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Rules Going Into Effect Today

NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

List of Public Laws

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

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To authorize the United States Secret Service to continue to furnish protection to certain former Federal officials or members of their immediate families (Jan. 19, 1977; 91 Stat. 3) Price: $.35

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The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
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DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	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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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 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Revision of Delegations of Authority to the Judicial Officer

Paragraph (a) of § 2.35 of Part 2, Subtitle A, Title 7, Code of Federal Regulations, is amended to align the authority of the Judicial Officer with the recently adopted "Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes" (7 CFR Part 1, Subpart H), published in the FEDERAL REGISTER on January 4, 1977 (42 FR 743). The paragraph is revised to read as follows:

§ 2.35 Delegations of authority to the Judicial Officer.

* * * * *

(a) Pursuant to the provisions of the Act of April 4, 1940 (7 U.S.C. 450c–450g), and Reorganization Plan No. 2 of 1953 (5 U.S.C. 1970 Ed., Appendix, p. 550), the Judicial Officer is hereby authorized to perform any regulatory function as defined in the said Act, which the Secretary of Agriculture is or hereafter may be authorized or required by law to perform, in acting as final deciding officer in adjudication proceedings subject to 5 U.S.C. 556 and 557; in other adjudication proceedings which are or may be made subject to the "Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes" set forth in 7 CFR Part 1, Subpart H; in rate proceedings under the Packers and Stockyards Act; and in reparation proceedings under statutes administered by the Department. As used herein the term "Judicial Officer" shall mean any person or persons so designated by the Secretary of Agriculture. The provisions of the delegation shall not be construed to limit the authority of the Judicial Officer to perform any functions, in addition to those defined in the said Act of April 4, 1940, which from time to time may be assigned by the Secretary to him.

* * * * *

Effective date: This amendment shall become effective on February 1, 1977.

Dated: January 18, 1977.

JOHN A. KNEBEL,
Secretary of Agriculture.

[FR Doc.77-2241 Filed 1-24-77;8:45 am]

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

[Navel Orange Reg. 396, Amdt. 1]

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

Limitation of Handling

This regulation increases the quantity of California-Arizona Navel oranges that may be shipped to fresh market during the weekly regulation period January 14–20, 1977. The quantity that may be shipped is increased due to improved market conditions for Navel oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 907.

(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 an increase in the quantity of oranges available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Navel Orange Regulation 396 (42 FR 2665). The marketing picture now indicates that there is a greater demand for Navel oranges than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of Navel oranges to fill the current market demand thereby making a greater quantity of Navel oranges available to meet such increased demand, the regulation should be amended, 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 amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Navel oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b)(1) (i), (ii), and (iii) of § 907.696 (Navel Orange Regulation 396 (42 FR 2665)) are hereby amended to read as follows:

§ 907.696 Navel Orange Regulation 396.

* * * * *

(b) * * * (1) * * *

(i) District 1: 1,094,000 cartons;
(ii) District 2: 216,000 cartons;
(iii) District 3: 40,000 cartons.

* * * * *

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

Dated: January 19, 1977.

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

[FR Doc.77-2238 Filed 1-24-77;8:45 am]

PART 959—ONIONS GROWN IN SOUTH TEXAS

Handling Requirements

This regulation, designed to promote orderly marketing of South Texas onions, imposes minimum grade, size and container standards and requires inspection of fresh market shipments to keep undesirable onions from being shipped to consumers.

Notice of rulemaking with respect to a proposed handling regulation, to be effective under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR Part 959), regulating the handling of onions grown in the production area, was published in the December 16, 1976 FEDERAL REGISTER (41 FR 54948). This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The notice afforded interested persons until January 3, 1977, to file written comments. None was filed.

Findings. After consideration of all relevant matters, including the proposal set forth in the aforesaid notice which was recommended by the South Texas Onion Committee, established pursuant to said marketing agreement and order, it is hereby found and determined that

the handling regulation, as hereinafter set forth, will tend to effectuate the declared policy of the act.

The recommendations of the committee reflect its appraisal of the expected volume and composition of the 1977 early spring crop of South Texas onions and of the marketing prospects for the shipping season which is expected to begin about March 7.

The grade and size requirements are similar to last season's and are designed to prevent onions of poor quality or undesirable sizes from being distributed in fresh market channels.

Thus, only onions that contain not more than 20 percent defects of U.S. No. 1 grade and are not packed or loaded on Sunday except for export may be shipped from March 7 through May 14, 1977. Again this season in order to provide more orderly marketing from all districts, the inspection and container requirements will be extended through June 11, 1977.

The container requirements should prevent the use of off-size or deceptive containers which could adversely affect the reputation and returns of South Texas onions. However, it will not preclude the use of containers customarily packed for the retail trade. The prohibition on packaging and loading onions on Sunday is recommended principally to provide more orderly marketing by tailoring shipments from the production area more closely to the ability of receiving markets to accept marketings. However, this season handlers may, with approval of the committee, grade, package and load onions on Sunday for export: *Provided*, That they shut down packing and loading operations on the first working day after shipment for the same length of time as they operated on Sunday. This should prevent handlers who ship on Sunday for export from gaining a competitive advantage due to longer packing hours over handlers who do not have export orders.

Exceptions are provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable. Up to 100 pounds of onions may be handled, other than for resale, per day without regard to requirements of this section in order to avoid placing an unreasonable burden on persons handling noncommercial quantities of onions.

The requirements with respect to special purpose shipments will allow the shipment of onions for experimental purposes or the use of containers including bulk bins which have been the subject of test shipments during past seasons, and should encourage exports by allowing the use of containers required for such purposes. Shipments for relief or charity are exempt from inspection and assessment requirements since no useful purpose would be served by regulating such shipments.

The regulation is as follows:

§ 959.317 Handling regulation.

During the period March 7 through June 11, 1977, no handler may package or load onions on any Sunday, except in accordance with paragraph (f) of this section, or handle any lot of onions grown in the production area, except red onions, unless such onions meet the assessment requirements of § 959.217 and the requirements of paragraphs (a), (b), (c) and (d) of this section, or unless such onions are handled in accordance with the provisions of paragraphs (e) or (f) of this section except that the grade and size requirements of paragraphs (a) and (b) and the Sunday packaging prohibition shall terminate at 11:59 p.m. on May 14, 1977.

(a) *Grade requirements.* Not to exceed 20 percent defects of U.S. No. 1 grade. In percentage grade lots, tolerances for serious damage shall not exceed 10 percent including not more than 2 percent decay. Double the lot tolerance shall be permitted in individual packages in percentage grade lots. Application of tolerances in U.S. onion standards shall apply to in-grade lots.

(b) *Size requirements.* (1) "Small"—1 to 2¼ inches in diameter, and limited to whites only;

(2) "Repacker"—1¾ to 3 inches in diameter, with 60 percent or more 2 inches in diameter or larger;

(3) "Medium"—2 to 3½ inches in diameter; or

(4) "Jumbo"—3 inches or larger in diameter.

(5) Tolerances for size in the U.S. onion standards shall apply except that for "repacker" and "medium" sizes not more than 20 percent, by weight, of onions in any lot may be larger than the maximum diameter specified. Application of tolerances in the U.S. onion standards shall apply.

(c) *Container requirements.* (1) 25-pound bags, with an average net weight in any lot of not more than 27½ pounds per bag, and with outside dimensions not larger than 29 inches by 31 inches; or

(2) 50-pound bags, with an average net weight in any lot of not more than 55 pounds per bag, and with outside dimensions not larger than 33 inches by 39½ inches.

(3) These container requirements shall not be applicable to onions sold to Federal agencies.

(d) *Inspection.* (1) No handler may handle any onions regulated hereunder, except pursuant to paragraphs (e) or (f)(3) of this section, unless an appropriate inspection certificate has been issued with respect thereto and the certificate is valid at the time of shipment.

(2) No handler may transport or cause the transportation by motor vehicle of any shipment of onions for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto or by documentary evidence on forms furnished by the committee identifying truck lots to which a valid inspection certificate is applicable and a copy of such inspection certificate or committee document, upon request, is surrendered to authorities designated by the committee.

(3) For purposes of operation under this part each inspection certificate or committee form required as evidence of inspection is hereby determined to be valid for a period not to exceed 72 hours following completion of inspection as shown on the certificate.

(e) *Minimum quantity exemption.* Any handler may handle, other than for resale, up to, but not to exceed 100 pounds of onions per day without regard to the requirements of this section, but this exemption shall not apply to any shipment or any portion thereof of over 100 pounds of onions.

(f) *Special purpose shipments and culls.* (1) Onions may be handled in containers customarily packed for the retail trade and in other designated special purpose containers as follows:

(i) Each handler desiring to make such shipments shall first apply to the committee for and obtain a Certificate of Privilege to make such shipments.

(ii) After obtaining an approved Certificate of Privilege, each handler may handle onions packed in 2, 3 or 5-pound containers customarily packed for the retail trade, or 50-pound cartons, if they meet the grade, size, and inspection requirements of paragraphs (a), (b) and (d) of this section and if they are handled in accordance with the reporting requirements established in subparagraph (2) of this paragraph on such shipments: *Provided*, That shipments of 2, 3 and 5-pound containers shall not exceed 10 percent of a handler's total weekly onion shipments, and provided further that shipments of 50-pound cartons shall not exceed 10 percent of a handler's total weekly onion shipments of all onions allowed to be marketed under this section.

(iii) The average gross weight per lot of onions packed in master containers shall not exceed 115 percent of the designated net contents.

(iv) The average net weight per lot of 50-pound cartons shall not exceed 55 pounds.

(2) *Reporting requirements for shipments in designated special purpose containers.* Each handler who handles shipments of onions in containers customarily packed for the retail trade and in other designated special purpose containers, shall report thereon to the committee, the inspection certificate numbers, the grade and size of onions packed, and the size of the containers in which such onions were handled. Such report, in accordance with § 959.80 shall be furnished to the committee in such manner, on such forms and at such times as it may prescribe. Also, each handler of such shipments of onions shall maintain records of such marketings, pursuant to § 959.80(c). Such records shall be subject to review and audit by the committee to verify reports thereon.

(3) *Experimental shipments.* Upon approval of the committee, onions may be shipped in bulk bins with inside dimensions of 47 inches x 37½ inches x 36 inches deep and having a volume of 59,440 cubic inches, or similar containers. Each container shall have a new perforated 2-mil polyethylene liner. Also, onions may be shipped in 40-pound cartons, but not to exceed 4,000 cartons. Such experimental shipments shall be exempt from paragraph (c) of this section but shall not exceed ten percent of a handler's total weekly onion shipments and shall be handled in accordance with safeguard provisions of § 959.54 and this paragraph. Also, the receiver must agree to furnish the committee with a report on the arrival condition of each shipment. Further, upon approval of the committee, onions may be shipped for other experimental purposes exempt from regulations issued pursuant to §§ 959.42, 959.52 and 959.60, provided they are handled in accordance with safeguard provisions of § 959.54.

(4) *Export shipments.* Upon approval of the committee, the prohibition against packaging or loading onions on any Sunday may be modified or suspended to permit the handling of onions for export. If a handler, with approval of the committee, grades, packages and ships onions for export on any Sunday, such handler shall on the first workday following shipment of the onions, cease all grading, packaging and shipping operations for the same length of time as the handler operated grading, packaging and shipping operations on Sunday.

(5) *Onions failing to meet requirements.* Onions failing to meet the grade, size, and container requirements of this section, and not exempt under paragraph (e) of this section, may be handled only pursuant to § 959.126. Culls may be handled pursuant to § 959.126(a)(1). Shipments for relief or charity may be handled without regard to inspection and assessment requirements.

(g) *Definitions.* "U.S. onion standards" mean the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (§§ 51.3195–51.3209 of this title), or the United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types) (§§ 51.2830–51.2854 of this title), whichever is applicable to the particular variety, or variations thereof specified in this section. The term "U.S. No. 1" shall have the same meaning as set forth in these standards.

All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 143, as amended, and this part.

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

Dated: January 19, 1977, to become effective March 7, 1977.

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

[FR Doc.77-2239 Filed 1-24-77;8:45 am]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regs., 1976 Crop Wheat Supp., Amdt. 1]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—1976 Crop Wheat Loan and Purchase Program

On October 13, 1976, Acting Secretary Knebel announced the 1977-crop wheat loan rate, an increase over the 1976-crop wheat loan rate. He further announced that the 1977-crop wheat loan rate would be immediately applicable to the 1976-crop of wheat. Premiums and discounts will remain unchanged.

Additional disbursements on 1976-crop wheat loans already made will be available retroactively for those producers who want their loans increased to the new rates.

Producers who wish to secure loans or adjust present loans at the new rate for 1976 wheat can do so by contacting their local Agricultural Stabilization and Conservation Service Office or Agricultural Service Center.

Under conditions of exceptionally heavy demand for credit in a very limited and overly tight money market, the new loan rates will better assist the producers in holding wheat for improved market prices. In light of this current trend, the 1976-crop national average loan and purchase rate revision is being made now to give farmers timely assistance in the orderly marketing of this year's record crop of wheat.

In order to show the new loan rates, 7 CFR 1421.488(a), published in the FEDERAL REGISTER at 41 FR 35702 and effective as to the 1976 crop of wheat, is revised to read as follows:

§ 1421.488 Loan and purchase rates.

(a) *Basic loan and purchase rates (counties).* Basic rates per bushel for loan and settlement purposes for wheat are established for wheat grading U.S. No. 1 and are as follows:

ALABAMA

County	Rate per bushel	County	Rate per bushel
Mobile	$2.42	All other counties	$2.23

ARIZONA

All counties	$2.28

ARKANSAS

All counties	$2.24

CALIFORNIA

County	Rate per bushel	County	Rate per bushel
Alameda	$2.44	Kern	$2.39
Alpine	2.26	Kings	2.36
Amador	2.39	Lake	2.32
Butte	2.33	Lassen	2.21
Calaveras	2.39	Los Angeles	2.44
Colusa	2.38	Madera	2.37
Contra Costa	2.39	Marin	2.37
El Dorado	2.38	Mariposa	2.37
Fresno	2.34	Mendocino	2.26
Glenn	2.32	Merced	2.40
Humboldt	2.21	Modoc	2.21
Imperial	2.36	Monterey	2.34
Inyo	2.32	Napa	2.38
Orange	$2.44	Barbara	$2.34
Placer	2.38	Santa Clara	2.38
Plumas	2.21	Santa Cruz	2.39
Riverside	2.36	Shasta	2.22
Sacramento	2.44	Sierra	2.23
San Benito	2.37	Siskiyou	2.21
San Bernardino	2.45	Solano	2.39
San Diego	2.44	Sonoma	2.36
San Francisco	2.44	Stanislaus	2.41
San Joaquin	2.44	Sutter	2.38
San Luis Obispo	2.33	Tehama	2.28
San Mateo	2.44	Tulare	2.36
Santa		Tuolumne	2.37
		Ventura	2.41
		Yolo	2.39
		Yuba	2.38

COLORADO

County	Rate per bushel	County	Rate per bushel
Adams	$2.10	La Plata	$2.01
Alamosa	2.07	Larimer	2.10
Arapahoe	2.10	Las Animas	2.13
Archuleta	2.04	Lincoln	2.10
Baca	2.13	Logan	2.10
Bent	2.10	Mesa	2.01
Boulder	2.09	Moffat	2.07
Chaffee	2.07	Montezuma	2.01
Cheyenne	2.11	Montrose	2.01
Conejos	2.07	Morgan	2.10
Costilla	2.07	Otero	2.10
Crowley	2.10	Ouray	2.01
Custer	2.09	Phillips	2.10
Delta	2.01	Pitkin	2.01
Denver	2.10	Prowers	2.12
Dolores	2.01	Pueblo	2.10
Douglas	2.10	Rio Blanco	2.04
Eagle	2.04	Rio Grande	2.07
Elbert	2.10	Routt	2.07
El Paso	2.10	Saguache	2.07
Fremont	2.09	San Miguel	2.01
Garfield	2.04	Sedgwick	2.10
Grand	2.07	Summit	2.04
Huerfano	2.11	Teller	2.09
Jackson	2.07	Washington	2.10
Jefferson	2.09	Weld	2.10
Kiowa	2.11	Yuma	2.11
Kit Carson	2.11		

CONNECTICUT

All counties	$2.25

DELAWARE

All counties	$2.28

FLORIDA

All counties	$2.22

GEORGIA

All counties	$2.22

IDAHO

County	Rate per bushel	County	Rate per bushel
Ada	$2.20	Gem	$2.20
Adams	2.20	Gooding	2.20
Bannock	2.18	Idaho	2.28
Bear Lake	2.16	Jefferson	2.15
Benewah	2.31	Jerome	2.20
Bingham	2.16	Kootenai	2.29
Blaine	2.16	Latah	2.31
Boise	2.20	Lemhi	2.15
Bonner	2.23	Lewis	2.28
Bonneville	2.15	Lincoln	2.19
Boundary	2.21	Madison	2.15
Butte	2.15	Minidoka	2.19
Camas	2.17	Nez Perce	2.13
Canyon	2.20	Oneida	2.19
Caribou	2.17	Owyhee	2.19
Cassia	2.19	Payette	2.20
Clark	2.13	Power	2.19
Clearwater	2.29	Shoshone	2.29
Custer	2.15	Teton	2.14
Elmore	2.19	Twin Falls	2.20
Franklin	2.19	Valley	2.19
Fremont	2.14	Washington	2.20

ILLINOIS

County	Rate per bushel	County	Rate per bushel
Adams	$2.26	Bond	$2.32
Alexander	2.29	Boone	2.34

ILLINOIS—Continued

County	Rate per bushel	County	Rate per bushel
Brown	$2.26	Logan	$2.28
Bureau	2.32	McDonough	2.28
Calhoun	2.33	McHenry	2.34
Carroll	2.31	McLean	2.30
Cass	2.28	Macon	2.28
Champaign	2.32	Macoupin	2.32
Christian	2.30	Madison	2.33
Clark	2.28	Marion	2.32
Clay	2.28	Marshall	2.31
Clinton	2.32	Mason	2.26
Coles	2.28	Massac	2.28
Cook	2.34	Menard	2.26
Crawford	2.27	Mercer	2.30
Cumberland	2.28	Monroe	2.33
De Kalb	2.34	Montgomery	2.32
DeWitt	2.28	Morgan	2.30
Douglas	2.29	Moultrie	2.29
DuPage	2.34	Ogle	2.32
Edgar	2.30	Peoria	2.30
Edwards	2.28	Perry	2.32
Effingham	2.30	Piatt	2.28
Fayette	2.31	Pike	2.27
Ford	2.32	Pope	2.26
Franklin	2.32	Pulaski	2.29
Fulton	2.30	Putnam	2.31
Gallatin	2.25	Randolph	2.33
Greene	2.32	Richland	2.27
Grundy	2.34	Rock Island	2.31
Hamilton	2.26	Saint Clair	2.33
Hancock	2.26	Saline	2.26
Hardin	2.25	Sangamon	2.30
Henderson	2.28	Schuyler	2.26
Henry	2.31	Scott	2.28
Iroquois	2.34	Shelby	2.30
Jackson	2.31	Stark	2.30
Jasper	2.27	Stephenson	2.33
Jefferson	2.32	Tazewell	2.28
Jersey	2.33	Union	2.29
Jo Daviess	2.31	Vermilion	2.33
Johnson	2.29	Wabash	2.27
Kane	2.34	Warren	2.30
Kankakee	2.34	Washington	2.32
Kendall	2.34	Wayne	2.28
Knox	2.30	White	2.25
Lake	2.34	Whiteside	2.32
LaSalle	2.34	Will	2.34
Lawrence	2.27	Williamson	2.30
Lee	2.33	Winnebago	2.33
Livingston	2.33	Woodford	2.30

INDIANA

County	Rate per bushel	County	Rate per bushel
Adams	$2.27	Howard	$2.26
Allen	2.27	Huntington	2.26
Bartholomew	2.27	Jackson	2.28
Benton	2.32	Jasper	2.33
Blackford	2.27	Jay	2.27
Boone	2.26	Jefferson	2.30
Brown	2.27	Jennings	2.28
Carroll	2.30	Johnson	2.26
Cass	2.30	Knox	2.27
Clark	2.32	Kosciusko	2.30
Clay	2.28	Language	2.26
Clinton	2.26	Lake	2.34
Crawford	2.32	La Porte	2.34
Daviess	2.28	Lawrence	2.28
Dearborn	2.27	Madison	2.27
Decatur	2.27	Marion	2.27
De Kalb	2.27	Marshall	2.30
Delaware	2.27	Martin	2.28
Dubois	2.29	Miami	2.26
Elkhart	2.29	Monroe	2.27
Fayette	2.27	Montgomery	2.28
Floyd	2.32	Morgan	2.26
Fountain	2.30	Newton	2.33
Franklin	2.27	Noble	2.27
Fulton	2.30	Ohio	2.27
Gibson	2.27	Orange	2.30
Grant	2.26	Owen	2.27
Greene	2.28	Parke	2.30
Hamilton	2.27	Perry	2.28
Hancock	2.27	Pike	2.28
Harrison	2.32	Porter	2.34
Hendricks	2.26	Posey	2.25
Henry	2.27	Pulaski	2.33

INDIANA—Continued

County	Rate per bushel	County	Rate per bushel
Putnam	$2.26	Tipton	$2.26
Randolph	2.27	Union	2.27
Ripley	2.27	Vanderburgh	2.27
Rush	2.27	Vermillion	2.30
Saint Joseph	2.32	Vigo	2.29
Scott	2.30	Wabash	2.26
Shelby	2.27	Warren	2.32
Spencer	2.28	Warrick	2.28
Starke	2.33	Washington	2.30
Steuben	2.27	Wayne	2.27
Sullivan	2.28	Wells	2.27
Switzerland	2.28	White	2.32
Tippecanoe	2.29	Whitley	2.26

IOWA

Pottawattamie	$2.34	All other counties	$2.22

KANSAS

County	Rate per bushel	County	Rate per bushel
Allen	$2.29	Linn	$2.32
Anderson	2.32	Logan	2.12
Atchison	2.34	Lyon	2.27
Barber	2.18	McPherson	2.21
Barton	2.18	Marion	2.21
Bourbon	2.30	Marshall	2.27
Brown	2.32	Meade	2.15
Butler	2.22	Miami	2.33
Chase	2.25	Mitchell	2.21
Chautauqua	2.25	Montgomery	2.27
Cherokee	2.27	Morris	2.25
Cheyenne	2.11	Morton	2.14
Clark	2.15	Nemaha	2.29
Clay	2.23	Neosho	2.28
Cloud	2.23	Ness	2.17
Coffey	2.30	Norton	2.18
Comanche	2.16	Osage	2.30
Cowley	2.22	Osborne	2.21
Crawford	2.28	Ottawa	2.22
Decatur	2.14	Pawnee	2.18
Dickinson	2.22	Phillips	2.18
Doniphan	2.32	Pottawatomie	2.29
Douglas	2.33	Pratt	2.18
Edwards	2.18	Rawlins	2.11
Elk	2.25	Reno	2.21
Ellis	2.18	Republic	2.23
Ellsworth	2.21	Rice	2.21
Finney	2.13	Riley	2.27
Ford	2.16	Rooks	2.19
Franklin	2.33	Rush	2.18
Geary	2.25	Russell	2.19
Gove	2.16	Saline	2.22
Graham	2.18	Scott	2.12
Grant	2.12	Sedgwick	2.21
Gray	2.15	Seward	2.14
Greeley	2.10	Shawnee	2.31
Greenwood	2.25	Sheridan	2.15
Hamilton	2.12	Sherman	2.10
Harper	2.20	Smith	2.21
Harvey	2.21	Stafford	2.18
Haskell	2.13	Stanton	2.12
Hodgeman	2.17	Stevens	2.14
Jackson	2.31	Sumner	2.21
Jefferson	2.33	Thomas	2.12
Jewell	2.22	Trego	2.18
Johnson	2.34	Wabaunsee	2.28
Kearny	2.12	Wallace	2.10
Kingman	2.21	Washington	2.25
Kiowa	2.18	Wichita	2.11
Labette	2.27	Wilson	2.27
Lane	2.16	Woodson	2.28
Leavenworth	2.34	Wyandotte	2.34
Lincoln	2.21		

KENTUCKY

Jefferson	$2.33	All other counties	$2.25

LOUISIANA

East Baton Rouge	$2.43	Saint Charles	$2.43
Jefferson	2.43	West Baton Rouge	2.43
Orleans	2.43	All other counties	2.28

MAINE

County	Rate per bushel	County	Rate per bushel
All counties			$2.22

MARYLAND

Baltimore City	$2.41	All other counties	$2.28

MASSACHUSETTS

All counties	$2.24

MICHIGAN

County	Rate per bushel	County	Rate per bushel
Alcona	$2.17	Keeweenaw	$2.18
Alger	2.18	Lake	2.19
Allegan	2.26	Lapeer	2.25
Alpena	2.14	Leelanau	2.16
Antrim	2.14	Lenawee	2.29
Arenac	2.18	Livingston	2.26
Baraga	2.18	Luce	2.18
Barry	2.25	Mackinac	2.18
Bay	2.22	Macomb	2.28
Benzie	2.17	Manistee	2.18
Berrien	2.30	Marquette	2.18
Branch	2.27	Mason	2.21
Calhoun	2.26	Mecosta	2.22
Cass	2.27	Menominee	2.18
Charlevoix	2.13	Midland	2.22
Cheboygan	2.13	Missaukee	2.17
Chippewa	2.18	Monroe	2.31
Clare	2.20	Montcalm	2.23
Clinton	2.23	Montmorency	2.14
Crawford	2.17	Muskegon	2.23
Delta	2.18	Newaygo	2.21
Dickinson	2.18	Oakland	2.28
Eaton	2.25	Oceana	2.21
Emmet	2.11	Ogemaw	2.18
Genessee	2.25	Ontonagon	2.18
Gladwin	2.20	Osceola	2.19
Gogebic	2.18	Oscoda	2.17
Grand Traverse	2.17	Otsego	2.14
Gratiot	2.23	Ottawa	2.23
Hillsdale	2.28	Presque Isle	2.13
Houghton	2.18	Roscommon	2.17
Huron	2.24	Saginaw	2.25
Ingham	2.25	Saint Clair	2.28
Ionia	2.23	Saint Joseph	2.27
Iosco	2.18	Sanilac	2.25
Iron	2.18	Schoolcraft	2.18
Isabella	2.22	Shiawassee	2.25
Jackson	2.26	Tuscola	2.25
Kalamazoo	2.26	Van Buren	2.26
Kalkaska	2.17	Washtenaw	2.28
Kent	2.23	Wayne	2.28
		Wexford	2.17

MINNESOTA

County	Rate per bushel	County	Rate per bushel
Aitkin	$2.44	Itasca	$2.42
Anoka	2.44	Jackson	2.38
Becker	2.34	Kanabec	2.43
Beltrami	2.37	Kandiyohi	2.42
Benton	2.43	Kittson	2.28
Big Stone	2.35	Koochiching	2.38
Blue Earth	2.42	Lac Qui Parle	2.36
Brown	2.42	Lake of the Woods	2.32
Carlton	2.44	Le Sueur	2.44
Carver	2.44	Lincoln	2.34
Cass	2.40	Lyon	2.37
Chippewa	2.38	McLeod	2.44
Chisago	2.44	Mahnomen	2.34
Clay	2.32	Marshall	2.31
Clearwater	2.36	Martin	2.40
Cottonwood	2.39	Meeker	2.44
Crow Wing	2.42	Mill Lacs	2.43
Dakota	2.44	Morrison	2.42
Dodge	2.44	Mower	2.42
Douglas	2.39	Murray	2.37
Faribault	2.41	Nicollet	2.44
Fillmore	2.40	Nobles	2.36
Freeborn	2.40	Norman	2.32
Goodhue	2.44	Olmsted	2.42
Grant	2.37	Otter Tail	2.37
Hennepin	2.44	Pennington	2.33
Houston	2.37	Pine	2.43
Hubbard	2.37	Pipestone	2.34
Isanti	2.44		

MINNESOTA—Continued

County	Rate per bushel	County	Rate per bushel
Polk	$2.33	Stevenes	$2.38
Pope	2.40	Swift	2.38
Ramsey	2.44	Todd	2.40
Red Lake	2.33	Traverse	2.34
Redwood	2.40	Wabasha	2.43
Renville	2.42	Wadena	2.38
Rice	2.44	Waseca	2.43
Rock	2.34	Washington	2.44
Roseau	2.29	Watonwan	2.41
Saint Louis	2.44	Wilkin	2.34
Scott	2.44	Winona	2.41
Sherburne	2.44	Wright	2.44
Sibley	2.44	Yellow Medicine	2.38
Stearns	2.42		
Steele	2.42		

MISSISSIPPI

Harrison	$2.43	All other counties	$2.24
Jackson	2.43		

MISSOURI

Adair	$2.21	Linn	$2.27
Andrew	2.32	Livingston	2.28
Atchison	2.27	McDonald	2.22
Audrain	2.26	Macon	2.24
Barry	2.22	Madison	2.26
Barton	2.26	Maries	2.27
Bates	2.30	Marion	2.25
Benton	2.26	Mercer	2.25
Bollinger	2.26	Miller	2.23
Boone	2.23	Mississippi	2.28
Buchanan	2.34	Moniteau	2.21
Butler	2.25	Monroe	2.25
Caldwell	2.31	Montgomery	2.29
Callaway	2.25	Morgan	2.24
Camden	2.24	New Madrid	2.28
Cape Girardeau	2.27	Newton	2.22
Carroll	2.29	Nodaway	2.30
Carter	2.23	Oregon	2.21
Cass	2.31	Osage	2.25
Cedar	2.25	Ozark	2.17
Chariton	2.27	Pemiscot	2.26
Christian	2.19	Perry	2.26
Clark	2.22	Pettis	2.26
Clay	2.32	Phelps	2.24
Clinton	2.32	Pike	2.28
Cole	2.24	Platte	2.32
Cooper	2.23	Polk	2.24
Crawford	2.26	Pulaski	2.22
Dade	2.24	Putnam	2.23
Dallas	2.21	Ralls	2.25
Daviess	2.29	Randolph	2.24
De Kalb	2.31	Ray	2.32
Dent	2.24	Reynolds	2.24
Douglas	2.19	Ripley	2.23
Dunklin	2.26	Saint Charles	2.32
Franklin	2.32	Saint Clair	2.27
Gasconade	2.29	Saint Genevieve	2.27
Gentry	2.28	Saint Francis	2.27
Greene	2.22	Saint Louis	2.32
Grundy	2.26	Saline	2.27
Harrison	2.28	Schuyler	2.19
Henry	2.29	Scotland	2.19
Hickory	2.26	Scott	2.28
Holt	2.30	Shannon	2.21
Howard	2.23	Shelby	2.24
Howell	2.17	Stoddard	2.27
Iron	2.26	Stone	2.22
Jackson	2.34	Sullivan	2.24
Jasper	2.25	Taney	2.19
Jefferson	2.29	Texas	2.20
Johnson	2.30	Vernon	2.28
Knox	2.21	Warren	2.31
Laclede	2.21	Washington	2.27
Lafayette	2.32	Wayne	2.25
Lawrence	2.22	Webster	2.20
Lewis	2.23	Worth	2.28
Lincoln	2.30	Wright	2.20

MONTANA

County	Rate per bushel	County	Rate per bushel
Beaverhead	$2.14	Madison	$2.21
Big Horn	2.15	Meagher	2.19
Blaine	2.16	Mineral	2.21
Broadwater	2.20	Missoula	2.21
Carbon	2.16	Musselshell	2.16
Carter	2.16	Park	2.20
Cascade	2.19	Petroleum	2.16
Chouteau	2.19	Phillips	2.15
Custer	2.15	Pondera	2.19
Daniels	2.14	Powder River	2.15
Dawson	2.16	Powell	2.21
Deer Lodge	2.21	Prairie	2.16
Fallon	2.17	Ravalli	2.19
Fergus	2.18	Richland	2.16
Flathead	2.22	Roosevelt	2.15
Gallatin	2.21	Rosebud	2.14
Garfield	2.14	Sanders	2.21
Glacier	2.19	Sheridan	2.15
Golden Valley	2.18	Silver Bow	2.21
Granite	2.21	Stillwater	2.18
Hill	2.17	Sweet Grass	2.19
Jefferson	2.21	Teton	2.19
Judith Basin	2.18	Toole	2.18
Lake	2.21	Treasure	2.15
Lewis and Clark	2.19	Valley	2.14
Liberty	2.18	Wheatland	2.19
Lincoln	2.22	Wibaux	2.17
McCone	2.15	Yellowstone	2.16

NEBRASKA

Adams	$2.21	Jefferson	$2.26
Antelope	2.29	Johnson	2.27
Arthur	2.12	Kearny	2.19
Banner	2.09	Keith	2.12
Blaine	2.19	Keya Paha	2.21
Boone	2.29	Kimball	2.09
Box Butte	2.09	Knox	2.29
Boyd	2.26	Lancaster	2.30
Brown	2.19	Lincoln	2.16
Buffalo	2.22	Logan	2.16
Burt	2.34	Loup	2.19
Butler	2.31	McPherson	2.15
Cass	2.33	Madison	2.29
Cedar	2.30	Merrick	2.26
Chase	2.11	Morrill	2.09
Cherry	2.15	Nance	2.27
Cheyenne	2.09	Nemaha	2.27
Clay	2.22	Nuckolls	2.21
Colfax	2.31	Otoe	2.30
Cuming	2.33	Pawnee	2.29
Custer	2.19	Perkins	2.11
Dakota	2.33	Phelps	2.18
Dawes	2.09	Pierce	2.29
Dawson	2.21	Platte	2.29
Deuel	2.10	Polk	2.28
Dixon	2.30	Red Willow	2.14
Dodge	2.33	Richardson	2.30
Douglas	2.34	Rock	2.22
Dundy	2.11	Saline	2.26
Fillmore	2.24	Sarpy	2.34
Franklin	2.19	Saunders	2.33
Frontier	2.14	Scotts Bluff	2.09
Furnas	2.17	Seward	2.29
Gage	2.27	Sheridan	2.10
Garden	2.10	Sherman	2.22
Garfield	2.23	Sioux	2.07
Gosper	2.17	Stanton	2.31
Grant	2.12	Thayer	2.24
Greeley	2.25	Thomas	2.16
Hall	2.23	Thurston	2.33
Hamilton	2.25	Valley	2.22
Harlan	2.18	Washington	2.34
Hayes	2.13	Wayne	2.30
Hitchcock	2.13	Webster	2.21
Holt	2.26	Wheeler	2.25
Hooker	2.13	York	2.26
Howard	2.23		

NEVADA

County	Rate per bushel	County	Rate per bushel
All counties			$2.20

NEW HAMPSHIRE

All counties	$2.24

NEW JERSEY

All counties	$2.28

NEW MEXICO

All counties	$2.25

NEW YORK

Albany	$2.41	All other counties	$2.26
New York City	2.41		

NORTH CAROLINA

All counties	$2.22

NORTH DAKOTA

Adams	$2.16	McLean	$2.16
Barnes	2.29	Mercer	2.16
Benson	2.22	Morton	2.19
Billings	2.15	Mountrail	2.15
Bottineau	2.16	Nelson	2.28
Bowman	2.16	Oliver	2.17
Burke	2.14	Pembina	2.17
Burleigh	2.20	Pierce	2.19
Cass	2.31	Ramsey	2.24
Cavalier	2.23	Ransom	2.32
Dickey	2.29	Renville	2.16
Divide	2.13	Richland	2.33
Dunn	2.16	Rolette	2.19
Eddy	2.25	Sargent	2.32
Emmons	2.23	Sheridan	2.19
Foster	2.26	Sioux	2.18
Golden Valley	2.15	Slope	2.16
Grand Forks	2.30	Stark	2.16
Grant	2.18	Steele	2.29
Griggs	2.29	Stutsman	2.27
Hettinger	2.16	Towner	2.20
Kidder	2.23	Traill	2.30
La Moure	2.27	Walsh	2.29
Logan	2.25	Ward	2.15
McHenry	2.17	Wells	2.23
McIntosh	2.25	Williams	2.14
McKenzie	2.14		

OHIO

Adams	$2.28	Hardin	$2.31
Allen	2.29	Harrison	2.32
Ashland	2.32	Henry	2.30
Ashtabula	2.34	Highland	2.28
Athens	2.31	Hocking	2.31
Auglaize	2.28	Holmes	2.32
Belmont	2.32	Huron	2.31
Brown	2.28	Jackson	2.28
Butler	2.28	Jefferson	2.32
Carroll	2.32	Knox	2.32
Champaign	2.28	Lake	2.34
Clark	2.28	Lawrence	2.28
Clermont	2.28	Licking	2.32
Clinton	2.28	Logan	2.28
Columbiana	2.33	Lorain	2.32
Coshocton	2.32	Lucas	2.31
Crawford	2.28	Madison	2.28
Cuyahoga	2.32	Mahoning	2.34
Darke	2.28	Marion	2.31
Defiance	2.28	Medina	2.32
Delaware	2.31	Meigs	2.28
Erie	2.31	Mercer	2.28
Fairfield	2.31	Miami	2.28
Fayette	2.28	Monroe	2.32
Franklin	2.31	Montgomery	2.28
Fulton	2.30	Morgan	2.32
Gallia	2.28	Morrow	2.32
Geauga	2.34	Muskingum	2.32
Greene	2.28	Noble	2.32
Guernsey	2.32	Ottawa	2.31
Hamilton	2.28	Paulding	2.28
Hancock	2.31	Perry	2.31

OHIO—Continued

County	Rate per bushel	County	Rate per bushel
Pickaway	$2.31	Summit	$2.32
Pike	2.28	Trumbull	2.34
Portage	2.32	Tuscarawas	2.32
Preble	2.28	Union	2.31
Putnam	2.30	Van Wert	2.28
Richland	2.32	Vinton	2.31
Ross	2.31	Warren	2.28
Sandusky	2.31	Washington	2.32
Scioto	2.28	Wayne	2.32
Seneca	2.31	Williams	2.28
Shelby	2.28	Wood	2.31
Stark	2.32	Wyandot	2.31

OKLAHOMA

Adair	$2.26	Le Flore	$2.28
Alfalfa	2.24	Lincoln	2.28
Atoka	2.28	Logan	2.27
Beaver	2.19	Love	2.28
Beckham	2.27	McClain	2.28
Blaine	2.27	McCurtain	2.28
Bryan	2.28	McIntosh	2.28
Caddo	2.28	Major	2.26
Canadian	2.28	Marshall	2.28
Carter	2.28	Mayes	2.26
Cherokee	2.26	Murray	2.28
Choctaw	2.28	Muskogee	2.28
Cimarron	2.18	Noble	2.26
Cleveland	2.28	Nowata	2.26
Coal	2.28	Okfuskee	2.28
Comanche	2.28	Oklahoma	2.28
Cotton	2.28	Okmulgee	2.28
Craig	2.26	Osage	2.26
Creek	2.27	Ottawa	2.26
Custer	2.27	Pawnee	2.26
Delaware	2.26	Payne	2.27
Dewey	2.26	Pittsburg	2.28
Ellis	2.21	Pontotoc	2.28
Garfield	2.26	Pottawatomie	2.28
Garvin	2.28	Pushmataha	2.28
Grady	2.28	Roger Mills	2.25
Grant	2.24	Rogers	2.26
Greer	2.28	Seminole	2.28
Harmon	2.28	Sequoyah	2.28
Harper	2.19	Stephens	2.28
Haskell	2.28	Texas	2.19
Hughes	2.28	Tillman	2.28
Jackson	2.28	Tulsa	2.26
Jefferson	2.28	Wagoner	2.26
Johnston	2.28	Washington	2.26
Kay	2.25	Washita	2.27
Kingfisher	2.27	Woods	2.24
Kiowa	2.28	Woodward	2.24
Latimer	2.28		

OREGON

Baker	$2.31	Lake	$2.26
Benton	2.37	Lincoln	2.27
Clackamas	2.44	Lane	2.35
Clatsop	2.51	Linn	2.38
Columbia	2.51	Malheur	2.21
Coos	2.17	Marion	2.42
Crook	2.35	Morrow	2.38
Curry	2.16	Multnomah	2.51
Deschutes	2.35	Polk	2.40
Douglas	2.21	Sherman	2.40
Gilliam	2.40	Tillamook	2.44
Grant	2.35	Umatilla	2.37
Harney	2.21	Union	2.33
Hood River	2.46	Wallowa	2.31
Jackson	2.21	Wasco	2.42
Jefferson	2.38	Washington	2.44
Josephine	2.21	Wheeler	2.37
Klamath	2.29	Yamhill	2.42

PENNSYLVANIA

Philadelphia	$2.41	All other counties	$2.26

RHODE ISLAND

All counties	$2.25

SOUTH CAROLINA

Charleston	$2.41	All other counties	$2.22

SOUTH DAKOTA

County	Rate per bushel	County	Rate per bushel
Aurora	$2.29	Jackson	$2.20
Beadle	2.28	Jerauld	2.29
Bennett	2.16	Jones	2.22
Bon Homme	2.32	Kingsbury	2.29
Brookings	2.32	Lake	2.31
Brown	2.28	Lawrence	2.14
Brule	2.26	Lincoln	2.34
Buffalo	2.26	Lyman	2.23
Butte	2.14	McCook	2.32
Campbell	2.21	McPherson	2.25
Charles Mix	2.28	Marshall	2.32
Clark	2.28	Meade	2.15
Clay	2.34	Mellette	2.21
Codington	2.32	Miner	2.30
Corson	2.18	Minnehaha	2.33
Custer	2.08	Moody	2.33
Davison	2.32	Pennington	2.15
Day	2.32	Perkins	2.15
Deuel	2.35	Potter	2.23
Dewey	2.18	Roberts	2.34
Douglas	2.28	Sanborn	2.29
Edmunds	2.25	Shannon	2.15
Fall River	2.08	Spink	2.28
Faulk	2.27	Stanley	2.22
Grant	2.35	Sully	2.23
Gregory	2.25	Todd	2.20
Haakon	2.21	Tripp	2.23
Hamlin	2.31	Turner	2.33
Hand	2.28	Union	2.34
Hanson	2.29	Walworth	2.23
Harding	2.15	Washabaugh	2.20
Hughes	2.24	Yankton	2.30
Hutchinson	2.31	Ziebach	2.16
Hyde	2.26		

TENNESSEE

Shelby	$2.34	All other counties	$2.23

TEXAS

Andrews	$2.26	Dallas	$2.37
Archer	2.31	Dawson	2.26
Armstrong	2.26	Deaf Smith	2.26
Atascosa	2.40	Delta	2.36
Bailey	2.26	Denton	2.35
Bandera	2.36	De Witt	2.42
Bastrop	2.40	Dickens	2.26
Baylor	2.30	Dimmit	2.34
Bee	2.48	Donley	2.26
Bell	2.40	Eastland	2.30
Bexar	2.40	Edwards	2.30
Blanco	2.38	Ellis	2.37
Borden	2.26	El Paso	2.26
Bosque	2.37	Erath	2.35
Bowie	2.33	Falls	2.39
Brazos	2.45	Fannin	2.33
Briscoe	2.26	Fisher	2.27
Brown	2.34	Floyd	2.26
Burleson	2.45	Foard	2.28
Burnet	2.38	Frio	2.38
Caldwell	2.40	Gaines	2.26
Calhoun	2.44	Galveston	2.50
Callahan	2.30	Garza	2.26
Carson	2.26	Gillespie	2.34
Castro	2.26	Glasscock	2.26
Chambers	2.50	Goliad	2.44
Cherokee	2.42	Gray	2.26
Childress	2.28	Grayson	2.33
Clay	2.32	Grimes	2.45
Cochran	2.26	Guadalupe	2.40
Coke	2.27	Hale	2.26
Coleman	2.31	Hall	2.26
Collin	2.35	Hamilton	2.37
Collingsworth	2.26	Hansford	2.23
Comal	2.40	Hardeman	2.28
Comanche	2.35	Harris	2.50
Concho	2.32	Hartley	2.23
Cooke	2.33	Haskell	2.28
Coryell	2.39	Hays	2.40
Cottle	2.26	Hemphill	2.23
Crosby	2.26	Hill	2.37
Culberson	2.26	Hockley	2.26
Dallam	2.23	Hood	2.34
		Howard	2.26

TEXAS—Continued

County	Rate per bushel	County	Rate per bushel
Hudspeth	$2.26	Parker	$2.34
Hunt	2.36	Parmer	2.26
Hutchinson	2.23	Pecos	2.26
Irion	2.28	Potter	2.26
Jack	2.32	Presidio	2.26
Jackson	2.40	Randall	2.26
Jeff Davis	2.26	Real	2.32
Jefferson	2.46	Red River	2.33
Johnson	2.36	Reeves	2.26
Jones	2.28	Refugio	2.47
Karnes	2.44	Roberts	2.23
Kaufman	2.38	Robertson	2.42
Kendall	2.38	Rockwall	2.36
Kent	2.26	Runnels	2.30
Kerr	2.34	San Patricio	2.50
Kimble	2.32	San Saba	2.35
King	2.26	Schleicher	2.28
Kinney	2.30	Scurry	2.27
Knox	2.28	Shackelford	2.30
Lamar	2.33	Sherman	2.23
Lamb	2.26	Somervell	2.34
Lampasas	2.39	Stephens	2.31
Limestone	2.39	Sterling	2.27
Lipscomb	2.23	Stonewall	2.26
Live Oak	2.46	Sutton	2.28
Llano	2.36	Swisher	2.26
Loving	2.26	Tarrant	2.37
Lubbock	2.26	Taylor	2.28
Lynn	2.26	Terry	2.26
McCulloch	2.34	Throckmorton	2.30
McLennan	2.39	Tom Green	2.29
Martin	2.26	Travis	2.40
Mason	2.34	Uvalde	2.33
Maverick	2.30	Van Zandt	2.38
Medina	2.36	Victoria	2.44
Menard	2.32	Waller	2.45
Midland	2.26	Ward	2.26
Milam	2.43	Wharton	2.45
Mills	2.35	Wheeler	2.26
Mitchell	2.27	Wichita	2.30
Montague	2.32	Wilbarger	2.30
Moore	2.23	Williamson	2.40
Motley	2.26	Wilson	2.42
Navarro	2.38	Wise	2.33
Nolan	2.37	Yoakum	2.26
Nueces	2.50	Young	2.31
Ochiltree	2.23	Zavala	2.34
Oldham	2.26		
Palo Pinto	2.32		

UTAH

All counties	$2.20

VERMONT

All counties	$2.24

VIRGINIA

Chesapeake (Norfolk)	$2.41	All other counties	$2.24

WASHINGTON

Adams	$2.36	Lewis	$2.46
Asotin	2.33	Lincoln	2.34
Benton	2.38	Mason	2.40
Chelan	2.38	Okanogan	2.34
Clallam	2.30	Pacific	2.43
Clark	2.51	Pend Oreille	2.23
Columbia	2.37	Pierce	2.51
Cowlitz	2.51	San Juan	2.32
Douglas	2.36	Skagit	2.40
Ferry	2.28	Skamania	2.46
Franklin	2.37	Snohomish	2.45
Garfield	2.37	Spokane	2.33
Grant	2.36	Stevens	2.28
Grays Harbor	2.43	Thurston	2.45
Island	2.32	Wahkiakum	2.45
Jefferson	2.32	Walla Walla	2.37
King	2.51	Whatcom	2.37
Kitsap	2.33	Whitman	2.34
Kittitas	2.40	Yakima	2.38
Klickitat	2.42		

WEST VIRGINIA

All counties	$2.27

WISCONSIN

County	Rate per bushel	County	Rate per bushel
Douglas	$2.44	All other counties	$2.22

WYOMING

All counties	$2.11

Since the 1976 crop of wheat has already been harvested in the wheat producing area and the provisions of this amendment are needed to carry out the loan program more effectively, compliance with the notice of proposed rulemaking would be impracticable and contrary to the public interest. Therefore, this amendment is issued without following such procedure.

(Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); Secs. 107, 401, 63 Stat. 1051, as amended (7 U.S.C. 1445a, 1421))

Effective date: January 25, 1977.

Signed at Washington, D.C., on Jan. 14, 1977.

KENNETH E. FRICK,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc.77-2172 Filed 1-24-77;8:45 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—GENERAL REGULATIONS

[FmHA Instructions 403.1, 443.1, 444.1, 444.4, 444.5, 444.8, 441.2]

LOANS AND GRANTS

Miscellaneous Amendments

On December 20, 1976, a document was published in the FEDERAL REGISTER (41 FR 55359-55365) proposing to review Part 1803, including a change in title, and numerous miscellaneous amendments to various Parts 1821, 1822, and 1832 of Title 7, Chapter XVIII, in the Code of Federal Regulations, to implement the multiple advance feature of the Loan Disbursement System (LDS) nationwide. This new method of disbursing loan and grant funds applies to the following loan types: Section 502 and 504 Rural Housing loans for construction and repair work, Farm Ownership, Individual Soil and Water, Recreation and Emergency, and enables the Farmers Home Administration to disburse loan and grant funds as they are needed, rather than disbursing them in a lump sum and allowing them to remain idle in a supervised bank account. Also, the multiple advance feature greatly reduces the need for supervised bank accounts as required by Part 1803 published at 35 FR 16399, as amended at 36 FR 17832 and 40 FR 16334. However, supervised bank accounts may still be used when needed.

The notice of proposed rulemaking document published in summary form at 40 FR 49577 dated October 23, 1975, proposing to revise Part 1803, "Supervised Bank Accounts," and a Supplemental Notice published at 40 FR 52854 dated November 13, 1975, indicating that a multiple advance feature of LDS would be field tested before nationwide implementation have been considered in the rule as set forth below. Accordingly, Part 1803, is revised and various sections of Parts 1821, 1822, and 1832, are amended as follows:

PART 1803—LOAN AND GRANT DISBURSEMENT

Sec.

1803.1 General.
1803.2 Policies governing disbursement of funds.
1803.3 Procedures to follow in fund disbursement.
1803.4 Establishing supervised bank accounts.
1803.5 Pledging collateral for deposit of funds in supervised bank account.
1803.6 Authority to establish supervised bank accounts, deposit loan checks and other funds, countersign checks, close accounts, and execute all forms in connection with supervised bank account transactions.
1803.7 Deposits.
1803.8 Withdrawals.
1803.9 County Office records.
1803.10 Reconciliation of accounts.
1803.11 Closing accounts.
1803.12 Request for withdrawals by State Director.

AUTHORITY: 7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, sec. 10 Pub. 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, delegation of authority by Director, OEO 29 FR 14764, 33 FR 9850.

§ 1803.1 General.

This Part prescribes the policies and procedures of the Farmers Home Administration (FmHA) to be followed in the disbursement of funds under the Loan Disbursement System (LDS) and in establishing and using supervised bank accounts. The LDS system provides for funds on an as needed basis to substantially reduce interest costs to FmHA borrowers, U.S. Treasury, and FmHA.

(a) *Form FmHA 440-1*, "Request for obligation of Funds," provides for: (1) the obligation only, (2) obligation and check request for the full amount of the loan or grant, and (3) obligation and check request for a partial amount of the loan or grant. The instructions on when and how to use this form are contained in the Forms Manual Insert (FMI) for this form.

(b) *Form FmHA 440-57*, "Acknowledgment of obligated Funds/Check Request," provides for: (1) the initial loan amount check, (2) all subsequent loan checks, (3) making corrections on the data in the loan account as reflected on the form, (4) notifying the Finance Office of the loan closing date and the loan amortization effective date, and (5) providing requested information from the Finance Office. The instructions on when and how to use this form are contained in the Forms Manual Insert for this form.

(c) See applicable regulations for procedures to follow if checks are lost or destroyed.

(d) Borrowers as referred to in this Part include both loan and grant recipients. They are referred to as depositors in the deposit agreements hereinafter described. References herein and in deposit agreements to "other lenders" include lenders and grantors other than FmHA.

(e) Banks referred to in this Part are those in which deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

(f) Supervised bank accounts referred to in this Part are bank accounts established through deposit agreements entered into between either (1) the borrower, the United States of America acting through the FmHA, and the bank on Form FmHA 402-1, "Deposit Agreement," or (2) the borrower, FmHA, other lenders, and the bank on Form FmHA 402-5, "Deposit Agreement (Non-FmHA Funds)."

(g) Form FmHA 402-1 provides for the deposit of funds in a supervised bank account as security for payment of the borrower's indebtedness to FHA and to assure the performance of the borrower's obligations to FHA in connection with a loan and grant.

(h) Form FmHA 402-5 provides for the deposit of funds advanced by other lenders as security for payments of the indebtedness to them and to assure the performance of the borrower's obligation to them in connection with a loan and grant are made in a separate supervised bank account.

(i) "Interest-Bearing Deposit Agreement," available in all FmHA offices provides for the deposit of loan or grant funds that are not required for immediate disbursement in specified interest-bearing deposits, and it is executed in conjunction with Form FmHA 402-1 or Form FmHA 402-5.

§ 1803.2 Policies Governing Disbursement of Funds.

(a) The partial advance feature of the LDS will be utilized whenever possible in accordance with the specific program procedures, except where prohibited by State statutes. The capability to request Treasury Checks on an as needed basis reduces the need for supervised bank accounts. Therefore, supervised bank accounts will be used only in rare instances, e.g.:

(1) When a construction loan is made and the construction is substantially complete, but a small amount is being withheld pending completion of landscaping or some similar item, or a small amount of funds usually not to exceed $2,000, is not disbursed at loan closing. In this case, the amount of funds not disbursed will be requested from the Finance Office using Form FmHA 440-57, or issued by the Finance Office when the predetermined amortization effective date occurs, and placed in a supervised bank account for future disbursement as appropriate.

(2) When a large number of checks will be issued in the construction of a dwelling or other development, as for

example under the "borrower method" of construction or in Operation (OL) loans and Emergency (EM) loans. In such cases, installment checks will continue to be requested from the Finance Office as necessary and deposited in a supervised bank account and disbursed to suppliers, sub-contractors, etc., as necessary. When the construction process requires several checks to be issued at one time the LDS system can still be utilized. Those County Offices authorized to request checks by telephone may request more than one check at a time. The offices not authorized to use the telephone method for requesting checks will use Form FmHA 440–57 to request one check at a time. If more than one check is required, a Form FmHA 440–57 will be prepared for each check.

(3) Association loan and grant funds made on a multiple advance basis need not be deposited in a supervised bank account unless required by State statutes or otherwise determined necessary by the State Director.

(4) Supervised bank accounts will be used only when necessary to assure the correct expenditure of all or a part of loan and grant funds, borrower contributions, and borrower income. Such accounts will be limited in amount and duration to the extent feasible through the prudent disbursement of funds and the prompt termination of the interests of FmHA funds and other lenders when the accounts are no longer required.

(5) Income from the sale of security property or Economic Opportunity (EO) property or the proceeds from insurance on such property will be deposited in a supervised bank account under Form FmHA 402–1 when the County Supervisor determines that it is necessary to do so to assure that the funds will be available for replacement of the property.

(6) When a borrower has clearly demonstrated inability to handle his financial affairs, all or part of his income or other funds may be deposited in the supervised bank account under Form FmHA 402–1 or Form FmHA 402–5 if the County Supervisor determines that such an arrangement is necessary to provide guidance in major financial management practices essential to the borrower's success, subject to the following requirements.

(i) This supervisory technique will be used for a temporary period to help the borrower learn to properly manage his financial affairs. Such a period will not exceed one year unless extended by the District Director; and

(ii) The borrower is agreeable to such an arrangement.

(7) In exceptional cases when the unincorporated EO cooperative or association borrower cannot obtain a position fidelity bond, its income may be deposited as provided for in §§ 1803.5 and 1803.2(f) if another lender is involved.

(b) For all construction loans, and those loans to be advanced in increments, only the actual amount to be disbursed at loan closing will be requested either through the initial submission of Form FmHA 440–1 or through Form FmHA 440–57. Subsequent checks will be ordered as needed by submitting Form FmHA 440–57 to the Finance Office.

(c) Program instructions and FMI's provide information as to the type of note to be utilized and the method of handling advances and the interest accrued thereon. For individual loan programs, interest will accrue from date of the check or date of loan closing whichever occurs later. For association and organization type loans, interest will accrue from the date the check is delivered to the borrower.

(d) For all loan accounts, when the total amount has not been advanced at the amortization effective date, as defined in the forward the remaining ballance to the County Supervisor for appropriate action, unless the County Supervisor notifies the Finance Office of other arrangements.

(e) When a check cannot be negotiated within 20 working days from the date of the check, the County Supervisor will return the check(s) with Form FmHA 440–10, "Cancellation of Loan or Grant Check and/or Obligation," in accordance with applicable regulations.

(f) Funds provided to an FmHA borrower by another lender (through subordination agreements by the FmHA or under other arrangements between the borrower, FmHA, and other lender) that are not used immediately after the loan or grant closing will be deposited in a supervised bank account under Form FmHA 402–5, provided:

(1) The County Supervisor determines such action is necessary to protect FmHA's interest and to assure that the funds will be used for the purposes planned, (2) The other lender is unwilling to control the use of such funds, and (3) The other lender is agreeable to the use of the FHA supervised bank account.

(g) The debt instruments executed at the time of loan closing constitutes an obligation on the part of the Government to disburse all funds at one time or in multiple advances provided the funds are for purposes authorized by the Government at the time of loan closing. This obligatory commitment takes priority over any intervening liens or advances by other creditors regardless of the provisions of the State laws involved.

§ 1803.3 Procedures to follow in fund disbursement.

(a) The County Supervisor will determine during loan approval the amount(s) of loan check(s)—full or partial—and forward such request to the Finance Office by complying with the FMI for Form FmHA 440–1 and Form FmHA 440–57.

(b) *Counties using the telephone to request subsequent advances* will call the designated telephone number provided by the Finance Office and request all subsequent checks by providing the information required on a Form FmHA 440–57.

(c) When check(s) are delivered to the County Office, the County Supervisor will assure himself that the name of the borrower and the amount(s) of check(s) coincide with the request on file. The County Supervisor should assure himself that the check is properly endorsed to insure payment to the intended recipient. An example of such a restrictive endorsement is:

"Pay to the order of (3rd party payee)"—(Contractor, Developer, Sub-Contractor, Building Supply House, etc.) for the purpose of ----------

(d) *When necessary and only under the circumstances* as listed in paragraph II the County Supervisor will establish or cause to be established a supervised bank account.

§ 1803.4 Establishing supervised bank accounts.

(a) Each borrower will be given an opportunity to choose the bank in which his supervised bank account will be established, provided the bank is a member of the FDIC.

(b) When accounts are established, it should be determined that:

(1) The bank is fully informed concerning the provisions of Form FmHA 402–1 and/or Form FmHA 402–5, and

(2) Agreements are reached with respect to the services to be provided by the bank including the frequency and method of transmittal of bank statements, and

(3) Agreement is reached with the bank regarding the place where the counter-signature will be on checks, particularly those drawn on banks under electronic checking systems.

(c) When possible, County Supervisor will make arrangements with banks which are members of the FDIC under which they will waive service charges in connection with supervised bank accounts established in such banks. However, there is no objection to the payment by the borrower of a reasonable charge for such service.

(d) If the amount of Association, Watershed (WS), Organizational Rural Rental Housing (RRH), Rural Renewal (RN), Resource Conservation and Development (RCD), EO loans to a Cooperative Association, Rural Cooperative Housing (RCH), or Organizational Labor Housing (LH) loan funds and grant funds plus any borrower contributions and funds from other sources to be deposited in the supervised bank account will exceed $40,000 the bank will be required to pledge collateral for the excess over $40,000 before the deposit is made (see § 1803.5 of this Chapter). In addition, a pledge of collateral for any excess over $40,000 in a supervised bank account may be required for other types of loans or grants in amounts in excess of the State Director's approval authorization when determined necessary by the National Office on an individual case basis.

(e) Only one supervised bank account will be established for any borrower regardless of the amount or source of funds, except for RRH loans separate ac-

counts will be established for each project.

(f) When a supervised bank account is established, an original and two copies of Form FmHA 402–1 or Form FmHA 402–5, and the Interest-Bearing Deposit Agreement available in all FmHA offices, when applicable, will be executed by the borrower, the bank, and a County Office employee. The original will be retained in the borrower's case file, one executed copy will be delivered to the bank, and one executed copy to the borrower. An extra copy of the Interest-Bearing Deposit Agreement will be prepared and attached to the certificate passbook, or other evidence of deposit representing the interest-bearing deposit.

(1) If an agreement on Form FmHA 402–1 or Form FmHA 402–5 has previously been executed and Form FmHA 402–6, "Termination of Interest in Supervised Bank Account," has not been executed with respect to it, a new agreement is not required when additional funds are to be deposited unless requested by the bank.

(2) When the note and security instrument are signed by two joint borrowers or by both husband and wife, a joint survivorship supervised bank account will be established from which either can withdraw funds if State laws permit such accounts. In such cases both parties will sign the Deposit Agreement(s).

§ 1803.5 Pledging collateral for deposit of funds in supervised bank account.

(a) Funds in excess of $40,000 for borrowers referred to in § 1803.4(d) deposited in supervised bank accounts, must be secured by pledging acceptable collateral with the Federal Reserve Bank in an amount not less than the excess.

(b) As soon as it is determined that the loan will be approved and the applicant has selected or tentatively selected a bank for the supervised bank account, the County Supervisor will contact the bank to determine:

(1) That the bank selected is a bank that is insured by the FDIC.

(2) Whether the bank is willing to pledge collateral with the Federal Reserve Bank under Treasury Circular No. 176 to the extent necessary to secure the amount of funds being deposited in excess of $40,000.

(c) If the bank is agreeable to pledging collateral, the County Supervisor should complete a form letter available in all FmHA offices in an original and three copies, the original and one copy for the National Office, the second copy for the State Office, and the third copy for the County Office. The form letter should be forwarded to the National Office at least 30 days before the date of loan closing.

(d) The National Office will arrange for the Treasury Department have the bank designated as a depositary unless already designated, and to have collateral pledged.

(e) If, two days before loan closing, the State Director has not received a copy of the Treasury Department's letter to the bank confirming the pledge of collateral, he should contact the National Office, Attention: Financial Support Division.

(f) When the amount of the deposit in the supervised bank account has been reduced to a point where the bank desires part or all of its collateral released, it should write to the Treasury Department, Domestic Banking Staff Bureau of Government Operations, Washington, D.C. 20226, requesting the release and stating the balance in the supervised bank account.

§ 1803.6 Authority to establish supervised bank accounts, deposit loan checks and other funds, countersign checks, close accounts, and execute all forms in connection with supervised bank account transactions.

County Supervisors are authorized to establish supervised bank accounts, deposit loan checks and other funds, countersign checks, close accounts, and execute all forms in connection with supervised bank account transactions and redelegate this authority to authorized collection officers under their supervision who are considered capable of exercising such authority. State Directors will make written demand upon the bank for withdrawals as outlined in § 1803.12 of this Chapter.

§ 1803.7 Deposits.

(a) *Deposits by FmHA Personnel.* (1) Checks made payable solely to the Federal Government, or any agency thereof, and a joint check when the Treasurer of the United States a joint payee, may not be deposited in a supervised bank account.

(2) FmHA personnel will accept funds for deposit in a borrower's supervised bank account ONLY in the form of a check or money order endorsed by the borrower "For Deposit Only," or a check drawn to the order of the bank in which the funds are to be deposited or a loan check drawn on the U.S. Treasury.

(i) A joint check that is payable to the borrower and FmHA will be endorsed by the County Supervisor as provided in Part 1862 of this Chapter.

(ii) Ordinarily, when deposits are to be made from funds which are received as the result of consent or subordination agreements or assignments of income, the check should be drawn to the order of the bank in which the supervised bank account is established or jointly to the order of the borrower and the FmHA. All such checks should be delivered or mailed to the County Office.

(iii) If direct or insured loan funds (other than OL, EM, or EO loan funds) or borrower contributions are to be deposited in a supervised bank account, such funds will be deposited on the date of loan closing afer it has been determined that the loan can be closed. However, if it is impossible to deposit the funds on the day the loan is closed due to reasons such as distance from the bank or banking hours, the funds will be deposited on the first banking day following the date of loan closing.

(iv) Grant funds will be deposited when such funds are delivered.

(v) When funds from any source are deposited by FmHA personnel in a supervised bank account, a deposit slip will be prepared in an original and two copies and distributed as follows: Original to the bank, one copy to the borrower, and one copy for the borrower's case folder. The name of the borrower, the source of funds, and "Subject to FmHA Countersignature", and if applicable, the account number will be entered on each deposit slip.

(vi) A loan or grant check drawn on the U.S. Treasury may be deposited in a Supervised Bank Account without endorsement by the borrower when it will facilitate delivery of the check and is acceptable to the bank. The borrower will be notified immediately of any deposit made and will be furnished a copy if the deposit of this nature is made, the following endorsement will be used:

"For deposit only in the supervised bank account of _____
(Name of borrower)
in the _____
(Name of bank and address
_____ pursuant
when necessary for identification)
to Deposit Agreement dated_____."

(vii) Accounts established through the use of an Interest-Bearing Deposit Agreement will be in the name of the depositor and the Government.

(b) *Deposits by Borrowers.* Funds in any form may be deposited in the supervised bank account by the borrower if authorized by the FmHA provided the bank has agreed that when a deposit is made to the account by other than FmHA personnel, the bank will promptly deliver or mail a copy of the deposit slip to the FmHA County Office.

(1) A loan or grant check drawn on the U.S. Treasury may be deposited in a supervised bank account by a borrower, provided the following endorsement is used and is inserted thereon prior to delivery to the borrower for signature:

"For deposit only in my supervised bank account in the _____
(name of bank and address
_____ pursuant
when necessary for identification)
to Deposit Agreement dated_____."

(2) Funds other than loan or grant funds may be deposited by the borrower in those exceptional instances where an agreement is reached between the County Supervisor and the borrower whereby the borrower will make deposits of income from any source directly into the supervised bank account. In such instances the borrower will be instructed to prepare the deposit slip in the manner described in § 1803.6(a)(v) of this chapter.

§ 1803.8 Withdrawals.

(a) The County Supervisor will not countersign checks on the supervised bank account for the use of funds unless the funds deposited by the borrower from other sources were cash deposits or checks which the County Supervisor

knows to be good or until he knows that the deposited checks have cleared.

(b) Withdrawals of funds deposited under Form FmHA 402–1 or Form FmHA 402–5 are permitted only by order of the borrower and countersignature of authorized FmHA personnel or upon written demand on the bank by the State Director of the FmHA.

(c) Upon withdrawal or maturity of interest-bearing accounts established through the use of an Interest-Bearing Deposit Agreement, such funds will be credited to the supervised bank account established through the use of Form FmHA 402–1 or Form FmHA 402–5.

(d) The issuance of checks on the supervised bank account will be kept to the minimum possible without defeating the purpose of such accounts. When major items of capital goods are being purchased, or a limited number of relatively costly items of operating expenses are being paid, or when debts are being refinanced, the checks will be drawn to the vendors or creditors. If minor capital items are being purchased or numerous items of operating and family living expenses are involved as in connection with a monthly budget, a check may be drawn to the borrower to provide the funds to meet such costs.

(1) A check will be issued payable to the appropriate payee but will never be issued to "cash". The purpose of the expenditure will be clearly shown on Form FmHA 402–2, "Statement of Deposits and Withdrawals," and indicated on the face of the check. When checks are drawn in favor of the borrower to cover items too numerous to identify, the expenditure will be identified on the check if space permits as "miscellaneous."

(2) Normally, OL and EM loan funds will not be withdrawn from the supervised bank account until the lien search has been made and the determination reached that the required security has been obtained. This applies also to withdrawal of funds in secured individual loan cases. However, in those instances when the applicant is unable to pay for the lien search and filing fees from his own funds, a check for this purpose may be drawn on the supervised bank account to meet these loan making requirements.

(3) Ordinarily, a check will be countersigned before it is delivered to the payee. However, in justifiable circumstances such as when excessive travel on the part of the borrower or the County Supervisor would be involved or purchases would be prevented, and the borrower can be relied upon to select goods and services in accordance with the plans, a check may be delivered to the payee by the borrower before being countersigned.

(i) When a check is to be delivered to the payee before being countersigned, the County Supervisor must make it clear to the borrower and to the payee, if possible, that the checks will be countersigned only if the quantity and quality of items purchased are in accordance with approved plans.

(ii) Checks delivered to the payee before countersignature will bear the following legend in addition to the legend for countersignature: "Valid only upon Countersignature of Farmers Home Administration."

(iii) The check must be presented by the payee or his representative to the County Office of the FmHA servicing the account for the required countersignature.

(iv) Such check must be accompanied by a bill of sale, invoice, or receipt signed by the borrower identifying the nature and cost of the goods or services purchased or similar information must be indicated on the check.

(4) For real estate loans or grants, whether the check is delivered to the payee before or after countersignature, the number and date of the check will be inserted on all bills of sale, invoices, receipts, and itemized statements for materials, equipment, and services.

(5) Bills of sale, and so forth, may be returned to the borrower together with the canceled check for the payment of the bill.

(6) Checks to be drawn on a supervised bank account will bear the legend:

Countersigned, not as co-maker or endorser.

(Title)

Farmers Home Administration.

§ 1803.9 County office records.

A record of funds deposited in a supervised bank account will be maintained on Form FHA 402–2 in accordance with instructions for its preparation available at all FmHA Offices. The record of funds provided for operating purposes by another creditor or grantor will be on a separate Form FHA 402–2 so that they can be clearly identified.

§ 1803.10 Reconciliation of accounts.

(a) A bank statement will be obtained periodically in accordance with established banking practices in the area. If requested by the bank, a supply of addressed, franked envelopes will be provided for use in mailing bank statements and canceled checks for supervised bank accounts to the County Office. Bank statements will be reconciled promptly with County Office records. The persons making the reconciliation will initial the record and indicate the date of the action.

(b) All banks statements and canceled checks will be forwarded immediately to the borrower when bank statements and County Office records are in agreement. If a transmittal is used, Form FHA 140–4, "Transmittal of Documents," is prescribed for that purpose.

§ 1803.11 Closing accounts.

When FmHA loan or grant funds or those of another lender have all been properly expended or withdrawn, Form FmHA 402–6 may be used to give the consent of FmHA (and of another lender, if involved) to close the supervised bank account in the following situations:

(a) When FHA loan funds in the supervised bank account of a borrower have been reduced to $100 or less, and a check for the unexpended balance has been issued to the borrower to be used for authorized purposes.

(b) For all loan accounts, except association loans, after completion of authorized loan fund expenditures, and after promptly refunding any remaining unexpended loan funds on the borrower's loan account with FmHA or another lender, as appropriate.

(c) For association loan and grant accounts, when the funds have been expended in accordance with the requirements of Subparts A and I of this chapter the supervised bank account will be closed within 90 days following completion of development unless an extension of time is authorized in writing by the District Supervisor. If the borrower will not agree to closing the account. The County Supervisor will request the State Director to make demand upon the bank in accordance with § 1803.12.

(d) Promptly (1) upon the death of a borrower, except when the loan is being continued with a joint debtor, or (2) when a borrower is in default and it is determined that no further assistance will be given, or (3) when a borrower is no longer classified as "active."

(1) Deceased borrowers.

(i) Ordinarily, upon notice of the death of a borrower, the County Supervisor will request the State Director to make demand upon the bank for the balance of deposit and apply all of the balance after payment on any bank charges to the borrower's FmHA indebtedness. When the State Director approves continuation with a survivor, the Supervised bank account of a deceased borrower may be continued with a remaining joint debtor who is liable for the loan and agrees to use the unexpended funds as planned, provided:

(A) The account is a joint survivorship supervised bank account, or

(B) If not a joint survivorship account, the bank will agree to permit the addition of the surviving joint debtor's name to the existing signature card and Form FmHA 402–1 and/or Form FmHA 402–5 and continue to disburse checks out of the existing account upon FmHA's countersignature and the joint debtor's signature in place of the deceased borrower, or

(C) The bank will permit the State Director to withdraw the balance from the existing supervised bank account with a check jointly payable to the FHA and the surviving joint debtor and deposit the money in a new supervised bank account with the surviving joint debtor, and will disburse checks from this new account upon the signature of such survivor and the countersignature of an authorized FHA official.

(ii) The State Director, before applying the balance remaining in the supervised bank account to the FmHA indebtedness,

is authorized upon approval by the Office of the General Counsel (OGC) to release any unobligated balances thereof made by other lenders to the FmHA borrower for specific operating purposes in accordance with subordination agreements or other arrangements between the FmHA, the lender, and the borrower.

(iii) The State Director, upon the recommendation of an authorized representative of the estate of the deceased borrower and the approval of the OGC, is authorized to approve the use of deposited funds for the payment of commitments for goods delivered or services performed in accordance with the deceased borrower's plans approved by FmHA.

(2) *Borrowers in Default.* Whenever it is impossible or impractical to obtain a signed clerk from a borrower whose supervised bank account is to be closed, the County Supervisor will request the State Director to make demand upon the bank for the balance on deposit in the borrower's supervised bank account for application as appropriate:

(i) To the borrower's FHA indebtedness, or

(ii) As refunds of any unobligated advances provided by other lenders which were deposited in the account, or

(iii) For the return of FmHA grant funds to the FmHA Finance Office, or

(iv) For the return of grant funds to other grantors.

(3) *Reclassified Borrowers.* When a borrower's loan has not been paid in full, but the borrower is no longer classified as "active."

(4) *Paid up Borrowers.* A paid up borrower is one who has a balance remains in the supervised bank account and has repaid his entire indebtedness to FmHA and has properly expended all funds advanced by other lenders. In such cases the County Supervisor will (a) notify the borrower in writing that the interests of in the account FmHA and the other lender, if any, in the account have been terminated, and (b) inform the borrower of the balance remaining in the bank account.

§ 1803.12 Request for withdrawals by State Directors.

When the State Director is requested to make written demand upon the bank for the balance on deposit in the supervised bank account, or any part thereof, the request will be accompanied by the following information:

(a) Name of borrower as it appears on Form FHA 402–1 and/or Form FHA 402–5.

(b) Name and location of the bank.

(c) Amount to be withdrawn for refund to another lender of any balance that may remain of funds received by the borrower from such lender as a loan or grant or under a subordination agreement or other arrangement between the FmHA, the other lender, and the borrower.

(d) Amount to be withdrawn, excluding any bank charges, for a refund of FmHA's or other lender's loans or grants.

(e) Other pertinent information including reasons for the withdrawal.

PART 1821—FARM PURCHASE AND DEVELOPMENT LOANS TO INDIVIDUALS

Subpart A—Farm Ownership Loan Policies, Procedures, and Authorizations

1. The introductory paragraph and paragraph (b) of 31821.16 are revised to read as follows:

§ 1821.16 Deferred payments.

Payments may be deferred when income is not available to meet regular installments. Deferment may be up to the end of the second full crop year from the date of the loan providing there is:

* * * * *

(b) A new system of farming or nonfarm enterprise is being established that will require substantial improvements, such as land clearing, draining, leveling, irrigating, basic fertilizing, seeding, other land development, soil improvement, and extensive nonfarm facilities. Deferred payment alternate III on Form FmHA 440–16, "Promissory Note," is authorized for FO loans. Refer to the Form Manual insert for preparing the form.

2. Paragraph (d)(1) and (d)(3) of § 1821.20 are revised to read as follows:

§ 1821.20 Loan approval.

* * * * *

(d) *Distribution of docket forms and loan approval.* * * *

(1) *To the finance office.* Form FmHA 440–1 (copy). After Form FmHA 440–1 is processed in the Finance Office it will return to the County Office a copy of Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," Form FmHA 443–12 (Original), Form FmHA 494–19 (Original when required).

* * * * *

(3) *To the State Office.* If a loan is approved in the State Office, a copy of Form FmHA 440–1 will be retained in the State Office unless exempted by State Supplements and a copy of Form FmHA 443–12 will be retained. If the loan is approved in the County Office, a conformed copy of Form FmHA 440–1 will be sent to the State Office for retention unless exempted by State Supplements and a copy of Form FmHA 443–12 will be sent to the State Office for retention; also, a copy of Form FmHA 492–19 when required by FmHA regulations.

* * * * *

3. Section 1821.21 is revised to read as follows:

§ 1821.21 Requesting title service and accepting option:

When the loan is approved, the County Supervisor will see that title service is requested in accordance with Part 1807 of this Chapter. If this has not already been done, and where land is being acquired also see that Form FmHA 440–35, "Acceptance of Option," is completed, signed, and mailed to the seller. However, in connection with the acceptance of an option on a subdivision, Form FmHA 443–10, "Acceptance of Option by Assignee (Land to be Subdivided)." and Form FmHA 443–11, "Acceptance of Option to Buyer (Land to be Subdivided)," will be used, as appropriate. When the acceptance of option letter has been mailed to the seller, the borrower will arrange with the seller, in consultation with the County Supervisor, to occupy and operate the farm as soon as practicable. Agreements will be in writing and cover such subjects as disposition of growing crops, rentals, payment of maintenance cost, and other pertinent points. The following forms will be used for this purpose, as appropriate:

Form FmHA 443–5, "Short-Term Lease of Optioned Land," Form FmHA 443–6, "Short-Term Lease (Between Purchaser and Seller)," Form FmHA 443–8, "Agreement (Between Seller, Purchaser, and Tenant)."

4. Section 1821.22 (a) and (b)(2) are revised and read as follows:

§ 1821.22 Actions subsequent to loan approval.

(a) *Requesting check.* If real estate will not be taken as security or if real estate is taken as security and satisfactory title evidence is obtained prior to loan approval or when the County Supervisor is reasonably certain that satisfactory title evidence can be obtained so the loan can be closed within 15 days from the date of the check request, loan funds may be requested at the time of loan approval by entering the amount needed in block 21 of Form FmHA 440–1. If funds are not requested when the loan is approved, advances in the amount needed will be requested by using Form FmHA 440–57 in accordance with the FMI. The original 440–57 will be retained in the County Office and a copy sent to the Finance Office. The initial loan advance will be requested when loan approval conditions can be met, satisfactory title to real estate security can be provided, and a date has been set for loan closing.

(1) When all loan funds can be disbursed at or within 15 days after loan closing or if the amount of funds that cannot be disbursed does not exceed $2,000, the total amount of the loan will be requested in a single advance.

(2) When loan funds cannot be disbursed as outlined in subparagraph 1 above, the amount needed to meet the needs of the borrower will be requested by submitting a copy of Form FmHA 440–57 to the Finance Office. The amount of the advances should be as near as possible to meet the needs of borrowers so that the amount in the supervised bank account will be kept at a minimum. The Finance Office will continue to supply Form FmHA 440–57 until the entire loan has been disbursed. The County Supervisor should inform borrowers of their responsibility of notifying the County Office of amounts needed on a timely basis.

(b) *Handling loan checks.*

* * * * *

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate

action in accordance with FmHA regulations.

* * * * *

PART 1822—RURAL HOUSING LOANS AND GRANTS

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

1. Section 1822.7(n) is revised to read as follows:

§ 1822.7 Special requirements.

* * * * *

(n) *Mutual self-help housing loans.* Applicants who are unable to build modest dwellings by customary methods, because of limited income and repayment ability, may build their homes by participating in a mutual self-help housing project. The County Supervisor will not approve RH loans or proceed in the development of a self-help project without prior approval of the State Director. He will, therefore, submit complete information about each family in the proposed self-help project to the State Office for review and request authority to proceed. Information submitted will include items such as the family's size, income, age of family members who will work on the dwelling, the size and cost of the planned dwelling, estimated savings, and the amount of the needed loan. Exhibit A, "Mutual Self-Help Housing Guidelines," will be used as a guide for developing self-help projects and counseling with participating families. The County Supervisor, in counseling with families participating in self-help housing projects, will determine the anticipated time required for construction and the extent to which the borrower will be able to meet loan payments during this period. If the applicants will not have enough income to meet payments of interest accruing at the note rate of interest, or regular amortized loan payments during the construction period, interest and principal payments will be deferred and interest accruing during the construction period will be added to the principal and scheduled for repayment in regular amortized installments over the remaining term of the loan.

* * * * *

2. Section 1822.13, paragraphs (c)(3)(i)(A) and (c)(3)(ii) are revised to read as follows:

§ 1822.13 Loan approval.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(A) *Form FmHA 440–1.* (copy)

* * * * *

(ii) *To the State Office.* If the loan is approved by the County Supervisor, an unsigned copy of Form FmHA 440–1 will be sent to the State Office unless exempted by State instructions, and a copy of Form FmHA 444–2 will be sent to the State Office. If the loan is approved in the State Office, an unsigned copy of Form FmHA 440–1 and a copy of Form FmHA 444–2 will be retained in the State Office.

* * * * *

3. Section 1822.14, paragraph (a) introductory text is revised; paragraphs (a)(1) and (a)(2) are added; and paragraph (b)(2) is revised to read as follows:

§ 1822.14 Actions subsequent to loan approval.

(a) *Requesting check.* When the loan has been approved, approval conditions can be met, any necessary curative actions have been taken to provide a satisfactory title to any real estate security, and a tentative date has been set for loan closing, the County Supervisor or his delegate will complete the original and copy of Form FmHA 440–57 in accordance with the Forms Manual Insert (FMI) and send the copy to the Finance Office. If real estate will not be taken as security or if real estate is taken as security and satisfactory title evidence is obtained prior to loan approval, or when the County Supervisor is reasonably certain that satisfactory title evidence can be obtained so the loan can be closed within 15 days from the date of the check request, the loan check may be requested at the time of loan approval by entering the amount of the check requested in the appropriate block of Form FmHA 440–1.

(1) If all the loan funds will be disbursed at or within 15 days after loan closing or in cases where the amount of funds that cannot be disbursed at loan closing does not exceed $4,000, the total amount of the loan will be requested in a single advance.

(2) If loan funds cannot be disbursed in accordance with time frame in paragraph (a)(1) of this section, the County Supervisor will enter in the appropriate block of Form FmHA 440–1 the amount of the loans funds to be disbursed at loan closing. Additional loan funds will be requested when and in amounts needed by submitting a completed copy of Form FmHA 440–57 to the Finance Office, or by telephone request if the additional funds cannot be received by the day needed using mail service. The County Supervisor should work with developers and others to be sure that funds will be available when needed and, at the same time, to keep the future advances to a reasonable minimum. Any loan funds not requested by the date reported to the Finance Office as the "amortization effective date" for the loan will be disbursed by the Finance Office to the County Office by check dated on the amortization effective date. The check will be deposited in the borrower's supervised bank account if it cannot be endorsed directly to a payee within 20 working days from the date of the check.

* * * * *

(b) *Handling loan checks.*

* * * * *

(2) If a loan Treasury check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA regulations.

* * * * *

In § 1822.15, paragraphs (b)(2) and (b)(3) are revised and completely restructured to read as follows:

§ 1822.15 Loan closing actions.

* * * * *

(b) * * *

(2) *Promissory note.* Form FmHA 440–16, "Promissory Note," will be used for loans made under this subpart. The note will be prepared and signed in accordance with Part 1807 of this chapter, concerning cosigners, § 1822.10(b)(5), and the FMI.

(i) The payment alternatives of the note will be completed in accordance with the FMI and the following:

(A) Payments of principal and interest will be deferred during the period the dwelling is not expected to be suitable for occupancy as a residence because of construction or repairs to be made. In such cases, accrued interest is added to principal and repaid in regular amortized installments (payment alternative II) after the deferment period.

(B) Payments of principal but not interest may be deferred on subsequent loans when authorized by the Administrator in accordance with Section 1822.17. Payments of principal and interest and principal only may be deferred on RHD loans in accordance with Section 1822.16.

(C) Payments will not be deferred if the dwelling is suitable to be occupied as the borrower's residence when the loan is closed.

(ii) The payment provision of the note will be completed in accordance with the FMI and the following:

(A) The monthly payment provision will be used for all borrowers who regularly receive monthly income and who can repay the loan in 12 equal monthly payments.

(B) The annual payment provision will be used only for borrowers who do not regularly receive monthly income. If installments are not to be deferred, the following provisions apply.

(*1*) The amount of the first installment will be determined by the County Supervisor after considering the immediate debt-paying ability of the borrower. The amount of the first installment may be less, but not more, than a regular annual installment.

(*2*) The amount of the first installment may not be less than the amount equal to interest on the loan from the date of loan closing to January 1 of the calendar year following the calendar year in which the loan is closed.

(*3*) Form FmHA 440–9 should be used to supplement this payment provision to facilitate servicing of loans for borrowers who pay more than one time a year.

(3) *Collection of first installment.* If the annual payment provision of the note is used and payments are not deferred, the first installment of a loan closed during December will be collected at the time of loan closing.

5. Section 1822.16(f) is revised to read as follows:

§ 1822.16 Rural Housing diaster loans.

* * * * *

(f) *Deferred payments.* The initial payments of principal and interest or principal only may be deferred so as not to become due until as late as the third January 1 after the date of loan closing subject to all of the following conditions.

* * * * *

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

6. In § 1822.74, paragraphs (a), (b)(1) and (b)(3) are revised and read as follows:

§ 1822.74 Action subsequent to loan approval.

(a) *Requesting the check.* * * *

(1) In those cases where relatively large amounts of funds are to be expended for purchase of real estate or for other reasons, separate checks for such purposes may be ordered and endorsed by the borrower to the seller or other appropriate party. This will preclude the necessity for depositing such loan funds in the supervised bank account and reduce the amount of required collateral.

(2) Multiple advances may be used for all loans in accordance with Part 1803 of this chapter. Except as indicated in paragraph (a)(1) of this section, advances will be made only as needed to cover disbursements required by the borrower for a 30-day period. Normally, the advances should not exceed 24 in number or extend longer than 2 years beyond loan closing. Generally contracts provide that a percentage will be retained to assure that the construction will be completed in accordance with the contract documents. The County Supervisor will be sure that these funds are withheld and included in the last advance.

(i) For multiple advances to public bodies whose loans will be secured by bonds, instructions will be provided by the National Office in their letter of authorization.

(ii) For all loans other than public bodies:

(A) Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, land purchase, legal, engineering or architectural costs, interest, and other expenses, as needed. The borrower will prepare Form FmHA 440–11, "Estimate of Funds Needed For 30-day period." This form will be approved by the County Supervisor. After the County Supervisor determines that the estimate prepared by the borrower is adequate, he will request the advance by indicating the amount of the immediate need on Form FmHA 440–57 in accordance with the FMI and forward it to the Finance Office, St. Louis, Missouri. As an example, for a loan of $200,000 the advances may be made as follows: Assuming that the loan will be closed on July 1, the borrower will complete Form FmHA 440–11 in sufficient time so that the funds will be available on the day of loan closing. The estimates should be broken down for the first advance in a manner similar to the following:

Construction	$43,000
Land acquisition	10,000
Engineering or architectural	14,000
Legal	3,000
Total	70,000

An advance in the amount of $70,000 would then be available on July 1, the date of loan closing. The second advance will also be based on the borrower's estimate prepared on Form FmHA 440–11, and will be prepared in sufficient time so that the estimate amount of funds will be available on August 1. This estimate of funds might be broken down as follows:

Construction	$19,000
Engineering phase	400
Total	19,400

A copy of Form FmHA 440–57 specifying the amount then will be forwarded to the Finance Office. The same routine will be followed for each advance until the project is completed. Loan funds for the payment of interest due on each January 1 will be requested in sufficient time to be available in the December advance.

(B) Any deviation from the multiple advance procedure must have the prior approval of the National Office.

(b) *Handling the loan check.* (1) Any loan check to be deposited in the supervised bank account will be deposited in accordance with Part 1803 of this chapter.

* * * * *

(3) If a loan check other than a check from a private lender is received and the loan cannot be closed within a reasonable amount of time, no more than 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA regulations.

* * * * *

7. In § 1822.75, paragraphs (c)(1), (2), (3), (4), and (5) are revised to read as follows:

§ 1822.75 Loan closing.

* * * * *

(c) *Promissory note and insurance endorsement.*

(1) The total amount to be shown in the note will be the amount of the loan appearing on Form FmHA 440–1.

(2) Payments on LH loans will be scheduled in accordance with the FMI for Form FmHA 440–16, "Promissory Note." Any funds included in the loan for the payment of interest will be collected and applied as a regular payment at the time of loan closing. Scheduled principal installments during the first or first and second years after loan closing may be deferred. Interest payments may not be deferred.

(3) Form FmHA 440–16, "Promissory Note," will be used. Preparation will be in accordance with the FMI.

(4) For a loan to a public body whose obligations bear interest exempt from Federal income taxation, the forms of obligation and insurance endorsement will be determined in accordance with Part 1811 of this chapter.

(5) The note will be signed in accordance with Part 1807 of this chapter.

* * * * *

Subpart D—Rural Rental Housing Policies, Procedures, and Authorizations

8. In § 1822.88, paragraph (b) is revised to read as follows:

§ 1822.88 Special conditions.

* * * * *

(b) *Deferred principal payments.* When necessary and advisable, smaller than regular payments of principal or no payments of principal may be provided for the first and second year after loan closing. However, accrued interest must be paid according to the regular installment schedule.

* * * * *

9. In § 1822.93, paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 1822.93 Loan approval.

* * * * *

(b) *Loan approval action.*

* * * * *

(2) *Approval or disapproval of a loan.*

(i) Approval. When a loan is approved, the approval official will:

(A) Sign the original and one copy of Form FmHA 440–1 and insert his title in the space provided. Indicate on all copies any conditions that must be met at or before the time of the loan is closed. Such conditions could include the amount of surety fidelity bond coverage, other insurance, the title evidence, and any other special requirements. If more space is needed, the form will be supplemented by a memorandum.

(B) Prepare a completed Form FmHA 071–1 and handle in accordance with FmHA Instruction 2015–C.

(C) Forward an executed Form FmHA 440–1 to the applicant in accordance with the Forms Manual Insert (FMI) and FmHA Instruction 2015–C.

(ii) Disapproval. If a loan is disapproved after the docket has been developed, the reason for such action will be shown on the original Form FmHA 440–1. Form FmHA 440–1 will be initialed and dated. The County Supervisor will notify the applicant of the disapproval of the loan and the reasons therefor. The disapproved docket will then be handled in accordance with appropriate FmHA regulations.

* * * * *

(3) *Distribution of items.* After the loan is approved, the contents of the docket will be distributed as follows:

(i) To the Finance Office. Form FmHA 444–5 (original), and Form FmHA 440–1, (copy). After being processed, an original and copy of Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," will be processed and distributed by the Finance Office.

(ii) To the State Office. One copy of Form FmHA 440–1 and one copy of Form FmHA 444–5.

(iii) To the County Office. One copy of Form FmHA 440–1 and the remainder of the loan docket.

(iv) To the OGC. For a loan to an organization, or for a loan to an individual in special cases, the approved loan docket, including any title evidence, will be sent to the OGC for preparation of closing instructions and any special legal documents required for closing. A certified copy of a required loan resolution or the original executed, witnessed loan agreement must be supplied by the applicant in time to be included in the loan docket. No docket will be considered which fails to include such a required resolution or agreement. The OGC will route the docket, including closing instructions and any such legal documents, to the County Office through the State Office for review and for inclusion of any further instructions needed in closing the loan.

(v) To the National Office a copy of Form FmHA 444–5.

10. In § 1822.95, paragraph (c) (1), (2), (3), (4), and (5) are revised to read as follows:

§ 1822.95 Loan closing.

* * * * *

(c) *Promissory note.*

(1) The total amount to be shown in the note will be shown on Form FmHA 440–1. The note will be dated the date of loan closing except as authorized in § 1807.2(f)(8) of this chapter.

(2) Payments on RRH loans will be scheduled on the note in accordance with the Forms Manual Insert (FMI). Monthly payments will be implemented. As provided in § 1822.88(b) the monthly principal installments during the first or the first and second years after loan closing may be deferred. Interest payments may not be deferred.

(3) Form FmHA 440–16, "Promissory Note," will be used. Instructions for preparation for monthly installments in the FMI will be followed.

(4) The note(s) will be signed in accordance with the FMI and Part 1807 of this chapter.

(5) Any funds included in the loan for the payment of interest will be collected and applied as a regular payment at the time of loan closing.

* * * * *

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

11. § 1822.272(a)(1) is revised to read as follows:

§ 1822.272 Approval or disapproval of a loan.

(a) * * *

(1) Sign the original and one copy of completed Form FmHA 440–1 and insert his title in the space provided.

* * * * *

12. § 1822.274, paragraph (c) is revised and restructured to read as follows:

§ 1822.274 Loan closing.

* * * * *

(c) *Promissory note.* Form FmHA 440–16, "Promissory Note," will be used. Instructions for preparation will be in accordance with the FMI and the following:

(1) The total amount to be shown in the note will be the amount of the loan shown on Form FmHA 440–1. The note will be dated the date of the loan closing. Items (1) through (6b) will be completed in accordance with the FMI for the note. Immediately after the item (6b) following the words "Per Annum" delete the period and type, "Shall be paid at the end of two years from the date of this note," except that prepayments may be made as provided herein below.

(2) The note will be signed in accordance with Part 1807 of this chapter and the FMI for the Form FmHA 440–16.

(3) The note will be signed in accordance with Part 1807 of this chapter and the FMI Form FmHA 440–16, FMI.

(4) Payments shall not be deferred.

* * * * *

13. In § 1822.278, paragraphs (e) and (f) are revised to read as follows:

§ 1822.278 Special requirements for RHS section 523 loans (loans to Organizations providing sites for self-help housing).

* * * * *

(e) *Multiple advances.* These loans may be disbursed over a period not to exceed 18 months from the date of the first advance.

(f) *Note forms.* Form FmHA 440–16, "Promissory Note," will be used. See § 1822.274(c).

* * * * *

PART 1832—EMERGENCY LOANS

Subpart A—Emergency Loan Policies, Procedures, and Authorizations

1. Section 1832.29 is added and reads as follows:

§ 1832.29 Loan fund disbursement.

EM loan funds will be disbursed as provided in Part 1803 of this chapter.

(a) Loan funds may be requested as follows:

(1) An immediate advance of all loan funds may be requested by using Form FmHA 440–1, "Request for obligation of funds," at the time the loan is obligated or by using Form FmHA 440–57, "Acknowledgment of obligated funds/check request," at a later date.

(2) An initial partial advance, may be requested by using Forms FmHA 440–1 or FmHA 440–57. One or more subsequent advances may be requested by using Form FmHA 440–57.

(b) When an actual loss loan is made to an applicant for expenditures he has already made, the loan check may be turned over directly to him after such prior expenditures have been reasonably verified by the borrower's county case file.

2. In § 1832.30, paragraphs (a) through (e) are revised to read as follows:

§ 1832.30 Loan docket forms.

(a) *Promissory Note(s).* One or more notes will be prepared for the full amount of the loan, rounded to the nearest $10. Each scheduled installment will include interest in addition to principal unless deferment of principal is authorized in accordance with § 1832.21(c). The first installment may not be less than the amount equal to interest on the loan from the estimated date or actual date of closing to installment due date.

(1) Form FmHA 441–1, "Promissory Note," will be used when a loan is scheduled for payment in unequal annual installments, or within one full crop year after loan closing.

(2) Form FmHA 440–16, "Promissory Note," will be used when a loan is scheduled for payment in equal annual installments of three years or more. Also, this note may be used when the first two installments are unequal and the balance consists of equal installments.

(3) When the applicant is partnership, the promissory note(s) will be executed so as to evidence the liability of the partnership as well as each partner as an individual. This will be accomplished by typing the name of the partnership above the space provided for signatures and having the note executed by each member of the partnership both as a partner and as an individual. To evidence the liability of the partnership, the words "As Partners" will be typed immediately beneath the name of the partnership and each partner will sign thereunder. To evidence partners' liability as individuals, the words "As Individuals" will be typed at the top of the blank space to the left of the lines for signatures, and each partner will sign thereunder, along with his spouse if required by State Supplements or loan closing instructions.

(4) When the applicant is a corporation, the promissory note(s) will be executed by the corporation acting through its appropriate officials and, in order to evidence their personal liability for the debt, by the principal stockholders as individuals. To evidence the principal stockholders' liability as individuals each principal stockholder will sign the note(s) except in unusual circumstances including legal disability, absence from the country, or legal justification. Their spouses will also sign the note if required by State Instructions or loan closing instructions.

(b) *Form FmHA 440–1, "Request for Obligation of Funds."* This form is used to obligate loan funds to provide certain statistical information about the loan and applicant and to request all or part of the loan funds obligated.

(1) EM loans approved for borrowers presently indebted for an EM loan, but having NEW qualifying losses from a subsequent major or natural disaster for which a MDDN, PEDN, SDDN, or SDAN has been assigned, will show the new appropriate disaster designation number. This number will be used for all subsequent EM loans approved unless the borrower has new qualifying losses from a different disaster for which another disaster designation number has been assigned.

(2) The Finance Office will not process Form FmHA 440–1 for EM loans that are not coded with a disaster designation number.

(c) *Form FmHA 441–5, "Subordination Agreement."* When a subordination agreement is required on crops, livestock, farm equipment, and other chattel property, including items which have become personal property through execution of a severance agreement, Form FmHA 441–5, or other form approved by the State Director with the advice of the OGC, where Form FmHA 441–5 is not legally sufficient, will be used. Subordinations will be for a specified amount of money rather than for a specific period of time.

(d) *Form FmHA 440–6, "Severance Agreement."* This form will be used when required by State Instructions.

(e) *Form FmHA 440–26, "Consent and Subordination Agreement."* Unless otherwise provided by a State Supplement this form, rather than a severance agreement, will be used in Uniform Commercial Code (UCC) States when a security interest is taken in property after it has become a fixture.

* * * * *

3. In § 1832.31, the listing for Form FmHA 440–1 should read as follows:

* * * * *

440–1 Request for obligation of funds, 5, 2-O&C[1] 1–0, 1–C, State director.

* * * * *

4. Section 1832.36 (c) is revised to read as follows:

§ 1832.36 Loan closing.

* * * * *

(c) *Supervised bank accounts.* EM loan funds will only be deposited in a supervised bank account as provided in Part 1803 of this chapter.

(7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, Section 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, OEO 29 FR 14764, 33 FR 9850.)

Effective date: These regulations will become effective on January 25, 1977.

Dated: January 19, 1977.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.77-2303 Filed 1-24-77;8:45 am]

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

[FmHA Instruction 442.12]

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

Grants for Facilitating Development of Private Business Enterprises and Community Water and Waste Disposal Facilities

DISBURSEMENT OF GRANT FUNDS—CORRECTION

In FR Doc. 76–38119 appearing at page 56626 in the FEDERAL REGISTER of December 29, 1976, the introductory text of § 1823.460 is corrected in the last sentence by adding a comma and the words ", signed statements from other lenders and the applicant showing that such financing is not" immediately following the word "available" and immediately before the word "at."

As corrected, the entire introductory text for § 1823.460 follows:

§ 1823.460 Grant closing and delivery of funds.

Closing is the process by which FmHA determines that applicable administrative actions and required work of the grantee have been completed and delivers the grant funds. If all or a portion of the grant is for construction, the grant will not be closed and funds will not be delivered before construction is completed; however, in exceptional cases grants may be closed at an earlier date with prior concurrence of the National Office. In such exceptional cases, State Directors will forward their recommendations for fund disbursal and the following information to the National Office for concurrence before grant closing or commencement of construction, whichever comes first: The applicant's certification that it has no other resources to pay for completion of the construction; and if interim financing cannot be used due to legal reasons, an opinion from the State Attorney General to that effect, provided by the applicant; or when interim financing is not otherwise available, signed statements from other lenders and the applicant showing that such financing is not available at reasonable rates and terms.

* * * * *

(7 U.S.C. 1989; 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.)

Effective date: This correction shall become effective January 25, 1977.

Dated: January 18, 1977.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.77-2370 Filed 1-24-77;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

[FEA Ruling 1977–2]

DOMESTIC CRUDE OIL

Further Clarifications to Mandatory Petroleum Price Regulations

I. BACKGROUND

On August 20, 1976, the Federal Energy Administration ("FEA") issued a Notice entitled "Clarifications to Mandatory Petroleum Price Regulations Applicable to Domestic Crude Oil" (41 FR 36172, August 26, 1976). In the August 20 Notice FEA adopted certain regulatory amendments designed to improve the incentives offered under the two tier pricing system. FEA also set forth its conclusions with respect to a variety of technical issues that had arisen in connection with FEA's implementation of the crude oil pricing policy of the Energy Policy and Conservation Act ("EPCA," Pub. L. 94–163). The conclusions with respect to these issues were subsequently contained in "FEA Ruling 1977–1" (42 FR 3628, January 19, 1977). Among the specific issues addressed in the August 20 Notice were the definitions of "property" and "posted price"; whether a well is properly classified as an oil well for purposes of the stripper well property rule; and the partial rescission and modification of "FEA Ruling 1975–15" (including the issue whether a property's producing patterns have been "significantly altered" for purposes of treating a unitized property as a single property under the price regulations.

Although the August 20 Notice addressed many of the issues raised in connection with the price regulations applicable to first sales of domestic crude oil, it was recognized and expressly noted in the August 20 Notice itself, that there might remain some issues that justify further consideration. Accordingly, further comments were requested addressed to the way in which the issues considered in the August 20 Notice were resolved, or to any other issue not specifically considered in that Notice that might need clarification and resolution.

FEA has received written comments specifically in response to the request in the August 20 Notice—and several other comments of a less formal nature—which indicate the need for additional technical clarification of some of the issues addressed in the August 20 Notice. These comments also illustrate the need to clarify a number of issues not otherwise previously resolved. Accordingly, the purpose of this Ruling is to resolve as many as possible of the remaining issues that have arisen with respect to the price regulations applicable to first sales of domestic crude oil. Some of these issues relate to past applications of the definition of property, while others of these issues relate to the reservoir definition of property adopted by FEA effective September 1, 1976. Conclusions stated in this Ruling with respect to past applications of the definition of property will be applied from August 1973 forward. Clarifications stated in this Ruling with respect to the reservoir definition of property which was adopted effective September 1, 1976, will be applied from September 1, 1976 forward.

II. PAST APPLICATIONS OF THE DEFINITION OF "PROPERTY"

As indicated above, comments have been received from interested parties raising several issues with respect to certain conclusions contained in the August 20 Notice (and later restated in "FEA Ruling 1977–1"), which justify further clarification at this time.

A. CONTINUATION AFTER SEPTEMBER 1, 1976 OF PAST APPLICATIONS OF THE DEFINITION OF "PROPERTY"

In "Ruling 1977–1," FEA set forth its conclusions with respect to certain past applications of the definition of property in which departures from a literal application of the "premises described by

an oil and gas lease" concept were permissible. As proper departures from a literal interpretation, FEA discussed generally (1) situations in which a single oil and gas instrument might convey more than one right to produce, which might properly have been treated as more than one "property"; (2) situations in which premises subject to a single right to produce could properly have been segregated into two or more properties for purposes of the price regulations; and (3) situations in which two or more single rights to produce (or parts of two or more single rights to produce) could properly have been aggregated into a single property for purposes of the price regulations. Specific examples of each of these situations were given in "Ruling 1977–1".

Several producers have requested FEA to clarify whether determinations of property status, made in accordance with the clarifications set forth in "Ruling 1977–1," may continue to be used after September 1, 1976.

FEA will permit producers to continue such determinations after September 1, 1976, insofar as they were made in accordance with the clarifications contained in "Ruling 1977–1." Those clarifications are applicable to the definition of property as it was adopted by the Cost of Living Council ("CLC") in August 1973, and which remained substantially unchanged until its amendment by FEA effective September 1, 1976. Moreover, the September 1 amendment did not alter the basic property definition, which continues to provide in part:

> "Property" means the right to produce domestic crude oil, which arises from a lease or from a fee interest * * *.

The substantive effect of the September 1 amendment was to provide an option, whereby producers:

> May treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil, provided that such reservoir is recognized by the appropriate governmental regulatory authority as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.

Accordingly, the September 1 amendment merely provided an option whereby producers might, in certain circumstances on or after September 1, 1976, make property determinations from that time forward on a reservoir-by-reservoir basis. Inasmuch as FEA made no substantive change in the basic property definition as it had existed since promulgation by CLC in August 1973, the clarifications contained in "Ruling 1977–1" continue to be valid with respect to construing "the right to produce crude oil." Therefore, FEA will, after September 1, 1976, continue to recognize property determinations which comport with those clarifications.

Where a producer's historical and consistent property determinations comport with the clarifications contained in "Ruling 1977–1", such determinations, of course, are required to be continued by the producer after September 1, 1976, and may be altered only to the extent that for each such property, the producer may, but is not required to, treat each separate and distinct producing reservoir as a separate property after September 1, 1976, if such reservoir meets the separate reservoir criteria as set forth in the September 1 amendment and further clarified in Part III of this Ruling.

Inasmuch as the clarifications to past applications of property have been recognized by FEA as appropriate departures from a literal application of the "premises described by an oil and gas lease" concept only to the extent that such determinations were employed by a producer historically and consistently since the inception of price regulations when such determinations were first required to be made, such departures are generally not permitted to be adopted for the first time subsequent to FEA's issuance of the August 20 Notice, where the clarifications were first announced. However, FEA recognizes that some producers departed from historical and consistent "property" determinations that would have comported with the clarifications set forth in the August 20 Notice in order to make property determinations based upon a more literal application of the "premises described by an oil and gas lease" concept. Where this was done at the outset under CLC regulations, or where it was done later in response to a CLC, FEO or FEA compliance action, FEA will permit such determinations to be readopted effective September 1, 1976.

B. SEGREGATION OF PREMISES SUBJECT TO A SINGLE RIGHT TO PRODUCE, ACCORDING TO SEVERANCE TAX OR ROYALTY OWNER ACCOUNTABILITY

1. *Royalty owner accountability.* FEA indicated in "Ruling 1977–1" that:

> Where the payment of revenues to state tax authorities or to royalty owners requires separate accounting for production from identified portions of a premises subject to a single right to produce, and where such portions of the premises have consistently and historically been treated as separate properties, such separate treatment may appropriately be continued.

FEA has received a number of inquiries regarding this clarification, specifically with regard to division orders. Although there was no specific discussion of this issue in "Ruling 1977–1," FEA understands division orders generally to be a means whereby the purchasers of crude oil from a property are authorized to distribute the payment for purchases of crude oil produced and sold from the property among the various interest holders who are entitled to such distribution.

Inasmuch as FEA understands the typical division order to act primarily as a means to protect the purchaser against the possibility that payment for crude oil produced and sold from a certain property might be improperly distributed—rather than as an instrument which acts to segregate a premises subject to a single right to produce—the language above was not intended to suggest that the treatment by a producer of each division order as establishing a separate property was appropriate under the price regulations. Moreover, the language above referred only to royalty owners (and not to overriding royalty owners, working interest owners, or other interest owners) and therefore takes into account only the situation in which an operator is required, under a single oil and gas lease, to account separately to different royalty owners (whose interests are limited to specific identified portions of the premises, as delineated in the oil and gas lease) for production from corresponding identified portions of the premises granted in a single oil and gas lease.

To illustrate, such an instance might exist where "O," the owner of an oil and gas interest in Blackacre granted a working interest in Blackacre to a producer "P," reserving a royalty interest in production from the North half of Blackacre to "O's" daughter, and reserving a royalty interest in production from the South half of Blackacre to "O's" son, and where P has historically and consistently treated the North and South halves of Blackacre as separate properties. In this instance, therefore, when originally making property determinations, P might appropriately have determined that for purposes of the price regulations, the North half of Blackacre constituted one property, and the South half of Blackacre constituted a separate property, because of the requirement to account for production from the North half of Blackacre to one royalty owner and the requirement to account for production from the South half of Blackacre separately to a different royalty owner. On the other hand for example, where several small tracts (each having different royalty interests) have been aggregated under a single lease granting a single operating interest in order to meet minimum well spacing requirements, the single premises granted in the lease should have been treated as a single property regardless that payment was made to different royalty owners and accounted for separately on the basis of their proportionate interests in that premises. The mere existence of separate royalty owners and a requirement to account to them separately for their proportionate interests does not satisfy the requirement that there be " * * * separate accounting for production from identified portions of a premises * * *." In other words, with respect to royalty owner accountability, it is only where production and sale of crude oil from an identified portion of a premises subject to a single right to produce entails no duty to account to royalty owners of another identified portion of the premises that separate properties may exist.

2. *Severance tax accountability.* With respect to separate accounting for severance tax purposes, FEA understands that it might be necessary in some instances for a producer to account separately for different types of crude oil

produced and sold from different specified portions of a tract in order to determine liability for severance taxes to the state in which the property is located.

It is FEA's understanding that although this is not usually the case, it may be necessary in isolated cases where the severance tax is more in the nature of an ad valorem real estate tax, the rate of which varies according to the value of the crude oil produced and sold from the property. In such a situation, where the imposition of an ad valorem tax has required the producer separately to account for production from separately identified portions of a premises subject to the same right to produce crude oil, and where the producer has since the inception of price regulations consistently treated such distinct portions of the premises as separate properties, such separate property treatment may appropriately be continued. On the other hand, where a severance tax is determined merely by applying a fixed tax rate to total production volume (normally on a firm-wide basis), separate property treatment would not have been appropriate unless "different rates of tax were applied to identified portions of a particular premises."

With respect to severance tax accountability, then, the mere fact that total tax liability may be determined by cumulating production figures that are required to be reported on a well-by-well basis does not mean that there is severance tax accountability on a well-by-well basis. Such separate accountability exists only where separate accounting for production from identified portions of a premises is required in order to determine a severance tax liability which is different from that which would have resulted had there not been such separate accounting.

C. SEPARATE GEOLOGICAL STRUCTURES

FEA made it clear in "Ruling 1977-1" that prior to September 1, 1976:

> A premises which contains multiple reservoirs but which is subject to a single right to produce may not, simply by virtue of the existence of separate reservoirs, be treated as comprising multiple "properties."

Notwithstanding this clear prohibition against separate reservoir treatment before September 1, 1976, FEA has received further comments since August 20, 1976 which indicate that some parties have perceived a conflict between this policy and the discussion in "Ruling 1977-1" involving segregation of a premises subject to a single right to produce in the case of "very large tracts," where FEA indicated that:

> Separate geological formations subject to the same right to produce which have been developed and produced separately, and which have historically and consistently been accounted for separately may continue to be so regarded.

By this language FEA did not intend to imply that separate reservoir treatment was proper in every case before September 1, 1976. Rather, this discussion recognizes that in certain instances extremely large tracts—sometimes large fee interests, but more commonly large state-owned leases—were developed and produced pursuant to a single lease or fee interest under circumstances that made treatment of separate geological formations as separate properties appropriate.

The term "geological formation" was used in this regard to signify not an individual producing reservoir, but a number of producing reservoirs, usually of common characteristics. This term should be understood in this context to be equivalent to the term "geological structure," which has been defined as:

> Layers of sedimentary rock which have been displaced from the horizontal by various forces of nature. Five general categories of structures are recognized: (1) Faults, (2) anticlines, (3) monoclines, (4) synclines, and (5) domes. ("Williams and Myers, Manual of Oil and Gas Terms" at 199.)

FEA will not permit, before September 1, 1976, the treatment of separate reservoirs as separate properties except in those cases where such treatment was permitted by express FEA order or interpretation, as indicated in "Ruling 1977-1." In order further to eliminate any confusion that might exist with respect to geological formations, a technical amendment to the definition of property will be made effective September 1, 1976, to eliminate any reference in that definition to producing "formation."

III. SEPTEMBER 1, 1976 AMENDMENT TO THE DEFINITION OF "PROPERTY"

As FEA indicated in the August 20 Notice, FEA's initial consideration of a reservoir property definition led to the conclusion that the advantages of permitting producers to make property determinations on a reservoir-by-reservoir basis were largely outweighed by the attendant administrative complexity associated with FEA having to (a) make reservoir determination in the first instance, and/or (b) verify asserted determinations previously made by others. FEA's further consideration of this issue resulted in adoption of a system that would permit FEA to "defer to other expert agencies to make reservoir-by-reservoir determinations" (41 FR 36179). Therefore, the September 1, 1976 definition of property permits producers to treat as separate properties, each separate and distinct producing reservoir underlying a tract, to the extent that the reservoir is recognized by the appropriate governmental regulatory authority, and production has been consistently and historically reported as such.

A. RESERVOIR RECOGNITION BY THE APPROPRIATE GOVERNMENTAL REGULATORY AUTHORITY

In requiring governmental recognition of a reservoir before a producer may treat that reservoir as a separate property under the September 1, 1976 amendment, FEA sought to adopt a system whereby FEA auditors could have at their disposal easily understandable records from which could be determined the limits of each producing property. Moreover, the requirement that production must have been reported to the governmental authority on the basis of its reservoir determination, is intended to ensure a necessary supplemental means for FEA to verify production and sales volumes used to determine volumes of upper and lower tier crude oil. By itself, however, the mere requirement by a state or other regulatory authority for producers to report on a reservoir-by-reservoir basis does not constitute "recognition by the governmental authority."

FEA understands that most states in which crude oil is produced in significant volumes have historically regulated the production of crude oil for various reasons, principally to ensure the conservation of the state's natural resources. In this regard, most producing states have empowered regulatory bodies to govern the drilling of wells and the production of oil and gas. In many instances, the state regulatory body limits well density and will not permit the drilling of additional producing wells into a reservoir that has already been developed. Inasmuch as development drilling and production are typically regulated on a reservoir-by-reservoir basis, most state regulatory bodies make some determination with respect to whether production from a new well will affect production from a developed reservoir. Where controlled, rates of production are typically set by the state, and these rates are determined on a reservoir-by-reservoir basis, and production volumes are reported to the state by the producer on a basis that production from each reservoir on each lease can be determined.

What constitutes "recognition" by the appropriate governmental authority will be a matter for resolution on a case-by-case basis by FEA regional officials who are in a position to be more familiar with state practices in their region. Generally, however, the following guidelines shall be used in making such determinations. The mere requirement that a producer must report to the regulatory body on the basis of separate reservoirs does not constitute government recognition. Rather, before a producer may treat a producing reservoir as an FEA property, there must have been some review by the appropriate regulatory body of factual considerations leading to a determination by the regulatory body that the reservoir is separate and distinct from, and not in communication with, any other reservoir subject to the same right to produce. Such determination by the regulatory body must be signified by an affirmative action: the mere receipt by the regulatory body of production or other types of reports, for example, does not constitute the requisite affirmative action.

In some states, the state regulatory body may conduct a formal proceeding to establish the limits of producing reservoirs. At such proceedings, evidence is taken from interested parties, a hearing is held, and after thorough considera-

tion of the record, the state issues an order setting forth its determination as to the physical limits of the reservoir. The state's determination contained in such an order would constitute the requisite affirmative action.

FEA recognizes, however, that not all states have such thorough procedures for making reservoir determinations. Nevertheless, in most states some review of factual considerations is made by the regulatory body, and some affirmative determination (usually contained in an order) as to the limits of the reservoir are made. Where such review is undertaken, FEA will recognize a subsequent affirmative determination by the state as "state recognition" of the existence of a separate reservoir. Provided also that the producer is required to report production volumes to the state on the basis of that determination, the producer may, effective September 1, 1976, treat the reservoir as a separate property.

With regard to properties not subject to the jurisdiction of any state regulatory body, a similar determination by an other governmental authority (e.g., the United States Geological Survey) will be recognized by FEA as "governmental recognition" so long as the determination satisfies the guidelines set forth above.

B. THE REQUIREMENT THAT EACH RESERVOIR BE SEPARATE AND DISTINCT AND NOT IN COMMUNICATION WITH ANY OTHER RESERVOIR SUBJECT TO THE SAME RIGHT TO PRODUCE

The principal objective in permitting producers to treat separate reservoirs as separate properties is to maximize the incentive to increased production by allowing:

> Decisions regarding the exploration for and development of crude oil reserves [to be] made on an individual reservoir basis without regard to the happenstance of production characteristics of other reservoirs underlying the same tract. (41 FR at 36178.)

That is, FEA believes that over the remaining term of crude oil price controls mandated by the EPCA the incentives intended under the two tier price system will work best to the extent that producers are able to make economic determinations and production decisions on the basis of separate producing entities. Inasmuch as FEA also believes that in the absence of crude oil price controls such decisions would be made on a reservoir-by-reservoir basis, the rewards offered under the two tier system of price controls should be structured accordingly

Therefore, for example, FEA believes that where a producer is faced with the expenditure of large sums of capital to initiate measures designed to increase production from one producing reservoir—or to develop new reserves subject to the same right to produce—the producer should be permitted to measure the benefits of such a decision against the real risks, and should not be required to take into account the production characteristics of other producing entities, "the production from which is not physically affected by actions taken with respect to the producing entity under consideration."

The same rationale, however, does not apply where production from two or more reservoirs (that are otherwise separate and distinct) is commingled in the well bore, because the production characteristics become interrelated. For this reason, the September 1 amendment permits a producer to treat as separate properties separate and distinct producing reservoirs only to the extent that they continue not to be in communication with each other. Accordingly, a producer may not treat as separate properties two or more otherwise seperate and distinct producing reservoirs if production from those reservoirs is commingled in the well bore. To the extent that commingled production is begun from two or more reservoirs subsequent to a post-September 1, 1976 determination by the producer to treat the reservoirs as separate properties, the producer must, as of the date that commingled production is begun, treat the two or more reservoirs as a single property. Where this is required, the BPCL for the single property (consisting of the two or more reservoirs with commingled production) will be determined as the sum of the BPCL's for all the reservoirs from which production is commingled. Moreover, the property (consisting of two or more reservoirs with commingled production) will be determined to have a current cumulative deficiency, if any, equal to the sum of the current cumulative deficiency as of the date production is commingled for all the reservoirs from which production is commingled.

In this context of determining two or more reservoirs to be separate and distinct, FEA will recognize production not to be "commingled" in a particular well where the well meets the test of a "multiple completion well" as set forth in "FEA Ruling 1975–12" (40 FR 40828, September 4, 1975), i.e., where:

> (a) The well consists of two (or more) separate tubing strings run inside the casing, each of which carries crude oil from a separate and distinct producing reservoir, and
>
> (b) The production capabilities of each reservoir are unaffected by any change in the production level of any other reservoir producing through the same well.

Additionally, for purposes of determining if two or more reservoirs are "separate and distinct and not in communication with each other," FEA will recognize production not to be commingled—even though produced through a single well—where production from one reservoir is carried through a tubing string and production from a separate and distinct reservoir is carried through the annulus between that tubing string and the casing: *Provided*, That the production capabilities of each reservoir are unaffected by any change in the production level of any other reservoir being produced through the same well: *And provided further*, That production from each reservoir can be separately measured at the wellhead. Where two otherwise separate and distinct producing reservoirs are produced through a multiple completion well that meets either test set forth above, either or both of the reservoirs may be treated as a stripper well property to the extent that production levels of 10 barrels or less per well per day are sustained from that reservoir for 12 consecutive months following a determination to treat the separate reservoirs as separate properties. (See Part III.E. below.) However, the recognition of two reservoirs as separate and distinct (where crude oil is produced through the annulus between a tubing string and the casing), does not affect the test announced in "FEA Ruling 1975–12" for determining when a multiple completion well may be treated as two or more producing wells for purposes of the stripper well property rule, where the reservoirs are not treated as separate properties. In the case of a multiple completion well that produces from two separate reservoirs not treated as separate properties, the multiple completion well may be treated as two or more producing wells for purposes of the stripper well property rule only if it meets the standards set forth in "FEA Ruling 1975–12."

The requirement that two or more otherwise separate and distinct producing reservoirs be treated as a single property because of commingled production applies on a property-by-property basis. That is, where production from two or more otherwise separate and distinct reservoirs is determined to be commingled with respect to a particular property, a producer from a second property may nevertheless treat those same reservoirs as separate properties, so long as production from those reservoirs is not commingled on the second property.

Finally, FEA will not consider production from two or more otherwise separate and distinct reservoirs to be commingled where the reservoirs are produced through different wells but such production is commingled into a single tank battery, provided that production is separately measured at the wellhead, or that production volumes are allocated back to each well based on regular well tests.

C. TREATMENT OF SEPARATE RESERVOIRS AS SEPARATE PROPERTIES

With respect to the treatment of separate reservoirs as separate properties, FEA has not required that such decisions be made immediately for every property. To the contrary, producers are permitted to make separate reservoir determinations at any time on or after September 1, 1976. Of course, post-September 1, 1976 determinations to treat separate reservoirs as separate properties must become effective from the first day of the month in which such a decision is made and may not be applied retroactively beyond the two-month recertification restriction of 10 CFR 212.72. Under no circumstances are such determinations permitted to affect volumes of crude oil produced and sold prior to the September 1, 1976 effective date of the amendment to the definition of property.

Once a producer has elected to treat separate reservoirs subject to a single right to produce as separate properties, such a decision shall be effective from

that time forward with respect to all of the separate and distinct producing reservoirs subject to the same right to produce. To permit the selective segregation of individual reservoirs subject to the same right to produce might encourage selective recalculation of base production control levels ("BPCL") solely to increase levels of new crude oil without promoting any increase in crude oil production.

Moreover, the decision to segregate all of the producing reservoirs subject to the same right to produce, is one that, once made for a particular property, is not subject to modification throughout the duration of price controls applicable to the first sale of domestic crude oil. Purchasers as well as producers must be able to function under a system of price regulation with an adequate degree of finality. To permit the continual redesignation of properties (with the accompanying recomputations of BPCL's) would unnecessarily complicate the operation of the two tier pricing system without providing any discernible additional incentives to producers to increase domestic production. As only one example, such a practice would involve a multitude of additional certifications, and would defeat the purpose of certification requirements intended to be made one time for each property.

The only exception to this policy will be, as indicated above, where commingled production begins subsequent to a post-September 1, 1976 determination to treat separate reservoirs as separate properties, or where two or more reservoirs are subsequently unitized. Where such commingled production is begun for two or more, but less than all, of the reservoirs subject to the same right to produce, only those commingled reservoirs must then be aggregated to form a single property, and all other separate and distinct reservoirs must continue to be treated as separate FEA properties.

Accordingly, for each property, effective September 1, 1976, each producer may treat each separate and distinct producing reservoir as a separate property. To the extent that a single property consists of several reservoirs, only some of which are commingled, the producer may treat the non-commingled reservoirs as separate properties (if all such reservoirs are so treated), and if so, production from commingled reservoirs must be aggregated and treated as a separate property (or properties, if there is more than one set of commingled reservoirs). Moreover, to the extent that the property consists of what the producer believes to be more than one separate and distinct reservoir (only some of which are recognized by the appropriate governmental authority) the decision to treat any one governmentally-recognized reservoir as a separate property must include all such governmentally-recognized reservoirs. Any other production from the property, even if believed by the producer to be from separate and distinct reservoirs, must, in the absence of governmental recognition, be aggregated and treated as if from a single property.

The decision to redesignate properties on the basis of separate and distinct producing reservoirs need not be made for all of a producer's properties. For any particular property, however, a producer must treat separate and distinct reservoirs as separate properties according to the requirements set forth above, if the producer elects so to treat any one separate reservoir. Once separate reservoir designations are made for a specific property, any newly-developed producing reservoir must be designated as a separate property.

D. DETERMINATION OF BASE PRODUCTION CONTROL LEVELS ON A RESERVOIR-BY-RESERVOIR BASIS

In the August 20 Notice, FEA set forth guidelines for recalculating BPCL's for properties redesignated on or after September 1, 1976 on a reservoir-by-reservoir basis. Those guidelines did not, however, address the treatment of current cumulative deficiencies in making such recalculations. The failure of FEA in the August 20 Notice specifically to address the treatment of cumulative deficiencies has generated sufficient comment from interested parties to justify the following, more detailed guidelines, which are to be used by producers that elect to treat separate reservoirs as separate properties in determining BPCL's for those reservoir-properties.

As of the effective date upon which a producer elects to redesignate a particular property on the basis of each separate and distinct reservoir encompassed by that property, the producer must determine a BPCL for each reservoir. This is done generally by making "attributed" calculations for each reservoir as if the reservoir had been a separate property since the inception of the price regulations (i.e., by calculating attributed volumes of new, released and old crude oil for each reservoir for every month from August 1973 to the effective date that the reservoir is treated as a separate property). It should be emphasized that these calculations of attributed volumes are done only for the purpose of determining a BPCL and a cumulative deficiency (if any) for each reservoir-property; no recertification of any volumes of new, released, or stripper well crude oil is intended and none will be permitted.

1. *Reservoirs from which no crude oil was produced in 1972.* As FEA stated in the August 20 Notice, any reservoir from which no crude oil was produced in 1972 will, as of the effective date that the producer elects to treat that reservoir as a separate property, have a BPCL of zero. This result is reached because, had the reservior been treated as a separate property since the inception of price regulations, that "property" would have produced and sold all new crude oil. Inasmuch as the "property" would have produced and sold no old crude oil in 1975, its BPCL effective February 1, 1976, would also have been zero.

Accordingly, for any reservoir that did not produce crude oil in 1972, the BPCL for that reservoir-property will be zero. Inasmuch as production of crude oil could not at any time have been less than the reservoir-property's BPCL, there can be no cumulative deficiency for such reservoir-property.

2. *Reservoirs from which crude oil was produced in 1972.* For any reservoir from which crude oil was produced in 1972, the producer must, as of the effective date that the reservoir is treated as a separate property, determine a BPCL. This will be accomplished as follows:

a. The producer must establish an "attributed BPCL." The initial step in determining a reservoir-property's attributed BPCL is to determine the actual production and sale of crude oil from the reservoir for every month in 1972.

b. Based on those figures, the producer must then establish the attributed volumes of new and released crude oil for the reservoir-property, for each month from August 1973 through January 1976. This is accomplished by comparing actual production and sale volumes for the reservoir for every month during that period with the attributed BPCL. For any month (during that period) in which production and sale from that reservoir did not exceed the attributed BPCL, an attributed cumulative deficiency will exist. Any volumes of attributed cumulative deficiencies must be accounted for in subsequent months in determining volumes of attributed new and attributed released crude oil.

c. The producer must then establish an attributed BPCL based upon average monthly production and sale of attributed old crude oil for the reservoir-property in 1975.

d. The producer will then be able to compare the attributed 1972 BPCL with the attributed 1975 BPCL. The lower attributed BPCL may then be adopted as the reservoir-property BPCL for the period commencing with February 1, 1976 and thereafter.

e. Using the reservoir-property BPCL, the producer should determine attributed volumes of new and old crude oil for every month during the period from February 1, 1976 to the effective date that the reservoir is treated as a separate property. The reservoir-property begins on February 1, 1976 with no attributed cumulative deficiency. However, once attributed new crude oil was "produced and sold" from the reservoir after February 1, 1976, and the actual monthly production and sale of crude oil from the reservoir subsequently fell below the attributed BPCL, an attributed cumulative deficiency must be accounted for. Any attributed cumulative deficiency existing on the effective date that the reservoir is treated as a separate property must then be accounted for before any new crude oil may be sold from that reservior-property. (The use of 1972 or 1975 as the reservoir-property's BPCL may

be done for each reservoir independently, but calculations of attributed volumes of new crude oil must be made as if a BPCL selection had occurred on February 1, 1976. That is, calculations of attributed cumulative deficiencies subsequent to February 1, 1976 may be made based upon either year. However, once those calculations are made, the same base year (either 1972 or 1975) must continue to be used thereafter to determine actual volumes of new and old crude oil.)

E. TREATMENT OF SEPARATE RESERVOIRS AS STRIPPER WELL PROPERTIES

Effective September 1, 1976, prices charged in the first sale of crude oil produced and sold from a stripper well property are exempt from the price regulations applicable to first sales of domestic crude oil. A "stripper well property" is defined in 10 CFR 212.54 as:

a "property" whose average daily production of crude oil (excluding condensate recovered in non-associated production) per well did not exceed 10 barrels per day during any preceding consecutive 12-month period beginning after December 31, 1972.

Section 212.54 was adopted by FEA on October 29, 1976 (41 FR 40319, November 3, 1976) to implement the congressional policy, set forth in the Energy Conservation and Production Act ("ECPA," Pub. L. 94-385), of promoting continued production of crude oil from marginal properties. In this regard, FEA indicated in the October 29 Notice that:

as evidenced in the ECPA legislative history, the Congress has intended to *prolong* the production of crude oil from properties that produce 10 barrels per well per day or less, and *not to generate development of new stripper well properties.* (Emphasis added, 41 FR at 48321.)

Accordingly, FEA made it clear that newly-developed properties must establish a 12-month history of marginal production before they may be treated as stripper well properties.

FEA believes that the same policy is appropriately applied to newly-designated properties, whose property status is predicted upon a reclassification, on or after September 1, 1976, by the producer.

The September 1 amendment to the definition of property was designed to ensure that the incentives intended under the two tier price system would be maximized over the remainder of the term of crude oil price controls mandated by EPCA. Accordingly, the option to treat separate reservoirs as separate properties is intended to provide producers with additional incentives, though additional revenues, to increase production, and not to promote property reclassifications solely to achieve stripper well property status.

To the extent that an individual reservoir-property sustains production levels of 10 barrels or less per well per day for a period of 12 consecutive months after being designated a property, that reservoir-property would, of course, qualify as a stripper well property.

IV. UNITIZED PROPERTIES

In order to resolve certain issues that have arisen with respect to the price regulations applicable to unitized properties, it is necessary to review several actions that have been taken by FEA in this regard.

A. RULING 1975-15

On August 31, 1975, FEA issued "Ruling 1975-15" (40 FR 40832, September 4, 1975) addressed to those cases where, due to a change or restructuring since 1972 of the right to produce crude oil, guidance concerning application of the definition of "property" would be required in determining BPCL's. In particular, "Ruling 1975-15" stated that:

• • • where a unit consists of several leases that were unitized in 1973, the property consists of the unit, and the BPCL is the total 1972 monthly production from all the several leases that now comprise the unit. (40 FR at 40832.)

In response to comments urging reconsideration of "Ruling 1975-15," FEA, on February 1, 1976 (in connection with the first stage rulemaking to implement the pricing policy of the EPCA) rescinded that part of the Ruling which required producers of unitized properties to total all the BPCL's of the participating leases and to treat the unit as a single property as of the date of unitization. Instead, producers of unitized properties were permitted to continue to determine quantities of upper tier crude oil on a lease-by-lease basis until the actual implementation of enhanced recovery operations or until such time as there has been "a significant alteration in producing patterns," whichever occurred first. The February 1 Notice did not define "a significant alteration in producing patterns" but indicated instead that a Ruling would follow, to set forth objective criteria to be used in determining when a significant alteration of producing patterns has occurred on a unitized property. (Those objective criteria were subsequently set forth in the August 20 Notice.) With respect to "enhanced recovery units" required to establish a unit BPCL on or after February 1, 1976, FEA adopted in the February 1 Notice a new unitized property rule (10 CFR 212.75) which provided a means for preserving under the unit BPCL the benefits of the stripper well status of any leases included in the unit. Section 212.75 was subsequently amended, effective September 1, 1976, to provide a rule whereby unit BPCL's established on or after that date are permitted to reflect upper tier crude oil volumes previously produced and sold from the previously separate properties which comprise the unit. The result of these actions concerning unitized properties can be summarized as follows:

1. *All unitized properties required to establish a unit BPCL on or after September 1, 1976.* A unit base production control level must, in general be established as of the effective date of unitization, and the producer must treat the unit as a single property. Section 212.75 provides an exception to this requirement where (1) the producer has certified to FEA[1] its intention to continue to determine volumes of upper, lower and stripper well crude oil separately for all properties that constitute the unitized property, and (2) the unitized property has not sustained a significant alteration in producing patterns. A significant alteration in producing patterns is defined in § 212.75 as the occurrence of either (a) the application of extraneous energy sources by the injection of liquids or gases into the reservoir, or (b) the increase in production allowables for any property that comprises the unitized property. Once a significant alteration in producing patterns has occurred, a unitized BPCL must be established.

Regardless whether established as of the effective date of unitization or as of the time that a significant alteration in producing patterns occurs, a unit BPCL established on or after September 1, 1976 is the sum of (1) the total average monthly production and sale of old crude oil during the 12-month period immediately preceding the establishment of a unit BPCL, from all the properties that constitute the unitized property, plus (2) the average monthly production and sale of crude oil during the 12-month period immediately preceding the establishment of a unit BPCL, from all stripper well properties—qualified as such prior to the establishment of a unit BPCL—that constitute the unitized property.

Once a unit BPCL has been established, it may be eligible for adjustment under § 212.76. In determining upper tier crude oil volumes each month following the establishment of a unit BPCL, the producer measures the entire current monthly production and sale of crude oil from the unit and compares that volume against the unit BPCL. Current monthly production and sale volumes in excess of the unit BPCL qualify for treatment each month as new crude oil produced and sold from the unitized property unless there is a cumulative deficiency.

Section 212.75 also contains provisions for determining volumes of imputed new crude oil and volumes of imputed stripper well crude oil produced and sold each month for a unitized property for which a unit BPCL is established on or after September 1, 1976. Volumes of imputed new crude oil may be sold each month at a price not to exceed the upper tier ceiling price; volumes of imputed stripper well crude oil may be sold each month at exempt prices. Imputed new crude oil is a number equal to the average monthly production and sale of new (and released, if any) crude oil during the 12-month period immediately preceding the

[1] Such certifications should be made pursuant to 10 CFR 205.90 and filed with the Deputy Assistant Administrator for Compliance, FEA, 2000 M Street, N.W., Washington, D.C. 20461.

establishment of a unit BPCL, from all the properties that comprise the unitized property. Imputed stripper well crude oil is a number equal to the average monthly production and sale of crude oil during the 12-month period immediately preceding the establishment of a unit BPCL, from all previously qualified stripper well properties that constitute the unitized property. In the case of some stripper well properties, the 12-month period immediately preceding the establishment of a unit BPCL may include some period of time (up to eleven months) during which the stripper well property had not yet qualified as such.

2. *Enhanced recovery unitized properties required to establish a unit BPCL on or after February 1, 1976 and before September 1, 1976.* Section 212.75, adopted on February 1, 1976, is applicable only to enhanced recovery unitized properties which established a unit BPCL on or after February 1, 1976. Section 212.75(a) required that the unitized property be treated as a single FEA property and a unit BPCL established "as of the date of implementation of enhanced recovery operations on a unit or as of the date production patterns with respect to individual leases within a unit are substantially altered (which ever date occurs first) * * *." However, § 212.75 did not, until September 1, 1976, contain a definition of "significant alteration in producing patterns." Accordingly, for any enhanced recovery unit formed during that time the producer was permitted to continue determinations of upper and lower tier crude oil volumes on a lease-by-lease basis until such time as enhanced recovery operations had begun. After such an occurrence, however, the unitized property was required to be treated as a single property and a unit BPCL had to be established. The unit BPCL was determined to be the sum of (1) the total average production and sale of old crude oil during the 12-month period immediately preceding the establishment of a unit BPCL, for all properties that constitute the unitized property, plus (2) the average monthly production and sale of crude oil during the 12-month period immediately preceding the establishment of a unit BPCL, from all previously-qualified stripper well properties that constitute the unit. After a unit BPCL had been established, the producer was required to compare the total production and sale of crude oil from the unitized property with the unit BPCL to determine current volumes of new crude oil. Section 212.75 as in effect from February 1, 1976 until August 31, 1976, contained a provision, similar to the current provisions for imputed stripper well crude oil, whereby certain previously-qualified volumes of stripper well crude oil could be sold from the unit each month as upper tier crude oil. It did not, however, include a provision similar to the current provision for imputed new crude oil.

With respect to any enhanced recovery unitized property formed during the period February 1, 1976 to September 1, 1976, for which a unit BPCL was not established, the current definition of "significant alteration in producing patterns," adopted in the August 20 Notice and effective September 1, 1976 is applicable effective September 1, 1976. Accordingly, if such an alteration in producing patterns (as that term is now defined in § 212.75) did occur prior to September 1, 1976, the unitized property must be treated as a single property and a unit BPCL must be established under § 212.75 as of September 1, 1976, if the producer had not begun to treat the unit as a single property as of the time that a significant alteration in producing patterns occurred. If such an alteration in producing patterns has not occurred as of September 1, 1976, but does occur subsequent to September 1, 1976, the unitized property must at that time be treated as a single property and a unit BPCL must be established, and the provisions of § 212.75 then in effect shall apply. Of course, once a unit BPCL has been established, it may be eligible for adjustment under § 212.76.

3. *All unitized properties required to establish a unit BPCL prior to February 1, 1976 and unitized properties required to establish a unit BPCL prior to September 1, 1976.* Determinations of new, released and stripper well crude oil for units formed prior to the date on which unit BPCL regulations were adopted (February 1, 1976 for enhanced recovery units and September 1, 1976 for all units) are subject to the provisions of "FEA Ruling 1975–15" as modified on February 1, 1976. Accordingly, all such units formed during or after 1972 were required to calculate a BPCL by aggregating the BPCL's of all the participating properties at such time as significant changes in the unit's producing patterns occurred (and with respect to enhanced recovery unitized properties beginning February 1, 1976, as of the date of implementation of enhanced recovery operations). To the extent that a unit BPCL was required to be established prior to the effective date of any applicable unit BPCL regulation, the aggregation of BPCL's pursuant to "Ruling 1975–15" did not afford any means to reflect the prior stripper well lease status or production and sale of volumes of new or released crude oil of the previously separate properties which comprise the unit. Although a regulatory definition of "significant alteration in producing patterns" was not provided until September 1, 1976, that definition will be considered as guidance in audits and compliance cases in determining whether a significant alteration has occurred with respect to such units. FEA will, however, on a case-by-case basis, permit unit operators to justify the establishment of the date of significant alteration in producing patterns in such units on reasonable bases other than those specified by the present definition. If no such alteration has occurred as of September 1, 1976, determinations of upper tier and stripper well crude oil volumes may continue to be made on a lease-by-lease basis until such time as a significant alteration does occur, at which time the unitized property must be treated as a single property and a unit BPCL must be established. As of the time that a unit BPCL is established, the provisions of § 212.75 then in effect are applicable, and the unitized property may be eligible for a BPCL adjustment pursuant to § 212.76.

B. UNITIZATION OF TWO OR MORE PREVIOUSLY-QUALIFIED STRIPPER WELL PROPERTIES

Effective February 1, 1976 (with respect to enhanced recovery units for which a unit BPCL is established after that time) and effective September 1, 1976 (with respect to any unitized property for which a unit BPCL is established after that time), § 212.75 provides a mechanism to ensure that producers of crude oil from previously-qualified stripper well properties will not be deterred for economic reasons from entering the unit. This mechanism provides generally that an amount equal to current volumes of crude oil produced from participating stripper well properties may continue to be sold from the unit as stripper well crude oil after the establishment of a unit BPCL. (A similar rule, effective September 1, 1976, is designed to encourage producers of new crude oil to participate in the unitization.)

FEA has determined that this mechanism is the most effective method to remove the disincentive to unitization by producers of stripper well crude oil. The unit BPCL regulations do not, however, permit the unitized property to qualify as a stripper well property until the unitized property itself has sustained an average daily production of 10 barrels or less per well for 12 consecutive months following the establishment of a unitized BPCL. There are basically two reasons for this policy.

First, as noted above, FEA believes that the concept of "imputed stripper well crude oil" is adequate to ensure the participation in a unitized project and continued production of crude oil from previously-qualified stripper well properties.

Second, to permit a unit to qualify as a stripper well property on the basis of the production characteristics of its participating properties would likely encourage the selective unitization of marginal and non-marginal properties merely to obtain exempt stripper well property status for other than truly marginal properties. Such a result would obviously not comport with the congressional policy behind the exemption contained in the Energy Conservation and Production Act (ECPA, Pub. L. 94–385).

The only appropriate exception to this policy would appear to be for a unitized property in which all participating properties have previously qualified as stripper well properties. In such case, under a proposal set forth in a contemporaneous Notice of Proposed Rulemaking, the unitized property would be treated as a stripper well property as of the effective date of unitization.

V. APPLICABILITY OF THE STRIPPER WELL PROPERTY RULE TO CONDENSATE PRODUCED FROM GAS WELLS

Since January 1, 1975, a producer may not include gas wells in the calculation of a property's per-well average daily production to determine whether the property qualifies as a stripper well property. (40 FR 40818, September 4, 1975.) In order to resolve the uncertainty that had arisen due to diverse state criteria for classifying producing wells as either gas wells or oil wells, FEA undertook in the August 20 Notice to provide a functional test whereby producers might be able to determine whether a particular well may be considered an "oil well" for purposes of the stripper well property rule, regardless whether the particular well has been classified as a gas well for other purposes by the state regulatory authority.

FEA preliminarily concluded in the April 13 Notice that the inclusion of a well for purposes of determining stripper well property qualification is only prohibited to the extent that the well provides only non-associated production of natural gas and condensates, and that if a well produces some crude oil, the well would qualify as an oil well for purposes of the stripper well property rule. After soliciting comments on this distinction, FEA concluded in "FEA Ruling 1977-1" that:

> If a well produces from an associated reservoir (i.e., a reservoir in which gas occurs in association with crude oil), that well may be included to determine if the property is a stripper well property only if crude oil is produced from that well. If only condensate is produced, in association with the gas, the well may not be included to determine if the property is a stripper well property. On the other hand, if a well is producing non-associated gas (i.e., free gas not in contact with crude oil in the reservoir), or only natural gas (even if from an associated gas reservoir), that well may not be included as a producing well because it does not produce crude oil.

FEA has continued to receive inquiries, however, concerning the crude oil/condensate distinction, which suggest that there is an inconsistency between the distinction drawn in "Ruling 1977-1" and the definition of "crude oil" in 10 CFR 212.31, which includes condensate:

> "Crude oil" means a mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities. *"Crude oil" includes condensate recovered in associated and non-associated production by mechanical separators, whether located on the lease, at central field facilities, or at the inlet side of a gas processing plant.* (Emphasis added.)

The definition of "crude oil" in § 212.31 includes condensate in recognition of the treatment of condensate as crude oil by producers on a historical pricing basis. (See 40 FR 40818, September 4, 1975.) However, FEA recognizes that some gas wells produce condensate, which under the § 212.31 definition is treated as "crude oil" for purposes of Subpart D, but which does not constitute crude oil for purposes of the crude oil/condensate distinction which is used to differentiate oil wells from gas wells for purposes of stripper well property qualification.

Thus, a distinction between crude oil and condensate is necessary for purposes of determining whether the particular well from which the condensate is produced may be counted in determining the property's per-well average daily production for purposes of the stripper well property rule. For all other purposes, condensate, whether recovered in associated or non-associated production, is treated as crude oil under Subpart D in determining a first sale price.

FEA understands that associated production occurs if hydrocarbons in both liquid and gaseous states exist together in one reservoir. Thus, a reservoir in which gas occurs in solution with crude oil would produce crude oil and gas in "associated" production. An oil reservoir having a gas cap normally produces crude oil and gas in associated production but could (in theory though not ordinarily in practice) produce crude oil and gas in either associated or nonassociated production depending on the manner in which the well has been completed in the reservoir. Non-associated production is understood to occur when both liquid and gaseous hydrocarbons are jointly produced from a reservoir in which they exist in the reservoir only in a gaseous state.

The further tests described below are not fully definitive, but should in most circumstances provide an adequate basis for distinguishing "associated" from "non-associated" production for purposes of determining if the particular well may be included in determining a property's per-well average daily production. Generally, each of the following tests should indicate whether the condensate is recovered in "associated production."

A. *Phase test.* FEA does not expect that a phase test will actually be conducted for each well, or reservoir, and none is required. However, if such tests have been conducted or if phase behavior is inferable from other relevant well or reservoir data, a valid determination can probably be made. If as the hydrocarbon stream rises from the reservoir to the surface a bubble point occurs, (that is, the entrained dissolved gas separates from the liquid into bubbles), the joint production of oil and gas is said to be "associated." If, under production conditions of pressure reduction at reservoir temperature the hydrocarbon stream exhibits a dewpoint, the joint production of fluid and gas is said to be "non-associated."

B. *Production method test.* If the hydrocarbon stream is raised to the surface by pumping, the joint production of liquid and gas is almost surely "associated." If the stream rises to the surface by its own underground pressure, the joint production is more likely "non-associated" than "associated." This delineation is particularly true for old wells and reservoirs, which generally correspond to marginal situations.

C. *Gravity test.* If the production at the surface is a single liquid stream having a gravity of 45° API or lighter, that stream would be generally deemed pure condensate (although FEA recognizes that there are a few crude oils in the 50° to 60° range), and the production would be deemed to be "non-associated." If production at the surface consists of two streams, one having a gravity heavier than 45° API (crude oil) and the other 45° API or lighter (condensate), that joint production would indicate "associated" production.

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Federal Energy Administration.

JANUARY 19, 1977.

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PART 210—GENERAL ALLOCATION AND PRICE RULES

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

Exemption of Motor Gasoline from Mandatory Petroleum Allocation Regulations

INTRODUCTION

On November 19, 1976, the Federal Energy Administration ("FEA") issued a notice of proposed rulemaking and public hearing (41 FR 51832, November 24, 1976) to amend 10 CFR Parts 210, 211 and 212 to exempt motor gasoline (as defined in 10 CFR 211.51 and 212.31 of the Mandatory Petroleum Allocation and Price Regulations) and to establish a special motor gasoline set-aside for the transitional period following decontrol. The proposal was based on tentative conclusions set forth in a document dated November 16, 1976, entitled "Preliminary Findings and Views Concerning the Exemption of Motor Gasoline from the Mandatory Petroleum Allocation and Price Regulations" ("Preliminary Findings").

Concurrent with the issuance of this amendment exempting motor gasoline from the Mandatory Petroleum Allocation Regulations, a separate amendment is being issued to exempt motor gasoline from the Mandatory Petroleum Price Regulations. Both amendments are being submitted for Congressional review, as Energy Actions Nos. 8 and 9, respectively, pursuant to section 551 of the Energy Policy and Conservation Act, Pub. L. 94-163 ("EPCA"), and in accordance with section 102 of the Energy Conservation and Production Act, Pub. L. 94-385 ("EPCA"), which in effect requires that FEA submit separate energy actions to the Congress when proposing the exemption of a refined petroleum product from both price and allocation regulations, but does not prohibit concurrent submissions of such separate energy actions.

Written comments on the exemption proposal and on the Preliminary Findings were invited through December 15, 1976 and public hearings were held on December 14 and 15, 1976 in Washington, D.C.; Atlanta, Georgia; Chicago,

Illinois; Dallas, Texas; Denver, Colorado; New York, N.Y.; and San Francisco, California. As of December 31, 1976, 307 parties had submitted oral and written comments in response to the proposed exemption. Those offering comments included major integrated refining companies, large and small independent refining companies, branded and nonbranded wholesale gasoline distributors, retail sales outlets, trade associations, consumer groups and governmental representatives.

A substantial majority of those commenting agreed with FEA that motor gasoline should be exempted from FEA's allocation and price regulations. This support was based generally upon agreement with FEA's conclusions as to supply and demand projections, competition, and other findings and views set forth in the Preliminary Findings. In particular, there was widespread agreement that competition has been keeping retail gasoline prices below the maximum prices allowed under the Mandatory Petroleum Price Regulations. Most marketers commenting also favored the establishment of a mechanism to assure them a source of supply during the transition following the exemptions. Certain comments at the December hearings noted that the Preliminary Findings, issued contemporaneously with the exemption proposal, were not consistent with data from the economic forecasting firm, Data Resources, Inc. ("DRI"), whose macroeconomic model drives FEA's short-term petroleum demand model. DRI released revised economic forecasts, on which these comments were based, after the analysis for the Preliminary Findings was completed. Information derived from the most recent DRI "Cyclelong" forecast has, however, now been incorporated into FEA's current findings and views. After carefully considering all the comments and making the appropriate revisions to the data supporting its proposed findings, FEA has concluded that its initial view that motor gasoline should be exempted from regulations is correct.

No information or data were presented in this proceeding which significantly alter FEA's Preliminary Findings and Views. FEA does not anticipate that supply shortages will occur or that motor gasoline prices will rise to higher levels than if controls were continued. In any event, FEA has standby authority under section 12(f) of the Emergency Petroleum Allocation Act of 1973 (EPAA) to reimpose controls (on a temporary or permanent basis) if necessary to attain the objectives set forth in section 4(b)(1) of the EPAA. Therefore, FEA hereby adopts the proposed amendments exempting motor gasoline from the Mandatory Petroleum Allocation Regulations.

In the exemption proposal, FEA requested comments on the appropriate lead time which should be provided before the decontrol amendment would become effective so as to assure a smooth transition to a decontrolled market. FEA proposed an effective date of the first day of the month following the first full month subsequent to the expiration of the Congressional review period. The fifteen day review period under section 551 of the EPCA will expire shortly after February 1, 1977. Upon consideration of the comments received on this issue, FEA has concluded that it would be appropriate to provide for an effective date of March 1, given that firms will have more than a month's notice of FEA's exemption proposals. Therefore, unless disapproved by either House of Congress under section 551 of the EPCA, this exemption will be effective March 1, 1977.

Findings and Views

In addition to this amendment exempting motor gasoline from the Mandatory Petroleum Allocation Regulations and the concurrent amendment exempting motor gasoline from the Mandatory Petroleum Price Regulations, FEA has prepared its findings and views supporting these amendments as required by section 12 of the EPAA, based upon its consideration of the comments of those persons who participated in the rulemaking and other information available to FEA. These findings and views are set forth in a single document dated January 14, 1977 and entitled "Findings and Views Concerning the Exemption of Motor Gasoline from the Mandatory Petroleum Allocation and Price Regulations" (the "Findings and Views"). The findings and views set forth therein may be summarized, in part, as follows:

(1) Motor gasoline is no longer in short supply; anticipated supplies of motor gasoline will be sufficient to meet the demand over the near term.

(2) Exemption of motor gasoline from the Mandatory Petroleum Allocation and Price Regulations will not have an adverse impact on the supply of any other refined product. With projected expansions, domestic refining capacity is projected to be more than adequate to meet demand.

(3) Competition and market forces are adequate to protect consumers following exemption of motor gasoline from regulation.

(4) Exemption of motor gasoline from regulation will not result in inequitable prices for any class of end-user. FEA does not expect that exemption of motor gasoline from price controls would lead to any price increases over and above those that would be experienced under continued regulation.

Adequate refinery capacity to meet all refined product requirements should guarantee continued competition in the refining segment of the industry. The large number of independent and small refiners now competing successfully in the motor gasoline market indicates that sufficient competition exists to protect consumers.

(5) Exemption of motor gasoline from the price and allocation regulations is consistent with the attainment of the objectives set forth in section 4(b)(1) of the EPAA.

Since an adequate supply is anticipated, continued allocation and pricing controls over motor gasoline are not necessary to protect the public health, safety and welfare, and the national defense (section 4(b)(1)(A)); the maintenance of all public services (section 4(b)(1)(B)); the mantenance of agricultural operations (section 4(b)(1)(C)); or the maintenance of exploration for and production or extraction of fuels and minerals (section 4(b)(1)(G)).

Adequate supply and the positive effects of competition should insure that the exemption is consistent with: The equitable distribution of crude oil, residual fuel oil and refined petroleum products at equitable prices (section 4(b)(1)(F)); preservation of an economically sound and competitive petroleum industry (section (4)(b)(1)(D)); economic efficiency (section 4(b)(1)(H)); and minimization of economic distortions, inflexibility, and interference with market mechanisms (section 4(b)(1)(I)).

The exemption should have no adverse effect on the allocation of suitable types of crude oil to U.S. refineries (section 4(b)(1)(E)).

The Findings and Views also state FEA's views concerning the potential economic impacts of exempting motor gasoline from the Mandatory Petroleum Allocation and Price Regulations. Because no supply, demand or price impacts are anticipated as a result of the exemption, it is not expected that there will be any significant state or regional impacts resulting from the proposed exemption. In particular, no undue adverse impact is expected on any governmental units. In addition, FEA anticipates no adverse economic impacts on the availability of consumer goods or services, the Gross National Product, small business or the supply and availability of energy resources as fuel or feedstock for industry. FEA expects that the exemption will not adversely affect the competitive viablity of independent refiners and marketers. The exemption is likewise expected not to cause an adverse effect on employment or consumer prices. FEA's assessment of the effects of the exemption on the rate of unemployment in the U.S., on the Consumer Price Index and on the implicit price deflator for the Gross National Product are set forth in detail in the Findings and Views.

Special Rule No. 4

While FEA did not and does not expect supply dislocations to occur as a result of motor gasoline decontrol, Special Rule No. 4, as proposed in the November 19 notice, was designed as a safeguard against the same type of potential supply dislocations which prompted the adoption of Special Rule No. 3, following the exemption of middle distillates. In the proposal, FEA sought to insure that no marketer of gasoline would lose its supply source without adequate time to arrange for a new supplier during the transitional period following the removal of controls. As proposed, Special Rule No. 4 permitted marketers who have made diligent unsuccessful efforts to obtain supplies of motor gasoline to be assigned

as much as their previously authorized base period use from the special set-aside. These assignments could have been made for periods of up to three months if required to permit the marketers to make their own supply arrangements or for longer if required to preclude hardships to consumers. The proposal also allowed assignments to be made directly to consumers under the same hardship criteria that currently exist for motor gasoline in the state set-aside program. As proposed, the set-aside for each prime supplier constituted three percent of the estimated portion of its total supply of motor gasoline for the particular month to be sold into the distribution system of a state for consumption therein. FEA also proposed that the motor gasoline special set-aside be administered by State Offices, which currently are authorized to administer both the state set-aside for motor gasoline and the special set-aside for middle distillates.

As a result of evaluating marketers' comments, FEA has concluded that the proposed Special Rule No. 4 may not be a fully adequate safeguard to assure continued supply. As adopted, therefore, Special Rule No. 4 provides greater protection for independent marketers than the initial proposal. Special Rule No. 4 now contains a double type of supply guarantee for all wholesale purchasers. Under the transition assignment program, to terminate motor gasoline supplier/wholesale purchaser relationships prior to March 1, 1978, all suppliers will be required to provide at least 90 days notice to any wholesale purchaser (commencing no earlier than the effective date of this amendment) before terminating the supply relationship with that purchaser. Any such termination may be effective only at the end of a period corresponding to a base period coinciding with or following the end of the ninety day notice period. If the purchaser is unable, after a diligent effort, to obtain a supply of motor gasoline equal to its base period use, it may apply at least thirty days prior to the date on which the termination is to become effective to the FEA Regional Office for the region where it is located, to continue its supplier/purchaser relationship with its base period supplier for three additional months. The wholesale purchaser may reapply to the FEA Regional Office for two additional continuation orders for three month periods if it remains unable to find alternative sources of supply. A purchaser which chooses not to receive product from its base period supplier during any three month period, however, will be assumed to have an alternative source of supply and not be eligible to apply for a further transition assignment as to the volume of product not lifted, unless such failure to lift is due to factors beyond the control of the purchaser and FEA determines that the purchaser's inability to obtain that volume would impose an undue hardship on that purchaser. The notification and transition assignment period will provide a maximum of four three month periods of assured supply. In any event, no assignment under Special Rule No. 4 will extend beyond one year from March 1, 1977, the announced effective date of this exemption.

Special Rule No. 4 also provides that if FEA fails to act on an application for continuation of a supplier/purchaser relationship that was filed in a timely fashion, that is, at least thirty days prior to the date on which a termination following ninety days' notice was to take effect or a prior continuation order was to expire, the supplier/purchaser relationship will not end but will automatically continue for an additional month pending FEA action on the application. Moreover, if a late-filed application has not been acted on by FEA on the termination date, Special Rule No. 4 authorizes FEA to issue a temporary continuation order for one month pending final action on the application if the applicant shows good cause for the late filing.

Inasmuch as prices will no longer be subject to controls during this period if the exemption with regard to price is not disapproved, Special Rule No. 4 also prevents circumvention of the transition assignment procedures set forth above by requiring that prices charged to wholesale purchasers, including marketers, receiving product under Special Rule No. 4 shall be nondiscriminatory. Suppliers must make gasoline available to purchasers which are assigned to them pursuant to Special Rule No. 4 on the same terms and conditions under which they make gasoline available to other similarly situated purchasers. In other words, suppliers may not discriminate against purchasers solely because they are assigned purchasers. The same definition of "discrimination" applies for purposes of the Special Rule as currently is used in § 210.62(b).

Special Rule No. 4 further provides the additional protection of a continuing, but gradually diminishing, operation of the state set-aside for motor gasoline for nine months following decontrol, which would be available to resellers, as well as end-users which can demonstrate hardship or emergency requirements. The decreasing volumes available in the set-aside are based on FEA's view that, as the transition to a normally functioning decontrolled market continues, a decreasing number of end-users and wholesale purchasers, including marketers, have the potential of being faced with hardship and emergency requirements. For the first three months following decontrol, the set-aside for each prime supplier would constitute three percent of the estimated portion of its total supply of motor gasoline for each particular month to be sold into the distribution system of a state for consumption therein. For the next succeeding three months the set-aside would constitute two percent and, for the following three months, one percent, after which time it will terminate. Aside from modifying the state set-aside percentage and making it available to resellers (e.g., independent retail marketers) as well as end-users, all other current procedures governing use of the state set-aside would remain in effect.

FEA intends to issue guidelines pursuant to Special Rule No. 4 to provide both FEA and the public greater guidance on the operation of the provisions of the Rule. These guidelines would explain in greater detail such matters as what efforts FEA would deem to constitute a "diligent unsuccessful effort to locate an alternate source of supply" and how the non-discrimination requirements would apply in particular situations.

Section 12(f) of the EPAA provides that following the exemption of any product from regulation, FEA shall have the authority at any time to reimpose allocation controls if necessary to attain the objections of the EPAA. For this reason, FEA is adopting amendments which exempt motor gasoline from the general allocation regulations but which do not delete those regulations from the Code of Federal Regulations. They are in effect converted to standby status, so that, in the event of shortages or other occurrences which might require reimposition of controls, they may, with appropriate modifications, be quickly put into effect.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 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; E.O. 11933, 41 FR 36641)

In consideration of the foregoing, Parts 210 and 211 of Chapter II, Title 10 of the Code of Federal Regulations, are amended as set forth below, effective March 1, 1977, unless this amendment is disapproved by either House of Congress pursuant to the review procedures set forth in Section 551 of the EPCA or withdrawn by the President prior to Congressional approval or disapproval during the 15-day period provided for Congressional review in section 551 of the EPCA.

Issued in Washington, D.C., January 19, 1977.

DAVID G. WILSON,
Acting General Counsel.

1. Section 210.35 is amended by adding paragraph (h)(1) to read as follows:

§ 210.35 Exempted products.

* * * * *

(h)(1) Motor gasoline as defined in § 211.51 of this chapter is exempt from the provisions of Part 211 of this chapter (except as set forth in Special Rule No. 4 to Subpart A of Part 211 of this chapter).

2. Section 211.1 is amended in paragraph (b) by adding new subparagraph (10) to read as follows:

§ 211.1 Scope.

* * * * *

(b) *Exclusions.* * * *

(10) Notwithstanding the other provisions of this part, including Subpart F, motor gasoline is excluded from this part (except as set forth in Special Rule No. 4 to Subpart A of this Part 211).

3. The Appendix to Subpart A of Part 211 is amended by the addition of a Special Rule No. 4 to read as follows:

SPECIAL RULE NO. 4

1. *Scope.* Notwithstanding the exemption of motor gasoline from the Mandatory Petroleum Allocation Regulations, this Special Rule provides for a continuation of the State set-aside program for motor gasoline for the months March 1977 through November 1977, as set forth below, and the establishment of a transitional assignment program for motor gasoline for the months March 1977 through February 1978.

2. *Provision for motor gasoline set-aside.* (a) Notwithstanding the provisions of paragraph (h) of § 210.35 and of subparagraph (10) of paragraph (b) of § 211.1, the set-aside established for motor gasoline for assignment by State Offices in accordance with the provisions of §§ 211.17 and 211.107(a) and Subpart Q of the Federal Energy Administration Administrative Procedures and Sanctions (10 CFR 205.210 et seq.) is hereby continued for the months March 1977 through November 1977, except as modified herein.

(b) In addition to those wholesale-purchaser consumers and end-users eligible to receive an assignment from the State set-aside, and those wholesale purchaser-resellers seeking an assignment to enable them to supply such wholesale purchaser-consumers and end-users under 10 CFR 205.211 (a), any wholesale purchaser-reseller which is experiencing a hardship due to its inability to obtain an adequate supply of motor gasoline may apply for and receive an assignment of motor gasoline in accordance with the provisions of § 211.17 and 10 CFR 205.210 et seq.

(c) The State set-aside percentage level for motor gasoline will be three percent for the months March, April, and May 1977, two percent for June, July, and August 1977, and one percent for September, October, and November 1977.

3. *Transitional assignment program.* Notwithstanding any contrary provisions of Parts 205 and 211 of this chapter, assignments of base period suppliers and base period use for wholesale purchasers of motor gasoline shall be made in accordance with the provisions of this Special Rule.

(a) No supplier/wholesale purchaser relationship in effect under § 211.9 of this part as of February 28, 1977, may be terminated before March 1, 1978 by a supplier except upon written notice to the wholesale purchaser given at least ninety (90) days prior to the date on which the supplier intends to terminate the supply relationship. A termination under this paragraph (a) may only be effective at the end end of the period corresponding to a base period coinciding with or following the expiration of the ninety (90) day notice period. Any such ninety (90) day period may not begin prior to March 1, 1977.

(b) Any wholesale purchaser which has received a notice from its supplier under paragraph (a) above shall make a diligent effort to locate an alternate source of supply. If its effort is unsuccessful it may apply to the appropriate FEA Regional Office for a continuation of its current supplier/purchaser relationship, but any such application shall be made at least thirty (30) days prior to the date on which the termination under paragraph (a) is to become effective. The applicant shall certify to the FEA that it has made a diligent unsuccessful effort to locate an alternate source of supply and shall set forth in its application (i) the name and address of its base period supplier; (ii) its base period use with that supplier for each period corresponding to a base period; and (iii) the names and addresses of other suppliers contacted with respect to the applicant's efforts to locate an alternate source of supply, the volumes requested from each such other supplier, and the dates of those contacts. The applicant shall send a copy of its application to its base period supplier.

(c) If FEA determines that an applicant has made a diligent unsuccessful effort to locate an alternate source of supply, FEA shall order a continuation of the applicant's existing supplier/purchaser relationship for a period of three consecutive periods corresponding to a base period. While a continuation order is in effect, the wholesale purchaser shall again make a diligent effort to locate an alternate source of supply. If the wholesale purchaser is again unsuccessful, it may again apply for a continuation in accordance with paragraph (b) above.

(d) If FEA fails to take action on a timely filed application under paragraph (b) or (c) prior to the date upon which the termination of the supplier/purchaser relationship which is the subject of the application is to become effective, the supplier/purchaser relationship shall be automatically extended for a period of one (1) month pending FEA action on the application. If FEA fails to take action on a late filed application under paragraph (b) or (c) prior to the date upon which the termination of the supplier/purchaser relationship which is the subject of the application is to become effective, FEA may issue a temporary continuation order for a period of one (1) month pending FEA action on the application upon a showing by the applicant of good cause for the late filing.

(e) FEA may issue with respect to any supplier/purchaser relationship no more than three (3) continuation orders. In no event may the provisions of a continuation order be effective beyond February 28, 1978.

(f) The failure of any wholesale purchaser to purchase its full allocation entitlement from its base period supplier without the written consent of that supplier in any three (3) month period shall disqualify any such purchaser from being eligible for issuance of a further continuation order covering volumes in excess of the percentage of the allocation entitlement lifted in the previous three (3) month period, unless such failure to purchase is due to factors beyond the control of that wholesale purchaser and FEA determines that such disqualification would impose an undue hardship on that wholesale purchaser.

4. *Non-discrimination requirement.* To prohibit any form of discrimination (including price discrimination) which has the effect of circumventing, frustrating, or impairing the objectives, purposes and intent of this Special Rule, the requirements of paragraph (b) of § 210.62 of this chapter shall continue to apply to suppliers to which an authorizing document is presented pursuant to the continuation of the motor gasoline set-aside under this Special Rule, to suppliers which are subject to a continuation order under the transitional assignment program of this Special Rule, and to all suppliers which are still supplying purchasers because they have failed to give notice of intent to terminate supplies or such termination has not yet become effective.

[FR Doc.77-2269 Filed 1-19-77;2:10 p.m.]

PART 210—GENERAL ALLOCATION AND PRICE RULES

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Exemption of Motor Gasoline From Mandatory Petroleum Price Regulations

INTRODUCTION

On November 19, 1976, the Federal Energy Administration ("FEA") issued a notice of proposed rulemaking and public hearing (41 FR 51832, November 24, 1976) to amend 10 CFR Parts 210, 211 and 212 to exempt motor gasoline (as defined in 10 CFR 211.51 and 212.31 of the Mandatory Petroleum Allocation and Price Regulations) and to establish a special motor gasoline set-aside for the transitional period following decontrol. The proposal was based on tentative conclusions set forth in a document dated November 16, 1976, entitled "Preliminary Findings and Views Concerning the Exemption of Motor Gasoline from the Mandatory Petroleum Allocation and Price Regulations" ("Preliminary Findings").

Concurrent with the issuance of this amendment exempting motor gasoline from the Mandatory Petroleum Price Regulations, a separate amendment is being issued to exempt motor gasoline from the Mandatory Petroleum Allocation Regulations. Both amendments are being submitted for Congressional review, as Energy Actions Nos. 9 and 8, respectively, pursuant to section 551 of the Energy Policy and Conservation Act, Pub. L. 94-163 ("EPCA"), and in accordance with section 102 of the Energy Conservation and Production Act, Pub. L. 94-385 ("ECPA"), which in effect requires that FEA submit separate energy actions to the Congress when proposing the exemption of a refined petroleum product from both price and allocation regulations, but does not prohibit concurrent submissions of such separate energy actions.

Written comments on the exemption proposal and on the Preliminary Findings were invited through December 15, 1976 and public hearings were held on December 14 and 15, 1976 in Washington, D.C.; Atlanta, Georgia; Chicago, Illinois; Dallas, Texas; Denver, Colorado; New York, N.Y.; and San Francisco, California. As of December 31, 1976, 307 parties had submitted oral and written comments in response to the proposed exemption. Those offering comments included major integrated refining companies, large and small independent refining companies, branded and nonbranded wholesale gasoline distributors, retail sales outlets, trade associations, consumer groups and governmental representatives.

A substantial majority of those commenting agreed with FEA that motor gasoline should be exempted from FEA's allocation and price regulations. This support was based generally upon agree-

ment with FEA's conclusions as to supply and demand projections, competition, and other findings and views set forth in the Preliminary Findings. In particular, there was widespread agreement that competition has been keeping retail gasoline prices below the maximum prices allowed under the Mandatory Petroleum Price Regulations. Most marketers commenting also favored the establishment of a mechanism to assure them a source of supply during the transition following the exemptions. Certain comments at the December hearings noted that the Preliminary Findings, issued contemporaneously with the exemption proposal, were not consistent with data from the economic forecasting firm, Data Resources, Inc. ("DRI"), whose macroeconomic model drives FEA's short-term petroleum demand model. DRI released revised economic forecasts, on which these comments were based, after the analysis for the Preliminary Findings was completed. Information derived from the most recent DRI "Cycle-long" forecast has, however, now been incorporated into FEA's current findings and views. After carefully considering all the comments and making the appropriate revisions to the data supporting its proposed findings, FEA has concluded that its initial view that motor gasoline should be exempted from regulations is correct.

No information or data were presented in this proceeding which significantly alter FEA's Preliminary Findings and Views. FEA does not anticipate that supply shortages will occur or that motor gasoline will rise to higher levels than if controls were continued. In any event, FEA has standby authority under section 12(f) of the Emergency Petroleum Allocation Act of 1973 (EPAA) to reimpose controls (on a temporary or permanent basis) if necessary to attain the objectives set forth in section 4(b)(1) of the EPAA. Therefore, FEA hereby adopts the proposed amendments exempting motor gasoline from the Mandatory Petroleum Price Regulations.

In the exemption proposal, FEA requested comments on the appropriate lead time which should be provided before the decontrol amendment would become effective so as to assure a smooth transition to a decontrolled market. FEA proposed an effective date of the first day of the month following the first full month subsequent to the expiration of the Congressional review period. The fifteen day review period under section 551 of the EPCA will expire shortly after February 1, 1977. Upon consideration of the comments received on this issue, FEA has concluded that it would be appropriate to provide for an effective date of March 1, given that firms will have more than a month's notice of FEA's exemption proposals. Therefore, unless disapproved by either House of Congress under section 551 of the EPCA, this exemption will be effective March 1, 1977.

Findings and Views

In addition to this amendment exempting motor gasoline from the Mandatory Petroleum Price Regulations and the concurrent amendment exempting motor gasoline from the Mandatory Petroleum Allocation Regulations, FEA has prepared its findings and views supporting these amendments as required by section 12 of the EPAA, based upon its consideration of the comments of those persons who participated in the rulemaking and other information available to FEA. These findings and views are set forth in a single document dated January 14, 1977 and entitled "Findings and Views Concerning the Exemption of Motor Gasoline from the Mandatory Petroleum Allocation and Price Regulations" (the "Findings and Views"). The findings and views set forth therein may be summarized, in part, as follows:

(1) Motor gasoline is no longer in short supply; anticipated supplies of motor gasoline will be sufficient to meet the demand over the near term.

(2) Exemption of motor gasoline from the Mandatory Petroleum Allocation and Price Regulations will not have an adverse impact on the supply of any other refined product. With projected expansions, domestic refining capacity is projected to be more than adequate to meet demand.

(3) Competition and market forces are adequate to protect consumers following exemption of motor gasoline from regulation.

(4) Exemption of motor gasoline from regulation will not result in inequitable prices for any class of end-user. FEA does not expect that exemption of motor gasoline from price controls would lead to any price increases over and above those that would be experienced under continued regulation.

Adequate refinery capacity to meet all refined product requirements should guarantee continued competition in the refining segment of the industry. The large number of independent and small refiners now competing successfully in the motor gasoline market indicates that sufficient competition exists to protect consumers.

(5) Exemption of motor gasoline from the price and allocation regulations is consistent with the attainment of the objectives set forth in section 4(b)(1) of the EPAA.

Since an adequate supply is anticipated, continued allocation and pricing controls over motor gasoline are not necessary to protect the public health, safety and welfare, and the national defense (Section 4(b)(1)(A)); the maintenance of all public services (section 4(b)(1)(B)); the maintenance of agricultural operations (section 4(b)(1)(C)); or the maintenance of exploration for and production or extraction of fuels and minerals (section 4(b)(1)(G)).

Adequate supply and the positive effects of competition should insure that the exemption is consistent with: the equitable distribution of crude oil, residual fuel oil and refined petroleum products at equitable prices (section 4(b)(1)(F)); preservation of an economically sound and competitive petroleum industry (section 4(b)(1)(D)); economic efficiency (section 4(b)(1)(H)); and minimization of economic distortions, inflexibility, and interference with market mechanisms (section 4(b)(1)(I)).

The exemption should have no adverse effect on the allocation of suitable types of crude oil to U.S. refineries (section 4(b)(1)(E)).

In connection with FEA's projection that no price increase will occur solely as a result of the exemption from the price regulations, it should be noted that FEA expects that upon decontrol the additional costs of refining unleaded gasoline over the costs of producing leaded gasoline will be more accurately reflected in the prices of unleaded gasoline. FEA has estimated that a price differential of up to two cents per gallon could result. However, even if price controls were to continue, FEA has on this same date issued a regulatory change which permits refiners to reflect the difference in refining costs between these two grades of motor gasoline in the prices charged for these products.

The Findings and Views also state FEA's views concerning the potential economic impacts of exempting motor gasoline from the Mandatory Petroleum Allocation and Price Regulations. Because no supply, demand or price impacts are anticipated as a result of the exemption, it is not expected that there will be any significant state or regional impacts resulting from the proposed exemption. In particular, no undue adverse impact is expected on any governmental units. In addition, FEA anticipates no adverse economic impacts on the availability of consumer goods or services, the Gross National Product, small business or the supply and availability of energy resources as fuel or feedstock for industry. FEA expects that the exemption will not adversely affect the competitive viability of independent refiners and marketers. The exemption is likewise expected not to have an adverse effect on employment or consumer prices. FEA's assessment of the effects of the exemption on the rate of unemployment in the U.S., on the Consumer Price Index and on the implicit price deflator for the Gross National Product are set forth in detail in the Findings and Views.

Post Exemption Monitoring of Gasoline Prices

FEA intends to issue shortly for comment a method of monitoring prices of motor gasoline to assure the continued reasonableness of price levels following the effective date of the exemption of motor gasoline from price and allocation controls. FEA will request written comments and hold public hearings with respect to the specific features of the price monitoring system.

The monitoring system which FEA intends to adopt provides for the monthly measurement of average actual gasoline prices, calculating prices on both a national and regional basis through the end of the 1977 summer driving season. Actual prices would be compared with price indices representing the average price levels FEA believes would have prevailed had gasoline continued under price controls, with sufficient flexibility to allow for statistical error, inherent deficiencies in the operation of the price index, seasonal price adjustments and short term market aberrations. The proposed price monitoring system will pro-

vide for remedial action in the event the actual average prices exceed by two cents the appropriate price index.

Section 12(f) of the EPAA provides that following the exemption of any product from regulation, FEA shall have the authority at any time to reimpose price controls if necessary to attain the objectives of the EPAA. For this reason, FEA is adopting amendments which exempt gasoline from the price regulations but which do not delete those regulations from the Code of Federal Regulations. They are in effect converted to standby status, so that, in the event of shortages or other occurrences which might require reimposition of controls, they may, with appropriate modifications, be quickly put into effect.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 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; E.O. 11933, 41 FR 36641)

In consideration of the foregoing, Parts 210 and 212 of Chapter II, Title 10 of the Code of Federal Regulations, are amended as set forth below, effective March 1, 1977, unless this amendment is disapproved by either House of Congress pursuant to the review procedures set forth in section 551 of the EPCA or withdrawn by the President prior to Congressional approval or disapproval during the 15-day period provided for Congressional review in section 551 of the EPCA.

Issued in Washington, D.C., January 19, 1977.

DAVID G. WILSON,
Acting General Counsel.

1. Section 210.35 is amended by adding subparagraph (2) to paragraph (h) to read as follows:

§ 210.35 Exempted products.

* * * * *

(h) * * *

(2) Gasoline as defined in § 212.31 of this chapter is exempt from the provisions of Part 212 of this chapter.

2. Section 212.31 is amended in the definition of "covered products" to read as follows:

§ 212.31 Definitions.

* * * * *

"Covered products" means aviation fuel (kerosene-type), aviation gasoline, butane, crude oil, natural gas liquids, natural gasoline, and propane. A blend of two or more particular covered products is considered to be that particular covered product constituting the major proportion of the blend.

* * * * *

3. Subpart C of Part 212 is amended by adding a new § 212.58 as follows:

§ 212.58 Gasoline.

The prices charged for gasoline are exempt from the provisions of this part.

[FR Doc.77-2286 Filed 1-19-77;2:39 pm]

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

Emergency Amendment on Use of Naphtha for Synthetic Natural Gas Plant Feedstock Use

The Federal Energy Administration ("FEA") hereby adopts on an emergency basis an amendment, effective immediately, to § 211.29 of the Mandatory Petroleum Allocation Regulations (10 CFR Part 211). The purpose of this amendment is to make explicit FEA's intent to limit the volumes of naphtha that can be used for synthetic natural gas (SNG) plant feedstock use.

FEA's allocation program regulates the use of petroleum feedstocks for SNG manufacture. 10 CFR 211.29 sets forth the basic rule that

> * * * a firm which purchases crude oil and allocated products for use as feedstock in a synthetic natural gas plant which has requirements that exceed its base period volume or which has no base period volume may seek an adjustment to its base period volume or establishment of a base period volume only upon application to the FEA National Office * * *

10 CFR 211.29 also states the criteria to be considered by FEA in processing an application for assignment or adjustment, and these criteria are further discussed in Special Rule No. 1 to Subpart A, Part 211. In addition to 10 CFR 211.29 and the Special Rule, FEA has issued a Statement of Policy setting forth the FEA's general policy regarding the use of liquid petroleum feedstocks for the production of SNG.

Prior to the exemption of naphtha from the Mandatory Petroleum Allocation Regulations for all uses except for SNG feedstock use, an allocation level of one hundred percent of base period use was provided for naphtha for SNG plant feedstock use. Under FEA's mandatory allocation regulations before the exemption of naphtha, allocation levels for naphtha were not subject to an allocation fraction. Because of the peculiar role of naphtha in internal refinery operations, particularly the use of naphthas for gasoline blending, the calculation of an allocation fraction for that product was impracticable, and the provisions of § 211.10(g) governing surplus product were not applied to naphtha. Thus, access to volumes and sources of naphtha for purchasers of naphtha for SNG feedstock use was only expressly authorized as permitted under FEA orders and regulations, other than § 211.10(g), and an effective use limitation of one hundred percent of base period use therefore applied. The exemption of naphtha from the allocation program, except for naphtha allocated under §§ 211.29 and 211.183(b)(2), did not change FEA's view that an implicit use limitation existed for naphtha.

Nevertheless, since the use limitation for naphtha is not explicitly stated in FEA regulations as it is for propane and butane for use as SNG feedstocks, and since there are no present regulations governing the distribution of naphtha which is excess to a refiner's needs, certain questions with respect to the existence of the limitation have been brought to FEA's attention. FEA is therefore adopting this amendment to provide explicitly that SNG manufacturers are limited to volumes of naphtha for SNG feedstock use equivalent to one hundred percent of base period use. In those instances where FEA has not yet established a base period use of naphtha, the purchaser is limited to use of those volumes specifically permitted by FEA orders. This clarification of FEA's intentions is consistent with the manner in which FEA has historically administered § 211.29 with respect to naphtha allocations.

As indicated at the time naphtha was exempted from the allocation regulations (except for those sections pertaining to SNG feedstock), FEA is preparing a programmatic environmental impact statement (EIS) on its regulations affecting SNG. Until the completion of the EIS, FEA intends to maintain the operation of its SNG program as it has previously been in effect. After a comprehensive evaluation of the EIS, FEA will determine whether the continued allocation of naphtha for SNG plant feedstock use would be appropriate.

FEA believes that this amendment must be issued on an emergency basis to ensure continued compliance with FEA's SNG allocation program. Specifically, it is essential that the existence of this use limitation be made explicit to prevent an unauthorized increase in consumption of naphtha for SNG manufacture, which might otherwise occur subsequent to the exemption from the Mandatory Petroleum Allocation Regulations of naphtha for all uses except SNG plant feedstock, and which would be in violation of the regulation and underlying policies set forth in § 211.29, Special Rule No. 1 and the Statement of Policy. If this amendment were to be adopted after notice and a hearing, the use limitation on naphtha would not have been made explicit until the current heating season was almost over. FEA therefore finds that strict compliance with the notice requirements of section 7(i)(1)(B) of the Federal Energy Administration Act of 1974, as amended ("FEAA"), Pub. L. 93-275, Pub. L. 94-385, will cause serious harm and injury to the public health, safety and welfare, and the notice requirements of that section are hereby waived.

As required by section 7(c)(2) of the FEAA, a copy of this emergency amendment was 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.

In accordance with Executive Order 11821 and OMB Circular A-107, FEA is considering the inflationary impact of this proposal.

Because this amendment is being issued on an emergency basis, an opportunity for oral presentation of views is not possible prior to its implementation. A public hearing, however, will be held beginning at 9:30 a.m., on February 24, 1977, in Room 2105, 2000 M Street NW.,

Washington, D.C., to receive comments from interested persons. Any person who has an interest in the subject of the hearing, or who is a representative of a group or class of persons which has an interest in the subject of the hearing, may make a written request for an opportunity to make an oral presentation. Such a request should be directed to Executive Communications, FEA, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20461, and must be received before 4:30 p.m., e.s.t., February 2, 1977. Such a request may be hand delivered to Room 3309, 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. The person making the request should be prepared to describe the interest concerned; if appropriate, to state why he or she is a proper representative of a group or class of persons which has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted through February 4, 1977. Each person selected to be heard will be so notified by the FEA before 5:30 p.m., e.s.t., February 4, 1977, and must submit 50 copies of his or her statement to Office of Allocation Regulation Development, FEA, Room 2214, 2000 M Street NW., Washington, D.C. 20461, before 9:00 a.m., e.s.t., February 23, 1977.

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

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

Any interested person may submit questions, to be asked of any person making a statement at the hearing, to Executive Communications, FEA, before 4:30 p.m., e.s.t., February 22, 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. The FEA or the presiding officer, if the question is submitted at the hearing, will determine whether the question is relevant, and whether time limitations permit it to be presented for answers.

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

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the FEA and made available for inspection at the FEA Freedom of Information Office, 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. Anyone may buy a copy of the transcript from the reporter.

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

Comments should be identified on the outside envelope and on documents submitted to Executive Communications, FEA, with the designation "Use Limitation—SNG Feedstocks." Fifteen copies should be submitted. All comments received by February 22, 1977, and all relevant information, will be considered by the Federal Energy Administration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, in accordance with the procedures stated in 10 CFR 205.9(f). The FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

(Emergency Petroleum Allocation Act of 1973, P.L. 93-159, as amended P.L. 93-511, P.L. 94-99, P.L. 94-133, P.L. 94-163, P.L. 94-385; Federal Energy Administration Act of 1974, P.L. 93-332, P.L. 94-385; E.O. 11790 (39 FR 23185).)

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below, effective immediately.

Issued in Washington, D.C., January 19, 1977.

DAVID G. WILSON,
Acting General Counsel.

1. Section 211.29 is revised by redesignating paragraphs (a), (b), (c) and (d) thereof as subparagraphs (1), (2), (3) and (4), respectively, by designating the introductory paragraph thereof as paragraph (a), and by adding a new paragraph (b), to read as follows:

§ 211.29 Synthetic natural gas production.

* * * * *

(b) Unless directed by FEA upon application pursuant to Subpart G of Part 205 of this chapter, no supplier shall supply and no wholesale purchaser or end-user shall accept or use naphtha in excess of one hundred percent of base period use for synthetic natural gas plant feedstock use.

[FR Doc.77-2285 Filed 1-19-77;2:30 pm]

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

Emergency Amendment Authorizing Waiver of Propane and Butane Peak Shaving Use Limitation

The Federal Energy Administration ("FEA") hereby adopts on an emergency basis amendments to the Mandatory Petroleum Allocation Regulations, 10 CFR Part 211, with respect to the volumetric limitation imposed on the use of propane and butane for peak shaving. The amendments adopted today are effective immediately.

In light of the severely cold winter weather that many parts of the nation are experiencing, gas utilities are faced with extremely large demand for natural gas to meet the requirements of their highest priority customers. Because of this increased demand for natural gas and also because of equipment breakdowns resulting from the cold weather, the FEA has received a large number of requests from gas utilities for permission to use propane for peak shaving in excess of the use limitations imposed by FEA Regulations. These applications must currently be processed as applications for exception from the regulations. Since evaluation of an application for exception is frequently a somewhat lengthy process, there may well be instances in which FEA could not provide relief promptly, with the result that some high priority customers such as hospitals and schools would have to be curtailed pending final FEA action on a meritorious application. This emergency amendment is being issued to provide FEA with the authority to waive the peak shaving use limitations set forth in §§ 211.83(c)(2)(v) and 211.93 (c)(2)(iv) for propane and butane respectively, without requiring a utility to obtain an exception to the regulations.

In September 1975, FEA issued an amendment to § 211.10(g)(8) to allow imported non-Canadian propane and butane to be employed for certain uses (other than gas utility or synthetic natural gas feedstock use) without regard to use limitations contained in that section (40 FR 40821, September 4, 1975). At that time, FEA retained in § 211.10 (g)(8) the limitation on the use of propane or butane for gas utility or synthetic natural gas feedstock use to one hundred percent (100) of base period use. In the preamble to that amendment, FEA stated:

[T]here are certain gas utilities which by reason of the very high level of residential use of natural gas and the inability of their customers to convert to use of substitute fuels in the near term should be permitted to acquire and use supplies of non-Canadian propane and butane in excess of base period use. For this reason, FEA has retained authority in §§ 211.10(g)(8), 211.86 and 211.96 to permit relaxation of the use limitation and inventory accumulation restrictions otherwise applicable to gas utilities. Gas utilities may petition for relief pursuant to these sections and Subpart G of Part 205 of

the FEA procedural regulations. Such a petition will not be treated as an exception request and should be submitted to the Assistant Administrator for Regulatory Programs. * * * (40 FR 40821, September 4, 1975).

Thus, FEA intended to retain its flexibility to respond to applications for permission to exceed the use limitation by providing that the volumetric limitation could be waived if "directed by FEA upon application pursuant to Subpart G of Part 205 of this chapter." FEA has now determined, however, that by not including the same procedure in the use limitations for peak shaving contained in §§ 211.83(c)(2)(v) and 211.93(c)(2)(iv) of the Mandatory Petroleum Allocation Regulations, FEA may have limited its authority under the regulations to allow a gas utility to exceed its base period use, except through the exceptions process.

The volumetric portion of the use limitation for peak shaving in 10 CFR § 211.83(c)(v) provides:

> The use of propane for peak shaving by gas utilities during any consecutive twelve month period beginning after January 1, 1974, is limited to the volume of propane equal to one hundred (100) percent of that volume which a gas utility contracted for or purchased for delivery during the period April 1, 1972 through March 31, 1973, regardless of whether that volume was used during the period.

The same use limitation is provided in § 211.93(c)(2)(iv) for butane.

Therefore, under current regulations, FEA may waive the use limitation of § 211.10(g)(8) but may permit gas utilities to exceed their base period use of propane or butane for peak shaving only by the increment which would bring the total amount to that for which they contracted or which they purchased for delivery in the base period. For some utilities this relief would be inadequate. FEA has therefore determined that the same waiver procedure should be available in §§ 211.83(c)(2)(v) and 211.93(c)(2)(iv) as appears in § 211.10(g)(8). By including the procedure in each of the cited sections, FEA is providing a means of expeditiously responding to applications for waiver with an adequate remedy in cases where relief is warranted.

In connection with the issuance of these amendments, FEA is soliciting comments on the criteria which should apply to the issuance of waivers of the volumetric limitations of propane and butane for peak shaving by gas utilities and on whether FEA should issue either regulations or guidelines in this regard. Prior to the development of regulations or guidelines, FEA intends to examine all the relevant circumstances surrounding each application before granting a waiver.

These amendments are being issued on an emergency basis so that FEA may respond expeditiously to requests from gas utilities for additional propane or butane to help meet the demands of their high priority customers during the current heating season, without requiring the utilities to go through the exceptions process. If these amendments were not adopted until after notice and a hearing, they would not be effective until after the coldest portion of the heating season, long after most of the requests for additional peak shaving material should have been acted upon. FEA therefore finds that strict compliance with the notice requirements of section 7(i)(1)(B) of the Federal Energy Administration Act of 1974, as amended, ("FEAA"), Pub. L. 93-275, Pub. L. 94-385, will cause serious harm and injury to the public health, safety and welfare, and the notice requirements of that section are hereby waived.

Section 7(c)(1) of the FEAA provides that FEA shall, before promulgating proposed regulations affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency ("EPA") may provide written comments concerning the impact of such regulations on the quality of the environment. Such comments are required to be published concurrently with or as part of the notice of proposed rulemaking.

Under section 7(c)(2) of the FEAA, the prior review required by section 7(c)(1) may be waived for a period of 14 days if there is an emergency situation which requires taking action at a date earlier than would permit the EPA the five day opportunity for prior comment required under section 7(c)(1). Notice of any such waiver must be given to the EPA and filed with the FEDERAL REGISTER with the notice of proposed or final FEA action and must include an explanation of the reasons for such waiver together with supporting data and factual background information.

Pursuant to section 7(c)(2) of the FEAA, FEA hereby waives the requirements of section 7(c)(1) of the FEAA concerning prior review by EPA of the environmental impact of this proposed rulemaking. This waiver is based on an emergency situation which, as explained above, mandates that FEA be able immediately to determine whether to permit gas utilities to use propane or butane for peak shaving in excess of their base period use to serve high priority customers who might otherwise be curtailed. A copy of this emergency amendment has been sent concurrent with its issuance to the Administrator for his comments.

In accordance with Executive Order 11821 and OMB Circular A-107, FEA is considering the inflationary impact of this proposal.

Because this amendment is being issued on an emergency basis, an opportunity for oral presentation of views is not possible prior to its implementation. A public hearing, however, will be held beginning at 9:30 a.m., on February 16, 1977, in Room 2105, 2000 M Street NW., Washington, D.C., to receive comments from interested persons. Any person who has an interest in the subject of the hearing, or who is a representative of a group or class of persons which has an interest in the subject of the hearing, may make a written request for an opportunity to make an oral presentation. Such a request should be directed to Executive Communications, FEA, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, and must be received before 4:30 p.m., e.s.t., February 3, 1977. Such a request may be hand delivered to Room 3309, 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. The person making the request should be prepared to describe the interest concerned; if appropriate, to state why he or she is a proper representative of a group or class of persons which has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted through February 4, 1977. Each person selected to be heard will be so notified by the FEA before 5:30 p.m., e.s.t., February 4, 1977, and must submit 50 copies of his or her statement to Office of Allocation Regulation Development, FEA, Room 2214, 2000 M Street NW., Washington, D.C. 20461, before 9:00 a.m., e.s.t., February 15, 1977.

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

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

Any interested person may submit questions, to be asked of any person making a statement at the hearing, to Executive Communications, FEA, before 4:30 p.m., e.s.t., February 11, 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. The FEA or the presiding officer, if the question is submitted at the hearing, will determine whether the question is relevant, and whether time limitations permit it to be presented for answers.

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

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the FEA and made available

for inspection at the FEA Freedom of Information Office, Room 2107, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Anyone may buy a copy of the transcript from the reporter.

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

Comments should be identified on the outside envelope and on documents submitted to Executive Communications, FEA, with the designation "Propane and Butane Peak Shaving Limitation." Fifteen copies should be submitted. All comments received by February 11, 1977, and all relevant information, will be considered by the Federal Energy Administration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, in accordance with the procedures stated in 10 CFR 205.9(f). The FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385; E.O. 11790 (39 FR 23185))

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below, effective immediately.

Issued in Washington, D.C., January 18, 1977.

DAVID G. WILSON,
Acting General Counsel.

1. Section 211.83 is amended by revising paragraph (c)(2)(v) to read as follows:

§ 211.83 Allocation levels.

* * * * *

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

(2) * * *

(v) *Peak shaving for gas utilities.* Unless directed by FEA upon application pursuant to Subpart G of Part 205 of this chapter, the use of propane for peak shaving by gas utilities during any consecutive twelve month period beginning after January 1, 1974, is limited to the volume of propane equal to one hundred (100) percent of that volume which a gas utility contracted for or purchased for delivery during the period April 1, 1972 through March 31, 1973, regardless of whether that volume was used during the period. Propane shall not be used for peak shaving as long as the gas utility continues service during such peak shaving usage to interruptible industrial customers (other than for process fuel, plant protection fuel, or raw material) or to any nonresidential customer who can use a fuel other than natural gas, propane or butane; and * * *

2. Section 211.93 is amended by revising paragraph (c)(2)(iv) to read as follows:

§ 211.93 Allocation levels.

* * * * *

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

(2) * * *

(iv) *Peak shaving for gas utilities.* Unless directed by FEA upon application pursuant to Subpart G of Part 205 of this chapter, the use of butane for peak shaving by gas utilities during any consecutive twelve month period beginning after January 1, 1974 is limited to the volume of butane equal to one hundred (100) percent of that volume which a gas utility contracted for or purchased for delivery during the period April 1, 1972 through March 31, 1973, regardless of whether that volume was used during the period. Butane shall not be used for peak shaving as long as the gas utility continues service during such peak shaving usage to interruptible industrial customers (other than for process fuel, plant protection fuel, or raw material) or to any nonresidential customer who can use a fuel other than natural gas propane or butane; and

* * * * *

[FR Doc.77-2243 Filed 1-19-77;12:26 pm]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 34-13156, 35-19853, IC-9604, AS-206]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Adoption of Amendments of Certain Forms and Related Rules

The Securities and Exchange Commission today announced that it has adopted amendments to certain of its rules, schedules and reporting forms under the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)) which will (1) provide for more timely filing of reports on Form 8-K (17 CFR 249.308) by amending General Instruction B to Form 8-K and Rules 13a-11 (17 CFR 240.13a-11) and 15d-11 (17 CFR 240.15d-11); (2) decrease the number of items of information required to be included in reports on Form 8-K (17 CFR 249.308) by approximately 62 percent by transferring certain items to the Form 10-Q (17 CFR 249.308a); (3) revise two of the items retained in the Form 8-K and four of those transferred to the Form 10-Q; (4) provide for different filing requirements as to Parts I and II of the Form 10-Q by revising Rules 13a-13 (17 CFR 240.13a-13) and 15d-13 (17 CFR 240.15d-13); (5) add three new items to Form 10-K (17 CFR 249.310) and revise one item of the Form 10-K to require disclosure of items of information previously required in reports on Form 8-K filed during the fourth quarter of the fiscal year for which no report on Form 10-Q is required; and (6) revise Item 5 of Schedule 14A to Regulation 14 under the Exchange Act (17 CFR 240.14a-101) to conform to the amendment to Item 1 of Form 8-K. Forms 8-K, 10-Q and 10-K are the general forms for, respectively, current, quarterly and annual reports filed pursuant to Section 13 or 15(d) of the Exchange Act, and Regulation 14 specifies the information required to be set forth in proxy and information statements filed pursuant to Section 14 of that Act. Schedule 14A is also applicable to the solicitation of proxies under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)) and the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq., as amended by Pub. L. 94-29 (June 4, 1975)).

This release contains a general discussion of the purpose and effect of the amendments and of the consideration given to the comments received on the proposed amendments. Comments of a general nature are discussed in the General Statement, and specific comments are discussed within the brief synopses of the principal amendments. Attention is directed to the text of the amendments for a more complete understanding.

GENERAL STATEMENT

Notice of the proposed amendments to Forms 8-K, 10-Q and 10-K and to Schedule 14A was published on July 12, 1976 in Securities Exchange Act Release No. 12619 [41 FR 29784, July 19, 1976]. Comments on the proposed amendments were received from 60 interested parties, and changes have been made to reflect a number of the suggestions made by the commentators.

In Exchange Act Release No. 12619, the Commission stated that the proposals therein represented a step forward in the efforts to further simplify and rationalize the corporate disclosure system under the federal securities laws and to provide more meaningful information to investors. Although a few commentators suggested that these goals would be more fully achieved through the elimination of the Form 8-K and the transfer of all of the items of the Form 8-K to the Form 10-Q,[1] the Commission believes that registrants should describe in reports on Form 8-K certain matters about which investors might not otherwise receive adequate and reasonably current infor-

[1] These commentators expressed support for the recommendations of the so-called Wheat Report that the Form 8-K be substantially eliminated and that most of the 8-K items be included in a quarterly report. See "Report and Recommendations to the Securities and Exchange Commission from the Disclosure Policy Study, Disclosure to Investors, A Reappraisal of Administrative Policies under the 1933 and 1934 Acts" (March 1969) at pp. 356-364.

mation. Accordingly, the Form 8–K has been retained to serve as the report for disclosure of changes in control of the registrant (Item 1), acquisition and disposition of significant amounts of assets (Item 2), the appointment of a receiver of the registrant in a bankruptcy or similar proceeding (Item 3), and changes in a registrant's certifying accountant (Item 4). The voluntary disclosure item has been retained in the Form 8–K as Item 5 because the Commission believes that registrants may wish to describe certain material events in the monthly report. In order to provide for more current reporting of events of major significance to investors, the Form 8–K and Rules 13a–11 and 15d–11 have been amended to require registrants to file reports on Form 8–K within fifteen days after the occurrence of a reportable event.

The Commission believes that the amendments which are adopted today should reduce the number of reports on Form 8–K required to be filed and, therefore, should result in a significant savings of costs and time to registrants and the Commission. Registrants are reminded, however, of the obligations of publicly held companies to make full and prompt announcements of material facts regarding the company's financial condition, notwithstanding their compliance with the reporting requirements of the Exchange Act. The Commission believes that these amendments do not in any way affect the responsibility of management to make such announcements. The failure of companies to make prompt and accurate disclosure of both favorable and unfavorable information to security holders and the investing public may violate the Exchange Act and, in the case of an issuer making a continuous offering of its shares, may also violate the Securities Act of 1933 if the prospectus is not appropriately updated. Therefore, corporate managements are urged once again to review their policies with respect to corporate disclosure and endeavor to set up procedures which will insure that prompt disclosure be made of all material corporate developments.[1]

During the past several months, the Commission has accelerated further its program to integrate, streamline and update the corporate disclosure system it administers under the Securities Act and the Exchange Act. The adoption of these amendments is a significant step forward in these efforts. The Commission has also adopted a revised Form S–8 in Securities Act Release No. 5767 (November 22, 1976 (41 FR 52662) and has adopted amendments to Forms S–7 and S–16 which make these forms available to more registrants in Securities Act Release No. 5791 (December 20, 1976 (41 FR 56301). Public comments have been invited on the following additional proposals: (1) The adoption of a new registration form to permit use of an abbreviated prospectus with certain business combination transactions in Securities Act Release No. 5744 (October 4, 1976) (41 FR 43876); (2) the amendment of the rules relating to tender offers, in Securities Act Release No. 5731 (August 6, 1976 (41 FR 33004); (3) the amendment of Form S–16 to broaden the availability of the form to a limited category of large companies for the registration of certain primary offerings of securities in Securities Act Release No. 5792 (December 20, 1976) (41 FR 56331). The Commission announced it is reviewing the procedures available to small issuers to raise capital, and proposals may be published soon soliciting comments on simplifying these procedures.

[1] *See* Securities Act Release No. 5092 (October 15, 1970), 35 FR 16733 (October 29, 1970).

I. Amendments Relating to the Time for Filing Reports on Form 8–K

Securities Exchange Act Rules 13a–11 and 15d–11 have been amended to delete the specific requirement relating to the time for filing reports on Form 8–K and to refer instead to the filing requirements set forth in the form itself. General Instruction B to the form has been amended to require that reports on Form 8–K be filed within fifteen days after the occurrence of an event specified in the form or within ten days after the end of the month during which occurred an event reported pursuant to Item 5, the voluntary disclosure item. Registrants are encouraged, however, to file all reports on Form 8–K as soon as practicable regardless of these filing requirements. Registrants may continue to report more than one event in a report on Form 8–K provided there is compliance with the requirements of the form relating to the time for filing the report.

The Commission has considered the objections to the proposed filing requirement of ten days after the occurrence of the reportable event which were raised by many of the commentators but believes that any inconvenience to registrants will be more than offset by the benefits to investors from more timely reporting. In addition, the Commission believes that upon the occurrence of any one of the four events requiring current disclosure registrants should have knowledge of the event and access to most of the information required to be set forth in response to the applicable item. In order to alleviate any difficulties which registrants might encounter as a result of weekends, holidays or the mail service, the Commission has adopted the filing date of fifteen days after the occurrence of the reportable event rather than the proposed ten days after the occurrence of the event.

In light of the proposed earlier filing date for reports on Form 8–K, the Commission has also amended General Instruction B to provide registrants with an additional 30 days after the report is filed in which to file the auditor's letter required by Item 6(b) when the registrant reports a change in its certifying accountant.

The Commission has not adopted, however, the proposal to permit registrants to file within 60 days after the report is filed the financial statements required to be included in reports pursuant to Item 2 of Form 8–K. The Commission believes that the proposed revision is unnecessary because of the provisions of Rule 12b–25 under the Exchange Act (17 CFR 240.12b–25) relating to requests for extension of time for furnishing information. Rule 12b–25 provides for an automatic 30-day extension of time unless the Commission enters an order denying the application or notifies the registrant that the application has been denied within 15 days after the application on Form 12b–25 (17 CFR 249.322) is filed. An additional 30 days in which to file the required information may be available upon separate application.

II. Amendments Relating to the Elimination of Items From Form 8–K

The amendments authorized today eliminate the following information items from Form 8–K: Item 3 (Legal Proceedings), Item 4 (Changes in Securities), Item 5 (Changes in Security for Registered Securities), Item 6 (Defaults Upon Senior Securities), Item 7 (Increase in Amount of Securities Outstanding), Item 8 (Decrease in Amount of Securities Outstanding), Item 9 (Options to Purchase Securities), Item 10 (Extraordinary Item Charges and Credits, other Material Charges and Credits to Income of an Unusual Nature, Restatements of Capital Share Account), and Item 11 (Submission of Matters to a Vote of Security Holders). To the extent that any of the events previously reported pursuant to these former 8–K items, such as material legal proceedings, constitutes an event of material importance to security holders in the opinion of the registrant, it may be reported under the new Item 5 of the Form 8–K, the voluntary disclosure item. The items remaining in Form 8–K have been renumbered.

A. Elimination of Item 6 (Defaults Upon Senior Securities)

In Securities Exchange Act Release No. 12619, the Commission proposed to retain in revised form previously numbered Form 8–K Items 6 and 10. It was proposed that Item 6 be revised to require disclosure of non-compliance with the terms for payment of principal and interest on senior securities. Upon reconsideration of the proposal and after review of the comments, the Commission has transferred the unrevised former 8–K Item 6 to the Form 10–Q. The proposed revision would not have fully achieved the objective of requiring early disclosure of significant liquidity difficulties and the quarterly report is the more appropriate report for disclosure of defaults upon senior securities.

B. Elimination of Item 10 of the Form 8–K Relating to Material Charges and Credits

Former Item 10 of Form 8–K required disclosure of material charges and credits to income of an unusual or infrequent nature and direct charges and credits to retained earnings. The objectives of the item were to require appropriate and timely reporting of events or trans-

actions which had a material impact upon the registrant's financial position or results of operations. The Commission continues to believe that disclosure of such information is necessary. However, it believes that the objective is achieved without the necessity for specific requirements in Forms 8-K, 10-Q and 10-K. The Commission has, therefore, determined to eliminate Item 10 and not transfer the item to the Form 10-Q.

The Commission believes that Item 10 of Form 8-K is now unnecessary because the information previously required by that item has become a part of other regulations subsequently adopted by the Commission and/or revisions to generally accepted accounting principles. The Commission believes that Accounting Principles Board Opinions No. 28 (Interim Financial Reporting) and No. 30 (Reporting the Results of Operations) and Accounting Series Releases No. 159 (Textual Analysis of Summary of Earnings or Operations) (39 FR 31896) and No. 177 (Interim Financial Reporting, including Instruction 5 to Form 10-Q, Management's Analysis of Quarterly Income) (40 FR 46107), provide an appropriate framework or requirements for the disclosure of material charges and credits.

Accounting Principles Board Opinion No. 30 requires that disclosure of the nature and financial effects of unusual or infrequently occurring items on the fact of the income statement. In addition, the management discussion and analysis of the statement of operations required by ASR 159 requires a discussion of material facts, whether favorable or unfavorable, which in the opinion of the management may make the historical operations or earnings not indicative of current or future operations or earnings. The Commission believes that these disclosure requirements encompass reporting the nature of a charge or credit, the reasons for a charge or credit, and an analysis of the components of the charge or credit, including information as to the types of items written off and provision made for future expenses. They also encompass the reporting of the timing of significant future cash requirements or recoveries.

The Commission also believes that provisions for future charges and the changes in such provisions are subject to the reporting requirements of Schedule XII of Regulation S-X (Valuation and Qualifying Accounts and Reserves) (17 CFR 210.12-13). Major components of such reserves should be set forth separately in Schedule XII.

By eliminating the specific material charges and credits item from the forms, the Commission does not believe the requirements for such disclosures have been lessened nor does it believe that the timeliness or quality of disclosures regarding material events or transactions of registrants will be diminished. The Commission again reminds registrants of their responsibilities under the Securities Acts for full and timely disclosure of material charges and credits in the absence of specific requirements in its forms. The Commission intends to monitor compliance with the disclosure requirements for these forms and will take further action in appropriate circumstances.

III. Amendments Relating to the Transfer of Items From the Form 8-K to the Form 10-Q

A. Amendments to Form 10-Q for Quarterly Reports Under Section 13 or 15 (d) of the Securities Exchange Act

The information called for by the items which have been eliminated from the Form 8-K will be reported in quarterly reports on Form 10-Q, with the exception of Items 9 (Options to Purchase Securities) and 10 (Extraordinary Item Charges * * *). Item 9 has not been included in Form 10-Q because the disclosure it calls for already is required in annual reports on Form 10-K and in proxy and information statements filed pursuant to Section 14 of the Securities Exchange Act; Item 10 has not been transferred to the Form 10-Q for the reasons discussed above.

The amendments to Form 10-Q provide for a two part report. Part I contains the quarterly financial information and Part II, which is deemed to be a "filed" document and subject to the liability provisions of Section 18 of the Exchange Act, contains the following items of information: (1) The information reported pursuant to the seven items being transferred to the Form 10-Q from the Form 8-K; (2) a new Item 8 which enables a registrant voluntarily to include in its quarterly report any information not otherwise called for by Form 10-Q which the registrant deems of material importance to security holders; (3) a new Item 9 relating to reports on Form 8-K, if any, which have been filed by registrant during the quarter covered by the report; and (4) appropriate instructions as to required exhibits. The General Instructions to Form 10-Q have been amended to reflect the reorganization of the form into the two parts and to include instructions appropriate to the information required by new Part II of the form.

New Item 8 of Part II of Form 10-Q, which permits registrants to report matters of material importance to security holders, is similar to former Item 13 of Form 8-K and to Item 5 of the amended form. It differs from the 8-K item in that it provides for disclosure of events "not previously reported in a report on Form 8-K."

In addition, new Item 9 of Part II of Form 10-Q requires registrants to file certain necessary exhibits to the other items of Part II and state whether any reports on Form 8-K have been filed during the quarter covered by the report, listing the dates of any such reports, the items reported and any financial statements filed. This amendment is intended to provide users of the reporting system with a convenient reference to determine whether a registrant has filed any reports on Form 8-K.

B. Amendments to Securities Exchange Act Rules 13a-13 (17 CFR 240.13a-13) and 15d-13 (17 CFR 240.15d-13)

In connection with the transfer of items from the Form 8-K to the Form 10-Q, the Commission has adopted certain technical amendments to Rules 13a-13 and 15d-13 under the Exchange Act in order to set forth the persons required to file pursuant to and the nature of the filing requirements of Parts I and II of the form.

Rules 13a-13 and 15d-13 have been amended to revise the exemption contained therein from the requirement to file quarterly reports on Form 10-Q. All life insurance companies and holding companies, regardless of the effect on such companies of the amendments announced in Accounting Series Release No. 197 (41 FR 42645), and certain mining companies henceforth will be required to file quarterly reports on Part II of Form 10-Q to report the occurrence of any one or more of the events specified in Part II and to state whether or not any reports on Form 8-K have been filed. These companies have been required to file current reports on Form 8-K and, therefore, the amendment merely preserves the status quo. The exemption from the requirements to file quarterly and current reports on Forms 10-Q and 8-K formerly available to certain investment companies and foreign private issuers has not been affected by the amendments announced today.

Secondly, in order to retain the requirement that public utilities, common carriers and pipeline carriers report the information called for by the items which have been transferred from the Form 8-K to the 10-Q, Rules 13a-13 and 15d-13 have been amended to provide that those corporations which are regulated by the Civil Aeronautics Board, the Federal Communications Commission, the Federal Power Commission or the Interstate Commerce Commission may file their reports submitted to such agencies in lieu only of Part I of the form.[3]

Securities Exchange Act Rules 13a-13 and 15d-13 have provided prior to their amendment that the quarterly reports are not deemed to be "filed" for the purpose of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section.[4] Section 18 has been applicable to the information reported on Form 8-K and, accordingly, the Com-

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[3] In Securities Exchange Act Release No. 12769 (September 3, 1976) (41 FR 39050), the Commission proposed amendments to Rules 13a-13 and 15d-13 to require registrants subject to the jurisdiction of the above federal agencies to file annual reports on Form 10-K and quarterly financial reports on Form 10-Q; these proposals are still pending.

[4] The basis stated for the determination that Section 18 should not apply to the quarterly financial information was that "interim earnings figures can frequently be arrived at only by the use of reasonable estimates or on the basis of certain assumptions * * *" *See* Securities Exchange Act Release No. 5129 (January 27, 1955), 20 FR 771 (February 4, 1955).

mission has amended Rules 13a–13 and 15d–13 to extend Section 18 liability to the information required by Part II of the Form 10–Q.

C. AMENDMENTS TO FORM 10–K FOR ANNUAL REPORTS PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT

Reports on Form 10–Q are not required for the fourth quarter of a registrant's fiscal year, and the Form 10–K has not previously required the disclosure of certain of the events reportable under the items contained in new Part II of the Form 10–Q. Therefore, in order to provide for prompt reporting of the information called for by these items concerning events occurring during registrant's fourth quarter, the Commission has amended the Form 10–K to require disclosure of the following matters unless previously reported in a report on Form 10–Q:

(1) The institution and termination of material legal proceedings (revised Item 5);

(2) Increases and decreases in registered debt securities and in indebtedness (revised Item 6);

(3) Changes in securities and changes in security for registered securities (new Item 7);

(4) Defaults upon senior securities (new Item 8); and

(5) Submission of matters to a vote of security holders (new Item 10).[5]

Item 6 has been amended further to eliminate former paragraph (b) which required disclosure relating to securities sold by registrants in reliance upon Section 4(2) of the Securities Act of 1933 (the "Securities Act") (15 U.S.C. 77a et seq. as amended by Pub. L. No. 94–29 (June 4, 1975)). The Commission believes that this paragraph is unnecessary because disclosure of sales of securities in reliance upon Section 4(2) is required already by other provisions. All issuances of equity securities are reported under paragraph (a) of Item 6. In addition, all increases in the amount outstanding of debt securities will be reported in quarterly reports on Form 10–Q (or in annual reports on Form 10–K when the transactions occurred during the fourth quarter of registrant's fiscal years) if the aggregate amount of all such increases not previously reported exceeds five percent of the outstanding securities of the class. In lieu of former paragraph (b) of Item 6, new paragraph (b) requires registrants to list and briefly discuss increases and decreases in the amount outstanding of debt securities and indebtedness which were previously reported in quarterly reports on Form 10–Q. The Commission believes that this amendment will make disclosure in the Form 10–K more complete while eliminating disclosure of less significant transactions and unnecessary repetition of previously disclosed information.

In addition, a new item has been adopted in Form 10–K requiring registrants to state whether any reports on Form 8–K have been filed during the last quarter of the period covered by the report and to list the items reported and financial statements filed, and the dates of the reports. Certain technical amendments to the Form 10–K have also been adopted to renumber the prior 10–K items and references to items contained therein, and to list the exhibits required by the new items of the form. (New Item 13(b) Reports on Form 8–K).

III. AMENDMENTS TO FORM 8–K FOR CURRENT REPORTS UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT AND TO SCHEDULE 14A TO REGULATION 14 UNDER THE SECURITIES EXCHANGE ACT

A. AMENDMENT TO ITEM 1 OF FORM 8–K (CHANGES IN CONTROL OF REGISTRANT) AND TO ITEM 5 OF SCHEDULE 14A TO REGULATION 14 (VOTING SECURITIES AND PRINCIPAL HOLDERS THEREOF)

The Commission has revised Item 1 of Form 8–K to expand the disclosure heretofore required to be reported concerning changes in control of registrants and to conform the disclosure requirements of the item to the existing requirements of Item 5 (e) and (f) of Schedule 14A to Regulation 14 under the Securities Exchange Act, applicable to proxy and information statements. The revised item will require disclosure of (1) the identity of the person or persons from whom control was assumed and (2) a description of any arrangements, including a pledge of securities of the registrant or any of its parents, which might result in a change in control of the registrant.

The Commission has also amended Item 1 of Form 8–K and Item 5 of Schedule 14A* to require the following additional disclosure concerning changes in control: (1) The amount and source of the consideration used by the person or persons who acquired control; (2) the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control and the names of the lenders or pledgees; and (3) a description of any arrangements or understandings among members of both the former and new control group and their associates with respect to election of directors or other matters. If the source of all or any part of the consideration paid by the person(s) who acquired control is a loan made in the ordinary course of business by a bank as defined in Section 3(a)(6) of the Act, the revised items permit the registrant to delete the name of the bank provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act by the person(s) who acquired control.[7]

Certain commentators questioned the need for requiring disclosure of changes in control of registrants in reports on the Form 8–K in view of the filing requirements of Section 13(d) of the Exchange Act. It is the Commission's belief that a change in control of a registrant is an important event about which current information should be readily available to investors. The Schedule 13D (17 CFR 240.13d–101) is not an adequate substitute for the report on Form 8–K for the following reasons: (1) Section 13(d) is not applicable to the acquisition of securities of a company which files reports under the Exchange Act pursuant to Section 15(d) of the Act; (2) many, if not most, of the acquisitions of securities reported in accordance with Section 13(d) do not result in changes in control of the registrant; and (3) changes in control are not always the result of an acquisition of securities. Accordingly, Item 1 has been retained in the Form 8–K.

In addition, various commentators noted that the disclosure required by the item may be unavailable to the management. Rule 12b–21 under the Exchange Act (17 CFR 240.12b–21) relates to those instances when information is unknown to the registrant; therefore, these items have not been amended to state that information need be given only insofar as it is known or reasonably available to management.

B. AMENDMENT TO ITEM 2 OF FORM 8–K (ACQUISITION OR DISPOSITION OF ASSETS)

In order to provide for reporting of more complete information concerning acquisitions or dispositions of significant amounts of assets, otherwise than in the ordinary course of business, the Commission has amended Item 2 of Form 8–K to require disclosure of the source of the funds used by the registrant or its subsidiary in making an acquisition. If all or any part of the consideration is a loan made in the ordinary course of business by a bank as defined in Section 3(a)(6) of the Act, the revised item permits the registrant to delete the name of the bank provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act by the person(s) who acquired control.[8] The proposed revision to require disclosure of management's reasons for acquiring or disposing of the assets has been deleted upon its reconsideration by the Commission.

C. ADDITION OF NEW ITEM 3 TO FORM 8–K (BANKRUPTCY OR RECEIVERSHIP)

The Commission has adopted a new Item 3 to Form 8–K to require reporting of information concerning the appointment of a receiver for the registrant or its parent in a proceeding under the

[5] These matters have heretofore been reported in reports on Form 8–K under Items 10, 3, 7 and 8, 4 and 5, 6, and 11 respectively. For a discussion of the amendments of some of these items in Part II of the Form 10–Q, see the discussion in Section IV.

* The Commission recently has proposed for comment certain amendments to Item 5 of Schedule 14A which would require more disclosure regarding the background of the management of publicly-held companies. See Securities Act Release No. 5728 (November 2, 1976), 41 FR 4949 (November 9, 1976).

[7] If a request for confidentiality has not been made pursuant to Section 13(d)(1)(B) of the Act, registrant may request confidentiality of the identity of the bank pursuant to the provisions of Rule 24b–2 of the Act (17 CFR 240.24b–2).

* See also note 7 supra.

Bankruptcy Act or in any other proceeding under State or Federal law in which a court or governmental body has assumed jurisdiction over substantially all of the assets or business of the registrant or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession, but subject to the supervision and control of a court or governmental body. The Commission believes that the availability of this information in the Commission's public files will be useful to investors.

D. AMENDMENT TO INSTRUCTION 4 OF THE INSTRUCTION RELATING TO THE FILING OF FINANCIAL STATEMENTS OF BUSINESSES ACQUIRED

Instruction 4 relating to the financial statements required when an acquisition of a business is reported pursuant to item 2 has been amended to clarify when the Commission may grant a waiver from the requirement to furnish financial statements. In addition, the instruction has been revised to state that requests for relief should be filed as a part of the report on Form 8–K and to set forth the information to be included together with such a request.

The Commission may grant relief from the provisions relating to the required financial statements if the statements are not reasonably available to the registrant, because the obtaining thereof would involve unreasonable effort or expense or practicable difficulties. When a request for relief is submitted, the Commission considers the reasons advanced by the registrant and the magnitude of the acquisition based on the financial data submitted.

The Commission believes that these amendments will facilitate the consideration of requests for relief in the future.

E. TECHNICAL AMENDMENTS

The new item and the items which have been retained in the Form 8–K as well as the instructions to the required exhibits have been renumbered and revised to reflect the above-outlined changes, the deletion of Items 9 and 10 and the transfer of former Items 3, 4, 5, 6, 7, 8 and 11 to the Form 10–Q. The cover page of the form has been amended to add a line for disclosure of the registrant's former name or former address if they have been changed since the registrant's last report was filed. General Instruction E has been deleted because Rule 12b–23 under the Exchange Act (17 CFR 240.12b–23) clearly discusses incorporation by reference.

IV. AMENDMENTS TO ITEMS OF THE FORM 8–K TRANSFERRED TO NEW PART II OF FORM 10–Q

A. ITEM 1, PART II OF FORM 10–Q (LEGAL PROCEEDINGS) (FORMERLY ITEM 3 OF FORM 8–K)

The Commission has transferred to the Form 10–Q, in revised form previously numbered Item 3 of the Form 8–K. This item has been revised to require registrants to describe the disposition of previously reported legal proceedings.

B. ITEM 4 (INCREASE IN AMOUNT OUTSTANDING OF SECURITIES OR INDEBTEDNESS) AND ITEM 5 (DECREASE IN AMOUNT OUTSTANDING OF SECURITIES OR INDEBTEDNESS) OF PART II OF FORM 10–Q (FORMERLY ITEMS 7 AND 8 OF FORM 8–K)

Former Items 7 and 8 of the Form 8–K relating to disclosure of increases and decreases in securities outstanding have been transferred to Part II of the Form 10–Q in revised form. The items have been revised to reflect the staff's interpretation that increases and decreases in commercial loans must be reported thereunder.

A few commentators questioned the applicability of prior Form 8–K Items 7 and 8 to various types of commercial loans, such as revolving credit agreements, citing cases which hold that commercial loans are not securities. In view of their observations and in order to clarify the extent of disclosure which the Commission believes should be required by these items, the captions and the text of the items in the Form 10–Q have been revised to require disclosure of fluctuations in the amount outstanding of indebtedness as well as securities. Obligations which mature not later than one year from the date of issuance are excluded from the applicability of the items.

In addition, the items have been revised in order to require disclosure only of significant increases and decreases of indebtedness. A new instruction applicable to these items has been adopted which permits registrants to classify all of their indebtedness (including short term indebtedness) into convertible long term debt and other indebtedness for the purpose of determining whether the aggregate amount of all changes in the amount of one of these two classes of indebtedness, including changes not previously reported, exceeds five percent of the outstanding debt in the class.

The required disclosure with respect to increases and decreases in the amount of equity securities will be the same as that required by former Items 7 and 8 of the Form 8–K.

The Commission believes that the narrative disclosure relating to increases and decreases in commercial debt is necessary in Part II of the Form 10–Q despite the opinion expressed by certain commentators that the expanded balance sheet disclosure required in the quarterly report should be sufficient. The information which must be disclosed pursuant to Items 5 and 6 of Part II of the Form 10–Q is more complete than the information which is required by Part I of the form.

C. TECHNICAL AMENDMENTS

The instructions to Part I and the items and the instructions in Part II of the Form 10–Q have been numbered, revised or drafted to reflect the above-outlined changes and the reorganization of the form into 2 parts. Former General Instruction M to the Form 10–Q has been deleted because similar disclosure is now required in Part II of the revised form.

The text of amendments is set forth below:

1. Rule 13a–11 (§ 240.13a–11) is amended by revising paragraph (a) to read as follows:

§ 240.13a–11 Current reports on Form 8–K (§ 249.308 of this chapter).

(a) Except as provided in paragraph (b) of this section, every registrant subject to § 240.13a–1 shall file a current report on Form 8–K within the period specified in that form unless substantially the same information as that required by Form 8–K has been previously reported by the registrant.

* * * * *

2. Rule 13a–13 (§ 240.13a–13) is revised to read as follows:

§ 240.13a–13 Quarterly reports on Form 10–Q (§ 249.308a of this chapter).

(a) Except as provided in paragraphs (b) and (c) of this section, every issuer which has securities registered pursuant to section 12 of the Act and which is required to file annual reports pursuant to section 13 of the Act on Form 10–K (§ 249.310 of this chapter), 12–K (§ 249.312 of this chapter) or U5S (§ 249.450 of this chapter) shall file a quarterly report on Form 10–Q (§ 249.308a of this chapter) within the period specified in General Instruction A to that form, for each of the first three fiscal quarters of each fiscal year of the issuer, commencing with the first such fiscal quarter which ends after securities of the issuer become so registered.

(b) The provisions of this rule shall not apply to the following issuers:

(1) Investment companies required to file quarterly reports pursuant to § 240.13a–12; or

(2) Foreign private issuers required to file reports pursuant to § 240.13a–16.

(c) Part I of the quarterly report on Form 10–Q need not be filed by the following issuers:

(1) Life insurance companies and holding companies having only life insurance subsidiaries for quarters in fiscal years ending on or before December 25, 1978, if they do not meet the tests specified in § 210.3–16(t)(1)(i)(B);

(2) Mutual life insurance companies; or

(3) Mining companies not in the production stage but engaged primarily in the exploration for or the development of mineral deposits other than oil, gas or coal, if all the following conditions are met:

(i) The registrant has not been in production during the current fiscal year or the two years immediately prior thereto; except that being in production for an aggregate period of no more than eight months over the three-year period shall not be a violation of this condition.

(ii) Receipts from the sale of mineral products or from the operations of mineral producing properties by the registrant and its subsidiaries combined have not exceeded $500,000 in any of the most recent six years and have not aggregated more than $1,500,000 in the most recent six fiscal years.

(d) Public utilities, common carriers and pipeline carriers which submit financial reports to the Civil Aeronautics Board, the Federal Communications Commission, the Federal Power Commission or the Interstate Commerce Commission may, at their option, in lieu of furnishing the information called for by Part I of Form 10–Q, file as exhibits to reports on this form copies of their reports submitted to such Board or Commission for the preceding fiscal quarter or for each month of such quarter, as the case may be, together with copies of their quarterly reports, if any, for such periods sent to their stockholders.

(e) Notwithstanding the foregoing provisions of this section, the financial information required by Part I of Form 10–Q, or financial information submitted in lieu thereof pursuant to paragraph (d) of this section, shall not be deemed to be "filed" for the purpose of section 18 of the Act or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

3. Rule 15d–11 (§ 240.15d–11) is amended by revising paragraph (a) to read as follows:

§ 240.1d–11 Current reports on Form 8–K (§ 249.308 of this chapter).

(a) Except as provided in paragraph (b) of this section, every registrant subject to § 240.15d–1 shall file a current report on Form 8–K within the period specified in that form unless substantially the same information as that required by Form 8–K has been previously reported by the registrant.

* * * * *

4. Rule 15d–13 (§ 240.15d–13) is revised to read as follows:

§ 240.15d–13 Quarterly reports on Form 10–Q (§ 249.308a of this chapter).

(a) Except as provided in paragraphs (b) and (c) of this section, every issuer which has securities registered pursuant to the Securities Act of 1933 and which is required to file annual reports pursuant to section 15(d) of the Securities Exchange Act of 1934 on Forms 10–K (§ 249.310 of this chapter), 12–K (§ 249.312 of this chapter) or U5S (§249.450 of this chapter) shall file a quarterly report on Form 10–Q (§ 249.308a of this chapter) within the period specified in General Instruction A to that form, for each of the first three fiscal quarters of each fiscal year of the issuer, commencing with the first such fiscal quarter which ends after securities of the issuer become so registered.

(b) The provisions of this rule shall not apply to the following issuers:

(1) Investment companies required to file quarterly reports pursuant to §240.15d–12; or

(2) Foreign private issuers required to file reports pursuant to §240.15d–16.

(c) Part I of the quarterly report on Form 10–Q need not be filed by the following issuers:

(1) Life insurance companies and holding companies having only life insurance subsidiaries for quarters in fiscal years ending on or before December 25, 1978, if they do not meet the tests specified in § 210.3–16(t)(1)(i)(B);

(2) Mutual life insurance companies; or

(3) Mining companies not in the production stage but engaged primarily in the exploration for or the development of mineral deposits other than oil, gas or coal, if all the following conditions are met:

(i) The registrant has not been in production during the current fiscal year or the two years immediately prior thereto; except that being in production for an aggregate period of no more than eight months over the three-year period shall not be a violation of this condition.

(ii) Receipts from the sale of mineral products or from the operations of mineral producing properties by the registrant and its subsidiaries combined have not exceeded $500,000 in any of the most recent six years and have not aggregated more than $1,500,000 in the most recent six fiscal years.

(d) Public utilities, common carriers and pipeline carriers which submit financial reports to the Civil Aeronautics Board, the Federal Communications Commission, the Federal Power Commission or the Interstate Commerce Commission may, at their option, in lieu of furnishing the information called for by Part I of Form 10–Q, file as exhibits to reports on this form copies of their reports submited to such Board or Commission for the preceding fiscal quarter or for each month of such quarter, as the case may be, together with copies of their quarterly reports, if any, for such periods sent to their stockholders.

(e) Nothwithstanding the foregoing provisions of this section, the financial information required by Part I of Form 10–Q, or financial information submitted in lieu thereof pursuant to paragraph (d) of this section, shall not be deemed to be "filed" for the purpose of section 18 of the Act or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

5. Section 249.308 is amended by revising Form 8–K to read as follows:

§ 249.308 Form 8–K, for current reports.

* * * * *

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8–K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) _____

_____

(Exact name of registrant as specified in its charter)

_____

(State or other jurisdiction of incorporation)

_____

(Commission File Number)	(IRS Employer Identification No.)

_____

(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code _____

_____

(Former name or former address, is changed since last report.)

GENERAL INSTRUCTIONS

A. *Rule as to Use of Form 8–K.*

Form 8–K shall be used for current reports under Section 13 or 15(d) of the Securities Exchange Act of 1934, filed pursuant to Rule 13a–11 [17 CFR 240.13a–11] or Rule 15d–11 [17 CFR 240.15d–11].

B. *Events to be Reported and Filing of Reports.*

A report on this form is required to be filed upon the occurrence of any one or more of the events specified in the items of this form. Reports are to be filed within 15 days after the occurrence of the earliest event required to be reported. However, reports which disclose events pursuant to Item 5 may be filed within 10 days after the close of the month during which the event occurred. If the letter from the independent accountants to be furnished pursuant to Item 4(d) is unavailable at the time of filing, it shall be filed within thirty days thereafter. Moreover, if substantially the same information as that required by this form has been previously reported by the registrant, an additional report of the information on this form need not be made. The term "previously reported" is defined in Rule 12b–2 [17 CFR 240.12b–2].

C. *Application of General Rules and Regulations.*

(a) The General Rules and Regulations under the Act [17 CFR Part 240] contain certain general requirements which are applicable to reports on any form. These general requirements should be carefully read and observed in the preparation of filing of reports on this form.

(b) Particular attention is directed to Regulation 12B [17 CFR 240.12b–1 et seq.] which contains general requirements regarding matters such as the kind and size of paper to be used, the legibility of the report, the information to be given whenever the title of securities is required to be stated, and the filing of the report. The definitions contained in Rule 12b–2 should be especially noted. See also Regulations 13A [17 CFR 240.13a–1 et seq.] and 15D [17 CFR 240.15d–1 et seq.].

D. *Preparation of Report.*

This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b–12 [17 CFR 240.12b–12]. The report shall contain the numbers and captions of all applicable items, but the text of such items may be omitted, provided the answers thereto are prepared in the manner specified in Rule 12b–13 [17 CFR 240.12b–13]. All items which are not required to be answered in the particular report may be omitted and no reference thereto need be made in the report. All instructions should also be omitted.

E. *Signature and Filing of Report.*

Three complete copies of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, and five additional copies which need not include exhibits, shall be filed with the Commission. At least one complete copy of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such copy filed with

each exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

INFORMATION TO BE INCLUDED IN THE REPORT

Item 1. Changes in Control of Registrant.

(a) If, to the knowledge of management, a change in control of the registrant has occurred, state the name of the person(s) who acquired such control; the amount and the source of the consideration used by such person(s); the basis of the control; the date and a description of the transaction(s) which resulted in the change in control; the percentage of voting securities of the registrant now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate that disclosure of the identity of the bank has been so omitted and filed separately with the Commission.

Instructions. 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to the election of directors or other matters shall be described.

(b) Describe any contractual arrangements, including any pledge of securities of the registrant, or any of its parents, known to management, the operation of the terms of which may at a subsequent date result in a change in control of the registrant.

Instruction. Paragraph (b) does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the registrant.

Item 2. Acquisition or Disposition of Assets.

If the registrant or any of its majority-owned subsidiaries has acquired or disposed of a significant amount of assets, otherwise than in the ordinary course of business, furnish the following information:

(a) The date and manner of the acquisition or disposition and a brief description of the assets involved, the nature and amount of consideration given or received therefor, the principle followed in determining the amount of such consideration, the identity of the person(s) from whom the assets were acquired or to whom they were sold and the nature of any material relationship between such person(s) and the registrant or any of its affiliates, any director or officer of the registrant, or any associate of any such director or officer. If the transaction being reported is an acquisition, identify the source(s) of the funds used unless all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act in which the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act. In lieu thereof, the material shall indicate that the identity of the bank has been so omitted and filed separately with the Commission.

(b) If any assets so acquired by the registrant or its subsidiaries constituted plant, equipment or other physical property, state the nature of the business in which the assets were used by the person(s) from whom acquired and whether the registrant intends to continue such use or intends to devote the assets to other purposes, indicating such other purposes.

Instructions. 1. No information need be given as to (i) any transaction between any person and any wholly-owned subsidiary of such person; (ii) any transaction between two or more wholly-owned subsidiaries of any person; or (iii) the redemption or other acquisition of securities from the public, or the sale or other disposition of securities to the public, by the issuer of such securities.

2. The term "acquisition" includes every purchase, acquisition by lease, exchange, merger, consolidation, succession or other acquisition; provided, that such term does not include the construction or development of property by or for the registrant or its subsidiaries or the acquisition of materials for such purpose. The term "disposition" includes every sale, disposition by lease, exchange, merger, consolidation, mortgage, or hypothecation of assets, assignment, whether for the benefit of creditors or otherwise, abandonment, destruction, or other disposition.

3. The information called for by this item is to be given as to each transaction or series of related transactions of the size indicated. The acquisition or disposition of securities shall be deemed the indirect acquisition or disposition of the assets represented by such securities if it results in the acquisition or disposition of control of such assets.

4. An acquisition or disposition shall be deemed to involve a significant amount of assets (i) if the registrant's and its other subsidiaries' equity in the net book value of such assets or the amount paid or received therefor upon such acquisition or disposition exceeded 10 percent of the total assets of the registrant and its consolidated subsidiaries, (ii) if it involved the succession to or disposition of a business which would meet the test of a significant subsidiary, or (iii) if it involved the acquisition or disposition of an interest in a business which would meet the test of a significant subsidiary and would be required to be accounted for by the equity method.

5. Where assets are acquired or disposed of through the acquisition or disposition of control of a person, the person from whom such control was acquired or to whom it was disposed of shall be deemed the person from whom the assets were acquired or to whom they were disposed of, for the purposes of this item. Where such control was acquired from or disposed of to not more than five persons, their names shall be given; otherwise it will suffice to identify in an appropriate manner the class of such persons.

6. Attention is directed to the requirements in Item 6 of the form with respect to the filing of financial statements for businesses acquired and to the filing of copies of the plans of acquisition or disposition as exhibits to the report.

Item 3. Bankruptcy or Receivership.

If a receiver, fiscal agent or similar officer has been appointed for a registrant or its parent, in a proceeding under the Bankruptcy Act or in any other proceeding under State or Federal law in which a court or governmental agency has assumed jurisdiction over substantially all of the assets or business of the registrant or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental body, identify the proceeding, the court or governmental body, the date jurisdiction was assumed, the identity of the receiver, fiscal agent or similar officer and the date of his appointment.

Item 4. Changes in Registrant's Certifying Accountant.

If an independent accountant who was previously engaged as the principal accountant to audit the registrant's financial statements resigns (or indicates he declines to stand for reelection after the completion of the current audit) or is dismissed as the registrant's principal accountant, or another independent accountant is engaged as principal accountant, or if an independent accountant on whom the principal accountant expressed reliance in his report regarding a significant subsidiary resigns (or formally indicates he declines to stand for re-election after the completion of the current audit) or is dismissed or another independent accountant is engaged to audit that subsidiary:

(a) State the date of such resignation (or declination to stand for re-election), dismissal or engagement.

(b) State whether in connection with the audits of the two most recent fiscal years and any subsequent interim period preceeding such resignation, dismissal or engagement there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to the satisfaction of the former accountant would have caused him to make reference in connection with his report to the subject matter of the disagreement(s); also, describe each such disagreement. The disagreements required to be reported in response to the preceding sentence include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this rule are those which occur at the decisionmaking level; i.e., between personnel of the registrant responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

(c) State whether the principal accountant's report on the financial statements for any of the past two years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainty, audit scope, or accounting principles; also describe the nature of each such adverse opinion, disclaimer of opinion, or qualification.

(d) The registrant shall request the former accountant to furnish the registrant with a letter addressed to the Commission stating whether he agrees with the statements made by the registrant in response to this item and, if not, stating the respects in which he does not agree. The registrant shall file a copy of the former accountant's letter as an exhibit with all copies of the Form 8-K required to be filed pursuant to General Instruction F.

Item 5. Other Materially Important Events.

The registrant may, at its option, report under this item any events, with respect to which information is not otherwise called for by this form, which the registrant deems of material importance to security holders.

Item 6. Financial Statements and Exhibits.

List below the financial statements and exhibits, if any, filed as a part of this report.

(a) Financial statements of businesses acquired.

Instructions. 1. Businesses for Which Statements are Required.

The financial statements specified below shall be filed for any business the succession to which or the acquisition of an interest in which is required to be described in answer to Item 2 above.

2. Statements Required.

(a) There shall be filed a balance sheet of the business as of a date reasonably close to

the date of acquisition. This balance sheet need not be audited, but if it is not audited there shall also be filed an audited balance sheet as of the close of the preceding fiscal year.

(b) Income and source and application of funds statements of the business shall be filed for each of the last three full fiscal years and for the period, if any, between the close of the latest of such fiscal years and the date of the latest balance sheet filed. These income and source and application of funds statements shall be audited up to the date of the audited balance sheet.

(c) If the business was in insolvency proceedings immediately prior to its acquisition, the balance sheets required above need not be audited. In such case, the income and source and application of funds statements required shall be audited to the close of the latest full fiscal year.

(d) Except as otherwise provided in this instruction, the principles applicable to a registrant and its subsidiaries with respect to the filing of individual, consolidated and group statements in an original application or annual report shall be applicable to the statements required by this instruction.

3. Application of Regulation S–X.

Regulation S–X governs the examination and the form and content of the statements required by the preceding instruction, including the basis of consolidation, and prescribes the statements of other stockholders' equity to be filed. No supporting schedules need be filed. A manually signed accountant's report should be provided as required by Rule 2–02(a) of Regulation S–X [17 CFR 210.2–02(a)].

4. Filing of Other Financial Information in Certain Cases.

The Commission may, upon the written request of the registrant and where consistent with the protection of investors, permit the omission of one or more of the financial statements herein required or the filing in substitution therefor of appropriate statements of comparable character, if the required audited financial statements are not reasonably available to the registrant, because the obtaining thereof would involve unreasonable effort, expense or practicable difficulties. A request for such relief shall be filed as a part of the report. If an extension of time has been granted pursuant to Rule 12b–25 [17 CFR 240.12b–25], a request for relief shall be filed as a part of an amendment to the initial report within the additional time provided under said rule. The request shall set forth the following information:

(a) The reason(s) for the unavailability of the audited financial statements;

(b) The estimated costs of the audit;

(c) An explanation of any other practical auditing problems;

(d) A letter from the registrant's independent auditors confirming the above representation; and

(e) A tabular presentation of the following items of information, comparing the acquired business(es) with the registrant on a consolidated basis (excluding the acquired business(es)): (1) gross sales and operating revenues; (2) net income; (3) total assets; (4) total stockholder equity; and (5) total purchase price compared to total assets of registrant.

The Commission may also by informal written notice require the filing of other financial statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

(b) Exhibits. Subject to the rules as to incorporation by reference, the following documents shall be filed as exhibits to this report:

1. Copies of any plan of acquisition or disposition described in answer to Item 2, including any plan of reorganization, readjustment, exchange, merger, consolidation or succession in connection therewith.

2. Letters from the independent accountants furnished pursuant to Item 4(d).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

(Registrant)

Date ---------- ----------

(Signature)[1]

6. Section 249.308a is amended by amending Form 10–Q to read as follows:

§ 249.308a Form 10–Q, for quarterly reports under section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

GENERAL INSTRUCTIONS

A.–C. [No change.]

D. *Incorporation by Reference.*

(a) If the registrant makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a financial statement containing the information required by this form, the information called for may be incorporated by reference to such published statement provided copies thereof are filed as an exhibit to Part I of the report on this form.

(b) Other information may be incorporated by reference in answer or partial answer to any item or items of Part II of this form in accordance with the provisions of Rule 12b–23.

E. *Signature and Filing of Report.*

Eight copies of the report shall be filed with the Commission. At least one copy of the report shall be filed with each exchange on which any class of securities of the registrant is listed and registered. At least one copy of the report filed with the Commission and one copy filed with each such exchange shall be manually signed on the registrant's behalf by a duly authorized officer of the registrant and by the principal financial officer or chief accounting officer of the registrant. Copies not manually signed shall bear typed or printed signatures.

PART I. FINANCIAL INFORMATION

Instruction 1. Persons for Whom the Financial Information Is To Be Given.

(a) The required information is to be given as to the registrant or, if the registrant includes consolidated financial statements in its annual reports filed with the Commission, it shall be given for the registrant and its consolidated subsidiaries. If the information is given for the registrant and its consolidated subsidiaries, it need not be given separately for the registrant.

(b) Summarized income statement information shall be given separately as to each subsidiary not consolidated or 50 percent or less owned persons or as to each group of such subsidiaries or fifty percent or less owned persons for which separate individual or group statements are required to be included in the registrant's annual reports filed with the Commission. It need not be furnished, however, for any such subsidiary or person which would not be required pursuant to Rule 13a–13 or 15d–13 to file quarterly financial information if it were a registrant.

Instruction 2. Preparation of Financial Information.

This part requires only the items of information specified. The information is not required to be audited and may carry a notation to that effect and any other qualification considered necessary or appropriate. Amounts may be stated in thousands or hundred thousands of dollars provided it is stated that such has been done. Losses or other negative amounts shall be indicated clearly in the caption and the amounts shown in brackets or parentheses.

Instruction 3. Delay in Filing Financial Information.

The information required may be omitted with respect to foreign subsidiaries not consolidated or other foreign persons if it is impracticable to furnish it within the time specified for filing the report, provided it is indicated that such information has been omitted and the omitted information is furnished by amendment when available. Apart from the foregoing, any request for extension of time for the filing of the report or the furnishing of any of the required information shall be made pursuant to Rule 12b–25.

Instructions 4 and 5. [No change from former Instructions H and I of Form 10–Q.]

Instruction 6. Other Financial Information.

The registrant may furnish any additional information related to the periods being reported on which, in the opinion of management, is of significance to investors, such as the seasonality of the company's business, major uncertainties currently facing the company, significant accounting changes under consideration and the dollar amount of backlog of firm orders.

Instructions 7 and 8. [No change from former Instructions K and L of Form 10–Q.]

Instruction 9. Exhibits.

List below the following documents, if any, cited as a part of Part I of this report:

1. Financial information filed in lieu of the information required by this form in accordance with General Instruction D.

2. Letters from the independent accountants furnished pursuant to Instruction 4(f).

3. Statements setting forth the computation of per share earnings furnished in accordance with Instruction 4(g).

4. Letters from the independent accountant furnished pursuant to Instruction 7.

PART II. OTHER INFORMATION

Instruction. The report shall contain the item numbers and captions of all applicable items of Part II, but the text of such items may be omitted provided the responses clearly indicate the coverage of the item. Any item which is inapplicable or to which the answer is negative may be omitted and no reference thereto need be made in the report. If substantially the same information has been previously reported by the registrant, an additional report of the information on this form need not be made. The term "previously reported" is defined in Rule 12b–2 [17 CFR 240.12b–2].

Item 1. Legal Proceedings

(a) Briefly describe any material legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries has become a party or of which any of their property has become the subject. Include the name of the court or agency in

[1] Print name and title of the signing officer under his signature.

which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought.

(b) If any such proceeding previously reported has been terminated, identify the proceeding, give the date of termination and describe the disposition thereof with respect to the registrant and its subsidiaries.

Instructions. 1. If the business ordinarily results in actions for negligence or other claims, no such action or claim need be described unless it departs from the normal kind of such actions.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Notwithstanding the foregoing instructions, any bankruptcy, receivership or similar proceeding with respect to the registrant or any of its significant subsidiaries shall be described. Any proceeding to which any director, officer or affiliate of the registrant, any principal holder of equity securities of the registrant or any associate of any such director, officer or security holder, is a party adverse to the registrant or any of its subsidiaries shall also be described.

4. Notwithstanding the foregoing, administrative or judicial proceedings arising under any Federal, State or local provisions regulating the discharge of materials into the environment or otherwise relating to the protection of the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if such proceeding is material to the business or financial condition of the registrant or if it involves primarily a claim for damages and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. Any such proceedings by governmental authorities shall be deemed material and shall be described whether or not the amount of any claim for damages involved exceeds 10 percent of current assets on a consolidated basis and whether or not such proceedings are considered "ordinary routine litigation incidental to the business"; provided, however, that such proceedings which are similar in nature may be grouped and described generically stating: the number of such proceedings in each group; a generic description of such proceedings; the issues generally involved; and, if such proceedings in the aggregate are material to the business or financial condition of the registrant, the effect of such proceedings on the business or financial condition of the registrant.

Item 2. Changes in Securities.

(a) If the constituent instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Instruction. Working capital restrictions and other limitations upon the payment of dividends are to be reported hereunder.

Item 3. Changes in Security for Registered Securities.

If there has been a material withdrawal or substitution of assets securing any class of registered securities of the registrant, furnish the following information:

(a) Give the title of the securities.

(b) Identify and describe briefly the assets involved in the withdrawal or substitutions.

(c) Indicate the provision in the underlying indenture, if any, authorizing the withdrawal or substitution.

Instruction. This item need not be answered where the withdrawal or substitution is made pursuant to the terms of an indenture which has been qualified under the Trust Indenture Act of 1939.

Item 4. Defaults Upon Senior Securities.

(a) If there has been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any indebtedness of the registrant or any of its significant subsidiaries exceeding 5 percent of the total assets of the registrant and its consolidated subsidiaries, identify the indebtedness and state the nature of the default. In the case of such a default in the payment of principal, interest, or a sinking or purchase fund installment, state the amount of the default and the total arrearage on the date of filing this report.

Instruction. This paragraph refers only to events which have become defaults under the governing instruments, *i.e.*, after the expiration of any period of grace and compliance with any notice requirements.

(b) If any material arrearage in the payment of dividends has occurred or if there has been any other material delinquency not cured within 30 days, with respect to any class of preferred stock of the registrant which is registered or which ranks prior to any class of registered securities, or with respect to any class of preferred stock of any significant subsidiary of the registrant, give the title of the class and state the nature of the arrearage or delinquency. In the case of an arrearage in the payment of dividends, state the amount and the total arrearage on the date of filing this report.

Instruction. Item 4 need not be answered as to any default or arrearage with respect to any class of securities all of which is held by, or for the account of, the registrant or its totally held subsidiaries.

Item 5. Increase in Amount Outstanding of Securities of Indebtedness.

If the amount outstanding of securities or indebtedness of the registrant has been increased through the issuance of any new class of securities or indebtedness or through the issuance of reissuance of any additional securities or indebtedness of a class outstanding, and the aggregate amount of all such increases not previously reported exceeds 5 percent of the outstanding securities or indebtedness of the class, furnish the following information:

(a) Title of class, the amount outstanding as last previously reported, and the amount presently outstanding (as of a specified date);

(b) A brief description of the transaction(s) resulting in the increase and a statement of the aggregate net cash proceeds or the nature and aggregate amount of any other consideration received or to be received by the registrant;

(c) The names of the principal underwriters, if any, indicating any such underwriters which are affiliates of the registrant;

(d) A reasonably itemized statement of the purposes so far as determinable, for which the net proceeds have been or are to be used and the approximate amount used or to be used for each such purpose;

(e) A statement as to whether or not any such securities were registered under the Securities Act of 1933; if not, an indication of the exemption claimed and the facts relied upon to make the exemption available; and

(f) If the securities were capital shares, a statement of the amount of the proceeds credited or to be credited to any account other than the appropriate capital share account.

Instructions. 1. For the purpose of responding to this item, the registrant may treat each of the following as a single class of indebtedness: (1) convertible long term debt; and (2) other indebtedness.

2. This item does not apply to notes, drafts, bills of exchange, bankers' acceptances or other obligations which mature not later than 1 year from the date of issuance. No report need be made where the amount not previously reported, although in excess of 5 percent of the amount outstanding, does not exceed $50,000 face amount of indebtedness or 1,000 shares or other units.

3. This item includes the reissuance of treasury securities and securities held for the account of the issuer thereof. The extension of the maturity date of indebtedness shall be deemed to be the issuance of new indebtedness for the purpose of this item. In the case of such an extension, the percentage shall be computed upon the basis of the principal amount of the indebtedness extended.

Item 6. Decrease in Amount Outstanding of Securities or Indebtedness.

If the amount outstanding of any class of securities or indebtedness of the registrant has been decreased through one or more transactions and the aggregate amount of all such decreases not previously reported exceeds 5 percent of the amount of securities or indebtedness of the class previously outstanding, furnish the following information:

(a) Title of the class, the amount outstanding as last previously reported, and the amount presently outstanding (as of a specified date);

(b) A brief description of the transaction(s) involving the decrease and a statement of the aggregate amount of cash or the nature and aggregate amount of any other consideration paid or to be paid by the registrant in connection with such transaction or transactions.

Instruction. Instructions 1 and 2 to Item 5 shall also apply to this item. This item need not be answered as to decreases resulting from ordinary sinking fund operations, similar periodic decreases made pursuant to the terms of the constituent instruments, decreases resulting from the conversion of securities or decreases resulting from the payment of indebtedness at maturity.

Item 7. Submission of Matters to a Vote of Security Holders.

If any matter has been submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, state the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) Briefly describe each other matter voted upon at the meeting and state the number of affirmative votes and the number

of negative votes cast with respect to each such matter.

Instructions. 1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to Regulation 14 under the Act, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the registrant has published a report containing all of the information called for by this item, the item may be answered by a reference to the information contained in such report, provided copies of such report are filed as an exhibit to the report on this form.

Item 8. Other Materially Important Events.

The registrant may, at its option, report under this item any events, not previously reported in a report on Form 8-K, with respect to which information is not otherwise called for by this form but which the registrant deems of material importance to security holders.

Item 9. Exhibits and Reports on Form 8-K [17 CFR 249.308]

(a) Exhibits. List below the documents, if any, filed as a part of this report. Subject to the rules as to incorporation by reference, the following documents shall be filed as exhibits:

1. Copies of the amendments to all constituent instruments and other documents described in answer to Item 2.

2. Copies of all constituent instruments defining the rights of the holders of any new class of securities referred to in answer to Item 5.

3. Copies of the text of any proposal described in answer to Item 7.

4. Copies of any published report furnished in response to Item 7. (See Item 7, Instruction 5.)

5. Copies of any material amendment to the registrant's charter or by-laws not otherwise required to be filed.

(b) Reports on Form 8-K. State whether any reports on Form 8-K have been filed during the quarter for which this report is filed, listing the items reported, any financial statements filed, and the dates of any such reports.

SIGNATURES [1]

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

(Registrant)

Date ---------- ----------
(Signature) [2]

Date ---------- ----------
(Signature) [2]

7. Section 249.310 is amended by amending Form 10-K.

§ 249.310 Form 10-K, annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

GENERAL INSTRUCTIONS

A.-G. [No change.]

H. *Omission of Information Previously Filed.*

(a) Except as provided in paragraph (b) below, the information called for by Part I of this form (Items 1 through 13) is to be furnished by all registrants required to file a report on this form. Part II (Items 14 through 18) may be omitted from the report by any registrant which, since the close of the fiscal year, has filed with the Commission a definitive proxy statement pursuant to Regulation 14A, or a definitive information statement pursuant to Regulation 14C, which involved the election of directors, or which files such a proxy or information statement not later than 120 days after the close of the fiscal year.

(b) If the information called for by Items 4, 5 or 12 would be unchanged from that given in a previous report, a reference to the previous report which includes the required information will be sufficient. Copies of such previous report need not be filed with the report currently being filed on this form.

PART I

Item 1. [No change.]

Item 2. Summary of Operations

* * * * *

Instructions. 1.-5. [No change.]

6. For any previously reported material charge or credit to income of an unusual or infrequent nature in which an amount of cost was estimated to be incurred in the fiscal year being reported on or the prior fiscal year, summarize such transaction and state the amounts of such estimated cost and the amounts of the actual cost incurred in such periods, the reasons for differences between estimated and actual amounts, if any, and provide a detailed reconciliation showing all chages and credits to any reserve provided.

Items 3. and 4. [No change.]

Item 5. Legal Proceedings

(a) Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

(b) If any material legal proceeding which was previously reported or which became reportable during the fourth quarter of registrant's fiscal year was terminated during such quarter, give the date of termination and describe the disposition thereof with respect to the registrant and its subsidiaries.

Instructions. 1. If the business ordinarily results in actions for negligence or other claims, no such action or claim need be described unless it departs from the normal kind of such actions.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Notwithstanding Instructions 1 and 2, any material bankruptcy, receivership, or similar proceeding with respect to the registrant or any of its significant subsidiaries shall be described. Any material proceedings to which any director, officer or affiliate of the registrant, any security holder named in answer to Item 14(a), or any associate of any such director, officer or security holder, is a party, or has a material interest, adverse to the registrant or any of its subsidiaries shall also be described.

4. Notwithstanding the foregoing, administrative or judicial proceeding arising under any Federal, State or local provisions regulating the discharge of materials into the environment or otherwise relating to the protection of the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if such proceeding is material to the business or financial condition of the registrant or if it involves primarily a claim for damages and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. Any such proceedings by governmental authorities shall be deemed material and shall be described whether or not the amount of any claim for damages involved exceeds 10 percent of current assets on a consolidated basis and whether or not such proceedings are considered "ordinary routine litigation incidental to the business"; provided, however, that such proceedings which are similar in nature may be grouped and described generically stating: the number of such proceedings in each group; a generic description of such proceedings; the issues generally involved; and, if such proceedings in the aggregate are material to the business or financial condition of the registrant, the effect of such proceedings on the business or financial condition of the registrant.

Item 6. Increases and Decreases in Outstanding Securities and Indebtedness.

(a) Give the following information as to all increases and decreases during the fiscal year in the amount of equity securities of the registrant outstanding:

(1) The title of the class of securities involved;

(2) The date of the transaction;

(3) The amount of securities involved and whether an increase or decrease; and

(4) A brief description of the transaction in which the increase or decrease occurred.

[1] *See* General Instruction E.

[2] Print name and title of the signing officer under his signature.

If previously reported, the description may be incorporated by a specific reference to the previous filing.

Instruction. The information shall be prepared in the form of a reconciliation between the amounts shown to be outstanding on the balance sheet to be filed with this report and the amounts shown on the registrant's balance sheet for the previous year. The exercise of outstanding options or warrants (separately by class or type of option or warrant), conversions of previously issued convertible securities (separately by class of security) and the issuance of options may be grouped together showing the dates between which all such transactions occurred. If the information called for has been previously reported on Form 10–Q it may be incorporated by a specific reference to the previous filing.

(b) Increases and decreases in the amount outstanding of debt securities and indebtedness which were previously reported in reports on Form 10–Q should be listed and briefly discussed with appropriate cross references to the earlier disclosure.

(c) If, during the fourth quarter of registrant's fiscal year, the amount of debt securities or indebtedness outstanding has been increased or decreased through one or more transactions, and the aggregate amount of all such increases or decreases not previously reported exceeds 5% of the outstanding securities or indebtedness of the affected class, furnish, the following information:

(1) Title of class, the amount outstanding as last previously reported, and the amount presently outstanding (as of a specified date);

(2) A brief description of the transaction or transactions resulting in the change;

(3) If an increase in securities or indebtedness is reported, furnish: (i) a statement of the aggregate net cash proceeds or the nature and aggregate amount of any consideration received or to be received by the registrant; (ii) the names of the principal underwriters, if any, indicating any such underwriters which are affiliates of the registrant; (iii) a reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds have been or are to be used and the approximate amount used or to be used for each such purpose; and (iv) a statement as to whether or not any such securities were registered under the Securities Act of 1933; if not, an indication of the exemption claimed and the facts relied upon to make the exemption available; and

(4) If a decrease in securities or indebtedness is reported, a statement of the aggregate amount of cash or the nature and aggregate amount of any other consideration paid or to be paid by the registrant in connection with such transaction or transactions.

Instructions. 1. For the purposes of responding to paragraph (b) the registrant may treat each of the following as a single class of indebtedness: (1) convertible long term debt, and (2) other indebtedness.

2. This paragraph does not apply to notes, drafts, bills of exchange, bankers' acceptances, or other obligations which mature not later than 1 year from the date of issuance. No report need be made where the amount not previously reported, although in excess of 5 percent of the amount outstanding, does not exceed $50,000 face amount of indebtedness or 1,000 shares or other units.

3. This paragraph includes the reissuance of treasury securities and securities held for the account of the issuer thereof. The extension of the maturity date of indebtedness shall be deemed to be the issuance of new indebtedness for the purpose of this paragraph. In the case of such an extension, the percentage shall be computed upon the basis of the principal amount of the indebtedness extended.

4. This paragraph need not be answered as to decreases resulting from ordinary sinking fund operations, similar periodic decreases made pursuant to the terms of the constituent instruments, decreases resulting from the conversion of securities or decreases resulting from the payment of indebtedness at maturity.

Item 7. Changes in Securities and Changes in Security for Registered Securities.

General Instruction. No response to this item is required if the information called for herein has been previously reported in a report on Form 10–Q.

(a) If the constituent instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Instruction. Working capital restrictions and other limitations upon payment of dividends are to be reported hereunder.

(c) If there has been a material withdrawal or substitution of assets securing any class of registered securities of the registrant, furnish the following information:

1. Give the title of the securities.

2. Identify and describe briefly the assets involved in the withdrawal or substitutions.

3. Indicate the provision in the underlying indenture, if any, authorizing the withdrawal or substitution.

Instruction. This paragraph need not be answered where the withdrawal or substitution is made pursuant to the terms of an indenture which has been qualified under the Trust Indenture Act of 1939.

Item 8. Defaults upon Senior Securities.

General Instruction. No response to this item is required if the information called for herein has been previously reported in a report on Form 10–Q.

(a) If there has been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any indebtedness of the registrant or any of its significant subsidiaries exceeding 5 percent of the total assets of the registrant and its consolidated subsidiaries, identify the indebtedness and state the nature of the default. In the case of such a default in the payment of principal, interest or a sinking or purchase fund installment, state the amount of the default and the total arrearage on the date of filing this report.

Instruction. This paragraph refers only to events which have become defaults under the governing instruments, i.e., after the expiration of any period of grace and compliance with any notice requirements.

(b) If any material arrearage in the payment of dividends has occurred or if there has been any other material delinquency not cured within 30 days, with respect to any class of preferred stock of the registrant which is registered or which ranks prior to any class of registered securities, or with respect to any class of preferred stock of any significant subsidiary of the registrant, give the title of the class and state the nature of the arrearage or delinquency. In the case of an arrearage in the payment of dividends, state the amount and the total arrearage on the date of filing this report.

Instruction. Item 8 need not be answered as to any default or arrearage with respect to any class of securities all of which is held by, or for the account of, the registrant or its totally held subsidiaries.

Item 9. Approximate Number of Equity Security Holders.

[No change from former Item 7 of Form 10–K.]

Item 10. Submission of Matters to a Vote of Security Holders.

If any matter has been submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information if not previously disclosed in a report on Form 10–Q:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, state the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) Briefly describe each other matter voted upon at the meeting and state the number of affirmative votes and the number of negative votes cast with respect to each such matter.

Instructions. 1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to Regulation 14 under the Act, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the registrant has published a report containing all of the information called for by the item, the item may be answered by a reference to the information contained in such report, provided copies of such report are filed as an exhibit to the report on this form.

Item 11. Executive Officers of Registrant.

[No change from former Item 8 of Form 10–K.]

Item 12. Indemnification of Directors and Officers.

[No change from former Item 9 of Form 10–K.]

Item 13. Financial Statements, Exhibits filed, and Reports on Form 8–K.

(a) List all of the following documents filed as a part of the report:

1. All financial statements.

2. All exhibits, including those incorporated by reference.

Instruction. Where any financial statement or exhibit is incorporated by reference, the incorporation by reference shall be set forth in the list required by this Item. See Rule 12b–23 [17 CFR 240.12b–23]

(b) Reports on Form 8–K. State whether any reports on Form 8–K have been filed during the last quarter of the period covered

by this report, listing the items reported, any financial statements filed and the dates of any such reports.

PART II

[The items and references to item numbers within the items in Part II have been renumbered.]

Item. 14. [No change from former Item 11 of Form 10–K.]

Item 15. Directors of the Registrant.

NOTE.—Paragraph (c) of Item 15 also applies to executive officers of the registrant.

* * * * *

Instruction. 1. Instruction 2 to Item 11 shall also apply to this item.

[No change in remainder from former Item 12.]

Item 16. Remuneration of Directors and Officers.

* * * * *

Instructions. 1.–3. [No change from Instructions 1.–3. to paragraph (a) of former Item 13.]

4. Do not include remuneration paid to a partnership in which any director or officer was a partner, but see Item 18.

[No change in remainder from former Item 13.]

Item 17. Options Granted to Management to Purchase Securities.

Furnish the following information, in substantially the tabular form indicated, as to all options to purchase any securities from the registrant or any of its subsidiaries which were granted to or exercised by the following persons since the beginning of the fiscal year, and as to all options held by such persons as of the latest practicable date regardless of when such options were granted: (i) each director and officer named in answer to Item 16(a)(1), naming each such person; and (ii) all directors and officers of the registrant as a group, without naming them:

* * * * *

Instructions. 1.–2. No change from Instructions 1.–2. of former Item 14.]

3. (i) Where the total market value on the granting dates of the securities called for by all options granted during the period specified does not exceed $10,000 for any officer or director named in answer to Item 16(a)(1) or $40,000 for all officers and directors as a group, this item need not be answered with respect to options granted to such person or group. (ii) Where the total market value on the dates of purchase of all securities purchased through the exercise of options during the period specified does not exceed $10,000 for any such person or $40,000 for such group, this item need not be answered with respect to options exercised by such person or group. (iii) Where the total market value as of the latest practicable date of the securities called for by all options held at such time does not exceed $10,000 for any such person or $40,000 for such group, this item need not be answered with respect to options held as of the specified date by such person or group.

[No change in remainder from former Item 14 of Form 10–K]

Item 18. Interest of Management and Others in Certain Transactions.

(a) [No change from paragraph (a) of former Item 15.]

(1) [No change from subsection (a)(1) of former Item 15.]

(2) Any security holder named in answer to Item 14(a).

(3) [No change from subsection (a)(3) of former Item 15.]

Instructions. 1. (No change from Instruction 1 to paragraph (a) of former Item 15.)

2. No information need be given in response to this item as to any remuneration or other transaction reported in response to Items 16 or 17, or as to any transaction with respect to which information may be omitted pursuant to Instruction 2 to Item 16(b), the instruction to Item 16(c), or Instruction 2 or 3 to paragraph (b) of this item.

3.–7. [No change from Instructions 3.–7. to paragraph (a) of former Item 15.]

(b) [No change from paragraph (b) of former Item 15.]

(c) [No change from paragraph (c) of former Item 15.]

(1) [No change from subsection (c)(1) of former Item 15.]

(2) Any security holder named in answer to Item 14(a).

[No change in remainder from former Item 15.]

SIGNATURES

[No change.]

INSTRUCTIONS AS TO FINANCIAL STATEMENTS

[No change.]

INSTRUCTIONS AS TO EXHIBITS

Subject to Rule 12b–32 regarding the incorporation of exhibits by reference, the following exhibits shall be filed as a part of the report:

A. Copies of all amendments or modifications, not previously filed, to all exhibits previously filed (or copies of such exhibits as amended or modified).

B. Copies of all contracts and other documents of a character required to be filed as an exhibit to an original registration statement on Form 10 which were executed or in effect during the fiscal year and not previously filed.

C. Copies of the exhibits called for by Instructions 3, 4(d) and 5 to Item 2.

D. Copies of all constituent instruments defining the rights of the holders of any new class of securities referred to in answer to Item 6(c).

E. Copies of the amendments to all constituent instruments and other documents described in answer to Item 7.

F. Copies of the text of any proposal described and copies of any published report furnished in response to Item 10.

8. Section 240.14a–101 is amended by amending Item 5 of Schedule 14A to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 5. Voting securities and principal holders thereof.

* * * * *

(e) If, to the knowledge of the persons on whose behalf the solicitation is made, a change in control of the issuer has occurred since the beginning of its last fiscal year, state the name of the person(s) who acquired such control, the amount and the source of the consideration used by such person or persons; the basis of the control, the date and a description of the transaction(s) which resulted in the change of control and the percentage of voting securities of the issuers now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate that the identity of the bank has been so omitted and filed separately with the Commission.

Instructions. 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to election of directors or other matters should be described.

(f) Describe any contractual arrangements, including any pledge of securities of the issuer, or any of its parents, known to the persons on whose behalf the solicitation is made, the operation of the terms of which may at a subsequent date result in a change in control of the issuer.

Instruction. Paragraph (f) does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the issuer.

* * * * *

(Secs. 13, 14(a), 15(d), 23(a), 48 Stat. 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 4, 5, 6, 78 Stat. 569, 570–574; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 10, 18, 89 Stat. 119, 155 (15 U.S.C. 78m, 78n(a), 78o(d), 78w(a)); Secs. 12(e), 20(a), 49 Stat. 823, 833 (15 U.S.C. 79l(e), 79t(a)); Secs. 20(a), 38(a), 54 Stat. 822, 841 (15 U.S.C. 80a–20(a), 80a–37(a)).)

DATE OF EFFECTIVENESS

The amendments to Rules 13a–11 and 15d–11, to the Form 8–K, and to Schedule 14A shall be effective for events which occur subsequent to February 28, 1977. The amendments to Rules 13a–13 and 15d–13 and to Form 10–Q shall be effective for quarterly periods beginning after December 31, 1976. The amendments to the Form 10–K shall be effective for reports filed for periods beginning after March 31, 1976.

STATUTORY AUTHORITY FOR AMENDMENTS

The foregoing amendments are adopted pursuant to Sections 13, 14(a), 15(d) and 23(a) of the Securities Exchange Act of 1934, Sections 12(e) and 20(a) of the Public Utility Holding Company Act of 1935, and Sections 20(a) and 38(a) of the Investment Company Act of 1940. Pursuant to Section 23(a) of the Securities Exchange Act, the Commission has considered the effect that the proposed amendments would have on competition and has concluded that, to the extent the amendments impose burdens on competition, such burdens are necessary and appropriate in furtherance of the purposes of the securities laws.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 13, 1977.

[FR Doc.77–2225 Filed 1–24–77;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER A—GENERAL

[Docket No. 76N-0414]

PART 2—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

Subpart D—Public Hearing Before a Public Advisory Committee

ESTABLISHMENT OF PROCEDURES; CORRECTION

In FR Doc. 76-34666, appearing at page 52148 in the FEDERAL REGISTER of Friday, November 26, 1976, on page 52164, in § 2.340 List of standing advisory committees, paragraph (c)(17)(ii) is corrected in the sixth line by changing the word "allergenic" to read "allergic."

Dated: January 17, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-2087 Filed 1-24-77;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7465]

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

Community Trust's Governing Body; Effect of Restrictions and Conditions

By notice of proposed rulemaking appearing in the FEDERAL REGISTER for November 17, 1976 (41 FR 50698), amendments to Income Tax Regulations (26 CFR Part 1) were proposed under section 170(b)(1)(A) of the Internal Revenue Code of 1954, relating to the definition of a community trust, and section 507(b)(1) of the Code, relating to the termination of private foundation status. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, certain changes were made, and the proposed amendments of the regulations, subject to the changes, are adopted by this document.

These final regulations contain rules relating to the powers that the governing body of a community trust must possess, such as, the power to modify restrictions and conditions on the distributions from funds to specified distributees and the power to replace any participating trustee, custodian, or agent.

In addition, these final regulations provide guidance under § 1.507-2(a)(8) (relating to the effect of restrictions and conditions upon the distribution of net assets by a private foundation terminating its status as such) with regard to donor advice pertaining to distributions made by a public charity from the donor's fund to specified distributees.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

In view of the foregoing, the Income Tax Regulations (26 CFR Part 1) are amended as follows:

Paragraph 1. Section 1.170A-9(e)(11) is amended by revising paragraph (e)(11)(iv), by adding a heading to paragraph (e)(11)(v)(A) and by adding paragraph (e)(11)(v)(B), (C), (D), (E) and (F) to read as follows:

§ 1.170A-9 Definition of section 170(b)(1)(A) organizations.

* * * * *

(e) *Definition of section 170(b)(1)(A)(vi) organization.* * * *

(11) *Community trusts; requirements for treatment as a single entity.* * * *

(iv) *Common instrument.* All funds of the organization must be subject to a common governing instrument or a master trust or agency agreement (herein referred to as the "governing instrument"), which may be embodied in a single document or several documents containing common language. Language in an instrument of transfer to the community trust making a fund subject to the community trust's governing instrument or master trust or agency agreement will satisfy the requirements of paragraph (e)(11)(iv) of this section. In addition, if a community trust adopts a new governing instrument (or creates a corporation) to put into effect new provisions (applying to future transfers to the community trust), the adoption of such new governing instrument (or creation of a corporation with a governing instrument) which contains common language with the existing governing instrument shall not preclude the community trust from meeting the requirements of such paragraph (e)(11)(iv).

(v) *Common governing body—(A) In general.* * * *

(B) *Powers of modification and removal.* Except as provided in paragraph (e)(11)(v)(C) of this section, the governing body must have the power in the governing instrument, the instrument of transfer, the resolutions or by-laws of the governing body, a written agreement, or otherwise—

(*1*) To modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the sole judgment of the governing body (without the necessity of the approval of any participating trustee, custodian, or agent), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served;

(*2*) To replace any participating trustee, custodian, or agent for breach of fiduciary duty under State law; and

(*3*) To replace any participating trustee, custodian, or agent for failure to produce a reasonable (as determined by the governing body) return of net income (within the meaning of paragraph (e)(11)(v)(F) of this section) over a reasonable period of time (as determined by the governing body).

The fact that the exercise of any such power in paragraph (e)(11)(v)(B) (*1*), (*2*) or (*3*) of this section is reviewable by an appropriate State authority will not preclude the community trust from meeting the requirements of paragraph (e)(11)(v)(B) of this section.

(C) *Transitional rule.* (*1*) Notwithstanding paragraph (e)(11)(v)(B) of this section, if a community trust meets the requirements of paragraph (e)(11)(v)(C)(*2*) of this section, then in the case of any instrument of transfer which is executed before July 19, 1977 and is not revoked or amended thereafter (with respect to any dispositive provision affecting the transfer to the community trust), and in the case of any instrument of transfer which is irrevocable on January 19, 1982, the governing body must have the power to cause proceedings to be instituted (by request to the appropriate State authority)—

(*i*) To modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the judgment of the governing body such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served; and

(*ii*) To remove any participating trustee, custodian, or agent for breach of fiduciary duty under State law.

The necessity for the governing body to obtain the approval of a participating trustee to exercise such a power shall be treated as not preventing the governing body from having such power, unless (and until) such approval has been (or is) requested by the governing body and has been (or is) denied.

(*2*) Paragraph (e)(11)(v)(C)(*1*) of this section shall not apply unless the community trust meets the requirements of paragraph (e)(11)(v)(B) of this section, with respect to funds other than those under instruments of transfer described in the first sentence of such paragraph (e)(11)(v)(C)(*1*), by January 19, 1978, or such later date as the Commissioner may provide for such community trust, and unless the community trust does not, once it so complies, thereafter solicit for funds that will not qualify under the requirements of such paragraph (e)(11)(v)(B).

(D) *Inconsistent State law.* (*1*) For purposes of paragraph (e)(11)(v)(B)(*1*), (*2*), or (*3*) or (C)(*1*) (*i*) or (*ii*) or (E) of this section, if a power described in such a provision is inconsistent with State law even if such power were expressly granted to the governing body by the governing instrument and were accepted without limitation under an instrument of transfer, then the community trust will be treated as meeting the requirements of such a provision if it meets such requirements to the fullest

extent possible consistent with State law (if such power is or had been so expressly granted).

(2) For example, if, under the conditions of paragraph (e)(11)(v)(D)(*1*) of this section, the power to modify is inconsistent with State law, but the power to institute proceedings to modify, if so expressly granted, would be consistent with State law, the community trust will be treated as meeting such requirements to the fullest extent possible if the governing body has the power (in the governing instrument or otherwise) to institute proceedings to modify a condition or restriction. On the other hand, if in such a case the community trust has only the power to cause proceedings to be instituted to modify a condition or restriction, it will not be treated as meeting such requirements to the fullest extent possible.

(3) In addition, if, for example, under the conditions of paragraph (e)(11)(v)(D)(*1*) of this section, the power to modify and the power to institute proceedings to modify a condition or restriction is inconsistent with State law, but the power to cause such proceedings to be instituted would be consistent with State law, if it were expressly granted in the governing instrument and if the approval of the State Attorney General were obtained, then the community trust will be treated as meeting such requirements to the fullest extent possible if it has the power (in the governing instrument or otherwise) to cause such proceedings to be instituted, even if such proceedings can be instituted only with the approval of the State Attorney General.

(E) *Exercise of powers.* The governing body shall (by resolution or otherwise) commit itself to exercise the powers described in paragraph (e)(11)(v)(B), (C) and (D) of this section in the best interests of the community trust. The governing body will be considered not to be so committed where it has grounds to exercise such a power and fails to exercise it by taking appropriate action. Such appropriate action may include, for example, consulting with the appropriate State authority prior to taking action to replace a participating trustee.

(F) *Reasonable return.* In addition to the requirements of paragraph (e)(11)(v)(B), (C), (D) or (E) of this section, the governing body shall (by resolution or otherwise) commit itself to obtain information and take other appropriate steps with the view to seeing that each participating trustee, custodian, or agent, with respect to each restricted (within the meaning of paragraph (e)(13)(x) of this section) trust or fund that is, and with respect to the aggregate of the unrestricted trusts or funds that are, a component part of the community trust, administers such trust or fund in accordance with the terms of its governing instrument and accepted standards of fiduciary conduct to produce a reasonable return of net income (or appreciation where not inconsistent with the community trust's need for current income), with due regard to safety of principal, in furtherance of the exempt purposes of the community trust (except for assets held for the active conduct of the community trust's exempt activities). In the case of a low return of net income (and, where appropriate, appreciation), the Internal Revenue Service will examine carefully whether the governing body has, in fact, committed itself to take the appropriate steps.

* * * * *

Paragraph 2. Section 1.507-2(a)(8) is amended by revising paragraph (a)(8)(iv)(A) to read as follows:

§ 1.507-2 Special rules; transfer to or operations as, public charity.

(a) *Transfer to public charities.* * * *

(8) *Effect of restrictions and conditions upon distributions of net assets.* * * *

(iv) *Adverse factors.* The presence of any of the following factors will be considered as preventing the transferee "from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes" (within the meaning of paragraph (a)(8)(i) of this section):

(A) *Distributions.* (*1*) With respect to distributions made after April 19, 1977, the transferor private foundation, a disqualified person with respect thereto, or any person or committee designated by, or pursuant to the terms of an agreement with, such a person (hereinafter referred to as "donor"), reserves the right, directly or indirectly, to name (other than by designation in the instrument of transfer of particular section 509(a)(1), (2), or (3) organizations) the persons to which the transferee public charity must distribute, or to direct the timing of such distributions (other than by direction in the instrument of transfer that some or all of the principal, as opposed to specific assets, not be distributed for a specified period) as, for example, by a power of appointment. The Internal Revenue Service will examine carefully whether the seeking of advice by the transferee from, or the giving of advice by, any donor after the assets have been transferred to the transferee constitutes an indirect reservation of a right to direct such distributions. In any such case, the reservation of such a right will be considered to exist where the only criterion considered by the public charity in making a distribution of income or principal from a donor's fund is advice offered by the donor. Whether there is a reservation of such a right will be determined from all of the facts and circumstances, including, but not limited to, the facts contained in paragraph (a)(8)(iv)(A)(*2*) and (*3*) of this section.

(*2*) The presence of some or all of the following factors will indicate that the reservation of such a right does not exist:

(*i*) There has been an independent investigation by the staff of the public charity evaluating whether the donor's advice is consistent with specific charitable needs most deserving of support by the public charity (as determined by the public charity);

(*ii*) The public charity has promulgated guidelines enumerating specific charitable needs consistent with the charitable purposes of the public charity and the donor's advice is consistent with such guidelines;

(*iii*) The public charity has instituted an educational program publicizing to donors and other persons the guidelines enumerating specific charitable needs consistent with the charitable purposes of the public charity;

(*iv*) The public charity distributes funds in excess of amounts distributed from the donor's fund to the same or similar types of organizations or charitable needs as those recommended by the donor; and

(*v*) The public charity's solicitations (written or oral) for funds specifically state that such public charity will not be bound by advice offered by the donor.

(*3*) The presence of some or all of the following factors will indicate the reservation of such a right does exist:

(*i*) The solicitations (written or oral) of funds by the public charity state or imply, or a pattern of conduct on the part of the public charity creates an expectation, that the donor's advice will be followed;

(*ii*) The advice of a donor (whether or not restricted to a distribution of income or principal from the donor's trust or fund) is limited to distributions of amounts from the donor's fund, and the factors described in paragraph (a)(8)(iv)(A)(*2*)(*i*) or (*ii*) of this section are not present;

(*iii*) Only the advice of the donor as to distributions of such donor's fund is solicited by the public charity and no procedure is provided for considering advice from persons other than the donor with respect to such fund; and

(*iv*) For the taxable year and all prior taxable years the public charity follows the advice of all donors with respect to their funds substantially all of the time.

* * * * *

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

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: January 19, 1977.

CHARLES M. WALKER,
Assistant Secretary of the Treasury.

[FR Doc.77-2372 Filed 1-19-77;5:07 pm]

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 7464]

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

Disclosure of Returns and Information

Temporary regulations relating to disclosures after December 31, 1976 by officers and employees of Federal agencies of returns and return information (including taxpayer return information) disclosed to such officers and employees

by the Secretary before January 1, 1977 for a purpose not involving tax administration.

This document contains temporary regulations on procedure and administration (26 CFR Part 404) under section 6103(a) 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. 1667) in order to provide rules governing disclosures after December 31, 1976 of returns and return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3), disclosed before January 1, 1977, by the Secretary to officers and employees of Federal agencies for a purpose not involving tax administration.

Prior to its amendment by Section 1202 of the Tax Reform Act of 1976, effective as of January 1, 1977, section 6103(a) authorized the disclosure of Federal tax data by the Secretary to Federal agencies for nontax related purposes as provided by orders of the President and implementing rules and regulations prescribed by the Secretary and approved by the President. The temporary regulations provide that returns and return information so disclosed by the Secretary to a Federal agency before January 1, 1977 pursuant to the authority of prior law (and orders of the President and implementing rules and regulations) may, with one restriction, be disclosed after December 31, 1976 by such agency for any purpose authorized by such prior law (and orders, rules, and regulations). The restriction on such further disclosure would be use of such returns or return information after December 31, 1976, by, or on behalf of, the Federal agency in an administrative or judicial proceeding. Such use would be restricted to an administrative or judicial proceeding described in section 6103 (i) (4) and then only if the requirements of section 6103(i) (4) are first met.

These temporary regulations are effective as of January 1, 1977.

ADOPTION OF AMENDMENT TO THE REGULATIONS

In order to prescribe temporary regulations on procedure and administration relating to disclosures after December 31, 1976 by officers and employees of Federal agencies of returns and return information (including taxpayer return information) disclosed to such officers and employees by the Secretary before January 1, 1977, for a purpose not involving tax administration pursuant to the authority of section 6103 of the Internal Revenue Code of 1954 (or any order of the President under section 6103 or rules and regulations thereunder prescribed by the Secretary and approved by the President) before amendment of such section by section 1202 of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1667), the following temporary regulations are hereby adopted:

§ 404.6103(a)-1 Disclosures after December 31, 1976 by officers and employees of Federal agencies of returns and return information (including taxpayer return information) disclosed to such officers and employees by the Secretary before January 1, 1977 for a purpose not involving tax administration.

(a) *General rule.* Except as provided by paragraph (b) of this section, a return or return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3) of the Internal Revenue Code, disclosed by the Secretary before January 1, 1977, to an officer or employee of a Federal agency (as defined in section 6103(b) (9)) for a purpose not involving tax administration (as defined in section 6103 (b) (4)) pursuant to the authority of section 6103 (or any order of the President under section 6103 or rules and regulations thereunder prescribed by the Secretary and approved by the President) before amendment of such section by Section 1202 of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1667) may be disclosed by, or on behalf of, such officer, employee, or agency after December 31, 1976, for any purpose authorized by such section (or such order or rules and regulations) before such amendment.

(b) *Exception.* Notwithstanding the provisions of paragraph (a) of this section, a return or return information (including taxpayer return information) disclosed before January 1, 1977, by the Secretary to an officer or employee of a Federal agency for a purpose unrelated to tax administration as described in paragraph (a) may, after December 31, 1976, be disclosed by, or on behalf of, such agency, officer, or employee in an administrative or judicial proceeding only if such proceeding is one described in section 6103(i) (4) and if the requirements of section 6103(i) (4) have first been met.

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 (c) of that section.

(This Treasury decision is issued under the authority contained in sections 6103(q) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1685, 68A Stat. 917; 26 U.S.C. 6103 (q), 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: January 19, 1977.

CHARLES M. WALKER,
Assistant Secretary of the Treasury.

[FR Doc.77-2364 Filed 1-19-77;4:51 pm]

[T.D. 7463]

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

Disclosure of Returns and Information

In the matter of temporary regulations relating to disclosures of returns and return information to and by officers and employees of the Department of Justice and other Federal agencies in connection with preparation for certain administrative and judicial proceedings (or investigations which may result in such proceedings).

This document contains temporary regulations on procedure and administration (26 CFR Part 404) under section 6103(h)(2) and (i) (1) and (2) 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. 1674) in order to provide rules governing disclosures of returns and return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3), to and by officers and employees of the Department of Justice and other Federal agencies in connection with preparation for certain administrative and judicial proceedings (or investigations which may result in such proceedings).

The temporary regulations describe the circumstances and conditions under which returns and return information may be disclosed to and by officers and employees of the Department of Justice and other Federal agencies in connection with preparation for, or investigations which may result in, proceedings involving tax administration (as defined in section 6103(b)(4)) and proceedings pertaining to the enforcement of specifically designated Federal criminal statutes (not involving tax administration) to which the United States or a Federal agency is or may be a party.

These temporary regulations are effective as of January 1, 1977.

ADOPTION OF AMENDMENT TO THE REGULATIONS

In order to prescribe temporary regulations on procedure and administration relating to disclosures of returns and return information (including taxpayer return information) to and by officers and employees of the Department of Justice and other Federal agencies in connection with preparation for certain administrative and judicial proceedings (or investigations which may result in such proceedings) under section 6103(h)(2) and (i)(1) and (2) 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. 1674), the following temporary regulations are hereby adopted and added to Part 404 of Title 26 of the Code of Federal Regulations:

§ 404.6103(h)(2)–1 Disclosure of returns and return information (including taxpayer return information) to and by attorneys and other officers and employees of the Department of Justice or other Federal agencies in preparation for proceeding or investigation involving tax administration and certain other matters.

(a) *Disclosure of returns and return information (including taxpayer return information) to and by attorneys of the Department of Justice.* (1) Returns and return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3) of the Internal Revenue Code, shall, to the extent provided by subparagraphs (A), (B), and (C) of paragraph (2) of section 6103(h) and subject to the requirements of section 6103(h)(3), be open to inspection by or disclosure to attorneys of the Department of Justice (including United States attorneys) personally and directly engaged in, and for their necessary use in, preparation for any proceeding (or for their necessary use in an investigation which may result in such a proceeding) before a Federal grand jury or any Federal or State court in a matter involving tax administration (as defined in section 6103(b)(4)), including any such proceeding (or any such investigation) also involving the enforcement of a related Federal criminal statute which has been referred by the Secretary to the Department of Justice.

(2) Returns and return information (including taxpayer return information) inspected by or disclosed to attorneys of the Department of Justice as provided in paragraph (a)(1) of this section may also be used by such attorneys, or disclosed by them to other attorneys (including United States attorneys and supervisory personnel, such as Section Chiefs, Deputy Assistant Attorneys General, Assistant Attorneys General, the Deputy Attorney General, and the Attorney General) of the Department of Justice where necessary in connection with preparation for any proceeding (or with an investigation which may result in such a proceeding) described in paragraph (a)(1) of this section or any proceeding (or investigation) involving any other matter related to tax administration or involving any matter brought before a Federal grand jury or Federal court pertaining to enforcement of a specific Federal criminal statute (other than one described in paragraph (a)(1) of this section) to which the United States is or may be a party, provided that such proceeding (or investigation) involves or arises out of the particular facts and circumstances giving rise to the proceeding (or investigation) described in paragraph (a)(1) of this section.

(b) *Disclosure of returns and return information (including taxpayer return information) by attorneys of the Department of Justice.* (1) Returns and return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3) of the Code, inspected by or disclosed to attorneys of the Department of Justice as provided by paragraph (a) of this section may be disclosed by such attorneys to other persons, including, but not limited to, persons described in paragraph (b)(2) of this section but only to the extent necessary in connection with the proper preparation for a proceeding (or in connection with an investigation which may result in such a proceeding) described in paragraph (a). Such disclosures may include, but are not limited to, disclosure where necessary—

(i) To properly accomplish any purpose or activity of the nature described in § 404.6103(k)(6)–1 which is essential to proper preparation for such proceeding (or to such investigation);

(ii) To properly interview, consult, depose, or interrogate or otherwise obtain relevant information from, the taxpayer to whom such return or return information relates (or such taxpayer's legal representative) or from any witness who may be called to give evidence in the proceeding; or

(iii) To properly conduct negotiations concerning, or obtain authorization for, settlement or disposition of the proceeding, in whole or in part, or stipulations of fact in connection with the proceeding.

Disclosure of a return or return information to a person other than the taxpayer to whom such return or return information relates or such taxpayer's legal representative to properly accomplish any purpose or activity described in this paragraph should be made, however, only if such purpose or activity cannot otherwise properly be accomplished without making such disclosure.

(2) Among those persons to whom returns and return information may be disclosed by attorneys of the Department of Justice as provided by paragraph (b)(1) of this paragraph are—

(i) Other officers end employees of the Department of Justice, such as, personnel of an office, board, division, or bureau of such department (for example, the Federal Bureau of Investigation or the Drug Enforcement Administration), clerical personnel (for example, secretaries, stenographers, docket and file room clerks, and mail room employees) and supervisory personnel (such as supervisory personnel of the Federal Bureau of Investigation or the Drug Enforcement Administration);

(ii) Officers and employees of another Federal agency (as defined in section 6103(b)(9)) working under the direction and control of any such attorney of the Department of Justice; and

(iii) Court reporters.

§ 404.6103(i)–1 Disclosure of returns and return information (including taxpayer return information) to and by officers and employees of the Department of Justice or another Federal agency in preparation for proceeding or investigation involving enforcement of Federal criminal statute not involving tax administration.

(a) *Disclosure of returns and return information (including taxpayer return information) to attorneys of the Department of Justice or another Federal agency.* Returns and return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3) of the Internal Revenue Code, shall, to the extent provided by paragraphs (1), (2), and (3) of section 6103(i) and subject to the requirements of such paragraphs (1) and (2), be open to inspection by or disclosure to attorneys of the Department of Justice (including United States attorneys) or of another Federal agency (as defined in section 6103(b)(9)) personally and directly engaged in, and for their necessary use in, preparation for any administrative or judicial proceeding (or their necessary use in an investigation which may result in such a proceeding) pertaining to enforcement of a specifically designated Federal criminal statute not involving or related to tax administration to which the United States or such agency is or may be a party.

(b) *Disclosure of returns and return information (including taxpayer return information) by attorneys of the Department of Justice or another Federal agency.* (1) Returns and return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3) of the Code, disclosed to attorneys of the Department of Justice or other Federal agency (as defined in section 6103(b)(9)) as provided by paragraph (a) of this section may be disclosed by such attorneys to other persons, including, but not limited to, persons described in paragraph (b)(2) of this section, but only to the extent necessary in connection with the proper preparation for a proceeding (or in connection with an investigation which may result in such a proceeding) described in paragraph (a). Such disclosures may include, but are not limited to, disclosures where necessary—

(i) To properly obtain the services of persons having special knowledge or technical skills (such as, but not limited to, handwriting analysis, photographic development, sound recording enhancement, or voice identification);

(ii) To properly interview, consult, depose, or interrogate or otherwise obtain relevant information from, the taxpayer to whom such return or return information relates (or such taxpayer's legal representative) or any witness who may be called to give evidence in the proceeding; or

(iii) To properly conduct negotiations concerning, or obtain authorization for, disposition of the proceeding, in whole or in part, or stipulations of fact in connection with the proceeding.

Disclosure of a return or return information to a person other than the taxpayer to whom such return or return information relates or such taxpayer's legal representative to properly accomplish any purpose or activity described in this paragraph should be made, however, only if such purpose or activity cannot otherwise properly be accomplished without making such disclosure.

(2) Among those persons to whom returns and return information may be

disclosed by attorneys of the Department of Justice or other Federal agency as provided by paragraph (b)(1) of this section are—

(i) Other officers and employees (including attorneys) of the Department of Justice (including an office, board, division, or bureau of such department, such as the Federal Bureau of Investigation or the Drug Enforcement Administration) or other Federal agency described in paragraph (b)(1) of this section, such as clerical personnel (for example, secretaries, stenographers, docket and file room clerks, and mail room employees) and supervisory personnel (for example, in the case of the Department of Justice, Section Chiefs, Deputy Assistant Attorneys General, Assistant Attorneys General, the Deputy Attorney General, the Attorney General, and supervisory personnel of the Federal Bureau of Investigation or the Drug Enforcement Administration);

(ii) Officers and employees of another Federal agency (as defined in section 6103(b)(9)) working under the direction and control of such attorneys of the Department of Justice or other Federal agency described in paragraph (b)(1) of this section; and

(iii) Court reporters.

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.

(This Treasury decision is issued under the authority contained in sections 6103(q) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1685, 68A Stat. 917; 26 U.S.C. 6103(q), 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: January 19, 1977.

CHARLES M. WALKER,
Assistant Secretary of the Treasury.

[FR Doc.77-2365 Filed 1-19-77;4:51 pm]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 678-77]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart B—Office of the Attorney General

ADMINISTRATION OF THE FEDERAL JUSTICE RESEARCH PROGRAM

This order amends the functions of the Office of Policy and Planning by assigning to it responsibility for the administration of the Federal Justice Research Program.

By virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301, Subpart B of Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

1. Paragraph (d) of § 0.6 is redesignated paragraph (e).

2. A new paragraph (d) of § 0.6 is inserted immediately after paragraph (c), to read as follows:

§ 0.6 Office of Policy and Planning.

* * * * *

(d) Administer the Federal Justice Research Program, a departmental program for the conduct, by contract or otherwise, of research bearing upon federal civil and criminal justice.

Dated: January 14, 1977.

EDWARD H. LEVI,
Attorney General.

[FR Doc.77-2192 Filed 1-24-77;8:45 am]

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

PART 657—TOBACCO MANUFACTURES INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended (29 U.S.C. 205, 206, 208)), including the Fair Labor Standards Amendments of 1974 (Pub. L. 93-259; 88 Stat. 55), and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and by means of Administrative Order No. 647 (41 FR 40254), the Seretary of Labor appointed and convened Industry Committee No. 137 for Tobacco Manufactures Industry, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6 of the Act to such employees, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its finding of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee 137 are hereby published, amending §§ 657.2 (a)(1), (a)(2), (a)(3), and (a)(5) of Part 657, Title 29, Code of Federal Regulations. The other wage rates have heretofore reached the mainland rates and are continued.

As amended § 657.2 reads as follows:

§ 657.2 Wage rates.

* * * * *

(a) *Pre-1961 coverage classifications.*
* * *

(1) *Filler tobacco processing classification.* (i) The minimum wage for this classification is $1.56 an hour through April 30, 1977. Under section 6(c) of the Act, the rate is increased $.15 on May 1, 1977, and an additional $.15 on May 1 of each succeeding year until the mainland rate is reached.

* * * * *

(2) *Wrapper type tobacco processing classification.* (i) The minimum wage for this classification is $1.85 an hour through April 30, 1977. Under section 6(c) of the Act, the rate is increased $.15 on May 1, 1977, and an additional $.15 on May 1 of each succeeding year until the mainland rate is reached.

* * * * *

(3) *Machine threshing, other operations classification.* (i) The minimum rate for this classification is $2.07 an hour through April 30, 1977. Under section 6(c) of the Act, the rate is increased $.15 on May 1, 1977, and an additional $.15 on May 1 of each succeeding year until the mainland rate is reached.

* * * * *

(5) *Other products and activities classification.* (i) The minimum rate for this classification is $2.13 an hour through April 30, 1977. Under section 6(c) of the Act, the rate is increased $.15 on May 1, 1977, and an additional $.15 on May 1 of each succeeding year until the mainland rate is reached.

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062 and 1064, as amended (29 U.S.C. 205, 206, 208).)

Effective date: The effective date of these amendments is February 10, 1977.

Signed at Washington, D.C., on this 14th day of January 1977.

RONALD J. JAMES,
Administrator, Wage and Hour Division, United States Department of Labor.

[FR Doc.77-2135 Filed 1-24-77;8:45 am]

CHAPTER XXVI—PENSION BENEFIT GUARANTY CORPORATION

PART 2608—INTERIM REGULATION ON ALLOCATION OF ASSETS

Amendment to Allow Subclasses

Correction

In FR Doc. 77-1132 appearing on page 2677 in the issue of Thursday, January 13, 1977 on page 2678, 1st column, the 2nd paragraph, beginning with the amendatory language, the document should be corrected to read as follows:

In consideration of the foregoing part 2608 of Chapter XXVI, Title 29, is amended as follows:

1. Sections 2608.7(b)(1)(i)(C) and (b)(2)(i)(A) are revised to read:

§ 2608.7 Priority category 2 benefits.

* * * * *

(b) * * *
(1) * * *
(i) * * *

* * * * *

(C) Interest, if any, on the sum of the amounts determined under paragraphs (b)(1)(i) (A) and (B) of this section compounded annually at the applicable rate under section 204(c)(2)(C)(iii) of the Act, from the beginning of the first plan year to which section 204(c) of the Act applies to the earlier of the participant's retirement date or the date of plan termination.

* * * * *

(2) * * *

(i) * * *

(A) Add accumulated employee contributions computed under paragraph (b)(1) of this section and interest at the applicable rate on such contributions under section 204(c)(2)(C)(iii) of the Act from the date of plan termination to the date on which the participant would attain normal retirement age.

2. Section 2608.10(a) is revised to read:

§ 2608.10 Priority category 5 benefits.

(a) Priority category 5 benefits consist of all nonforfeitable benefits payable with respect to a participant in a plan, other than benefits derived from voluntary employee contributions assigned to priority category 1 and all benefits assigned to priority categories 2, 3 or 4. The only benefits payable as annuities contained in this section are those benefits payable as annuities to which a participant is entitled under § 2605.5 of this chapter.

* * * * *

Title 30—Mineral Resources

CHAPTER II—GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

PART 211—COAL MINING OPERATING REGULATIONS

Surface Management; Final Regulations

On December 6, 1976, the Department of the Interior proposed several changes in the regulations contained in 30 CFR Part 211 as part of its efforts to comply with the requirements of the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083. The proposed changes were published in 41 FR 53360 (1976). This rulemaking adopts final changes based on that proposed rulemaking. The changes from the original proposal are explained in a related rulemaking that amends Title 43 CFR. That rulemaking is published today in the FEDERAL REGISTER at page 4442. This rulemaking notice also contains several changes in the regulations in 30 CFR Part 211 that were not previously proposed. The changes are minor and are made to clarify existing requirements or to conform the language of minor provisions of the regulations to the intent of the drafters. The Department believes it is unnecessary to publish these changes as proposed rulemaking because they are minor, do not change existing right or impose new requirements. Comments on these latter changes may be directed to the Director, U.S. Geological Survey, The National Center, Reston, Virginia, 22092. Appropriate action will be taken on any comments.

Under the authority granted to the Secretary of the Interior, Title 30 CFR Part 211 is amended to read as follows:

§ 211.1 [Amended]

1. The thirteenth line of 30 CFR 211.1(b) is amended by the insertion of "economic" between "maximum" and "recovery."

§ 211.2 [Amended]

2. 30 CFR 211.2(r) is amended as follows:

(r) *Lessee* means any person or persons, partnership, association, corporation, public body, or governmental entity to whom a coal lease is issued, subject to the regulations in this Part, or an assignee of such a lease under an approved assignment.

3. 30 CFR 211.2(s) is amended by the substitution of a comma for the period at the end and the addition of the following: "or any person, association, corporation, public body, or governmental entity to whom an exploration license is issued pursuant to section 201(b) of Title 30 of the United States Code."

§ 211.10 [Amended]

4. The first sentence in 30 CFR 211.10(a)(1) is amended to read as follows:

(a) *General.* (1) Before conducting any operation on leased, permitted, or licensed land other than casual use, the operator shall submit to the Mining Supervisor, and obtain his approval of an exploration or mining plan; on any lease issued or readjusted after August 4, 1976, the first mining plan shall be submitted to the Mining Supervisor not later than three years after the effective date of the lease or three years after the date of readjustment, whichever is later.

5. 30 CFR 211.10(c)(6) is amended to read as follows:

(ii) The method of mining, including mining sequence and proposed production rate; the plan for any lease issued or readjusted after August 4, 1976, must provide for the mining of all the reserves of the logical mining unit of which the lease is a part in a period of not more than forty years; that period shall begin on the date of approval of the first mining plan for that logical mining unit.

6. 30 CFR § 211.10(d)(1) is amended by adding a sentence after the last sentence of that paragraph which says: "Where the land involved in the mining plan is under the surface jurisdiction of an agency other than the Department of the Interior, that other agency must consent to the terms of the approval of the mining plan."

§ 211.40 [Amended]

7. Title 30 CFR § 211.40(a)(12) is amended by adding a new subsection (iii) to read as follows:

(iii) For the purpose of paragraph (a)(12)(i) hereof, "access roads" shall not include temporary roads constructed within a working pit for the purpose of use by equipment and personnel for access to the coal being mined.

§ 211.5 [Amended]

8. Title 30 CFR § 211.5(c)(1)(i) is amended to read as follows:

(i) Approval of a new mining plan, or any major modification thereof, and approval of any modification to a previously approved mining or exploration plan which contains a request for a variance pursuant to § 211.74 hereof.

Dated: January 19, 1977.

THOMAS S. KLEPPE,
Secretary of the Interior.

[FR Doc.77-2257 Filed 1-24-77;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

PART 3040—ENVIRONMENTAL AND SAFETY

Subpart 3041—Surface Management

This rulemaking adopts as final two conforming changes to Title 43 CFR Subpart 3040. The first of the changes is directly related to actions that the Department of the Interior has taken under 30 CFR 211.75(a). Under that section, the Department may, under certain circumstances adopt the requirements of a state's reclamation law as Federal. The Department has taken this action in Wyoming, 41 FR 53793, and proposed to do so in Montana, 41 FR 39036. The amendment made in this rulemaking codifies the Department's stated position that the requirements of 43 CFR subpart 3041 are effected by adoption of State law as Federal law. The second amendment in this rulemaking clarifies that the definition of access roads in 43 CFR § 3041.2-2(f)(12) does not include temporary roads in the mining pit. The Department has already made a similar amendment to the requirement on this point in 30 CFR 211.40(a)(12). The Department has not published either of these regulations as proposed rulemaking because it has concluded that publication as a proposed rule is unnecessary because of the minor nature of these changes. Comments on these changes may be filed with the Director, Bureau of Land Management, (210), Washington, D.C. 20240, and the Department will take appropriate action on any comments.

Under the authority granted to the Secretary of the Interior, Subpart 3041 of Title 43 CFR is amended to read as follows:

* * * * *

1. Title 43 CFR § 3041.2-2(f) is amended by adding after "subpart" and before ":", the following, "except as otherwise provided by the action of the Secretary under 30 CFR § 211.75(a)."

2. Title 43 CFR § 3041.2-2(f)(12), is amended by adding a new paragraph (f)(12)(iii), as follows:

§ 3041.2-2 Obligations and standards of performance.

* * * * *

(f) * * *

(12) * * *

(iii) For the purpose of paragraph (f)(12)(i) of this section, "access roads" shall not include temporary roads constructed within a working pit for the pur-

pose of use by equipment and personnel for access to the coal being mined.

Dated: January 19, 1977.

THOMAS S. KLEPPE,
Secretary,
Department of the Interior.

[FR Doc.77-2259 Filed 1-24-77;8:45 am]

COMPETITIVE COAL LEASING SURFACE MINING REGULATIONS: COAL

Final Regulations

This rulemaking notice discusses and adopts as final rules proposals that were made in three separate rulemaking notices: (1) proposed revisions to the Energy Minerals Activity Recommendation System (EMARS), 41 FR 47258; proposed revisions to miscellaneous regulations, 41 FR 48124; and proposed revisions to surface management coal mining operating regulations, 41 FR 53360. Each of these proposals was made to ensure that the Department of the Interior's coal leasing and management regulations conformed to the requirements of the Federal Coal Leasing Amendments Act of 1975 (FCLAA), 90 Stat. 1083, Because these three sets of proposed regulations are closely related, the Department is publishing the final rulemaking for each in this consolidated proceeding.

The Department has fully considered all of the comments that were received during the comment periods for these regulations, and has considered to the extent possible comments received after that time. This notice discusses those comments that the Department feels are of the greatest public interest. The Department has made several changes in the proposed regulations in response to the comments that were received. The notice discusses most of these important changes. These changes have also forced the Department to renumber the proposed regulations. Consequently, the section numbers in this rulemaking may not correspond to those in the proposals.

DISCUSSION OF CHANGES AND COMMENTS

1. *Confusion Over the Relationship Between EMARS and the Surface Management Regulations in 43 CFR Part 3040.* Although the Department intended that EMARS should contain the major set of requirements for competitive coal leasing, the regulations in 43 CFR Part 3040 also have contained language that is related to leasing procedures. The final rulemaking clarifies the role of both sets of regulations by removing all leasing aspects of Part 3040 and, where necessary, placing the appropriate language in the EMARS subpart, 3525. Part 3040 retains its intended function of establishing standards and procedures for the surface management of future and existing federal coal leases. To ensure that the changes made in Part 3040 are understood, this rulemaking notice reprints that entire subpart as revised. The changes made in Part 3040 are not substantive changes and do not affect or change the standards or procedures that will be used. Although this revision of Part 3040 was not included in the earlier proposals, the Department has concluded that it is unnecessary to publish them as proposed rulemaking because they make no changes in the prior standards and are essentially a recodification of the existing regulations. The public is encouraged to bring to the attention of the Department any deficiencies in the changes. If further amendments are required, the Department will make the necessary changes at an appropriate time.

The major change in subpart 3041 is the removal of the section on lease applications. The EMARS regulations, in section 3525.9, now list the exclusive requirements for coal lease applications. A person who wishes to file an application for a competitive coal lease will have to comply with this section. The application procedures in other parts of 43 CFR Part 3500, such as § 3521.2–2, do not apply to competitive coal leasing. The procedures in subpart 3525 do apply. The revised application procedures also make explicit what was implicit in previous regulations: the Department will only accept competitive lease applications for short-term competitive lease sales. Section 3525 of the final regulations restates the short-term leasing criteria that the Department adopted in May 1973, and that Secretary Kleppe reaffirmed his policy statement in January 1976. The criteria require that the coal to be leased will be used to maintain an existing operation or be used as a reserve for production in the near future for a new mine. Under the second standard, operation must be scheduled to commence within 3 years, and delivery of the coal must be expected to commence in 5 years. Short-term leases will be issued in compliance with all of the EMARS procedures except for nominations and the coal lease schedule. Except for those situations, the Department, under EMARS, will rely on nominations (and competitive coal lease applications on file) to indicate the need for additional coal leasing. To help ensure that nominations will be requested with sufficient frequency, the final regulations specifically authorize any person to ask for a call for nominations. This request is informational only, and does not trigger any Bureau action.

One other change was made in the regulations in Part 3040. Existing 3040 regulations refer to "leases, permits or licenses." Since Congress repealed the Department's authority to issue prospecting permits, the references throughout that part to permits have been deleted. (The references in Part 211 have been retained since they deal with post-issuance matters.)

2. *Clarification of EIS Requirements.* One comment requested the Department to clarify whether under EMARS, the Department would prepare an EIS on both a coal lease and a mining plan. The Department has been preparing impact statements when it proposes to approve mining plans that will significantly affect the environment. However, all of the mining plans to date cover leases for which no EIS was done prior to lease issuance. Where the Department has prepared an impact statement prior to lease issuance, it does not expect it will have to do a second statement at the mine plan stage since the impacts of mining will have been adequately considered in the leasing EIS.

3. *Special Leasing Opportunities.* The preamble to the draft regulations stated that the Department would choose a reasonable number of tracts for special leasing opportunities on an ad hoc basis. Comments on this proposal were generally favorable, and the final regulations retain this flexibility. The proposed regulations had a requirement that the Department would hold a special leasing opportunity sale only if a public body nominated tracts in a state. Because the Department wishes to promote this anti-monopoly aspect of EMARS system, the nomination requirement has been eliminated. The Department will consider timely post-nomination requests for special leasing opportunities to the extent that it is feasible. The Department urges public bodies to participate extensively in the nomination process since it is the major way the Department receives information on the need for federal coal leasing.

Several comments inquired whether a public body which has or will engage in a joint venture with a private company qualifies for the special leasing opportunity. Each situation will require separate analysis. In general, arrangements of that type will be satisfactory if there is no attempt to circumvent the obligation to use the federal coal for the benefit of the members of the public body. For example, a public body would not be disqualified from participating in a special leasing opportunity if it intended to burn the coal from a federal lease in a plant controlled by a private corporation if the power delivered to the public body was essentially equivalent to the coal it supplied to the power plant.

A comment by a coal association suggests that where both public bodies and others nominate a tract, public bodies should have to bid against private bodies and that "[t]he special leasing opportunity would derive from the fact that if a public body were willing to pay more than the highest bid made by a private company, the public entity would be allowed to lease the tract." This suggestion would negate totally the leasing preference granted in the Act and has been rejected. Some of the comments suggested that the definition of public bodies proposed in 43 CFR 3500.0–5 was too broad, others that it was too narrow. The Department has reviewed the legislative history of the Act and has concluded that although the term "public bodies" was directed primarily at rural electric cooperatives and other consumer-controlled utilities, it is broad enough to encompass a broad range of non-profit organizations. The final regulations have been amended by adding general language to include organizations similar to the ones actually named in section 3500.0–5.

Finally, one comment expressed concern whether public bodies could bid in regular lease sales. The clear answer to that question is that they may bid in both special and regular sales.

4. *Disqualification of Holder of Federal Leases for 10 Years.* Section 3525.3, as proposed, codifies the requirement in the FCLAA that disqualifies certain holders of federal coal leases from participating in competitive lease sales. One comment correctly noted that the proposed regulation omitted the statutory exception for operations that are interrupted by strikes, the elements or casualties not attributable to the lessee, or where advance royalities are being paid. The final regulations correct this omission, and renumber the proposed section as 3525.4.

5. *Attorney General Consultation.* Several comments suggested that due process and the FCLAA required the Department to hold a hearing prior to rejecting a coal lease on the basis of a determination by the Attorney General that the lease issuance would create a situation inconsistent with the anti-trust laws. The Department does not agree and has not changed this requirement. The purpose of the hearing requirement in section 15 of the FCLAA is to establish the procedures that will permit the Secretary to issue a lease despite an adverse recommendation by the Attorney General. The Secretary is not required to hold a hearing prior to rejecting a bid, in this and other situations, because the bidders do not have the type of interest protected by the due process clause of the Constitution. Also, the Departments of Interior and Justice are still determining what information a bidder must submit, and consequently, the regulations remain general on that point. The regulations have been changed in one respect. The proposed regulation stated that the Secretary could not act until 30 days after he requested the advice of the Attorney General, but did not state whether the Attorney General's failure to respond on time permitted the Secretary to issue the lease. The final regulations state that the Secretary may proceed with the issuance of a lease if the Attorney General does not respond to the request for an opinion in 30 days. Finally, the regulations clarify that the Department may offer a lease to the second high bidder if, for any reason, the high bidder is unable to receive the lease.

6. *Deferment of Bonus Payment.* Several of the comments suggested that the Department should defer the bonus payments for a 10-year period. The Department has decided to retain the 5-year schedule, as proposed, because it feels it is a good balance between the need to promote competition by reducing front-end costs and the need to have sufficient holding costs to deter speculative holdings of leases. However, the final rules contain one change from the rule proposed on deferred payment sales. The proposed rule stated that at least 50 per cent of all sales would be on a deferred payment basis. To maximize the opportunity of small businesses to compete for federal coal leases, section 3525.7 of the final regulations requires that all competitive lease sales be on a deferred payment basis.

7. *Confidentiality of Information.* Some of the comments requested that the Department omit the language in the proposed section 3525.10(f), and substitute the language in section 3520.1–2(f) of the regulations adopted on June 1, 1976, 41 FR 22053. Both sections state how information submitted under the EMARS will be treated under the Freedom of Information Act. The former section merely states that the Department will treat information in accordance with the Freedom of Information Act. The latter section states which specific type of information will be withheld from disclosure. The final regulations, section 3525.8(f), retain the language in the October 28, 1976 proposal. There are two reasons for this decision. First, the Department is currently preparing and will publish shortly extensive Freedom of Information regulations for mineral information. These regulations, if adopted, would permit the Department to adjudicate whether information is subject to disclosure at the time of its submission. Second, the Department's authority to withhold the information specified in the June 1, 1976, regulations has been challenged in a Freedom of Information suit which is currently pending before the Department. For both of these reasons, the Department prefers to leave its regulations in a general format.

8. *Limitation of Overriding Royalties.* One comment suggested that the Department institute limitations on overriding royalties to limit speculation in federal coal leases. The Department has regulations on this topic that are found in 43 CFR § 3503.3–2(c)(3)(i). If the Department determines that the limitations in this section are inadequate to prevent speculation in federal coal leases, it may reduce the limits in the section. The final rulemaking does not change the requirements of the existing regulations.

9. *Land-use Plans.* Several comments requested additional clarification of the requirements for a land-use plan. Some of the comments also suggested that the Department's Management Framework Plans were not plans which complied with the requirements of the Federal Coal Leasing Amendments Act. The Department has taken steps in these final regulations to clarify what minimum requirements are necessary to have an adequate land-use plan. The Federal Coal Leasing Amendments Act does not explain what is meant by the term "comprehensive land-use plans." Language in the legislative history of the Act suggests that the definition of a comprehensive land-use plan should be taken from what was eventually passed as the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, S. Rep. No. 94–296, 94th Cong., 1st Sess. 14 (1975). The Department is required by that Act to use a land-use planning system that conforms to its requirements. Since the Department will use the same planning system for coal leasing as well as other activities, the Department has included in the EMARS regulations a list of the planning system requirements of the Federal Land Policy and Management Act. These are included in section 3525 of the final regulations.

The Department reiterates its conclusion that the Department's existing planning processes meet the requirements of both the Federal Coal Leasing Amendments Act and the Federal Land Policy and Management Act. The legislative history of both Acts confirms that Congress was both aware of and satisfied with the Department's planning system. 122 Cong. Rec. E. 3667 (daily ed. June 29, 1976); H. Rep. No. 94–1163, 94th Cong., 2d Sess. 5 (1976). The only real changes that will be required in the Department's planning system are the addition of specific figures on underground and surface coal deposits and a more formalized public participation process. The Department will also propose for adoption as formal regulations, the procedures and requirements of its planning system. The Department is now preparing proposed land-use planning regulations. These final regulations drop the reference to the Management Framework plans, and instead refer to a land-use planning system.

10. *Hearings and Meetings.* Several comments criticized the Department's proposed EMARS regulations for their failure to comply with the hearing requirements of the Federal Coal Leasing Amendments Act. In particular, criticism was directed at the use of the term "meeting" to describe the opportunity for public input prior to the adoption of a land-use plan. Traditionally, the Department has used the term "hearing" to denote a proceeding conducted by an Administrative Law Judge, and the term "meeting" to denote a proceeding that is conducted by other employees. Despite the Department's past practice, the final regulations do call for a "hearing" before a land-use plan is adopted if one is requested. The regulations go on to define the requirements of a hearing. Only two requirements are present. First, the Department (or the other agency which prepares a land-use plan) must allow the orderly presentation of testimony by those who wish to do so. Second, if a request is made in advance of the hearing, a complete transcript of the hearing must be made. The hearing described by the regulations is not a formal adversary proceeding that requires findings of fact or a recommended decision and does not have to be conducted by an Administrative Law Judge. Its sole function is to ensure that the agency which prepares the plan has given the public an adequate opportunity to comment on the proposed action. The regulations explicitly exempt from this more formal hearing procedure land-use plans which were adopted prior to the enactment of the Federal Coal Leasing Amendments Act if the public had an adequate opportunity to comment on the adoption of the plan.

The final regulations also clarify the requirements of the hearing that is to be conducted on the proposed lease tracts prior to a final decision. Under the final regulations, this hearing will be conducted on the record, and held after the

environmental analysis process has been completed, after the technical examination has been completed, but before the Bureau of Land Management has made recommendations on a proposed coal lease schedule to the Secretary. The regulations do not require the use of an Administrative Law Judge, although one may be used.

11. *Lease modifications.* A request was made that § 3524.2–1(a), which provides that the modification of a lease by adding contiguous coal deposits shall not exceed 160 acres or the same number of acres as that in the original lease, be modified by adding the words "whichever is less." This suggestion was adopted to clarify the intent of the section.

The proposed regulations did not require that a lease modification change the terms at the original lease and a suggestion was made to modify § 3524.2–1(c) to provide that the Secretary prescribe terms and conditions applicable to all the acreage in a modified lease. The Department has revised the section to make that requirement mandatory. The language of section 13 of the Federal Coal Lease Amendments Act states that the modified lease (the original lease plus the added acreage) must have lease terms consistent with the Act.

12. *Use of Rentals as a set-off against royalties.* Prior to the enactment of the Federal Coal Leasing Amendments Act, the Mineral Leasing Act and the Department's regulations required rentals to be credited against royalties that were owed for that year. The Federal Coal Leasing Amendments Act repealed that authority and the final regulations, in 43 CFR 3503.3–1 reflect that loss of authority. The Department will continue to allow holders of leases issued before August 4, 1976, to retain this offset until their leases are readjusted.

13. *Preliminary Plans.* The revised regulations also clarify that the requirement to submit a preliminary plan is limited to those who file an application for a lease. Nominators are not required to submit a preliminary plan. The information required by a preliminary plan is a good guide, however, to the type of information that the Bureau desires to receive under the nomination process.

14. *Nominations.* The final regulations retain the one-tier nomination system that was adopted in the June 1, 1976, regulations even though the response to the one-tier system has not been entirely favorable. The one-tier system, which was instituted at the request of the Western Governor's Regional Energy Policy Organization, does give the public opportunity to comment on the industry nominations after the nominations process has been held. This opportuntiy comes at the public meeting that will be held after the nominations are received (which may be combined with the hearing on adoption of a land-use plan) but before the Department chooses proposed coal lease tracts for environmental analysis. This is now included in 43 CFR 3525.9(1). The public may also comment on the nominations through the normal land-use planning process, and at the hearings on environmental impact statements, and at the final hearing prior to the Secretary's decision whether to adopt a coal lease schedule. The Department has concluded that because these opportunities are available, the one-tier system is satisfactory.

15. *Reasonable Prices.* One comment asserted that the Department was not fulfilling its responsibility under section 30 of the Mineral Leasing Act to ensure that coal from federal leases was sold at reasonable prices. As the comment noted, the Department has reserved in its leases the right to take adequate measures to ensure the sale of coal from federal coal leases at reasonable prices. The Department believes this protects the public interest, sufficiently for the present.

16. *Notice of availability of Exploration Plans.* The December 6, 1976, notice proposed that the notice of availability procedures in 30 CFR § 211.5 apply to exploration plans. Several adverse comments were received on this point, and the final rulemaking omits this requirement because the Department has concluded that the procedures of the section are not appropriate for exploration plans.

17. *Fair Market Value Determinations.* Comments received on the October proposed EMARS regulations included requests for more information on procedures for fair market value determinations. The long-standing method for determination of resource value in sales or leasing of onshore minerals is comparative sales. Under the comparative sales approach, the value of the property up for lease is inferred from recent sales of similar properties in the same area. Due to the long pause in Federal coal leasing and to the dominance of Federal coal in many areas, there have not been enough recent sales to allow use of the comparative sales method at least in the initial coal lease sales. To supplement the comparative sales method, the Department is currently developing at the Geological Survey a discounted cash flow (DCF) model for estimating the value of coal offered for lease. Using projections of future coal prices and estimates of coal production costs, the value of a coal tract can be estimated. The method would employ probabilistic techniques to take account of coal price uncertainties. This method of estimating coal resource value is similar to the Monte Carlo techniques now used for OCS resource value estimation.

The coal DCF model now under development is being tested in prototype situations and in short-term criteria lease sales. Because the best method for fair market value determination is still being examined, it is inappropriate at this time to make commitments to any particular method, and the final regulations are general on this point.

18. *Intertract Competition.* Two commenters stated their concern that intertract competition was authorized but no explanation was given as to how it would work. Intertract competition is a method of competitive bidding that can be employed where there is more federal coal acceptable for development in a sale area than the government has determined is suitable for lease in a given lease sale. Under intertract competition, bidders will be requested to submit bids on the tracts acceptable for development, but bids will be accepted only for tracts with the relative highest bids (a per ton basis), such that the total of leased coal equals the government's lease sale target. The purposes of intertract competition are to maintain strong bigging competition in western coal areas with highly fragmented coal and surface ownership and to determine which tracts will be leased to the basis of the size of industry bids. Although it is under active consideration for use in suitable circumstances, no determination has been made by the Department to employ intertract competition. Before a lease sale would be conducted under intertract competition, the Department would issue a full set of procedures and groundrules. Under the authority delegated to the Secretary of the Interior, Titles 30[1] and 43 CFR are amended as follows:

PART 3040—ENVIRONMENT AND SAFETY

1. Subpart 3041, in Title 43, Part 3040 is revised as follows:

Subpart 3041—Environment and Safety

Sec.

3041.0–1 Pupose.
3041.0–2 [Reserved]
3041.0–3 Authorities.
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§ 3041.0–1 Purpose.

(a) The purpose of this subpart is to establish rules and regulations to be followed in the management of the federally-owned coal estate consistent with the policies, goals, and objectives established by the Acts cited in § 3041.0–3 of this Subpart, regardless of surface ownership, to ensure effective and reasonable regulation of surface coal mining operations in accordance with the requirements hereof, as an appropriate and necessary means to minimize so far as practicable the adverse social, economic

[1] The amendments to 30 CFR relating to this rulemaking can be found in FR Doc. 77–2257, at page 4441 of this issue of the FEDERAL REGISTER.

and environmental effects of such operations.

§ 3041.0–2 [Reserved]

§ 3041.0–3 Authorities.

The regulations contained in this Subpart are issued pursuant to the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181–287), and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), and in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended, (42 U.S.C 4321–47). Regulations governing the issuance of Federal coal leases and licenses are found in 43 CFR 3500 of this Chapter. Regulations governing operations conducted on lands subject to lease, permit, or license are found in 30 CFR 211. Regulations setting forth the general and basic policies for disposal and management of the public lands are found in 43 CFR 1725 of this Chapter.

§ 3041.0–4 Responsibilities.

(a) The Bureau of Land Management (BLM) exercises at the Bureau level the Secretary's discretionary authority to determine whether or not mineral leases and licenses are to be issued in accordance with 43 CFR Part 3500. The BLM is responsible for issuing coal leases and licenses, and is the office of record in mineral leasing matters.

(b) The Geological Survey (GS) exercises the Secretary's authority regarding operations conducted within the area of operations by permittees, lessees, and licensees and determines the action to be taken by them from the standpoint of the development, conservation, and management of mineral resources under the jurisdiction of the Department. The Geological Survey is responsible for all geologic, engineering, and economic value determinations for the Department's mineral leasing program. These determinations include: the mineral characteristics of lease and permit areas; parceling; appropriate resource evaluation; reserves; investments, diligent development, and minimum production requirements; and all other terms and conditions relating to mineral operations under leases and licenses.

(c) The BLM or other Federal surface managing agency, in consultation with the GS and the surface owner if other than the United States, formulates the requirements to be incorporated in leases and licenses for the protection of the surface and nonmineral resources and for reclamation, using the reclamation obligations and standards of performance contained in § 3041.2–2 of these regulations and in 30 CFR Part 211.40.

(d) The GS reviews and approves exploration and mining plans, and authorizes the abandonment of operations, in consultation with the BLM or other appropriate Federal surface managing agency, and the surface owner, if other than the United States, on the adequacy of the surface use, environmental protection, and reclamation aspects of such plans and will not grant approval if inconsistent with the BLM's or other Federal surface managing agency's recommendations without further discussions and referrals for resolution pursuant to 30 CFR Part 211.

(e) As to the lands outside of the area of operations, the authorized officer of the BLM or other appropriate Federal surface managing agency is responsible for conducting compliance examinations and for assuring compliance by the lessee or licensee with the requirements of this Subpart, and the terms and conditions of a lease or license and for reporting noncompliance to the Mining Supervisor for appropriate action. As to the lands inside the area of operations the GS examines operations to ensure compliance by the lessee or licensee with the terms and conditions set forth in the provisions of any lease or license or any approved mining or exploration plan. GS refers to BLM any instance of noncompliance with lease terms which may require cancellation action, and BLM may initiate such action. With respect to approval of access roads, pipelines, utility routes and other surface uses outside the area of operations, the BLM, or other Federal surface managing agency, has the primary responsibility but obtains the recommendations of the GS before taking final actions. Except as may be expressly provided for in § 3041.7 of this Subpart and 30 CFR Part 211.72, orders to operators for any remedial action are the exclusive responsibility of the Geological Survey.

(f) Subject to the supervisory authority of the Secretary, the regulations in this Subpart shall be administered by the Director, Bureau of Land Management through the authorized officers having jurisdiction over the lands subject to these regulations and authorized to perform the duties described. Prior to issuance of any coal lease or license, the authorized officer shall consult with and accept and consider recommendations from the Mining Supervisor, the Federal surface managing agency when other than the BLM, or the surface owner, as to the terms and conditions required to achieve the purpose of this Subpart. Any disagreements that cannot be resolved between the GS and BLM arising in connection with any such issuance of a lease or license will be referred for resolution to the appropriate Assistant Secretaries or to the Under Secretary of the Department of the Interior. Leases issued for lands, the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior, shall contain the terms and conditions prescribed by that agency with respect to the use and protection of the nonmineral interests in those lands.

§ 3041.0–5 Applicability.

(a) This Subpart sets forth regulations governing reclamation standards, use of surface, bond requirements, and reports relating to leases and licenses issued by the BLM with respect to Federal coal deposits located on public domain and acquired lands of the United States and reserved Federal coal deposits underlying lands the surface of which is privately owned. These regulations do not govern the leasing or development of coal deposits owned by Indians and subject to the Trust protection of the United States, which are controlled by regulations found in 25 CFR Chapter 1.

(b) The provisions of this Subpart shall become effective upon the date of publication in the FEDERAL REGISTER (January 25, 1977) as final rulemaking, except as hereinafter provided.

(1) Existing operations.

(i) On and after 180 days from the effective date of this Subpart, the provisions of § 3041.2–2(f) shall apply to all existing operations with respect to lands from which the overburden has not previously been removed, provided, however, that this subparagraph shall not be deemed or construed so as to apply the requirements of subparagraphs 3041.2–2(f) (1) and (2), hereof to any operation for which a mining plan has been approved on or before the effective date of this Subpart and for which a variance pursuant to the provisions of subparagraph 3041.2–2(f)(2) would be required.

(ii) On or before 18 months from the effective date of this Subpart, the operator of each existing operation shall have submitted and shall have obtained the approval of a plan or modification thereof which shall comply with all applicable provisions of this Subpart, provided, however, that if the Director of the GS determines that a proposed new plan or modification of an existing plan was prepared and submitted in timely fashion, taking into account the complexity of the operation and of the plan or modification involved, but that administrative delay thereafter has prevented approval within the time specified, the time for compliance with this paragraph may be extended by order of the Director of the GS for an amount of time equal to the duration of such delay.

(iii) For the purpose of this paragraph, the term "existing operation" shall mean:

(A) All operations for which a plan has been approved on or before the effective date of this Subpart, and

(B) All operations with respect to which a proposed plan has been submitted to the Department on or before the effective date of this Subpart, and with respect to which proposed plan the Department has on that date either completed its environmental impact analysis and determined that no environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act is necessary, or has determined that such a statement is necessary and has commenced, and expended substantial resources of the Department in the preparation or completion of, such a statement.

(iv) On or before 90 days from the effective date of this Subpart, the Director of the Geological Survey shall review all proposed plans which have been submitted to the Department on or before the effective date of this Subpart and, after consultation with appropriate Federal surface managing agencies, publish in the FEDERAL REGISTER a list which shall identify each such proposed plan

and whether it will be considered to cover an existing operation.

(2) All operations or proposed operations not included in the definition of "existing operation" in the preceding paragraph shall be considered to be new operations, and shall be subject to the provisions of this Subpart upon the effective date hereof.

(3) The provisions of § 3041.7(c) of this Subpart shall apply immediately upon the effective date of this Subpart.

(c) To the maximum extent possible, all environmental impact statements and all approvals of plans covering existing operations which are pending before the Department on the effective date of this Subpart shall take into account and shall reflect and implement the provisions and purposes hereof; provided, however, that nothing in this subparagraph shall be construed to relieve any operator of the obligation imposed by subparagraph (b)(1)(i) of this section.

(d) Nothing in this Subpart shall be deemed or construed as increasing or diminishing any rights not in conflict with Federal law held by any person, including any surface owner or entryman, arising under the laws of any State and relating to the giving or withholding of consent to, or consultation in connection with, entry to any land for the purpose of conducting operations subject to this Subpart.

§ 3041.0–6 Definitions.

As used in this Subpart, the following terms shall have the following meanings:

(a) *"Acid or toxic producing materials"* means natural or disturbed earth materials having chemical and physical characteristics that, under mining or postmining conditions of drainage, exposure, or other processes, may produce effluents that contain chemical constituents, such as acids, bases, or metallic compounds, in sufficient concentration to individually or in combination adversely affect the environment.

(b) *"Affected lands"* means any lands affected or to be affected by exploration, development, and mining operations and the construction of facilities necessary and related to such operations.

(c) *"Approximate original contour"* means the surface configuration achieved by backfilling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining (although not necessarily the original elevation) and blends into and complements the drainage pattern and topography of the surrounding terrain.

(d) *"Area of operations"* means that area of the leased or licensed lands which is required for exploration, development, producing, and processing operations, including all related surface structures and facilities, and which is delineated on a map or plat that is made a part of the approved exploration or mining plan.

(e) *"Authorized officer"* means any officer designated by any Federal surface managing agency to exercise its authority in matters relating to coal leases and licenses and to the provisions of this Subpart.

(f) *"Coal"* includes coal of all ranks from lignite to anthracite.

(g) *"Compaction"* means the reduction of porous spaces among the particles of soil and rock generally caused by running heavy equipment over the earth materials, as in the process of leveling the overburden material on strip mine spoil piles or banks, for the purpose of increasing the bearing capacity and stability of the earth materials.

(h) *"Contemporaneously as practicable"* means with respect to reclamation of mined or otherwise disturbed areas, the commencement, conduct and completion of reclamation activity as soon after disturbance as possible, without undue physical interference with ongoing operations, leaving a minimum of land unreclaimed, consistent with the objectives of environmental protection set forth in this Subpart.

(i) *"Daylighting"* is a term used to define the surface mining procedure for exposing an underground mined area to remove remaining coal.

(j) *"Director"* means the Director of the Bureau of Land Management, U.S. Department of the Interior.

(k) *"Exploration"* means the detailed investigation and acquisition of data pertaining to a mineral deposit, including activities for identifying regions or specific areas in which deposits are most likely to occur, and activities used to establish the nature of a coal deposit preparatory to mining.

(l) *"Exploration plan"* means a detailed plan submitted to the Mining Supervisor for approval before exploration operations commence showing the location and type of exploration work to be conducted, environmental protection procedures, roads, and reclamation procedures to be followed upon completion of such operations.

(m) *"General Coal Mining Order"* means a formal numbered order issued by the Mining Supervisor, with the prior approval of the Division Chief, and published, after opportunity for public comment, in the FEDERAL REGISTER, which implements the regulations in this Part and applies to coal mining and related operations in a specified geographic area.

(n) *"Impoundment"* means an artificially built, dammed, or excavated place for the retention of water or sediments. A permanent impoundment is one that is intended to remain after final abandonment of the operation, and shall be identified as such in approved plan.

(o) *"Leased lands, leased premises, or leased tract"* means lands embraced within a coal lease and subject to the regulations in this Subpart.

(p) *"Lessee"* means any person or persons, partnership, association, corporation, public body or governmental entity to whom a coal lease is issued, subject to the regulations in this Subpart, or an assignee of such lease under an approved assignment.

(q) *"Licensee"* means any individual, association or individuals, or municipality to whom a coal license is issued pursuant to the provisions of Section 208 of Title 30 of the United States Code, or any person, association, corporation, public body or governmental entity to whom an exploration license is granted under section 201(b) of Title 30 of the United States Code.

(r) *"Logical mining unit"* means an area of land designated as such by the Geological Survey pursuant to applicable Departmental regulations.

(s) *"Methods of operation"* means the method and manner by which any activities are performed by the operator, as described in an exploration or mining plan.

(t) *"Mine"* means an underground or surface excavation and the surface or underground support facilities that contribute directly or indirectly to coal mining, preparation, and handling.

(u) *"Mining plan"* means a detailed plan for development of the coal resource submitted to the Mining Supervisor for approval prior to commencement of any mining operation, showing the proposed location, method, and extent of mining and all related activities necessary and incidental to such operation, including steps to be taken to reclaim disturbed areas, to mitigate adverse impacts, and to otherwise meet the performance standards and requirements set forth in this Subpart.

(v) *"Mining Supervisor"* means the Area Mining Supervisor, Conservation Division, Geological Survey, or District Mining Supervisor or other subordinate acting under his direction.

(w) *"Notice of Availability"* means a formal notification, by the appropriate Federal officer, to appropriate Federal, state and local agencies and interested individuals or groups of individuals, of the availability for inspection of information, data, proposed plans or modifications thereof, pending decisions and other documents subject to such notice. Any such notice shall include the nature of the information, data, plan or modification, decision or other document involved; the name and mailing address of any applicant; the nature, location (county, township, range and section), duration and brief description of any proposed operations; the date upon which any proposed action might be taken; and, when appropriate, a specific time limit for public review, comment or request for any departmental action, including the holding of any public meeting. For the purpose of ensuring appropriate distribution of such notices, there shall be maintained at each office of a Mining Supervisor or authorized officer of the Department of the Interior a mailing list which shall consist of the names and mailing addresses of all appropriate Federal, state or local agencies and any individuals or groups of individuals who have requested in writing to be included on such lists. All notices of availability shall be mailed to such agencies, individuals or groups at the addresses indicated on such lists.

(x) *"Notice of noncompliance"* means a written notice of operator noncompliance issued pursuant to Section 211.72 of 30 CFR Part 211.

(y) *"Operator"* means a lessee or licensee, or one conducting operations on

lands under the authority of the lessee or licensee.

(z) *"Overburden"* means the earth, soil, rock, and other natural materials which lie above the coal being mined.

(aa) *"Permanent abandonment"* means the cessation of exploration or mining or other operations set forth in an approved plan on all or any portion of lands covered by a lease or license and subject to the provisions of this Subpart, where it is the intent of the operator not to continue operations at the mine or portion thereof.

(bb) [Omitted].

(cc) [Omitted].

(dd) *"Pollution"* means man-made or man-induced adverse alteration of the chemical, physical, biological, and radiological integrity of land, water or air, which reduces, or has the potential of reducing the beneficial uses of these resources.

(ee) *"Post mining land use"* means that use which will be made of affected lands after mining and reclamation is completed and which is specified in a mining or exploration plan approved pursuant to 30 CFR 211.

(ff) *"Preliminary data"* means data, consisting of maps and text, submitted by an applicant for a lease or license to the authorized officer of the BLM, which describes the applicant's proposal in the detail necessary to allow the authorized officer to conduct a technical examination and environmental analysis as described in § 3041.2.

(gg) *"Preparation"* means any crushing, sizing, cleaning, drying, mixing or other processing of coal to prepare it for market which is conducted on lands subject to this Subpart.

(hh) *"Reclamation"* means the process of returning affected lands to a stable condition and form consistent with their premining productivity and use, or other approved post mining land use.

(ii) *"Road"* means any open way for passage or travel upon which to transport people, equipment, materials, or coal, which is constructed, improved or maintained by the operator and which is used to service the pit, bench, underground mine workings, loading facilities or exploration activities.

(jj) *"Secretary"* means the Secretary of the Interior.

(kk) *"Significant vegetation"* means farm crops, including grasses and forbs, that are integral parts of agriculture or ranching operations and the natural vegetation of forests or meadows with significant recreational, watershed, agricultural, or wildlife habitat value.

(ll) *"Spoil"* means soil, rock, and other earth materials that are broken, moved, dumped, or otherwise significantly disturbed during surface coal mining operations subject to this Subpart.

(mm) *"Subsidence"* means a lowering of surface elevations over an underground mine caused by loss of support and subsequent caving of strata lying above the mine.

(nn) *"Surface owner"* means an entryman, or a person or persons who hold legal title to the land surface.

(oo) *"Topsoil"* means natural earth materials at or vertically adjacent to the land surface with physical and chemical characteristics suitable for support of vegetation.

(pp) *"Valley floors"* means the channelways, floodplains, and adjacent low terraces of streams that are flooded during periods of high flow and that are underlain by unconsolidated stream-laid deposits. Excluded are higher terraces and slopes underlain by colluvial and other surficial deposits normally occurring along valley margins.

(qq) *"Waste"* means solid or liquid refuse, rubbish, or other valueless material which is produced by or in connection with coal mining operations, including exploration, production, development, preparation and other related activities, and which has no useful purpose in connection with any remaining operations.

§ 3041.0–7 Use of surface.

(a) The operator shall be entitled to use only so much of the surface of the lands subject to a lease or license as is deemed necessary and has been designated in an approved plan. This Subpart shall not be construed to authorize any use of the Federal lands for a power generation plant or a commercial or industrial facility. Separate permits for such uses must be obtained from the appropriate agency. The operator shall not be entitled to use any mineral materials subject to the Materials Act except as provided by Part 3600 of this Chapter.

(b) Operations conducted in connection with other authorized uses on the same lands shall not unreasonably interfere with or endanger operations conducted in connection with uses authorized under this Chapter, nor shall operations authorized and conducted pursuant to this Chapter unreasonably interfere with or endanger operations under any lease, permit, license, or other use authorized pursuant to the provisions of any other Act.

§ 3041.1 [Reserved]

§ 3041.1–1 [Reserved]

§ 3041.1–2 [Reserved]

§ 3041.2 Technical examination/environmental analysis.

The appropriate authorized officer, with the assistance of the Mining Supervisor, shall make a technical examination and environmental analysis of the area covered by a competitive coal lease application or on Bureau motion, pursuant to the provisions of this section.

(a) The technical examination shall include:

(1) An examination of the technical aspects of the proposed operations set forth in any preliminary data and information; and

(2) An evaluation of the impacts of such operations or, if on BLM motion, the effect of coal leasing and development, on other land uses, resources, or land management programs on or adjacent to the area.

(b) The environmental analysis shall include an analysis of the impact of the proposed operations set forth in any preliminary data and information and of alternatives thereto, or, if on BLM motion, the impacts of coal leasing and development on the living and nonliving components of the environment.

§ 3041.2–1 Technical examination/environmental analysis report.

(a) Following completion of the technical examination and environmental analysis described in the preceding Section, the authorized officer shall prepare a report which sets forth recommendations as to (1) land which should be excluded from any lease or license in order to avoid mining where reclamation is not attainable or assured, or in recognition of other exclusive land use management priorities; (2) measures required to comply with the reclamation and performance standards set forth in this Subpart; (3) necessary conditions and amounts of bonds to cover estimated reclamation costs for areas that will be disturbed during the initial 5-year period of the lease, permit, of license; (4) any additional, more stringent requirements needed in the lease or license pursuant to § 3041.1(e) of this Subpart.

(b) If it is recommended that a specific area within the applied for lands be excluded from a lease or license, or modification thereof, the report shall set forth with reasonable specificity the facts upon which such recommendation is based.

§ 3041.2–2 Obligations and standards of performance.

(a) Any operator who accepts a coal lease or license shall comply with, and be bound by, the general obligations and standards of performance set forth in this section and such additional and more stringent specific requirements as may be contained in the terms and conditions of such lease or license.

(b) If the appropriate authorized officer of the BLM determines that an approved exploration or mining plan should be required to be revised or supplemented to adjust to changed conditions or to correct oversights, he may propose such revision or supplement to the Mining Supervisor for action pursuant to the provisions of 30 CFR Part 211 relating to changes in plans.

(c) Surface coal mining operations shall be conducted so as to assure the extraction of the coal resource to the maximum extent possible, taking into account existing technology, commercially available equipment, the cost of production, and the quality and quantity of the coal resource, so that future environmental disturbance through the resumption of mining will be minimized.

(d) The operator shall, in accordance with the terms and conditions of the lease or license (1) take visual resources identified by the Federal surface managing agency into account in the planning, design, location, and construction of facilities on the affected lands; and (2) take such action as may be needed to

minimize, control, or prevent damage to the recreational, cultural, scientific, historical and known or suspected archeological and paleontological values of the land contained therein.

(e) The following performance standards shall be applicable to the surface effects of underground mining.

(1) Each operator of an underground coal mine shall adopt measures consistent with feasible known technology in order to prevent or, in those instances where the mining method used requires planned subsidence in a predictable and controlled manner, control subsidence; maximize mine stability; and maintain the value and use of surface lands.

(2) Where pillars or panels are not removed and controlled subsidence is not part of the mining plan, pillars or panels of adequate dimensions shall be left to assure stability giving due consideration of the thickness and strength characteristics of the coal beds and of the strata above and immediately below the coal bed.

(f) The following performance standards shall be applicable to all coal exploration, development, mining, preparation, handling, and reclamation operations on the surface of lands subject to this Subpart:

(1) The operator shall reclaim affected lands pursuant to his approved plan, as contemporaneously as practicable with operations, to a condition capable of supporting all practicable uses which such lands were capable of supporting immediately prior to any exploration or mining, or equal or better uses that have been approved in accordance with this Subpart.

(2) The operator shall replace overburden and waste materials in the mined area by backfilling (compacting, where necessary, to ensure stability or to prevent leaching of toxic materials), grading or other means, so as to cover all acid-forming or other toxic materials and eliminate highwalls and spoil piles and restore the approximate original contour. Where the thickness of the coal deposits relative to the volume of overburden is large and where the overburden and other spoil and waste materials are either insufficient or more than sufficient to restore the approximate original contour, the operator shall, in order to provide adequate drainage, backfill, grade, and where necessary, compact, using all available overburden or spoil material, to obtain the lowest practicable grade, which shall in any event be less than the angle of repose. Excess overburden or other spoil material shall be fully reclaimed in accordance with the requirements of this Subpart. Variance from the requirements of subparagraphs (1) and (2) of this paragraph may be allowed in an approved mining plan if the Director of the Geological Survey, with the concurrence of the Director of the Bureau of Land Management or the comparable appropriate authorized officer, determines that unusual physical conditions at the site, such as steeply dipping coal beds or multiple seam mining, exist, and such conditions make backfilling pursuant to such requirements impracticable as a result of the volume of material excavated or environmentally undesirable as a result of the duration of the operation.

(3) The operator shall stabilize and protect all surface areas, including spoil piles, affected by the coal mining and reclamation operation, to effectively control slides, erosion, subsidence, and attendant air and water pollution.

(4) The operator shall remove topsoil separately, for replacement on the backfill area, and if not so utilized immediately, segregate it in a separate pile from other spoil. When topsoil is not to be replaced on a backfill area within a time short enough to avoid deterioration, the operator shall establish and maintain an approved quick growing vegetative cover or employ other approved measures so that the topsoil is protected from wind and water erosion and establishment of noxious plant species, and is in a condition for sustaining vegetation when used during reclamation. If topsoil is of insufficient quantity or of poor quality for sustaining vegetation, and if other excavated materials can be shown to be more suitable for revegetation, then the operator may be authorized in the approved plan to remove, segregate, protect, and utilize in a like manner such other materials.

(5) The operator shall ensure that water impoundments, water retention facilities, dams, or settling ponds have been set forth in an approved plan, and ensure that:

(i) Any such facility is adequate for its intended purposes and the quality and quantity of impounded water will be suitable for its intended use.

(ii) Any such facility is designed, located, built, used, and maintained in accordance with sound engineering standards and practices and applicable Federal and State laws and regulations, to ensure that such facilities will have necessary stability with an adequate margin of safety.

(iii) Final grading will provide adequate safety and access for proposed or reasonably anticipated water users.

(iv) Such facilities will not have a significant adverse impact on the water resources utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses, provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(v) No mine or processing waste is used in the construction of such facilities unless authorized in the approved plan.

(6) The operator shall cover or plug all auger mine holes with noncombustible and, where necessary to minimize control or prevent harmful drainage, impervious material.

(7) The operator shall utilize the best practicable commercially available technology to minimize, control or prevent disturbances of the prevailing quality, quantity and flow of water in surface and ground water systems, and of the prevailing erosion and deposition conditions at the mine site and in affected offsite areas, both during and after coal mining operations and reclamation, by:

(i) Controlling acid or toxic drainage and the adverse consequences thereof by such measures as, but not limited to, diverting surface runoff water away from disturbed areas; excluding oxygen from, or restricting the flow of water through acid or toxic-producing minerals; treating drainage to reduce acid or toxic content which adversely affects downstream water upon being released to water courses; and casing, sealing, or otherwise treating drill holes, shafts, and wells to keep acid or toxic drainage from entering ground and surface waters.

(ii) Conducting surface mining operations so as to minimize, control, or prevent (A) contributions of suspended solids to streamflow or runoff outside the mining site above natural levels under seasonal flow conditions as measured for a period and at sites determined by the Mining Supervisor, in consultation with the appropriate authorized officer, and (B) except where specifically authorized in an approved plan, deepening or enlarging of stream channels where operations include the discharge of water from mines.

(iii) Removing or modifying siltation structures after disturbed areas are revegetated and stabilized unless otherwise authorized by the Mining Supervisor in an approved plan, with the concurrence of the appropriate authorized officer, provided, however, that any siltation structure retaining water shall, in any event, be subject to the requirements of § 3041.-2-2(f)(5) of this Subpart.

(iv) Protecting the quality, quantity and flow, including depth of flow, of upstream and downstream surface and ground water resources of those valley floors which provide water sources that support significant vegetation or supply significant quantities of water for other purposes, by such measures as, but not limited to, relocating and maintaining the gradients of stream, avoiding mining installing, reestablishing or replacing acquifers or acquicludes, and replacing soils, provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(8) The operator shall: (i) Treat or dispose of all rubbish and noxious substances in a manner designed to minimize, control or prevent air and water pollution and the hazards of ignition and combustion.

(ii) Dispose of all waste resulting from the mining and preparation of coal in a manner designed to minimize, control or prevent air and water pollution and hazards of ignition and combustion. Where surface disposal of solid wastes in areas other than the mine workings or other excavations has been authorized in the approved plan, stabilize such waste including, where necessary, constructing waste piles in compacted layers with the use of incombustible and impervious materials; shape waste piles

to be compatible with the natural surroundings and terrain; cover with topsoil or other suitable material in accordance with subparagraph (f)(4) of this section; and revegetate in accordance with subparagraph (f)(13) of this section. All impoundments of liquid wastes shall comply with the requirements of subparagraph (f)(5) of this Section. Waste containing coal in such quantity that it may be later separated from the waste by washing or other means shall be stored separately.

(9) Except as provided herein, the operator shall not conduct excavation, drilling, or blasting operations within 200 feet of an active or abandoned underground mine. Where it can be established by certified maps or inspection of such an underground mine that such activities may be conducted without danger of interference with, or penetration of, an underground mine, they may be authorized in an approved plan to be conducted up to but not less than 25 feet from such underground mine provided that nothing in this paragraph shall preclude daylighting or similar surface coal mining activities intended to improve resource recovery, abate water pollution, or eliminate public hazards resulting from such underground mines.

(10) To prevent personal injury or damage to public and private property, the operator shall use explosives only in accordance with all applicable Federal and State laws and an approved plan and shall:

(i) Provide adequate advance written notice, by publication and/or posting of planned blasting schedules, to local governments and to residents who might be affected by the use of such explosives, and maintain a log of the magnitudes and times of blasts for a period of at least two years.

(ii) Limit the size, timing, and frequency of blasts, as determined by the physical conditions of the site.

(11) The operator shall design to applicable standards, construct, maintain and, when no longer necessary and unless otherwise authorized in an approved plan, remove, all roads, pipelines, powerlines and similar utility access facilities and associated bridges, culverts and ditches, into and across the site of operations, in a manner that will minimize control or prevent erosion and siltation, fugitive dust, pollution of water, damage to fish or wildlife or their habitat and public or public property.

(12) (i) Roads shall not be surfaced with any acid or toxic producing material. No access roads will be constructed unless (A) the operator shall have first submitted a surveyed profile accompanied by typical cross-sections of the road and ditches, showing pipe, entrance, exit channels and sediment control structures and other structures or configurations to be used on the road to meet performance standards and (B) the location shall have been marked and inspected, and approved by the Mining Supervisor, in consultation with the appropriate authorized officer and the surface owner, if other than the United States.

(ii) No access road shall be constructed in a stream, nor shall any stream or stream bed be used as an access road. Insofar as possible, all roads shall be located on benches, ridges, and flatter slopes to enhance stability and minimize disturbance. Stream fordings shall be avoided and the normal seasonal flow and the normal seasonal sediment load shall not be detrimentally affected by access roads in a continuous fashion that results in harm to the aquatic ecosystem. Provided, however, that nothing in this subparagraph shall be construed to prohibit relocation or alteration of such beds or channels pursuant to the provisions of this Subpart and as set forth in an approved plan.

(13) (i) The operator shall, except where other reclamation based upon post-mining land use and not requiring revegetation pursuant to the requirements of this section is expressly provided for in an approved plan, establish on regarded areas and all other affected lands a diverse vegetative cover, native to the area and capable of regeneration and plan succession at least equal in density and permanence to the natural vegetation provided, however, that the Mining Supervisor, with the concurrence of the appropriate authorized officer may allow the use of approved mixtures of introduced or native species where preferable to achieve quick cover or assure successful revegetation. In approving such mixture, preference will be given to non-toxious species.

(ii) The operator's responsibility and liability under his performance bond for revegetation of each planting area shall extend until such time as the appropriate authorized officer, in consultation with the Mining Supervisor and the surface owner, if other than the United States, determines that successful revegetation in compliance with subparagraph (i) of this subsection has occurred, provided, however, that this period shall extend for a minimum of five full years after the first planting, and for a total period of liability not to exceed 10 years from the original planting; and further provided that,

(A) Where the appropriate officer, in consultation with the Mining Supervisor, determines that natural conditions such as annual precipitation, soil characteristics and native vegetation are stable and favor rapid revegetation, and that revegetation pursuant to subparagraph (i) of this subsection is likely to occur before the expiration of such minimum period, he may specify in the lease, permit, or license that such minimum period will not apply with respect to some or all of the lands included in such lease, permit or license; and

(B) Where during any such minimum period such authorized officer, in consultation with the Mining Supervisor and the surface owner, if other than the United States, determines that natural conditions such as annual precipitation and soil characteristics are sufficiently unstable so as to favor only slow and uncertain revegetation, he may recommend to the Mining Supervisor that the liability of the operator be extended for a period of up to five years beyond the period initially established, if the financial liability that would be incurred by the operator as a result is reasonably commensurate with the increased probability of successful revegetation.

(iii) During the relevant period of liability, the Mining Supervisor and the appropriate authorized officer shall jointly inspect and evaluate the revegetated areas pursuant to subparagraph 3041.6 (b)(2) hereof.

(14) The operator shall: (i) Except as provided in subparagraph (ii) hereof, allow public access to and upon Federal lands subject to his lease, permit, or license for all lawful and proper purposes, except where such access would unduly interfere with his authorized use.

(ii) Regulate public access, vehicular traffic, and wildlife or livestock grazing in all areas of active operations, including lands undergoing reclamation, in order to protect the public, wildlife and livestock from hazards associated with such operations, and to protect revegetated areas from unplanned and uncontrolled grazing. For this purpose, the operator shall provide warning signs, fencing, flagmen, barricades, and other safety and protective measures as may be necessary.

(15) Coal storage areas shall be designed and maintained so as to eliminate fire hazards from spontaneous combustion and other accidential ignition. If a coal seam exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited during the term of a lease, the operator shall immediately take all necessary steps to extinguish the fire.

(16) Upon completion or temporary or permanent abandonment of mining operations in all or any part of a strip pit, the face of the coal shall be covered with noncombustible material that will effectively protect the coal bed from becoming ignited.

(17) The driving of any underground openings by auger or other methods from any strip pit shall not be undertaken except as specifically approved by the Mining Supervisor, in an approved plan.

§ 3041.3 Compliance or performance bond.

(a) The provisions of Subpart 3504 of this Chapter are hereby made applicable to this subpart. In addition each compliance bond will be conditioned upon faithful compliance with the regulations in this subpart and any additional terms and conditions of the lease or license.

(b) Prior to issuing a lease or license, the authorized officer, after consultation with the Mining Supervisor, shall ensure that the amount of the compliance bond or bonds to be furnished is sufficient to ensure reclamation in accordance with the performance and reclamation standards in § 3041.2–2, and with the terms and conditions of the lease or license.

(c) An application for a lease or license may be denied any applicant or offeror who has previously forfeited a bond because of failure to comply with an approved plan unless the affected lands covered by such plan have been re-

claimed without cost to the Federal Government. Nothing in this subparagraph shall be deemed to modify or limit any discretionary authority of the authorized officer of the BLM otherwise to deny for cause any application for a lease or license.

(d) Once a lease or license has been issued the authorized officer, after consulting with and receiving the recommendation to increase or to release in whole or in part any compliance bond or bonds so that the amount of the compliance bond or bonds will at all times be sufficient to cover the estimated costs of completion of the remaining reclamation requirements of the approved plan and of the terms and conditions of the lease or license.

§ 3041.4 Procedures and public participation.

Written findings. Except as may be otherwise expressly set forth in this Subpart, decisions and determinations of any appropriate authorized officer acting pursuant to this Subpart or to 30 CFR Part 211 with respect to issuance of leases, approval of mining plans or modifications thereof, and abandonment of operations shall be in writing, shall set forth with reasonable specificity the facts and the rationale upon which such decisions or determinations are based, and shall be available for public inspection during normal business hours at the offices of such officer.

§ 3041.5 Completion of operations and abandonment.

(a) *Grading and backfilling.* Upon completion of backfilling and grading as required by the approved plan and prior to replacing topsoil and revegetation, the operator shall submit a report thereon, in duplicate, to the Mining Supervisor and request inspection for approval. Whenever it is determined by such inspection that the backfilling and grading has met the requirements of the approved plan, the Mining Supervisor shall recommend to the appropriate authorized officer release of an appropriate amount of the compliance bond for the area satisfactorily backfilled and graded.

(b) *Temporary abandonment.* In areas in which there are no current operations, but operations are to be resumed under an approved plan, the operator shall substantially backfill, fence, protect, or otherwise effectively close all surface openings, auger holes, areas prone to subsidence, and surface facilities or workings which are a hazard to people or animals. Conspicuous signs shall be posted prohibiting entrance of unauthorized persons. All such protective measures shall be maintained in a secure condition until such operations are resumed or permanently abandoned.

(c) *Permanent abandonment.* Before permanent abandonment of exploration or mining operations, all openings and excavations, including water discharge points, shall be closed or backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved plan. Drill holes, trenches, and other excavations for exploration, development or prospecting shall be abandoned in such a manner as to protect the surface and not to endanger any present or future underground operations or any deposit of oil, gas, other mineral resources, or ground water. Methods of abandonment shall be approved in advance by the Mining Supervisor in an approved plan, and may include backfilling, regrading, revegetation, cementing, and capped casing, or combinations of these, or other methods. Reclamation and clean-up of surface areas around and near permanently abandoned underground or surface mines, including, except where otherwise expressly provided in an approved plan, removal of equipment and structures related to the mining operation, shall commence without delay following cessation of mining operations. Areas affected by access roads will be graded, drained, and revegetated in accordance with the approved Mining Plan and therein approved post mining land use prior to bond release. In the event that access or haul roads are intended to remain after abandonment of the operation, pursuant to § 3041.2-2(f)(11) of this Subpart, they must be designed and constructed so as to be permanently stabilized using adequate drains, water barriers, and other practices.

(d) *Notice of abandonments release of bond.* (1) Not less than 30 days prior to cessation or abandonment of operations, the operator shall submit to the Mining Supervisor, in duplicate, a notice of his intention to cease or abandon operations, together with a statement of the exact number of acres affected by his operations, the extent and kind of reclamation accomplished, and a statement as to the structures and other facilities that are to be removed from or remain on the leased or licensed lands.

(2) Upon receipt of such notice, the Mining Supervisor and the appropriate authorized officer or officers shall promptly make a joint inspection to determine whether all operations have been completed in accordance with the terms and conditions of all leases, permits, and licenses, and with the requirements of approved operating plan. Where the operator has compiled with all such terms, conditions and requirements and the regulations of this Subpart the Mining Supervisor shall recommend to the appropriate authorized officer that the appropriate period of bonded liability be terminated.

(3) When the surface of lands in a lease permit or license is not owned by the United States the Mining Supervisor shall notify the surface owner and solicit and take into account his comments before recommending to the appropriate authorized officer that the period of such bond liability be terminated.

§ 3041.6 Reports.

(a) *Operations.* The operator shall file with the Mining Supervisor within 30 days after the end of each calendar year, and within 30 days after any temporary or permanent abandonment of operations, a report, in duplicate, containing the following with respect to his operations or the operations subject to such abandonment.

(1) Serial number of the lease, permit, or license and a description of the lands affected by operations.

(2) The number of acres disturbed and the number of acres reclaimed, including areas on which revegetation is being conducted.

(3) A description of the reclamation work remaining to be done on lands disturbed.

(b) *Revegetation.* (1) The operator shall file a report, in duplicate with the Mining Supervisor within 30 days after each planting is completed. The report shall: (i) Identify the lease or license; (ii) Show the types of planting or seeding, including mixtures and amounts; (iii) Show the date of planting or seeding; (iv) Identify or describe the planted or seeded lands; (v) Describe any surface manipulation, mulching, fertilization, and irrigation procedures, if any, and contain such other information as may be considered relevant.

(2) The Mining Supervisor and the authorized officer of the Federal surface managing agency shall, as soon as possible after each full growing season, jointly inspect and evaluate the revegetated areas to determine, in consultation with the surface owned if other than the United States, whether satisfactory vegetative growth has been established, or whether additional revegetation efforts should be ordered pursuant to 30 CFR 211.62(b)(2).

§ 3041.7 Notice of noncompliance: Revocation.

(a) The appropriate authorized officer and the Mining Supervisor shall have the right to enter upon the lands subject to this Subpart under lease or license, at any reasonable time.

(b) If an appropriate authorized officer discovers that an operator is conducting on lands subject to this subpart activities which are not in compliance with the requirements of a least or license, applicable regulations, or an approved plan and such activities do not threaten immediate and serious damage to the environment, resources, or the health and safety of the public, such authorized officer shall or, in the case of an appropriate authorized officer of any Federal surface managing agency not in the Department of the Interior, may refer the matter to the Mining Supervisor for remedial action pursuant to 30 CFR 211.72(a).

(c) If an appropriate authorized officer discovers that an operator is conducting on lands subject to this subpart activities which are not in compliance with the requirements of a lease or license, applicable regulations or an approved plan and such activities threaten immediate and serious damage to the environment, resources, or the health and safety of the public, and the Mining Supervisor is not available for appropriate remedial action pursuant to 30 CFR 211.72(c), such authorized officer may order the immediate cessation of

such activities and shall promptly notify the Mining Supervisor. Upon such notification, the Mining Supervisor shall order immediate remedial action pursuant to 30 CFR 211.72(c).

(d) Failure of the operator to take action in accordance with an order for cessation of activities issued pursuant to paragraph (c) of this section, or with a written notice of noncompliance issued by the Mining Supervisor in accordance with the provisions of 30 CFR 211.72 shall be grounds for suspension of the operation and for possible cancellation of the lease, permit, or license in accordance with the regulations in 43 CFR 3500 of this Chapter.

§ 3041.8 Variances.

(a) Variances from compliance with the performance standards set forth in this subpart may be allowed as part of an approved mining plan under either of the following circumstances:

(1) Where an applicant states in a proposed plan or modification thereof that he cannot meet a performance standard specified in subparagraphs 3041.2–2(f) (2), (4), (6), (11), (12) or (13) of this subpart, he may request a variance from such performance standard where such variance would be compatible with the approved post mining land use, and shall support his request with appropriate information demonstrating the need therefor. The Mining Supervisor, after consultation with the appropriate authorized officer and the surface owner, if other than the United States, may approve or disapprove such variance, and shall advise the applicant and approve or disapprove the proposed plan or modification accordingly;

(2) Where an applicant proposes a post-mining land use that is substantially different from the land use immediately prior to any exploration and mining, the Mining Supervisor, with the concurrence of the appropriate authorized officer and after consultation with the surface owner, if other than the United States, may approve a mining plan containing variances from the performance standards of 30 CFR 211 and § 3041.2–2(f) hereof, provided that:

(A) After consultation with the appropriate land use planning agencies, if any, the proposed development is deemed to constitute an equal or better economic or public use of the affected land, as compared with the premining use.

(B) The granting of such variance is essential to achieving the proposed post mining land use.

(C) The applicant presents specific plans for the proposed post mining land use and appropriate assurances that such use will be: (i) Compatible with adjacent land uses; (ii) Supported by commitments and assured of investment from public agencies where appropriate; (iii) Practicable with respect to private financial capability for completion of the proposed development; (iv) Planned pursuant to a schedule made part of the proposed mining plan so as to integrate the mining operation and reclamation with the post mining land use; (v) Designed by qualified personnel in conformance with professional standards in order to assure the stability, drainage, and configuration necessary for the intended use of the site.

(D) To the degree possible and taking into account the subjective nature of the assessment, the applicant has considered the impact of the proposed land use on the aesthetic character of the area by consulting with inhabitants of the area, and utilizing expertise in the landscape and geomorphologic fields.

(b) Any application for a variance pursuant to paragraph (a) of this section shall demonstrate that any proposed disturbance of land above a highwall will facilitate compliance with the environmental protection and performance standards set forth in this subpart.

(c) Any application for variance pursuant to paragraph (a) of this section which proposes to place spoil or other material on the downslope below the bench used to mine an area classed as "steep slope," shall demonstrate to the satisfaction of Mining Supervisor that the permanent or temporary sediment loads in the receiving drainages and reclamation to the post-mining land use will not have significant adverse effects upon the aesthetics of the area.

(d) All variances granted pursuant to this section shall be reviewed by the Mining Supervisor and the appropriate authorized officer not more than three years after granting of the variance and incorporation in the mining plan, to ensure that the development is proceeding in accordance with the terms of the approved plan and the terms and conditions of any lease, permit, or license.

(e) An operator may apply for a variance pursuant to the provisions of paragraph (a) of this section only by submitting a new or revised mining plan to the Mining Supervisor for approval pursuant to the provisions of 30 CFR 211. Minor changes of operations which do not involve violations of the performance standards set forth in this subpart, and the granting of a variance pursuant to the description in § 3041.2–2(a)(2) of this subpart, will not be deemed to be subject to or require compliance with, the provisions of this section.

(f) If the Director of the GS determines that a decision to grant a variance would constitute a major Federal action significantly affecting the quality of the human environment, and that an environmental impact statement as required by Section 102(2)(C) of the National Environmental Policy Act has not been prepared with respect thereto, such a statement shall be prepared. If the Mining Supervisor grants a variance pursuant to this Section, he shall notify the appropriate land managing agency or land planning agency for the purpose of determining whether any changes may, as a result of such variance, be required in any land use plan.

PART 3500—LEASING OF MINERALS OTHER THAN OIL AND GAS: GENERAL

2. Section 3500.0–5 of 43 CFR is amended by revising paragraphs (h) and (i) as follows:

§ 3500.0–5 Definitions.

* * * * *

(h) *Public Bodies.* Public bodies are Federal and State agencies, municipalities, and rural electric cooperatives and similar types of organizations, and nonprofit corporations controlled by any of foregoing entities.

(i) *Government entities.* Governmental entities are Federal and State agencies, municipalities and subdivisions thereof, including any corporation primarily acting as an agency or instrumentality of a State, which produces electrical energy for sale to the public.

3. 43 CFR 3501.1–4 paragraphs (b)(1)(i) and (ii) are revised to read as follows:

§ 3501.1–4 Acreage limitations.

* * * * *

(b) * * *

(1) *Coal.* (i) No person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time Federal coal leases or permits on an aggregate of more than 46,080 acres in any one State, and in no case on an aggregate of more than 100,000 acres in the United States.

(ii) No person, association, or corporation holding, owning or controlling Federal coal leases or permits (by itself or through any subsidiary, affiliate, or person under common control with it) on an aggregate of more than 100,000 acres in the United States on August 4, 1976, shall be required to relinquish any lease or permit which it held on that date, but it shall not be permitted to take, hold, own or control any further Federal coal leases or permits until such time as its holding, ownership, or control of Federal leases or permits has been reduced below an aggregate of one hundred thousand acres within the United States.

* * * * *

4. 43 CFR 3501.1–5 is revised to read as follows:

§ 3501.1–5 Exceptions.

(a) *All leaseable minerals except coal.* No lands within the boundaries of the following areas in the public domain shall be leased under the provisions of this Part:

(1) National parks and monuments.

(2) Indian reservations.

(3) Incorporated cities, towns, and villages.

(4) Naval petroleum and oil shale reserves.

(5) Lands acquired under the act of March 1, 1911 (36 Stat. 961; 16 U.S.C. 513–519) known as the Appalachian Forest Reserve Act, or other acquired lands.

(b) *Coal.* No coal leasing shall be permitted on the public domain within the areas set forth in 43 CFR 3535.4.

5. 43 CFR 3501.2–1 is revised to read as follows:

§ 3501.2 Acquired lands.

§ 3501.2–1 Lands and deposits not subject to leasing.

(a) *All leaseable minerals except coal.* The following acquired lands are not subject to leasing:

(1) Lands acquired for the development of their mineral deposits;

(2) Lands acquired by foreclosure or otherwise for resale;

(3) Lands acquired as surplus under the Surplus Property Act of October 3, 1944 (58 Stat. 765; 50 U.S.C. 1611, et seq.);

(4) Lands in incorporated cities, towns, and villages;

(5) Lands in national parks and monuments; and

(6) Lands which are tide lands or submerged coastal lands within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States.

(b) *Coal.* No coal leasing shall be permitted on acquired lands within the areas set forth in 43 CFR 3525.4.

6. 43 CFR 3502.9 is amended to read as follows:

§ 3502.9 Public Bodies.

§ 3502.9–1 Coal.

(a) To obtain a coal lease on a tract set aside pursuant to 30 U.S.C. 201(a) a public body must submit:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a lease or permit;

(3) Evidence that the action proposed has been duly authorized by its governing body; and

(4) A definite plan to produce energy solely for its own use or for sale to its members or customers (except for short-term sales to others).

(b) To obtain a license to mine coal pursuant to 30 U.S.C. 208, a municipality must submit:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a license; and

(3) Evidence that the action proposed has been duly authorized by its governing body.

(c) To obtain a coal lease pursuant to 30 U.S.C. 352 on a tract of acquired lands set apart for military or naval purposes, a governmental entity must submit:

(1) Evidence of the manner in which it is organized, including the state in which it is located;

(2) Evidence that it is authorized to hold a lease;

(3) Evidence that the action proposed has been duly authorized by its governing body; and

(4) Evidence that it is producing electricity for sale to the public in the state where the lands to be leased is located.

(d) Where the material required in paragraphs (a), (b) and (c) of this section has previously been filed, a reference by serial number of the record in which it has been filed, together with a statement as to any amendments, will be accepted.

7. 43 CFR Subpart 3503 is amended by adding a new § 3503.3–3 to read as follows:

§ 3503.3–3 Coal.

(a) A coal lease shall require payment of a royalty of not less than 12½ per centum of the value of the coal removed from a surface mine.

(b) A coal lease shall require payment of a royalty of not less than 8 per centum of the value of the coal removed from an underground mine, except that the authorized officer may determine a lesser amount if conditions warrant.

(c) The value of coal removed from a mine is defined for royalty purposes in 30 CFR 211.63.

8. 43 CFR § 3503.3–1(b) is amended by revising paragraph (1) to read as follows:

§ 3503.3–1 General statement rentals.

* * * * *

(b) *Leases*—(1) *Coal.* Annual rental per acre or fraction thereof for coal leases shall not be less than 25 cents for the first year, not less than 50 cents for the second through fifth years and not less than $_____ for each and every year thereafter during the continuance of the lease.

(i) *Leases issued before August 4, 1976.* The rental paid for any year shall be credited against the royalties for that year until the lease is readjusted.

(ii) *Leases issued or adjusted after August 4, 1976.* Rental payments may not be credited against royalties.

§§ 3505.1–1, 3505.2–1 through 3505.2–4 [Reserved]

9. 43 CFR Subpart 3505 is amended by revoking and reserving §§ 3505.1–1, 3505.2, 3505.2–1, 3505.2–2, 3505.2–3, and 3505.2–4.

§§ 3511.2–1 and 3511.2–2 [Amended]

10. 43 CFR Subpart 3511 is amended by revoking and reserving paragraph (b)(1) of § 3511.2–1(b)(1) and § 3511.4–4.

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

Operator questions order of sections:

11. Section 3520.0–3 is revised as follows:

§ 3520.0–3 Authorities.

(a) *Public domain and acquired lands.* The Secretary is authorized to divide into leasing units and award leases of mineral lands and mineral deposits owned by the United States as set forth in § 3500.1–1 subject to the provisions of the Mineral Leasing Act, as amended and supplemented, and the Mineral Leasing Act for Acquired Lands as set forth in § 3500.0–3. Coal leasing is governed by the application procedures in 43 CFR Subpart 3525. Other leaseable minerals are covered by the procedures in 43 CFR Subpart 3521.

14. Section 3521.2–1 is revised as follows:

§ 3521.2–1 Application or Bureau motion.

(a) *Application.* (1) *Forms.* (i) Where filed and copies. An application for a lease must be filed in duplicate in the proper office. No specific form is required. Competi-coal lease applications will be accepted only as authorized by 43 CFR Subpart 3525. The application should include the information set forth in (ii) to (v) of this subparagraph.

(ii) The applicant's name and address.

(iii) State of citizenship and qualifications.

(iv) A complete and accurate description of the lands for which the lease is desired. See § 3501.1–3.

(v) Evidence that the land is valuable for the mineral for which application is made, with a statement as to the character, extent and mode of occurrence of the deposit.

(2) *Additional Statements Required.* The contemplated investment for the development and purchase of equipment of a producing mine of a stated average daily output. Phosphate. To the extent such information is known to the applicant, a description of the phosphate and associated or related mineral deposits in the land based upon such actual examination as can be effected without an injury to the land or deposits (such examination shall not be deemed a trespass), giving nature and extent of the deposits; an outline in general terms of the proposed method of mining and processing the same; the proposed investment in mining operations thereon, and processing facilities therefor.

(3) Evidence showing in sufficient detail that:

(i) The amount of phosphate lands, Federal and non-Federal, held by him, together with the lands described in the application are necessary for his proposed development plan.

(ii) He intends to explore, mine and develop the property in good faith.

(iii) His proposed operations of the property will be in accordance with good conservation practice and this additional development is needed in order to supply an existing demand which cannot otherwise be reasonably met.

12. Section 3521.2–2 is revised as follows:

§ 3521.2–2 Qualifications.

(a) Compliance with Subpart 3502 is required.

(b) Bureau motion. (1) Bureau of Land Management responsibility.

(2) Geological Survey responsibility.

(c) *Leasing Units.* (1) *Phosphate.* If the authorized officer shall determine, after consultation with the Mining Supervisor of the Geological Survey that specific lands or deposits, not under an outstanding permit or application for preference right lease, which constitute an acceptable leasing unit are subject to phosphate lease, they will be offered for such lease on the terms and conditions to be specified in the notice of lease offer to the qualified person who offers the highest bonus by competitive bidding equal to the fair market value of the mineral deposit either at public auction

or by sealed bids as provided in the notice of lease offer.

(2) *Solid (hardrock) minerals.* Any qualified person may file an application for the competitive offering of such deposits. Leasing units may not exceed, in reasonably compact form, 2,560 acres of land described in the manner required by this section. The authorized officer may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for a legical leasing unit.

(i) *Exception.* (a) *Phosphate.* In a notice for a phosphate lease, the detailed statement will set forth that the terms of minimum production will not be reduced or waived at the lessee's request as provided in § 3503.3–2(b)(3), (d), (e), or upon a satisfactory showing that market conditions are such that the lessee cannot operate except at a loss.

(b) *Asphalt.* All leases will be issued through competitive bidding only in the same manner as that provided for in Subpart 3120.

(c) *Publication.* Notice of offer of lands or deposits for lease by competitive bidding will be by publication once a week, or for such other period as may be deemed available, in a newspaper of general circulation in the county in which lands are situated.

13. The following sections are repealed and reserved: 43 CFR § 3520.0–4, 43 CFR § 3520.1–2, 43 CFR § 3520.1–3, 43 CFR § 3521.1–4, 43 CFR § 3521.1–5.

14. Title 43 CFR § 3520.2–1 is amended to read as follows:

§ 3520.2–1 Duration of Leases.

Leases shall be issued for indeterminate periods subject to readjustment or renewal at the end of the first 20-year period upon such terms and conditions as may be incorporated in each lease or prescribed in general regulations issued by the Secretary of the Interior, including covenants relative to mining methods, waste, period of preliminary development and minimum production (a) *Exceptions.* (1) *Asphalt.* Asphalt leases are issued for 10 years and so long thereafter as the lessee complies with the terms and conditions of the lease.

(2) *Solid (hardrock) minerals.* The lease will be issued for a period not exceeding 20 years the term to be determined upon the advice of the agency having jurisdiction over the surface and the U.S. Geological Survey.

(3) *Coal leases issued or readjusted after August 4, 1976.* The term of the lease shall be twenty years, and as long thereafter as the lessee is producing coal annually in commercial quantities.

§ 3524.1–1 [Reserved]

15. 43 CFR Subpart 3524 is amended by revoking and reserving § 3524.1–1.

16. 43 CFR 3524.2–1 is amended to read as follows:

§ 3524.2–1 Coal.

(a) *Application.* A lessee may obtain modification of his lease to include coal lands or coal deposits contiguous to those embraced in his lease if the authorized officer determines that it would be in the interest of the United States to do so. In no event shall the total area added by such modifications to an existing coal lease exceed one hundred sixty acres or the same number of acres as that in the original lease, whichever is less. The lessee shall file his application for modification in duplicate in the proper land office, describing the additional lands desired, and the needs and reasons for and the advantage to the lessee of such modification.

(b) *Availability*—(1) *Noncompetitive.* Upon determination by the authorized officer that the modification is justified and that the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the land or deposits as he shall prescribe.

(2) *Competitive.* If it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them, they will be offered as provided in Subpart 3520.

(c) *Terms and conditions.* The authorized officer shall require changes in the terms and conditions of the original lease to make them consistent with the modified lease. Before a lease is modified under paragraph (a) or (b) of this section, the lessee shall file his written acceptance of the conditions imposed in the modified lease and the written consent of the surety under the bond covering the original lease to the modification of the lease and to extension of the bond to cover the additional land.

17. A new Subpart, 3525, is added to Title 43 CFR as follows:

Subpart 3525—Energy Minerals Activity Recommendation System (EMARS)

Sec.

3525.1 Authority.
3525.2 Objectives and policy.
3525.3 Competitive leases: procedures.
3525.4 Qualified applicants.
3525.5 Lands subject to leasing.
3525.6 Special leasing opportunities.
3525.7 Deferred bonus payment policy.
3525.8 Request for information on areas of interest.
3525.9 Applications: short-term sales.
3525.10 Preliminary data.
3525.11 Land-use plans.
3525.12 Land-use plans: availability.
3525.13 Consent to leasing: Federal surface managing agency.
3525.14 Consultation with Governors.
3525.15 Notice of lease sale.
3525.16 Consultation with Attorney General.
3525.17 Award of leases.
3525.18 Compliance with Notice of Competitive Lease Offer.
3525.19 Procedures and public participation.

Subpart 3525—Energy Minerals Activity Recommendation System (EMARS)

§ 3525.1 Authority.

(a) *Acts.* (1) The Act of February 25, 1920, 41 Stat. 437, as amended by the Act of June 3, 1948, 62 Stat. 248, the Act of September 9, 1959, 73 Stat. 490, the Act of August 31, 1964, 78 Stat. 710, and the Act of August 4, 1976, 90 Stat. 1083, 30 U.S.C. 201(a).

(2) The Act of August 7, 1947, 61 Stat. 913, and the Act of August 4, 1976, 90 Stat. 1090, 30 U.S.C. 352.

(b) *Actions Authorized.* The Secretary may issue coal leases through competitive bidding.

§ 3525.2 Objectives and policy.

(a) The objectives of the Department's coal leasing process called Energy Minerals Activity Recommendation System (EMARS), include: the orderly and timely development of federally-owned coal; appropriate uses of the resources; effective environmental protection; and a fair market return to the public for the resources sold. The program consists of three principal elements: nominations; multiple resource land-use planning; and environmental analysis. Nominations provide the first indication of tracts which should or should not be leased. The nominations received are then compared with resource values through the Bureau's land-use planning process, including Management Framework Plans. From these phases, proposed tract recommendations will be made and environmental analyses will be undertaken on the proposed coal lease tracts. The integration of these three elements, i.e., nominations, multiple resource land-use planning, and environmental analysis—each of which will be undertaken with State and public participation—will produce specific coal lease recommendations for Secretarial decision.

(b) It is the policy of the Department to encourage the development of Federally-owned coal, where such development is authorized, through a program that will provide for the protection, orderly development and conservation of Federal mineral and nonmineral resources in a manner that will avoid, minimize or correct adverse impacts on society and the environment resulting from coal development, without undue duplication or administrative delay by Federal officers. It is also the policy of the Department to issue leases for coal only where reclamation of the affected lands to the standards set forth in 43 CFR Part 3040 is attainable and assured and a reclamation program will be undertaken as contemporaneously as practicable with operations.

§ 3525.3 Competitive leases: Procedures.

(a) *Establishment of leasing tracts.* General coal land or deposits shall be divided into suitable leasing tracts and leased competitively. The Energy Minerals Activity Recommendation System (EMARS) shall be used to identify tracts suitable for leasing through nominations and multiple-use land management planning. All competitive lease sales, except those that qualify under the short-term leasing criteria, will be on Bureau motion.

(b) *Selection of proposed tracts.* (1) *Bureau Motion.* Proposed tracts will be selected by the Bureau of Land Management and United States Geological Survey field offices, with participation from affected State governments, and other surface management agencies, if other than the Bureau of Land Management, based upon relevant information including information from the ap-

propriate land-use plan, from nominations and from competitive coal lease applications on file.

(2) *Selection of Proposed Tracts: Short-term Sale.* Proposed tracts for short-term sales will be selected using the same criteria as Bureau motion tracts. Prior to selecting a proposed short-term tract the Bureau must determine that the application meets the short-term leasing criteria.

(3) No lands may be included in a proposed tract unless: (i) the land is included in a completed land-use plan and leasing is compatible with the plan; (ii) the lands have been included in a known recoverable coal resource area (KRCRA);

(iii) the lands have been included in a nomination or have been identified by BLM as potential leasing tracts or included in a short-term lease application.

(4) *Tract Selection Factors.* The selection of proposed lease tracts will include consideration of such factors as: depth, quality, thickness and extent of the coal resource; water resource availability; relationship to existing communities; potential impacts on economic structure (e.g., employment, available services, etc.); service and access corridors; aesthetic qualities such as scenic, cultural, Wildlife, and vegetative values; rehabilitation potential and Coal Resources Regulations Guideline No. 1 (41 FR 43722).

(c) *Compliance with NEPA.* The National Environmental Policy Act will be complied with as follows: If several proposed leasing units have significant related characteristics and would sustain similar or related environmental impacts, as determined by the Secretary, they may be covered by a single regional environmental impact statement. Where leasing actions are adequately covered in a regional impact statement, no additional impact statement need be prepared. A public hearing will be held after publication of a draft regional environmental assessment or an impact statement, as appropriate, will be prepared for proposed leasing actions not included in a regional impact statement. The Department will provide public notice and an opportunity for a public meeting on an environmental assessment for a coal leasing proposal that indicates that an environmental impact statement is not required.

(d) *Technical examinations.* A technical examination in accordance with the procedures in 43 CFR 3041.2 and 3041.2–1 will be completed on each unit after completion of the final environmental impact statement or environmental analysis to identify specific reclamation requirements and tracts requiring special environmental consideration and to prepare bonding requirements and stipulations to minimize impacts upon the environment and other resources, lands uses, or programs. Reclamation requirements will be imposed in accordance with 43 CFR 3041. The technical examination will include an evaluation of the proposed leasing unit to balance the value of the coal against the cost of mining, the cost of mitigation of environmental damage, and the significance of unmitigable damages. The Bureau will obtain from the Geological Survey an evaluation and comparison of the effects of recovering coal by deep mining, by surface mining, and by other methods to determine which method or methods achieves the maximum economic recovery of the proposed tract.

(e) *Recommendation of tentative coal lease tracts.* (1) After the BLM has completed the actions required by paragraphs (a)–(e) of this section, after State government and surface management agency consultation, and after holding a public hearing, on the record, in the area which may be affected by the proposed coal lease sale, the State Director will recommend suitable tentative coal lease tracts to the Director. The Director will consolidate approved field recommendations into a proposed Coal Lease Sale Schedule for review and approval by the Secretary.

(2) The Director's recommendation, and the Secretary's final approval, shall include a written synopsis of earlier analyses which evaluates and compares:

(i) The effects of recovering coal by deep mining, by surface mining and by any other method to determine which method or methods or sequence of methods achieves the maximum economic recovery of the coal within the proposed leasing tract, and

(ii) The effects which mining the proposed lease might have on an impacted community or area, including impacts on the environment, on agriculture and other activities, and on public services.

§ 3525.4 Qualified applicants.

Leases may be issued to qualified applicants listed in Subpart 3502 of this chapter unless:

(a) The qualified applicant, or any subsidiary, affiliate, or person controlled by or under the common control of the qualified applicant holds a lease or leases to coal deposits issued by the United States and has held the lease for 10 years and is not producing coal in commercial quantities.

Exceptions. A lessee is not disqualified from holding a lease if either production is interrupted by strikes, the elements, or casualties not attributable to the lessee, or the Secretary has suspended the requirement of continued operation upon payment of advance royalties.

(1) The 10-year period referred to in paragraph (a) of this section shall begin on August 4, 1976, or the date the lease is issued, whichever is later.

(2) For the purpose of this paragraph, production of coal in commercial quantities means production adequate to meet the requirement for continuous operation as defined in § 3500.0–5(g) of this chapter.

(b) The qualified applicant holds or controls more than 46,080 acres of Federal coal leases in any one state or 100,000 acres of Federal coal leases in the entire United States.

§ 3525.5 Lands subject to leasing.

(a) The Secretary may issue coal leases on all lands owned by the United States except lands in the:

(1) National Park System;

(2) National Wildlife Refuge System;

(3) National Wilderness Preservation System;

(4) National System of Trails;

(5) Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act;

(6) Incorporated cities, towns and villages; and

(7) Tide lands, submerged coastal lands within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States.

(8) Lands acquired by the United States for the development of mineral deposits, for foreclosure or otherwise for resale, or reported as surplus property pursuant to the provisions of the Surplus Property Act of 1944.

(b) (1) The Secretary may issue coal leases with the consent of the Secretary of Defense on acquired lands set apart for military or naval purposes only if the leases are issued to a governmental entity, including any corporation primarily acting as an agency or instrumentality of a State, which

(i) Produces electrical energy for sale to the public; and

(ii) Is located in the State in which the leased lands are located.

(2) A government entity is located in a State if its production facilities are in that State, and the coal produced from the lease will be used in the State.

(c) The regulations in Subpart 3525 of Title 43 CFR do not apply to the leasing and development of coal deposits owned by Indians and subject to the trust protection of the United States. Regulations governing those deposits are found in 25 CFR Chapter I.

§ 3525.6 Special leasing opportunities.

(a) The Secretary shall, under the procedures established under this subpart, reserve and offer a reasonable number of coal lease tracts within competitive lease sales each year as special leasing opportunities. Except for the limitation on bidding contained in paragraph (b) of this section, all of the requirements of this subpart apply to special leasing opportunities including the requirement that the coal be leased at its fair-market value.

(b) Only public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations controlled by any of these entities which have a definite plan to produce energy for their own use or for sale of their members or customers will be eligible to bid for leases designated as special leasing opportunities. Evidence of qualification to bid for leases designated as special leasing opportunities must be filed with the Department at least 60 days prior to a sale.

(c) The Secretary may designate certain coal lease tracts as special leasing

opportunities only if a public body has requested, in the nomination or elsewhere, that the procedures of this section apply.

(d) Leases issued under this Section may be assigned only to another public body.

§ 3525.7 Deferred Bonus Payment Policy.

All competitive coal lease sales shall be held on a deferred bonus payment basis. In a deferred bonus payment the lessee shall pay the bonus payment in five (5) equal installments: The first installment shall be made as required by § 3525. The balance shall be paid in equal annual installments due and payable on the first four anniversary dates of the lease. If a lease is relinquished or otherwise terminated, the unpaid remainder of the bid shall be immediately payable to the United States.

§ 3525.8 Request for information on areas of interest.

(a) *Purpose.* This section establishes a procedure by which industry, the general public, and State and local governments can inform the Department of the Interior of their views on coal leasing in particular areas. The Department will incorporate the information it receives into its internal planning processes for Federal coal leasing tract selections. Except for short-term leasing applications, nominations are the primary source of information on the need for additional coal leasing.

(b) *Description of process.* The Director will request information on an annual basis, or as necessary. Any person may file with the Bureau, a statement with supporting information, asking the Director to make a request for nominations. The Bureau is not required to act on the statement. The Request for Information on Areas of Interest will consist of two types.

(1) *Industry nominations.* Nominations from industry of tracts of land that the Department should or should not make available for coal leasing including, as appropriate, statements describing why the tracts should or should not be leased.

(2) *Areas of public concern.* Concurrently with Industry Nominations, State and local governments and the general public are requested to submit Areas of Public Concern covering tracts of land that the Department should or should not make available for coal leasing including, as appropriate, statements describing why the tracts should or should not be leased.

(c) *Use of nominations.* Information obtained through the nominations process will be analyzed and compared with multiple resource opportunities identified in the land-use planning process. Proposed coal lease tracts will then be developed on the basis of nominations and multiple resource information.

(d) *Description of nominations.* All nominations or statements of information for or opposed to leasing shall: (1) (i) Describe the lands by legal subdivisions, section, township, and range; or in the case of land covered only by protracted surveys, by section, township, and range according to an approved protraction diagram; or

(ii) Use the Bureau of Land Management's Surface/Minerals Management Quads (minerals ownership maps) to indicate nominated areas. A readily discernible line on these maps conforming to legal subdivision and section lines will be accepted as the description required in paragraph (d)(1)(i) of this section. The maps are available for sale at BLM State and most District Offices.

(2) Describe reasonably compact areas, which will be assumed to include all Federal coal within the boundaries described, and may not exceed 25,000 acres.

(e) *Multiple nominations.* If a person submits two or more nominations for leasing or two or more nominations against leasing, choices shall be ranked in order of importance and shall be numbered consecutively. Nominations should be ranked on a nationwide basis.

(f) *Inspection and copying.* The procedures in 43 CFR Part 2 govern the public inspection and copying of information submitted under this section.

(g) *Notice of requests for nominations on areas of interest.* (1) Notice of each Request for Information on Areas of Interest will be published in the FEDERAL REGISTER and in a newspaper(s) of general circulation in the State affected and will specify the area or areas covered by the call, the size and raking of nominations, the period of time within which to submit nominations, and the addresses to which the nominations are to be submitted.

(2) *Lands Eligible for Nominations.* Nominations will be accepted only for those lands that are eligible for coal leasing. Lands not subject to leasing include (i) lands listed in § 3525.5; (ii) lands withdrawn from coal leasing or otherwise not subject to the provisions of the Mineral Leasing Act; (iii) land subject to a coal lease, permit or preference right lease application; and (iv) areas designated by BLM as primitive areas.

(h) *Areas nominated in national forest system.* The authorized officer will notify the Secretary of Agriculture of all lands nominated for leasing that are in the National Forest System.

(i) *Meeting on Nominations.* Prior to the selection of proposed tracts, the Bureau will hold a public meeting on nominations if the public has not had an opportunity to comment on the nominations in the land-use planning process.

§ 3525.9 Applications: Short-term sales.

Applications for coal leases will be accepted only if the applicant shows that (a) the coal is needed to maintain an existing mining operation, or (b) the coal is needed as a reserve for production in the near future.

§ 3525.10 Preliminary data.

(a) Any application for coal lease filed pursuant to the regulations in this Chapter shall contain preliminary data to assist the authorized officer in making a technical evaluation and environmental analysis as described in § 3041.2.

(b) Such preliminary data shall include: (1) Such map, or maps, as may be available from State or Federal sources, on which shall be shown the topography of the land applied for, and on which the applicant shall show physical features and natural drainage patterns and existing roads, vehicular trails, and utility systems; the location of any proposed exploration operations, including seismic lines, drill holes, to the extent known, the location of any proposed mining operations and facilities, trenches, access roads or trails, and support facilities incidental thereto, including the approximate location and aerial extent of the areas to be used for pits, overburden, and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(2) A narrative statement, including: (i) The anticipated scope, method, and schedule of exploration operations, including the types of exploration equipment to be used.

(ii) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed.

(iii) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands.

(iv) A brief description, including suitable maps or aerial photographs as appropriate, of the existing land use within and adjacent to the lands applied for; and of known geologic, visual, cultural, or archaeological features; and the known habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed or reasonably anticipated exploration or mining operations.

(v) A brief description of the proposed measures to be taken to maximize, control, or prevent fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, air and noise pollution, and hazards to public health and safety; to reclaim the surface; and to otherwise meet applicable laws and regulations, which the applicant wishes to have considered by the authorized officer.

(c) The applicant shall not enter upon the land for any operational purpose, except for casual use, without prior authorization. Casual use, as used in this section, means activities which do not cause significant surface disturbance or damage to lands, resources, and improvements, such as activities which do not include (1) the use of heavy equipment or explosives, or (2) vehicular movement off established roads and trails which causes such disturbance.

(d) The authorized officer, after reviewing the preliminary data contained in an application, and at any time during a technical examination and environmental analysis, may request additional information from the applicant.

§ 3525.11 Land-use plans.

(a) *Preparation of a land-use plan.* The Secretary may not issue a lease for coal deposits unless the lands containing coal deposits have been included in a comprehensive land-use plan and the sale is compatible with the plan. A comprehensive land-use plan shall:

(1) Use and observe the principles of multiple use and sustained yield set forth in the Federal Land Policy and Management Act of 1976;

(2) Use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;

(3) Give priority to the designation and protection of areas of critical environmental concern;

(4) Rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;

(5) Consider present and potential uses of the public lands;

(6) Consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(7) Weigh long-term benefits to the public against short-term benefits;

(8) Provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and

(9) Assess the amount of coal deposits contained in the land and shall, based on available information, identify the amount of coal that is recoverable by deep mining operations and the amount that is recoverable by surface mining operations.

(b) *Agency to prepare land-use plans.* (1) The Bureau of Land Management will prepare plans for land under its jurisdiction in accordance with its procedures.

(2) The Department of Agriculture and other federal agencies with jurisdiction over lands where there is interest in coal mining will prepare land-use plans for those lands.

(3) If the Secretary finds that because of non-Federal interest in the surface, or because the coal resources are insufficient to justify the costs of a Federal comprehensive land use-plan, in an area, he may lease lands in that area if the lands containing the coal deposits have been included in either a comprehensive land-use plan prepared by the State within which the lands are located, or a land-use analysis prepared by the Secretary of the Interior.

(c) *Consultation and public hearing.* A plan will not be adequate for the purposes of this section unless the agency that prepares the plan has:

(1) Consulted appropriate State and local governments and the general public during the preparation of a plan; and

(2) Provided an opportunity for a public hearing on a proposed plan prior to its adoption if requested by any person who may be adversely affected by the adoption of the plan.

(d) *Hearing Requirements.* The agency that conducts the hearing shall: (1) Publish a notice of the hearing in a newspaper of general circulation at least once in each of two consecutive weeks in the affected geographical area;

(2) Provide an opportunity for testimony by anyone who desires to do so;

(3) Compile a complete transcript of the hearing if a request for a transcript is filed, in writing, at least 10 days prior to the hearing;

(4) Plans adopted prior to August 9, 1976 will be considered adequate if the public had an adequate opportunity to comment on the plan prior to its adoption, even if a formal hearing was not held.

§ 3525.12 Land-use plans: availability.

The Bureau's land-use plan and multiple land-use management plans of other Federal agencies, as appropriate, will be available for inspection at the appropriate Bureau or agency office. Upon the request of the Governor of a State affected by coal lease actions, the State Director will make available for his review the land-use plans for that State, and, as appropriate, adjacent States.

§ 3525.13 Consent to leasing: Federal surface managing agency.

(a) The Secretary may not issue leases for lands the surface of which is under the jurisdiction of any agency other than the Department of the Interior unless the Federal agency has consented to the issuance of the lease, but any lease shall contain terms and conditions as the head of the agency may prescribe for the use and protection of the nonmineral interests in those lands.

(b) The Secretary must accept the conditions prescribed by the surface managing agency, but may prescribe additional terms and conditions that are consistant with the terms proposed by the surface managing agency to protect the interests of the United States and to safeguard the public welfare.

§ 3525.14 Consultation with Governors.

(a) *General consultation.* Prior to offering a coal lease for competitive sale, the Secretary shall consult the Governor of the State in which the land to be leased is located.

(b) *Consultation for surface mining proposals in national forest.* (1) Prior to offering a coal lease in a National Forest where the method of mining which achieves maximum economic recovery of the coal resources is surface mining, the Secretary shall submit the lease proposal to the Governor of the State in which the coal deposits are found.

(2) The Secretary may not issue a lease in a National Forest for a lease which the method of mining that achieves maximum economic recovery is surface mining until at least 60 days after he notifies the Governor of the lease proposal.

(3) If the Governor fails to object to the lease proposal in 60 days, the Secretary may issue the lease. If within the sixty-day period the Governor notifies the Secretary, in writing, that he objects to the lease proposal, the Secretary may not approve the lease for six months from the date the Governor objects to the lease.

(4) The Governor may, during this six-month period, submit a written statement of reasons why the lease should not be issued, and the Secretary shall, on the basis of this statement, reconsider the lease proposal.

§ 3525.15 Notice of lease sale.

(g) *Notice of lease sale.* (1) Publication. Prior to the lease sale, the Authorized Officer shall publish in the FEDERAL REGISTER and in a newspaper(s) of general circulation in the county affected by the sale a notice of the proposed sale. The newspaper notice shall be published once a week for three consecutive weeks.

(2) The notice will show the time and place of sale whether the sale will be at public auction or by sealed bids, the description of the land, and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained.

(3) It will also contain a statement that sealed bids may not be modified or withdrawn unless the modifications or withdrawals are received prior to the time fixed for opening of the bids.

(4) The detailed statement will set forth the terms and conditions of the sale, including the manner in which the bids may be submitted.

(5) The detailed statement will also contain a warning to all bidders against violation of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders.

(6) The detailed statement will specify that the Government reserves the right to reject any and all bids. If the sale is by public auction, the statement of terms and conditions of the sale will also specify that sealed bids may be submitted. If any bid be rejected, the deposit will be returned.

(7) The detailed statement will also contain a request for comments on the fair market value of the tracts to be sold. The notice shall state the address to where the comments on fair market value should be submitted.

§ 3525.16 Consultation with Attorney General.

(a) Subsequent to a lease sale, but prior to issuing a lease, the Secretary shall notify the Attorney General of the proposed lease issuance, the proposed lessee, normally the high bidder in a sale, and other relevant information. The Secretary may not issue a lease until 30 days after he notifies the Attorney General.

(b) The Secretary shall not issue the lease to the proposed lessee if, during this 30-day period, the Attorney General notifies the Secretary that the proposed lease issuance would create or maintain a situation inconsistent with the antitrust laws, which means:

(1) The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved

July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(2) The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (15 U.S.C., et seq.), as amended;

(3) The Federal Trade Commission Act (15 U.S.C. 41, et seq.), as amended;

(4) Sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; or

(5) The Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a)."

(c) If the Attorney General notifies the Secretary that a lease should not be issued the Secretary may:

(1) Reject all other bids or may request the Attorney General in accordance with paragraph (a) of this section to consider the issuance of the proposed lease to the next qualified high bidder; or

(2) Issue the lease if, after he conducts a public hearing on the record in accordance with the Administrative Procedures Act, he determines that: (i) Issuance of the lease is necessary to carry out the purposes of the Federal Coal Leasing Amendments Act of 1975; (ii) Issuance of the lease is consistent with the public interest; and (iii) There are no reasonable alternatives to the issuance of the lease that are consistent with the Federal Coal Leasing Amendments Act of 1975, the antitrust laws and the public interest.

(d) If the Attorney General does not give a written reply to the notification in paragraph (a) of this section within 30 days, the Secretary may issue a lease without waiting for the advice of the Attorney General.

§ 3525.17 Award of leases.

(a) *Pre-sale evaluation.* Before the lease sale, the U.S. Geological Survey, considering public comments on fair market value and available geotechnical, engineering and economic data, shall make a coal resource economic evaluation of each tract to be sold and shall submit it to the authorized officer.

(b) *Notification of award.* Bids will be received only until the hour on the date specified in the notice of competitive leasing. All bids submitted after the hour will be rejected. The authorized officer will read all sealed bids. If the procedure calls for sealed bids followed by oral bids the oral bidding will begin at the level of the highest sealed bid received. After the oral bidding has ceased, the highest bid will be announced. The high bidder will be required to comply with 43 CFR § 3421.2–4 and 43 CFR § 3521.4–2. No decision to accept or reject any bid will be made at this time. The sale will be adjourned and the sale panel will convene to determine if the bid adequately reflects fair market value considering, among other factors, comments on fair market value. The recommendations of the panel will be sent to the authorized officer who, after the Department complies with § 3525.17 of this subpart, will make the final decision to accept a bid or reject all bids, as soon as possible after the sale date. The successful bidder will be notified in writing. The Department reserves the right to reject any and all bids but will not accept any bids which are less than the fair market value of the tract. The Department also reserves the right to offer a lease to the second high bidder if the successful bidder fails to execute the lease.

(c) *Intertract competition.* The use of bidding competition between tracts (intertract bidding) is hereby authorized when and if the Bureau of Land Management and the U.S. Geological Survey determine it is needed in the public interest. The authorization to utilize intertract competition does not preclude the use of any other form of competitive bidding procedure.

§ 3525.18 Compliance with notice of competitive lease offer.

(a) *Action by successful bidder.* Four copies of the lease will be sent to the successful bidder, who will be required not later than the 30th day after his receipt thereof, to execute them, pay the balance of the bonus bid or the first payment of the deferred bonus payment on the first year's rental, and file a bond as required by Subpart 3504.

(b) *Death of bidder.* If the bidder dies before the lease is issued, there must be compliance with § 3502.8 of this chapter.

§ 3525.19 Procedures and public participation.

(a) *Written findings.* Except as may be otherwise expressly set forth in this subpart, decisions and determinations of any appropriate authorized officer acting pursuant to this subpart with respect to issuance of leases, shall be in writing, shall set forth with reasonable specificity the facts and the rationale upon which such decisions or determinations are based, and shall be available for public inspection during normal business hours at the offices of such officer.

(b) *Availability of documents.* Except for documents which are subject to withholding under the Freedom of Information Act, any application for a lease, together with the proposed terms, conditions, and special stipulations and any preliminary data submitted under this subpart shall be available for public inspection in the appropriate BLM office. To allow for such public inspection, a notice of the availability of any such documents shall be prepared by the appropriate officer of the BLM and promptly posted at his office and mailed to the surface owner, if other than the United States, to appropriate Federal and State agencies, and to the clerk or other appropriate officer in the county in which the proposed operation is located for posting or publication in accordance with the procedures of that office. No final action with respect to such documents shall be taken for a period of 30 days after such posting and mailing. A copy of such notice shall be published by the applicant in a local newspaper of general circulation in the locality of the proposed operation at least once a week for four consecutive weeks.

(c) Where a hearing under this subpart has been held on the record, a complete transcript, of the hearing, including any written comments submitted for the record, shall be kept and maintained available to the public during normal business hours at the appropriate Federal office under whose auspices such meeting is conducted, and shall be furnished at cost to any interested party.

Dated: January 18, 1977.

THOMAS S. KLEPPE,
Secretary,
Department of the Interior.

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CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

PART 3500—LEASING OF MINERALS OTHER THAN OIL AND GAS; GENERAL

PART 9230—TRESPASS

Exploration Licenses for Federally-Owned Coal Deposits

These regulations provide for the issuance of licenses to explore Federally-owned coal deposits subject to lease pursuant to 43 CFR Part 3500.

Section 4 of the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94–377; 90 Stat. 1039) amended section 2(b) of the Mineral Leasing Act of 1920 (30 U.S.C. 201(b)) to provide for the issuance of exploration licenses for federally-owned coal. In November 5, 1976, the Department published a notice of proposed rulemaking to implement section 4 of the new Act, 41 F.R. 48754. Comments have been received and carefully considered, and the regulations are included in this notice as a final rulemaking.

The most significant change to be made since the regulations were published in draft is in the section controlling the submission and treatment of data collected during exploration, 43 CFR § 3507.4. The statute requires the Department to treat data as confidential until the applicable land is leased or until disclosure would not damage the competitive position of the licensee, whichever is sooner. The proposed regulations repeated this requirement but limited the period of confidentiality to five years. Several commentators stated that if land was not leased within five years, the competitive position of a licensee would usually be damaged. For this reason, the five-year limitation has been deleted.

Other commentators expressed concern with the same section because it provides that only "resource data" (data relating primarily to coal deposits) as opposed to environmental data would be treated as confidential. However, the statute does not make this distinction in requiring "all data" to be treated as confidential. Accordingly, the section has been amended to eliminate the distinction and follow the wording of the statute more closely. The Department points out that in most cases the disclosure to the public of environmental information would not damage the competitive position of a licensee and, as

permitted by the statute, it will be disclosed when that finding is made.

Many comments were received in response to § 3507.3–1(d) of the proposal, which provides for participation in exploration licenses. Many commentators urged that the subsection be deleted because the requirement to explore jointly with others would reduce the incentive to explore. Nevertheless, the Department has decided not to delete the subsection. If parties are induced to group together, fewer exploration programs are apt to be conducted in any single area and any toll on the environment is therefore apt to be less.

Many commentators urged that 43 CFR § 3507.3–2(b) be modified so as to allow for an extension of the term of a license beyond two years. The Department believes that this suggested change would conflict with a provision in the statute that limits the term of a license to "not more than two years." There is no authority in the statute to extend that 2-year term. Accordingly, the Department has not modified the subsection as suggested. It should be noted that the provision for issuance of another license covering the same land at the end of the initial license's 2-year term serves the same purpose as an extension.

There was some concern expressed over the restrictive interpretation of "substantial disturbance" and "reasonable amounts" found in 43 CFR §§ 3507.-0–5(j), 3507.0–5(k), and 3507.3–3(c). It is the Department's position that the statute is intended to allow exploration of coal deposits "without substantial disturbance to the natural land surface." So-called "test burns," involving the extraction of several thousand tons of coal, would be outside the scope of the statute. Accordingly, these provisions have not been changed.

Two commentators suggested that land subject to outstanding prospecting permits or preference right lease applications be excluded from exploration activities. The statute does not provide for this limitation; it prohibits only the issuance of exploration licenses for lands for which coal leases have been issued. While no amendment has been made, however, the Department points out that if lands subject to a license are leased, those lands shall thereafter be excluded from the license.

Some commentators objected to 43 CFR § 3507.3–6 of the proposed regulations which provides that a licensee may be required to collect and submit ground water data to the authorized officer. The objections were based on a feeling that the collection of hydrologic data might be costly and beyond the scope of an exploration program. The Department feels that hydrologic data often provides valuable environmental information that can bear on the advisability of opening an area for coal leasing. For this reason, it is not considered to be beyond the scope of an exploration program. The Department has therefore not modified this section of the regulations.

On the basis of the foregoing:

1. 43 CFR Part 3500 be amended by adding a new Subpart 3507 to read as follows:

Subpart 3507—Coal Exploration Licenses

Sec.

3507. 0–1 Purpose.
3507. 0–2 Objective.
3507. 0–3 Authority.
3507. 0–4 Responsibilities.
3507. 0–5 Definitions.
3507. 1 Lands subject to exploration license.
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3507. 3–1 Applications for license.
3507. 3–2 Issuance and termination of license.
3507. 3–3 Rights under license.
3507. 3–4 Operating regulations.
3507. 3–5 Surface protection and reclamation.
3507. 3–6 Ground water data.
3507. 3–7 Bonds.
3507. 4 Use of data.
3507. 5 Use of surface.

Subpart 3507—Coal Exploration Licenses

§ 3507.0–1 Purpose.

This subpart provides for the issuance of licenses for exploring federally-owned coal deposits subject to disposal pursuant to this Part 3500, regardless of surface ownership.

§ 3507.0–2 Objective.

The objective of this subpart is to allow private parties to explore federally-owned coal deposits in order to obtain geological, environmental, and other pertinent data concerning the deposits and the lands in which they lie.

§ 3507.0–3 Authority.

The authority for this subpart is found in section 2(b) of the Mineral Leasing Act of February 25, 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083, 1085, 30 U.S.C. 201(b).

§ 3507.0–4 Responsibilities.

(a) The Bureau of Land Management (BLM) exercises at the Bureau level the Secretary's discretionary authority to determine whether exploration licenses are to be issued, and is responsible for issuing and cancelling exploration licenses and terminating the period of liability of bonds. The regulations in this Subpart shall be administered by the Director through the State Director and the authorized officer, subject to the supervisory authority of the Secretary. The proper BLM office is also the office of record.

(b) The Geological Survey exercises the Secretary's authority regarding operations conducted within the area of operations by the licensee, and is responsible for all geological, economic, and engineering determinations for the Department's coal leasing program.

(c) The authorized officer in consultation with the Geological Survey, and where appropriate, the surface management agency and the surface owner if other than the United States, formulates the requirements to be incorporated in exploration licenses for the protection of the surface resources, for reclamation, using as guidelines the surface operating and reclamation performance standards in Subpart 3041 of this chapter and 30 CFR Part 211, and for the bonding requirements.

(d) The Geological Survey, after consultation with the authorized officer, and where appropriate, the surface management agency and the surface owner, if other than the United States, reviews and concurs in exploration plans and recommends termination of the period liability of the bond upon the completion of exploration operations.

§ 3507.0–5 Definitions.

(a) "Coal deposit" means all federally-owned deposits which are subject to disposal under applicable law, except those held in trust for Indians.

(b) "Exploration" means drilling, excavating, and geophysical or geochemical surveying operations designed to obtain detailed data on the physical and chemical characteristics of coal deposits and their environment including the strata above the deposit, the hydrologic conditions associated with the deposit, and any other information that may be necessary to prepare a complete resource evaluation of the land.

(c) "Surface management agency" means the Federal ageny or authorized officer thereof other than the Bureau of Land Management having jurisdiction over the surface of lands containing coal deposits subject to this part.

(d) "Exploration plan" means a detailed plan showing the location and type of exploration work to be conducted, environmental protection procedures, present and proposed roads, as well as reclamation and abandonment procedures to be followed upon completion of such operations.

(e) "Exploration license" means a license issued by the authorized officer to permit the exploration of federally-owned coal deposits under terms and conditions that will protect the surface and subsurface resources and the environment, and provide for the reclamation of any damage caused by such exploration.

(f) "Participate" means to have or take part or share with others in an exploration license.

(g) "Participant" means a person who participates or shares in an exploration license.

(h) "Reasonable amount of coal for analysis and study" means only that amount of coal necessary to establish whether or not a federally owned deposit can be economically extracted and the removal of which does not cause substantial disturbance to the natural land surface.

(i) "Substantial disturbance to the natural land surface" means disturbance of the surface other than that necessary for the mere location of potential coal deposits and for the access to those deposits necessary to determine their location and quality by operations such as

surface sampling or drilling geologic study and exploration holes. These operations shall extend only to the degree and extent necessary to determine the nature of the overlying strata and the depth, thickness, shape, grade, and quality of the coal deposit.

§ 3507.1 Lands subject to exploration license.

(a) Exploration licenses may be issued for:

(1) Lands administered by the Secretary subject to coal leasing;

(2) National forest lands or other lands administered by the Secretary of Agriculture through the Forest Service subject to coal leasing;

(3) Coal deposits in lands which have been conveyed by the United States subject to a reservation to the United States or mineral deposits, to the extent that those deposits are subject to lease pursuant to this Part 3500; and

(4) Coal or lignite deposits in acquired lands set apart for military or naval purposes.

(b) No exploration license will be issued for any land on which a coal lease has been issued.

§ 3507.2 Prelicensing procedures.

§ 3507.2–1 Environmental review.

Before the issuance of an exploration license:

(a) The authorized officer or, where the surface is not administered by BLM, the surface management agency shall, in accordance with 43 CFR §§ 3041.2 and 3041.2–1 and using the exploration plan submitted by the applicant, make an environmental analysis and technical examination of the potential effect of such exploration on the resources of the area and its environment, including fish and other aquatic resources, wildlife habitats and populations, visual resources, recreation, cultural, and other resources in the affected area. The applicant shall not begin exploration until an environmental analysis is accomplished and the exploration plan has been approved.

(b) If the authorized officer or, where the surface is not administered by BLM, the surface management agency determines that an environmental impact statement is required by the National Environmental Policy Act of 1969 (43 U.S.C. 4321–4327), he will take necessary steps to prepare such a statement.

§ 3507.2–2 Cultural resources.

If lands in the National Register or nominated for inclusion in the National Register contain cultural resources which might be affected by the issuance of an exploration license, no license for such lands will be authorized until there has been compliance with Section 106 of the Historic Preservation Act (80 Stat. 917; 16 U.S.C. 470f) and Section 2(b) of E.O. 11593 of May 13, 1971, (36 FR 8921 (16 U.S.C. 470 fn)).

§ 3507.2–3 Threatened or endangered species.

The authorized officer shall not issue an exploration license if he determines pursuant to the Act of December 28, 1973 (87 Stat. 884, 16 U.S.C. 1531–1543) that the existence of any threatened or endangered species of fauna or flora will be jeopardized and that critical habitat would be destroyed or adversely modified to a significant degree by the exploration activities authorized by that license. In making this determination, the authorized officer shall consult the surface management agency, if the surface is not managed by BLM.

§ 3507.2–4 Surface management agency.

The authorized officer shall issue an exploration license covering lands the surface of which is under the jurisdiction of any Federal agency other than the Bureau of Land Management only upon such conditions as the surface management agency may prescribe with respect to the use and protection of the nonmineral interests in those lands.

§ 3507.3 Licenses.

§ 3507.3–1 Applications for license.

(a) *Applications.* Exploration license applications shall be submitted to the authorized officer and shall be subject to the following requirements:

(1) No specified form of applicaton is required.

(2) Each application shall identify the tract or tracts to be explored described by legal description (or, if unavailable, by metes and bounds).

(3) Each application shall contain three copies of an exploration plan which complies with the requirements of 30 CFR 211.10.

(4) Each application with supporting documents shall be filed in the proper BLM Office, together with a nonrefundable $250 license fee.

(5) A separate application shall be filed for exploration in each State.

(b) *Qualified persons.* Any person qualified to hold leases or contracts issued pursuant to this Part 3500 may apply for an exploration license.

(c) *Call for applications.* Nothing in this subpart shall preclude the authorized officer from issuing a call for an expression of interest in exploration licenses for a given area.

(d) *Participation.* Applicants for licenses shall be required, after approval of the plan and prior to issuance, to afford other parties an opportunity, on a pro rata cost sharing basis, to participate in the approved exploration plan. Upon notice that a license will be issued to him an applicant must publish a "Notice of Invitation," approved by the authorized officer, once every week for four consecutive weeks in at least one newspaper of general circulation in the area where the lands covered by the license application are situated. This notice must contain an invitation to the public to participate in the proposed exploration program. Copies of published Notices of Invitation must be filed with the authorized officer upon each publication for posting in the proper BLM Office. Any person who elects to participate in the exploration programs shall notify in writing the authorized officer and the applicant. Upon the applicant's compliance with the requirements of this section, all else being regular, the authorized officer may issue the exploration license.

§ 3507.3–2 Issuance and termination of license.

(a) *General.* No person may conduct exploration without a lease unless he has been issued an exploration license. An exploration license shall not be required for "casual use" as defined in 30 CFR § 211.10(a). The issuance of exploration licenses under this Subpart is discretionary with the authorized officer. An exploration license shall confer no right to a lease.

(b) *Duration.* Exploration licenses may be issued for not more than two years, including the time for clean up and restoration. The authorized officer shall designate the date on which operations may begin.

(c) *Relinquishments.* A licensee may, subject to his own and his surety's continued obligation to comply with the terms and conditions and special stipulations of the license, the plan, and the regulations, relinquish an exploration license for all or any portion of the lands embraced in it. A relinquishment must be filed in the proper BLM Office.

(d) *Revocation.* An exploration license may be revoked for noncompliance with the terms of the license, the plan, or the regulations, after the licensee has been given a notice of violation and the licensee has failed to correct the violations within the period prescribed in the notice.

(e) *Exploration Plan.* The approved exploration plan will be dated, attached, and made a part of each license issued.

(f) *Modifications.* When unforeseen conditions that could result in signficant disturbance or damage are encountered or when geologic or other physical conditions warrant a modification in the approved exploration plan, (1) the authorized officer, after consultation with the Mining Supervisor and, where appropriate, the surface management agency, may adjust the terms and conditions of the license or, (2) the Mining Supervisor, after consultation with the authorized officer, and where appropriate, the surface management agency, may approve changes in the exploration plan.

(g) *Different States.* A separate exploration license is required for exploration in each State.

(h) *Extensions.* Exploration licenses may not be extended. Exploration operations may not be conducted after a license has expired. The licensee may apply for a new license as described in § 3507.3–1. A new license may be issued simultaneously with the termination of the existing license.

§ 3507.3–3 Rights under licenses.

(a) The issuance of an exploration license shall confer the right to perform exploration operations in accordance with the specific terms and conditions of the license, the approved plan, and the regulations.

(b) The issuance of exploration licenses shall not preclude the issuance of

coal leases at such time and places and to such persons as are deemed appropriate, subject to applicable regulations, and, if a coal lease is issued for lands embraced in an exploration license, those lands shall be eliminated from the license upon the effective date of the lease.

(c) A licensee may not remove for sale any coal from the deposits subject to his license, but he may remove a reasonable amount of coal for analysis and study.

§ 3507.3–4 Operating regulations.

The licensee shall comply with all regulations of the Secretary of the Interior, including the provisions of the operating regulations of the Geological Survey (30 CFR Part 211). Copies of the operating regulations may be obtained from the Mining Supervisor. The licensee shall allow inspection of the premises and operations by duly authorized representatives of the Secretary and, where appropriate, any surface management agency, and shall provide for the free ingress and egress of Government officers and persons using the lands under authority of the United States.

§ 3507.3–5 Surface protection and reclamation.

(a) The authorized officer shall include in each exploration license requirements and stipulations to protect the environment and other resources and to ensure reclamation of the land disturbed by exploration.

(b) A licensee may not cause substantial disturbance to the natural land surface.

§ 3507.3–6 Ground water data.

The applicant may be required to collect and report ground water data to the authorized officer.

§ 3507.3–7 Bonds.

(a) The provisions of the regulations in Subpart 3504 of this part are hereby made applicable to these regulations. The holding of an adequate compliance bond will be a condition of the exploration license.

(b) Prior to issuing an exploration license the authorized officer after consultation with the Mining Supervisor and, where appropriate, the surface management agency, the surface owner, shall ensure that the amount of the compliance bond or bonds to be furnished is sufficient to ensure compliance with the terms and conditions of the license and regulations, but in no event shall the amount of such bond be less than $5,000.

(c) Upon completion of an exploration and reclamation program which is in compliance with the terms and conditions of the exploration license, the approved plan, and the regulations, or upon discontinuance of exploration operations and completion of such reclamation as may be needed to the satisfaction of the authorized officer and, where appropriate, the surface management agency, the authorized officer will terminate the period of liability of the compliance bond. Where the surface of the land being explored is in private ownership, the authorized officer shall not terminate the period of liability under the compliance bond until he has received written acknowledgement from the surface owner of his satisfaction with the reclamation of the surface. In the event the licensee and surface owners are unable to reach agreement on the adequacy of the reclamation the authorized officer shall make the final determination. He will terminate the period of liability under the compliance bond after determining that the terms and conditions and special stipulations of the license, the approved plan, and the regulations have been met.

§ 3507.4 Use of data.

The licensee shall furnish to the Mining Supervisor copies of all data (including but not limited to, geological, geophysical, and core drilling analyses) obtained during exploration. The licensee shall submit such data and, where appropriate, the methods by which the data were gathered, at such time and in such form as required by the Mining Supervisor, the authorized officer, or surface management agency, or as specified in this Subpart the license, or the plan. The confidentiality of all data so obtained shall be maintained until after the areas involved have been leased or until such time as the Mining Supervisor determines that making the data available to the public would not damage the competitive position of the licensee, whichever comes first.

§ 3507.5 Use of surface.

(a) A licensee shall be entitled to use for exploration purposes only so much of the surface of the licensed lands as is authorized in the approved exploration plan.

(b) Operations under these regulations shall not unreasonably interfere with or endanger operations under any other authorized use pursuant to the provisions of any other Act.

(c) The licensee shall comply with all applicable Federal, State and local laws and regulations including the regulations in Parts 3041, 3500, 3600 of this chapter and 30 CFR Parts 211 and 231.

(d) Any person who willfully conducts coal exploration on lands subject to this subpart without an exploration license shall be subject to the provisions of § 9239.5–3(f) of this chapter.

2. Paragraph (b)(3) of 43 CFR 9239.0–3 be amended to read as follows:

§ 9239.0–3 Authority.

* * * * *

(b) * * *

(3) *Coal trespass.* 18 U.S.C. 1851; 30 U.S.C. 201(b)(4).

3. 43 CFR 9239.5–3 be amended by adding a new paragraph (f) to read as follows:

§ 9239.5–3 Coal.

* * * * *

(f) *Penalties for unauthorized exploration for coal.* (1) Any person who willfully conducts coal exploration for commercial purposes without an exploration license issued under Subpart 3507 of this chapter shall be subject to a fine of not more than $1,000 for each day of violation.

(2) All data collected by said person on any Federal lands as a result of such violations shall immediately be made available to the Secretary, who shall make the data available to the public as soon as possible.

(3) No penalty under this section may be assessed unless such person is given notice and opportunity for a hearing with respect to such violation pursuant to Part 4 of this chapter.

Effective: January 19, 1977.

Dated: January 19, 1977.

THOMAS S. KLEPPE,
Secretary,
Department of the Interior.

[FR Doc.77–2261 Filed 1–24–77;8:45 am]

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 99—PRIVACY RIGHTS OF PARENTS AND STUDENTS

On June 17, 1976, final regulations were published in the FEDERAL REGISTER at 41 FR 24662 setting forth the requirements to be met by an educational agency or institution to protect the privacy of parents and students under section 438 of the General Education Provisions Act, as amended (added by section 513 of Pub. L. 93–380 and amended by section 2 of Pub. L. 93–568). Due to an inadvertent drafting error § 99.32 of those regulations require technical corrections in order to bring it into conformity with the statutory requirement upon which it is based.

Accordingly, the purpose of this correction notice is to make technical changes in the regulations of June 17, 1976.

The Department finds that there is good cause to dispense with proposed rule-making procedures as unnecessary, since the correction notice makes only technical changes to change incorrect wording and restore omissions. Furthermore, to delay the effective date of these changes might result in an unnecessary expenditure on the part of educational agencies and institutions; specifically, with respect to the requirement that a record be kept of certain requests for disclosure of education records, even though an accounting need not be made for the actual disclosure of information pursuant to these requests. As modified, § 99.32 will relieve educational agencies and institutions of keeping a record of requests for disclosure in those areas where they are not required to record actual disclosures.

Section 99.32 of Title 45 of the Code of Federal Regulations is amended as follows:

1. The title of § 99.32 is revised to read as follows:

§ 99.32 Record of requests and disclosures required to be maintained.

2. Paragraph (b) of § 99.32 is revised to read as follows:

(b) Paragraph (a) of this section does not apply:

(i) to requests by or disclosure to a parent of a student or an eligible student;

(ii) to requests by or disclosures to school officials under § 99.31(a)(1);

(iii) if there is written consent of a parent of a student or an eligible student, or

(iv) to requests for or disclosure of directory information under § 99.37.

3. Paragraph (c) is amended by inserting the phrase "requests and" before the word "disclosures".

Effective date: These amendments take effect on January 25, 1977.

Dated: January 17, 1977.

THOMAS S. MCFEE,
Deputy Assistant Secretary for Management Planning and Technology.

[FR Doc.77-2226 Filed 1-24-77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20119; FCC 77-50]

PART 15—RADIO FREQUENCY DEVICES

Low Power Communication Devices

Adopted: January 13, 1977.

Released: January 19, 1977.

By the Commission: Commissioner Lee absent.

1. The Commission has received two timely filed petitions and three letters requesting reconsideration of the revised rules adopted February 4, 1976, by the Report and Order[1] in the above described proceeding. The letters are being considered part of this proceeding, since they deal with the same questions raised in the petitions. Petitions were filed by Radio Communications Co., Inc. (Radcom) and Teletronics United Inc. (Teletronics).[2] Letters were received from Barrett Electronics Corp., (Barrett), Gutzmer International Inc. (Gutzmer) and Mr. Bruce D. Ross, a private consultant in electronics.

2. Teletronics, Gutzmer, Radcom and Ross stated that they are either manufacturing and marketing or in the design stage of producing a cordless telephone terminal device.[3] They allege that the new rules are not satisfactory to permit the continued marketing of their devices and therefore request reconsideration of these rules. Barrett claims that the channelization of the frequencies has placed a severe restriction on the marketability of low power communication devices[4] used to control material handling equipment used by the grocery industry.

3. The new rules adopted in this proceeding that, among other things, shifted low power voice-operated communication devices, such as toy walkie-talkies, from the 27 MHz band to a new band at 49 MHz, went into effect on March 18, 1976. The rules in effect prior to March 18, 1976, permitted the operation of a low power communication device on any frequency in the 26.97–27.27 MHz band—a band that coincides with the band allocated for the Class D Citizen Radio Service commonly referred to as the CB band. The principal technical restrictions for operating a low power communication device in this band were a power and antenna limitation of 100 milliwatts and 1.5 meters, respectively. Toy walkie-talkies are the most prevalent example of devices operating under these provisions. Because of enforcement and interference problems between transmitters licensed in the Class D Citizen Radio Service and toy walkie-talkies which operate without an individual license, the Commission shifted low power voice-operated devices from the CB band to 49 MHz.[5] Non-voice operated devices were permitted to remain in the 27 MHz band under more restrictive technical requirements.

PETITIONS FOR A CORDLESS TELEPHONE TERMINAL DEVICE

4. Teletronics manufacturers and markets a cordless telephone terminal device under the trade name of PortaCall. The system is comprised of a base unit that interfaces with the interstate telephone network and a mobile unit that can be carried from place to place. The battery-operated mobile unit and base units contain a telephone handset and cradle unit fitted with a low power transmitter. To permit duplex operation, i.e., a continuous conversation between sender and receiver, two frequencies separated by at least 150 kHz are required. According to Teletronics this is a critical operating requirement. Under the previous provisions at 27 MHz, Teletronics claimed that it was possible to operate up to five PortaCall systems in the same area at the same time without causing interference to one another and still avoid the most active citizens band channels. With respect to its interference potential, Teletronics argued that it was to their advantage to avoid CB channels, since PortaCall systems operate with low power and are more susceptible to receiving harmful interference than causing harmful interference. It should also be noted that the propensity for the interception of communications, as with any radio transmitter, is a possibility with the use of these devices.

5. According to Teletronics, cordless telephone terminal devices serve the public in a number of useful ways. For example an individual who is confined to a wheel chair, or otherwise has difficulty in moving rapidly to a telephone, is thereby provided with communications capability to deal with personal and emergency situations which are not possible with cord bound phones. It is also argued that these systems provide additional flexibility for many thousands of people who are required to stay by a telephone terminal. The extended range, which is advertised to be 300 feet in most operating environments, allows these individuals to receive important (and in some cases emergency) phone calls no matter where they may be as long as they are within the bounds of the system.

6. In their initial filing, Teletronics stated: "We find the shift to the 49.82 to 49.90 MHz band attractive in principle in that it will allow more reliable and secure short range communications without the present legal and illegal interference from Citizen Band users. However, the proposal (new rules) requiring that operation be confined to five defined 20 kHz channels inhibits certain developments in progress that could enable us [Teletronics] to shift to the 49 MHz band with little cost penalty and major performance advantage." Their initial petition concludes by requesting the Commission to allow the simultaneous use of two adjacent channels with a total bandwidth of 35 kHz to allow the operation of a single carrier time shared duplex communication.

7. In a subsequent supplemental filing, Teletronics stated "* * * after extensive evaluation it has been determined that the current allocation at 49.82–49.90 MHz places serious limitations that would result in its (Teletronics) demise." Moreover, the petition asserts that even if a satisfactory 49 MHz PortaCall could be developed, it would not likely be marketable due to its increased cost and single system limitation, i.e., only one system could be operated in one given area at a time. The net result of limiting such devices to the 49 MHz band, according to Teletronics, would be the cessation of their manufacture and use.

8. In its supplemental filing Teletronics suggested that the true answer to the dilemma presented to the cordless telephone industry lies in an allocation of more frequencies. This can be accomplished by permitting cordless telephones to continue to operate in the 27 MHz band with the same technical requirements as adopted for non-voice devices under Section 15.116 of the new rules adopted in this proceeding.[6] A claim is also made that the cordless phones would not be confused with the licensed Class

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[1] 41 FR 7394, February 18, 1976.

[2] A supplement to the Teletronics petition for reconsideration was subsequently received and accepted on the basis of the justifications presented in a separate pleading "Motion for leave to file a supplemental Petition for Reconsideration."

[3] A cordless telephone terminal device is customer provided ancillary equipment which is connected to the telephone network through interface equipment.

[4] A low power communication device complying with both the technical and certification requirements of Subpart D of Part 15 may be operated without an individual license for any legitimate purpose.

[5] Report and Order in Docket No. 20119 at paragraph 1.

[6] Non-voice (i.e., radio control) devices operating under the new requirements (§ 15.116), among other things, are restricted to six 20-kHz channels in the 26.99–27.26 MHz band and field strength limits of 10,000 μV/m at 3 meters. It would appear that Teletronics is requesting the Commission to amend the rules in Part 15 to permit cordless telephones to operate under these same provisions.

D Citizen Stations since the cordless phone operates on different frequencies (Class C frequencies) and its transmissions are preceded with a tone signal for dialing purposes. This, coupled with Porta-Call's low power and field strength limitations, practically eliminates the possibility of interference it is asserted.

9. Gutzmer International Inc., also a manufacturer of personal communication devices including cordless telephone equipment, submitted two letters supporting the Teletronics petition. The modus operandi of the Gutzmer system is slightly different from that of Teletronics in that the base station of the Gutzmer system uses carrier current techniques at frequencies just above the standard AM Broadcast Band.[7] Its mobile unit operates at 27 MHz under the interim provisions of § 15.115 of the rules. In addition to supporting Teletronics petitions, Gutzmer emphasized the need for additional frequencies if the portable telephone industry is to grow, otherwise usage density (i.e., the number of systems in a given area) becomes high enough to cause interstation interference. Even under the previous rules in Part 15, Gutzmer says there isn't sufficient spectrum to promote growth and additional frequencies would be needed in a couple of years in any case. It claims that further studies are under way but the immediate need is a relaxation of the new rules adopted in this proceeding.

10. Gutzmer in their first correspondence requested the following technical specifications as an immediate but temporary solution for allowing the continued development and manufacture of cordless telephone extensions;

Continued operation at 27 MHz with 100 milliwatt power to the final on the six Class C Citizen Radio Station Channels.

Continued operation at 1.7 MHz using carrier current technique.

30,000 μV/m at 3 meters instead of 10,000 μV/m at 3 meters for devices at 49 MHz.

11. The second letter from Gutzmer revises their original request and asks for a higher level of radiated signal at 27 MHz. Gutzmer states that after extensive evaluation, the 10,000 μV/m at 3 meters, (which is the level of radiated signal requested by Teletronics in their Supplemental Petition) is too low to provide an operating range of 100 meter (300 feet) for a cordless telephone. A sample calculation based on a number of assumptions ostensibly shows that an order of magnitude increase of radiated signal is required to obtain a 100 meter operating distance. No measurement data is provided. Based on these calculations, Gutzmer requests that its portable phone be permitted 100,000 μ/Vm at 3 meters, which they claim is equivalent to the 100 milliwatt limit under the previous provisions.

12. The relief sought by cordless telephone terminal equipment manufacturers puts the Commission in somewhat of a quandary. On one hand, we are faced with diluting, if not abandoning, the original stated purpose of this proceeding.[8]

On the other hand, if we insist on the immediate removal of all voice-operated low power communication devices from the CB Band, it may cause the demise of these manufacturers. In part, this is due to the fact that cordless telephone equipment was designed to operate under rules which were never intended to provide for a reliable communication service. It appears that the proposal to make changes in the 27 MHz band did not come to the attention of these manufacturers until after the revised rules were promulgated. Accordingly, the Commission was not made aware of their needs when it adopted the Report and Order in Docket No. 20119. When the revised rules did come to their attention, the petitioner realized that they could not operate under the new rules and that they no longer had a marketable system.

13. The statements and claims made by the manufacturers of this equipment raise a number of questions which cannot be addressed in this reconsideration. A basic question that needs to be answered relates to the public interest aspect of the cordless equipment under our obligation to assure efficient use of the limited radio spectrum. Another is: Should such cordless equipment be operated under Part 15 or should it be licensed? These questions can only be answered in a formal rule making proceeding with adequate opportunity for all interested parties to participate and make their views known to the Commission.

14. Inasmuch as these questions cannot possibly be answered here and since at the same time we do not desire the demise of these manufacturers without giving them a reasonable opportunity to develop alternatives, the Commission is hereby granting temporary relief for manufacturers of cordless telephone terminal devices. A new § 15.114 is added to provide for the operation of such devices for a limited period of three years during which a petition for permanent regulations can be received and considered. The temporary regulations are essentially the same as those in § 15.116 which regulate the operation of non-voice devices, except that the permitted field strength has been increased from 10,000 to 50,000 μV/m at 3m in response to the Gutzmer pleading. The text of these new regulations is set out in the Appendix.[10]

15. During this 3 year period, the cordless telephone equipment industry may petition the Commission to amend the rules to make special provisions for their devices. This must be accompanied by a positive showing why it is in the public interest to do so. Any such petition should be submitted promptly, but in no event later than 9 months after release of this order, to allow adequate time for normal rule making process. The industry is also put on notice that the Commission does not anticipate extending the temporary regulations adopted herein beyond the three years specified. Also, the industry is reminded that the responsibility is theirs and not the Commission's for making a showing that such rules are necessary and in the public interest. Such a determination has not been made here.

Petitions Re Restrictions in the 49 MHz Band

16. Radio Communications Co., Inc., (Radcom) another manufacturer of such cordless equipment, in its petition requests reconsideration of the requirement in § 15.118(d) that a device operating under the new provisions at 49 MHz must be completely self-contained with the antenna permanently attached and the microphone built into the box containing the device. Radcom states that they contemplate redesign of their system, which operates under the old provisions at 27 MHz, to use the new frequencies at 49 MHz. Although not explicitly stated, the petition implies that the restriction in § 15.118(d) would preclude their type of device, since the microphone which is in a telephone handset, is separated by a connecting wire from the box housing the transmitter. Whether the firm is able to produce a marketable system at 49 MHz is not clear from the petition.

17. In a similar vein, Mr. Bruce D. Ross, a private consultant, states that he is in the process of designing a cordless telephone equipment and that the new rules, particularly § 15.118(d), are unnecessary. Mr. Ross argues that there are man configurations and services that should be allowed, but are presently excluded by the built-in microphone and no remote control rule. Most of these, he states, could be used in commercial applications; such as, desk top sets with microphones or handsets on cords, wall mounted sets with handsets, fork truck, scooter, bicycle and hard hat mounted units for use inside factories and construction sites, telephone operator type headsets. If the intent of the requirement is curtailment of the range by preventing the device to be mounted on tall poles, this can be accomplished by more direct rules, he argues. He also recommends that prohibition of remote opera-

[7] Presently these systems operate under the provision in § 15.7 of the rules, which limits the radiated energy from the system to 15μV/m at a distance of $\lambda/2\pi$. The Notice of Proposed Rule Making in FCC Docket No. 20780 (41 FR 17938) proposed to revise § 15.7. If revised as proposed the subject system would be redefined as a low power communication device.

[8] See paragraph 3, supra.

[9] Although there are no requirements on the receiver part of these systems at present, this is subject to change in another rule making proceeding in FCC Docket No. 20746 (41 FR 13375, 58 FCC 2nd 5, page 839).

[10] Inasmuch as cordless phones are attached to the telephone network, they must be separately registered with the Commission pursuant to Part 68 and Subpart L of Part 2 of FCC Rules.

tion, restrictions on modulation and channel specfications be deleted. No justification is provided for these recommendations.

18. With respect to the self-contained restriction in § 15.118, the Commission agrees, in part with Radcom and Mr. Ross that a requirement for a built-in microphone would preclude many types of useful devices. The intent of this restriction is to insure that the radiated signal from the device, hence its interference potential, is not increased by attachment of external antennae and microphones. Since this can be accomplished by limiting the microphone cable length and by requiring the device be tested with the permanently attached microphone cable orientated so as to produce maximum radiation, we are revising this restriction accordingly.

BARRETT PETITION FOR ADDITIONAL RADIO CONTROL FREQUENCIES

19. Barrett Electronics Corporation, in their petition, states that the rule changes in this proceeding will preclude a material handling equipment that they have been manufacturing and marketing to the grocery industry for over 20 years. The system they are producing is described as a radio remote controlled tractor-trailer train which is used by wholesale grocery warehouses for order selections. The train operator wearing a small transmitter on his belt controls the tractor from the various positions adjacent to the vehicle as he finishes each loading operation.

20. To insure that each operator controls only his particular tractor, Barrett designs each system (transmitter-tractor combination) to operate on a separate frequency and have a range of approximately 30 feet. Because some warehouses utilize up to 50 trains, 50 separate frequencies are used with the present equipment operating under the interim provisions of Section 15.115 of the rules with a 5 kHz spacing between each channnel over the entire band, 26.97–27.27. The petition states that this type of operation is obviously not feasible on the 5 channels at 49 MHz, nor is it on the 6 channels in the 27 MHz under the new provisions. Electronic schemes to reduce the number of channels, such as time division or synchronous operation, Barrett claims have not proved feasible. Redesigning the equipment to operate in the licensed Business Radio Service is also not acceptable, because of the limited number of channels available, Barrett asserts. Distributing the system over all bands available, licensed or unlicensed is costly and entirely unsatisfactory to the petitioner. Barrett concludes by requesting that instead of the present unlicensed operation anywhere in the CB band, licensed low power (100 milliwatts) limited bandwidth operation be allowed, with 5 kHz spacing throughout the entire 26.97–27.27 MHz band.

21. Barrett's request for a number of frequencies spaced 5 kHz apart over the entire CB band to provide for the licensed operation of remote control devices is outside the scope of this proceeding. To accomplish this, a new rule making proceeding must be initiated to amend the present rules to make additional frequencies available for remote control operation in the 27 MHz band. However, it is not apparent that new rules are necessary in this instance, since the present rules appear to accommodate the type of operation described by Barrett. For instance, a transmitter licensed for use in the Business Radio Service under Part 91 of the rules with an output power of 200 milliwatts may operate on almost any frequency allocated for use in the Business Radio Service with minimum technical restrictions. Eligibility requirements for licensing in this service are minimal and certainly within the realm of most small businesses. A second possibility in the Business Radio Service is use of the offset frequencies at 450–470 MHz (band).

22. Notwithstanding these alternatives, there are eleven frequencies available for remote operation without an individual license at 27 MHz and 49 MHz,[1] provided the device complies with both the technical and certification requirements of Subpart D of Part 15 of FCC Rules. A suitable coding scheme, similar to the type used by most door opener controls, could accommodate several controllers on each frequency.

EXTENSION OF INTERIM REQUIREMENTS

23. The rules adopted in this proceeding allow a 7 year period for amortization of devices operating in the 27 MHz band under the previous provisions in Part 15. Manufacture and marketing must cease March 18, 1977 and March 18, 1978, respectively. Inasmuch as several petitioners must modify their present equipment in accordance with the rules appended hereto, the Commission is extending the 7 year amortization period under the interim provisions in Section 15.115 for an additional six months. This is to allow these manufacturers the time needed to produce equipment under these modified requirements.

24. In view of the foregoing, the Commission finds that it is in the public interest to amend Section 15.118(e), in the manner described herein, to extend the date for manufacturing low power communication devices in the CB Band for six months, and to permit continued manufacture of cordless telephone terminal devices under restricted conditions for a period of 3 years, pursuant to the discussion in paragraph 12 above. Pursuant to the authority contained in Section 4(1), 302 and 303(r) of the Communications Act of 1934, as amended *it is ordered*, That effective February 28, 1977, Part 15 is amended as set forth below.

25. *It is further ordered*, That to the extent indicated above, the subject petitions are granted and in all other respects, denied.

[1] Six frequencies are available to non-voice operation at 27 MHz and five frequencies at 49 MHz making a total of 11 frequencies available under Part 15 for remote operation.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082, Sec. 302, 82 Stat., 290; 47 U.S.C. 154, 302, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

Part 15 is amended as follows:

1. A new § 15.114 is added to read as follows:

§ 15.114 Interim requirements for cordless telephone terminal devices operating between 26.97–27.2 MHz.

A low power communication device used as a cordless telephone terminal device that complies with all the requirements of paragraphs (a) through (i) may be operated until January 1, 1986. Manufacture, importation and marketing of such a device shall cease January 1, 1980, April 1, 1980 and January 1, 1981, respectively.

(a) The device may only be used as a cordless telephone terminal device.

(b) The device shall operate on one or more of the following frequencies:

26.995 MHz	27.145 MHz
27.045 MHz	27.195 MHz
27.095 MHz	27.255 MHz

(c) Frequency tolerance of carrier: ±0.01%. This tolerance shall be maintained for a temperature variation of −20° to +50°C at normal supply voltage and for a variation in the primary supply from 85% to 115% of the rated supply voltage at a temperature of 20°C.

(d) The authorized band shall be 20 kHz centered on the frequencies listed in paragraph (b) of this section.

(e) Emissions within the authorized band shall not exceed 50,000 μV/m when measured at 3 meters in accordance with a procedure approved by the Commission.

(f) Emissions between 10 kHz and 50 kHz from the carrier frequency shall not exceed 1000 μV/m at 3 meters.

(g) Emissions greater than 50 kHz from the carrier frequency shall not exceed 300 μV/m at 3 meters. The spectrum shall be scanned from 10 kHz to 1000 MHz and all emissions from the device shall be scanned from 10 kHz to 100 MHz exceeding 30 μV/m at 3 meters shall be reported.

(h) If the device is designed to operate from commercial power lines, the RF energy fed back into the power lines shall not exceed 100 microvolts on any frequency below 25 MHz when measured in accordance with the procedure in IEEE Standard 213 (See § 15.75 of this Part).

(i) The device shall be registered pursuant to the procedures in Subpart L of Part 2 of this Chapter demonstrating that the device complies with the requirements in Part 68 of this Chapter.

2. The headnote and introductory text of § 15.115 are revised to read as follows:

§ 15.115 Interim requirements for operation between 26.97–27.27 MHz.

A low power communications device complying with all the provisions of par-

agraphs (a) through (d) of this section may be operated until September 18, 1983. Manufacture and importation of such a device shall cease September 18, 1977 and October 18, 1977, respectively. Applications for certification of such a device will not be accepted by the Commission after June 18, 1977. Marketing of such a device shall be terminated not later than September 18, 1978.

* * * * *

3. Paragraph (e) of § 15.118 is revised to read as follows:

§ 15.118 Technical Specifications for the band 49.82–49.90 MHz.

* * * * *

(e) The device shall, with the exception of the microphone, be completely self-contained with the antenna permanently attached to the enclosure containing the device. The microphone may be external to the device, provided it is permanently attached to the enclosure with a cable not longer than 1.5 meters.

* * * * *

4. Paragraph (d) of § 15.119 is revised to read as follows:

§ 15.119 Alternative technical specifications for the band 49.82–49.90 MHz.

* * * * *

(d) The device shall, with the exception of the microphone, be completely self-contained with the antenna permanently attached to the enclosure containing the device. The microphone may be external to the device, provided it is permanently attached to the enclosure with a cable not longer than 1.5 meters.

* * * * *

[FR Doc.77-2339 Filed 1-24-77;8:45 am]

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[FRA Docket No. HS-4, Notice No. 6]

HOURS OF SERVICE ACT

Signal Service: Interim Statement of Agency Policy and Interpretation

On September 28, 1976, the Federal Railroad Administration (FRA) published in the FEDERAL REGISTER a proposed statement of agency policy and interpretation concerning the Hours of Service Act, as amended (45 U.S.C. 61–64b; hereinafter "Act") (41 FR 42692). Public comments were requested to be submitted by October 29, 1976. Subsequent notices extended the comment period through December 7, 1976 (see 41 FR 48163, November 2, 1976; 41 FR 52351, November 29, 1976; 41 FR 54047, December 7, 1976). FRA administers and enforces the Act under section 6(f)(3)(A) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(A)) and a delegation from the Secretary of Transportation (49 CFR 1.49(d)).

Having analyzed the comments received in light of the express purpose of the Act, its legislative history, case law, and prior administrative interpretations, FRA has decided to issue interim interpretations concerning the limitations on hours of service of individuals engaged in installing, repairing or maintaining signal systems (section 3A of the Act). A final statement of policy and interpretation addressing the balance of the statute will be published in the very near future.

Eleven individuals or organizations submitted comments on the segment of the proposed statement dealing with signal service. A joint submission by the organization representing the great majority of common carriers by railroad and the principal labor union representing employees affected by section 3A of the Act was particularly helpful. FRA has adopted much of the substance of that joint submission in preparing the interim interpretations. Other comments have been considered and incorporated to the extent appropriate.

The interim interpretations set forth below are designed to implement safety policy considerations within the framework of the Act, guarding against excessive periods of work while permitting enough flexibility to assure that systems vital to the safety and efficiency of rail transportation are properly maintained. FRA is issuing interim interpretations at this time because of the complexity of the administrative problems involved in applying the amended statute to the variety of factual situations possible. These interpretations may be modified as knowledge is gained of the various practical situations that may arise under the Act. This will permit FRA to assess the actual application of the Act to persons in signal service. If it becomes evident that the intent of the Act is not achieved by these interpretations, then FRA may be required to issue interpretations based on a more strict reading of the statute.

In making their joint submission, industry and labor representatives noted their intention to seek legislative action to address possible deficiencies in the Act and clarify its intended application. FRA has been mindful of the likelihood of such action in preparing these interim interpretations.

Covered service. Six commenters addressed the issue of the scope of covered signal service. One commenter urged that all maintenance of way employees have a role in the installation, maintenance or repair of signal systems and that a tired or fatigued person working any place on the signal system is a danger to the integrity of the entire system. An organization representing electrical workers detailed the tasks which are the responsibility of its members on some railroads but which are listed in the legislative history as duties of "signalmen". The commenter objected to the use of the term "signalman" to identify members of other crafts and concluded by arguing that the Act should be construed to apply only to such tasks as are uniformly assigned to the signal craft on all railroads across the country.

FRA is convinced by the language of the legislative history and the stated purpose of the Hours of Service Act that the proper benchmark for application of the Act must be found in the relationship of the particular function or service to the safety of the devices and systems which Congress deemed to fall under the general rubric of "signal systems". That is, covered service cannot be defined by reference to the craft which owns the contractual right to a particular task on one or more railroads. Rather, the focus must be safety of railroad operations as it is affected by the readiness of individuals who work on the identified devices and systems. Therefore, the discussion of covered service which appears in the interim interpretations is substantially unchanged from the discussion in the notice of interpretations. A commenter has noted that, through inadvertent error, the words "train control and cab signal systems, interlocking systems" were omitted from the quotation taken from House Report 94–1166. The quotation has been corrected in the present document.

Two commenters urged that the construction of signal systems should be distinguished from the "installation" of signal systems. The commenters believe that the latter term should be read to mean "activation". No basis appears in the legislative history for making such a distinction. While it is true that normal testing procedures should limit potential hazards deriving from defects in construction, Congress may well have assumed that some problems could go undetected as a result of faulty testing or that a lack of durability could be caused by poor workmanship. Indeed, the Committee on Interstate and Foreign Commerce of the House stated in its report on the legislation "A signalman who worked excessive hours in either the "construction" or maintenance of signal systems may make errors in the intricate wiring or adjustment of those devices which would circumvent the safety functions of the system." (Emphasis added.) H.R. Rep. No. 94–1166 (1976) at page 13. Two commenters stressed the use of subsequent component tests as a basis for excluding work done in carrier signal shops from the coverage of the Act. Again, there would seem to be insufficient basis for distinguishing between repairs on components in the field and repairs effected in a carrier shop. One commenter would exclude testing and inspection functions from covered service. FRA believes that testing and inspection are an important and integral part of overall system maintenance.

Limitations on hours. One commenter suggested that the text point out more strongly that a new 24-hour period may begin after any 8-hour period of release. Additional examples have been added which point out this fact.

Duty time. Perhaps the most difficult problem posed by the general language of section 3A of the Act is the definition of time on duty. Individuals who work on signal systems often spend much of their compensated time traveling for the carrier's purposes. Since such travel inevitably adds to fatigue and detracts from time available for rest, and since the provision on commingled service contemplates that noncovered service will

normally be counted with covered service in computing total time on duty, clearly time spent in transportation before covered service and enroute between work sites must be recognized to be on-duty time. Similarly, travel from a work site to headquarters by on-track vehicle involves potential peril to train operations and to the individuals themselves and must be viewed as time on duty. However, as one commenter pointed out, highway travel back to the headquarters or residence after work is complete, by itself, involves no hazard to the safety of train operations. Further, travel to the residence (directly or via the headquarters) following a period of covered service closely resembles deadheading or a combination of deadheading and commuting.

As recommended in the joint industry/labor submission, FRA has revised the discussion and examples concerning travel time from the work site to the headquarters or residence outside the regular work day.

Both industry and employee representatives have urged that, while all travel time within regular assigned work hours should be acknowledged to be time on duty, time spent in transportation from a work site to the headquarters or residence outside regularly assigned hours should be treated neither as time on duty nor as time off duty. That is, the employee should be considered to have been "released" for purposes of the prohibition on excess service; but the employee would not be considered "off duty" for purposes of the required period of release of 8 or 10 hours. In the text below, FRA authorizes this treatment of transportation time following any period of covered or commingled service outside regularly scheduled hours. That is, during the next months FRA will not assert statutory penalties involving alleged violations where such time is used in computing excess service and no violation would exist absent the addition of such time. However, FRA will monitor implementation of this approach during the period these interim interpretations are under study.

Effective periods of release. Because many employees who work on signal systems perform overtime service outside their regularly assigned hours, and because the Act does not expressly articulate the requirements for effective periods of release, both FRA and the commenters have experienced difficulty in fashioning principles of general application concerning when time available for rest may be considered off-duty time and when the continuity of service is broken. The question of continuity is important because it may determine whether an employee is required to have 10 rather than 8 hours off following a period of 12 hours service. Obviously, any period considered off-duty time would not count toward the 12-hour maximum.

After review of all comments and in light of specific recommendations by representatives of the industry and affected employees, FRA has decided to modify its position on periods of release. It has been determined that regularly assigned meal periods should be treated as off-duty time but should not be viewed as interrupting the essential continuity of service. Similarly, other periods of release during which the employee is entirely free of responsibilities to the carrier are treated as off-duty time. However, only periods of 1 hour or more would be recognized as effective breaks in the continuity of service.

One commenter urged that transportation time to or from a food service facility should not be counted as time on duty. While FRA believes that a strong case can be made that such time, which is expended in part for the convenience of the carrier, should be treated as on-duty time, FRA recognizes that such a view may be impractical as applied in many situations. Thus, where the employee has the option to eat his lunch at the site (by use of a lunch box or other arrangement), the entire meal period may be treated as time off duty.

It should be stressed that, with the exception of assigned meal periods, all compensated time during a scheduled work tour is considered time on duty. A carrier may not stretch the permitted 12-hour work period by creating breaks in a regular work day which do not afford meaningful periods of relaxation.

Emergencies. Several commenters seriously questioned the proposed interpretation of the special emergency provision for signal service and urged a more liberal reading of the statute. The commenters noted, for instance, that there may be no way in many instances to ascertain whether a false restrictive indication involves a hazard to train operations without first calling a signal maintainer to investigate the situation.

FRA appreciates that the section 3A(f) "emergency situation" is a broader concept than the section 5(d) "casualty or unavoidable accident or * * * act of God". That is, an emergency permitting service up to 16 hours may be a less extraordinary event than an act of God permitting service in excess of 16 hours. By the same token, FRA is concerned that the exception not be read in a way which will largely consume the rule.

The joint submission of industry and employee representatives implicity recognized that many potential safety problems associated with false restrictive conditions and device malfunctions may be eliminated through temporary measures such as operation at restricted speed; but the submission noted that certain other conditions might produce service disruptions or secondary safety problems rising to the level of emergencies. The text below reflects an FRA determination that conditions producing material disruptions of service may be legitimate emergencies within section 3A(f).

As noted above, FRA has decided to issue the interpretations which appear below as operative interim interpretations pending review of their effectiveness in carrying out the statutory design and purpose. Therefore, FRA hereby reopens for comment its Docket No. HS–4 on an indefinite basis and invites further public comment on the proper application of section 3A of the Act. FRA will publish a notice in the future renewing the invitation for comments and setting a date for closing of the comment period.

Comments should refer to Docket No. HS–4 and should be submitted in triplicate to the Docket Clerk Office of Chief Counsel (RCC–1), Federal Railroad Administration, 400 7th Street, SW., Washington, D.C. 20590.

In consideration of the foregoing, the following statement constitutes the policy of FRA concerning the administration and enforcement of section 3A of the Hours of Service Act, as amended (45 U.S.C. 63a), and is effective on January 25, 1977. This statement should be read in conjunction with the final statement of policy on the balance of the statute, including general provisions, which will be published in the very near future.

INTERIM STATEMENT OF AGENCY POLICY AND INTERPRETATION: SECTION 3A OF THE HOURS OF SERVICE ACT

(Act of March 4, 1907, 34 Stat. 1415, as amended (45 U.S.C. 61–64b); sec. 6(f)(3)(A) of Pub. L. 89–670, 80 Stat. 940 (49 U.S.C. 1655 (f)(3)(A)); § 1.49(d) of the Regulations of the Secretary of Transportation (49 CFR 1.49 (d).)

The discussion below describes the policy of the Federal Railroad Administration (FRA) concerning the administration and enforcement of section 3A of the Hours of Service Act (45 U.S.C. 63a). Section 3A establishes maximum hours of service and required periods of release for individuals employed by common carriers who are engaged in installing, repairing or maintaining signal systems.

Section 3A was added to the Act by section 4(d) of the Federal Railroad Safety Authorization Act of 1976, Pub. L. No. 94–348, 90 Stat. 819. This amendment became effective July 8, 1976.

COVERED SERVICE

The legislative history of section 3A establishes that Congress intended to make subject to the Act all those persons who work on "signal systems," and that this term was meant to refer to a variety of technologies bearing on the safety of railroad operations. The House committee report on the 1976 amendments contains the following statement, which was repeated on the Senate floor during the debate on passage in that body and which sets forth the congressional understanding of the term "signal systems":

The duties of signalmen encompass the construction, installation, repair, maintenance, testing and inspection of signal systems. These signal systems include automatic block signal systems, traffic control systems, train stop, train control and cab signal systems, interlocking systems, railhighway grade crossing protection, automatic classification yards, hot box detectors, broken

flange detectors, and other similar devices, appliances and systems. H.R. Rep. No. 94-1166 (1976) at pg. 12. See 122 Cong. Rec. S 10376 (daily ed. June 24, 1976).

This explanation of the language of the statute stands as the basic guide to the types of duties covered by this amendment. The reference to "automatic classification yards" is to retarder mechanisms and related control systems.

On many railroads certain of the functions described by Congress as relating to signal systems are performed by persons who are assigned to other departments within the carrier's organization, persons who may not be affiliated with the labor union which represents "signalmen" as that term is commonly employed. It is neither practical nor realistic to vary the application of the Act from one railroad to another, based on which craft has the contractual right to particular work of the individual carrier. Thus, the only reasonable construction of the statute in light of the legislative purpose is that any employee who performs work on one or more of the enumerated systems during a twenty-four hour period is covered by and subject to the Act. In the discussion below, individuals covered by the statute are referred to as "signalmen" for purposes of convenience only. That term is meant to include all individuals engaged in installing, repairing or maintaining signal systems.

It should be noted that certain related work will have such a minimal relation to traditional signal duties as to put it outside the scope of covered service. For instance, an individual responsible for track maintenance whose only signal-related work is the replacement of insulation at rail joints would not be covered by the Act.

In keeping with the functional approach of the Act, employees are subject to the Act only if they perform covered service. Work in the nature of digging ditches into which signal cables are to be laid, putting up poles (without installing signal lines), and driving signal department vehicles is not covered service under the Act. Of course, if an individual performing non-covered service also engages in covered service during the twenty-four hour period, then the individual will be subject to the Act with respect to "on-duty" time and required off-duty periods.

LIMITATIONS ON HOURS

No individual employed by a common carrier in installing, repairing or maintaining signal systems may be required or permitted to work in excess of twelve continuous hours. After working twelve continuous hours, an individual must be given at least ten consecutive hours off duty before being permitted to return to work.

No individual engaged in covered work may be required or permitted to continue on duty or go on duty unless he has had "at least eight consecutive hours off duty within the preceding twenty-four hours." The clear spirit and intent of the quoted language lead to the conclusions that:

(1) When the time on duty is broken or interrupted by off-duty periods of less than 8 consecutive hours, the individual may be on duty up to a maximum of 12 hours during a 24 hour period, so long as such individual has had a statutory off-duty period of at least 8 or 10 consecutive hours immediately prior to reporting for work.

(2) After completing the 12 hours of broken duty, or at the end of the 24 hour period, whichever occurs first, the employee may not be required or permitted to continue on duty or to go on duty until he has had at least 8 consecutive hours off duty.

(3) The 24-hour period referred to in paragraphs 1 and 2 above shall begin when an employee reports for work immediately after his having had a statutory off-duty period of 8 or 10 hours.

The provision on emergencies, discussed below, may extend the permissible time on duty referred to above.

The following examples illustrate the effect of the limitations on hours of service in situations similar to those likely to be encountered on many railroads. For simplicity, the examples assume no regularly assigned meal periods during the stated hours, no emergencies, and no travel time. As used throughout these interim interpretations, "regular duty tour" refers to any scheduled period of service. It is to be distinguished from trouble calls, when the employee is called without prior warning to perform a particular task.

EXAMPLE A

Facts: Regular duty tour, 7:00 a.m.–3:00 p.m. (8 hours). Trouble call, 10:00 p.m.–1:00 a.m. (3 hours).

Effect of law: The individual may not return to his regular job until 9:00 a.m., since he must have 8 consecutive hours off duty before commencing a new 24-hour period. (Note that the individual had not had 8 consecutive hours off duty between his release at 3:00 p.m. and the trouble call). On these facts the employee could take a short trouble call if he could complete it by 7:00 a.m. However, if he returned home at 7:00 a.m. he could not return to work before 3:00 p.m.

EXAMPLE B

Facts: Regular duty tour, 7:00 a.m.–3:00 p.m. (8 hours). Trouble call, 11:00 p.m.–1:00 a.m. (2 hours).

Effect of law: The individual may return to work at 7:00 a.m., his normal starting time, since he did have 8 consecutive hours off duty prior to the 11:00 p.m. trouble call, which commenced a new 24-hour period. However, the individual would be limited to 10 hours of work, since he has already worked 2 hours in the new 24-hour period.

EXAMPLE C

Facts: Work, 7:00 a.m.–3:00 p.m. (8 hours). Off duty, 3:00 p.m.–11:00 p.m. (8 hours). Work, 11:00 p.m.–7:00 a.m. (8 hours). Off duty, 7:00 a.m.–3:00 p.m. (8 hours). Work, 3:00 p.m.–11:00 p.m. (8 hours).

Effect of law: No violation of law because a new 24-hour period commences when the employee reports for work after each 8-hour period off duty. At the end of the last 8-hour work period, the employee has an additional 4 hours that he may work in other than emergency service under the law during the 24-hour period which began at 3:00 p.m.

EXAMPLE D

Facts: Regular duty tour, 7:00 a.m.–3:00 p.m. (8 hours). Trouble call 1, 10:00 p.m.–12:00 midnight (2 hours). Trouble call 2, 5:00 a.m.–6:00 a.m. (1 hour).

Effect of law: The individual may not return to his regular duty tour until 2:00 p.m., since he must have 8 consecutive hours off duty before a new 24-hour period would commence. Note that on these facts the employee could take a short trouble call if he could complete it by 7:00 a.m. However, if he returned home at 7:00 a.m. he could not return to work before 3:00 p.m.

EXAMPLE E

Facts: Regular duty tour, 7:00 a.m.–3:00 p.m. (8 hours). Trouble call 1, 10:00 p.m.–12:00 midnight (2 hours). Trouble call 2, 6:00 a.m.

Effect of law: The individual must be released from duty at 7:00 a.m. since the 24-hour period which commenced at 7:00 a.m. the previous day has now expired. He must have 8 consecutive hours off duty before returning to work.

DUTY TIME

The Act provides that time on duty commences when an individual reports for duty and terminates when the individual is finally released from duty.

Uniform and consistent administration of the Act requires that a fixed, known standard be enunciated for the treatment of time spent in transportation for the carrier's purposes. FRA has determined that the following discussion fairly interprets the intent of the Act while providing objective standards applicable to most common situations. For purposes of the following, compensated travel time means time spent in transportation for the carrier's purposes, which is compensated by the employer.

1. *Commuting distinguished from travel for employer.* Normal commuting between the individual's residence and his normal "headquarters" or "regular reporting point" is not time on duty for any purpose. This principle applies only to commuting associated with a regular work day, irrespective of the method by which the employee commutes. By contrast, compensated travel time to an initial work site other than the individual's headquarters in connection with a regular work day is considered time on duty. Customarily, signal maintainers and other employees engaged in this work will report to headquarters before going to a work site on the line of railroad. However, in those instances where an employee is permitted to utilize some of his compensated time traveling directly from his residence to a work site where covered service is performed, that compensated time is counted as time on duty under the Act. It is administratively impracticable to distinguish between work sites which are relatively close to the residence and those distant from the residence.

Example 1–A. Signalman A operates out of a headquarters point to which he normally reports at the beginning of a regular work day. As a matter of personal preference, Signalman A chooses to live 1 hour's drive from headquarters. His transportation time between his home and the headquarters point at the beginning and end of the regular work day is counted as part of his required off-duty period of 8 or 10 hours.

Example 1–B. Signalman A, whose regular work day begins at 7:00 a.m., goes directly to a work site on a given day instead of reporting to headquarters. Signalman A leaves his home at 6:30 a.m. and drives to the work site, arriving at 7:45 a.m. He is paid from 7:00 a.m. until he goes off duty. Signalman A is on duty for purposes of the Act commencing at 7:00 a.m. It is immaterial whether he drove to the work site in his personal automobile or a carrier-provided truck.

2. *Transportation during and following regular work day.* All time spent in transportation during a regular work day is normally on-duty time. Time spent in non-rail transportation returning to headquarters or the individual's residence after the expiration of the regular work day is neither time on duty nor time off duty, even though such time may be paid for. Time spent in transportation by on-track vehicle is always time on duty.

Example 2–A. Signalman B reports to headquarters for a regular work day, 7:00 a.m.–3:00 p.m., and rides or drives to work site where covered service is performed, commencing at 7:40 a.m. He departs work site at 2:20 p.m. and rides or drives back to headquarters where he is relieved at 3:00 p.m. Signalman B has been on duty a total of 8 hours.

Example 2–B. Signalman B reports to headquarters for a regular work day, 7:00 a.m.–3:00 p.m., and rides or drives to work site where covered service is performed, commencing at 7:40 a.m. He departs work site

at 3:00 p.m. and rides or drives back to headquarters where he is relieved at 3:40 p.m. Signalman B has been on duty a total of 8 hours from 7:00 a.m. to 3:00 p.m. Off-duty time commences at 3:40 p.m.

Example 2–C. Signalman B reports to headquarters for a regular work day, 7:00 a.m.–3:30 p.m., and rides or drives to work site where covered service is performed, commencing at 7:40 a.m. He departs work site at 2:50 p.m. and rides or drives back to headquarters where he is relieved at 3:30 p.m. Signalman B has been on duty a total of 8 hours from 7:00 a.m. until 3:00 p.m. Off-duty time commenced at 3:30 p.m.

Example 2–D. A signal gang travels to a work site remote from individual residences. The carrier houses the crew in a motel (or other facility), which is treated as the tie-up point for the gang. The gang has had a statutory off-duty period and departs the motel at 7:30 a.m. for a work site, works continuously until 7:30 p.m. and returns to the tie-up point arriving at 8:00 p.m. Members of the gang have been on duty for 12 hours for purposes of the Act and must have 10 consecutive hours off duty before returning to work. The travel time to the tie-up point from 7:30 p.m. to 8:00 p.m. is considered neither on-duty time nor off-duty time; consequently, the 10 consecutive hours off duty commenced on arrival at the tie-up point at 8:00 p.m.

3. *Trouble calls.* As a general rule, all compensated time from the time an individual receives a trouble call until he has completed the work for which he was called with be considered time on duty. Of course, this assumes the individual actually begins service for the carrier immediately and that there are no diversions for personal reasons. If an individual devotes only 2 hours to a call for which he receives 2 hours and 40 minutes pay under a collective bargaining agreement, only the actual time worked (2 hours) is counted for purposes of the Act. Travel time on return from an individual's work site to his headquarters or his home outside his assigned hours (except any part of said time performed in or on an on-track vehicle traveling on rails); prior to receiving an off-duty period, is not counted as either off-duty time or on-duty time.

Example 3–A. Signalman C, after returning home following a regular work day of 8 hours, receives a trouble call at 10:00 p.m. The work location is some distance from his residence. Signalman C immediately puts on work clothing and departs for the work site and completes repairs by 11:30 p.m. He arrives home at midnight having consumed 30 minutes on the return trip. He has been on duty 9½ hours (8 plus 1½ hours). His off-duty time began at 12:00 midnight, when he returned home and had an opportunity for meaningful rest.

Example 3–B. Signalman C, after returning home following a regular work day of 8 hours, receives a trouble call at 10:00 p.m. The work location is some distance from his residence. Signalman C immediately puts on work clothing and departs for his headquarters and takes an on-track vehicle and drives it over the rails to the work site. He completes repairs by 11:30 p.m. He arrives at his headquarters at midnight after driving the on-track vehicle over the rails, having consumed 30 minutes on the return trip. Taking a direct route, he arrives home at 12:15 a.m. Signalman C was on duty until his arrival at headquarters at midnight. If Signalman C is compensated in some way for the drive to his residence, then the period from 12:00 to 12:15 a.m. is counted neither as on-duty time nor as off-duty time.

As a general rule, on-duty time ceases with the employee's release. (Where travel prior to the end of the work day is involved, see paragraph 2 above.) With respect to trouble calls, on-duty time ceases with completion of the work (paragraph 3 above). On-duty time begins again at the commencement of the employee's next regular work day or with the receipt of a trouble call (paragraph 3 above).

EFFECTIVE PERIODS OF RELEASE

In order to qualify as off-duty time, a period of release must provide a meaningful opportunity for relaxation. In addition, the employee must be free of all responsibilities to the carrier, including any duty to remain at a particular location.

Because of the unique characteristics of signal service, regularly assigned meal periods are not computed as on-duty time but do not break the continuity of service. This is true regardless of the duration of the meal period. Thus, service through a scheduled work tour is deemed to be continuous for purposes of the 10-hour release requirement if the only non-duty period is a regularly assigned meal period. Of course, the 10-hour release requirement would come into play only if the continuous service (less the meal period) totaled 12 hours.

EXAMPLE A

Facts: Regular duty tour, 7:00 a.m.–12:00 noon. Assigned meal period, 12:00 noon–12:30 p.m. Regular duty tour continued, 12:30–3:30 p.m. Additional service, 3:30–7:30 p.m.

Effect of law: The individual has worked 12 continuous hours and must be afforded 10 consecutive hours off duty.

EXAMPLE B

Facts: Regular duty tour, 7:00 a.m.–12:00 noon. Assigned meal period, 12:00 noon–12:30 p.m. Regular duty tour continued, 12:30–3:30 p.m. Trouble call, 4:30 p.m.–8:30 p.m.

Effect of law: The individual has worked a total of 12 hours in broken service and must be afforded 8 consecutive hours off duty before being permitted to return to work.

All other non-duty periods of less than one hour during which there is an opportunity for relaxation and during which the individual is free of responsibilities to the carrier are excepted from the computation of on-duty time. However, such periods of less than one hour are not deemed to interrupt the continuity of service. Conversely, periods, of one hour or more which are available for rest and during which the individual is free of responsibilities are considered off-duty time and do break the continuity of service.

EXAMPLE C

Facts: Regular duty tour, 7:00 a.m.–12 noon. Assigned meal period, 12:00 noon–1:00 p.m. Regular duty tour continued, 1:00–4:00 p.m. Trouble call, 4:30 p.m.–8:30 p.m. Travel on return from trouble call, 8:30 p.m.–9:00 p.m.

Effect of law: The individual has been on duty 12 continuous hours (5+3+4) and must receive 10 consecutive hours off duty. The 30-minute period between the close of the scheduled duty tour and the trouble call is not counted toward time on duty but does not interrupt the essential continuity of service. The off-duty period begins at 9:00 p.m.

EXAMPLE D

Facts: Scheduled duty tour, 7:00 a.m.–12:00 noon. Assigned meal period, 12:00 noon–12:30 p.m. Scheduled duty tour continued, 12:30 p.m.–3:30 p.m. Trouble call, 5:30 p.m.–9:30 p.m. Travel on return from trouble call, 9:30 p.m.–10:00 p.m.

Effect of law: The individual has been on duty 12 hours in broken service (5+3+4) and must receive 8 consecutive hours off duty. The off-duty period begins to run at 10:00 p.m.

EMERGENCIES

Section 3A(f) of the Act provides that an individual engaged in installing, repairing, or maintaining signal systems may work up to 4 additional hours within a 24-hour period when an actual emergency exists and the work of the individual is related to such emergency. This means that during an ongoing emergency the individual may work up to 16 hours consecutively or in the aggregate. An emergency ceases to exist when the signal systems are restored to service.

An emergency for purposes of signal service is considered to be any condition causing a material disruption of service or constituting a significant safety hazard. Examples of emergencies include (1) false proceed indications, (2) malfunctioning grade crossing protection devices, and (3) false restrictive conditions that materially disrupt service or which may cause a significant safety hazard. An emergency is to be distinguished from an extraordinary event under section 5(d) of the Act which may render the limitations of the Act inapplicable. For instance, an unusually severe ice storm might rise above an emergency and qualify as an "act of God" permitting service in excess of 16 hours. However, judicial pronouncements on section 5(d) have made it clear that, even in the presence of an "act of God" or other extraordinary event the carrier must employ due diligence to avoid or limit excess service.

It is important to remember that the existence of a bona fide emergency does not excuse the failure to provide a proper off-duty period after the emergency is over. In addition, the existence of a continuing emergency will not always justify working an employee a full 16 hours.

Consider the following:

EXAMPLE

Facts: Work: 7:00 a.m.–3:00 p.m. (8 hours). Trouble call 10:00 p.m.–12:00 midnight (2 hours). Emergency call (valid continuing emergency) 3:00 a.m.

Effect of law: The individual must be released for 8 hours off duty not later than 7:00 a.m., even though at that time he has worked only 14 hours total. The reason for this is that the 24 hour period which commenced at 7:00 a.m. the previous day has now expired.

NOTE.—These interim interpretations should be read in conjunction with the final statement of agency policy and interpretation on the balance of the Hours of Service Act which will be issued in the very near future.

Issued at Washington, D.C., on January 18, 1977.

ASAPH H. HALL,
Administrator.

[FR Doc.77–2197 Filed 1–24–77;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Service Order No. 1256]

PART 1033—CAR SERVICE

The Baltimore and Ohio Railroad Co. and the Chesapeake and Ohio Railway Co. Authorized To Select Certain Cars of Coal To Be Unloaded by Port Coal Dumping Machines

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 17th day of January, 1977.

It appearing, that, there are massive accumulations of carloads of coal for transshipment by water awaiting unloading by the coal dumping machines of The Baltimore and Ohio Railroad Company (B&O) at its Curtis Bay coal piers at Baltimore, Maryland, and by The Chesapeake and Ohio Railway Company (C&O) at its coal piers at Newport News, Virginia; that because of extreme cold and high moisture content, many of these carloads of coal are so deeply frozen that they cannot be unloaded at rates in excess of five cars per hour; that other carloads of coal are available which are not so deeply frozen which can be unloaded without excessive delay for thawing and loosening; that the normal practice of the B&O and C&O is to unload cars on a sequential basis determined by the arrival of the vessel designated by the transshipper to receive the coal; that such practice results in excessive delays to cars of coal which are unfrozen or only partially frozen on arrival thereby causing these cars also to become deeply frozen; that the transshipment of coal from railroad cars to vessels has been drastically reduced because of these conditions; that the B&O and C&O are unable to supply sufficient cars to coal mines, thereby forcing some mines to close or severely to curtail operations resulting in the unemployment of coal miners, railroad employees and others engaged in the mining and transporting of coal; that several thousand carloads of coal awaiting movement are being stored at points as far distant as 300 miles from the ports; that such practices are resulting in serious congestion and are interfering with the normal flows of other types of traffic; that the prompt unloading of coal less deeply frozen or unfrozen without regard to the normal sequence of unloading will enable the B&O and C&O to reduce the backlog of cars awaiting unloading, thereby making these cars available to shippers and reducing congestion at various points between the coal fields and the ports; that the severity of the operating and car supply problems caused by the continued attempt to unload frozen coal on the normal sequential basis requires immediate modification; that in the opinion of the Commission an emergency exists; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1256 The Baltimore and Ohio Railroad Company and the Chesapeake and Ohio Railway Company authorized to select certain cars of coal to be unloaded by port coal dumping machines.

(a) The Baltimore and Ohio Railroad Company (B&O) and The Chesapeake and Ohio Railway Company (C&O), be, and they are hereby, authorized to select for unloading by the coal dumping machines of the B&O at Curtis Bay, Baltimore, Maryland, and by the coal dumping machines of the C&O at Newport News, Virginia, carloads of coal consigned to such ports for transshipment to vessels, which, in the judgment of the carrier, may be unloaded more promptly than other carloads of coal which are more deeply frozen regardless of the normal sequence of unloading.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Effective date.* This order shall become effective at 12:01 a.m., January 19, 1977.

(d) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., February 28, 1977.

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

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

By the Commission, Railroad Service Board, members Joel E. Burns, Lewis R. Teeple, and Thomas J. Byrne.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2345 Filed 1-24-77;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 263—UNITED STATES STANDARDS FOR GRADES OF FISH FILLETS

Subpart A—United States General Standards for Fish Fillets

The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), proposes to issue interim regulations to amend Title 50, Code of Federal Regulations, by the addition of a new Subpart A to Part 263. The purpose of this proposed amendment is to issue U.S. general standards for grades of fish fillets.

The scope of the proposed general standards cover fresh or frozen fish fillets of any commercial marine or fresh water species except those fillets covered by specific U.S. Standards for Grades as follows:

PART 263

Subpart B—U.S. Standards for Grades of Cod Fillets
Subpart C—U.S. Standards for Grades of Flounder and Sole Fillets
Subpart D—U.S. Standards for Grades of Haddock Fillets
Subpart E—U.S. Standards for Grades of Ocean Perch and Pacific Ocean Perch Fillets

The intent of the proposed general standards is to allow for the systematic differentiation of the quality of fish fillets into three categories, U.S. Grades A, B, and C, and subsequently to permit identification of such quality levels on the product or product label for the benefit of the consumer and the industry.

Issuance of general standards is expected to facilitate trade in fish fillets of all commercial species, not just those currently covered by specific standards. This will allow consumers to select purchases of any fish fillet on the basis of identified quality.

It is the policy of the Department of Commerce, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendments on or before February 28, 1977, to the Director, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

Because of the high level of interest expressed for the availability of this document, NMFS intends to allow the use of the proposed interim general standards for fish fillets in its voluntary program of fishery products inspection and certification commencing on January 25, 1977.

The amendments are proposed pursuant to 16 U.S.C. 742e; D.O.O. 25–5A, subsection 3.01 K(A); and D.O.O. 25–5B, section 12.

Accordingly, Title 50 Chapter II, Part 263 of the Code of Federal Regulations is hereby proposed to be amended by the addition of a new Subpart A to read as follows:

Subpart A—U.S. General Standards for Grades of Fish Fillets

Sec.
263.101 Scope and product description.
263.102 Product forms.
263.103 Grades.
263.104 Grade determination.

AUTHORITY: 16 U.S.C. 742e; D.O.O. 25–5A, subsection 3.01K(A); and D.O.O. 25–5B, section 12.

Subpart A—U.S. General Standards for Grades of Fish Fillets

§ 263.101 Scope and product description.

This standard shall apply to fillets of fish that are fresh or frozen of any species suitable for use as human food and processed and maintained in accordance with good manufacturing procedures. It does not apply to products covered by Subparts B, C, D, and E of Part 263. Fillets are slices of fish of irregular size and shape which are removed from the carcass by cuts made parallel to the backbone and sections of such fillets cut so as to facilitate packing.

§ 263.102 Product forms.

(a) *Types.*
(1) Fresh.
(2) Frozen individually (IQF); glazed or unglazed.
(3) Frozen solid packs; glazed or unglazed.
(b) *Styles.* (1) Single.

(i) Skin-on.
(ii) Skin-on scaled.
(iii) Skin-on (white side only).[1]
(iv) Skin-off (skinless).
(2) Butterfly.

The fillets may be labeled as boneless, provided that boning has been completed.

§ 263.103 Grades.

(a) U.S. Grade A. Fish fillets shall. (1) Possess good flavor and odor characteristic of the species and

(2) Comply with the limits for defects for U.S. Grade A quality as outlined in § 263.104.

(b) U.S. Grade B Fish fillets shall. (1) Possess reasonably good flavor and odor characteristic of the species and

(2) Comply with the limits for defects for U.S. Grade B quality in accordance with § 263.104.

(c) U.S. Grade C. Fish fillets shall. (1) Possess minimal acceptable flavor and odor characteristic of the species with no objectionable off-flavors or off-odors and

(2) Exceed the limits for defects for U.S. Grade B quality in accordance with § 263.104.

§ 263.104 Grade determination.

(a) *Procedures for grade determination.* The grade shall be determined by evaluating the product in the frozen, and/or thawed, and cooked states. Each defect is classified as to its relative severity as minor, major, or serious in accordance with paragraphs (d), (e), and (f) of this section. Odor and flavor are evaluated in accordance with paragraph (c) of this section. Tolerance for the various defects is set for each grade classification according to group species.

(b) *Sampling.* Sampling is to be done in accordance with the Regulations Governing Processed Fishery Products, Title 50, Chapter II, Subchapter G, § 260.61, Tables II or V, where applicable. When sampling for Military procurement, sampling shall be in accordance to Military Standard 105. The sample unit shall be the container and its entire contents for containers up to 10 pounds. A representative 3 pound sample unit for containers over 10 pounds shall be used.

(c) *Evaluation of flavor and odor.* (1) Evaluation of flavor and odor on each of the sample units shall be carried out only by those trained to do so. For evaluation of the odor of raw fillets the thawed fillets should be broken and the broken flesh held close to the nose immediately to detect off odor.

(2) If raw odor evaluation indicates any non-characteristic and/or off-odors, the sample unit or parts thereof shall be cooked by any of the following methods for verification of results of raw odor evaluation:

(i) Baked method. Package the product in aluminum foil. Place the packaged product on a flat cookie sheet or shallow flat-bottom pan of sufficient size so that the packages can be evenly spread on the sheet or pan. Place the pan and frozen contents in a properly ventilated oven preheated to 400° F until the internal temperature of the product reaches 160° F.

(ii) Boil in bag method. Insert the thawed unseasoned sample into a boilable film-type pouch. Fold open end of the pouch over a suspension bar. Clamp in place to provide a loose seal after evacuating the air by immersing the pouch into boiling water. Cook the contents until the internal temperature of the product reaches 160° F.

(iii) Steam method. Wrap the sample in a single layer of aluminum foil and place on a wire rack suspended over boiling water in a covered container. Steam the packaged product until the internal temperature of the product reaches 160° F.

(d) *Examination for physical defects.* Each sample unit shall be examined for defects using the list of defect definitions that follow. Defects will be categorized as minor, major, and serious according to Table 1 of this standard.

(e) *Definition of defects in fillets.* (1) "Abnormal condition" means that the normal physical and/or chemical structure of the fish flesh has been sufficiently changed so that the usability and/or desirability of the flesh is adversely affected. It includes but is not limited to the following:

(i) Jellied—refers to the abnormal condition wherein a fish fillet is partly or wholly characterized by a gelatinous, glossy, translucent appearance.

(ii) Milky—refers to the abnormal condition wherein a fish fillet is partly or wholly characterized by a milky-white, excessively mushy, pasty, or fluidized appearance.

(iii) Chalky—refers to an abnormal condition wherein a fish fillet is partly or wholly characterized by a dry, chalky, granular appearance, and fiberglass structure.

The intensity of abnormal conditions is defined as follows:

(A) Moderate—refers to a condition that is distinctly noticeable but does not seriously affect the appearance, desirability, and/or the eating quality of the product.

(B) Excessive—refers to a condition which is both distinctly noticeable and seriously objectionable.

(2) Appearance defects—refers to the color of the fish flesh and to the degree of surface dehydration of the product.

(i) Color defects—refers to any readily discernable abnormal coloration including bruises, blood spots, browning, yellowing, and melanin spotting. Each square inch (6.5 cm^2) of affected area is counted as one instance as determined by a transparent grid of 1 inch squares.

The extent of appearance defects is defined as follows:

(A) Slight—2–4 instances.
(B) Moderate—5–6 instances.
(C) Excessive—over 6 instances.

(ii) Dehydration—refers to loss of moisture from fish fillet surfaces during frozen storage.

(A) Slight dehydration—is surface color masking affecting more than 5 percent of area which can be readily removed by scraping with a blunt instrument.

(B) Moderate dehydration—is deep color masking penetrating the flesh affecting less than 5 percent of area and requiring a knife or other sharp instrument to remove.

(C) Excessive dehydration—is deep color masking penetrating the flesh affecting more than 5 percent of area and requiring a knife or other sharp instrument to remove.

(3) Workmanship defects refers to: (i) Cutting and trimming imperfections, ragged edges, holes, tears, and improper or misplaced cuts. Each square inch (6.5 cm^2) of affected area is counted as one instance whether it is full or fractional. "Ragged edges" refers to the irregular or shredded appearance of the fillet edge.

(ii) Scales, fins, or pieces of fins or extraneous material.

(A) Scales (skin-off) scaled fillets—An occurrence of attached or loose scales in any sample unit up to 1 square inch (6.5 cm^2) is counted as one instance. Each additional 1 square inch (6.5 cm^2) is an additional instance.

(B) Fins—Any fin or parts of any fin up to 1 square inch (6.5 cm^2) in area shall be considered one instance of fin.

(C) Extraneous material means any piece of foreign matter on the fillet or elsewhere in the package. Each occurrence is considered one instance.

The extent of workmanship defects is defined as follows:

Slight degree—1–2 instances.
Moderate degree—3–4 instances.
Excessive degree—Over 4 instances.

(4) Bones (for Fillets not designated as boneless) refers to a bone that after the product has been cooked is capable of piercing or hurting the palate. Each area of one inch square (6.5 cm^2) which contains a bone or a cluster of bones shall be regarded as one instance of bones.

The amount of bones is defined as follows:

Slight—1 instance.
Moderate—2–4 instances.
Excessive—Over 4 instances.
If labeled boneless, no bones shall be permitted.

(5) Skin—this includes exterior skin and black membrane (belly lining).

(i) For skinless fillets, each piece of skin up to 1 square inch (6.5 cm^2) and every additional complete 1 square inch (6.5 cm^2) thereafter shall be considered an instance.

(ii) In the case of skin-on or skinless fillets, each piece of black membrane (belly lining) up to 1 square inch (6.5 cm^2) thereafter shall be considered an instance.

The amount of skin is defined as follows:

Slight degree—1 instance.
Moderate degree—2–4 instances.
Excessive degree—Over 4 instances.

(6) Size of fillets—Refers to the freedom from undesirably small pieces of fil-

[1] Flatfish only.

lets. Undesirably small shall mean any piece of fillet weighing less than 1 ounce (30 grams) per container.

Moderate degree—2 pieces.
Excessive—Over 2 pieces.

(7) "Texture defects"—Refers to the texture of the cooked fish—not characteristic of the species.

(i) Slight—fairly firm, does not form a fibrous mass in the mouth, moist but not mushy.

(ii) Moderate—moderately tough or rubbery, has noticeable tendency to form a fibrous mass in the mouth, moist but not mushy.

(iii) Excessive—excessively tough or rubbery, has marked tendency to form a fibrous mass in the mouth, or is very dry or very mushy.

(f) *Categorization of physical defects.* Instances shall be assessed on a per pound basis for physical defects, except for defects relating to abnormal conditions, texture, dehydration and sizes of fillets.

TABLE 1.—*Defect table*

Defect description	Classification		
	Minor	Major	Serious
1. Abnormal condition:			
Moderate		2	
Excessive			4
2. Appearance:			
(a) Color defects:			
Slight (2 to 4 instances)	1		
Moderate (5 to 6 instances)		2	
Excessive (over 6 instances)			4
(b) Dehydration:			
Slight moderate	1	(1)	
Moderate excessive		1 2	
Excessive excessive		(1)	4
3. Workmanship defects:			
(a) Cutting and trimming			
(b) Scales, fins, extraneous material:			
Slight (1 to 2 instances)	1	2	
Moderate (3 to 4 instances)		2	
Excessive (over 4 instances)			4
4. Bones:			
Slight (1 instance)	1		
Moderate (2 to 4 instances)		2	
Excessive (over 4 instances)			4
5. Skin and membrane:			
Slight (1 instance)	1		
Moderate (2 to 4 instances)		2	
Excessive (over 4 instances)			4
6. Size of fillets:			
Moderate (2 instances)		2	
Excessive (over 4 instances)			4
7. Texture:			
Slight	1		
Moderate		2	
Excessive			4

[1] Less than 5 pct.

Tolerances for various defects

Combined minor and major defects	Serious defects	Group species [1]
U.S. grade A:		
Up to 4 points	None	Groundfish.
Up to 5 points	do	Flatfish.
Up to 6 points	do	Redfish.
Up to 6 points	do	Herring and others.
U.S. grade B:		
Up to 8 points	do	Groundfish.
Up to 10 points	do	Flatfish.
Up to 12 points	do	Redfish.
Up to 12 points	do	Herring and others.
U.S. grade C: Exceeds tolerances for U.S. grade B, but is suitable for human consumption.		

[1] Groundfish (white fish) includes cusk, ocean catfish, pollock, hake, whiting, and ling. Flatfish includes Greenland turbot and halibut. Redfish includes rockfish, and sea bream. Herring and others includes sardines, pilchards, sprats, and mackerel.

(g) *Grade assignment.* Each sample unit will be assigned the grade into which it falls in accordance with the tolerance contained in Table 1 for Group Species. The grade to be assigned a lot is the grade indicated by the average of the total scores, provided the number of sample units in the next lower grade for both physical defects and flavor and odor does not exceed the acceptance number of indicated in the sampling plans contained in § 260.61.

Dated: January 17, 1977.

ROBERT W. SCHONING,
Director, National Marine Fisheries Service.

[FR Doc.77-2193 Filed 1-24-77;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 1002]

[Docket No. AO-71-A72]

MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

Decision on Proposed Amendments to Marketing Agreement and to Order

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the New York-New Jersey marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900), at New York, New York, on September 16, 1976, pursuant to notice thereof issued on August 26, 1976 (41 FR 36668).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Program Operations, on November 30, 1976 (41 FR 53346), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein subject to the following modifications:

1. Under the heading "1. *Partial payments to producers and cooperative associations.*", three new paragraphs are added at the end of the discussion.

2. Under the heading "2. *Due dates for the payment of certain obligations.*":

a. Paragraph 4 is changed.

b. Two new paragraphs are added after paragraph 13.

c. A new paragraph is added after paragraph 17.

d. Paragraph 20 is changed.

e. Two new paragraphs are added after paragraph 21.

f. Paragraphs 22 and 23 are changed, and two new paragraphs are added after paragraph 23.

The material issues on the record of the hearing relate to:

1. Partial payments to producers and cooperatives; and

2. The dates by which payments should be made to producers and cooperatives, and to and from the producer-settlement fund.

FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Partial payments to producers and cooperative associations.* The New York-New Jersey order (Order 2) should not be amended to require handlers to make a partial payment for milk received from producers and cooperatives during the first 15 days of the month.

Amendments requiring partial payments for milk were proposed by a group of nine cooperatives representing about 30 percent of the market's producers. As proposed, handlers would be required to pay not less than the preceding month's Class II price for milk received from cooperatives and producers during the first 15 days of the month. Such payments to cooperatives would be due by the 5th day of the following month and payments to individual producers would be due on the 7th day.

The witness for proponents contended that adoption of the proposal would assure a uniform and more orderly system of partial payments for all producers and Cooperative associations supplying the market. He indicated that for those producers not now receiving partial payments the order changes would reduce the period of time some must wait to be paid for at least a portion of their deliveries to handlers. The witness also contended that mandatory partial payments would eliminate certain handler inequities which he alleged exist under the voluntary partial payment practices that now prevail in the market. The spokesman asserted that such inequities contribute to market disorder by creating competitive advantages for some handlers. The witness also claimed that order-imposed partial payments would help reduce the risk of losses by cooperatives and producers if a handler became financially unable to pay for his milk receipts.

In support of partial payments, the witness pointed out that such payments are required under most other Federal orders. He contended that adoption of partial payments for the New York-New Jersey market would better align the payment provisions of Order 2 with other orders, thereby promoting greater intermarket equity for handlers, producers, and cooperative associations.

Mandatory partial payments were opposed by several handlers on the basis that most cooperatives and producers now receive partial payments at rates that generally exceed the proposed rate. The handlers contended that producers are satisfied with the current partial payment practices. The spokesman for a major cooperative association indicated that there appeared to be little need at this time for establishing prescribed partial payment procedures for the market.

The evidence adduced at the hearing indicates that most of the handlers in the market are making partial payments to producers and cooperatives that supply them milk. However, payment practices do vary. For example, various cooperatives bill handlers for partial payments on the basis of class prices, estimated class prices, or estimated blend prices. The dates on which such billings are submitted and the subsequent payments received also vary. In the case of nonmembers, some handlers make partial payments to just those producers who request them, while others make partial payments to all producers from whom they receive milk. Also, the date on which such partial payments are made may vary from handler to handler by several days.

Partial payment practices in this market clearly lack uniformity. Yet, aside from that expressed by the proponent cooperatives, there appears to be little dissatisfaction with the present voluntary arrangements. Although one handler expressed concern about handler equity, he nevertheless was opposed to having the order require partial payments. Handler spokesman otherwise did not express concern that certain handlers might gain a competitive advantage by not making partial payments, or by making such payments at lower rates than paid by other handlers. Also, the record provides no evidence that producers or cooperatives that wish to receive a partial payment for milk are unable to obtain such payments.

As pointed out by witnesses, recent legislation applicable in the State of New York is tending to result in somewhat greater uniformity of payment practices in the Order 2 market. Under the New York State Security Fund Law for assuring payments to producers, handlers who make semi-monthly payments in a prescribed manner are entitled to a reduction in the amount of the surety bond or other security filed by them in lieu of making payments to the security fund. It is recognized that this applies only to handlers receiving milk from New York producers. Nevertheless, such legislation apparently is lessening the differences in payment practices in this market.

The fact that other Federal orders require partial payments in itself provides no basis for adopting similar provisions in the Order 2 market. There was no demonstration, however, that the lack of prescribed partial payment requirements in this market is causing problems for handlers or producers because of the application of such payment requirements in other markets.

The record in this proceeding does not provide a compelling basis for concluding that partial payment provisions are es-

sential to maintain stable and orderly marketing conditions in the Order 2 market. Accordingly, such provisions should not be adopted.

In their exceptions to the recommended decision, the proponent cooperative contended that the Department erred in concluding that mandatory partial payments should not be adopted on the basis of this proceeding. They stated that because of proposed order changes that would affect the payment schedule of handlers, some handlers have indicated their intention to cease their current practice of making voluntary partial payments to cooperatives. Proponents indicated that if this alleged threat materializes handlers would then be in a position to make partial payments to nonmembers only, thereby further undermining the strength of cooperatives in this market. Also, the cooperatives argued that the Department relied on "self-serving, unsworn statements by handlers in opposition" to the partial payment proposal, and that evidence of non-uniform voluntary partial payments was disregarded.

It is recognized, as stated in the recommended decision, that volutary partial payment practices lack uniformity. This does not necessarily mean, however, that partial payments thus should be mandated by the order. In view of opposition to such provisions, their adoption should be based on a demonstrated need, which we believe is lacking. The absence of a compelling need tends to be supported by the lack of widespread support among producers in this market for the adoption of the proposal.

The alleged threats that voluntary partial payments may be discontinued do not appear in the record and thus may not serve as a basis for concluding that partial payments should be mandatory. The decision must be based, as this decision is, solely on the basis of testimony by witnesses who were under oath at the hearing.

2. *Due dates for the payment of certain obligations.* The dates by which certain payments under the order are to be made should be changed as follows: (1) Handler payments to cooperatives for milk purchased at class prices should be received by such cooperatives by the 19th day after the month in which the milk was delivered; (2) Handler payments to the producer-settlement fund should be received by the market administrator by the 21st day of the month; and (3) Payments to handlers from the producer-settlement fund should be made by the market administrator by the 22nd day of the month. If the due date for payments to or from the producer-settlement fund falls on a Saturday or Sunday or a national holiday, such payment should not be due until the next day the market administrator's office is open for public business.

The order also should be clarified with respect to the handling of producer-authorized deductions from payments for their milk, and with respect to the collection of lump-sum payments at the blend price by a cooperative on behalf of its member producers.

Handler payments to cooperatives at class prices currently are required by the 15th day of the month, and payments to and from the producer-settlement fund are due on the 18th and 20th days, respectively. Handler payments to producers and cooperatives at the uniform price, which would not be changed, are due on the 25th day of the month.

The group of nine cooperatives referred to under Issue No. 1 proposed that handlers pay cooperatives for milk purchased at class prices by the 16th day of the month following the month of delivery, rather than on the 15th day. These cooperatives also proposed that the due date for paying producers and cooperatives at the uniform price be changed from the 25th to the 22nd day of the month. Another group of cooperatives proposed that handler payments to cooperatives at class prices be due by the 19th instead of the 15th day of the month. Also, they proposed that payments to and from the producer-settlement fund be made by the 20th and 21st days, respectively, of each month, rather than on the 18th and 20th days.

In the case of both groups, the basic thrust of their proposals was a reduction in the amount of time between payments to cooperatives at class prices and payments to individual producers and cooperatives at the blend price. Presently, the time between payment dates is 10 days, the difference between the 15th and the 25th days of the month. Both groups contended that the 10-day difference in payment dates tends to provide handlers with an economic incentive to buy milk from nonmember producers rather than from cooperatives that are selling milk at class prices, since the cooperatives must be paid 10 days earlier.

While the cooperatives were in agreement on the need for reducing the 10-day difference in payment dates, the two groups proposed different sets of dates to accomplish this. The witness for the nine cooperatives indicated that producers should be paid as soon as possible and urged that the final payment date be advanced from the 25th to the 22nd day of the month. It was his position that the current deadline (the 25th) provides an unjustified extension of credit to handlers. Also, he claimed that an earlier payment date would be somewhat more in line with the payment deadlines under other Federal orders. The witness indicated, on the other hand, that the final payment date should not be advanced more than 3 days because of problems associated with adjustments in other payment dates. In this regard, he urged that payments to cooperatives at class prices be due on the 16th rather than the 15th day of the month so that handlers would have an additional day for making their payments.

Witnesses for the other cooperatives stressed that the payment dates must be structured so as to afford handlers a reasonable opportunity to comply with the regulations. They indicated that requiring payments to cooperatives at class prices and to producers at the blend price on the 19th and 25th days, respectively, would best accommodate the existing settlement arrangements in the market. They pointed out, however, that if these dates are adopted corollary changes would need to be made in the dates by which payments to and from the producer-settlement fund must be made.

The order prescribes various dates throughout the month for actions that must be completed. The present sequence begins with the announcement of class prices by the 5th day of each month. Handlers' reports of receipts and utilization must be mailed to the market administrator by the 8th day, or physically delivered to him by the 10th day. By the 15th day of the month the market administrator announces the uniform price, with his billings to handlers mailed immediately thereafter. Handler payments to cooperatives for milk purchased at class prices also are due on the 15th day. Handler obligations to the producer-settlement fund are due by the 18th, followed by payments to other handlers from the fund by the 20th. Finally, handler payments to producers are due by the 25th day of the month. It is within the context of this sequence of dates that the proposed changes must be considered.

It is necessary that the payment dates prescribed in the order allow adequate time for the required transfers of money. Otherwise, handlers could be placed in the position of being unable to comply with the order simply because the dates are not realistic in view of mailing times and other factors that affect the payment of obligations. The changes in dates adopted herein are intended to provide handlers a reasonable opportunity to comply with the order in making the required payments.

Basically, the various payment dates must be coordinated with the date for announcing the uniform price to producers. Presently, the market administrator must announce this price by the 15th day of the month. It is only then that the obligations to and from the producer-settlement fund can be determined and final payments made to producers and cooperatives.

With this announcement date for the blend price, it is not reasonable to require that payments to the producer-settlement fund be completed before the 21st day of the month. Once the uniform price has been announced, the market administrator must then notify handlers of their obligation to the producer-settlement fund. The handlers in turn must submit their payments to the market administrator. Thus, in setting the date for such payments, it is necessary that adequate recognition be given to the time needed to carry out these steps.

Customarily, both the notification to handlers and the payments to the producer-settlement fund are done by mail. Although other procedures could be used that would involve less time, it is more convenient for both the handlers and the market administrator to rely upon the mail service. This necessarily requires, then, that handlers be given until the 21st of the month to get their payments to the market administrator. Payments

not received by the market administrator by the close of business on the 21st day would be considered late.

Payments to handlers from the producer-settlement fund should then be made by the market administrator by the 22nd day of the month. This will provide 3 days for handlers to receive their money from the producer-settlement fund and, in turn, make final payments to producers by the 25th day.

A group of cooperatives took exception to specifying the 21st and 22nd days of the month as the dates for making payments to and from the producer settlement fund. They would prefer the 20th and 21st days, as they proposed at the hearing, on the basis that cooperatives otherwise may not receive payments from the producer-settlement fund in time for the payments by the cooperatives to reach their member producers by the 25th of the month.

If the latter dates were adopted, cooperatives receiving class price payments from handlers would have only one day in which to make their payments to the producer-settlement fund, since such handler payments would not have to reach the cooperative until the 19th day. This would provide insufficient time for cooperatives to then get their payments to the market administrator.

The dates when payments to and from the producer-settlement fund are due occasionally will fall on weekends or holidays when the market administrator's office is not open for public business. On such occasions, the due date should be the next day that the market administrator's office is open for business. The order should provide, however, that if payments to the market administrator are so delayed, payments by the market administrator to handlers also may be delayed by the same number of days.

From a review of the various procedures just outlined, it is evident that final payments to producers and cooperatives at the blend price should not be required before the 25th day of the month. Requiring such payments at an earlier date would not permit the timely completion of the various payment procedures necessary under the order.

It is possible, however, to accommodate the desire of the cooperatives to reduce the time between payments to cooperatives at class prices and payments to producers and cooperatives at the blend price. The order requires that when a cooperative in its capacity as a handler sells milk to other handlers, it must account to the pool at the classified use value of the milk. If the value of the milk at class prices exceeds its value at the uniform price, the cooperative must pay the difference to the producer-settlement fund. It is essential, then, that the cooperative receive payment for the milk from handlers at the appropriate class prices in time to make the necessary payment to the producer-settlement fund.

As provided herein, handlers (including cooperatives) would not be required to get their payments to the market administrator until the 21st day of the month. Accordingly, cooperatives that must submit payments to the market administrator need not receive payments from their handler-buyers until the 19th of the month, rather than on the 15th as the order now provides. Under such scheduling, cooperatives should be able to make their payments to the producer-settlement fund on a timely basis. At the same time, such scheduling would reduce from 10 days to 6 days the difference in time between payments to cooperatives at class prices and final payments to producers at the blend price.

The order language accompanying the recommended decision did not specifically state that handler payments to cooperatives at class prices and to the producer settlement fund must be received by the recipients by the due date, as was indicated in the findings. The order should be specific in this regard, as reflected in the revised order language accompanying this decision.

On the basis of questions raised at the hearing relative to various payment practices in the market, certain clarifying changes should be made in the order in conjunction with the handling of the principal issues of this proceeding. The record indicates that some handlers receive milk from producers who are members of a cooperative association that is not acting as the handler for such milk. However, rather than paying the individual producers, the handler pays the cooperative an amount equal to the total amount due the individual producers at the blend price. The cooperative, in turn, distributes the funds to its member producers.

The order lacks specific provisions for the accommodation of this payment practice. Accordingly, the order should clearly specify that a cooperative may collect from handlers on behalf of its members the total amount due such producers at the blend price. Such payments should be subject to the following conditions: (1) The cooperative has been authorized by each such producer to collect payment for his milk delivered to the handler; (2) The cooperative has requested the handler in writing to make such payment to the cooperative; and (3) The cooperative has certified to the market administrator in writing that it has authority to collect payments for milk on behalf of its member producers.

At the hearing a witness suggested that lump-sum payments to cooperatives at the blend price be required two days earlier than the final payments to individual producers. He contended that cooperatives need to receive such payments from handlers in time for the cooperatives to make payments to members on the same date that proprietary handlers pay their producers.

The order should provide that payments to cooperatives that are collecting on behalf of their members be made by the same date that final payments are due individual producers—the 25th day of the month. As indicated earlier, the market administrator's payments to handlers from the producer-settlement fund would not be required until the 22nd day. In most cases, this schedule would not provide sufficient time for handlers to receive their payments from the market administrator and pay the cooperatives on the 23rd of the month.

Cooperatives took exception to this conclusion in the recommended decision. They claimed that cooperatives need to receive their money from handlers by the 25th day to cover the cooperatives' payments to producers on that date. Otherwise, they contended, cooperatives may need to seek short-term commercial loans in order to pay their member producers on the 25th when other producers in the market are paid.

With the other payment dates adopted herein, there is no practicable way to provide assurance that cooperatives will receive lump-sum payments by the 25th of the month. Under the adopted timetable, it is possible that payments to handlers from the producer settlement fund might not be made until the 24th. This could occur when the due date for making payments to the producer settlement fund falls on a Saturday. In such situations, payment to the market administrator would not be due until Monday, the 23rd, and payments from the producer settlement fund would then be due on the 24th. Handlers should not be required to pay cooperatives in advance of the date that the handlers themselves can expect to receive payment from the market administrator.

Another issue raised at the hearing was the procedure for handling producer-authorized deductions from blend price payments to producers. Handlers are making payments to third parties on behalf of producers and deducting such amounts when making payment for milk received from the producers. Amounts covering the value of supplies purchased from the handler also are being deducted from producer payments. The order lacks specific language concerning the treatment of such deductions. Accordingly, the order should clearly provide for producer-authorized deductions. Deductions for assignments and supplies should be allowed, however, only if the producer has authorized the handler in writing to make such deductions and such authorization is retained by the handler for verification by the market administrator.

Exception was taken by cooperatives to the statement in the recommended decision that handlers are expected to pay the amounts deducted from producers' returns to the assignees by the time payment is made to producers. The cooperatives took the view that a few days of leeway in this regard is reasonable because rigid compliance with the payment date would interfere with the scheduled use of computers in preparing payments to producers. Moreover, it was claimed that the order language does not reflect this expectation.

A producer's written authorization or a handler to deduct monies for payment to an assignee does not relieve the handler of his obligation to make full payment or milk received from producers by the date specified in the order. The

minimum payment requirement of the order would not be fully met if handlers were permitted to delay payments to assignees to some time after such monies otherwise would be due producers. If such such requirements are not met, inequities may arise among competing handlers. Thus, the date set forth in the order for handler payments to producers must apply also to the payment by handlers of third-party assignments. This is implied in the order language prescribing the payment requirements of handlers.

In conjunction with other changes adopted herein, the date by which handlers are required to pay their administrative assessment to the market administrator also should be changed. Such payments are now due on the 18th day of the month, which is the same date that handler payments to the producer-settlement fund are now due. As described earlier, the latter payments would not be due under the changes adopted herein until the 21st day of the month. No purpose would be served by requiring handlers to make separate payments to the administrative expense and producer-settlement funds on different dates. Accordingly, payments to the administrative expense fund should be due on the same date that payments to the producer-settlement fund are due.

In conjunction with other proposed changes to the section of the order dealing with class prices, it also was proposed that a proviso applicable to the Class I-A milk price be removed because it no longer is operative.

The proviso, adopted effective February 11, 1975, provided that the Class I-A price for the remainder of February 1975 and for March 1975 be based on the basic formula price for the preceding month, rather than for the second preceding month. The proviso's application thus was limited to that period of time. Since no purpose would be served by retaining order language no longer in effect, the proviso should be deleted.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

At the hearing, a representative of several handlers requested a deferral of the decision on the issues being considered so that handlers could have an opportunity to submit other proposals for consideration. This request was renewed in the handlers' brief.

The record in this proceeding does not demonstrate a need for granting the request. There has been no showing of how the submission of additional proposals would be helpful to a full review of the issues under consideration. Also, the handlers in question have not demonstrated how they would be adversely affected should the Department not grant their request. Accordingly, their request is denied.

General Findings

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

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the New York-New Jersey marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300 et seq.), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the New York-New Jersey marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during the representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be August 1976.

The agent of the Secretary to conduct such referendum is hereby designated to be Norman K. Garber.

The United States Department of Agriculture 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 at Washington, D.C., on January 19, 1977.

RICHARD L. FELTNER,
Assistant Secretary.

Order[1] amending the order, regulating the handling of milk in the New York-New Jersey marketing area.

Findings and Determinations

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

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

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

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

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

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

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

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

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Program Operations, on November 30, 1976, and published in the FEDERAL REGISTER on December 6, 1976, (41 FR 53346) shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein, subject to the following modifications:

Changes are made in §§ 1002.50a (introductory text) and 1002.85.

1. In § 1002.50a, the introductory text and paragraph (a) are revised to read as follows:

§ 1002.50a Class prices.

For pool milk received during each month from dairy farmers or cooperative associations of producers, each handler shall pay per hundredweight not less than the prices set forth in this section, subject to the differentials and adjustments in §§ 1002.51 and 1002.81. Any handler who purchases or receives milk during any month from a cooperative association of producers which is also a handler but which does not operate the plant or the unit receiving the milk from producers shall pay the cooperative association on or before the 19th day of the following month for such milk at not less than the class prices pursuant to this section, subject to the differentials and adjustments set forth in §§ 1002.51, 1002.81 and 1002.82(b) applicable at the location where the milk was received from producers. Any handler who purchases or receives milk during any month from a cooperative association of producers which is also a handler and which operates the plant or the unit receiving the milk from producers shall pay the cooperative association on or before the 19th day of the following month for such milk at not less than the class prices pursuant to this section, subject to the differentials and adjustments set forth in §§ 1002.51, 1002.81, and 1002.82(b) applicable at the plant at which the milk was first received. Such payments to a cooperative association shall be deemed not to have been made until the payments have been received by the cooperative association.

(a) For Class I–A milk the price shall be the basic formula price for the second preceding month plus $2.40.

* * * * *

2. In § 1002.80, paragraphs (a), (b), (c), and (d) are redesignated as paragraphs (c), (d), (e), and (f), respectively, the introductory text of the section is designated as paragraph (a) and is revised, and a new paragraph (b) is added to read as follows:

§ 1002.80 Time and rate of payments.

(a) On or before the 25th day of each month, each handler shall make payment pursuant to paragraphs (b), (c), (d), (e), and (f) of this section to each producer for all pool milk delivered by such producer during the preceding month at not less than the uniform price, subject to the following adjustments:

(1) Appropriate differentials set forth in §§ 1002.81 and 1002.83;

(2) Proper deductions for the month that were authorized in writing by producers from whom the handler received milk; and

(3) For milk received in a bulk tank unit, there may be deducted, as proper and as authorized in writing by the producer, or by a cooperative association authorized to act on behalf of such producer, a tank truck service (transportation) charge of up to 10 cents per hundredweight, which in no event shall exceed in the case of Class II milk on which a transportation credit is applicable pursuant to § 1002.55 the actual transportation costs in excess of 10 cents and otherwise actual transportation costs, and in either circumstance only to the extent transportation was actually provided by the handler or at his expense. Any such deduction with respect to bulk tank milk must be made by the handler not later than the date on which the producer is required to be paid for the milk involved. If authorization for such deduction is canceled by the producer or by the cooperative by notifying the handler in writing, such cancellation shall be effective on the first day of the month following its receipt by the handler.

(b) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk, each handler, on or before the date on which the payments are otherwise due individual producers, shall pay the cooperative association for milk received during the month from the producer-members of such association an amount equal to not less than the total amount otherwise due such producer-members as determined pursuant to paragraph (a) of this section.

* * * * *

3. Section 1002.85 is revised to read as follows:

§ 1002.85 Payments to the producer-settlement fund.

On or before the 21st day of each month, each handler shall make full payment to the market administrator of the debit balance, if any, of such handler shown on the last statement of account rendered pursuant to § 1002.84. Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator. If the date by which such payments must be received by the market administrator falls on a Saturday or Sunday or a national holiday, such payments shall not be due until the next day that the market administrator's office is open for public business.

4. Section 1002.86 is revised to read as follows:

§ 1002.86 Payments out of the producer-settlement fund.

(a) On or before the 22nd day of each month, the market administrator shall make payment to each handler of the credit balance, if any, of such handler shown on the last statement of account rendered pursuant to § 1002.84. If the date by which such payments are to be made falls on a Saturday or Sunday or a national holiday, such payments need not be made until the next day that the market administrator's office is open for public business. If payments to the producer-settlement fund under § 1002.85 were delayed because the due date fell on a Saturday or Sunday or a national holiday, payments under this paragraph may be delayed by the same number of days.

(b) If the balance in the producer-settlement fund is insufficient to make the full payment required under paragraph (a) of this section, the market administrator shall reduce uniformly the payments to each handler and shall complete such payments as soon as the necessary funds are available. No handler who, on the 25th day of the month, has not received such payments in full from the market administrator shall be deemed to be in violation of §§ 1002.80 through 1002.82 if he reduces his total payments to producers for milk delivered by such producers during the preceding month by not more than the amount of the reduction in payment from the producer-settlement fund.

5. Section 1002.90 is revised to read as follows:

§ 1002.90 Payment by handlers.

As his pro rata share of the expense of administration of this part, each handler shall, on or before the date specified for making payment to the producer-settlement fund pursuant to § 1002.85, pay to the market administrator a sum not exceeding 4 cents per hundredweight on the total quantity of pool milk received from dairy farmers at plants or from farms in a unit operated by such han-

dler, directly or at the instance of a cooperative association of producers and on the quantity for which payment is made pursuant to § 1002.70(d)(2), the exact amount to be determined by the market administrator subject to review by the Secretary. This section shall not be deemed to duplicate any similar payment by any handler under an order issued by the Commissioner of Agriculture and Markets of the State of New York, or the Director of the Division of Dairy Industry of the New Jersey Department of Agriculture, with respect to the marketing area. Whenever verification by the market administrator discloses an error in the payment made by any handler, such error shall be adjusted not later than the date next following such disclosure on which payments are due pursuant to this section.

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Agricultural Marketing Service

[7 CFR Part 1260]

[Docket No. BRIA-1]

BEEF RESEARCH AND INFORMATION

Recommended Decision and Opportunity To File Written Exceptions

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision concerning a proposed national research and information order for cattle, beef, and beef products.

Interested persons may file written exceptions to the recommended decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, no later than February 24, 1977. The exceptions should be filed in quintuplicate. 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.

This notice of filing of the recommended decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Beef Research and Information Act (7 U.S.C. 2901 et seq.) and the applicable rules of practice and procedure (7 CFR Part 1260) governing proceedings to formulate an order under the Act, which were published in the FEDERAL REGISTER, June 23, 1976, 41 FR 25881.

PRELIMINARY STATEMENT

The public hearing, on the record of which the recommended decision was formulated, was held at Dallas, Texas, September 14 and 15; Pittsburgh, Pennsylvania, September 28; Atlanta, Georgia, September 30; Denver, Colorado, October 5 and 6; San Francisco, California, October 7; and Des Moines, Iowa, October 12 and 13, 1976. Briefs, proposed findings, and conclusions were received until November 15, 1976. This hearing was held pursuant to notice thereof which was published in the FEDERAL REGISTER, August 17, 1976, 41 FR 34772.

MATERIAL ISSUES

The material issues presented on the record of hearing are as follows: (1) The need for the Proposed Research and Information Order to effectuate the declared policy and purposes of the Act; and (2) The determination of the specific terms and provisions of the Proposed Order necessary to effectuate the declared policy and purposes of the Act, including:

(a) Definitions of terms used therein which are necessary and incidental to achieve the objectives of the Order;

(b) The establishment, maintenance, composition, powers, duties, procedures, and operation of a Board which shall be the administrative agency for this Order;

(c) The authority for establishing and financing the development and implementation of programs and projects of research, information, education, and promotion to improve, maintain, and develop domestic and foreign markets for cattle, beef, and beef products;

(d) The establishment and maintenance of an effective working relationship with State beef boards, beef councils, or other beef promotion entities organized to conduct programs with objectives similar to those of this Order;

(e) The procedures to levy assessments on the sales of cattle, to make refunds of assessments to producers who request them, and to incur necessary expenses;

(f) The provisions concerning record-keeping requirements and reports by slaughterers; and

(g) The need for additional terms and conditions as set forth in §§ 1260.181 through 1260.187 of the Order which are necessary to effectuate provisions of the Act.

FINDINGS AND CONCLUSIONS

Cattle are produced in all 50 States and cattle, beef, and beef products move in interstate and foreign commerce and those which do not move in such channels of commerce directly burden or affect interstate commerce of cattle, beef, and beef products. The record is replete with testimony that such commerce in cattle, beef, and beef products is commonplace. Therefore, it is found that the right to exercise Federal jurisdiction with respect to the Order set forth herein is established.

The findings and conclusions on the material issues are based on the evidence presented at the hearing and the record thereof and are as follows:

(1) *Need for the Order.* Beef is the major source of protein in the diet of most U.S. citizens. Beef supplies are currently at record levels and U.S. per capita beef consumption in 1976 totaled more than 8 pounds above the former record established in 1975. Large increases in beef output during 1975 and 1976 were due largely to unusually high cow and heifer slaughter. During the past 3 years, beef producers have been caught in a severe price-cost squeeze. In response to this extremely unfavorable situation, cattlemen have reduced cow herds, sharply curtailing the nation's production potential for future years.

The U.S. cattle cycle typically encompasses a period of approximately 10 years, which usually includes a period of about 7 years of increasing numbers followed by about 3 years of decline. There is a need to eliminate or at least moderate the recurring 10-year cattle cycle. A more stable beef production pattern would result in less variation in prices to consumers and more consistent returns to producers. Funding from assessments under this Order could be used to provide improved market information at all levels, which could aid the nation's nearly 2 million producers in being more responsive to consumer demand.

During the past 50 years the U.S. cattle herd has more than doubled, but inventory growth has been marked by alternate periods of expansion and liquidation. The number of cattle and calves on U.S. farms and ranches grew from 57 million head in 1928 to a peak of nearly 132 million head on January 1, 1975. Numbers have consistently peaked at about 10-year intervals followed by inventory declines of up to 12 percent in succeeding years. U.S. per capita consumption of beef and veal during the past 50 years has ranged from about 53 pounds in 1932 to an estimated 132 pounds during 1976. However, as herds were being rebuilt following periods of inventory liquidation, per capita consumption declined as much as 22 percent from the level attained in an earlier year.

These large fluctuations are caused by large numbers of individual cattle producers responding independently but similarly to price incentives. Cattlemen tend to retain larger numbers of cows and heifers for breeding when calves are selling at profitable levels. This practice tends to restrict concurrent beef supplies while increasing beef output prospects for future years. In the early stages of an expansion phase of the cattle cycle, inventories grow but slaughter supplies remain relatively stable as increased retention of females tends to offset the effect of larger calf crops. Eventually, however, the full impact of a larger breeding herd is reflected in larger slaughter and prices begin to decline. As profits turn to losses, cow and heifer slaughter increases, further boosting beef output. The increased supplies soon put additional pressure on prices and significant losses to producers result. After the cow herd is diminished and calf crops decline, however, smaller beef supplies and higher prices return. With improved profitability the expansion phase of the cycle begins anew.

Biological factors are a major cause of alternate periods of overproduction and underproduction in the beef industry. Roughly 3 years transpire between the time a producer decides to retain a heifer for replacement and the date the beef from her offspring is purchased by the consumer. Thus, unprofitable price levels for a sustained period do not result in a reduction in beef output until a few years later. Losses continue until the adjustment can be accomplished.

Changes in cow numbers are a major determinant of future beef supplies and cattlemen favor an improved cow-herd size awareness program. Cow numbers increased rapidly during the early 1970's, jumping from 48 million head on Janu-

ary 1, 1969, to a peak of 56.7 million head on January 1, 1975. From January 1, 1972, through January 1, 1975, cow numbers grew at an annual rate of 4 percent, or over 2 million head per year. As usually happens when the rate of expansion exceeds the normal year-to-year increase in demand for beef, which is 1 to 2 percent, excess beef output and unprofitable price levels resulted.

As losses to producers mounted during 1974 and 1975, cow slaughter rates increased dramatically and numbers of heifer replacements entering the herd dropped sharply. Cow slaughter reached a record of almost 12 million head in 1975, nearly doubling the 6 million head killed during 1973. The cow inventory dropped nearly 2 million head during 1975 to 54.8 million on January 1, 1976. Since cow slaughter during 1976 totaled almost 11 million head and the number of heifer replacements continued to decline, another significant drop in cow numbers will undoubtedly be reflected in the January 1, 1977, inventory.

The downturn in the total cattle inventory during the current cycle is unusually sharp, reflecting the severe financial stress the cattle industry experienced during 1974–1976. On January 1, 1976, cattle numbers totaled 128 million head, down nearly 4 million head from peak levels a year earlier, and the January 1, 1977, inventory is expected to total only 120–122 million head. With the exception of several months during 1975, the cattle feeding segment of the industry has suffered severe losses, often over $100 per head marketed, since late 1973. Cow-calf producers generally have sold calves and yearlings for less than the cost of production since mid-1974. As a result, many cattlemen have been forced into bankruptcy and those remaining have sharply higher mortgages on their farms and ranches and greatly increased overall debt.

One significant measure of the turnaround experienced by the industry was the drop in inventory value. From January 1, 1974, to January 1, 1975, the average value per head of cattle in the United States dropped 46 percent from $293 to $159, and the value of the total inventory dropped from over $37 billion to only $21 billion.

Cattle producers have repeatedly indicated that they want a self-help program and not Federal monetary assistance. There are no price support programs for cattle or beef to moderate the cyclical ups and downs. A desirable goal of the programs made possible by assessments under the Order is to assist in alleviating the problems which result from the cyclical nature of beef production by providing improved information to aid in making production decisions.

Beef producers have been conducting beef education, information, and promotion programs for a number of years, often relying on either voluntary or mandatory State collection systems. Funding levels in relation to sales value are lower than expenditures for many other raw agricultural products, and are extremely low when compared to expenditures for competing manufactured food products. Twenty-eight major beef producing States have organizations which collect funds, primarily for State promotion activities. Some of the money collected at the State level is forwarded to the National Live Stock and Meat Board to be used, along with other voluntary contributions, in national education, information, promotion, and research efforts. But such efforts have been relatively small in size and scope due to funding limitations.

The Proposed Order would provide the industry with sufficient funding to carry out a coordinated program of education, promotion, and research for the entire cattle and beef industry. Such a program, operated on a national basis, would minimize duplication of effort among the various State groups and would be far more efficient and effective than previous fragmented programs.

Numerous areas of research concerning cattle and beef have potential for benefiting both producers and consumers but presently lack funding. There are identifiable research needs for production research, marketing research, product or market research, and foreign market research. Examples of some current research needs are:

Production research. Studies should be designed to speed genetic improvement of the nation's cattle herds and to improve the rate of gain on grass and in the feedlot. Gaining a clearer understanding of protein synthesis would provide a step toward improving the growth process. Increasing the emphasis on finding solutions to animal health problems, such as brucellosis and internal parasites, could lead to reduced death losses and lower production costs.

Marketing research. More efficient beef marketing procedures and techniques would not only benefit producers but would also help consumers obtain quality beef at reasonable prices. Improved efficiency and reductions in the cost of distribution, cost reduction in the labor-intensive processing segment of the industry, and reducing product loss in the distribution chain could be studied to help reach that goal.

Product or market research. There is a need to more accurately identify the quantities and types of cattle and beef products desired by the retail customer. Methods of marketing beef have not kept pace with consumer desires and buying habits and new beef products should be developed to meet the changing consumer preferences. With a growing share of meals eaten away from home, appropriate beef products must be developed to meet the needs of this growing market. Studies should be initiated to find beef products and cooking methods consistent with the limited time available for meal preparation. Also, research directed toward developing processing methods to produce more desirable products from the less desirable portions of the carcass is necesary to more efficiently utilize the whole carcass.

Foreign market research. Determining the wants and needs of potential foreign customers for beef and methods to fulfill those needs is necessary for effective foreign market development. U.S. exports of beef and veal in recent years have been less than one-half of 1 percent of commercial production while comparable U.S. imports averaged 7 to 8 percent of commercial production. The United States enjoys a competitive advantage over all other nations in the production of large quantities of high-quality beef. With increasing affluence around the world, there is considerable potential for substantial increases in U.S. beef exports if the appropriate market knowledge is developed.

The record reveals a need to communicate factual information to consumers about the nutritional properties of beef. Consumers understand that beef is high in protein, but often do not understand its many other significant contributions to health needs. For instance, there are high iron and B vitamin contents in beef, and the life-saving drug insulin is a beef byproduct. Educational programs could provide information to consumers on many topics concerning beef, with particular attention directed to those issues involving nutrition and health. Nutrition and health information developed for use in elementary schools has been well received. However, funds to reproduce this information and to distribute it to schools have been limited; consequently, only a small percentage of the nation's schools have had access to this information. Similar funding problems have limited the distribution of meat nutrition, purchasing, and cooking information to high school and college classes in nutrition, food, and home economics.

Adoption of a beef research and information order has been endorsed in concept by 81 State and national cattle organizations. The record evidence establishes a need for financing research to find more efficient methods to produce and market a relatively stable supply of beef at fair prices to consumers with reasonable returns to producers. The evidence also shows that research and information funded under the Order will be beneficial to the beef industry and consumers as well. Consumers would benefit from the increased efficiency in production and marketing, a more stable supply of beef, more stable beef prices, and increased nutrition and health information.

It is concluded from the record evidence that the beef industry needs a research and information program and that the Order, by providing such a program, would effectuate the declared policy of the Act.

(2) *Terms and provisions of the Order.* (a) *Definitions.*—"Act" is defined to provide the correct legal citation for the statute pursuant to which the Order may be put into effect and operated. The inclusion of this definition makes it unnecessary to refer to such law and statutory citation each time reference is made to the Act in the provisions of the Order. "Act" also is defined to include any amendments that may be made to the Beef Research and Information Act (7 U.S.C. 2901 et seq.).

"Fiscal Period" is defined as the 12-month period corresponding with the USDA's fiscal year. The Beef Board is required to submit to the Secretary, for his approval, budgets on a fiscal period basis containing anticipated expenses and disbursements in the various areas expenditures are authorized. The Board's fiscal period is the same as USDA's fiscal year. However, the Beef Board, with the approval of the Secretary, may select some other 12-month period as its fiscal year if necessary.

"Beef Board" or "Board" is defined as the administrative agency or body charged by the Act with the duty to administer the Order. Producer assessments finance the activities authorized and the administrative agency is composed of beef producers, selected by the Secretary from nominations submitted by eligible organizations, associations, general farm organizations, cooperatives, or unaffiliated producers.

The Board shall elect an "Executive Committee" of 7 to 11 Board members who are generally representative of the cattle industry. This Committee has the authority to hire a staff to handle administrative matters, to make policy recommendations to the Board, and to administer the terms of the Order under the direction of the Board and within the policies determined by the Board.

"Producer" is defined in the Order to identify the persons responsible for payment of assesments under the Order. In addition, producers have the right to vote in any referendum on the Order and are eligible to serve on the Board and to nominate others to serve on the Board.

The term "producer" includes any person who owns or acquires ownership of cattle other than one who acquires cattle solely for the purpose of slaughter, except that a person may not qualify as a producer based on sales transactions in which his only share in the proceeds is a sales commission, handling fee, or other fee. However, the period of ownership may be short. For example, a cattle trader or any other person who assumes ownership of cattle, even if the cattle are resold the same day, would qualify as a producer.

The term "producer" does not include a person who acquires cattle solely for the purpose of slaughter. Packers who purchase all their cattle solely for the purpose of slaughter are performing no producer function and do not qualify as producers, even though it is recognized that in normal trade practice such cattle sometimes remain in the feedlot or packer's lot for several days before slaughter. However, a cattle slaughterer or packer who has cattle on feed or buys or owns cattle for purposes other than immediate slaughter qualifies as a producer.

"Producer organization" or "eligible organization" is defined to include producer organizations, associations, general farm organizations, and cooperatives representing cattle producers in a geographic area. The final determination of whether an organization is an eligible organization rests with the Secretary of Agriculture.

"Research" is defined to include any type of systematic study or investigation intended to advance the desirability, marketability, production, or quality of cattle, beef, or beef products. It includes market research, production research, and other basic research as well as the evaluation of the relative effectiveness of such studies and investigations.

The Board may enter into contracts, with the approval of the Secretary, for the purpose of carrying out authorized activities. The term "Contracting Party" is defined to include any individual, group of individuals, partnership, corporation, association, cooperative, or other entity, public or private, with which the Beef Board may enter into a contract or agreement in the manner provided in the Order.

"Marketing year" means the calendar year ending on December 31 unless some other consecutive 12-month period is designated by the Board and approved by the Secretary. The calendar year is the appropriate period to be designated the marketing year since most marketing statistics applicable to the Order are maintained on a calendar year basis.

"Part" refers to 7 CFR Part 1260, containing rules, regulations, orders, supplemental orders, amendments, and similar matters concerning the Beef Research and Information Act. The term "subpart" is used when referring to a portion or segment of Part 1260.

(b) *Beef Board.* A "Beef Board" is established to act as the administrative body for this Order as specified in Section 8 of the Act. It is composed of producers appointed by the Secretary from nominations submitted either by eligible producer organizations in specified geographic areas or in a direct manner by producers not represented by eligible organizations in such areas. Each member has an alternate to serve in his stead as necessary.

Membership. Members of the Beef Board shall be selected to reflect the varied character of the cattle and beef industry. Cattle are produced in all 50 States, although the concentration varies greatly in different States as does the position of producers in the production chain. Some are engaged primarily in the production of calves from either commercial or purebred herds, while another large section of the industry is involved in feedlot operations. Many producers keep only dairy animals which are used primarily for the production of milk, although such operations also add substantially to the beef supply. There are many combinations of these different functions and related interests in individual production units. There also is a wide range in the size of production units.

The Act specifies that the Beef Board shall consist of not more than 68 members. A Board of this size was constituted so that there may be sufficient representation for all geographic areas and for the multifarious interests of producers. It is intended that the result will be widespread participation of producers in the management of the programs authorized by the Act and the Order.

The stated purpose of the Act is to enable cattle producers, through a Board composed of producers, to establish, finance, and carry out a coordinated program of research, producer and consumer information, and promotion to improve, maintain, and develop markets for cattle, beef, and beef products.

There was testimony recommending that consumers should be included as members of the Beef Board. The legislative history of the Act demonstrates that Congress considered this point extensively. However, the final version of the Act specifies that the Beef Board shall be composed of producers. The conference report indicates that Congress intended for the Beef Board to seek consumer input and it was recommended that the Secretary appoint five consumer representatives to serve in advisory capacities. Record evidence indicates that such a practice would be advisable in order to obtain consumer views on programs of the Board.

A partnership, cooperative, corporation, or similar business entity is to be considered a producer for the purpose of determining who is required to pay assessments and who is eligible to vote in any referendum held pursuant to the Act. However, only individual producers will be nominated and appointed to membership on the Beef Board.

There was testimony proposing that only producers who receive a majority of their income from the production of cattle should be eligible to serve on the Beef Board. Further, it was recommended that elected or appointed local, State, or Federal government officials and executives or officers of organizations which contract with the Beef Board should be prohibited from serving as members of the Board. Rather than outlining such restrictions on Board membership in the Order, producers in selecting nominees and the Secretary in appointing Board members should ascertain that they are active, representative producers.

Term of office. The term of office for Board members and their alternates is 3 years as provided in the Act. Such a period of time is necessary to permit a member to become familiar with the programs and operations of the Board and to make an effective contribution. Initial appointments shall be, proportionately, 1, 2, and 3 year terms, giving staggered terms for Board members to prevent the possibility that all terms would expire at the same time and providing continuity of program efforts and program direction. The Secretary shall determine which initial members shall serve for 1, 2, and 3 year terms on a random basis, though assuring that the terms of members from a geographic area with multiple representation expire at different times.

No member may serve more than 6 consecutive years on the Beef Board, except that members appointed to the initial Board for terms of 1 or 2 years are eligible to serve 2 additional terms. This provision would serve to utilize the experience acquired and enhance the development of an effective program.

Certification of organizations. Record evidence shows that there are many organizations representing cattle producers throughout the country. The Secretary is charged with the responsibility to set the criteria to be used in determining the eligibility of organizations to nominate members of the Board and has the final authority to make the determination.

Representatives of general farm organizations expressed concern about whether such organizations would be eligible to nominate members to the Board. Further testimony suggested that accurate information necessary to establish the eligibility of general farm organizations to nominate members would not be available, such as the proportion of members producing cattle and the number of cattle they produce. However, other testimony indicates that such organizations normally could provide the data required to meet the needs for certification. It is concluded that general farm organizations should be certified if they meet the criteria established.

Record testimony shows that many of the producer organizations intending to nominate Board members are State organizations, but there also may be some regional organizations participating. A regional organization should be certified to nominate members to the Board in any geographic area in which it meets the established criteria. Similarly, a State organization should be certified to nominate members in a geographic area, even though the area may include other States, if it meets the established criteria.

An organization may file a request for certification to nominate members to the Board at any time. However, the certification of an organization should not be open-ended, since the membership, program objectives, geographic area covered, and other characteristics of an organization may shift. Accordingly, an organization is required to request recertification each time it wishes to nominate a member of the Board.

Nominations. Orderly procedures are established for producer organizations, associations, general farm organizations, cooperatives, and producers not represented by such organizations within a geographic area, as determined by the Secretary, to submit nominations for Board members and alternates to the Secretary. It is essential that the nominations and appointments be completed in a timely fashion, but adequate time must be provided for producers to consider and select their nominees and for the Secretary to make the appointments. A final Order establishing a Beef Board becomes effective only upon approval by producers voting in a referendum. Nominations shall be submitted to the Secretary within 90 days after it is determined that the results of the referendum favor the Order, but the Secretary may prescribe a longer period if necessary.

Eligible organizations in each geographic area may caucus to jointly nominate qualified individuals for each member and each alternate member to be appointed to the Board. If they do not caucus or if they fail to agree on nominees, each eligible organization is authorized to submit nominations for each position to be filled. The Secretary also is required to determine whether a substantial number of producers are not members of or their interests are not represented by any eligible organization and, if so, provide a manner for such producers to submit nominations. The 90-day period between approval of the Order and the deadline for submitting nominations is necessary to permit the Department to certify eligible organizations and establish procedures by which producers not represented by an organization may submit nominations. This period of time should be sufficient for all certified organizations to caucus, make their selections, and submit their nominations to the Secretary and for producers not represented by such organizations to submit nominations. However, the Secretary may prescribe a longer period if necessary.

After the initial Board has been established, nominations for subsequent appointments of Board members and alternates should be submitted sufficiently in advance to permit the Secretary to select the members, to inform them of their selection, and to obtain acceptance of such appointments before the beginning of the term of office for which they are being appointed. It is necessary to make these subsequent appointments in a timely fashion in order that operations of the Board can continue without interruption when normal changes in membership of the Board occur. Therefore, submission of nominations to the Secretary for subsequent Board members and alternates shall be at least 60 days prior to the expiration of the terms of members and alternates previously appointed to the Board. Other aspects of the nomination procedures for these appointments to the Board are the same as those for nominating members and alternates to the initial Board.

Section 8 of the Act provides that Board members and alternates be named from specified geographic areas designated to reflect, to the extent practicable, the proportion of cattle in each such geographic area. Organizations representing cattle producers normally are organized and operate on a statewide basis, although there also are regional or national organizations, often formed by an affiliation of similar State organizations. Statistics measuring cattle production are available on a State by State basis. Accordingly, to the extent practicable, a State is the geographic area used for determining representation on the Board, with each major cattle producing State entitled to at least one Board member and one alternate. The geographic areas for the initial Board and the number of Board members for each are listed in § 1260.138(e) of the Order.

January 1 inventory numbers of cattle and calves on farms, published annually by the Department of Agriculture, are generally considered the best available measure of the proportion of cattle in the various States. In determining this initial distribution of membership, a geographic area is defined as a State or combination of States with 500,000 head of cattle or more. Each such geographic area is entitled to one Board member and alternate plus an additional member and alternate for each additional 2.5 million head of cattle. Use of this definition accomplishes the objective of providing separate representation on the Board for most States, recognizing the usual boundaries of producer organizations and the similarity of interests of producers within many States.

Important considerations in combining States which have to few cattle to qualify as a geographic area are geographic location and similarity of interests, among other factors. To the extent possible, a geographic area containing several States includes those which are contiguous and which have similar interests. The practical problems of caucusing and reaching agreement on nominations then are simplified.

California and Hawaii were combined to form a geographic area with two Board members and two alternates in the Proposed Order published and subjected to hearing. Spokesmen for California cattlemen testified at the hearing that California should be designated a geographic area by itself, since under the proposed guidelines the State would be entitled to two Board members without the addition of another State. A representative of Nevada cattlemen testified that it would be acceptable to combine Nevada and Hawaii. In a subsequent brief, the proponents recommended that Hawaii be included with Maryland, Delaware, New Jersey, and the District of Columbia to form a geographic area. A spokesman for Hawaii cattlemen filed a brief with the same recommendation. Such a combination would not follow the principle outlined with respect to geographic location. Accordingly, Hawaii is included with Nevada to form a geographic area rather than with California.

The record contains a suggestion that each State be assigned one Board member in establishing the initial Board until records are developed on assessments from the various States for use in determining representation. However, it is found that, with the wide differences in cattle numbers among the various States, adoption of such a plan would not provide representation on the Board accurately reflecting the proportion of cattle in each geographic area.

The basis of determining the makeup of the initial Board cannot be permanent. Representation must be reviewed periodically to take into account shifts in cattle production. Accordingly, the Board is required to review the distribution of membership within 5 years of the establishment of the initial Board and subsequently at any time not to exceed 5 years from the date of the last review. Assessments, cash receipts from the sales of cattle, cattle numbers, and other factors which are found feasible to reflect the proportion of cattle in each geographic area may be considered by the

Board in determining the need for changes in geographic areas when updating representation on the Board. The Board shall cause regular review to be made of geographic areas and redefine the geographic areas as necessary, subject to the approval of the Secretary. Such changes will be made at the expiration of the terms of members in order to effect the changes in an orderly fashion.

Appointments. The Order provides that the Secretary will select and appoint Board members and an alternate for each from nominations submitted, providing representation on the Board by geographic area. Written notice of their acceptance of the appointment will be submitted to the Secretary promptly by member and alternate designates.

Vacancies. The nomination and appointment procedures for individuals to fill unexpired terms when vacancies occur are the same as those specified for the normal appointment and reappointment of members and alternates. It is important that vacancies be filled promptly in order to maintain full membership and representation on the Board and a minimum of disruption. Accordingly, nominations to fill vacancies are to be submitted to the Secretary within 60 days of the time the vacancy occurs. Such a period provides a reasonable amount of time for the selection of nominees. However, should a vacancy occur within 6 months of the expiration of the term of a Board member or alternate, the Secretary need not fill the vacancy.

Alternate members. Each Board member has an alternate designated to serve in his place as necessary. On occasions, a Board member may find it necessary to be absent from Board meetings. An alternate member should be available so that the business affairs of the Board will not be impaired. The alternate member will serve at Board meetings in the absence of the member. Also, in the event of a vacancy on the Board for any reason, the alternate will act until a successor is appointed. Alternate members do not automatically serve in place of Board members on committees and other special assignments unless specifically selected to do so by the Board. The Board is not precluded from assigning other duties to alternates in addition to their responsibility to serve in the absence of Board members. The same criteria and procedures are used for nominating and appointing alternates as those for Board members. Alternates also are limited to 6 consecutive years of service as an alternate. However, nothing precludes an alternate from replacing or succeeding a member and that alternate is permitted to serve up to two terms as a Board member, without regard to the length of time served as an alternate.

Procedure. The Board should adopt bylaws governing its organization and operation. However, the method of voting in decisions of the Board and quorum requirements are specified in the Order. The presence of a majority of the members and alternates acting for members constitutes a quorum. On any vote taken by the Board, a majority of those present and voting must concur before any action can be taken. All votes cast at an assembled meeting shall be cast in person with no proxy voting permitted.

It is necessary that the Board adopt procedures which will assure that it operates properly and efficiently and it should schedule regular meetings. However, there may be instances when it is necessary to transact routine, noncontroversial business or take rapid action at times when it would be expensive and unnecessary to call an assembled meeting. Therefore, the Board is authorized to vote by telephone, telegraph, or other means of communication in such instances. However, any such vote by telephone shall be confirmed promptly in writing. The Board should have authority to determine when it will be necessary to transact business without calling an assembled meeting.

Compensation. Board members and alternates serve without compensation, but it is appropriate that members and alternates be reimbursed for necessary and reasonable expenses incurred when performing authorized Board business. The Board, with the approval of the Secretary, shall set standard procedures governing reimbursement, including the forms to be used, receipts or other documentation required, and the limits of reasonable expenses.

Powers. The Board must have the powers specified in Section 8 of the Act in order to effectively provide administrative direction of the program. The Board has the power to administer all terms and provisions of the Order and carry out the plans and programs authorized by the Act. The Board is empowered to develop rules and regulations necessary for implementing and operating the program and submit them to the Secretary for approval and issuance. Such rules and regulations are necessary to set the procedures under which the Board exercises its responsibilities. They govern the method of collecting assessments, the refund procedures, the actions to be taken to implement specific programs, the records that must be kept by slaughterers and others, and the related provisions necessary to meet the requirements of the Order.

Violations of the rules and regulations issued pursuant to the Order may occur and the Board has the power to investigate alleged violations. Procedures established for handling such violations should assure fair and equitable treatment in all instances. The Board should take all reasonable steps to settle violations and in the event that settlement cannot be reached, report violations to the Secretary for appropriate action.

Problems may arise or conditions may change within the industry that would necessitate amendments to the Order. The Board should maintain regular surveillance of the need for amendments and has the power to recommend amendments of the Order to the Secretary when it deems that such action is necessary.

Duties. The duties of the Board as set forth in the Order are necessary for the discharge of its responsibilities. The stated duties provide authority and guidance concerning many details common to the operation of an administrative entity such as the Board. They include the duty to meet and organize, elect officers, and establish committees and subcommittees of Board members as necessary to handle the affairs of the Board. Bylaws should be adopted governing the conduct of business by the Board. The Board also has authority to appoint advisory committees, which would include persons who are not members of the Board, in order to gain added expert advice and counsel on problems, procedures, and programs. Such committees can act in an advisory position only; final decisions and actions are reserved to the Board, and only the Board may take action authorizing the expenditure of funds. The Board has the authority to reimburse advisory committee members for travel and other expenses arising from their assignments.

The Act provides that the Beef Board shall appoint from its members an Executive Committee of not less than 7 nor more than 11 members. In view of the authorized maximum size of the Beef Board, 68 members, an Executive Committee is necessary to provide more efficient and effective administration of the programs. The Beef Board shall delegate to the Executive Committee authority to employ staff members, specifying their duties and compensation, and to administer the provisions of the Order under the direction of the Board and within policies established by the Board. The Board should establish and maintain an effective managerial team composed of the Executive Committee and the administrative staff of the Board.

A major duty of the Board is the development of plans and programs to implement the Order. Since the level of anticipated funding is relatively large for programs of this nature and should provide for a comprehensive program, the Board has authority to initiate contracts or agreements with other organizations to conduct program activities. Contractors are required to provide plans for each project or program, outline procedures to be followed, and submit a detailed estimate of the costs. Further, contractors are required to keep adequate records and submit regular reports of their activities on a project showing progress made, disbursement of funds, and any other relevant information required by the Board or the Secretary. Contracts and agreements of the Board may become effective only upon approval of the Secretary. In addition to contracting with others, the Board has authority to conduct program activities on its own if such an approach can be shown to be more effective or efficient in furthering the purposes of the Act and Order.

The Board shall prepare a budget of its anticipated income and expenses each fiscal period and submit it to the Secretary for approval. The Secretary should specify the date for submission of the

budget for his approval, allowing adequate time for review prior to the beginning of the fiscal period. In addition to income and expenses, the budget statement should show program plans, the distribution of anticipated expenses for each major program category, the estimated cost for administration, and detailed justification of the plans. The Board is required to submit copies of the budget to the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry.

Other duties of the Board which are outlined in the Order are those necessary to assure that it operates in a business-like fashion. They involve requirements for maintaining records and submitting reports of activities as required by the Secretary, making annual reports of activities to producers and the public, accounting for funds received and expended each fiscal period, and initiating an annual audit of its financial status by an outside party. Further, the Board is required to give the Secretary the same notice of meetings as is given Board members and to provide any other information pertaining to the Order which the Secretary requests.

(c) *Programs and Projects.* The Board has the authority to determine the type of research, market development, education, producer information, consumer information, promotion, and advertising charged with the responsibility of initiating and recommending to the Secretary the establishment of such projects as are authorized by the Act. The projects and programs should be designed to assist, improve, or promote the production, sale, marketing, processing, distribution, and utilization of cattle, beef, and beef products. The authority is broad and flexible to enable the Board to use the most efficient and effective methods of carrying out the purposes of the Act. Emphasis should be placed on developing a coordinated national program, with activities designed to complement the efforts of groups, organizations, or agencies which are currently engaged in research and promotion activities.

The Board has the authority to recommend programs designed to expand sales in foreign markets for cattle, beef, and beef products. This area of activity should include steps to increase sales to present overseas customers as well as to develop new outlets and tailor products to their needs. Cooperative efforts with existing programs of this nature conducted by Federal and State governments and private interests may prove to be an effective approach.

Programs or projects conducted by the Board shall be periodically reviewed to determine if each such plan or project contributes to an effective and coordinated program of research, information, education, and promotion. Upon such review the Board shall terminate any program or project which it determines does not further the purposes of the Act.

The provision of the Order and Act that no advertising or promotion shall make any reference to private brand names of cattle, beef, or beef products is necessary to avoid discrimination. The Board represents all interests in the industry and therefore must be fair to all segments and elements of the cattle industry. Prohibition of the use of false or unwarranted claims in behalf of cattle, beef, or beef products or false or unwarranted statements with respect to the attributes or uses of competing products is also necessary for proper administration of the Order.

An ample and stable supply of beef for consumers is clearly in the public interest. Maintenance and expansion of existing markets and the development of new markets, both at home and abroad, are essential if the cattle industry is to be healthy enough to supply the needs of consumers. Therefore, the Order provides the necessary authorizations for research and information designed to accomplish this objective. It enables the Board to undertake production research, marketing research, product or market research, and other research designed to improve efficiency throughout the production and marketing chain from the earliest stages of production up to the time the product reaches the consumer. In addition, information derived from research and other factual information would be made available to both producers and consumers.

The Board may either perform research or information work within its own organization, or it may contract for such research, market development, education, producer information, consumer information, promotion, and advertising projects and programs with public and private research and development agencies which are capable of performing the work needed. While the projects and programs must be submitted to the Secretary for approval, it is recognized that study and planning may be involved in the development of such activities. Therefore, reasonable expenses which may be incurred by the Board in connection with such development should be authorized as part of the annual plan or budget even though prior to the time such projects are submitted.

(d) *State beef councils.* The effectiveness of a new national program of research and information activities for cattle and beef will depend, in part, on its relationship to existing programs operating in several States. The stated purpose of the Act is to enable the development of an effective and continuous program of research, consumer information, producer information, and promotion designed to strengthen the cattle and beef industry's position in the marketplace and maintain and expand domestic and foreign markets and uses for United States beef. Further, Section 16 of the Act states that nothing in the Act shall be construed to preempt or interfere with the workings of any beef board, beef council, or other beef promotion entity organized and operating within and by authority of any of the several States. Record evidence shows that 28 States have programs similar to the national program which would be established by an Order under thes Beef Research and Information Act. Also, there is a national effort of this nature, currently operating on a voluntary basis, conducted by industry interests through the National Live Stock and Meat Board. A portion of the funds collected in connection with several of the State programs presently is being forwarded to the National Live Stock and Meat Board.

State programs differ widely in several characteristics, but especially with respect to the basis for the assessments, the assessment rate, the method of collection, the mandate under which the State program operates, the availability of refunds, and the composition of the administrative body of the program. Testimony received at the hearing indicates that the anticipated effect on existing State programs of the initiation of a new national program varies widely. Representatives of some State programs indicated that they expected their local effort to continue with little change. Others indicated that their program would be likely to either diminish considerably or end because producers would not be willing to pay an increased assessment necessary to operate both State and national programs. Such testimony indicates that a new national program under the Beef Research and Information Act may interfere with the operation of some State programs in such instances. There is abundant evidence throughout the record that it may be desirable to keep viable State programs active in a coordinated, cooperative effort as part of a new national program in order to achieve maximum overall effectiveness of the effort. Such an approach would provide continuity available from ongoing State programs, minimize duplication of effort, and assure that the total effort was directed toward common goals. Spokesmen familiar with existing State programs pointed out the need for local contacts in order to have effective educational activities, particularly those conducted through the schools. Feedback from producers through cooperating State programs also might help achieve a successful national program. Some State representatives felt that there should be no overlap between current State programs and a new national program. They felt that assessments for State programs should be phased out and that such programs should continue to operate only as a part of the national effort. In essence, such an approach could result in using the State organization only as an administrative entity of the national program without the State organization conducting any local program activities. The Board should continually analyze the results of cooperative relationships with the various State programs and select the most effective approach in each case.

Record evidence supports permitting the Beef Board to allocate up to 10 percent of the net assessments paid by producers in a State for return to the qualifying State beef board, beef council, or other beef promotion entity. Although current programs in some States are funded at a higher level and some at a lower level than such funds would pro-

vide, all State programs would be accorded equal treatment by making up to 10 percent of the funds generated in the State for the national program available for use in the State. Such a provision helps assure the continuation of State programs by providing funds, upon the proper showing of program need and objectives.

Many producers testified that the Order should guarantee that at least 10 percent of the assessments from a State would be returned to help fund its State beef council, if requested. However, such a provision would be an undue restriction on the Board in that needs for funds may change over the years in many States and other States may demonstrate acceptable plans for less than the 10 percent level of funding. Still other States may decide that the national program better serves their purposes. Further, the Order contains a provision that allows State promotion entities to be eligible to be awarded contracts by the Board for program activities. These funds would be in addition to any funds returned to the States from the allocation of up to 10 percent of net assessments. Thus, a State promotion board, upon demonstration of need and an acceptable program, could receive further funding.

The Board is given flexibility with respect to the use of funds, including those which may be made available to support State programs, in order to achieve maximum effectiveness of the total national program. Testimony at the hearing indicates that assessments in some State programs would diminish rapidly and that funds from the national program would be needed in many States soon after the national program began. Accordingly, the Board may enter into agreements allocating funds to State programs as soon as possible during the first year on the basis of estimated net assessments in the State.

The amount of funds available for return to a qualifying State organization is based on net assessments contributed to the program by producers in that State. Refunds made to producers in the State would be subtracted from the estimated total assessments paid by producers in the State to compute net assessments. Accurate records of assessments on a State by State basis will be difficult or impractical to compile, since under the value-added concept the assessments remitted to the Board at the time cattle are slaughtered may also include assessments paid by several previous owners. The record includes considerable testimony showing that many cattle change ownership several times during their lifetime and often move from State to State. Extensive recordkeeping would be necessary to accurately credit the assessments paid by producers in each State. Data on the cash receipts from the sale of cattle by producers in each State, published by the U.S. Department of Agriculture, may provide the best available estimate of total assessments obtained from each State. It was also suggested in testimony that the number of cattle fed in a State and the size of the basic cow herd should be considered to help determine net assessments. Finally, testimony was presented proposing that the Order explicitly show the manner in which net assessments for a State would be computed. However, it is preferable for the Board to spell out such procedures in the rules which it adopts, thereby maintaining the option of seeking improvements, from time to time, in the basis for accurately reflecting the net assessments paid by producers in each State.

To qualify to receive funds from those assessments which may be made available for distribution to States, a State beef board, beef council, or other beef promotion entity must demonstrate ability to provide research, information, education, or promotion consistent with the purposes of the Order. The State entity should have goals and purposes complementary to the goals and purposes of the Act and the Order and must submit budgets and plans for research, information, education, or promotion programs for which the funds will be used and also submit reports to the Board on use of the funds. An eligible State organization should be organized under legislative authority in the State or by State charter. If more than one State entity requests funds, the one most qualified to fulfill the purposes of the Act and the Order will be selected by the Beef Board, subject to the approval of the Secretary.

Record evidence shows considerable concern that the use of funds returned to States would be unduly controlled by the Board and the Secretary. It was suggested that an organization should be able to qualify merely by demonstrating that it has goals complementary to those of the Order rather than be required to submit specific plans and programs for which the funds would be used and to report how the funds were used. However, the requirements should be the same as for other contractors and are not meant to result in submission of State entities to undue controls. Rather, they are necessary to assure that the Board and the Secretary exercise their responsibilities under the Act.

(e) *Assessments, Refunds, Expenses. Assessments.* The Act provides that funding for activities under this Order shall be acquired from assessments levied on producers of cattle, which will be collected from producers by producer-buyers and slaughterers, and that the slaughterers shall remit the assessments to the Board. Assessments levied on producers are based on the commercial value of cattle at the time of sale, normally the sale price. In order for each producer to pay his fair share of the assessment on cattle owned by two or more producers, a value-added procedure is employed.

The rate of assessment will be established each fiscal year by the Board, subject to the approval of the Secretary. Such rate of assessment may not exceed the statutory maximum of one-half of 1 percent of the value of the cattle sold. A rate of three-tenths of 1 percent of the value of cattle sold should provide sufficient funds to carry out the policy and purposes of the Act at this time while not creating an undue burden on producers. Section 1260.162 of the Order specifies that assessments may not exceed three-tenths of 1 percent of the value of cattle sold during the first 3 years that assessments are collected. Some producer testimony recommended a one-tenth of 1 percent assessment rate for the first year or more, or a plan whereby the rate would be increased periodically in the early years of the program. Reasons given for this position included: (1) Some producers, especially feeders, would pay a relatively larger share of the assessments since they would have to pay the total assessment on cattle they owned at the time the program began, even though they owned the cattle only a short time; (2) time is required to develop the administrative details of a new program and initiate projects to effectively use the funds; and (3) a lower initial rate would help reduce any disruption of existing State programs caused by the beginning of a new national program. However, the bulk of the testimony supported the assessment rate shown in the Order. Further, under the Order, the Board has flexibility to set the assessment rate at less than three-tenths of 1 percent if it finds that conditions warrant a lesser rate.

The cattle industry includes numerous classes of producers, such as dairy cattle producers, purebred or breeding stock producers, cow-calf producers, stocker-growers, traders, and cattle feeders. Each represents a segment of the industry or a stage in the production process. Most cattle slaughtered are owned by two or more producers prior to slaughter and some change hands several times.

The evidence indicates that for all producers to pay their fair share of assessments, a value-added concept should be employed—that is, each producer should pay an assessment based on the increase in value of cattle under his ownership. The value-added concept operates as follows:

Assuming an assessment rate of three-tenths of 1 percent of the sales price, a cow-calf man who sells a calf to a stocker-grower for $100 would be assessed three-tenths of 1 percent of the sales price or $.30. The cow-calf man could pay the stocker-grower $.30 or the stocker-grower could deduct $.30 from the $100 sales price and pay the cow-calf man $99.70 rather than $100. In either case, the cow-calf man would have paid an assessment based on the value added to the animal during his ownership. If the stocker-grower sold the animal to a feeder for $200, he would either pay the feeder three-tenths of 1 percent of the sales price ($.60) or the feeder would deduct $.60 from the $200 sales price and pay the stocker-grower only $199.40. In either instance, the $.60 assessment would include $.30 from the $100 increase in value during the cow-calf man's period of ownership and $.30 from the $100 increase in value during the stocker-grower's period of ownership. If the feeder later sells the animal to a slaughterer for $400, the slaughterer would collect from the feeder, or deduct from his $400 check, three-tenths

of 1 percent of the sales value or $1.20. The slaughterer would forward the $1.20 to the Beef Board. Each of the producers would have contributed his fair share based on the value added during his ownership—$.30 each from the cow-calf man and the stocker-grower and $.60 from the feeder.

If no sales transaction occurs at the point of slaughter or other transfer, a fair commercial market value shall be attributed to the cattle for purposes of determining the assessment. For example, packer-owned cattle from feedlots will be assessed at the point of slaughter based on market prices of similar cattle. Cattle traded for other cattle or for merchandise also would be assessed on commercial market value. Similarly, cattle customs slaughtered for home consumption would be assigned a fair commercial market value for assessment purposes. However, cattle slaughtered for an individual's own home consumption are exempt from the assessment if the individ- sessment on such cattle until time of slaughter.

Most cattle increase in value rather consistently from birth to slaughter. Thus, under the value-added system of assessments, the final assesment remitted to the Beef Board by the slaughterer will exceed any previous assessment for the bulk of all cattle slaughtered. However, if the value of cattle involved in a sales transaction declines during a person's period of ownership, the total assessment paid by previous producers will not be passed on in the normal manner. A decline in value could be due to factor such as death loss, weight loss, or decline in market price. Detailed procedures for the collection of assessments due the Board but not passed along in the normal manner under such circumstances should be provided in the rules and regulations of the Board.

Further, since many cattle kept for breeding and milk production achieve a value for these purposes which is higher than their slaughter value, the Order specifies that the Beef Board may provide for an adjustment in the value of these cattle for assessment purposes so as not to exceed their value in the commercial slaughter market chain, or the Board may exempt collection of the assessment on such cattle until time of slaughter.

Some hearing evidence indicated that purebred cattle and cattle kept for dairy purposes should be exempt from assessment until slaughter. The exemption of such cattle until slaughter would reduce administrative problems, it was argued. However, testimony from producers of purebred and dairy cattle indicated that they wished to pay their fair share of assessments levied on the industry. In addition, proponents testified that determination by the buyer and seller of the commercial market value of breeding cattle would not be difficult. To maintain the flexibility necessary under the Order, the Beef Board will determine and specify in the regulations of the Board whether assessments on breeding cattle, including cattle kept for milk production, will be based on the estimated commercial value or whether such cattle will be exempt until slaughter. If assessments are based on estimated commercial value and difficulties arise, the Beef Board may amend the regulations and exempt breeding and dairy cattle from assessment until slaughter.

Slaughterers will be required to remit assessments to the Board, including assessments due at time of slaughter on cattle of their own production, in accordance with regulations developed by the Board. Assessments due on cattle slaughtered must be paid to the Board regardless of whether the assessment has been collected from the producer. Similarly, throughout the production chain, collection or deduction of assessments with transfer of ownership will be self-enforcing, since a producer-buyer who fails to collect the assessment on a transaction will be obligated to pay, as a producer-seller, an assessment based on the total commercial value of the transaction rather than only the assessment based on the value added during his ownership. In all transactions in which a slaughterer or producer-buyer has collected or deducted an assessment from a producer, the producer-seller should be given a receipt showing the amount deducted or collected.

The Beef Board is authorized to set aside funds in an operating reserve and to budget for such a reserve. It would be impractical to operate without a reasonable reserve. Research opportunities, the need for increased promotion, and other opportunities may develop suddenly. Without available funds it would not be possible to take advantage of such opportunities and to fulfill such needs, and a reserve fund is necessary for such purposes. The amount of the reserve fund will be determined by the Board with the approval of the Secretary. However, the reserve fund should not exceed approximately the average yearly collections of the Board.

Refunds. Refunds of assessments to producer-sellers who request them are provided in the Order. Any producer against whose cattle any assessment is made and collected from him—and who is not in favor of supporting the programs—shall have the right to receive a refund of such assessment from the Beef Board. However, no producer may receive a refund of the portion of the assessment which he collected from other producers. Regulations will be issued controlling the method of obtaining a refund, including a requirement of proof that the producer-seller paid the assessment for which the refund is claimed. A refund request must be submitted within 60 days after the end of the month in which the transaction occurred.

The Act and the Order provide that the refund be made by the Board within 60 days after the submission of proof satisfactory to the Board that the producer-seller paid the assessment for which refund is sought, but no producer shall claim or receive a refund of any portion of an assessment which he collected from other producers. The refund provision is essential to the voluntary concept of the Order, in that no producer is forced to financially support the Order if he does not favor it. The Board should make refund forms readily available to producers and each producer who asks for a refund must individually request it, i.e., he must submit the refund request. Marketing agencies, cooperatives, brokers, or others shall not be allowed to request refunds on behalf of producers. Slaughterers shall not be entitled to refunds even if they submit funds to the Board in the amount of a producer's assessment without collecting the assessments from the producer. But a slaughterer who is also a producer and has paid the assessment as a producer is entitled to request and receive a refund.

Expenses. Board expenses shall be paid from assessments received and any other funds which accrue to the Board. The Board may incur expenses which are found by the Secretary to be reasonable for the functioning and maintenance of the Board and necessary for the Board to exercise its powers and duties.

The Act and its legislative history make it clear that included in the expenses of the Board will be a reimbursement to the Secretary for such expenses, excluding salaries, as the Secretary determines were incurred by the Government in preparation of an original order and for the conduct of the referendum. In a brief, the opinion was expressed that the Secretary should be reimbursed for the conduct of the referendum but not for expenses incurred in preparation of an original order. However, the conference report of April 15, 1976, (House of Representatives Report No. 94–1044), clearly lists a number of costs for which the Secretary is to be reimbursed which are necessary costs in preparation of an original order. It is therefore found that such costs must be reimbursed.

The Act also requires that, after the Order becomes effective, all administrative costs, including salaries, which the Secretary determines were incurred by the Government under the Order shall be reimbursed by the Beef Board. In a brief, the opinion was expressed that Government salaries should not be reimbursed by the Beef Board. However, the legislation is clear that administrative costs of the Government are to be reimbursed. Therefore, it is found that the Secretary shall be reimbursed for all costs, including salaries, that he determines are incurred by the Government under the Order.

(f) *Records and Reports.* The Act imposes requirements on slaughterers to keep records and make such reports as necessary to the effectuation, administration, and enforcement of the Act and the Order or regulations issued pursuant to it. The Board has authority, with approval of the Secretary, to establish regulations requiring slaughterers to keep necessary books and records and to report to the Board periodically as the Board determines is necessary. Details on the information needed in records and reports and the frequency and timing of reports are to be estabished by the Board

and shown in the regulations. Record evidence shows some concern that unduly burdensome requirements may be imposed on slughterers. It was suggested that existing records systems of the industry should be utilized to the extent possible, and the Board should be cognizant of this recommendation when formulating regulations for approval by the Secretary.

All books and records required under the regulations must be made available by slaughterers for inspection by representatives of the Board or the Secretary as necessary to verify reports on assessments made and forwarded to the Board. These records are to be retained at least 2 years beyond the marketing year of their applicability. Such a time period is necessary to permit to completion of authorized audits, investigations, or other actions that may be necessary in administering and enforcing the provisions of Order and the Act.

Representatives of the Board or the Secretary, while acting in their official capacities, on occasion are likely to have access to records and accounts of slaughterers, producers, and others which may reveal trade secrets. The Act requires that the confidential nature of such business records be protected. Therefore, the Order provides that information obtained from books, records, and reports required of slaughterers, and information about refunds made to producers, shall be kept confidential by employees of the Board and of the Department of Agriculture. Also, any such information which becomes available to contracting parties should be kept confidential by officers and employees of such parties. However, the Secretary retains the authority to permit disclosure of such information, but only in a suit or administrative hearing relevant to the Order brought at the direction, or upon the request, of the Secretary of Agriculture, or to which any officer of the United States is a party.

It should be recognized that some information about the program may be of interest and benefit to the general public. Accordingly, the Order does not prohibit (1) the issuance of general statements concerning the number of persons subject to the Order or statistical data collected which do not identify the information furnished by any person; (2) the publication, as approved by the Secretary, of general statements relating to refunds made by the Beef Board which do not identify any person to whom a refund is made; or (3) the publication by direction of the Secretary of the name of any person violating the Order, together with a statement of the provisions of the Order violated.

(g) *Other Terms and Conditions.* Record evidence shows concern that patents, copyrights, inventions, and publications developed through the use of funds collected under the Order should be the property of the Beef Board to use for the benefit of the entire cattle industry. In a brief, proponents suggested that a section be added to the Order to outline such a provision. Accordingly, a new section is included in the Order as shown in § 1260.181. It provides that any patents, copyrights, inventions, or publications developed through the use of funds collected under the Order shall be the property of the Beef Board and any benefits or income from the use of such patents, copyrights, inventions, or publications shall inure to the benefit of the cattle industry. In the event of termination of the Order, control of such holdings and other assets would revert to the Secretary to be used for the benefit of the industry as specified in the Order.

The record shows a need for several other miscellaneous terms and conditions as shown in §§ 1260.182 through 1260.187 of the Order. Each section sets forth certain rights, obligations, privileges, or procedures which are necessary and appropriate for the effective operation of the Order. These provisions are incidental to, and not inconsistent with, the terms and conditions of the Act, are necessary to effectuate the other provisions of the Order, and are supported by the record evidence.

Rulings on Briefs, Proposed Findings, and Conclusions

At the close of the hearing, the Administrative Law Judge fixed November 15, 1976, as the final date for interested parties to file briefs, proposed findings, and conclusions based on the evidence received at the hearing. Eight briefs were filed on behalf of the following parties: Ed Grady, Manager, Information Division, Minnesota Farm Bureau Federation, St. Paul, Minnesota; Jack Russ, Director, California Cattlemen's Association, Sacramento, California; J. F. Goold, Executive Vice-President, League of California Milk Producers, Sacramento, California; James K. Kreutz, Attorney, Beef Development Taskforce, Denver, Colorado; Stephen F. Krut, Assistant Executive Director, National Association of Meat Processors, Elizabethtown, Pennsylvania; B. H. Jones, Executive Vice-President, National Livestock Feeders Association, Omaha, Nebraska; J. Gordon Cran, President, Hawaii Cattlemen's Council, Inc., Honolulu, Hawaii; and John Lewis, Director, California Farm Bureau Federation, Berkeley, California.

Several of the briefs reiterated points made by witnesses at the hearing or were copies of statements presented at the hearing. The points in each of the briefs were carefully considered along with the record evidence received at the hearing in making the findings and conclusions set forth herein as discussed in this recommended decision. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions as set forth herein, requests to make such findings or reach such conclusions are denied for the reasons previously cited in this decision.

General Findings

On the basis of the evidence presented at the hearing and the record thereof, it is found that: 1. The Beef Research and Information Order and all of the terms and conditions thereof as hereinafter set forth will tend to effectuate the declared policy of the Act; and

2. The following terms and conditions of the Order are recommended as a detailed means of carrying out the declared policy of the Act with respect to the development of effective and continuous coordinated programs of research, consumer information, producer information, and promotion for cattle, beef, and beef products with adequate financing through assessments on the sales of cattle.

Recommended Beef Research and Information Order

The following national Research and Information Order is recommended as the appropriate means by which the foregoing conclusions may be carried out.

A new subpart is added to Part 1260 of Title 7, CFR as follows:

PART 1260—BEEF RESEARCH AND INFORMATION

Subpart—Beef Research and Information Order

DEFINITIONS

Sec.
1260.101 Secretary.
1260.102 Act.
1260.103 Person.
1260.104 Cattle.
1260.105 Beef.
1260.106 Beef products.
1260.107 Fiscal period.
1260.108 Beef Board or Board.
1260.109 Executive Committee.
1260.110 Producer.
1260.111 Producer-buyer.
1260.112 Producer-seller.
1260.113 Slaughterer.
1260.114 United States.
1260.115 Marketing.
1260.116 Commerce.
1260.117 Producer organization or eligible organization.
1260.118 Producer information.
1260.119 Consumer information.
1260.120 Promotion.
1260.121 Research.
1260.122 Transaction.
1260.123 Contracting party.
1260.124 Marketing year.
1260.125 Part and subpart.

BEEF BOARD

1260.136 Establishment and membership.
1260.137 Term of office.
1260.138 Nominations.
1260.139 Appointments.
1260.140 Acceptance.
1260.141 Vacancies.
1260.142 Alternate members.
1260.143 Procedure.
1260.144 Compensation and reimbursement.
1260.145 Powers of the Board.
1260.146 Duties of the Board.

RESEARCH, INFORMATION, EDUCATION, AND PROMOTION

1260.151 Research, information, education and promotion.

STATE BEEF COUNCILS

1260.156 Continuity.
1260.157 Qualifications.

EXPENSES AND ASSESSMENTS

1260.161 Expenses.
1260.162 Assessments.
1260.163 Producer refunds.
1260.164 Influencing governmental action.

REPORTS, BOOKS, AND RECORDS

Sec.
1260.171 Reports.
1260.172 Books and records.
1260.173 Confidential treatment.

CERTIFICATION OF ORGANIZATIONS

1260.176 Certification of organzations.

MISCELLANEOUS

1260.181 Patents, copyrights, inventions, and publications.
1260.182 Suspension and termination.
1260.183 Proceedings after termination.
1260.184 Effect of termination or amendment.
1260.185 Amendments.
1260.186 Personal liability.
1260.187 Separability.

AUTHORITY: Beef Research and Information Act (7 U.S.C. 2901 et seq.).

DEFINITIONS

§ 1260.101 Secretary.

"Secretary" means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

§ 1260.102 Act.

"Act" means the Beef Research and Information Act (7 U.S.C. 2901 et seq.) and any amendments thereto.

§ 1260.103 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1260.104 Cattle.

"Cattle" means live domesticated bovine quadrapeds.

§ 1260.105 Beef.

"Beef" means the flesh of cattle.

§ 1260.106 Beef products.

"Beef products" means products produced in whole or in part from cattle, exclusive of milk and products made therefrom.

§ 1260.107 Fiscal period.

"Fiscal period" is the 12-month budgetary period and means the USDA's fiscal year unless the Beef Board, with the approval of the Secretary, selects some other 12-month period.

§ 1260.108 Beef Board or Board.

"Beef Board" or "Board" or other designatory term adopted by such Board means the administrative body established pursuant to § 1260.136.

§ 1260.109 Executive Committee.

"Executive Committee" means those members of the Beef Board, from 7 to 11 in number, who are elected by the Board to administer the provisions of this subpart under the supervision of the Board and within the policies determined by the Board.

§ 1260.110 Producer.

"Producer" means any person who owns or acquires ownership of cattle other than one who acquires cattle solely for the purpose of slaughter: *Provided*, That a person shall not be considered to be a producer if his only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

§ 1260.111 Producer-buyer.

"Producer-buyer" means a producer who buys cattle.

§ 1260.112 Producer-seller.

"Producer-seller" means a producer who sells cattle.

§ 1260.113 Slaughterer.

"Slaughterer" means any person who slaughters cattle including cattle of his own production.

§ 1260.114 United States.

"United States" means the 50 States of the United States of America and the District of Columbia.

§ 1260.115 Marketing.

"Marketing" means the sale or any other disposition of cattle, beef, or beef products in any channel of commerce.

§ 1260.116 Commerce.

"Commerce" means interstate, foreign, or intrastate commerce.

§ 1260.117 Producer organization or eligible organization.

"Producer organization" or "eligible organization" means any organization which has been certified by the Secretary pursuant to this subpart.

§ 1260.118 Producer information.

"Producer information" means facts, data, and other information that will assist producers in making decisions that lead to increased efficiency, lower cost of production, a stable supply of cattle, and the development of new markets.

§ 1260.119 Consumer information.

"Consumer information" means facts, data, and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparation, and utilization of beef and beef products.

§ 1260.120 Promotion.

"Promotion" means any action to advance the image or desirability of beef and beef products.

§ 1260.121 Research.

"Research" means any type of systematic study or investigation to advance the desirability, marketability, production, or quality of cattle, beef, and beef products, and includes the evaluation of such studies or investigations.

§ 1260.122 Transaction.

"Transaction" means any transfer of ownership of cattle or beef through a sale, trade, or other means of exchange.

§ 1260.123 Contracting party.

"Contracting party" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity, public or private, with which the Beef Board may enter into a contract or agreement pursuant to § 1260.146(e).

§ 1260.124 Marketing year.

"Marketing year" means the calendar year ending on December 31 or any other consecutive 12-month period designated by the Board, with the approval of the Secretary.

§ 1260.125 Part and subpart.

"Part" means 7 CFR Part 1260, containing rules, regulations, orders, supplemental orders, and similar matters concerning the Beef Research and Information Act. "Subpart" refers to any portion or segment of this part.

BEEF BOARD

§ 1260.136 Establishment and membership.

There is hereby established a Beef Board composed of not more than 68 producers, each of whom shall have an alternate, appointed by the Secretary from nomination submitted by eligible producer organizations within geographic areas certified pursuant to § 1260.176 or by producers in a manner authorized by the Secretary pursuant to § 1260.138(a).

§ 1260.137 Term of office.

The members of the Board and their alternates shall serve for terms of 3 years, except appointments to the initial Board shall be, proportionately, for terms of 1, 2, and 3 years. Eech member and alternate member shall continue to serve until his successor is appointed by the Secretary and has accepted. No member or alternate member shall serve more than 6 consecutive years: *Provided*, That those members and alternate members appointed to the initial Board for 1 or 2 year terms are eligible to serve two additional consecutive terms.

§ 1260.138 Nominations.

All nominations to the Beef Board authorized under § 1260.136 shall be made in the following manner:

(a) Within 90 days of the announcement of approval of this Order, or a longer period if so prescribed by the Secretary, nominations shall be submitted to the Secretary for each member and each alternate member to be appointed for each geographic area as specified in paragraph (d) of this section by eligible organizations, certified pursuant to § 1260.176: *Provided*, That if there is no eligible organization certified for a geographic area, or if the Secretary determines that a substantial number of producers are not members of, or their interests are not represented by, any such eligible organization, then nominations shall be submitted in a manner authorized by the Secretary;

(b) After the establishment of the Board, the nominations for subsequent Board members and alternates shall be submitted to the Secretary not less than 60 days prior to the expiration of the terms of the members and alternates previously appointed to the Board;

(c) Where there is more than one eligible organization within a geographic area, they may caucus for the purpose of jointly nominating qualified persons for each member and for each alternate member to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held within a defined geographic area, each eligible organization may submit to the Secretary nominations for each appointment to be made;

(d) For purposes of nominating members and their alternates to the Board, the United States shall be divided into geographic areas so as to reflect the proportion of cattle in each geographic area: *Provided*, That each designated geographic area shall be entitled to at least one member on the Board and one alternate member;

(e) The initial geographic areas and the number of members and alternates on the Beef Board from each area shall be: Alabama 1, Arizona 1, Arkansas 1, California 2, Colorado 2, Florida 1, Georgia 1, Idaho 1, Illinois 2, Indiana 1, Iowa 3, Kansas 3, Kentucky 2, Louisiana 1, Michigan 1, Minnesota 2, Mississippi 1, Missouri 3, Montana 2, Nebraska 3, New Mexico 1, New York 1, North Carolina 1, North Dakota 1, Ohio 1, Oklahoma 3, Oregon 1, Pennsylvania 1, South Carolina 1, South Dakota 2, Tennessee 2, Texas 7, Utah 1, Virginia 1, West Virginia 1, Wisconsin 2, Wyoming 1. Additional geographic areas, comprised of combined States, shall be: Nevada-Hawaii 1, Washington-Alaska 1, Maryland-Delaware-New Jersey-District of Columbia 1, Maine-Vermont-New Hampshire-Massachusetts-Rhode Island-Connecticut 1; and

(f) After the establishment of the Board, the geographic areas provided for in paragraph (d) of this section, including the area distribution of members of the Board and their alternates, shall be reviewed within 5 years and at any time not to exceed 5 years from the date of the last review by the Board. The Board shall redefine the geographic areas, subject to the approval of the Secretary, if it finds that the existing geographic areas do not properly reflect the proportion of cattle in each geographic area: *Provided*, That each such area shall be represented by at least one Board member.

§ 1260.139 Appointments.

From the nominations made pursuant to §§ 1260.136 and 1260.138, the Secretary shall appoint the members of the Board and an alternate for each member on the basis of the representation provided for in §§ 1260.136, 1260.137 and 1260.138.

§ 1260.140 Acceptance.

Any person appointed by the Secretary as a member or as an alternate member of the Board shall notify the Secretary of his acceptance in a manner prescribed by the Secretary.

§ 1260.141 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and appointed in a manner specified in §§ 1260.1336, 1260.137, 1260.138(b), and 1260.140, except that replacement of a Board member or alternate with an unexpired term of less than 6 months is not necessary.

§ 1260.142 Alternate members.

An alternate member of the Board, during the absence of the member for whom he is the alternate, shall act in the place and stead of such member of the Board at meetings and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him at Board meetings until a successor for such member is appointed.

§ 1260.143 Procedure.

(a) A majority of the members of the Board, including alternates acting for members of the Board, shall constitute a quorum, and any action of the Board shall require the concurring votes of at least a majority of those present and voting. At assembled meetings all votes shall be cast in person.

(b) For matters which do not require deliberation and the exchange of views, and in matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may also take action upon the concurring votes of a majority of its members by mail, telegraph, or telephone, but any such telephone vote shall be confirmed promptly in writing.

§ 1260.144 Compensation and reimbursement.

The members of the Board and alternates shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

§ 1260.145 Powers of the Board.

The Board shall have the following powers:

(a) To supervise the administration of this subpart in accordance with its terms and conditions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 1260.146 Duties of the Board.

The Board shall have the following duties: (a) To meet and organize and to select from among its members a chairman and such other officers as may be necessary, to select committees and subcommittees of Board members, and to adopt such rules for the conduct of its business as it may deem advisable. The Board also may establish advisory committees of persons other than Board members;

(b) To appoint from its members an Executive Committee, consisting of not less than 7 nor more than 11 members, and to delegate to the Committee authority to employ a staff and administer the terms and provisions of the subpart under the direction of the Beef Board and within the policies determined by the Board. The membership of the Executive Committee shall be generally representative of the cattle industry and shall reflect, to the extent practicable, the same geographic distribution of membership as the Beef Board itself;

(c) To develop and submit to the Secretary plans or projects, together with the Board's recommendations with respect to the approval thereof by the Secretary;

(d) To prepare and submit to the Secretary for his approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of each research, information, advertising, promotion, and developmental plan or project. The Board shall also submit informational copies of such budgets to the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry;

(e) To enter into contracts or agreements, with the approval of the Secretary, with appropriate contracting parties for the development and carrying out of the projects and programs of the Board as authorized by § 1260.151, and for the payment of the costs thereof with funds accruing pursuant to the administration of this subpart: *Provided*, That nothing in this subpart shall preclude the Board from conducting projects or activities on its own to effectuate the intent and purposes of the Act. Any such contract or agreement shall also provide that such contracting parties shall develop and submit to the Board a plan or project, together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project, and that any such plan or project shall become effective upon approval by the Secretary. Any such contract or agreement shall also provide that the contracting parties shall keep accurate records of all of their activities with respect to the contract or agreement and make periodic reports to the Board of activities carried out, an accounting for funds received and expended, and such other reports as the Secretary or Board may require;

(f) To maintain such books and records and prepare and submit such reports from time to time to the Secretary as he may prescribe and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(g) To prepare and make public, at least each fiscal period, a report of activities carried out and an accounting for funds received and expended;

(h) To cause its books to be audited by a public accountant at least once each fiscal period and at such other times as

the Secretary may request and to submit a copy of each such audit to the Secretary;

(i) To give the Secretary the same notice of meetings of the Board as is given to members in order that he or his representative may attend such meetings; and

(j) To submit to the Secretary such information pertaining to this subpart as he may request.

RESEARCH, INFORMATION, EDUCATION, AND PROMOTION

§ 1260.151 Research, information, education, and promotion.

(a) The Beef Board shall in the manner prescribed in § 1260.146 provide for:

(1) The establishment, issuance, effectuation, and administration of plans or projects for advertising, promotion, education, producer information, and consumer information with respect to the use of cattle, beef, and beef products and for the disbursement of necessary funds for such purposes;

(2) The establishment and carrying on of research, market development projects, and studies with respect to the production, sale, processing, distribution, marketing, or utilization of cattle, beef, and beef products and the creation of new products thereof, in accordance with section 7(b) of the Act, to the end that the production, marketing, and utilization of cattle, beef, or beef products may be encouraged, expanded, improved, or made more efficient and/or acceptable and the data collected by such activities may be disseminated, and for the disbursement of necessary funds for such purposes; and

(3) The development and expansion of foreign markets and uses for cattle, beef, or beef products.

(b) Each program or project authorized under paragraph (a) of this section shall be periodically reviewed or evaluated by the Board to insure that each such plan or project contributes to an effective and coordinated program of research, information, education, and promotion. If it is found by the Board that any such program or project does not further the purposes of the Act, then the Board shall terminate such program or project.

(c) No reference to a private brand or trade name shall be made if the Secretary determines that such reference will result in undue discrimination against the cattle, beef, or beef products of other persons in the United States. No such advertising, consumer education, or sales promotion program shall make use of claims in behalf of cattle, beef, or beef products, or statements with respect to quality, value, or use of any competing product if the Secretary determines them to be false or misleading.

STATE BEEF COUNCILS

§ 1260.156 Continuity.

The Beef Board may allocate up to 10 percent of net assessments from each State for use during the next fiscal year by the qualifying State beef council, beef board, or other beef promotion entity: *Provided*, That during the first year, the Beef Board may estimate the net assessments from each State and upon request from such entity provide up to 10 percent of estimated net assessments. The amount of net assessments from each State shall be computed by the Beef Board to reflect total assessments in such State less a deduction for refunds to producers in such State. Any request for funds shall be made by a State beef promotion entity which meets the qualifications specified in § 1260.157.

§ 1260.157 Qualifications.

To qualify for the receipt of funds pursuant to § 1260.156, a State beef board, beef council, or other beef promotion entity shall (a) be organized pursuant to legislative authority within the State or be organized by State charter, (b) have goals and purposes complementary to the goals and purposes of the Act, and (c) demonstrate ability to provide research, information, education, or promotion consistent with the Act and this subpart. The request from a State beef promotion entity for such funds shall show plans or projects and estimated costs of activities for which the funds will be used. The contract or agreement for such funds shall provide that the State promotion entity shall keep accurate records of all activities with respect to the contract or agreement and make periodic reports to the Board of activities carried out, an accounting for funds received and expended, and such other reports as the Board or the Secretary may require. In no event shall more than one such entity qualify within a State. If more than one entity applies for qualification within a State, the Beef Board shall choose, subject to the approval of the Secretary, the one most qualified to fulfill the purposes of the Act and this subpart.

EXPENSES AND ASSESSMENTS

§ 1260.161 Expenses.

(a) The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from assessments received pursuant to § 1260.162 and other funds available to the Board.

(b) The Board shall reimburse the Secretary, from producer assessments, for all the expenses and expenditures, excluding salaries, which the Secretary determines were incurred by the Government in the preparation of an original order and the conduct of the referendum considering its approval.

(c) The Board shall reimburse the Secretary, from producer assessments, for administrative costs, including salaries, which the Secretary determines are incurred by the Government with respect to this subpart.

§ 1260.162 Assessments.

(a) Each producer-seller, upon sale or transfer of ownership of any cattle, except as provided below, shall pay to the producer-buyer or slaughterer thereof, pursuant to regulations issued by the Board, and such producer-buyer or slaughterer shall collect from the producer-seller an assessment based on the value of the cattle involved in the transaction as follows:

(1) The Beef Board, with the approval of the Secretary, shall set the amount of assessment, not to exceed five-tenths of 1 percent of the sale price;

(2) The assessment rate for the first three years shall not exceed three-tenths of 1 percent of the sale price;

(3) In the event that no sales transaction occurs at the point of slaughter or other transfer, a fair commercial market value shall be attributed to the cattle for the purpose of determining the assessment;

(4) Cattle slaughtered for his own home consumption by a producer who has been the sole owner of such cattle shall not be subject to assessments provided in this subpart;

(5) The Beef Board may provide for the adjustment of the value of breeding cattle or classes of breeding cattle, including those used in milk production, so as not to exceed commercial market value, or it may exempt collection of the assessment on such cattle until time of slaughter;

(6) Each slaughterer shall remit assessment(s) collected to the Beef Board at such times and in such manner as prescribed by regulations issued by the Board, including any assessment(s) due at time of slaughter on cattle of his own production;

(7) Failure of the slaughterer to collect the assessment(s) on each animal shall not relieve the slaughterer of his obligation to remit the assessment(s) to the Beef Board as required in this subpart; and

(8) The Beef Board may collect directly from any producer any assessment(s) that he collected under the provisions of this subpart or otherwise due which were not passed along in the manner set forth in this subpart due to the loss in value of the cattle or due to the export of the cattle or due to other reasons.

(b) The Beef Board may accumulate a reasonable reserve of approximately the average yearly collections to maintain continuity of programs and fulfill other obligations and expenses.

§ 1260.163 Producer refunds.

Any producer-seller on whose cattle an assessment is made and collected from him under the authority of the Act shall have the right to remand and receive from the Beef Board a refund of such assessment upon submission of proof satisfactory to the Board that the producer-seller paid the assessment for which refund is sought. Any such demand shall be made by such producer-seller in accordance with regulations and on a

form prescribed by the Board and approved by the Secretary. Such demands shall be made within 60 days after the end of the month in which the transaction occurred upon which said refund is based. Refund shall be made within 60 days after the submission of proof satisfactory to the Board that the producer-seller paid the assessment for which refund is sought: *Provided*, That no producer shall claim or receive a refund of any portion of an assessment which he collected from other producers.

§ 1260.164 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action except as provided in this subpart.

REPORTS, BOOKS, AND RECORDS

§ 1260.171 Reports.

Each slaughterer subject to this subpart shall be required to report to the Beef Board periodically such information as may be required by regulations established by the Board.

§ 1260.172 Books and records.

Each slaughterer shall maintain and make available for inspection by the Beef Board and the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the marketing year of their applicability.

§ 1260.173 Confidential treatment.

All information obtained from such books, records, or reports required to be maintained under §§ 1260.171 and 1260.172 and all information obtained by the Beef Board pertaining to producer refunds made pursuant to § 1260.163 shall be kept confidential by all employees of the Beef Board, all employees of the Department of Agriculture, and all officers and employees of contracting parties, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which any officer of the United States is a party, and involving this subpart: *Provided, however*, That nothing in this subpart shall be deemed to prohibit (a) the issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person, (b) the publication of general statements relating to refunds made by the Beef Board during any specific period, which statements do not identify any person to whom refunds are made, or (c) the publication by direction of the Secretary of the name of any person violating this subpart, together with a statement of the particular provisions violated by such person.

CERTIFICATION OF ORGANIZATIONS

§ 1260.176 Certification of organizations.

(a) Any producer organization within a geographic area designated pursuant to §§ 1260.136 and 1260.138 may request the Secretary to certify its eligibility to represent cattle producers to participate in nominating members and alternate members to represent such geographic area on the Beef Board. Such eligibility shall be based, in addition to other available information, upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including but not limited to the following:

(1) Geographic area covered by the organization's active membership;

(2) Nature and size of the organization's active membership, proportion of total of such active membership accounted for by producers of cattle, and the volume of cattle produced by the organization's active membership in each such State or applicable geographic area(s);

(3) The extent to which the cattle producer membership of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organization's operating funds are derived;

(6) Functions of the organization; and

(7) The organization's ability and willingness to further the aims and objectives of the Act.

(b) The primary consideration in determining the eligibility of an organization shall be whether its producer membership consists of a substantial number of producers who produce a substantial volume of cattle in the geographic area subject to the provisions of this subpart.

(c) The Secretary shall certify any organization which he finds to be eligible under this section and his determination shall be final. After the original certification of an organization, such organization shall request recertification at any time it wishes to nominate a member to the Board and the Secretary may require recertification at any time.

§ 1260.181 Patents, copyrights, inventions, and publications.

Any patents, copyrights, inventions or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the Beef Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the cattle industry. Upon termination of this subpart, § 1260.183 applies to determine disposition of all such property.

§ 1260.182 Suspension and termination.

(a) The Secretary shall, whenever he finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this subpart or such provision.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of cattle producers voting in the referendum approving this subpart, to determine whether cattle producers favor the termination or suspension of this subpart, and the Secretary shall suspend or terminate such subpart 6 months after he determines that its suspension or termination is approved or favored by a majority of the producers of cattle voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production of cattle and who produced more than 50 percent of the volume of the cattle produced by the cattle producers voting in the referendum.

§ 1260.183 Proceedings after termination.

(a) Upon termination of this subpart, the Beef Board shall recommend not more than five of its members to the Secretary to serve as trustees, for the purpose of liquidating the affairs of the Beef Board. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall: (1) continue in such capacity until discharged by the Secretary; (2) carry out the obligations of the Beef Board under any contracts or agreements entered into by it pursuant to § 1260.146(e); (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and (4) upon the direction of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations imposed upon the trustees.

(d) Any residual funds or property not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be utilized, to the extent practicable, in the interest of continuing one or more of the beef research or information programs hitherto authorized.

§ 1260.184 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any right or remedies of the United States, or of any person, with respect to any such violation.

§ 1260.185 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by an organization certified pursuant to Section 15 of the Act, or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1260.186 Personal liability.

No member, alternate member, or employee of the Beef Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member, alternate, or employee except for acts of dishonesty or willful misconduct.

§ 1260.187 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Single copies of this notice of recommended decision may be obtained from the Hearing Clerk, Room 112-A, Administration Building, United States Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

Signed at Washington, D.C., on January 18, 1977.

DONALD E. WILKINSON,
Administrator.

[FR Doc.77-2240 Filed 1-24-77;8:45 am]

Rural Electrification Administration

[7 CFR Part 1701]

RURAL TELEPHONE PROGRAM

Purchasing and Installing Central Office Equipment

Notice is hereby given that, pursuant to the Rural Electrification Act, as amended (7 USC 901 et seq.), including the amendment thereto enacted by Pub. L. 93-32, REA proposes to revise REA Bulletin 384-1 (Telephone), Purchasing and Installing Central Office Equipment. The proposed revised bulletin modifies the procedures whereby an REA Telephone Borrower may purchase central office equipment. On issuance of REA Bulletin 384-1, revised January 1977, Appendix A to Part 1701 will be modified accordingly.

Persons interested in the proposed revision may submit written data, views or comments to the Director, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, on or before February 24, 1977. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Telephone Operations and Standards Division, during regular business hours.

The text of the proposed revision is as follows:

REA BULLETIN 384-1

Subject: Purchasing and Installing Central Office Equipment:

I. *Purpose.* To set forth the methods and procedures to be employed by borrowers in purchasing and installing the following central office equipment with REA loan funds:

A. Dial Central Office Equipment.

B. Automatic Toll Ticketing Equipment.

C. Automatic Number Identification Equipment.

D. Toll Office Equipment.

E. Private Automatic Branch Exchange (PABX) Equipment.[1]

F. Miscellaneous Equipment (Traffic Recording, Loop Treatment, Remote Alarm Reporting, Etc.).[1]

II. *General.* A. Materials and equipment must meet the standards and general specifications approved by REA. Materials and equipment included in REA Bulletin 344-2, "List of Materials Acceptable for Use on Telephone Systems of REA Borrowers," have been accepted as meeting these requirements. If the equipment being considered is not included in the "List of Materials" but has been generally approved for field trial installations, the borrower must in each instance obtain field trial approval from REA prior to entering into any agreement with a supplier.

B. Only new equipment shall be purchased unless otherwise approved by REA in specific cases.

C. All purchases of materials and equipment are subject to the "Buy American" provision. See REA Bulletin 344-3.

D. Appendix A is attached and provides an abbreviated summary of the procedures covered in detail in this bulletin.

III. *Contract Documents.* REA Bulletin 384-3, "Central Office Equipment Contracts and Specifications," lists the contracts and specifications which are currently available as well as the source of supply for these documents. Two types of contracts are available for the purchase of central office equipment.

A. REA Form 525 provides for the furnishing, delivery, and installation of the equipment and consists of the following:

1. Notice and Instructions to Bidders.
2. Proposal and Acceptance.
3. Form of Contractor's Bond.
4. Specifications:

a. Central Office Dial Equipment (Direct Acting):

(1) REA Form 558a, General Specifications.

(2) REA Form 558b, Installation.

(3) REA Form 558c, Detailed Central Office Requirements (one required for each central office location).

(4) REA Form 810, Central Office Equipment Engineering Information.

b. Central Office Dial Equipment (Common Control):

(1) REA Form 524a, General Specifications.

(2) REA Form 524b, Installation.

(3) REA Form 524c, Detailed Common Control Central Office Equipment Requirements (one required for each central office location).

(4) REA Form 524d, Detailed Common Control Central Office Equipment Requirements (Information supplied by Bidder).

(5) REA Form 810, Central Office Equipment Engineering Information.

c. Toll Office Equipment—When toll board equipment is required, the following specifications shall be attached to and made a part of the contract:

(1) REA Form 542a, General Specifications.

(2) REA Form 542b, Installation.

(3) REA Form 542c, Detailed Toll Office Equipment Requirements.

d. Direct Distance Dialing Equipment—When direct distance dialing (automatic toll ticketing) equipment is required, the following specifications shall be attached to and made a part of the contract:

(1) REA Form 538a, General Specifications.

(2) REA Form 538b, Installation.

(3) REA Form 538c, Detailed Direct Distance Dialing Equipment Requirements.

(4) REA Form 538d, Detailed Direct Distance Dialing Equipment Requirements (Information supplied by Bidder).

e. Automatic Number Identification Equipment-CAMA—When CAMA-ANI equipment is required, the following specifications shall be attached to and made a part of the contract:

(1) REA Form 537a, General Specifications.

(2) REA Form 537b, Installation.

(3) REA Form 537c, Detailed ANI Equipment Requirements.

(4) REA Form 810, Central Office Equipment Engineering Information.

f. Private Automatic Branch Exchange Equipment—PABX—When PABX equipment is required, the following specifications shall be attached to and made a part of the contract:

(1) REA Form 528a, General Specifications.

(2) REA Form 528b, Installation.

(3) REA Form 528c, Detailed PABX Equipment Requirements.

(4) REA Form 528d, PABX Special Features.

(5) REA Form 528e, Detailed PABX Equipment Requirements (Information supplied by Bidder).

g. Miscellaneous Equipment—When miscellaneous equipment such as traffic recording equipment, loop treatment equipment, remote alarm reporting equipment, etc., is to be purchased with loan funds, the following shall be attached to and made part of the contract:

(1) A functional specification describing the requirements for the particular application.

(2) The supplier's technical proposal including a list of materials.

B. REA Form 545 provides for the furnishing and delivery of the equipment and is used when the installation is to be made by other than the supplier. It consists of the following:

1. Notice and Instruction to Bidders.
2. Proposal and Acceptance.
3. Specifications: Same as listed under "A", above, except part "b", Installation, will not be used.

C. REA Form 238, "Construction/Equipment Contract Amendment," should be used

[1] The procedure set forth in this bulletin for the purchase of equipment covered in E and F above shall be used only when this equipment is being purchased under contract terms. Usually this type of equipment will be purchased on a purchase order basis as explained in Bulletin 344-1.

* Supersedes March 24, 1958, issue.

when an amendment to either Form 525 or Form 545 is required.

IV. *Purchasing Central Office Equipment.* A. Central office equipment (direct acting or common control) may be purchased by the competitive bid procedure or by negotiation, at the borrower's option. The procedure as set forth below in V,A (Competitive) or V,B (Negotiation) shall be followed, depending upon the method selected. In either case, prior to requesting proposals from suppliers, REA must be notified of the method of procurement and approval of the plans and specifications must be obtained from REA. If the competitive bid method is followed, negotiations after the bid opening will not be permitted. When common control equipment is to be purchased by competitive bidding it is recommended that a two-step procedure similar to that set forth in paragraph V,A,4 be used.

B. When a borrower considers foreign equipment under either plan, selection of the foreign equipment may be made only if it meets the "Buy American" requirements. It will be necessary in those instances to obtain two or more domestic proposals for comparable equipment for the purpose of making a "Buy American" comparison. An exception to this would be the case where a domestically equivalent product is not available. (See REA Bulletin 344–3).

V. *Procedure.* A. Competitive Bidding:

1. After approval by REA of the specifications and equipment requirements, the Owner, or its engineer, sends out two copies of the "Notice and Instructions to Bidders" accompanied by two complete copies of the proposal and specifications to each supplier. The documents for this purpose are prepared by the Owner's engineer. The "Notice and Instructions to Bidders" is dated at the time it is signed and sent out. No less than three Bidders capable of preparing a responsive bid will be invited to bid.

2. The Bidder prepares its proposal entering the required information thereon and signs and dates same. One copy of the completed proposal is sent to the borrower and one copy is retained by the Bidder for its record.

3. The proposals of the Bidders, on the date of bid opening, are reviewed by the Owner and its engineer. Prior REA approval of the award of the contract is not required where the contract is awarded under the following conditions:

a. Award is made to the lowest responsive Bidder, and

b. A minimum of three bids are received, and

c. The amount of the bid is not in excess of the amount established in the loan budget for central office equipment, and

d. The bid contains no irregularities except minor ones which may be waived by the Owner.

In such cases, the Owner's engineer is to immediately send to REA a tabulation of the bid results for all Bidders by exchanges, the recommendation of the engineer, and a statement of the Owner (in case of a cooperative, the statement should be in the form of a board resolution) concerning the award of the contract. Prior receipt of this information by REA will allow prompt approval of the executed copies of the contract when they are received.

Prior REA approval of the award of a contract is required where conditions (a) to (d), above, have not been met. In such cases, the results of the bid opening, the recommendation of the Owner's engineer and a statement from the Owner (in case of a cooperative, the statement should be in the form of a board resolution) recommending the award of the contract are to be sent to REA for review and approval.

4. Procurement of common control equipment may be by a "Two-Step Competitive Bid" in which case:

a. The notice and instructions to Bidders must set forth the method of evaluating bids and must require the submission of equipment lists and traffic calculations with the bids.

b. Standard REA Contract Forms 525 or 545, as appropriate, shall be used, except that the "Notice and Instructions to Bidders" shall state that prior to the bid opening a technical evaluation will be conducted with each supplier to resolve any questions related to the technical proposal submitted by the supplier. The suppliers' technical proposals should be requested for presentation 30 days in advance of the bid opening to enable sufficient time to make the technical evaluation.

c. A sufficient number of firms (at least three) shall be invited to bid to assure adequate competition. A list of the firms invited to bid shall be sent to REA well in advance of the bid opening date.

d. Suppliers' technical proposals received by the Owner should be considered by representatives from the board of directors of the borrower, the manager, and the borrower's engineer. The REA field engineer may attend these evaluations as an observer where requested by the borrower.

e. Upon completion of technical discussions, sealed bids will be solicited from those Bidders whose technical proposals were found to meet the plans and specification requirements. When bids are solicited from less than three Bidders capable of making a responsive bid, prior REA approval must be obtained. The award will then be made to the low Bidder.

5. When the successful Bidder has been determined, and approved by REA, if necessary, the Owner's engineer then prepares two counterpart copies of the proposal and specifications and has the Owner sign and date the acceptance in the original and two counterpart copies.

6. The engineer then sends the three copies of the contract to the Bidder. The Bidder executes the two counterpart copies using the same date as the original proposal. When the contract includes installation of the equipment by the Bidder, the Bidder also has the three copies of the Contractor's Bond, pages 9 and 10, REA Form 525, completely executed. The date of the contract to be inserted in the bond on page 9 is the date of acceptance of the proposal as shown on page 8. The bond is dated on page 10, which date should always be subsequent to the date of the contract. (The signature of a resident agent of the surety is required in some states.)

7. The Bidder then sends the three complete contracts to the Owner's engineer for final review and submission to REA for approval.

8. Upon approval of the contract by REA, notice is given to the Bidder, Owner, and the Owner's engineer and two copies of the contract are returned to the Owner. One copy is then sent by the Owner to the Bidder.

B. Negotiation. 1. Quotations from at least three suppliers shall be secured. If three cannot be secured, waiver of this requirement must be obtained from REA. The "three proposal" requirement would not apply when negotiating for an office of the same type as an existing one in the borrower's system. The suppliers should be advised that the award may be based upon factors other than low price. REA approval will be conditioned upon the borrower obtaining prices in line with current competitive prices.

2. The Bidders prepare their proposals, entering the required information thereon and sign and date same. One copy of the completed proposal is to be sent to the borrower and one copy retained by each Bidder for its record. Technical presentations and subsequent evaluations similar to those outlined under V,A,4,d should be made. The "two-step" procedure is not necessary if the negotiation is for an additional office of the same type as an existing one in the borrower's system.

3. When a quotation is accepted by the Owner, the Owner's engineer sends to REA the quotation accepted, a tabulation of the other quotations received, the engineer's recommendation to the Owner, and a statement of the Owner (in case of a cooperative, the statement should be in the form of a board resolution) concerning the acceptance of the proposal. The engineer's recommendation should include complete justification for the selection made.

4. Following approval by REA of the Owner's selection, the Owner's engineer then prepares two counterpart copies of the proposal and specifications, and has the Owner sign and date the acceptance in the original and two counterpart copies.

5. The engineer then sends the three copies of the contract to the Bidder. The Bidder executes the two counterpart copies using the same date as the original proposal. When the contract includes installation of the equipment by the Bidder, the Bidder also has the three copies of the Contractor's Bond, pages 9 and 10, REA Form 525, completely executed. The date of the contract to be inserted in the bond on page 9 is the date of acceptance of the proposal as shown on page 8. The bond is dated on page 10, which date should always be subsequent to the date of the contract. (The signature of a resident agent of the surety is required in some states.)

6. The Bidder then sends the three complete contracts to the Owner's engineer for final review and submission to REA for approval.

7. Upon approval of the contract by REA, notice is given to the Bidder, Owner, and Owner's engineer and two copies of the contract are returned to the Owner. One copy is then sent by the Owner to the Bidder.

C. Contract Amendments: The borrower's engineer should prepare equipment contract amendments on REA Form 238, "Construction or Equipment Contract Amendments,":

1. As soon as it has been determined that a change in the specifications is necessary or desirable which increases the contract price by more than $2500, or

2. Whenever a substantial change in the design or type of materials to be used in the installation under the contract is proposed, whether or not the contract price is changed.

Prior REA approval of such amendments is required before any such changes are initiated. Whenever a change has been made in the specifications which did not require prior REA approval under conditions "1" or "2" above, a final contract amendment shall be prepared and submitted to REA with the final documents. When an amendment by itself or together with preceding amendments increases the initial contract price by an amount which exceeds 20 percent of the initial contract price, an extension to the bond covering the amount of the increase shall be executed (see REA Bulletin 381–9).

D. Additions: Where additions to existing central office equipment installations are required:

1. When it is determined what additional equipment is required, a quotation is requested from the supplier. This request should be based on the original installation specifications. The General Specifications (558a, 524a, 528a, 542a, 538a or 537a) should not be used when purchasing additions.

2. The borrower prepares a proposal containing an outline of the proposed use of

the equipment, the quotation from the supplier and an estimate of the installation cost, and submits to the REA field engineer for approval. The field engineer will either approve or forward it to the Chief, Area Engineering Branch, for approval.

3. After approval of the quotation, the purchase may be made by using either the standard form contract, Form 525 (or 545, not installed), or a purchase order.

4. If the purchase is to be made by contract, three executed copies of the contract with attachments are to be submitted to the Chief, Area Engineering Branch. If satisfactory, REA will approve the contract and return two copies to the borrower.

5. If the purchase is to be made by purchase order, the executed purchase order with attachments is issued to the supplier. Copies of the purchase orders are *not* to be sent to REA (see REA Bulletin 344-1).

This REA bulletin supersedes REA Bulletin 384-1, dated March 24, 1958, and all other material in conflict with its provisions.

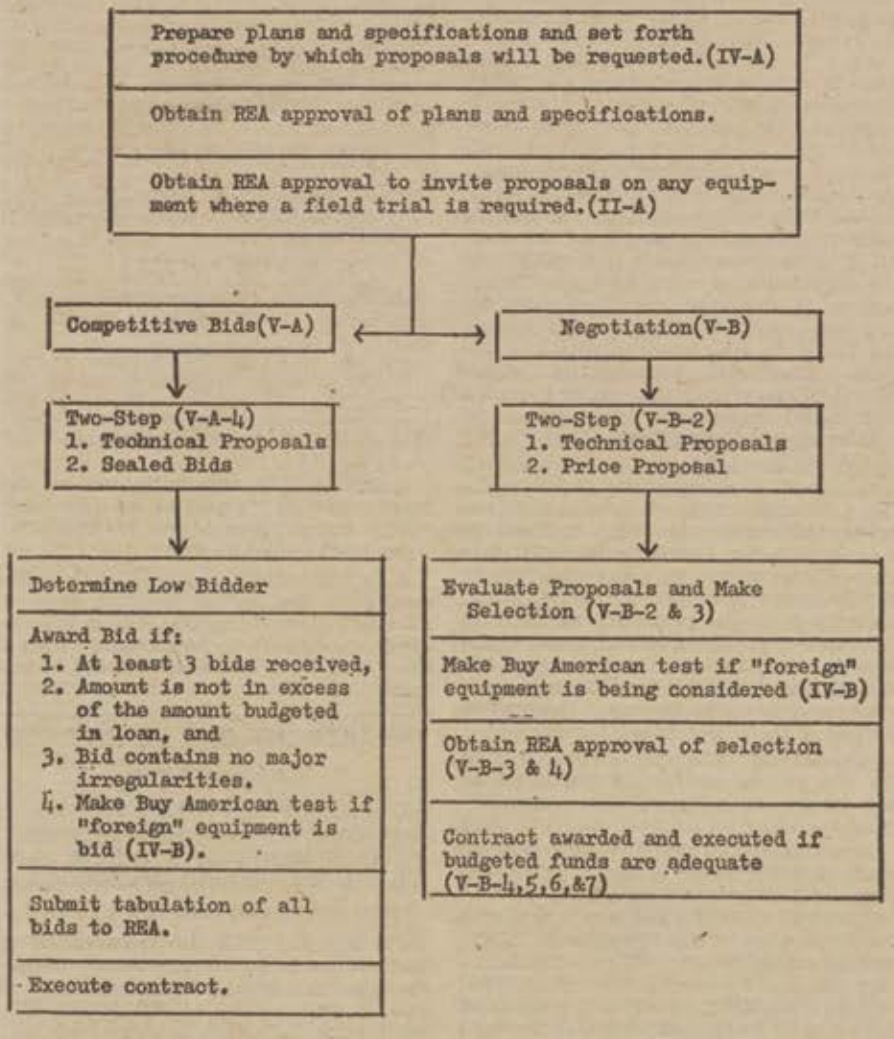
Dated: January 13, 1977.

C. R. BALLARD,
Assistant Administrator—Telephone.

Bulletin 384-1

APPENDIX A

SUMMARY OF PROCEDURES FOR PURCHASING COMMON CONTROL EQUIPMENT[1]



[1]Procedure is identical for direct acting equipment except the two-step process does not apply.

[FR Doc.77-1967 Filed 1-24-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

[10 CFR Part 212]

PRODUCTION AND SALE OF "IMPUTED STRIPPER WELL CRUDE OIL" FROM UNITIZED PROPERTIES

Proposed Rulemaking and Public Hearing

The Federal Energy Administration ("FEA") hereby gives notice of a proposed rulemaking and public hearing to consider a proposal to amend 10 CFR 212.75 so as to compute volumes of "imputed stripper well crude oil" produced and sold from unitized properties on a percentage basis. Currently, § 212.75 provides for such computations to be made on the basis of absolute production and sale volumes.

Section 212.75 currently provides that with respect to any unitized property which is comprised of one or more previously qualified stripper well properties and for which the producer has established a unit base production control level, the producer may sell each month a number of barrels of "imputed stripper well crude oil" at prices which are exempt from the provisions of Subpart D. "Imputed stripper well crude oil" is currently defined as:

> A number of barrels of crude oil equal to the total number barrels of crude oil produced during the 12-month period immediately preceding the establishment of a unit base production control level for the unitized property from all stripper well properties that constitute the unitized property, divided by 12 * * *.

On October 29, 1976, in connection with the adoption in final form (effective September 1, 1976) of the stripper well property exemption mandated by the Energy Conservation and Production Act (Pub. L. 94-385), FEA indicated its intention to initiate a rulemaking proceeding to consider modifying the definition of "imputed stripper well crude oil" to be based upon a percentage of the unitized production rather than upon a fixed number of barrels. (Comments received in connection with the rulemaking proceeding to implement the stripper well property exemption urged that stripper well property operators might be deterred from participating in a unitization unless any increased production attributable to the stripper well property is afforded exempt status.)

FEA's preliminary consideration of this concern leads to the conclusion that there may be instances in which certain operators of stripper well properties might be discouraged from participating in a unitized project. For example, if a stripper well property is so strategically located with reference to the underlying reservoir that the operator will benefit from any enhanced recovery operation regardless whether the stripper will property actually participates in the unitization, the operator might be encouraged

not to participate in the unitization because all increased production from his property would qualify as exempt. If the property were to participate in the project, on the other hand, any increased production attributable to the stripper well property would qualify under present regulations, at best, for treatment only as upper tier crude oil.

Accordingly, FEA solicits comments addressed to the need for and feasibility of a unitized property rule which would permit a percentage of increased production from the unit to be sold at exempt prices. Such a percentage might be equal to the percentage of stripper well property production to total production from participating leases over the 12-month period immediately preceding the establishment of a unitized BPCL. However, FEA will consider any reasonable alternative approach that might be suggested in the comments.

WRITTEN COMMENT PROCEDURES

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposals set forth in this notice to Executive Communications, Room 3309, Federal Energy Administration, Box KD, Washington, D.C. 20461.

Comments should be identified on the outside envelope and on documents submitted to FEA Executive Communications with the designation "Production and Sale of 'Imputed Stripper Well Crude Oil' From Unitized Properties." Fifteen copies should be submitted. All comments received by Thursday, February 10, 1977, before 4:30 p.m., will be considered by the Federal Energy Administration before final action is taken on the proposed amendment.

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

HEARING PROCEDURES

The public hearing in this proceeding will be held at 9:30 a.m., on Friday, February 11, 1977, and will be continued, if necessary, on Monday, February 14, 1977, in Room 2105, 2000 M Street, NW., Washington, D.C. 20461, in order to receive comments from interested persons on the matters set forth herein.

Any person who has an interest in the proposed amendment issued today, or who is a representative of a group or class of persons that has an interest in today's proposed amendment, may make a written request for an opportunity to make oral presentation. Such a request should be directed to Executive Communications, FEA, and must be received before 4:30 p.m., on Wednesday, January 26, 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., Monday through Friday. The person making the request should be prepared to describe the interest concerned, if appropriate, to state why he is a proper representative of a group or class of persons that has such an interest, and to give concise summary of the proposed oral presentation and a phone number where he may be contacted through Thursday, February 10, 1977. Each person selected to be heard will be so notified by the FEA before 4:30 p.m., Friday, January 28, 1977 and must submit 100 copies of his statement to Regulations Management, FEA, Room 2214, 2000 M Street, N.W., Washington, D.C. 20461, before 4:30 p.m., Thursday, February 10, 1977.

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

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

Any interested person may submit questions to be asked of any person making a statement at the hearings, to Executive Communications, FEA, before 4:30 p.m., Thursday, February 10, 1977. Any person who wishes to ask a question at the hearings may submit the question, in writing, to the presiding officer. The FEA or the presiding officer, if the question is submitted at the hearings, will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

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

A transcript of the hearings will be made and the entire record of the hearings, including the transcript, will be retained by the FEA and made available for inspection at the Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

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.

This proposal had been reviewed in accordance with Executive Order 11821, issued November 24, 1974, and has been determined not to be of a nature that requires an evaluation of its inflationary impact pursuant to Executive Order 11821.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 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, Part 212 of Chapter II of Title 10 of the Code of Federal Regulations is proposed to be amended as set forth above.

Issued in Washington, D.C., January 19, 1977.

DAVID G. WILSON,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77-2287 Filed 1-19-77;2:48 pm]

DEPARTMENT OF LABOR

Assistant Secretary of Labor-Management Relations, Office of Labor-Management Relations Services

[29 CFR Part 215]

URBAN MASS TRANSPORTATION ACT OF 1964

Proposed Guidelines

Correction

In FR Doc. 77-1517 appearing at page 3319 of the issue for Tuesday, January 18, 1977:

1. In the fifth and sixth lines of the first paragraph, "states other than local public bodies" should read "states or other local public bodies";

2. In the middle of the third column, page 3320, the section heading reading § 215.66 *Recertifications based on existing agreements"* should read "§ 215.6 *Recertifications based on existing agreements".*

DEPARTMENT OF THE INTERIOR

Geological Survey

[30 CFR Part 211]

COAL MINING OPERATION REGULATIONS: REQUIREMENTS OF A MINING PLAN FOR UNDERGROUND OPERATIONS

Proposed Rulemaking

On May 17, 1976, the Department of the Interior adopted regulations to govern the management and operation of federal coal leases, 41 FR 20252. The regulations that were published on that day contain the requirements for a mining plan for federal coal lessees. 30 CFR § 211.10. The requirements of those regulations were drafted with specific consideration for operations that would use surface mining to remove the coal resources, and contain extensive data-collecting and other requirements that are extremely appropriate to surface mines.

The regulations also apply to underground mines. The Department has now received several applications for approval of mining plans for operations that will be conducted by underground mining. The Department's experience with these plans has demonstrated that many of the requirements of 30 CFR 211.10 are unnecessary to accomplish the purposes of the Department's regulations: development of the nation's coal resources in an environmentally acceptable manner. To relieve the problem of requiring irrelevant information from operators who will be conducting underground operations, the Department is now proposing that the mine plan requirements be amended to reflect the Department's different information needs on underground operations and surface operations.

Comments on this proposed change should be sent in writing to the Director, Geological Survey, the National Center, Reston, Virginia 22092. Comments should be sent to that address by March 1, 1977. The Department will consider all comments received by that date, and will consider all comments received after that date to the extent that is possible.

It is proposed that 30 CFR § 211.10(a)(1) be amended by adding after the last word of the fifth sentence the following:

§ 211.10 Exploration and mining plans.

(a)(1) * * * and shall include all of the information set forth in paragraph (c) of this section for surface mines and all such information relevant to the surface and subsurface impacts of underground or deep mines. * * *

* * * * *

THOMAS S. KLEPPE,
Secretary,
Department of the Interior.

JANUARY 19, 1977.

[FR Doc. 77-2258 Filed 1-24-77;8:45 a.m.]

[30 CFR Part 211]

COAL MINING OPERATIONS REGULATIONS

Adoption of the Cooperative Agreement With North Dakota for Enforcement and Administration of Surface Coal Mine Reclamation Standards

On May 17, 1976, the Department of the Interior adopted new regulations to govern the management of federally-owned coal resources. 41 F.R. 20252 (1976). These regulations authorize the Department to enter into Cooperative Agreements with States in which federal coal leases have been or will be issued for the purpose of avoiding duality in the administration and enforcement of surface coal mining reclamation operations. 30 C.F.R. 211.75.

On October 12, 1976, the Secretary issued a Policy Statement to clarify the intent and meaning of the May 1976 regulations. In a letter to the Governor of North Dakota, the Secretary stated: "I want you to know that I fully accept the premise that State reclamation laws and regulations can apply to the Federal lands * * * [and] * * * In a further effort to ensure cooperation and avoid duplication, we desire to enter into cooperative agreements with the respective States for the administration and enforcement of regulations on Federal lands."

The Secretary and the Governor of North Dakota have completed the negotiation of a Cooperative Agreement as authorized by 30 CFR 211.75(b). The Agreement provides that the State of North Dakota will be the principal entity responsible for the administration and enforcement of surface coal mine reclamation operations on federal coal leases in North Dakota.

The Department of the Interior's surface mining regulations require a federal coal lessee to conduct mining operations in a manner which ensures the effective reclamation of mined lands. After review of State laws and regulations, practices and procedures, the Department has concluded that the State of North Dakota has the authority to, and does in fact, administer its reclamation laws and regulations in a manner that provides the same cedures of the State are as effective as required by Federal law. The Cooperative Agreement commits the State to this degree of environmental protection. The Agreement also recognizes that the procedures of the State are as affective as the procedures of the Department to enforce the requirements of the mining plan. If the State is unable to meet the terms of the Agreement, the Department has the duty to notify the State that it intends to cancel the Agreement. The Agreement calls for an exchange of information between the State and the Department and the Department may conduct inspections to determine whether the State is complying with the provisions of the Agreement.

The Department and the State regard four elements as central to the Agreement: Mine plans, inspections, enforcement provisions, and bonding requirements. The Department believes that the State of North Dakota is capable of administering and enforcing reclamation operations on federal coal leases in North Dakota in such a way that federal interests are protected.

Although the Agreement grants the State of North Dakota the authority for administering and enforcing reclamation operations, we note the following: The Federal Coal Leasing Amendments Act of 1975, Pub. L. 94-377, requires the Secretary to approve the mining plan of a federal lessee. Article IV, section C of the Agreement states that it is the Secretary's duty to review and approve mining plans in addition to the State review and approval. The Agreement does avoid the application of conflicting standards by allowing the submission of one mining plan to both the State and the Department.

Article VII, section A avoids the imposition of double bonds by providing that the Department's bond requirement, if higher than the State's, will only be for the amount of the difference between the two amounts.

This rulemaking takes no action under 30 CFR 211.75(a) and does not affect the requirements of 30 CFR 211.40, or the standards the Department will use to approve a mining plan. In addition, this rulemaking does not explicitly amend 43 CFR Subpart 3041, but the Department wishes to state that the enforcement and administration provisions of that Subpart will be administered consistently with the changes in 30 CFR Part 211 proposed here.

The environmental impacts of this proposed action are discussed in the final Environmental Impact Statement, Surface Management of Coal Resources (43 CFR Subpart 3041) and Coal Mining Operating Regulations (30 CFR Part 211). NEPA does not require and the Department has not prepared a separate impact statement for this action.

The proposal contains the text of the Cooperative Agreement but it also contains proposed technical changes in 30 CFR 211.10 and 211.74 to conform those rules to the adoption of the Cooperative Agreement.

The Department and the State of North Dakota believe that this Agreement can promote both coal production and proper surface coal mine reclamation by eliminating duplication in the administration and enforcement of reclamation laws.

The Department will accept and consider written comments on the proposed rulemaking until February 21, 1977. Comments should be directed to Deputy Under Secretary W. W. Lyons, Chairman, Task Force on the Determination of State Role in Federal Surface Coal Mine Programs, Department of the Interior, Washington, D.C. 20240.

Dated: January 19, 1977.

THOMAS S. KLEPPE,
Secretary of the Interior.

1. It is proposed that 30 CFR § 211.10 be amended by the addition of a new paragraph (e)(4) to read as follows:

§ 211.10 Exploration and mining plans.

* * * * *

(e) *States with 211.75(b) agreements.* * * *

(4) *North Dakota.* A Federal coal lessee in the State of North Dakota who must submit a mining plan or permit under both State and Federal law shall submit, in lieu of the mining plan required by this section, a mining plan containing the information required by:

(i) North Dakota Cent. Code 38-14-04;

(ii) North Dakota Public Service Commission Rules and Regulations for Reclamation of Surface Mined Lands, R38-14-04.1 through R38-14-04.20;

(iii) 30 CFR 211.10(c); and a statement certifying that the information has been given to the North Dakota Public Service Commission and the Department of the Interior.

2. It is proposed that 30 CFR 211.74 be amended by the addition of a new paragraph (g)(4) to read as follows:

§ 211.74 Variances.

* * * * *

(g) *States with 211.75(b) agreements.* * * *

(4) *North Dakota.* A federal coal lessee in the State of North Dakota shall request and receive a variance from a mining plan under the provisions of North Dakota Public Service Commission Rules and Regulations for Reclamation of Surface Mined Lands, R38–14–04.18 and 30 CFR 211.74.

3. It is proposed that the Department enter into and approve a Cooperative Agreement to designate the State of North Dakota as the principal party to enforce surface coal mine reclamation on Federal coal leases in the State of North Dakota, to read as follows:

COOPERATIVE AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF THE INTERIOR AND THE STATE OF NORTH DAKOTA under Section 32 of the Mineral Leasing Act of 1920, 30 U.S.C. Section 189, and Section 307 of the Federal Land Policy and Management Act of 1976, and 30 CFR 211.75(b).

THIS AGREEMENT (referred to as the Cooperative Agreement) is made between the STATE OF NORTH DAKOTA acting by and through its Governor and its Public Service Commission (referred to as the State) and the UNITED STATES DEPARTMENT OF THE INTERIOR, acting by and through the Secretary of the Interior or his duly authorized representative (referred to as the Secretary).

ARTICLE I

PURPOSE

This Cooperative Agreement provides for a cooperative program between the United States Department of the Interior and the State of North Dakota with respect to the administration and enforcement of surface coal reclamation requirements conducted under coal leases issued by the Department of the Interior under the Mineral Leasing Act of 1920. The basic purpose of the agreement is to prevent duality of administration and enforcement of surface reclamation requirements by designating the State of North Dakota as the principal entity to enforce reclamation laws and regulations in North Dakota.

ARTICLE II

EFFECTIVE DATE

The Cooperative Agreement is effective on the _____ day of _____, 19___, and remains in effect until terminated as provided in Article IX.

ARTICLE III

REQUIREMENTS FOR COOPERATIVE AGREEMENT

The State of North Dakota affirms that the State will comply with all of the provisions of this Cooperative Agreement and will continue to meet all the conditions and requirements specified in this Article upon which the approval of the Secretary is based.

A. *Responsible Administrative Agency.* The North Dakota Public Service Commission (hereinafter referred to as the State Agency) is, and shall continue to be, the sole agency responsible for administering this Cooperative Agreement on behalf of the State throughout the State of North Dakota.

B. *Authority of State Agency.* The State Agency designated in Paragraph A of this Article has, and shall continue to have, authority to carry out this Cooperative Agreement on behalf of the State throughout the State of North Dakota.

C. *State Reclamation Law.* The State Agency shall ensure that all mining plans covering coal subject to federal lease approved under this agreement shall afford general protection of the environment at least as stringent as would occur under the exclusive application of 30 CFR Part 211, and that the standards used to approve a mining plan of a Federal Lessee will not unreasonably impair coal mining that is in the overriding national interest.

D. *Effective of State Procedures.* The procedures of the State shall be, in the judgment of the Secretary, substantially as effective for the purpose of enforcing the reclamation requirements of 30 CFR Part 211 as the procedures of the Department of the Interior.

E. *Inspection of Mines.* The State affirms that the State Agency will inspect all mines located in the State, in accordance with the minimum schedules in Article V.

F. *Enforcement.* The State affirms that it will enforce the Agreement in a manner that ensures effective environmental protection.

G. *Qualified Personnel.* The State Agency will have an adequate number of fully qualified personnel necessary for the enforcement of this Cooperative Agreement.

H. *Funds.* The State will devote adequate funds for the administration and enforcement of reclamation requirements in the State.

I. *Reports and Records.* The State Agency shall make reports to the Secretary, containing information about its compliance with the terms of this Cooperative Agreement, as the Secretary shall from time to time require. The State Agency and the Secretary shall exchange, upon request, information developed under this Cooperative Agreement.

The Secretary affirms that the Department of the Interior will comply with all of the provisions of this Cooperative Agreement.

ARTICLE IV

MINE PLANS

Federal regulation, 30 CFR 211.10(c), and State laws and regulations require the operator of lands leased, permitted or licensed for coal mining to receive approval of a mining plan, or permit, or amendment thereto, prior to conducting operations.

A. *Contents of Mining Plans and Permits.* The State and the Secretary agree to require a Federal coal lessee who must submit a mining plan or permit application under both State and Federal law, to submit a plan or permit with the following information:

1. The information required by:

a. North Dakota Cent. Code § 38–14–04.

b. North Dakota Public Service Commission Rules and Regulations for Reclamation of Surface Mined Lands, R38–14–04.1 through R38–14–04.20.

c. 30 CFR 211.10(c).

2. A Statement certifying that a copy of the plan or permit has been given to both the State Agency and the Secretary.

If either the State or the Secretary requires the operator to submit additional information, the operator shall submit the information to both the State and the Secretary. The operator will request variance from the mining plan in accordance with 30 CFR 211.74, and shall file the request with the State Agency and the Secretary.

B. *Review of Plan.* The State Agency and the Secretary shall each review and analyze the adequacy of the plan or request for a variance from a plan or changes in an approved plan.

C. *Approval of Mining Plans.* The State Agency shall review the adequacy of the mining plan, any request for a variance, or a request for a change in a mining plan, as provided in North Dakota Public Service Commission Rules and Regulations for Reclamation of Surface Mined Lands, R30–14–04.18, and shall notify the Secretary of its action. The Secretary shall then review and take final action on the mining plan as required by 30 CFR 211.10(d), a request for a variance as required by 30 CFR 211.74, or a change in an approved mining plan which was acted upon by the State Agency. The Secretary shall notify the State Agency of his action, and the State Agency shall reconsider its action if necessary to comply with this Cooperative Agreement.

ARTICLE V

INSPECTIONS

A. The State Agency shall inspect as authorized by North Dakota Cent Code § 38–14–03.1 as frequently as necessary but at least quarterly the operations area of all Federal leases, permits and licenses where operations affecting the reclamation of mined lands are conducted or are to be conducted, for the purpose of determining whether the operator is complying with all requirements of approved mining plans.

B. The State Agency shall subsequent to conducting any inspection, file with the Secretary a copy of their report on (1) the general conditions of the lands under lease permit or license, (2) the manner in which the operations are being conducted, and (3) whether the operator is complying with applicable reclamation requirements. A copy of such report shall be furnished to the operator on request, and shall be made available for public inspection during normal business hours at the offices of the Mining Supervisor.

C. For the purpose of evaluating the manner in which the Cooperative Agreement is being carried out and to ensure that reclamation is being effectively performed, the Secretary may inspect from time to time mines on Federal coal leases within the State of North Dakota. Inspections by the Secretary may be made in association with regular inspection by the State Agency.

D. The Secretary may conduct inspections to determine whether the operator is complying with requirements that are unrelated to reclamation.

ARTICLE VI

ENFORCEMENT

A. If the State Agency determines that the operator is not complying with a requirement that relates to the reclamation of lands disturbed by surface mining, it shall take such steps as required by North Dakota Cent. Code § 38–14–03.1, and § 38–14–12.

B. If, in the judgment of the State Agency, an operator is conducting activities on lands subject to this Agreement which fail to comply with a requirement that relates to reclamation and those activities threaten immediate and serious damage to the environment, the State shall order the immediate cessation of such activities, as authorized by North Dakota Cent. Code § 38–14–03.1.

C. The State shall notify the Secretary of all violations of applicable laws regarding reclamation including violations of Federal laws and regulations or lease terms and of all actions taken under North Dakota Cent. Code § 38–14–03.1, and § 38–14–12.

D. This Article does not limit the Secretary's authority to seek cancellation of a Federal coal lease under Federal laws and regulations, or prevent the Secretary from taking appropriate steps to correct actions that violate Federal law, other than those incorporated in this Agreement, but not State law.

E. Failure to adequately enforce the reclamation laws and regulations shall be grounds for termination of this Cooperative Agreement.

ARTICLE VII

BONDS

A. *Amount and Responsibility.* The State Agency shall require all Federal coal lessees subject to the provisions of 30 CFR Part 211 to submit a bond as required by North Dakota Cent. Code § 38-14-07. The Secretary shall reduce the federal bond required for reclamation purposes under 43 CFR 3041.3, and 30 CFR 211.3 by the amount of the bond required by the State Agency only if the release of all or any portion of the State's bond is conditioned on compliance with the requirements of the approved plan, and the amount released is appropriate to the work completed. Where the surface of the lands is not owned by the United States, the State Agency shall notify the surface owner and solicit and take into account his comments before recommending release of the bond.

B. *Notification.* Prior to releasing the bond required by North Dakota Cent. Code § 38-14-07 for lands the surface of which is owned by the Federal Government, the State Agency shall consult with and seek the advice and consent of the Secretary.

C. *Release of Bond.* The State Agency shall hold the operator responsible and liable for successful reclamation as required by North Dakota Cent. Code § 38-14-07.

ARTICLE VIII

OPPORTUNITY TO COMPLY WITH COOPERATIVE AGREEMENT

The Secretary may, at his sole discretion, and without instituting or commencing proceedings for withdrawal of approval of the Cooperative Agreement, notify the State Agency that it has failed to comply with the provisions of the Cooperative Agreement. The Secretary shall specify how the State has failed to comply and shall specify and state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him that the State has remedied the defects in administration and is in compliance with and has met the requirements of the Secretary. Upon failure of the State Agency to meet the requirements of the Secretary within the time specified, the Secretary may institute proceedings for withdrawal of approval of the Cooperative Agreement as set forth in Article IX.

ARTICLE IX

TERMINATION OF COOPERATIVE AGREEMENT

The Cooperative Agreement may be terminated as follows:

A. *Termination by the State.* The Cooperative Agreement may be terminated by the State upon written notice to the Secretary, specifying the date upon which the Cooperative Agreement shall be terminated, but which date of termination shall not be less than 60 days from the date of the notice.

B. *Termination by the Secretary.* The Cooperative Agreement may be terminated by the Secretary whenever the Secretary finds, after giving due notice to the State and affording the State an opportunity for a hearing:

1. That the State has failed to comply substantially with any provision of the Cooperative Agreement; or

2. That the State has failed to comply with any assurance given by the State upon which the Cooperative Agreement is based, or any condition or requirement which is specified in Article III; or

3. That State action unrelated to surface coal mine reclamation will unreasonably and substantially prevent the mining of Federal coal.

C. *Termination by Operation of Law.* This Cooperative Agreement shall terminate by operation of law when no longer authorized by Federal laws and regulations.

D. *Notice of Proposed Termination.* Whenever the Secretary proposes to terminate the Cooperative Agreement he shall:

1. Give written notice to the Governor and to the State Agency specified in Article III;

2. Specify and set out in the written notice the grounds upon which he proposes to terminate the Cooperative Agreement;

3. Specify the date upon which and the place where tht State will be afforded an opportunity for hearing and to show cause why the Cooperative Agreement should not be terminated by the Secretary. The date upon which such hearing shall be held shall be not less than 30 days from the date of such notice, and the place of hearing shall be in the State of North Dakota.

4. The Secretary shall also publish a notice in the FEDERAL REGISTER containing the items in 1-3 of this paragraph.

5. Within 30 days of the date of the written notice specifying the date of the hearing, the State shall file a written notice with the Secretary stating whether or not it will appear and participate in the hearing. The notice shall specify the issues and grounds specified by the Secretary for termination which the State will oppose or contest and a statement of its reasons and grounds for opposing or contesting. Failure to file a written notice in the Office of the Secretary within 30 days shall constitute a waiver of the opportunity for hearing, but the State may present or submit before the time fixed for the hearing written arguments and reasons why the Cooperative Agreement should not be terminated, and within the discretion of the Secretary may be permitted to appear and confer in person and present oral or written statements, and other documents relative to the proposed termination.

E. *Conduct of Hearing.* The hearing will be conducted by the Secretary. A record shall be made of the hearing and the State shall be entitled to obtain a copy of the transcript. The State shall be entitled to have legal and technical and other representatives present at the hearing or conference, and may present, either orally or in writing, evidence, information, testimony, documents, records, and materials as may be relevant and material to the issues involved.

F. *Notice of Withdrawal of Approval of Cooperative Agreement.* After a hearing has been held, or the right to a hearing has been waived or forfeited by the State, the Secretary, after consideration of the evidence, information, testimony, and arguments presented to him shall advise the State of his decision. If the Secretary determines to withdraw approval of the Cooperative Agreement, he shall notify the State Agency of his intended withdrawal of approval of the Cooperative Agreement, and afford the State an opportunity to present evidence satisfactory to the Secretary that the State has remedied the specified defects in its administration of the Cooperative Agreement. The Secretary shall state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him, and upon failure of the State to do so within the time stated, the Secretary may thereupon withdraw his approval of the Cooperative Agreement without any further opportunity afforded to the State for a hearing.

ARTICLE X

REINSTATEMENT OF COOPERATIVE AGREEMENT

The Cooperative Agreement which has been terminated may be reinstated upon application by the State and upon giving evidence satisfactory to the Secretary that the State can and will comply with all the provisions of the Cooperative Agreement and has remedied all defects in administration for which the Cooperative Agreement was terminated.

ARTICLE XI

AMENDMENTS OF COOPERATIVE AGREEMENT

This Cooperative Agreement may be amended by mutual agreement of the State and the Secretary. An amendment proposed by one party shall be submitted to the other with a statement of the reasons for such proposed amendment. The amendment shall be adopted after rulemaking and the party to whom the proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment, and if rejected shall state the reasons for rejection.

ARTICLE XII

CHANGES IN STATE OR FEDERAL STANDARDS

The Secretary of the Interior or the State of North Dakota may from time to time revise and promulgate new or revised reclamation requirements or enforcement and administration procedures. The Secretary and the Governor shall immediately inform the other of any final changes in their respective laws or regulations. Each party shall, if it determines it to be necessary to keep this Cooperative Agreement in force, change or revise its respective laws or regulations. For changes which may be accomplished by rulemaking, each party shall have six months in which to make such changes. For changes which require legislative authorization, each party has until the close of its next legislative session at which such legislation can be considered in which to make the changes. If such changes are not made, then the termination provision of Article IX may be invoked.

ARTICLE XIII

QUALIFICATIONS AND EXPERIENCE OF PERSONNEL

The State Agency, under appropriations from the Legislature, shall be adequately staffed with, or have readily available to it, an adequate number of qualified personnel to carry out fully the requirements of the Cooperative Agreement.

ARTICLE XVI

CONFLICT OF INTEREST

No member of the State Agency or agencies responsible for the administration of the State law and rules and regulations relating to this Cooperative Agreement shall participate in the review, analysis, administration, decision-making, or enforcement actions relating to any operation subject to this Cooperative Agreement if such person has, directly or indirectly, any financial interest in a company, partnership, organization, or corporation (parent or subsidiary) which owns, operates or has a financial interest in such operations subject to this Cooperative Agreement.

ARTICLE XV

EQUIPMENT AND LABORATORIES

The State Agency, under appropriations from the Legislature, shall have the equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed or determined, and which are necessary to carry out the requirements of the Cooperative Agreement or have access to such facilities and personnel.

ARTICLE XVI

EXCHANGE OF INFORMATION

A. *Organizational and Functional Statement.* The State Agency and the Secretary shall advise each other of the organization, structure, functions, and duties of the offices, departments, divisions, and persons within their organizations. Each shall advise promptly the other in writing of changes in personnel, officials, heads of departments or divisions, or a change in the functions or

duties of persons occupying the principal offices within the organization. The State Agency and the Secretary shall advise each other in writing the location of its various offices, addresses, telephone numbers, and the names, locations, and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible, and shall advise promptly of any changes in such.

B. *Laws, Rules and Regulations.* The State Agency and the Secretary shall provide to each other copies of their respective laws, rules, regulations and standards pertaining to the enforcement and administration of this Cooperative Agreement and promptly furnish copies of any final revision of such laws, rules, regulations, and standards when the revision becomes effective.

ARTICLE XVII

RESERVATION OF RIGHTS

This Cooperative Agreement shall not be construed as waiving or preventing the assertion of any rights the Governor and the Secretary may have under the Mineral Leasing Act, the Constitution of North Dakota or the Constitution of the United States.

STATE OF NORTH DAKOTA,
ARTHUR A. LINK,
Governor of North Dakota.

RICHARD ELKIN,
Chairman, Public Service Commission.

DEPARTMENT OF THE INTERIOR,
THOMAS S. KLEPPE,
Secretary of the Interior.

[FR Doc.77-2260 Filed 1-24-77;8:45 a.m.]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 674-2]

ALABAMA

Approval and Promulgation of Implementation Plans

On May 31, 1972 (37 FR 10847), the Administrator approved the Alabama plan to attain and maintain the National Ambient Air Quality Standards in that State. The State continually revises the plan to improve its effectiveness. On May 25, 1976 after notice and public hearing, the Alabama Air Pollution Control Commission adopted additional changes in its air pollution control regulations. These changes were submitted as proposed implementation plan revisions to the Agency's Region IV office in Atlanta. The purpose of this notice is to describe the proposed changes in the Alabama plan and to invite public comment on them.

Part 5.3, Sulfur Recovery Plants, is replaced by a part titled, "Petroleum Production." This part applies to the regulation for facilities that handle natural gas or refinery gas that contains more than 0.10 grains of hydrogen sulfide per standard cubic foot (SCF). In subpart 5.3.2., No person shall cause or permit the emission of a process gas stream containing more than 0.10 grains hydrogen sulfide per SCF into the atmosphere unless it is properly burned to maintain ground level concentrations of hydrogen sulfide to less than 20 parts per billion beyond plant property limits, averaged over a 30-minute period. In subpart 5.3.3, No person shall cause or permit the sulfur oxide emission from any facility designed to dispose of, or process, natural gas or refinery gas containing more than 0.10 grains hydrogen sulfide per SCF to exceed the following:

CATEGORY I COUNTIES

Available sulfur (long tons per day):	*Permitted emissions of sulfur dioxide*
Up to 5	No limit.
5 to 35	373 lb/h.
35 to 75	0.10 lb SO_2 per pound of sulfur processed.
Over 75	0.08 lb SO_2 per pound of sulfur processed.

CATEGORY II COUNTIES

Up to 10	No limit.
10 to 50	560 lb/h.
50 to 100	0.10 lb SO_2 per pound of sulfur processed.
Over 100	0.08 lb SO_2 per pound of sulfur processed.

The allowable emissions of sulfur dioxide are increased as follows to allow for dry acid gas streams containing less than 60 percent hydrogen sulfide:

Mol percent of hydrogen sulfide tons per day):	*Additonal SO_2 of sulfur dioxide*
50% but less than 60%	.02 lb SO_2 per pound of sulfur processed.
40% but less than 50%	.04 lb SO_2 per pound of sulfur processed.
30% but less than 40%	.06 lb SO_2 per pound of sulfur processed.
20% but less than 30%	.10 lb SO_2 per pound of sulfur processed.
Less than 20%	Must utilize the best available control technology, with consideration to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

In subparts 5.3.4 (a) and (b), the following counties are classified Category I Counties: Jackson, Jefferson, and Mobile; all other counties are classified as Category II. A new Part 5.5 is added and applies to facilities not regulated by Parts 5.1, 5.2, 5.3, and 5.4. In subpart 5.3.2, No person shall construct and operate a new or modified sulfur compound emission source that does not meet any and all applicable New Source Performance Standards and utilize the best available control technology, with consideration to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility. In subpart 5.5.3, No person shall construct and operate a new or modified emission source that will cause or contribute to a condition such that either the primary or the secondary sulfur dioxide ambient air quality standards are exceeded in the area.

Copies of the information submitted by Alabama may be examined by the public during normal business hours at the following locations:

Air Programs Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region IV, 345 Courtland St. NE., Atlanta, Georgia 30308.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20160.

Alabama Air Pollution Control Commission, 645 South McDonough St., Montgomery, Alabama 36104.

Interested persons are encouraged to submit written comments on the Alabama plan revisions. To be considered, such comments must be received on or before February 24, 1977, and should be addressed to Eliot Cooper of the Agency's Region IV Air Programs Branch in Atlanta (see address above). After carefully weighing relevant comments received and all other information available to him, the Administrator will take approval/disapproval action on these changes in the Georgia plan.

(Section 110 of the Clean Air Act (42 U.S.C 1857c-5).)

Dated: January 13, 1977.

JOHN A. LITTLE,
Acting Regional Administrator.

[FR Doc.77-1973 Filed 1-24-77;8:45 am]

DEPARTMENT OF THE INTERIOR

[43 CFR Part 2]

RECORDS AND TESTIMONY

Mineral Resource Data Information; Proposed Rulemaking

The Department of the Interior is considering promulgation of regulations to prescribe rules for the handling of mineral resource data information in the Department's possession which may be entitled to confidential treatment. The primary purpose of the regulation is to establish the substantive criteria which the Department will apply in determining whether mineral resource data and information which it receives is entitled to confidential treatment so that both the submitters of such information and the public are fully informed of the Department's policy.

It is proposed to promulgate a new subpart C of Title 43, Code of Federal Regulations, to contain all substantive Departmental regulations governing the treatment of mineral resource data and information which are entitled to confidential treatment. Existing subparts C, D, and E would be redesignated as D, E, and F. In addition, the new subpart will contain special provisions concerning the confidential treatment of data and information relating to coal as required by the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377). A number of existing regulations relating to confidentiality of mineral resource data and information which appear in Title 43 and Title 30 of the Code of Federal Regulations would be revoked or revised to conform to the new subpart. Notices of these revocations or revisions will be published in the FEDERAL REGISTER when and if the new subpart C is adopted.

Relationship to subpart B. Subpart B contains the Department's general regulations and procedures implementing the Freedom of Information Act, 5 U.S.C. Section 552. Those regulations contain no provisions requiring consultation with persons who may have submitted information either voluntarily or involuntarily which they may regard as entitled to confidential treatment, other than the provision in 43 CFR § 2.13(h) which provides that if a requested record was obtained by the Department from a person or entity outside of the Government the official responsible for processing the request shall seek the views of that person or entity "when it is administratively feasible to do so." Likewise, the existing regulations do not provide any procedures or guidelines for persons wishing to assert a claim of confidentiality, or for advance determination that certain types of mineral resource information is entitled to confidential treatment. The proposed new subpart would thus correct these deficiencies in the Department's present regulations.

Policy pending final promulgation of subpart. The Department will continue to follow the procedures in existing subpart B and other regulations in responding to requests for information, and, where mineral resource data and information is requested, to the extent that it is possible under existing regulations, will follow the general approach in the proposed subpart until the final version is promulgated. Pending final promulgation the Department will not utilize those provisions in the proposed subpart which impose new, affirmative requirements on persons who desire that the Department not release mineral resource information. For example, § 2.22 which requires timely assertion of a claim of confidentiality and contains the consequences of failure to assert such a claim by marking the data and information at the time of submission, will not be relied upon to justify disclosure of mineral resource information over the objections of the submitter. Nor will the Department use the provisions of § 2.24 (d) which require a person to institute an action in court to obtain preliminary injunctive relief within 10 days after being informed that the Department has determined that a claim of confidentiality should be denied and the mineral resource information should be released.

As a matter of policy the Department will require the substantiation of a claim of confidentiality, and will require such substantiation to be furnished quickly in order to process initial determinations and appeals involving Freedom of Information Act requests. Likewise, the substantive criteria in § 2.25 for determining confidentiality of mineral resource information will be applied by the Department prior to final promulgation, as will the provisions in § 2.27 regarding disclosure in special circumstances.

Interested parties may participate in the proposed rulemaking by submitting comments and objections to the Office of the Solicitor, United States Department of the Interior, Washington, D.C. 20240. Comments received on or before February 24, 1977 will be considered before taking final action on the proposal.

W. W. LYONS,
Deputy Under Secretary of the Interior.

JANUARY 29, 1977.

It is proposed to revise 43 CFR Part 2 by redesignating existing subparts C, D and E as D, E, and F and by adding a new subpart C to read as follows:

Subpart C—Confidentiality of Mineral Resource Information

Sec.
2.20 Definitions.
2.21 Applicability of subpart; priority where provisions conflict.
2.22 Notice to be included in requests, demands, and forms; method of asserting confidentiality claim; effect of failure to assert claim at time of submission.
2.23 Initial action by bureaus.
2.24 Final confidentiality determinations.
2.25 Substantive criteria for use in confidentiality determinations.
2.26 Advance confidentiality determinations.
2.27 Disclosure in special circumstances.
2.28 Safeguarding of mineral resources information; penalty for wrongful disclosure.
2.30 Special rules governing certain information concerning coal obtained under the Mineral Leasing Act.

AUTHORITY: 5 U.S.C. 552.

Subpart C—Confidentiality of Mineral Resource Information

§ 2.20 Definitions.

For the purposes of this subpart: (a) "person" means an individual, partnership, corporation, association, or other public or private organization or legal entity, including Federal, State or local governmental bodies and agencies.

(b) "mineral resource data and information" means any geological and geophysical data and information, including maps, which may be used to calculate mineral reserves in place, drill hole data and information, core drilling analyses, geophysical data, processed and reprocessed geophysical information and interpreted geophysical information, and geological data and analyzed and interpreted geological information, and includes trade secrets and commercial or financial information concerning mineral resources, mining methods, mineral beneficiation and processing.

(c) "reasons of confidentiality" include the concept of trade secrecy and other related legal concepts which give or may give persons the right to preserve the confidentiality of mineral resource data and information and to limit its use or disclosure to or by others in order that they may obtain or retain competitive advantages they derive from their rights in the information.

(d) "confidentiality claim" means a claim or allegation that mineral resource data and information are entitled to confidential treatment or a request for a determination that such information is entitled to such treatment.

(e) "voluntary submitted information" means mineral resource data and information in the Department's possession: (1) the submission of which the Department had no statutory or contractual authority to require; and (2) the submission of which was not prescribed by statute or regulations as a condition for obtaining some benefit.

(f) "Bureau" means any constituent bureau or office of the Department of the Interior, including the Office of the Secretary and other Departmental offices.

§ 2.21 Applicability of subpart; priority where provisions conflict.

(a) Sections 2.20 through 2.28 establish basic rules governing confidentiality claims, the handling by the Department of all mineral resource data and information in its possession which are or may be entitled to confidential treatment, and determinations by the Department of whether information is entitled to confidential treatment.

(b) The Mineral Leasing Act of 1920, as amended, contains special provisions concerning the entitlement to confidential treatment of data and information relating to coal. Section 2.30 prescribes special rules relating to the treatment to be given certain categories of mineral resource data and information obtained by the Department under the Act's provisions.

(c) The basic rules of §§ 2.20 through 2.28 govern except to the extent that they are modified or supplanted by the special rules of § 2.30 respecting coal resources. In the event of a conflict between the provisions of the basic rules and those of a special rule respecting coal, the provision of the special rule shall govern.

(d) The subpart does not apply to questions concerning entitlement to confidential treatment of mineral resource information which concerns an individual solely in his personal, as opposed to his business capacity.

§ 2.22 Notice to be included in requests, demands, and forms; method of asserting confidentiality claim; effect of failure to assert claim at time of submission.

(a) *Notice.* Whenever an authorized representative of a bureau makes a written request or demand that a person furnish mineral resource data and information, which in the bureau's opinion, are likely to be regarded by the submitter as entitled to confidential treatment under this subpart, or whenever a bureau prescribes a form for use in furnishing such information, the request, demand or form shall include or enclose a notice which—

(1) States that the person may, if he desires, assert a confidentiality claim covering part or all of the data and information, in the manner prescribed in paragraph (b) of this section, and that data and information covered by such claim will be disclosed by the Department only to the extent and by means of the procedures set forth in this subpart; and

(2) States that if no such claim accompanies the data and information when they are received by the Depart-

ment, they may be made available to the public by the Department without further notice to the person.

(b) *Method of asserting claim.* A person submitting mineral resource data and information to the Department may assert a confidentiality claim by placing on (or attaching to) the data and information at the time of submission to the Department, a cover sheet, a stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential". Allegedly confidential portions of otherwise non-confidential documents should be clearly identified, and may be submitted separately to facilitate identification and handling. If confidential treatment is desired only until a certain date or the occurrence of a certain event, the notice should so state.

(c) *Failure to assert claim.* If information was submitted to a bureau, on or after the effective date of this subpart, in response to a request or demand (or on a prescribed Departmental form) which contained the substance of the notice required by paragraph (a) of this section, and if no confidentiality claim accompanied the data and information when they were received by the bureau, the notice to the submitter required by § 2.23(c)(1) need not be sent.

§ 2.23 Initial action by bureaus.

(a) *Situations requiring action.* This section prescribes the procedures to be followed by bureaus in making an initial determination of whether mineral resource data and information are entitled to confidential treatment. Actions shall be taken under this section whenever a bureau:

(1) receives a request under 5 U.S.C. 552 for the release of mineral resource data and information; in such a case the bureau shall issue an initial determination within the period of time specified in § 2.16 of this Part; or

(2) desires to determine whether mineral resource data and information are entitled to confidential treatment, even though no request for the release of the information has been received.

(b) *Confidentiality determinations.* Whenever a request for release of information under 5 U.S.C. 552 is received the bureau shall—

(1) first determine whether there has been a previous determination of confidentiality issued by the Office of the Solicitor acting under this subpart, or by a Federal court, holding that the data and information requested are entitled to confidential treatment. If such a determination has been made the bureau shall inform the requester that the request is denied; or

(2) if no previous determination of confidentiality has been made, examine the information and its records to determine whether an assertion of confidentiality has been made as provided in § 2.22(b). If a claim of confidentiality has been asserted the bureau shall take action under paragraph (c) of this section.

(c) *Preliminary determination.* Whenever action under this paragraph is required by paragraph (b)(ii) of this section the bureau shall make a determination with respect to the assertion of confidentiality governing the data and information involved. Such determination shall take into account the applicable substantive criteria in § 2.25 and any previously issued determinations which are applicable.

(1) If, in connection with any confidentiality claim, a bureau determines that the information may be entitled to confidential treatment, the bureau shall—

(i) send to the person asserting a claim of confidentiality concerning the information involved a written notice by certified mail (return receipt requested) stating that a request for the information has been received under 5 U.S.C. § 552; that the bureau is determining under this subpart whether the information is entitled to confidential treatment, and according the person 15 working days from receipt of the written notice within which to send any comments or objections. The notice shall specify that information may be disclosed without further notice if comments are not received within the 15 day period;

(ii) inform the person whose request for release of the information is pending under 5 U.S.C. 552 that the information requested may be entitled to confidential treatment under this subpart and 5 U.S.C. § 552(b)(4) and/or (b)(9); that further inquiry by the Department is necessary before a final determination on the request can be issued; that the request is therefore initially denied, and that after further inquiry a final determination will be issued by the Office of the Solicitor; and

(iii) refer the matter to the appropriate legal office of the Office of the Solicitor.

(2) The written notice required by paragraph (c)(1)(i) of this section shall in addition invite comments on the following points:

(a) the portions of the information which are alleged to be entitled to confidential treatment;

(b) the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specified event, or permanently);

(c) the purpose for which the information was furnished to the Department and the approximate date of submission, if known;

(d) measures taken to guard against undesired disclosure of the information to others;

(e) the extent to which the information has been disclosed to others; and the precautions taken in connection therewith;

(f) whether the person asserts that disclosure of the information requested would be likely to result in substantial harmful effects on his competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects; and

(g) whether the information is voluntarily submitted as defined in § 2.20(e), and if so, whether and why disclosure of the information would tend to lessen the availability of the information in the future.

§ 2.24 Final confidentiality determinations.

(a) The appropriate legal office of the Office of the Solicitor (see subparagraphs (d)(1)(i), (ii), and (iii) of this section) is responsible for making the final administrative determination of whether or not mineral resource information covered by a confidentiality claim is entitled to confidential treatment under this subpart.

(1) Whenever a request under 5 U.S.C. § 552 involves records located in field installations the regional solicitor providing legal services for such installation shall make the final determination.

(2) Whenever a request under 5 U.S.C. 552 involves records located at the headquarters installation of a bureau the associate solicitor providing legal services for such bureau shall make the final determination.

(3) Advance confidentiality determinations under § 2.25 shall be made by the appropriate associate solicitor.

(b) *Comment period; extensions; untimeliness as waiver of claim.*

(1) Any person who has been furnished the notice to comment prescribed by § 2.23(c)(1) shall furnish his comments to the office specified in the notice in a manner calculated to result in receipt of such comments no later than the date specified for receipt in the notice.

(2) The period for submission of comments may be extended if a request for an extension is made and approved by the appropriate office of the Solicitor. Requests for extension will not be approved except in extraordinary circumstances without the consent of the person whose request for release of information under 5 U.S.C. 552 is pending.

(3) If no comments are received within the time specified, in the notice, or within an extended comment period; a claim of confidentiality shall be deemed to be waived and the information shall be considered to be available to the public.

(c) *Determination that information is entitled to confidential treatment.* If the Office of the Solicitor determines that the information involved is entitled to confidential treatment for the full period requested by the person who made the claim, the Department will maintain the information in confidence for such period, subject to disclosure in special circumstances as prescribed in § 2.27 of this subpart.

(d) *Determination that information is not entitled to confidential treatment; notice, waiting period; release of information.* (1) If the Office of the Solicitor determines that a claim of confidentiality should be denied in whole or in part a written notice of denial shall be sent to the person asserting the claim. The

notice of denial shall state: (i) The basis for the denial;

(ii) That the denial constitutes final Departmental action concerning the confidentiality claim;

(iii) That the Department will make the information available to the public on the tenth working day after the person's receipt of the written notice unless the Office of the Solicitor has been notified of the commencement of an action in a Federal court to obtain judicial review of the determination and to obtain preliminary injunctive relief against disclosure;

(iv) That the Department may make the information available to the public if the Federal court has denied a motion for a preliminary injunction or has upheld the Department's determination, or whenever the Office of the Solicitor, after reasonable notice, determines that appropriate measures are not being taken to obtain a speedy resolution of the action; and

(v) That the information will not be released to the public prior to the end of the period of temporary entitlement to confidential treatment.

(2) The period of time within which an action to obtain judicial review of a decision denying confidential treatment may be extended if a request for extension is received before the expiration and is approved by the Office of the Solicitor. Extensions will not be approved except in extraordinary circumstances without the consent of any person who has requested release of the information pursuant to 5 U.S.C. 552.

§ 2.25 Substantive criteria for use in confidentiality determinations.

Mineral resource information shall be determined to be entitled to confidential treatment if—

(a) A claim of confidentiality has been asserted which has neither expired by its terms, nor has been waived nor withdrawn;

(b) It has been shown that the person supplying the information to the Department has taken reasonable measures to protect the confidentiality of the information, and that such measures will be continued;

(c) The information is not, and has not been, reasonably obtainable without the person's consent by other persons (other than governmental bodies) by use of legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;

(d) There is no statute specifically requiring disclosure of the information; and

(e) Either—

(1) It has been satisfactorily shown that disclosure of the information is likely to cause substantial harm to a person's competitive position; or

(2) The information is voluntarily submitted information and its disclosure would be likely to seriously impair the Government's ability to obtain the information in the future.

§ 2.26 Advance confidentiality determinations.

(a) An advance determination under this section may be issued by the Office of the Solicitor if—

(1) The Department has requested, or proposes to request that mineral resource information be furnished to it;

(2) There is reason to believe persons required to submit the information will assert that the information if submitted would constitute voluntarily submitted information under § 2.20(e);

(3) There is reason to believe that persons will vountarily submit the information for use by the Department only if the Department first determines that the information is entitled to confidential treatment under this subpart; and

(4) The bureau which desires submission of the information has requested that the Office of the Solicitor issue a determination under this section.

(b) If the Office of the Solicitor determines that the information involved would constitute voluntarily submitted information and that it is entitled to confidential treatment, a notice of such determination shall be published in the FEDERAL REGISTER which describes the information involved, the basis for the conclusion that the information is entitled to confidential treatment, and states that such information will not be released to the public unless or until such time as the determination is modified or revoked.

§ 2.27 Disclosure in special circumstances.

(a) *General.* Mineral resource information which under this subpart is not available to the public may be disclosed to the persons in the manner, and under the circumstances described in this section.

(b) *Disclosure to Congress or the Comptroller General.* Upon receipt of a written request the Department will disclose mineral resource information to either House of Congress, to a committee or subcommittee of Congress, or to the Comptroller General, unless a statute forbids such disclosure. Whenever such disclosure is made the Department will inform the requester of any unresolved claims of confidentiality, and any determination that the information is entitled to confidential treatment.

(c) *Disclosure to other Federal or State agencies.* The Department may disclose mineral resource information to Federal or State agencies if—

(1) It is required by Federal law to disclose such information; or

(2) It receives a written request for disclosure from a duly authorized officer or employee of such agency;

(3) The written request describes the official purpose for which the information is needed;

(4) The requesting agency agrees not to disclose further unless—

(i) The other agency has obtained the consent of the affected person to the proposed disclosure; or

(ii) The other agency has received a written statement from the Solicitor agreeing to the proposed disclosure.

(d) *Court-ordered disclosure.* The Department shall disclose any mineral resource information when so ordered by a Federal court.

(e) *Disclosure within the Department.* A Department office, officer, or employee may disclose any mineral resource information to another Department office, officer, or employee with an official need for the information.

(f) *Disclosure with consent.* Mineral resource information subject to confidential treatment may be disclosed whenever the Department obtains prior consent of each affected person.

§ 2.28 Safeguarding of mineral resource information; penalty for wrongful disclosure.

(a) No Department officer or employee may disclose, or use for his private gain or advantage, any mineral resource information in his possession, or to which he gained access, by virtue of his official position or employment, except as authorized by this subpart.

(b) Department officers or employees who have custody or possession of mineral resource information shall take appropriate measures to protect such information from improper disclosure.

(c) Violation of paragraphs (a) and (b) of this section shall constitute grounds for dismissal, suspension, fine, or other adverse personnel action. Willful violations of paragraph (a) may result in criminal prosecution under 18 U.S.C. 1905 or other applicable statutes.

(d) Each contractor with the Department or any subcontractor of such contractor, and each employee of the contractor or subcontractor, who is furnished mineral resource information by the Department shall use or disclose such information only as permitted by the contract under which the information was furnished. Any violation of this paragraph shall constitute grounds for debarment or suspension of the contractor or subcontractor or the contractors or subcontractor's employee in question. Willful violation of this paragraph may result in criminal prosecution.

§ 2.30 Special rules governing certain information concerning coal obtained under the Mineral Leasing Act.

(a) *Definitions.* As used in this § 2.30:

(1) "Act" means the Mineral Leasing Act of February 25, 1920, as amended by the Act of August 4, 1976. P.L. 94-377 (30 U.S.C. § 181 et seq).

(2) "Exploration license" means a license issued by the Secretary of the Interior to conduct coal exploration operations on lands subject to the Act pursuant to the authority in section 2(b) of the Act, as amended (30 U.S.C. 201 (b)).

(3) "Fair market value of coal to be leased" means the fair market value of coal as determined by the Secretary of the Interior underlying leasing tracts offered in general lease sales or reserved

and offered for lease to public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations controlled by any of such entities, pursuant to section 2(a) of the Act (30 U.S.C. 201(a)(1)).

(b) *Applicability.* (1) This section applies to the following categories of mineral resource information—

(i) *Category A.* Information and data provided to or obtained by a bureau under section 2(b)(3) of the Act by the holder of a coal exploration license.

(ii) *Category B.* Information and data purchased by a bureau from commercial or other sources pursuant to section 8A (b) of the Act, and information and data developed by the United States Geological Survey under an exploratory program authorized by Section 8A of the Act;

(iii) *Category C.* Information and data obtained from commercial sources while not under contract with the United States Government;

(iv) *Category D.* Information and data provided to the Secretary by a Federal department or agency pursuant to section 8A(e) of the Act; and

(v) *Category E.* The fair market value of coal to be leased and comments received by the Secretary with respect to such value.

(c) *Availability of data and information.* Information obtained by the Department from various sources shall be made available to the public as follows—

(1) *Category A—Information.* All coal data and information in Category A furnished to the Secretary by the holder of an exploration license under Section 2(b)(3) of the Act shall not be disclosed to the public until after the areas to which the data and information pertains have been leased by the Department, or until the Secretary determines that release of the information to the public would not damage the competitive position of the licensee, whichever comes first.

(2) *Category B—Information.* Mineral resource data and information in Category B purchased by a bureau from commercial or other sources shall be made available to the public in accordance with the terms and conditions of the contract or purchase agreement.

(3) *Category C—Information.* Confidential and proprietary data and mineral resource information in Category C purchased from commercial sources not under contract with the United States Government shall not be made available to the public until after the areas to which the information and data pertain have been leased by the Department.

(4) *Category D—Information.* Confidential and proprietary mineral resource data and information in Category D obtained pursuant to section 8A(e) of the Act shall be made available to the public under the terms and conditions agreed to by the head of the department or agency from whom the information is requested.

(5) *Category E—Information.* Category E shall not be made public until the lands have been leased.

[FR Doc.77-2262 Filed 1-24-77;8:45 am]

Bureau of Land Management

[43 CFR Part 4700]

RANGE MANAGEMENT

Wild Free-Roaming Horse and Burro Management

This proposed rulemaking amends 43 CFR Part 4700, "Wild Free-Roaming Horse and Burro Protection, Management, and Control," to implement section 9 of the Wild Free-Roaming Horse and Burro Act (16 U.S.C. 1331–1340) as provided by section 404 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701). This amendment to the Wild Free-Roaming Horse and Burro Act authorizes the use of helicopters or, for the purpose of transporting captured animals, motor vehicles in administering the provisions of the Wild Free-Roaming Horse and Burro Act, as amended (16 U.S.C. 1331-1340). The provision also directs that the use of helicopters and motor vehicles be undertaken (1) in accordance with humane procedures prescribed by the Secretaries of the Interior and Agriculture, (2) under the direct supervision of the appropriate Secretary or a duly authorized officer or employee of their Departments, and (3) only after a public hearing.

This proposed rulemaking establishes the procedures to be used in carrying out the amendment to the Wild Free-Roaming Horse and Burro Act by:

1. Amending the authority section (§ 4700.0–3) to reflect the amendment to the Act of December 15, 1971 (16 U.S.C. 1331–1340).

2. Defining the terms "the Act," "malicious harassment," "captured animal," and "humane procedures."

3. Revising § 4720.2, "Claimed Animals," to exclude the use of helicopters for the gathering operations of claimed animals.

4. Establishing procedures for using fixed-wing aircraft, helicopters, and motor vehicles in management operations.

5. Establishing humane procedures for the use of helicopters and motor vehicles.

Since both the Forest Service and BLM are subject to the provisions of the Wild Free-Roaming Horse and Burro Act as amended by the Federal Land Policy and Management Act of 1976, both Agencies are issuing rulemaking proposals in the FEDERAL REGISTER. During the period allowed for public comment, joint public hearings will be held on the subject of using helicopters and motorized vehicles as proposed in the rulemaking. Written comments and comments received at the hearings will be carefully analyzed prior to final rulemaking. Public meetings will be held in each District prior to a scheduled gathering of wild free-roaming horses or burros. Procedures to be used in the conduct of such roundups, including the use of helicopters, will be discussed at that time.

The hearings listed below are intended to provide the public an opportunity to comment on, and seek answers to questions about, the proposed rules. The hearing schedule is as follows:

State	Date/time (1977)	Place
Arizona	Mar. 2, 1 p.m. to 5 p.m.	Maricopa County Board of Supervisors Auditorium, 205 West Jefferson St., Phoenix, Ariz.
California	Mar. 5, 10 a.m. to 4 p.m.	Yuba Room, Sacramento Community Center, 14th and K Sts., Sacramento Calif.
Colorado	Mar 23, 10 a.m.	City Hall Auditorium, 5th and Rood Sts., Grand Junction, Colo.
Idaho	Mar. 15, 7:30 p.m.	Rodeway Inn, 20th and Chinden Blvd., Boise, Idaho.
Montana	Mar. 15, 2 p.m.	Room 152, Library Building, Eastern Montana College, Billings, Mont.
Nevada	Mar. 15, 3 to 5 p.m. and 7 to 9 p.m.	Pioneer Motor Inn, 221 South Virginia, Reno, Nev.
New Mexico	Mar. 3, 7 p.m.	Albuquerque Convention Center, Navajo Nambe Room, Albuquerque, N. Mex.
Oregon	Mar. 2, 7:30 p.m.	Harney County Court House, Burns, Oreg.
Utah	Mar. 2, 7 p.m.	Salt Palace, Room 220, Salt Lake City, Utah.
Wyoming	Mar. 16, 7:30 p.m.	College Meeting Room, Western Wyoming College, Rock Springs, Wyo.

The Department of the Interior 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.

It is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) is not required.

In accordance with the Federal Land Policy and Management Act of 1976, interested parties may submit written comments, suggestions, or objections with respect to the proposed rules to the Director (210), Bureau of Land Management, Washington, D.C. 20240, until April 22, 1977.

Copies of comments, suggestions, or objections made pursuant to this notice will be available for public inspection in the Division of Legislation and Regulatory Management, Bureau of Land Management, Room 5555, Interior Building, Washington, D.C., during regular business hours (7:45 a.m.–4:15 p.m.).

It is therefore proposed to revise 43 CFR 4700 in the manner set forth below.

1. Section 4700.0–3 is revised to read as follows:

§ 4700.0–3 Authority.

The Act of December 15, 1971 (16 U.S.C. 1331–1340), as amended, and the Act of June 28, 1934 (43 U.S.C. 314–315r).

2. Section 4700.0–5 is amended by revising paragraph (i) and by adding new paragraphs (k), (l), and (m) to read as follows:

§ 4700.0–5 Definitions.

* * * * *

(i) "Act" means the Act of December 15, 1971 (16 U.S.C. 1331–1340), as amended.

* * * * *

(k) "Malicious harassment" means any intentional act which creates a likelihood of injury, or is detrimental to normal behavior patterns of wild free-roaming horses and burros including feeding, watering, resting, and breeding. Such acts include, but are not limited to, unauthorized chasing, pursuing, herding, roping, or attempting to gather or catch wild free-roaming horses and burros. It does not apply to lawfully conducted activities by or on behalf of the Bureau of Land Management or the Forest Service in implementation or performance of duties and responsibilities under this Act.

(l) "Captured animal" means a wild free-roaming horse or burro taken and held in the custody of the authorized officer. This term does not apply to an animal placed in private custody through a cooperative agreement under § 4740.2 (b) or § 4750.2.

(m) "Humane procedure" means kind and merciful treatment, without causing unnecessary stress or suffering to the animal in all actions involving roundups, other capture operations, handling, transporting, or other involvement with wild free-roaming horses and burros.

3. Section 4720.2 is amended by revising paragraph (a) to read as follows:

§ 4720.2 Claimed animals.

(a) Any person claiming ownership under State branding and estray laws of unbranded or branded horses or burros on public land where such animals are not authorized must present evidence of ownership to justify a roundup before permission will be granted to gather such animals. Claims of ownership with supporting evidence were required to be filed during a 90-day claiming period which expired November 15, 1973. Unauthorized privately owned horses or burros entering onto the public lands after November 15, 1973, may be claimed by filing an application with the District Manager. All written authorizations to gather claimed animals shall be on a form approved by the Director and shall provide for compliance with appropriate provisions of Subpart 4720. After such public notice as the authorized officer deems appropriate to inform interested parties, he may authorize the gathering or roundup. The authorized officer shall provide in the authorization that the gathering or roundup shall be consistent with these regulations and shall exclude the use of aircraft or motor vehicles solely to capture claimed horses or burros; shall establish in the authorization a reasonable period of time to allow the gathering of the claimed animals; and shall provide such other conditions in the authorization which he deems necessary to minimize stress on any associated wild free-roaming horses or burros and to protect other resources.

* * * * *

4. Subpart 4730 is amended by adding §§ 4730.7, 4730.7–1, 4730.7–2 and 4730.7–3 to read as follows:

§ 4730.7 Aircraft and motor vehicles.

§ 4730.7–1 Fixed-wing aircraft.

Fixed-wing aircraft may be used for inventory, observation, and surveillance purposes required for the administration of the Act. Such aircraft use shall be consistent with the Act of September 8, 1959, as amended (18 U.S.C. 41 et seq.). Fixed-wing aircraft shall not be used in connection with capture operations.

§ 4730.7–2 Helicopters.

Helicopters may be used in all phases of the administration of the Act including, but not limited to, inventory, observation, surveillance, and capture operations (see § 4740.4). The authorized officer shall supervise all helicopter use as follows:

(a) The authorized officer shall have the means to communicate with the pilot and be able to direct the use of the helicopter.

(b) The authorized officer shall be able to observe the effects of the use of the helicopter on the well-being of the animals.

§ 4730.7–3 Motor vehicles.

Motor vehicles may be used in the administration of the Act except that such vehicles shall not be used in connection with capture operations for driving or chasing the animals. The use of motor vehicles for the purpose of transporting captured animals is subject to the provisions of § 4740.4(b).

5. Subpart 4740 is amended by adding § 4740.4 to read as follows:

§ 4740.4 Humane use of helicopters and motor vehicles.

(a) The use of helicopters is authorized to locate the animals involved and for related purposes such as to transport personnel and equipment (including veterinarians and medical supplies). The condition of the animals shall be continuously observed by the authorized officer and should signs of unnecessary stress be noted, the source of stress shall be removed so as to allow for recovery. Helicopters may be used in roundups or other capture operations subject to the following humane procedures:

(1) Helicopters shall be used in such a manner that bands or herds will tend to remain together.

(2) The rate of movement shall not exceed limitations set by the authorized officer who shall consider terrain, weather, distance to be traveled, and condition of animals.

(3) The helicopter shall be used to enable the authorized officer to look for the presence of dangerous areas and move the animals away from hazards during the capture operation.

(4) During capture operations, animals shall be moved in such a way as to prevent unnecessary stress.

(b) Motor vehicles may be used for the purposes of transporting captured animals, subject to the following humane procedures:

(1) All such transportation shall be in compliance with appropriate State and Federal laws and regulations applicable to the transportation of animals (horses and burros).

(2) Vehicles shall be in good repair, of adequate rated capacity, and safely operated so as to insure that captured animals are transported without undue risk of injury.

(3) Vehicles shall be inspected and approved by an authorized officer prior to use.

(4) Animals shall be sorted as to age, size, and condition when transporting them so as to minimize, to the extent possible, injury due to fighting and trampling.

(5) The authorized officer shall consider the condition of the animals, weather conditions, type of vehicles, and distance to be transported when planning for the movement of captured animals.

CHRIS FARRAND,
Acting Assistant,
Secretary of the Interior.

JANUARY 19, 1977.

[FR Doc. 77-2316 Filed 1-19-77;3:49 pm]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 185]

EMERGENCY SCHOOL AID

Waivers of Ineligibility for Discriminatory Assignment of Students to Classes

Under the authority of the Emergency School Aid Act (Title VII of Pub. L. 92–318, as amended; 20 U.S.C. 1601–1619), the U.S. Commissioner of Education, with the approval of the Assistant Secretary for Education and the Secretary of Health, Education, and Welfare, proposes to amend the regulation governing approval of waivers of ineligibility in the case of discriminatory assignment of students to classes (45 CFR 185.44(f)(3)) as set forth below.

The Emergency School Aid Act provides desegregation-related financial aid to educational agencies and other organizations. Section 706(d) of the Act (20 U.S.C. 1605(d)) prohibits aid to educational agencies which have engaged in certain prohibited practices, including racially discriminatory assignment of students to classes and other groupings. However, an educational agency found to have engaged in one of these practices may establish its eligibility for aid by applying for a waiver of ineligibility and showing that the practice has ceased to exist and will not reoccur.

The Commissioner has determined that the present regulations are not wholly adequate to ensure the proper corrective action in the case of waivers of ineligibility based on discriminatory assignment of students to groupings (particularly special education classes). The present regulations apply to all racially identifiable groupings that cannot be justified educationally, and do not make it clear that remedies appro-

priate for one kind of grouping (such as unjustified ability grouping) may not be appropriate for another kind (such as unjustified assignment to educable mentally retarded classes). During last year's funding cycle, this deficiency contributed to abrupt changes in the educational programs of educational agencies applying for waivers, and to the possible deprivation of needed services to some of the students affected. Further, the regulations do not expressly take into account statutory requirements pertaining to the proper treatment of handicapped students which have been enacted since the passage of the Emergency School Aid Act in 1972. Nor do the regulations ensure that students reassigned out of discriminatorily-constituted groupings receive special help in adjusting to their new educational settings.

The revised regulations proposed by this document are designed to accomplish three main purposes:

(a) Make it clear that waiver applications in the case of discriminatory assignment of students to special education groupings are not approvable if the applicant disbands the groupings even temporarily and reassigns students in them to regular classes;

(b) Condition the approval of waivers in the case of discriminatory assignment of students to special education groupings on the completion of evaluations and placements required for handicapped students under Pub. L. 94-142 (The Education of all Handicapped Children Act of 1975) and section 504 of Pub. L. 93-112 (The Rehabilitation Act of 1973); and

(c) Require that a student reassigned from any discriminatorily constituted grouping to a new grouping be provided transitional services to help the student adjust to the new grouping. In addition, the revised regulations incorporate other minor and editorial changes.

If you wish to comment on the proposed revised regulations, write or call:

Thomas B. Irvin, Donohue Building, Room 4926, 400 6th St., S.W., Washington, D.C. 20202. (202) 245-9805.

All comments received by 4:30 p.m. Washington, D.C. time on March 11, 1977 will be considered.

The U.S. Office of Education 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.

(Catalog of Federal Domestic Assistance Numbers 13.525, 13.526, 13.528, and 13.529.)

Dated: January 12, 1977.

VIRGINIA Y. TROTTER,
Assistant Secretary for Education.

Approved: January 12, 1977.

DAVID MATHEWS,
Secretary of Health, Education, and Welfare.

Revised 45 CFR 185.44(f)(3) is proposed to read as follows:

§ 185.44 Waiver of ineligibility.

* * * * *

(f) Discrimination against children:

* * * * *

(3) (i) In the case of the assignment of students to racially or ethnically identifiable groups, tracks, or classes which cannot be justified educationally, as described in § 185.43(d)(5), an educational agency shall submit the following information:

(A) If the assignment was to a grouping to provide special education or related services to handicapped students, evidence that the students so assigned have been evaluated and placed in accordance with requirements for evaluation and placement of handicapped students under Pub. L. 94-142 and section 504 of Pub. L. 93-112, and any regulations under those statutes; or

(B) If the assignment was to other groupings, evidence that the students so assigned have been nondiscriminatorily reassigned to groupings that are not racially or ethnically identifiable, or evidence that the students so assigned have been reassigned to groupings in accordance with the criteria in § 185.43(c)(1)-(3).

(ii) If the educational agency reassigns any student to a new grouping under paragraph (f)(3)(i) of this section, it shall also submit evidence that it has made provision for such transitional services as are necessary to enable the student to participate meaningfully in the educational program of the new grouping.

(Pub. Law 92-318, secs. 706(d)(1)-(3).)

[FR Doc.77-2227 Filed 1-24-77;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

PLANT VARIETY PROTECTION BOARD

Availability of Report

Notice is hereby given that the report covering activities of the Plant Variety Protection Board, authorized by the Plant Variety Protection Act (7 U.S.C. 2327 et seq.) for the 1975 and 1976 calendar years is available for public inspection and copying in the Office of the Commissioner, Plant Variety Protection Office, Grain and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 301, National Agricultural Library, Beltsville, MD 20782.

Dated: January 19, 1977.

WILLIAM T. MANLEY,
Deputy Administrator,
Program Operations.

[FR Doc.77-2355 Filed 1-24-77;8:45 am]

Farmers Home Administration

[Designation Number A425]

LOUISIANA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in Caldwell Parish, Louisiana, as a result of drought June 1 through October 31, 1976.

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Edwin Edwards that such designation be made.

Applications for emergency loans must be received by this Department no later than March 10, 1977, for physical losses and October 7, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, DC, this 18th day of January, 1977.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.77-2368 Filed 1-24-77;8:45 am]

[Designation Number A428]

TEXAS

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in Lee County, Texas, as a result of excessive rainfall during the growing season April 1 through June 30, 1976, and again during harvest season September 15 through December 13, 1976.

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Dolph Briscoe that such designation be made.

Applications for emergency loans must be received by this Department no later than March 10, 1977, for physical losses and October 7, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, DC, this 18th day of January, 1977.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.77-2369 Filed 1-24-77;8:45 am]

Forest Service

BANKHEAD NATIONAL FOREST TIMBER MANAGEMENT PLAN

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for the Bankhead National Forest Timber Management Plan, National Forests in Alabama, USDA-FS-RS-FES (Adm.) 76-23.

This unit contains 179,294 acres of National Forest land located in Winston, Lawrence and Franklin Counties. Major actions are harvesting timber products, development and maintenance of wildlife improvements, development of recreation facilities for dispersed recreation and construction and reconstruction of roads.

This final environmental statement was transmitted to CEQ January 17, 1977. Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Rm. 3230, 12th St. & Independence Ave., SW., Washington, D.C. 20250.
USDA, Forest Service, 1720 Peachtree Street, NW., Rm. 804, Atlanta, Georgia 30309.
U.S. Forest Service, 1765 Highland Avenue, Box 40, Montgomery, Alabama 36101.

A limited number of single copies are available upon request to Forest Supervisor, National Forests in Alabama, 1765 Highland Avenue, Box 40, Montgomery, Alabama 36101.

Copies of the environmental statement have been sent to various Federal, State and local agencies as outlined in the CEQ guidelines.

Dated: January 17, 1977.

ROBERT F. WILLIAMS,
Regional Environmental
Coordinator.

[FR Doc.77-2304 Filed 1-24-77;8:45 am]

Office of the Secretary

NATIONAL MEAT AND POULTRY INSPECTION ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the National Meat and Poultry Inspection Advisory Committee will be held on February 9, 1977, beginning at 9 a.m. in Room 4306, South Building, U.S. Department of Agriculture, Washington, D.C.

The purpose of this Committee is to advise and make recommendations to the Secretary of Agriculture regarding operations pertaining to meat and poultry inspection programs pursuant to section 301 of the Federal Meat Inspection Act and section 5 of the Poultry Products Inspection Act. Matters to be discussed will include administrative procedures relating to letters of credit for State funds; cooperative agreements; inplant quality control programs; survey and study of dry sausage; review of the Salmonella Advisory Committee activities; and an update on the recommendations of the Expert Panel on Nitrates and Nitrosamines, contact study of meat and poultry inspection and litigation activities.

This meeting is open to the public, but space and facilities are limited. Comments of interested person may be filed with the Committee before or after the meeting.

Information pertaining to this meeting may be obtained from Dr. James K. Payne, Room 4347, South Building, U.S.

Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250, Area Code (202) 447-6313.

Dated: January 21, 1977.

F. J. MULHERN,
Vice Chairman.

[FR Doc.77-2566 Filed 1-24-77;9:35 am]

CIVIL AERONAUTICS BOARD

[Order 77-1-39; Docket 29123; Agreement C.A.B. 26256; R-1 through R-8]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order

Issued under delegated authority January 10, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of Traffic Conference 2 (Europe/Africa/Middle East) of the International Air Transport Association (IATA). The agreement was adopted at the Composite Passenger Traffic Conference held in Miami during September/October 1976, and has been assigned the above C.A.B. agreement number.

We will approve the first- and economy-class fares, which are combinable with fares to/from United States points and thus have indirect application in air transportation as defined by the Act, but will disclaim jurisdiction with respect to creative fares which are not similarly combinable.

Pursuant to authority duly delegated by the Board in the Board's Regulations 14 CFR 385.14:

1. It is not found that the following resolutions, incorporated in Agreement C.A.B. 26256 as indicated, and which have indirect application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act:

Agreement CAB	IATA No.	Title	Application
26256:			
R-1	001b	TC2—Special Effectiveness Resolution (Tie-In)	2
R-2	002	Standard Readoption Resolution	2
R-3	022b	TC2 (Except Within Europe) Adjustment Factors For Sales of Passenger Air Transportation (New).	2
R-4	052	TC2 First Class Fares	2
R-5	062	TC2 Economy Class Fares	2

2. It is not found that the following resolutions, incorporated in Agreement C.A.B. 26256, affect air transportation within the meaning of the Act:

Agreement CAB	IATA No.	Title	Application
26256:			
R-6	072b	TC2 Creative Fares Except Europe (Readopting and Amending)	2
R-7	075a	TC2 Common Interest Group Fares (Readopting and Amending)	2
R-8	093	TC2 Teachers Fares (Readopting and Amending)	2

Accordingly, *It is ordered*, That:

1. Those portions of Agreement C.A.B. 26256 described in finding paragraph 1 above, which have indirect application in air transportation as defined by the Act, be and hereby are approved; and

2. Jurisdiction be and hereby is disclaimed with respect to those portions of Agreement C.A.B. 26256 described in finding paragraph 2 above.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2163 Filed 1-24-77;8:45 am]

[Order 77-1-53; Docket 27573; Agreement C.A.B. 26316 R-1 through R-3; Agreement C.A.B. 26325 R-1 through R-3]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order

Issued under delegated authority January 11, 1977.

Agreements have been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers and other carriers embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA).

The agreements name additional specific commodity rates as set forth below, reflecting reductions from general cargo rates; and were adopted pursuant to unprotested notice to the carriers and promulgated in IATA letters dated December 17 and 23, 1976.

Agreement CAB	Specific commodity Item No.	Description and rate
26316:		
R-1	2206	Clothing, footwear, outerwear, undergarments, finished or semifinished.[1] 310 c/kg minimum weight 500 kg. From New York to Lagos.
R-2	2006	Clothing, footwear, outerwear, undergarments, finished or semifinished.[1] 146 c/kg,[2] minimum weight 300 kg. From Bucharest to New York.
R-3	4375	Totalizators (pari-Mutural) including ticket rolls. 275 c/kg, minimum weight 1,000 kg. From Sydney to New York.
26325:		
R-1	1407	Floral and nursery stock and seeds, excluding cut flowers. 153 c/kg,[3] minimum weight 200 kg. From Copenhagen to New York.
R-2	3405	Stoves and ranges, pans, kettles and baking tins.[4] 104 c/kg,[2] minimum weight 500 kg. 90 c/kg,[3] minimum weight 1,000 kg. From Paris to New York. 106 c/kg,[3] minimum weight 500 kg. 101 c/kg,[3] minimum weight 1,000 kg. From Lyon to New York.
R-3	4204	Parts of automobiles, motorscooters, motorcycles, bicycles.[4] 145 c/kg, minimum weight 100 kg. 107 c/kg, minimum weight 200 kg. From New York to Budapest.

[1] See applicable tariffs for complete commodity descriptions.
[2] Expires Sept. 30, 1977.
[3] Expires Dec. 31, 1977.
[4] See applicable tariffs for complete commodity descriptions.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that the subject agreements are adverse to the public interest or in violation of the Act, provided that approval is subject to the conditions hereinafter ordered.

Accordingly, *it is ordered*, That:

Agreements C.A.B. 26316, R–1 through R–3 and C.A.B. 26325, R–1 through R–3, are approved, provided that (a) approval shall not constitute approval of the specific commodity description contained therein for purposes of tariff publications; (b) tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing; and (c) where a specific commodity rate is published for a specified minimum weight at a level lower than the general commodity rate applicable for such weight, and where a general commodity rate is published for a greater minimum weight at a level lower than such specific commodity rate, the specific commodity rate shall be extended to all such greater minimum weights at the applicable general commodity rate level.

Persons entitled to petition the Board for review of this order, pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board unless within such period a petition for review is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2164 Filed 1-24-77;8:45 am]

[Order 77-1-55; Docket 27573; Agreement C.A.B. 26234]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order

Issued under delegated authority January 11, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Traffic Conference 2 of the International Air Transport Association (IATA). The agreement was adopted at the 38th Meeting of the TC2 Specific Commodity Rates Board in Geneva held November 15–20, 1976.

The agreement would establish several new specific commodity descriptions and change the area of application on several descriptions as well as change the descriptions as shown in the Attachment and establish specific commodity rates for several items to apply between various world markets outside of air transportation (Europe/Africa/Middle East). We will approve the descriptions as shown in the Attachment which have general application within air transportation as defined by the Act but will disclaim jurisdiction with respect to the rates which involve points solely outside of air transportation.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14:

1. It is not found that the specific commodity descriptions incorporated in Agreement C.A.B. 26324, which have general application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act.

2. It is not found that the specific commodity rates incorporated in Agreement C.A.B. 26324 which involve transportation solely between foreign points affect air transportation within the meaning of the Act.

Accordingly, *it is ordered*, That:

1. Those portions of Agreement C.A.B. 26324 set forth in the Attachment which have general application in air transportation as defined by the Act, be and hereby are approved; and

2. Jurisdiction be and hereby is disclaimed with respect to that portion of Agreement C.A.B. 26324 described in finding paragraph 2 above.

Persons entitled to petition the Board for review of this order, pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

AGREEMENT C.A.B. 26324

Item No.	*Description*
0176	Chocolate and chocolate manufactures.[1]
0230Q	Eggs—fresh.[1]
0306	Fish and fish products.[1 2]
0326	Fish—excluding live, inedible.[1]
0356	Fish, crabs and/or shrimps—excluding fish, live, inedible.[1]
0609	Turkey meat.[1 2]
1435	Carnation and chrysanthemum cuttings.[1]
1436	Carnation and chrysanthemum cuttings.[3]
1926	Artificial sausage casings.[1 2]
2315	Tee-shirts and slips.[1 2]
2413	Cotton denim outwear.[4]
2811	Blankets, bed sheets, bedspreads, pillowcases, mosquito nets and towels.[4]
4414	Loudspeakers, tape recorders, record players, radios, amplifiers and accessories thereof.[1 2]
4456	Electrical parts for automobiles.[1 2]
4816	Tools consisting of twist drills, masonry drills, milling cutters, reamers, tool bits, hacksaw blades, punches, builders levels, screwdrivers, hammers, pliers, vices, shifting and/or adjustable spanners.[4]
4951	Pneumatic equipment and tools, namely compressors, hoists, rock drill machines, hand-held power tools, centrifugal and reciprocating pumps, steam jet ejectors.[1]
4953	Compressors.[4]
4969	Pistons and piston rings.[4]
5706	Quartz, raw.[1 2]
6112	Plastic sheets in rolls/strips.[4]
6230	Cylinders—empty or filled—with medical gases.[1 2]
7123	Religious books.[4]
7184	Technical documents for drilling operations.[4]
7448	Rubber seals.[3]
7610	Wooden furniture unassembled, plywood, veneer wood, sawn timber.[1 2]
8419	Films and photographs excluding newsreel film and motion picture film, or 35 mm or larger dimensions.[4]
9592	Empty fire extinguishers.[4]
9969	Safety and/or racing helmets, work gloves, safety harnesses used by an individual for construction, building, maintenance and mining.[1]

[1] Area of application changed.
[2] Description changed.
[3] Deleted.
[4] New description.

[FR Doc.77-2165 Filed 1-24-77;8:45 am]

[Order 77-1-85; Docket 29123; Agreement C.A.B. 26211, R-1 through R-8]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order

Issued under delegated authority January 14, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of Traffic Conference 1 of the International Air Transport Association (IATA). The agreement was adopted at the Composite Passenger Traffic Conference held in Miami, Florida during October 1976.

Agreement C.A.B. 26211, which only affects air transportation indirectly, would establish new fare levels between points within South America effective May 1, 1977 through March 31, 1978. In general, all first-class, economy, and promotional fares would be increased by five percent. However, special fares to/from Venezuela would be increased by seven percent, except for special fares between Venezuela and Brazil which would be increased by the five percent formula. We will approve those portions of the agreement governing fares which are combinable with fares to/from United States points and thus have indirect application in air transportation as defined by the Act. Jurisdiction will be disclaimed on the balance of the resolutions which govern noncombinable fares and thus have no application in air transportation.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14:

1. It is not found that the following resolutions, incorporated in the agreement as indicated and which have indirect application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act:

Agreement CAB	IATA No.	Title	Application
26211:			
R-1	001b III	TC1—Special Effectiveness Resolution (Tie-in)	1 (South America).
R-2	002 III	Standard Adoption Resolution	1 (South America).
R-3	051d	TC1 First-Class Fares	1 (South America).
R-4	061d	TC1 Economy-Class Fares	1 (South America).
R-5	070j	TC1 Excursion Fares—Within South America (New)	1.

2. It is not found that the following resolutions, incorporated in the agreement as indicated, affect air transportation within the meaning of the Act:

Agreement CAB	IATA No.	Title	Application
26211:			
R-6	075L	TC1 30-Day Group Excursion Fares (Within South America) (Revalidating and Amending).	1
R-7	084hh	TC1 Group Inclusive Tour Fares—South America (Revalidating and Amending).	1
R-8	084w	TC1 Group Inclusive Tour Fares—Bolivia/Chile/Columbia/Ecuador/Peru.	1

Accordingly, *it is ordered*, That:

1. Those portions of Agreement C.A.B. 26211, described in finding paragraph 1 above and which have indirect application in air transportation as defined by the Act, be and hereby are approved; and

2. Jurisdiction be and hereby is disclaimed with respect to those portions of Agreement C.A.B. 26211 described in finding paragraph 2 above.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2162 Filed 1-24-77;8:45 am]

[Order 77-1-58; Docket 29123; Agreement C.A.B. 26356]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Delayed Inaugural Flights Agreement

ORDER

Issued under delegated authority January 11, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of Traffic Conference 1 of the International Air Transport Association (IATA). The agreement, adopted by mail vote, has been assigned the above C.A.B. agreement number.

The agreement would permit Ecuatoriana to postpone to a date not later than March 31, 1977, the performance of its inaugural flight between Nassau, Bahamas and Quito, Ecuador.

Pursuant to authority duly delegated by the Board in the Board's Regulations 14 CFR 385.14, it is not found that resolution 100 (Mail 90) 200h incorporated in Agreement C.A.B. 26356 as indicated, is adverse to the public interest or in violation of the Act.

Accordingly, *it is ordered*, That:

Agreement C.A.B. 26356 be and hereby is approved.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2332 Filed 1-24-77;8:45 am]

COMMISSION ON CIVIL RIGHTS

NEW YORK ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the New York Advisory Committee (SAC) of the Commission will convene at 4:30 p.m. and end at 7:30 p.m. on February 9, 1977, at the Phelps Stokes Fund, New York, New York 10028.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeast Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this meeting is to discuss ongoing Asian American project and plans for new project.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.77-2333 Filed 1-24-77;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

BOWMAN GRAY SCHOOL OF MEDICINE

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the

Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 76-00492. Applicant: Bowman Gray School of Medicine of Wake Forest University, 300 South Hawthorne Road, Winston-Salem, North Carolina 27103. Article: Electron Microscope, Model EM 9S-2. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for viewing biological tissue specimens of various types. Research to be conducted will include:

1. The identification and charácterization of synaptosomes from specially treated and prepared nervous tissue.

2. The identification of myelin figures by negative staining procedures and research concerning muscle metabolism.

3. Effects of intrauterine devices and prostaglandines on the female reproductive system and regenerative repair in the vertebrate central nervous system.

The article will also play a major role in a training program and will be used as the teaching instrument in an electron microscope course entitled, "Methods in Histological Research—Anatomy 407."

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time Customs received this application (July 23, 1976).

Reasons: The foreign article is a relatively simple, easy to operate, medium resolution electron microscope designed for confident use by beginning students with a minimum of detailed programming. The article provides 7 Angstroms point to point resolution, an accelerating voltage of 60 kilovolts (KV), and low distortion magnifications from 140–60,000X (Magnifications of 140 to 1000X are within the normal, light microscopic range). Thus the article covers the range of light and electron microscopy. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated December 10, 1976 that the low distortion, low magnification capabilities available specifically in the optical range at 140X, as well as, simplicity and ease of operation are pertinent to the purposes for which the foreign article is intended to be used. HEW also advises that it knows of no domestic instrument or apparatus which provided the pertinent features of the article at the time customs received this application.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article for such purposes as this article is intended to be used, which was being manufactured in the United States at the time Customs received this application.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Imports Programs Division.

[FR Doc.77-2276 Filed 1-24-77;8:45 am]

CARNEGIE INSTITUTION OF WASHINGTON

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 76-00523. Applicant: Carnegie Institution of Washington, Department of Embryology, 115 W. University Parkway, Baltimore, Md. 21210. Article: Electron Microscope Model JEM-100S and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for studies of DNA molecules, artificial membranes, membranes of cultured cells, and ultrastructure of nerve and muscle cells. The experiments to be conducted will include measuring the length of single- and double-stranded regions of DNA molecules that have been enzymatically digested, observing the fusion of artificial and natural membranes, locating and quantifying specific proteins in nerve and muscle cells, and characterizing the distribution and structure of synapses in the nervous system. The article will also be used for training graduate students and postdoctoral trainees who are working on the research described above.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be use, was being manufactured in the United States at the time the foreign article was ordered (September 9, 1976).

Reasons: The foreign article is equipped with a eucentric side entry goniometer stage with a specified resolving power of 7Å point to point. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated December 20, 1976 that the eucentric goniometer stage of the article is pertinent to the applicant's studies. HEW further advises that it knows of no domestic instrument which provided the pertinent feature at the time of order.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the article was ordered.

(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.77-2277 Filed 1-24-77;8:45 am]

COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that a meeting of the Computer Systems Technical Advisory Committee will be held on Thursday, February 10, 1977, at 9:30 a.m. in Room 3817, Main Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, and January 13, 1977, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to computer systems, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls.

The agenda for the meeting is:

(1) Opening remarks by the Chairman.
(2) Presentation of papers or comments by the public.
(3) Reports on the work programs of the Subcommittees:
(a) Technology Transfer;
(b) Foreign Availability;
(c) Licensing Procedures; and
(d) Hardware.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available upon written request

addressed to the Freedom of Information Officer, Room 3012, Domestic and International Business Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Domestic and International Business Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202–377–4196.

Dated: January 19, 1977.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc.77-2255 Filed 1-24-77;8:45 am]

COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEF; FOREIGN AVAILABILITY SUBCOMMITTEE

Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that a meeting of the Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee will be held on Wednesday, February 9, 1977, at 1 p.m. in Room 3817, Main Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C.

The Computer Systems Technical Advisory Committee was intially established on January 3, 1973. On December 20, 1974 and January 13, 1977, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee was established on July 8, 1975, with the approval of the Director, Office of Export Administration, pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to computer systems, including technical data related thereto, and including those whose export is subject to multilateral (CO COM) controls. The Foreign Availability Subcommittee was formed to ascertain if certain kinds of equipment are available in non-COCOM and Communist bloc countries, and if such equipment is available, then to ascertain if it is technically the same or similar to that available elsewhere.

(1) Opening remarks by the Subcommittee Chairman.

(2) Presentation of papers or comments by the public.

(3) Discuss new work program for 1977.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available upon written request addressed to the Freedom of Information Officer, Room 3012, Domestic and International Business Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Domestic and International Business Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202–377–4196.

Dated: January 19, 1977.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc.77-2253 Filed 1-24-77;8:45 am]

COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE; HARDWARE SUBCOMMITTEE OF THE

Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that a meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held on Wednesday, February 9, 1977, at 9 a.m. in Room 3817, Main Commerce Building, 14th and Constitution Avenue, NW, Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, and January 13, 1977, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Hardware Subcommittee of the Computer Systems Technical Advisory Committee was established on July 8, 1975, with the approval of the Director, Office of Export Administration, pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to computer systems, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls. The Hardware Subcommittee was formed to continue the work of the Performance Characteristics and Performance Measurements Subcommittee, pertaining to (a) maintenance of the processor performance tables and further investigation of total systems performance; and (b) investigation of array processors in terms of establishing the significance of these devices and determining the differences in characteristics of various types of these devices.

The agenda for the meeting is:

(1) Opening remarks by the Subcommittee Chairman.

(2) Presentation of papers or comments by the public.

(3) Discussion of computer performance measurements.

(4) Discuss new work program for 1977.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available upon written request addressed to the Freedom of Information Officer, Domestic and International Business Administration, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Domestic and International Business Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202–377–4196.

Dated: January 19, 1977.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc.77-2254 Filed 1-24-77;8:45 am]

CORNELL UNIVERSITY MEDICAL COLLEGE

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the partment of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 76-00510. Applicant: Cornell University Medical College, 525 East 68 Street, New York, New York 10021. Article: Blood Gas Electrode Meter Type D 22—modified for 110 V, 60C current. Manufacturer: L. Escheweiler & Co., West Germany. Intended use of article: The article is a replacement part for an existing blood gas instrument being used for investigation of oxygen and car-

bon dioxide tension in blood and cerebral spinal fluid.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The application relates to an accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used and is pertinent to the applicant's purposes. The Department of Health, Education, and Welfare advises in its memorandum dated December 10, 1976 that it knows of no domestic instrument of equivalent scientific value to the article for its intended uses.

The Department of Commerce knows of no other similar accessory being manufactured in the United States, which are interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-2273 Filed 1-24-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Consolidated Decision on Applications for Duty-Free Entry of Ultramicrotomes

The following is a consolidated decision on applications for duty-free entry of ultramicrotomes pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 76-00508. Applicant: DHEW, National Institutes of Health, Laboratory of Biophysics, IRP, NINCDS, Marine Biological Laboratory, L-320, Woods Hole, Mass. 02543. Article: Ultramicrotome, Model LKB 8800A with cryokit, Model 14800-1 and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of the nervous system of several species of invertebrates and vertebrates. Special attention will be given to histochemistry with frozen sections.

Investigators will study the subcellular localization of enzymes especially those involved with neurotransmitters metabolism. The distribution of diffusible substances within the cell after being taken up by the cell will also be investigated. Tracing specific synapses and other cell to cell contact with membrane specialization will be conducted after intracellular injection of markers to identified cells. Changes in intracellular spaces and in membrane structure or in membrane interaction between two neighboring cells induced by changes in their biochemical and biophysical environments will also be studied. Application received by Commissioner of Customs: August 12, 1976. Advice submitted by the Department of Health, Education, and Welfare on December 10, 1976.

Docket Number: 76-00527. Applicant: Deborah Heart and Lung Center, Clinical Laboratory, Department of Pathology, Trenton Road, Browns Mills, New Jersey 08015. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for investigations that will include ultrastructural studies on normal and pathologic plant and animal tissues, developmental studies on fungal systems, cyto and histochemical studies on fungal systems, cyto and histochemical studies on enzyme and subcellular organelle localization in cells and tissues, membrane interactions at host-parasite interfaces, and subcellular changes in cells induced by changes in their biochemical and physical environments. In addition, the article will be used in the courses Ultrastructure and Cytochemistry which involve a study of general principles on techniques and the use of the electron microscope to study the fine structure of cells and various subcellular organelles and the employment of cytochemical staining methods to localize various enzymes. Application received by Commissioner of Customs: September 3, 1976. Advice submitted by the Department of Health, Education, and Welfare on December 20, 1976.

Docket Number: 76-00529. Applicant: University of Texas System Cancer Center, Department of Laboratory Medicine, 6723 Bertner Drive, Houston, Texas 77025. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of human hematopoietic tissues including bone marrow and peripheral blood specimens. Investigations will include ultrastructural studies on normal and pathologic hematopoietic tissue for the purpose of diagnostic studies. Application received by Commissioner of Customs: September 3, 1976. Advice submitted by the Department of Health, Education, and Welfare on December 20, 1976.

Docket Number: 76-00532. Applicant: Cornell University Medical College, Department of Pathology, Room C-346, 1300 York Avenue, New York, N.Y. 10021. Article: Ultramicrotome, Model LKB 8900A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for investigations that will include (1) ultrastructural studies on formal and pathologic plant and animal tissues, developmental studies on fungal systems, cyto and histochemical studies on enzyme and subcellular organelle localization in cells and tissues, membrane interactions at hostparasite interfaces, and subcellular changes in cells induced by changes in their biochemical and physical environments. The article will also be used for educational purposes in the courses Ultrastructure and Cytochemistry which will involve a study of general principles on techniques and the use of the electron microscope to study the fine structures of cells and various subcellular organelles and the employment of cytochemical staining methods to localize various enzymes. Application received by Commissioner of Customs: September 9, 1976. Advice submitted by the Department of Health, Education, and Welfare on December 20, 1976.

Comments: No comments have been received with respect to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles for such purposes as these articles are intended to be used, is being manufactured in the United States.

Reasons: Each of the foreign articles provides a range of cutting speeds from 0.1 to 20 millimeters per second. The most closely comparable domestic instrument is the Model MT-2B ultramicrotome which is manufactured by Ivan Sorvall, Inc. (Sorvall). The Model MT-2B has a range of cutting speeds from 0.09 to 3.2 millimeters per second. The conditions for obtaining high-quality sections that are uniform in thickness, depend to a large extent on the hardness, consistency, toughness and other properties of the specimen materials, the properties of the embedding materials, and geometry of the block. In connection with a prior application (Docket Number 69-00665-33-46500), which relates to the duty-free entry of an article that is identical to those to which the foregoing applications relate, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting, (among such (other) factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior application (Docket Number 70-00077-33-46500) which also relates to an article that is identical to those described above, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that the "pro-

duction of ultrathin serial sections of specimens that have a great variation in physical properties is very difficult." Accordingly, HEW advises in its respectively cited memoranda, that cutting speeds in excess of 4 millimeters per second are pertinent to the satisfactory sectioning of the specimen materials and the relevant embedding materials that will be used by the applicants in their respective experiments. For these reasons, we find that the Sorvall Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-2275 Filed 1-24-77;8:45 am]

SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF MEDICINE

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Material Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number 76-00530. Applicant: Southern Illinois University School of Medicine, P.O. Box 3926, Springfield, Ill. 62708. Article: Cryokit, Model LKB 14800-1 for use with LKB Ultratome III. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for the study of immune complex localization in kidney disease as well as other biological materials and for microanalysis of biological specimens in the future. Conjugation with various antigens will be carried out on frozen sectioned material for both immunofluorescence and electron microscope studies.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The application relates to an accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used and is pertinent to the applicant's purposes. The Department of Health, Education, and Welfare advises in its memorandum dated December 20, 1976 that it knows of no domestic instrument of equivalent scientific value to the article for its intended uses.

The Department of Commerce knows of no other similar accessory being manufactured in the United States, which are interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-2274 Filed 1-24-77;8:45 am]

UNIVERSITY OF CALIFORNIA

Withdrawal of Application for Duty-Free Entry of Scientific Article

The University of California has withdrawn Docket Number 77-00060 an application for duty-free entry of an Electron Microscope, Model EM 301. Accordingly, further administrative processings will not be taken by the Department of Commerce with respect to this application.

(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.77-2272 Filed 1-24-77;8:45 am]

UNIVERSITY OF IOWA

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 76-00511. Applicant: The University of Iowa, College of Medicine, Department of Physiology & Biophysics, Iowa City, Iowa 52240. Article: Flow scintillation counting system and accessories. Manufacturer: Berthold Instruments, West Germany. Intended use of article: The article is intended to be used for the study of peptide hormones and blood factors. Specifically, the article will be used for determination of the primary sequence of Somantomedian C isolated from human blood plasma which would allow synthesis of large quantities for clinical treatment of patients having growth hormone deficiencies.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a small volume (100 microliters) measuring flow cell. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated December 10, 1976 that the capability described above is pertinent to the applicant's research studies. HEW also advises that it knows of no domestic instrument of equivalent scientific value to the foreign article.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-2280 Filed 1-24-77;8:45 am]

UNIVERSITY OF MASSACHUSETTS MEDICAL SCHOOL, ET AL.

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C.

Docket number: 76-00522. Applicant: University of Massachusetts Medical School, Department of Anatomy, 55 Lake Ave., North, Worcester, MA 10605. Article: Electron Microscope, Model JEM-100S and accessories. Manufacturer: Jeol, Japan. Intended use of article: The article is intended to be used for examination of biological tissues which will include both the male and female reproductive system in various stages of differentiation and development, the organ of corti in the inner ear and the nerves leading to that organ, bone and connective tissue under various experi-

mental pathological disease states, kidney following induced experimental disease, lymphoid and blood elements from pathological disease states, both peripheral and central nervous systems from a number of genetic diseases and disorders. Experiments to be conducted will be aimed at determining the structure of cells and the role of various components in the economy of the cell. The article will also be used to teach and train graduate students involved in a new graduate program and to teach microscopy to medical students who elect to do research in microscopy anatomy. Application received by Commissioner of Customs: August 25, 1976. Advice submitted by the Department of Health, Education, and Welfare on: December 20, 1976. Article ordered: August 17, 1976.

Docket number: 76-00526. Applicant: University of Massachusetts Medical School, Department of Pathology, 55 Lake Avenue North, Worcester, MA 01605. Article: Electron Microscope, Model JEM 100S and Haskris recirculating water chiller. Manufacturer: Jeol, Japan. Intended use of article: The article is intended to be used for examination of biological tissues which will include the heart and great vessels of animals with experimental cardiovascular disease, the pancreas, kidneys and skeletal muscle of animals with experimental diabetes, the brain and other tissues after the induction of inflammation. In addition, bone marrow specimens, biopsies of human tumors, kidney and liver biopsies and other tissue specimens obtained for diagnostic and educational purposes will be examined. Experiments to be conducted will be aimed at determining the pathophysiology of inflammation, atherosclerosis, diabetes mellitus and leukemia. Studies of a variety of human tumors will assist in the understanding and treatment of cancer. The article will also be used to teach and train post doctoral fellows, pathology residents and staff as well as to teach microscopy to medical students who elect to do research in pathology. Application received by Commissioner of Customs: September 3, 1976. Advice submitted by the Department of Health, Education, and Welfare on: December 20, 1976. Article ordered: August 17, 1976.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for such purposes as these articles are intended to be used, was being manufactured in the United States at the time the articles were ordered. Reasons: Each foreign article provides distortion free micrographs over a magnification range of 100 to 200,000× without a pole-piece change. The Department of Health, Education, and Welfare (HEW) advises in its respectively cited memoranda that each article's low distortion in the low magnification range is pertinent to each applicant's intended use. HEW further advises that it knows of no domestic instrument which provided the pertinent feature at the time of order.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which was being manufactured in the United States at the time the articles were ordered.

(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.77-2281 Filed 1-14-77;8:45 am]

VETERANS ADMINISTRATION HOSPITAL—TACOMA

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 76-00445. Applicant: Veterans' Administration Hospital, American Lake, Tacoma, WA 98493. Article: Microtome, Universal Cut-All, Spare Parts and accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used to prepare undermineralized human bone biopsies for quantitative histological measurements. Several experimental groups are to be evaluated in order to determine the pathology of bone diseases and to evaluate the efficacy of specific therapeutic programs in controlled studies. Renal bone disease, primarily osteoporosis, and vitamin D deficiency are scheduled for study.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article is a sophisticated, massive and rigid microtome which is capable of providing 0.1 micron sections of raw bone consistently. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated December 10, 1976 that the capabilities of the article described above are pertinent to the applicant's intended use. HEW also advises that it knows of no domestic instrument which provides all the pertinent features of the article.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Director,
Special Import Programs Division.

[FR Doc.77-2279 Filed 1-24-77;8:45 am]

VETERANS ADMINISTRATION, WADSWORTH HOSPITAL CENTER—LOS ANGELES

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 76-00533. Applicant: Veterans Administration, Wadsworth Hospital Center, Wilshire and Sawtelle Blvds., Los Angeles, California 90073. Article: Electron Microscope, Model EM 400 with single condenser lens and accessories. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended use of article: The article will be used for studies of the glomerular capillary wall in rats and humans including the arrangement of the glycoprotein macromolecular filaments, 12 Å wide, in the free surface coat of the visceral epithelial cell, the cell-membrane relationships in the vicinity of the glomerular epithelial slit, the relationships between the outer layer of the trilaminar-plasma membrane and the surface coat, and the relationships between the slit membrane and the surface coat. The specific aim of the investigations is to define those factors or influences which prevent, stabilize or heal injury to the glomerulus. The article will also be used for educational purposes in the course Approved Residency in Pathology and a Clinical Laboratory Technological Trainee Program.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (March 4, 1976).

Reasons: The foreign article provides a magnification range of 50 to 800,000X and adequate illumination over this range due to built-in electronically ad-

justable anode to shield distance. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated December 20, 1976 that the capabilities described above are pertinent to the applicant's intended purposes. HEW further advises that it knows of no domestic instrument which provided the pertinent features at the time of order.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the article was ordered.

(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.77-2278 Filed 1-24-76;8:45 am]

Economic Development Administration

FLOWER HANDBAG MANUFACTURING CORP.

Petition for a Determination of Eligibility To Apply for Trade Adjustment Assistance

A petition by Flower Handbag Manufacturing Corporation, 25 Hall Street, Brooklyn, New York 11205, a producer of handbags for women and girls, was accepted for filing on January 17, 1977, pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated an investigation to determine whether increased imports into the United States of articles like or directly competitive with those produced by the firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of the petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of February 4, 1977.

JACK W. OSBURN, Jr.,
Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc.77-2190 Filed 1-24-77;8:45 am]

National Fire Prevention and Control Administration

ADVISORY COMMITTEE ON FIRE TRAINING AND EDUCATION FOR THE NATIONAL ACADEMY FOR FIRE PREVENTION AND CONTROL

Meeting Change

The time and place of the Advisory Committee on Fire Training and Education for the National Academy for Fire Prevention and Control meeting, previously announced to be held on January 31 and February 1, 1977, from 8:30 a.m. to 5 p.m., in the Press Room, Washington Hotel, 15th Street at Pennsylvania Avenue NW., Washington, D.C., has been changed to January 31, 1977, 8:30 a.m.-12:15 p.m., at 2400 M Street NW., Room 114, Washington, D.C., 2 p.m.-5 p.m., in the Press Room, Washington Hotel, 15th Street at Pennsylvania Avenue NW., Washington, D.C.; and on February 1, 1977, 8:30 a.m.-4 p.m., in the Capitol Room, Washington Hotel, 15th Street at Pennsylvania Avenue NW., Washington, D.C. The notice of this meeting was previously published in the January 6, 1977, FEDERAL REGISTER, Volume 42, No. 4, pages 1286-87, FR Doc. 77-530. All other information related to this meeting announcement remains as originally published.

Dated: January 19, 1977.

HOWARD D. TIPTON,
Administrator, National Fire Prevention and Control Administration.

[FR Doc.77-2371 Filed 1-24-77;8:45 am]

Office of the Secretary

WEATHER MODIFICATION ADVISORY BOARD

Establishment

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App I (Supp. V, 1975)) and the Office of Management and Budget Circular A-63 of March 1974, and after consultation with OMB, the Secretary of Commerce has determined that the establishment of the Weather Modification Advisory Board is in the public interest in connection with the performance of duties imposed on the Department by law.

The Board will advise and make recommendations to the Secretary, through the Administrator of the National Oceanic and Atmospheric Administration, on matters of a national policy, a national research and development program, and other aspects of weather modification as outlined in the National Weather Modification Policy Act of 1976 (Pub. L. 94-490), enacted October 13, 1976. The scope of the Board's activities covers research; development; operations; economic, social, environmental, and legal impacts; funding; program management; legislation; regulation; and international implications and agreements.

The Board will consist of about 17 members, with a balanced representation of scientific groups, academia, operators, users, environmentalists, lawyers, consumers, government officials, etc., appointed by the Secretary of Commerce.

The Board will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act.

Interested persons are invited to submit comments regarding the establishment of the Weather Modification Advisory Board. Such comments as well as any inquiries, may be addressed to the Associate Administrator, Environmental Monitoring and Prediction, National Oceanic and Atmospheric Administration, Rockville, Maryland 20852, phone: 301-443-8646.

Dated: January 18, 1977.

JOSEPH E. KASPUTYS,
Assistant Secretary for Administration.

[FR Doc.77-2367 Filed 1-24-77;8:45 am]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1977

Proposed Additions

Notice is hereby given pursuant to section 2(a)(2) of Pub. L. 92-28; 85 Stat. 77, of the proposed addition of the following services and commodities to Procurement List 1977, November 18, 1976 (41 FR 50975).

Tax Form Order Fulfillment Services, Buffalo and Western New York, N.Y.

Campground Cleanup and Trash Removal, U.S.D.A., Forest Service, Laramie, Wyoming.

Class 4910

Creeper, Mechanics
4910-00-106-7834

Class 7340

Spoon, Plastic
7340-00-J19-1300

If the Committee approves the proposed additions, all entities of the Government will be required to procure the above services and commodities from workshops for the blind or other severely handicapped.

Comments and views regarding the proposed deletions may be filed with the Committee on or before February 24, 1977. Communications should be addressed to the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, 2009 Fourteenth Street North, Suite 610, Arlington, Virginia 22201.

This notice is automatically cancelled six months from the date of this FEDERAL REGISTER.

By the Committee.

C. W. FLETCHER,
Executive Director.

[FR Doc.77-2263 Filed 1-24-77;8:45 am]

PROCUREMENT LIST 1977

Proposed Deletion

Notice is hereby given pursuant to section 2(a)(2) of Pub. L. 92-28; 85 Stat. 77, of the proposed deletion of the following commodity from Procurement List 1977, November 18, 1976 (41 FR 50975).

Class 3990

Pallet, Material Handling
3990-00-935-7960

Comments and views regarding the proposed deletion may be filed with the

Committee on or before February 24, 1977. Communications should be addressed to the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, 2009 Fourteenth Street North, Suite 610, Arlington, Virginia 22201.

This notice is automatically cancelled six months from the date of this FEDERAL REGISTER.

By the Committee.

C. W. FLETCHER,
Executive Director.

[FR Doc.77-2264 Filed 1-24-77;8:45 am]

PROCUREMET LIST 1977

Deletion

Notice of proposed deletions from Procurement List 1977, November 18, 1976 (41 FR 50975) were published in the FEDERAL REGISTER on December 3, 1976 (41 FR 53126).

Pursuant to the above notice the following service is deleted from the Procurement List:

Keypunch and Verification, Thirty percent of overflow requirements for Interstate Commerce Commission, Washington, D.C.

By the Committee.

C. W. FLETCHER,
Executive Director.

[FR Doc.77-2265 Filed 1-24-77;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

PROPOSED EXEMPTION FROM PREEMPTION FOR CALIFORNIA'S CHILDREN'S CLOTHING FLAMMABILITY REGULATIONS

Oral Proceedings

The purpose of this notice is to announce that the Consumer Product Safety Commission will offer interested persons an opportunity for oral presentations concerning the proposed exemption from preemption under section 16 (c) of the Flammable Fabrics Act (FFA) (15 U.S.C. 1203(c)) for California's children's clothing flammability regulations. The oral presentations will be in Washington, D.C. on February 7; in San Francisco, California, on February 14; and in Los Angeles, California on February 15. The Commission invites any interested person to submit by February 2 a request to make an oral presentation at any of the three locations.

BACKGROUND

In a letter dated October 25, 1976, the California State Fire Marshal requested the Commission to grant an exemption from preemption under the FFA for its regulations. The Commission published the proposed exemption, with a memorandum from the California State Fire Marshal, in the FEDERAL REGISTER of December 27, 1976 (41 FR 56294), in accordance with section 16 of the FFA (15 U.S.C. 1203) and the Commission's proposed and interim procedures concerning applications for exemption from preemption under the FFA. (July 29, 1976, 41 FR 31569).

The California regulations require items of children's clothing meeting only the criteria of acceptance of Federal Standard CS 191-53 (16 CFR Part 1610) to bear cautionary labeling, when sold or offered for sale in California on or after July 1, 1977. The California regulations also require items of children's clothing sold or offered for sale in California on or after July 1, 1979 to meet the criteria of acceptance stipulated in the Federal flammability standards for children's sleepwear, FF 3-71 (16 CFR Part 1615) and FF 5-74 (16 CFR Part 1616), or any other standard approved by the State Fire Marshal. If the Commission grants the proposed exemption, the California flammability regulations for children's clothing would not be preempted under section 16 of the FFA.

Prior to granting any application for an exemption from preemption under the FFA, the Commission must provide an opportunity for the presentation of written and oral views concerning the proposal, in accordance with Section 16 of the Act and the proposed and interim procedures. In the December 27, 1976 FEDERAL REGISTER notice proposing the exemption, the Commission solicited written comments from interested persons, to be received by the Commission's Office of the Secretary on or before February 25, 1977. In this notice, the Commission is providing for oral proceedings concerning the proposed exemption.

RELEVANT ISSUES TO BE ADDRESSED IN ORAL PRESENTATIONS

Section 16(c) of the FFA permits the Commission to grant an exemption from preemption if: (1) Compliance with the State or local flammability requirement would not cause the fabric, product, or related material to be in violation of the Federal requirement, (2) the State or local flammability requirement provides a significantly higher degree of protection than the Federal requirement, and (3) the State or local requirement would not unduly burden interstate commerce. To assist the Commission in reaching conclusions concerning the degree of protection provided by the California regulations and the extent to which the regulations would burden interstate commerce, the Commission would like oral presentations to address the following questions, in addition to any other relevant matters the participants wish to address:

1. Whether the California regulations concerning the flammability of children's clothing would provide a significantly higher degree of protection from the risk of occurrence of fire with respect to which the Federal standard, CS 191-53, is in effect.

2. Whether the California regulations concerning the flammability of children's clothing would unduly burden interstate commerce, specifically,

(a) Whether it is technologically feasible to comply with the California regulations.

(b) Whether it is economically feasible to comply with the California regulations.

(c) Whether the cost of complying with the California regulations would unduly burden interstate commerce.

(d) The present geographic distribution of the items to which the California regulations would apply, and projections of future geographic distribution.

(e) The probability that other States or local governments will apply for an exemption for a similar flammability standard or other regulation.

(f) Whether there are any particular circumstances affecting the State of California that make it necessary for California to establish its regulations.

PROCEDURES FOR ORAL PROCEEDINGS

The oral proceedings will be informal, nonadversary, legislative type proceedings at which there will be no formal pleadings or adverse parties.

The proceedings will be conducted impartially, thoroughly, and expeditiously to allow interested persons an opportunity for oral presentation of data, views or arguments while preserving the basic informal nature of rulemaking under section 553 of title 5 of the United States Code. The oral presentations will be transcribed. A copy of the transcript for each oral proceeding will be available for examination by interested persons in the Commission's Office of the Secretary shortly after the presentations.

It is anticipated that a Commissioner will preside at each of the oral proceedings. The presiding officer will chair the proceedings; make appropriate provision for testimony, comments, and questions; and will be responsible for the orderly conduct of the proceedings. The presiding officer will have all the powers necessary or appropriate to contribute to the equitable and efficient conduct of the oral proceedings, including the following:

(1) The right to apportion the time of persons making presentations in an equitable manner in order to complete the presentations within the time period allotted for the proceedings.

(2) The right to terminate or shorten the presentation of any party when, in the view of the presiding officer, such presentation is repetitive or is not relevant to the purpose of the proceedings.

(3) The right to confine the presentations to the issues specified in this notice of oral proceeding.

(4) The right to require a single representative to present the views of two or more persons or groups who have the same or similar interests. The presiding officer will have the authority to identify groups or persons with the same or similar interests in the proceedings.

The presiding officer and Commission representatives will have the right to question persons making an oral presentation as to their testimony and any other matter relating to the proposed rule. Persons in attendance may submit questions, in writing, to the presiding officer.

Persons wishing to comment on, or rebut, statements by other participants in

the oral proceedings may do so by sending written comments (preferably in five copies) to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207 on or before February 25, 1977, which is the deadline for submitting written comments on the proposed exemption. Persons making an oral presentation may also submit, on or before February 25, a written presentation of their views or any other written statement for the record. Materials received by the Office of the Secretary after February 25 will be considered to the extent practicable. Received comments and other relevant material may be seen in the Office of the Secretary, Third Floor, 1111 18th Street NW., Washington, D.C. during working hours Monday through Friday.

REQUESTS TO PARTICIPATE IN ORAL PROCEEDINGS

The February 7 Washington, D.C. proceeding has been tentatively scheduled to begin at 9:30 a.m. at the Commission's third floor hearing room, 1111 18th Street NW., Washington, D.C. The February 14 San Francisco proceeding has been tentatively scheduled to begin at 9:30 a.m. at the Federal Building, 450 Golden Gate Avenue, Room 2007, San Francisco, California. The February 15 Los Angeles proceeding has been tentatively scheduled to begin at 9:30 a.m. at the Patriotic Hall, 1816 Figueroa Street, Los Angeles, California. The locations and times for these proceedings may be confirmed with the Commission's Office of the Secretary. Any changes will be published in the FEDERAL REGISTER and the Commission's public calendar prior to these proceedings.

All persons who wish to make an oral presentation should notify Richard Danca of the Office of the Secretary, CPSC, Washington, D.C. 20207, telephone 202-634-7700, no later than close of business February 2, 1977 for scheduling purposes. Persons wishing to make a presentation should indicate the city in which they desire to make a presentation and the amount of time they request. A summary or outline of each oral presentation should be filed with the Office of the Secretary at least 2 working days prior to the oral presentation.

In order to facilitate presentations by interested persons who are unable to attend during normal working hours, the Commission is willing to provide an opportunity for presentations after 5:00 p.m. If persons wish to make a presentation after 5:00 p.m., they should so notify the Office of the Secretary.

The following persons have already submitted requests to make an oral presentation and need not submit another request: Textile Distributors Association; National Cotton Council of America; Sears, Roebuck and Company; American Apparel Manufacturers Association; National Retail Manufacturers Association; Coalition of Apparel Industries in California; Springs Mills, Inc.; Cotton Incorporated; Man-Made Fiber Producers Association; Inc., National Knitwear Manufacturers Association; American Textile Manufacturers Institute; State Fire Marshall of the State of California. If they have not already done so, these persons should notify the Office of the Secretary of the amount of ti...e they request for a presentation and should indicate the city in which they desire to make a presentation.

Dated: January 19, 1977.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.77-2235 Filed 1-24-77;8:45 am]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS

Receipt

Environmental impact statements received by the Council on Environmental Quality from January 10 through January 14, 1977. The date of receipt fo reach statement is note in the statement summary. Under Council Guidelines the minimum period for public review and comment on draft environmental impact statements in forty-five (45) days from this FEDERAL REGISTER notice of availability. (March 7, 1977). The thirty (30) day period for each final statement begins on the day the statement is made available to the Council and to commenting parties.

Copies of individual statements are available for review from the originating agency. Back copies will also be available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

DEPARTMENT OF AGRICULTURE

Contact: Coordinator of Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 359-A, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Draft

U.S. Borax Mining Access Rd., Quartz Hill Prospect, Alaska, January 12: Proposed, by the United States Borax & Chemical Corporation (in behalf of Pacific Coast Mines, Inc.), is the development of a mining exploration road due east of Ketchikan on the mainland of southeast Alaska. This road is to be used for intensive development drilling of the prospect to depths below 600 feet and for the extraction of about 500 tons of ore for pilot testing (bulk sampling). The greatest adverse impact will be a major development in an otherwise undeveloped area of the Tongass National Forest. Greater pressure will be put on fish and other aquatic life. (ELR Order No. 70047.)

Cannery Creek Timber Sale, Chugach N.F., Alaska, January 12: Proposed is a timber sale near Cannery Creek, Unawik Inlet, Prince William Sound, approximately 70 miles northwest of Cordova, Alaska. The sale is a combination salvage and reservoir right-of-way clearing project for a proposed Alaska Department of Fish and Game salmon hatchery project. The estimated volume is 2,230 MBF which will be coming from 6 clearcut units totalling approximately 166 acres. The gross sale area is 480 acres. The scenic value of the area will be altered by the proposed sale over the next 30 to 40 years. (ERL Order No. 70049.)

Final

Wilderness Suitability, Oregon Dunes N.R.A., Douglas Lane, Coos County, Oreg., January 11: The proposed action is the implementation of a management plan for the Oregon Dunes National Recreation Area, Siuslaw N.F. in Lane, Douglas, and Coos Counties, Oregon. The area will be managed primarily for dispersed use, while providing for a broad spectrum of recreational activities. Existing campgrounds will be retained and a large campground will be provided near Butterfield Lake, as well as 4 primitive hiker-boater camps on Siltcoos Lake, Tahkenitch Lake and the Umpqua River. Impacts on the environment will be beneficial. Comments made by: HUD, USDA, DOT, FPC, DOC, DOI, COE, EPA, State and local agencies, concerning citizens. (ELR Order No. 70042.)

SOIL CONSERVATION SERVICE

Final

Central Madison Watershed Project, Madison County, La., January 10: The proposed project is for watershed protection, flood prevention, and drainage in Madison Parish, Louisiana. Approximately 52 miles of channel work with appurtenant measures will be installed. Land treatment measures will be applied on 38,700 acres of cropland and pastureland, and 16,200 acres will be managed for wildlife habitat. About 796 acres of forestland, 2 acres of wooded channel banks, and 285 acres of open land will be disturbed by construction. Comments made by: COE, DOI, HEW, DOT, OEO, EPA, State and local agencies, concerned citizens. (ELR Order No. 70033.)

DEPARTMENT OF DEFENSE, AIR FORCE

Contact: Dr. Billy Welch, Room 4D 873, The Pentagon, Washington, D.C. 20330, 202-OX 7-9297.

Final

U.S.A.F. Communications Relocation to Scott AFB, St. Clair County, Ill., January 12: Proposed is the relocation of Headquarters Air Force Communications Service and all of its technical units at Richards-Gebaur AFB including four C-140 aircraft to Scott AFB, Illinois (approximately 2,184 military and civilian manpower authorizations), except result of the proposed action, approximately 42 military manpower authorizations) would be relocated to Keesler AFB, Misaissippi. As a result of the proposed action, approximately 3,769 military and civilian manpower authorizations and would be deleted from the Richards-Gebaur AFB which would result in a savings of about 1,543 manpower positions. Comments made by: EPA, VA, USDA, DOC, HEW, HUD, State and local agencies, concerned groups and persons. (ELR Order No. 70039.)

DEPARTMENT OF DEFENSE, ARMY CORPS

Contact: Dr. C. Grant Ash, Office of Environmental Policy Development, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue, S.W., Washington, D.C. 20314, 202-693-6795.

Draft

Redbank and Fancher Creeks Investigation, Fresno County, Calif., January 12: The proposed plan includes construction of flood control facilities east of the Fresno-Clovis metropolitan area in Fresno County, California, to provide increased flood protection to eastern Fresno, Clovis, and surrounding rural and agricultural lands. The plan calls for a dam on Fancher Creek, enlargement of the existing Big Dry Creek project, and construction of three detention basins, one on Pupcreek, one on Redbank Creek, and one on

Alluvial Drain. Adverse effects include loss of agricultural land, riparian vegetation, and wildlife habitat. (Sacramento District) (ELR Order No. 70043.)

Charlotte Co. Beach Erosion Control, etc. Study, Charlotte County, Fla., January 10: This statement considers beach fill and periodic nourishment for the northerly 17,400 linear feet (3.3 miles) of Charlotte County on Manasota Peninsula; construction of a 550-foot rubble-mound terminal groin on the southwest tip of the peninsula, and construction of a 700-foot rubble-mound revetment easterly along the north shore of Stump Pass. Adverse effects include temporary degradation of water quality at specific sites. (Jackson District). (ELR Order No. 70028.)

Papillion Creek and Tributaries Lakes (2), Nebraska, January 10: The proposed project is to modify the plan for the Big Papillion Creek portion of the basin to authorize Dam 3A in lieu of Dams 1 through 9. It is also the intent of the District Engineer to complete the development of Dams 16 and 11 as authorized, initiate the construction of Dam 10 as authorized, and defer construction of any of the dams in the West Branch Papillion Creek portion of the basin until a restudy is completed. Adverse impacts include acquisition of 7,656 acres of land, displacement of 62 families, loss of riparian wildlife habitat, and some degradation of downstream and lake water quality. (Omaha District). (ELR Order No. 70026.)

Hudson R. Project, N.E. U.S. Water Supply Study, New York, January 12: Proposed is the construction of a water intake structure, pumping station, water treatment facility and sixty mile tunnel through deep rock for utilizing Hudson River water as a supplement to the existing New York City System when the existing system reservoirs reach predetermined low levels indicative of potential shortages. The project also entails completion of portions of New York City Water Tunnel No. 3 and rehabilitation of an existing pipeline between the New York City System and Nassau County. Impacts associated with operation include minor adverse local effects on water quality. (North Atlantic Division). (ELR Order No. 70040.)

Final

Patchogue River Maintenance Dredging, Middlesex County, Conn., January 13: The proposed action is to conduct maintenance dredging on the Patchogue River Federal Navigation Project in Westbrook, Connecticut. A hydraulic dredge will remove approximately 17,600 cubic yards of sediment to a land disposal area in the mouth of the Patchogue River. Future maintenance will utilize ocean disposal at the Cornfield Shoals dumping ground. Adverse impacts include the continued disruption of benthic communities, increase of solids, nutrients, and chemicals in the water column, and temporary runoff of drainage at the disposal site. Comments made by: EPA, DOC, DOI, DOT, State and local agencies, and concerned citizens. (ELR Order No. 70058.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Please refer to the separate notice published by EPA in this issue of the FEDERAL REGISTER for the appropriate EPA contact.

Draft

New Milford Wasterwater Collection and Treatment, Connecticut, January 12: This statement proposes the development of a regional wastewater treatment and collection system to serve the towns of New Milford and Brookfield, Connecticut. Included is the expansion in three phases of an already existing system which currently serves only the downtown area of New Milford. The treatment facility will be located in New Milford, on the west bank of the Housatonic River. Limited adverse effects are anticipated. (Region I). (ELR Order No. 70048.)

Final

Exhaust and Crankcase Regulations—1978 Models, January 12: The proposed action is the institution of exhaust and crankcase regulations for 1978 and later model year street-legal motorcycles with displacements greater than 50 cc. Exhaust emission standards for hydrocarbons (HC) will be set at 5 to 14 grams per kilometer with the exact standard being a function of engine displacement. Carbon monoxide (CO) emissions must not exceed 17 g/km for all motorcycles. In 1980 the HC emission standard will be 5 g/km regardless of engine size and the size and the CO emission standard will be reduced to 12 g/km. Environmental effects will be beneficial. Comments made by: DOC, DOT, concerned groups and persons. (ELR Order No. 70038.)

W. Contra Costa Co. Wastewater Program, Contra Costa County, Calif., January 10: Proposed is the development of a wastewater management plan for the Western Contra Costa County area primarily to meet the needs of municipal wastewater dischargers. The objectives relate to upgrading the method of effluent disposal and providing adequate treatment, while enhancing the early reclamation and reuse of wastewater effluent. Adverse effects related to construction will occur mostly along the interceptor routes from Pinole to Richmond and at the dredging sites for submarine outfall extensions. Comments made by: COE, USCS, EPA, HEW, DOI, DOT, AHP, GSA, FPC, State and county agencies, concerned citizens. (ELR Order No. 70032.)

FEDERAL ENERGY ADMINISTRATION

Contact: Mr. Robert Stern, Director, Office of Environmental Impact, Federal Energy Administration, New Post Office Building, Room 7119, 12th and Pennsylvania Avenue, NW, Washington, D.C. 20461, 202-961-8621.

Draft

Central Rock Mine, SPR, Fayette County, Ky., January 12: The proposed project involves the implementation of the Strategic Petroleum Reserve, Title I, Part B, of the Energy Policy and Conservation Act (P.L. 94-163). This action is part of the Early Storage Reserve and proposes to store 14 million barrels of oil in an underground limestone mine located in Lexington, Kentucky. The proposed storage of oil at Central Rock Mine would be implemented at an existing underground limestone mine presently owned and operated by the Central Rock Company. Adverse socioeconomic impacts may result if the limestone mine is closed temporarily. (ELR Order No. 70052.)

Ironton Mine, SPR, Lawrence County, Ohio, January 12: This project involves the implementation of the Strategic Petroleum Reserve, Title I, Part B, of the Energy Policy and Conservation Act of 1975 (Pub. L. 94-163). The present action is part of the Early Storage Reserve and proposes to store 21 million barrels of oil in an underground limestone mine located near Ironton, Ohio. The proposed storage of oil at Ironton Mine would be implemented at an abandoned underground limestone mine presently owned by the Alpha-Portland Cement Company. (ELR Order No. 70053.)

Final

West Hackberry Salt Dome—SPR, Cameron County, La., January 13: Proposed is the implementation of the Strategic Petroleum Reserve (SPR), Title I, Part B, of the Energy Policy and Conservation Act of 1975 through the development of a 60 million barrel crude oil facility at the West Hackberry salt dome. Under the initial phase of the SPR, referred to as the Early Storage Reserve (ESR), 150 million barrels of oil will be stored by 1978. The West Hackberry site, a salt dome with existing cavities located in Cameron Parish, Louisiana, has been identified as a candidate site for the ESR. Adverse effects include the risk of oil spills. Comments made by: AHP, COE, EPA, FPC, HEW, NRC, TVA, DOT, TREA, State and local agencies, organizations and individuals. (ELR Order No. 70060.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7258, 451 7th Street, S.W., Washington, D.C. 20410, 202-755-6308.

Draft

Vista Verde Subdivision, Dade Co., Dade County, Fla., January 11: Proposed is the development of a subdivision project Vista Verde, located 14 miles northwest of Miami, Florida. The 240-acre project will include 142 single family detached residences, 306 cluster residences, 833 townhouse units, and a 12-acre school-park site. The completion of the development will create additional demand on utilities, and municipal and community services and facilities. Other impacts include increases in surface water run-off, congestion of traffic, and increases in air and noise pollution. (ELR Order No. 70036.)

Sugar Land, 1st Colony Subdivision, Fort Bend County, Tex., January 10: The proposed action is the development of 7,530 acres for multipurpose use in the city of Sugar Land, Texas. The project will include up to 13,200 units under the HUD/FHA home mortgage programs. Plans call for additional construction of a golf course and several lakes. The major impact would be the transition of the area from its present predominantly agricultural state into a planned urban development providing a wide range of living accommodations for 63,000 people. (ELR Order No. 70027.)

Final

St. Charles Communities, Charles County, Md., January 12: Proposed is the development of St. Charles Communities, located approximately 25 miles southeast of Washington, D.C. It is bounded on the north and east by Maryland Route 5, on the south by Maryland Route 448, and on the west by U.S. Route 301. Adverse effects of development include the degradation of the Zekiah Swamp. The existing and proposed transportation network for the area may also prove to be inadequate. Comments made by: USDA, COE, DOI, ERDA, EPA, FPC, State and local agencies, concerned citizens. (ELR Order No. 70045.)

Supplement

Merced, Atwater, Castle AFB (S-1), Merced County, Calif., January 13: This statement supplements a draft EIS filed with CEQ in April, 1976, concerning Merced, Atwater, Castle Air Force Base and Environs. It consists of consideration of major areas acceptable for HUD programs, including mortgage insurance. Major potential beneficial impacts result in the availability of mortgage insurance, preservation of select natural areas, and encouragement of residential development in areas of moderate noise levels. Potential adverse impacts are the loss of open space and agricultural land (ELR Order No. 70056.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 7260, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

BUREAU OF LAND MANAGEMENT

Draft

San Luis Resource Area, Grazing Management, Colorado, January 10: Proposed is a grazing management program on national resource lands in the San Luis Valley, located in south-central Colorado. The components of the proposal are (1) intensive management of grazing (allotment management plans of AMPs) on 473,916 acres; (2) custodial management of grazing on 16,625 acres; (3) elimination of grazing on 5,930 acres; and (4) continuation of unallotted status of range on 19,900 acres. Construction of various range improvements would be required to implement the AMPs, and fencing would be required to eliminate grazing in some areas. (ELR Order No. 70034.)

Final

Northwest Colorado Coal, Routt, Moffat, and Rio Blanco Counties, Colo., January 10: Proposed is the approval by the Department of the Interior of a variety of formal and anticipated proposals relating to the development of Federal coal. The cumulative effects of increased coal exploration and development, additional Federal coal leasing, and right-of-way approval are analyzed on a regional basis. Coal related developments would total 3 mines, 3 power plants, 86 miles of new railroads, 90 miles of new roads, and 350 miles of new powerlines by 1990. Adverse impacts include modification of natural contours, sedimentation, increases in air pollution, and loss of 19,000 acres of habitat. Comments made by: AHP, ERDA, EPA, HEW, HUD, ICC, DLAB, State and local agencies, concerned groups and persons. (ELR Order No. 70030.)

Challis Planning Unit Grazing Program, Custer County, Idaho, January 10: Proposed are domestic livestock management plans for the Challis Unit, which includes 330,617 acres of national resource lands. The plan would include permanent grazing systems, range improvements including water developments, fencing, cattleguards and gates, vegetative manipuation and stock trails. Adverse impacts would include periodic increases of sedimentation in pastures where livestock would be concentrated for early spring use, short-term impacts of vegetation because of plants not being permitted to meet growth requirements, occasional competition of wildlife and wild horses for vegetation, and a decrease of grazing for operators. Comments made by: USDA, EPA, DOI, AHP, State and local agencies, concerned citizens. (ELR Order No. 70035.)

DEPARTMENT OF LABOR

Draft

Occupational Exposure to Cotton Dust, Standard. Proposed is the regulation of employee exposure to cotton dust by prohibiting their exposure to respirable particulates above the concentration limit of 200 $\mu g/m^3$. The proposal also provides for employee exposure measurements, methods of compliance, personal protective equipment, training, work practices, including housekeeping, medical surveillance, and recordkeeping. No adverse impacts on the environment external to the workplace are expected as a result of the promulgation of the proposed standard. (ELR Order No. 70059.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, 202-426-4357.

FEDERAL HIGHWAY ADMINISTRATION

Draft

U.S. 24 Relocation, U.S. 24 Bypass—S.R. 37, Wabash and Huntington Counties, Ind., January 12: Proposed is the relocation of U.S. 24, commencing at the existing intersection with S.R. 13, northeast of the City of Wabash, then northeasterly for between 15.6 and 18.8 miles (subject to the alternate selected) to the existing S.R. 9–S.R. 37 Bypass west of the City of Huntington. Secondary terminal being considered are the west end of the U.S. 24 Bypass around the City of Wabash and eastern termini the west city limits of the City of Fort Wayne. Adverse effects include the relocation of from 3 to 5 families and as many as 10 businesses. (Region 5). (ELR Order No. 70046.)

N. & S. Tigard Exchange, Pacific Hwy—I–5, Clackamas, Multnomah, and Washington Counties, January 12: The proposed action calls for the widening of 1.44 miles of existing four lane freeway to six lanes, completing the six-lane freeway from Salem to Portland. Two safety features are proposed in addition: reconstruction of Haines Interchange and construction of an exclusive 1 truck bypass lane. The bypass lane would join an existing shoulder which would be converted to an exclusive truck climbing lane. Three alternatives are currently under consideration, each having its respective impact. (Region 10). (ELR Order No. 70041.)

Final

Florida Street Extension, Mobile, Mobile County, Ala., January 13: Proposed is the construction of an extension of Florida Street from Government Boulevard to Springhill Avenue in Mobile, Alabama. The project length ranges from 2.2 to 2.4 miles, depending upon the alternative selected. The most significant negative impact of the project is the potential dislocation of approximately 19 families, 13 businesses, and 2 non-profit organizations. Temporary construction disruption would result. Comments made by: DOC, USDA, HUD, HEW, EPA, State and local agencies, concerned citizens. (ELR Order No. 70054.)

Interstate 210, Los Angeles, Los Angeles County, Calif., January 10: The proposed action is the construction of a 5.6-mile segment of I–210 Freeway between 0.1 mile west of Van Nuys Blvd. and 1.0 mile east of Sunland Blvd. in Los Angeles, California. This will be the last link of the 48.7-mile freeway to be completed. Adverse impacts include dislocation of 142 families, taking of 17.704 acres of undeveloped land leased for park purposes from the 1,437 acre Hansen Dam Recreational Area, loss of flood storage capacity in the dam Basin, and loss of wildlife habitat. Comments made by: DOT, HEW, USDA, EPA, COE, DOI, HUD, State and local agencies, concerned citizens. (ELR Order No. 70031.)

U.S. 18 Expressway, Clayton County, Clayton County, Iowa, January 12: Proposed is the construction of a section of the US 18 Arterial in Clayton County. The 4-mile project begins on present U.S. 18 near the western section line of Section 29, T95, R3W, in Clayton Co., and proceeds north to a point in the Basil Giard Claim No. 1 near Station 6390. The section curves northeasterly, then easterly to the new Mississippi River Bridge at Marquet. The acquisition of 140 acres of land, including 95 acres of timber and pastureland and 25 acres of tillable land, will be necessary. Other negative impacts include removal of natural wildlife habitat from the deepest section of the creek valley to the agricultural fields surrounded by woodland. Comments made by: HEW, HUD, DOI, EPA, State and local agencies, concerned citizens. (ELR Order No. 70044.)

I–471, from I–275 to Cincinnati, Campbell and Kenton Counties, Ky., January 12: The proposed action is construction of a north-south interstate connector between I–275 and Cincinnati. The 3.51-mile facility is to be a 6-lane divided highway from Lexington Avenue in Newport south to U.S. 27 in the vicinity of Moock Road and the Intersection with U.S. 27 at Sunset Avenue. Adverse impacts will be displacement of residents and businesses, increases in air and noise pollution, and disruption of wildlife. (Region 4) Comments made by: HEW, HUD, EPA, DOC, DOI, USDA, State and local agencies, concerned citizens. (ELR Order No. 70037.)

S.R. 61, Oliver Springs-S.R. 61, Anderson and Roane Counties, Tenn. The proposed project is a relocation of State Route around the northern portion of Oliver Springs, Tennessee. The 2.2-mile project begins on the southwest side of Oliver Springs and extends to existing S.R. 61, southeast of Oliver Springs. The facility will be a 5-lane city-type cross section for the first part and then a 4-lane divided facility for the last portion. Negative effects include the displacement of residences and businesses, introduction of noise and air pollution, soil erosion and siltation of water courses, a visual impact on the community, and a potential for side slope instability. (Region 4) Comments made by: HUD, DOI, FPC, DOT, COE, EPA, HEW, State and local agencies, concerned citizens. (ELR Order No. 70050.)

U.S. 2 Belknap Viaduct, Superior, Douglas County, January 13: The proposed project involves replacement of the Belknap Street Viaduct which carries local and USH 2 traffic in the City of Superior, Douglas County, Wisconsin. The new structure would be a 4-lane bridge and would be from 1500 to 1900 feet long, depending upon its new location. Adverse effects include right of way requirements; disruption of families, business, and wildlife in the center drainage area; and damages to haul roads not designed for heavy loads. Comments made by: EPA, DOI, HEW, HUD, DOT, State and local agencies, concerned citizens. (ELR Order No. 70055.)

NUCLEAR REGULATORY COMMISSION

Contract: Mr. Benard Rersche, Director of Division of Reactor Licensing, P–722, NRC, Washington, D.C. 20555, 301–492–7373.

Supplement

Midland Plant, Units 1 and 2 (S–1), Midland County, Mich., January 13: This statement supplements a final EIS filed with CEQ in March, 1972. The proposed action is the continuance of the construction permits issued on December 15, 1972 to Consumers Power Company for the construction of Midland Plant Units 1 and 2. The Midland Plant Units 1 and 2 will have two pressurized water reactors that will generate about 1,300 megawatts of electricity for distribution to the applicant's system. In addition, up to about 4,000,000 pounds per hour of steam are designated to be delivered to the Dow Chemical Company. (ELR Order No. 70057.)

DAVID TUNDERMAN,
Acting General Counsel.

[FR Doc.77-2271 Filed 1-24-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF SCIENTIFIC ADVISORY BOARD

Meeting

JANUARY 6, 1977.

The USAF Scientific Advisory Board Space and Missile Systems Organization Advisory Group, Air Force Systems Command, will hold meetings on February 14, 1977 from 8:30 a.m. to 5 p.m and February 15, 1977 from 8:30 a.m. to 1 p.m. at the Los Angeles Air Force Station, California in the Command Presentation Center, Building 105.

The Group will receive classified briefings and hold classified discussions on selected space programs.

The meetings concern matters listed in section 552(b) of Title 5, United States Code, specifically subparagraph (1) thereof, and that accordingly the meetings will be closed 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.77-2191 Filed 1-24-77;8:45 am]

USAF SCIENTIFIC ADVISORY BOARD

Meeting

JANUARY 13, 1977.

The USAF Scientific Advisory Board ad hoc Committee on the EF-111A will hold meetings at Kirtland AFB, New Mexico on February 15 and 16, 1977 from 9 a.m. to 5 p.m. each day.

The Committee will receive classified briefings and hold classified discussions on the EF-111A.

The meetings concern matters listed in section 552(b) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly the meetings will be closed 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.77-2306 Filed 1-24-77;8:45 am]

USAF SCIENTIFIC ADVISORY BOARD

Meeting

JANUARY 17, 1977.

The USAF Scientific Advisory Board ad hoc Committee on Aeronomy will hold a meeting on February 18, 1977 in the Pentagon.

The Committee will have a working session to discuss and complete work on the final draft report on the study of Aeronomy.

The meeting will be open to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-4648.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc.77-2307 Filed 1-24-77;8:45 am]

Office of the Secretary

DOD ADVISORY GROUP ON ELECTRON DEVICES

Advisory Committee Meeting

Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) will meet in closed session at 201 Varick Street, New York, NY 10014 on 15 February 1977.

The purpose of the Advisory Group is to provide the Director of Defense Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The microwave area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Advisory Group meeting concerns matters listed in section 552(b) of Title 5 of the United States Code, specifically subparagraph (1) thereof, and that accordingly, this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

JANUARY 19, 1977.

[FR Doc.77-2335 Filed 1-24-77;8:45 am]

DOD ADVISORY GROUP ON ELECTRON DEVICES

Advisory Committee Meeting

Working Group C (Mainly Imaging and Display) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed session at the Institute for Defense Analysis, 400 Army Navy Drive, Arlington, Virginia 22202, on 16 February 1977 vice the 27 January 1977 meeting which was cancelled.

The purpose of the Advisory Group is to provide the Director of Defense Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military Departments propose to initiate with industry, universities or in their laboratories. This special device area includes such programs as Infrared and Night Vision Sensors. The review will include classified program details throughout.

In accordance with section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Advisory Group meeting concerns matters listed in section 552(b) of Title 5 of the United States Code, specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

JANUARY 19, 1977.

[FR Doc.77-2336 Filed 1-24-77;8:45 am]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

[ERDA-1553-D]

MANAGEMENT OF INTERMEDIATE LEVEL RADIOACTIVE WASTE, OAK RIDGE NATIONAL LABORATORY, OAK RIDGE, TENNESSEE

Availability of Draft Environmental Statement

Notice is hereby given that a Draft Environmental Statement, ERDA-1553-D, Management of Intermediate Level Radioactive Waste, Oak Ridge National Laboratory, Oak Ridge, Tennessee, was issued pursuant to the Energy Research and Development Administration's (ERDA) implementation of the National Environmental Policy Act of 1969. The statement was prepared to support an administrative action to select a preferred technique for the management of intermediate level radioactive waste (ILW) and the construction and operation of a facility to implement the technique at the Oak Ridge National Laboratory in Roane County, Tennessee.

Copies of the draft statement have been distributed for review and comment to Federal and Tennessee State and local agencies and other organizations and individuals. Copies of the draft statement are available for public inspection at the ERDA public document rooms at:

ERDA Headquarters, 20 Massachusetts Avenue, Washington, D.C.
Albuquerque Operations Office, Kirtland Air Force Base East, Albuquerque, New Mexico.
Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois.
Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho.
Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada.
Oak Ridge Operations Office, Federal Building, Oak Ridge, Tennessee.
Richland Operations Office, Federal Building, Richland, Washington.
San Francisco Operations, 1333 Broadway, Oakland, California.
Savannah River Operations Office, Savannah River Plant, Aiken, South Carolina.

Comments and views concerning the draft statement are requested from other interested agencies, organizations and individuals. Single copies of the draft environmental statement will be furnished for review and comment upon request addressed to W. H. Pennington, Director, Office of NEPA Coordination, U.S. Energy Research and Development Administration, Mail Station E-201, Washington, D.C. 20545, (301) 353-4241. Comments shoud be sent to the same address.

In accordance with guidelines from the Council on Environmental Quality, agencies and members of the public submitting comments on the draft environ-

mental statement should endeavor to make their comments as specific, substantive, and factual as possible without undue attention to matters of form in the impact statement. It would assist in the review of comments if the comments were organized in a manner consistent with the structure of the draft statement. Emphasis should be placed on the assessment of the environmental impacts of the waste management activities, and the acceptability of those impacts on the quality of the environment, particularly as contrasted with the impacts of reasonable alternatives. Commenting entities may recommend modifications and/or new alternatives that will enhance environmental quality and avoid or minimize adverse environmental impacts.

Comments on the draft environmental statement will be placed in the above referenced document rooms and will be considered in the preparation of the final environmental statement if received within 60 days of the date of publication of this notice.

Dated at Germantown, Md., this 18th day of January 1977.

For the Energy Research and Development Administration,

JAMES L. LIVERMAN,
Assistant Administrator for Environment and Safety.

[FR Doc.77-2200 Filed 1-24-77;8:45 am]

[ERDA-1551-D]

NEVADA TEST SITE, NYE COUNTY, NEVADA

Availability of Draft Environmental Impact Statement

Notice is hereby given that a Draft Environmental Impact Statement, ERDA-1551-D, Nevada Test Site, Nye County, Nevada (January 1977), has been issued pursuant to the Energy Research and Development Administration's (ERDA) implementation of the National Environmental Policy Act of 1969. The statement was prepared to support ERDA administrative actions related to the continuation of ERDA's underground nuclear testing program and other activities at the Nevada Test Site for Fiscal Year 1978 and beyond.

Copies of the draft statement have been distributed for review and comment to Federal, State and local agencies and other organizations and individuals. Copies of the draft statement are available for public inspection at the ERDA public document rooms at:

ERDA Headquarters, 20 Massachusetts Avenue, Washington, D.C.
Albuquerque Operations Office, Kirtland Air Force Base East, Albuquerque, New Mexico.
Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois.
Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho.
Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada.
Oak Ridge Operations Office, Federal Building, Oak Ridge, Tennessee.
Richland Operations Office, Federal Building, Richland, Washington.
San Francisco Operations, 1333 Broadway, Oakland, California.
Savannah River Operations Office, Savannah River Plant, Aiken, South Carolina.

Comments and views concerning the draft statement are requested from other interested agencies, organizations and individuals. Single copies of the draft environmental statement will be furnished for review and comment upon request addressed to W. H. Pennington, Director, Office of NEPA Coordination, U.S. Energy Research and Development Administration, Mail Station E-201, Washington, D.C. 20545, (301) 353-4241. Comments should be sent to the same address.

In accordance with guidelines from the Council on Environmental Quality, agencies and members of the public submitting comments on the draft environmental statement should endeavor to make their comments as specific, substantive, and factual as possible without undue attention to matters of form in the impact statement. It would assist in the review of comments if the comments were organized in a manner consistent with the structure of the draft statement. Emphasis should be placed on the assessment of the environmental impacts of the NTS activities, and the acceptability of those impacts on the quality of the environment, particularly as contrasted with the impacts of reasonable alternatives. Commenting entities may recommend modifications and/or new alternatives that will enhance environmental quality and avoid or minimize adverse environmental impacts.

Comments on the draft environmental statement will be placed in the above referenced document rooms and will be considered in the preparation of the final environmental impact statement if received within 60 days of the date of publication of this notice.

Dated at Germantown, Md., this 18th day of January 1977.

For the Energy Research and Development Administration.

JAMES L. LIVERMAN,
Assistant Administrator for Environment and Safety.

[FR Doc.77-2198 Filed 1-24-77;8:45 am]

[ERDA-1552-D]

SAFETY RESEARCH EXPERIMENT FACILITIES, IDAHO NATIONAL ENGINEERING LABORATORY, IDAHO

Availability of Draft Environmental Impact Statement

Notice is hereby given that a Draft Environmental Impact Statement, ERDA-1552-D, Safety Research Experiment Facilities, Idaho National Engineering Laboratory, Idaho, was issued pursuant to the Energy Research and Development Administration's (ERDA) implementation of the National Environmental Policy Act of 1969. The statement was prepared in support of legislative action related to the ERDA request for appropriation of funds for Fiscal Year 1978 for the project.

The statement addresses the potential environmental impacts associated with the construction and operation of a new safety test facility and modifications to existing facilities at the Argonne National Laboratory-West which is part of the Idaho National Engineering Laboratory in Butte County, Idaho. The facilities will be used to confirm the calculated safety of liquid metal fast breeder reactor fuel elements under a variety of abnormal conditions.

Copies of the draft environmental statement have been distributed for review and comment to appropriate Federal, Idaho State and local agencies and organizations and individuals who are known to have an interest in this activity. Copies of the statement are available for public inspection in the ERDA public document rooms at:

ERDA Headquarters, 20 Massachusetts Avenue, NW., Washington, D.C.
Albuquerque Operations Office, Kirtland Air Force Base East, Albuquerque, New Mexico.
Chicago Operations Office, 8900 South Cass Avenue, Argonne, Illinois.
Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho.
Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada.
Oak Ridge Operations Office, Federal Building, Oak Ridge, Tennessee.
Richland Operations Office, Federal Building, Richland, Washington.
San Francisco Operations Office, 1333 Broadway, Oakland, California.
Savannah River Operations Office, Savannah River Plant, Aiken, South Carolina.

Comments and views concerning the draft environmental statement are requested from other interested agencies, organizations and individuals. Single copies of the statement will be furnished for review and comment upon request addressed to W. H. Pennington, Director, Office of NEPA Coordination, Mail Station E-201, Energy Research and Development Administration, Washington, D.C. 20545, (301) 353-4241. Comments should be sent to the same address.

In accordance with the guidelines of the Council on Environmental Quality, those submitting comments on the draft environmental impact statement should endeavor to make their comments as specific, substantive, and factual as possible without undue attention to matters of form in the impact statement. However, it would assist in the review of comments if the comments were organized in a manner consistent with the structure of the draft environmental statement. Emphasis should be placed specifically on the assessment of the environmental impacts of the proposed project, and the acceptability of those impacts on the quality of the environment, particularly as contrasted with the impacts of reasonable alternatives to the proposed action. Commenting entities may recommend modifications and/or new alternatives that will enhance environmental quality and avoid or minimize adverse environmental impacts.

Copies of comments received on the draft environmental statement will be placed in the above referenced public

document rooms for inspection and will be considered in the preparation of the final environmental impact statement if received within 60 days of the date of publication of this notice.

Dated at Germantown, Md., this 18th day of January 1977.

For the Energy Research and Development Administration.

JAMES L. LIVERMAN,
Assistant Administrator for Environment and Safety.

[FR Doc. 77-2199 Filed 1-24-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 674-6]

AGENCY COMMENTS ON ENVIRONMENTAL IMPACT STATEMENTS AND OTHER ACTIONS IMPACTING THE ENVIRONMENT

Availability

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, and section 309 of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) has reviewed and commented in writing on Federal agency actions impacting the environment contained in the following appendices during the period of November 1, 1976 and November 30, 1976.

Appendix I contains a listing of draft environmental impact statements reviewed and commented upon in writing during this review period. The list includes the Federal agency responsible for the statement, the number and title of the statement, the classification of the nature of EPA's comments as defined in Appendix II, and the EPA source for copies of the comments as set forth in Appendix VI.

Appendix II contains the definitions of the classifications of EPA's comments on the draft environmental impact statements as set forth in Appendix I.

Appendix III contains a listing of final environmental impact statements reviewed but not commented upon by EPA during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the statement, a summary of the nature of EPA's comments, and the EPA source for copies of the comments as set forth in Appendix VI.

Appendix IV contains a listing of final environmental impact statements reviewed but no commented upon by EPA during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the statement, and the source of the EPA review as set forth in Appendix VI.

Appendix V contains a listing of proposed Federal agency regulations, legislation proposed by Federal agencies, and any other proposed actions reviewed and commented upon in writing pursuant to section 309(a) of the Clean Air Act, as amended, during the referenced reviewing period. The listing includes the Federal agency responsible for the proposed action, the title of the action, a summary of the nature of EPA's comments, and the source for copies of the comments as set forth in Appendix VI.

Appendix VI contains a listing of the names and addresses of the sources of EPA reviews and comments listed in Appendices I, III, IV, and V.

Copies of the EPA Manual setting forth the policies and procedures for EPA's review of agency actions may be obtained by writing the Public Information Reference Unit, Environmental Protection Agency, Room 2922, Waterside Mall SW., Washington, D.C. 20460, telephone 202/755-2808. Copies of the draft and final environmental impact statements referenced herein are available from the originating Federal department or agency.

Dated: January 18, 1977.

REBECCA W. HANMER,
Director, Office of Federal Activities.

APPENDIX I.—*Draft environmental impact statements for which comments were issued between Nov. 1, 1976, and Nov. 30, 1976*

Identifying No.	Title	General nature of comments	Source for copies of comments
	CORPS OF ENGINEERS		
DS-COE-A32043-OO	Red River Waterway, Mississippi River to Shreveport, La., Texas, Texas, Oklahoma, Arkansas.	LO-2	G
D-COE-B35004-CT	Maintenance dredging, Patchogue River, Westbrook, Middlesex County, Conn.	ER-2	B
D-COE-B36005-MA	Cape Cod Canal, Bourne and Sandwich Counties, Mass.	LO-1	B
D-COE-B36010-RI	Pawtuxet River watershed, Rhode Island	ER-2	B
D-COE-D07003-DE	Delmarva Power & Light Co., Indian River Power Station Unit No. 4, Millsboro, Sussex County, Del.	LO-2	D
D-COE-D40042-PA	Relocation of U.S. 209, Bushkill to Milford, Tocks Island Project, Pennsylvania.	3	D
D-COE-E32019-FL	Sec. 15 Permit, Punta Gorda Isles, Inc., Construction of Boat Lock, Alligator Creek, Punta Gorda, Charlotte County, Fla.	ER-2	E
D-COE-E35027-NC	Wilmington Harbor, Northeast Cape Fear River, Wilmington and New Hanover Counties, N.C.	ER-2	E
D-COE-E35028-FL	Cross Florida Barge Canal (CFBC) Restudy Report, St. Johns River to Gulf of Mexico, Florida.	EU-2	E
DS-COE-F36010-MI	Flood Control on the Tittabawassee River, Midland County, Mich.	LO-2	F
DS-COE-F36015-MN	Root River Basin, Flood Control, Minnesota	LO-2	F
DS-COE-F36029-MN	Bassett Creek Watershed, Hennepin County, Minn.	LO-2	F
D-COE-F67001-WI	Permit, Flambeau Mining Corp., Open Pit Copper Mine, Ladysmith, Rusk County, Wis.	LO-2	F
DS-COE-G36048-TX	Lake Witchita, Holliday Creek, Witchita Falls, Tex.	LO-1	G
DS-COE-H36011-IA	Muscatine Island Levee District and Muscatine-Louisa County Drainage District No. 13, Local Flood Protection, Louisa County, Iowa.	ER-2	H
D-COE-K39018-HI	Kapuakea Homestead, Flood Control Project, Molokai, Maui County, Hawaii.	LO-1	J
DS-COE-L36041-WA	Chehalis River Flood Control, South Aberdeen Cosmopolis, Grays Harbor County, Wash.	LO-2	K
	DEPARTMENT OF AGRICULTURE		
D-AFH-E28017-NC	Avon Water Project, Cape Hatteras Water Association, Buxton, Dare County, N.C., (USDA-FHMA-ADM-NC-76-1).	LO-2	E
D-AFS-D65003-PA	Buzzard Swamp Unit Plan, Allegheny National Forest, Pa.	LO-1	D
D-AFS-E65013-AL	Timber Management Plan, William B. Bankhead National Forest, Winston, Lawrence and Franklin Counties, Ala. (USDA-FS-RS-DES-ADM-76-23).	LO-2	E
D-AFS-F65001-WI	Timber Management Plan, Chequamegon National Forest, Ashland, Bayfield, Sawyer, Price, Taylor and Vilas Counties, Wis.	LO-2	F
D-AFS-G65018-LA	Management of Vernon Unit Plan, Kisatchie National Forest, Vernon Parish, La.	LO-1	G
D-AFS-J40027-MT	Buck Creek and Yellow Mules Special Use Road Permit, Burlington Northern, Inc., Gallatin National Forest, Mont.	ER-2	I
D-AFS-J65053-CO	Dolores Planning Unit, San Juan National Forest, Colo.	ER-2	I
D-AFS-K65018-CA	Mohawk Land Use Plan, Plumas and Tahoe National Forests, Plumas and Sierra Counties, Calif.	ER-2	J
D-AFS-K65019-CA	Ranchería Planning Unit, Sierra National Forest, Fresno County, Calif.	LO-2	J
D-AFS-L61082-OR	Grande Ronde Planning Unit, Wallowa-Whitman and Umatilla National Forests, Union County, Oreg. (USDA-FS-R6-15).	LO-1	K
D-AFS-L65023-AK	Valley Timber Sale, Chugach National Forest, Alaska (USDA-FS-DES-ADM-76-07).	LO-2	K
D-AFS-L65024-AK	North Irish Creek Timber Sale, Tongass National Forest, Alaska (USDA-FS-R10-DES-ADM-76-04).	LO-2	K
LD-ASC-A99116-OO	Agriculture Conservation Program, Proposed Amendment to Soil Conservation and Domestic Allotment Act.	LO-2	A
D-REA-G07011-NM	Gamerco Coal Mine, McKinley County, N. Mex.	LO-1	G
D-SCS-B36010-CT	Avery Brook Watershed, Hartford County, Conn.	LO-1	B
DS-SCS-F36044-IL	Little Cache Creek Watershed, Johnson County, Ill.	LO-2	F
	DEPARTMENT OF COMMERCE		
D-EDA-C60001-NY	1980 Olympic Winter Games, Village of Lake Placid, N.Y.	LO-2	C
	DEPARTMENT OF DEFENSE		
D-UAF-B11002-ME	Proposed Reduction, Loring Air Force Base, Limestone, Aroostook County, Maine.	ER-2	B
D-UAF-F11004-MI	Proposed Closure of Kincheloe Air Force Base, Mich.	LO-2	F
D-UAF-G11002-OO	Proposed Closure of Craig AFB, Ala., and Webb AFB, Tex.	LO-1	G
DS-USA-J36007-CO	South Platte River, Chatfield Dam to Denver, Colo.	ER-2	I

Identifying No.	Title	General nature of comments	Source for copies of comments
	DEPARTMENT OF INTERIOR		
D-BOR-A86102-OO	Departmental Implementation of Executive Order 11644 Pertaining to use of Off-Road Vehicles (ORV) on the Public Lands (DES-76-27).	ER-1	A
D-IBR-J35001-OO	Savory-Pot Hook Project, Colorado and Wyoming	ER-2	I
D-IGS-J01002-WY	Eagle Butte Mine, Proposed Plan of Mining and Reclamation, Amax Coal Co., Eastern Powder River, Campbell County, Wyo.	ER-3	I
	DEPARTMENT OF TRANSPORTATION		
DS-DOT-A41655-MN	MN-23, Junction MN-24 and MN-212, Renville, Lyndon, Yellow Medicine and Chippewa Counties, Minn.	ER-2	F
D-FAA-H51010-NB	Schuyler Municipal Airport, Colfax County, Nebr.	LO-2	H
D-FAA-K51008-CA	Ontario International Airport, Development Program, Los Angeles, San Bernardino County, Calif.	ER-2	J
D-FHW-E40086-NC	U.S. 74, Maxton Bypass, Laurinburg Bypass to U.S. 74, Alma, Robeson and Scotland Counties, N.C.	ER-2	E
D-FHW-E40087-NC	N.C.-127 Improvement, Second Avenue N.E. to N.C.-1400, Hickory, Catawba County, N.C. (FHWA-NC-EIS-76-07-D).	LO-2	E
D-FHW-F40076-IN	West 10th Street Bridge, I-465 to West Street, White River, Indianapolis, Marion County, Ind.	LO-2	F
D-FHW-F40077-IN	U.S. 50, Jackson and Lawrence County line, I-65, Jackson County, Ind.	ER-2	F
D-FHW-F40079-IN	U.S. 50, Bryantsville to Lawrence and Jackson County line, Lawrence County, Ind.	ER-2	F
D-FHW-G40057-NM	NM-41, Willard to Estancia, Torrance County, N. Mex.	LO-1	G
DS-FHW-H40057-OO	Abbott Dr., Omaha, Douglas County, Nebraska and Carter Lake, Pottawattamie County, Iowa (FHWA-NEB-EIS-76-08-DS).	3	H
D-FHW-H40062-KS	U.S. 81 Location Study, Ottawa, Cloud and Republic Counties, Kans. (FHWA-KS-EIS-76-05-D).	LO-2	H
D-FHW-J40026-CO	C-082, CO-133 to Aspen, Carbondale East, Eagle, Garfield, Pitkin Counties, Colo.	ER-2	I
D-FHW-L40043-AK	Gravel Extraction, Section 31, Seward Meridian, Alaska	LO-2	K
D-FHW-L40045-WA	Seattle Central Business District Exclusive Bus Lanes, King County, Wash.	LO-1	K
	FEDERAL ENERGY ADMINISTRATION		
D-FEA-G03003-LA	Cote Blanche Mine, Strategic Petroleum Reserve, St. Mary's, La.	LO-2	G
D-FEA-G03004-LA	West Hackberry Salt Dome, Strategic Petroleum Reserve, Cameron, La.	LO-2	G
D-FEA-G03005-LA	Weeks Island Mine, Strategic Petroleum Reserve, Iberia County, La.	LO-2	G
D-FEA-G03006-TX	Bryan Mound Salt Dome, Strategic Petroleum Reserve, Brazoria, Tex.	LO-2	G
D-FEA-G03007-LA	Bayou Choctaw Salt Dome, Strategic Petroleum Reserve, Iberville, La.	LO-2	G
	FEDERAL POWER COMMISSION		
D-FPC-E05006-SC	Santee-Cooper Project, No. 199, Santee and Cooper Rivers, Berkeley, Calhoun, Clarendon, Orangeburg and Sumter Counties, S.C.	ER-2	E
	GENERAL SERVICES ADMINISTRATION		
D-GSA-L81006-AK	Haines Border Station, Haines, Dalton Cache at U.S./Canadian border, Mile 42, Alaska.	LO-1	K
	DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT		
D-HUD-C85013-AK	Monte Brisas Development, Project No. 76-300, Fajardo, P.R.	ER-2	C
D-HUD-D28002-VA	Standardsville Water Main Extension, Standardsville, Va. (CDBG).	LO-2	D
D-HUD-E28016-AL	Union Community Water System, Greene County, Ala. (CDBG).	LO-2	E
D-HUD-E85013-GA	Georgetown Subdivision, Planned Unit Development, Chatham County, Ga. (HUD-R04-EIS-76-16-D).	ER-2	E
D-HUD-E89004-FL	Senior Citizens Center, Bayview Park, Pensacola, Escambia County, Fla. (CDBG).	LO-2	E
D-HUD-G24003-AR	Breckenridge-Union Water System, Jackson County, Ark.	LO-1	G
D-HUD-G85017-TX	Anderson Mill Subdivision, Travis County, Tex.	LO-1	G
D-HUD-G85018-TX	Trailwood Addition Subdivision, Grand Prairie, Dallas County, Tex.	LO-2	G
D-HUD-K89016-CA	Mei Lun Yuen Development, China Town Redevelopment Area, San Francisco, Calif.	LO-2	J
	NATIONAL INSTITUTE OF HEALTH		
RD-NIH-A84024-00	Guidelines for Research Involving Recombinant DNA Molecules.	ER-2	A

NUCLEAR REGULATORY COMMISSION			
D-NRC-C06006-PR	North Coast Nuclear Plant, Unit 1, Islote Site, Puerto Rico resources Authority, Docket No. 50-376, P.R. (NUREG 0113).	3	C
D-NRC-E06003-TN	Phipps Bend Nuclear Plant, Units 1 and 2, Holston River, Tennessee Valley Authority, Docket Nos. STN-553 and STN 50-554, Hawkins County, Tenn., (NUREG-0098).	LO-2	E
D-NRC-F06004-WI	Koshkonong Nuclear Plant, Units 1 and 2, Wisconsin Utilities Project, Docket Nos. STN 50-502 and STN 50-503, Jefferson County, Wisc. (NUREG-0079).	EU-2	F
U.S. POSTAL SERVICE			
D-UPS-E81013-GA	U.S. Post Office and Vehicle Maintenance Facility, Atlanta, Fulton County, Ga.	LO-2	E

APPENDIX II—DEFINITIONS OF CODES FOR THE GENERAL NATURE OF EPA COMMENTS

ENVIRONMENTAL IMPACT OF THE ACTION

LO—Lack of Objection

EPA has no objections to the proposed action as described in the draft impact statement; or suggests only minor changes in the proposed action.

ER—Environmental Reservations

EPA has reservations concerning the environmental effects of certain aspects of the proposed action. EPA believes that further study of suggested alternatives or modifications is required and has asked the originating Federal agency to reassess these impacts.

EU—Environmentally Unsatisfactory

EPA believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the potential safeguards which might be utilized may not adequately protect the environment from hazards arising from this action. The Agency recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

ADEQUACY OF THE IMPACT STATEMENT

Category 1—Adequate

The draft impact statement adequately sets forth the environmental impact of the proposed project or action as well as alternatives reasonably available to the project or action.

Category 2—Insufficient Information

EPA believes that the draft impact statement does not contain sufficient information to assess fully the environmental impact of the proposed project or action. However, from the information submitted, the Agency is able to make a preliminary determination of the impact on the environment. EPA has requested that the originator provide the information that was not included in the draft statement.

Category 3—Inadequate

EPA believes that the draft impact statement does not adequately assess the environmental impact of the proposed project or action, or that the statement inadequately analyzes reasonable available alternatives. The Agency has requested more information and analysis concerning the potential environmental hazards and has asked that substantial revision be made to the impact statement.

APPENDIX III.—*Final environmental impact statements for which comments were issued between Nov. 1, 1976, and Nov. 30, 1976*

Identifying No.	Title	General nature of comments	Source for copies of comments
CORPS OF ENGINEERS			
F-COE-A29032-IA	Evansdale Local Protection Project, Black Hawk County, Iowa.	EPA's concerns were adequately addressed in the final statement. However, EPA informed the Corps of Engineers that the discharge of water from a borrow pit to the Cedar River will probably require a national pollutant discharge elimination of Public Law 92-500.	H
F-COE-E35025-NC	Maintenance of the Waterway Connecting Pamlico Sound and Beaufort Harbor, N.C.	EPA's concerns were adequately addressed in the final EIS.	E
F-COE-F32014-MI	Maintenance and Dredging, Monroe Harbor, Monroe County, Mich.	EPA's concerns were adequately addressed in the final EIS. EPA recommended that remedial measures be developed and implemented as soon as possible at the old disposal site to prevent adverse water quality effects from lake water overtopping and escaping soil material.	F
DEPARTMENT OF AGRICULTURE			
F-AFS-J61011-UT	Four Seasons Development, Uinta National Forest, Provo, Utah County, Utah.	EPA's review of the final EIS indicated the EIS was unresponsive to the previous comments made by EPA on the potential air quality and noise impacts of the traffic to be attracted to this development. In addition, EPA recommended further evaluation be performed of the secondary impacts of transportation to the resort, especially air quality and noise impacts.	I
F-SCS-F36036-IN	Rock Creek Watershed, Cass and Carroll Counties, Ind.	EPA's concerns were adequately addressed in the final EIS.	F

DEPARTMENT OF DEFENSE			
FS-UAF-A82015-00	Disposition of Orange herbicide by incineration.	EPA agreed with the USAF that reprocessing herbicide orange was the best available disposal alternative; however, EPA identified several concerns and questions which had not been fully addressed and answered by this amendment. Those points included protection, control and storage of the contaminated residuals, and quality control of the reprocessed herbicide.	A
DEPARTMENT OF THE INTERIOR			
F-BLM-A02100-00	Proposed 1976 oil and gas lease sale No. 44, Outer Continental Shelf, (OCS), Gulf of Mexico, Louisiana and Texas.	EPA's concerns were adequately addressed in the final EIS.	A
F-BLM-A65015-00	Ten Year Timber Management Program, Western United States.	EPA's concerns were adequately addressed in the final EIS. EPA noted that the preparation of this programmatic EIS would not obviate the need for more site specific EIS's.	A
DEPARTMENT OF TRANSPORTATION			
F-DOT-A40060-WI	Stadium Freeway, I-894 to I-94, Milwaukee County, Wisc.	EPA's concerns were adequately addressed in the final EIS.	F
F-FHW-A42410-IL	U.S. 460, IL-15, FA-821, 24th to 13th St., Mt. Vernon, Jefferson County, Ill.	EPA continues to have environmental reservations on the proposed project with regard to excessive noise levels. EPA recommended that soundproofing measures be utilized.	F
F-FHW-A42411-MI	Charlotte to I-96 to northwest of Lansing, I-69, Clinton and Eaton Counties, Mich. (FHW-EIS-MICH-73-03-F).	EPA's concerns were adequately addressed in the final EIS.	F
F-FHW-A42412-WI	U.S. 51, Merrill to CTH "K", Lincoln and Oneida Counties, Wisc.	EPA's concerns were adequately addressed in the final EIS. However, EPA feels qualitative analysis should be provided on the impacts the project will have upon the wetland areas involved.	F
FS-FHW-C40013-VI	Sion Farm to Christiansted Highway, St. Croix, V.I.	EPA's concerns were adequately addressed in the supplement to the final EIS.	C
NF-FHW-F40050-IN	IN-1, Bridge over the Penn Central Railroad, Dearborn, County, Ind.	EPA's concerns were adequately addressed in the final negative declaration.	F
F-FHW-H40029-NB	U.S. 6 and U.S. 34, junction with NB-23, Holdrege, Phelps County, Nebr.	EPA continues to have environmental reservations with the proposed project because projected noise levels at 3 motels, 12 homes and 9 Businesses will exceed FHPM 7-7-3 noise standards. EPA requested the FHWA to contact the people affected by highway noise, inform them of the adverse noise impacts and discuss possible mitigtive actions on an individual basis. In addition, EPA stated the need for an overall assessment of improving the entire segmented approch currently being used.	H
F-FHW-K40019-CA	March Lane Expressway, El Dorado St. to West Lane, Calif.	EPA's concerns were adequately addressed in the final EIS.	J
FEDERAL POWER COMMISSION			
F-FPC-K05002-CA	California Aqueduct Project No. 2426, California.	EPA's continues to have environmental concerns on proposed project relative to algae control, severe siltation, erosion, and turbidity problems, the quality of the reservoir releases, and the generation of power. EPA also expressed concern that the preparation of the EIS as directed by FPC opinion No. 688 has precluded the complete addressing of environmental impacts associated with the project.	J
GENERAL SERVICES ADMINISTRATION			
F-GSA-FS1005-WI	U.S. Courthouse, Madison, Dane County, Wisc.	EPA's concerns were adequately addressed in the final EIS. Additionally, EPA offered its assistance to the GSA in establishing a program to recycle paper wastes.	F
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT			
FS-HUD-A85033-NY	Ganada New Community, Wayne County, N.Y.	EPA's concerns were adequately addressed in the final EIS.	C
RF-HUD-A86078-00	Revised Flood Plain Management Regulations of the National Flood Insurance Program.	EPA had no objections to the action, but suggested procedures to discourage the unwise use of the flood plain. These included, prohibition of flood water impeding structures in the floodway, protection of wetlands and wildlife habitats within the flood plain, acceleration of the rate mapping program and higher priority to rate mapping in communities undergoing rapid growth.	A

DEPARTMENT OF AGRICULTURE—Continued			
F-HUD-B80007-MA	Fall River Central Business District, Urban Renewal Project, Bristol County, Mass. (HUD-R01-EIS-75-06-F).	Generally, EPA's concerns on air and water quality and noise were adequately addressed in the final EIS. However, the final EIS was deficient in two respects: (1) It did not respond to concerns raised by EPA and the Department of The Interior over the fact that the EIS was prepared after the project was well underway: And, (2) That since the final EIS consisted only of comments, responses, new exhibits, and recommendations, it is apparent that changes were not incorporated into the body of the EIS itself.	B
F-HUD-C85009-NY	Rochester South East Loop Urban Renewal Project No. 175, Monroe County, N.Y.	EPA continues to have environmental reservations on the proposed project. The project as proposed has the potential to significantly increase particulate levels, possibly in violation of ambient air quality standards. In addition, EPA suggested further analysis is necessary to assess the impact upon carbon monoxide concentration.	C
F-HUD-E85012-GA	Bedford-Pine Urban Renewal Area, Atlanta, Fulton County, Ga. (HUD-R04-EIS-75-06-F).	Generally, EPA's concerns were adequately addressed in the final EIS. However, EPA reiterated the need for an analysis for the eight-hour carbon monoxide standard.	E
F-HUD-F85006-MN	Edenvale 11th Addition, Eden Prairie, Minn.	Generally, EPA's concerns were adequately addressed in the final EIS.	F
F-HUD-J85007-CO	Harriman Park and Lakehurst West III Planned Developments, Jefferson County, COLO.	Generally, EPA's concerns were adequately addressed in the final EIS. However, EPA requested the cumulative regional impacts on air and water quality be addressed in more detail.	I
NUCLEAR REGULATORY COMMISSION			
F-NRC-F06001-IN	Marble Hill Nuclear Generating Station Units 1 and 2, Public Service Company of Indiana, Inc. et. al., docket nos. STN 50-546, STN 50-547, Jefferson County, IND. (NUREG-0007).	EPA continues to have environmental reservations on the proposed project. The issue of a continuously operating traveling screen and a fish return system has not been resolved. These concerns will be addressed during subsequent review under section 316(b) of the FWPCA. However, at this time, EPA recommended that the intake be designed to accommodate future measures which may be required to reduce mortality resulting from impingement.	F

APPENDIX IV.—*Final environmental impact statements which were reviewed and not commented on between Nov. 1, 1976, and Nov. 30, 1976*

Identifying No.	Title	Source of review
CORPS OF ENGINEERS		
F-COE-A50129-NC	Replacement of Wilkerson Creek Bridge, Hyde County, N.C.	E
F-COE-D36004-VA	Flood protection measures, Richmond, Va.	D
F-COE-E35020-NC	Navigation improvements Morehead City Harbor, Carteret County, N.C.	E
F-COE-G39001-TX	Neches River and Tributaries, Salt Water Barrier, Beaumont, Jefferson, County, Tex.	G
F-COE-H07001-KS	Nearman Creek Steam-Electric Generating Station, Wyandotte County, Kans.	H
FS-COE-L36033-00	Lower Columbia River Bank Protection Project, Wahkiakum, Colwitz, and Clark Counties, Wash. and Oreg.	K
DEPARTMENT OF AGRICULTURE		
F-AFS-J65004-MT	Multiple Use Plan, Ward-Eagle Planning Unit, Lolo National Forest, Mineral County, Mont.	I
F-AFS-L61040-WA	East Deer Creek Planning Unit, Colville National Forest, Wash.	K
F-AFS-L61051-WA	Upper Lewis River Planning Unit, Gifford Pinchot National Forest, Vancouver, Skamania County, Wash.	K
F-AFS-L61071-OR	Cascade Head Scenic Research Area, Management Plan, Lincoln and Tillamook Counties, Oreg. (USDA-FS-FES-ADM-76-06).	K
F-AFS-L61073-00	Land Use Plan, Lamb-Upper West Branch Planning Unit, Kaniksu National Forest, Pend Oreille County, Wash., and Bonner County, Idaho.	K
DEPARTMENT OF COMMERCE		
F-EDA-G28004-AR	Carroll-Boone Regional Water Supply System, Carroll and Boone Counties, Ark.	G
DEPARTMENT OF DEFENSE		
FA-UAF-A10046-00	B-1 Aircraft Development and Procurement	A
FA-USN-A10042-CT	Dredge River Channel, Naval Submarine Base, New London, Groton, Conn.	B
DEPARTMENT OF INTERIOR		
F-BOR-L61050-ID	Proposed Bruneau Wild and Scenic River, Idaho (FES-76-57)	K
F-SFW-E64001-NC	Wildlife Enhancement Project, Mattamuskeet National Wildlife Refuge, Hyde County, N.C.	E

Department of Transportation		
F-FAA-L51002-WA	Lopez Island Airport Improvements, Lopez Island, Wash.	K
F-FAA-L51004-WA	Development of Richland Airport, Washington	K
F-FHW-A41876-NB	U.S. 6, West Dodge Rd., 114 to 156th St., Omaha, Douglas County, Nebr.	H
F-FHW-B40010-NH	U.S. 202 Relocation, Rindge, Cheshire County, N.H. (FHWA-NH-EIS-76-01-F).	B
F-FHW-G40039-NM	U.S. 133, University Ave., Las Cruces, Dona Ana County, N. Mex.	G
F-FHW-H40020-IA	U.S. 61, North-South Facility, IA-361, Davenport, Scott County, Iowa.	H
F-FHW-H40035-KS	KS-177 and KS-18 at Manhattan, Riley County, Kans.	H
F-FHW-H40048-KS	Grove St., Lewis to Elm, Wichita, Sedgwick County, Kans.	H
F-FHW-L40019-00	I-205 Lewis and Clark Highway, Clark County, Washington and Portland, Multnomah County, Oreg.	K
F-HUD-G85014-LA	Alsen-St. Irma Lee Sewage Facilities, Baton Rouge Parish, La. (CDBG).	G

APPENDIX V.—*Regulations, legislation and other Federal agency actions for which comments were issued between Nov. 1, 1976, and Nov. 30, 1976*

Identifying No.	Title	General nature of comments	Source for copies of comments
Department of Commerce			
R-BLM-A03006-AK	43 CFR Part 2360, National Petroleum Reserves in Alaska, Surface Management and protection.	EPA noted that the proposed regulations depend on the effective review of individual plans and the nature and careful use of stipulations being developed by USDI. Accordingly, EPA urges wide distribution plans, accompanied by the stipulations to be imposed, among the public and concerned agencies.	A
R-IGS-A01038-00	30 CFR Part 211, coal mining operations, regulations, adoption of requirements of Montana's Reclamation Laws and Requirements.	EPA generally concurred with the proposed rulemaking. However, EPA suggested the USDI strengthen the rule by adding reference to EPA's "Coal Mining Point Source Category Effluent Guidelines and Standards." (FEDERAL REGISTER dated May 13, 1976.)	A
Department of Transportation			
A-DOT-A03065-AK	Notices, Trans-Alaska Pipeline, anticipated petition for waivers.	EPA advised against the granting of waivers of the applicable DOT regulations for the remaining welds in question. However, if it could be shown by an environmental assessment, that due to the sensitivity of the location of a certain weld, it would clearly be more environmentally beneficial to leave the weld intact, EPA would acknowledge the appropriateness of the waiver.	A
A-UMT-A54036-00	Paratransit Services, proposed policy (UMTA Docket No. 76-05).	EPA commented in favor of UMTA's proposed policy statement which will serve to foster the increased use of paratransit. In addition, EPA asked to be afforded the opportunity to comment on the specific implementing guidance developed for the policy.	A
Federal Energy Administration			
A-FEA-A00049-00	International Energy Agency's long-term cooperation program, request for expression of interest and public comments.	EPA expressed its continued interest in the IEA program and offered assistance to FEA as the program is pursued. EPA recommended the development of IEA projects in pollution control techniques for coal cleaning, coal gasification and coal liquefaction technologies.	A
Department of Housing and Urban Development			
R-HUD-A89142-00	24 CFR Part 600, comprehensive planning assistance, review and approval process Docket No. R-76-310.	Based on the review, EPA recommended that air quality planning be included as a part of the comprehensive plan similar to EPA's "208" Water Quality Planning Program. In addition, EPA suggested a change which would maximize mutual consistency between the plans.	A

APPENDIX VI—SOURCE FOR COPIES OF EPA COMMENTS

A. Public Information Reference Unit (PM-213), Environmental Protection Agency, Room 2922, Waterside Mall, SW, Washington, D.C. 20460.

B. Director of Public Affairs, Region 1, Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203.

C. Director of Public Affairs, Region 2, Environmental Protection Agency, 26 Federal Plaza, New York 10007.

D. Director of Public Affairs, Region 3, Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.

E. Director of Public Affairs, Region 4, Environmental Protection Agency, 345 Courtland Street NE, Atlanta, Georgia 30308.

F. Director of Public Affairs, Region 5, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

G. Director of Public Affairs, Region 6, Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270.

H. Director of Public Affairs, Region 7, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, Missouri 64108.

I. Director of Public Affairs, Region 8, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80203.

J. Director of Public Affairs, Region 9, Environmental Protection Agency, 100 California Street, San Francisco, California 94111.

K. Director of Public Affairs, Region 10, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

[FR Doc. 77-2179 Filed 1-24-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21043, File No. 8296-CM-P-72; Docket No. 21044, File No. 9450-CM-P-72]

MOBIL SIGNAL CO., INC. AND MIDWEST CORP.

Applications for Construction Permits in the Multipoint Distribution Service

1. The Commission has before it the above-referenced applications of Mobile Signal Company, Inc. (Mobile Signal) (File No. 8296-CM-P-72), filed on May 22, 1972 and Midwest Corporation (Midwest) (File No. 9450-CM-P-72), filed on June 27, 1972. Both applications propose Channel 1 operation in the Mobile, Alabama area, and thus are mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. Mobile Signal has only the subject application before the Commission, though two of its principals are corporations engaged in "* * * some significant but non-broadcast aspect of the communications business * * *" One, Signal Engineering and Sales, Inc., is in the design and construction of communications equipment. The other, National Telecommunications Associates, Inc., was formed to provide "* * * consulting, design, or implementation * * * relating to telecommunications, including * * * software * * *" and is expected to assist with operations and arrangement of the proposed station. Louis H. Pfau is a principal of Mobile Signal and its parent corporations as well as signatory to MDS applications in several other cities, including Jackson, Mississippi and Columbus, Georgia. Midwest, owned by APS, Inc., has MDS applications pending in twenty cities, including Winston-Salem and Greensboro, North Carolina, and is permittee in Greenville, South Carolina.

3. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

4. Accordingly, *it is hereby ordered*, That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative

basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience, and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Mobile, Alabama area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security, and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of the applicants.

5. *It is further ordered*, That Mobile Signal Company, Inc., Midwest Corporation, and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. *It is further ordered*, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

Adopted: December 29, 1976.

Released: January 19, 1977.

JOSEPH A. MARINO,
Deputy Chief,
for Chief, Common Carrier Bureau.

[FR Doc.77-2340 Filed 1-24-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

SUPPLY AND PRICE LEVELS OF MIDDLE DISTILLATE FUELS

Public Hearing and Opportunity for Comment

The Federal Energy Administration ("FEA") hereby gives notice that it will hold public hearings in Minneapolis, Minnesota, and Boston, Massachusetts, and will also receive written comments, with respect to the current price levels for and the adequacy of supplies of middle distillates. FEA has determined to solicit public comment at this time on these matters to provide the Agency with background information as to any supply or pricing problems that may arise this heating season, particularly in the North Central states and New England, so that the FEA may anticipate and take appropriate action should any such problems develop. FEA will use information received in this proceeding to consider whether any regulatory action is required and, if required, what type of modifications to FEA's regulatory programs would be most appropriate, including, for example, the reimposition of controls on a partial or total basis.

On June 15, 1976, FEA issued amendments to the Mandatory Petroleum Allocation and Price Regulations exempting middle distillates from those regulations (41 FR 24516, 41 FR 24518, June 16, 1976). The amendments became effective July 1, 1976, following Congressional review as provided in section 551 of the Energy Policy and Conservation Act ("EPCA"), Pub. L. 94-163. In response to Congressional concerns related to the exemptions, FEA committed that it would take action following the effectiveness of the exemptions both to assure that no unwarranted price increases would occur once controls were removed and to protect marketers' ability to obtain supplies during the transitional period following removal of controls. These commitments resulted in the adoption of a monitoring system for middle distillate prices (41 FR 41155, September 21, 1976) and Special Rule No. 3 for Subpart A of Part 211, establishing a set-aside program for middle distillates (41 FR 33881, August 11, 1976).

FEA is conducting this inquiry to receive data, views and arguments from the public on whether the exemption of middle distillates continues to be consistent with the objectives of the Emergency Petroleum Allocation Act ("EPAA") and whether any further actions may be necessary to implement FEA's commitments to the Congress. In particular, FEA requests comments on whether the extremely cold weather that has occurred this heating season has either resulted in, or has the potential to result in, inequitable prices for consumers or has created, or has the potential to create, supply dislocations or shortages.

Comments should address particularly the situations in the North Central states and New England. For that reason, FEA is holding the public hearing in each of those regions. Information available to FEA indicates that inventories of No. 1 fuel oil have been reduced to levels that have the potential for creating supply disruptions in the North Central states, primarily due to exceptionally high demand and to certain changes in marketing methods.

In addition, FEA has been monitoring the recent price increases in the areas affected by the severe weather, and wishes to learn whether the increases have taken place principally at the retail level or the wholesale or refiner levels. Comments are specifically invited on whether current price levels are justified, taking into account normal seasonal increases and the higher costs of any imports into the particular region.

Finally, FEA requests comments on whether any specific changes are required in its current regulatory programs For example, FEA is interested in receiving views on whether entitlements benefits should be extended to imported middle distillates.

PUBLIC HEARINGS AND WRITTEN COMMENT PROCEDURES

The public hearings, will be held in Minneapolis, Minnesota, and Boston, Massachusetts, beginning at 9:30 a.m., local time, on Friday, January 28, 1977, to be continued, if necessary, at 9:30 a.m., local time, Saturday, January 29, 1977. The Minneapolis hearing will be held in Courtroom No. 3, Federal Courthouse, 110 South Fourth Street, Minneapolis, Minnesota. The Boston hearing will be held in Room 208 (P.O.C.H.), John W. McCormick Post Office and Courthouse, Post Office Square, Boston, Massachusetts (use Milk Street entrance).

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 that has an interest in the subject matter of this notice may make a written request for an opportunity to make an oral presentation. Persons requesting time to testify at the Minneapolis hearing should direct their request to FEA Region V, 175 South Jackson Street, Room A-333, Chicago, Illinois 60604, Attention: Richard Williams. Persons requesting time to testify at the Boston hearing should direct their requests to FEA Region I, Room 700, 150 Causeway Street, Boston, Massachusetts 02114, Attention: Diane Novick. Requests to testify must be received before 4:30 p.m. local time, Tuesday, January 25, 1977. Requests should be labeled both on the document and on the envelope "Supply and Price Levels of Middle Distillates."

The person making the request should briefly describe the interest concerned; if appropriate, state why he or she is proper representative of a group or class of persons that has such an interest, and give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted through Wednesday, January 26, 1977. Each person selected to be heard will be so notified by the FEA before 4:30 p.m., January 26, 1977 and must, if feasible, submit 100 copies of his or her statement to FEA at the location of the hearing on the day the statement is scheduled to be delivered.

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

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

[1] Consideration of these factors shall be made in light of the Commission's discussion in Peabody Telephone Answering Service, et al., 55 F.C.C. 2d 626 (1975).

ments will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person who wishes to ask a question at the hearings may submit the question, in writing, to the presiding officer. The presiding officer, will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

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

A transcript of the hearings will be made and the entire record of the hearings, including the transcript, will be retained by the FEA and made available for inspection at the Freedom of Information Office, Room 2107, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

Interested persons are also invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposals set forth in this notice to Executive Communications, Room 3309, Federal Energy Administration, Box KK, Washington, D.C. 20461. Comments should be identified on the documents and on the envelope "Supply and Price Levels of Middle Distillates." Fifteen copies should be submitted. Comments in this proceeding will be considered if received by January 31, 1977.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted 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.

Issued in Washington, D.C., January 18, 1977.

DAVID G. WILSON,
Acting General Counsel.

[FR Doc.77-2242 Filed 1-19-77;12:27 pm]

FEDERAL MARITIME COMMISSION

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTON)

Certificates Issued

Notice is hereby given that the following vessel owners and/or operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by section 311 (p) (1) of the Federal Water Pollution Control Act, and have been issued Federal Maritime Commission Certificates of Financial Responsibility (Oil Pollution) pursuant to Part 542 of Title 46 CFR.

Certificate No.	Owner/operator and vessels
01014	Robert Bornhofen Reederei: *Max Bornhofen.*
01015	A/S Rederiet Odfjell: *Bow Sun, Bow Clipper.*
01426	Kuwait Shipping Co. (S.A.K.): *IBN Albeitar, IBN Bassam.*
01502	Moore-McCormack Lines, Inc.: *Mormacsea, Mormacsaga, Mormactide, Mormacwave.*
02040	Odra-Swinoujscie: Manta.
02402	Interstate and Ocean Transport Co.: *Ocean 255, Interstate 29, Interstate 70, Argoil 175, Interstate 35, Interstate 37, Tide 119, Ocean 155, Atlantic 28, York River, Ocean 190, Interstate 71, Ocean States, Elk River, Interstate 72, Ocean 250, Ocean 135, Ocean 115, Ocean 96, Ocean 90, Ocean 80, Interstate No. 52, Interstate No. 53, Interstate No. 50, Interstate 48, Interstate No. 30, Offshore 2401, Argoil 185, Interstate No. 19, Interstate No. 13, Interstate No. 17, Argoil 150, Argoil 160, Argoil 130, Chem Ten, Chesapeake, Interstate No. 8, Argoil 105, R.T.C. No. 51, Interstate 54, Interstate 55, Interstate 36, Interstate 38, Interstate No. 34, Interstate No. 1.*
02501	Standard Oil Co. of California: *Chevron Colorado.*
02578	Waxler Towing Co., Inc.: *PO 1202.*
02864	Empresa Nacional Del Petroleo S.A.: *Montesa, Alcazar.*
02889	Showa Kaiun K.K.: *Satsuma Maru.*
02956	Ashland Oil Inc.: *Ellis 1301.*
02976	Arthur-Smith Corp.: *EBL 76.*
02982	The Shipping Corporation of India Ltd.: *Mizoram.*
03069	Alfred C. Toepfer Schiffahrtsges MBH: *Emma Johanna.*
03315	Afran Transport Co.: *Afran Coast.*
03453	Kyosei Kisen Kabushiki Kaisha: *Houshun Maru.*
03484	Sanko Kisen K.K.: *Zenko Maru.*
03506	Taiheiyo Kaiun K.K.: *Capella.*
03692	Marmac Corp.: B-11, GT-118.
03708	Puget Sound Tug & Barge Co.: *Mohawk.*
03864	Neptune Shipping Co. Ltd.: *Oro Verde.*
04002	Compagnie Des Messageries Maritimes: *Pascal, Rousseau.*
04046	A/S Mosbulkers: *Star Mostangen.*
04124	Gulf Oil Canada Ltd.: *Gulf Gatineau.*
04128	Skips A/S Westray: *Bruni.*
04226	National Marine Service Inc.: *N.M.S. No. 1455, N.M.S. No. 1456.*
04410	Tenneco Oil Co.: *CTCO-302-6, Tenneco 150.*
04433	Allied Chemical Corp.: *CC 205.*
04437	Lebeouf Bros. Towing Co. Inc.: *Joyce O.*
04675	Naviera Santa Catalina S.A.: *Cimadevilla.*
05047	PPG Industries Inc.: *PPG-220, PPG-225, PPG-222, PPG-223, PPG-221, PPG-224.*
05149	The Delta Queen Steamboat Co.: *Mississippi Queen.*
05572	Lafarge Concrete Ltd.: *Maquinna.*
05579	Black Sea Shipping Co.: *Yasnogorsk, Izgutty Aytykov, Aleksandr Matrosov.*
05581	Latvian Shipping Co.: *Jacques Duclos.*
05624	Perusahaan Pertambangan Minyak Dan Gas Bumi Negara: *Permina 3002.*
06248	Commercial Corporation Sovryb-flot: *Tajphun, Cyklon, Uragan, Khersones, Tarkhankut, Apogey, Inkerman, N. Onilova, Kurs, Zhuckovskij, Orlinoe, Pyatigorsk, General Ostryakov, Kandalakshskiy Zaliv, Alma, Ayu-Dag, Koreiz, Miskhor, Balaklava, N. Filchenkov, Langust, Salgir, Amurskty Zaliv, Dvinskiy Zaliv, Onezhskiy Zaliv, Rizhskiy Zaliv, Malahov Kurgan, Taganrogskiy Zaliv, Vasiliy Polenov, Molodaya Gvardiya, Iment 61 Kommunara, Pioner Volkov Ulan-Ude, Ilia Repin, Slava Sevastopolja, Sevastopol, Simferopol, Shkval, Veter, Matros Koshka, Ussuriysiy Zaliv.*
06311	Kanai Gyogyo Kabushiki Kaisha: *Tomimaru No. 52, Tomimaru No. 53.*
06429	Ta Cheng Marine Co. Ltd.: *Great Power.*
07183	Elenmaris Corp.: *Eleni M.*
08196	Nordtramp I/S: *Nordkap, Nordtramp, Nordpol.*
08222	Rail & Water Terminal (Quebec) Inc.: *Mont St. Martin.*
08353	Hellas Schiffahrts - Agentur GmbH: *Hydra Gale.*
08048	Veb Deutfracht/Seereederei: *F. Freiligrath, G. Weerth.*
09018	Sigurd Herlofson & Co. A/S: *Oro Chief.*
10260	Hollywood Marine Inc.: *S-1513.*
10273	Namyangsa Co. Ltd.: *Cipsa No. 3.*
10434	Chelsea Navigation Co. Inc.: *Andreina.*
10729	Dragon Navigation S.A.: *Seiryu.*
10910	Naviera Peninsular S.A.: *Azuero Doz.*
11095	Dong-A General Industrial Co. Ltd.: *No. 507 Haeng Bok.*
11198	Mochimune Gyogyo Kabushiki Kaisha: *Kyoei Maru No. 5, Kyoei Maru No. 7.*
11264	Bosma's Scheepvaart & Handelbedrijf N.V.: *Okko Bosma.*
11476	Transportacion Maritima Peninsular S.A.: *Coloradas.*
11526	Sockabo Transports Inc.: *Parker 102-25, Parker 103-25.*
11609	Monarch Cruise Lines Inc.: *Monarch Star.*
11632	General Overseas Shipping Corp. S.A.: *Saint Iwaki.*
11714	Global Transport Organisation: *250-2, 250-3, 250-5, 250-4, Mary B VI, PAC 160-2, PAC 160-3, 220, Federal 400-7, Genmar 100, Genmar 101, Genmar 102, Genmar 103, Genmar 104, Sol 252, 205,-1.*
11730	United Overseas Corp.: *United Overseas I.*
11921	Point Land Fuel Corp.: *James 711.*
11924	Ocean Liquid Carriers Ltd.: *Chemist Lutetia.*
11935	Sunluck Maritime Co. Ltd.: *Sunluck.*
11944	Namyang Shipping Co. Ltd.: *Acacia No. 5, Acacia No. 6.*
11955	Loadstar Shipping Co. Inc.: *Kiowa.*
11958	Taurus Shipping Co. N.V.: *Safocean Adelaide, Straat Amsterdam.*
11808	Egret Marine Co. Ltd.: *Cumberlandia.*
11831	Partrederiet for M.S. Scol Rover: *Scol Rover.*
11836	R/A Trajan: *Sir Charles Hambro, Julian, Fabian, Nerva, Aurelian, Kong Haakon VII, Lucian, Sir Winston Churchill.*
11994	Artemis Carriers Ltd.: *Anwo Venture.*
12006	Feng Hwa Fishing Co. Ltd.: *Feng Hwa No. 22.*
12009	Latypa Shipping Co. S.A.: *Polluz.*
12011	Partenreederei MS Brunsland: *Brunsland.*
12015	Wistaria Shipping Co. Pte. Ltd.: *Wistaria Pearl.*

Certificate No.	Owner/operator and vessels
12018	Sunstar Car Carrier S.A.: *Coral Ace.*
12021	Coron Bulk Carriers Inc.: *Don Salvador III.*
12023	Kokusai Shipping K.K.: *Sanwo Maru.*
12025	SPS Management A/S: *Frendo Partnership, Fellowship, Membership.*
12030	Atlantic Supply A/S: *Atlantic Fosna.*
12036	Republic Shipping Co. Ltd. Liberia: *Pallas Athene.*
12040	Stolt Sincerity Inc.: *Stolt Sincerity.*
12044	International Iranian Trading Co.: *Capetan Michalis.*
12055	Ever Moral Line S.A.: *Ever Moral.*
12059	Zapata Ocean Resources Corp.: *Zapata Discoverer, Zapata Pathfinder.*
12060	Transmar Shipping Corp.: *Sapphire.*
12062	Poly Shipping Co.: *Polydora.*
12063	RKS Supertrans: *Hermes Scan.*
12064	Dietrich Sander Bereederungs GmbH: *Hede.*
12065	La Islas Navegacion S.A.: *Altemis Island, Iris Island, Artemis Island.*

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-2331 Filed 1-24-77;8:45 am]

PACIFIC COAST-EUROPE RATE AGREEMENT

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before February 14, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement filed by:

David C. Nolan, Esquire, Graham & James, One Maritime Plaza, San Francisco, California 94111.

Agreement No. 10052-2, among the members of the above-named rate agreement, extends the term of the basic agreement through August 28, 1978.

By order of the Federal Maritime Commission.

Dated: January 19, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-2329 Filed 1-24-77;8:45 am]

[Docket No. 77-1; Certificate (performance) No. P-88]

PACIFIC FAR EAST LINE, INC.

Order of Hearing

In accordance with the provisions of 46 CFR 540.8(a), the Federal Maritime Commission on October 1, 1976, served on Pacific Far East Line, Inc. (PFEL) a Notice of Intention to Revoke Certificate (Performance) No. P-88. In that notice the Commission set forth in detail the reasons for its intention: (a) to revoke the waiver heretofore granted to PFEL as to the amount of working capital required for qualification for a Certificate (Performance) as a self-insurer in accordance with 46 CFR 540.5(d); and (b) to revoke Certificate (Performance) No. P-88 covering the SS *Mariposa* and the SS *Monterey*.

Under the authority granted it by section 3 of Pub. L. 89-777, 46 U.S.C. 817e (d), the Commission issued its General Order 20, (46 CFR 540) which provides that in order to qualify for a Certificate (Performance) for Financial Responsibility, an applicant must maintain financial responsibility coverage for performance in an amount not less than 110 percent of the greatest amount of unearned passenger revenue held by the applicant on any date during the immediately preceding two fiscal years (46 CFR 540.5). Evidence of adequate coverage may be established by one or a combination of methods: insurance, guaranties, escrow accounts, or by qualifying as a self-insurer. In order to qualify for a Certificate (Performance) as a self-insurer, an applicant must demonstrate, among other things, that it has working capital in an amount not less than 110% of the greatest amount of unearned passenger revenue held by it on any date during the immediately preceding two fiscal years, and that it has had continued and stable passenger operations over an extended period of time (46 CFR 540.5(d)). The regulations of the Commission do permit the Commission, for good cause shown, to waive the requirement as to the amount of working capital (46 CFR 540.5(d)).

If an applicant does not establish adequate evidence of financial responsibility by the methods of insurance, guaranties, escrow accounts and/or self-insurance, the regulations of the Commission require the applicant to obtain a surety bond in the required amount of coverage before it may receive a Certificate (Performance) and arrange, offer, advertise or provide passage on its vessels (46 CFR 540.1 and 540.6).

PFEL has at no time qualified for its Certificate (Performance) No. P-88 by the methods of insurance, guaranties, or escrow accounts. It has, however, since November 6, 1970, qualified for its Certificate (Performance) as a self-insurer. Because its working capital had dropped below the required amount, on January 31, 1972, PFEL was granted a waiver of the working capital requirement for self-insurance status. The Commission at that time found the requisite good cause for the waiver in representations made by PFEL that the reduction in its working capital was only temporary in nature.

When it became apparent to the Commission that PFEL's working capital in late 1973 and early 1974 had drastically deteriorated to a deficit in excess of $10,000,000, the Commission explored with PFEL various possible methods of increasing its evidence of financial responsibility in order to avoid, if possible, revocation of the waiver of working capital requirement and/or the Certificate (Performance). In November of 1974, PFEL committed itself to obtain a surety bond in the amount of $300,000 and to increase the amount of that bond by $100,000 per month each month thereafter. Based upon this commitment, and the resulting monthly increase in protection thus made available for the benefit of passengers, the Commission took no action at that time to revoke the waiver of working capital requirement or the Certificate (Performance).

However, circumstances at the present time are substantially different from those which obtained in 1972 and 1974. The alleged temporary reasons given by PFEL for its decline in working capital have long since ended, and PFEL has had a four-year history of financial instability. Furthermore, in March of 1976 PFEL unilaterally and without the consent of the Commission, decided not to further increase the face amount of the bond which had reached a level of $1,900,000. PFEL has since that time declined to further increase the face amount of the bond.

Without a waiver of the working capital requirement it does not appear that PFEL meets the working capital requirement of self-insurer status. 110% of PFEL's highest unearned passenger revenue within its immediately preceding two fiscal years (calendar years 1974 and 1975) is $5,051,539. The working capital of PFEL as of July 2, 1976, according to a company-prepared unaudited, uncertified balance sheet, was $1,849,028. This working capital of PFEL is $3,202,511 less than, and only 35.6% of, that required by the regulation of the Commission. The last audited, certified financial statement of PFEL as of December 31, 1975, shows that the working capital of PFEL was $747,782, an amount $4,303,757 less than,

and only 14.8% of, that required by Commission regulations. Thus, PFEL has apparently not met the working capital requirement for self-insurer status, whether its financial state is measured by either the unaudited, uncertified balance sheet of July 2, 1976 or by the audited, certified statement of December 31, 1975.

Furthermore, the history of PFEL's financial operating results and working capital situation for the years 1972 through 1975 and July 2, 1976, demonstrates drastic fluctuations and indicates that PFEL has apparently not met the requirement for continued and stable passenger operations over an extended period of time.

Based upon the evidence subsequent to January 31, 1972, including the unilateral decision by PFEL not to increase the bond beyond $1,900,000, it now appears that good cause no longer exists for continued waiver of the working capital requirement for PFEL.

In response to the Commission's Notice of Intention to Revoke, PFEL, on October 19, 1976, filed a Request for Hearing and Statement of Position. In accordance with the provisions of 46 CFR 540.8(a), that filing requested a hearing to show, with respect to any intended revocation, suspension, or modification of Certificate (Performance) No. P-88, that the evidence of financial responsibility filed by PFEL with the FMC does meet the requirements of 46 U.S.C. 817e and the provisions of Subpart A of 46 CFR 540.

Now, therefore, it is ordered, Pursuant to 46 CFR 540.8(a), that a hearing is hereby ordered to determine: (a) whether good cause exists for the continued waiver of PFEL's working capital requirement; and (b) whether PFEL's Certificate (Performance) No. P-88 should be revoked for failure to comply with the financial responsibility requirements of 46 U.S.C. 817e and 46 CFR Part 540, Subpart A. Such hearing shall afford PFEL the requested opportunity to demonstrate that good cause exists for the continued waiver of PFEL's working capital requirement and/or that the evidence of its financial responsibility filed with the Commission does meet the requirements of 46 U.S.C. 817e and 46 CFR Part 540, Subpart A, and that PFEL does therefore qualify to retain its existing Certificate (Performance) No. P-88.

It is further ordered, That this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the Presiding Administrative Law Judge, but in any event, the hearing shall commence no later than March 28, 1977.

It is further ordered, That PFEL is hereby made a respondent in this proceeding pursuant to Rule 3(a) of the Commission's rules of practice and procedure (46 CFR 502.41).

It is further ordered, That notice of this order be published in the FEDERAL REGISTER and that a copy thereof and notice of hearing be served on respondent.

It is further ordered, That any persons other than respondent who desire to become a party to this proceeding and to participate therein, shall file a petition to intervene in accordance with Rule 5(1) of the Commission's rules of practice and procedure (46 CFR 502.72).

It is further ordered, That all further notices issued by or on behalf of the Commission in this proceeding, including notice and time and place of hearing or prehearing conference shall be mailed directly to all parties of record.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-2330 Filed 1-24-77;8:45 am]

PUERTO RICO PORTS AUTHORITY AND UNIVERSAL SHIPPING, INC.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before February 14, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement filed by:

Mr. Jose Ysern de la Cruz, Executive Assistant to the Executive Director, Puerto Rico Ports Authority, Commonwealth of Puerto Rico, G.P.O. Box 2829, San Juan, Puerto Rico 00936.

Agreement No. T-3231-1, between the Puerto Rico Ports Authority (Port) and Universal Shipping, Inc. (Universal), modifies the parties' basic agreement providing for Universal's two-year preferential use of certain marine facilities at Isla Grande Pier, San Juan, Puerto Rico, for the docking, mooring, loading and discharge of vessels and the handling and temporary storage of outbound cargo, as well as the exclusive use of 160 square feet of office space. The purpose of the modification is to extend the term of the agreement for an additional two-year period.

By order of the Federal Maritime Commission.

Dated: January 19, 1977.

FRANCES C. HURNEY,
Secretary.

[FR Doc.77-2328 Filed 1-24-77;8:45 am]

WEST COAST UNITED STATES & CANADA/INDIA PAKISTAN, CEYLON AND BURMA RATE AGREEMENT

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before February 14, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement filed by:

H. P. Blok, Secretary, West Coast United States & Canada/India, Pakistan, Ceylon and Burma Rate Agreement, 417 Montgomery Street, San Francisco, California 94104.

Agreement No. 8760-8 entered into by the member lines of the West Coast United States & Canada/India, Pakistan, Ceylon and Burma Rate Agreement, would amend the "WITNESSETH" article to include Hawaii and Alaska in the scope of the agreement trade area.

By order of the Federal Maritime Commission.

Dated: January 19, 1977.

FRANCES C. HURNEY,
Secretary.

[FR Doc.77-2327 Filed 1-24-77;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. G-7115, et al.]

COASTAL STATES GAS PRODUCING CO., ET AL.

Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

JANUARY 7, 1977.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 7, 1977, file with the Federal Power Commission, Washington, D.C. 20462, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. 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.

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 all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where 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 Applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
G-7115 ..... B 9-13-76	Coastal States Gas Producing Co., 5 Greenway Plaza East, Houston, Tex. 77046.	Tennessee Gas Pipeline Co., Cologne area, Victoria County, Tex.	(1)	.....
G-8818 ..... D 12-20-76	The California Co., a division of Chevron Oil Co., 1111 Tulane Ave., New Orleans, La. 70112.	Tennessee Gas Pipeline Co., Charenton and Gillis-English Bayou Fields, St. Mary, St. Martin, and Calcasieu Parishes, La.	(2)	(2)
G-8832 ..... B 9-13-76	Coastal States Gas Producing Co., 5 Greenway Plaza East, Houston, Tex. 77046.	Trunkline Gas Co., Alfred and Prescnos Fields, Jim Wells County, Tex.	(1)	.....
G-10012 ..... G-16094 G-16098 G-18746 B 9-13-76	do	Trunkline Gas Co., Hidalgo Field area, Hidalgo County, Tex.	(1)	.....
G-14366 ..... B 9-30-76	do	Natural Gas Pipeline Co., Moos, Neely, Tiger Minerals, West Adami, Maguellitos, Harry, and Charamousca Fields, Duval, Webb, and La Salle Counties, Tex.	(1)	.....
C174-145 ..... C 12-23-76	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77001.	El Paso Natural Gas Co., devonian formation gas-well gas, Lea County, N. Mex.	[3] [4] [5] 59.2660¢	14.65
C175-742 ..... C 12-22-76	Marathon Oil Co., 539 South Main St., Findlay, Ohio 45840.	Colorado Interstate Gas Co., Wamsutter area (Tierney Well No. 2), Sweetwater County, Wyo.	[4] [6] [7] 59.6797¢	.....
C176-341 ..... B 12-27-76	Ladd Petroleum Corp., 830 Denver Club Bldg., Denver, Colo. 80202.	Northwest Pipeline Corp., Blanco Pictured Cliffs Field, San Juan County, N. Mex.	(8)	.....
C177-138 ..... A 12-28-76	Pan Eastern Exploration Co.,[9] P.O. Box 1642, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., Beaver County, Okla.	[8] [10] 166.1614¢	.....
C177-162 ..... (C161-1521) F 12-14-76	Cabot Corp. (SW) (successor to Apexco, Inc.), P.O. Box 1101, Pampa, Tex. 79065.	Transwestern Pipeline Co., Barby Ranch No. 1-41 unit well, sec. 8, township 2 north, range 27 ECM, Beaver County, Okla.	[11] [12] [13] 35.3343¢	.....
C177-165 ..... A 12-23-76	Highland Resources, Inc., 800 San Jacinto Bldg., Houston, Tex. 77002.	Michigan Wisconsin Pipe Line Co., Eugene Island, offshore Louisiana, block 296.	[3] [14] $143.0	14.73
C177-166 ..... (G-4787) B 12-20-76	Caroline Hunt Sands, 1401 Elm, Dallas, Tex. 75202.	Tennessee Gas Transmission Co., West El Campo, Wharton County, Tex.	(15)	(15)
C177-167 ..... B 12-16-76	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Skelly Oil Co., Cooper Jal Field, Lea County, N. Mex.	(16)	(16)
C177-168 ..... A 12-17-76	Ladd Petroleum Corp., 830 Denver Club Bldg., Denver, Colo. 80202.	Colorado Interstate Gas Co., Wild Rose Field, Washakie Basin Sweetwater County, Wyo.	[17] [18] [5]	14.65
C177-169 ..... A 12-17-76	Transwestern Gas Supply Co.,[9] P.O. Box 2521, Houston, Tex. 77001.	Transwestern Pipeline Co., Nash Draw (Atoka) Field, Eddy County, N. Mex.	[4] [7] [19] 157.7782¢	14.65
C177-170 ..... A 12-17-76	do	Transwestern Pipeline Co., Apollo Field, Winkler County, Tex.	[8] [7] [20] 154.8302¢	14.65
C177-171 ..... A 12-17-76	do	Transwestern Pipeline Co., St. Clair Field, Roberts County, Tex.	[4] [7] [20] 154.8302¢	14.65
C177-172 ..... A 12-20-76	Gas Producing Enterprises, Inc.,[9] P.O. Box 1087, Colorado Springs, Colo. 80944.	Colorado Interstate Gas Co., Hugoton area, Kearny County, Kans.	[3] $1.44	14.73
C177-173 ..... A 12-20-76	CIG Exploration, Inc.,[9] P.O. Box 1087, Colorado Springs, Colo. 80944.	Colorado Interstate Gas Co., Hugoton area, Kearny and Finney Counties, Kans.	[3] $1.44	14.73
C177-174 ..... (G-7532) B 12-20-76	Amoco Production Co., 500 Jefferson Bldg., P.O. Box 3092, Houston, Tex. 77001.	El Paso Natural Gas Co., Eumont, et al. fields, Lea County, N. Mex.	(16)	(16)
C177-175 ..... A 12-22-76	Sohio Petroleum Co., 50 Penn Pl., Suite 1100, Oklahoma City, Okla. 73118.	El Paso Natural Gas Co., Drinkard Field, Lea County, N. Mex.	[21] 155.4119¢ [22] [3] 58.1481¢	14.73
C177-176 ..... A 12-22-76	American Petrofina Co. of Texas, P.O. Box 2159, Dallas, Tex. 75221.	Texas Gas Transmission Corp., Claiborne and Lincoln Parishes, La.	[4] [4] $1.51	14.73
C177-177 ..... (G-7532) B 12-27-76	Amoco Production Co., P.O. Box 3092, Houston, Tex. 77001.	El Paso Natural Gas Co., Elinebry Gas Field, Lea County, N. Mex.	(16)	(16)
C177-178 ..... B 12-27-76	do	Skelly Oil Co., Drinkard Field, Lea County, N. Mex.	(16)	(16)
C177-179 ..... (G-11089) B 12-16-76	Terra Resources, Inc., P.O. Box 2329, Tulsa, Okla. 74101.	Tennessee Gas Pipeline Co., Hagist Ranch Field, Duval County, Tex.	(23)	(23)
C177-180 ..... (G-11265) B 12-22-76	Getty Oil Co., P.O. Box 1404, Houston, Tex. 77001.	Michigan Wisconsin Pipe Line Co., Holly Beach, Cameron Parish, La.	(15)	(15)
C177-181 ..... (C171-393) B 12-27-76	Diamond Shamrock Corp., P.O. Box 631, Amarillo, Tex. 79173.	Kansas-Nebraska Natural Gas Co., Inc., Shoshoni unit, Fremont County, Wyo.	(24)	(24)
C177-182 ..... (G-18162) B 12-27-76	do	Colorado Interstate Gas Co., Keyes Field, Cimarron County, Okla.	(24)	(24)

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

See footnotes at end of table.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
C177-183 (G-18162) B 12-27-76	do	do	(36)	(36)
C177-184 C 12-28-76	Pan Eastern Exploration Co.,[31] P.O. Box 1642, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., Hemphill County, Tex.	[37] 154.8302¢	14.65

[1] Applicant is filing to reflect cessation of gas purchases from various producers.
[2] Leases terminated.
[3] Includes 52.7122¢ base price, plus 4.2745¢ production taxes (7.5005 pct), and 2.2795¢ Btu adjustment.
[4] Applicant is willing to accept a permanent certificate in accordance with opinion No. 770, as amended.
[5] Subject to upward and downward Btu adjustment.
[6] Includes 100-pct reimbursement of taxes.
[7] Applicant is willing to collect the national rate in accordance with opinion No. 770, as amended.
[8] Applicant and purchaser have been unable to connect the Horton No. 6 well (covered by base contract) to purchaser's facilities, and have executed an agreement deleting the 160 acres associated with such well from the contract.
[9] Applicant and purchaser are affiliated.
[10] Plus 0.9046¢ escalation per quarter.
[11] Includes 29.340¢ base rate, plus 2.2085¢ tax reimbursement, plus 3.7858¢ Btu based on 1120.
[12] Subject to downward Btu adjustment.
[13] Applicant proposes to continue service of predecessor Assignor, Apexco, Inc., as to assigned interest of 9.375 pct share of gas produced.
[14] Plus 1¢ escalation per quarter.
[15] Wells plugged and abandoned.
[16] Wells reclassified.
[17] For 4 wells, 19181984¢; for 1 well, 124.7408¢ at 14.73 lb/in²a.
[18] Subject to upward and downward Btu adjustment; for 4 wells 31.9708¢; for 1 well, 20.7916¢ at 14.73 lb/in²a.
[19] Includes 143.2179¢ base price plus 11.5603¢ taxes.
[20] Includes 143.2179¢ base price plus taxes of 11.6123¢.
[21] Opinion No. 770 rate for gas sales from the Elliott B-12-1 Well No. 2 at 14.73 lb/in²a, adjusted for 1¢ escalations effective Oct. 1, 1976, and Jan. 1, 1977, and is also inclusive of tax reimbursement and a 1.5 c/1,000 ft³ gathering allowance.
[22] Opinion No. 669-H rate at 14.73 c/1,000 ft³ for gas sales from the W. Gray No. 2 effective Jan. 1, 1977, adjusted for tax reimbursement and inclusive of a 1.5 c/1,000 ft³ gathering allowance.
[23] Well plugged.
[24] Depleted.

[FR Doc.77-2042 Filed 1-24-77;8:45 am]

[Docket Nos. RP75-1, RP75-53 and RP76-24]

FLORIDA GAS TRANSMISSION CORP.

Order Approving Settlement Agreement

JANUARY 13, 1977.

Certification of a proposed Stipulation and Agreement in Docket No. RP76-24 was made on September 14, 1976, by Presiding Administrative Law Judge Samuel Gordon. This Agreement resolves not only all issues in that docket, but also the reserved issue of rate of return for common equity in Docket Nos. RP75-1 and RP75-53.[1] For the reasons stated herein, the Commission shall approve the Settlement Agreement.

The proposed Settlement Agreement provides that the reserved issue of return on equity in Docket Nos. RP75-1 and RP75-53 will be resolved by providing a return of 13.00% on equity in these two dockets. Resolution of this issue will terminate the proceedings in these dockets. On the basis of this settlement, Florida Gas Transmission Company (Florida Gas) agrees to refund to its Rate Schedule G customers the resulting $557,375 in excess revenues it collected during the locked-in periods covered by Docket Nos. RP75-1 and RP75-53. This refund shall be made with simple interest at a 9% rate per annum.

The proposed Settlement Agreement resolves the return issue in Docket No. RP76-24 by allowing a return on equity of 13.00% with an overall return of 9.83%. In addition, it provides for the refund of excess revenues in the instant docket of $773,629 based upon stipulated test period costs. This reduction provides also a basis for calculation of rate reductions for transportation service rate schedules. Finally, the settlement provides for contingent additional refunds for sales in excess of test period volume of 80,936,300 MMBtu for the period April 15, 1976, through April 14, 1977. Refunds will be calculated by multiplying the excess sales for each rate schedule by the established unit fixed costs for each rate schedule. Refunds of all amounts under the proposed Agreement will be made with simple interest at the rate of 9% per annum.

Aside from these refund provisions, the proposed Agreement provides for the filing of refund reports; reaffirms Florida Gas's obligation to flow through the jurisdictional portion of supplier refunds; provides for an increase in the basic transmission plant depreciation rate to 5.5% with the understanding that approval of the Agreement would indicate approval of this depreciation rate under Section 9 of the Natural Gas Act; and refers to the understanding of all parties that Florida Gas is conforming to the requirements of Section 167(e) of the Internal Revenue Code relating to the normalization method of accounting. The Agreement contains a provision that it requires approval in total and that should approval of the total Agreement be given, Docket Nos. RP75-1, RP75-53 and RP76-24 shall be considered terminated.

Attached as Appendix A hereto is the settlement cost of service for these dockets. The Commission's review of the proposed Agreement and settlement cost of service indicates that it provides a just and reasonable resolution of the contested issues in the dockets covered by the Agreement. Accordingly, the Commission believes that the proposed Agreement should be approved and that these dockets should be terminated, except for the refund obligations.

The Commission orders: (A) The proposed Stipulation and Agreement certified on September 14, 1976, in the referenced dockets is hereby approved. The Agreement is hereby incorporated by reference to this order.

(B) Florida Gas shall file within thirty days of the issuance of this order revised tariff sheets, to be effective April 15, 1976, in accordance with Article IV of the Agreement, to reflect the reduced rates resulting from approval of this Agreement.

(C) Florida Gas shall file a report of refunds within thirty days of the issuance of this order showing refunds required by the Agreement together with interest calculated at the rate of 9% per annum.

(D) 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 Florida Gas or any person or party.

(E) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

Florida Gas Transmission Co.—Cost of service for docket No. RP75-1

Line No.	Description (1)	Amount (2)
	A. Total cost of service—12 mo ended June 30, 1975: [1]	
1	Gas supply expenses	$94,385,286
2	Transmission expenses	8,732,843
3	Sales expenses	233,785
4	Administrative and general expenses	4,912,562
5	Total, operating expenses	48,264,486
6	Depreciation and amortization expenses	13,410,27
	Taxes:	
7	Federal income	10,879,493
8	State income	1,145,611
9	Other than income	2,855,783
10	Return on rate base	22,638,410
11	Other gas revenue, credit	(1,054,070)
12	Total, cost of service	98,178,988
13	B. Jurisdictional portion of total cost of service	78,442,961
14	C. Jurisdictional portion applicable to locked-in period of Jan. 1, 1975, through July 9, 1975	43,970,449

[1] Total cost of service from stipulation and agreement in docket No. RP75-1, dated Oct. 23, 1975, app. A; with return, Federal and State income taxes adjusted to reflect settlement rate of return.

[1] A settlement agreement in Docket No. RP75-1 was approved by Commission order issued February 9, 1976; an agreement in Docket No. RP75-53 was approved by order issued June 7, 1976. In each case, return on common equity was reserved for hearing.

Florida Gas Transmission Co.—Cost of service for docket No. RP75-53

Line No.	Description (1)	Amount (2)
	A. Total cost of service—9 mo Ended Mar. 31, 1976: [1]	
1	Gas supply expenses	$19,402,072
2	Transmission expenses	6,838,766
3	Sales expenses	178,400
4	Administrative and general expenses	4,081,947
5	Total, operating expenses	30,501,185
6	Depreciation and amortization expenses	12,943,475
	Taxes:	
7	Federal income	8,300,898
8	State income	874,085
9	Other than income	2,241,072
10	Return on rate base	16,336,432
11	Other gas revenues, credit	(911,986)
12	Total, cost of service	70,285,161
	B. Jurisdictional portion of total cost of service	63,172,130

1 Total cost of service from cost of service report dated June 14, 1976, filed pursuant to stipulation and agreement dated Feb. 24, 1976 (art. II and app. A), with return, Federal and State income taxes adjusted to reflect settlement of rate of return.

Florida Gas Transmission Co.—Jurisdictional billing determinants and Revenues related to costs of service

Line No.	Description	1,000,000 Btu volumes	Rates (cents per 1,000,000 Btu)	Revenue
	A. Docket No. RP75-1 locked-in period of Jan. 1, 1975, through July 9, 1975:			
1	Rate schedule G [1]	16,290,744	70.38	$11,315,542
2	Rate schedule I	24,139,382	56.48	13,633,923
3	Total, sales for resale	40,430,126		24,949,465
4	Rate schedule T-1	8,942,853	24.53	2,193,683
5	Rate schedule T-2	17,100,000	32.41	5,542,100
6	Rate schedule T-3	38,000,000	26.64	10,123,200
7	Total, transportation	64,042,853		17,858,983
8	Total, jurisdictional	104,472,979		42,808,447
	B. Docket No. RP75-53 9-mo period of July 1, 1975, through Mar. 31, 1976: [2]			
9	Rate schedule G [3]	27,020,535	73.33	19,611,962
10	Rate schedule I	24,120,028	57.92	13,970,330
11	Total, sales for resale	51,140,563		33,582,292
12	Rate schedule T-1	13,750,000	27.72	3,811,500
13	Rate schedule T-2	24,750,000	36.31	8,986,725
14	Rate schedule T-3	55,000,000	30.02	16,511,000
15	Total, transportation	93,500,000		29,309,225
16	Total, jurisdictional	144,640,563		62,891,507
17	C. Total jurisdictional revenues for docket Nos. RP75-1 and RP75-53.			105,699,954

[1] Rate schedule G revenues at base rate; Less air-conditioning discount (999,228,000,000 Btu at 15¢). Total $149,884.
[2] See cost of service report, schedule 15, p. 1.
[3] Rate schedule G revenues at base rate: Less air-conditioning discount (1,347,947,000,000 Btu at 15¢). Total $202,196.

[FR Doc.77-1983 Filed 1-24-77;8:45 am]

[Docket No. CI77-199]

GULF OIL CORP.

Notice of Application for Abandonment Authorization [1]

JANUARY 12, 1977.

Take Notice that the Applicant listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before January 24, 1977, file with the Federal Power Commission, Wash-

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

ington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

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 herein, if the Commission on its own review of the matter finds that an abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on this application if no petition to hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI77-199..... (C166-1055) B 12-30-76	Gulf Oil Corp., P.O. Box 3725, Houston, Tex. 77001.	Texas Eastern Transmission Corp., Bethany-Longstreet Field, DeSoto Parish, La.	(1)	.....

[1] Gulf to terminate deliveries to Texas Eastern under American Petrofina rate schedule No. 88 and to commence deliveries of this supply of gas to Texas Eastern under Gulf's rate schedule No. 278.

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

[FR Doc.77-2040 Filed 1-24-77;8:45 am]

[Docket No. CS77-181, et al.]

J. L. TRITTIPO, INC., ET AL.

Applications for "Small Producer" Certificates[1]

JANUARY 12, 1977.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 7, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. 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.

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 all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where 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 Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS77-181..	Dec. 15, 1976	J. L. Trittipo, Inc., 600 Commerce Sq. Charleston, W. Va. 25301.
CS77-182.....	do.....	The Stone Oil Corp., 1976 Venture-A, 3100 Fountain Sq. Plaza, Cincinnati, Ohio 45202.
CS77-183.....	do.....	Estate of Jarvis Hunt, deceased, 2447 Santa Clara Ave., Alameda, Calif. 94501.
CS77-184.....	do.....	Charlie Gill, Jr., 6375 River Overlook Dr., N.W. Atlanta, Ga. 30328.
CS77-185.....	do.....	Trepel Petroleum Exploration and Development Corp., 505 Forman Dr., Birmingham, Mich. 84010.
CS77-186.....	do.....	John A. Morgan, 222 N. Michigan Ave., Chicago, Ill. 60601.
CS77-245..	Dec. 28, 1976	Mark Two Ltd., Suite 600, 24C Capital St., Charleston, W. Va. 25301.
CS77-253..	Dec. 30, 1976	Headco Production Co., 1001 First National Center, Oklahoma City, Okla. 73102.
CS77-254..	Dec. 29, 1976	Edinger Inc., 510 Highlower Bldg., Oklahoma City, Okla. 73102.
CS77-255.....	do.....	Richard R. Steiner and Robert L. Steiner, Steiner Corp., P.O. Box 2317, Salt Lake City, Utah 84110.
CS77-256..	Dec. 30, 1976	Erle P. Halliburton, Jr., 4570 Campus Dr., Suite 6, New Port Beach, Calif. 92660.
CS77-257.....	do.....	Johnny Mitchell, 4025 One Shell Plaza, Houston, Tex. 77002.
CS77-258.....	do.....	David J. Halliburton, 1730 West Olympic Blvd., Suite 406, Los Angeles, Calif. 90015.
CS77-259.....	do.....	Madge W. Lisle, 6412 Hillcrest, Oklahoma City, Okla. 73116.
CS77-260.....	do.....	Third Buttner Trust, Edgar L. Buttner, trustee, 534—20th St., Oakland, Calif.
CS77-261.....	do.....	Third Buttner Trust, Edgar L. Buttner, trustee, 534—20th Street, Oakland, Calif. 94612.
CS77-262.....	do.....	Ergon, Inc., 1220 North 18th St., Suite 210, Monroe, La. 71201.
CS77-263.....	do.....	Theo. N. and Carolina W. Law, Vinson & Elkins, 2100 First City National Bank Bldg., Houston, Tex. 77002.
CS77-264..	Jan. 3, 1977	Elizabeth Merrick Cox, 425 1st Southwest, Admore, Okla. 73401.
CS77-265.....	do.....	The Northern Trust Co. as Trustee under the Patricia C. Isett, trust, dated Dec. 8, 1972, The Northern Trust Co., 50 South La Salle St., Chicago, Ill. 60675.
CS77-266.....	do.....	National Boulevard Bank of Chicago and Jeanne McKenna Zacchco, Cotrustees of P. M. Corbett Trust, National Boulevard Bank of Chicago, 400 North Michigan Ave., Chicago, Ill. 60611.
CS77-267.....	do.....	Duncan Corp., 602 Parker Bldg.—8 E. 3d, Tulsa, Okla. 74103.
CS77-268.....	do.....	Edison Dick, 69 West Washington St., Chicago, Ill. 60602.
CS77-269.....	do.....	William C. McKinney, 5520 Old Marietta Rd., Austell, Ga. 30001.
CS77-270.....	do.....	Pickrell Drilling Co., 1400 Vickers—K.S.B. & T. Bldg., Wichita, Kans. 67202.
CS77-271.....	do.....	Dale M. Robinson d/b/a Robinson Oil Co., 1400 Vickers—K.S.B. & T. Bldg., Wichita, Kans. 67202.

[FR Doc.77-2044 Filed 1-24-77;8:45 am]

[Docket Nos. CS77-187, et al.]

STEWART GREEN OIL & GAS, INC., ET AL.

Applications for "Small Producer" Certificates [1]

JANUARY 6, 1977.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the application which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 3, 1977, file with the Federal Power Commission, Washington D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. 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.

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 held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where 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 Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS77-187	Dec. 15, 1976	Stewart Green Oil & Gas, Inc., 2014 330 5 Avenue, SW., Calgary, Alberta, Canada.
CS77-188	do	Helen M. Hillsewock, 3709 Colgate, Dallas, Tex. 75225.
CS77-189	Dec. 16, 1976	Edwin L. Cox, 1880 First National Bank Bldg., Dallas, Tex. 75202.
CS77-190	Dec. 15, 1976	Jackson Enterprises, 66 S. Kanawha St., Buckhannon, W. Va. 26201.
CS77-191	do	Bogart Coal & Gas, Route 2, Box 449-35, Buckhannon, W. Va. 26201.
CS77-192	Dec. 13, 1976	Estate of Marion Lynn Russell, Eminence Star Rt., Garden City, Kans. 67846.
CS77-193	Dec. 17, 1976	McFadden Oil Corp., 9219 Katy Freeway, Suite 202, Houston, Tex. 77024.
CS77-194	do	Peter R. Maupin, Petroleum Center No. D-102, 900 Northeast Loop 410, San Antonio, Tex. 78209.
CS77-232	Dec. 21, 1976	Dorsey Woodruff, R.R. 1 Box 100, Canonsburg, Pa. 15317.
CS77-233	Dec. 22, 1976	RO-JO Industries, Inc., 3545 Northwest 58th St., Suite 310, Oklahoma City, Okla. 73112.
CS77-234	Dec. 23, 1976	Kenneth L. Hewitt, 1200 West Wesley Rd., N.W, Atlanta, Ga. 30327.
CS77-235	do	William W. Hulsey, P.O. Box 25188, Oklahoma City, Okla. 73125.
CS77-236	do	Edna Cohan, 1985 South Ocean Dr., Hallendale, Fla. 33009.
CS77-237	Dec. 27, 1976	W.W.F. Oil Corp., 920 Commercial National Bank Bldg., Shreveport, La. 71101.
CS77-238	do	The Stone Oil Corp., 1976 Ventures—K, 3100 Fountain Sq. Plaza, Cincinnati, Ohio 45202.
CS77-239	do	Sundown Petroleum Corp., Wayside, Tex. 79094.
CS77-240	do	William A. Holabird, 135 South LaSalle St., Chicago, Ill. 60603.
CS77-241	do	Ocelot Oil Co., Greenwich Office Park 11, Greenwich, Conn. 06830.
CS77-242	do	Crawley Petroleum Corp., 415 Hightower Bldg., Oklahoma City, Okla. 73102.
CS77-243	do	Gifford E. Joseph, 123 Glynn Way, Houston, Tex. 77056.
CS77-244	do	Allen B. Pease, 3545 Northwest 58th, Suite 420, Oklahoma City, Okla. 73112.
CS77-245	do	Kenneth L. Hewitt, 1200 West Wesley Rd., NW., Atlanta, Ga. 30327.
CS77-246	do	David H. Tripp, 1400 Vickers—K.S.B. & T. Bldg., Wichita, Kans. 67202.
CS77-247	do	Southwest Petro-Chem (Prod.) Inc., 1400 Vickers—K.S.B. & T. Bldg., Wichita, Kans. 67202.
CS77-248	do	H. A. Mayor, 1400 Vickers—K.S.B. & T. Bldg., Wichita, Kans. 67202.
CS77-249	do	Joe S. Johnson, 1400 Vickers—K.S.B. & T. Bldg., Wichita, Kans. 67202.
CS77-250	do	Philip B. Hartley, 1400 Vickers—K.S.B. & T. Bldg., Wichita, Kans. 67202.
CS77-251	do	Vera M. Dombaugh, 1400 Vickers—K.S.B. & T. Bldg., Wichita, Kans. 67202
CS77-252	do	Robert Dry, 1400 Vickers—K.S.B. & T. Bldg., Wichita, Kans. 67202.

[FR Doc.77-2041 Filed 1-24-77;8:45 am]

FEDERAL RESERVE SYSTEM

COMMERCIAL BANK, DELPHOS, OHIO

Order Approving Application for Merger of Banks

The Commercial Bank, Delphos, Ohio, (Applicant) a member of bank has applied for approval to the Board of Governors of the Federal Reserve System, pursuant to the Bank Merger Act, (12 USC 1828(c)), to acquire by merger, The Farmers Bank of Elida, Elida, Ohio, (Bank), a nonmember bank, under the name and charter of Applicant. It is proposed that upon consummation of this merger the present office of Bank will be operated as a branch of Applicant.

As required by the Act, notice of the proposed merger, in the form approved by the Board, has been published and the Federal Reserve Bank of Cleveland has requested reports on competitive factors from the Attorney General of the United States, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. A copy of the application has also been sent to the Superintendent of Banks of Ohio for his comments.

The Federal Reserve Bank of Cleveland has considered the application and all comments and reports in the light of factors set forth in the Act.

Applicant, ranking 131st among banking organizations in Ohio, holds deposits of $23.2 million representing 0.1 percent of total deposits in Commercial banks in the State.[1]

Applicant operates its head office in Delphos, Ohio, and has one branch in town and another branch in Gomer, Ohio, which is located approximately 7 miles east of its head office and 5 miles northeast of Bank. Applicant holds approximately 7.9 percent of total deposits of commercial banks in the Lima banking market (which includes all of Allen County, southern Putnam County and a small portion of eastern Van Wert County) and is the fifth largest of 11 banks in that market.

Bank operates a single banking office in Elida, which is located in the predominately rural northwest section of Allen County, approximately 7 miles from Delphos. Bank holds deposits of $3.2 million and is the smallest bank operating in the Lima market. The merger would eliminate some existing and future competition between Applicant and Bank. Both Applicant and Bank operate in the same banking market and the service area of Bank is entirely contained within that of Applicant. Applicant derives approximately 1.5 percent of its deposit volume and 4.4 percent of its loan volume from Bank's service area, and Bank derives approximately 7.0 percent of its deposit volume and 4.0 percent of its loan volume from the portion of Applicant's service area, which lies outside its own. Consummation of the proposed merger of Applicant with Bank would not materially increase Applicant's share of total deposits in the State and Applicant's share of deposits in the relevant market would increase from 7.9 percent to 9.0 percent. Applicant would retain its present rank in the market.

Although consummation of the proposal would eliminate one banking alternative from the Lima market, it would not significantly increase the concentration of market deposits. Based on these considerations, the proposed merger would have slightly adverse effects on competition in the market.

The financial and managerial resources of Applicant are satisfactory. Bank is in need of leadership and successor management which Applicant would be able to furnish. The future

[1] All deposit data are as of June 30, 1975.

prospects for Applicant after consummation of the proposal appear favorable.

There is no evidence in the record to indicate that the needs of the Allen banking market are not being met at the present time. However, if the merger is approved, Applicant has indicated that it will offer indirect installment loans, more extensive checking account services, and establish Saturday banking hours at Bank. Therefore, considerations relating to the convenience and needs of the communities to be served lend weight toward approval of the application.

It is the judgment of the Federal Reserve Bank of Cleveland that the slightly adverse effect of the proposed merger on existing and future competition are outweighed by the benefits to the banking convenience and needs of the customers to be served by Applicant.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Cleveland, acting pursuant to delegated authority.

By order of the Federal Reserve Bank of Cleveland, acting pursuant to delegated authority, for the Board of Governors of the Federal Reserve System, effective January 13, 1977.

WILLIS J. WINN,
President.

[FR Doc.77-2320 Filed 1-24-77;8:45 am]

MONTGOMERY BANCORPORATION, INC.

Order Approving Formation of Bank Holding Company

Montgomery Bancorporation, Inc., Winchester, Kentucky, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) of formation of a bank holding company through acquisition of 80 percent or more of the voting shares of Montgomery National Bank of Mt. Sterling, Mt. Sterling, Kentucky ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant is a nonoperating corporation organized under the laws of Kentucky for the purpose of becoming a bank holding company through the acquisition of bank. Upon acquisition of bank, Applicant would hold .15 of one percent of the total deposits in commercial banks in the State.[1] Bank (deposits of approximately $15 million) is the fourth largest of eight commercial banks in the relevant banking market[2] and holds 16.5 percent of total deposits in commercial banks in the market. Four of Applicant's principals in their individual capacities own an aggregate of 46 percent of the voting shares of Clark County National Bank of Winchester, Winchester, Kentucky ("Winchester Bank"), which is located 16 miles west of Bank, in a separate banking market. Since Winchester Bank is located in a separate banking market from that of Bank, it appears that no meaningful competition would be eliminated as a result of consummation of this proposal. Inasmuch as this proposal represents essentially a reorganization of the ownership of Bank from individuals to a corporation owned by the same individuals, the acquisition of Bank by Applicant would not have any significant adverse effect upon either existing or potential competition within the relevant banking market. Accordingly, the Board concludes that competitive considerations are consistent with approval of the application.

The financial and managerial resources and future prospects of Applicant, Winchester Bank, and Bank are regarded as satisfactory. As part of the proposal, Applicant has committed to credit to the income account of Bank all insurance commission income from the sale of credit life and credit accident and health insurance in connection with extensions of credit by Bank. Applicant proposes to service the debt it will incur in acquiring shares of Bank over a twelve-year period, through dividends to be declared by Bank and through the tax benefits to be derived from the filing of consolidated tax returns. In the Board's view, Applicant's earnings prospects appear to be adequate in order to service that debt without impairing the financial condition of Bank.[3] Accordingly, the Board concludes that the banking factors are consistent with approval of the application. Applicant has proposed several improvements in the services offered by Bank including an extension of the business hours of Bank and an increase in the effective interest rate on passbook savings accounts through the implementation of day-of-deposit-to-day-of-withdrawal computation and daily compounding of interest. Considerations with respect to the convenience and needs of the community to be served are regarded as being consistent with approval of the application. Accordingly, it is the Board's judgment that the proposed transaction would be in the public interest and the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Cleveland, pursuant to delegated authority.

By order of the Board of Governors,[4] effective January 18, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2321 Filed 1-24-77;8:45 a.m.]

[1] Deposit data are as of December 31, 1975.

[2] The relevant banking market is approximated by Bath, Menifee, and Montgomery Counties.

[3] In making this determination, the Board specifically considered Applicant's commitment to credit to Bank's income account all commission income derived from the sale of credit life and credit accident and health insurance related to extensions of credit by Bank. Accordingly, this Order is conditioned upon the fulfillment of that commitment.

[4] Voting for this action: Vice Chairman Gardner and Governors Coldwell and Lilly. Voting against this action: Governor Wallich. Absent and not voting: Chairman Burns and Governors Jackson and Partee.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

RESEARCH SCIENTIST DEVELOPMENT REVIEW COMMITTEE

Meeting

In accordance 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:

Research Scientist Development Review Committee, February 10–12; 8:30 a.m., Plaza Room, Dupont Plaza Hotel, Connecticut and Massachusetts Aves., N.W., Washington, D.C. Open—February 10, 11 a.m.–12 noon. Closed—Otherwise. Contact Ms. Jeannette Raley, Parklawn Building, Room 9C–24, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–4347.

Purpose: The Committee reviews applications for Research Scientist Development Awards, and Research Scientist Awards administered by the National Institute of Mental Health and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 11 to 12 noon, February 10, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552(b)(5) and 552(b)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact person listed above.

The NIMH Information Officer who will furnish summaries of the meeting and a roster 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, 301–443–3600.

Dated: January 19, 1977.

CAROLYN T. EVANS,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc.77-2219 Filed 1-24-77;8:45 am]

Food and Drug Administration

ADVISORY COMMITTEES

Notice of Meetings

This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and the FDA regulations, 21 CFR Part 2, Subpart D, relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, and place	Type of meeting and contact person
1. FDA/NIDA Drug Abuse Research Advisory Committee.	Feb. 10 and 11; 1 p.m. on Feb. 10; rm. C8805 on Feb. 10, rm. C8861 on Feb. 11, Neuropsychiatric Institute, University of California at Los Angeles, Los Angeles, Calif.	Closed committee deliberations Feb. 10, 9 a.m. to 12 m.; open public hearing Feb. 10, 1 to 2 p.m.; open committee discussion Feb. 10, 2 to 5 p.m., Feb. 11 9 a.m. to 5 p.m., John A. Scigliano, Ph. D., (HFD-123), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3504.

General function of the committee. Advises the Food and Drug Administration on action to be taken with respect to investigational use of substances with abuse potential. Advises the National Institute on Drug Abuse (NIDA) about supplies of substances for clinical studies and quantities of substances for animal and in vitro studies. Advises FDA and NIDA on development of broad outlines for studies of substances with abuse potential and new methods and tests in animals and man by which the dependence liability of investigational drugs may be estimated.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Progress reports on cannabis—tolerance and withdrawal properties, psychological effects on flying, use for glaucoma (effect on intra-ocular pressure), use for nausea and vomiting in patients under cancer chemotherapy, and laboratory demonstrations on the effect on driving (using a simulator).

Closed committee deliberations. Report on actions taken on previous committee recommendations, review of investigational new drug (IND) applications and amendments, and staff actions on drug shipments. This portion of the meeting will be closed to protect trade secret data and personal information, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552(b) (4) and (6)).

Committee name	Date, time, and place	Type of meeting and contact person
2. Neurological Panel.....	Feb. 11 and 12; on Feb. 11, 9 a.m., rm. 6821, FB-8, 200 C St. SW., Washington, D.C.; on Feb. 12, 9 a.m., rm. 421, Crystal City Marriott Hotel, Arlington, Va.	Open public hearing Feb. 11, 9 to 10 a.m.; open committee discussion Feb. 11, 10 a.m. to 3 p.m.; closed committee deliberations Feb. 11, 3 to 4 p.m.; open committee discussion Feb. 12, 9 a.m. to 4 p.m.; James R. Veale (HFK-450), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7226.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present to the executive secretary, information pertinent to classification of devices listed in this announcement or devices previously considered by the panel. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify the executive secretary by February 4, 1977, and submit a brief statement about the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also the approximate time required to make their comments.

Open committee discussion. Review classification recommendations of the November 5, 1976 meeting of the Diagnostic and Monitoring Devices and Instruments Subcommittee; review classification recommendations of the November 6, 1976 meeting of the Surgical Implants and Instruments Subcommittee; classification of the following devices: physiological signal amplifiers; EEG spectrum analyzers; ataxiagraphs; chronaximeters; electronystagmograph units; EEG test signal generator; skin potential measurement devices; temperature measurement devices (direct contact, powered); peripheral autonomic function measuring/monitoring devices; physiological signal conditioners/couplers; spike enhancer; tremor transducers; alpha monitors; EEG monitors; aneurysm clip applicators; ligature passing and knot-tying instruments; shunt

system implantation instruments; microsurgical instruments (excluding optical devices); specialized knives and accessories; rasps; manual retractors and accessories; self-retaining retractors and accessories; manual rongeurs; powered rongeurs; manual saws and accessories; powered saws and accessories; scissors; separators; spatulas; spoons; cottonoid paddies; cotton sponges; gauze sponges; hemostatic clip applicators; clip forming/cutting instruments; clip removal instruments; clip racks; cranial electrotherapy (electrosleep) stimulators; induction coagulation generators; radiofrequency lesion generators; leukotomes; coagulation probes; cryogenic systems; induction coagulation seeds (implantable); lesion temperature monitors; lesion impedance monitors; biofeedback devices; aversive conditioning devices.

Closed committee deliberations. The panel will discuss a proposed regulatory action to be taken by the agency under authority granted under the Food, Drug, and Cosmetic Act as amended. This portion of the meeting will be closed to protect investigatory files compiled for law enforcement purposes (5 U.S.C. 552(b)(7)).

Committee name	Date, time, and place	Type of meeting and contact person
3. Allergenic Extracts Panel	Feb. 11 and 12; 9 a.m., on Feb. 11, 8:30 a.m. on Feb. 12, rm. 130, 6110 Executive Blvd., Rockville, Md.	Open public hearing Feb. 11, 9 to 11 a.m.; open committee discussion Feb. 11, 11 a.m. to 5:30 p.m., Feb. 12, 8:30 to 10 a.m.; closed committee deliberations Feb. 12, 10 a.m. until adjournment; Clay Sisk, (HFB-5), 8800 Rockville Pike, Bethesda, Md 20014, 301-443-5455.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of biological products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of alum precipitated allergenic extracts, food extracts for immunotherapy, recommendations for further testing, standardization of allergenic extracts, revision of draft generic statements on several allergenic extracts, and draft label recommendations.

Closed committee deliberations. Review of data submissions from allergenic extract producers on the subject of manufacturing techniques for epidermal allergenic extracts and for food allergenic extracts. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552(b)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 2, Subpart D, published in the FEDERAL REGISTER of November 26, 1976 (41 FR 52148).

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permit such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably, deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, D.C., area on the basis of the criteria of § 2.307 (21 CFR 2.307) of FDA's regulations relating to public advisory committees.

Dated: January 18, 1977.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc.77-2402 Filed 1-24-77;8:45 am]

[Docket No. 76N-0403; DESI 11250]

ARGININE GLUTAMATE

Opportunity for Hearing on Proposal To Withdraw Approval of New Drug Application

The Food and Drug Administration is reclassifying the drug arginine gultamate to lacking substantial evidence of effectiveness and offering an opportunity for a hearing on the proposal to withdraw its approval. Persons who wish to request a hearing may do so on or before February 24, 1977.

In a notice (DESI 11250) published in the FEDERAL REGISTER of June 3, 1971 (36 FR 10815), the Food and Drug Administration announced its conclusions that the drug product described below con-

taining arginine glutamate is possibly effective for its labeled indications relating to use in conditions associated with elevated blood ammonia levels.

NDA 11-640; Modumate Solution for Injection containing arginine glutamate; Abbott Laboratories, 14th and Sheridan Rd., North Chicago, Ill. 60064.

Other drugs included in the June 3, 1971 notice are not affected by this notice.

Modumate was subsequently included in the list of drugs that may remain on the market pending completion of scientific studies to determine effectiveness, as announced in the FEDERAL REGISTER of December 14, 1972 (37 FR 26623).

No clinical studies have been undertaken, and on June 29, 1976, Abbott Laboratories requested that approval of the new drug application be withdrawn. No other person has submitted data or protocols or has expressed an intention to perform additional clinical studies on arginine glutamate. Accordingly, in a notice appearing elsewhere in this issue of the FEDERAL REGISTER, the Commissioner of Food and Drugs is revoking the exemption granted in the December 14, 1972 notice for continued marketing of the drug. The drug is now reclassified to lacking substantiial evidence of effectiveness.

On the basis of all of the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5), demonstrating the effectiveness of the drug.

Therefore, notice is given to the holder(s) of the new drug application(s) and to all other interested persons that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug application(s) (or if indicated above, those parts of the application(s) providing for the drug product(s) listed above) and all amendments and supplements thereto on the ground that new information before him with respect to the drug product(s), evaluated together with the evidence available to him at the time of approval of the application(s), shows there is a lack of substantial evidence that the drug product(s) will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

In addition to the holder of the new drug application specifically named above, this notice of opportunity for hearing applies to all persons who manufacture or distribute a drug product that is identical, related, or similar to the drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice of opportunity for hearing to determine whether it covers any drug product he manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes that may be identical, related, or similar to the drug product named in this notice by writing to the Food and Drug Administration, Bureau of Drugs, Division of Drug Labeling Compliance (HFD-310), 5600 Fishers Lane, Rockville, Md. 20857.

In addition to the ground(s) for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug product subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962; or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicant(s) and all other persons subject to this notice pursuant to 21 CFR 310.6 are hereby given an opportunity for a hearing to show why approval of the new drug application(s) should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug product named above and of all identical, related, or similar drug products.

If an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 elects to avail himself of the opportunity for a hearing, he shall file (1) on or before February 24, 1977, a written notice of appearance and request for hearing, and (2) on or before March 28, 1977, the data, information, and analyses on which he relies to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by such person not to avail himself of the opportunity for a hearing concerning the action proposed with respect to such drug product and a waiver of any contentions concerning the legal status of any such drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice shall be filed in quintuplicate with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

All submissions pursuant to this notice, except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk during working hours, Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053, as amended (21 U.S.C. 355)), and under authority delegated to the Director of the Bureau of Drugs (21 CFR 5.31) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262).)

Dated: December 30, 1976.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc.77-2223 Filed 1-24-77;8:45 am]

ARGININE GLUTAMATE

Drugs for Human Use; Drug Efficacy Study Implementation; Revocation of Exemption

In a notice appearing elsewhere in this issue of the FEDERAL REGISTER, the Food and Drug Administration is reclassifying the possibly effective indication for arginine glutamate (DESI 11250) to lacking substantial evidence of effectiveness and is offering an opportunity for hearing. That drug, described below, has been allowed to remain on the market beyond the time limit established for implementation of the Drug Efficacy Study on the condition that manufacturers undertake additional clinical studies to determine its effectiveness. The temporary exemption to permit continued marketing was announced in a notice published in the FEDERAL REGISTER of December 14, 1972 (37 FR 26623). Since no person has submitted additional data, or expressed an intention to perform such studies, the exemption granted by the December 14, 1972 notice is hereby revoked.

NDA 11-640; Modumate Solution for Injection containing arginine glutamate; Ab-

bott Laboratories, 14th and Sheridan Rd., North Chicago, IL 60064.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)).

Dated: January 17, 1977.

JOSEPH P. HILE,
Associate
Commissioner for Compliance.

[FR Doc.77-2220 Filed 1-24-77;8:45 am]

DENTIFRICE AND DENTAL CARE PANEL

Cancellation

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), the Food and Drug Administration announced in a notice published in the FEDERAL REGISTER on January 18, 1977 (42 FR 3348), public advisory committee meetings and other required information in accordance with provisions set forth in section 10(a)(1) and (2) of the act.

Notice is hereby given that the meeting of the Dentifrice and Dental Care Panel scheduled for February 16 and 17, 1977, Conference Rm. K, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD, is cancelled.

Dated: January 17, 1977.

JOSEPH P. HILE,
Associate
Commissioner for Compliance.

[FR Doc.77-2221 Filed 1-24-77;8:45 am]

MEDICAL RADIATION ADVISORY COMMITTEE

Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Medical Radiation Advisory Committee by the Secretary, Department of Health, Education, and Welfare, for an additional period of 2 years beyond January 5, 1977.

Authority for this committee will expire on January 5, 1979, unless the Secretary formally determines that continuance is in the public interest.

Dated: January 17, 1977.

JOSEPH P. HILE,
Associate
Commissioner for Compliance.

[FR Doc.77-2086 Filed 1-24-77;8:45 am]

Health Services Administration

PROJECT GRANTS FOR SUDDEN INFANT DEATH SYNDROME INFORMATION AND COUNSELING

Announcement of Availability of Grants

The Bureau of Community Health Services, Health Services Administration, announces that competitive applications for Sudden Infant Death Syndrome Information and Counseling project grants are being accepted under authority of section 1121(b), of the Public Health Service Act.

Section 1121(b) of the Public Health Service Act (42 U.S.C. 300c–11) authorizes grants to public and nonprofit private entities for support of sudden infant death syndrome (SIDS) projects. Grants to eligible applicants may be made by the Secretary for projects which include both: (1) The collection, analysis, and furnishing of information (derived from post mortem examinations and other means) pertaining to the causes of SIDS; and (2) The provision of information and counseling to families affected by SIDS.

Application kits, including all necessary forms, instructions and information may be obtained from, and completed applications returned to, the address below:

Grants Management Branch
Bureau of Community Health Services
Health Services Administration
Public Health Service
Room 7A–39, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

Programmatic information relative to development of an application is available from the Office of Maternal and Child Health, Bureau of Community Health Services, Room 7–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, 20857, telephone number 301–443–6600.

Completed applications must be received by March 1, 1977.

The amount available for grants under this announcement is $250,000.

Dated: January 11, 1977.

JOHN H. KELSO,
Acting Administrator,
Health Services Administration.

[FR Doc.77-2308 Filed 1-24-77;8:45 am]

National Institute of Education

PANEL FOR THE REVIEW OF LABORATORY AND CENTER OPERATIONS

Deadline for Receipt of Documentation to Support Nominations

Notice is hereby given that the Director, National Institute of Education, has established January 31, 1977, as the deadline for the receipt of documentation to support nominations to the Panel for the Review of Laboratory and Center Operations. The deadline for receipt of nominations for the Panel was January 17, 1977.

The initiation for Panel nominations, originally published at 41 FR 53547, December 7, 1976, is authorized pursuant to the provisions of Section 403(f)(3)(A) of the General Education Provisions Act, as amended by the Education Amendments of 1976 (Pub. L. 94–482). In accordance with this statute, the initiation is limited to designated educational laboratories, research and development centers, and to "professional, commercial, scholarly and educational associations, particularly associations or organizations engaged in educational research". For additional information contact:

Steve Scheier, Task Force on Laboratories and Centers, National Institute of Education, 1200 19th Street, NW., Room 714, Washington, D.C. 20208.

Dated: January 18, 1977.

RICHARD S. WERKSMAN,
Committee Management Officer.

[FR Doc.77-2195 Filed 1-24-77;8:45 am]

National Institutes of Health

ADVISORY COMMITTEE REPORTS

Filing of Annual Reports

Pursuant to sections 10(d) and 13 of the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the annual reports for the committees listed below have been filed with the Library of Congress. Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, or on weekdays, at the Department Library, North Building, Room 1436, Washington, D.C. 20201, between 9 a.m. and 4:30 p.m.

Advisory Committee to the Director, NIH
Aging Review Committee
Allergy and Immunology Research Committee
Allergy and Immunology Study Section
Animal Resources Advisory Committee
Applied Physiology and Bioengineering Study Section
Arteriosclerosis and Hypertension Advisory Committee
Arteriosclerosis Specialized Centers of Research (SCOR) ad hoc Review Committee
Artificial Kidney-Chronic Uremia Advisory Committee
Bacteriology and Mycology Stud Section
Behaviorial Sciences Research Contract Review Committee
Biochemistry Study Section
Biomedical Communications Study Section
Biomedical Library Review Committee
Biometry and Epidemiology Contract Review Committee
Biophysics and Biophysical Chemistry A Study Section
Biophysics and Biophysical Chemistry B Study Section
Blood Diseases and Resources Advisory Committee
Board of Regents of the National Library of Medicine
Board of Scientific Counselors of the Division of Cancer Treatment.
Board of Scientific Counsels, NCI
Board of Scientific Counselors, NEI
Board of Scientific Counselors, NHLBI
Board of Scientific Counselors, NIA
Board of Scientific Counselors, NIAMDD
Board of Scientific Counselors, NICHD
Board of Scientific Counselors, NIDR
Board of Scientific Counselors, NEIHS
Board of Scientific Counselors, NINCDS
Breast Cancer Diagnosis Committee
Breast Cancer Epidemiology Committee
Breast Cancer Experimental Biology Committee
Breast Cancer Treatment Committee
Cancer Clinical Investigation Review Committee
Cancer Control and Rehabilitation Advisory Committee
Cancer Control Community Activities Review Committee

Cancer Control Grant Review Committee
Cancer Control Intervention Programs Review Committee
Cancer Control Nutrition Scientific Review Committee
Cancer Control Supportive Services Review Committee
Cancer Special Program Advisory Committee
Carcinogenisis Program Scientific Review Committee A
Carcinogenisis Program Scientific Review Committee B
Carcinogenisis Program Scientific Review Committee C
Cardiology Advisory Committee
Cardiovascular and Pulmonary Study Section
Cardiovascular and Renal Study Section
Cell Biology Study Section
Chemical/Biological Information-Handling Review Committee
Clinical Applications and Prevention Advisory Committee
Clinical Cancer Education Committee
Clinical Trials Committee
Clinical Trials Review Committee
Combined Modality Contract Review Committee
Committee on Cancer Immunobiology
Committee on Cancer Immunodiagnosis
Committee on Cancer Immunotherapy
Committee on Cytology Automation
Communicative Disorders Review Committee
Communicative Sciences Study Section
Comprehensive Sickle Cell Centers (CSCC) ad hoc Review Committee
Computer and Biomathematical Sciences Study Section
Contraceptive Development Contract Review Committee
Contraceptive Evaluation Research Contract Review Committee
Dental Caries Program Advisory Committee
Dental Research Institutes and Special Programs Advisory Committee
Developmental Behavioral Sciences Study Section
Developmental Therapeutics Technical Review Committee
Diagnostic Radiology Committee
Diagnostic Research Advisory Group
Diet and Cancer Scientific Review Committee
Diet, Nutrition and Cancer Program Advisory Committee
DCT Drug Development Committee
Endocrinology Study Section
Epidemiology and Disease Control Study Section
Epilepsy Advisory Committee
Experimental Psychology Study Section
Experimental Therapeutics Study Section
Experimental Virology Study Section
General Clinical Research Centers Committee
General Medicine A Study Section
General Medicine B Study Section
General Research Support Advisory Committee
Genetics Study Section
Heart and Lung Research Review Committee A
Heart and Lung Research Review Committee B
Hematology Study Section
Human Embryology and Development Study Section
Immunobiology Study Section
Immunological Sciences Study Section
Infectious Disease Committee
Lipid Metabolism Advisory Committee
Mammalian Cell Lines Committee
Maternal and Child Health Research Committee
Medical Laboratory Sciences Review Committee
Medicinal Chemistry A Study Section
Medicinal Chemistry B Study Section
Mental Retardation Research Committee
Metabolism Study Section
Microbial Chemistry Study Section
Minority Access to Research Careers Review Committee
Molecular Biology Study Section
Molecular Cytology Study Section
Molecular Control Working Group
National Advisory Allergy and Infectious Diseases Council
National Advisory Child Health and Human Development Council
National Advisory Council on Aging
National Advisory Dental Research Council
National Advisory Environmental Health Sciences Council
National Advisory Eye Council
National Advisory General Medical Sciences Council
National Advisory Neurological and Communicative Disorders and Stroke Council
National Advisory Research Resources Council
National Arthritis, Metabolism, and Digestive Diseases Advisory Council
National Bladder Cancer Project Working Cadre
National Commission on Arthritis and Related Musculoskeletal Diseases
National Commission on Diabetes
National Heart, Lung, and Blood Advisory Council
National Large Bowel Cancer Project Working Cadre
National Pancreatic Cancer Project Working Cadre
National Prostatic Cancer Project Working Cadre
Neurological and Communicative Disorders and Stroke Science Information Program Advisory Committee
Neurological Disorders Program Project Review A Committee
Neurological Disorders Program Project Review B Committee
Neurology A Study Section
Neurology B Study Section
Nutrition Study Section
Oral Biology and Medicine Study Section
Pathobiological Chemistry Study Section
Pathology A Study Section
Pathology B Study Section
Periodontal Diseases Advisory Committee
Pharmacology Study Section
Pharmacology-Toxicology Research Program Committee
Physiological Chemistry Study Section
Physiology Study Section
Population Research Committee
Population Research Study Section
Primate Research Centers Advisory Committee
Pulmonary Diseases Advisory Committee
Pulmonary Specialized Centers of Research (SCOR) ad hoc Review Committee
Pulmonary Young Investigator Grant Committee
Radiation Study Section
Recombinant DNA Molecular Program Advisory Committee
Reproductive Biology Study Section
Surgery A Study Section
Surgery B Study Section
Third National Cancer Survey Utilization Advisory Committee
Thrombosis Specialized Centers of Research (SCOR) ad hoc Review Committee
Tobacco Working Group
Toxicology Study Section
Transplantation and Immunology Committee
Tropical Medicine and Parasitology Study Section
Virology Study Section
Virus Cancer Program Advisory Committee
Virus Cancer Program Scientific Review Committee A
Virus Cancer Program Scientific Review Committee B
Vision Research Program Committee
Visual Sciences A Study Section
Visual Sciences B Study Section

Dated: January 13, 1977.

DONALD S. FREDERICKSON,
Director,
National Institutes of Health.

[FR Doc.77-2218 Filed 1-24-77;8:45 am]

ALLERGY AND IMMUNOLOGY RESEARCH COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Allergy and Immunology Research Committee, National Institute of Allergy and Infectious Diseases on March 3-4, 1977 at the National Institutes of Health, Building 31B, Conference Room 5, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to 10 a.m. on March 3 for the discussion of general policy matters and administrative reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5), and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting of the committee will be closed to the public from 10 a.m. on March 3 to adjournment on March 4 for the review, discussion, and evaluation of individual initial pending and renewal grant applications. The closed portions of the meetings involve solely the internal expression of views and judgments of committee members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mr. Robert L. Schreiber, Chief, Office of Research Reporting and Public Response, NIAID, National Institutes of Health, Building 31, Room 7A32, Bethesda, Maryland 20014, (301) 496-5717, will furnish rosters of committee members, summaries of the meetings, and other information pertaining to the meetings.

(Catalog of Federal Domestic Assistance Program No. 13.855, National Institutes of Health.)

Dated: January 18, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2210 Filed 1-24-77;8:45 am]

ANIMAL RESOURCES ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Animal Resources Advisory Committee, Division of Research Resources, March 1-2, 1977, National Institutes of Health, Building 31, Conference Room 7, Bethesda, Maryland 20014. This meeting will be open to the public on March 1 from 9 a.m. to 10:30 a.m., during which

time there will be a brief staff presentation on the current status of the Animal Resources Program. The Committee will select future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5) and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 10:30 a.m. to 5 p.m. on March 1 and from 9 a.m. to adjournment on March 2 for the review, discussion and evaluation of initial pending and renewal research grant applications. The closed portion of the meeting involves solely the internal expression of views and judgments of Committee members on individual grant applications containing detailed research protocols, designs and other technical information; financial data such as salaries; and personal information concerning individuals associated with the applications.

Mr. James Augustine, Information Officer, Division of Research Resources, Building 31, Room 5B39, Bethesda, Maryland 20014, 301/496-5545, will provide summaries of the meeting and rosters of Committee members. Dr. Dennis O. Johnsen, Executive Secretary, Animal Resources Advisory Committee, Building 31, Room 5B33, Bethesda, Maryland 20014, 301/496-5507, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.306, National Institutes of Health.)

Dated: January 18, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2209 Filed 1-24-77;8:45 am]

BREAST CANCER TASK FORCE PROJECT PRESENTATIONS

Meeting

Notice is hereby given of the Breast Cancer Project Presentations sponsored by the Breast Cancer Task Force, National Cancer Institute, March 9, 1977, Holiday Inn, Versailles Rooms I and II, Bethesda, Maryland.

This meeting will be open to the public from 8:30 a.m. to adjournment on March 9, 1977, for discussion of research projects related to breast cancer. Attendance by the public will be limited to space available.

For additional information, please contact Dr. D. Jane Taylor, Landow Building, Room A-422, Division of Cancer Biology and Diagnosis, National Cancer Institute, National Institutes of Health, Bethesda, Maryland 20014, (301) 496-6718.

Dated: January 13, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2213 Filed 1-24-77;8:45 am]

BREAST CANCER VIRUS WORKSHOP ON MASON PFIZER MONKEY VIRUS AND RELATED VIRUSES

Meeting

Notice is hereby given of the Breast Cancer Virus Workshop on Mason Pfizer Monkey Virus and Related Viruses sponsored by the Virus Cancer Program, March 28 and 29, 1977, Building 31, Conference Room 9, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on March 28, 1977, from 9 a.m. to 5 p.m. and on March 29, 1977, from 9 a.m. to 5 p.m. for presentation of scientific papers. Attendance by the public will be limited to space available.

Dr. Clarice E. Gaylord, Acting Head, Breast Cancer Virus Studies Section, Collaborative Research Branch, Landow Building, Room C306, Division of Cancer Cause and Prevention, National Cancer Institute, National Institutes of Health, Bethesda, Maryland 20014 (301/496-4533) will provide additional information.

Dated: January 13, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2216 Filed 1-24-77;8:45 am]

BOARD OF SCIENTIFIC COUNSELORS DIVISION OF CANCER BIOLOGY AND DIAGNOSIS

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCBD, National Cancer Institute, March 11 and 12, 1977, Building 31A, Conference Room 11A-10, National Institutes of Health. This meeting will be open to the public on March 11, 1977, from 9 a.m. to 5 p.m. to discuss the scientific research program of the Laboratory of Cell Biology, DCBD. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 12, 1977, from 9 a.m. to adjournment, for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Alan S. Rabson, Director, Division of Cancer Biology and Diagnosis, National Cancer Institute, Building 31, Room 3A03, National Institutes of Health, Bethesda, Maryland 20014 (301/496-4345) will furnish summary minutes, rosters of committee members, and substantive program information.

Dated: January 13, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2215 Filed 1-24-77;8:45 am]

BOARD OF SCIENTIFIC COUNSELORS, NINCDS

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Neurological and Communicative Disorders and Stroke, National Institutes of Health, April 14 and 15, 1977, in Conference Room 1B07, Bldg. 36, NIH, Bethesda, Maryland 20014. This meeting will be open to the public from 10:30 a.m. to 5 p.m. on April 14th to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 9 a.m. until the conclusion of the meeting on April 15th for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Chief, Office of Scientific and Health Reports, Mrs. Ruth Dudley, Bldg. 31, Room 8A03, NIH, NINCDS, Bethesda, Maryland 20014, telephone 301/496-5751, will furnish summaries of the meeting and rosters of committee members.

The Executive Secretary from whom substantive program information may be obtained is: Dr. Thomas N. Chase, Director of Intramural Research, NINCDS, Bldg. 36, Room 5A05, NIH, Bethesda, Maryland, 20014, telephone 301/496-4297.

(Catalog of Federal Domestic Assistance Program No. 13.356, National Institutes of Health.)

Dated: January 13, 1977.

SUZANNE L. FREMEAU,
Committee Manager Officer,
National Institutes of Health.

[FR Doc.77-2217 Filed 1-24-77;8:45 am]

COMMITTEE ON CANCER IMMUNODIAGNOSIS

Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Committee on Cancer Immunodiagnosis, National Cancer Institute, February 28, 1977, March 1, 1977, March 2, 1977 and March 3, 1977, National Institutes of Health, Building 1, Wilson Hall, which was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 859).

Dated: January 13, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2207 Filed 1-24-77;8:45 a.m.]

DIAGNOSTIC RESEARCH ADVISORY GROUP

Amended Notice of Meeting

Notice is hereby given of a change in the meeting of February 16, 1977 8:30 a.m. at Building 31–C, Conference Room 9, of the Diagnostic Research Advisory Group, National Cancer Institute, which was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 859).

This committee was to have convened at 8:30 a.m. on February 16, 1977 but has been changed to 8:30 a.m., February 17, 1977, at Building 31–A, Conference Room 8A30.

The meeting will be open to the public from 8:30 a.m. to 10:30 a.m. on February 17, 1977, and closed from 10:30 a.m. to adjournment. Attendance by the public will be limited to space available.

Dated: January 18, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2206 Filed 1-24-77;8:45 a.m.]

MINORITY ACCESS TO RESEARCH CAREERS REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Minority Access to Research Careers Review Committee, National Institute of General Medical Sciences, on February 28–March 1, 1977, 9 a.m., National Institutes of Health, Building 31C, Conference Room 8. The Committee will host the Conference of Black Graduate Deans, and will be open to the public on Monday, February 28, 9 a.m. until 12 noon. The meeting will consist of opening remarks, discussion of procedural matters and a seminar of general interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5), and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 28 from 12 noon to 5 p.m. and on March 1 from 9 a.m. to 5 p.m. for the review, discussion, and evaluation of individual grant applications under the National Research Service Awards Program (42 U.S.C. 4821–1). The closed portion of the meeting involves solely the internal expression of views and judgments of committee members on individual grant applications which contain detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mr. Paul Deming, Staff Assistant to the Director, NIGMS, Westwood Building, 5333 Westbard Avenue, Room 9A–05, Bethesda, Maryland 20014, telephone (301) 496–7301, will furnish summary minutes of the meeting and a roster of committee members.

Substantive program information may be obtained from Dr. Prince Rivers, Executive Secretary, Westwood Building, Room 9A–18, Bethesda, Maryland 20014, telephone (301) 496–7357.

(Catalog of Federal Domestic Assistance Programs 13–859, 13–860, 13–861, 13–862, General Medical Sciences.)

Dated: January 18, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2208 Filed 1-24-77;8:45 am]

NATIONAL ARTHRITIS ADVISORY BOARD

Establishment

The National Institutes of Health announces the establishment on December 16, 1976, of the National Arthritis Advisory Board, under the authority of section 440 of Pub. L. 94–562 (42 U.S. Code 289c–7). This Board is governed by provisions of Pub. L. 92–463 which sets forth standards for the formation and use of advisory committees.

The Board shall review and evaluate the implementation of the Arthritis Plan formulated by the National Commission on Arthritis and Related Musculoskeletal Diseases. In carrying out this function the Board shall advise and recommend to the Congress, the Secretary, and the heads of other appropriate Federal agencies with respect to the Arthritis Plan and the guidelines, policies and procedures of Federal programs relating to arthritis. The Board may collect such data as it deems advisable and necessary to enable it to perform these functions. The data collection responsibilities of the Board and the activities of its subcommittees are intended to allow it to perform the function of assessing the implementation of the Arthritis Plan and in submitting its annual report.

Authority for this Board will expire on September 30, 1980.

Dated: January 14, 1977.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc.77-2204 Filed 1-24-77;8:45 am]

NATIONAL COMMISSION ON DIGESTIVE DISEASES

Establishment

The National Institutes of Health announces the establishment on December 16, 1976, of the National Commission on Digestive Diseases, under the authority of section 301 of Pub. L. 94–562 (42 U.S. Code 289a note). This Commission is governed by provisions of Pub. L. 92–463 which sets forth standards for the formation and use of advisory committees.

The Commission shall: conduct a comprehensive study of the present state of knowledge of the incidence, duration, and morbidity of, and mortality rates resulting from digestive diseases and of the social and economic impact of such diseases; evaluate the public and private facilities and resources (including trained personnel and research activities) for the diagnosis, prevention, and treatment of, and research in such diseases; and identify programs (including biological, behavioral, nutritional, environmental, and social programs) in which, and the means by which, improvement in the management of digestive diseases can be accomplished. Each Federal entity administering health programs and activities related to digestive diseases shall, upon request, assist the Commission in carrying out its duties under this paragraph.

Based on the study, evaluation, and identification made pursuant to the above stated function, the Commission shall develop and recommend a long-range plan for the use and organization of national resources to effectively deal with digestive diseases. The plan shall provide for: research studies; investigations; development of preventive measures; detection of digestive disease; evaluation of new and improved methods of screening for digestive diseases; development of criteria for the diagnosis and the clinical management and control of digestive diseases; development of coordinated health care systems; education and training of scientists, clinicians, educators, and allied health professionals; the conduct and direction of field studies and clinical trials; establishment of a standardized nomenclature of all digestive diseases for use in basic and clinical research and to facilitate collaborative studies; and establishment of a system of periodic surveillance of the research potential and research needs in digestive diseases corresponding with the recently completed survey organized by the National Institute of Arthritis, Metabolism, and Digestive Diseases.

The Commission shall within eighteen months following its initial meeting publish and transmit directly to Congress a final report respecting its activities. The Commission shall cease to exist on the thirtieth day following the date of submission of this report.

Dated: January 14, 1977.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc.77-2205 Filed 1-24-77;8:45 am]

NATIONAL DIABETES ADVISORY BOARD

Establishment

The National Institutes of Health announces the establishment on December 16, 1976, of the National Diabetes Advisory Board, under the authority of section 201 of Pub. L. 94–562 (42 U.S. Code 289c–3a(a)). This Board is governed by provisions of Pub. L. 92–463 which sets forth standards for the formation and use of advisory committees.

The Board shall review and evaluate the implementation of the long-range plan to combat diabetes mellitus formulated by the National Commission on Diabetes. In carrying out this function the Board shall advise and recommend to the Congress, the Secretary, and the

heads of other appropriate federal agencies, with respect to the guidelines, policies and procedures of federal programs relating to diabetes. The Board may collect such data as it deems advisable and necessary to enable it to perfrom these functions. The Board shall submit to the Secretary and to the Congress an annual report that describes and evaluates the progress made during the year in diabetes research, treatment, education and training, and summarizes and analyzes expenditures made by the federal government for diabetes related activities.

Authority for this Board will expire on September 30, 1980.

Dated: January 14, 1977.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc.77-2203 Filed 1-24-77;8:45 am]

NEUROLOGICAL AND COMMUNICATIVE DISORDERS AND STROKE SCIENCE INFORMATION PROGRAM ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Neurological and Communicative Disorders and Stroke Science Information Program Advisory Committee, National Institute of Neurological and Communicative Disorders and Stroke, March 10 and 11, 1977, at the National Institutes of Health, Building 31, Room 8A-30, Bethesda, MD 20014.

This meeting will be open to the public on March 10, 1977, from 12:30 p.m. to 5 p.m., and on March 11, 1977, from 9 a.m. until conclusion of the meeting, to discuss the status and plans for the Institute's science information program. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552(b)(4) and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 10, 1977, from 9:30 a.m. to 12:30 p.m., for the review, discussion, and evaluation of individual contract proposals. The proposals contain information of a proprietary or confidential nature, including financial data, such as salaries, and personal information concerning individuals associated with the proposals.

Mrs. Ruth Dudley, Chief, Office of Scientific and Health Reports, NINCDS, NIH, Building 31, Room 8A-06, Bethesda, Maryland 20014, (301) 496-5751, will provide summaries of the meeting and rosters of committee members.

Mr. Alfred Weissberg, Executive Secretary, NINCDS, NIH, Building 31, Room 8A-03, Bethesda, Maryland 20014, (301) 496-9271, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.854, National Institutes of Health.)

Dated: January 13, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2214 Filed 1-24-77;8:45 am]

POPULATION RESEARCH COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Population Research Committee, National Institute of Child Health and Human Development, on March 3-4, 1977, in the Landow Building, Room C-418, 7910 Woodmont Avenue, Bethesda, Maryland.

The meeting will be open to the public on March 3, from 9 a.m. to 10:30 a.m. to discuss the program status, new developments and projections for population research centers, program projects and national research service award applications. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5), and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 3 from 10:30 a.m. to adjournment on March 4 for the review, discussion and evaluation of individual initial pending and supplemental grant applications. The closed portion of the meeting will involve solely the internal expression of views and judgments of committee members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Building 31, Room 2A-04, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1848, will provide a summary of the meeting and a roster of committee members. Dr. William A. Sadler, Executive Secretary of the Population Research Committee, NICHD, Landow Building, Room C-704, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-6515, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.864, National Institutes of Health.)

Dated: January 18, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2211 Filed 1-24-77;8:45 am]

TUMOR VIRAL IMMUNOLOGY WORKSHOP

Meeting

Notice is hereby given that the RNA Virus Studies Section, Viral Oncology Program of the Division of Cancer Cause and Prevention, NCI will hold a workshop entitled "Tumor Viral Immunology", March 8 & 9, 1977, from 9 a.m. to 5 p.m. each day at the King and Prince Hotel, St. Simon Island, Georgia.

The main purpose of the workshop is to review the current knowledge and present state of research regarding oncornaviral antigens and immune responses to these antigens. Particular emphasis will be placed on establishing the nomenclature for these antigens. This is not an advisory committee meeting. The workshop will be open to the public but attendance will be limited to available space.

For additional information contact Dr. Wilna Woods, National Cancer Institute, Landow Building, Room C306, 7910 Woodmont Avenue, Bethesda, Maryland 20014, (301) 496-6085.

Dated: January 18, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2212 Filed 1-24-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

NATIONAL PETROLEUM RESERVE IN ALASKA

Memorandum of Understanding

The purpose of this publication is to give notice of a memorandum of understanding (MOU) for cooperative procedures which provides a mechanism to carry out the Secretary's responsibility of continuing the ongoing exploration program of the National Petroleum Reserve in Alaska (NPRA) and to take necessary and appropriate measures to protect the subsistence, environmental, fish and wildlife, historical, and scenic values of the Reserve during such exploration activities. This MOU will cover the limited period and purpose of exploration.

The Naval Petroleum Reserves Production Act of April 5, 1976 (43 U.S.C. 6501 et seq.) (hereafter called the "Act"), transfers the administrative responsibility of the NPRA to the Secretary of the Interior. The Act reserved and withdrew, subject to valid existing rights, all lands within the exterior boundaries of NPRA from all forms of entry and disposition under the public land laws including the mining and mineral leasing laws and all other acts. All uses within the Reserve must be consistent with the purposes of the legislation. The transfer of jurisdiction over the Reserve from the Secretary of the Navy to the Secretary of the Interior as it relates to petroleum exploration is to take effect on June 1, 1977. In order to accomplish his dual responsibilities on the Reserve, the Secretary of the Interior has delegated the management of the continuing exploration program, the enforcement of stipulations related to petroleum exploration, and the operation of the South Barrow gas field or other necessary gas fields as specified in the Act to the U.S. Geological Survey (GS). He has delegated to the Bureau of Land Management (BLM) the surface management and protection of surface values from environmental degradation.

The MOU identifies procedures to facilitate the interfacing of these two secretarial responsibilities delegated to GS and BLM through their respective Assistant Secretaries.

The Act requires the exploration of the Reserve and also mandates that it be accomplished in a manner that requires every precaution be taken to avoid unnecessary surface damage and minimize

ecological disturbances throughout the Reserve.

The Act requires that two separate studies be conducted in the Reserve. One study under section 105(b)(1) will determine the best overall procedures to be used in the development, production, transportation, and distribution of petroleum resources. The MOU will allow the coordination of exploration activities that must be carried out to provide for the gathering of data needed to complete the study. The other study under section 105(c) will determine the values of, and best uses for, the lands in the Reserve. Both studies with appropriate recommendations will be forwarded to Congress by January 1, 1980, and April 5, 1979, respectively. Congress will then decide how to develop the known petroleum resources and to protect and preserve the other resource values.

On September 20, 1976, proposed regulations were published in the FEDERAL REGISTER regarding surface management and environmental protection of NPRA. The drafting of these proposed regulations involved considerable input from various local, State, and Federal agencies and other interested parties in Alaska. Following publication, numerous public comments and suggestions were submitted to the Department for consideration.

Due to the mandatory petroleum exploration operations and critical scheduling requirements necessary to conduct these activities, it has been determined that regulations governing these operations and related activities are not appropriate. This does not mean that such exploration activities will be conducted without regard to the environmental values and concerns which are found in the Reserve. The protection of the various resource values as mandated by the Act will be accomplished and facilitated by the cooperative procedures as outlined in the MOU. Briefly, these procedures provide for the preparation of preliminary and final plans; the coordination and consultation with other Federal, State, and local agencies, the Native community, and other interested parties; preparation of stipulations; and inspections to insure full compliance with environmental protection measures and rehabilitation requirements. After Congress determines how future development and production will take place, regulations could, at that time, be developed and issued to provide for the development and production of petroleum resources. Such regulations would come under the provisions of the Administrative Procedures Act.

Uses for other than the petroleum exploration will be authorized under regulations being promulgated in Chapter 2360 of Title 43 of the Code of Federal Regulations.

The legislation does not allow for the development and production of petroleum except on a limited basis from the South Barrow gas field or such other designated fields to supply gas to the Native village of Barrow and installations near Point Barrow.

Those areas that have been identified as having any significant subsistence, recreational, fish and wildlife, historic or scienic values, such as the Utukok River and Teshekpuk Lake areas, shall receive maximum protection to control activities which would unduly disrupt the surface values or disturb the associated fish and wildlife habitat values and related subsistence requirements of the Alaska Natives. Such maximum protection efforts are not intended as a prohibition of exploration activities within such areas, only that such activities are conducted in a manner which will minimize the adverse impact on the environment.

This MOU is effective January 18, 1977.

COOPERATIVE PROCEDURES OF JANUARY 18, 1977 FOR NATIONAL PETROLEUM RESERVE IN ALASKA BETWEEN BUREAU OF LAND MANAGEMENT AND THE U.S. GEOLOGICAL SURVEY

COOPERATIVE PROCEDURES

These procedures provide for the mutual cooperation and interface of authority and responsibility between the U.S. Geological Survey (GS) and the Bureau of Land Management (BLM) concerning petroleum exploration activities (i.e., geophysical and drilling operations) and the protection of the environment during such activities in the National Petroleum Reserve in Alaska (NPRA). This agreement supplements and is consistent with Secretarial Order No. 2948 of October 26, 1972. Such activities will be conducted in those designated Areas of Operations (AO) and other designated sites as identified in the Annual Plan of Operations. The procedures are based upon the following listed documents: Naval Petroleum Reserves Production Act of April 5, 1976 (42 U.S.C. 6501 et seq.); the Secretary's decision of April 6, 1976, as contained in the Executive Secretary's memorandum of April 15, 1976; Cooperative Procedures Agreement between GS and BLM dated August 29, 1975, and Secretrial Order No. 2948, and the reservations, terms, and conditions as stated in documents conveying land to Native corporations located within NPRA and, specifically the agreement of May 14, 1974, between the Department of the Navy, the Arctic Slope Regional Corporation, and four Native village corporations. These procedures may be further constrained by valid existing rights, statute, or court decree that may be applicable to NPRA or a particular site within the boundary of the Reserve.

The Naval Petroleum Reserves Production Act of 1976 assigned to the Secretary of the Interior all responsibilities with respect to any activities related to the protection of environmental, fish and wildlife, historical, or scenic values, as of April 5, 1976, the date of enactment. In addition, it requires that the Secertary assume total jurisdiction over the Reserve on June 1, 1977. This includes the commencement of further petroleum exploration and the assumption of any contracts which may be in effect with respect to such activities within the Reserve.

The Secretary of the Interior has delegated these responsibilities to the Assistant Secretary—Energy and Minerals, and Assistant Secretary—Land and Water Resources. The two Assistant Secretaries have in turn redelegated these assignments to their respective Bureaus.

Briefly, the basic responsibility for each agency is as listed below:

GEOLOGICAL SURVEY

a. The management of the continuing exploration program during the interim between the transfer of jurisdiction from Navy to Interior and the effective date of any legislation for a permanent development and production program.

b. Enforcement of regulations and stipulations issued relating to the exploration of petroleum resources.

c. Operation of the South Barrow gas field.

BUREAU OF LAND MANAGEMENT

a. Surface management of NPRA and protection of surface values from environmental degradation.

b. Prepare such rules and regulations as are necessary to carry out the surface management and protection duties.

To carry out these responsibilities, the intent of Congress as stated in the Conference Report of the Act is quite evident. Maximum protection of designated special areas or protection of the remaining area of the Reserve does not imply a prohibition of exploration or related activities. However, it is expected and intended that such exploration operations will be conducted so that every precaution is taken to avoid unncessary surface damage and to minimize ecological disturbances throughout the Reserve.

The designation of BLM in this agreement shall refer to the responsibilities of the BLM Alaska State Director.

The designation of GS in this agreement shall refer to the responsibilities of the Chief, Office of National Petroleum Reserve in Alaska (ONPRA).

With only those exceptions herein specified, the GS shall be the sole representative of the Secretary with respect to direct contact with the contractor consistent with Section 2(c)(2) of Secretarial Order No. 2948.

For the purpose of this working agreement, the AO and other designated ancillary facility sites shall be outlined on the map enclosed in the approved Annual Plan of Operations. Such sites will involve joint GS/BLM management roles and responsibilities. Operations on that portion of the AO involving exploration (or development and production (as specified in the Act) of the South Barrow gas field, or other designated fields) shall be the exclusive jurisdiction of the GS. All other uses not appurtenant to the petroleum operations will be the exclusive jurisdiction of the BLM. The following general guidelines are provided to describe the exterior boundaries of an AO:

1. *For an exploratory well:* For wells two miles or from the nearest producing well, the AO shall be established as 160 acres if it is an oil resources test and 640 acres if a gas test.

2. *For the South Barrow Gas producing field:* For wells within or adjacent to the South Barrow producing field, or such other designated fields (as specified in the Act), the AO shall embrace the actual acreage then spaced for production from the target reservoir plus, if necessary, the spacing unit for the well then under consideration. However, only the surface use area delineated on the map enclosed in the plan of operations and approved by both the GS and BLM shall be for the exclusive use of the operator while such operations are being conducted thereon.

3. *For Geophysical Operations:* For geophysical operations, the AO shall be the entire length of the line to be covered by the geophysical survey and a width as mutually agreed upon. For those areas that are selected for camp sites, the AO shall be established as mutually agreed upon.

Regardless of the AO so established, the GS shall be solely responsible for all petroleum exploration operations conducted thereon, including the enforcement of the surface protection and rehabilitation rements, as well as on other approved surface

use areas whereon such operations are normally conducted as follows:

a. Well sites—includes the area required for drilling the well, normally 5 to 10 acres. Should a well projected as an oil test be completed as a gas well, or vice versa, any additional surface use required by such completion will be subject to the procedures hereinafter set forth.

b. Tank batteries and treatment area—actual areas are established by the approved plan of operations.

c. Gathering lines to and from the wells to the tank batteries or treatment facilities and access roads covered by the plan of operations.

d. Airport facilities at the well sites.

For surface uses within the AO other than those related to operations, the BLM shall be solely responsible for authorizing such uses and the prospective surface user (resources operators or other parties such as recreationists, special use permittees, etc.) shall submit proposals directly to BLM who shall consult with GS to prevent any surface use conflicts. BLM will not approve any surface use within an AO which is contrary to GS recomendations without further discussions with GS.

All surface use requirements not related to exploration operations outside the limits of established Areas of Operations shall be the sole responsibility of the BLM.

Any unresolved isue between the BLM Alaska State Director and the GS Chief, ONPRA, will be immediately referred to the respective Associate Directors for resolution.

Nothing in this agreement is intended to modify in any manner the present or future cooperative programs of either Agency with States, other public agencies, the Native corporations, or educational institutions. However, any future cooperative programs involving NPRA will have to be within the procedures as established by this agreement.

Nothing in this agreement shall be construed as obligating either party to the expenditure of funds in excess of appropriations authorized by law or otherwise commit either Agency to actions for which it lacks statutory authority.

This agreement shall become effective upon the date subscribed by the last signatory, and shall remain in force until terminated by either Agency upon 90 days written notice. It shall be reviewed by all parties at the end of each fiscal year for adequacy and timeliness. Amendments to existing wording within this agreement may be proposed by either Agency and shall become effective upon joint approval.

A—Preparation of Preliminary Plan

A preliminary plan for the petroleum exploration, production (as specified in the Act), and environmental protection measures will be jointly prepared. The respective Bureaus will cover their areas of responsibility in the preparation of this plan. The plan will cover those activities which are tentatively scheduled for the 12-month period commencing November 1 of the succeeding year. The plan will provide as much advance information and data concerning anticipated operations and mitigating measures as available to facilitate preparation of the Annual Plan of Operations and to meet the critical time frames for such activities.

GS will: 1. Submit information for the preliminary plan to BLM by October 31 of each year, unless otherwise mutually agreed upon.

2. Participate and assist BLM in the consultation with other concerned Federal, State, and local agencies and the Arctic Slope Regional Corporation and affected village corporations as appropriate, and other Native community groups through the North Slope Borough and other interested parties.

BLM will: 1. Ascertain valid existing rights, land ownership patterns, and other constraints that may be associated with the land.

2. Review the submitted data as forwarded by GS and make appropriate and timely comments and input for the preliminary plan.

3. Take appropriate steps to notify, coordinate, and consult with other Federal, State, and local agencies having statutory and regulatory responsibilities, the Arctic Slope Regional Corporation and affected village corporations as appropriate, other Native communities through the North Slope Borough, and other interested parties concerning such preliminary plans.

B—Preparation of Annual Plan of Operations

An Annual Plan of Operations will be developed to facilitate the petroleum exploration program and protection of the environment responsibilities. In developing this plan, each agency recognizes the mandate of Congress regarding the interrelationship between these two responsibilities. This plan will cover site specifics for the ensuring field season.

The following procedures will provide guidance in the development of the plan.

GS will: 1. Prepare a draft Annual Plan of Operation. Such plan will include but is not limited to the following listed information for:

a. Drilling Operations.

(1) A brief description of the type of operations which will be undertaken.

(2) Description of well site layout including equipment and facilities needed.

(3) Map or maps with scale of 1:63,000 or other maps of sufficient detail to allow for adequate evaluation, showing lands to be entered or disturbed by the proposed exploration operations.

(4) The approximate dates of commencement and termination of operations.

(5) Location of access routes and means of access including any construction activities and types of vehicles used.

(6) Location and development of water sources including means of transport.

(7) Location, development, and description of communication sites and facilities.

(8) Type, location, and description of materials sites, including method of material recovery, type of material, estimated quantity, and method and route of transport.

(9) Method of handling waste materials.

(10) Plans for restoration and rehabilitation of the surface.

(11) Airstrips and other aircraft landing sites.

(12) Any standard or special applicable stipulations to be imposed.

(13) Any other facets of the proposed operation which may be of assistance during evaluation of the plan.

b. Geophysical Operations.

(1) The type of geophysical operations or surveys such as reflection or refraction surveys.

(2) The line of shot holes displayed on a map of appropriate scale.

(3) Distance between shot holes.

(4) Depth of shot holes.

(5) The type of tools and associated equipment to be utilized.

(6) The testing, logging, and coring programs to be followed with provisions made for required flexibility.

(7) The anticipated starting date and duration of the operation.

(8) Long and short-term camp sites.

(9) Access routes, airstrips, and other aircraft landing sites.

(10) Construction materials to be utilized during operations and source of such materials.

(11) Disposal of all waste material.

(12) Communication sites.

(13) Any standard or special applicable stipulations to be imposed.

(14) Any other facets of the proposed operation which may be of assistance during evaluation of the plan.

c. Cultural Resource Inventory Reports.

Note.—An intensive cultural resource inventory must be conducted on those sites and alternative sites identified for exploration operations that involve surface disturbing activities. This inventory shall be conducted under the requirement of a Federal Antiquities Permit by a qualified professional. The need for an intensive inventory may be waived only if it is determined by BLM that equivalent data are available or that something less than intensive data are available and acceptable. These inventory data should be prepared in the form of a report. See Appendix I for the format of the report.

2. Participate with BLM in the consultation with other concerned Federal, State, and local agencies, the Arctic Slope Regional Corporation, and effected village corporations as appropriate, and other Native community groups through the North Slope Borough and other interested parties.

3. Submit such draft plans to the BLM not later than July 15, unless another date is mutually agreed upon, to allow sufficient time to conduct a field examination, coordinate with other concerned agencies, prepare a joint environmental analysis, assemble and prepare proposed stipulations, and jointly finalize and approve the plan. (See C—Field Investigation.)

BLM will: 1. Upon receipt of the draft Annual Plan of Operations, be responsible for notifying, coordinating, and consulting with other Federal, State, and local agencies having statutory or regulatory responsibilities, the Arctic Slope Regional Corporation, and effected village corporations as appropriate, and other Native communities through the North Slope Borough and other interested parties regarding the plan. The Bureau will review all environmental concerns and recommended stipulations concerning the proposed program from such agencies, Alaska Native interests, and other parties. (See C—Field Investigations.)

2. Review submitted stipulations and, as appropriate, prepare its proposed environmental stipulations to mitigate adverse environmental impacts for inclusion in the plan and submit to GS for joint finalizing action.

GS and BLM will: 1. Jointly prepare an environmental analysis covering all aspects of the Annual Plan of Operations. Basically, each agency will be responsible for their respective areas of expertise (i.e., GS—technical program aspects/BLM—surface management aspects), although some overlap will be required. Guidelines for this joint action, including sharing of professional skills, will be as identified in the Cooperative Procedure Agreement of August 6, 1975, for Coordinating Preparation of Environmental Analysis and Environmental Statement (BLM WO-55).

2. Jointly finalize and approved the Annual Plan of Operations before the date scheduled for commencing exploration operations.

C—Field Investigations

For purposes of indentifying and analyzing the environmental concerns and anticipated impacts regarding proposed exploration operations, field investigations, as needed, will be conducted. Such field examinations will be applicable to the preparation of the preliminary plans and/or Annual Plan of Operations. To the extent possible, they should be conducted jointly when it is determined by either agency that such an examination is necessary.

Because of the high priority of such field investigations, they will be scheduled as early as possible, particularly after GS submits the draft Annual Plan of Operations to BLM. The GS may designate a number of future sites so that they may be inspected at one time.

GS and BLM will jointly: 1. Determine and schedule the date to conduct field investigations.

2. Arrange and conduct field investigations.

BLM will: 1. Make arrangements for other concerned Federal, State, and local agencies and the Arctic Slope Regional Corporation and affected village corporations as appropriate, and other Native communities through the North Slope Borough to participate in the fied investigation.

GS will: 1. Make arrangements for participation of its contractor in the field investigation.

D—Compliance With Terms and Conditions and Emergency Situations

GS will: 1. Conduct inspections to insure that the contractor is in compliance and accordance with terms and conditions of the approved Annual Plan of Operations.

2. Notify and seek BLM assistance and expertise in surface management problems involving noncompliance with terms and conditions or stipulations, rehabilitation measures, or for modifications requested by the contractor.

3. As appropriate, request the BLM to make inspections to assure compliance with the surface protection requirements of the approved Annual Plan of Operations.

4. Seek all available help, including BLM, on major accidents or spills involving flowline or gathering facility spills, breaks in sludge pits, etc. Seek BLM expertise in rehabilitation and clean-up operations.

BLM will: 1. Conduct inspections to insure compliance with the surface protection requirements of the approved Annual Plan of Operations and will note contractor noncompliance therewith. Except in an emergency, no instructions or directions will be given to the contractor or his subcontractors without GS approval.

2. Notify GS immediately of all such incidents of noncompliance with the surface protection requirements of the approved Annual Plan of Operations.

3. Exercise jurisdiction over activities within the area of operations (AO) only in emergency situations, and may issue orders to the operator only under the following circumstances and conditions:

(a) The emergency situation shall be such as to clearly threaten immediate and serious damage to the environment, resources, or the health and safety of the public, and the GS official is not available to take the necessary immediate action.

(b) Order, in such emergency situation, immediate cessation of activities responsible for the emergency situation, such orders to be followed by prompt notification to the GS who will take over jurisdiction and order immediate remedial action.

4. As requested, furnish help during and after the emergency for clean-up operations, and also furnish expertise for any required rehabilitation.

The agency responsible for seeking curative action on instances of noncompliance with the terms and conditions of the approved Annual Plan of Operations will take the necessary action when notified of the noncompliance by the other agency.

E—Maintenance of Field Activities Inside the Area of Operations

GS will: 1. Submit to BLM for review and joint approval an amendment to the Plan of Operations prior to undertaking any new construction, reconstruction, or alteration of facilities, including roads, dams, reservoirs, etc., which will result in additional surface disturbance.

2. Inspect operations to insure that the contractor is in compliance with and is conducting operations in accordance with the stipulations and the approved Annual Plan of Operations.

3. Report to the BLM infrations of stipulations and incidents of noncompliance.

4. Take the appropriate administrative action upon receiving BLM reports of contractor's unauthorized activities outside the area of operations.

5. Furnish BLM with the name, address, and both the office and home numbers of the GS official to contact in case of emergencies or incidents of noncompliance with the surface use and rehabilitation requirements of the approved Annual Plan of Operations.

6. Seek all available help, including BLM, on accidents which might result in damage to other resources. Seek BLM expertise in clean-up operations.

7. Make periodic inspections to assure that the contractor is properly maintaining the facilities.

BLM will: 1. Respond timely to GS's submission after an amended Annual Plan of Operations has been forwarded for additional surface use within an AO by providing its proposed surface protection or rehabilitation requirements and jointly approving the amended plan.

2. Where activities not included in an approved Annual Plan of Operations constitute unauthorized activity on such lands by the contractor, these activities will be reported to GS for the appropriate corrective action.

3. When requested by the GS, assist in resolving noncompliance with terms and conditions or stipulations of any approved Annual Plan of Operations.

4. Make periodic inspections to assure that the contractor is complying with the surface protection and rehabilitation requirements of the approved Annual Plan of Operations and will notify GS when it becomes aware of any operating condition warranting correction. The BLM, on its own initiative, may make recommendations to GS for the maintenance or rehabilitation of existing conditions adversely affecting the surface or other resources within AO.

5. Notify GS of all applications which involve other surface uses of the lands within the AO for GS recommendations prior to approval or disapproval of the application.

F—Surface Use Management Outside the Area of Operation

BLM will: 1. Resolve surface use conflicts to the satisfaction of all users if possible; failing this, BLM will take appropriate steps to eliminate the conflict with priority consideration given to the continued petroleum exploration and/or development and production (as specified in the Act). In that regard the comments and recommendations of the GS will be requested.

2. Work directly with all surface users in the area, including the contractor, regarding maintenance of roads and other support facilities, preventing damage to the surface resources, and encouraging public health and safety awareness.

3. Notify GS of all applications involving lands outside the AO where surface use may cause conflicts. Approval or disapproval of applications will be based upon all considerations including recommendations from the GS.

GS will: 1. Contact BLM immediately if it becomes aware of any conflicts involving surface use.

2. Make recommendations to BLM if production (as specified in the Act) facilities are being vandalized so protection measures, such as limiting or restricting public access into the area, may be initiated.

3. Make recommendations to both the contractor and BLM to improve public health and safety conditions and other conditions such as road maintenance in the general area.

4. Work with BLM to resolve any surface use conflicts which may arise.

G—Abandonment of Drilling and/or Geophysical Operations

GS will: 1. Notify BLM of cancellation or termination of any approved Annual Plan of Operations under which no activity has taken place.

2. Send BLM a copy of all notices of intention to abandon wells, including any special procedures to be required. If the permit is to remain in effect, any proprietary data contained in a notice will be deleted. If that portion of the approved Annual Plan of Operations covering surface rehabilitation does not contain information as to whether the well's casing is to be cut off below the ground surface or the abandonment marker is to be waived, or both, the BLM will be orally contacted for its recommendations.

3. Approve the surface and subsurface plugging program to be followed by the contractor.

4. As necessary, request the BLM work directly with the contractor.

5. Approve the subsequent report of abandonment only after a joint inspection by BLM and GS confirms that surface rehabilitation requirements of the approved Annual Plan of Operations have been completed satisfactorily.

BLM will: 1. Upon request, advise GS if the well's casing should be cut off below ground surface.

2. Upon request, advise the GS whether the required surface abandonment marker should be waived.

3. When requested by GS, work directly with the contractor concerning surface rehabilitation.

4. Notify GS of any failure on the part of the contractor to undertake surface rehabilitation measures which are required by the approved plan of operations.

5. Notify GS of the contractor's satisfactory completion of surface rehabilitation.

H—General

GS will: 1. Coordinate and communicate with the BLM concerning exploration, also development and production (as specified in the Act) plans, and other information requirements prior to submission of preliminary plans and/or the Annual Plan of Operations.

2. To facilitate BLM's monitoring role and responsibilities, make arrangements with GS's contractor to provide (a) billeting for one person at each drilling and geophysical site, (b) two billets and one desk at Lonely Base Camp, and (c) transportation on a need basis for scheduled and unscheduled trips for field investigations, compliance checks, and other matters relating to BLM responsibilities.

BLM will: 1. Coordinate and communicate with the GS prior to submission of the Annual Plan of Operations to expedite BLM's input concerning surface management and environmental concerns and stipulations.

2. Reimburse billeting and transportation expenses provided by GS's contractor.

BLM and GS will: 1. Periodically hold joint meetings with GS's contractor and other involved Federal, State, and local agencies and the Arctic Slope Regional Corporation and

affected village corporations as appropriate, and other Native communities through the North Slope Borough to discuss problems, stipulations, working agreements, and other items of common concern and interest.

2. Meet on a bi-weekly basis at the BLM State Office or the GS ONPRA Office to discuss past and future procedures under these instructions and other matters of mutual concern and interest.

3. Offer suggestions for revision of these procedures to their Washington Offices for improving their workability and to reduce duplication of effort in conducting these cooperative and joint efforts.

Date December 10, 1976.

GEORGE L. TURCOTT,
Associate Director,
Bureau of Land Management.

Date December 16, 1976.

W. A. RADLINSKI,
Associate Director,
Geological Survey.

I concur:

Date January 18, 1977.

JACK HORTON,
Assistant Secretary,
Land and Water Resources.

Date January 18, 1977.

WILLIAM L. FISHER,
Assistant Secretary for
Energy and Minerals.

APPENDIX I

Cultural resource inventory report. The report should contain at a minimum the following:

a. Identification of the Federal Antiquities Permit under which the work was performed.

b. Description of data review and field inventory methods used, intensity of field inventories, the names of individuals employed in the work, and the commencement and termination dates of field inventory.

c. Identification of the project, and the BLM serial case file number, if any, for which the report is being written.

d. A general background discussion of cultural resources of the area.

e. Identification and description of specific cultural resource sites and values found, and evaluation of their significance, and whether such sites might be eligible for placement in the National Register of Historic Places with specific citation to qualifying criteria under 36 CFR 800.10.

f. Site inventory records (BLM Form 6230–2 or other acceptable form) completed for each cultural property inventoried with appropriate maps indicating the location of each site.

g. Suitable maps that clearly define all areas surveyed and intensity of survey in relation to identified cultural resources and the relationship of sites found to the project. Minimum acceptable base map should be with a scale of 1: 63,000 or other maps of sufficient detail.

h. Catalog of all cultural resource objects collected and indication of where they are stored.

i. Identification of the probability of finding additional sites and their probable significance.

j. Identification of the probable direct and indirect effects of the project upon known and unknown cultural resources.

k. Professional recommendations to realistically mitigate the direct and indirect adverse effects upon cultural resources which will result from the project.

[FR Doc.77-2185 Filed 1-24-77;8:45 am]

Geological Survey

NATIONAL PETROLEUM RESERVE IN ALASKA

Memorandum of Understanding

CROSS REFERENCE.—For a document concerning the above entitled matter filed jointly by the Bureau of Land Management and the Geological Survey, see FR Doc. 77-2185 in the notices section of the FEDERAL REGISTER.

LESSEES AND OPERATORS OF FEDERAL ONSHORE OIL AND GAS LEASES

Procedures for Reporting and Accounting for Royalties

Notice is herby given that the Geological Survey has finalized its procedures and reporting forms for reporting and accounting for royalties and other compensation accruing to onshore Federal oil and gas leases. This notice also prescribes certain information which a lessee or operator must provide in support of reports and payments made to the Geological Survey.

On March 1, 1976, the Geological Survey published in the FEDERAL REGISTER (Vol. 41, No. 41, pp. 8802–8805) a notice which set forth its proposed requirements for: (1) The submittal of Monthly Report(s) of Operations (Form 9–329), Monthly Report(s) of Sales and Royalty (Form 9–361), and Rental and Royalty Remittance Advice(s) (Form 9–614–A); (2) the submittal of related supporting documentary evidence and Application(s) for Establishment of Royalty (Form 9–1926); and (3) the procedures for remitting all payments to the Geological Survey. Said Notice solicited the submittal of written comments from interested parties by March 25, 1976. On March 24, 1976, the Geological Survey published in the FEDERAL REGISTER (Vol. 41 41, No. 58, p. 12235) a notice extending the period for written comments to May 1, 1976.

Written and oral comments received by the Geological Survey have been carefully considered in the preparation of this final Notice, whether received before or after May 1, 1976. Comments were received from 13 oil and gas companies and 1 oil and gas association. Even though the industry responses received represent only a small percentage of companies and individuals operating Federal oil and gas leases, those received were very comprehensive. Certain of the comments were adopted or essentially satisfied, and the Geological Survey has made other changes on its own motion.

Many of the comments received concerning the proposed Notice published on March 1, 1976, indicate that certain terms used therein engendered some confusion as to the intent and effect of various provisions of the proposed NTL–1. Therefore, the following general explanatory comments are provided in an attempt to alleviate some of the more repetitive items of concern. However, in the event of a conflict between these general comments and the specific language of NTL–1, the provisions of NTL–1 will prevail.

The terms "lessee" and "operator" are often used almost interchangeably in this and other Notices to Lessees and Operators (NTL's). Although the Geological Survey considers a lessee as ultimately responsible for the proper performance of all obligations established by the lease, NTL–1 recognizes that a lessee may be an operator, a nonoperating working interest owner, or the owner of record title with all operating rights vested in other parties. Thus, NTL–1 should not be inferred as requiring a lessee to submit reports and payments to the Supervisor except when a lessee is also an operator or a nonoperating working interest owner who separately disposes of its proportionate share of jointly owned production or merely elects to make separate payments for said proportionate share.

The requirements of NTL–1 should not be construed as requiring all rental payments due under Federal oil and gas leases to be made to the Geological Survey. However, advance rental payments for those old form leases which are in a producing status, as well as rentals for nonproducing leases which are committed to producing units, are to be made to the Geological Survey. Thus, where rentals are now paid directly to another agency, that practice should be continued unless notification is subsequently received that the lease account has been transferred to the jurisdiction of the Geological Survey.

The provisions of NTL–1 apply only to onshore Federal oil and gas leases, certain private and State lands subject to cooperative agreements to the extent, and only to the extent, provided in such formal agreements and, on rare occasion, to unleased Federal land subject to a formal agreement. The provisions of NTL–1 do not apply to any Indian lands or leases, nor to Outer Continental Shelf lands or leases, nor to any Federal leases for minerals other than oil and gas. However, notice is hereby given of the Geological Survey's intent to publish shortly a final NTL–1A which will set forth the procedures for reporting and accounting for royalties on Indian oil and gas leases, except those on the Osage Indian Reservation. NTL–1A will be identical in all respects to NTL–1, except to recognize certain basic differences between Federal and Indian leases as related to payments, remittance advices, overpayments, royalties on gas production, and reimbursement of taxes paid by a lessee or operator.

All forms described in NTL–1 are to be filed with the appropriate Supervisor's office, regardless of past instructions that required a copy of certain forms to be filed with District offices. Moreover, all other directives concerning the subject matter addressed by NTL–1 are superseded and cancelled by this final NTL–1 to the extent that they conflict therewith. In other words, where a conflict exists, the provisions of the final NTL–1 will prevail.

The principal changes in this final NTL–1 from that proposed on March 1, 1976, are:

Package reporting. The final NTL–1 does not require all reports, documentary evidence, payments, and remittance advices to be filed as a package. However, the Notice does require that the Monthly Report of Sales and Royalty (Form 9–361), with its supporting documentary evidence, be submitted as a package beginning with the report for the production month of April 1977. Payments and related Rental and Royalty Remittance Advices (Form 9–614–A) are to be submitted together as a package beginning with the payments made for the production month of October 1977. The Monthly Report of Operations (Form 9–329) need not accompany either package.

Due date for submittal of continuing monthly reports. The due date for submittal of the Monthly Reports of Sales and Royalty (Form 9–361) and Operations (Form 9–329) has been changed to the 10th day of the second month following the production month. No change was made concerning the submittal of royalty payments which will continue to be due on the last day of the month next following the production month.

Effective dates for mandatory use of revised forms. The effective date for mandatory use of revised Forms 9–329, 9–361, and 9–614–A is established as those submitted for the production month of October 1977.

Time for filing other data. The time for filing Division Orders and Sales Agreements/Contracts was extended from 30 to 60 days following the date of first sales. Further clarification has also been provided in relation to the time frame in which Applications for Establishment of Royalty Values (Form 9–1926) are to be filed.

Division orders. The language concerning Division Orders in the proposed Notice of March 1, 1976, unequivocally required the filing of Division Orders for all leases. Such language has been revised to require the filing of Division Orders only in those instances where used.

Other notices to lessees and operators. All references or citations related to other NTL's have been eliminated in the final NTL–1.

Rental and royalty remittance advice (Form 9–614–A). Operators are encouraged to file separate remittance advices and payments for those rental payments made to the Geological Survey in order to assure proper and timely credit to the appropriate lease account.

Application for establishment of royalty value (Form 9–1926). Provision was made to permit an operator to file one Form 9–1926 for multiple leases so long as the pricing elements applicable to the leases are identical. The Supervisor will advise the applicant by return letter concerning the value(s) established for royalty computation purposes rather than countersigning the application form. After the initial filing of Form 9–1926 for any given lease, it will be necessary to file a new or revised Form 9–1926 for that lease only for major changes such as price deregulation, a change in purchaser, or subsequent opinions, or rulings which affect permitted prices, e.g., a revision of FPC's Opinion 770. It will not be necessary to file a new or revised Form 9–1926 for every price fluctuation such as those due to differences in measured API gravity during separate runs or changes in the calculated Btu content of gas as a result of a subsequent sampling.

Standard conditions applicable to volume measurement. Inasmuch as most of industry and many governmental agencies have adopted 14.73 psia as the pressure base for measuring gas, the Geological Survey is hereby changing from its previous standard pressure base of 15.025 psia to 14.73 psia. Because of this change, standard conditions pertaining to gas measurement are cited in each applicable section of NTL–1. Since no change was made in the standard conditions pertaining to the measurement of crude oil or other liquid hydrocarbons, the present standards have not been repeated in the Notice.

The Geological Survey is fully aware and appreciates the magnitude of the effort required by industry in changing over to the procedures outlined in NTL–1. However, except for the additional requirement that Applications for Establishment of Royalty Values be submitted, the only basic changes from previous procedures are in the format of the monthly reporting forms, the manner of recording data on such forms, and the requirements for certain package submittals. It is believed that once (1) the Applications for Establishment of Royalty Values have been submitted and processed and (2) practical experience has been gained in the use of the revised reporting formats that the new procedures will result in substantial benefits for all concerned.

Because of the significant changes in data format and the procedures for preparing and filing the forms, it is not feasible to implement all provisions of NTL–1 on or immediately following its effective date. Therefore, provisions have been included in NTL–1 to phase in over a 9-month period the various requirements of the new procedures and the use of the revised reporting forms. During this phase-in period, lessees and operators will be furnished a supply of the new reporting forms and will be instructed in their proper use. Also, the system, as established by NTL–1, will continue to be studied with the intent that modifications will be made in the requirements of NTL–1, as warranted. The first such formal review will occur in December of 1977, and all concerned parties are invited and encouraged, prior to that time, to provide constructive comments concerning their practical experience with NTL–1 and the associated reporting forms prior to that time.

The U.S. Geological Survey has determined that this documents does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

W. A. RADLINSKI,
Acting Director.

NOTICE TO LESSEES AND OPERATORS OF FEDERAL ONSHORE OIL AND GAS LEASES (NTL–1)

PROCEDURES FOR REPORTING AND ACCOUNTING FOR ROYALTIES

I. GENERAL

Pursuant to the regulations contained in Title 30 CFR Parts 221 and 223 and the requirements of this Notice, operators of onshore Federal oil and gas leases are required to timely file with the Area Oil and Gas Supervisor (Supervisor) the below defined sales agreements, operations reports, production and sales reports, supporting documentary evidence, remittance advices and royalty payments, and the other items required herein.

Items	Copies required by USGS [1]	Due date
Division orders	2	Within 60 d following the date of 1st sales.
Sales agreements/contracts	1	Within 60 d following the effective date of the contract or the date of 1st sales, whichever occurs 1st. Any amendment to an existing contract must be filed within 60 d following the effective date of the amendment.
Monthly report of operations (form 9–329)	2	Due monthly with the 1st report submitted for the month in which the initial well on, or for the benefit of, a lease is commenced.
Monthly report of sales and royalty (form 9–361).	1	Due monthly with the 1st report submitted for the month in which the 1st well was completed for production on, or for the benefit of, a lease, even if no sales were made.
Purchaser's and gasoline plant statements	1	Evidence to confirm the monthly sale of all lease products must be submitted monthly beginning with the month of 1st sales.
Rental and royalty remittance advice (form 9–614–A).	1	Beginning with the production month of October 1977, 1 copy of the remittance advice, form 9–614–A, must accompany all payments submitted to the supervisor.
Application for establishment of royalty value (form 9–1926).	1	Within 6 months after the effective date hereof for all leases in a producing status at that time or within 60 d following the date of 1st sales, if after June 1, 1977.

[1] Unless otherwise specified by the supervisor.

Inquiries regarding the general requirements of this Notice may be directed to any Supervisor. However, specific questions concerning a particular reporting problem should be directed to the appropriate Supervisor having jurisdiction over the area in which the involved lease, unit area, or communitized tract is situated.

This Notice shall remain in effect until modified or revoked. However, it will be subject to periodic review, the first of which will be completed not later than January 1,

1978. Should any of the requirements prove to be inadequate, impractical, or unnecessary for the proper conduct of the Geological Survey's assigned responsibilities in this regard, the Notice will thereafter be revised accordingly.

II. DIVISION ORDERS, SALES AGREEMENTS, AND SALES CONTRACTS

A. *Division orders.* Where a division order is the means by which a sale is consummated of any product produced from, or for the benefit of, a Federal lease, each such division order, properly identified by Federal lease or contract number, must be furnished in duplicate to the Supervisor within sixty (60) days following the date of initial sales. A copy approved by the Supervisor will be returned to the operator. Division orders are approved as a proper means of distributing lease proceeds, and such approval is subject to the condition that nothing contained therein will be construed as affecting the relationship between the lessee (operator) and the Secretary of the Interior. Division orders submitted to the Supervisor need not be signed by working interest owners or other royalty owners under the lease or contract, since the Supervisor's approval is intended only to verify to the party making payment that the Federal Government's royalty interest is correctly stated and to authorize transportation companies and purchasers to receive products from the leased lands.

The due date for royalty payments will be enforced even though a division order is incomplete and purchasers should be advised that nothing contained in a division order may in any way alter the royalty rate specified in a lease. Federal royalties must be released even though other monies are being held in suspense by a purchaser due to an incomplete division order or other irregularities. However, if a purchaser fails to timely release Federal royalties, the operator shall be held responsible for making such payments by the due date.

B. *Sales agreements/contracts.* A copy of each agreement or contract for the disposal of leasehold products must be furnished to the Supervisor within sixty (60) days following the effective date of first sales. Any amendment to the contract must also be forwarded to the Supervisor within sixty (60) days following the effective date of the amendment. Any applicable rulings by the Federal Power Commission or the Federal Energy Administration, which are incorporated in, or which affect the prices shown in a contract or amendment, must be cited. All agreements, contracts, supplemental amendments, and citations must identify, by Federal lease(s) or contract number(s), the Federal lease(s) affected or be accompanied by a transmittal letter which provides such information. If a contract, agreement, supplemental amendment, or citation does not apply to all production, wells, or zones on a given lease, that production and wells or zones to which it does apply must be specified.

Operators are advised that the price which the seller agrees to accept and the price which the buyer agrees to pay in any contract or other arrangement made for the sale or disposal of products from the leased lands shall not be construed as establishing a value that is binding on the Supervisor for royalty computation purposes.

III. GAS AND ASSOCIATED LIQUIDS PRODUCTION, SALES, AND ROYALTY REQUIREMENTS

The value of all produced gas and associated liquid hydrocarbons will be established by the Supervisor. Such value will be based on the Supervisor's estimated reasonable value of both the natural gas and its entrained liquid hydrocarbons with due consideration being given to the highest price paid for a part or for a majority of like quality production in the same field or area, to the price(s) received by the operator, to the Btu content of the gas, and to other relevant matters. Under no circumstances will the royalty value be computed on less than the gross proceeds accruing to the operator from the sale of such leasehold production. Gross proceeds include, but are not limited to, tax reimbursements and payments to the operator for gathering, measuring, compressing, dehydrating, or performing other services necessary to market the production. Likewise, no deduction will be allowed for the cost which an operator occurs by reason of placing the gas in a marketable condition as an operator is obligated to do so at no cost to the lessor.

The weighted average Btu content of all gas produced from, or for the benefit of, each Federal lease or contract must be shown on the Monthly Report of Operations (Form 9-329). The Btu content of the gas should also be shown monthly on the purchaser's statement (includes gas settlement and gasoline plant statements).

The Supervisor may adjust royalty value to reflect the Btu content of the gas regardless of whether the gas is sold on that basis. The Supervisor may also redetermine the value of the gas for royalty purposes at any subsequent date should such action be required to reflect the reasonable value of the gas and its entrained liquid hydrocarbons.

Should the Supervisor elect to compute product value separately on the residue gas and the individual byproducts extracted therefrom, the monthly Form 9-361 must show the 100 percent volumes and values of the residue gas and the liquefiable hydrocarbons recovered, sold, lost, or utilized. Non-hydrocarbon byproducts such as sulfur and carbon dioxide which are extracted for sale must also be reported in the same manner on the monthly Form 9-361. When required by the Supervisor, an annual report must be submitted showing in detail total plant operating costs, gas processed, and the resultant volumes of residue gas and byproducts.

The Supervisor may require an operator to submit additional supporting information to show (1) the value of gas at the wellhead adjusted for its Btu content; (2) the gross proceeds accruing to the operator; or (3) the value of the separate commodities at the tailgate of a field facility and/or gasoline plant.

If an operator is receiving or is entitled to receive an escalated gas price under the provisions of an interstate gas sales contract prior to the approval of said price by the Federal Power Commission, royalty will be calculated on not less than such escalated price. If said price is subsequently disallowed or reduced by the Federal Power Commission, a refund or credit against future royalty accruals will be permitted and may be arranged by application to the Supervisor.

Payments made by a gas purchaser pursuant to a contractual "take-or-pay" clause are subject to royalty under the terms of the lease agreement. The receipt of such monies by the operator and the subsequent recovery of "take-or-pay" gas by the purchaser must be reported and properly identified as such on Form 9-361. Any problems related to computation of such royalties should be referred to the Supervisor.

IV. CRUDE OIL AND CONDENSATE PRODUCTION, SALES, AND ROYALTY REQUIREMENTS

Royalty is due on the value of all crude oil or condensate produced from, or for the benefit of, onshore Federal oil and gas leases. The Supervisor shall establish a value for royalty purposes on crude oil and condensate production for which royalty is due. The royalty value so established will be based on the estimated value of the crude oil or condensate with due consideration given to the highest price paid for a part or for a majority of production of like quality in the same field or area, to the price received by the operator, to posted prices, and to other relevant matters. Under no circumstances will the royalty value be computed on less than the gross proceeds accruing to the operator from the sale of leasehold production or on less than the highest price legally obtainable for production from the lease, unit participating area, or communitized tract. Deduction of transportation charges will not be allowed unless justified in writing and approved by the Supervisor. Generally, the deduction of transportation charges will not be allowed for a field or area in which there is a willing purchaser who would absorb such costs, and provided that the regulations of the Federal Energy Administration do not prohibit the operator from selling to said purchaser.

V. APPLICATION FOR ESTABLISHMENT OF ROYALTY VALUES

A properly completed Application for the Establishment of Royalty Values on Form 9-1926 must be submitted to the Supervisor by August 1, 1977, for those leases in a producing status as of June 1, 1977. Separate applications must be filed by each operator and working interest owner who is responsible for the payment of royalty or other compensation. An operator may file a single application for its leases in the same field or area if they are subject to identical marketing arrangements. However, where upper and lower tier oil or different vintages of gas are involved, the application must be supplemented with appropriate information identifying the production subject to each tier or vintage. For those leases which achieve production after June 1, 1977, the application must be submitted within sixty (60) days following the date of first sales. Failure to file an accurate and complete application within the time allowed will result in the Supervisor establishing a royalty value equal to the highest price paid for like quality production in the field or area, assessing liquidated damages, or taking other appropriate action to bring about compliance.

In the interim period between the filing of an application and final action by the Supervisor, operators may submit payments based on the price(s) paid by their purchasers. The Supervisor will advise the operator by letter of the value(s) which have been established for royalty purposes and the effective date thereof. The difference, if any, between the approved value(s) and the value(s) upon which payments have been made shall be reconciled by the operator within sixty (60) days thereafter. This includes the submittal of amended reports and additional payments, as necessary. Any subsequent adjustments or amendments in the sales arrangements set forth in an Application for Establishment of Royalty Values must be reported promptly to the Supervisor.

VI. MONTHLY REPORTING AND PAYMENT REQUIREMENTS

General. The production and sale or other disposition of all oil, condensate, gas, associated liquid hydrocarbons, and other byproducts produced from, or for the benefit of, onshore Federal leases, and for which the Supervisor requires a separate accounting, must be reported individually on a monthly basis to the Supervisor, unless waived by the Supervisor as hereinafter provided.

Where an operator is solely responsible for the sale or disposition of all production, said operator will be held responsible for the timely submittal of operations reports, sales and royalty reports, remittance advices, and payments as well as for the submittal of purchaser(s) and gasoline plant statements and other supporting documentary evidence to substantiate the reported volume(s) and unit price(s) or value(s) of all production from the lease, unit participation area, or communitized tract.

In those instances where there are multiple operators under a single lease, each operator will be individually responsible for the timely submittal of the foregoing reports, documentary evidence, remittance advices, and payments for that portion of the lease which they operate.

In those joint venture projects (whether conducted on a lease basis or under the terms of an approved communitization or unitization agreement) where the operator sells or otherwise disposes of all production, but each working interest owner elects to make separate payments, the operator is responsible for the timely submittal of all reports and supporting documentary evidence which reflect the disposition of the total production and the value(s) or unit price(s) established by the Supervisor for such production. Each working interest owner, including the operator, will be held accountable for the timely submittal of remittance advices and payments for their proportionate share in the total production. However, in those situations where the operator and individual working interest owners in a joint venture project conducted on a lease basis elect to separately sell or dispose of their proportionate share in that production, the operator must timely submit the operations reports for the lease. Each working interest owner, including the operator, will be held responsible for the timely submittal of sales and royalty reports, supporting documentary evidence, remittance advices, and payments which reflect the disposition of their share in the total production from the lease, and the value(s) or unit price(s) established by the Supervisor for their proportionate share in such production. Where each working interest owner in a joint venture project conducted pursuant to a communitization or unitization agreement elects to separately sell or dispose of its proportionate share in that production, the reporting requirements for each such party are, with one exception, the same as that specified above in regard to individual reporting for joint venture projects conducted on a lease basis. That exception is that the individual Monthly Reports of Sales and Royalty (Form 9-361) must reflect the disposition of the total production from the communitized tract or unit participating area.

Beginning with the production month of April 1977, operators and working interest owners, as applicable, will be required to file for each lease, unit participating area, or communitized tract, for which they have reporting responsibilities, a package submittal which includes the Monthly Report of Sales and Royalty (Form 9-361), purchaser(s) and gasoline plant statements, and other supporting documentary evidence. The initial package report must be received by the Supervisor no later than June 10, 1977. Unless otherwise authorized in writing by the Supervisor, all subsequent package submittals must be received in the office of the Supervisor by the 10th day of the second month next following the production month. However, if said 10th day of the month falls on a nonwork day, the submittal shall be due not later than the last official working day prior thereto.

Beginning with the production month of April 1977, the Monthly Report of Operations (Form 9-329) must also be received by the 10th day of the second month next following the production month unless otherwise modified as specified above but need not accompany the Form 9-361 and its attachments.

Beginning with the production month of April 1977, all royalty payments must be received without exception in the office of the Supervisor by the last day of the month next following the production month or the next official working day thereafter if said last day occurs on a nonwork day. Beginning with the production month of October 1977, all payment, including those for royalty must be accompanied by a remittance advice.

All reports, supporting documentary evidence, and payments must be identified by the appropriate Federal lease, unit, or communitization agreement contract number(s), and each report must be signed by an authorized person.

Beginning with the manually prepared data submitted for the production month of October 1977, the use of Forms 9-329, 9-361, and 9-614-A, as revised effective February 1976, will be mandatory.

Operators who currently furnish magnetic tape or key-punched card data to the specifications of the Conservation Division for direct input of charge and/or payment data into the Division's automated data processing system will be permitted to continue that practice; provided, however, that beginning with the production month of April 1977, all reports, including printouts of automated input, supporting documentary evidence, remittance advices, and applicable payments must be submitted to the Supervisor in accordance with the schedule set out above.

Beginning with the production month of October 1977, operators having computer capability will be permitted to submit printouts in lieu of the revised Forms 9-329, 9-361, and 9-614-A provided that such printouts are identical in all respects to said forms.

The following is a detailed explanation of the required monthly items which are to be submitted.

A. *Monthly report of operation* (Form 9-329). A report covering the operations conducted on each well on a lease, unit area, unit participating area, or communitized tract must be filed by the operator each month in duplicate on Form 9-329 or an acceptable computer printout as above defined. This report must be furnished monthly beginning with the month in which the first well is commenced. All wells must be shown on the report until approved by the Geological Survey as plugged and abandoned.

Shut-in, temporarily abandoned, and other inoperative wells must be reported each month even though there may be no operations or production. A separate monthly report is required for each lease, unit area, unit participating area, or communitized tract. The report must be fully completed and provide a detailed breakdown of all production by well and the disposition of all production from the lease, unit participating area, or communitized tract.

Gas volumes shall be reported in MCF (1,000 cubic feet) at a pressure and temperature base of 14.73 psia and 60°F., unless otherwise directed in writing by the Supervisor.

Annual reports may be submitted for shut-in leases provided that prior approval is obtained from the Supervisor. When approved, annual reports must be filed on a lease-year basis and received by the Supervisor no later than 30 days following the end of the lease year. However, monthly reports must be commenced immediately whenever operations and/or production are resumed.

B. *Monthly report of sales and royalty (Form 9-361).* A report on Form 9-361, or an acceptable computer printout as above defined, must be filed monthly, in accordance with the instructions set forth under the general requirements of this Section VI., by each responsible party beginning with the month in which the first well is completed. The initial report must also include those volumes of oil and gas produced during testing and completion operations which are subject to royalty or compensation.

These separate reports must reflect, by individual product, the disposition of the total production from the lease, unit participating area, or communitized tract which is subject to royalty or compensation and the value(s) or unit price(s) established by the Supervisor for each reporting party's proportionate share in such production.

Gas volumes shall be reported in MCF (1,000 cubic feet) at a pressure and temperature base of 14.73 psia and 60°F., unless otherwise directed in writing by the Supervisor.

Each report shall include only the disposition of products for the month being reported. Annual reports on a lease-year basis may be submitted for shut-in leases if prior approval is obtained from the Supervisor, provided that the report is received within thirty (30) days after the end of the lease year.

Leases whose royalty is based on a sliding or step scale rate are affected by the total production, well count, gravity, or number of days in the month, depending on the terms of the lease; accordingly, these items are essential for computing royalties and must be properly reported each month. Title 30 CFR 221 sets forth the criteria for determining monthly the appropriate well count. Other information related to computing royalties for these leases may be obtained from the Supervisor.

The Supervisor will consider proposals for the submittal of magnetic tape or key-punched card data in lieu of Form 9-361, and may be contacted for more information reragding the Division's requirements for this type of reporting.

C. *Purchaser's statements, run tickets, tank tables, and gas plant statements.* All sales of crude oil, condensate, gas, associated liquid hydrocarbons, and other byproducts produced from, or for the benefit of, Federal oil and gas leases, and for which the Supervisor requires a separate accounting, should be confirmed by copies of appropriate purchaser, settlement, or gasoline plant statements properly identified by Federal lease or contract number. In situations where purchaser, settlement, or gasoline plant statements are not available or it is determined that such statements are insufficient to confirm reported volume(s) and value(s), the Supervisor may require that additional documentation be furnished. When required, run tickets, related tank tables, meter proving reports, pipeline run statements issued by common carrier pipelines, gas meter charts, check counterfoils, or other documents that confirm the operator's or working interest owner's reported volumes and receipts must be submitted.

Where purchaser, settlement, pipeline run, or gasoline plant statements are submitted, the operator generally will not be requested to also submit run tickets and related tank tables, gas meter charts, or check counterfoils covering shipments shown on such statements, provided that (1) such documents properly identified by Federal lease or con-

tract number, must be submitted promptly when requested by the Supervisor and (2) all such documents are retained by the operator for a period of not less than six years. Tank tables shall be retained during the life of the tank and for six years thereafter.

D. *Payments.* The Geological Survey is responsible for maintaining the lease accounts of all producing Federal leases, all Federal leases which are subject to compensatory royalty assessments or underground storage agreements. Remittances under such leases for rental, when applicable, or for production royalty, compensatory royalty, minimum royalty, royalty or compensation for lost oil or gas, or fees pursuant to a storage agreement must be made payable to the U. S. Geological Survey.

Advance rental payments must be received in the office of the Supervisor on or before the anniversary date of the lease for those leases whose accounts are maintained by the Geological Survey and which are subject in whole, or in part, to the payment of rental. The due date is critical on many leases which do not include a well capable of production in paying quantities, as all leases requiring the payment of advance rental which are subject to Pub. L. 555 will expire by their own terms if the rental payment is not timely received.

All such separate payments which are made to the Geological Survey must be accompanied by a Rental and Royalty Remittance Advice (Form 9–614–A) that identifies each Federal lease or contract number and, as applicable, the product, month of sale, and the amount attributable to each lease or contract. Operators are encouraged to file a separate payment and remittance advice when submitting advance rentals to assure proper and timely credit to the lease account.

The Supervisor will consider proposals for the submittal of magnetic tape or keypunched card data in lieu of a Rental and Royalty Remittance Advice, Form 9–614–A, and may be contacted for more information regarding the Division's requirements for this type of reporting.

VII. LOAD OIL

Any oil or other liquid hydrocarbons produced from, or for the benefit of, a Federal lease, and which is used for the treatment of a well on or off that lease, is defined as load oil. Royalty is due on all such transfers whether the oil is used on the lease or otherwise, and must be accounted for on the monthly reports, Forms 9–329 and 9–361, as though a sale had occurred.

The value of any such load oil must be equal to the highest net price paid for any regular crude oil or other liquid hydrocarbon run of comparable gravity made from the lease, unit participating area, or communitized tract during the month of the transfer or the actual price received by the operator, whichever is greater.

Where royalty is paid at the time of transfer, a volume of crude oil or other liquid hydrocarbon equal to the volume of the load oil used in the treatment may be recovered and disposed of royalty-free, provided that such recovery is credited against the first production from the treated well after treatment. If an operator fails to request a credit against production immediately after treatment, no such royalty-free recovery will be allowed unless the operator presents evidence, acceptable to the Supervisor, that such delay is justified. The value of load oil recovered shall not exceed the average weighted price of all oil or other liquid hydrocarbons sold from the lease, unit participating area, or communitized tract during the month of recovery.

No credit on royalty will be allowed the operator for recovered load oil unless complete documentation is attached to the Monthly Report of Sales and Royalty (Form 9–361) to substantiate the use and recovery of such load oil. This documentation must include the following information:

A. For transfers between Federal leases:

The Federal lease number from which the oil was produced.

The Federal lease number to which the oil was transferred.

The number and location of the well which was treated.

The volume of oil used in the treatment.

Acceptable evidence to substantiate the recovery of load oil for which a credit is sought.

B. For transfers to a Federal lease from a non-Federal source:

The source from which the oil was obtained.

The name and address of the seller.

Date of purchase.

was transferred.

Transporter.

The Federal lease number to which the oil

The number and location of the well which was treated.

The volume of oil used in the treatment.

Acceptable evidence to substantiate the recovery of load oil for which a credit is sought.

C. Transfers of load oil from a Federal lease to a non-Federal lease are to be reported as a sale, and no subsequent credit will be allowed.

If the required information under item A or B hereof is contained in an affidavit prepared for submittal to the purchaser or to another Federal or State agency, a copy of said affidavit will normally meet the documentation requirements of the Geological Survey.

VIII. OVERPAYMENTS

An overpayment on a Federal lease can be recovered either by requesting a refund from the Supervisor or, with the prior approval of the Supervisor, by withholding an amount equal to the overpayment from subsequent royalties accruing to the lease on which the overpayment was made.

IX. LEASE ACCOUNT ADJUSTMENT

An error on a Monthly Report of Sales and Royalty (Form 9–361) and/or a Rental and Royalty Remittance Advice (Form 9–614–A) requires special attention because of the effect that an adjustment, if not accounted for properly, may have on the minimum royalty obligation of a lease, the royalty rate of a variable royalty rate lease, and because of the problems that may result in reconciling a lease account when monthly royalty charges and payments do not agree.

In order that these problems may be substantially eliminated, it is required that the disposition of each months's production and the corresponding payments be reported separately and not combined with any other month's business. A separate Monthly Report of Sales and Royalty and/or Rental and Royalty Remittance Advice, identified as an "amended" report or advice, will be required to correct any erroneous entry shown on a previous month's report or advice. Amended reports must show the total entry, as corrected, not just the difference between that previously reported and what should have been reported. In other words, where previously reported data is to be corrected, a two-line entry will be required on the amended report or advice. One entry will show the information previously reported as a credit or negative entry and the second entry will show the corrected information as a debit or positive entry.

Unless otherwise directed in writing by the Supervisor, amended reports or advices may include corrections for more than one lease, unit participating area, or communitization tract and may also include corrections covering more than one month. No method different from that prescribed above may be used in making adjustments without the prior approval of the Supervisor.

X. MEASUREMENT AND STORAGE REQUIREMENTS

All production from a lease, unit participating area, or communitized tract shall be gauged or measured according to methods approved by or acceptable to the Supervisor. However, the Supervisor. However, the Supervisor's specific written approval must be obtained prior to installing an ACT meter, commingling production between leases or formations, or the use of common storage or off-lease facilities.

XI. STATEMENT OF ACCOUNT (FORM 9–1424)

Lessees and operators will be provided a Statement of Account (Form 9–1424) recapitulating all transactions affecting each of their leases on a month-to-month basis.

Lessees and operators should review the Statement(s) of Account to ensure that royalty charges and payments are properly accounted for and that the lease account is correct. Any amount shown as owed must be promptly remitted unless there is an apparent error, in which event the discrepancy must be called immediately to the attention of the Supervisor.

XII. NONCOMPLIANCE, VIOLATIONS, AND ASSESSMENT OF LIQUIDATED DAMAGES

Failure to submit properly completed reporting forms, supporting documentary evidence, remittance advices, or payments by the due dates will be considered as incidences of noncompliance and will result in the assessment of liquidated damages or other appropriate action being taken for each violation. When liquidated damages are assessed, the amount of the assessment will be determined in accordance with Title 30 CFR 221.

(Date) (Oil and Gas Supervisor)

(Area)

Approved.

RUSSELL G. WAYLAND,
Acting Chief, Conservation Division

[FR Doc.77–2189 Filed 1–24–77;8:45 am]

Mining Enforcement and Safety Administration

GROUND CHECK CIRCUITS FOR THREE-PHASE ALTERNATING CURRENT LOW- AND MEDIUM-VOLTAGE RESISTANCE GROUNDED CIRCUITS

Technical Seminars

Section 309(c) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 869(c)) (§ 75.902, Part 75, 30 CFR) required that within six months of the operative date of the Act that three-phase alternating current low- and medium-voltage resistance-grounded systems shall include a fail-safe grounded check circuit to monitor continuously the grounding circuit to assure continuity of the grounding circuit. That section further recognized that such equipment might not be available and provided that an extension of time, not in excess of 12 months, might be permitted by the Secretary on a mine-

by-mine basis if he determined that such equipment was not available.

Early attempts at compliance necessitated installation of a ground check conductor in trailing cables of electric face equipment. The installation of the additional conductor destroyed the electrical symmetry of the cable causing induced currents in the grounding conductor of the cable. This induced current resulted in incentive arcing when the frames of two machines came in contact. Since machine frames come in contact regularly in the face areas of coal mines where methane is most likely to be released, an extremely dangerous condition was created.

On March 23, 1971, the then Assistant Director, Coal Mine Health and Safety, Bureau of Mines, in recognition of the extremely dangerous condition resulting from incendive arcing, issued a memorandom to all coal mine operators suspending installation of ground check circuits which required a ground check conductor trailing cables serving alternating current face equipment.

The intermachine arcing problem has now been solved. Tested and proven equipment is now available that will limit the induced energy in the trailing cable grounding conductor to less than incendive levels. Reliable ground check devices have now been developed by six different manufacturers that will satisfy the requirements of section 75.902, Part 75, 30 CFR. A representative number of ground check devices produced by the six manufacturers have undergone extensive laboratory testing by MESA Technical Support and extensive field testing by industry electrical engineers. The results of these tests indicate that the devices are reliable when properly installed and maintained.

A survey of the six manufacturers of ground check devices indicates that the necessary ground check units can be supplied in sufficient numbers to allow complete industry compliance within six months after orders are received. It is estimated that an additional three months may be needed for modification of power centers and distribution lines to allow installation of the ground check circuits.

In view of the capability that now exists to suppress incentive intermachine arcing and the development of the technology and availability of reliable ground check devices, the memorandum of the Assistant Director of March 23, 1971, is therefore rescinded and revoked and coal mine operators will be required to comply with the provisions of sections 75.902 through 75.902–4, Part 75, 30 CFR on and after December 31, 1977.

Commencing April 1, 1977, MESA inspection personnel, upon observing three-phase alternating current powered face equipment which is being operated and which does not comply with sections 75.902 through 75.902–4 will issue a Safeguard Notice to the operator of the coal mine. The Safeguard Notice will advise the mine operator that the technology and equipment is now readily available for compliance with sections 75.902 through 75.902–4 and that on and after December 31, 1977, the operator shall be required to comply with those standards.

If present forecasts of availability of ground check devices prove to be accurate, failure to have such ground check circuits installed and properly maintained on and after December 31, 1977, will be considered cause for the issuance of a Notice of Violation under section 104 of the Act.

In order to acquaint coal mine operators and the coal mining industry with the availability, technology, and current state of the art of ground check monitoring, a series of technical seminars will be conducted. The date, time and locations of the seminars and seminar program are as follows:

MARCH 8, 1977—9 A.M.

National Mine Health and Safety Academy, Beckley, West Virginia.

MARCH 11, 1977—9 A.M.

Holiday Inn-Airport, 5000 Tenth Ave., North, Birmingham, Alabama.

MARCH 15, 1977—9 A.M.

Bureau of Mines Building, 4800 Forbes Ave., Pittsburgh, Pennsylvania.

MARCH 22, 1977—9 A.M.

Holiday Inn-Airport, 4040 Quebec Blvd., Denver, Colorado.

MARCH 24, 1977—9 A.M.

Holiday Inn-North, 4545 North Lindbergh, Bridgeton (St. Louis), Missouri.

SEMINAR PROGRAM

9:00 a.m.	Introduction.
9:15 a.m.	Design Parameters — U.S. Bureau of Mines and West Virginia University.
10:15 a.m.	Technical Support Evaluation and Acceptance of Ground Check Circuits.
10:45 a.m.	Break.
11:00 a.m.	Industry Test and Evaluation Program.
11:30 a.m.	Development Problems.
12:00 Noon	Lunch.
1:15 p.m.	Manufacturers' Presentations.
3:15 p.m.	Break.
3:30 p.m.	Monitor Test Procedures.
4:00 p.m.	Panel Discussion.
5:00 p.m.	Adjournment.

Interested persons who plan to attend a seminar are requested to notify the Mining Enforcement and Safety Administration, Technical Support, 2239 South Kanawha St., Beckley, West Virginia 25801, Telephone 304–255–1581 of their intention to attend, which seminar they will attend, and the number of persons attending.

Dated: January 17, 1977.

RAYMOND A. PECK, JR.,
Deputy Assistant Secretary of the Interior.

[FR Doc.77-2233 Filed 1-24-77;8:45 am]

Mining Enforcement and Safety Administration

ZIPPERTUBING CO. MINE CABLE SPLICE KIT

Action to Rescind Acceptance

Pursuant to a notice published in the FEDERAL REGISTER for November 19, 1976 (41 FR 51128), a hearing was held by the Mining Enforcement and Safety Administration (MESA) in Pittsburgh, Pa. on December 9, 1976. The purpose of the hearing was to receive relevant evidence concerning whether the acceptance issued for The Zippertubing Co. mine cable splice kit, under Acceptance Number 151–1–MESA, should be rescinded for cause on the grounds that splices prepared using Zippertubing Co. kits were not flame-resistant. The hearing record was held open until December 24, 1976.

Evidence introduced by MESA shows that 19 splices prepared using Zippertubing Co. mine cable splice kits, under Acceptance Number 151–1–MESA, were tested to determine whether the splices met the flame resistance requirements set forth in 30 CFR 18.64. Eighteen of the 19 mine cable splices tested failed to meet those requirements.

Representatives of The Zippertubing Co. did not dispute the findings of MESA regarding the failure of the 18 mine cable splice kits. They offered into the record various documents primarily relating to quality control procedures for their mine cable splice kits. In response to questions at the hearing, The Zippertubing Co. stated that they were unable to explain why the accepted splice kits tested by MESA failed to pass flame resistance tests. However, they agreed to conduct tests in an effort to determine the cause of the failure.

On December 21, 1976, a Western Union Telefax was received by MESA in which The Zippertubing Co. stated that they had "positively been able to identify the cause of the splices failing to meet the flammable requirements." They further stated that one large shipment of a component had been certified to meet Underwriters' Laboratories requirement, but that tests proved that either the fire-retardants were omitted or did not have sufficient quantity to provide satisfactory retardancy. It was noted that materials to substantiate their findings would be forwarded under separate cover for MESA verification. Other steps to be undertaken by The Zippertubing Co. were also outlined. No verification material has been received by MESA as of this date.

In view of the undisputed failure of the Zippertubing Co. mine cable splice kits, I find that under 30 CFR 18.16 cause exists on the stated grounds for rescinding Acceptance Number 151–1–MESA issued for The Zippertubing Co. mine cable splice kits. Because the scope and extent of corrective action, including quality control procedures, require complete retesting and reevaluation, this finding would not have been otherwise, even if The Zippertubing Co. had submitted data or evidence substantiating their December 21, 1976 statement as to the cause of the failures.

If in the future, the cause of the failure is verified and The Zippertubing Co. is prepared to introduce quality control measures necessary to insure the quality of the product, The Zippertubing Co. may submit a new application for acceptance. At that time, thorough review and testing would be performed by

MESA to determine whether an acceptance should be issued.

Accordingly, notice is given that Acceptance Number 151–1–MESA issued for The Zippertubing Co. mine cable splice kit is hereby rescinded, effective on January 31, 1977.

Dated: January 17, 1977.

ROBERT E. BENNETT,
Administrator, Mining Enforcement and Safety Administration.

[FR Doc.77-2317 Filed 1-24-77;8:45 am]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 17, 1977. Pursuant to section 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by February 4, 1977.

WILLIAM J. MURTAGH,
Acting Chief, Office of Archeology and Historic Preservation.

ALASKA

Yukon-Koyukuk Division

Healy vicinity, *Mine Safety Car 5*, E of Healy at Usibelli-Suntrana Spur 99787.

ARIZONA

Gila County

Globe vicinity, *Gila Pueblo*, S of Globe.

CALIFORNIA

Orange County

San Juan Capistrano vicinity, *Hot Springs Road*, CA 74 from Mission San Juan Capistrano E of Hot Springs.

COLORADO

Montezuma County

Cortez, *Anasazi Archeological District*, U.S. 160 (also in Dolores County).

CONNECTICUT

Fairfield County

Norwalk vicinity, *Rock Ledge*, S of Norwalk at 33, 40–42 Highland Ave.

Trumball vicinity, *Kaatz Icehouse*, N Trumball at 255 Whitney Ave.

Litchfield County

Winsted, *Winsted Green Historic District*, U.S. 44 and CT 8.

GEORGIA

Dougherty County

Albany, *Farkas, Samuel, House*, 328 W. Broad Ave.

Albany, *Smith, W. E., House*, 516 Flint Ave.

Murray County

Chatsworth vicinity, *Fort Mountain*, E of Chatsworth off U.S. 76.

Muscogee County

Columbus, *Bullard-Hart House*, 1408 3rd Ave.

Troup County

Mountville vicinity, *Van Boddie, Nathan, House*, W of Mountville on GA 109.

ILLINOIS

Adams County

Quincy, *U.S. Post Office and Courthouse*, 200 N. 8th St.

IOWA

Cass County

Lewis vicinity, *Hitchcock, George B., House*, W of Lewis.

MARYLAND

Carroll County

Westminster vicinity, *Friendship Valley Farm*, 1 mi. S of Westminster at 950 Gist Rd.

Howard County

Ellicott City vicinity, *White Hall*, W of Ellicott City at 4130 Chatham Rd.

Prince Georges County

Brandywine vicinity, *St. Paul's Parish Church* (Baden), SE of Brandywine off MD 381.

MINNESOTA

Chippewa County

Montevideo, *Budd, Charles H., House*, 219 N. 3rd St.

Montevideo, *Chippeaw County Bank*, N. 1st St. and Lincoln Ave.

Koochiching County

International Falls, *Koochiching County Courthouse*, 4th St. and 8th Ave.

Swift County

Appleton, *Appleton City Hall*, 23 S. Miles St.

Appleton, *Benson, Elmer, House*, 150 W. Rooney.

Benson, *Swift County Courthouse*, Idaho Ave. and 14th St.

Washington County

Stillwater, *Chicago, Milwaukee and St. Paul Freight House and Depot*, 233–335 Water St.

MISSISSIPPI

Adams County

Natchez, *Elm Court*, 42 John R. Junkin Dr.

NEW JERSEY

Burlington County

Moorestown vicinity, *Farmer's Hall*, SE of Moorestown on Mt. Laurel Rd.

Pemberton, *Morris Mansion and Mill*, Hanover St.

Camden County

Chesilhurst, *Grant A.M.E. Church*, 4th and Washington Sts.

Cape May County

North Wildwood, *Hereford Lighthouse*, Central Ave.

Essex County

Caldwell, *Caldwell Presbyterian Church Manse*, 207 Bloomfield Ave.

Newark, *Feigenspan Mansion*, 710 High St.

Gloucester County

Clarksboro, *St. Peter's Episcopal Church*, King's Highway.

Hudson County

Jersey City, *Barrow, Dr. William, Mansion*, 83 Wayne St.

Mercer County

Princeton vicinity, *Rogers, John, House*, S of Princeton on S. Post Rd.

Monmouth County

Red Bank vicinity, *Throckmorton, John, Farm*, NW of Red Bank on Oak Hill Rd.

Sussex County

Stanhope, *Plaster Mill*, near Main St. and Kelly Pl.

NEW YORK

Chautauqua County

Fredonia, *Fredonia Commons Historic District*, Main, Temple, Church, Day, and Center Sts. surrounding common.

PENNSYLVANIA

Bucks County

Cornwells Heights, *St. Elizabeth's Convent*, 1663 Bristol Pike.

TENNESSEE

Hickman County

Williamsport vicinity, *Gordon, John, House*, NW of Williamsport off TN 50 (boundary change.

TEXAS

Titus County

Winfield vicinity, *Hale Mound Site*, S of Winfield.

UTAH

Sanpete County

Manti, *Tuttle-Folsom House*, 195 W. 300 North.

VIRGINIA

Henrico County

Varina vicinity, *Varina Plantation*, SE of Varina off VA 5.

WEST VIRGINIA

Berkeley County

Martinsburg vicinity, *Swan Pond*, E of Martinsburg on SR 5/3.

Martinsburg vicinity, *Van Metre Ford Stone Bridge*, E of Martinsburg at Opequon Creek and SR 36.

Hampshire County

Romney, *Wilson–Wodrow–Mytinger House*, 51 W. Gravel Lane.

Monroe County

Union vicinity, *Walnut Grove*, N of Union on U.S. 219.

Pocahontas County

Marlinton, *Pocahontas Times Print Shop*, 810 2nd Ave.

Wood County

Parkersburg, *Julia–Ann Square Historic District*, includes cemetery, and both sides of Juliana, Ann, and 9th Sts.

[FR Doc.77-2117 Filed 1-24-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[Docket No. 419]

CERTAIN WELDED STAINLESS STEEL PIPE AND TUBE

Change in Procedure for Commission Action

Notice is hereby given that: (1) On January 10, 1977, the Commission issued a Notice Concerning Procedure for Commission Action in response to a complaint filed on November 15, 1976, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), concerning welded stainless steel pipe and tube. The notice was published in the FEDERAL REGISTER on January 13, 1977 (42 F.R. 2726), and set January 28, 1977, as the date for oral argument in the proceeding to show cause why an investigation under section 337 should be instituted on the basis of the complaint filed on November 15, 1976.

(2) On January 11, 1977, the Commission received a letter requesting a change in the date for oral argument, which was docketed by the Office of the Secretary as motion No. P-419-1. In response to this request, the Commission hereby orders that the date for oral argument set in paragraph (4) of the notice issued on January 10, 1977, is changed to 10 a.m., e.s.t., on January 26, 1977.

Issued: January 18, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2186 Filed 1-24-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[USITC SE-77-4A]

GOVERNMENT IN THE SUNSHINE

Amendment to Notice

The following persons, listed as being reasonably expected to attend the closed portion of the Commission meeting of January 24, 1977, pertaining to reorganization (agenda item No. 3), should not have been listed as being reasonably expected to attend:

Russell N. Shewmaker, General Counsel.
Rhond Roth, Attorney-Advisor.

Accordingly, their names are deleted from the list of persons reasonably expected to attend this discussion.

By order of the Commission.

Issued: January 19, 1977.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2337 Filed 1-24-77;8:45 am]

DEPARTMENT OF LABOR

Bureau of Labor Statistics

BUSINESS RESEARCH ADVISORY COUNCIL'S COMMITTEE ON ECONOMIC GROWTH

Meeting

The BRAC Committee on Economic Growth will meet at 1:30 p.m., February 22, 1977, at the General Accounting Office Building, 441 G Street, NW, Room 4454, Washington, D.C. Agenda for the meeting follows:

1. Status of 1990 Projections.
2. Review of work for the Federal Energy Administration.
3. Review of work for the Environmental Protection Agency.

This meeting is open to the public. It is suggested that persons planning to attend this meeting as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council on Economic Growth (Area Code 202) 523-1559.

Signed at Washington, D.C., this 13th day of January 1977.

JULIUS SHISKIN,
Commissioner of Labor Statistics.

[FR Doc.77-2133 Filed 1-24-77;8:45 am]

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER RURAL DEVELOPMENT ACT

Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice to: Deputy Assistant Secretary for Employment and Training, 601 D St., NW, Washington, D.C. 20213.

Signed at Washington, D.C. this 17th day of January, 1977.

WILLIAM H. KOLBERG,
Assistant Secretary for Employment and Training.

Applications received during the week ending January 14, 1977

Name of applicant	Location of enterprise	Principal product or activity
Kent Inc. (tenant of Fort Kent)	Fort Kent, Maine	Cut, sew and package infants sleep'n play sets.
Mountaineer Leather, Inc	Cameron, W. Va	Sale of leather garments.
Charles County Plant Farms, Inc	La Plata, Md	Greenhouse.
Vienna Improvement Corp., Inc	Parkersburg, W. Va	Motor hotel.
Liston Foods, Ltd	Bruceton Mills, W. Va	Grocery store.
Centennial Development Co	Williamstown, W. Va	Transient motor lodge.
Red Oaks Shopping Center, Inc	Fairlea, W. Va. and Covington, Va.	Lease of rental property.
Brundidge Foods, Inc	Troy, Ala	Manufacturing of viscous, liquid salad dressings, mustard, and oil.
Smart-Tops, Inc. (tenant of city of Mount Airy).	Mount Airy, N.C	Manufacturing of infant hosiery.
LaFayette Health Care Center Ltd. Partnership.	LaFayette, Ga	Skilled nursing care services.
Carmack, Inc	Phenix City, Ala	Manufacturing of gray iron castings.
Adama United Corp	Morrisville, Fuquay-Variana and Kinston, N.C.	Manufacturing of concrete masonry.
B&H Construction Co., Inc	New Bern, N.C	Electrical and mecahnical construction, ace motor rewinding and sales of ace electric equipment.
Moundville Foundry Inc	Moundville, Ala	Manufacturing of various classes of grey iron metal castings.
Three Rivers Oil Co., Inc	Booneville, Miss	Distributor of petroleum products.
Outdoor Recreation Services, Inc	Hilton Head Island, S.C.	Recreation theme park.
Sweetwater Carpet Corp	Ringgold, Ga	Manufacturing of carpet.
Chaplin Aviation, Inc	Sheboygan Falls, Wis	Storage and servicing aircraft fuel sales, avionics, sales and service, and also clerical and management.
Clifford Manufacturing Co	Marlette, Mich	Manufacturing of ferrous metal.
Hardwood Specialties Co., Inc	Bonham, Tex	Sawmill producing rough saw hardwoods.
John W. Parker	Mexia, Tex	Buildings for a shopping center.
Kitchs Dairy Mart and Motel	Fairfield, Tex	Restaurant and motel.
Kaiser Aluminum Highway Products (tenant of city of Eunice).	Eunice, La	Marketing of aluminum.
Rockwall Steel Co	Terrell, Tex	Manufacturing of steel library shelving, steel wardrobes, and field erection.
Copper Mountain, Inc	Copper Mountain, Colo.	Ski center and resort.
Gibson Products of Loveland, Inc	Loveland, Colo	Sale of merchandise through discount department store.
Arrow Motel	Montezuma, Colo	Motel.
Pyrotronics Corp	Anaheim, Calif	Manufacturing and wholesale distributor of safe and sane fireworks.
K. J. Industries Inc	Canby, Oreg	Manufacturing of steel castings.

[FR Doc.77-2184 Filed 1-24-77;8:45 am]

Occupational Safety and Health Administration

NATIONAL ADVISORY COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH, SUBGROUPS ON STANDARDS AND POLICY/BUDGET

Meeting

Notice is hereby given that the Subgroups on Standards and Policy/Budget of the National Advisory Committee on Occupational Safety and Health (NACOSH) will meet on February 17, 1977 in Room N-4437, Department of Labor Building, 3rd Street and Constitution Avenue NW., Washington, D.C. 20210.

The National Advisory Committee was established under section 7(a) of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor and the Secretary of Health, Education, and Welfare on matters relating to the administration of the Act.

The meeting will begin at 9:00 a.m. The public is invited to attend. The Subgroups will develop recommendations on the identification, classification and regulation of potential carcinogens.

For additional information contact:

J. Goodell, Chief, Committee Management Office, Occupational Safety and Health Administration, Department of Labor—OSHA, Room N-3635, Third Street and Constitution Avenue NW., Washington, D.C. 20210. Phone: (202) 523-8024.

Any written data or views concerning this agenda item or suggestions for future agenda items which are received by the Committee Management Office before the meeting, preferably with 20 copies, will be presented to the Subgroups and included in the official record of the meeting.

Anyone wishing to make an oral presentation should notify the Committee Management Office 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 content of the presentation. Oral presentations will be scheduled at the discretion of the Subgroup Chairmen, depending on the extent to which time permits.

Official records of the meeting will be available for public inspection at the above address.

Signed at Washington, D.C., this 21st day of January 1977.

J. Goodell,
Executive Secretary.

[FR Doc.77-2452 Filed 1-24-77;8:45 am]

WASHINGTON STATE STANDARDS

Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrators for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the Federal Register (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act.

Sections 1952.120–124 of Subpart F sets forth the State's schedule for the adoption of at least as effective State standards. By letter dated October 4, 1976, John Hillier, Assistant Director, Department of Labor and Industries, to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State submitted State standards comparable to 29 CFR Part 1918, as published in the Federal Register (39 FR 22074) dated June 19, 1974. These standards, which are contained in the Washington Safety Standard for Longshore, Stevedore, and Related Waterfront Operations, WAC 296-56, were promulgated after a public hearing held on December 18, 1973 at Olympia, Washington.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are at least as effective as the comparable Federal standards and are hereby approved.

The State standards, which are contained in WAC 296-56-401 through 560 generally are comparable to 29 CFR part 1918 as it applies to shoreside employment. In addition, the State on its own initiative has adopted many additional State original standards covering hazards not addressed by the Federal standards. The detailed standards comparison is available at the locations specified below.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98504; and the Technical Data Center, Room N3620, 200 Constitution Avenue NW., Washington, D.C. 20210.

4. *Public participation.* Section 1953.2 (c) of this chapter provides that where State standards are identical to or "at least as effective" as comparable Federal standards and have been promulgated

in accordance with State law, approval may be effective upon publication without an opportunity for further public participation. As the standards under consideration are "at least as effective" as the Federal standards and have been promulgated in accordance with State law, including an opportunity for public comment and/or public hearings, they are approved without an opportuntiy for further public comment.

This decision is effective January 25, 1977.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Seattle, Wash., this sixth day of December 1976.

JOHN A. GRANCHI,
Acting Regional Administrator—OSHA.

[FR Doc.77-2134 Filed 1-24-77;8:45 am]

Office of the Secretary

[TA-W-1,560]

BERMAN MANUFACTURING COMPANY, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 10, 1977 the Department of Labor received a petition dated December 23, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Berman Manufacturing Company, Inc., South River, New Jersey (TA-W-1,560). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with women's slacks, jackets, vests, skirts and blouses produced by Berman Manufacturing Company, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2358 Filed 1-24-77;8:45 am]

[TA-W-1211]

BETHLEHEM STEEL CORP., TORRANCE, CALIFORNIA

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1211: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 21, 1976 in response to a worker petition received on October 21, 1976 which was filed on behalf of workers and former workers producing structural steel pieces at the Torrance, California Works of Bethlehem Steel Corporation.

The notice of investigation was published in the FEDERAL REGISTER (41 FR 51136) on November 19, 1976. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Bethlehem Steel Corporation, its customers, the U.S. International Trade Commission, the U.S. Department of Commerce, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The Department's investigation revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment of production workers declined 34.2 percent in 1975 compared to 1974. The plant was shut down in February 1976.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales, in net tons, declined 3.5 percent in 1975 compared to 1974.

Production, in net tons, declined 35.8 percent in 1975 compared to 1974.

Plant sales and production ceased in February 1976.

INCREASED IMPORTS

Imports of structural steel shapes, relative to U.S. shipments, increased from 21.8 percent in the first three months of 1975 to 28.7 percent in the same period of 1976.

CONTRIBUTED IMPORTANTLY

The Torrance Works competed with other companies for subcontracts from general construction firms. A survey of construction firms accounting for over 90 percent of Torrance Works' total sales in 1975 indicated that several of these firms subcontracted to competitors which used imported structural steel pieces.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with structural steel pieces produced at the Torrance Works, Torrance, California plant of Bethlehem Steel Corporation, contributed importantly to the total or partial separation of workers engaged in the production and installation of such structural steel at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Torrance Works, of the Bethlehem Steel Corporation, Torrance California who became totally or partially separated on or after September 19, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 13th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2136 Filed 1-24-77;8:45 am]

[TA-W-1281]

BIRWIN TROUSERS, INC., NEW YORK, NEW YORK

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1281: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 15, 1976 in response to a worker petition received on November 15, 1976 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's trousers at Birwin Trousers, Incorporated.

The notice of investigation was published in the FEDERAL REGISTER on December 3, 1976 (41 FR 53083). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Grossman Clothing and Birwin Trousers Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The Department's investigation revealed that all four criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers at Birwin Trousers, Inc. declined 21 percent in 1975 compared to 1974. The average number of production workers declined 3 percent in the first ten months of 1976 compared to the first ten months of 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Production at Birwin Trousers, Inc. declined 9 percent in 1975 compared to 1974. Production declined 3 percent in the first ten months of 1976 compared to the first ten months of 1975.

INCREASED IMPORTS

Imports of men's and boys' tailored suits increased every year from 1971 through 1974, rose 27 percent in 1975 compared to 1974, and increased 7 percent in the first nine months of 1976 compared to the like period of 1975.

The ratio of imports to domestic production increased from 12.3 percent in 1974 to 17.4 percent in 1975 and declined from 19.9 percent in the first half of 1975 to 17.3 percent in the like period of 1976.

CONTRIBUTED IMPORTANTLY

Grossman sells all suit pants produced by Birwin. Customers have decreased purchases of men's clothing from Grossman and have increased purchases of imported men's clothing. In addition, Grossman has received numerous requests since the first quarter of 1976 from the largest importer of men's clothing for credit information on retail customers of Grossman that are placing their first orders for imported clothing.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's suit pants produced by Birwin Trousers, Inc. contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All employees of Birwin Trousers, Inc., New York, New York who became totally or partially separated from employment on or after November 1, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 14th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2137 Filed 1-24-77;8:45 a.m.]

[TA-W-1321]

CRESCENT MACHINE AND NIPPLE CO., ALLEGAN, MICHIGAN

Negative Determination Regarding Eligibility To Apply for Workers Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1321: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 30, 1976 in response to a worker petition received on that date which was filed by the United Steelworkers of America on behalf of workers and former workers producing pipe nipples at Crescent Machine and Nipple Company, Allegan, Michigan.

The notice of investigation was published in the FEDERAL REGISTER on December 14, 1976 (41 FR 54555). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Crescent Machine and Nipple Company, the United Steelworkers of America, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropirate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (2) has not been met.

Crescent Machine and Nipple Company produces primarily pipe nipples at the Allegan, Michigan plant. The company also produces thermal cutting rods, fireplace equipment, and is engaged in a small amount of pipe fabrication.

During the course of the department's investigation it was established that sales, production and employment increased in 1976 compared to 1975. Sales increased nearly 20 percent in 1976 compared to 1975. Production increased 14 percent in 1976 compared to 1975.

Employment increased 12 percent in 1976 compared to 1975. Union officials verified that several workers separated from employment at Crescent Machine in 1975 and 1976 had either returned to work or had been offered the opportunity to return to work by early 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that sales or production, or both, at the Allegan, Michigan plant of Crescent Machine and Nipple Company did not decrease absolutely as required under section 223 of the Act. Therefore eligibility to apply for adjustment assistance is denied.

Signed at Washington, D.C., this 13th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2138 Filed 1-24-77;8:45 am]

[TA-W-954]

GIBSON, INC., KALAMAZOO, MICHIGAN

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-954: investigation regarding certification of eligibility to apply for adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 29, 1976 in response to a worker petition received on that date which was filed by the United Steelworkers of America on behalf of workers and former workers producing acoustical and electric guitars, mandolins and banjos at the Kalamazoo, Michigan plant of Gibson, Incorporated, a subsidiary of Norlin Music, New York.

The notice of investigation was published in the FEDERAL REGISTER on July 16, 1976 (41 FR 29513). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Norlin Music, Incorporated, the parent firm of Gibson, Incorporated, the customers of Gibson, Incorporated, the Department of Commerce, the International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threats thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers employed at Gibson, Inc., Kalamazoo, Michigan, and Nashville, Tennessee, decreased 18 percent in 1975 compared to 1974, and 9 percent in the first 6 months of 1976 compared to the like period of 1975.

SALES OR PRODUCTION OR BOTH, HAVE DECREASED ABSOLUTELY

Gibson produced fretted musical instruments in the $25 and up wholesale price range. Sales at Gibson, Inc., Kalamazoo, Michigan decreased 15.5 percent in value in 1975 compared to 1974, and 16 percent in value in the first 6 months of 1976 compared to the like period in 1975.

INCREASED IMPORTS

Imports of fretted musical instruments declined both actually and relative to domestic production in every year compared to the previous year from 1972 through 1975, but increased 93 percent in the last 6 months of 1975 compared to the first 6 months of 1975, and 49 percent in the first 6 months of 1976 compared to the like period in 1975.

CONTRIBUTED IMPORTANTLY

Customers surveyed indicated that they have switched purchases from fretted musical instruments produced at Gibson Inc., Kalamazoo, Michigan to imported fretted musical instruments.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imported fretted musical instruments contributed importantly to the total or partial separation of workers at Gibson, Incorporated, Kalamazoo, Michigan. In accordance with the provisions of the Act, I make the following certification:

All workers at the Kalamazoo, Michigan plant of Gibson Incorporated, who became totally or partially separated from employment on or after June 1, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 15th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2139 Filed 1-24-77;8:45 am]

[TA-W-1,558]

GLASS DIMENSIONS, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 10, 1977 the Department of Labor received a petition dated December 16, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Glass Dimensions, Inc., Magnolia, Massachusetts (TA-W-1,558). Accordingly, the Director, Officer of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with hand blown glass plant pots produced by Glass Dimensions, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

The petition filed in this case is available or inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2359 Filed 1-24-77;8:45 am]

[TA-W-1282]

GROSSMAN CLOTHING COMPANY, INC., NEW YORK, NEW YORK

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1282: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 15, 1976 in response to a worker petition received on November 15, 1976 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's suits and sportcoats at Grossman Clothing.

The notice of investigation was published in the FEDERAL REGISTER on December 3, 1976 (41 FR 53090). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Grossman Clothing Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of

eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated.

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The Department's investigation revealed that all four criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers at Grossman declined 22 percent in 1975 compared to 1974. The average number of production workers declined 3 percent in the first ten months of 1976 compared to the first ten months of 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Production at Grossman declined 23 percent in 1975 compared to 1974. Production declined 1 percent in the first ten months of 1976 compared to the first ten months of 1975.

INCREASED IMPORTS

Imports of men's and boys tailored dress coats and sportcoats increased in each year from 1971 to 1973, declined in 1974 compared to 1973, rose 8 percent in 1975 compared to 1974 and increased 32 percent in the first nine months of 1976 compared to the like period of 1975.

The ratio of imports to domestic production increased from 21.3 percent in 1974 to 30.9 percent in 1975 and rose from 23.8 percent in the first half of 1975 to 30.7 percent in the like period of 1976.

Imports of men's and boys' tailored suits increased every year from 1971 through 1974 rose 27 percent in 1975 compared to 1974 and increased 7 percent in the first nine months of 1976 compared to the like period of 1975. The ratio of imports to domestic production increased from 12.3 percent in 1974 to 17.4 percent in 1975 and declined from 19.9 percent in the first half of 1975 to 17.3 percent in the like period of 1976.

CONTRIBUTED IMPORTANTLY

The Department's investigation indicated that customers have decreased purchases of men's clothing from Grossman and have increased purchases of imported mens' clothing. In addition, Grossman has received numerous requests since the first quarter of 1976 from the largest importer of men's clothing for information on retail customers of Grossman that are placing their first orders for imported men's clothing.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's suits and sportcoats produced by Grossman Clothing contributed importantly to the total or partial separations of the workers of that plant. In accordance with the provision of the Act, I make the following certification:

All employees of Grossman Clothing Company, New York, New York who became totally or partially separated from employment on or after November 1, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 14th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2140 Filed 1-24-77;8:45 am]

[TA-W-51]

INTERNATIONAL SHOE CO., PERRYVILLE, MISSOURI

Revised Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 222 of the Trade Act of 1974 and in acordance with section 223(a) of such Act, on August 4, 1975 the Department of Labor issued a certification of eligibility to apply for adjustment assistance applicable to workers and former workers of the Perry ville, Missouri plant of the International Shoe Company (TA-W-51). The notice of certification was published in the FEDERAL REGISTER August 15, 1975 (40 FR 34491).

Further investigation developed evidence that revealed employment and production at the Perryville plant continues to be adversely influenced by imports of articles like or directly competitive with men's footwear produced at the Perryville plant.

Production at the Perryville, Missouri plant declined 12 percent in quantity in the first three quarters of 1976 compared to the same period of 1975. Employment declined 2 percent in the first three quarters of 1976 compared to the same period of 1975.

Imports of men's dress and casual footwear increased absolutely and relatively in the first nine months of 1976 compared to the same period of 1975. The ratio of imports to domestic production increased from 46.1 percent in the first nine months of 1975 to 52.1 percent in the same period of 1976.

Based on additional evidence, a review of the entire record and in accordance with the provision of the Act, I have determined that the termination date included in TA-W-51 Certification, issued on August 4, 1975, should be deleted. Such deletion of the termination date contained in TA-W-51 Certification is hereby made as follows:

All workers of the Perryville, Missouri plant of the International Shoe Company, St. Louis, Missouri who became totally or partially separated from employment related to the production of men's footwear on or after October 3, 1974 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington D.C., this 13th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

On the basis of a further showing and further investigation by the Office of Trade Adjustment Assistance, the following recommendation is made:

That the Notice of Certification applicable to workers of the Perryville, Missouri plant of International Shoe (TA-W-51) be revised as follows:

"All workers of the Perryville, Missouri plant of the International Shoe Company who became totally or partially separated from employment related to the production of men's footwear on or after October 3, 1974 be certified as eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

I concur, accept, and adopt the findings of fact and recommendation as set forth herein, except as noted below.

Exceptions:

[FR Doc.77-2141 Filed 1-24-77;8:45 am]

[TA-W-1173]

J. H. RUTTER-REX-MANUFACTURING CO., INC., NEW ORLEANS PLANTS

Negative Determination Regarding Eligibility To Apply for Workers Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1173: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 14, 1976 in response to a worker petition received on that date which was filed on behalf of workers and former workers producing work pants and work shirts at the New Orleans plants of the J. H. Rutter-Rex-Manufacturing Company, Incorporated.

The notice of investigation was published in the FEDERAL REGISTER (41 FR 48811) on November 5, 1976. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of J. H. Rutter-

Rex-Manufacturing Company, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (3) has not been met.

The Department's investigation revealed that the New Orleans plants of the J.H. Rutter-Rex-Manufacturing Company produce work pants and work shirts principally under government contracts issued by the Defense Personnel Support Center in Philadelphia, Pennsylvania.

Production, sales, and employment at the New Orleans plants of the J.H. Rutter-Rex-Manufacturing Company, Incorporated were influenced in 1975 and 1976 by restrictions placed by the Defense Personnel Support Center on its contract bid invitations. Certain contracts issued by the Defense Personnel Support Center have been restricted solely to small business bids. The J.H. Rutter-Rex-Manufacturing Company is not categorized as a small business firm.

The Defense Personnel Support Center restricts all contract bidding on apparel and textile items to domestic suppliers. There is therefore no foreign competition involved in submitting bids and competing for such contracts.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that imports of articles like or directly competitive with work pants and work shirts produced at the New Orleans plants of the J. H. Rutter-Rex-Manufacturing Company, Incorporated, have not increased as required for certification under section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 13th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2142 Filed 1-24-77;8:45 am]

[TA-W-1231]

LIBERTY TRUCKING CO., JANESVILLE, WISCONSIN

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1231: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 8, 1976 in response to a worker petition received on that date which was filed on behalf of workers and former workers at the Janesville, Wisconsin terminal of Liberty Trucking Company who were engaged in providing transportation services to automobile assembly plants.

The Notice of Investigation was published in the FEDERAL REGISTER on November 23, 1976 (41 FR 51632). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Liberty Trucking Company and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

If any of the above criteria is not satisfied a negative determination must be made.

Liberty Trucking Company does not produce an article within the meaning of section 222(3) of the Act and this Department has already determined that the performance of services are not covered by the adjustment assistance program. See Notice of Determination in "Pan American World Airways, Incorporated" (TA-W-153, 40 FR 54639). The only question in this case is whether General Motors Corporation, i.e., a firm which produces an article, namely automobiles, and for whom the service is provided, can be considered the "workers' firm". The Department has also previously determined that an independent firm for which such services are provided cannot be considered the "workers' firm." See Notice of Determination in "Nu-Car Driveaway, Incorporated" (TA-W-393, 41 FR 12749).

Liberty Trucking Company is a transport business incorporated in the State of Illinois and licensed and regulated by the State and the Interstate Commerce Commission. Liberty Trucking competed for available business with other carriers in the Janesville, Wisconsin area and each was free to haul for any business requesting their services.

Neither General Motors Corporation, on one hand, nor Liberty Trucking Company on the other, is financially or otherwise involved in the business of the other. Liberty Trucking either owns or leases the facilities necessary to the operation of its business and owns or leases all its trucks and equipment.

The workers upon whose behalf this petition was filed were hired and are paid by Liberty Trucking Company. They are supervised by and subject to the control of Liberty Trucking personnel only. All employment benefits which they enjoy are provided and maintained by Liberty Trucking.

CONCLUSION

After careful review of the issues and facts involved, I have determined that services of the kind provided by Liberty Trucking Company, Janesville, Wisconsin are not "articles" within the meaning of section 222(3) of the Trade Act of 1974, and that General Motors Corporation cannot be considered the "workers' firm." The petition for trade adjustment assistance is, therefore, denied.

Signed at Washington, D.C., this 9th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[TA-W-1210]

M. JANOWITCH AND SONS, MAHANOY CITY, PENNSYLVANIA

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1210: investigation regarding eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 28, 1976 in response to a worker petition received on October 28, 1976 which was filed on behalf of former workers producing ladies' dresses at the Mahanoy City, Pennsylvania plant of M. Janowitch and Sons.

The notice of investigation was published in the FEDERAL REGISTER on November 23, 1976 (41 FR 51632). No public hearing was requested and none was held.

The information upon which the determination was made was obtained prin-

cipally from officials of M. Janowitch and Sons, its customers, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, the fourth criterion has not been met.

The Department's investigation revealed that M. Janowitch and Sons is a contractor producing women's and misses' dresses for one manufacturer. The plant was closed on June 5, 1976 because of problems other than competition for imports. The subject firm's only manufacturer stated that they would still do business with M. Janowitch and Sons if they were open and could meet their requirements. The manufacturer shifted Janowitch's business to other domestic contractors.

Conclusion

It is concluded that imports of articles like or directly competitive with women's and misses' dresses produced at the Mahanoy City, Pennsylvania plant of M. Janowitch and Sons did not contribute importantly to the total or partial separation of the works at such plant.

Signed at Washington, D.C., this 12th day of January 1977.

James F. Taylor,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2144 Filed 1-24-77;8:45 am]

[TA-W-1193]

P. J. BARASH ASSOCIATES, INC., CAMDEN, NEW JERSEY

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1193: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 19, 1976 in response to a worker petition received on October 19, 1976 which was filed on behalf of workers and former workers producing women's dresses at the Camden, New Jersey plant of P. J. Barash Associates, Incorporated.

The Notice of Investigation was published in the Federal Register on November 5, 1976 (41 FR 48816). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of P. J. Barash Associates, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although the first three criteria have been met, the fourth criterion has not been met.

Significant Total or Partial Separations

The average number of production workers at P. J. Barash Associates, Incorporated remained the same from 1974 to 1975 and declined 12.5 percent in the first nine months of 1976 compared to the same period in 1975. Average weekly hours declined 3.1 percent from 1974 to 1975 and decreased 5.3 percent in the first nine months of 1976 compared to the same period in 1975.

Sales or Production, or Both, Have Decreased Absolutely

Company sales decreased 5.4 percent from 1974 to 1975 and declined 31.7 percent in the first nine months of 1976 compared to the same period in 1975.

Increased Imports

Imports of women's, misses' and children's dresses have declined each year since 1971 except in 1975 when imports increased over the previous year. The ratio of imports to domestic production was 9.0 percent in 1971, declined to 6.3 percent in 1973, and increased to 7.4 percent in 1975. Imports for the first nine months of 1976 were up by about 0.5 percent over the same period in 1975.

Contributed Importantly

The investigation revealed that P. J. Barash Associates, Inc., has two customers the larger of which does not import dresses and has reduced its purchases from P. J. Barash in 1975 compared to 1974 and in the first nine months of 1976 compared to the like period in 1975. The remaining customer increased its purchases from P. J. Barash in 1975 compared to 1974 and in the first nine months of 1976 compared to the like period in 1975. The decline in purchases by the non-importing customer was not offset, and this decline accounted for the entire sales decline experienced by P. J. Barash.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's dresses which are produced at the Camden, New Jersey plant of P. J. Barash Associates, Incorporated, did not contribute importantly to the total or partial separations of the workers at such plant.

Signed at Washington, D.C., this 13th day of January 1977.

James F. Taylor,
Director, Office of Management, Administration and Planning.

[FR Doc. 77-2145 Filed 1-24-77;8:45 am]

[TA-W-804]

REPUBLIC STEEL CORP. CANTON SOUTH PLANT

Revised Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a notice of negative determination regarding certification of eligibility to apply for worker adjustment assistance on August 20, 1976 (41 FR 37430) applicable to former workers producing stainless steel and alloy steel products at the Canton South plant of Republic Steel Corporation, Canton, Ohio.

At the request of an official of the United Steelworkers of America, a further investigation was instituted by the Director of the Office of Trade Adjustment Assistance. The further investigation developed additional information from company officials and a broader spectrum of the plant's customers concerning the influence of imports on the employment of workers at the plant.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that with respect to the production of stainless steel, all four of the above criteria have been met but that with respect to the production of alloy steel criterion (4) has not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers at Canton South increased 13.1 percent in 1974 compared with 1973, decreased 34.6 percent in 1975 compared with 1974 and decreased 36.4 percent in the first quarter of 1976 compared with the first quarter of 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Shipments of stainless steel sheet and plate increased 139.2 percent in 1974 compared with 1973, decreased 67.4 percent in 1975 compared with 1974 and decreased 62.8 percent in the first quarter of 1976 compared with the first quarter of 1975. Shipments of alloy steels increased 21.8 percent in 1974 compared with 1973, decreased 36.3 percent in 1975 compared with 1974 and decreased 48.4 percent in the first quarter of 1976 compared with the first quarter of 1975.

INCREASED IMPORTS

Imports of stainless steel sheet and plate decreased 36.5 percent in 1972 compared with 1971, decreased 18.0 percent in 1973 compared with 1972, increased 33.3 percent in 1974 compared with 1973 and increased 3.0 percent in 1975 compared with 1974. The ratios of imports to domestic shipments and consumption increased from 10.4 percent and 9.9 percent, respectively, in 1974 to 21.3 percent and 18.3 percent, respectively, in 1975.

Imports of alloy steel blooms, slabs, billets, ingots, castings and sheet bars decreased 0.6 percent in 1972 compared with 1971, decreased 13.5 percent in 1973 compared with 1972, decreased 37.1 percent in 1974 compared with 1973 and increased 10.0 percent in 1975 compared with 1974. The ratios of imports to domestic shipments and consumption increased from 0.28 percent for each, in 1974 to 0.34 percent for each, in 1975.

CONTRIBUTED IMPORTANTLY

The additional information developed in the investigation revealed that the Canton South plant is part of the fully integrated production operations of Republic Steel's Central Alloy District. The Canton South plant performs various operations on stainless and alloy steel products within the organizational framework of Republic's Central Alloy District. Shipments of stainless steel products are received from other plants within the Central Alloy District including the Canton Works and the Massillon Works and are further processed at the Canton South plant. In addition, stainless steel products at an earlier stage of production are shipped from the Canton South plant to other plants within the Central Alloy District. The majority of processed products and finished products are considered sales of the other plants in the Central Alloy District.

Due to the high degree of integration which exists between the Canton South plant and other plants of the Central Alloy District, the impact of imports on the sales of stainless steel products of the Central Alloy District directly affects the production operations at the Canton South plant. The Department has issued certifications for each of the plants in the Central Alloy District noting that increases of imports of stainless steel like or directly competitive with stainless steel produced at the Canton Works (TA-W-665) and the Massillon Works (TA-W-666) contributed importantly to the total or partial separations of workers at these plants.

Customers indicated that they had not shifted purchases of alloy steels from the Canton South plant to foreign sources. These customers, including commercial aircraft, defense and aerospace contractors and subcontractors, cited slowdowns in commercial aircraft production and delays in the contracting and procurement of certain weapons systems are reasons for reduced purchases of alloy steels from the Canton plant.

CONCLUSION

Based on additional evidence, a review of the entire record and in accordance with the provisions of the Trade Act of 1974, I hereby issue the following certification:

All workers engaged in employment related to the production of stainless steel in the South Jobbing Mill, South Sheet Mills 7, 8, 9 and 12 the South Finishing Department, the Forging Department and the Special Bar Finishing Department and all workers engaged in employment related to the processing of Clad and the finishing of stainless steel at the Canton South plant of Republic Steel Corporation, Canton, Ohio who became totally or partially separated from employment on or after March 20, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

It is further concluded that increases of imports of alloy steels and stainless steel did not contribute importantly to the total or partial separations of workers in the Vacuum Melt Departments, in Steel Ingot Conditioning nor of employees engaged in employment related to the production of alloy steel at the Canton South plant.

Signed at Washington, D.C., this 13th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2146 Filed 1-24-77;8:45 am]

[TA-W-1165]

SPORTSWEAR MANUFACTURING CO., INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1165: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 13, 1976 in response to a worker petition received on that date which was filed by the Amalgamated Clothing and Textile Workers Union (ACTWU) on behalf of workers formerly producing men's suits, sportcoats, pants and vests at Sportswear Manufacturing Company, Inc., Brooklyn, New York.

The Notice of Investigation was published in the FEDERAL REGISTER on October 29, 1976 (41 FR 47630). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Sportswear Manufacturing Company, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production;

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Average employment of production workers fell 38 percent in 1975 compared to 1974. Although employment rose 13 percent in the first ten months of 1976 compared to the like period of 1975, employment declined 22 percent in the July through October period of 1976 compared to the like period of 1975.

All production workers were separated from employment on or before October 29, 1976 when the company ceased operations.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Unit production fell 25 percent in 1975 compared to 1974 and rose 40 percent in the first ten months of 1976 compared to the like period of 1975.

The increases in employment and production shown when comparing the first ten months of 1976 to the first ten months of 1975 are misleading. Production was temporarily curtailed and employees were laid off for two months in 1975 while the company moved to a new facility.

INCREASED IMPORTS

Imports of men's and boys' tailored dress coats and sportcoats increased each year from 1971 to 1973, declined in 1974 compared to 1973, rose 8 percent in 1975 compared to 1974 and increased 32 percent in the first nine months of 1976 compared to the like period of 1975. The ratio of imports to domestic production increased from 21.3 percent in 1974 to 30.9 percent in 1975 and rose from 23.8 percent in the first half of 1975 to 30.7 percent in the like period of 1976.

Imports of men's and boys' tailored suits increased every year since 1971, rose 27 percent in 1975 compared to 1974 and increased 7 percent in the first nine months of 1976 compared to the like period of 1975. The ratio of imports to domestic production increased from 12.3 percent in 1974 to 17.4 percent in 1975 and declined from 19.9 percent in the first half of 1975 to 17.3 percent in the like period of 1976.

Imports of men's and boys' dress and sport trousers and shorts increased in 1972 compared to 1971, declined in 1973 and 1974, rose 39 percent in 1975 compared to 1974 and increased 41 percent in the first nine months of 1976 compared to the like period of 1975. The ratio of imports to domestic production increased from 18.2 percent in 1974 to 30.3 percent in 1975 and rose from 28.2 percent in the first half of 1975 to 32.0 percent in the like period of 1976.

Imports of men's and boys' tailored suit vests increased every year since 1971, rose 154 percent in 1975 compared to 1974 and increased 114 percent in the first nine months of 1976 compared to the like period of 1975. The ratio of imports to domestic production increased from 12.2 percent in 1974 to 16.3 percent in 1975.

CONTRIBUTED IMPORTANTLY

The parent corporation which received approximately 80 percent of Sportswear Manufacturing Company's production, increased purchases of imported men's suits, sportcoats and pants by more than 100 percent and reduced orders to Sportswear Manufacturing Company, Inc. in 1975 compared to 1974.

The corporation reduced purchases from all sources in 1976 due to its own declining sales. The decline in sales was attributed to competition from other retailers who purchase large quantities of low priced imported men's clothing.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's suits, sportcoats, pants and vests produced at Sportswear Manufacturing Company, Inc., Brooklyn, New York, a subsidiary of Robert Hall Clothes, New York, N.Y. did contribute importantly to the total or partial separation of the workers of that company. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of men's suits, sportcoats, pants and vests at Sportswear Manufacturing Company, Inc., Brooklyn, New York who became totally or partially separated from employment on or after September 29, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 13th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2147 Filed 1-24-77;8:45 am]

[TA-W-918]

U-BRAND CORP., ASHLAND, OHIO

Correction of Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, on October 18, 1976 the Department of Labor issued a certification of eligibility to apply for adjustment assistance applicable to workers and former workers at the Ashland, Ohio plant (Machine Division) and Shelby, Ohio warehouse of the U-Brand Corporation (TA-W-918). The Notice of Certification was published in the FEDERAL REGISTER on October 29, 1976 (41 FR 47632).

The certification as originally issued excluded workers who were engaged in employment related to the distribution of iron pipe fittings at the Vernon, California warehouse of the U-Brand Corporation.

The certification issued October 18, 1976 is hereby amended to include all workers of the Vernon, California warehouse of the U-Brand Corporation.

Signed at Washington, D.C., this 15th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2148 Filed 1-24-77;8:45 am]

[TA-W-1,561]

U.S. STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 10, 1977 the Department of Labor received a petition dated December 23, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Duluth, Minnesota plant of U.S. Steel Corporation, Pittsburgh, Pa. (TA-W-1,561). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increase of imports of articles like or directly competitive with coke produced by U.S. Steel Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2360 Filed 1-24-77;8:45 am]

[TA-W-1,562]

U.S. STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 10, 1977 the Department of Labor received a petition dated December 23, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the U.S. Steelworkers of America on behalf of the workers and former workers of Rankin, Pennsylvania

plant of U.S. Steel Corporation, Pittsburgh, Pa. (TA–W–1,562). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with iron products produced by U.S. Steel Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2361 Filed 1-24-77;8:45 am]

[TA–W–1,557]

WILLOFORM MANUFACTURING CO., INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 1, 1977 the Department of Labor received a petition dated December 1, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the International Ladies' Garment Workers Union on behalf of the workers and former workers of Willoform Manufacturing Co., Inc., New York, New York (TA–W–1,557). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with brassieres and girdles produced by Willoform Manufacturing Co., Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2362 Filed 1-24-77;8:45 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (77-4)]

NASA RESEARCH AND TECHNOLOGY ADVISORY COUNCIL PANEL ON AVIATION SAFETY AND OPERATING SYSTEMS SUBCOMMITTEE ON AVIATION SAFETY REPORTING SYSTEM

Meeting

The NASA Research and Technology Advisory Council (RTAC), Subcommittee on Aviation Safety Reporting System will meet on February 15–16, 1977, at the Ames Research Center, Moffett Field, CA 94035. The meeting will be held in the Committee Room, Administration Building. The meeting is being held at this time to review the operation of the Aviation Safety Reporting System and to plan the one-year evaluation. Members of the public will be admitted on a first come, first served basis up to the seating capacity of the room which is about 25 persons. All visitors must report to the Ames Research Center receptionist in the Administration Building.

The RTAC Subcommittee on Aviation Safety Reporting System serves in an advisory capacity only. The Chairman is Mr. John H. Winant. There are 12 members. The following list sets forth the approved agenda and schedule for the February 15–16, 1977, meeting of the Aviation Safety Reporting System Subcommittee. For further information please contact Mr. E. Gene Lyman, NASA Headquarters, Code RB, Washington, DC 20546 (202–755–2380).

FEBRUARY 15, 1977

Time	*Topic*
9 a.m.	Report of the chairman. (Purpose: To summarize activities relating to the Aviation Safety Reporting System (ASRS) since the last subcommittee meeting.)
9:30 a.m.	Report on the Aviation Safety Reporting System. (Purpose: To describe status of activities pertaining to ASRS operations. Members will comment on these activities and identify items requiring additional attention.)
10:30 a.m.	Review of Aviation Safety Reporting System Reports. (Purpose: To allow members an opportunity to comment on information received and topics requiring special analysis.)
2:30 p.m.	Report of Security Group. (Purpose: To review security aspects of ASRS and to receive members' advice and recommendations concerning ASRS security.)
3:30 p.m.	Review of Aviation Safety Research. (Purpose: To review ongoing aviation safety research studies and to receive members' advice about these studies.)

FEBRUARY 16, 1977

8:30 a.m.	Develop ASRS Evaluation Plan. (Purpose: To develop an approach, schedule, and assign responsibilities for the ASRS one-year evaluation.)
10:30 a.m.	Members' Discussion. (Purpose: To consider total aspects of ASRS and provide advice and recommendations about its operation.)
1 p.m.	Adjourn.

JOHN M. COULTER,
Acting Assistant Administrator for DOD and Interagency Affairs National Aeronautics and Space Administration.

JANUARY 17, 1977.

[FR Doc.77-2187 Filed 1-24-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR PSYCHOBIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Psychobiology.
Date: February 10 and 11, 1977.
Time and place: 9:00 a.m. to 5:00 p.m. each day; National Science Foundation, 1800 G St. N.W., Washington, D.C. Room 321.
Type of meeting: Part Open (Open 9:00 a.m. to 10:00 a.m., February 11, 1977; remainder Closed).
Contact person: Fred Stollnitz, Program Director for Psychobiology Room 320, National Science Foundation, Washington, D.C. Telephone: (202) 632–4264.
Summary minutes: (open portion). May be obtained from the Committee Management Coordination Staff, Division of Personnel and Management, Room 248, National Science Foundation, Washington, D.C. 20550.
Purpose of panel: To provide advice and recommendations concerning support for research in psychobiology.
Agenda: February 10, 9:00 a.m. to 5:00 p.m., February 11, 10:00 a.m. to 5:00 p.m., closed. The panel will be reviewing and evaluating research proposals and projects as part of the selection process for awards. February 11, 9:00 a.m. to 10:00 a.m., open. The Panel will be discussing methods of assessing the state and outlook of the field of Psychobiology and the role and performance of the Psychobiology Program in supporting it.
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.

M. Rebecca Winkler,
Acting Committee Management Officer.

January 19, 1977.

[FR Doc.77-2343 Filed 1-24-77;8:45 am]

ADVISORY PANEL FOR SENSORY PHYSIOLOGY AND PERCEPTION

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Sensory Physiology and Perception.
Date and time: February 7 and 8, 1977; 9:00 A.M.–5:00 P.M. each day.
Place: National Science Foundation, 1800 G Street N.W., Washington, D.C. 20550, Room 517.
Type of meeting: Closed.
Contact person: Dr. Terrence R. Dolan, Program Director, Sensory Physiology and Perception, Room 320, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 634–1624.
Purpose of panel: To provide advice and recommendations concerning support for research in sensory physiology and perception.
Agenda: To review and evaluate research 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 P.L. 92–463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. Rebecca Winkler,
Acting Committee Management Officer.

January 19, 1977.

[FR Doc.77-2267 Filed 1-24-77;8:45 am]

ADVISORY PANEL FOR SYSTEMATIC BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act., Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Biology.
Date and time: February 10 and 11, 1977—8:30 a.m. to 5:00 p.m. each day.
Place: Room 543, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.
Type of meeting: Closed.
Contact person: Dr. John W. Wright, Program Director, Systematic Biology Program, Room 336, National Science Foundation, Washington, D.C. 20550, telephone (202) 632–5846.
Purpose of panel: To provide advice and recommendations concerning support for research in systematic biology.
Agenda: To review and evaluate research 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 P.L. 92–463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. Rebecca Winkler,
Acting Committee Management Officer.

January 19, 1977.

[FR Doc.77-2344 Filed 1-24-77;8:45 am]

FEDERAL SCIENTIFIC AND TECHNICAL INFORMATION MANAGERS

Meeting

The next meeting of the Federal Scientific and Technical Information Managers will be held on Wednesday, February 9, 1977, from 9:30 a.m.–12 noon, at the Department of Commerce, 14th and Constitution Avenue, NW, Conference Room B–841. The theme of this meeting will be the "Micrographics, Video and Other Image Transfer Developments: Substitutes or Complements for Computer-Based Communication?"

These meetings, sponsored by the National Science Foundation, provide a forum for the interchange of information concerning common problems and coordination in the areas of Federal scientific and technical information and communications.

These meetings are designed solely for the benefit of Federal employees and officers, and do not fall under the provisions of the Federal Advisory Committee Act (P.L. 92–463). However, this meeting is believed to be of sufficient importance and interest to the public to be announced in the Federal Register.

Any persons wishing to attend this meeting or requiring further information should notify Mr. Andrew A. Aines, Division of Science Information, National Science Foundation, 1800 G Street, NW, Washington, DC 20550, telephone: (202) 632–5836.

Lee G. Burchinal,
Director,
Division of Science Information.

January 22, 1977.

[FR Doc. 77-2266 Filed 1-24-77;8:45 am]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS NUCLEAR REGULATORY COMMISSION

Notice of Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on February 10–12, 1977, in Room 1046, 1717 H Street NW., Washington, D.C.

The agenda for the subject meeting will be as follows:

Thursday, February 10, 1977

8:00 A.M.—8:45 A.M.: Executive Session (Closed).—The Committee will discuss the qualifications of candidates nominated for appointment to the ACRS.

8:45 A.M.–9:45 A.M.: Executive Session (Open).—The Committee will hear and

discuss the reports of ACRS Subcommittees and consultants who may be present regarding the evaluation of selected safety issues related to light-water reactors. Portions will be closed if necessary to discuss proprietary material or intra-agency memoranda prepared for internal use only.

9:45 A.M.–12:45 P.M. and 1:45 P.M.–4:45 P.M.: Meeting on Evaluation of Selected Safety Issues Related to Light-Water Reactors (Open).—The Committee will hear presentations and hold discussions regarding evaluation of selected safety issues related to light-water reactors.

Portions of this session will be closed if necessary to receive reports from individual NRC employees who will present their personal opinions and recommendations only in confidence. Portions will also be closed if required to review Proprietary Information related to the matters being considered and intra-agency memoranda prepared for internal use only.

4:45 P.M.–6:30 P.M.: Executive Session (Open).—The Committee will hear and discuss reports of ACRS Subcommittees regarding proposed Regulatory Guides and regulatory activities related to the practices and policies for correction of ECCS errors for operating power plants. The Committee will also discuss a proposed revision of its report on the Status of Generic Matters Related to Light-Water Reactors.

FRIDAY, FEBRUARY 11, 1977

8:30 A.M.—11:15 A.M.: Meeting with Members of the NRC Staff.—This portion of the meeting will include sessions with the Executive Director for Operations and other members of the NRC Staff related to current reactor operating experience and licensing actions; evaluation of generic matters related to light-water reactors, including performance of steam generator tubes in pressurized water reactors and evaluation of fuel handling accidents inside containment; and evaluation of safety research data and regulatory requirements of the Federal Republic of Germany. The future schedule for ACRS activities will be discussed. Reports will be made to the Committee regarding the NRC program to evaluate integrity of reactor pressure vessels designed and fabricated to the ASME Boiler and Pressure Vessel Code Sections I and VIII and the NRC program to review environmental phenomena at sites with facilities for processing and fabricating plutonium.

11:15 A.M.–12:00 Noon: Executive Session (Open).—The Committee will hear and discuss the report of the ACRS Subcommittee and consultants who may be present regarding the analytical models formulated to evaluate use of Exxon Nuclear Company Replacement Fuel for Light-Water Reactors. Portions of this session will be closed if required to discuss Proprietary Information related to the design, fabrication, or operation of this fuel.

1:00 P.M.–3:00 P.M.: Meeting Regarding Exxon Nuclear Company, Inc. Replacement Fuel for Light-Water Reactors (Open).—The Committee will hear and discuss information with representatives of the NRC Staff and the Exxon Nuclear Company, Inc., and the Jersey Central Power & Light Company, regarding the ECCS evaluation models for replacement fuel to be used in non-jet pump boiling water reactors and pressurized water reactors with low-pressure containment.

Portions of this session will be closed if required to discuss Proprietary Information related to the design, fabrication or operation of this type fuel.

3:00 P.M.–5:00: Executive Session (Open).—The Committee will hear and discuss the reports of ACRS Subcommittee Chairmen with respect to ACRS activities regarding review of the Zion Nuclear Station, ACRS review of the Clinch River Breeder Reactor, review of sites with environmental phenomena for plutonium processing and fabrication facilities, and ACRS review of the NRC plan to reevaluate siting policy and practices.

5:00 P.M.–6:30: Executive Session (Closed).—The Committee will meet in closed Executive Session to discuss the qualifications of proposed candidates for appointment to the Committee. The Committee will discuss a proposed ACRS report on safeguards provisions at nuclear facilities.

SATURDAY, FEBRUARY 12, 1977

8:30 A.M.–4:30 P.M.: Executive Session (Open).—The Committee will discuss proposed ACRS reports and activities regarding matters considered during this meeting. Portions of this session will be closed if necessary to discuss proprietary material related to the matters being discussed. Portions will also be closed if necessary to discuss information related to safeguards provisions at nuclear facilities and to discuss proposed policy and practice regarding conduct of ACRS activities.

I have determined in accordance with Subsection 10(d) of Public Law 92-463 that it is necessary to close portions of the meeting as noted above to protect material, which has been designated national security information and is classified under E.O. No. 11652 (5 U.S.C. 552(b)(1)), to protect proprietary data (5 U.S.C. 552(b)(4)), to protect the confidentiality of intra-agency memoranda prepared for internal agency use only and discussion of information which, if written, would fall within the provisions of exemption 5 of 5 U.S.C. 552(b) (5 U.S.C. 552(b)(5)), to preserve the confidentiality of information related to safeguarding of special nuclear material (5 U.S.C. 552(b)(4)), to protect information provided in confidence by individual members of the NRC Staff (5 U.S.C. 552(b)(5)), and to protect information which, if released, would represent an undue invasion of privacy (5 U.S.C. 552(b)(6)). Separation of factual information and information considered exempt from disclosure under exemption (1), exemption (4), exemption (5), and exemption (6) of 5 U.S.C. 552(b) during these portions of the meeting is not considered practical.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Committee is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

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 meetings 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 items may do so by providing a readily reproducible copy to the Committee 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 mailing a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than February 2, 1977, to the Executive Director, Advisory Committee on Reactor Safeguards, Nuclear Regulatory Commission, 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 Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, DC 20555 and at the following Public Document Rooms:

OYSTER CREEK NUCLEAR POWER PLANT

Ocean County Library, 15 Hooper Avenue, Toms River, NJ 08753.

D.C. COOK UNIT 1

Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

(b) Those persons wishing to make oral statements regarding agenda items at the meeting should make a request to do so prior to the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements in safety related areas within the Committee's purview at an appropri-

ate time chosen by the Chairman of the Committee.

(c) Further information regarding topics to be discussed, whether the meeting or portions of the meeting have 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 February 9, 1977, to the Office of the Executive Director of the Committee (Telephone: 202–634–1371) between 8:15 A.M. and 5:00 P.M., Eastern Time. It should be noted that the above schedule is tentative, based on the anticipated availability of related information, etc. It may be necessary to reschedule items to accommodate required changes. The ACRS Executive Director will be prepared to describe these changes on February 9, 1977.

(d) Questions may be propounded only by members of the Committee and its consultants.

(e) The use of still, movie, and television cameras, the physical installation and presence of which will not interfere with the course of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) Persons with agreements or orders permitting access to proprietary information other than safeguards 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 3 days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of this 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 the Executive Director at 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 during the following workday at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. Copies of the minutes of the meeting will be made available for inspection at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. on or after May 13, 1977. Copies may be obtained upon payment of appropriate charges.

Dated: January 21, 1977.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.77-2389 Filed 1-21-77;1:11 pm]

OFFICE OF TELECOMMUNICATIONS POLICY

ELECTROMAGNETIC RADIATION MANAGEMENT ADVISORY COUNCIL

Meeting

Notice is hereby given that the Electromagnetic Radiation Management Advisory Council (ERMAC) will meet at 9:00 a.m., in room 2010, New Executive Office Building, 17th and H Streets, N.W., Washington, D.C. on Wednesday, February 9, 1977 and on Thursday, February, 10, 1977.

The principal agenda items will consist of presentations on research programs being conducted to evaluate the biological effects of nonionizing electromagnetic radiation. On 9 February presentations will be made by the Departments of Air Force and Army and on 10 February by the Environmental Protection Agency.

The meetings will be open to the public; any member of the public will be permitted to file a written statement with the Committee, before or after the meeting.

Information regarding the Committee may be obtained from Lt. Cmdr. Peter S. Labyak, Office of Telecommunications Policy, Washington, D.C. 20504 (telephone: 202/395-4737)

Dated: January 19, 1977.

L. DANIEL O'NEILL,
Advisory Committee Management Officer.

[FR Doc.77-2323 Filed 1-24-77;8:45 am]

OHIO RIVER BASIN COMMISSION

GREAT MIAMI RIVER BASIN COMPREHENSIVE COORDINATED JOINT PLAN REVIEW

Availability of Report

Pursuant to section 204(3) of the Water Resources Planning Act of 1965 (Pub. L. 89–80), the Ohio River Basin Commission has completed a report summarizing the current Comprehensive Coordinated Joint Plan (CCJP) for the Great Miami River Basin portion of the Ohio River Basin. The Report currently is being reviewed by the Governors and the head of each Federal agency, and each interstate agency, from which a member of the Commission has been appointed.

Views, comments and recommendations on the CCJP are requested by April 14, 1977. Copies are available on request to the Ohio River Basin Commission, 36 E. Fourth Street, Suite 208–20, Cincinnati, Ohio 45202.

FRED E. MORR,
Chairman.

[FR Doc.77-2311 Filed 1-24-77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

ECI INDUSTRIES

Suspension of Trading

JANUARY 18, 1977.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of ECI Industries being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

Therefore, pursuant to section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from 10:00 a.m., e.s.t., on January 18, 1977 through January 27, 1977.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-2230 Filed 1-24-77;8:45 am]

[Release No. 34–13172; File No. SR–MSE–76–28]

MIDWEST STOCK EXCHANGE, INC.

Proposed Rule Change; Self-Regulatory Organizations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975), notice is hereby given that on January 3, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

MSE's STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

Article I, Rule 10:

TRANSFERS OF MEMBERSHIP

Rule 10. A membership is a privilege which cannot be transferred until the transferee shall have been elected a member or member organization. All bids for, and offerings of, memberships shall be submitted to and will be processed by the Exchange in accordance with procedures that shall from time to time be established by the Executive Committee. All contracts for the sale of memberships shall be approved by the Exchange. A sale or transfer of a membership without Exchange approval shall confer no rights on the purchaser or transferee to become a member, to exercise any rights of membership or other-

wise to deal on or with the Exchange on a basis other than that of a nonmember. Transference pursuant to financing arrangements, whereby the transferor retains the right to reacquire the membership, must be in accordance with the requirements of the Exchange and the terms of all such arrangements must be approved by the Exchange.

MSE'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The proposed rule change is to provide specific notice in the rules that it is the policy of the Exchange that these financing arrangements must be in accordance with the requirements of the Exchange.

The proposed rule change gives the Exchange the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder.

Comments have neither been solicited nor received.

The Midwest Stock Exchange believes that no burdens have been placed on competition.

On or before March 1, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 15, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 14, 1977.

[FR Doc.77-2231 Filed 1-24-77;8:45 am]

[SR-NYSE-76-37]

NEW YORK STOCK EXCHANGE, INC.

Order Approving Rule Change

On June 25, 1976, the New York Stock Exchange, Inc., 11 Wall Street, New York, New York 10005, filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b-4 thereunder, copies of a proposed rule change. The rule change reduces the capital requirements for registered traders from the current initial and maintenance requirements of, respectively, $250,000 and $175,000 over and above any other federal or exchange requirement to a constant minimum requirement of $25,000 over and above any other federal or exchange requirement; and changes the title of "registered traders" to "competitive traders."

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Release No. 34-12555 (June 18, 1976)) and by publication in the FEDERAL REGISTER (41 FR 26287 (June 25, 1976)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change filed with the Commission on June 25, 1976, be, and it hereby is, approved.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-2232 Filed 1-24-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1262]

MINNESOTA

Declaration of Disaster Loan Area

Cook County and adjacent counties within the State of Minnesota constitute a disaster area because of physical damage to wells resulting from drought which occurred in the calendar year 1976.

Eligible persons, firms and organizations may file applications for loans for physical damage as a result of drought until the close of business on March 17, 1977 and for economic injury until the close of business on October 17, 1977 at:

Small Business Administration, District Office, Plymouth Building, Room 530, 12 South Sixth Street, Minneapolis, Minnesota 55402.

or other locally announced locations.

Dated: January 14, 1977.

MITCHELL P. KOBELINSKI,
Administrator.

[FR Doc.77-2312 Filed 1-24-77;8:45 am]

[Declaration of Disaster Loan Area No. 1283]

WISCONSIN

Declaration of Disaster Loan Area

Iron County and adjacent counties within the State of Wisconsin constitute a disaster area because of physical damage to wells resulting from drought which occurred in the calendar year 1976.

Eligible persons, firms and organizations may file applications for loans for physical damage as a result of drought until the close of business on March 17, 1977 and for economic injury until the close of business on October 17, 1977 at:

Small Business Administration, District Office, 122 West Washington Avenue, Room 700, Madison, Wisconsin 53703.

or other locally announced locations.

Dated: January 14, 1977.

MITCHELL P. KOBELINSKI,
Administrator.

[FR Doc.77-2313 Filed 1-24-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

DEPUTY DIRECTOR

Delegation of Authority

Effective noon January 20, 1977, and until an Administrator is nominated and confirmed, the Deputy Administrator, Federal Railroad Administration is delegated authority to carry out the duties vested in the Administrator, and in the absence of the Deputy Administrator, the Chief Counsel, Federal Railroad Administration is authorized to carry out the duties of the Administrator, and in the absence of the Deputy Administrator and the Chief Counsel, the Associate Administrator for Policy and Program Development, Federal Railroad Administration is authorized to carry out the duties of the Administrator.

This action is taken under the authority of section 9 of the Department of Transportation Act (49 U.S.C. 1657) and the Regulations of the Secretary of Transportation (49 CFR 1.45(b)).

Issued in Washington, D.C., on January 18, 1977.

ASAPH H. HALL,
Administrator, Federal Railroad Administration.

[FR Doc. 77-2196 Filed 1-24-77;8:45 am]

Office of the Secretary

[OST File No. 49; Notice 77-2]

DESIGN, ART AND ARCHITECTURE IN TRANSPORTATION

Request for Public Comment

The purpose of this notice is to invite public comment on ways to encourage the use of art, good design, and architecture in the development of federally funded transportation projects.

On January 14, 1977, I issued "A Policy Statement on the Use of Design, Art and Architecture in Transportation System." On that same date, I established a task force within the Department of Transportation on the subject of design, art and architecture in transportation. The statement of policy and the memorandum establishing the task force are set forth below.

The Department of Transportation hereby requests comments of the interested public on (1) the policy; (2) matters which commentors believe the task force should consider; (3) the matters which I have specifically asked the task force to consider; and (4) any other suggestions as to how the Department can appropriately improve design, art and architecture in transportation systems.

Comments should be submitted in writing to:

Docket Clerk, OST File No. 49, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590.

Comments received by Friday, March 25, 1977, will be considered; those received after that date will be considered only to the extent feasible. Comments will be available for public inspection and copying in the Office of the Assistant General Counsel for Operations and Legal Counsel, Room 10100 Nassif Building, 400 Seventh Street, SW., Washington, D.C., 9 a.m. to 5:30 p.m. local time, Monday through Friday, except Federal holidays.

For further information, contact:

Charles Ansbacher, White House Fellow, Department of Transportation, Washington, D.C. 20590, (202) 426-4363.

Issued in Washington, D.C. on January 18, 1977.

WILLIAM T. COLEMAN, JR.,
Secretary of Transportation.

A POLICY STATEMENT ON THE USE OF DESIGN, ART AND ARCHITECTURE IN TRANSPORTATION SYSTEMS

JANUARY 14, 1977.

The purpose of this statement is to set forth an explicit Departmental policy with respect to the use and encouragement of art and good design in our Nation's transportation systems. It is our strong conviction that a Nation's public works reflect the strength and depth of its cultural heritage. We need only look at the creations of great nations of antiquity to find examples of their civilization—Athens gives us her places of worship and trade, Rome bequeaths her aqueducts and colosseums, Paris presents her splendor in magnificent boulevards and public museums of unsurpassed beauty. The Parliament Building of London commands our regard for that Nation's splendid history of leadership and commitment to democratic principles.

These examples have been emulated in many instances by our own great country—often as our youthful cities sought to develop their own statement of character and achievement. New York was identified by the majestic height of its Empire State Building and the massively attractive Brooklyn Bridge; San Francisco is the home of the Golden Gate; Washington, like London, is a city planned for its leading governmental role and through its monuments, parks and buildings, constantly reminds us of our great leaders and strong Constitution.

Today, enormous amounts of public funds, collected from our people, flow into the development and continued improvement of our Nation's cities and countryside. Since transportation systems claim a large portion of those funds, we recognize that in the spirit of the past, and with care for the future, the Department of Transportation must make a strong commitment to a policy which will assure that all public funds allocated to transportation be spent with due consideration for their design, artistic and cultural impact.

Thus, as a matter of policy, we believe that a concern for good design is an integral part of responsible planning for safe, efficient and economical transportation systems. To accomplish this objective, the Department proposes to establish a process which will encourage the use of art and good design in the development of Federally funded transportation projects.

In the final analysis, high quality design will accomplish the broadest transportation objectives and may generate benefits which far outweigh any additional costs. Design which provides visual testimony to the Country's respect for the dignity of individuals will become another cherished portion of our Nation's heritage. Emphasis, therefore, must be placed on the choice of plans which embody the finest American architectural, design, and artistic thought.

WILLIAM T. COLEMAN, JR.

JANUARY 14, 1977.

Memorandum to: Commandant, United States Coast Guard, Federal Aviation Administrator, Federal Highway Administrator, Federal Railroad Administrator, Urban Mass Transportation Administrator, Assistant Secretary for Policy, Plans and International Affairs, Assistant Secretary for Environment, Safety and Consumer Affairs, Assistant Secretary for Administration, White House Fellow, Director of Public Affairs.

Subject: Establishment of Task Force on Design, Art and Architecture in Transportation.

I am establishing herewith an ad hoc Task Force on Design, Art and Architecture in Transportation, with the addressees of this memorandum as members. The Task Force will be chaired jointly by the Assistant Secretary for Environment, Safety and Consumer Affairs and the White House Fellow. The purpose of the Task Force is to develop and submit to the Secretary, within six months, a report setting forth proposals for the implementation of the policy which I am issuing today on Design, Art and Architecture in Transportation.

In developing its report, the Task Force should consider the following:

(1) The creation of a National Advisory Board on Design, Art and Architecture in Transportation.

(2) The understanding that the cost of incorporating aesthetic design and art work may be eligible for Department of Transportation assistance at a certain level of funding based on a formula of a project's total budget. This assistance will apply to transportation systems which will be refurbished and modernized, and for new construction.

(3) The establishment of an annual awards program to give recognition to outstanding examples of achievement in design, art and architecture in transportation systems.

(4) The promulgation of regulations regarding procedures which the Department of Transportation grantees should follow to assure that design, art and architecture factors in transportation systems are given due consideration.

(5) Grants be made available to communities for aesthetic environmental enhancement of transportation systems on a one-to-one matching basis, where federal dollars are matched by funds from individuals, neighborhood organizations, or businesses.

The Task Force should evaluate the comments received on the policy, and the foregoing items, in response to a notice in the FEDERAL REGISTER. Also, for the purpose of informing itself more completely, the Task Force is hereby authorized to hold a public hearing and to travel to the extent necessary. In developing its report, the Task Force should review all relevant programs and policies within the Department, as well as elsewhere in the Federal Government, and—on a selected basis—in State and local governments.

WILLIAM T. COLEMAN, JR.

[FR Doc.77-2325 Filed 1-24-77;8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice No. 310]

ASSIGNMENT OF HEARINGS

JANUARY 19, 1977.

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 142215, Duke Transportation, Inc. now being assigned March 15, 1977 (3 days) at Baton Rouge, Louisiana in a hearing room to be later designated.

MC 23441 (Sub-No. 21), Lay Trucking Company, Inc. and MC 61592 (Sub-No. 386), Jenkins Truck Line, Inc., now being assigned for continued hearing on February 10, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 142251, Ill-Mo Air Freight, Inc., application dismissed.

MC 33641 (Sub-No. 126), IML Freight, Inc., now being assigned for continued hearing on April 5, 1977 (4 days), at Boise, Idaho, Bankruptcy Courtroom, U.S. Post Office, Room 214, North 8th and Bannock Streets.

No. 36434, Petition for Declatory Order and Reconsideration (Commuter Fares-Consolidated Rail Corporation, New Jersey and New York) and No. 36474, *Benjamin A. Gilman* v. *Consolidated Rail Corporation, et al*, now being assigned February 14, 1977 (1 day) at New York, New York; in a hearing room to be later designated.

MC 82841 Sub 177, Hunt Transportation, Inc. now being assigned March 28, 1977 (1 week)

at Denver, Colorado in a hearing room to be later designated.

MC 57697 Sub 3, Lester Smith Trucking, Inc. now being assigned March 24, 1977 (2 days) at Denver, Colorado in a hearing room to be later designated.

MC 142574 (Sub 1), Circle C Transportation Company now being assigned March 22, 1977 (2 days) at Denver, Colorado in a hearing room to be later designated.

MC 111611 (Sub-30), Noerr Motor Freight, Inc., now being assigned March 23, 1977 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 112582 (Sub-45), T. M. Zimmerman Company, now being assigned March 17, 1977 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 113666 (Sub-109), Freeport Transport, Inc., now being assigned March 24, 1977 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 118989 (Sub-146), Container Transit, Inc., now being assigned March 9, 1977 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 140829 (Sub-16), Cargo Contract Carrier Corp., now being assigned March 23, 1977 at the Offices of the Interstate Commerce Commission, Washington, D.C.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2351 Filed 1-24-77;8:45 am]

[AB 77 (Sub-No. 1)]

BANGOR AND AROOSTOOK RAILROAD CO.

Abandonment of Lines

JANUARY 13, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Bangor and Aroostook Railroad Company of its line between South Lagrange and Packard, a distance of 27.96 miles, in Penobscot and Piscataquis Counties, Maine, 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 environmental impacts of the subject action are considered insignificant because all traffic previously handled over this line has, since November 1974, been diverted to applicant's alternate main line via Brownville, Maine. Consequently, there will be no increases in energy consumption or air pollution which might otherwise occur as a result of diversion of traffic from rail to motor carriers. There are no industrial development plans in the tributary territory which would be dependent on continued rail service over this line. Finally, interest has been expressed in utilizing the abandoned right-of-way for recreational use, and the line has been found to be suitable for other public purposes upon abandonment.

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 February 25, 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.77-2349 Filed 1-24-77;8:45 am]

[Docket No. AB-6 (Sub-No. 45)]

BURLINGTON NORTHERN, INC.

Abandonment of Lines

JANUARY 13, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Burlington Northern, Inc., of its branch line between Sterling and New Raymer, a distance of 34.50 miles, in Logan and Weld Counties, Colo., 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 environmental impacts associated with the abandonment are considered insignificant because diversion of the low volume of traffic presently handled on the line will not cause measurable increases in fuel consumption or air pollution. A developing industrial park adjacent the line west of Shirley would be adversely impacted should the abandonment be approved. Several firms presently considering the park require rail service and would most likely select an alternate location should the abandonment be approved. However, abandonment is not expected to create a serious adverse impact on community and rural development because abandonment will not preclude industrial development by firms which do not require rail service. An alternative granting partial abandonment, and thereby avoiding adverse impacts to the industrial park is included.

The State of Colorado, Department of Highways and the city of Sterling have both indicated an interest in acquiring portions of the right-of-way for either the continued use as a transportation corridor or for utilization as a hike and bike trail.

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 February 25, 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.77-2348 Filed 1-24-77;8:45 am]

CONDITION OF INTERCITY BUS INDUSTRY

Informal Conference

JANUARY 18, 1977.

Upon consideration of a telegraphic request, the Commission, Division 2, has determined that an informal conference should be held for the purpose of discussing the financial condition of the intercity bus industry.

The informal conference will convene at 10 a.m. on February 2, 1977, at the Office of the Interstate Commerce Commission, Washington, D.C. Parties interested in attending this conference should indicate their intention to participate by notifying the Commission no later than January 26, 1977. Letters of intent to participate should be addressed to the Interstate Commerce Commission, Room 5342, Washington, D.C. 20423.

Notice of this informal conference before Division 2 shall be given to the general public by depositing a copy of this Notice in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. for public inspection and by delivering a copy of the Notice to the Director, Office of the Federal Register, for publication therein as notice to interested persons.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2347 Filed 1-24-77;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 19, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common

carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with rule 40 of the general rules of practice (49 CFR 1100.40) and filed on or before February 9, 1977.

FSA No. 43306—*Joint Rail-Water Container Rates—Lykes Bros. Steamship Co., Inc.* Filed by Lykes Bros. Steamship Co., Inc., (No. 6), for itself and interested rail carriers. Rates on general commodities, from ports in Continental Europe, The United Kingdom, Scandinavia and Denmark, North Spain, Portugal, the Mediterranean and Black Sea, to San Francisco, California.

Grounds for relief—Water competition.

Tariffs—Lykes Bros. Steamship Co., Inc., Eastbound Pacific Coast to Europe tariff No. 1, I.C.C. No. 1, F.M.C. No. 89, and 3 other schedules named in the application. Rates are published to become effective on February 15, 1977.

FSA No. 43307—*Barley or Wheat and Related Articles from Points in Montana.* Filed by North Pacific Coast Freight Bureau, Agent, (No. 77-1), for and on behalf of Chicago, Milwaukee, St. Paul and Pacific Railroad Company. Rates on barley, or wheat and products thereof, in carloads, as described in the application, from specified points in Montana, to specified points in Washington and Oregon.

Grounds for relief—Carrier competition.

Tariff—North Pacific Coast Freight Bureau, Agent, tariff 13-I, I.C.C. No. 1302. Rates are published to become effective on February 19, 1977.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2352 Filed 1-24-77;8:45 am]

[Docket No. AB 83 (Sub-No. 3)]

MAINE CENTRAL RAILROAD CO.

Abandonment of Lines

JANUARY 13, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Maine Central Railroad Company of its line between North Anson and Bingham, a distance of 16.00 miles, in Somerset County, Maine, 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 environmental impacts of the proposed abandonment are considered insignificant because traffic over this line, which consists mostly of wood products, has dropped sharply since 1974, when the major shipper ceased operations in Bingham. Local planning agencies have been attempting to attract industrial development in the Bingham area. While abandonment would create an adverse effect to the extent that firms requiring rail service will not choose to locate in the Bingham area, there will not be a serious adverse impact on rural and community development because certain types of industrial development would not be precluded. Furthermore, given the nature of wood cutting operations, abandonment may increase the initial motor carrier haul to a railhead, but the basic modal mix of the movement would not be altered. Finally, no interest has been expressed for use of the right-of-way following abandonment, and the line is not considered suitable for other public purposes.

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 February 25, 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.77-2350 Filed 1-24-77;8:45 am]

[Notice No. 107]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before February 24, 1977. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

Correction: No. MC-FC-76814, filed November 3, 1976. Transferee: STROP TRANSPORTATION, INC., 1501 S. Burlington, Hastings, Nebr. 68901. Transferor: Charles R. Strop, doing business as Strop Transportation, 1501 S. Burlington, Hastings, Nebr. 68901. Applicant's representative: Arlyn L. Westergren, Attorney-at-Law, 530 Univac Building, 7100 W. Center Road, Hastings, Nebr. 68106. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificates Nos. MC 134341 (Sub-No. 3) and MC 134341 (Sub-No. 5), issued February 20, 1973, and July 19, 1976, respectively, as follows: Meats, meat products, and 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 the facilities of Minden Beef Company at Minden, Nebr., to points in Connecticut, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin, and the District of Columbia; and packinghouse by-products (other than hides), from the plant site of Hastings Hide, Inc., at or near Hastings, Nebr., to Denver, Colo., and Kansas City, Mo.; and hides, from the plant site of Hastings Hide, Inc., located at or near Hastings, Nebr., to Los Angeles, Long Beach, and San Francisco, Calif., Portland, Oreg., and Seattle, Wash.; and those set forth in Permit No. MC 136833, issued June 10, 1974, to Shaw Trucking, Inc., and acquire by transferor herein pursuant to No. MC-F-12387, consummated July 17, 1976, as follows: Motor vehicle and recreational equipment, supplies and accessories, from Wahoo, Nebr., to points in the United States (except Alaska, Hawaii, and Nebraska), and equipment, materials, and supplies (except commodities in bulk), used in the manufacture of the commodities described immediately above, from points

in the United States (except Alaska and Hawaii), to Wahoo, Nebr., limited to a transportation service to be performed under a continuing contract or contracts with Hellstar Corporation, of Wahoo, Nebr. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b). The purpose of this correction is to include the operating rights under Permit No. MC 136833 in the authority proposed for transfer.

No. MC–FC–76866, filed December 9, 1976. Transferee: HUGH J. RITCHIE and GEORGE J. KROCOS, a partnership, doing business as TRUCKIT, 6463 E. Canning St., Los Angeles, Calif. 90040. Transferor: Joseph Jennard and George Krocos, a partnership, 2332 S. Peck Rd., Suite 194, Whittier, Calif. 90601. Applicants' representative: Hugh J. Ritchie, Attorney at Law, 3200 Wilshire Blvd., Suite 809, Los Angeles, Calif. 90010. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit No. MC 140880 (Sub-No. 1), issued July 30, 1976, as follows: *Foundry compounds and supplies* (except commodities in bulk), over irregular routes, from Georgetown and Danville, Ill., Cleveland, Columbus, Hamilton, and Ashtabula, Ohio, Milwaukee, Wis., and Muse, Pa., to Vernon and City of Commerce, Calif., with restrictions. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76880, filed December 17, 1976. Transferee: FURLOW'S GARAGE, INC., P.O. Box 853, Cumberland, Md. 21502. Transferor: James Neil Furlow, doing business as FURLOW'S GARAGE, P.O. Box 853, Cumberland, Md. 21502. Applicants' representative: Frank B. Hand, Jr. Attorney-at-Law, P.O. Box 187, Berryville, Va. 22611. Authority sought for purchase by transferee of the operating set forth in Certificate No. MC 136969, issued August 30, 1973, to transferor, as follows: Motor vehicles, in towaway service, between points in Pennsylvania, Maryland, Virginia, and West Virginia on and bounded by a line beginning at Uniontown, Pa. and extending along U.S. Highway 40 to junction U.S. Highway 219 near Grantsville, Md., thence north along U.S. Highway 219 to junction Pennsylvania Turnpike, thence along the Pennsylvania Turnpike to junction Interstate Highway 70 near Breezewood, Pa., thence along Interstate Highway 70 to junction Interstate Highway 81 near Hagerstown, Md., thence along Interstate Highway 81 to junction U.S. Highway 50 at Winchester, Va., thence along U.S. Highway 50 to junction U.S. Highway 119 near Grafton, W. Va., thence along U.S. Highway 119 to junction U.S. Highway 40 at Uniontown, Pa. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b) of the Act.

No. MC–FC–76881, filed December 17, 1976. Transferee: SAWYER TRANSPORTATION, INC., 3535 Wolf Road Saginaw, Mich. 48601. Transferor: Jon C. Sawyer, doing business as Sawyer Transport Co., 3535 Wolf Road, Saginaw, Mich. 48601. Applicants' representative: Karl L. Gotting, Attorney-at-Law, 1200 Bank of Lansing Bldg., Lansing, Mich. 48933. Authority sought for purchase by transferee of the operating rights set forth in Certificate No. MC 138383 (Sub-No. 1), issued July 3, 1974, as follows: Scrap iron and scrap steel, in bump vehicles, between the plant sites of The Tuschman Steel Co., and Kasle Iron and Metals, Inc., at Toledo,,Ohio, on the one hand, and, on the other, points in Michigan. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b) of the Act.

No. MC–FC–76882, filed December 17, 1976. Transferee: BRISTOL BUS CO., INC., 15 Tower St., Bristol, R.I. 02809. Transferor: Leo Raymond Bouffard, 88 Arlington Ave., Warren, R.I. 02885. Transferor's representative: Frank Daniels, Attorney-at-Law, 15 Court Square, Boston, Mass. 02108. Transferee's representative: Emilio D. Iannuccillo, Attorney-at-Law, 825 Hope St., Bristol, R.I. 02809. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificates Nos. MC 117215 (Sub-No. 1), MC 117215 (Sub-No. 2), and MC 117215 (Sub-No. 3), issued September 9, 1964, April 14, 1966, and June 14, 1972, respectively, as follows: Passengers, in special round-trip operations, beginning and ending at Falls River, Mass., and extending to Central Falls, Pawtucket, Providence and Warren, R.I.; beginning and ending at New Bedford, Mass., and extending to Warren, Providence, and Pawtucket, R.I.; beginning and ending at New Bedford, Mass., and extending to East Providence, R. I.; and beginning and ending at Wareham, Mass., and extending to East Providence, Cranston, and Providence, R.I.; and beginning and ending at Fall River, Mass., and extending to East Providence and Cranston, R.I., all restricted to the transportation of passengers who at the time are traveling for the purpose of participating in games commonly referred to as Beano and Bingo games. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b) of the Act.

No. MC–FC–76883, filed December 17, 1976. Transferee: GARRETT BROS., INC., 13900 S. Meridian, Oklahoma City, Okla. 73119. Transferor: Trans Western Transports of Oklahoma, Inc., 2705 S. Eastern, Oklahoma City, Okla. 73129. Applicants' representative: G. Timothy Armstrong, Attorney-at-Law, 6161 North May Ave., Oklahoma City, Okla. 73112. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate No. MC 74346, issued by the Commission May 6, 1969, to M–G Trucking Co., a corporation, doing business as M–G Trucking Company, Oklahoma City, Okla., and acquired by transferor herein pursuant to No. MC–FC–76384, approved May 17, 1976, and consummated June 25, 1976, as follows: Machinery, materials, supplies, and equipment, incidental to, or used in the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum, between points in Oklahoma, Texas, and Kansas. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

No. MC–FC–76895, filed December 28, 1976. Transferee: DEAN H. PETERSEN, 2401 Park Avenue, Lincoln, Nebr. 68502. Transferor: Dean H. Petersen & Son, Inc., 367 Garden Street, Bennet, Nebr. 68317. Applicants' representative: Patrick E. Quinn, Attorney-at-Law, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought for purchase by transferee of the operating rights set forth in Certificate No. MC 134418, issued January 27, 1971, in the name of transferor, as follows: Dairy products, between points in Nebraska, on the one hand, and, on the other, points in Kansas, Missouri, Iowa, Minnesota, and Colorado, restricted against the transportation of shipments originating at the plantsite of Beatrice Foods Co. at Lincoln, Nebr. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b) of the Act.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2353 Filed 1-24-77;8:45 am]

[Notice No. 108]

MOTOR CARRIER TRANSFER PROCEEDINGS

JANUARY 24, 1977.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212a(b) in connection with transfer application under section 212a(b) and Transfer Rules, 49 CFR Part 1132:

MC–FC–76925. By application filed January 13, 1977, Ashbourne Transportation, Inc., 7827 Old York Road, Elkins Park, PA., 19117, seeks temporary authority to lease the operating rights of North Penn Bus Lines, Inc., 140 North Ridge Avenue, Ambler, PA., 19002, under section 210a(b). The transfer to Ashbourne Transportation, Inc., of the operating rights of North Penn Bus Lines, Inc., is presently pending.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2354 Filed 1-24-77;8:45 am]

[Notice No. 1]

TEMPORARY AUTHORITY TERMINATION

The temporary authorities granted in the dockets listed below have expired as a result of final action either granting or denying the issuance of a Certificate or Permit in a corresponding application for permanent authority, on the date indicated below:

Temporary authority application	Final action or certificate or permit No.	Date of action
Risa International Corp., MC 200, sub 276	MC 200, sub 277	July 2, 1976
Garrett Freight Lines, Inc., MC 263, sub 203	MC 263, sub 196	July 21, 1976
Younger Brothers, Inc., MC 531, sub 327	MC 531, sub 320	Dec. 13, 1976
Pacific Intermountain Express Co., MC 730, sub 367	MC 730, sub 379	Oct. 4, 1976
Pacific Intermountain Express Co., MC 730, sub 377	MC 730, sub 381	Nov. 10, 1976
Pacific Intermountain Express Co., MC 730, sub 382	MC 730, sub 376	Do.
Greyhound Lines, Inc., MC 1515, sub 207	MC 1515, sub 208	Sept. 14, 1976
The Kaplan Trucking Co., MC 2304, sub 33	MC 2304, sub 34	Oct. 7, 1976
Horn's Motor Express, Inc., MC 2780, sub 4	MC 2780, sub 5	Mar. 29, 1976
A & H Truck Line, Inc., MC 2962, sub 55	MC 2962, sub 56	June 13, 1975
Barnes Truck Line, Inc., MC 7640, sub 47	MC 7640, sub 44	Feb. 9, 1976
George Transfer and Rigging Inc., MC 8535, sub 50	MC 8535, sub 49	Aug. 8, 1975
Western Gillette, Inc., MC 8048, sub 108	MC 8048, sub 106	July 21, 1975
Metropolitan Trucking, Inc., MC-8973, sub 32	MC 8973, sub 29	Feb. 9, 1976
Dba R. O. Wets Transportation, MC-31438, sub 15	MC 31438, sub 14	Oct. 26, 1976
Carleton G. Whitaker, Inc., MC 88504, sub 22	MC 88504, sub 21	Aug. 17, 1976
Wharton Transport Corp., MC 114848, sub 56	MC 114848, sub 57	Dec. 7, 1976
J & M Transportation Co., Inc., MC 115311, sub 178	MC 115311, sub 180	Dec. 2, 1976
Brooks Armored Car Service, Inc., MC 115601, sub 24	MC 115601, sub 23	Nov. 8, 1976
Contract Freighters, Inc., MC 119399, sub 62	MC 119399, sub 53	Oct. 5, 1976
MonKem Co., Inc., MC 119493, sub 141	MC 119493, sub 142	Nov. 19, 1976
Schwerman Trucking Co., MC 124078, sub 635	MC 124078, sub 618	July 22, 1976
Zeifer, Inc., MC 124789, sub 3	MC 124789, sub 4	Dec. 28, 1976
Eastern States Transportation Pa., Inc., MC 125687, sub 16	MC 125687, sub 15	Nov. 5, 1976
D.b.a. Tobell Trucking Co., MC 128993, sub 1	MC 128993	Apr. 23, 1968
Chemical Tank Lines, Inc., MC 129826, sub 18	MC 129826, sub 20	Sept. 24, 1976
D.b.a. James Funch Trucking, MC 133291, sub 2	MC 133291, sub 3	Dec. 17, 1976
Joe Brown Co., Inc., MC 136008, sub 53	MC 136008, sub 52	July 2, 1976
D.b.a. McCorkle Truck Line, MC 136711, sub 20	MC 136711, sub 21	Nov. 15, 1976
Swift Transportation Co., Inc., MC 136818, sub 9	MC 136818, sub 10	Dec. 27, 1976
Monfort Transportation, MC 138253, sub 3	MC 138253, sub 2	Dec. 15, 1976
Spacemaster Trucking Corp., MC 138482, sub 2	MC 138482, sub 3	Apr. 29, 1976
D.b.a. Transport Steel, MC 140517, sub 1	MC 140517	Sept. 23, 1976
D.b.a. Bentley W. Warren Trucking Co., MC 140608	MC 140608, sub 1	Dec. 10, 1976
Cox Refrigerated Express, Inc. MC 140033 sub 10	MC 140033, sub 7	Apr. 22, 1968

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2334 Filed 1-24-77;8:45 am]

federal register

TUESDAY, JANUARY 25, 1977

PART II



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

■

PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Procedures for Review of Hospital Services

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 101]

HOSPITAL REVIEW

Subpart G; Notice of Proposed Rulemaking

Notice is hereby given that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposes to add a new Subpart G, entitled "Hospital Review," to Part 101 of Title 42, Code of Federal Regulations.

I. PURPOSE OF REGULATIONS

The purpose of the present proposal is to implement sections 1155 and 1156 of the Social Security Act (42 U.S.C. 1320c-4 and 1320c-5). These sections deal with the duties and functions of Professional Standards Review Organizations (PSROs) with respect to the review of health care services and items for which payment may be made under the Social Security Act. Such review will determine if services are or were medically necessary, meet professionally recognized standards of quality, and, where proposed to be provided on an inpatient basis, could, consistent with the provision of appropriate medical care, be effectively provided on an outpatient basis or more economically in an inpatient health care facility of a different type. This proposal sets forth procedures for a review system designed to fulfill the purposes of the hospital review described above. The Secretary will consider alternative approaches to portions of this review system provided they are or have the potential to be as effective and efficient as the corresponding portions of the proposed regulations for conducting hospital review.

II. HISTORY AND STATUTORY BASIS

At present, utilization review activities are required under Titles XVIII, XIX and V of the Social Security Act. Regulations have been proposed to implement these statutory requirements (see 41 FEDERAL REGISTER 13453, March 30, 1976). Title XI, Part B of the Act provides for the establishment of new organizations, the PSROs, and a new system for the review of the medical necessity and appropriateness of services under Titles XVIII and XIX.

The proposed hospital review regulations are based on procedures and requirements which were initially published and distributed by the Secretary as interim guidelines in the PSRO Program Manual of March 1974. The system of review of the medical necessity, quality and appropriateness of health care services proposed in these regulations builds upon the experiences of hospitals, foundations for medical care and Experimental Medical Care Review Organizations (EMCROs) in designing and testing systems for similar types of review.

Under section 1155(a)(1) of the Social Security Act and these proposed PSRO hospital review regulations, the locus of responsibility for health care review determinations is shifted from individual hospitals and third-party payors to local physician organizations, the PSROs, which will assume responsibility for performance of their duties and functions on a gradually increasing basis. Responsibility for any review functions which have not been assumed by a PSRO will remain with those agencies or institutions presently having such responsibility under Titles XVIII and XIX.

III. RELATION TO TITLES XVIII AND XIX

Appropriate regulations under this Part will provide that, to the extent authority for making determinations of medical necessity is vested in the PSROs, it will not be exercised by intermediaries, carriers, State agencies, or other fiscal agents with respect to the provision of items and services subject to review by a PSRO under Part B of Title XI of the Social Security Act. Rather, such organizations will incorporate PSRO determinations of medical necessity into their determinations of coverage and reimbursement under Titles XVIII and XIX of the Social Security Act, as appropriate. On the other hand, it is not the responsibility of PSROs to set national coverage policy in terms of what services are excluded from payment under section 1862 of the Act, and for that reason the Title XVIII coverage exclusion guidelines (Medicare Part A Intermediary Manual, Chapter II Appendices) will remain in effect. In addition, fiscal intermediaries may, in their application of coverage regulations and guidelines, request PSROs to make retrospective determinations of the medical necessity of specific services delivered during both approved and non-approved hospital stays. PSROs should, therefore, be aware of national coverage policies when they make determinations of medical necessity. In brief, it is the PSRO's responsibility to use professional judgment to decide what is medically necessary, and the intermediary's responsibility to apply payment guidelines.

IV. RELATION TO HOSPITALS

In order to obtain reimbursement under Titles XVIII and XIX, hospitals will be expected to cooperate with the PSRO in fulfilling its review responsibilities. PSROs will, however, through the delegation process outlined in Subpart H of this Part, take advantage of the experience hospitals have gained in conducting utilization and other review activities. Hospitals which are found by the appropriate PSRO to be capable of efficiently and effectively conducting the review required by the regulations may continue to do so, as specified more fully in Subpart H of this Part (which is being published in proposed form concurrently with these proposed regulations), although final responsibility for all review activities is assumed by the area-wide PSRO.

V. APPLICATION TO SHORT STAY HOSPITALS

The proposed regulations set out below apply to review of inpatient health care services in short stay hospitals and, in the case of medical care evaluation (MCE) studies, to hospital based outpatient services as well where inclusion is consistent with the objectives of the study. Regulations regarding the review of health care services in long term care institutions and review of ambulatory care services will be proposed in the future.

VI. THE REVIEW SYSTEM

The proposed regulations set forth three major review components in short stay hospitals: 1) concurrent review of the medical necessity and appropriateness of admission to, and continued stay in, a hospital (admission review and continued stay review); 2) MCE studies to assure the quality and improve the nature of the utilization of health care services; and 3) analysis of health care practitioner, institutional, and patient profiles. Concurrent, as well as retrospective, review of services by PSROs is authorized under section 1155(b)(2) of the Social Security Act which expressly provides for review "either before or after, or both before and after, the provision of services." In addition, preadmission review by PSROs is authorized under section 1155(a)(2) of the Social Security Act. These components of the PSRO review system interact to form a comprehensive quality assurance mechanism. Profile analysis, for example, provides a means for judging the effectiveness of a PSRO's or hospital's review program by comparing similar data over time. In addition, by distinguishing between usual practice patterns and those that are consistently aberrant, profile analysis allows the PSRO to modify its admission and continued stay review programs to focus on defined problem situations. The concurrent review component, itself, also frequently identifies potential problems in health care administration and delivery. These can then be topics for more detailed medical care evaluation studies to further define the problem and develop means for its solution.

The accumulation of data through concurrent review, medical care evaluation studies, and profile analysis will enable PSROs to identify areas of practice (e.g., diagnoses, conditions, therapies, and procedures) that demonstrate consistently good performance. On the basis of such adequate data, PSROs are encouraged to focus concurrent review activities to concentrate on problem areas. Such focusing of concurrent review, together with monitoring of other areas, is likely to be the key to PSRO efficiency and effectiveness. Through focusing, PSROs will be able to devote their review resources to priority areas while simultaneously monitoring the effectiveness of the entire system. It should be recognized, however, that focusing of review can occur only if a PSRO has sufficient review capability and data, collected on either a concurrent or retrospective basis, to make the distinction between problem areas and areas of appropriate practice. Until such time as capability and a sufficient data base are established automatic certification of admission of patients in specific categories should not occur. When, however,

the PSRO has established review capability and sufficient data, focusing of review on problem areas and automatic certification of consistently appropriate admissions are encouraged. The Department will develop, within one year, guidelines for the focusing of review activities.

A. APPROACH TO CONCURRENT REVIEW

All Title XVIII, XIX and V patients will be identified by PSRO reviewers at the time of admission. Depending upon the stage of development of the PSRO's review system, one of two approaches will be taken. Where routine concurrent review procedures are to be used, admissions will be subject to screening review using explicit written criteria to determine those cases in which the medical necessity for hospitalization is evident without further review by peer practitioners. For those cases in which this screening process does not clearly establish the need for hospitalization, the determination of the medical necessity and appropriateness of hospital care is made by a peer of the professional ordering hospital admission. Similarly, in cases requiring continued stay review, the need for continued stay in the hospital is periodically assessed using a similar screening and peer review process.

In addition, as noted above, the PSRO will identify situations in which the medical necessity and appropriateness of admission and, in some instances, continued stay, can be automatically certified. In the former instance (automatic admission certification), a length of stay will be assigned to each admission in this category. In the latter instance (automatic certification of the hospitalization), no admission or continued stay review will be conducted. In these, as in all cases, the data necessary to fulfill PSRO reporting requirements and develop profiles will be collected. Further, it should be emphasized that in the case of automatic admission certification and in the more rare case of automatic certification of the hospitalization, the PSRO must have developed sufficient review capability and data base to justify these abbreviated procedures.

Only where it is clear that hospital care is not necessary will the PSRO make an adverse determination. Payment for further hospital care can be denied only if an adverse determination is made by a peer health professional. In any instance where there is reasonable doubt as to the necessity of care at the hospital level, the admission or continued stay should be approved. In this manner the interests of patients in receiving needed health care services are protected, and the judgment of the attending physician or nonphysician health care practitioner with attending privileges is fully considered.

When admission review is conducted, it should generally be initiated as soon as possible following admission and must be completed within three working days of such admission. The Secretary believes that review of the necessity and appropriateness of admission concurrent with admission affords reviewers the best opportunity to consider the unique characteristics of each patient. The ready availability of the medical record and the patient's attending physician will allow review decisions to be based upon the most accurate available information. In order best to judge the necessity and appropriateness of an admission, reviewers should complete their assessment as close to the point of admission as possible, in most cases within one or two days. Thus, the three day allowance should not be interpreted as a guideline for timing of review, but as an upper limit for completion.

It should be clearly understood that a reviewer's decision concerning the necessity and appropriateness of hospital care is based on the types of diagnostic and therapeutic health care services needed by a patient. A diagnosis need not have been established nor must a workup be completed within the three working day timeframe. Approval would be given unless there was no clear reason for continuing a diagnostic workup at the hospital level. This, coupled with the fact that PSROs will, with time, limit their admission review by focusing on problem areas, makes the three working day limit for the vast majority of cases an appropriate balance between the need to review the necessity of admission shortly thereafter and considerations of administrative efficiency.

These regulations also require the review, within three working days of admission, of elective surgical and other major elective diagnostic and therapeutic procedures. Where there is evidence of medically unnecessary or inappropriate utilization of such procedures, developed for example through medical care evaluation studies, profile analysis, or concurrent review, procedure review must take place prior to the performance of the procedure. Where the PSRO has a reasonable belief that utilization is medically unnecessary or inappropriate, review should take place prior to the performance of the procedure. These requirements are intended to assure that patients are afforded the benefits of PSRO screening review, and where necessary, peer review prior to undergoing elective surgical or other elective procedures with the attendant risks of anesthesia, iatrogenic illness, and post-surgical complications. By conducting review prior to the performance of the procedure in the case of known problem areas, the risks of an unnecessary procedure may be avoided and limited program resources will not be wasted.

It is recognized that in some cases (e.g., those scheduled for surgery immediately after admission or the morning after a weekend admission), review prior to the procedure might result in postponement of the provision of services and increased lengths-of-stay solely to enable the PSRO to complete the required review. Since such a result is clearly not the intent of these regulations, where length-of-stay may be increased only because of review, the PSRO should make every reasonable effort to complete review without delaying the procedure, as, for example, by performing review prior to admission.

Explicit written norms, criteria, and standards, adopted by the PSRO in accordance with requirements set forth in instructions and in Subpart I of this Part (which is being published in proposed form concurrently with these proposed regulations) will be utilized in these review activities.

B. MEDICAL CARE EVALUATION (MCE) STUDIES

MCE studies are an exceedingly important component of the PSRO review system. They afford PSROs and hospitals the opportunity to examine well defined areas of practice to identify problems in the quality or administration of health services as well as to document that high quality care is being delivered. These regulations outline a generic approach for conducting MCE studies. This approach—which is well rooted in the past experience of hospital medical audit committees—includes the steps necessary to identify problems (if any), attempt their correction and determine if the corrective action has succeeded.

Additionally, these regulations contain requirements for a minimum number of MCE studies which varies depending upon the number of admissions to the hospital. By requiring more studies in hospitals with more admissions, the benefits of MCE studies can be more uniformly distributed across patients and practitioners.

A principal characteristic of all MCE studies and a requirement of these regulations, is that those practitioners whose delivery of care is to be assessed are involved in the design of the study and in the development of the criteria and standards to be used. This approach helps to assure that the results of the study are more credible and aids in assuring smooth implementation of any necessary corrective action. Also, many groups have found that involvement in the design and conduct of MCE studies, especially the development of criteria and standards, is educational. The interaction of the discussants helps to define acceptable alternative approaches to a clinical problem, highlights the degree to which there is scientific basis for certain practices and increases the awareness of some participants of the need to modify their practice habits.

Over recent years it has also become increasingly apparent that continuing medical education should be linked more closely to the results of the review of health care quality. MCE studies constitute the important first step in this linkage by providing clear definition of the causes of problems in the quality of health care.

Finally, it is important to recognize that MCE studies do not constitute clinical research in the usual investigative sense. Their purpose is to evaluate current local clinical or administrative practices to determine if they match local expectations as defined by criteria. In an MCE study, criteria and standards are to be based on the medical literature (including the results of clinical re-

search) and on the experience of local practitioners.

C. PROFILE ANALYSES

These regulations also provide for data collection, analysis, and development in the form of profiles. Section 155(a)(4) of the Act requires that profiles for patients, physicians, and providers be maintained and reviewed by PSROs. These data sets will compare institutional and physician practice patterns and evaluate these patterns over time. The evaluations will show areas of care on which the PSROs may focus review in order most effectively and efficiently to fulfill their purpose of assuring quality. Problem areas may then be more intensively reviewed by concurrent review mechanisms or MCE studies. Profile analysis also promotes efficiency on a wider scale when PSROs use comparative data in carrying out their responsibilities of assuring appropriate review activities in delegated hospitals. In evaluation of the data from multiple PSROs, ultimately the effects of the entire review system may be analyzed. Thus profile analysis will serve to continuously define problem areas, document quality care, and serve as an overall monitoring system of PSRO review.

VII. ALTERNATIVE PLANS

The Secretary actively encourages PSROs to submit review plans which propose innovative approaches to meet the objectives of concurrent review. Such proposals will be accepted by the Secretary, if they are consistent with the provisions of Title XI, Part B of the Act and if they have been shown to be or have the potential to be equally or more efficient and effective than the concurrent review procedures described in this regulation. If the Secretary approves alternate methods of review, the PSRO directly, or a hospital performing review for the PSRO, may utilize such procedures in lieu of concurrent review. Procedures with potential, but not of proven effectiveness, will be approved in the early stages of the program by the Secretary for implementation in only a limited number of PSRO areas. Those which demonstrate effectiveness can later be more broadly implemented across the PSRO program. Profile analysis must be a part of each PSRO's review system under section 1155(a)(4) of the Social Security Act. MCE studies, because they represent a mechanism to provide an in-depth analysis of the quality and utilization of services and because there is a broad range of acceptable methods for their conduct, must also be included in each PSRO's review system.

VIII. OBJECTIVES AND IMPACT

PSROs are empowered to review the care provided to Medicare, Medicaid, and Title V patients and to determine if (1) the care provided is medically necessary, (2) the quality of care meets professionally accepted standards and (3) the care is to be or was provided in the most economical setting consistent with the health care needs of the patient. Experience from similar past efforts indicated that, at least for the first year or two, PSROs will decrease the number and possibly the length of hospital admissions. This should result in cost savings which may or may not be separately identifiable as they are mixed with the multitude of other factors which influence the level of health expenditures.

After this initial impact, the net effect of PSRO review on expenditures is less predictable. This is particularly true when it is realized that the emphasis of PSRO review will probably change with time. Currently PSROs focus considerable attention to the necessity for hospitalization, but emphasis may gradually shift as review and analysis identify new needs and problem areas.

Medical care evaluation studies, by their general educational effects as well as specific recommendations, are likely to lead to improvement in the quality of care, but effects on expenditures are less predictable.

Therefore, PSROs and all other health care review mechanisms with which we are familiar, have limited, albeit important, responsibilities and effects. In fulfilling these responsibilities, health professionals will broadly assess the quality of care provided by their peers. They will specifically assess the medical necessity of care, the degree to which the health care process and its outcomes comply with local standards, and the appropriateness of the setting. Thus, PSRO review will directly address the quality of patient care. The impact such review will have on health care expenditures is unpredictable but the overall effect of PSROs, under the proposed procedures, is expected to improve the utilization, cost and quality of health care provided under Medicare and Medicaid.

The new regulations policies of the Department issued July 25, 1976, require that this Notice of Proposed Rulemaking (NPRM) have an implementation plan prepared prior to its issuance. In compliance with these requirements, an implementation plan was forwarded to the Secretary, and he has authorized the issuance of this NPRM without the use of a Notice of Intent (NOI) which would otherwise be required by the new policies because:

1. There is an urgent requirement for these regulations.

2. Over an extended period of time there has been significant interaction between the Department and organizations and individuals in the development of this NPRM which has satisfied the spirit and intent of the NOI. Specifications for this NPRM were reviewed by the National Professional Standards Review Council at public meetings and available for public comment at least twice. Draft transmittals presenting policies incorporated in this NPRM have been presented to the National Council, and circulated to all planning and conditional PSROs, and PSRO Support Centers and professional organizations, as well as other organizations that routinely receive PSRO information. In addition, requests by outside organizations for information contained in this NPRM have been fulfilled.

Interested persons are invited to submit written comments, suggestions or objections concerning the proposed regulations to the Director, Bureau of Quality Assurance, Health Services Administration, Room 16A55, 5600 Fishers Lane, Rockville, Maryland 20857, on or before March 28, 1977. All comments received in timely response to this Notice will be considered and will be available for public inspection in the above named office during regular business hours.

It is proposed to make this regulation effective upon republication in the FEDERAL REGISTER.

NOTE.—The Department of Health, Education, and Welfare 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: November 22, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 11, 1977.

MARJORIE LYNCH,
Acting Secretary.

PART 101—PROFESSIONAL STANDARDS REVIEW

It is proposed to issue a new Subpart G of Part 101 of Title 42 as set out below.

Subpart G—Hospital Review

Sec.
101.701 Applicability.
101.702 Definitions.
101.703 Concurrent review.
101.704 Preadmission review.
101.705 Modifications of review activities.
101.706 Physician certification.
101.707 Notice of adverse initial determinations.
101.708 Informing discharge planners.
101.709 Alternate review methods.
101.710 Medical care evaluation studies.
101.711 Profile analysis.
101.712 Involvement of nonphysician health care practitioners.
101.713 Reviewer qualifications.
101.714 Examination of the operation and records of hospitals.
101.715 Refusal of hospital to allow PSRO entry and performance of review.
101.716 Reports to the Secretary.

AUTHORITY: (Sec. 1155 and 1156 of the Social Security Act, sec. 249F(b) of Pub. L. 92-603, 86 Stat. 1433-143 (42 U.S.C. 1320c-4 and 1320c-5), sec. 1102 of the Social Security Act, 49 Stat. 647, as amended (42 U.S.C. 1302).)

Subpart G—Hospital Review

§ 101.701 Applicability.

The provisions of this Subpart are applicable to the exercise by PSROs of their duties and functions under sections 1155 and 1156 of the Social Security Act (42 U.S.C. 1320-c4 and 1320-c5). Unless otherwise indicated, the provisions of this Subpart relating to duties and functions of PSROs shall also apply to hospital review committees performing delegated PSRO review functions pursuant to Subpart H of this Part and section 1155 (e) of the Act.

Section 1155(a)(1) of the Social Security Act (42 U.S.C.-c4), which states the general review responsibility of PSROs, provides that notwithstanding any other provisions of law, but consistent with the

provisions of Part B of Title XI of the Social Security Act, it shall be the duty and function of each PSRO to assume for its geographic area, at the earliest date practicable, responsibility for the review of the professional activities in such area of physicians and other health care practitioners and institutional and non-institutional providers of health care services in the provision of health care services and items for which payment may be made (in whole or in part) under the Social Security Act for the purpose of determining whether:

(a) such services and items are or were medically necessary;

(b) the quality of such services meets professionally recognized standards of health care; and

(c) in case such services and items are or were proposed to be provided in a hospital on an inpatient basis, such services and items could, consistent with the provision of appropriate meidcal care, be effectively provided on an outpatient basis or more economically in an inpatient health care facility of a different type.

§ 101.702 Definitions.

As used in this Subpart: (a) "Act" means the Social Security Act, as amended (42 U.S.C. Chap. 7).

(b) "Active staff privileges in a hospital" means that a physician or nonphysician health care practitioner is authorized on a regular, rather than infrequent or courtesy, basis: (1) to order the admission of patients to a hospital; (2) to perform diagnostic services in a hospital; or (3) to care for and treat patients in a hospital.

(c) "Admission review" means a review and an initial determination by a PSRO of the medical necessity and appropriateness of the patient's admission to a hospital level of care.

(d) "Assigned length-of-stay" means the number of days from admission at which the determination of the medical necessity of continued hospital stay would ordinarily be made by the PSRO.

(e) "Certified length-of-stay" means a period of time which a PSRO approves as a medically necessary and appropriate period for a patient to receive inpatient care in a hospital.

(f) "Concurrent review" means admission review and continued stay review.

(g) "Continued stay review" means a review and an initial determination by a PSRO, during a patient's hospitalization, of the medical necessity and appropriateness of continuation of the patient's stay at a hospital level of care.

(h) "Criteria" means predetermined elements of health care, developed by health professionals relying on professional expertise, prior experience and the professional literature, with which aspects of the quality, medical necessity, and appropriateness of a health care service may be compared.

(i) "Elective," when applied to a health care service, means a service that can be delayed without substantial risk to the patient and is not necessary immediately to prevent imminent death or serious impairment of the health of the individual.

(j) "Health care service" means an inpatient service or item for which payment may be made (in whole or in part) under the Act.

(k) "Hospital" means a health care institution or distinct part of a health care institution providing health care services in the PSRO area, as defined in section 1861(e)–(g) of the Act, except that the institution shall not be a Christian Science sanatorium operated, or listed and certified by the First Church of Christ, Scientist, Boston, Massachusetts.

(l) "Initial determination" means a review determination by a PSRO, or by a hospital review committee acting as a delegate of the PSRO under section 1155(e) of the Act, regarding the medical necessity or quality of health care services provided to a patient or the appropriateness of the level of care at which the services are delivered.

(m) "Length-of-stay projection" means a criterion which defines the expected point in time at which patients of similar age and diagnosis or condition would be expected to be ready for discharge. This projection is established by the PSRO based upon an analysis of regional norms and, where available, PSRO area norms for lengths-of-stay.

(n) "Major clinical area" means medicine, surgery, pediatrics, obstetrics and gynecology, or psychiatry.

(o) "Major diagnostic or therapeutic procedure" means a procedure which involves a surgical or anesthetic risk or requires highly trained personnel or requires highly trained personnel or special facilities or equipment.

(p) "Medical care evaluation study" means a process, usually performed retrospectively, in which an in-depth assessment of the quality and/or the nature of the utilization of health care services is conducted, corrective action is taken, where indicated, and a subsequent analysis is made of the impact of the corrective action.

(q) "Nonphysician health care practitioners" means those health professionals who do not hold a Doctor of Medicine or Doctor of Osteopathy degree, meet all applicable State or Federal requirements for practice of their profession, and are actively involved in the delivery of direct patient care or health care services.

(r) "Norms" mean numerical or statistical measures of usual observed performance of health care services.

(s) "Physician" means a doctor of medicine or osteopathy or another individual who is authorized under State or Federal law to practice medicine and surgery, or osteopathy.

(t) "Preadmission review" means a review and an initial determination by a PSRO, prior to a patient's admission to a hospital, of the medical necessity and appropriateness of the patient's elective admission to a hospital level of care.

(u) "Profile" means aggregated data in formats which display patterns of health care services over a defined period of time.

(v) "Profile analysis" means review and analysis of profiles to identify and consider patterns of health care services.

(w) "PSRO" means a Professional Standards Review Organization which is conditionally or unconditionally designated.

(x) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(y) "Standards" mean professionally developed expressions of the range of acceptable variation from a norm or criterion.

(z) "Working day" means any one of at least five days of each week (excluding, at the option of each PSRO, legal holidays), in which the necessary personnel are available to perform review in the hospital.

§ 101.703 Concurrent review.

(a) *Admission review.* (1) *Requirement for Review:* (i) Until the PSRO is able to modify its review activities in accordance with § 101.705, each PSRO shall assess the medical necessity and appropriateness of each admission to a hospital of a patient entitled to benefits under the Act. Such assessment shall be accomplished as prescribed in subparagraph (a)(1)(ii) below or as specified in § 101.704.

(ii) The assessment shall consist of screening review and, where necessary, peer review. Screening review shall be conducted by an appropriately trained nonphysician representative of the PSRO or by a physician or an appropriate nonphysician health care practitioner representative of the PSRO using PSRO criteria and standards developed pursuant to Subpart I of this Part to screen cases in order to select those cases requiring peer review.

(iii) Where as a result of the assessment the PSRO determines that such services are medically necessary and appropriately provided at a hospital level of care it shall so certify the admission.

(iv) Where as a result of peer review the PSRO determines that such services are not medically necessary or not appropriately provided at a hospital level of care it shall render and provide notice of an adverse initial determination regarding the patient's admission. Notice of such adverse initial determination shall be provided as prescribed in § 101.707.

(v) In the case of Medicare beneficiaries, PSRO determinations regarding the appropriateness of a particular level of care shall be made in accordance with the level of care definitions in sections 1814 and 1861 of the Act, 20 CFR 405.116, 405.126–405.128 as amended, and related guidelines of the Secretary.

(vi) Admission review shall be completed within three working days of the admission, including certification as described in (a)(1)(iii) or the provision of adverse notice as described in (a)(1)(iv).

(vii) Where the purpose of admission is for the performance of elective sur-

gery or other elective major diagnostic or therapeutic procedure, review to determine the medical necessity of the surgery or other such procedure shall be completed within three working days of the admission. Where documentation is developed by the PSRO that indicates medically unnecessary or inappropriate utilization of a procedure, review of the medical necessity of that procedure must be completed prior to the procedure. Where a PSRO has a reasonable belief that a procedure is inappropriately utilized, review shall be completed prior to the procedure.

(2) *Initial assigned length-of-stay:* When an admission is certified in accordance with subparagraph (1) of this paragraph, the PSRO shall assign an initial length-of-stay using: (i) Relevant length-of-stay projections developed by the PSRO pursuant to Subpart I of this Part, for groups of patients with the same condition (and modified, as necessary, to reflect the clinical situation of the individual patient who is the subject of the admission review) to indicate the expected point in time that the patient will no longer require a hospital level of care, or;

(ii) Length-of-stay norms, where appropriate, for diagnoses or conditions for which the PSRO has not yet developed length-of-stay projections. In such cases, the initial assigned length-of-stay shall usually be based on the 50th percentile of lengths-of-stay for patients of a similar age and condition. The PSRO may use its own length-of-stay norms if this is justified in accord with § 101.907 of this Part after analysis of corresponding regional norms, or;

(iii) In cases where the diagnosis is unclear at the time of admission, or where length-of-stay projections and norms are unavailable, a reasonable length-of-stay assigned in accordance with the nature of the patient's medical problem and the projected time when the patient's condition will be more fully clarified, or;

(iv) In the case of a PSRO conducting concurrent quality assurance, the expected point in time that a critical procedure or outcome may be expected to occur, as determined by the PSRO.

(3) *Attending physician opportunity to discuss:* If the PSRO has reason to believe that an admission will not be certified it shall promptly notify the patient's attending physician or nonphysician health care practitioner attending the patient and afford him an opportunity, within the period prescribed in subparagraph (a)(1)(vi) of this section, to discuss the matter with the PSRO and explain the nature of the patient's needs for hospital services including all factors which, in his opinion, preclude treatment of the patient as an outpatient or at an alternative inpatient level of care.

(b) *Continued stay review.* (1) *Requirement for review:* (i) Where a patient whose admission has been certified by the PSRO remains in the hospital, the PSRO shall, except as specified in § 101.705, assess the medical necessity and appropriateness for continued hospitalization of such patient. The assessment, consisting of screening review and, where necessary, peer review shall be initiated prior to the last day assigned under the initial assigned length-of-stay and completed by the expiration of the initial assigned length-of-stay period. Screening review shall be conducted by an appropriately trained nonphysician representative or by a physician or an appropriate nonphysician health care practitioner representative of the PSRO using PSRO criteria and standards developed pursuant to Subpart I of this Part to screen cases in order to select those cases requiring peer review.

(ii) Where the PSRO determines that such services are medically necessary and appropriately provided at a hospital level of care, it shall assign a continued length-of-stay by the end of the previously assigned length-of-stay period.

(iii) Where the PSRO determines that such services are not medically necessary or not appropriately provided at a hospital level of care, it shall render and provide notice of an adverse initial determination regarding the patient's continued stay by the last day of the initial assigned length-of-stay period. Notice of such adverse initial determination shall be provided as prescribed in § 101.707.

(iv) In the case of Medicare beneficiaries, PSRO determinations regarding the appropriateness of a particular level of care shall be made in accordance with the level of care definitions in sections 1814 and 1861 of the Act, 20 CFR 405.116, 405.126–405.128 as amended, and pertinent guidelines of the Secretary.

(2) *Duration of continued length-of-stay.* Where the PSRO has determined that a continued length-of-stay shall be assigned, the PSRO shall determine the duration of the continued length-of-stay based upon the expected point in time that the individual patient will no longer require a hospital level of care.

(3) Attending physician opportunity to discuss. If the PSRO has reason to believe that it will not assign a continued length-of-stay, it shall so notify the patient's attending physician or nonphysician health care practitioner attending the patient in accordance with the procedures specified in subparagraph (a)(3) of this section and within the period prescribed in subparagraph (b)(1)(i) of this section.

(4) *Additional continued stay review.* Before the expiration of the continued length-of-stay, each case shall be reviewed again in the manner prescribed in subparagraphs (b)(1) through (b)(3) above, with such reviews being repeated as long as the continued stay is further certified by the PSRO.

(c) *Approval of services incident to hospitalization.* PSRO certification of a patient's admission or continued stay shall (in the absence of specific PSRO review and disapproval of a particular health care service rendered, or proposed to be rendered, during the length of stay certified for such patient) constitute approval of all health care services rendered, or proposed to be rendered, during such certified length of stay. Except as provided under sections 1158 and 1159 of the Act (and in the absence of specific PSRO review and approval of a particular health care service rendered, or proposed to be rendered, during the patient's hospital stay), a PSRO adverse determination of a patient's admission or continued stay shall constitute disapproval of all health care services rendered, or proposed to be rendered, during such patient's hospital stay. Nothing in this section shall be construed as precluding a Medicare fiscal agent or Medicaid State agency, in the proper exercise of its duties and functions, from reviewing claims for benefits under Titles XVIII and XIX of the Act or from determining whether they meet the pertinent coverage requirements established under Titles XVIII and XIX and of the implementing regulations for which such agent or agency has responsibility. In addition, nothing in this section shall be construed as precluding a Medicare fiscal agent or Medicaid State agency from requesting of the PSRO a retrospective determination regarding the medical necessity and appropriateness of specific health care services in the application of coverage requirements and regulations.

(d) *Review in case of delayed identification of eligibility.* In cases of patients whose eligibility for benefits is identified at some point after admission, review of the medical necessity for admission and continued stay shall be conducted as soon as practicable after identification.

§ 101.704 Preadmission review.

(a) *Routine preadmission review.* (1) Each PSRO is authorized to assess the medical necessity and appropriateness, prior to admission, of any health care service which is to be provided to a patient on an elective basis in the hospital. Such assessment shall consist of screening review and, where necessary, peer review. Screening review shall be conducted by an appropriately trained nonphysician representative of the PSRO or by a physician or an appropriate nonphysician health care practitioned representative of the PSRO using PSRO criteria and standards developed pursuant to Subpart I of this Part to screen cases in order to select those cases requiring peer review.

(2) In the case of Medicare beneficiaries, PSRO determinations regarding the appropriateness of a particular level of care shall be made in accordance with the level of care definitions in sections 1814 and 1861 of the Act, 20 CFR 405.116, 405.126–405.128 as amended, and related guidelines of the Secretary.

(b) *Voluntary preadmission review.* Any attending physician proposing to provide to a patient health care services which are subject to the review of the PSRO may, if such services are to be provided on an elective basis, request that the PSRO perform preadmission review in accordance with paragraph (a) of this section. The PSRO shall comply with such request whenever it is feasible.

(c) *Publication.* Prior to exercise of the authority provided under paragraph

(a) of this section, the PSRO shall publish a list of the types and kinds of health care services, by type of diagnosis or problem, or in terms of other relevant information relating to the provision of health care services, which will be subject to preadmission review on a routine basis. Such list shall be revised by the PSRO from time to time as appropriate. A copy of such list, and any subsequent revisions thereof, shall be published in a medical publication of general circulation in the area, and copies provided to the chief of each hospital medical staff for distribution within the hospital. A current copy of such list shall be available for inspection in the PSRO office during regular business hours.

(d) *Additional review procedures.* (1) Where a PSRO determines to certify an admission pursuant to this section, it shall follow those appropriate procedures prescribed for length-of-stay assignment under § 101.703(a)(2), for continued stay review under § 101.703(b) and for approval of services incident to hospitalization under § 101.703(c).

(2) Where a PSRO has reason to believe that the admission will not be certified, it shall follow the discussion procedures specified in § 101.703(a)(3).

(e) *Adverse initial determinations.* Where the PSRO determines that such services are not medically necessary or not appropriately provided at a hospital level of care, it shall promptly render and provide notice of an adverse initial determination. Notice of such adverse initial determination shall be provided as prescribed in § 101.707.

§ 101.705 Modifications of review activities.

(a) Each PSRO, when it has developed the review capability and data base necessary to do so, shall modify the review activities prescribed in § 101.703 and § 101.704 in order to concentrate review efforts in areas where improvement in health care services is needed. Where appropriate, such review activities shall be modified to provide for:

(1) the identification of diagnoses, conditions, elective surgical and other major elective diagnostic and therapeutic procedures, and major clinical areas which shall be automatically certified for admission to the hospital level of care. In such cases a length-of-stay shall be assigned as provided for in § 101.703(a)(2) and continued stay review performed as prescribed in § 101.703(b). The PSRO shall use normative data and prior experience in review, such as concurrent review, the results of medical care evaluation studies or profile analysis, in order to select:

(i) diagnoses and conditions where data are available to demonstrate that the criteria for the presence of the diagnosis or condition are always met;

(ii) elective surgical and other procedures where data is available to demonstrate that such procedures are consistently medically necessary and are performed on a consistently appropriate basis in a particular hospital; and

(iii) major clinical areas where data is available to demonstrate that admissions in such areas are consistently medically necessary and appropriate in a particular hospital.

(2) the identification of diagnoses, conditions, elective surgical and other major elective diagnostic and therapeutic procedures, and major clinical areas of a hospital which shall not be subject to concurrent review and for which the entire hospitalization shall be automatically certified. Such identification shall be based on:

(i) data which demonstrate that admissions and continued stays associated with such diagnoses, conditions, and major clinical areas are consistently medically necessary and appropriate at the hospital level of care; and

(ii) data which demonstrate that elective surgical or other elective procedures are appropriately performed on a consistent basis in a particular hospital, and consistently account for medically necessary and appropriate continued stays following such procedures.

(b) The PSRO shall, through the performance of medical care evaluation studies performed pursuant to §101.710 and profile analysis performed pursuant to § 101.711, assure that admissions and hospitalizations automatically certified as prescribed in paragraph (a) above continue to represent consistently appropriate utilization of health care services provided in hospitals.

(c) Hospitals performing review for the PSRO pursuant to Subpart H of this Part shall modify their review activities as prescribed in paragraphs (a) and (b) above, but only when approved by the PSRO.

§ 101.706 Physician certification.

(a) Each PSRO shall specify the points in time when the attending physician or nonphysician health care practitioner attending the patient will certify the medical necessity for the patient's continued stay in the hospital. The first such certification shall usually be no later than the 50th percentile of lengths-of-stay norms for patients in similar age groups with similar diagnoses. Subsequent certification dates should be established by the PSRO at intervals appropriate to allow the PSRO to evaluate the patient's need for further health care at the hospital level.

(b) Each PSRO shall specify the information which it requires to be included in the medical record, including progress notes and orders, in order to enable the PSRO to evaluate the patient's need for further health care at the hospital level. If a PSRO so specifies, signed and dated continuing progress notes and orders by the attending physician or nonphysician health care practitioner attending the patient which justify the medical necessity for further health care in the hospital (including inpatient diagnostic study and therapeutic services) will suffice to satisfy the physician certification requirement. Alternatively, the PSRO may require a form of physician certification separate from the medical record.

(c) Each PSRO shall develop a mechanism for informing all physicians and nonphysician health care practitioners accorded active staff privileges in hospitals and engaged in professional activities in the PSRO area of the applicable physician certification requirements and shall be responsible for assuring that the certification requirements are being followed. Each PSRO shall also inform all such physician and appropriate nonphysician practitioners of their obligation not to provide unnecessary health care services and of the sanctions under section 1160 of the Social Security Act. Each PSRO shall maintain, at its principal business office, a copy of its physician certification requirements and its procedures for informing physicians and appropriate nonphysician practitioners of their requirements. Each PSRO shall forward its physician certification requirements to the Secretary within 90 days from the effective date of these regulations.

§ 101.707 Notice of adverse initial determinations.

(a) A notice of an adverse initial determination under § 101.703(a)(1), § 101.703(b)(1), § 101.703(c), or § 101.704(e), shall:

(1) Be provided to the patient (and, where appropriate, the patient's next of kin or sponsor), the attending physician, or nonphysician health care practitioner attending the patient, and the authorized representative of the hospital;

(2) Be delivered to each such person in the hospital if the person to be notified is in the hospital where the services are being, or proposed to be, provided, or mailed if the person to be notified is not in such hospital; and

(3) Be provided in writing, although oral notice may suffice if confirmed in writing within two days of delivering the oral notice; and

(4) Contain the following information:

(i) The reason for the determination;

(ii) The date after which the patient's stay in the hospital will not be approved as being medically necessary or appropriate at an in-patient hospital level of care;

(iii) A statement informing the parties and their representatives of their rights to:

(A) A reconsideration of the determination in accord with applicable regulations of this Part if they are dissatisfied with the determination, even if the patient leaves the hospital prior to filing a request for reconsideration or prior to its completion; and

(B) Submit additional documentary information and to make an oral presentation at the reconsideration;

(iv) The various locations for filing a reconsideration request and the applicable time period within which such a request must be filed, as prescribed under applicable regulations of this Part and guidelines published by the Secretary; and

(v) A brief jurisdictional statement concerning the authority of the PSRO and its responsibility for review under the Act.

(b) Notice of an adverse initial determination under § 101.703(a)(1), § 101.703(b)(1), § 101.703(c), or § 101.704(e), shall be provided promptly to: the Medicaid State agency or its designee, in the case of a Medicaid patient; the Medicare intermediary, in the case of a Medicare patient; or the affected State Title V agency, in the case of a Title V patient.

(c) Notice of an adverse initial determination shall be given to the patient (and, where appropriate, the patient's next of kin or sponsor), the attending physician or nonphysician health care practitioner attending the patient, and the authorized representative of the hospital according to the time frame specified below:

(1) Within 3 working days of the admission, under § 101.703(a)(1), or

(2) Prior to the procedure in the case of pre-procedure review under § 101.703(a)(1)(vi), or

(3) By the last day of the approved length-of-stay period under § 101.703(b)(1), or

(4) Prior to the admission under § 101.704.

(d) In the case of a Title V claim, the notice under paragraph (a) above shall explain that the PSRO determination is not conclusive for payment purposes under section 1158 of the Act, and that Title V recipients and providers have no right to reconsideration of such a PSRO determination under section 1159 of the Act.

§ 101.708 Informing discharge planners.

Where a PSRO becomes aware, in the course of review, that a patient or patients may require extended post-hospital care or institutional placement, the PSRO shall promptly inform the attending physician or nonphysician health care practitioner attending the patient and those in the hospital responsible for assisting the attending physician in discharge planning.

§ 101.709 Alternate review methods.

(a) Alternate methods for conducting the requirements set forth in § 101.703 through § 101.705, may be utilized by PSROs if a written plan explaining such methods is approved by the Secretary. The Secretary may approve such alternate review methods which he determines to be consistent with all provisions of Title XI, Part B, of the Act, and which have been shown to be or have the potential to be equal or more efficient and effective than those provided under § 101.703 through § 101.705 of these regulations. Alternate review methods determined by the Secretary to have such potential will be approved by the Secretary for implementation by only a limited number of PSROs. When the efficiency and effectiveness of an alternate method have been demonstrated to the satisfaction of the Secretary, he may approve its use in other PSRO areas.

(b) Alternate review methods proposed by a PSRO to be utilized for its entire area, or portions of its area, or to be utilized by hospitals conducting review for the PSRO pursuant to Subpart H, shall be submitted as a written plan to the Secretary. The written plan shall specify objectives of the alternate approach to concurrent and preadmission review which are consistent with § 101.701 (a), (b) and (c), and shall describe in detail the methods to be used, including the use of norms, criteria and standards; the applicability of the plan to the PSRO area; and the PSRO's plan to utilize hospital review committees, where appropriate, to conduct review for the PSRO pursuant to Subpart H of this Part.

§ 101.710 Medical care evaluation studies.

(a) *Purpose of medical care evaluation studies.* Each PSRO shall perform medical care evaluation studies for the purpose of: (1) Assuring that health care services are appropriate to the patients' needs and are of appropriate quality;

(2) Assuring that health care organization and administration of hospitals support the timely provision of quality care;

(3) Focusing on patterns of service which may require modification in review efforts as described in § 101.703 through § 101.705;

(4) Identifying changes necessary to improve the quality of care and the effectiveness and efficiency of the utilization of services.

(b) *Requirements.* Each PSRO shall be responsible for performing, at a minimum, the following number of medical care evaluation studies in each hospital in its area: (1) In each hospital with less than 2,500 total admissions per year, the PSRO shall perform four medical care evaluation studies per year.

(2) In each hospital with 2,500 to 4,999 total admissions per year, the PSRO shall perform six medical care evaluation studies per year.

(3) In each hospital with 5,000 to 9,999 total admissions per year, the PSRO shall perform eight medical care evaluation studies per year.

(4) In each hospital with 10,000 to 19,999 total admissions per year, the PSRO shall perform ten medical care evaluation studies per year.

(5) In each hospital with 20,000 and over total admissions per year, the PSRO shall perform twelve medical care evaluation studies per year.

For purposes of this section, a year means a calendar year. For purposes of this section, performance of a medical care evaluation study shall include completion of the study through the initiation of corrective action as described in subparagraph (c)(6) of this section. The PSRO shall be responsible for assuring that, for each year, medical care evaluation studies performed shall include study of the care of patients in all major clinical areas in the PSRO area. Medical care evaluation studies which involve more than one hospital shall be counted towards the number of studies required under this section for each such hospital involved in such study.

(c) *Nature of studies.* Each medical care evaluation study shall: (1) focus upon a known or suspected problem area in organization, delivery or outcome of hospital care;

(2) to be carried out in accord with objectives explicitly stated in, and specifically developed for, the study;

(3) utilize criteria and standards as described in paragraph (d) of this section;

(4) where appropriate, include the use of a sample of patients (including patient records) selected from all patients in the hospital. Such sample may include patients other than those covered under Titles XVIII, XIX and V where such access to use of their records is authorized by the hospital;

(5) result in written recommendations, where indicated, to institutions or organizations which provide continuing professional education activities, or to appropriate individuals and organizations responsible for effecting change in the organization and administration of health care delivery in order to improve the quality of care and promote more effective and efficient utilization of facilities and services;

(6) include a plan for follow-up evaluation by the PSRO where indicated, to determine what changes have occurred as a result of action taken pursuant to subparagraph (c)(5) above; and

(7) include such a follow-up evaluation where indicated. The follow-up evaluation shall be done in a reasonable time, but usually no later than one year following the performance of the initial study. The follow-up evaluation shall be limited to relevant key indicators of performance and shall not be counted as a new medical care evaluation study for purposes of fulfilling the requirements in paragraph (b) of this section.

(d) *Use of criteria and standards.* Criteria and standards shall be adopted by the PSRO in accordance with Subpart I of this Part, which relate to the specific objectives of the medical care evaluation study. The criteria and standards shall be used to define the information necessary to identify the degree of conformance between actual performance and that specified in the criteria. A PSRO which identifies a pattern of performance which does not conform to applicable criteria shall subject those services involved in the pattern to further analysis. The identification of such a pattern shall not necessarily constitute a finding by the PSRO that such services were not medically necessary, not of appropriate quality, or not provided at the appropriate level of care.

(a) *Reports to hospitals.* Each PSRO shall provide the written results, including an analysis of such results, of each medical care evaluation study which is pertinent to the operation of a particular hospital to appropriate members of the hospital medical staff, the chief administrative official of the hospital, and the Chairman of the Board of Trustees (or other governing body) of such hospital, in conformity with procedures for confidentiality as specified in applicable regulations of this Part.

§ 101.711 Profile Analysis.

(a) *Types of profiles.* (1) Each PSRO shall be responsible for the periodic development and analysis, in conformity with procedures or confidentiality as specified in applicable regulations of this Part, of profiles of: (i) Health care services for which payment may be made under the Act provided to patients in hospitals in the PSRO area;

(ii) each health care practitioner providing health care services for which payment may be made under the Act in hospitals in the PSRO area; and

(iii) each hospital in the PSRO area providing health care services for which payment may be made under the Act.

(2) Profiles shall be developed using, at a minimum, appropriate data elements collected by the PSRO, which is required to compile PSRO Federal reports and to complete the PSRO Uniform Hospital Discharge Data Set for each patient reviewed.

(b) *Process of profile analysis.* Depending upon the nature of the profile to be analyzed, the process of analysis shall include: (1) Comparison of patterns of care by similar providers (institutions or practitioners);

(2) Comparison of current patterns with those from a previous time period; and

(3) Identification of exceptional patterns using preestablished norms, criteria and standards as points of reference.

(c) *Purposes of analyses.* The profiles shall be analyzed by the PSRO for the purposes of: (1) Focusing on patterns of service which may require modifications in review efforts as described in § 101.703 through § 101.705;

(2) Identifying possible subjects for medical care evaluation studies;

(3) Self-evaluation of the overall performance of the PSRO;

(4) Evaluation of the comparative performance of providers (institutions or practitioners) in the PSRO area;

(5) Monitoring of review activities delegated to hospitals pursuant to Subpart H of this Part; and

(6) Determining whether the care and services ordered or rendered were consistent with the purposes specified in paragraphs (a), (b), and (c) of § 101.701 and the criteria and standards developed under Subpart I of this Part.

(d) *Provision of profiles to hospitals.* Each PSRO shall provide the profiles which are pertinent to the operations of a particular hospital to appropriate members of the hospital medical staff, the chief administrative official of the hospital and the Chairman of the Board of Trustees (or other governing body) of such hospital.

§ 101.712 Involvement of nonphysician health care practitioners.

(a) Each PSRO shall make arrangements to utilize, to the extent necessary and appropriate for the proper performance of its duties and functions, the services of nonphysician health care practitioners in the various areas of health care (including dentistry), which persons shall, to the maximum extent practicable, be individuals engaged in practice within the PSRO area.

(b) Such arrangements shall provide that: (1) Nonphysician health care practitioners are involved in developing the PSRO criteria and standards, selecting norms to be used, developing review mechanisms for the review of care provided by such practitioners, and in the review of such care.

(2) Nonphysician health care practitioners will work with, and make written recommendations, where indicated, to institutions or organizations which provide continuing professional education or to appropriate individuals and organizations responsible for effecting change in the organization and administration of health care delivery in order to assure that review findings of the nonphysician health care practitioners performing PSRO review assist in improving the quality of care and promoting more effective and efficient utilization of health care facilities and services.

§ 101.713 Reviewer qualifications.

(a) *Staff privileges.* (1) Each physician or nonphysician health care practitioner assigned responsibility for making initial or reconsidered determinations concerning health care services provided in a hospital shall have active staff privileges in at least one of the participating hospitals in the PSRO area.

(2) Physicians and nonphysician health care practitioners who do not have active staff privileges in at least one of the participating hospitals in the PSRO area may participate in medical care evaluation studies, criteria development, profile analysis, concurrent review and preadmission review for hospitals in the PSRO area provided that such physicians and nonphysician health care practitioners shall not make initial or reconsidered determinations.

(3) A physician or nonphysician health care practitioner who has active staff privileges in a hospital in the PSRO area shall not have responsibility for making initial or reconsidered determinations concerning health care services provided in the hospitals in which he has staff privileges unless: (i) The hospital in which the physician or nonphysician health care practitioner has staff privileges is operating under a delegation pursuant to section 1155(e)(1) of the Act and Subpart H of this Part, or

(ii) The PSRO finds that such physicians or nonphysician health care practitioners are needed to perform PSRO review because of a lack of alternate physician or appropriate nonphysician health care practitioner reviewers available to perform review in such hospital, and such finding is approved by the Secretary after the PSRO has notified the Secretary of its intention to use such physicians or appropriate nonphysician health care practitioners, and provided its justification therefor.

(b) *Review of services provided directly or in which reviewer was involved.* A physician or nonphysician health care practitioner shall not be permitted to participate in the review of health care services which he provided directly or in the provision of which he was directly or indirectly involved. For purposes of this paragraph, a physician or nonphysician health care practitioner who was directly or indirectly involved shall be, any physician who has issued treatment orders or provided consultation regarding the services under review or any nonphysician health care practitioner involved in the formulation or execution of the patient's treatment plan.

(c) *Financial interest.* A physician or nonphysician health care practitioner shall not be permitted to participate in the review of health care services provided in or by a hospital, if he or any member of his family has, directly or indirectly, a financial interest in such hospital.

(1) For purposes of this paragraph, a physician's or nonphysician health care practitioner's family includes only his spouse (other than a spouse who is legally separated from him under a decree of divorce or separate maintenance), children (including legally adopted children), grandchildren, parents and grandparents.

(2) For purposes of this paragraph, a financial interest means an ownership interest in such hospital and includes:

(i) Sole ownership of such hospital;

(ii) A partnership interest in such hospital;

(iii) Any direct stock ownership or debt interest which is convertible to stock or which is secured by stock in such hospital; or

(iv) A controlling interest in an organization which holds any ownership interest in such hospital.

(3) For purposes of this paragraph, an employment relationship does not, in itself, constitute a financial interest.

(d) *Physician review by peers.* No PSRO shall utilize the services of any individual who is not a licensed doctor of medicine or osteopathy to make final PSRO determinations with respect to the professional conduct of, or any act performed by, any other licensed doctor of medicine or osteopathy in the exercise of his professional conduct.

(e) *Physician participation.* Each PSRO shall to the maximum extent consistent with the effective and timely performance of its duties and functions: (1) Encourage all physicians practicing in the area served by the PSRO to participate as reviewers in the PSRO's review activities;

(2) Provide rotating physician participation in review activities on an extensive and continuing basis;

(3) Assure that participation in review activities has the broadest representation feasible in terms of the various types of physician practice in the area served by the PSRO; and

(4) Utilize, whenever appropriate, medical periodicals and similar publications to publicize the functions and activities of PSROs.

(f) *Nonphysician health care practitioners' review of peers.* Where nonphysicians are involved in review (see § 101.712), the PSRO shall utilize only duly

qualified nonphysician health care practitioners who meet all applicable State or Federal requirements for the practice of their profession to make determinations with respect to the professional conduct of, or any act performed by, any other duly qualified peer nonphysician health care practitioner in the exercise of his profession.

§ 101.714 Examination of the operation and records of hospitals.

(a) Each PSRO is authorized to inspect the operation and records pertinent to the health care services rendered to Title V, XVIII or XIX patients of any hospital in the PSRO area in which such services are provided and may require such hospital to provide copies of such records to the PSRO in order to:

(1) Evaluate unusual cases which preadmission review, concurrent review, medical care evaluation studies, or profile analysis have shown to deviate significantly from the PSRO norms, criteria and standards; and

(2) Evaluate the capability of a hospital to assume delegated PSRO functions and monitor the performance of a hospital which has assumed delegated PSRO functions, pursuant to Subpart H of this Part.

(b) A PSRO may utilize the records of patients other than those covered under Titles XVIII, XIX and V, where access to their records is authorized by the hospital.

(c) In performing an examination a PSRO shall: (1) Limit the inspection to those operations and records of a hospital which are necessary in order to achieve the purposes of paragraph (a) of this section;

(2) Cooperate with agencies performing similar examination functions under Title V, XVIII or XIX of the Act in order to minimize duplication of effort;

(3) Conduct such examinations during the daytime shift of the hospital; and

(4) Maintain written records of such examination in its principal office, and provide written reports to appropriate members of the medical staff of the hospital, the chief administrative official of the hospital and the Chairman of the Board of Trustees (or other governing body) of the hospital which has been inspected, describing the results of the examination and the follow-up necessary.

§ 101.715 Refusal of hospital to allow PSRO entry and performance of review.

The refusal of a hospital in the PSRO area to allow a PSRO to enter and perform all PSRO duties and functions required under this Subpart in such hospital shall constitute grounds for a PSRO to determine that such hospital has violated the obligations imposed under section 1160(a)(1)(C) of the Act, and for the PSRO to report such matter to the Secretary under section 1157 of the Act.

§ 101.716 Reports to the Secretary.

Each PSRO shall submit reports to the Secretary, at such times and in such form as the Secretary may require pursuant to this Subpart, indicating how it has fulfilled the responsibilities specified under this Subpart.

[FR Doc.77-1951 Filed 1-24-77;8:45 am]

[42 CFR Part 101]

RELATIONSHIP OF THE PSRO TO HOSPITALS AND UTILIZATION OF HOSPITAL REVIEW COMMITTEES

Subpart H; Notice of Proposed Rulemaking

Notice is hereby given that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposes to add a new Subpart H to Part 101 of Title 42, Code of Federal Regulations.

The purpose of the present proposal is to implement the provisions of section 1155(e) of the Social Security Act (42 U.S.C. 1320c-4(e)). This section requires Professional Standards Review Organizations (PSROs) to utilize the services and accept the findings of hospital review committees when and to the extent and for such time as such committees have demonstrated to the PSRO's satisfaction a capacity to conduct effective and timely review so as to aid the PSRO in fulfilling its review responsibilities. The purpose of the requirement is to build upon existing systems of review. Over the last two decades many hospitals have gained considerable experience and expertise in the review of health care. Rather than dismantling these efforts, the PSRO is to capitalize upon them in building its review system. Also, however, it must be recognized that the PS RO program represents a major shift in the locus of responsibility for conducting health care review. Before PSRO, this responsibility rested with individual hospitals, and Medicare and Medicaid agencies. Under PSRO, the responsibility is given to a community based organization which must establish an effective review system for the institutions in its area. Therefore, the decision of a PSRO to delegate review to a hospital must be based upon both the hospital's capability to conduct effective review and the degree to which delegation aids the PSRO in creating an efficient and effective review system.

The PSRO will use the hospital's review committee(s) in the performance of PSRO preadmission and concurrent review, or medical care evaluation (MCE) studies or both where such review committees are willing and have the capacity to effectively perform these functions. However, where the PSRO delegates the performance of either of these review functions to a hospital, the PSRO still retains responsibility to monitor and assure the effective performance of such functions and because responsibility for effective review continues to reside with the PSRO, it is expected to exercise this delegation authority and monitoring activity carefully.

The delegation process will result in the establishment of a relationship between a hospital and a PSRO which will be different for concurrent review than for medical care evaluation studies. When concurrent review is delegated, all the review will be conducted by the hospital with the PSRO using retrospective data analysis and onsite visits to assure that review is being conducted effectively. For MCE studies, however, the PSRO and the hospital will work closely together on some or all of the studies related to that hospital. Thus, while a delegated hospital will conduct some MCE studies independently, it will also work in cooperation with the PSRO when an area-wide or multi-hospital MCE involves the care provided in that hospital. In the hospital which has not been delegated MCE studies, the PSRO must, nevertheless, work closely with the hospital staff in the design of studies, implementation of corrective actions and conduct of follow-up analyses. In both the delegated and nondelegated situation, the PSRO must help to assure that the results of the study and of any necessary corrective actions are made available to the governing board of the hospital to assist the board in meeting its public responsibility to assure the provision of quality care in its institution. This need for a close relationship between a PSRO and hospital results from the fact that early and continuous involvement by those whose care is being assessed by the medical care evaluation process will allow the results of the studies to have their optimum impact.

The proposed regulation outlines the following steps in the delegation process: (1) PSRO notification to hospitals in the PSRO area of the delegation procedures and the factors the PSRO will use to evaluate the hospital's capability; (2) the hospital's expression of interest in obtaining delegation of review functions; (3) the development of a hospital review plan which meets PSRO requirements; (4) the PSRO determination of the hospital's capability to perform delegated review effectively, based on the review plan and utilizing specific evaluation factors; (5) agreement upon administrative procedures by the PSRO and the hospital; and (6) PSRO monitoring of the performance of delegated review functions and periodic reassessment of the hospital's capability to perform such review effectively. In addition, the proposed regulation provides a process for (1) the Secretary's consideration of disapproval of a delegation or investigation of complaints regarding improper rejection of a hospital's proposal for delegation; and (2) for reconsideration by the PSRO of determinations of capability with which a hospital is dissatisfied.

The proposal indicates that eligibility for delegation will not be limited to utilization review committees organized under Title V, XVII and XIX of the Act, but may include other committees of a hospital.

The proposed regulation applies solely to short stay hospitals and regulations will be issued in the future to deal with review in other operating health care facilities or organizations.

The new regulations policies of the Department issued July 25, 1976, require

that this Notice of Proposed Rulemaking (NPRM) have an implementation plan prepared prior to its issuance. In compliance with these requirements, an implementation plan was forwarded to the Secretary and he has authorized the issuance of this NPRM without the use of a Notice of Intent (NOI) which would otherwise be required by the new policies because:

1. There is an urgent requirement for these regulations.

2. Over an extended period of time there has been significant interaction between the Department and organizations and individuals in the development of this NPRM which has satisfied the spirit and intent of the NOI. Specifications for this NPRM were reviewed by the National Professional Standards Review Council at public meetings and available for public comment at least twice. Draft transmittals presenting policies incorporated in this NPRM have been presented to the National Council, and circulated to all planning and conditional PSROs, PSRO Suport Centers and professional organizations, as well as, other organizations that routinely receive PSRO information. In addition, requests by outside organizations for information contained in this NPRM have been fulfilled.

Interested persons are invited to submit written comments, suggestions or objections concerning the proposed regulations to the Director, Bureau of Quality Assurance, Health Services Administration, Room 16A55, 5600 Fishers Lane, Rockville, Maryland 20857, March 28, 1977. All comments received in timely response to this Notice will be considered and will be available for public inspection in the above named office during regular business hours.

It is proposed to make this regulation effective upon republication in the FEDERAL REGISTER.

NOTE.—The Department of Health, Education, and Welfare 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: November 22, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 11, 1977.

MARJORIE LYNCH,
Acting Secretary.

PART 101—PROFESSIONAL STANDARDS REVIEW

It is therefore proposed to issue a new Subpart H of Part 101 of Title 42 as set out below.

Subpart H—The Relationship of the PSRO to Hospitals and Utilization of Hospital Review Committees

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101.801 Applicability.
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AUTHORITY: Sec. 1155(e) of the Social Security Act, Section 249F(b) of Public Law 92-603, 86 Stat. 1435, [42 U.S.C. 1320c-4(e)]; Section 1102 of the Social Security Act, 49 Stat. 647, as amended [42 U.S.C. 1302].

Subpart H—The Relationship of the PSRO to Hospitals and Utilization of Hospital Review Committees

§ 101.801 Applicability.

The provisions of this Subpart are applicable to the exercise by PSROs of their duties and functions under section 1155 (e) of the Act [42 U.S.C. 1320c-4(e)] with regard to utilization of the review committees of hospitals,

§ 101.802 Definitions.

As used in this Subpart:

(a) "Act" means the Social Security Act, as amended (42 U.S.C. Chap. 7).

(b) "Active staff privileges in a hospital" means that a physician or nonphysician health care practitioner is authorized on a regular, rather than infrequent or courtesy basis to (1) order the admission of patients to a hospital; or (2) perform diagnostic services in a hospital; or (3) care for and treat patients in a hospital.

(c) "Concurrent review" means admission review and continued stay review.

(d) "Criteria" means predetermined elements of health care, developed by health professionals relying on professional expertise, prior experience and the professional literature with which aspects of the quality, medical necessity, and appropriateness of a health care service or item may be compared.

(e) "Delegation" means the utilization by the PSRO of the services of a hospital and acceptance of the review findings of the hospital's review committee(s) in accordance with section 1155(e) of the Act.

(f) "Health care service" means an inpatient service or item for which payment may be made (in whole or in part) under the Act.

(g) "Hospital" means a health care institution or distinct part of a health care institution providing health care services in the PSRO area as defined in section 1861(e)-(g) of the Act, except that the institution shall not be a Christian Science sanatorium operated, or listed and certified by the First Church of Christ, Scientist, Boston, Massachusetts.

(h) "Hospital review committee" means a committee established by a hospital to serve as the focus for PSRO review which consists of one or more physicians having active staff privileges in such hospital, with the participation of nonphysician health care practitioners, where appropriate.

(i) "Medical care evaluation study" means a process usually performed retrospectively, in which an in-depth assessment of the quality and/or the nature of the utilization of health care services is conducted, corrective action is taken, where indicated, and a subsequent analysis is made of the impact of the corrective action.

(j) "Nonphysician health care practitioners" means those health professionals who do not hold a Doctor of Medicine or Doctor of Osteopathy degree, meet all applicable State or Federal requirements for practice of their profession, and are actively involved in the delivery of direct patient care or health care services.

(k) "Norms" means numerical or statistical measures of usual observed performance of health care services.

(l) "Physician" means a Doctor of Medicine or Osteopathy or another individual who is authorized under State or Federal law to practice medicine and surgery, or osteopathy.

(m) "Profile" means aggregated data in formats which display patterns of health care services over a defined period of time.

(n) "Profile Analysis" means review of profiles to identify and consider patterns of health care services.

(o) "PSRO" means a Professional Standards Review Organization which is conditionally or unconditionally designated.

(p) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(q) "Standards" mean professionally developed expressions of the range of acceptable variation from a norm or criterion.

§ 101.803 General requirements.

(a) No PSRO may initiate review in a hospital unless it has notified and evaluated the capability of such hospital to obtain delegation in accord with § 101.803 through § 101.807 of this Subpart.

(b) Such PSRO shall delegate to a hospital, when it has determined that such hospital has demonstrated the willingness and capability to conduct effective and efficient review activities so as to aid the PSRO in the performance of its review responsibilities, the performance of:

(1) Preadmission review and concurrent review, or where the Secretary has approved alternative review activities pursuant to § 101.709 of this Part, such alternative review activities, or

(2) Medical care evaluation studies, or

(3) The review activities described in both subparagraphs (1) and (2) above.

(c) Where the PSRO delegates the performance of one or more of the functions, it shall:

(1) Delegate such functions to the hospital rather than to individual departments or divisions within a hospital;

(2) Perform all those functions which are not delegated to the hospital;

(3) In the delegation of concurrent review or preadmission review delegate both admission and continued stay review;

(4) In the case of delegated medical care evaluation studies delegate all activities related to performance of the study as described in Subpart G of this Part;

(5) Review profiles of all area hospitals at least for the purpose of comparative analysis of hospitals; and

(6) Periodically reassess the hospital review committee's continuing capability to perform effective and efficient review (see § 101.810).

(d) The Secretary may disapprove a delegation of review functions for good cause pursuant to § 101.811.

§ 101.804 Notification to hospitals.

Each PSRO shall notify in writing all hospitals in its area in a timely manner of the requirements of section 1155(e)(1) of the Act, the PSRO hospital review requirements which may be delegated, the factors and the process which the PSRO will utilize for evaluating the capability of a hospital review committee to perform review functions (see § 101.807), and the procedure necessary to apply for a delegation of PSRO functions. An example of the notification letter shall be submitted to the Secretary for his approval prior to use.

§ 101.805 Letter of interest.

(a) A hospital which seeks to obtain a delegation of PSRO review functions shall submit a letter of interest to the PSRO signed by an authorized representative of the hospital medical staff and the chief administrative official of the hospital containing, at a minimum, the following information:

(1) The specific functions for which delegation is sought; and

(2) An expression of the hospital's willingness to accept PSRO evaluation and monitoring of its review activities.

(b) A letter of interest may be accompanied by a delegation review plan as specified in § 101.806.

(c) If a hospital does not forward a letter of interest in response to the PSRO's written notification within thirty calendar days following the PSRO notification, the PSRO shall forward a second written notification in a form similar to the original to such hospital. If the hospital does not respond to the second notification within 10 calendar days, or provides written notification to the PSRO that it does not desire to perform PSRO review functions, the PSRO shall notify the hospital that the PSRO will begin to perform review in the hospital in accordance with applicable regulations of this Part and procedures approved by the Secretary. In such cases, administrative procedures developed by the PSRO, with the consultation of the hospital, shall be executed indicating the scope of PSRO activities in the hospital, as specified in § 101.808.

(d) A hospital review committee may forward a letter of interest to the PSRO at any time. A PSRO which receives such letter later than 10 calendar days following the second notification described in paragraph (c) will proceed to make a determination of capability in accord with the procedures set forth in this Subpart, except that it shall render such a determination within six months from the date of receipt of the delegation review plan, unless the time period specified in § 101.817 is applicable.

§ 101.806 Delegation review plan.

A hospital seeking delegation shall develop a plan describing how it will organize its resources and implement PSRO review functions for which it seeks delegation. Such plan shall be consistent with the PSRO's approved formal plan and shall be submitted to the PSRO no later than 30 days from the date the letter of interest was mailed. The delegation review plan shall include:

(a) A description of the manner in which the hospital will organize itself to conduct the delegated review activities and those activities supportive of delegated review;

(b) A description of the proposed operation of the review effort under the direction of the hospital review committee, including:

(1) The number and types of hospital personnel to be used for each type of review;

(2) The methods of providing for selection, training and reimbursement for review personnel;

(3) The methods of involving nonphysician health care practitioners in review functions;

(4) A description of the proposed use of norms, criteria and standards in review;

(5) Methods by which review findings will lead to appropriate continuing education activities and administrative change;

(6) The functions which the hospital review committee expects to be performed by PSRO personnel for those review functions not delegated;

(c) A description of the proposed relationships with Titles V, XVIII and XIX claims payment agencies, including the mechanisms to be used in notifying these agencies of those delegated review determinations that impact on claims payment;

(d) The methods of providing for data collection, data flow and information release to satisfy PSRO profile and reporting requirements, including a description of the current and proposed relationships of the hospital with hospital discharge abstract data processors;

(e) The number of physicians on the hospital's medical staff who are eligible for PSRO membership, as defined in applicable regulations of the Secretary, and the number who actually are members;

(f) Specific information about the hospital's existing review system, if any, including narrative material concerning operating procedures, results, and follow-up;

(g) Information which characterizes the hospital including number of beds; total admissions each year; Title XVIII, Title XIX, and Title V admissions each year; type of ownership; teaching affiliations; and size and specialization of medical staff.

§ 101.807 Determination of capability.

(a) Each PSRO shall, within 90 calendar days from receipt of such delegation review plan, determine the capability of each review committee of a hospital which forwards a letter of interest and a delegation review plan to such PSRO, except as provided in § 101.805 (d) and § 101.817.

(b) Each PSRO, in making such a determination of capability, shall utilize written evaluation factors which shall be submitted to the Secretary prior to use and no such factors shall be utilized by the PSRO unless approved by the Secretary.

(c) The evaluation factors shall measure the capability of the hospital review committee to effectively and efficiently perform review activities, as prescribed in Subpart G of this Part, so as to aid in accomplishing the purposes described in section 1155(a)(1) of the Act, and shall include, at a minimum the following:

(1) The degree to which the review mechanisms and the organization for review that the hospital proposes provide the hospital with the capability to meet the PSRO program objectives specified in § 101.701 of this Part and the PSRO's approved formal plan;

(2) The PSRO determination of the adequacy of the performance of the hospital in Medicare and Medicaid utilization review activities. In making such a determination, the PSRO shall consider information solicited by the PSRO and received from the Medicare State survey agency and the appropriate Medicare intermediaries and the Medicaid State agency concerning the hospital's past performance in Medicare and Medicaid utilization review and information obtained by the PSRO through site visits to such hospitals;

(3) The degree to which the delegation of one or more functions to the hospital assists the PSRO in fulfilling its objective of establishing an effective and efficient areawide review system;

(4) Membership in the PSRO of at least 25 percent of those physicians with active staff privileges in the hospital who are eligible to be PSRO members; and

(5) The capacity to provide the PSRO with the data required by the PSRO for monitoring of the hospital review activities and the generation of profiles and reports.

(d) Such determination shall be made by an evaluation committee, designated

by the governing body of the PSRO, which shall consist of two or more PSRO members. No member of such evaluation committee may participate in a determination of capability of a hospital in which: (1) He has a financial interest as defined in §101.713 of this Part; or

(2) He has active staff privileges as defined in §101.702 of this Part, unless special arrangements are made with the approval of the Secretary to utilize members who have active staff privileges in the hospital due to lack of alternate physicians to conduct the determination.

(e) The PSRO shall provide written notice of the determination of capability to the hospital within 90 days of receipt of the delegation review plan, including in such notice a statement of the reasons for the determination and an explanation of the hospital's right to obtain a reconsideration by the PSRO of any determinations of capability with which the hospital is dissatisfied.

(f) Each PSRO shall maintain a record of the decision and the information which formed the basis for the determination of capability.

(g) Any hospital which is dissatisfied with a PSRO determination of the hospital review committee's capability to perform delegated review effectively, including a determination that the hospital review committee is not performing effectively a review function which has been delegated (see § 101.810), may request a PSRO reconsideration of such determination in accordance with § 101.812. A PSRO may at any time initiate a reconsideration of a determination of capability.

§ 101.808 Initiation of PSRO review in nondelegated hospitals.

(a) Where the PSRO has made a determination not to delegate the performance of review functions to a hospital, or a determination to withdraw delegation of review functions from a hospital (see § 101.810), the PSRO shall, after providing notice to the hospital as specified in § 101.807(e), initiate review functions in such hospital within a reasonable time and in accord with procedures approved by the Secretary and applicable regulations of this Part. The initiation of PSRO review shall not be postponed because of a request for reconsideration by the hospital. Any subsequent request by the hospital to perform delegated review shall be subject to the time period specified in § 101.817 regarding PSRO consideration of the request.

(b) Where the PSRO has made a determination as described in paragraph (a) of this section, or where the PSRO will begin to perform review in a hospital as provided in § 101.805(c), the PSRO shall develop administrative and review procedures, with the consultation of each hospital and the approval of the Secretary in such time and manner as prescribed under applicable regulations of this Part relating to the assumption of review responsibilities by PSROs. Such procedures shall include:

(1) The specific review functions to be performed by the PSRO in the hospital in accord with the approved formal plan of the PSRO, Title XI, Part B of the Act and the regulations of this Part;

(2) The review procedures to be followed by the PSRO in the hospital in accord with the approved formal plan of the PSRO;

(3) A schedule indicating the time for phasing-in of each function;

(4) The norms, criteria and standards to be used by the PSRO in review in accord with Subpart I of this Part;

(5) Mechanisms for notifying the Titles XVIII, XIX, and V payment agencies of review determinations;

(6) PSRO responsibilities for data collection, data flow and information release;

(7) Specifications for the selection, training, and reimbursement of review personnel by the PSRO;

(8) The PSRO's plan for handling reconsiderations and appeals of its review decisions;

(9) The methods for the PSRO to provide profiles, medical care evaluation studies and other pertinent information to the hospital;

(10) The methods of involving nonphysician health care practitioners in review functions; and

(11) A PSRO mechanism for resolving disputes with the hospital regarding PSRO procedures.

§ 101.809 Agreement with delegated hospitals.

Where the PSRO has made a determination pursuant to § 101.807 to delegate the performance of review functions to a hospital, the PSRO and the hospital shall enter into a written agreement signed by the chief administrative official of the PSRO, and an authorized representative of the hospital's medical staff, the chief administrative official of the hospital and the Chairman of the Board of Trustees (or other governing body) for a time period not to exceed one year which shall be renewable. The PSRO shall submit a model of such agreement to the Secretary prior to use. A PSRO may not enter into an agreement with a hospital until the Secretary has approved its model agreement. Each signed agreement shall be retained at the principal offices of the PSRO for public inspection during regular business hours and shall include:

(a) The specific review functions to be performed by the hospital under delegation;

(b) The specific review functions which will not be delegated and will be performed by the PSRO;

(c) Agreement by the hospital that it will perform those functions and responsibilities for which it has received delegation in accord with the requirements placed upon PSROs for such functions and responsibilities under Title XI, Part B of the Act, 42 CFR Part 101, the approved formal plan of the PSRO and the review plan submitted by the hospital under § 101.806;

(d) A schedule indicating the time for phasing-in of each function;

(e) The norms, criteria and standards to be used by the hospital in review in accord with Subpart I of this Part;

(f) Methods of involving the hospital in the PSRO plan for reconsiderations and appeals;

(g) Methods for PSRO monitoring of delegated review functions including inspection of the operation and records of the hospital (see § 101.714 of this Part);

(h) Methods for the PSRO to report profiles, medical care evaluation studies and other pertinent information to the hospital;

(i) Procedures for reassessing the hospital, in accord with § 101.810;

(j) Procedures for the resolution of disputes between the hospital and the PSRO, which shall include agreement that if the hospital and the PSRO are unable to agree upon any item in dispute, such dispute shall be submitted to the Secretary to make a determination to resolve the dispute. Where a dispute is submitted to the Secretary, he will designate an official to make an initial determination within 30 days from the submittal based upon his consideration of any written information submitted by the hospital or the PSRO and any oral presentations made at an informal meeting involving all parties to the dispute, as deemed appropriate by such official. The Secretary will review such initial determination, render a final determination within 60 days from the submittal and notify the PSRO and the hospital of his determination, with a full explanation of the reasons for such determination;

(k) Procedures for the termination of the agreement which shall include provision that the agreement may be terminated by the PSRO upon reassessment in accord with § 101.810, or by the hospital, upon 90 days notice to the PSRO, or by the Secretary, pursuant to § 101.811. Where a PSRO has been so notified it shall initiate review in such hospital as specified in § 101.808; and

(l) Provisions for modification of the agreement with the approval of both parties.

§ 101.810 PSRO monitoring and reassessment of capability.

(a) Each PSRO shall periodically monitor and reassess, by means of analysis of profiles and reports provided by the hospital and on-site inspections, the performance, effectiveness and efficiency of each hospital review committee in its area of delegated functions in order to:

(1) Assure compliance with the agreement described in § 101.809 and the provisions of this Subpart;

(2) Assess the effectiveness and efficiency of the delegated hospital review in terms of the purposes of review as specified in § 101.701 of this Part;

(3) Reassess the appropriateness of continued delegation of the performance of PSRO review functions based upon the capability of the hospital review com-

mittee to perform review in an effective and efficient manner, in accord with written evaluation factors developed by the PSRO and available to all hospitals in the PSRO area. The evaluation factors shall be submitted to the Secretary prior to use and no such factors shall be utilized by a PSRO unless approved by the Secretary. Such evaluation factors for reassessment shall include, at a minimum:

(i) The degree to which the hospital has performed delegated functions in accord with the agreement specified in § 101.809;

(ii) The effectiveness and efficiency of the performance of delegated functions;

(iii) The maintenance of membership in the PSRO of at least 25 percent of those physicians with active staff privileges in the delegated hospital who are eligible to be PSRO members;

(iv) The degree to which delegation arrangements with the hospital are demonstrated to fulfill the PSRO objective of establishing an efficient and effective areawide review system.

(b) Where the PSRO determines that a hospital which has been delegated review functions is not performing such functions effectively, the PSRO shall notify the hospital and the Secretary of such determination as specified in § 101.807(e) and shall initiate review in the hospital as specified in § 101.808.

§ 101.811 Monitoring by the Secretary and disapproval for good cause.

(a) The Secretary will periodically require the PSRO to submit reports indicating those hospitals which have been delegated the performance of review functions and the manner in which they are performing and the Secretary may disapprove for good cause such delegation determinations. The Secretary shall take into consideration any comments submitted by Medicare fiscal agents or State Medicaid or Title V agencies regarding the appropriateness of a delegation of review to a hospital or effectiveness of the performance of delegated review functions by a hospital. For purposes of this Subpart, "good cause" for disapproval of a delegation shall include:

(1) A PSRO determination of capability which does not comply substantially with the procedures of this Subpart;

(2) The hospital's substantial noncompliance with the agreement described in § 101.809 or the provisions of this Subpart; and

(3) The hospital's failure to perform delegated review functions effectively and efficiently so as to aid the PSRO in the performance of its review responsibilities.

(b) Where the Secretary disapproves a delegation of review functions pursuant to paragraph (a) of this section, he will notify the PSRO and the hospital, in writing, providing a statement explaining his disapproval and the cause for such disapproval at least 30 days prior to the effective date of the disapproval. The PSRO and the hospital shall have an opportunity, prior to such effective date, to file a written statement with the Secretary explaining the reasons why such disapproval should not become effective. If no such statement is received prior to the effective date, the disapproval shall be final on the effective date and the hospital shall no longer retain PSRO delegation to perform review. In such case, the PSRO shall initiate review in the hospital as specified in § 101.808. Any subsequent request by the hospital to perform delegated review shall be subject to the time period in § 101.817 regarding PSRO consideration of the request. If the Secretary determines that additional information indicates "good cause" for disapproval does not exist and the disapproval should not become effective, he will withdraw the notice of disapproval.

§ 101.812 Time and place of filing request for reconsideration.

(a) A request by a hospital for reconsideration of a PSRO determination of a hospital capability to perform delegated review functions effectively shall be made in writing by the authorized representative of the hospital medical staff and the chief administrative official of the hospital and filed at the principal office of the PSRO within 60 days from the date of the mailing of the notice of capability by the PSRO to the hospital, unless such time is extended by the PSRO for good cause.

(b) The reconsideration request shall include a statement specifying the particular reasons why the hospital seeks reversal of the determination, including the results of any remedial actions which may have been taken by the hospital to correct deficiencies.

§ 101.813 Reconsideration committee.

The PSRO shall designate a committee of PSRO members, in accord with § 101.807(d), to conduct the reconsideration, except that no PSRO members may serve who participated in the determination of the capability of the hospital which is being reconsidered.

§ 101.814 Time of reconsideration and notification to hospital.

(a) The reconsideration proceedings shall begin not later than 14 calendar days, excluding holidays, from the date of the receipt by the PSRO of the request for reconsideration, or at the option of the hospital, at a later time.

(b) The PSRO shall notify the hospital no less than ten calendar days prior to the reconsideration proceedings of the time and place of the reconsideration proceedings. Such notice shall offer the hospital an opportunity to make an oral presentation and offer additional written information.

§ 101.815 Reconsideration proceedings.

(a) Reconsideration proceedings shall be informal and need not be bound by formal rules of evidence or other formal procedures.

(b) The reconsideration committee shall review the determination of capability, the reasons and information upon which the determination of capability was based, and any additional information submitted to the PSRO by the hospital.

§ 101.816 Reconsidered determination and notification.

(a) The PSRO shall make a reconsidered determination, affirming, modifying or reversing the initial determination of capability, based upon the information reviewed during the reconsideration proceedings.

(b) The PSRO shall provide written notice of the reconsidered determination to the hospital, including a statement of the reasons for the reconsidered determination, within 30 days from the date of the commencement of the reconsideration proceedings.

(c) Each PSRO shall maintain a record of the decision and the information which formed the basis for the reconsidered determination of capability, including a record summarizing the reconsideration proceedings.

§ 101.817 Renewal of interest in performing review after a PSRO determination or reconsideration.

Where a hospital review committee previously has received a negative determination under § 101.807 regarding its capability to perform review effectively, such hospital may at any time formally renew its interest in obtaining a delegation of PSRO review functions by filing a letter of interest pursuant to § 101.805. Such letter of interest shall include any progress which the hospital has made since the determination in effectively performing review functions for which it is seeking delegation. In such cases, the PSRO shall within one year from the date of the filing of the letter of interest, make a new determination of the capability of the hospital to perform review effectively and efficiently.

§ 101.818 Complaints to the Secretary.

(a) A hospital may make a written complaint to the Secretary if it believes that a PSRO has not complied substantially with the requirements of this Subpart or that the PSRO determinations of capability are motivated by nonprofessional prejudice or bias. The complaint shall include a statement of the reasons for such belief.

(b) The Secretary will investigate such complaint and if the Secretary finds that a PSRO has not complied substantially with the requirements of this Subpart or that its determinations of capability are motivated by nonprofessional prejudice or bias, he may take appropriate action to correct the abuse, including termination of the PSRO agreement.

§ 101.819 Reports to the Secretary.

Each PSRO shall submit such reports to the Secretary, as the Secretary shall deem appropriate, indicating the manner in which it has fulfilled its responsibilities under this Subpart.

§ 101.820 Previously approved delegations.

Sections 101.804 through 101.809 of this Subpart shall not apply to delegations or notification and evaluation activities leading to delegation which were effected prior to the effective date of this Subpart under procedures approved by the Secretary.

[FR Doc.77-1952 Filed 1-24-77;8:45 am]

[42 CFR Part 101]

NORMS FOR PSRO HOSPITAL REVIEW

Subpart I; Notice of Proposed Rulemaking

Notice is hereby given that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposes to add a new Subpart I to Part 101 of Title 42, Code of Federal Regulations.

The new Subpart would implement, in part, the provisions of Section 1156 of the Social Security Act (42 U.S.C. 1320c-5) with regard to the development and application of "professionally developed norms of care, diagnosis and treatment" (i.e. norms, criteria and standards), which must be applied by PSROs as principal points of evaluation in the review of health care services provided in hospitals under Titles V, XVIII and XIX of the Social Security Act. The use of norms, criteria and standards in the PSRO hospital review process grows out of the experiences of medical care foundations, individual hospitals and Experimental Medical Care Review Organizations (EMCROs) in developing such tools for streamlining the review process. The use of explicitly stated norms, criteria and standards as tools for initial screening serves to make the review process more objective and to minimize the demands of the hospital review system on physician time. By using such screening tools, trained nonphysician health care professionals can conduct screening review and identity cases requiring peer review. Norms, criteria, and standards do not constitute absolute definitions of proper utilization and high quality. Most of the care reviewed by the PSRO will fall within the standards set by peer practitioners and will require no further review. Care falling outside that range, however, will then be subject to closer scrutiny by peers to assure that services for Medicare, Medicaid, and Maternal and Child Health/Crippled Children's Services patients are necessary, appropriate and of high quality. It should be emphasized that criteria and standards do not imply the requirement of "cookbook" medicine. The fact that an individual episode of care may fall outside the standard set by the local PSRO does not imply that such care is of inferior quality; rather, it is an indication that closer professional review should be conducted in order to assure appropriateness of the care.

These regulations require that norms and criteria be emloyed in concurrent and preadmission review or in alternate review methods approved by the Secretary, pursuant to Section 101.709 of this Part. Standards are not specifically required in these review processes, but may be employed by PSROs. For example, the screening criteria employed in concurrent or preadmission review generally define elements of medical practice which, in the judgment of local peer practitioners, should be present in either 100 percent or 0 percent of cases. Where such criteria are not met, the case will be referred for peer review. Used in this way, criteria are being employed as standards in the concurrent or preadmission review process.

Only criteria and standards are required to be employed in medical care evaluation studies. The use of norms is not a requirement because when normative data is used in a medical care evaluation study, it is used only after those designing the study have determined that the norm represents a goal to be achieved (that is, the norm is being used as a criterion or standard).

Regional norms, criteria, and standards will be distributed by the National Professional Standards Review Council and will be used as principal points of reference by each PSRO as it establishes norms, criteria (including length-of-stay projections) and standards for its area. Until such time as the National Council distributes such regional norms, criteria and standards, PSROs will be expected to utilize available, statistically valid regional data to develop length-of-stay projections, and available sets of criteria and standards as guides to developing PSRO area criteria and standards. In addition to its responsibility to distribute regional norms, criteria and standards, the National Council will be analyzing the appropriateness of variations among the norms, length-of-stay projections, criteria and standards employed by PSROs. When it distributes the regional norms, criteria and standards, the National Council will use them as principal points of reference in identifying significant variations. As specified in section 1156(a) of the Social Security Act, when the Council determines that the variation in a PSRO's norms, length-of-stay projections, or other criteria or standards is inappropriate, the PSRO may not use those norms, criteria, or standards. A PSRO may use criteria and standards which vary from its areawide criteria and standards for preadmission and concurrent review in hospitals or subareas having limited resources, unusual patient populations, or other characteristics which make the variation appropriate. Such variation would be expected to be the exception, rather than the rule, and each PSRO should consider carefully any request by a hospital to vary from the PSRO areawide criteria and standards used in the concurrent and preadmission review process.

The proposed regulations setting forth the PSRO hospital review process, under Subpart G (published in proposed form at the same time as this Subpart I) provide that length-of-stay norms will be used to assist the PSRO in developing length-of-stay projections which, in turn, assist in setting the time when the next PSRO review must be completed. Criteria will be used in concurrent and preadmission review for screening in order to select from a large number of cases those which require peer review. For example, where a PSRO review coordinator finds that certain physical symptoms or diagnostic test results of a patient are not consistent with the criteria developed by the PSRO for a certain diagnosis, the coordinator would refer the case to a PSRO physician advisor for peer review. When an admission is certified, the coordinator would then set a length-of-stay period at the end of which continued stay review must be completed.

In making this assignment, review coordinators will use length-of-stay projections developed by physicians of the PSRO. In developing such projections, these physicians will use regional and, when available, PSRO length-of-stay information as guides. These projections will assist in assigning certified lengths-of-stay which reflect the point in time that patients with a given diagnosis or undergoing a given procedure should be ready for discharge. These projections would then be available to review coordinators as they screen individual admissions. Because individual patients vary widely in their clinical presentation, it will often be appropriate in individual cases to assign a length-of-stay period shorter or longer than the projected period developed for an aggregate of patients. This may be done by the review coordinator, often with the guidance of the physician advisor. In other instances, a patient will present a problem, rather than a clear diagnosis. In such cases, the length-of-stay assignment should be based on a projection of when the nature of the patient's condition will be more fully clarified. When a patient is admitted with a diagnosis for which the PSRO has not made the projections noted above, it would need to utilize length-of-stay norms in assigning a length-of-stay period. In such cases, review organizations often assign a period based on the 50th percentile of lengths-of-stay for patients of a similar age and condition. Finally, in those instances where a PSRO is conducting concurrent quality assurance, it may wish to assign a length-of-stay period based on the point in time that a critical procedure or outcome may be expected to occur.

Under these regulations and Subpart G, criteria and standards are also established as points of reference for each medical care evaluation study, by the group or committee responsible for the study, in advance of its actual conduct. Patterns of medical care which depart from the previously established criteria and standards are then analyzed to determine the cause of such departure and to assess the need for programs of education or administrative change. In addition, norms, criteria and standards will be applied by each PSRO as points of reference in the analysis of profiles of health services, health care practitioners, and hospitals.

The new regulations policies of the Department issued July 25, 1976, require that this Notice of Proposed Rulemaking

(NPRM) have an implementation plan prepared prior to its issuance. In compliance with these requirements, an implementation plan was forwarded to the Secretary and he has authorized the issuance of this NPRM without the use of a Notice of Intent (NOI) which would otherwise be required by the new policies because:

1. There is an urgent requirement for these regulations.

2. Over an extended period of time there has been significant interaction between the Department and organizations and individuals in the development of this NPRM which has satisfied the spirit and intent of the NOI. Specifications for this NPRM were reviewed by the National Professional Standards Review Council at public meetings and available for public comment at least twice. Draft transmittals presenting policies incorporated in this NPRM have been presented to the National Council, and circulated to all planning and conditional PSROs, PSRO Support Centers and professional organizations, as well as other organizations that routinely receive PSRO information. In addition, requests by outside organizations for information contained in this NPRM have been fulfilled.

Interested persons are invited to submit written comments, suggestions or objections concerning the proposed regulations to the Director, Bureau of Quality Assurance, Health Services Administration, Room 16A55, 5600 Fishers Lane, Rockville, Maryland 20857 on or before March 28, 1977.

All comments received in timely response to this Notice will be considered and will be available for public inspection in the above named office during regular business hours.

It is proposed to make this regulation effective upon republication in the FEDERAL REGISTER.

NOTE.—The Department of Health, Education, and Welfare 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: November 22, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 11, 1977.

MARJORIE LYNCH,
Acting Secretary.

PART 101—PROFESSIONAL STANDARDS REVIEW

It is proposed to issue a new Subpart I of Part 101 of Title 42 as set out below.

Subpart I—Norms for PSRO Hospital Review

Sec.
101.901 Applicability.
101.902 Definitions.
101.903 Application of norms, criteria and standards in the review of services provided in hospitals.
101.904 Regional norms, criteria and standards.
101.905 PSRO establishment of area norms, criteria and standards.
101.906 Technical assistance.
101.907 Approval of significant differences from regional norms, criteria and standards.
101.908 Availability of norms, criteria and standards for inspection.

AUTHORITY: Sec. 1156, Social Security Act, Sec. 249F(b) of Pub. L. 92-603, 86 Stat. 1435-1436, (42 U.S.C. 1320(c)(5)); sec. 1102 of the Social Security Act, 49 Stat. 647, as amended (42 U.S.C. 1302).

Subpart I—Norms for PSRO Hospital Review

§ 101.901 Applicability.

Section 1156 of the Act requires that, in carrying out its review responsibilities as prescribed under Section 1155(a)(1) and (2) of the Act, each PSRO shall apply professionally developed norms of care, diagnosis and treatment based upon typical patterns of practice in its area as principal points of evaluation and review. The regulations of this Subpart are applicable to the development and application of such norms with regard to health care services and items for which payment may be made under the Act which are provided in hospitals for which a PSRO has assumed review responsibility.

§ 101.902 Definitions.

As used in this Subpart:

(a) "Act" means the Social Security Act, as amended (42 U.S.C. Chapter 7).

(b) "Area" means the geographical area within the boundaries of a State, or within the boundaries of one or more counties or other political subdivisions in a State, designated as constituting an area with respect to which a PSRO may be designated, pursuant to Section 1152 (a) of the Act.

(c) "Criteria" means predetermined elements of health care, developed by health professionals relying on professional expertise, prior experience and the professional literature, with which aspects of the quality, medical necessity, and appropriateness of health care services may be compared.

(d) "Hospital" means a health care institution or distinct part of a health care institution in the PSRO area as defined in section 1861(e)-(g) of the Act, except that such institution shall not be a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

(e) "Length-of-stay projection" means a criterion which defines the expected point in time at which patients of similar age and diagnosis or condition would be expected to be ready for discharge. This projection is established by the PSRO based upon an analysis of regional norms and, where available, PSRO area norms for lengths-of-stay.

(f) "National Council" means the National Professional Standards Review Council established under Section 1163 of the Act.

(g) "Norms" means numerical or statistical measures of usual observed performance of health care activities.

(h) "Professionally developed norms of care, diagnosis and treatment" means norms, criteria and standards.

(i) "PSRO" means a Professional Standards Review Organization which is conditionally or unconditionally designated.

(j) "Region" means a geographical division, as determined by the Secretary with the advice of the National Council, which is larger than a PSRO area and with respect to which the National Council may distribute norms, criteria, and standards to PSROs within such division.

(k) "Standards" means professionally developed expressions of the range of acceptable variation of performance from a norm or criterion.

(l) "The Secretary" means the Secretary of Health, Education, and Welfare, or any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

§ 101.903 Application of norms, criteria and standards in the review of services provided in hospitals.

(a) *Norms and criteria applied in preadmission and concurrent review.* Each PSRO shall, in the preadmission and concurrent review process, as specified in §§ 101.703, 101.704, and 101.705 of this Part:

(1) Apply criteria specifying clinical indications for hospital admission, the appropriate nature of a preadmission work-up and/or the types of services which are most effectively and appropriately provided at a hospital level of care, in accord with §§ 101.703(a)(1)(ii), 101.703(b)(1)(i), and 101.704(a)(1).

(2) Apply length-of-stay projections or norms in assigning initial and extended certified length-of-stay periods, in accord with §§ 101.703(a)(2)(i) and (ii) and (b)(2) of this Part.

(3) Identify diagnoses, conditions, clinical areas or procedures which, based upon analysis of normative data and prior experience, will be automatically certified for admission, in accord with § 101.705 of this Part.

(4) Apply length-of-stay norms to specify the time when attending physician certifications are required, in accord with § 101.706(a).

(b) *Norms and criteria applied in alternate review methods.* Where the Secretary has approved an alternate review method, pursuant to § 101.709 of this Part, norms and criteria shall be applied as specified in the approved alternate review plan.

(c) *Criteria and standards applied in medical care evaluation studies.* Each PSRO shall apply criteria and standards in medical care evaluation studies, conducted pursuant to § 101.710 of this Part. Such criteria and standards shall relate to the specific objectives of the medical care evaluation study and shall be used to define the information necessary to identify the degree of conformance between actual performance and that specified in the criteria. The identification of a pattern of performance which does not conform to applicable criteria or standards shall result in those services involved in the pattern being subjected to further analysis through peer review.

(d) *Norms, criteria and standards applied in profile analysis.* Norms, criteria and standards shall be applied by each PSRO as points of reference in the

analysis of profiles under § 101.711 of this Part for the purposes stated in § 101.711(c) of this Part.

(e) *Application of PSRO norms, criteria and standards by delegated hospitals.* All hospitals which are delegated review functions under Subpart I of this Part shall apply norms, criteria and standards which are established by the PSRO in the same manner as required of the PSRO under this section, except as specified in § 101.905(e).

§ 101.904 Regional norms, criteria and standards.

(a) The National Council shall provide for the distribution to each PSRO of appropriate regional norms, criteria, and standards to be used by the PSRO as principal points of reference in its establishment of area norms, criteria, including length-of-stay projections, and standards.

(b) The Secretary will, within 30 days from the date of each such distribution, publish a notice in the FEDERAL REGISTER stating that the distribution has been made by the National Council, and that such material will be open to inspection and copying by members of the public at the Office of the Assistant Secretary for Health.

(c) The National Council shall, from time to time, review the material it has distributed, make revisions where appropriate, and distribute revisions to each PSRO. A notice of the availability of such revisions for inspection shall promptly be published by the Secretary in the FEDERAL REGISTER in accord with paragraph (b) of this section.

§ 101.905 PSRO establishment of area norms, criteria and standards.

(a) Each PSRO shall establish written area norms, criteria (including length-of-stay projections), and standards which are required in Subpart G of this Part for preadmission and concurrent review, or for alternate review methods, and for profile analysis, using as principal points of reference such regional norms, criteria and standards as have been distributed under § 101.904 and PSRO area norms which reflect typical patterns of practice in the entire PSRO area.

(b) Each PSRO shall establish written criteria and standards to be used as principal points of reference in conducting medical care evaluation studies as described in § 101.710 of this Part.

(c) Each PSRO shall specify, in the written formal plan to be approved by the Secretary prior to designation of the PSRO, the organizational structure and procedures which the PSRO will employ to establish, disseminate, validate and modify norms, criteria, and standards.

(d) Each PSRO shall periodically reassess, revise and update the norms, criteria and standards currently applied in preadmission and concurrent review, or in an alternate review method established pursuant to § 101.709 of this Part.

(e) Where patterns of practice in certain locations or hospitals are substantially different from patterns in the remainder of the PSRO area, and the PSRO determines that there is a reasonable basis for such difference, such as limited resources, unusual patient populations or other characteristics which make the variation appropriate, the PSRO may establish different criteria (including length-of-stay projections), and standards for use in preadmission and concurrent review to be applicable only to such locations or hospitals in the PSRO area.

§ 101.906 Technical assistance.

The National Council and the Secretary will, upon request, subject to the availability of funds and personnel, provide technical assistance to aid each PSRO in utilizing applicable regional norms, criteria and standards, as principal points of reference in establishing PSRO area norms, criteria and standards.

§ 101.907 Approval of significant differences from regional norms, criteria and standards.

(a) All norms, criteria (including length-of-stay projections), and standards to be employed by each PSRO in the preadmission and concurrent review process, or in an alternate review method established pursuant to § 101.709 of this Part, shall be forwarded by the PSRO to the Secretary upon their establishment and revisions, if they have been made, at least annually thereafter.

(b) Criteria and standards established by the PSRO for use in medical care evaluation studies and norms, criteria and standards for use in profile analysis shall be forwarded by each PSRO to the Secretary on a sample basis in accordance with applicable procedures specified by the Secretary.

(c) The Secretary will review the norms, criteria and standards established and submitted by the PSRO pursuant to paragraph (a) above and identify significant differences from the regional norms, criteria and standards distributed by the National Council. The Secretary will so notify the National Council and the PSRO. Such notice will explain that the PSRO may consult and discuss with the National Council as to whether a reasonable basis exists for usage of such norms, criteria and standards which differ from regional norms, criteria and standards if the PSRO forwards a written request to the National Council within 30 days of the notice.

(d) The National Council shall, after appropriate consultation and discussion with the PSRO, if such consultation and discussion is requested within the time specified, approve or disapprove the PSRO norms, criteria and standards in question based upon its determination as to whether a reasonable basis exists for the usage of such norms, criteria and standards.

(e) Norms, criteria, and standards established and submitted by the PSRO in accordance with § 101.905 and § 101.907 (a) may be used by each PSRO in the concurrent and preadmission review process, or in an alternate review method established pursuant to § 101.709 of this Part, unless such norms, criteria and standards have been disapproved by the National Council.

(f) If the National Council disapproves certain PSRO norms, criteria or standards, the PSRO shall make appropriate modifications for review by the Secretary pursuant to paragraphs (a) and (c) of this section.

§ 101.908 Availability of norms, criteria and standards for inspection.

(a) Each PSRO shall disseminate to each hospital in the PSRO area a copy of the norms, criteria (including length-of-stay projections), and standards to be employed by the PSRO and by delegated hospitals in the preadmission and concurrent review process, or in an alternate review method established pursuant to § 101.709 of this Part.

(b) Each PSRO shall publish in local medical periodicals and in one newspaper of general circulation in the area a notice stating that the norms, criteria and standards currently employed by the PSRO in concurrent and preadmission review (or an alternate review method established pursuant to § 101.709 of this Part), in medical care evaluation studies, and in profile analysis are available at the principal office of the PSRO for public inspection.

[FR Doc.77-1953 Filed 1-24-77;8:45 am]

federal register

TUESDAY, JANUARY 25, 1977

PART III

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Determinations for Various Communities

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-2544]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Borough of East Newark, 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 Borough of East Newark, 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 Borough of East Newark 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 Borough Hall, 34 Sherman Avenue, East Newark, New Jersey 07029.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Raymond Graham, Borough Hall, 34 Sherman Avenue, East Newark, New Jersey 07029. 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
Passaic River (tidal).	I-280 (downstream side of road).	10
	Central Ave.	10
Passaic River (tidal).	370 ft north along Passaic Ave. from intersection of Central and Passaic Aves.	

(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 22, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.77-1865 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2558]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Aberdeen, Mississippi

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 Aberdeen, Mississippi.

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 Aberdeen 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, Box 31, Aberdeen, Mississippi 39730.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor H. A. Miller, City Hall, Box 31, Aberdeen, Mississippi 39730. 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
Tombigbee River.	U.S. Highway 45	20[1]
	St. Louis-San Francisco R.R.	20[1]
Mattubby Creek.	Meridian St.	202
City Ditch.	Illinois Central Gulf R.R.[1]	203
	do.[2]	204
	Polar St.	206
	Chestnut St.	209
	Locust St.	210
	Meridian St.	211
	Hickory St.	212
	James St.	212
	Madison St.	212
	Jefferson St.	214
	Long St.	215
James Creek tributary No. 1.	Thayer Ave.	210
	Highway No. 25 north.[2]	221
	Old G.M. & O. Rd.[1]	225
	High St.	225
	Glendale Circle.	225
	West Parkway.	228
	Central St.	233
James Creek tributary No. 2.	Illinois Central Gulf R.R.	203
	Junction Meridian and Evergreen St.[2]	213
	Hamilton St.[2]	216

[1] Downstream side.
[2] Upstream side.

(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 22, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1850 Filed 1-24-77;8:45 a.m.]

[24 CFR Part 1917]

[Docket No. FI-2557]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Cabool, Missouri

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 Cabool, Missouri.

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 Cabool

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, 618 Main Street, Cabool, Missouri 65689.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor David Rusc, City Hall, 618 Main Street, Cabool, Missouri 65689. 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
Big Pine River	Airport Rd.	1,224
	U.S. Route 60 and 63	1,234
	Cedar St.	1,248
	Elm St. and Route E.	1,252
	Cannaday Lane	1,268
Unnamed tributary No. 1.	St. Louis & San Francisco R.R.	1,246
	Ozark Ave. and U.S. 60.	1,249
	Summit Ave.	1,251
	Walnut St.	1,254
	Spruce St.	1,259
	Second St.	1,266
	Cedar St.	1,270
	Third St.	1,272
	Tindel Ter.	1,280
	Sycamore St.	1,289
	Highland St.	1,301
	Mecker St.	1,303
Unnamed tributary No. 2.	Elm St.	1,254
Unnamed tributary No. 3.	St. Louis & San Francisco R.R.	1,254
	Elm St. and Route E.	1,257
	Main St.	1,262
	Ozark Ave. and U.S. 60.	1,279
	Summit Ave.	1,285
	Garst St.	1,297

(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.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1851 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2562]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Carrollton, Georgia

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 Carrollton, Georgia.

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 Carrollton 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, City Hall Avenue, Carrollton, Georgia 30117.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor C. L. Cashan, City Hall, City Hall Avenue, Carrollton, Georgia 30117. 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
Beulah Creek	Brumbelow Rd.[1]	986
	do.[2]	989
	Beulah Church Rd.[1]	992
	do.[2]	995
Beulah Creek tributary	Brumbelow Rd.[1]	1,008
	do.[2]	1,011
Buffalo Creek	Georgia Highway 166[1]	992
	do.[2]	995
	Hayes Mill Rd.	997
	Trojan Ave.[1]	1,009
	do.[2]	1,114
	Stadium Dr.[1]	1,114
	do.[2]	1,117
	Roop St.[1]	1,020
	do.[2]	1,021
	U.S. Highway 27	1,022
	Dixie St.	1,022
	Southwire East Mill driveway.	1,036
	Southwire Dam [1]	1,036
	do.[2]	1,042
	Blandenburg Rd.	1,042
	Georgia Highway 16	1,049
Buffalo Creek tributary No. 1.	Stickland Rd.[2]	1,042
	Adamson Ave.[1]	1,054
	do.[2]	1,055
Buffalo Creek tributary No. 2.	Georgia Highway 166	1,044
Chandler's Spring Creek	Kings Bridge Rd.[1]	989
	do.[2]	992
Curtis Creek	Stewart St.	991
	Lake Carroll Dam [1]	991
	do.[2]	1,006
	Georgia Highway 166	1,007
Curtis Creek tributary No. 1.	Almon Rd [1]	1,007
	do.[2]	1,010
	Georgia Highway 166[1]	1,012
	do.[2]	1,014
	Cedar St.	1,027
	U.S. Highway 27-A[1]	1,072
	do.[2]	1,075
Curtis Creek tributary No. 3.	Lakeshore Dr.[2]	1,012
	Abandoned airport runway.[1]	1,012
	Do.[2]	1,022
Little Tallapoosa River.	Lovvorn St.	981
	Alabama St.	984
	Brumbelow Rd.	987
	Center of Georgia R.R.	988
	Kings Bridge Rd.	989
	U.S. Highway 27	990
Little Tallapoosa River, tributary.	West White St.[1]	1,035
	do [2]	1,042
	Cherry Dr.[1]	1,055
	do[2]	1,057
Tanyard Branch	River Dr.[1]	989
	do[2]	990
	High St.[1]	1,008
	do[2]	1,015
	Alabama St.[1]	1,037
	do[2]	1,041

[1] Downstream side.
[2] Upstream side.

(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 3, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.77-1868 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2550]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Derby, 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 City of Derby, 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 City of Derby, Connecticut 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, 35 Fifth Street, Derby, Connecticut 06418.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Edward Ceccarelli, City Hall, 35 Fifth Street, Derby, Con-

necticut 06418. 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
Housatonic River.	Route 8	21
	PC RR	22
	Bridge St	22
Naugatuck River.	PC RR	26
	Route 34	28
	Division St	30

(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.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1855 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2547]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of East Tawas, Michigan

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 East Tawas, Michigan.

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 East Tawas 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, 120 West Westover Street, East Tawas, Michigan 48730.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Robert C. Bolen, City Hall, 120 West Westover Street, East Tawas, Michigan 48730. 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
Tawas River	Franklin St	588
Tawas Lake	Tawas Lake Rd	588
Tawas Bay	Newman St	584

(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.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1862 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2559]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Laurel, Mississippi

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 Laurel, Mississippi.

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 Laurel, Mississippi 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, P.O. Box 647, Laurel, Mississippi 39440.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor W. L. Patrick, Jr., City Hall, P.O. Box 647, Laurel, Mississippi 39440. 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
Tallahalla Creek	County Rd	224
	I.G.G. RR	226
	Mississippi Highway	227
	U.S. Highway	231
	I-59	234
	U.S. Highway 11	238
Tallahoma Creek	County road	214
	U.S. Highway 84	234
	I.C.G. RR	235
Country Club	Southern RR	216
Tributary	Ellisville Blvd	219
No. 1.	West Dr	223
	Airport Dr	228
	Iris Dr	233
	Grandview Dr	237
	Interstate 59	237
	U.S. Highway 84	258
	I.C.G. RR	271
Country Club	Jefferson St	253
Tributary	Congress St	256
No. 2.	U.S. Highway 84	250
Country Club Tributary No. 3.	Sunset Rd	240
Daphne Park	I.C.G. RR	229
Tributary.	4th Ave	233
	Jefferson St	237
	Maple St	237
	Mason St	245
	Central Ave	255
	6th St	267
	8th St	270
Gardiner Park	Arco Lane	231
Tributary.	Cooks St	233
	Cross St	234
	Front St	238
	Magnolia St	239
	7th St	240
	8th St	242
	10th St	245
	5th Ave	245
	13th St	250
	15th St	254
	18th St	259
	20th St	264
	21st St	269

(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.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1849 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2560]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Leawood, Johnson County, Kansas

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 Leawood, Johnson County, Kansas.

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 City Hall, 9617 Lee Boulevard, Leawood.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify the Honorable Eugene E. Alt, Mayor of Leawood, 9617 Lee Boulevard, Leawood, Kansas 66206. 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
Dyke Branch	State line	865
	Lee Blvd	882
	86th St	889
James Branch	104th St	832
	Sagamore Rd	837
	103rd St	840
	Lee Blvd	866
	Belinder Rd	873
	Ensley Lane	878
Indian Creek	State Line Rd	831
	Interstate 435	832
	Tributary No. 1	835
	Tributary No. 2	838
Tomahawk Creek	Indian Creek confluence	841
	119th St	862
	Roe Ave	869
	Nall Ave	876

(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 29, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1853 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2546]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Norton Shores, Michigan

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 Norton Shores, Michigan.

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 Norton Shores 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, 4801 Henry Street, Norton Shores, Michigan 49441.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Frank Buck, City Hall, 4801 Henry Street, Norton Shores, Michigan 49441. 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 Michigan	Shore end of Seminole Rd.	584
	Shore end of Hendrick Rd.	584
Black Lake	Shore end of Judson Rd.	601
Mona Lake	Shore end of Peninsula Dr.	584
	City park	584

(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.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1863 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2563]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Pensacola, 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 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Pensacola, Florida.

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 Pensacola 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, Pensacola, Florida 32521.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Barney B. Burks, City Hall, P.O. Box 12910, Pensacola, Florida 32521. 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
Gulf of Mexico	Langley Ave	10
	Mantalvo	10
	Hyde Park Rd. extended.	9
	9th Ave	9
	Coyle St	9
	"P" St. (Bayou Chico).	8
	"Q" St. (Bayou Chico).	8
	Cervantes St. (Bayou Texa upstream side).	8
	Cervantes St. (Bayou Texa downstream side).	9
	Mallory St. (Bayou Texa).	8
	Hyde Park Rd. (Bayou Texa).	8
	34th St. (Bayou Texa).	7

(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.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1867 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2549]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Plantation, 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 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Plantation, Florida.

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 Plantation 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, 400 Northwest 73rd Avenue, Plantation, Florida 33317.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Frank Veltri, City Hall, 400 Northwest 73rd Avenue, Plantation, Florida 33317. 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
Ponding	Northwest 118th Ave. and Northwest 21st Ct.	8
	Northwest 118th Ave. and Northwest 12th St.	8
	Northwest 117th Ave. and Northwest 12th St.	8
	University Dr. and Sunrise Blvd.	8
	Northwest 11th Pl. and Northwest 70th Ave.	8
	Northwest 10th Ct. and Northwest 45d Ave.	7
	Northwest 3d Pl. and Commodore Dr.	7
	Hiatus Rd. and Broward Blvd.	7
	Northwest 46th Ave. and Broward Blvd.	7
	Tara Dr. and East Mount Vernon Dr.	7
	Pine Island Rd. and Peters Rd.	7
	Peters Rd. and East Tropical Way.	7
	Southwest 70th Ter. and Southwest 20th St.	7

(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.77-1854 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2561]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Riverdale, Georgia

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 Riverdale, Georgia.

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 Riverdale must adopt sound flood plain management measures that are consistent with the food 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, 6690 Church Street, Riverdale, Georgia 30274.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Lamar Hutcheson, City Hall, 6690 Church Street, Riverdale, Georgia 30274. 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
Stream A	Bixley Dr.	911
	Pineview Ter.	909
Stream B	Voyles Dr.	889
	Riverdale Rd.	847
Stream C	Springdale Dr.	893
	Sherwood-Mayo Dr.	879
Stream CT.	Roundtree Rd.	903
	Roberts Dr.	861
Stream D	Taylor Rd.	889

(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 29, 1976.

Howard B. Clark,
Acting Federal Insurance Administrator.

[FR Doc.77-1869 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2545]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Sauk Rapids, Minnesota

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 Sauk Rapids, Minnesota.

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 Sauk Rapids 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, 104 North Benton Drive, Sauk Rapids, Minnesota 56379.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Bernard Gratzek, City Hall, 104 North Benton Drive, Sauk Rapids, Minnesota 56379. 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
Mississippi	Highway 152 bridge	993
	10th St. North	998
County Ditch No. 3.	River Ave.	999
	2d Ave. South	1,019
	3d Ave. South	1,020
	7th St. South	1,021

(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.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1864 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2548]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Alford, 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 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the Town of Alford, Massachusetts.

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 Alford 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 Town Hall, Great Barrington, Massachusetts 01230.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. L. Schoonmaker, Town Hall, Great Barrington, Massachusetts 01230. 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
Green River	Route 71	889
Alford Brook	East Rd	814

(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 11, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1861 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2553]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Edenton, North Carolina

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 Edenton, North Carolina.

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 Edenton 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 Town Hall, P.O. Box 300, Edenton, North Carolina 27932.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Roy L. Harrell, Town Hall, P.O. Box 300, Edenton, North Carolina 27932. 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
Queen Anne Creek.	Norfolk & Southern RR.	7
	North Carolina Highway No. 32.	7
	Paxton Lane	8
	U.S. Highway No. 17.	14
	Norfolk & Southern RR.	20
Northwest Tributary of Queen Anne Creek.	Old Hertford Rd	13
	North Broad St	14
Filberts Creek	U.S. Highway No. 17.	7
	West Albemarle St	7
Pembroke Creek.	U.S. Highway No. 17.	7
Northeast Tributary to Pembroke Creek.	3,000 ft upstream	7
	6,000 ft upstream	9
	8,000 ft upstream	10

(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 11, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.77-1858 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2551]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Kermit, West Virginia

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 Kermit, West Virginia.

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 Kermit 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, Kermit, West Virginia 25674.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Callie Preece, Town Hall, Kermit, West Virginia 25674. 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
Tug Fork of Big Sandy River.	Kentucky St	625

(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 Adminis-

trator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 29, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1856 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2555]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Pulteney, Steuben 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 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Town of Pulteney, Steuben County, New York.

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, Pulteney.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Fred Wright, Town Supervisor of Pulteney, Hammonds Port, New York. 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
Keuka Lake	Northern corporate limits.	721
	Armstrong Rd. extended.	721
	Brown Rd. extended	721
	Southern corporate limits.	721

(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 29, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1860 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2543]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Tarboro, North Carolina

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 Tarboro, North Carolina.

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 Tarboro 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 P.O. Box 220, Main Street, Tarboro, North Carolina 27886.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Victor Herring, P.O. Box 220, Main Street, Tarboro, North Carolina 27886. 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
Tar River	U.S. 64, bypass	43
	Seaboard Coastline RR.	43
	U.S. 64	45
	North Carolina 44	48
Canal	St. James St	44
	Baker St	44
	Clark Dr	51
	Forest Acres Dr	52
Hendricks Creek	East Carolina RR	43
	Wilson St	45
	Howard Ave	51
	Sunset Ave	53
	Fountain St	58
	Seaboard Coastline RR.	65
Tributary A	Howard Ave	52
	U.S. 64, bypass	67
	Speight Ave	79
	Pine St	80
Tributary B	West Northern Blvd	65
	U.S. 64, bypass	65

(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 1, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.77-1866 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2556]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Township of Bernards, 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 Bernards, 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 Bernards 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, 15 West Oak Street, Basking Ridge, New Jersey 07920.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Robert Deane, Township Hall, 15 West Oak Street, Basking Ridge, New Jersey 07920. 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
Passaic River	Bridge at Valley Rd	217
	Bridge at Lord Stirling Rd.	230
	Bridge at Madisonville Rd.[1]	244
	Bridge at Interstate 287.[1]	252

Source of flooding	Location	Elevation in feet above mean sea level
Penn's Brook.....	Bridge at North Maple Ave.	209
	Bridge at Berta Place.[2]	290
	Bridge at Berta Place.[1]	298
	Bridge at Cherry Lane.[2]	315
	Bridge at Appletree Lane.[1]	321
Dead River.....	Bridge at King George Rd.	216
	Bridge at Martinsville Rd.[1]	225
	Bridge at Somerville Rd.[1]	230
	Bridge at Mine Brook Rd.[2]	253
	Bridge at Amin Rd....	267
Harrison Brook..	Bridge at Valley Rd [2].	225
	Bridge at Lyons Rd.[2].	238
	Bridge at Lake Rd.[1]..	279
Harrison Brook Branch 1.	Bridge at Valley Rd.[2].	223
	Bridge at Valley Rd.[1].	224
	Bridge at Lurline Dr.[2].	230
Harrison Brook Branch 2.	Bridge at Atlas Rd.[2]..	250
	Dam at private road [1].	267

[1] Upstream of bridge.
[2] Downstream of bridge.

(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 29, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1852 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2552]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Village of Bay View, 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 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Bay View, Erie 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 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 Village Hall, 304 East Bayview Drive, Bay View Sandusky.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor William Ehrnsberger, Village Hall, 304 East Bayview Drive, Bay View Sandusky, Ohio 44870. 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
Sandusky Bay...	Sunset Plaza.....	578
	West Cayuga Trail (taken east to west).	578
	West Cherokee Trail...	578
	Plaza Drive (taken east to west).	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: November 29, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1857 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2554]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Village of Honeoye Falls, Monroe 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 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Honeoye Falls, Monroe County, New York.

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 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 Village office, 5 East Street, Honeoye Falls.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor William Mantegna, 5 East Street, Honeoye Falls, New York 14472. 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
Honeoye Creek....	North West corporate limit.	592
	Lehigh Valley RR....	596
	North Main St. (NYS 65).	617
	East St. (NYS 65).....	642
	Ontario St.....	668

(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 29, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1859 Filed 1-24-77;8:45 am]

federal register

TUESDAY, JANUARY 25, 1977

PART IV

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

■

RAILROAD REVITALIZATION AND REGULATORY REFORM

Procedures for Computing the Internal Rate of Return on Projects

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 76-01]

PART 258—REGULATIONS GOVERNING SECTION 505 OF THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Procedures for Computing the Internal Rate of Return on Projects

Section 505(b)(2)(A) of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended ("Act"), requires that the rate of return be considered in evaluating projects under section 505. The purpose of this document is to amend the regulations under section 505 of the Act to provide applicants for Federal financial assistance under that section with uniform guidance regarding: (1) The procedures to be followed in computing the internal rate of return ("IRR") on a project for which assistance is being requested; and (2) the format to be utilized in presenting the steps of that computation.

Part 260 of this chapter is being amended concurrently to provide applicants for Federal financial assistance under section 511 of the Act with the same uniform guidance regarding the computation of IRR on a project for which assistance under that section is being requested. The preamble to those amendments is equally applicable to this document, and is incorporated herein by reference.

The impact of section 505 assistance, including the inflationary impact of the regulations, was fully considered prior to publication of the initial regulations on October 8, 1976. The procedures proposed herein will not affect the overall costs or benefits of the program as it was set forth in the initial regulations. Accordingly, an evaluation of the expected impact of the regulations pursuant to the Department of Transportation Policies to Improve Analysis and Review of Regulations (41 FR 16200) is not required.

In consideration of the foregoing, Part 258 of Chapter II of Title 49 of the Code of Federal Regulations is amended as follows:

1. Paragraph (a)(4)(v) of § 258.7 is revised to read:

§ 258.7 Form and content of application.

(a) * * *

(4) * * *

(v) A detailed statement setting forth the estimated internal rate of return on the project, computed in accordance with the provisions of subpart C of part 260 of this chapter which is hereby incorporated herein by reference. This statement shall follow the procedures and utilize the format required by Subpart C of Part 260 of this chapter. Relevant material presented elsewhere in the application need not be repeated in this statement, but must be explicitly referenced.

* * * * *

Effective date: These amendments to 49 CFR Part 258 become effective January 25, 1977.

Dated: January 19, 1977.

ASAPH H. HALL,
Administrator, Federal Railroad Administration.

[FR Doc.77-2342 Filed 1-24-77;8:45 am]

[Docket No. 76-02]

PART 260—REGULATIONS GOVERNING SECTION 511 OF THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Procedures for Computing the Internal Rate of Return on Projects

On October 8, 1976, the Federal Railroad Administrator ("Administrator") published in the FEDERAL REGISTER final regulations under section 505 (41 FR 44570) and section 511 (41 FR 44577) of the Railroad Revitalization and Regulatory Reform Act of 1976, later amended ("Act"), concerning applications for Federal financial assistance. On December 10, 1976, the Administrator published in the FEDERAL REGISTER (41 FR 53996) miscellaneous amendments to the section 511 regulations. The purpose of this document is to amend the regulations under section 511 to provide applicants with uniform guidance regarding: (1) The procedures to be followed in computing the internal rate of return ("IRR") on a project for which assistance is being requested; and (2) the format to be utilized in presenting the steps of that computation.

For approximately a year and a half, the Department of Transportation ("Department") has been examining the manner in which railroads calculate the rate of return on railroad investment projects in order to develop standard procedures for use by the railroad industry. During this period project evaluation in general and IRR in particular were discussed in detail with both senior officials and technical staff at thirteen railroads. Dozens of project analyses done by railroads were examined in great detail. This study, which is continuing, revealed that IRR is widely used by railroads to support their investment decisions, but that the procedures followed and the assumptions used varied considerably among railroads. Such diversity would greatly complicate the task of the Federal Railroad Administration ("FRA") in assessing the projects submitted for financial assistance under section 511 of the Act. Furthermore, not all the procedures followed by railroads in their IRR computations are appropriate for the FRA's purposes. Therefore, these regulations have been developed to promote uniformity in the procedures to be followed and the format to be used by applicants seeking financial assistance under section 511.

Use of the IRR. With respect to projects under section 511, rate of return is useful in determining: (1) Whether the facilities or equipment to be acquired, rehabilitated, improved, constructed, developed or established with the proceeds of the obligation guaranteed will be economically and efficiently utilized (section 511(g)(4)); and (2) whether there is reasonable security and protection for the United States (section 511(g)(5)).

Revisions to these regulations. As previously noted, the Department's study on IRR in the railroad industry is not completed. FRA therefore welcomes comments from railroads and other interested parties regarding these regulations. Changes to these regulations may be made as a result of those comments, the continuing research of the Department, and FRA's experiences in administering the programs under sections 505 and 511.

The impact of section 511 assistance, including the inflationary impact of the regulations, was fully considered prior to publication of the initial regulations on October 8, 1976. The procedures proposed herein will not affect the overall costs or benefits of the program as it was set forth in the initial regulations. Accordingly, an evaluation of the expected impact of the regulations pursuant to the Department of Transportation Policies to Improve Analysis and Review of Regulations (41 FR 16200) is not required.

Since these amendments relate to public benefits and contracts, public notice and an opportunity to comment are not required. These amendments will, therefore, become effective upon publication.

In consideration of the foregoing, Part 260 of Chapter II of Title 49 of the Code of Federal Regulations is amended as follows:

1. Paragraph (a)(7)(i) of § 260.7 is revised and Subpart C is added as follows:

§ 260.7 [Amended].

(a) * * *

(7) * * *

(i) A detailed statement setting forth the estimated internal rate of return on the project, computed in accordance with the provisions of subpart C of this part. This statement shall follow the procedures and utilize the format required by Subpart C. Relevant material presented elsewhere in the application need not be repeated in this statement, but must be explicitly referenced.

Subpart C—Procedures for Computing the Internal Rate of Return on Projects

Sec.

260.31 Applicability.
260.33 Definitions.
260.35 Procedures to be followed and format to be utilized.
Appendix A—Selected cash flow impacts.
Appendix B—Forms to be used in computing IRR
Form I—Analysis of capitalized investment.
Form II—Analysis of sale or retirement of assets.
Form III—Analysis of expenses and contribution to profit.
Form IV—Consolidation of cash flows.
Form V—Computation of IRR.

§ 260.31 Applicability.

This subpart prescribes the procedures to be followed and the format to be utilized in computing the IRR under paragraph (a)(7)(i) of § 260.7 of subpart A of this part.

§ 260.33 Definitions.

As used in this subpart—

(a) Investment means any substantial non-recurring expenditure even if expensed for accounting purposes.

(b) IRR means the estimated internal rate of return on a project for which an application for financial assistance is filed pursuant to this part.

(c) IRS means the Internal Revenue Service.

(d) Project has the meaning set forth in subpart A of this part and for purposes of this subpart shall include as separate projects each part or subpart into which the total project for which the applicant seeks funding may reasonably be divided and for which the cost is considered independent of the remainder of the total project cost. The cost of a part or subpart is independent of the remainder of the total project cost if the cash flow impact upon the applicant resulting from the part or subpart would be approximately the same regardless of whether or not the remainder of the total project were undertaken. The cost of each part or subpart shall comprise all expenditures (including those for which no Federal assistance is requested) necessary to carry out the objectives of that part or subpart.

§ 260.35 Procedures to be followed and format to be utilized.

(a) A narrative discussion of the IRR computation for the project consisting of the following five parts shall be prepared and provided:

(1) *A detailed description of the project.* This description must present the following: the objectives of the project; what assets will be improved, rehabilitated, acquired or constructed; where they will be located; and how they will be used. It must also describe any other work to be done as a part of the project, and any operating changes, including retirement of assets, which will accompany the investment.

(2) *A detailed description of the base case.* The base case is the most favorable alternative action the applicant could take with little or no investment. The description must be comparable in scope to the description of the project. In some cases, the most favorable alternative action may be to do nothing, i.e., making no change in the current situation. In other cases, the applicant may have other alternative actions such as rerouting traffic, changing operating practices (perhaps with an increase in operating costs), or relying more heavily on facilities or equipment belonging to others. If the applicant has considered more than one alternative action (not requiring major investment) to the project, the applicant must describe each of the actions considered and give the rationale for the selection of the base case from among those other actions.

(3) *A discussion of key assumptions.* All general assumptions and those relating only to a particular cash flow impact which substantially affect the IRR should be explained. Assumptions regarding traffic volumes deserve particular attention. The applicant must specify how much traffic is expected if the project and base case are undertaken, and where the difference, if any, between the project and base case is expected to come from (e.g., diverted from truck, diverted from other railroads, generated by the project, etc.). Other key assumptions may relate to actions by third parties, such as regulatory agencies and other railroads.

(4) *A discussion of each of the project's and base case's cash flow impacts.* The applicant must identify all the benefits and costs of the project and base case which will affect its cash flow. For each cost and benefit used in the IRR computations, the applicant must explain why the particular cash flow will result from the project or base case, and how the size of the cash flow and the corresponding measure in physical units were estimated. In addition, the applicant should identify and discuss important costs and benefits which it has not been able to quantify. Since the project will be audited to provide a continuing assessment of the IRR computation, applicant must indicate how an audit trail could best be facilitated. Appendix A of this subpart lists the most common cash flow impacts of railroad investment projects and base case alternatives, indicates the kinds of actions likely to involve each type of cash flow, suggests how each might be measured (both in physical and monetary units), and discusses special problems associated with each. Appendix A is not exhaustive; other cash flow items should be included in the analysis as appropriate.

(5) *A discussion of the principal areas of uncertainty.* This discussion must indicate why particular values might be different from those used in the computation, and the range into which each uncertain value could be expected to fall. It must also indicate the applicant's subjective level of confidence that the computed IRR is a reasonably close prediction of the project's and base case's financial performance. Such a level of confidence may, for example, indicate that a prospective labor saving, although quantifiable, has little likelihood of realization. In some circumstances, the applicant must point out where the IRR fails to incorporate certain important features of the project or the base case, or both. Applicant may enhance its discussion by presenting examples of its own prior experiences with IRR, stating, perhaps, that an audit of past computations has shown marked deviations from actual results regardless of the detail of those computations.

(b) For the project (as it relates to its base case alternative), a thorough presentation of all the computations underlying the IRR using the Forms I–V of Appendix B to this subpart shall be prepared and provided. The computation of the IRR must follow the four steps described below. (This procedure cannot be used if the project consists of replacing an asset, usually equipment, which would otherwise remain in service (at high cost) for only a few more years. In that situation, the lifetime of the project (the new asset) is substantially longer than the lifetime of the base case (the old asset), so that it is not possible to get a differential cash flow in every year of the project's life. A possible approach for handling such cases is to determine the discount rate which gives the same average annual cost per unit of output for both the project and the base case. Because it is expected that very few of the applications will involve such replacements, the procedure for handling them will not be detailed here but will be provided upon request.)

(1) *Step 1: Determination of before-tax cash flows.* The applicant must determine, for each year of the project's expected useful life, up to a maximum of 15 years (unless the cash flow impacts of later years would substantially affect the IRR), both the project's and base case's before-tax cash flow impacts (receipts and disbursements). The cash flow estimates must not include the effects of inflation, but rather must be done in constant dollars. The effects of financing must also be excluded; that is the cash flows must be estimated as if the financing were consummated at no cost.

The various cash flow impacts for this step 1 must be shown on Forms I through V of Appendix B as explained below. On Forms I through V cash flow impacts occurring in the first year of the project and base case are assigned to and recorded in the time period year 1. Cash flows in subsequent years are all assigned to and recorded in the year in which they occur regardless of whether they occur at the beginning or end of the year. For purposes of assigning and recording cash flow impacts of the project and base case, it will be assumed that the project's starting date and thus the commencement of year 1 begins as of the first of the January following the year in which an application for financial assistance is filed.

(i) Capitalized investments which would occur as a part of the project or the base case must be entered in Column 1 of Form I. The capitalized investment includes capitalized engineering work, installation expenditures and other start-up costs allowable in reporting to the IRS. The total investment for the project or base case must be divided into portions which are homogeneous with respect to depreciation method (if depreciable), depreciation period (if depreciable), year in which the assets enter service, and whether the assets qualify for investment tax credit. (If applicant has a considerable tax credit carryforward, the tax credit must be shown only in the year or years it will result in a reduction of tax payments.) A separate form should be completed for each such portion.

(ii) Sales of released assets (as a useful assets or as scrap), which would occur

as a part of the project or the base case, must be entered in Column 1 of Form II. As was the case for capitalized investments, there must be a separate Form II for each portion of the assets sold, such that each portion is homogeneous with respect to tax treatment and year of sale. Form II must also be completed for retirements of assets, even though the sale price is zero, if the retirement will affect the applicant's income taxes and thereby the applicant's cash flow. The sale or retirement of an asset at the end of the project's life, if the cash flow impact is substantial enough to merit inclusion in the computation, must also appear on one or more Forms II. (If a project would continue an asset already owned in its prior use but the base case would put the asset to an alternative use, and if the cash flow from that alternative use is difficult to determine, the applicant may do the analysis as if the asset were to be sold in the base case at its fair market value when put to the alternative use. Similarly, if the base case would continue an asset in its present use but the project would result in the asset being employed in an alternative use, the anticipated cash flow of which would be difficult to determine, the asset in the project may be treated as a sale at fair market value in the IRR computations. In either event, the market value of the asset otherwise put to an alternative use would be entered in Column 1 of a Form II and the asset in its current use (in either the project or base case, as the case may be) would be recorded, as to continuing depreciation and income tax credit, if any, on Form I and, as to expenses and contribution to profit, on Form III. However, whenever possible, the anticipated cash flow of the alternative use, whether in the project or base case, should be entered on Form III rather than treated as a theoretical sale at fair market value.)

(iii) Expense items or contributions to profit which arise by reason of the project or the base case must be documented on Form III for the respective case, with a separate form being used for each item.

Columns 1 and 2 of Form III must be completed unless the difference of column 3 can be ascertained only through a direct computation (as, e.g., car-day savings by reason of track rehabilitation time sensitivity). When practical, expenses and traffic are to be expressed first in physical units (Columns 1, 2 and 3) and then converted to dollars (Column 4). In instances where this is not practical, the applicant may estimate expenses and contribution directly in dollars using only Columns 1, 2, and 4. In Columns 1 and 2, expense items should always be enclosed in parentheses because they represent cash outflows. Thus, positive numbers in Columns 3 and 4 will indicate that the project produces a larger cash inflow (or smaller cash outflow) than the base case.

(2) *Step 2: Determination of after-tax cash flows relating to capital assets.* The applicant must compute the annual after-tax cash flows corresponding to each of the before-tax flows recorded on each Form I and Form II in the previous step. If the applicant expects to pay taxes in some years but not others, the applicant will undoubtedly carry forward (or back) the tax losses and credits from years in which no tax was paid, so as to take full advantage of them. In that case, the applicant must estimate when such tax benefits will actually be received, and include them in the cash flow stream at the appropriate time. State and local taxes should be included unless applicant is unable to estimate a project's or base case's impact on those taxes. The appropriate tax rate for such computations is the applicant's marginal tax rate. This is the rate which would apply to one additional dollar of income earned by the applicant. Normally, the marginal rate will be 48% for Federal taxes except in years in which the applicant does not expect to pay taxes. The average or effective tax rate (found by dividing a firm's actual tax payments by its net income before taxes) is not appropriate for this purpose. If the tax rate assumed is different from 48%, or if the computations assume the applicant will not pay taxes in certain years, then those assumptions must be explained in the discussion of key assumptions. The tax-related computations must be shown on the same forms as were used to record the pre-tax cash flows. Additional working papers should be submitted as necessary to clarify the computations. The computations to be done on the two forms are as follows:

(i) On each Form I, the applicant must indicate in Column 2 the depreciation schedule which it expects to use in reporting to the IRS. In Column 3, the applicant must indicate how much its tax bill will be reduced as a result of the depreciation shown in Column 2. (If the applicant expects to pay taxes every year, Column 3 is simply 48% of Column 2.) In Column 4, the applicant must indicate the tax reduction, if any, it expects from investment tax credit. (The effect of the tax credit must be computed using the flow through method.) Column 5 is the net after-tax cash inflow associated with the investment.

(ii) On each Form II, the applicant must indicate in Column 2 the increase (or decrease) in its Federal income tax payments resulting from the difference between the sale price and the book value of assets to be sold by reason of the project or base case. If an asset is released without a sale or a corresponding write down of book value, Form II is not used, but Form I is used to reflect continuing depreciation as before the release. In Column 3, the applicant must record any recapture of investment tax credit by the IRS. (Such recapture can only occur when an asset is disposed of before it has been in service for seven years.) Finally, Column 4 records the net cash flow in or out.

(3) *Step 3: Determination of aggregate after-tax cash flow.* The applicant must determine the project's aggregate after-tax cash flow using Form IV. This shall be done as follows:

(i) For each year, the corresponding after-tax cash flow (Column 5) on the various Forms I on which the "project" box was checked are summed, and the total entered into Column 1 of Form IV. Then the net after-tax cash flows on the base case Forms I are summed and entered into Column 2 of Form IV.

(ii) Similarly, the project and base case Forms II (Column 4) are consolidated and entered into columns 3 and 4, respectively, of Form IV.

(iii) The Forms III (Column 4) are consolidated into Column 5 of Form IV. The corresponding after-tax cash flow is recorded in Column 6. If the applicant expects to pay taxes every year, Column 6 is simply 52% of Column 5. If applicant expects to pay no taxes, the two columns are identical. If applicant expects to pay taxes in some years but not others, the applicant must incorporate the effects of carrying losses forward (or back) into the estimated after-tax cash flow.

(iv) The aggregate net cash flow for the project relative to the base case is then found and entered in Column 7 of Form IV.

(4) *Step 4: Computation of the IRR.* The applicant must determine the discount rate for which the present value of the differential cash flow stream is zero. That is, the applicant must find the value of r which makes the expression

$$\sum_{i=1}^{n} \frac{c_i}{(1+r)^i}$$

equal to zero. In the above expression, r is the discount rate applied to future cash flows; i is an index denoting a particular year of a project's life; n is the number of years in the project's life; and c_i is the differential cash flow in year i. Computer programs for calculating the rate of return are widely available. If a program is utilized, copies of the printout showing input and output data, and a brief explanation of the program function must be included in the application. If the applicant chooses not to use such a computer program to find the IRR, the applicant may use Form V. If the IRR lies off the graph, it is sufficient to report that the IRR is negative or above 50%. If the nature of the cash flow stream is such that a unique IRR cannot be found, the work done to develop the cash flow stream must be submitted with a note that no IRR could be computed.

(c) Copies of all financial analyses which the applicant did on rejected alternatives to the project, including changes in scale or scope. The applicant need not do any such analyses beyond those already done, nor need the format, assumptions, or procedures used in those analyses be changed to conform to the requirements of these regulations.

(d) A reconciliation between the cash flows used in the IRR computations and all forecasted data presented in the application, both before (for the base case) and after (for the project) giving effect to Federal assistance. This reconciliation must indicate what inflation factor or factors were used in developing the fore-

casted financial statements as compared to the constant dollar figures used in the IRR computations. The reconciliation must also show how each of the individual parts and subparts of the project relates to the applicant's forecasted financial statements.

APPENDIX A—SELECTED CASH FLOW IMPACTS

Railroad investments usually affect the investor's cash flow by changing some of the following things:

Use of assets.
Contribution from traffic.
Labor requiremants.
Locomotive requirements.
Requirements for cars, trailers, and containers.
Maintenance material consumption.
Energy consumption.
Accident rates and severity.
Expenditures needed to meet legal requirements.
Salvage value.
Installation and start up expenses.

While this list is not exhaustive it does identify the most common cash flow impacts.

Some of the items listed, such as start up expenses, are almost always costs of projects or base cases, rather than benefits. Others, such as salvage value, are usually benefits. Most of the items, however, may be either project or base case benefits or costs, depending on the particular situation.

This appendix briefly discusses each of the eleven factors listed above. The discussions include four parts: a list of the kinds of actions which often involve the particular cash flow impact in question; the physical units in which the impact is generally measured; suggestions for converting the physical units to their monetary equivalent; and notes on special characteristics or problems associated with the particular cash flow impact.

USE OF ASSETS

Characteristic Actions: Assets are often released for sale or alternative uses when they are replaced or made unnecessary by new assets. Examples are pole line materials released when microwave is installed; shop equipment released when similar new equipment is acquired; rail replaced by rail in better condition; and land and track materials released when yards, shops, and terminals are made unnecessary by new facilities elsewhere. Some other types of actions, such as line changes and the installation of centralized traffic control, often permits some tract segments to be abandoned, thereby releasing track material for sale or other uses.

On the other hand, some actions involve the use of assets already owned, thereby prohibiting their sale or use of assets already for other purposes. Examples are car modifications and projects involving land and buildings already owned.

Physical Units: Feet (or miles) of rail, number of ties, acres of land, etc.

Monetary Value: The value of an asset released by an action depends on what will be done with it. The value of an asset occupied by an action, on the other hand, depends on what would have been done with it in the absence of the action. Regardless of whether it is the action or its alternative which makes the material available, one must first carefully specify what is assumed to happen to the asset both with and without the action, and identify the factors which change the cash flow stream. Depending on the particular circumstances, any of the following might be involved: payment received from selling the asset; a multi-year stream of income produced by the asset in some use; tax paid on the sale of the asset; expenditure for dismantling and/or moving the asset; recapture by the IRS of investment tax credit taken when the asset was purchased (if it had been in use for less than seven years). It is the use of the released asset which values it. Thus, a released asset such as rail which, by cascading, results in the subsequent release of less valuable rail, must be valued in its use and not as the value of subsequently released assets.

In cases in which the asset is transferred to another use which produces income over several years, the effect of releasing the asset extends over several years, and must be expressed as a series of annual cash flows, rather than a lump sum.

Special Features: A common error in project evaluations is to value a used asset at its book value (i.e., purchase price less accumulated depreciation). The book value may be far from the value of the asset on the open market, especially in the case of rail released by track abandonments and land released by the abandonment of facilities in urban areas. The only way the book value of retired assets enters into the cash flow stream is in determining the tax paid on the sale of the asset (or the tax saving if the asset is discarded or sold for less than its book value).

In calculating the tax paid on the sale of a released asset, the ordinary tax rate (48%) should be used, except when the capital gains rate applies.

It is sometimes difficult or impossible to estimate the contribution to profit which a particular asset, such as second hand rail, will produce in an alternative use. In such cases, it is better to do the financial analysis on the assumption that the asset in question would be sold at its fair market value (even though it would in fact be put to an alternative use), rather than leaving the asset out of the computations entirely.

CONTRIBUTION FROM TRAFFIC

Characteristic Actions: Actions which affect the availability and attractiveness of the railroad to shippers. The action may involve giving the shipper better access to the railroad (track extensions and terminal improvements) or better service. Line consolidations, on the other hand, may involve abandonments which deprive some shippers of service, or may result in such degradations in service quality that some shippers switch to other carriers. Faster service can result from more power or improvements in track, yards, terminals, signals, and communication. Another component of service quality, reduced loss and damage to lading, can be occasionally improved by eliminating accidents (wayside warning devices), using specialized cars, and making improvements to yard and terminal facilities. Service quality can also be enhanced by purchases of additional freight cars and trailers, so as to reduce the likelihood of car shortages. Another aspect of service quality is reliability, which may be affected by improvements in yards, terminals, and communications, as well as the elimination of accidents. Still another component of service quality is the cost to the shipper of packing and loading, which may be affected by investments in specialized cars and terminal facilities.

Physical Units: Car-loads.

Monetary Value: The contribution to profit is found by subtracting the variable cost of moving the traffic from the associated revenue. The variable cost is best estimated by a careful study of the operations and costs of the particular movements involved.

Such a study is not practical for certain traffic. In these cases the best alternative may be to estimate the variable cost using system averages, as is done in the Interstate Commerce Commission's Rail Form A, Carload Cost Scales, and Rail Revenue Contribution studies. Where appropriate, such system average costs should be adjusted to exclude costs not involved in the particular movement, and to reflect the current, not the historical, costs of assets to be purchased in the future.

Special Features: The contribution from new traffic resulting from an improvement is extremely important, but it is also one of the most difficult of all project benefits to estimate. One major problem is estimating the volume of traffic likely to result from a particular improvment, especially if the improvement affects service quality. A second serious problem is estimating the variable cost of particular movements. (These estimates may be facilitated by a six-part FRA cost study currently in progress.)

LABOR REQUIREMENTS

Characteristic Actions: Labor requirements are often reduced by automation, facility consolidation, faster train running times, reductions in switch engine requirements, and better communications for operations, and reductions in maintenance needs. On the other hand, actions involving new or expanded yards, terminals, or shop facilities may increase manpower requirements.

Physical Units: Man-hours, number of employees.

Monetary Value: The value of labor depends on the particular situation. If the action results in a change in the number of employees or in overtime, hours, the wages and fringe benefits associated with that change directly affects the railroad's cash flow. If an action changes or eliminates work for employees without changing jobs or overtime, the change will affect the railroad's cash flow if either:

The man-hours released or occupied by the change can be used on other profitable tasks which would otherwise not be done, or which would be accomplished by paying overtime or hiring more people; or

The action can be combined with one or more other actions, each of which saves or requires a fraction of an employee, so that the set of actions results in a change in the size of the work force.

In either case, the value of the man-hours released or consumed is the cost of the associated wages and fringe benefits. On the other hand, if the result of the action is simply to give existing employees more (or less) free time on the job, no cash impacts should be attributed to the change in the amount of work.

Special Features: There are several different kinds of labor which a project might affect: road crews, yard crews, maintenance-of-way, shop, inspection, clerical, and other.

Determining the wages and fringe benefits associated with a particular man-hour is often not straightforward because of rules governing employee compensation. The payment of some train crews on a mileage rather than a time basis is an example.

Wage and fringe benefits savings resulting from the elimination of jobs may be at least partially offset by costs incurred as a result of labor protection agreements. Depending on the situation, these costs may be lump-sum or recurring. Determination of employee protection costs is complicated by the fact that the individual who holds a position which is to be eliminated may not be the person who is actually laid off as a result of the elimination. Rather, the person whose job is eliminated may displace a person with less seniority holding a similar job. That person may, in turn, displace another employee and so on.

LOCOMOTIVE REQUIREMENTS

Characteristic Actions: Actions reducing train running time (track upgrading, line changes, signal system improvements, etc.), or which permit moving the same traffic with fewer trains (yard consolidations) or with fewer terminal delays (yard and terminal improvements) can all reduce the number of road engines needed. The number of switch engines needed can be reduced by some types of yard and terminal improvements, such as yard consolidations, track changes, and the installation of weigh-in-motion scales. Actions which lead to increased traffic, such as track extensions, may increase the need for both types of locomotives.

Physical Units: Locomotive-years (or locomotive-hours or locomotive-days). Note that one does not have to save 365 locomotive-days to save a locomotive-year, since locomotives are not available for service 365 days per year because of maintenance work. If a railroad's locomotives were available for service 78% of the time, it would only have to save 285 locomotive-days to save a locomotive-year.

Monetary Value: One way to estimate the value of a locomotive-year is the following four-step process:

1. Estimate the after-tax cash flow stream resulting from owning a locomotive. The components of this stream would be: the investment expenditure; investment tax credit; tax savings from depreciation; normal maintenance; overhauls; and salvage value. The cash flow stream must be in constant dollars of the same base year as would be used in the rest of the IRR computation.

2. Calculating the net present value of the cash flow stream, using the yield on 180-day United States treasury bills as the discount rate.

3. Find a stream of equal annual outlays which produces the same net present value as was found in Step 2. The annual outlay may be found by multiplying the net present value by

$$\frac{r(1+r)^n}{(1+r)^n-1}$$

where r is the yield in Sept 2, and n is the number of equal annual outlays.

4. Find the pre-tax equivalent of the after-tax annual payment found in Step 3, by dividing the after-tax figure by one minus the railroad's marginal tax rate. This is the pre-tax value of a locomotive year, expressed in dollars of the base year chosen in Step 1.

Increased locomotive productivity is somewhat analogous to increased labor productivity (see Labor Requirements) in that it may not always lead to significant cash savings. This is especially true with switch engines, since a decrease in car movements may not reduce the number of engines required if the number of locations which the switch fleet must serve does not also change. On the other hand, reducing the number of locations covered (by consolidating yards, for example) may decrease switch engine requirements. As in the case of increased labor productivity, increased locomotive productivity affects a railroad's cash flow only if a locomotive can be sold (or a purchase avoided) or if the locomotive is able to do other profitable work which would not be done otherwise.

Special Features: The locomotive values computed using the procedure above include maintenance and overhaul expense, but not fuel or other labor expense. Therefore any concomitant change in fuel or labor (except maintenance) should be estimated separately. Care should be taken to exclude changes in locomotive maintenance costs from any other estimates of changes in maintenance costs resulting from the investment project.

REQUIREMENTS FOR CARS, TRAILERS, AND CONTAINERS

Characteristic Actions: Actions which change train running times (such as track upgrading, purchase of additional power, line changes and signal improvements); actions which change the time cars spend in yards, or permit bypassing yards altogether (yard improvements and improved communication systems); actions which change the time cars are out of service for maintenance (shop facilities, car modifications, track upgrading); and actions which affect the turnaround time for cars in terminals.

Physical Units: Car-days.

Monetary Value: The procedure for finding the value of a locomotive-year or day is equally applicable to cars. (See Locomotive Requirements).

Another acceptable approach is to use per diem costs (including incentive per diem) since those charges approximate the cost of ownership. Although incentive per diem is in addition to car ownership costs, its inclusion in the car-day value is justified because it reflects, to some degree, the fact that a railroad sometimes loses business during short peaks in demand, because it is not immediately able to buy or hire the cars necessary to take advantage of a particular business opportunity.

Over the long run, however, a railroad need not continually lose traffic, so long as it is willing to incur the cost of owning a sufficient number of cars. Therefore, it is not appropriate to use the investing railroad's average contribution per car-day to value improved car utilization in IRR calculations. Given that per diem is a satisfactory approximation to the cost of car ownership, there is no need to distinguish between foreign car-days saved and investor car-days saved by an action.

Special Features: The valuation of improved car utilization is complicated by the fact that some projects, such as improvements in classification yards, may affect the entire car fleet, while other projects may affect only certain kinds of cars. For example, it may be that all the cars affected by a particular terminal improvement are refrigerator cars. The car-day value to be used is therefore not necessarily the same in all projects. Rather, it depends on the type of cars involved.

MAINTENANCE MATERIAL CONSUMPTION

Characteristic Actions: Since nearly all assets require maintenance, almost any action involving the acquisition of new assets will lead to expenditures for maintenance materials. On the other hand, actions which involve taking assets out of service, such as replacements, eliminate the need to maintain the retired assets. Improving track conditions may decrease equipment maintenance, while decreasing traffic volumes may decrease track maintenance needs.

Primary Units: List of materials involved (and quantities).

Monetary Value: The value of maintenance materials is the price of those materials (plus freight in and labor added, if any). Where a direct relationship exists between maintenance labor and materials, it may be more convenient to first estimate man-hours and then compute material costs in proportion to the man hours.

Special Features: The material costs (or savings) associated with changes in maintenance may include work equipment, as well as the materials consumed during maintenance.

Usually the best basis for predicting maintenance costs is the maintenance history of similar assets in similar service. Manufacturers can also sometimes provide projections of maintenance expense. To the extent practical, care should be taken to specifically reflect cyclical maintenance (overhauls) by assigning the maintenance costs (or savings) to the years in which they will actually occur, rather than normalizing, or smoothing out, the cash flow stream.

Assets which permit maintenance savings often involve maintenance costs which partially offset those savings.

ENERGY CONSUMPTION

Characteristic Actions: Actions changing locomotive activity or locomotive efficiency. Line changes and locomotive replacements may reduce fuel consumption by road engines. Improvements in yards and terminals, as well as locomotive replacements, may reduce the fuel consumed by switch engines. Improvements in buildings and structures can cut heating costs.

Physical Units: Gallons, kilowatt-hours, etc.

Monetry Value: Found by multiplying the fuel or electricity by the current price per unit.

Special Features: Road engine energy consumption generally varies with gross ton-miles and speed. Yard engines are frequently idling, consuming energy, even when not in use. Thus, energy consumption may vary with the number of switch engine crew shifts rather than the amount of work done. Care should be taken not to count changes in locomotive energy consumption twice, once as a change in locomotive requirements and once as a change in energy consumption.

ACCIDENT RATES AND SEVERITY

Characteristic Actions: Accidents may be reduced by wayside warning detectors (hot box detectors, grade crossing protection, dragging equipment detectors, etc.), lading protection devices, some specially equipped cars, some yard and terminal improvements, and track upgrading.

Physical Units: Accidents (of several different types) per year.

Monetary Value: Only the monetary cost likely to be borne by the railroad would be relevant to the IRR computation. This would include damage to equipment, roadway and lading, and the cost of wreckage removal as well as injury to people. The expected cost of an accident varies drastically, depending on the particular situation.

Special Features: Accidents delay trains and yard and terminal operations. Thus, actions which reduce accidents may also improve car and locomotive productivity. Care should be exercised that such benefits are counted only once.

EXPENDITURES NEEDED TO MEET LEGAL REQUIREMENTS

Characteristic Actions: Actions permitting abandonment of old facilities or equipment may reduce the need for such expenditures. New facilities may make some such expenditures necessary.

Physical Units: List of actions, such as grade crossing protection, water treatment facilities, or the installation of retention toilets, which would be required to bring the facilities or equipment in question up to legal standards.

Monetary Value: The total cost of the improvements including engineering (except engineering work already done), capital expenditure, maintenance, and operation. These expenditures should be offset by the appropriate tax reductions (resulting from depreciation and investment tax credit) which would result from those improvements.

SALVAGE VALUE

Characteristic Actions: Acquisition of new assets or disposal or existing assets.

Physical Units: List of the particular assets involved (such as tamping machine, 500' of 112# rail, etc.)

Monetary Value: The cash flow resulting from disposing of the assets or using them elsewhere. (See Use of Assets).

Special Features: The salvage value of most assets declines as the asset ages. The value of land often remains roughly constant, as does the value of materials in well maintained track. The salvage value of assets which cannot be used for other purposes, such as a culvert, is zero.

When salvage values are small relative to other benefits and costs, and when they are heavily discounted (because they occur far in the future), their impact on the IRR is likely to be negligible. In such cases, the salvage value can be safely ignored.

INSTALLATION AND START-UP EXPENSES

Characteristic Actions: Most fixed facilities.

Physical Units: Man-hours, list of materials required.

Monetary Value: As noted in the discussion of labor requirements the value of the labor depends on the particular situation. The value of the materials would normally be their market price.

Special Features: Often all or part of the expenditures needed to get a new asset in place and operating is capitalized. In such a case, the capitalized portion of the expenditure should be included as part of the investment cost, but not counted again as a start-up expense.

APPENDIX B—FORMS TO BE USED IN COMPUTING IRR

FORM I.—*Analysis of capitalized investment (constant dollars)*

Applicant .....
Project .....
Date .....
Sheet No. ..... of .....

Portion of investment covered by this sheet .....
Depreciation method used ..... Depreciation period .....
This investment would occur in the ☐ Project ☐ Base case (check one)

Year	(1) Amount capitalized	(2) Depreciation	(3) Tax reduction from depreciation	(4) Tax reduction from investment tax credit	(5) Net cash flow in (out)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
Totals					

Instructions

Use separate forms for portions of the investment which would receive different tax treatment or which would enter service in different years.

Estimate amounts in cols. 1–4 as would be done in reporting to IRS.

Col. 5 equals col. 3 plus col. 4 minus col. 1.

Applicant .....
Project .....
Date .....
Sheet No. ..... of .....

FORM II.—*Analysis of sale or retirement of assets (constant dollars)*

Assets covered by this sheet .....
Depreciation method used ..... Depreciation period .....
Book value of assets at time of sale .....
This sale would occur in the ☐ Project ☐ Base case (check one)

Year	(1) Sale price	(2) Tax on gain (or tax saving on loss) from disposal	(3) Tax credit recapture	(4) Net cash flow in (out)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
Totals				

Instructions

Use a separate form for each portion of the assets which would receive different tax treatment or be disposed of at different times.

Estimate amounts in cols. 1–3 as would be done in reporting to the IRS.

Col. 4 equals col. 1 minus col. 2 (plus col. 2 if a tax saving occurs) minus col. 3.

Applicant .....
Project .....
Date .....
Sheet No. ..... of .....

FORM III.—*Analysis of expenses and contribution to profit (constant dollars)*

Expense or contribution .....
Physical units used ..... Monetary value per physical unit .....

Year	Physical units			Cash difference (in before-tax constant dollars)
	Project	Base case	Difference	
	(1)	(2)	(3)	(4)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
Totals				

Instructions

This form applies to all cashflow impacts except capitalized investments and sales or retirements of assets. Use a separate form for each type of expense or contribution to profit.
Col 3 equals col. 1 minus col. 2.
Col. 4 equals col. 3 times monetary value per physical unit.

Applicant .....
Project .....
Date .....
Sheet No. ..... of .....

FORM IV.—*Consolidation of cash flows (constant dollars)*

Year	Form I totals		Form II totals		Form III		Net cash flow in (out)
	Project	Base case	Project	Base case	Before tax totals	After tax	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
Total							

Instructions

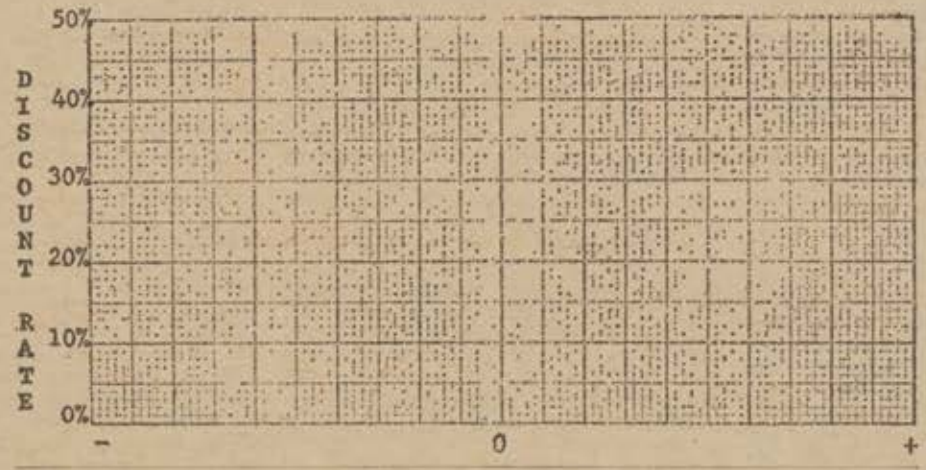
Cols. 1 through 5 are found by summing the right most columns on the indicated forms I–III.
Col. 6 equals col. 5 times (1 minus marginal tax rate) unless taxes will be paid in some years but not others.
Col. 7 equals col. 1 plus col. 3 plus col. 6 minus col. 2 minus col. 4. The subtracting of a (net cash flow out) results in the addition of a positive number.

Date .....
Sheet No. ..... of .....

FORM V.—*Computation of IRR (constant dollars)*

		Present value					
		At 10 pct		At 25 pct		At 40 pct	
	(1)	(2)		(3)		(4)	
Year	Cash flow	Factor	Value	Factor	Value	Factor	Value
1		0.909		0.800		0.714	
2		.826		.640		.510	
3		.751		.512		.364	
4		.683		.410		.260	
5		.621		.328		.186	
6		.564		.262		.133	
7		.513		.210		.095	
8		.467		.168		.068	
9		.424		.134		.048	
10		.386		.107		.035	
11		.350		.086		.025	
12		.319		.069		.018	
13		.290		.055		.013	
14		.263		.044		.009	
15		.239		.035		.006	
Total							

INTERPOLATION CHART



PRESENT VALUE OF CASHFLOW STREAM

IRR = ——

Instructions

1. Col. 1 is brought from form IV col. 7.
2. Cols. 2, 3, and 4 are found by multiplying col. 1 each time by the indicated factor.
3. Plot totals of cols. 1, 2, 3, and 4 against discount rate used (0, 10, 25, and 40 pct respectively). Applicant must indicate scale on horizontal axis of chart and connect the points in a column (1–4) sequence.
4. IRR is the discount rate corresponding to the point at which the graphical presentation intersects the zero present value ordinate."

Effective date: These amendments to 49 CFR Part 260 become effective January 25, 1977.

Dated: January 19, 1977.

ASAPH H. HALL,
Administrator,
Federal Railroad Administration.

[FR Doc.77-2363 Filed 1-24-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[49 CFR Part 258]

[Docket No. 76-01]

RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Proposed Standards for Evaluation and Other Miscellaneous Amendments

On October 8, 1976, the Federal Railroad Administrator ("Administrator") published in the FEDERAL REGISTER (41 FR 44577) final regulations governing applications under section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 ("Act"), concerning the purchase of redeemable preference shares. On October 19, 1976, the President signed into law the Rail Transportation Improvement Act ("RTIA"), Pub. L. 94-555, which, among other things, amends sections 505 and 506 of the Act. The purpose of this document is to correct certain technical errors that were contained in the regulations, clarify or revise certain provisions, and amend this part to reflect changes to the Act contained in the RTIA. Major changes in sections 505 and 506 are discussed below.

AMENDMENTS TO SECTIONS 505 AND 506 CONTAINED IN THE RTIA

1. *Distinction between Facilities Rehabilitation and Improvement and Other Projects.* Prior to enactment of the RTIA, section 505(a) of the Act prohibited the Administrator from acting finally on an application for facilities rehabilitation and improvement financing until the date of publication of the Final Standards, Classification and Designation of Lines of Class I Railroads in the United States under section 503 (e) of the Act ("final section 503 report"). Section 212 of the RTIA eliminates this prohibition.

2. *Determination of the Public Interest.* Section 505(b)(2) of the Act sets forth factors which the Administrator must consider in determining the public interest. One of these factors is—

> The availability of funds from other sources at a cost which is reasonable under principles of prudent railroad financial management in light of the railroad's projected rate of return for the project to be financed * * *

Section 216(a)(2) of the RTIA adds as a factor which must be evaluated in determining whether the cost of funds from other sources is reasonable—

> The railroad's rate of return on total capital (represented by the ratio which such carrier's net income, including interest on long-term debt, bore to the sum of average shareholder's equity, long-term debt, and accumulated deferred income tax for fiscal year 1975) as determined in accordance with the uniform system of accounts promulgated by the [Interstate Commerce] Commission * * *

As the information required for this evaluation is available in reports filed with the Interstate Commerce Commission, no changes in the regulations with respect to this additional factor are required.

In determining the public interest under section 505(b)(2) of the Act, the Administrator must also evaluate and consider—

> The public benefits to be realized from the project to be financed in relation to the public costs of such financing and whether the proposed project will return public benefits sufficient to justify the public costs.

Section 216(a)(3) of the RTIA amends section 505(b)(2) of the Act to provide in addition that (except as between applications that would return equal public benefits, where funding priority is to be given to the application that provides safety improvements) in determining the extent to which a project will provide public benefits, the Administrator shall "give the highest priority to projects which will enhance the ability of the applicant carrier or other carriers to provide essential freight services". This requirement has been taken into consideration in the standards for evaluations and determinations under section 505(b)(2) of the Act, which are discussed below.

3. *Standards for Evaluations and Determinations under Section 505(b)(2) of the Act.* Section 212 of the RTIA provides that any regulations published under section 505 of the Act "* * * shall include specific and detailed standards in accordance with which the [Administrator] shall conduct the evaluations and make the determinations required in subsection (b)(2) of [section 505]." The conference report on the RTIA indicates that such standards should "* * * fully explain the rationale for, and method of, defining and determining the elements of the public interest." H.R. Rep. No. 94-1743, 94th Cong., 2d Sess. 47 (1976). These standards are published herein as a new subpart B of this part.

Section 505(b)(2) of the Act, as amended, requires the Administrator to consider the following three factors in determining if the requested financial assistance is in the public interest:

(A) The availability of funds from other sources at a cost which is reasonable under principles of prudent railroad financial management in light of the railroad's projected rate of return for the project to be financed and the railroad's rate of return on total capital for fiscal year 1975;

(B) The interest of the public in supplementing such other funds as may be available for railroad financing; and

(C) The public benefits to be realized from the project to be financed in relation to the public costs of such financing and whether the proposed project will return public benefits sufficient to justify the public costs.

In accordance with section 505(a) of the Act, as amended, these regulations set forth standards by which the Administrator will evaluate each of these factors to determine whether the requested financial assistance is in the public interest. An applicant will receive Federal assistance only if all of the standards have been satisfied. The Administrator will determine the appropriate level of funding for all projects that qualify for assistance. For example, where an applicant applies for funds sufficient to rehabilitate a section of mainline trackage to a physical level adequate to carry high volume of overhead traffic at high speeds, the Administrator may determine that the public interest justifies rehabilitation only to a level adequate to serve traffic originating or terminating on the line. A discussion of the standards proposed under each of the three factors follows below.

A. THE COST OF FUNDS AVAILABLE FROM OTHER SOURCES

Section 258.23 of these regulations proposes evaluation tests by which the Administrator can determine whether the cost of alternative funding from any of three different types of sources is unreasonable under principles of prudent railroad financial management, thus satisfying the first part of the evaluation process. The Administrator will carefully review the statement submitted under § 258.7(a)(7) of this part to determine whether applicant has thoroughly explored all alternative sources of funds, including funds available from affiliated companies or pursuant to arrangements under section 15(19) of the Interstate Commerce Act, 49 U.S.C. 15(19).

The first of the three standards, set forth in § 258.23(b)(1) of the proposed regulations, applies to "borrowed money" and establishes three tests of when the cost of such borrowing is unreasonable. If any of these tests is met, this standard is satisfied. Subparagraph (i)(A) of this standard recognizes that no railroad can remain viable by investing borrowed money at returns which are, on average, less than the concomitant costs. Because the after-tax, internal rate of return on a project (without giving effect to debt service) provides a measure of the maximum cost of capital which may be prudently incurred to finance that project, it would generally be financially imprudent for a railroad to employ borrowed money with an after-tax effective cost higher than a project's internal rate of return. If the interest cost of the money is not higher than the current market yield on debt securities of like tenor of the applicant (or, if none, of debt securities of like tenor of other companies having a Moody's bond rating similar to that of the applicant), however, that cost will not be deemed unreasonable.

Subparagraphs (i)(B) and (C) of this standard recognize that even where the rate of return on a project exceeds the cost of the financing, the cost of borrowing may nonetheless be unreasonable. Thus, under subparagraph (i)(B), if the financial condition and operating results of the applicant (after giving effect to a project's net cash stream) appear inadequate to enable the applicant to service its total debt, the cost of the borrowed money will be deemed unreasonable under principles of prudent railroad financial management. Under subparagraph (i)(C), if the applicant's fiscal

1975 rate of return on total capital, as defined in section 505(b)(2) of the Act, as amended, would be reduced by more than 10 percent as a result of a project whose size is reasonable in comparison to the applicant's total capitalization, the cost will be deemed to be unreasonable. This test may be applicable whether or not the return on the project exceeds the cost of financing. The test is made applicable only to projects whose total cost does not exceed 25 percent of the applicant's total capitalization so that increases in debt load remain at a reasonable level and the standard cannot be satisfied solely because of the magnitude of the project's cost.

The second of the three standards applies to "excess working capital". Working capital is deemed to be "excess" to the extent that (1) it represents an excess of the sum of cash, cash equivalents, and accounts and notes receivable over current liabilities including long-term debt due within one year net of any special funds to be used to pay that debt, and (2) its conversion into less liquid assets is not likely to impair the continuing operations of the railroad. The standard recognizes that every railroad manages its internally available funds to maximize the rate of return on those funds. Such management, whether through short or long range cash planning, establishes for the railroad an opportunity cost theoretically incurred when using such funds to foster internal business growth. The standard defines this opportunity cost as the effective after-tax annual percentage rate of return available on short term securities in which the applicant customarily invests. The cost of excess working capital will be deemed to be unreasonable if (i) the opportunity cost is equal to or greater than the rate of return on the project to be funded and (ii) the use of such excess working capital to finance the project would reduce the applicant's fiscal 1975 rate of return on total capital, as defined in section 505(b)(2) of the Act, as amended, by more than 10 percent.

The third of the three standards applies to "new equity capital" and sets forth different standards for common stock and preferred stock. The cost of new common stock equity is deemed to be unreasonable if the issuance and sale of such common stock would result in dilution of the book value of common stock held by the current shareholders or would reduce the applicant's rate of return on total capital, as defined in section 505(b)(2) of the Act, as amended, by more than 10 percent. The cost of new preferred stock equity is deemed to be unreasonable if the annualized percentage cost of the new issue, including dividends and placement charges, is equal to or greater than the rate of return on the project to be financed or the issuance would reduce the applicant's rate of return on total capital, as defined in section 505(b)(2) of the Act, as amended, by more than 10 percent. However, as provided in § 258.23(b)(3)(iii) of the proposed regulations, the issuance by the applicant of new private equity capital will not be deemed to be unreasonable if the applicant's long-term debt exceeds 67 percent of its total capitalization, regardless of dilutive effects and effects on the applicant's rate of return on total capital.

This standard may require the use of parent company figures if a railroad is a wholly-owned subsidiary. Because a parent company will benefit from improvements in subsidiary operating results, the Administrator will consider the possibility of parent company equity funding, regardless of how it is passed through to its railroad subsidiary, to be a viable source of "new equity capital".

B. THE PUBLIC INTEREST IN SUPPLEMENTING TOTAL RAILROAD FUNDING

Section 505(b)(2)(B) requires the Administrator to consider "the interest of the public in supplementing such other funds as may be available in order to increase the total amount of funds available for railroad financing." In determining whether a specific application is consistent with this overall objective of the Act, it is appropriate that the Administrator be able to evaluate the applicant's long-term role in a viable, efficient, competitive national rail system. Because the nation's railroads are separate, for-profit corporations providing important rail services, the viability of individual carriers is crucial to the overall viability of the system. It is therefore, appropriate that applicants be required to set forth a long-term program to achieve and maintain, without the need for continuing Federal assistance, essential rail services either as a viable business enterprise or through merger or consolidation. The information requirements of the regulations have been revised to require submission of such a program.

By the purchase of redeemable preference shares, the Federal government will be assuming equity ownership in individual corporations, not in the system as a whole. Fiduciary responsibilities, therefore, dictate that care be taken to assure that the applicant be able to redeem the preference shares according to their terms, and the second part of this standard so provides. Finally, because it would clearly not be in the public interest for railroads to undertake financial investments whose burden would undermine the overall financial condition of the corporation, section 258.25(b)(iii) of the proposed regulations provides that the rate of return on the proposed project must equal or exceed the yield applicable on the preference shares.

C. PUBLIC BENEFITS AND COSTS

The third area which the standards address is determination of public benefits and costs associated with each proposed project. Because of the multiplicity of project types and variations between applicants and their markets, the standards establish specific thresholds above which the public benefits associated with proposed projects are substantial and will exceed whatever monetary or social costs are involved, subject to an assessment of its environmental impact.

Consistent with the major thrust of the Act, as amended, the public benefit standards are based on the identification of project categories that will contribute to the establishment and continued maintenance of a high capacity, highly efficient, competitive interstate rail system, in order to provide for essential rail services to meet the current and future needs of the nation for rail transportation. Under section 505(b)(2)(B) of the Act, as amended, discussed above, the Administrator evaluates the applicant carrier and his ability to be a viable element of the national rail system. This section relates the specific project of the applicant to the public interest in strengthening the most significant segments of the national rail network. In this regard, the following four standards, or categories, have been established. If an applicant satisfies any one of these standards, the public benefits of the proposed project will be deemed to justify the public costs.

(1) *Essential Freight Services.* Section 505(b)(2) of the Act provides that (except as between applications that would return equal public benefits, where priority is to be given to the application that provides safety improvements) in determining the extent to which a project will provide public benefits, the Administrator shall "give the highest priority to projects which will enhance the ability of the applicant carrier or other carriers to provide essential freight services". While it could be argued that any service which is economic to the railroad or in demand by shippers is "essential", such an interpretation, by its very breadth, would render the statutory language meaningless as a guide to administrative action.

The proposed standard establishes seven categories of lines that provide essential freight services. Whenever the demand for funds to finance all qualified projects exceeds the availability of appropriated funds, projects which meet this standard will be financed first and in the order in which the category of lines to be rehabilitated or improved is set forth within the standard. The categories are primarily based on the density of traffic that is currently moving on the line or can be demonstrated with specificity to be reasonably likely to move on the line in the immediate future. These categories are set forth in § 258.27(b)(1) of the proposed regulations.

The proposed density standards do not identify an interstate rail system. Rather, the density standards when combined with the other elements of these regulations, identify facilities which provide for substantial movements of freight traffic and are likely to survive any future restructuring of the existing system. It must be remembered that section 505 funding is interim in nature, and that subsequent studies will define the rail network essential to the national interest.

Within corridors of consolidation potential, as identified in the final section 503 report, and with regard to certain lower density mainlines, an additional threshold of two million net tons of revenue freight per mile originating or terminating on the line is used to identify lines that warrant investment to meet long-term service needs. Projects which involve a consolidation of lines or coordination of traffic flows are given priority over projects on lines of similar densities which do not involve a consolidation or coordination. Thus, under the proposed standard, the Administrator would not fund a project within a corridor of consolidation potential unless the facility on which funds are to be expended can be supported as a consolidated facility or as a line that will continue to be necessary to carry substantial traffic which originates or terminates on the line.

(2) *Competitive Freight Services.* The presence and viability of rail competition serving major markets is an integral element of a high capacity, highly efficient interstate rail network. On the other hand, rail competition now exists in many economic centers whose traffic base is too small to sustain the ability of even two railroads in the market to compete. The proposed standards, therefore, establish criteria for strengthening competition through two distinct types of assistance.

First, assistance may be given to rehabilitate or improve rail lines in markets where there is a sufficient level of traffic to support competition between two rail carriers. The proposed standard will assure that only those projects which are justified by current traffic levels and the presence of few rail carriers in the market will be funded. The information provided under § 258.7(a)(10) of the proposed regulations will be expected to confirm the strategic role of a carrier in a multi-road market as justification for assistance.

Second, assistance may be given to fund costs associated with the withdrawal of the applicant from a market when the applicant demonstrates his service is uneconomic at current levels of competition. Assistance under this provision may include extraordinary labor costs that result from the withdrawal.

(3) *Special Projects.* Projects which eliminate identifiable and severe public safety hazards will be deemed to have public benefits which justify the public costs.

(4) *Equipment Rebuilding.* Most railroads are able to finance acquisition of new equipment without recourse to Federal assistance programs. For those railroads which cannot obtain private financing of new equipment, the loan guarantee program under section 511 of the Act, as amended, is an available Federal assistance source.

However, because financing of equipment rebuilding, unlike equipment acquisition, may not be available from private sources or appropriate under section 511 of the Act, the fourth standard with respect to public benefits would allow for funding of equipment rebuilding if that equipment is necessary for the applicant to serve adequately current and reasonably prospective traffic which originates or terminates on the lines of the applicant. Rebuilding of locomotives would be allowed where necessary to provide local service and switching.

4. *Order of Funding.* Section 505(b)(2) of the Act requires the Administrator to "* * * act upon each * * * application within 6 months after the date on which all required information is received." Applicants will be notified promptly whether their application is complete and, if not, of the deficiencies. Within 6 months after the date on which the application is complete, the Administrator will determine whether funding of the proposed project is in the public interest.

A determination by the Administrator that the proposed assistance is in the public interest, however, does not automatically mean that the proposed project will be funded. A project will only be funded if there are sufficient appropriated funds available after funding all other projects that have been found to have greater public benefits and thus a higher priority for funding. The order of funding is set forth in § 258.29 of the proposed regulations. It is anticipated that demand for preference share financing will be such that funds will be available only for projects in the higher priority groups.

Fiscal year 1977 appropriated funds become available for commitment on the date of publication of the final standards for evaluations and determinations under section 505 of the Act, as amended, and each application received by that time will be assigned a funding priority based on its relative public benefits. Potential applicants for fiscal year 1977 funds should, therefore, file their applications as soon as possible. Fiscal year 1978 appropriations become available for commitment on October 1, 1977. Projects which have been approved prior to that date will be weighed against each other on that date for available fiscal year 1978 funds.

5. *Priority and Dividend Rate of Redeemable Preference Shares.* The RTIA makes two changes in the characteristics of redeemable preference shares as prescribed in section 506 of the Act. First, section 213 of the RTIA provides that the Administrator may make redeemable preference shares subordinate to any common stock that was issued pursuant to a court-approved reorganization plan under section 77 of the Bankruptcy Act (11 U.S.C. 205) and in exchange for securities that were senior in right to common stock, if the railroad was in reorganization under section 77 prior to February 5, 1976. Second, section 214 of the RTIA modifies the dividend rate payable on preference shares by requiring a minimum of fifteen annual redemption payments (except in the event of prepayment) and providing a maximum yield with respect to those shares which are used solely to reduce the deferred maintenance on facilities. With respect to this latter change, section 214 of the RTIA provides that the yield on such shares shall not be less than the minimum yield that could be calculated under sections 506(a)(3) and (4) of the Act or more than—

> Such railroad's rate of return on total capital (represented by the ratio which such carrier's net income, including interest on long-term debt, bore to the sum of the average shareholder's equity, long-term debt, and accumulated deferred income tax credits for the 3 fiscal years preceding the date of submission of the application) as determined in accordance with the uniform system of accounts promulgated by the [Interstate Commerce] Commission in those cases in which such rate of return exceeded such minimum permissible yield.

For the purpose of this section, deferred maintenance is defined as the accumulated physical deterioration in the component parts of a railroad facility, as defined in section 501(3) of the Act, as amended, which causes that facility to fail to meet the standard reasonably necessary to provide adequate freight services. The amount of deferred maintenance that exists on a line is therefore related to the type and density of traffic and the desired quality of service, as well as the previous condition of the facility.

The assessment of the physical condition or remaining useful life of the component parts of a facility and the amount of deferred maintenance in a facility must be based on engineering and maintenance practices customary in the industry. The determination must be made by professionally qualified railroad engineers and managers, projecting the quantities and types of work necessary to restore the facility to a condition adequate to meet current service requirements. The Administrator will review the applicant's submittal in this regard and carefully examine the methodology and assumptions used to calculate the amount and type deferred maintenance associated with a project.

Where it is determined that the proposed Federal assistance is to be "* * * expended solely to reduce deferred maintenance on facilities * * *", a schedule of dividend and redemption payments for the preference shares will be established which produces the maximum yield permissible under section 506(a)(5) of the Act, as amended. In the case of shares whose proceeds result in no reduction in the level of deferred maintenance on facilities, a schedule of dividend and redemption payments will be established which results in a yield that equals the cost of money to the government, except where the public benefits associated with the proposed project clearly warrant a lower yield. In all other cases, the yield will be a weighted average that reflects the portion of total project cost which is expended to reduce deferred maintenance.

REVISIONS NOT REQUIRED BY THE RTIA

Revisions not required by the RTIA are proposed in five areas. First, the requirements of §§258.9 (a) and (b), 258.13, and 258.15 of the regulations will be deleted because they set forth statutorily

prescribed duties or powers of the Administrator or Comptroller General of the United States or deal with matters that are more properly addressed in the financing documents. If an application is approved, purchase of redeemable preference shares will occur in accordance with a financing agreement which will include such terms and conditions as the Administrator deems appropriate, consistent with the purposes of the Act. The terms and conditions that will be imposed as a minimum in the financing documents will be discussed with applicants at an appropriate time during the application process.

Second, it is proposed that renumbered § 258.9 (c), (d) and (e) be revised to require the submission of additional balance sheet or income statement data needed to assess accurately the applicant's financial condition both before and after giving effect to the assistance requested in the application. There has been added to the provisions of § 258.9(c) a requirement that applicants submit the most recent year-end general balance sheet certified by applicant's independent public accountants, if available. Section 258.9(d) has been revised to add the requirements of (1) a submission of applicant's most recent annual income statement certified by applicant's independent public accountants, if available, (2) a spread sheet showing unaudited monthly and year-to-date income statement data for the calendar year in which the application is filed, (3) estimated month-end balance sheets for the months between the date of the unaudited balance sheet presented in Exhibit C and the filing of the application, and (4) a forecasted balance sheet as at the year end for the year in which the application was filed. Section 258.9(e) is amended to add the requirement of forecasted year-end balance sheets for each of the four years subsequent to the year in which the application is filed, both before and after giving effect to the proceeds of the assistance requested in the application. An applicant which does not submit a balance sheet and income statement that have been certified by independent public accountants, as requested in § 258.9 (c) and (d), will be required to supply such statements prior to closing in the event its application for financial assistance is approved, and execution of the financing documents will be contingent upon such certification being satisfactory to the Administrator.

Third, in response to comments by several applicants that more guidance is desired with respect to environmental assessments, § 258.7(a)(8) of the regulations has been revised and an appendix to the regulations has been added which sets forth required environmental information.

Since publication of the initial regulations on October 8, 1976, FRA has published procedures for computing the internal rate of return on proposed projects. Accordingly, § 258.7(a)(4)(v) has been revised to require applicants to follow that methodology.

Finally, a new § 258.7(a)(11) has been added which permits an applicant to supplement his application with any additional information that the applicant feels will assist the Administrator in making the evaluations or determinations required by the Act or otherwise supports the application.

The impact of section 505 assistance, including the inflationary impact of the regulations, was fully considered prior to publication of the initial regulations on October 8, 1976. The standards proposed herein will not affect the overall costs or benefits of the program as it was set forth in the initial regulations. Accordingly, an evaluation of the expected impact of the regulations pursuant to the Department of Transportation Policies to Improve Analysis and Review of Regulations (41 FR 16200) is not required.

Any person or organization may submit written data, views, or comments on these proposed amendments to the Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, D.C. 20590. All material received on or before February 24, 1977, will be considered by the Administrator before taking final action on the proposed amendments. To the extent practicable, comments received after that date will also be considered. All comments received will be available for examination during regular business hours in Room 5101, Nassif Building, 400 Seventh Street, SW., Washington, D.C. The proposals contained in this notice may be changed in light of comments received.

In consideration of the foregoing, it is proposed that 49 CFR Part 258 be amended as follows:

1. The heading to the regulations is amended to read:

PART 258—REGULATIONS GOVERNING SECTION 505 OF THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Subpart A—Procedures for Applications for Preference Share Financing

Sec.

258.1 Applicability.
258.3 Definitions.
258.5 Eligibility.
258.7 Form and content of application.
258.9 Required exhibits.
258.11 Preapplication and application procedure.
258.13 Information requests.
258.15 Waivers and modifications.

Subpart B—Standards for Evaluations and Determinations Under Section 505(b)(2) of the Act

258.17 Purpose.
258.19 Definitions.
258.21 Evaluation process.
258.23 Cost of funds available from other sources.
258.25 Public interest in supplementing total railroad funding.
258.27 Public benefits and costs.
258.29 Order of funding.
Appendix—Environmental Assessments.

AUTHORITY: Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94–210, as amended; the Department of Transportation Act, 49 U.S.C. 1651 et seq., Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(u).

§ 258.1 [Amended]

2. In the first sentence of § 258.1, the phrase ", as amended" is inserted after "1976."

3. Section 258.3(a) is revised to read:

§ 258.3 Definitions.

(a) "Act" means the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94–210, February 5, 1976), as amended.

4. Section 258.3(g) is deleted, and § 258.3 (h) and (i) are redesignated as § 258.3 (g) and (h), respectively.

5. Section 258.3(j) is deleted, and § 258.3 (k) through (p) are redesignated as § 258.3 (i) through (n), respectively.

6. Section 258.7(a)(4)(v), and (8) are revised to read:

§ 258.7 Form and content of application.

(a) * * *

(4) * * *

(v) Estimated rate of return on the project, calculated in accordance with the methodology set forth in subpart C of part 260 of Title 49 of the Code of Federal Regulations (42 FR _____, January 25, 1977).

* * * * *

(8) Detailed assessment of the impact of the project on the environment, in the general format and including the information set forth in the appendix to this part.

7. The word "and" following the semicolon in § 258.7(a)(9) is deleted, § 258.7 (a)(10) is renumbered as § 258.7(a)(12), and two new sections numbered 258.7(a)(10) and (11) are inserted which read:

(a) * * *

(10) A narrative statement detailing management's long-term program to achieve or maintain applicant's ability to provide essential rail freight services as a viable business enterprise. The statement shall include as a minimum a discussion of each of the elements listed as (i) through (viii) in this section including how each relates to the four year financial forecasts provided in Exhibits E and G of the application. The statement should not be limited, however, to the next four years, but should cover a period sufficient in management's judgment to demonstrate applicant's ability to maintain adequately on a continuing basis plant and equipment and meet all present and future financial obligations.

(i) Applicant's current and prospective traffic base, including by commodity and geographic region major markets served, major interchange points, and market development plans.

(ii) Applicant's current operating patterns, and plans, if any, to enhance its ability to serve the prospective traffic base identified in (a)(i) of this section.

(iii) System-wide plans to maintain (A) equipment and (B) right-of-way by major segments at levels adequate to serve markets and maintain operating patterns discussed in (i) and (ii) above.

(iv) Active or proposed plans, if any, including any application currently pending before the Commission, to seek a corporate merger with another carrier.

(v) Specific plans for rationalization of marginal or uneconomic services including coordination with other carriers in jointly served markets, withdrawal from markets served by two railroads other than the applicant and in which the applicant's services produce marginal or no earnings, and the abandonment of uneconomic facilities.

(vi) Facilities and services not discussed in (v) above that are physically or operationally susceptible to consolidation or coordination with other carriers or internally, and summmary of plans or discussions with other carriers regarding same.

(vii) Relationship of current requests for Federal financial assistance to the program discussed in this section, including a specific explanation of the impact of the assistance as stated in the financial forecasts of applicant in Exhibits E and G.

(viii) Any plans to seek further financial assistance from the FRA or assistance from any other public source.

(ix) A full explanation of the methodology and reasoning used in making the analyses specified in this section together with supporting documentation as appropriate.

(11) Any information that the applicant deems appropriate to convey a full and complete understanding of the project and its impact or to assist the Administrator in making the statutorily prescribed determinations; and

§ 258.9 [Amended]

8. Section 258.9(a) and (b) are deleted, and § 258.9 (c) through (l) are redesignated as § 258.9 (a) through (j), respectively, with concomitant changes in the lettering of the exhibits required therein.

9. The portion of renumbered § 258.9 (c) through the colon is revised to read:

* * * * *

(c) *Exhibit C.* A copy of applicant's most recent year-end general balance sheet certified by applicant's independent public accountants, if available, and a copy of applicant's most recent unaudited general balance sheet as of a date no less recent than the end of the third month preceding the date of filing of the application. The unaudited balance sheet shall be presented in account form and detail as required in schedule 200 of the Commission's annual report R–1 or R–2, as appropriate, together with the following schedules (where changes in accounts from the end of the prior year to date of the application have not been significant, copies of the appropriate schedules in the prior year's R–1 or R–2 with marginal notations listing the changes may be submitted).

10. Renumbered § 258.9 (d) and (e) are revised to read:

* * * * *

(d) *Exhibit D.* Applicant's most recent annual income statement certified by applicant's independent public accountants, if available, and a spread sheet showing unaudited monthly and year-to-date income statement data for the calendar year in which the application is filed in account form similar to that required in column (a) of schedule 300 of annual report R–1 or R–2, as appropriate. For those months preceding and ending upon the date of the unaudited balance sheet presented in Exhibit C, the income statement data shall be reported on an actual basis and so noted. For those months between the dates of the unaudited balance sheet and the filing of the application, the income statement data shall be reported on an estimated basis and so noted and shall be submitted in conjunction with corresponding estimated month-end balance sheets. For those months between the dates of the application and the end of the year, the income statement data shall be presented on a forecasted basis and so noted and shall be submitted in conjunction with a forecasted balance sheet as at the year end.

(e) *Exhibit E.* Spread sheets showing for each of the four years subsequent to the year in which the application is filed, both before and after giving effect to the proceeds of the assistance requested in the application:

(1) Forecasted annual income statement data in account form and detail similar to that required in column (a) of schedule 300 of annual report R–1 or R–2 as appropriate; and

(2) Forecasted year-end balance sheets in account form and detail similar to that required in schedule 200 of annual report R–1 and R–2, as appropriate.

These spread sheets shall be accompanied by a statement setting forth the bases for such forecasts.

11. Renumbered § 258.9(f)(1) is amended by inserting the word "unaudited" immediately prior to the words "balance sheets" and by striking "Exhibit E" and inserting in lieu thereof "Exhibit C".

12. Sections 258.13 and 258.15 are deleted, and §§ 258-17 and 259.19 are renumbered as §§ 258.13 and 258.15, respectively.

13. A new Subpart B is added which shall read:

Subpart B—Standards for Evaluation and Determinations Under Section 505(b)(2) of the Act

Sec.

258.17 Purpose.
258.19 Definitions.
258.21 Evaluation process.
258.23 Cost of funds available from other sources.
258.25 Public interest in supplementing total railroad funding.
258.27 Public benefits and costs.
258.29 Order of funding.

(Sec. 505, Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94–210, as amended).)

Subpart B—Standards for Evaluations and Determinations Under Section 505(b)(2) of the Act

§ 258.17 Purpose.

This subpart prescribes standards in accordance with which the Administrator will make the evaluations and determinations required under section 505(b)(2) of the Act.

§ 258.19 Definitions.

As used in this subpart—

(a) "Consolidation" means the combination of separate rail facilities into fewer facilities and the abandonment of the excess facilities.

(b) "Coordination" means the combination of rail freight traffic flows through the use of joint facilities arrangements or internally that result in a partial or complete discontinuance of service on the less essential facility.

(c) "Corridor of consolidation potential" means a corridor of consolidation potential as identified in the Final Standards, Classification and Designation of Lines of Class I Railroads in the United States, published by the United States Department of Transportation pursuant to section 503(e) of the Act.

(d) "Excess Working Capital" means the amount, if any, by which the current assets of an applicant (consisting of cash, cash equivalents, and accounts and notes receivable) exceeds the sum of (i) current liabilities of the applicant and (ii) long-term debt due within one year, deducting special funds, if any, to be used to pay that debt, and the deployment of which working capital is not likely to impair the continuing operations of the railroad.

(e) "Mainline" means a line that has an overall annual traffic density of at least five million gross ton-miles per mile.

(f) "Ratio" means the applicant's fiscal 1975 rate of return on total capital, represented by the ratio which such applicant's net income, including interest on long-term debt, bore to the sum of average shareholders' equity, long-term debt, and accumulated deferred income tax credits in fiscal year 1975.

(g) "Return" means the anticipated after-tax, internal rate of return on a proposed project, computed in accordance with the methodology set forth in Subpart C of Part 260 of Title 49 of the Code of Federal Regulations (42 FR 4652, January 25, 1977).

§ 258.21 Evaluation process.

(a) Section 505(b)(2) of the Act requires the Administrator to consider the following three factors in determining if financial assistance applied for under this part is in the public interest:

(1) The availability of funds from other sources at a cost which is reasonable under principles of prudent railroad financial management in light of the railroad's projected rate of return for the project to be financed and the applicant's Ratio.

(2) The interest of the public in supplementing such other funds as may be available for railroad financing; and

(3) The public benefits to be realized from the project to be financed in relation to the public costs of such financing and whether the proposed project will return public benefits sufficient to justify such public costs.

(b) In accordance with section 505(a) of the Act, this subpart sets forth standards for each of the three factors listed above, by which the Administrator will

make his determination of whether the requested financial assistance is in the public interest. Except where otherwise stated in this subpart, all of the standards must be satisfied in order for the applicant to qualify for the requested financial assistance. The Administrator retains discretion to determine the appropriate level of funding for all projects that qualify for assistance.

§ 258.23 Cost of funds available from other sources.

(a) *General.* Funds available from other sources may take the form of borrowed money, excess working capital, or new equity capital. Where the form of alternative financing combines one or more of these forms, an analysis of each affected form will be made independently. For example, if convertible debt is available, the cost of such debt will be evaluated against the standards below as if the convertible debt were borrowed money, and as if conversion to new equity capital would occur immediately on issuance. The Administrator will review the statement submitted under § 258.7(a)(7) of this part to determine whether applicant has thoroughly explored all alternative sources of funds, including funds available from affiliated companies or pursuant to transactions under section 15(19) of the Interstate Commerce Act, 49 U.S.C. 15(19).

(b) *Standards.* (1) *Borrowed Money.* The cost of borrowed money will be deemed to be unreasonable under principles of prudent railroad financial management if any of the following is true.

(i) The after-tax, effective, annualized cost (expressed as a percentage and including interest, placement, trustee's and other related charges) of borrowed money (hereafter in this § 258.23(b)(1) referred to as "Cost") is equal to or greater than the Return, and the Cost is higher than the current market yield on debt securities of like tenor of the applicant or, if none, then the market yield on debt securities of like tenor of other companies having a similar Moody's bond rating;

(ii) The financial condition and operating results of the applicant (after giving effect to a project's net cash stream) appear inadequate to enable the applicant to service its total debt; or

(iii) The amount of borrowed money is less than 25% of the denominator of the applicant's Ratio and the borrowing would result in a reduction of more than 10% in the applicant's Ratio, computed by adding an amount equal to the product of the Return and the borrowed money to the numerator of the Ratio, and an amount equal to the product of (I) the borrowed money and (II) the sum of 100% and the spread between the Return and the Cost (computed by subtracting the Cost from the Return) to the denominator of the Ratio.

(2) *Excess Working Capital.* The cost of Excess Working Capital will be deemed to be unreasonable under principles of prudent railroad financial management if (i) the after-tax opportunity cost, expressed as an annual percentage rate representing the return available on short term securities customarily invested in by the applicant (hereafter in this § 258.23(b)(2) referred to as "Cost"), of applicant's Excess Working Capital is equal to or greater than the Return; and (ii) the railroad's Ratio is reduced by more than 10% when an amount equal to the product of the Excess Working Capital to be used for the project and the negative spread between the Return and the Cost (computed by subtracting the Cost from the Return), is added to both the numerator and the denominator of the Ratio.

(3) *New Equity Capital.* (i) *Common Stock.* The cost of new common stock equity will be deemed to be unreasonable under principles of prudent railroad financial management if either of the following is true.

(A) An amount equal to the product of the consideration to be received by the applicant or its holding company upon the issuance and sale of new common stock equity (hereafter in this § 258.23(b)(3) referred to as "Consideration") and the sum of 100% and the Return is less than an amount equal to the product of the tangible book value per common share immediately prior to the issuance and sale of new common stock equity and the number of shares of common stock to be issued and sold; or

(B) The amount of Consideration is less than 25% of the denominator of the applicant's Ratio and the issuance and sale would result in a reduction of more than 10% in the applicant's Ratio, computed by adding an amount equal to the product of the Return and the Consideration to the numerator of the Ratio, and an amount equal to the product of the Consideration and the sum of 100% and the Return to the denominator of the Ratio.

(ii) *Preferred Stock.* The cost of new preferred stock equity will be deemed to be unreasonable under principles of prudent railroad financial management if either of the following is true.

(A) The effective annualized cost (expressed as a percentage and including dividends and placement charges) of the preferred stock (hereafter in this subparagraph 258.23(b)(3) referred to as "Cost") is equal to or greater than the Return; or

(B) The amount of Consideration is less than 25 percent of the denominator of the applicant's Ratio and the issuance and sale would result in a reduction of more than 10 percent in the applicant's Ratio, computed by adding an amount equal to the product of the Return and the new preferred stock equity to the numerator of the Ratio, and an amount equal to the product of the new preferred stock equity and the sum of 100 percent and the spread between the Return and the Cost (computed by subtracting the Cost from the Return) to the denominator of the Ratio.

(iii) Notwithstanding subdivisions (b)(3)(i) and (ii) of this section, the standard will not be deemed to be satisfied if the applicant's long-term debt prior to the issuance and sale of new equity capital exceeds 67 percent of its total capitalization.

§ 258.25 Public interest in supplementing total railroad funding.

(a) *General.* The standards set forth in paragraph (b) of this section will enable the Administrator to evaluate an applicant's long-term role in a viable national rail system in order to determine that the application is consistent with "the interest of the public in supplementing such other funds as may be available for railroad financing," as stated in section 505(b)(2)(b) of the Act.

(b) *Standards.* (i) Management's long-term program submitted under § 258.7(a)(10) of this part is reasonably likely to assure that essential rail freight services currently provided by the applicant will continue to be provided by the applicant as a viable business enterprise or by another carrier as the result of a merger of companies or consolidation of lines, and the financing applied for will contribute to that program.

(ii) The applicant is reasonably likely to be able to redeem any preference shares issued to finance the project according to a dividend and redemption schedule which results in a yield as set forth in paragraph (b)(iii) of this section.

(iii) The Return on the proposed project is not less than the yield on the redeemable preference shares, expressed as the effective annual percentage rate applicable from the date of issuance of the shares, which shall be:

(A) in the case of shares whose proceeds are to be expended solely to reduce the level of deferred maintenance on facilities, equal to the applicant's average rate of return on total capital, as defined in section 506(a)(5) of the Act, for the three fiscal years preceding the date of submission of the application;

(B) in the case of shares whose proceeds result in no reduction in the level of deferred maintenance on facilities, equal to the cost of money to the government, except where the public benefits associated with the project clearly warrant a lower yield; and

(C) in all other cases, equal to a weighted average yield determined by applying the yields obtained in paragraphs (b)(iii)(A) and (B) of this section to the appropriate portion of the total project cost. In no event shall the yield under this subparagraph (iii) be lower than the minimum permissible yield determinable under sections 506(a)(3) and (4) of the Act.

§ 258.27 Public benefits and costs.

(a) *General.* Each project for which assistance is sought must satisfy a set of public benefit standards based on national goals and objectives in order to qualify for funding. Public benefits and costs related to rail facility improvements encompass a wide range of values and are not easily quantified. Because of the multiplicity of project types, variations between applicants and their markets, and the difficulty of measuring cer-

tain benefits and costs, consideration of public benefits and costs is accomplished through identification of broad categories of projects for which the public benefits associated with proposed projects are substantial and will equal or exceed whatever monetary and social costs are involved, subject to an assessment of its environmental impact.

(b) *Standards.* The public benefits associated with a proposed project will be deemed to justify the public costs associated with the project if the project satisfies any of the following standards.

(1) *Essential Freight Services.* The proposed project enhances the ability of the applicant or other carriers to provide essential freight services by acquiring by lease, purchase or merger, constructing, rehabilitating, or significantly improving mainlines, including yards or other facilities used primarily to serve traffic moving on such lines, which are:

(i) Located in a corridor of consolidation potential and as a result of a consolidation of mainlines or coordination of traffic of the applicant and at least one other carrier will have a current or reasonably prospective annual traffic density of not less than 20 million gross ton-miles per mile;

(ii) Not located in a corridor of consolidation potential and as a result of a consolidation of mainlines or coordination of traffic by the applicant or between the applicant and at least one other carrier will have a current or reasonably prospective annual traffic density of not less than 20 million gross ton-miles per mile;

(iii) Not located in a corridor of consolidation potential and have a current or reasonably prospective annual traffic density of not less than 20 million gross ton-miles per mile;

(iv) Located in a corridor of consolidation potential and as a result of a consolidation of facilities or coordination of traffic of the applicant and at least one other carrier will have an annual traffic density of not less than two million net tons of revenue freight per mile originating or terminating on the line but have an overall annual traffic density of less than 20 million gross ton-miles per mile;

(v) Not located in a corridor of consolidation potential and have a current or reasonably prospective annual traffic density of not less than two million net tons of revenue freight per mile originating or terminating on the line but have an overall current or reasonably prospective annual traffic density of less than 20 million gross ton-miles per mile;

(vi) Located in a corridor of consolidation potential and have a current or reasonably prospective annual traffic density of not less than two million net tons of revenue freight per mile originating or terminating on the line; or

(vii) Not located in a corridor of consolidation potential and have a current or reasonably prospective annual traffic density of less than two million net tons of revenue freight per mile originating or terminating on the line, but have an overall current or reasonably prospective annual traffic density of less than 20 million gross ton-miles per mile.

The current annual traffic density of a line under this standard in net tons of revenue freight per mile originating or terminating on the line or gross ton-miles per mile will be deemed to be the average annual traffic density for the three calendar years preceding the filing of the application. In segmenting lines for the purpose of determining traffic density in (iv), (v), (vi) and (vii) above, originating and terminating traffic is measured from its originating or terminating point to the next operationally feasible interchange point consistent with traffic flows. A forecasted level of traffic will be deemed to be "reasonably prospective" under this standard if the increment of traffic above the average annual traffic density for the three calendar years preceding the filing of the application is accounted for by newly generated traffic which applicant demonstrates is the result of an increase in the capacity of shippers or receivers currently located on the line to produce or consume commodities that are traditionally shipped by rail or is the result of new shippers or receivers locating on the line and cannot be shipped by an alternate rail carrier.

(2) *Competitive Freight Services.* The application provides for:

(i) Rehabilitation or improvement of a line of an applicant who is competitive with no more than one rail carrier in the market served by the line and is shown by applicant to be economic in light of the current or reasonably prospective levels of traffic in the market and the number of alternative rail carriers in the market; or

(ii) Financial assistance to enable an applicant to withdraw from a market which has more than two competing rail carriers, where the applicant demonstrates that the reasonably prospective levels of traffic in the markekt are insufficient to enable all of the railroads competing in that market to earn a reasonable rate of return.

(3) *Special Projects.* The proposed project will eliminate identifiable and severe public safety hazards.

(4) *Equipment Rebuilding.* The proposed project provides for rebuilding equipment which the applicant requires in order to serve adequately traffic which originates or terminates on applicant's lines at levels which are consistent with the applicant's average market share in the commodity hauled for the three calendar years preceding the filing of the application or are reasonably prospective as defined in subparagraph (b)(1) of this section, and, in the case of locomotives, are necessary to the performance of local service and switching.

§ 258.29 Order of funding.

(a) Where appropriated funds are inadequate to finance all projects which qualify for Federal assistance, projects will be funded in the order in which the categories in which they fall are set forth in section 258.27 of this subpart; that is, in descending order of priority from § 258.27(b)(1) to § 258.27(b)(4) and within § 258.27(b)(1), from paragraph (i) to paragraph (vii).

(b) Where appropriated funds are adequate to finance some but not all projects which qualify for Federal assistance within any one of the categories described in paragraph (a) of this section, priority for funding will be given to projects that provide safety improvements and signals, including underpasses or overpasses at railroad crossings at which injury or loss of life has frequently occurred or is likely to occur.

(c) As between two projects within the same category, as described in paragraph (a) above, which both either provide or do not provide safety improvements and signals, priority for funding will be given to the project which was first proposed in a complete application.

14. An Appendix is added to Part 258 as follows:

APPENDIX—ENVIRONMENTAL ASSESSMENTS

Part I: Description of the environment in the area of the project before commencement of such project, together with statement of other Federal activities in the area which are known, or should be known, to the applicant. This description shall include, without limitation, the following information:

(A) *Demographic data.* Statement of population and growth characteristics of area and of any population and growth assumptions made by applicant in planning the project. Such statement should use the rates of growth in the projection compiled for the Water Resources Council by the Bureau of Economic Analysis of the Department of Commerce and the Economic Research Service of the Department of Agriculture, commonly referred to as the OBERS projection of regional economic activity in the United States. Applicants should refer to 1972 OBERS projections for economic areas, and provide 1969 data and 1980 projections for the following: population; manufacturing earnings; transportation, communications and public utilities earnings; agriculture, forestry and fisheries earnings; and mining earnings. Information should be provided for economic areas which the applicant's proposal would affect.

(B) *Current land use patterns.* Statement of the project's relationship to proposed land use plans, policies, and controls of affected communities, including, where appropriate, maps or diagrams. Where the project is inconsistent with any such plans, policies, or controls, the statement should describe and explain in detail the reasons for such inconsistency.

(C) *Characteristics of current operations.* The Applicant should indicate the maximum allowable speed and frequency of current rail traffic on any affected line, the number and location of grade crossings, and the length of time such grade crossings are blocked during a typical day. The Applicant should indicate derailments and fatalities or injuries resulting from accidents involving trains and motor vehicles or pedestrians on such lines. The Applicant should also indicate the hours of operation on such lines and noise levels of rail operations at 100' from the right of way. Applicants should refer to the United States Environmental Protection Agency document titled "Information on Levels of Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety", which provides a system of measuring day and night noises on a weighted average.

(D) *Air quality.* The Applicant should indicate the air quality in the region, as found in the state Air Quality Implementation Plans to meet ambient air quality standards. Each state is required to prepare such a plan under the Clean Air Act (42 U.S.C. 1857). Some states are required to have Transportation Control Plans to meet ambient air quality standards where transportation sources pose major air quality problems. Applicants should refer to state air quality agencies or to the Regional Offices of the U.S. Environmental Protection Agency for guidance.

(E) *Wetland or coastal zones.* Location, types, and extent of wetland areas or coastal zones that might be affected by the project.

(F) *Properties and sites of historical or cultural significance.* Identification of districts, sites, buildings and other structures, and objects of historical, architectural, archeological, or cultural significance that may be affected by the project. This should be accomplished by consulting the National Register and applying the National Register Criteria (36 CFR Part 800) to determine which properties that may be affected by the project are included in or eligible for inclusion in the National Register of Historic Places. The National Register is published in its entirety each February in the FEDERAL REGISTER. Monthly additions and listings of eligible properties are published in the FEDERAL REGISTER the first Tuesday of each month. The Secretary of the Interior will advise, upon request, whether properties are eligible for the National Register. Officials designated by their Governors to act as State Historic Preservation Officers responsible for state activities under the National Historic Preservation Act may also be consulted. A listing of these state officials may be found at 36 CFR 60.5(d), or may be obtained from the Director, National Parks Service, U.S. Department of the Interior, Washington, D.C. 20240.

(G) *Publicly-owned parklands, recreational areas, and waterfowl refuges, and historic sites (45 U.S.C. 1653(f)).* (i) Protected land proposed to be used. Describe any publicly-owned land from a public park, recreation area or wildlife and waterfowl refuge or any land from an historic site or wildlife and waterfowl refuge or any land from an historic site which would be affected or taken by the proposed program or project, including the size of the land proposed to be affected or taken, available activities on the land, use, patronage, unique or irreplaceable qualities, relationship to other similarly used land in the vicinity of the proposed project, and maps, plans, slides, photographs, and drawings in sufficient scale and detail to clearly show proposed project. Include a description of impacts of the proposed project on the land and changes in vehicular or pedestrian access.

(ii) Significant area. Include a statement of the national, State, or local significance of the entire park, recreation area, wildlife or waterfowl refuge, or historic site as determined by the Federal, State or local officials having jurisdiction thereof. In the absence of such a statement, protected land is presumed to be located in an area of national, State or local significance.

Part II: The probable impact of the project on the environment and measures which can be taken to mitigate adverse impacts. The applicant shall (1) assess the positive and negative environmental effects, including primary, secondary, and other foreseeable effects, on each of the areas specified in Part I above, including long-term impacts associated with the increased intensity, if any, of rail operations, and (2) list measures which can be taken to mitigate adverse impacts. Mitigation measures include control of hours of operation, coordination of street blockages with adjacent communities, dust and erosion control measures, and proposed methods of tie disposal. In addition, the applicant shall provide the following.

(A) Statement of the extent to which any of the impacts of the project represent irreversible or irretrievable commitments of resources. This requires identification of the extent to which implementation of the project irreversibly curtails the range of potential uses of the environment. "Resources" include the natural and cultural resources lost or destroyed as a result of the project.

(B) Statement of the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. This shall include a brief discussion of the extent to which the proposed action involves trade-offs between short-term environmental gains at the expense of long-term losses, or vice versa, and a discussion of the extent to which the proposed action forecloses future options.

(C) Statement of any probable adverse environmental effect which cannot be avoided, such as changes in exposure to noise and changes in level of noise or vibration; water or air pollution; undesirable land use patterns; impacts on public parks and recreation areas, wildlife and waterfowl refuges, or historic sites; damage to life systems; congestion of street traffic in adjacent communities; delays in the provision of essential services (police, fire, ambulance), anticipated changes in accident patterns and other threats to health; and other consequences adverse to the environmental goals set out in section 101(b) of the National Environmental Protection Act, 42 U.S.C. 4331(b). In considering noise levels, applicants should note any conflicts between projected noise levels from rail operations and HUD standards for noise at sensitive sites, such as schools, hospitals, parks and residential locations. (U.S. Department of Housing and Urban Development, "Noise Abatement and Control: Department Policy Implementing Responsibilities and Standards," Departmental Circular 1390.2, Chart: External Noise Exposure Standards for New Construction, April 4, 197.)

(D) Statement of construction impacts, identifying any special problem areas and including: (i) Noise impacts from construction and any specifications setting maximum noise levels:

(ii) Disposal of spoil and effect on borrow areas and disposal sites (include any specifications).

(iii) Measures to minimize effects on traffic and pedestrians.

(iv) Consideration of non-point source pollution such as might result from water runoff.

(E) Statement of any positive or negative impacts on energy supply and natural resource development, including, where applicable, any effect on either the production or consumption of energy or other natural resources. Discuss such effects if they are significant.

(F) Discussion of problems and objections raised by other Federal, State or local agencies, and citizens with respect to impact of the project on the environment.

Part III. Discussion of any alternatives to the project that have been considered with respect to impact on the environment. If cost-benefit analyses have been performed, the extent to which environmental costs have been reflected in the analysis should be stated. Underlying studies, reports, and other information obtained and considered in preparing each section of the statement should be identified. For energy comparisons, a possible source is Oak Ridge National Laboratory Report, "Energy Intensiveness of Passenger and Freight Transport Modes" by Dr. Eric Hirst, April, 1973. For analyzing community impacts, the following report may be useful: "The Impacts on Communities of Abandonment of Railroad Service," July, 1975, prepared for the U.S. Railway Association by the Public Interest Economics Center, Washington, D.C. In examining the environmental effects of highway transport as an alternative to rail service, applicants may wish to use the following publication: "A Study of the Environmental Impact of Projected Increases in Intercity Freight Traffic, August, 1971, prepared for the Association of American Railroads by Battelle, Columbus, Ohio."

(Sec. 505, Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210), as amended.)

Dated: January 19, 1977.

ASAPH H. HALL,
Administrator,
Federal Railroad Administration.

[FR Doc.77-2341 Filed 1-24-77;8:45 am]

federal register

TUESDAY, JANUARY 25, 1977

PART V

DEPARTMENT OF LABOR

Employment and Training Administration

■

TEMPORARY EMPLOYMENT OF ALIENS

Labor Certification Process

DEPARTMENT OF LABOR

Employment and Training Administration

[20 CFR Part 655]

TEMPORARY EMPLOYMENT OF ALIENS

Labor Certification Process for Temporary Agricultural and Logging Employment

Notice is hereby given that the Employment and Training Administration of the Department of Labor is proposing to amend its regulations governing the labor certification process for the temporary employment of aliens in the United States in agricultural (including sheepherding) and logging occupations. The regulations proposed in this document, when finalized, are intended to replace the current regulations at 20 CFR 602.10, 10a and 10b.

Interested persons are invited to submit comments on the proposed regulations to the Assistant Secretary for Employment and Training, Attention: William B. Lewis, Administrator, United States Employment Service, Room 8000, Patrick Henry Bldg., 601 D St., N.W., Washington, D.C. 20213, until February 24, 1977.

Among the proposed changes from the present regulations, are the following substantive changes: 1. The requirements governing sheepherding have been integrated with the requirements for other agricultural occupations.

2. The relationship between employers and their agents, such as associations of employers, have been set forth with greater clarity.

3. The period of recruitment of U.S. workers through the Federal-State employment service system has been lengthened from 60 to 90 days, or longer under certain conditions.

4. Provisions have been added governing fraud and wiliful misrepresentation with respect to temporary labor certifications and applications therefor.

5. A provision has been added that, if an employer has used foreign workers for each of the previous two years, the labor certification application must include a recruitment plan designed to reduce the employer's dependence on foreign workers.

6. The requirements involving deductions from workers' pay have been simplified.

7. The amount which an employer may charge a worker for providing the worker with three meals per day has been increased.

8. The provisions governing workers' disability insurance have been made clearer and more flexible.

9. The amount of work which an employer must guarantee to offer a worker has been increased from three-fourths of the workdays to at least 5 eight-hour days of work per week.

10. Provision is made for the publication of adverse effect piece rates at a later date.

11. The procedure, which was previously set forth in the Employment Security Manual, whereby, under certain conditions, an employer was permitted to pay less than the adverse effect rate to physically handicapped U.S. workers over 60 and under 18 years of age who could not produce normally, has been set forth in the regulations.

Accordingly, it is proposed to amend Title 20 of the Code of Federal Regulations, by adding a new Part 655 to read as follows:

PART 655—LABOR CERTIFICATION PROCESS FOR THE TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

Subpart A—Labor Certification Process for Temporary Agricultutral and Logging Employment

Sec.

655.1 Scope and purpose; definitions.
655.2 Temporary labor certification applications (general).
655.3 Contents of job offers.
655.4 Assurances.
655.5 Recruitment plan.
655.6 Recruitment efforts.
655.7 Action on temporary labor certification applications by the local office.
655.8 Temporary labor certification determinations.
655.9 Adverse effect rates.
655.10 Temporary Labor certification applications involving fraud or willful misrepresentation.
655.11 Invalidation of temporary labor certifications.
655.12 Failure of employers to comply with the regulations under this subpart.
655.13 Petitions for higher meal charges.

AUTHORITY: 8 CFR 214.2(h)(3)(i); Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq.

§ 655.1 Scope and purpose; definitions.

(a) Section 214.2(h)(3)(i) of the Immigration and Naturalization Service Regulations (8 CFR 214.2(h)(3)(i)), issued under the Immigration and Nationality Act, requires, in support of a petition for the admission of an alien into the United States to perform certain temporary labor:

Either a certification from the Secretary of Labor or his designated representative stating that qualified persons in the United States are not available and that the employment of the beneficiary will not adversely affect the wages and working conditions of workers in the United States similarly employed, or a notice that such a certification cannot be made shall be attached to every non-immigrant visa petition to accord an alien a classification under Section 101(a)(15)(H)(ii) of the Act.

(b) The temporary labor certification procedure is designed to prevent the use of foreign labor at the expense of the wages and working conditions of United States workers similarly employed. Thus, temporary foreign workers may only be used to meet shortages which occur in a particular occupation or industry. In the long run, normal adjustments in wages and working conditions should bring sufficient United States workers to an occupation.

(c) The regulations in this subpart set forth the process by which temporary labor certifications may be applied for, and by which they may be granted or denied.

(d) *Definitions of terms used in this subpart.* For purposes of this subpart:

"Administrator" means the chief official of the United States Employment Service or the Adminstrator's designee.

"Adverse effect rate" means the wage rate which the Administrator has determined must be offered and paid to foreign and U.S. workers for a particular occupation and/or area so that the wages of similarly employed U.S. workers will not be adversely affected. The Administrator may determine that the prevailing wage rate in the area and/or occupation is the adverse effect rate, or that a wage rate other than the prevailing wage rate is the adverse effect rate.

"Area of intended employment" means the area within normal commuting distance of the place (address) of intended employment. If the place of intended employment is within a Standard Metropolitan Statistical Area (SMSA), any place within the SMSA is deemed to be within normal commuting distance of the place of intended employment.

"Employment and Training Administration (ETA)" means the agency within the Department of Labor (DOL) which includes the United States Employment Service (USES).

"Employer" means a person, firm, corporation or other organization which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a full-time worker at a place within the United States or the authorized repersentative of such a person, firm, or corporation. For purposes of this definition an "authorized representative" means an employee of the employer whose position or legal status authorized the employee to act as the agent for the employer in labor certification matters. Neither the term "employer" nor "authorized representative" shall mean an association of employers which acts as the agent of a group of employers for temporary labor certification purposes.

"Job opportunity" means a job opening for employment at a place in the United States to which U.S. workers can be referred.

"Local employment service office" means an office of a State employment service agency which serves a particular geographic area within a State.

"*Notice of Findings*" means a notice which sets forth the bases upon which a Regional Administrator intends to deny a temporary labor certification unless the bases are satisfactorily rebutted.

"Regional Administrator, Employment and Training Administration (RA)" means the chief official of the Employment and Training Administration (ETA) in a Department of Labor (DOL) regional office.

"Secretary" means the Secretary of Labor, the chief official of the U.S. Department of Labor, or the Secretary's designee.

"Temporary labor certification" means the determination by the Secretary of Labor, pursuant to 8 CFR 214.2(h)(3)(i), that (1) there are not sufficient U.S. workers who are qualified and available to perform the work and (2) the employment of the alien will not adversely affect

the wages and working conditions of similarly employed U.S. workers.

"United States Employment Service (USES)" means the agency of the U.S. Department of Labor, established under the Wagner-Peyser Act of 1933, which is charged with administering the national system of public employment offices and carrying out the functions of the Secretary under the Immigration and Nationality Act.

"United States worker" means any worker who, whether U.S. citizen or alien, is legally permitted to work permanently within the United States.

§ 655.2 Temporary labor certification applications (general).

(a) An agricultural or logging employer anticipates a labor shortage may request a temporary labor certification for temporary foreign workers by filing, or by having an agent file, a temporary labor certification application, signed by the employer, with a local office of a State employment service in the area of intended employment. However, if the temporary labor certification application is filed by an agent, such as an association of employers, the agent may sign the application. If an agent is used, the application must be accompanied by a letter from each employer, signed by the employer, which authorizes the agent to act on the employer's behalf and which states that the employer assumes full responsibility for the accuracy of the application, for all representations made by the agent on the employer's behalf, and for the fulfillment of all legal requirements arising from the temporary labor certification.

(b) Every temporary labor certification application shall include: (1) A copy of the job offer used by the employer (or each employer in the recruitment efforts for both U.S. and foreign workers. The job offer for each employer shall state the number of workers needed by the employer, and shall be signed by the employer. The job offer shall comply with the requirements of § 655.3. If the State agency informs the employer that workers, who are fluent and/or literate in Spanish and who are not substantially fluent and/or literate in English, will be recruited for the job opportunities, a copy of the job offer written in Spanish shall be submitted;

(2) The assurances required by § 655.4 of this subpart;

(3) If applicable, the recruitment plan required by § 655.5; and

(4) Documentation showing the employer's efforts to recruit U.S. workers as required by § 655.6.

(c) A temporary labor certification application shall be filed in sufficient time to allow the local office to attempt to recruit U.S. workers through the Employment Service intrastate and interstate clearance systems for 90 calendar days, unless the RA has notified the employer in writing at least 30 days prior to the filing of the application that more than 90 days will be needed; the RA, however, shall never specify a period in excess of six months, and shall offer the employer assistance in recruiting U.S. workers. This 90-day period (or longer period if applicable) shall be in addition to the time necessary for the employer to secure foreign workers by the date of need if the temporary labor certification is granted. The Department of Labor, however, may grant or deny the temporary labor certification prior to the ending of the 90 calendar days (or longer period if applicable).

§ 6655.3 Contents of job offers.

(a) Each employer's job offer shall state that: (1) The employer will provide housing without charge which will meet either the full set of Department of Labor, Employment and Training Administration standards set forth at 20 CFR Part 620 or the full set of Department of Labor, Occupational Safety and Health Administration standards set forth at 20 CFR 1910.142;

(2) The employer, either on its own or in combination with other employers will provide housing to U.S. workers who are women and to those who need family housing;

(3) (i) If applicable, the worker will be eligible for workers' compensation for injury and disease arising out of and in the course of the worker's employment; or

(ii) If the worker will not be covered by the State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment, and that the insurance will provide benefits at least equal to those provided under the State workers' compensation law;

(4) The employer will furnish, without cost to the worker, all tools, supplies and equipment required to perform the work including all necessary protective clothing and special footwear and that, if any of these items are provided by the worker, the employer will reimburse the worker for the cost;

(5) The employer will provide the worker with three meals a day, and shall state the cost to the worker for such meals. The cost shall not be more than $3.25 per day unless the RA has approved a higher cost pursuant to § 655.13.

(6) (i) The employer will provide or pay for the worker's transportation and daily subsistence from the worker's home or place of last employment, whichever is applicable, to the place of employment provided the worker works for 50 percent or more of the contract period, and that the amount of the daily subsistence payment will be at least as much as the amount the employer will charge the worker for three meals a day at the place of employment;

(ii) Whether the employer will advance payment to the worker for the costs of transportation and subsistence en route;

(7) If the worker completes the contract period, the employer will provide or pay for the worker's transportation and daily subsistence from the place of employment to the place from which the employer recruited the worker (home or last place of employment, whichever is applicable) unless the worker has immediately subsequent employment with an employer who has contracted with the worker to pay for the worker's transportation and daily subsistence expenses to that employer's worksite.

(8) The employer will provide transportation between the worker's on-the-job site living quarters and the place where the work is to be performed without cost to the worker, and that all such transportation will be in accordance with all applicable laws and regulations.

(9) The employer, unless the prevailing practice in the area of intended employment is for the employer to pay for all travel time as work-time, will pay the worker the adverse effect rate (or the adverse effect rate's piece rate equivalent) for all travel time to work in excess of one-half hour and for all travel time from work in excess of one-half hour.

(10) (i) The employer guarantees the worker the opportunity to work for 5 eight-hour workdays out of each week, and that, if, under the guarantee or otherwise, the employer affords the worker employment on a day on which the worker refuses to work because of the worker's religious convictions, the employer will not dismiss the worker for not working on that day;

(ii) If the worker is afforded less employment than guaranteed, the worker will be paid an amount equal to the amount which the worker would have earned if the worker had worked for the guaranteed periods;

(iii) If the worker will be paid on a piece rate basis, the employer will use the worker's average hourly earnings to calculate the amount due under the guarantee; and

(iv) That any hours which the worker fails to work when the worker has been afforded the opportunity to do, and all hours of work performed, will be counted in calculating the period of guaranteed employment;

(11) (i) The employer will keep accurate and adequate records of all the worker's earnings and hours of employment, including records showing the nature of the work performed, the number of hours of work offered each day by the employer and worked each day by the worker, the time the worker began and ended each workday, the rate of pay, the amount of work performed, the worker's earnings, and the amount of and reasons for any and all deductions made from the worker's wages;

(ii) If the number of hours worked by the worker is less than the number offered, the records will state the reason therefor;

(iii) The records, including field tally records and supporting summary payroll records, will be made available for inspection and copying by representatives of the Secretary of Labor, and by the worker or the worker's representatives; and

(iv) The employer will retain the records for not less than three years after the completion of the contract;

(12) The employer will furnish to the worker at or before each pay-day, in one or more written statements:

(i) The worker's total earnings for the pay period, broken out by straight-time and overtime;

(ii) The worker's hourly rate or piece rate of pay;

(iii) The hours of employment which have been offered to the worker;

(iv) The hours worked by the worker;

(v) An intemization of all deductions made from the worker's wages; and

(vi) If piece rates are used, the units produced daily;

(13) The employer will comply with all applicable Federal, State and local laws, including employment-related safety and health laws;

(14) (i) If the worker will be paid by the hour, the employer will pay the worker the adverse effect rate; or

(ii) If the worker will be paid on a piece rate basis, the piece rate will be based on the normal efforts of average U.S. workers and will be designed to produce average hourly earnings at least equal to the adverse effect rate, and that, if the piece rate does not result in average hourly earnings at least equal to the adverse effect rate, the worker's pay at each pay period will be supplemented so that the worker's earnings are at least as much as the worker would have earned if the worker had been paid the adverse effect rate;

(15) The frequency with which the worker will be paid (in accordance with the prevailing practice in the area of intended employment, or at least biweekly whichever is more frequent);

(16) If the worker abandons employment before the end of the contract period, or is terminated for cause, the employer will not be responsible for providing or paying for the subsequent transportation of the worker;

(17) (i) If, before the expiration date specified in the work contract, the services of the worker are no longer required for reasons beyond the control of the employer due to a fire or other Act of God which makes the fulfillment of the contract impossible, the employer may terminate the work contract;

(ii) The employer will make efforts to transfer the worker to other comparable employment. If such transfer is not effected, the worker will be returned home or to the worker's last place of employment, whichever is applicable, at the employer's expense; and that

(iii) Any deductions made from the worker's pay by the employer for transportation and subsistence to the place of employment will be refunded to the worker.

(18) The employer will make those deductions from the worker's paycheck which are required by law:

(b) The job offer shall specify all deductions, not required by law, which the employer will make from the worker's paycheck. All deductions shall be reasonable. If the employer intends to deduct the cost of the worker's transportation and daily subsistence to the place of employment, the job offer shall state that the worker will be fully reimbursed for such deductions upon the worker's completion of 50 percent of the worker's contract period.

(c) The job offer shall also contain all the provisions contained in any contract which the employer agreed to in the previous year which conferred benefit upon foreign workers additional to those set forth in paragraphs (a)(1) through (a)(18) and (b) of this section.

(d)(1) The job offer may also contain a provision that physically handicapped U.S. workers over 60 years of age and/or under 18 years of age who are unable to produce normally may be requested or required by the employer to sign written waivers indicating their inability to work with normal speed or effectiveness, that such workers will not receive the piece rate earnings guarantee and that, if they are employed at hourly rates, they will be paid rates as low as 75 percent of the required adverse effect rate, but not less than the applicable Federal or State minimum wage.

(2) If the provision in paragraph (d)(1) of this section is included:

(i) The job offer must also contain provisions that the employer may request a U.S. worker to sign a waiver only after the worker has had average hourly earnings below the hourly standard for no less than 40 hours of work experience at piece rates designed to produce the hourly guarantee; that the 40 hour trial work experience period may begin only after the worker has had 24 hours of training in the activity in question; that the employer will maintain records to demonstrate the worker's earning ability during the 24 hours of training and during the 40 hour trial work experience period; and that, during this 64 hour period, the worker will receive the full hourly adverse effect rate;

(ii) The waiver shall be worded as follows:

I _____ having been given 3 eight
(Employee)
hour days of training and 40 hours work experience as a _____ and being unable to maintain production standards of _____ here-
(Occupation) (Minimum) (Acceptable per hour or day)
by waive my right to the minimum required rate of $_____ and authorize my employer to reduce my minimum wage to $_____
(List rate) (No less than 75 percent of adverse effect rate. (In no case less than the applicable minimum Federal or State wage).)

§ 655.4 Assurances.

As part of the labor certification application the employer shall include assurances signed by the employer, that:

(a) The employer has not within the past year been found by a Court or by a Federal or State enforcement agency to have failed without good cause to comply with an employment contract with a United States or foreign agricultural or logging worker, or to have failed without good cause to comply with applicable Federal, State and local employment-related laws, including health and housing laws and temporary labor certification related requirements, or that, if the employer was so found, the employer has produced conclusive, documented evidence that the violation has been remedied, and assures that it will not violate the law or laws in the future;

(b) The job opportunity is not:

(1) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute, or

(2) At issue in a labor dispute;

(c) During the period in which foreign workers are scheduled to be employed under the terms of the temporary labor certification:

(1) The wages and working conditions which will be offered and afforded by the employer to any foreign worker will not be higher or more favorable than those offered and afforded to U.S. workers;

(2) The employer will offer and provide employment to any U.S. worker who is qualified and willing to work in the job opportunity (including women) and will offer and provide housing to such a worker and to the worker's family until the time the foreign worker who holds the job opportunity has completed 50 percent of the foreign worker's contract period; and

(3) The employer will provide each U.S. worker with a copy of the worker's employment contract. The employment contract which is provided to the worker shall be written in Spanish if the worker is fluent and/or literate in Spanish but is not substantially literate in English.

§ 655.5 Recruitment plan.

If the employer has made requests for temporary foreign labor for each of the preceding two years, the employer shall submit as part of the temporary labor certification application, a written plan for recruiting and retaining U.S. workers which is designed to reduce the use of temporary foreign workers. If such a recruitment plan was submitted in the previous year, the employer shall submit documents showing the employer's efforts to implement the plan and the results of the implementation.

§ 655.6 Recruitment efforts.

As part of the temporary labor certification application the employer shall include documents clearly showing the employer's efforts to recruit U. S. workers. The documents must show that:

(a) Reasonable efforts have been and will continue to be made by the employer to obtain U.S. workers at wage rates and working conditions no less favorable than those offered to aliens; and

(b) Such efforts included reasonable attempts to use workers who commute on a daily basis between their residences and the place of employment, the use of the Employment Service intrastate and interstate clearance system, and the employer's participation in special youth recruitment programs.

§ 655.7 Action on temporary labor certification applications by the local office.

(a) When a temporary labor certification application is filed with a local employment service office, the local office shall make sure that the application is complete. If the application is not complete, the local office shall return it to

the employer and shall advise the employer to re-file it when it is completed.

(b) If the application is complete, the local office, using the information on the application, shall prepare and process an employment service job order. If this job order is discriminatory or otherwise unacceptable as a job order under employment service regulations, the local office shall, as appropriate, either contact the employer to try to remedy the defect or return the application to the employer with instuctions as to how the defect can be remedied.

(c)(1) If the job order is complete, and if it complies with employment service regulations, the State agency shall use the job order to recruit U. S. workers from the local area and through the Employment Service intrastate and interstate clearance systems.

(2) In view of the statutorily established basic function of the employment service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the Department of Labor nor the State employment service agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor do such job orders represent an "offer to contract" to which the Employment Service is in any way a party. Nevertheless, if the Department of Labor or a State employment service agency finds probable cause to believe that an employer's job order contains a material representation, the procedures at Subpart F of Part 658 of this Chapter shall be followed (as proposed in the FEDERAL REGISTER on October 5, 1976, at 41 FR 44023).

(d) The State agency shall send the labor certification application to the appropriate Regional Administrator (RA), Employment and Training Administration, together with a statement indicating whether the local office believes the employer has met requirements of this subpart, a report of U.S. worker availability in the area, a description of the recruitment efforts undertaken by the local office on behalf of the employer, and any other information requested by the ETA.

§ 655.8 Temporary labor certification determinations.

(a) The RA shall determine whether the employer has met the requirements of §§ 655.2–655.6. If the RA finds that the employer has complied with those requirements, the RA shall recommend to the Administrator in writing that the temporary labor certification be granted, giving the reasons therefor. If the Administrator objects to the granting of the temporary labor certification based on relevant considerations, the RA shall not grant the temporary labor certification until and unless the objections are resolved.

(b) If the RA believes that the employer's efforts to recruit U.S. workers has not been sufficient or that the temporary labor certification should not be granted for other reasons, the RA shall issue a Notice of Findings, as defined in § 655.1, and shall afford the employer a reasonable time to submit evidence to rebut the bases of the Notice of Findings.

(c) No labor certification shall be granted to any employer if the Immigration and Naturalization Service has notified the Department of Labor that the employer has knowingly had in his employ during the previous 12 months any foreign worker who was not lawfully in the United States, or if the employer, in the previous 12 months, has been found to have violated the Farm Labor Contractor Registration Act or the Federal regulations issued under that Act.

(d) After the labor certification determination has been made the RA shall notify the employer in writing of the decision. If the labor certification is denied, the notice shall state the reasons therefor and the appeal rights of the employer under the Immigration and Naturalization Service regulations.

§ 655.9 Adverse effect rates.

(a) *Schedule of Rates for 1976.*

State:	Rate
Connecticut	2.61
Florida (sugarcane only)	3.04
Maine	2.69
Maryland	2.27
Massachusetts	2.56
New Hampshire	2.82
New York	2.48
Vermont	2.78
Virginia	2.44
West Virginia	2.74

(b) The adverse effect rate for all areas not listed in paragraph (a) of this section, for logging and sheepherding, and for Florida crops other than sugarcane, shall be the prevailing wage rate for the occupation in the area of intended employment.

(c) The Administrator shall review the adverse effect rates annually in the light of changed agricultural and/or similarly skilled non-agricultural wage rates in each State. The Administrator shall periodically publish a schedule containing: (1) The adverse effect rate; and (2) The normal piece-rate production of an average U.S. worker; (3) The adverse effect piece rate, that is, the piece rate by which an average U.S. worker will earn the adverse effect rate.

§ 655.10 Temporary labor certification applications involving fraud or willful misrepresentation.

(a) If possible fraud or willful misrepresentation involving a temporary labor certification application is discovered prior to a final temporary labor certification determination, or if it is learned that an application is the subject of a criminal indictment or information filed in a Court, the RA shall refer the matter to the INS for investigation and shall notify the applicant in writing of this referral. The RA shall continue to process the application and may issue a qualified temporary labor certification.

(b) If a Court finds an applicant innocent of fraud or willful misrepresentation, or if the Department of Justice decides not to prosecute an applicant, the RA shall not deny the temporary labor certification application on the grounds of fraud or willful misrepresentation. The application, of course, may be denied for other reasons pursuant to this subpart.

(c) If a Court or the INS determines that there was fraud or willful misrepresentation involving a temporary labor certification application, the application shall be deemed invalidated, processing shall be terminated, and the application shall be returned to the applicant with with the reason therefore stated in writing.

§ 655.11 Invalidation of temporary labor certifications.

After issuance, temporary labor certifications are subject to invalidation by the INS upon a determination, made in accordance with that agency's procedures or by a Court, of fraud or willful misrepresentation of a material fact involving the temporary labor certification application. If evidence of such fraud or willful misrepresentation becomes known to a Regional Administrator, Employment and Training Administration or to the Administrator, the Regional Administrator or Administrator, as appropriate, shall notify the INS in writing.

§ 655.12 Failure of employers to comply with the regulations under this subpart.

If the Department of Labor or a State employment service agency has probable cause to believe that an employer's job order contains a material misrepresentation, or that an employer has not complied with the terms of a temporary labor certification application or of a certification, the procedures at subpart F of Part 658 of this Chapter shall be followed (as proposed in the FEDERAL REGISTER on October 5, 1976 at 41 FR 44023).

§ 655.13 Petitions for higher meal charges.

(a) An RA may permit an employer to charge workers up to $4.00 for providing them with 3 meals per day if the employer justifies the charge by submitting documentary evidence to the RA.

(b) Evidence submitted shall include the cost of goods and services directly related to the preparation and serving of meals, the number of workers fed, the number of meals served and the number of days meals were provided. The cost of the following items may be included: food; kitchen supplies other than food, such as lunch bags and soap; labor costs which have a direct relation to food service operations, such as wages of cooks and restaurant supervisors; fuel, water, electricity, and other utilities used for the food service operations; other costs directly related to the food service operation. Charges for transportation, depreciation, overhead, and similar charges may not be included. Receipts and other cost records for the representative pay period shall be available for inspection by the Secretary's representatives for a period of 1 year.

Signed at Washington, D.C., this 14th day of January 1977.

WILLIAM H. KOLBERG,
Assistant Secretary for Employment and Training.

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federal register

TUESDAY, JANUARY 25, 1977

PART VI



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

■

PROFESSIONAL STANDARDS REVIEW ORGANIZATION DETERMINATIONS

Interim Hearings and Appeals

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER I—MEDICAL CARE QUALITY AND COST CONTROL

PART 101—PROFESSIONAL STANDARDS REVIEW

Interim Hearings and Appeals of Professional Standard Review Organization Determinations

On February 20, 1976, interim regulations were adopted and published in the FEDERAL REGISTER (41 FR 7878), to provide for hearings and appeals of Professional Standards Review Organizations (PSROs) as required under section 1159(b) of the Social Security Act (42 U.S.C. 1320–8). While the regulations became effective immediately on publication, it was anticipated that appropriate revisions might be suggested by the public and interested persons were invited to submit written comments, suggestions or objections, not later than March 22, 1976, concerning these interim regulations. All comments received with respect to the interim regulations were given consideration.

1. A number of comments objected to the requirement, in § 101.1402(a), that the Statewide Council automatically review every adverse PSRO reconsideration. This comment was adopted and the regulation now requires a dissatisfied party to file a request for Statewide Council Review. It is not reasonable to require the Statewide Council to automatically review cases where no party has expressed an interest in obtaining such review. Moreover, a heavy workload and great expense for the Statewide Council would result from automatic review of every adverse PSRO reconsideration. On the other hand, the burden upon a party of filing a request for a Statewide Council review is minimal. Section 101.1402(a) has been amended accordingly.

2. Comments were received which requested that providers and practitioners be afforded hearings by the Secretary under section 1159(b) of the Social Security Act on adverse PSRO determinations. Section 101.1402(b) makes such hearings available to beneficiaries or recipients only. This language substantially parallels the language in section 1159(b) of the Act. Hence, the statute makes no express provisions for providers and practitioners to obtain Secretarial hearings. At the same time, section 1159(a) expressly affords rights to reconsideration of PSRO determinations to providers and practitioners. The limitation of the rights of such parties to reconsideration under section 1159(a) indicates a deliberate legislative design to omit provider and practitioner appeals under section 1159(b). Finally, under section 1159(c) of the Act, hearings in the PSRO program "shall be in lieu of any review, hearing, or appeal under this Act with respect to the same issue." Therefore, providers and practitioners are entitled neither to hearings under section 1159 of the Social Security Act, nor to hearings "on the same issue" (i.e., medical necessity, quality, and appropriateness of health care) under Title XVIII or XIX of the Act. However, on other issues, such as coverage and reasonable charges, providers and practitioners continue to retain rights to Departmental hearings provided under law. Section 101.1402(b) has not been changed, therefore, to provide appeals to such parties.

3. Comments were received questioning whether there is an appropriate method utilized by the Secretary for selecting impartial medical advisors to the Administrative Law Judges, as required under § 101.1404(b), which assures that the advisors are "impartial." It was suggested that advisors be chosen from a permanent panel created by State and local medical societies and that particular doctors be identified by the societies to be consulted in particular cases. It is not clear how this proposed system would insure impartiality. In contrast, under the regulations adopted, the system to be used is expected to operate to reasonably assure the objective of obtaining impartial advice. Under § 101.1404(b)(3), a professional advisor cannot be consulted if he was directly involved in providing services, he or his family have a financial interest in the institution in which care is provided, he participated in the PSRO or Statewide Council decisions, he has staff privileges at the institution where services are provided, or he is on the governing board of the PSRO or Statewide Council. The enumerated cases were considered to indicate the various factors which would prejudice an advisor to an improper degree. However, in order to insure that other cases of bias may be considered, the regulations have been amended to provide that where a reasonable showing is made to the Administrative Law Judge that an advisor may be biased in a case, the advisor's opinion will not be utilized and the Administrative Law Judge must obtain the advice of another professional advisor. Moreover, the selection process described in Comment 4 assures input from local medical societies and is expected to further insure impartiality.

4. It was suggested that language be added to the regulation to assure that the medical advisor is recognized as a peer of the professional whose services are being reviewed. Since the regulation calls for *"appropriate* professional consultation" (emphasis added), the language is considered sufficient. In fact, the system which is used by the Bureau of Hearings and Appeals to assure the competence and qualifications of advisors will also assure that appropriate peers are utilized to review the work of other physicians. The Bureau has entered into contracts with physicians throughout the country to provide appropriate medical consultation for Administrative Law Judges conducting hearings under various titles of the Social Security Act, including Title XI. These physicians are recommended by medical societies and other physicians. Before the physicians are selected, their background and credentials are closely scrutinized in such publications as the American Medical Association's Directorate of Doctors and in other medical literature relating to specialists prepared by the specialty boards and the American Medical Association. An advisor must be a member, in good standing, of his local medical society. After the physicians credentials are verified, interviews are held with members of the staff at the hospital at which he practices. Most of the advisors are board certified and they represent every medical specialty and geographic locale. The broad expertise and the heterogenous nature of this panel of medical advisors will enable the Administrative Law Judge to obtain a consultant in a hearing involving a PSRO determination who has the appropriate qualifications to be considered a peer of the physician who provided the services in question. At the same time, it is the general practice to utilize an advisor residing and practicing in the same area as the practitioner who rendered the services, assuring that, to that extent, a geographic peer will be consulting in the case. However, since advisors who have precisely the same qualifications as the professional under review, or who reside in the same locality as the professional involved, are not always available to consult, it was not considered appropriate to require specific peer qualifications under the regulations.

5. A suggestion was received that the medical advisors be subject to oral cross examination at the hearings or subjected to questions through a deposition form of proceeding prior to the hearing. Past experience in Title XVIII hearings and the procedures adopted for use in Title XI hearings, indicates that cross examination protections or similar protections, will be provided. In the majority of Title XVIII cases, the medical advisor has, in fact, appeared and testified before the Administrative Law Judge at the hearing. At such time, the advisor may be examined by the claimant and/or his representative (20 CFR 404.939). Where an advisor's opinion is obtained in writing, the claimant will be afforded an opportunity to examine the opinion and rebut it through additional evidence, oral testimony or a written statement (20 CFR 404.927).

6. Comment was received questioning whether PSRO medical necessity decisions must be accepted by a Medicaid State agency. Under sections 1154(b), 1155(a) and 1158 of the Social Security Act, PSROs, whether conditionally or unconditionally designated, will have final authority for purposes of payment under the Act on issues of medical necessity, quality, and appropriateness of health care services. Medicaid State agencies have been notified of this by the Department, and regulations are under development within the Department to implement these provisions. However, even in the absence of regulations, section 1164 of the Act provides that the provisions of Title XI, Part B of the Act shall apply automatically to Medicaid State plans.

7. Comment was received that rules regarding confidentiality of appeals data should be made a specific requirement

of these regulations. Data acquired or generated by a PSRO in the exercise of its functions is currently prohibited from public disclosure by section 1166 of the Act except where disclosure is necessary to carry out the purposes of Title XI or where disclosure is otherwise authorized by regulations. Regulations to further implement this provision relating to confidentiality of PSRO data are currently under development within the Department. However, disclosure of PSRO data and information which is necessary to carry out PSRO reconsiderations and Secretarial hearings is clearly authorized under section 1166(a)(1) of the Act, without the necessity for regulations.

8. Comment was received recommending that simplified administrative procedures should be included in the final regulations. Although the requirements for conduct of the hearing itself are lengthy and specified in some detail, this is in order to ensure that full due process is accorded the appellant. However, the procedures for requesting a hearing are very simple and should pose no burden or obstacle to the claimant.

9. It was proposed that a controversy involving a claim of $100 would more appropriately be handled at the local level rather than by the Statewide PSRO Council, and that the required amount in controversy for Statewide Council review should be $1000. The right of providers, practitioners, and beneficiaries and recipients to a review by a Statewide Council from an adverse PSRO reconsideration, where a Statewide Council exists and the claim is at least $100, is statutorily mandated by section 1159(b) of the Act and may not be waived or modified by regulation.

10. Comments recommended that the interim regulations should have been published as proposed rulemaking allowing prior public comment rather than as final rules effective upon publication. As explained in the preamble to the interim regulations, since conditional PSROs are currently making determinations which are conclusive for purposes of payment under the Social Security Act, and since rights to reconsideration, hearing and appeal under section 1159 are statutorily required, the Department believes that good cause existed in accord with the Administrative Procedure Act (5 U.S.C. 553) to make these interim regulations effective upon publication. However, public comment on the interim regulations was invited and considered and revisions set out in this Notice are the result of such public input. Moreover, regulations in proposed form setting out more detailed procedures for PSRO reconsiderations, hearings and appeals will be published in proposed form in the future, providing additional opportunity for public comment.

11. Comment was received suggesting that the regulations should require the hearing body to conduct and decide the hearing within a specified limited time from the date of the request. Since the time needed to conduct the hearing will vary depending in part upon the type and extent of evidence the claimant wishes to present at the hearing, this would not be an appropriate rule and could be disadvantageous to claimants. Administrative efforts to increase the number of hearing officials and other actions are expected to reduce unnecessary delays in the hearing process. Hence, no change in the regulation has been made.

12. It was proposed that language regarding continuance of the States' authority to conduct hearings on issues of scope of Medicaid benefits and eligibility should be incorporated not only in the Preamble but also in the body of the regulations. The language of § 101.1401 of the regulations, which provides that these regulations are applicable only to hearings provided by the Secretary with regard to determinations made by a PSRO under section 1155(a) of the Act, clearly delineates the PSRO's authority since section 1155(a) relates only to PSRO determinations of medical necessity, quality, and appropriateness of health care services. Hence, such additional language regarding coverage determinations and hearings would be redundant.

13. Comment was received that there should be two levels of appeal from a PSRO adverse initial determination prior to Statewide Council review; i.e., a reconsideration by a hospital delegated review functions under section 1155(e) of the Act, and another reconsideration by the PSRO. Section 1159(a) of the Act clearly provides for only one reconsideration of an adverse claims decision. To require another reconsideration, where the statute already requires numerous levels of review, including Statewide Council review, a hearing by the Department, and judicial review would be administratively burdensome, time-consuming and confusing to beneficiaries and recipients.

Accordingly, 42 CFR Part 101, Subpart N is revised as set forth below.

Effective Date. This regulation shall become effective January 25, 1977.

NOTE.—The Department of Health, Education, and Welfare 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 15, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 18, 1977.

MARJORIE LYNCH,
Acting Secretary.

Subpart N—Hearings and Appeals of Professional Standards Review Organization Determinations Interim Regulations

Sec.

101.1401 Applicability of section 1159(b) hearing procedures.
101.1402 Right to reconsideration, review and hearing.
101.1403 Utilization of procedures under Title XVIII, Part A of the Social Security Act.
101.1404 Professional consultation.
101.1405 Determining amount in controversy in case of proposed services.
101.1406 Right to judicial review.

AUTHORITY: Sec. 1159, Social Security Act; sec. 249F, Pub. L. 92-603; 86 Stat. 1429-1445 (42 U.S.C. 1320c-8); sec. 1102 of Social Security Act, 49 Stat. 647 as amended (42 U.S.C. 1302).

§ 101.1401 Applicability.

The regulations of this subpart are applicable to hearings provided by the Secretary pursuant to section 1159(b) of the Social Security Act (hereinafter "the Act") with regard to determinations under section 1155(a) of the Act by a PSRO, including a conditional PSRO, which has assumed full review responsibility in specified health care institutions.

§ 101.1402 Right to reconsideration, review and hearing.

(a) Any beneficiary or recipient who is entitled to benefits under the Act (other than Title V), or a provider or practitioner who is dissatisfied with a determination, with respect to a claim, made by a Professional Standards Review Organization in carrying out its responsibilities for the review of professional activities in accordance with paragraphs (1) and (2) of section 1155(a) of the Act shall, after being notified of such determination, be entitled to a reconsideration thereof by the Professional Standards Review Organization, and, where the Professional Standards Review Organization reaffirms such determination in a State which has established a Statewide Professional Standards Review Council, and where the matter in controversy is $100 or more, such determination shall, upon the written request of the dissatisfied party, be reviewed by professional members of such Council and, if the Council so determines, revised.

(b) Where the determination of a Statewide Professional Standards Review Council is adverse to the beneficiary or recipient (or where there is no such Council in a State and where the matter in controversy is $100 or more), such beneficiary or recipient shall be entitled to a hearing thereon by the Secretary to the same extent as provided in section 205(b) of the Act.

(c) Any review or appeal provided under this section shall be in lieu of any review, hearing or appeal under the Act with respect to the same issue.

§ 101.1403 Utilization of Title XVIII, Part A, hearing procedures.

The procedures specified in § 405.722 (time and place of filing request for hearing), §§ 405.740 through 405.747 (determining amount in controversy), §§ 404.919 through 404.952 and 404.954 through 404.956 (procedures for conduct of hearings and Appeals Council review); §§ 405.750, 404.958, 404.961 through 404.963, and 404.966 (reopening initial or reconsidered determinations and hearings or Appeals Council decisions); and §§ 404.971 through 404.973 (representation of parties) of Title 20 Code of Federal Regulations, except to the extent inconsistent with specific provisions of this Subpart N, shall govern hearings under section 1159(b) of the Act.

§ 101.1404 Professional consultation.

(a) Any decision made by an Administrative Law Judge with regard to a PSRO determination shall be made only after receiving and considering appropriate professional consultation on the matter.

(b) Professional consultation shall be obtained by the Administrative Law Judge, in the form of either testimony or written opinion, from an impartial medical advisor selected by the Social Security Administration in each matter which he is to decide under section 1159(b). Such consultation shall be part of the record, and shall be considered by the Administrative Law Judge along with other evidence of record in deciding the issues before him.

(1) Each party shall have the right to examine all evidence of record, including that obtained from the medical advisor, and to present rebuttal evidence. Such rebuttal evidence shall be made part of the record for consideration.

(2) Such consultation shall be rendered by a licensed doctor of medicine or osteopathy whenever the health care services or items in question were provided or proposed to be provided by another licensed doctor of medicine or osteopathy.

(3) No professional advisor shall be utilized to provide such consultation if: (i) he was directly or indirectly involved in providing the services which are the subject of the hearing; (ii) he or any member of his family has, directly or indirectly, any financial interest in the institution in which such services were provided or were proposed to be provided; (iii) he participated in the PSRO initial or reconsidered determinations or the Statewide Council determination which is the subject of the hearing; (iv) he has staff privileges in the institution in which such services were provided or proposed to be provided; (v) he is a member of the governing body of the PSRO or a member of the Statewide Council which rendered a determination in the matter; or (vi) a reasonable showing is made to the Administrative Law Judge that an advisor may be biased with regard to the case under review. Where a professional advisor is rejected, the Administrative Law Judge shall obtain appropriate professional consultation from another professional advisor who meets the requirements of this Subpart.

§ 101.1405 Determining amount in controversy in case of proposed services.

Where services or items proposed to be provided have been disapproved by the PSRO, the amount in controversy shall be determined upon the basis of reasonable estimates of the amounts which would be charged the individual if such services or items were provided, and shall be computed in accordance with the priciples set forth in section 405.740 of 20 CFR.

§ 101.1406 Right to judicial review.

To the extent authorized by section 1159(b) of the Act, a party to a decision of the Appeals Council (see section 404.-960 of 20 CFR), or the decision of an Administrative Law Judge where the request for review by the Appeals Council was denied, may obtain a court review where the amount in controversy after Appeals Council review is $1,000 or more, by filing a civil action in a district court of the United States in accordance with the provisions of section 205(g) of the Act (see § 422.210 of 20 CFR for filing procedure).

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federal register

TUESDAY, JANUARY 25, 1977

PART VII

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

General Provisions

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Docket No. 75N-0001]

ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

General Provisions

The Food and Drug Administration (FDA) is issuing in final form the general provisions for its administrative functions, practices and procedures. The regulations shall be effective February 24, 1977.

Included within this subpart (21 CFR Part 2, Subpart A) are regulations establishing procedural requirements for public requests for agency action or challenges to agency action, for the issuance of regulations by the agency, for the compilation and maintenance of the administrative record of agency decisions and actions, and, generally, for the conduct of agency business with the public. The regulations include provisions that specify the terms on which FDA officials will meet with members of the public and provisions that govern providing advice and information to the public on agency business. The provisions of Subpart A will apply to all aspects of FDA business unless superseded by other requirements specifically applicable to a particular class of actions or decisions.

The notice of proposed rule making on which these regulations are based was published in the FEDERAL REGISTER of September 3, 1975 (40 FR 40682). In the preamble to that proposal, the Commissioner of Food and Drugs discussed the initial issuance of these and related regulations, published in the FEDERAL REGISTER of May 27, 1975 (40 FR 22950), and subsequent litigation (*American College of Neuropsychopharmacology* v. *Weinberger, et al.*, Civil Action No. 75-1187) that resulted in their withdrawal as a final regulation and republication as a notice of proposed rule making. Other subparts of Part 2 proposed on September 3, 1975, have since been published separately in the FEDERAL REGISTER as final regulations as follows: Subpart C—Public Hearing Before a Public Board of Inquiry, June 28, 1976 (41 FR 26636); Subparts E, F, and G—Procedures for Public and Regulatory Hearings and Regulations Governing Standards of Conduct and Conflict of Interest, November 2, 1976 (41 FR 48258); Subpart B—Formal Evidentiary Public Hearings, November 23, 1976 (41 FR 51706); and Subpart D—Public Hearing Before a Public Advisory Committee, November 26, 1976 (41 FR 52148).

Most of the comments received on the provisions of Subpart A were from manufacturers of regulated products, including industry trade associations, professional associations, consumer groups, and individuals. Approximately 160 comments were received, including several comments on the May 27, 1975 final regulation, which, while subsequently withdrawn, was virtually identical in substance to the September 3, 1975 proposal. A section-by-section discussion of the substantive provisions of the regulations appeared in the preamble to that proposal. A summary of the issues raised by the comments, and the Commissioner's resolution of those issues, are set forth below.

No comments were received regarding § 2.1 Scope (21 CFR 2.1), and it is adopted as proposed.

1. Two comments were received regarding § 2.3 Definitions (21 CFR 2.3), both of which addressed the definition in § 2.3(a)(12) of "interested person." As explained in the preamble to the proposed rule, "interested person" and "any person who will be adversely affected" have been defined broadly to include any person who wishes to participate in any proceeding of FDA. No particular interest, specific economic or other harm, or other indicia of "standing" is required before a person may participate in or challenge any agency action.

One of the comments supported eliminating from the definition of "interested person" the requirement of a specific showing of interest. The other comment objected to the proposed definition as too broad. The comment argued that, by not limiting participation in agency matters to those who can show a definite interest that can be adversely affected, FDA proceedings may become protracted and burdened by numerous parties seeking to participate merely on the grounds that they represent some broad public interest. This, the comment argued, will prevent FDA proceedings from being expeditiously concluded in an orderly manner.

The Commissioner disagrees with this comment and has retained the proposed definition of "interested person" in the final regulation. Contrary to the comment, he maintains that persons espousing only broad interests shared generally by the public are entitled to participate fully in agency proceedings. As noted in the preamble to the proposal, FDA activities cover a broad range and affect every citizen generally, and thus all persons are entitled to participate in, and question, actions of the agency. The Commissioner is not persuaded that many agency actions will be seriously delayed as a result of the broad definition of "interested person," but he concludes that any delay that is likely to occur will be outweighed by the advantages of permitting unimpeded access by all persons to agency proceedings.

2. One comment on § 2.4 Summaries of administrative practices and procedures (21 CFR 2.4) urged that the distribution of the summaries by the Commissioner be wide and systematic so that public awareness would not be left to chance.

While the Commissioner agrees fully with the objective expressed by the comment, he believes it undesirable to modify the provision to impose on the agency what could be viewed as a requirement to establish a special distribution procedure. Every reasonable effort will be made by the agency to distribute the material so that it reaches as many segments of the public as possible.

3. Many comments were received in response to several aspects of § 2.5 Submission of documents to hearing clerk; computation of time; availability for public disclosure (21 CFR 2.5). Several comments objected to the requirement in proposed § 2.5(b) that submissions signed by attorneys or other authorized representatives be accompanied by signed statements of authorization, unless documentation of authorization has previously been submitted as part of the administrative file in the same proceeding. The comments argued, generally, that the requirement was excessive; that it was unwarranted to assume that an attorney would undertake to represent a party before the agency when he was not authorized to do so. Many comments argued that such a requirement was obviously superfluous when the attorney is in-house counsel to a corporation or organization. One comment inquired whether such an attorney, if an officer of the company, would be required to have his authority verified by another officer, and whether the corporate seal must also be affixed. Several comments noted that the Federal courts do not require the verification contemplated by the proposed rule, and thus questioned whether there could be a valid basis for imposition of the requirement by FDA.

After consideration of the comments, the Commissioner has concluded that the requirement should be deleted. He is persuaded by those comments questioning whether unauthorized submissions have been a problem for the agency, and he concedes that they have not. In any event, he believes that sanctions already available, notably 18 U.S.C. 1001 (the "False Reports to the Government Act"), as well as the Canons of Professional Ethics, will adequately ensure that attorneys or others representing parties or interested persons before the agency are authorized to do so.

A conforming change in § 2.130 (21 CFR 2.130), which in part establishes a similar verification requirement for any person representing another in a formal evidentiary public hearing under Subpart B, will be made in a subsequent publication.

4. Several comments objected to the requirement in proposed § 2.5(c) that all data and information referred to or in any way relied upon shall be included in each submission in full and may not be incorporated by reference, and to the requirement in paragraph (c)(1) that a copy of any article or other reference or source be included in each submission.

The comments contended that these companion requirements were unduly burdensome for various reasons. Several urged that submission be considered unnecessary if the material (1) is already available in another agency file, (2) consists of rules, regulations, court decisions, or agency memoranda, or (3) includes general reference materials such as standard medical texts. A comment suggested that incorporation of published sources be permitted unless FDA later notifies the party that the source is not available to the agency. It was pointed out that in a given matter sev-

eral comments may logically wish to rely on or refer to the same material, and inquired whether the receipt of five copies of the same material with each of numerous submissions was necessary or consistent with agency purposes. Another comment similarly questioned whether requiring receipt of duplicative material was consistent with the avowed limited agency resources, as represented in the preamble to the proposal, and suggested that some discretion be left to the submitting party. One comment urged that the rule be amended to require the submission of only the relevant portions of recognized texts.

The Commissioner advises that, insofar as submissions rely on legal documents, such as FDA documents that are routinely made publicly available (e.g., staff manual guides, hearing transcripts), Federal court cases, or Federal laws or regulations, he has determined that copies of the original material need not be submitted. He considers it appropriate to adopt a similar position for submissions that rely on an established, readily available medical or scientific textbook. Section 2.5(c) of this final regulation reflects these changes. Moreover, in accordance with § 2.1(a), § 2.5 would not change other agency regulations that permit referencing of materials in other types of administrative submissions (e.g., § 310.9 Designated journals (21 CFR 310.9), waiving with respect to the agency's new drug regulations the submission of reprints and summaries appearing in the journals listed).

However, the Commissioner does not agree with other suggestions made in the comments. He advises that the agency cannot, with its limited resources, be left to ferret from its voluminous files documents to which reference is made in submissions. The filing systems used by the Hearing Clerk and most other agency offices require manual searches to locate most materials. The Commissioner advises that § 2.5(c) permits referencing of material in the administrative file of the same proceeding. He finds unworkable, however, the suggestion to allow submissions to be made without referenced documents, if the information (other than those types expressly excepted) is believed to exist in a different agency file. In such cases, the Commissioner concludes that the burden of filing duplicative material is less than the burden on the agency of manually locating identical material in other files, and, if it is not found, of notifying a party at that time to submit it.

In response to the comment urging that the rule be amended to require only the submission of relevant portions of recognized texts (and, presumably, other documents), § 2.5(c)(3) as promulgated provides specifically for the deletion of irrelevant material from references of any type. The Commissioner cautions, however, that material that is relevant but not necessarily supportive of a submission may not be omitted.

5. Several comments objected to the requirement in paragraph (c)(6) of proposed § 2.5, which provides for the rejection of submitted documents that fail to comply with any requirement of the regulations. The Commissioner advised in the preamble to the proposal that strict adherence to the requirements for submissions would be required, and that failure to comply could result in rejection of a submission by the Hearing Clerk, or its exclusion from consideration.

One comment considered the rule too inflexible, and contended that it is unjustified where the flaw is procedural and can be corrected easily. The comment further protested that no time limit was imposed on the Hearing Clerk to reject a document, and that the proposed rule did not provide for deferral of the agency decision in connection with which the document had been submitted until any defect in the submission had been corrected. Similarly, another comment inquired whether the resubmission of a rejected comment must be within the original time specified, referring to proposed § 2.112(c) in Subpart B (21 CFR 2.112(c)), which provides for resubmission of objections or requests for a hearing within the original 30-day time period. One comment suggested that 15 days be allowed from the day of rejection to allow a person to resubmit any rejected comment or other document. Still another comment urged that rejection of a comment be permitted only in the case of a serious failure to comply with reasonable requirements that are authorized by statute. Another comment suggested that the test for rejection should be that the document patently fails to comply substantially with the requirements, and complained that the case cited in the preamble to the proposal, *Municipal Light Boards* v. *Federal Power Commission*, 450 F. 2d 1341 (D.C. Cir. 1971), cert. denied, 405 U.S. 989 (1972), does not authorize rejection of a submission for failure to adhere exactly to formal submission requirements. One comment urged that a right of appeal be provided to permit challenges to the rejection of submissions. A final comment suggested that proposed § 2.5(c)(6) be revised to permit amendment of a submission as a matter of right when the submission is found to be procedurally deficient.

The Commissioner concludes that the provision be promulgated as proposed. He finds insubstantial the comments objecting to the authority of the Hearing Clerk to reject submissions for failure to adhere to the requirements of Part 2. These requirements have been imposed to facilitate agency business by avoiding the submission of requests or comments that are specious, insubstantial, or that fail to contain justification adequate to permit the Commissioner to evaluate properly the request or submission.

The Commissioner advises that the agency is not obliged to provide additional time for resubmission when a submission has been properly rejected. He believes the requirements for submission are precise enough to be met in the first instance—and that persons failing to meet them, rather than the agency, should bear the responsibility for the failure. Moreover, to provide an extended time for filing would clearly promote the filing of insubstantial submissions as a device to obtain additional time. Consequently, he disagrees as well with those comments demanding that an administrative right of appeal or right of resubmission be accorded when a submission is rejected.

The Commissioner also rejects the suggestion that he amend the requirements to permit rejection only when a submission "substantially" departs from the requirements; to do so would also invite the submission of incomplete and inadequate documents. He has essentially in this section reserved the right to reject submissions that are inadequate for the purposes for which they are submitted. At the same time, he advises that submissions will not be rejected frivolously or casually. Nor will rejection automatically preclude consideration when a corrected submission is not filed in a timely fashion. Comment closing dates in informal rule making, for example, indicate only when the Commissioner is no longer legally obligated to consider a comment; they do not prohibit him from considering comments filed late, and he frequently does so. The Commissioner advises that in implementing these requirements he intends to continue to observe a basic policy of fairness in determining whether a submission is acceptable.

6. Several comments objected to the various substantive requirements in § 2.5 for submissions to the Hearing Clerk. Some comments objected to the requirement of proposed § 2.5(a) that submissions be filed in quintuplicate. One urged that a comment or submission should not be rejected for the failure to submit the required number of copies. The comment also noted that the regulations fail to define "submission." Another comment suggested retaining the present practice of specifying the number of copies in each FEDERAL REGISTER notice.

The Commissioner advises that "submission" is intended to have its common dictionary meaning. Those documents that must be "submitted" to the Hearing Clerk for each type of contemplated agency action, moreover, are adequately described in the final regulation, and therefore no special definition of "submission" is necessary.

The Commissioner concludes that the final regulation will retain the specification of the number of copies of a submission, although as a matter of practice the number of copies will, as one of the comments suggested, also be specified in the relevant FEDERAL REGISTER notice. Based on a reassessment of agency needs, the Commissioner has reduced to four the number of copies required to be submitted, except where otherwise specified. A conforming change has been made in § 2.10(b)(4) (21 CFR 2.10(b)(4)) dealing with the submission of comments in response to a proposed regulation.

The question of the number of copies is one with which each Federal agency

must deal. Although agencies do possess duplicating facilities, most are fully utilized in duplicating agency-originated records. That FDA needs several copies of submissions is obvious—copies must not only be on display for public examination but must be forwarded to agency employees and, frequently, to agency counsel for evaluation and action. Many submissions number scores of pages and FDA lacks the resources to duplicate every one received. Because duplicating facilities are widely available, the Commissioner deems it reasonable to expect the public to undertake the task of duplication. Nonetheless, the Commissioner advises that the regulations do provide some exceptions to the general requirement that four copies be submitted. With respect to comments filed in response to proposed rule making, § 2.10 permits individuals to file one copy, on the basis of the Commissioner's experience that submissions by individuals (1) are less frequently received, (2) are submitted by persons often lacking access to duplicating facilities, and (3) are generally shorter than submissions from manufacturers, industry groups, and public interest organizations. Section 2.19(i) (21 CFR 2.19(i)) permits lesser numbers of copies to be submitted; namely, three copies of comments responding to advisory opinions. In this final regulation, that section permits individuals to submit one copy. The Commissioner believes that adequate justification has not been presented to reduce further the numbers of copies required. Rather, he views the requirements as necessary for the efficient conduct of agency business and not significantly burdensome.

In response to a comment inquiring whether comments will be rejected for failure to provide the requisite copies, the Commissioner advises that he will not normally reject these comments, although he has expressly reserved the right to do so. In most situations, where the failure to provide the required copies is not habitual, the Hearing Clerk will merely file the copy received and, depending on its length, either request the person making the submission to provide additional copies, or make copies using agency facilities. The rule must permit some flexibility, and the Hearing Clerk will exercise appropriate judgment consistent with maintaining efficiency in the filing of documents.

7. One comment protested the requirement in proposed § 2.5(e) that certain submissions shall be considered filed on the date of receipt. The comment complains that this provides an advantage to persons located in Washington, DC.

The Commissioner advises that the receipt date is considered the filing date for only a small number of actions, e.g., petitions for reconsideration under § 2.8 and requests for administrative stays of action under § 2.9, where a strict filing time is specified to facilitate a prompt administrative decision. Establishing a date other than the receipt date as the day of filing in these limited circumstances would not be workable. The Commissioner views any disadvantage to persons outside the Washington area to be minimal, and to be clearly outweighed by the agency need to act expeditiously in certain limited types of matters.

The Commissioner advises that in most proceedings, except when another date is specified, § 2.5(e), as proposed and finalized, provides that the postmark shall be considered to be the date of filing. This rule applies equally to all persons regardless of their geographic location and the Commissioner finds this rule reasonable.

8. One comment asked implicitly whether proposed § 2.112(c), specifying steps the Hearing Clerk will take in filing objections or requests for hearing, should logically be incorporated into § 2.5. The Commissioner deems the comment to be valid, but advises that, as a matter of drafting preference, the references to "Subpart B of this part" in § 2.5(j) adequately incorporate the appropriate provision of § 2.112 into § 2.5.

9. Some comments objected to certain of the bases for rejecting comments stated in proposed § 2.5(c) (3) and (5). One comment characterized the reference to intemperate matter in § 2.5(c) (5) as vague and suggested deleting the requirement. Another contended that it is impracticable to remove all irrelevant matter as specified in § 2.5(c)(3), arguing that to do so would make many documents unintelligible and put undue emphasis on the matter retained. One comment suggested that what is irrelevant, defamatory, scurrilous or intemperate could vary widely, and argued that the provisions for resubmission were therefore inadequate.

The Commissioner views the issue raised by the comments as having some merit. He believes, however, that although the meaning of these words may vary, the standards can be fairly administered. The Commissioner must retain the ability to reject submissions whose content is clearly inappropriate for a public government file. He believes that proposed § 2.5(c) (3) and (5) contains a reasonably objective statement of criteria to be used, and thus has retained them in the final regulation.

The Commissioner advises that the comment regarding deleting irrelevant material has read the requirement too narrowly. The requirement does not intend that submissions must contain only carefully screened material that eliminates every irrelevancy. He advises, rather, that submissions should not include wholly irrelevant material that can easily be excised before submission, e.g., chapters of a book that are unrelated to the matter at hand. When thus viewed, he believes the requirement to be both necessary and desirable.

10. Comments expressed most concern about the requirement in proposed § 2.5(j)(2)(i) that material consisting of safety and effectiveness data and information or a protocol for a test or study be filed with the Hearing Clerk and be made available for public examination, but not for copying, if such material is submitted: (1) With an objection or request for a hearing filed pursuant to Subpart B of Part 2; (2) at a formal evidentiary public hearing pursuant to Subpart B of Part 2; (3) at a public hearing before a Public Board of Inquiry pursuant to Subpart C of Part 2; (4) at an alternative form of public hearing before a public advisory committee; or (5) at a public hearing before the Commissioner pursuant to § 2.117(a) (2) or (3) (21 CFR 2.117(a) (2) or (3)). Section 2.5(j)(2)(iii) proposed further that such material would be on public display and available for examination only for such time as is necessary to permit public participation in the public hearing, and any related judicial review. Proposed § 2.5(j)(2)(iv) would specify, in addition, that this limited availability would not constitute prior disclosure to the public as defined in § 4.81 (21 CFR 4.81) of the FDA public information regulations under Part 4 (21 CFR Part 4), and would prohibit any such information, if improperly copied, from being resubmitted to the agency in support of a petition or other request.

The many comments on the proposed requirement expressed essentially similar objections. Several comments argued that allowing examination but not copying of confidential safety and effectiveness information would be violative of the relevant statutory provisions prohibiting disclosure of trade secret information, i.e., 18 U.S.C. 1905 and section 301 (j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)) and would be inconsistent with prior agency positions, primarily reflected in its public information regulations, and the new drug regulations under § 314.13 (21 CFR 314.13). The comments insisted that these regulations clearly provide that previously undisclosed safety and effectiveness data, at least insofar as they relate to a product subject to a new drug application (NDA) (or new animal drug application (NADA)), are trade secrets and not subject to public disclosure, citing *Morgan* v. *FDA*, 495 F. 2d 1075 (D.C. Cir. 1974). The comments insisted, further, that if such information is entitled to confidential treatment, it is entitled to full and not partial confidentiality; that the law does not provide for degrees of nondisclosure; and that making such material available simply for examination cannot fairly be characterized as anything other than disclosure.

One comment suggested that permitting public examination of safety and effectiveness data may result in a court finding that the data no longer retain their trade secret status. Still another comment maintained that submission of trade secret material to a third person destroys trade secret status under common law and may thus influence parties not to submit information because of the likelihood of disclosure.

One comment claimed that the position ignores the competitive value of the information and that even limited exposure to such data can greatly facilitate a competitor's filing an NDA for an identical or similar drug. The comment urged that mere exposure to the results of a competitor's research points to approaches found most effective and eliminates much of the trial and error experi-

enced by the originator of the data. A related comment noted that protocols and test data may often have a commercial value beyond the single product or product class for which they were submitted. Several comments indicated that a mere viewing of such documents, particularly by trained scientists, can yield much information.

Another comment questioned the view stated in the proposal that the only value of the information would be in its resubmission to FDA. The comment contended, as did others, that such data had other commercial value. The comment suggested that the data would be valuable in obtaining product approvals in foreign countries, in designing clinical studies on similar compounds, and in verifying the results of independent research.

Several comments also disputed the representation in proposed § 2.5(j)(2)(iii) that the agency would not accept such material if improperly copied and submitted, pointing out that FDA has already taken the position in the preamble to its public information regulations published in the FEDERAL REGISTER of December 24, 1974 (39 FR 44602) that it could not under present law refuse to approve an identical, similar, or related drug on the basis of information that has been disclosed. Moreover, the comments questioned whether, even if FDA could lawfully refuse to accept such data, it could effectively enforce the ban on copying, or readily determine when wrongfully copied data, effectively disguised, were being resubmitted.

One comment asked whether the agency would, for example, require a second submitter to provide evidence that the information was not obtained by unauthorized copying. One comment pointed out that the rule forced a party to face the penalty of foregoing a hearing, guaranteed him by statute, if he did not wish to disclose his data. A related comment suggested that no need existed for public display of safety and effectiveness data when a hearing involved an NDA. It contended that the principal participants in an NDA hearing are the manufacturer and the agency, and that if the data were available to these parties, there would be no need to make it otherwise available, except through the already established use of summaries. Another comment suggested that the regulations not be finalized unless the FDA public information requirements were upheld in a suit against the regulations brought by the Pharmaceutical Manufacturers Association.

Several comments opposing the adoption of proposed § 2.5(j)(2) suggested alternatives in lieu of the proposed manner of disclosure of the material. One comment suggested maintaining confidentiality by limiting any disclosure to properly concerned parties under appropriate protective orders granted by the administrative law judge or authorized presiding officer. It suggested that such an arrangement has been held valid in a freedom of information context, citing *Porter County, etc., League* v. *U.S. Atomic Energy Commission*, 380 F. Supp. 360 (N.D. Ind. 1974). The comment suggested that where parties were represented by outside counsel, the documents could be disclosed to the counsel with a prohibition against disclosure to the client. The comment insisted that this procedure would both protect confidentiality and permit full participation in the hearing process.

Another comment contended that any need to disseminate safety and effectiveness data could be satisfied through the use of summaries under § 314.14(d) (21 CFR 314.14(d)), dealing with the treatment of such information when part of an NDA, and the agency's public information regulations under Part 4. It concluded that the material in question should thus be treated under proposed § 2.5(j)(3), namely, to permit neither examination nor copying.

One comment suggested that the requirements of proposed § 2.5(j)(3), which would prohibit disclosure except as permitted by the public information regulations, should apply to disclosure where participants are concerned. The comment would, by implication, permit disclosing the material to parties, although it did not specify whether the parties would be able to do more than review the material. The comment would require any party permitted to view the material to sign a statement that all trade secrets and confidential information would be used for the hearing only, and otherwise kept in confidence.

One comment expressed views contrary to the foregoing criticisms of the proposal. The comment protested the ban on copying imposed by proposed § 2.5(j)(2), claiming it to be unwise, unnecessary, and unenforceable. The comment noted anomalies in the requirement: that it would limit access to those who regularly meet or work in Washington or regional headquarters, and would put a premium on an observer's memory. It urged the agency to "go all the way" for convenience and accuracy.

While the Commissioner does not consider each of the objections to the requirements of proposed § 2.5(j)(2) to be valid, he has, upon reconsideration of the issue, determined to withdraw the provision.

The Commissioner agrees that proposed § 2.5(j)(2) is not readily reconcilable with the agency's position under Part 4. The public information regulations assert the traditional position that previously undisclosed full reports of safety and effectiveness data and certain protocols for studies are trade secrets and are thus prohibited from disclosure under both 18 U.S.C. 1905, the basic Federal criminal statute prohibiting the disclosure of trade secrets, and section 301(j) of the act, prohibiting the revealing of any information obtained under sections 404, 406, 505, 506, 507, 510, 512, 513, 514, 515, 516, 519, 520, 704, 706, or 708 of the act (21 U.S.C. 344, 346, 355, 356, 357, 360, 360b, 360c, 360d, 360e, 360f, 360i, 360j, 374, 376, 379) concerning any method or process which as a trade secret is entitled to protection.

Because of the large number of comments addressed to this issue, the Commissioner believes a full discussion of his reasons for modifying the proposal is appropriate. His position in the proposal was not that these materials were no longer trade secrets and were thus subject to disclosure, but rather that by limiting access to them to viewing only, and by precluding their resubmission to the agency by any other party, the agency would protect those interests that gave these materials their trade secret status. The Commissioner believed that this interpretation of the Federal nondisclosure statutes was appropriate, and that making the material so available would enhance the various hearing processes by allowing all participants access to information germane to the hearing.

The Commissioner continues to believe that the public availability of the information in question could enhance the utility and fairness of the public hearings provided for in Part 2. He has changed his position on the basis of three factors: (1) Upon reconsideration, he concludes that Congress has determined that such information may not be disclosed to the general public and that he must abide by that determination even in the context of public hearings, where access to the information may have a demonstrable public benefit; (2) the "look-but-don't-copy-rule," and the concomitant prohibition against resubmission of the material, would invite circumvention through both surreptitious efforts at copying and disguised resubmission, and could not be effectively enforced; (3) the benefit to the hearing process would be problematical. The Commissioner cannot say with assurance that mere access to the data, without copying, would permit the meaningful participation in the hearing process that was the objective of the proposal.

The provision has been modified, as suggested by a comment, to subject previously undisclosed safety and effectiveness data and information, including protocols, in a hearing setting to the restrictions against disclosure in proposed § 2.5(j)(3) (redesignated as paragraph (j)(2) in this final regulation), which will make the information available to all persons in accordance with Part 4, the agency public information regulations. As a practical matter, this will provide for the display of agency-prepared or -approved summaries for unlimited viewing and copying in the office of the Hearing Clerk, or dissemination of such summaries on request.

The Commissioner has also added a new paragraph (j)(3) to § 2.5, to permit disclosure of safety and effectiveness data and information, and otherwise undisclosed protocols for tests and studies, pursuant to a protective order issued by the administrative law judge at a formal evidentiary public hearing pursuant to Subpart B, or by the presiding officer at

a public hearing before a Public Board of Inquiry pursuant to Subpart C, or an alternative form of public hearing before a public advisory committee or a public hearing before the Commissioner pursuant to § 2.117(a) (2) or (3) (21 CFR 2.117(a) (2) or (3)). Any protective order must prohibit the disclosure of such confidential data except insofar as the administrative law judge or other presiding officer determines necessary for the proper conduct of the hearing. Paragraph (j)(3) accordingly permits disclosure only in in camera proceedings from which persons not specifically permitted access to the data would be excluded. The order must specify to whom the information is to be made available, e.g., to parties or participants, or only their counsel. The regulation thus permits the administrative law judge or other presiding officer to fashion a protective order to meet the circumstances of individual proceedings so long as the stated requirements are met. The requirements of proposed § 2.5(j)(2)(iv), prohibiting the resubmission of any material so disclosed, are incorporated into new paragraph (j)(3).

The Commissioner believes the use of protective orders and in camera proceedings meets most of the objections in the comments to the disclosure of this information. He notes that the use of in camera administrative proceedings to protect the confidentiality of information is recognized in the regulations of other agencies, e.g., 16 CFR 3.45, providing for in camera orders in proceedings before the Federal Trade Commission, and he is confident that, consistent with applicable statutes, such orders can be properly used in FDA hearings. For all interested persons not permitted to participate in in camera proceedings held as part of an administrative hearing where confidential safety and effectiveness data are discussed, summaries of such material will be available for inspection and copying in the office of the Hearing Clerk.

The Commissioner has not accepted other recommendations in the comments, e.g., the suggestion that disclosure be limited only to parties to the hearings; such a step would increase the number of persons seeking to become parties to a hearing simply to obtain access to confidential information. He rejects the obvious regulatory response to such a problem—to severely limit who may become a party to individuals, organizations, etc., having a recognizable specified interest in the proceedings—because it is inconsistent with the requirements' overall intent to improve access to FDA proceedings.

Nor does the Commissioner believe that he could lawfully adopt the last suggested alternative: permit copying as well as inspection of the material in question. This would be unauthorized under 18 U.S.C. 1905 and section 301(j) of the act.

11. The final order promulgating the public information regulations under Part 4 advised that confidentiality of documents submitted voluntarily to the Hearing Clerk cannot be established by submitting documents marked "confidential" or bearing some other analogous legend, but rather can be established only through presubmission review of voluntarily submitted documents under § 4.44 (21 CFR 4.44). The Commissioner advises that the personnel of the office of the Hearing Clerk cannot make decisions regarding confidentiality. Again, the Commissioner advises that the presubmission review procedure of § 4.44 must be followed by any member of the public who wishes information submitted voluntarily to the agency in a public proceeding to be held confidential. He has incorporated language to that effect in § 2.5(c)(6). In the absence of an affirmative determination of confidentiality under § 4.44, FDA will continue to make publicly available all materials submitted to the Hearing Clerk, notwithstanding any claims of confidentiality made on the face of a document.

12. Concern was expressed within the agency during the rule making process regarding the need for submissions from standard-setting organizations in which an FDA employee is participating under § 2.21 (21 CFR 2.21). The Commissioner advises that such organizations cannot properly rely on the FDA employee to convey their views regarding an anticipated agency action. Rather, any such group should, regardless of the number or identity of agency employees participating in its activities, offer submissions in its own name in accordance with this subpart whenever the organization wishes to make its views known to the agency.

Section 2.6 Initiation of administrative procedures (21 CFR 2.6) which specifies generally how agency action may be initiated is adopted substantially as proposed. Such action may be initiated (1) by any interested person who petitions the Commissioner in accordance with the requirements of this part or other agency regulations, (2) by the Commissioner, on his own initiative, or (3) when a court refers any such matter to the Commissioner after holding the matter in abeyance, dismissing an action regarding the matter in question, or making other appropriate judicial disposition of the matter.

13. A clarifying change has been made in § 2.6(c). As proposed, the section required the Commissioner to institute a proceeding "* * * whenever any court holds in abeyance or refers any such matter to him for * * * determination and the Commissioner concludes that the making of such a determination is feasible in light of agency priorities and resources." The phrase "holds in abeyance" might be understood to refer to a matter then before the agency and not, as was intended, simply to a matter then before the court. The referral by a court in § 2.6(c) means only those referrals not sought by the Commissioner, which are to be distinguished from referrals discussed in paragraph (b) of § 2.6. The latter result from initiatives by the Commissioner to have a matter within the agency's primary jurisdiction and pending before a court referred to the agency for decision or reconsideration. The language of § 2.6(c) has been clarified to reflect this distinction.

14. The only comment received on proposed § 2.6 urged that § 2.6(a), relating to administrative matters subject to citizen petitions, exclude food additive petitions under § 121.51 (21 CFR 121.51), NDA's under § 314.1 (21 CFR 314.1), and NADA's under § 514.1 (21 CFR 514.1). The comment argued that allowing any person to petition the Commissioner to revoke an NDA could create outside pressures inconsistent with the exercise of sound judgment, and could require that the holder of the NADA spend substantial time answering such a petition, even when the petition was without basis.

The Commissioner disagrees with the comment's contention that any interested person should not be entitled to petition to modify or reverse any agency action, including one that may have initially been taken ex parte, such as the approval of an NDA or NADA. The effects of such actions clearly extend to the public generally, and the public thus is entitled to initiate agency review of such decisions.

The Commissioner also notes that the comment appears to misunderstand the nature of the requirement. The mere submission of a petition under the section does not obligate the Commissioner to undertake agency action apart from reviewing the petition (e.g., § 2.7(e) (21 CFR 2.7(e))). Thus, the mere filing of a petition to revoke an approved NDA would not, as the comment postulates, automatically oblige the holder of the NDA to reply. Such reply would be necessary only if the Commissioner proposes to take an action on the petition adverse to the NDA holder; such action would be proposed only after his decision that the petition was meritorious. The comment is accordingly rejected.

Section 2.7 Citizen petition (21 CFR 2.7) codifies the requirements for citizen petitions, the mechanism by which any member of the public may seek agency action on any matter, except for the referral of matters to a United States attorney for the initiation of court enforcement action and related regulatory activities that are within the exclusive discretion of the Commissioner. As noted in the preamble to the proposed rule, in the past FDA has had no requirements governing the manner in which citizens might petition the agency to undertake agency action. This has resulted in confusion and uncertainty on the part of those who wish to petition the agency, as well as on the part of agency employees, on how to handle particular requests from the public.

15. The final regulation contains a new requirement, not proposed, that a citizen petitioner supply, when specifically requested by the Commissioner following review of the petition, information on the economic consequences of the action requested. Pursuant to Executive Order 11821, OMB Circular No. A-107, and HEW Guidelines, FDA is required

to consider the inflationary impact of legislative proposals and major rules and regulations that it initiates. The Commissioner has therefore added a new paragraph D. to the citizen petition form set forth in § 2.7(b) that requires citizen petitioners, when requested, to submit the type of information required under E.O. 11821 to be considered by executive agencies in assessing the inflationary impact of proposed actions. The submission of information relating to inflationary impact would not be required of every citizen petition. While evaluation of the inflationary impact of agency action is important, the one court that has addressed the issue has held that agency action is not subject to reversal because of alleged deficiencies in an inflation impact statement (*Independent Meat Packers Association v. Butz*, 526 F.2d 228 (8th Cir. 1975)). The Commissioner believes it justifiable, therefore, to elicit such information from petitioners only when he believes that additional information is necessary to evaluate the consequences of acting on a petition. In addition, the Commissioner will take into consideration the ability of the petitioner to provide relevant information and he recognizes that it is incumbent on the agency also to obtain such information from sources other than the petitioner.

16. Proposed § 2.7 does not obligate the Commissioner to respond definitively to citizen petitions within a given time frame, except where time limits are prescribed by statute. Several comments objected to this provision. The comments identified what they considered a lack of fairness, pointing out that other provisions of the proposed regulations (e.g., § 2.11 (21 CFR 2.11)) specify that administrative remedies be exhausted before court review can be obtained. One comment complained that a lack of a definite response period operated to the disadvantage of consumer groups as compared to industry petitioners, contending that in the past, consumer petitions filed with FDA have been forgotten.

The preamble to the proposal identified several reasons why no time period for response by the agency to petitions had been specified and explained that limited agency resources make it impractical for the agency to deal promptly with petitions concerning subjects of low priority. Moreover, the preamble noted that specifying a time period for reply might force the agency to decline requested action simply because it could not act within the time allowed.

After reviewing the various arguments, the Commissioner has determined that the agency should obligate itself to respond to a petitioner, at least preliminarily, within a specified time period. He has determined that such a requirement will on balance enhance agency efficiency in conducting its business. Moreover, the Commissioner believes that the obligation to respond to a citizen petition, when that response is overdue, must be regarded as a priority matter regardless of the petition's content, if the agency is to maintain the public confidence in its ability to deal with the issues within its jurisdiction.

Accordingly, as suggested by some comments, § 2.7(e) has been revised to require that the agency respond within 180 days to any petition submitted under that section. The response shall be either (1) approval, accompanied by some form of implementing action, e.g., the publication of a notice of proposed rule making, (2) denial, constituting final agency action, or (3) a tentative response, indicating why the agency has been unable to reach a decision on the merits of the petition, e.g., because of other agency priorities, a need for additional information, or other stated reason. The tentative response may indicate the likely agency response, and may specify when a definitive response may be given.

The Commissioner believes this modification will eliminate the uncertainty on the part of petitioners that the comments attribute to past agency handling of petitions, and thus responds to what appears to be the major objection raised by the comments.

17. Section 2.7(g), as proposed and as promulgated, permits any petitioner to supplement, amend, or withdraw his petition at any time before referral of the petition for hearing. After such a ruling or referral, however, the petition may be withdrawn only with the approval of the Commissioner. An editorial modification has been made to the section to clarify its meaning.

18. One comment suggested that § 2.7 be modified to state expressly that voluntary withdrawal of a petition shall be without prejudice to its resubmission. The Commissioner concurs that this is consistent with the intent of the section, and has revised § 2.7(g) accordingly. The Commissioner also advises, however, and has modified § 2.7(g) to provide, that when a petition may only be withdrawn with the agency's approval, the petitioner may resubmit it only with the agency's approval.

19. Section 2.7(l) requires the Hearing Clerk to maintain a chronological list of all petitions filed under that section, and under § 2.19, but excludes from the list petitions submitted to other parts of the agency pursuant to § 2.6(a)(1). The list, as proposed, would include for each petition the docket number established by the Hearing Clerk, the date the petition was filed by the Hearing Clerk, the name of the petitioner, and the subject matter involved. One comment suggested that a new item concerning the disposition of the petition be added so that interested persons might more easily determine what action FDA has taken on the petition. The Commissioner concurs with the suggestion and, as promulgated, paragraph (l) has been modified accordingly.

20. One comment urged that if petitions are permitted to be filed elsewhere in the agency and not listed by the Hearing Clerk, the regulation should provide for publication of notice in the FEDERAL REGISTER and direct communication with the holder of any NDA or NADA that is the subject of the petition.

The Commissioner advises that the procedures for revocation of an NDA or NADA are codified in both the Federal Food, Drug, and Cosmetic Act and agency regulations (section 505(e) of the act and § 314.121 (21 CFR 314.121); section 512(e) of the act and § 514.121 (21 CFR 514.121)) and already provide for notification of the holder of an approved NDA or NADA as part of any proceeding for revocation. Accordingly, no amendment to the regulations is necessary.

21. Many comments objected to the requirements in paragraph B of the proposed form for a citizen petition in § 2.7(b) that each petition include "* * * representative data and information known to the petitioner that are unfavorable to the petitioner's position." Some of the comments suggested that this requirement might violate the constitutional protection against self-incrimination, pointing out that a penal sanction may arise from the failure to comply. One comment questioned whether a violation of the False Reports to the Government Act would arise from a failure to provide required adverse information. Another comment maintained that to require a lawyer to include such information might conflict with his professional obligations. Another comment suggested that the adverse information might be misrepresented wittingly or unwittingly. That comment urged that the requirement was inappropriate; that truth in such matters should arise ultimately from the clash of opposing viewpoints. At least one comment attempted to characterize the conflict as one setting industry against consumer, and suggested that while the requirement might be fitting for an industry petition, it would have a "chilling" effect on citizen petitions. Another comment suggested the provision would give the agency an unfair advantage in court, should its decision on the petition be later subject to judicial review. Still other comments argued that the requirement was superfluous, contending that FDA would be obligated in any event to seek out adverse information on its own. A final comment suggested that the requirement, if adopted, should be revised to apply only to scientifically backed data and information, and that it not encompass unsupported lay opinion.

The Commissioner does not accept these arguments, and has promulgated the requirement as proposed. He finds that those comments that attempt to characterize administrative rule making resulting from citizen petitions as a type of litigation, and those that equate requiring inclusion of "unfavorable information" with self-incrimination, misunderstand the nature of administrative rule making. In rule making, the agency is attempting to make judgments about regulatory policy on the basis of all the scientific information that is available on a subject. There is thus no valid analogy between the interests of partici-

pants in a rule making proceeding and the interests of those involved in a criminal trial.

Equally important is the failure of the comments to recognize that divulging adverse information may advance rather than detract from a participant's position. The administrative record of a particular matter may contain information adverse to the Commissioner's decision and still be legally sufficient to support the decision. Indeed, in making many administrative decisions, the Commissioner will often choose between competing versions of the "facts." What the comments overlook is that a decision favorable to a petition that reflects a review of information and arguments both supportive of and adverse to the petition is likely to be credible, and thus ultimately more supportable, than a decision reached on the basis only of supportive information.

The Commissioner also rejects the suggestion that only scientifically backed adverse information should be required to be included. Issues that come before the Commissioner rarely turn on definitive or uncontradicated evidence, and adverse educated opinion, even if lay opinion, should be included if for no other reason than to permit the agency to explore the matter further if it so desires.

22. The Commissioner also rejects comments that protested the proposed requirement that citizen petitions, to be acceptable for requirements were demanding and that their inflexibility would discourage citizens from filing petitions. The comment contended that a document should be accepted as a petition if it includes (1) the word "petition," (2) a statement of the petitioner's request and reasons, and (3) a signature, address, and telephone number. Another comment suggested that a simple letter be accepted when the request cannot be answered simply by letter. A third comment suggested that a petition not be rejected for deficiencies of form until FDA had assisted the petitioner in bringing the petition into conformity.

The requirement that citizen petitions take a particular form and contain specifically prescribed information is not intended to create obstacles to persons who would petition for particular agency action. Given the heavy workload of the agency, the Commissioner believes it necessary to give formal petitions a status different from mere inquiries or suggestions so that he may properly respond. The agency may expend significant resources in responding to citizen petitions and the Commissioner believes it proper for any person requesting agency action to set forth with some completeness the basis for the request. The Commissioner does not find the substantive requirements of § 2.7 onerous, and believes that laymen can readily comply.

Moreover, the regulations are responsive to the comment requesting the agency to assist a petitioner in bringing a petition into compliance. Section 2.5 (c)(6), which applies to citizen petitions filed pursuant to § 2.7, provides, as proposed, that if the Hearing Clerk discerns that a petition or other submission fails to meet formal requirements, the submission will be returned to the petitioner with a copy of the applicable regulations indicating how the document fails to comply, without prejudice to the petitioner's right to resubmit the document in proper form.

23. Many comments also objected to the requirement in proposed § 2.7(b) that each petition contain an environmental impact analysis report in the form specified in § 6.1(g) (21 CFR 6.1 (g)). Some of these comments apparently misunderstood the requirement as relating to an environmental impact statement, for this reference is contained in several of the comments. The Commissioner advises that a full environmental impact statement is not required as part of a citizen petition. The report specified in § 6.1 requires general and nontechnical information on the environmental aspects of contemplated action, some of which will have been provided in other parts of a citizen petition.

Comments from some consumer groups argued that nonindustry petitioners did not have the resources to prepare environmental impact analyses, or urged that the requirement be that such a report be submitted only if the agency should later advise a petitioner of the need for an environmental impact statement. One comment suggested that in such as case the agency should prepare the environmental impact analysis report.

The Commissioner rejects the view that petitions from nonindustry sources should be exempt from the need for environmental evaluation, or that public interest or consumer groups should not conduct the review required in an environmental impact analysis report. The Commissioner regards the information provided in such a report as important in his evaluation of a petition, for the information will help determine whether the agency will be required to prepare, should it decide to undertake the requested action, an environmental impact statement. In cases where the environmental effects of an action will be minimal, the burden of preparing the required report will be correspondingly reduced.

24. A few comments objected to the requirement of proposed § 2.7(b) that a petitioner certify the truthfulness of the information contained in the petition. One comment argued that the requirement creates confusion, because it appears to limit the vigor with which a petitioner may argue against denial of his petition without violating the False Reports to the Government Act. Another comment argued that the proposed certification is unnecessary because § 2.5(i) already provides that all submissions constitute a representation that all statements therein are true and accurate.

The Commissioner has decided to retain the certification requirement in a citizen petition. He views as spurious the argument that the requirement makes impossible the obligation of a petitioner to include information unfavorable to the petition; all that is required is that a petitioner include such information as is known to him. Finally, while the requirement may be technically redundant, its inclusion will remind petitioners to verify the accuracy of their submissions.

Section 2.8 Administrative reconsideration of action (21 CFR 2.8) provides for reconsideration by the Commissioner of any administrative matter on his own initiative, and with respect to a matter initiated under § 2.6(a), on the basis of a petition submitted by any interested person. The section is adopted essentially as proposed.

25. Comments on § 2.8 objected to what they urged were unnecessarily rigid requirements of form for a petition for reconsideration. The Commissioner does not accept the objection. He has specified the form such petitions must take, not out of any preoccupation with form, but because he believes that petitions for reconsideration, given their importance and the need for prompt resolution of the issues they raise, must contain certain requisite information. The minimum requirements are set forth in the section, and the Commissioner finds them to be simple and straightforward. They are not intended to be, nor does the Commissioner find them to be, onerous in any respect.

26. Comments also objected to the requirement in proposed § 2.8(b) that a petition for reconsideration be filed within 30 days of the action that is to be reconsidered. One comment urged that the 30-day provision be extendable for good cause on the basis of new evidence; the comment argued that to require the proceeding to be reopened by the filing of a new petition would be wasteful of the resources of the petitioner and the agency. One comment also urged the addition of language to the section to require that specific notice of the Commissioner's original decision be provided to all parties to an action so that they would be assured of knowing when the 30-day period begins.

The Commissioner believes that the requirement that a petition for reconsideration be filed within 30 days of the action is reasonable. Such a petition seeks immediate review of agency action by the Commissioner on the basis of the same information as was before him at the time of his original decision. The Commissioner regards the need for prompt submission to be self-apparent. The Commissioner also does not accept the suggestion that the 30-day period be made extendable on the basis of new evidence. He advises that reconsideration is limited to the data and information on which the original action was taken. Moreover, to adopt the suggestion would undermine the finality of agency actions.

The Commissioner also rejects the suggestion that all parties to a proceeding be specifically, i.e., personally, notified so that they will know that the 30-day period has begun. The Commissioner advises that he believes publication of a decision in the FEDERAL REGISTER provides

adequate notice of when a decision has been made. A conforming change has been made in § 2.8(b) to indicate that, for purposes of computing the 30-day period, the date of publication shall be considered the date of the decision. Where the decision of the agency is not announced by FEDERAL REGISTER publication, the parties involved would be personally notified of the decision, e.g., a denial of a citizen petition under § 2.7 (e). The Commissioner's decision would also be placed in the public file of the matter. The Commissioner does not believe that further notice to the public of agency decisions is legally required, practicable, or necessary.

Section 2.9 Administrative stay of action (21 CFR 2.9) provides a mechanism by which the Commissioner may stay the effective date of any administrative action (but not including court enforcement action) on his own initiative, or on the petition of any interested person. The section is adopted without significant change.

27. One comment objected to what it considered to be unnecessary requirements for the form of these petitions. As stated in his response to similar objections regarding § 2.7 and § 2.8, the Commissioner's insistence on prescribing the form of such petitions arises from the need to assure that they contain adequate information on which to base a judgment. The requirements are not so complicated or rigid that the Commissioner feels obliged to relax them.

28. One comment urged that the proposed 30-day period for response was too short. The comment pointed to the 60-day period generally provided for seeking judicial review, and the 90-day period specified in section 701(f) of the act (21 U.S.C. 701(f)) for seeking judicial review of agency action resulting from proceedings governed by section 701(e) of the act (21 U.S.C. 701(e)).

The Commissioner believes that a 30-day period is adequate for interested persons to seek an administrative stay of agency action. It is important that such requests be reviewed expeditiously so that court review, if desired, will not be unduly delayed. The comment, moreover, fails to distinguish review of administrative action, which normally relates to the merits of the action, from a stay, which only delays implementation of the action. A petition for stay raises issues that ordinarily are far less complex than a challenge to the merits, and the references to the longer statutory periods in the comment are thus not relevant.

29. The Commissioner disagrees with comments urging that the filing of a petition for a stay should automatically stay the action for a period of time after the Commissioner's decision on the petition. These comments also urged that the regulation provide that no final order shall become effective in less than a specified time period. The result of accepting these comments would be that no action of the Commissioner could become effective until affected parties have had time to petition the agency for a stay, and if denied, to seek a stay in the courts. The comments argued, however, that the failure to so provide, given the Commissioner's stated intention to oppose any judicial stay until he has had an opportunity to review such a request administratively, would allow parties to be irreparably harmed by agency decisions without being able to seek judicial review of them.

As stated in the preamble to the proposed rule, the Commissioner's enforcement duties under the regulatory statutes for which he is responsible require that he have discretion to determine when enforcement or other regulatory action is appropriate, subject to judicial review. The requirements of § 2.9 as promulgated do not, in the Commissioner's judgment, deprive any individual of due process, and are fully consistent with applicable law.

30. One comment objected that parties are not apprised quickly when the Commissioner has made a decision, as when publication in the FEDERAL REGISTER is delayed for several days following a decision. Direct mail notice to all parties was requested.

The preamble to the proposed regulation indicates that the day of publication in the FEDERAL REGISTER will be the day of decision for purposes of petitions to stay an administrative action. The Commissioner believes this provision will minimize to the extent practicable the delay inherent in advising an entire nation of an agency decision. Some delay is unavoidable. A conforming change has been made in § 2.9(b).

31. One comment urged that the Commissioner obligate himself to respond to a petition for stay within a specified time period. The Commissioner has obligated himself to respond "promptly," and he believes further specificity is neither practicable nor necessary.

Section 2.10 Promulgation of regulations for the efficient enforcement of the law (21 CFR 2.10) specifies the procedures the Commissioner will utilize in the promulgation of regulations under the basic grant of rule making authority contained in section 701(a) of the Federal Food, Drug, and Cosmetic Act, and the rule making provisions of the Administrative Procedure Act (5 U.S.C. 553). Procedures for the promulgation of regulations pursuant to the more formal requirements of section 701(e) of the act and 5 U.S.C. 556 and 557 are contained in § 2.12 (21 CFR 2.12) and in Subpart B of Part 2, except insofar as those sections incorporate by reference some of these requirements.

32. Section 2.10(g) specifically prescribes what constitutes the record of an administrative proceeding under § 2.10. The proposal incorrectly established as the closing date of the record the day of publication of the final regulation in the FEDERAL REGISTER. This would technically have permitted new information to be submitted after the Commissioner's adoption of a regulation, but before its publication. Any such information, however, must be submitted under a new petition filed in accordance with other sections of these requirements, e.g., § 2.7. Consequently, § 2.10(h) has been revised to provide that the record shall be closed on the date the Commissioner signs a regulation.

33. Section 2.10(e) requires that, when notice and public procedure are not utilized in issuing a regulation, the notice promulgating the regulation shall provide an opportunity for comment to determine whether the regulation should subsequently be modified. In addition, the Commissioner may, in his discretion, similarly permit comment on any final regulation. However, it was the Commissioner's intention that subsequent final regulations based on such comments need not in either case, though they may, provide additional opportunity for comment or other form of public participation. Section 2.10(e)(1) has been modified to make this clear and a conforming change has been made in § 2.10(f)(10).

34. One comment objected to the predisposition against extensions of the comment period that the Commissioner acknowledged in the preamble to the proposed regulation.

The Commissioner's reasons for limiting extensions of the comment period were explained in the preamble to the proposal. Principal among them is the failure of many people to take the stated time for comment seriously. Nonetheless, the rule specifically allows for extension of the comment period in appropriate, though limited, circumstances.

35. The same comment urged also that the Commissioner not be confined to comments in establishing final rules.

The Commissioner points out that the section does not require him to rely only on comments submitted on the proposal when formulating a final regulation. Section 2.10(f) permits the Commissioner to use a wide range of administrative mechanisms to obtain information on any matter that is the subject of rule making. Moreover, that § 2.10 does not specifically provide for the generation of new information by the agency following the publication of a proposal does not preclude the agency from doing so. The authority to generate this information is implicit in the Commissioner's authority to issue regulations under section 701(a) of the act, and, indeed, is recognized in § 2.10(g)(5), which provides for filing with the Hearing Clerk "all data and information identified or filed by the Commissioner * * * as part of the administrative record supporting the final regulation."

36. Another comment suggested substituting "may" for "shall" in § 2.10(a)(2). The comment argued that not doing so would make the Commissioner's failure to publish a proposal subject to judicial review, and would then invite a court to require publication, a function that should be reserved exclusively for the legislative and executive branches.

The Commissioner does not believe that the language of the section deprives him of the discretion afforded by the law. Rather, the regulation merely specifies in general terms when the Commissioner will view a request for agency action to be sufficiently meritorious (if

consistent with law) to warrant public and agency consideration. The provision does not, as the comment mistakenly assumes, require the Commissioner to finalize such action; § 2.10(c) specifically provides for termination of a rule making proceeding as one possible outcome of review of the entire administrative record based on a proposal.

37. A comment urged that § 2.10 be amended to provide for time limits after the close of the comment period by which the Commissioner must issue a decision. The comment suggested 90 days, with provision for an additional 90 days upon a showing of good cause.

The Commissioner rejects this comment. The timetable for completion of a rule making action must remain subject to his discretion. Apart from judgments about agency priorities, which themselves may result in delays of varying length in concluding some rule making actions (but may frequently result in the expeditious handling of others), it is often not possible to predict how quickly a rule making proceeding can be concluded until after the comments on the proposal have been evaluated. The comments may reveal a need for additional proceedings, which if undertaken may prevent conclusion of the proceeding within any time period previously specified. The Commissioner thus concludes that it would be impracticable to specify such a time period.

38. The same comment also suggested that the regulation should more specifically state those narrow circumstances, e.g., where required by the public health and safety, when opportunity for notice and comment might be waived, and limit use of this procedure to situations in which alternatives such as a shorter comment period will not suffice.

The Commissioner finds the broad language in § 2.10(e)(1), "impracticable, unnecessary, or contrary to the public interest," which mirrors the standard of 5 U.S.C. 553, to be more satisfactory. Whether to dispense with notice and comment, including the use of alternative procedures, is a decision that must largely remain subject to the Commissioner's discretion. The provision would clearly permit such a decision in the situation suggested by the comment, namely, when necessary for the public health and safety.

39. One comment suggested that proposed § 2.10(i), which requires that the Hearing Clerk compile a list of regulations proposed and promulgated, include within the list the disposition of each matter. The Commissioner advises that the intent to include the disposition of each proposal is apparent in the proposed inclusion in the list of regulations "promulgated," for that would be the ordinary disposition of any prior proposed rule. In response to the comment, however, the Commissioner has determined that the list should specifically include the disposition of the petition. This change conforms to a similar change in § 2.7(l).

40. One comment objected to the statement in the preamble that the Commissioner will not take into account the number of comments but will consider, rather, repetitive comments as one. The comment states that this position demonstrates a preconceived agency bias and implies that such comments are not made in good faith.

The Commissioner intends no such implication. His statement means that it is the substance and not merely the number of comments that will be persuasive in formulating final regulations. Many similar conclusory comments will thus be less persuasive in the Commissioner's determinations than smaller numbers of thoughtful and well documented ones. However, § 2.10(c)(1) of the final regulations recognizes that the number of comments may be influential where the degree of public interest in a matter is a legitimate factor to be considered.

41. To conform with existing agency practice, § 2.10(f)(9) has been revised to provide for the publication in the FEDERAL REGISTER, when considered desirable by the Commissioner, of tentative final regulations. The proposal provided only for publication of a notice of availability of the documents.

42. Several comments objected on various grounds to the Commissioner's efforts in § 2.11 Court review of final administrative action; exhaustion of administrative remedies (21 CFR 2.11) to define for agency purposes the doctrine of exhaustion of administrative remedies. They argued that the policies set forth in § 2.11 are determined by statute, case law, and the Federal Rules of Civil Procedure, or by the court hearing a matter, and in any event are not for the Commissioner to determine by regulation. Several comments also contended that the proposal's criteria misstated applicable law.

One comment, addressing the announcement that the Commissioner will oppose requests for a judicial stay when a request for an administrative stay has not been timely filed, suggested that the exhaustion requirement is inapplicable when the administrative remedy is no longer available because it was not invoked in a timely fashion. One comment argued that no new burden would be imposed on the Commissioner if a stay were sought directly from a court, as the administrative record is the same; thus the comment requested that the requirement that a stay be sought first from the Commissioner be made optional.

Still another comment argued that proposed § 2.11(c) is without authority; that section 10(d) of the Administrative Procedure Act (5 U.S.C. 705) plainly authorizes a court to postpone the effectiveness of agency action; and that a court would not likely refuse to grant a stay simply because an administrative stay had not first been requested. Other comments argued that the provision was of no legal effect and suggested that it be revised to make clear its advisory character.

The Commissioner is aware that it is ultimately for a court to determine whether a particular agency action is "final" within the meaning of section 10(c) of the Administrative Procedure Act (5 U.S.C. 704), or whether a plaintiff has properly exhausted his administrative remedies. Nonetheless, the Commissioner believes it entirely proper to attempt, through these procedural regulations, to set forth his view of the most appropriate method of proceeding, to the end of inducing persons wishing to challenge an FDA action to do so at the agency level before seeking court review. This regulation will promote conservation of judicial resources, not only by eliminating the need for review in some cases, but also, when the Commissioner does not change his initial decision, by providing a more complete record for review of agency action. For example, when a party has petitioned for reconsideration or for a stay of agency action, the record before the reviewing court would include, under § 2.11(f), the record of such further proceeding, as well as the record of the initial decision.

The Commissioner considers the described scheme for judicial review to be a fair method of proceeding for all persons. It will encourage persons to participate at the administrative level and to advance all information and arguments at that point, and it will require the agency to identify the information on which it relies and to explain the basis for its reliance. At the same time, the scheme should preclude interposition of technical procedural objections and guarantee to a court a fixed and complete record on which to base review. In this regard, some comments specifically commended the Commissioner's decision not to raise a lack of "standing" as a basis for opposing review of agency decisions.

43. One comment identified three situations in which, it contended, judicial review may be appropriate in the absence of a final decision by the Commissioner. The comment listed: (1) the giving of an advisory opinion pursuant to § 2.19, citing *National Automatic Laundry and Cleaning Council* v. *Schultz*, 443 F.2d 689 (D.C. Cir. 1971); (2) delay of action by FDA so substantial as to constitute denial of the relief requested; and (3) initiation by FDA of a proceeding that it has no statutory authority to conduct.

After considering the comment, the Commissioner has decided to consider advisory opinions issued pursuant to § 2.19 and guidelines issued pursuant to § 2.20 (21 CFR 2.20) to be final agency action. He acknowledges that such opinions and guidelines are binding on the agency until amended or revoked. Although, under §§ 2.19(j) and 2.20(b)(8), they are not legal requirements, the Commissioner maintains that preenforcement review of such actions may be proper in appropriate cases where further administrative proceedings are not likely to clarify the scope or impact of a decision. Advisory opinions and guidelines have accordingly been included within the scope of § 2.11(d).

The other situations cited by the comment, i.e., agency delay and action taken without authority, though potentially subject to judicial review before final ac-

tion in limited circumstances, are obviously not appropriate to include within § 2.11 for they do not describe types of agency action contemplated by these procedural regulations, e.g., proposed or final regulations, or advisory opinions, but simply state legal reasons why particular agency actions may be held invalid. Accordingly, no change in the regulation has been made to reflect this part of the comment.

44. Two comments stated that § 2.11 (d) should include a reference to final regulations promulgated pursuant to § 2.10 within the list of actions considered by the Commissioner to constitute final agency action; and the final regulations have been amended accordingly.

The Commissioner advises that § 2.11 (d) should have included final regulations promulgated pursuant to § 2.10, as such regulations are ordinarily subject to immediate judicial review (*Abbott Laboratories* v. *Gardner*, 387 U.S. 136 (1967)). The preamble to the proposal, as one comment points out, refers to final regulations subject to § 2.10, and its omission from § 2.11(d) was thus in error.

45. One comment, reiterating an objection to § 2.9 argued that no final order should become effective for 30 days and that a request for stay within that period should automatically stay such order until 10 days after the Commissioner's decision. As indicated in his response to the comments on § 2.9, the Commissioner concludes that he must retain discretion to determine when an agency action is to become effective. The comment is accordingly rejected.

46. Comments reiterated an additional objection regarding § 2.9, namely that, by failing to require the Commissioner to respond to a petition for a stay within a specified time period, § 2.11 permitted him effectively to delay access to the courts by persons seeking to challenge agency action. One comment added, in an apparent reference to § 2.11(d), that access to the courts could also be limited if the Commissioner decided to reconsider a matter on his own initiative.

As stated in his response to the comments on § 2.9, the Commissioner cannot obligate himself to respond to petitions for a stay within a specified period. He believes it essential to retain discretion to be able to respond to changing demands on the agency in the manner most consistent with the public health and safety. However, the Commissioner advises that his failure to act on a petition for a stay does not limit access to court review of the merits of the original decision. Section 2.11(e) clearly contemplates that a person who desires to challenge any decision by the Commissioner can initiate a suit for review without first petitioning the Commissioner. It is only with respect to an attempt to obtain a stay of FDA action that the regulations require that a request for stay be first submitted to the Commissioner.

Nor would court review on the merits necessarily be delayed if the Commissioner determined on his own initiative to reconsider the matter, as the comment suggested. The reference in § 2.11(d) to petitions for reconsideration (§ 2.9) is intended to indicate only that the Commissioner's action on such a petition is final agency action and independently subject to judicial review.

47. One comment stated that proposed § 2.11(d)(2)(i) is unnecessary in light of the clear statement in the Administrative Procedure Act that actions committed to agency discretion by law are not subject to judicial review. The comment expressed concern that the provision may be interpreted as unduly broadening existing rules in this regard.

The Commissioner believes that the restatement of the statutory standard in these regulations is proper, and that the example of unreviewable decisions cited in § 2.11(d)(2)(i), i.e., whether or not to recommend initiation of civil or criminal enforcement proceedings under sections 302, 303 and 304 of the act (21 U.S.C. 332, 333, 334), falls clearly within his unreviewable discretion.

48. One comment urged that the reference in proposed § 2.11(d)(1)(ii) to "any interested person" should be changed to "any person."

The Commissioner finds the requested change unnecessary. "Interested person" is defined in § 2.3(a)(12) to mean, essentially, "any person."

49. One comment identified two asserted exceptions to the general rule stated in § 2.11(f), which, as promulgated, limits judicial review of agency action to the administrative record made before the agency. The comment argued that review could properly go beyond the administrative record (1) when a court decision subsequent to the initiation of judicial review plainly decides a legal issue that was not raised at the administrative level, and (2) when an issue is purely a matter of statutory construction, does not require the exercise of administrative expertise, and goes to the heart of the agency's statutory authority.

The comment misunderstands the Commissioner's purpose in defining the scope of the administrative record. The record is not intended to embrace all materials relevant to all of the legal objections to an agency action, including the type of legal issues which comprise the examples in the comment. Rather, the record of an administrative proceeding is intended to contain all of the factual information and data that were considered by the Commissioner in reaching his decision. While questions of legal authority may, from time to time, be raised in an administrative proceeding, the Commissioner advises that the regulations do not prohibit new issues of law including, obviously, questions of authority, from being raised in subsequent judicial proceedings.

50. One comment insisted that the procedure contemplated by proposed § 2.11 (b), under which the Commissioner may request a court to accept a further explanation of his action without further administrative proceedings, is not generally allowed by courts.

The Commissioner notes that the provision is advisory only. The provision can thus assist the public in obtaining judicial review of agency action. The Commissioner believes that the procedure described is not prohibited by any statute; however, if the procedure were not permitted by a particular court it would not, obviously, be available to the Commissioner in that instance.

51. Two comments on proposed § 2.12 Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing (21 CFR 2.12) objected to its failure to distinguish between the right to an "opportunity for a hearing," and an unqualified right to a hearing. By treating all requests for formal evidentiary public hearings uniformly, the comments argued, proposed § 2.12 overlooked important differences between the several statutory provisions in the Federal Food, Drug, and Cosmetic Act that require a hearing. The comments objected that, as proposed, § 2.12 would improperly permit use of the summary judgment mechanism upheld in *Weinberger* v. *Hynson, Westcott and Dunning, Inc.*, 412 U.S. 609 (1973), in cases in which it was not legitimately available.

One comment pointed out that certain provisions of the act require "an opportunity for a hearing," e.g., section 505; that others require that "reasonable grounds" must be stated to justify a hearing, e.g., section 507(f); and that still others purport to require a hearing without any qualification, e.g., section 701(e). The comment argued that only in two situations could the Commissioner refuse to hold a required section 701(e) hearing: (1) when objections to the Commissioner's order are a legal nullity, on the basis of *Dyestuffs and Chemicals, Inc.* v. *Fleming*, 271 F.2d 281 (8th Cir. 1959), cert. denied, 302 U.S. 911 (1960), and (2) when the objections relate exclusively to the agency's authority to take an action so that the factual basis for the action is wholly irrelevant. The comment urged that §§ 2.12 and 2.113(b) (21 CFR 2.113(b)) be revised accordingly.

The Commissioner has issued the section as proposed. He concludes that there is no basis for the comment's contention that section 701(e) absolutely guarantees a formal evidentiary public hearing whenever one is requested in a rule making proceeding conducted pursuant to that section. The Commissioner believes the act empowers him in each case to establish reasonable threshold requirements for the holding of a formal evidentiary public hearing, including a hearing on a regulation governed by section 701(e). The basis for this position has been set forth in the preamble to the publication in final form of § 2.113 in Subpart B, and interested persons are referred to the final regulation published in the FEDERAL REGISTER of November 23, 1976 (41 FR 51706) for a full statement of the Commissioner's views on the matter.

Section 2.13 Separation of functions; ex parte communications (21 CFR 2.13)

prescribes the degree to which separation of functions shall be observed between and within agency components in any matter that is subject by statute to an opportunity for a formal evidentiary public hearing and in any matter subject to a public hearing before a Public Board of Inquiry.

52. One comment suggested that proposed § 2.13(d)(3), specifying remedial measures to be taken when oral and written communications are made in contravention of the separation requirements of the section, be revised to require that copies be immediately provided to all parties to the hearing. As proposed, the requirement would have required only the filing of such communications with the Hearing Clerk.

The Commissioner accedes to the request and has modified the final regulation to provide that at the same time such a communication is filed with the Hearing Clerk, it shall also be served on all other participants in the proceeding. This change meets the objective of the comment that all participants be advised of the current status of the proceeding. Because the conduct described in the section is not likely to occur, the Commissioner believes it reasonable to provide for personal service on participants, rather than to force them to periodically examine the administrative file in the office of the Hearing Clerk. Moreover, required service of documents on other participants is already provided for by § 2.13(d)(2), which requires such service for proposals for settlement. The change can therefore be viewed as extending an existing obligation of participants to a hearing rather than as imposing a completely new obligation.

53. A comment suggested that § 2.13(b)(2)(i) and (ii) were inconsistent because the requirements bar, for example, the entire Bureau of Drugs from communicating with the office of the Commissioner after the bureau becomes a party to a hearing, while permitting all members of the Chief Counsel's office to be available to advise the Commissioner except those specifically engaged in the proceeding on behalf of the bureau. A related comment urged that the section be modified to permit a member of an involved bureau who is not personally involved in representing the bureau at the hearing to be free to discuss the matter with the office of the Commissioner. The comment suggested that this would benefit the agency in those situations where all of the agency expertise in a given field is located in a single bureau.

The Commissioner believes that the suggested inconsistency does not actually exist. A direct comparison of the treatment in the provision of the individual bureaus and of the office of the Chief Counsel is not meaningful, for each is organized to perform different functions. A bureau will normally be a party to such a hearing and thus be in the position to advocate a particular position. The Chief Counsel's office, in contrast, is not organized, except for the informal designation of attorneys to advise individual bureaus, into discrete divisions. Perhaps more important, the only attorneys available to represent a bureau and advise the Commissioner are employed in the office of the Chief Counsel. Establishment of ad hoc divisions within the office is the only practicable mechanism for assuring observance of separations of functions and at the same time making legal advice available to the bureau whose decision is the subject of the hearing, and to the Commissioner. Thus, as a general rule, the Commissioner has determined that it is both more convenient and defensible to treat, for purposes of separation of functions, each bureau as a single entity. However, in response to the comment, he is modifying § 2.13 to permit the designation, when he determines that it is necessary to ensure the best use of agency resources in deciding a particular matter, of employees of a bureau to advise him, or members of his office to advise a bureau. Any such designation will be in writing and must be filed with the Hearing Clerk no later than the time the limitations of separation of functions apply in the particular matter. An example of a situation where the procedure might be used is that cited in the comment, i.e., where all agency employees having expertise in a given field work in one bureau, leaving the Commissioner without expert assistance to assist him in deciding the matter.

54. In response to the comment, the Commissioner has modified § 2.13(b)(2)(ii) to provide for the appointment by the Chief Counsel of a "team" of attorneys to advise the Commissioner, rather than to permit that function, as proposed, to pass residually to all attorneys who have not been appointed to represent the bureau in a proceeding.

As a matter of practice the Chief Counsel has been specifically designating attorneys to advise the Commissioner in many matters for which a notice of opportunity for a hearing has been published. This approach has permitted the Chief Counsel to assess the workload of the office and avoid the appointment of an attorney to advise the Commissioner who may have assisted a bureau before the publication of the notice of hearing.

The section as issued in final form also provides that the Chief Counsel will ordinarily advise the Commissioner in a hearing proceeding. The proposal would have required the Chief Counsel to always advise the Commissioner. However, it is possible that the Chief Counsel may become involved in a matter before a notice of opportunity for hearing has been published, such as when he is called upon to advise a bureau on the initiation of a proceeding. In such cases, his subsequent service as an advisor to the Commissioner in the same matter would not be consistent with separation of functions.

The provision has also been modified, consistent with existing practice, to prevent contact on any matter that is the subject of a formal hearing between members of the office of the Chief Counsel who are advising the Commissioner and other members of the office, or any employee of the bureau involved (except one specially designated to assist the Commissioner). Although the proposed rule would have imposed this limitation only on the attorneys assigned to assist the bureau, it is clear that comparable restrictions should be imposed on counsel to the Commissioner, for the requirement is intended to maintain the independence of the Commissioner and his advisors.

55. To make the regulation comprehensive, § 2.13(b)(2)(ii) has been revised to acknowledge the Chief Counsel's specific authority to designate additional attorneys to represent a bureau or to advise the Commissioner. Such designation may be necessary where, for example, an attorney previously designated to advise one or the other is no longer able to serve in that capacity.

56. On September 13, 1976, Pub. L. 90-409, the "Government in the Sunshine Act," (5 U.S.C. 552b note) was signed into law, to become effective on March 12, 1977. The Sunshine Act imposes certain new requirements applicable to the FDA, as well as to other agencies, regarding ex parte communications between Federal officials and persons outside the Federal Government in connection with any administrative hearing subject to 5 U.S.C. 557(a). "Ex parte communication" is defined in new 5 U.S.C. 551(14) as "an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter."

In sum, the Sunshine Act prohibits the making of ex parte communications by either Federal employees or outside persons within the context of a hearing subject to 5 U.S.C. 557, and requires that any ex parte communications that are made be placed in the public record, either by filing written communications or reducing to writing the substance of any oral communications, as well as any responses, either written or oral, to either of these types of communications. The Sunshine Act further requires each Federal agency to designate a particular time during the administrative process after which the prohibitions shall apply. That time may not be later, however, than the time at which a proceeding is first noticed for a hearing, and must with respect to any person with knowledge that such notice is forthcoming, be no later than the time such knowledge was acquired. The new law specifically provides that an agency may consider, consistent with the interests of justice, a violation of the section as sufficient grounds for a decision adverse to the party committing the violation or causing it to occur. The Commissioner advises, in this regard, that he will consider as a violation of this section, as a "causing to occur" of an ex parte communication, a communication by any government official outside the agency, including members or representatives of mem-

bers of Congress, made at the knowing behest of any person who would be precluded under the statute from personally making the communication.

The Sunshine Act affects the provisions of proposed § 2.13 that address ex parte communications, with respect to any matter subject to an opportunity for a formal evidentiary public hearing, as listed in § 2.12(c), and any matter subject to a public hearing before a Public Board of Inquiry pursuant to Subpart C of Part 2, and necessitates some revision of them.

Accordingly, the Commissioner has determined to modify § 2.13 (and § 2.3) in the final order as follows:

a. The Sunshine Act's definition of "ex parte communication" has been incorporated into § 2.3.

b. The times at which the prohibition against ex parte communications are to come into play are those proposed in § 2.13 (b) and (c) for the matters referred to in those sections. However a new paragraph (e) has been added, in accordance with the statute, applying the restriction to any person having knowledge that a notice of hearing is to be issued to the time such knowledge is acquired.

c. Paragraph (d) of § 2.13 has been revised to indicate that the prohibitions against making ex parte communications apply to employees of the agency involved in any manner in the decisional process as well as to persons outside the agency.

d. A new paragraph (f) has been added to reflect the statutory provision that the making of a prohibited ex parte communication may, consistent with the interests of justice and the policy of the underlying statute, justify a decision adverse to the person knowingly making or causing the making of such a communication.

No comments were received on proposed § 2.14 Referral by court (21 CFR 2.14) and it is adopted as proposed.

Section 2.15 Meetings and correspondence (21 CFR 2.15) contains requirements for meetings and correspondence between employees of the Food and Drug Administration and any person outside the Department of Health, Education, and Welfare.

57. Several comments were received regarding § 2.15(f)(1), which as proposed would have permitted any meeting initiated by FDA involving only a small number of persons, such as 1 or 2 manufacturers, to be a private meeting, but would have required a meeting involving a large number of persons, e.g., 10 manufacturers of an ingredient, to discuss appropriate testing or labeling, to be a public meeting. The comments criticized the use of the number of persons as the criterion for determining whether a meeting should be public or private, urging in general that the nature or subject matter of the meeting should determine whether it should be private or open. One comment specifically suggested that the number of different interests represented, rather than the number of persons, should determine whether the meeting is to be public or private, but urged also that meetings should be open when closing them might give particular firms a competitive advantage.

Another comment insisted that the 10-person standard was arbitrary, and that whether a meeting should be open or closed should depend on a variety of factors, e.g., the meeting site, the various interests represented, and the subject discussed. The comment stated that where a single industry or group of persons is the focus of the meeting, the willingness of that group to meet in a public forum should weigh heavily in the decision. In general the comments from manufacturers and industry associations argued that private meetings encourage input, but a comment from a consumer group contended that it is important that consumers be present at meetings with industry because proposed § 2.15 failed to require taking transcripts or recordings. One comment asked the reason for subjecting to regulation the issue of whether meetings should be public or private and urged that the decision be left to the discretion of the Commissioner.

The Commissioner has considered the objections to the section, and finds them unpersuasive. Most of the comments appear to have assumed that the requirements of § 2.15(f)(1) apply to all meetings between the FDA and persons outside the Federal government. This is not the case. In contrast with other provisions of § 2.15, paragraph (f)(1) applies only to meetings initiated by FDA. It does not apply to private meetings between the agency and outside persons or groups at the behest of the lattter. Such meetings are subject principally to the requirements of § 2.15(d). The justification for the distinction is reasonable: The agency's initiation of a meeting is generally for the purpose of seeking information on or attempting to resolve an issue regarding a regulatory matter. It would be inappropriate for FDA to seek advice from only one group on a regulatory matter that affects many manufacturers or broad segments of the public.

The "number of persons" criterion in § 2.15(f) should be viewed as an attempt to establish a readily usable "rule of thumb" for determining when an agency-initiated meeting should be open to all. It should be noted that the specfic reference in § 2.15(f)(1) to numbers of participants as the criterion is neither absolute nor arbitrary. The language of the paragraph refers to examples of the subject matter of such meetings as well as to the number of persons, and the Commissioner intends that the number of persons shall be merely one guide, rather than a firm rule, for deciding when a meeting should be public. The Commissioner retains discretion to decide whether such a meeting should be open or closed.

The Commissioner also advises that he may follow § 2.15(f)(1) in determining whether to insist that other meetings should be open to the public when opening them will avoid the implication of undue influence in an agency decision or will otherwise further the purposes of the act.

58. One comment urged that proposed § 2.15(i), requiring a written summary to be made of any meeting with a representative of Congress relating to any one of several enumerated matters, be clarified to state that it applies only to FDA employees. The Commissioner believes it obvious that the requirement is applicable only to employees of the agency, and so advises. No change in the language of the provision is necessary.

59. One comment suggested that the language of proposed § 2.15(c), which requires the summarization in writing of any meeting between agency representatives and any person outside the Department relating to a "pending court case," as well as other enumerated subjects, be amended to include specifically an "immediately anticipated court case." The Commissioner advises that an anticipated court case would be included within the reference to "pending court case," and that agency employees have been observing this interpretation in maintaining records of telephone calls and meetings. Therefore, no formal modification of the paragraph is necessary.

60. One comment urged that telephone conversations be subject to the requirements of § 2.15(c) and (d). The Commissioner advises that the definition of "meeting" in § 2.3(a)(24) includes telephone conversations, and that no amendment to paragraph (c) or (d) is called for.

61. One comment directly, and another by implication, questioned the wisdom of requiring the written documentation of all contacts with the agency. Both commented that the requirement discourages such contacts. One comment argued additionally that such memoranda contain only one side of a conversation, and suggested that the section require only the logging of contacts without the description of their substance.

The Commissioner disagrees. Even conceding that some communications to the agency may not be made because of the fear of public disclosure, the Commissioner believes it is essential for the integrity of the regulatory process that records be kept of contacts between agency employees and outside parties. The keeping of such records should increase the reliability of the information that is submitted. Moreover, written documentation is necessary for the preparation of an administrative record should any decision of the Commissioner be subsequently challenged. Most important, the Commissioner believes that public confidence in government can only be maintained if government dealings with the public are, to the extent possible, open and subject to scrutiny. There is no basis for the suggestion that memoranda of these communications prepared by government employees will reflect only one side of such contacts: § 2.15(g) provides that any participant in any meeting under any participant in

any meeting under § 2.15 may submit his own summary of the meeting and that the summary will be made part of the administrative record along with any memoranda prepared by the agency.

62. One comment suggested the deletion of the statement in proposed § 2.15 (a) that meetings and correspondence are not final agency action on the ground that it is overbroad.

The Commissioner disagrees. The statement is not overbroad, for it is difficult to visualize a circumstance in which a meeting or informal correspondence would constitute final agency action, and its inclusion is consistent with the practice of the Commissioner in these regulations of specifying those agency actions that do and do not constitute final agency action for purposes of court review.

Section 2.16 Documentation of significant decisions in administrative files (21 CFR 2.16) provides for the documentation of agency decisions by the employees involved in making them. The section as proposed represented an attempt to protect the rights of agency employees working on a matter by permitting, under paragraph (b)(2)(ii), any employee to record his views in written memoranda that would be included in the file. Proposed § 2.16(e) also guaranteed such employees access to the file as appropriate for the performance of their work, subject to reasonable restrictions to assure the proper cataloging and storage of documents.

63. One comment, submitted by the Review Panel on New Drug Evaluation of the Secretary of Health, Education, and Welfare, suggested that both of these requirements be extended to employees that have been, but may not currently be, working on a particular matter. The panel recommended that an employee's exercise of the right to record his views and to have access to the administrative file on a matter should be consistent with attention to his other assignments.

The Commissioner considers it proper that agency employees who have previously worked on a particular matter not be precluded from further participation in that matter, or denied access to the file. This, indeed, was the intent of the proposal. Not only will such access avoid charges that employees may have been transferred to prevent their continued work on a matter, but it will also make the administrative record of the resolution of controversial issues more complete. As advocated by the comment, § 2.16 (b)(2)(ii) and (e) of the final regulation have been revised to reflect the original intent of the proposal.

64. The Commissioner has clarified the effect of §§ 2.15 and 2.16 regarding the filing of the administrative record in a formal evidentiary public hearing pursuant to § 2.153 of Subpart B (21 CFR 2.153). The clarification is prompted by questions that have arisen in agency preparation for hearings of this type during recent months.

Section 2.16(b) requires that the administrative file of any matter contain the complete documentation of the agency decision (including opinions of consultants and recommendations of individual employees) and reveal any internal differences of opinion. Section 2.15 (c) requires an agency employee to prepare a written summary of any meeting with any person outside the Department which shall be included in the administrative file. Section 2.153 requires the relevant portions of the "administrative record" to be filed with the Hearing Clerk, including all documents in bureau files containing factual data and information, whether favorable or unfavorable to the bureau position.

These provisions do not require the administrative file docketed with the Hearing Clerk to contain memoranda summarizing meetings of bureau counsel with witnesses, or to contain internal agency memoranda setting forth recommendations of agency employees. While such meetings and recommendations clearly are required to be summarized in written form for the administrative file, the regulations are not intended to require all such memoranda to be made public if the matter becomes subject to a formal evidentiary public hearing. The work-product of bureau counsel are obviously protected under the attorney-client privilege and, along with recommendations of employees (as distinguished from scientific or medical data) found in internal agency documents, are not required to be disclosed under Part 4, the agency's public information regulations. Such materials will, however, continue to be prepared and to be placed in the agency administrative file for purposes of judicial or congressional inquiry, or for historical purposes.

The definition of "administrative file" in § 2.3(a)(27) of the final regulation conforms to this position. The proposal has been revised to remove the implication that the administrative record of a matter filed with the Hearing Clerk is necessarily the same as the official administrative file of the matter. The documents comprising the former are, rather, listed variously in other sections of the regulation, e.g., in § 2.8(k), for administrative reconsideration of an action; in § 2.9(h), for an administrative stay of an action, and in § 2.10(f), for regulations promulgated pursuant to that section.

65. No comments were received on proposed § 2.17 Internal agency review of decisions (21 CFR 2.17) which is adopted without change. However, some concern was expressed within the agency that § 2.17(a)(3) imposed the obligation to formally review at a supervisory level the decision of any agency employee at the request of an interested person. The Commissioner advises that no such result is intended. Review of the work of subordinates by agency supervisors is currently a matter of a supervisor's discretion and § 2.17(a)(3) is intended to reflect present agency practice. The provision recognizes that supervisory agency employees will entertain requests from interested persons to review any decision of a subordinate, but that the extent of any review will continue to be determined by the supervisor.

Section 2.18 Dissemination of draft FEDERAL REGISTER notices and regulations (21 CFR 2.18) provides for the discussion, both orally and in writing, of draft, proposed, and final rules and regulations, by representatives of FDA with interested persons, including persons outside the agency.

66. Two comments were received regarding the proposal. One comment criticized the limitations imposed by § 2.18(d) on the discussion of the details of draft notices and regulations and on the dissemination of such drafts before publication in the FEDERAL REGISTER. The comment argued that the prohibition could prevent meaningful participation in drafting complex regulations, where agency knowledge may be inadequate to draft an appropriate proposal. The comment acknowledged that proper information may be supplied by comments after publication, but suggested that there often is reluctance to make major changes in a proposed regulation. The comment contended that allowing informal contacts could often improve a published proposal and thus speed promulgation of a final regulation with a minimum of delay and modification.

The Commissioner points out that § 2.18(d) does not prohibit either the discussion or distribution of draft FEDERAL REGISTER notices. Rather, it imposes restrictions on such discussion and distribution only as necessary to ensure that all interested parties will be treated fairly and afforded uniform access to internal working documents. In situations where expert advice from outside the agency may be needed to develop a proposal, the regulation permits such information to be obtained.

67. The second comment noted that proposed § 2.18(b), although permitting the distribution of draft documents and proposed regulations following FEDERAL REGISTER publication of a notice of availability, did not explicitly permit agency employees to discuss the details of such a draft even after it became publicly available, except with the specific permission of the Commissioner.

The Commissioner acknowledges that the comment has interpreted the proposal correctly. He agrees with the comment that such a restriction on the discussion of details of a draft already publicly available is unnecessary, and believes the public interest will be safeguarded adequately if such discussions are subject only to the other provisions of the section, e.g., § 2.18(i), which applies the requirements of § 2.15 *Meetings and correspondence*, to meetings and correspondence relating to draft FEDERAL REGISTER notices and regulations. While § 2.18 will thus allow for discussion of draft proposed and final regulations and notices that have been made publicly available, it requires that summary memoranda be made of any such discussions for inclusion in the administrative file. The Commissioner regards the preparation of such memoranda in the context of discussions of draft FEDERAL REGISTER notices and regulations as essential; the requirement will assure compilation of

the full administrative record and dispel suspicions of improper influence in the development of agency regulations. The Commissioner has amended § 2.18(b) in the final regulation to allow agency employees and interested persons to discuss without his prior permission draft documents that have been properly made available to the public.

68. A primary concern expressed by many comments on § 2.19 Advisory opinions (21 CFR 2.19) was that opinions by FDA employees that are not advisory opinions do not bind the agency to the interpretation expressed in the opinion. One comment argued that this position is not supported by case law. It rejected the cases cited in the preamble to the proposal regarding the doctrine of estoppel, and cited the following several cases in which various courts have held the government estopped on the basis of advice of an employee: *United States* v. *Wharton*, 514 F. 2d 406 (9th Cir. 1975), *United States* v. *Lazy FC Ranch*, 481 F. 2d 985 (9th Cir. 1973), *United States* v. *Burton*, 472 F. 2d 757 (8th Cir. 1973), and *Moser* v. *United States*, 341 U.S. 41 (1951). The comment contended that, based on these cases, the current rule is that the government will be prevented by estoppel from taking a position inconsistent with advice provided by an employee when the damage to the private party outweighs the loss to the government or any harm to the public interest. The comment concluded by urging that the regulations be recast to state that FDA is not bound by estoppel in any case where the public health or safety would be jeopardized, but that it will take reasonable steps to protect justifiable reliance on advice provided by an agency employee when the public health or safety will not be jeopardized.

Other comments addressed the same issue, through from different perspectives. One comment found proposed § 2.19(k) patently unfair, claiming that the regulation placed agency employees in positions of apparent authority but penalized those who relied on their advice. The same comment and one other argued that the public cannot conduct day-to-day operations by constantly requesting advisory opinions, and suggested that the agency could "grind to a halt" if responding to advisory opinions became a common practice. Both comments noted that much agency business is handled on the basis of "informal advice."

Finally, these comments requested that, should reliance on an agency employee's "informal" opinion result in regulatory action, in no event should a person so relying be subject to criminal prosecution. They urged the adoption of this position as a minimum, if the action ultimately complained of is undertaken in good faith reliance on the information provided by a representative of the agency.

The Commissioner acknowledges that these comments express a legitimate concern, but he believes that the regulation as proposed is proper. The Food and Drug Administration must be able to provide informal advice to interested persons on a staff level. Considerations of the public health and safety, as well as considerations of efficiency, however, prevent the agency from being legally bound by such representations.

The expectation that informal advice would bind the agency is unrealistic in light of the way such advice is generally requested and provided. Even when coordinated within the agency, opinions on the regulatory consequences of particular conduct may not be based on exhaustive inquiry into past agency practice or legislative intent. Moreover, many inquiries request a reply within a short period of time. In addition, circumstances are often described hypothetically, and may omit facts that the agency, in contrast to the person making the inquiry, may consider crucial. Finally, the Commissioner recognizes that some persons will "forum shop" within the agency until they obtain a desired answer. For these several reasons, the Commissioner declines to be bound by the informal responses of agency employees. Section 2.19 provides one broad exception: where a particular inquiry is of broad applicability or importance, the agency will commit its resources to providing its best institutional judgment on a matter through an advisory opinion.

The Commissioner considers the procedure established for obtaining an advisory opinion to be both realistic and fair. The procedure recognizes that, in fact, most actions taken by private firms under the statute are based on expert advice, both technical and legal, obtained outside the agency. Opinions by agency employees as to the legality of such actions are not necessarily accepted at face value, particularly if they conflict with those of the inquirer.

As a practical matter, advice provided informally by FDA employees will generally be correct, and when it is not, action in reliance will not result in the imposition of sanctions without good reason. But the risk that such advice is incorrect cannot readily be shifted to the government, and to the public. Particularly in matters involving individual compliance with the statutes administered by FDA, the ultimate burden must remain on manufacturers and distributors of regulated products. The alternative, which the Commissioner rejects, would be to preclude agency employees from furnishing advice, i.e., to require all inquiries to be subject to the procedures for advisory opinions outlined in § 2.19. This course would not work to the advantage of either the agency or affected persons.

The Commissioner will not rule out the possibility of recommending institution of criminal proceedings when an informal opinion has previously been furnished to a violator. At the same time he advises that recommendation for criminal prosecution is based on all the circumstances surrounding a violation, and it is unlikely that such prosecution would be recommended when the activity giving rise to the violation was the product of good faith reliance on advice given informally by an agency employee. Responsible exercise of the Commissioner's discretion will afford adequate protection in such circumstances.

The Commissioner does not discount the possibility, however remote, that FDA might be held by a court to be estopped by the informal advice of an employee in a given matter. However, he considers the cases cited by the comments regarding application of the doctrine of estoppel to the government to be not relevant to informal advice rendered by FDA employees pursuant to these regulations, for in none of the cases had the agency publicly indicated that informal opinions of employees were not binding, and provided an alternative procedure for obtaining formal binding opinions. More importantly, none of the cases cited involved a government agency that is entrusted to protect health and safety.

69. One comment objected that the form specified in the proposal for requesting advisory opinions is too rigid. The Commissioner disagrees that the form requirements are rigid. They require only that a request indicate that it is seeking an advisory opinion, that it clearly state the question and issue on which the opinion is requested, and that it include a statement of the facts and law relevant to the request. Moreover, the section permits the Commissioner to treat other requests, in his discretion, as requests for advisory opinions.

70. Several comments objected to the Commissioner's proposed decision not to publish advisory opinions in the FEDERAL REGISTER. They argued that it is inconsistent to urge reliance on such opinions and then not publish them. One comment urged that at least a notice of availability should be published, as well as a notice indicating the withdrawal or revocation of any advisory opinion. Another comment pointed out that reporting such opinions in the trade press is of no help to the general public. The comment also argued that the right under § 2.19(i) to comment on advisory opinions becomes illusory when the public is not aware of them.

The Commissioner believes the preamble to the proposal adequately explains the reasons for not publishing each advisory opinion in the FEDERAL REGISTER. The number of opinions makes publication of each one infeasible. Those that are contained in preambles to proposed or final regulations under § 2.19 (d)(1) will be published. Nonetheless, each advisory opinion that is not published will be publicly available and will probably receive wide publicity in the trade press. To further increase public awareness of advisory opinions, moreover, the Commissioner has modified § 2.19(g) in the final regulation to provide that a chronological index of all advisory opinions will be maintained by the Hearing Clerk. The index will include the date of the request for the advisory opinion, the date of the opinion, and identification of the appropriate file.

The Commissioner thus disagrees with the contention that the right to comment on advisory opinions is illusory. Suffi-

ciently wide publicity will be given to FDA advisory opinions so that any person with even a casual interest in the agency will be likely to learn of them. Advisory opinions that are also guidelines will be further disseminated through publication in the FEDERAL REGISTER of a notice of availability under § 2.20(b)(4) and whenever incorporated into the text of a regulation under § 2.20(a).

71. Another comment argued that the failure of the regulation to provide for the publication and indexing of informal opinions might violate paragraph (a)(2)(B) of 5 U.S.C. 552, the Freedom of Information Act. The comment contended that even informal interpretations are likely to be considered "interpretations adopted by the agency," as they are subject to internal review, and can thus fairly be considered to have been adopted by the agency. It cited as support *Tax Analysts and Advocates* v. *IRS*, 362 F. Supp. 1298 (D. D.C. 1973), aff'd, 505 F.2d 350 (D.C. Cir. 1974).

The Commissioner disagrees that informal opinions given by agency employees are subject to 5 U.S.C. 552(a)(2)(B), insofar as that section requires the publicizing and indexing of agency interpretations. Such opinions are not considered interpretations of the agency; they do not bind FDA even for the matters that they address. The Commissioner accordingly concludes that they are subject to the requirements of 5 U.S.C. 552 to the same extent as routine agency correspondence, and are therefore not required to be indexed or publicized. They will, however, be subject to disclosure under 5 U.S.C. 552. Because informal opinions have no binding effect, they will not be used by the agency as precedent for persons other than those to whom they are issued. In this context, the sanctions imposed by 5 U.S.C. 552 for failure to index and publicize documents, namely, that the agency may not rely upon them in other cases, are inapplicable.

The Commissioner advises that he will continue to evaluate whether informal opinions receive sufficient distribution, and may decide, in the future, that some additional mechanism to assure their dissemination is desirable.

72. One comment suggested that proposed § 2.19 should be amended to provide that whenever published, an advisory opinion should reveal the identity of the person requesting the opinion and should set forth a clear statement of the facts on which the opinion is based. It urged also that any opinion state that it is based on the assumption that the facts are as represented.

The Commissioner currently contemplates that these opinions will be unpublished. However, the information requested in the comment will be contained in the request for an opinion filed with the Hearing Clerk, where the responsive opinion would also be filed, and both will be publicly available.

73. One comment suggested that the Commissioner should be authorized to decline to issue an advisory opinion when the request relates to conduct in which the requester is already engaged. The comment argued that issuing an opinion in such circumstances may interfere with enforcement efforts with respect to the practice.

The Commissioner advises that § 2.19(a)(2)(v) authorizes him to refuse to issue an advisory opinion when it would not be in the public interest, and thus provides the authority that the comment advocates. However, the Commissioner reiterates that he may conclude that it is not improper to issue an advisory opinion in such circumstances. The fact that conduct has already commenced is not by itself reason not to issue an advisory opinion; the conduct may be entirely lawful and appropriate.

74. One comment urged that proposed § 2.20 Food and Drug Administration regulations, guidelines, recommendations, and agreements (21 CFR 2.20) provide for full notice and comment proceedings prior to the issuance of a guideline. This comment and one other urged particularly that guidelines for product labels be subject to notice and comment rule making. The comment argued that such guidelines have considerable economic impact because of the significant expense associated with printing and design work. A related comment noted that the Supreme Court has relied heavily on agency guidelines in deciding controversies before it, referring to *"Moody* v. *Albermarle Paper Company,"* 422 U.S. 405 (1975), and urged that this too dictated observance of notice and comment rule making procedures in the development of guidelines.

The Commissioner does not agree with these comments. Guidelines ordinarily represent agency interpretations of formal legal requirements, not binding legislative rules. The Commissioner's decision not to commit the agency to provide opportunity for notice and comment in the development of guidelines is consistent with their legal status under these procedural regulations. Section 2.20(b)(8) provides that although guidelines may be relied on by both FDA and persons outside the agency in administrative or court proceedings to illustrate acceptable and unacceptable procedures, they do not establish binding legal requirements. The Commissioner therefore believes it appropriate that the agency retain authority to develop them without prior public participation. The Commissioner disagrees with the reliance on *"Moody* v. *Albermarle Paper Company,"* supra. In that case, the Court, while relying on agency guidelines of the Equal Employment Opportunity Commission, explicitly recognized, without criticism, that the guidelines were not administrative regulations promulgated pursuant to formal procedures established by Congress. Thus, the case can be read as support for administrative agencies interpreting statutory provisions under their jurisdiction through guidelines developed without formal public participation.

Moreover, these regulations do not preclude all public participation in the preparation of FDA guidelines. Section 2.20(b)(11) recognizes explicitly that draft guidelines may be disseminated in the same manner as draft FEDERAL REGISTER notices and regulations pursuant to § 2.18. In such cases, the regulations contemplate at least informal public participation through discussion of the substance of the guideline. In addition, § 2.20(b)(7) provides for the submission of comments on a guideline or amended guideline, which are to be specifically considered in determining whether further amendments to the guideline are appropriate. The Commissioner believes that these two provisions allow a degree of public participation in the formulation of guidelines commensurate with their legal status.

75. One comment raised the objection, also directed at § 2.19, that it is unfair to consider as informal the personal opinions of agency employees.

The Commissioner refers to the explanation provided in his discussion of the same comment regarding § 2.19. He there indicated his conclusion that although agency employees ought to be permitted to share their opinions with the public, such opinions cannot formally bind the agency. He believes it is clearly reasonable to limit statements of position that can bind the agency to regulations, advisory opinions, and guidelines.

76. An issue raised within the agency concerns the reliance by FDA on a government procurement standard or other standard as the criterion for determining the legality of a product. The issue is whether the agency may properly so rely if it has not previously complied with the requirements for the issuance of guidelines contained in this section.

The Commissioner advises that he will consider agency reliance on government procurement standards, or other standards, to be subject to prior compliance with the requirements of this section for guidelines, including inclusion in the public file and publication of a notice of availability in the FEDERAL REGISTER.

77. A minor correction has been made in § 2.20(b)(10) in the final regulation. The reference to "this paragraph" is changed to "paragraph (b)(4) of this section." Paragraph (b)(4), requiring the placing of guidelines in a public file in the Hearing Clerk's office and the publication of notice of their availability in the FEDERAL REGISTER, is not intended to apply to analytical methods. While considered to be guidelines under the section, analytical methods are too numerous and complex, and are amended too frequently, to subject them generally to these provisions. The Commissioner may, however, in his discretion, decide that a particular analytical method should be included in the public file.

78. A question has been raised concerning the availability under § 2.20 of draft internal guidelines contained in the FDA Staff Manual. The issue arose as a result of a freedom of information request to the agency for these guidelines.

The Commissioner advises that guidelines in staff manuals are not formal "guidelines" unless there has been compliance with the requirements of § 2.20.

They rarely involve matters of "general applicability," as that term is used in § 2.20, but generally apply to internal agency business. Accordingly, neither § 2.20 nor § 2.18 is applicable to the public availability of draft guidelines of this type. Their availability is subject only to the Freedom of Information Act and FDA public information regulations. Final staff manual guidelines are publicly available under 5 U.S.C. 552(a)(2)(C).

No comments were received regarding § 2.21 Participation in outside standard-setting activities (21 CFR 2.21), and it is issued as proposed.

79. Many comments addressed the requirement in proposed paragraph (b) of § 2.22 Public calendars (21 CFR 2.22) to exempt meetings with the working press from listing on the retrospective public calendar. The preamble to the proposal had requested specifically that comments be submitted on this issue. Most of the comments urged that meetings with the working press be listed on the calendar. Several comments concluded that there was no basis for according special treatment to meetings with the press, particularly where, as in this instance, the press consisted largely of "expensive 'insider' services" that assertedly are oriented toward industry customers and capable of exerting influence on the regulatory process. The failure to list meetings retrospectively, it was argued, would therefore not benefit the public generally, but only the press. One comment stated the exemption would revive the supposedly discredited practice of basing news on "undisclosed sources," and that responsible journalists should not need the anonymity that the proposed rule offered them. Another comment urged that a policy of nondisclosure of press meetings might lead to abuse and encourage damaging leaks.

Several contrary arguments were offered. One comment described the function of the press as seeking out information and reporting it, and contended that the press should be impeded as little as possible in this function. The comment argued that conscientious reporting would be frustrated if reporters had to disclose their sources. The comment argued, further, that agency employees who previously have been willing to discuss matters with reporters would be reluctant to continue doing so if they were required at the same time to disclose publicly that they had met with the press. The comment argued also that the idea of an open calendar is to disclose contacts with government officials by persons seeking to influence actions, a category that does not include members of the press, who do not espouse a particular viewpoint. It was also argued that the listing would not necessarily provide greater protection for trade secrets, whose disclosure would be prohibited. Rather, the information whose distribution would be restricted would likely be of a type that would cause embarrassment or annoyance. Finally, the comment maintained that listing press contacts would hamper press competition, which fosters investigative journalism.

The Commissioner has decided to retain the exception for the listing of press contacts in the retrospective calendar. He concludes that listing such contacts is not necessary to serve the purpose of listing generally, and would be unnecessarily burdensome. He views that purpose as publicizing agency contacts with persons having a direct personal or economic interest in agency decisions. He does not believe that representatives of the press, including representatives of publications that can be characterized as "trade press," fall within this category. Moreover, the Commissioner notes that representatives of the trade press as a matter of practice visit the agency on virtually a daily basis to make routine inquiries. Consequently, their contacts with the various agency officials listed in § 2.22(b)(3) are so numerous as to make recording each contact for the public calendar impractical.

The Commissioner concludes, therefore, that it is appropriate to exclude from listing on the public calendar contacts with various segments of the working press. Consistent with the purposes stated above, however, he is limiting this exclusion to those segments of the working press not considered to be "house organs," i.e., publications published by a company that manufactures or distributes a regulated product or products, or by an industry association. Contacts with representatives of such publications will be listed on the retrospective calendar.

80. One comment urged that proposed § 2.22(b), prescribing requirements for the retrospective public calendar, list meetings with persons outside the executive branch, rather than only those meetings with persons outside the entire Federal government. The Commissioner agrees. He believes there is valid reason to report retrospectively meetings between FDA officials and persons from the legislative or judicial branches of government that are held to discuss positions on regulatory issues pending before the agency. The final regulation has been modified accordingly.

81. Another comment urged that the prospective calendar described in § 2.22(a) be required to list "all meetings with persons outside Government." It argued that without advance notice of such meetings, consumer views would inevitably be presented primarily at separate meetings held subsequently, which would have only limited utility. Moreover, because such meetings are not transcribed or recorded, the comment argued, consumers should have the opportunity to be present at all meetings between the agency and industry representatives to represent consumer interests.

The Commissioner disagrees; the comment misunderstands the purpose of the prospective calendar, which is to list public meetings, conferences, etc., not private meetings. Section 2.15(d) of the regulations acknowledges the right of any person, whether a representative of industry or any other group, to meet privately with representatives of the agency. The Commissioner believes the listing on the retrospective calendar of such meetings that occur with certain agency officials, and the filing of appropriate memoranda summarizing all such meetings in the administrative file, adequately protect the interests of persons not in attendance. Such memoranda, would, except where exempt from disclosure, be publicly available through either the Hearing Clerk or the Public Records and Documents Center. The Commissioner believes these procedures fairly balance consumer interests with the rights of any citizen to meet privately with agency officials.

82. One comment contended that it should be mandatory instead of optional to list telephone calls in the retrospective calendar. It argued that the substance of a meeting or call should determine whether it should be included on the calendar, not whether it was held in person or by telephone. The comment insisted that all telephone calls that could influence agency decisions should be recorded on the calendar.

The Commissioner agrees that it is the substance of a meeting that should determine whether it is included on the calendar. However, he believes the proposed regulation is responsive to the comment. He advises that recording of calls is made optional with agency employees to eliminate the need to list calls that do not bear upon the decisionmaking process of the agency, e.g., calls to establish a time for a meeting. The expectation is that any call affecting a matter of policy will be noted. All such calls must in any event be summarized in written memoranda for inclusion in the administrative file under § 2.15, and such memoranda would be subject to disclosure under the Freedom of Information Act. Listing of telephone calls on the public calendar may, therefore, properly remain optional with individual agency employees.

83. One comment urged that the prospective public calendar be published in the FEDERAL REGISTER. The comment stated that the locations presently specified in § 2.22(a)(2) for public display of the calendar will not assure sufficiently wide dissemination of the information.

The Commissioner does not agree. Publication in the FEDERAL REGISTER is not appropriate for routine matters such as a weekly calendar. The Commissioner believes the provisions made for public display of both the prospective and retrospective public calendars are adequate. Moreover, the Commissioner assures that topical items appearing in the calendar will be noted regularly in the trade press.

84. Section 2.22(b)(3)(ix) in the final regulation has been modified to include, among the agency representatives required to list their attendance at meetings on the public calendar, any representative of the Chief Counsel's office who attends or plans to attend a public meeting on behalf of the Chief Counsel. The organization of the Chief Counsel's office is such that representatives other than the Chief Counsel or Deputy Chief Counsel frequently attend meetings with

members of the public as the designated representative of the office. The effect of the requirement will be to bring to public attention meetings that might otherwise not be reported.

85. Numerous comments on proposed § 2.23 Representation by an organization (21 CFR 2.23) objected to the distinction between "organization" in paragraphs (a) and (c), and "trade association" in paragraph (b). Several comments questioned whether these terms included professional associations, consumer groups, large food cooperatives, etc.

The Commissioner advises that the divergent references to "organization" and "trade association" were inadvertent. As proposed, the section was intended to apply to any organization, including a trade association that represents a "membership," or other clearly defined group appearing before the agency. Thus, professional and trade associations as well as consumer groups having an identifiable membership would be included.

86. A large number of comments objected to the statement in proposed § 2.-23(b) that any representation by a trade association in a petition, comment, objection, or otherwise would be treated by FDA as binding on all members except those that had excluded themselves by name. Numerous reasons were offered to support this objection. Many comments urged that the requirement was impracticable; associations, operating within existing resources and prescribed time frames, could not, it was said, determine members' individual views prior to submitting comments. The comments pointed out that associations ordinarily attempt to reflect consensus views, and that if adopted, the rule would dramatically reduce the effectiveness of associations and primarily penalize small companies that rely heavily on associations to express their views. Legal objections were also raised as well. Many comments noted that trade associations have an identity apart from their membership and do not purport to act as agents for each of their members. The comments argued that FDA could not impose an "agency" relationship by regulation.

The Commissioner is persuaded that the proposed regulation should be modified to eliminate the provision that representations, petitions, comments, or objections by trade associations are binding on all members who have not expressly excluded themselves. He is persuaded by the practical difficulties of eliciting the views of an association member within the customary comment period. He also agrees with those comments that contended that organizations, including trade associations, should be entitled to participate in agency proceedings in their own right. Consequently, the final provision does not assert that association views will be binding on association members and does not require exclusion by name of members who do not subscribe to the views of the organization.

87. An equally large number of comments objected to the requirement of proposed § 2.23(b)(1) that any submission by a trade association (or other organization representing the views of its members) be accompanied by a current membership list or that the association have such a list on file in the Hearing Clerk's office. Several associations argued that their membership was simply too large and fluid; others contended that the requirement unlawfully infringed on the constitutional right of persons to petition their government or the right to participate in agency activities under the Administrative Procedure Act and the Federal Food, Drug, and Cosmetic Act. Several comments pointed to cases that have recognized a constitutional right against disclosure of association membership, citing *NAACP* v. *Alabama*, 357 U.S. 449 (1958), *Bates* v. *Little Rock*, 361 U.S. 516 (1960), and later cases, a right that can only be overcome by a compelling governmental interest in disclosure, citing *Gibson* v. *Florida Legislative Investigation Committee*, 372 U.S. 539 (1963). Some associations stated, however, that they had no objection to filing membership lists with the Hearing Clerk.

The Commissioner does not accept the argument that the cited cases, dealing principally with potential restrictions on freedom of expression, preclude requiring disclosure of association membership in the context of administrative proceedings to establish regulations based on information submitted by parties having obvious interests in the outcome. However, because the Commissioner has elected not to consider the positions taken by associations as binding on all members, there is no compelling reason to insist on the submission of membership lists by such organizations, and the proposed requirement is not adopted. Section 2.23(c) of the final regulation requests that such lists be provided on an annual basis to the Hearing Clerk for placement in a special file that will be available for public examination. The Commissioner hopes that organizations participating regularly in agency proceedings will file membership lists for he believes that information concerning the number and identity of members of associations will facilitate his evalution of association comments.

88. Many comments also questioned the requirement in proposed § 2.23(b)(2) that would prohibit a member of a trade association from deriving any rights individually from the filing by its association of an objection or request for hearing pursuant to §§ 2.110 through 2.112. The comments claimed it was inequitable to require members to be bound by association positions and not to provide rights commensurate with the obligation imposed. The Commissioner has retained the proposed provision (§ 2.23(d) in the final regulation), because he no longer intends to consider association members bound by positions taken by their association. However, he has amplified the provision to make clear that association members who wish to file objections or requests for hearing must do so in their own name if they wish to derive any rights therefrom.

89. Many comments challenged the validity of proposed § 2.23(c), in which the Commissioner announced his intention to treat any court proceeding in which an organization participates as a class action, and to assert in any related court case the doctrines of res judicata and collateral estoppel against all organization members except those excluded by name. The comments insisted that class actions must meet specific judicial requirements whose applicability can only be determined in specific proceedings. Other comments questioned the wisdom of including such statements of litigation strategy in these regulations.

The Commissioner acknowledges that whether an organization challenge to FDA regulations or other agency action should be adjudicated as a class action, just as the application of the doctrines of res judicata or collateral estoppel, will ultimately be determined judicially. Nonetheless, he has retained the provision (§ 2.23(e) in the final regulation) to emphasize that the positions stated reflect the agency's posture in court.

No comments were received regarding § 2.24 Settlement proposals (21 CFR 2.24), and it is issued as proposed.

No comments were received regarding § 2.25 Waiver, suspension, or modification of procedural requirements (21 CFR 2.25) and it is issued as proposed.

The proposed regulations on administrative practices and procedures contained proposed conforming changes in numerous existing regulations of the agency. The Commissioner has promulgated some of the proposed conforming regulations at the time of finalizing Subparts B and F of Part 2. In this document, the Commissioner is issuing the remainder of the conforming regulations substantially as proposed, inasmuch as no comments were received on them.

The changes in § 330.10(a)(12) (21 CFR 330.10(a)(12)) set forth in the September 3, 1975 proposal have been incorporated in a final regulation to be published in the FEDERAL REGISTER in the near future.

Section 328.30 Procedure for establishing, amending or repealing standards has been recodified as § 829.30 (recodification published in the FEDERAL REGISTER of February 13, 1976 (41 FR 6907)) and the proposed conforming amendment to the section is finalized in this document under Part 829.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 201 et seq., 52 Stat. 1040 (21 U.S.C. 321 et seq.)), the Public Health Service Act (sec. 1 et seq., 58 Stat. 682, as amended (42 U.S.C. 201 et seq.)), the Comprehensive Drug Abuse Prevention and Control Act of 1970 (sec. 4, 84 Stat. 1241 (42 U.S.C. 257a)), the Controlled Substances Act (sec. 301 et seq., 84 Stat. 1253 (21 U.S.C. 821 et seq.)), the Federal Meat Inspection Act (sec. 409(b), 81 Stat. 600 (21 U.S.C. 679(b)), the Poultry Products Inspection Act (sec. 24(b), 82 Stat. 807 (21 U.S.C. 467f(b)), the Egg Products Inspection Act (sec. 2 et seq., 84 Stat. 1620 (21 U.S.C. 1031 et seq.)), the Federal Import Milk Act (44 Stat. 1101 (21 U.S.C. 141 et seq.)), the

Tea Importation Act (21 U.S.C. 41 et seq.), the Federal Caustic Poison Act (44 Stat. 1406 (15 U.S.C. 401–411 notes)), the Fair Packaging and Labeling Act (80 Stat. 1296 (15 U.S.C. 1451 et seq.)), and all other statutory authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (24262)), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

1. By revising § 1.1a to read as follows:

§ 1.1a Foods, drugs, devices, and cosmetics; labeling; procedure for requesting variations and exemptions from required label statements.

Section 403(e) of the act (in this Part 1, the term "act" means the Federal Food, Drug, and Cosmetic Act) provides for the establishment by regulation of reasonable variations and exemptions for small packages from the required declaration of net quantity of contents. Section 403(i) of the act provides for the establishment by regulation of exemptions from the required declaration of ingredients where such declaration is impracticable, or results in deception or unfair competition. Section 502(b) of the act provides for the establishment by regulation of reasonable variations and exemptions for small packages from the required declaration of net quantity of contents. Section 602(b) of the act provides for the establishment by regulation of reasonable variations and exemptions for small packages from the required declaration of net quantity of contents. Section 5(b) of the Fair Packaging and Labeling Act provides for the establishment by regulation of exemptions from certain required declarations of net quantity of contents, identity of commodity, identity and location of manufacturer, packer, or distributor, and from declaration of net quantity of servings represented, based on a finding that full compliance with such required declarations is impracticable or not necessary for the adequate protection of consumers, and a further finding that the nature, form, or quantity of the packaged consumer commodity or other good and sufficient reasons justify such exemptions. The Commissioner, on his own initiative or on petition of an interested person, may propose a variation or exemption based upon any of the foregoing statutory provisions, including proposed findings if section 5(b) of the Fair Packaging and Labeling Act applies, pursuant to Part 2 of this chapter.

2. By revising § 1.8d(f) to read as follows:

§ 1.8d Food labeling; information panel.

* * * * *

(f) If the label of any package of food is too small to accommodate all of the information required by §§ 1.8a, 1.8c, 1.10, 1.13, 1.17, and 1.18, and Parts 80 and 125 of this chapter, the Commissioner may establish by regulation an acceptable alternative method of disseminating such information to the public, e.g., a type size smaller than one-sixteenth inch in height, or labeling attached to or inserted in the package or available at the point of purchase. A petition requesting such a regulation, as an amendment to this paragraph shall be submitted pursuant to Part 2 of this chapter.

PART 2—ADMINISTRATIVE PRACTICES AND PROCEDURES

3. By revising Subpart A of Part 2 to read as follows:

Subpart A—General

Sec.

2.1 Scope.
2.3 Definitions.
2.4 Summaries of administrative practices and procedures.
2.5 Submission of documents to Hearing Clerk; computation of time; availability for public disclosure.
2.6 Initiation of administrative proceedings.
2.7 Citizen petition.
2.8 Administrative reconsideration of action.
2.9 Administrative stay of action.
2.10 Promulgation of regulations for the efficient enforcement of the law.
2.11 Court review of final administrative action; exhaustion of administrative remedies.
2.12 Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing.
2.13 Separation of functions; ex parte communications.
2.14 Referral by court.
2.15 Meetings and correspondence.
2.16 Documentation of significant decisions in administrative file.
2.17 Internal agency review of decisions.
2.18 Dissemination of draft FEDERAL REGISTER notices and regulations.
2.19 Advisory opinions.
2.20 Food and Drug Administration regulations, guidelines, recommendations, and agreements.
2.21 Participation in outside standard-setting activities.
2.22 Public calendars.
2.23 Representation by an organization.
2.24 Settlement proposals.
2.25 Waiver, suspension, or modification of procedural requirements.

AUTHORITY: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91–513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 et seq., Pub. L. 91–513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85–172, 82 Stat. 807 (21 U.S.C. 467f (b)); sec. 2 et seq., Pub. L. 91–597, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101–1103 as amended (21 U.S.C. 141–149); secs. 1 through 10, Chapter 358, 29 Stat. 604–609 as amended (21 U.S.C. 41–50); sec. 1 et seq., Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.); sec. 1 et seq., Pub. L. 89–775, 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.).

Subpart A—General

§ 2.1 Scope.

(a) Part 2 governs practices and procedures applicable to all petitions, hearings, and other administrative proceedings and activities conducted by the Food and Drug Administration pursuant to the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and other laws with respect to which authority has been delegated to the Commissioner of Food and Drugs pursuant to § 5.1 of this chapter, except to the extent that specific provisions in other sections of this chapter state different requirements with respect to a particular matter.

(b) Where a specific provision in another section of this chapter states a different requirement with respect to a particular matter (e.g., the use of a form different from the one specified in § 2.7 (b)), the sections in this part shall apply to the extent that they do not conflict with such other provisions (e.g., the requirements for inclusion of all data and information and for translations of foreign language in § 2.5(b) shall apply regardless of which form is used).

§ 2.3 Definitions.

(a) As used in this part, the following terms shall have the meanings specified:

(1) "Act" means the Federal Food, Drug, and Cosmetic Act unless otherwise indicated.

(2) "Department" means the United States Department of Health, Education, and Welfare.

(3) "Secretary" means the Secretary of Health, Education, and Welfare.

(4) "Commissioner" means the Commissioner of Food and Drugs, Food and Drug Administration, United States Department of Health, Education, and Welfare, or his designee.

(5) "Agency" means the Food and Drug Administration.

(6) "Person" includes an individual, partnership, corporation, association, or other legal entity.

(7) "Presiding officer" means the Commissioner or his designee or an Administrative Law Judge appointed as provided in 5 U.S.C. 3105.

(8) "Hearing Clerk" means the Hearing Clerk of the Food and Drug Administration, United States Department of Health, Education, and Welfare, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

(9) "Proceeding" and "administrative proceeding" mean any undertaking to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action.

(10) "Party" means the bureau of the Food and Drug Administration responsible for the matter involved and every person who either has exercised a right to request or has been granted the right by the Commissioner to have a formal evidentiary public hearing pursuant to Subpart B of this part or a regulatory hearing before the Commissioner pursuant to Subpart F of this part, or who has waived any such right in order to obtain the establishment of a Public Board of Inquiry pursuant to Subpart C of this part, and as a result of whose action a formal evidentiary hearing or a regula-

tory hearing before the Commissioner has been granted or a Public Board of Inquiry has been established.

(11) "Participant" means any person participating in any proceeding, including each party and any other interested person.

(12) "Interested person" or "any person who will be adversely affected" means any person who submits a petition or comment or objection or otherwise requests an opportunity to participate in any informal or formal administrative proceeding or court action.

(13) "Public Board of Inquiry" or "Board" means an administrative law tribunal constituted pursuant to the provisions of Subpart C of this part.

(14) "Public advisory committee" or "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, that is not composed wholly of full-time officers or employees of the Federal government and is established or utilized by the Food and Drug Administration to obtain advice or recommendations.

(15) "Formal evidentiary public hearing" means any hearing conducted pursuant to the provisions of Subpart B of this part.

(16) "Public hearing before a Public Board of Inquiry" means any hearing conducted by a Board pursuant to the provisions of Subpart C of this part.

(17) "Public hearing before a public advisory committee" means any hearing conducted by an advisory committee pursuant to the provisions of Subpart D of this part.

(18) "Public hearing before the Commissioner" means any hearing conducted by the Commissioner or his designee pursuant to the provisions of Subpart E of this part.

(19) "Regulatory hearing before the Food and Drug Administration" means any hearing conducted by an authorized employee of the Food and Drug Administration pursuant to the provisions of Subpart F of this part.

(20) "The laws administered by the Commissioner" means all the statutory provisions with respect to which authority has been delegated to the Commissioner pursuant to § 5.1 of this chapter.

(21) "Petition" means any petition, application, or other document requesting the Commissioner to establish, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action, under the laws administered by him.

(22) "Regulation" means any agency rule of general or particular applicability and future effect implementing or applying any law administered by the Commissioner or relating to administrative practices and procedures. Pursuant to § 2.20(a), all agency regulations shall be promulgated in the FEDERAL REGISTER and codified in the Code of Federal Regulations.

(23) "Order" means any final agency disposition, other than the issuance of a regulation, in a proceeding concerning any matter and includes action on any new drug application, new animal drug application, or biological license.

(24) "Meeting" means any oral discussion, whether by telephone or in person.

(25) "Office of the Commissioner" includes the offices of the associate and assistant commissioners and excludes the bureaus, the office of the Executive Director for Regional Operations, and all regional and district offices.

(26) "Administrative action" includes every form and kind of act, including the refusal or failure to act, involved in the implementations of the laws administered by the Commissioner, except that it does not include the referral of apparent violations to United States attorneys for the institution of civil and criminal proceedings and acts preparatory or incidental thereto.

(27) "Administrative file" means the file maintained by the Food and Drug Administration, in which all documents pertaining to an administrative proceeding, including internal working memoranda and recommendations, are retained.

(28) "Food and Drug Administration employee" or "Food and Drug Administration representative" shall be deemed to include members of the Food and Drug Division of the office of the General Counsel of the Department of Health, Education, and Welfare.

(29) "Ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding.

(b) Any term which is defined in section 201 of the Federal Food, Drug, and Cosmetic Act or Part 1 of this chapter shall have that definition.

(c) Words in the singular form shall be deemed to include the plural, words in the masculine form shall be deemed to include the feminine form, and vice versa, as the case may require.

(d) Whenever any reference is made to this part to any person in the Food and Drug Administration, e.g., the director of a bureau, such reference shall also be deemed to include all persons to whom that person has delegated the specific function involved.

§ 2.4 Summaries of administrative practices and procedures.

The Commissioner shall prepare for public distribution summaries of Food and Drug Administration administrative practices and procedures in terms that are readily understood in order to encourage and facilitate participation in all agency activities.

§ 2.5 Submission of documents to Hearing Clerk; computation of time; availability for public disclosure.

(a) All submissions to the Hearing Clerk of petitions, comments, objections, notices, compilations of data and information, and any other documents pursuant to this part or other sections in this chapter shall be filed in four copies except as otherwise specifically provided in any relevant FEDERAL REGISTER notice or in other sections of this chapter. The Hearing Clerk shall be the agency custodian of such documents.

(b) All such submissions shall be signed by the person making the submission, or by an attorney or other authorized representative on his behalf. Submissions by trade associations shall also be subject to the requirements of § 2.23(b).

(c) All data and information referred to or in any way relied upon in any such submissions shall be included in full and may not be incorporated by reference, unless previously submitted as part of the administrative file in the same proceeding.

(1) A copy of any article or other reference or source cited shall be included, except where the reference or source is:

(i) A reported Federal court case,

(ii) A Federal law or regulation,

(iii) A Food and Drug Administration document that is routinely publicly available, or

(iv) A recognized medical or scientific textbook that is readily available to the agency.

(2) If any part of the material submitted is in a foreign language, it shall be accompanied by an English translation verified under oath to be complete and accurate, together with the name, address, and a brief statement of the qualifications of the person making the translation. Translations of literature or other material in a foreign language shall be accompanied by copies of the original publication.

(3) Where relevant data or information are contained in a document also containing irrelevant matter, the irrelevant matter shall be deleted and only the relevant data or information shall be submitted.

(4) Pursuant to § 4.63 (a) and (b) of this chapter, the names and other information which would identify patients or research subjects shall be deleted from any record before it is submitted to the Hearing Clerk in order to preclude a clearly unwarranted invasion of personal privacy.

(5) Defamatory, scurrilous, or intemperate matter shall be deleted from any record before it is submitted to the Hearing Clerk.

(6) The failure to comply with the requirements of this paragraph or any other requirement in this part shall result in rejection of the submission for filing or, if it is filed, in exclusion from consideration of any portion of the submission which fails to comply. If a submission fails to meet any requirement of this section and such deficiency becomes known to the Hearing Clerk, the Hearing Clerk shall return the submission with a copy of the applicable regulations indicating those provisions not complied with in the submission. A deficient submission may be corrected or supplemented and subsequently filed. The office of the Hearing Clerk is not equipped to make decisions regarding the confidentiality of submitted documents. Persons wishing to voluntarily submit information consid-

ered confidential shall do so in accordance with the presubmission review requirements of § 4.44 of this chapter.

(d) The filing of a submission shall mean only that the Hearing Clerk has not determined that it fails to meet the technical requirements for filing established in this section and in any other applicable sections in this chapter, e.g., § 2.7 relating to a citizen petition. The filing of a petition shall not mean or imply that it in fact meets all applicable requirements or that it contains reasonable grounds for the action requested or that the action requested is in accordance with law.

(e) All submissions to the Hearing Clerk shall be considered as submitted on the date on which they are postmarked or, if delivered in person during regular business hours, on the date on which they are so delivered, unless a provision in this part, an applicable FEDERAL REGISTER notice, or an order issued by an administrative law judge specifically states that such documents must be received by a specified date, e.g., § 2.8(g) relating to a petition for reconsideration, in which case they shall be considered submitted on the date actually received.

(f) All such submissions shall be mailed or delivered in person to the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, except that a submission which is required to be received by the Hearing Clerk by a specified date may be delivered in person to the Food and Drug Administration building in downtown Washington (Rm. 6819, 200 C St., SW., Washington, DC 20201) and shall be considered as received by the Hearing Clerk on the date on which it is logged in at Rm. 6819.

(g) The Food and Drug Administration ordinarily will not acknowledge or give receipt for such documents, except:

(1) Documents delivered in person or submitted by certified or registered mail with a return receipt requested.

(2) Petitions for which acknowledgement of receipt of filing is provided by regulations in this chapter or by customary practice, e.g., § 2.7(c) relating to a citizen petition.

(h) Saturdays, Sundays, and Federal legal holidays shall be included in computing the time allowed for the submission of any document, except that when such time expires on a Saturday, Sunday, or Federal legal holiday, such period shall be extended to include the next following business day.

(i) All submissions to the Hearing Clerk constitute a representation that, to the best of the knowledge, information, and belief of the person making the submission, all statements made in the submission are true and accurate. All such submissions are subject to the False Reports to the Government Act, 18 U.S.C. 1001, under which a willfully false statement is a criminal offense.

(j) The availability for public examination and copying of submissions to the Hearing Clerk shall be governed by the following rules:

(1) Except to the extent provided in paragraphs (j) (2) and (3) of this section, the following submissions, including all supporting material, shall be on public display and shall be available for public examination between the hours of 9 a.m. to 4 p.m., Monday through Friday. Requests for copies of such submissions shall be filed and handled pursuant to the provisions of Subpart C of Part 4 of this chapter.

(i) Petitions.

(ii) Comments on petitions, on documents published in the FEDERAL REGISTER, and on similar public documents.

(iii) Objections and requests for hearings filed pursuant to Subpart B of this part.

(iv) Material submitted at a formal evidentiary public hearing pursuant to Subpart B of this part, a public hearing before a Public Board of Inquiry pursuant to Subpart C of this part, a public hearing before the Commissioner pursuant to Subpart E of this part, or an alternative form of hearing before a public advisory committee pursuant to § 2.117(a) (2).

(v) Material placed on public display pursuant to regulations in this chapter, e.g., agency guidelines filed pursuant to § 2.20(b).

(2) (i) Material prohibited from public disclosure pursuant to § 4.63 of this chapter (clearly unwarranted invasion of personal privacy) as interpreted and applied in Part 4 of this chapter and the regulations referenced therein, and, except as provided in paragraph (j) (3) of this section, material submitted with objections and requests for hearings filed pursuant to Subpart B of this part, or at a formal evidentiary public hearing pursuant to Subpart B of this part, a public hearing before a Public Board of Inquiry pursuant to Subpart C of this part, or an alternative form of public hearing before a public advisory committee or a public hearing before the Commissioner pursuant to § 2.117(a) (2) or (3), of the following types shall not be on public display, shall not be available for public examination, and shall not be available for copying or any other form of verbatim transcription unless they are otherwise available for public disclosure pursuant to the provisions of Part 4 of this chapter and the regulations referenced therein:

(*a*) Safety and effectiveness data and information, which include all studies and tests of an ingredient or product on animals and humans and all studies and tests on the ingredient or product for identity, stability, purity, potency, bioavailability, performance, and usefulness.

(*b*) A protocol for a test or study.

(*c*) Manufacturing methods or processes, including quality control procedures.

(*d*) Production, sales, distribution, and similar data and information, except any compilation of such data and information aggregated and prepared in a way that does not reveal confidential data and information.

(*e*) Quantitative or semiquantitative formulas.

(*f*) Data and information on design or construction of products.

(ii) Material submitted pursuant to the provisions of paragraph (j) (2) of this section shall be segregated from all other submitted material and clearly so marked. Any person who does not agree that such a submission is properly subject to the provisions of paragraph (j) (2) of this section may request a ruling thereon from the Assistant Commissioner for Public Affairs whose decision on the matter shall be final, subject to judicial review pursuant to § 4.46 of this chapter.

(3) Material listed in paragraph (j) (2) (i) (*a*) and (*b*) of this section may be disclosed pursuant to a protective order issued by the administrative law judge or other presiding officer at any hearing referenced in paragraph (j) (2) (i). The order shall only permit disclosure of the data in camera and only to the extent necessary for the proper conduct of the hearing. The order shall state to whom the information is to be made available (e.g., to parties or participants, or only to counsel for parties or participants), and persons not specifically permitted access to the data shall be excluded from the in camera part of the proceeding. The administrative law judge or other presiding officer may impose other conditions or safeguards with the requirements of this section. The limited availability of material pursuant to this paragraph shall be deemed not to constitute prior disclosure to the public as defined in § 4.81 of this chapter, and no such data and information shall be submitted to or received or considered by the Food and Drug Administration in support of a petition or other request from any other person.

§ 2.6 Initiation of administrative proceedings.

An administrative proceeding under the laws administered by the Commissioner may be initiated in any of the following three ways:

(a) Any interested person may petition the Commissioner to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action, under the laws administered by him. Any such petition shall be either (1) in the form specified in other applicable sections in this chapter, e.g., the form for a food additive petition in § 121.51 of this chapter or for a new drug application in § 314.1 of this chapter or for a new animal drug application in § 514.1 of this chapter, or (2) in the form for a citizen petition in § 2.7.

(b) The Commissioner may on his own initiative institute a proceeding to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action, under the laws administered by him. The Food and Drug Administration has primary jurisdiction to make the initial determination on issues within its statutory mandate, and will request a court to dismiss, or to hold in abeyance its determination of or refer to the agency for administrative determination, any such issue which has not previously been determined by the agency or which, if

it has previously been so determined, the agency concludes should be reconsidered and subject to a new administrative determination. The Commissioner may, in his discretion, utilize any of the procedures established in this part in reviewing and making a determination on any matter on his own initiative.

(c) The Commissioner shall institute a proceeding to determine whether he should issue, amend, or revoke a regulation or order, or take or refrain from taking any other form of administrative action under the laws administered by him, whenever any court, without his initiative, holds in abeyance or refers any such matter to him for an administrative determination and he concludes that such an administrative determination is feasible in light of agency priorities and resources.

§ 2.7 Citizen petition.

(a) The provision of this section shall apply to any petition submitted by any person, except to the extent that specific provisions in other sections of this chapter state different requirements with respect to a particular matter.

(b) Any petition (including any attachments) shall be submitted in accordance with § 2.5 and in the following form:

_____
(Date)

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Rm. 4-65, 5600 Fishers Lane, Rockville MD 20857.

CITIZEN PETITION

The undersigned submits this petition pursuant to _____ (relevant statutory sections, if know) of the _____ (Federal Food, Drug, and Cosmetic Act and/or the Public Health Service Act and/or any other statutory provision with respect to which authority has been delegated to the Commissioner of Food and Drugs pursuant to 21 CFR 5.1) to request the Commissioner of Food and Drugs to _____ (issue, amend, or revoke a regulation or order or take or refrain from taking any other form of administrative action).

A. *Action Requested.*

((1) If the petition requests the Commissioner to issue, amend, or revoke a regulation, the exact wording of the existing regulation (if any) and the proposed regulation or amendment requested.)

((2) If the petition requests the Commissioner to issue, amend, or revoke an order, a copy or the exact wording of and citation to the existing order (if any) and the exact wording requested for the proposed order.)

((3) If the petition requests the Commissioner to take or refrain from taking any other form of administrative action, the specific action or relief requested.)

B. *Statement of Grounds.*

(A full statement of the factual and legal grounds upon which the petitioner relies. Such grounds shall include all relevant data, information, and views on which the petitioner relies, as well as representative data and information known to the petitioner which are unfavorable to the petitioner's position, and shall be submitted in a well-organized format.)

C. *Environmental Impact.*

(An environmental impact analysis report in the form specified in 21 CFR 6.1(g), except for the types of actions specified in 21 CFR 6.1(e).)

D. *Economic Impact.*

(The following information is to be submitted only when requested by the Commissioner following review of the petition: A statement of the effect of requested action on (1) cost (and price) increases to industry, government, and consumers; (2) productivity of wage-earners, businesses, or government; (3) competition; (4) supplies of important materials, products, or services; (5) employment; and (6) energy supply or demand.)

The undersigned certifies, that, to the best of his knowledge and belief this petition includes all data, information, and views on which the petition relies, and that it includes representative data and information known to the petitioner which are unfavorable to the petition.

Very truly yours,

_____
(Signature)

_____
(Name of petitioner)

_____
(Mailing address)

_____
(Telephone number)

(c) Any petition which appears to meet the requirements of paragraph (b) of this section and §2.5 shall be filed by the Hearing Clerk, stamped with the date of filing, and assigned a docket number. The docket number shall be used to identify the administrative file established by the Hearing Clerk for all submissions relating to the petition, as provided in this part. All subsequent submissions relating to the matter shall refer to such docket number and shall be filed in such administrative file. Identical, similar, or related petitions may be filed together and given the same docket number. The Hearing Clerk shall promptly notify the petitioner in writing of the filing and docket number of a petition.

(d) Any interested person may submit written comments to the Hearing Clerk on any filed petition, which shall become part of the Administrative file. Such comments shall specify the docket number of the petition and may support or oppose the petition in whole or in part. Any request for alternative or different administrative action shall be in the form of a separate petition.

(e)(1) The Commissioner shall, in accordance with paragraph (e)(2) of the section, review and rule upon every petition filed pursuant to paragraph (c) of this section, taking into consideration (i) the agency resources available to handle the category of subject matter involved, (ii) the priority assigned to the petition in relation both to the category of subject matter involved and the overall work of the agency, and (iii) time requirements established by statute.

(2) A response shall be furnished to each petitioner under this section within 180 days of the receipt of the petition. Such response shall either:

(i) Approve the petition, in which case the Commissioner shall concurrently take appropriate agency action (e.g., the publication of a FEDERAL REGISTER notice) implementing the approval; or

(ii) Deny the petition; or

(iii) Provide a tentative response, indicating why the agency has been unable to reach a decision on the merits of the petition, e.g., because of the existence of other agency priorities, a need for additional information, or other stated reason. The tentative response may also indicate the likely ultimate agency response, and may specify when a final response may be furnished.

(3) The Commissioner may grant or deny such a petition, in whole or in part, and may grant such other relief or take such other action as he may determine to be warranted by the petition. The petitioner shall be notified in writing of the Comimssioner's decision on a petition. Such decision shall be placed in the public docket file in the office of the Hearing Clerk and may also be in the form of a notice published in the FEDERAL REGISTER.

(f) If a petition filed pursuant to paragraph (c) of this section requests the Commissioner to issue, amend, or revoke a regulation, the provisions of § 2.10 or § 2.12 shall also apply.

(g) A petitioner may supplement, amend, or withdraw his petition in writing without agency approval and without prejudice to its resubmission at anytime until the Commissioner rules on the petition, unless the petition has been referred for a hearing under Subparts B, C, D, or E of this part. After a ruling or referral, a petition may be supplemented amended, or withdrawn only with the approval of the Commissioner. The Commissioner may in his discretion approve withdrawal, but with prejudice against resubmission of the petition.

(h) In reviewing any matter which is the subject of a petition filed pursuant to paragraph (c) of this section, the Commissioner may, in his discretion, utilize any of the following procedures.

(1) Conferences, meetings, discussions, and correspondence pursuant to § 2.15.

(2) A formal evidentiary public hearing pursuant to Subpart B of this part.

(3) A public hearing before a Public Board of Inquiry pursuant to Subpart C of this part.

(4) A public hearing before a public advisory committee pursuant to Subpart D of this part.

(5) A public hearing before the Commissioner pursuant to Subpart E of this part.

(6) A regulatory hearing before the Food and Drug Administration pursuant to Subpart F of this part.

(7) A notice published in the FEDERAL REGISTER requesting data, information, and views.

(8) A proposal to issue, amend, or revoke a regulation, in accordance with the provisions of § 2.10 or § 2.110.

(9) Any other specific public procedure established by the provisions in other sections of this chapter and explicitly made applicable to the matter by those provisions.

(i) The record of the administrative proceeding shall consist of the following:

(1) The petition, including all data and information on which it relies, filed by the Hearing Clerk.

(2) All comments received on the petition, including all data or information submitted as a part of such comments.

(3) If the petition resulted in a proposal to issue, amend, or revoke a regulation, all of the documents specified in § 2.10(g).

(4) The record, consisting of any transcripts, minutes of meetings, reports, FEDERAL REGISTER notices, and other documents, resulting from any of the option procedures specified in paragraph (g) of this section, except that it shall not include the transcript of any closed portion of any public advisory committee meeting.

(5) The Commissioner's decision on the petition, including all data and information identified or filed by the Commissioner with the Hearing Clerk as part of the record supporting the decision.

(6) All documents filed with the Hearing Clerk pursuant to § 2.15(h).

(7) If any petition for reconsideration or for a stay of action is filed pursuant to paragraph (j) of this section, the administrative record specified in § 2.8(k) or § 2.9(h) respectively.

(j) The administrative record specified in paragraph (i) of this section shall constitute the exclusive record for the Commissioner's decision. The record of the administrative proceeding shall be closed as of the date of the Commissioner's decision unless some other date for the closing of the record is specified by the Commissioner. Thereafter any interested person may submit a petition for reconsideration pursuant to § 2.8 and a petition for stay of action pursuant to § 2.9. Any person who wishes to rely upon data, information, or views not included in the administrative record shall submit it to the Commissioner with a new petition to modify the decision pursuant to this section.

(k) The provisions of this section shall not apply to the referral of a matter to a United States attorney for the initiation of court enforcement action and related correspondence, or to requests, suggestions, and recommendations made informally in routine correspondence received by the Food and Drug Administration. Such correspondence does not constitute a petition within the meaning of this section unless it purports to meet the requirements of this section. Action with respect to such routine correspondence does not constitute final administrative action which is subject to judicial review pursuant to § 2.11.

(l) The Hearing Clerk shall maintain a chronological list of all petitions filed pursuant to this section and § 2.19, but excluding petitions submitted elsewhere in the agency pursuant to § 2.6(a)(1), showing:

(1) The docket number.

(2) The date the petition was filed by the Hearing Clerk.

(3) The name of the petitioner.

(4) The subject matter involved.

(5) The disposition of the petition.

§ 2.8 Administrative reconsideration of action.

(a) The Commissioner may at any time conclude to reconsider any matter, on his own initiative or on the petition of any interested person.

(b) Any interested person may request reconsideration of any part or all of a decision of the Commissioner on any petition submitted pursuant to § 2.6(a). Any such request shall be submitted in accordance with § 2.5 and in the following form no later than 30 days after the date of the decision involved. In the case of a decision published in the FEDERAL REGISTER, the day of publication shall be the day of decision.

_____
(Date)

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852

PETITION FOR RECONSIDERATION

Docket No. _____

The undersigned submits this petition for reconsideration of the decision of the Commissioner of Food and Drugs in Docket No. _____.

A. *Decision Involved.*

(A concise statement of the decision of the Commissioner which the petitioner wishes to have reconsidered.)

B. *Action Requested.*

(The decision which the petitioner requests the Commissioner to make upon reconsideration of the matter.)

C. *Statement of Grounds.*

(A full statement of the factual and legal grounds upon which the petitioner relies. Such grounds shall demonstrate that relevant data, information, and views contained in the administrative record were not previously or not adequately considered by the Commissioner. No new data, information, or views may be included in a petition for reconsideration.)

Very truly yours,

_____
(Signature)

_____
(Name of petitioner)

_____
(Mailing address)

_____
(Telephone number)

(c) A petition for reconsideration relating to a petition submitted pursuant to § 2.6(a)(2) shall be subject to the requirements of § 2.7 (c) and (d), except that it shall be filed in the same docket file as the petition to which it relates.

(d) The Commissioner shall promptly review a petition for reconsideration. The Commissioner may grant such a petition in any proceeding when he determines that it is in the public interest and in the interest of justice. The Commissioner shall grant a petition for reconsideration in any proceeding if he determines that all of the following apply: (1) the petition demonstrates that relevant data, information, or views contained in the administrative record were not previously or not adequately considered by the Commissioner, (2) the petitioner's position is not frivolous and is being pursued in good faith, (3) the petitioner has demonstrated sound public policy grounds supporting reconsideration, and (4) reconsideration is not outweighed by public health considerations or other public interests.

(e) A petition for reconsideration shall be based only on data, information, and views contained in the administrative record on which the Commissioner made his decision. Any interested person who wishes to rely upon data, information, or views not included in such administrative record shall submit it to the Commissioner with a new petition to modify the decision pursuant to § 2.6(a).

(f) The Commissioner's decision on a petition for reconsideration shall be in writing and shall be placed on public display as part of the administrative file on the matter in the office of the Hearing Clerk. A determination to grant reconsideration shall be published in the FEDERAL REGISTER if the Commissioner's original decision was published in the FEDERAL REGISTER. Any other determination to grant or to deny reconsideration may also be published in the FEDERAL REGISTER.

(g) The Commission will consider a petition for reconsideration only if it is submitted within 30 days of the date of the decision involved and before such petitioner brings legal action in the courts to review such action, except that such a petition shall also be considered if the Commissioner has denied a petition for stay of action and such petitioner has petitioned for judicial review of the Commissioner's action and requested the reviewing court to grant a stay pending consideration of such review. A petition for reconsideration submitted later than 30 days after the date of the decision involved shall be denied as untimely. A petition for reconsideration shall be considered as submitted on the day it is received by the Hearing Clerk.

(h) The Commissioner may on his own initiative decide to reconsider all or part of any matter at any time after it has been decided or action has been taken. If review of such matter is pending in the courts, the Commissioner may request that the court refer the matter back to the agency or hold its review in abeyance pending administrative reconsideration. The administrative record of the proceeding shall include all additional documents relating to such reconsideration.

(i) After determining to reconsider a matter, whether on the petition of an interested person or on his own initiative, the Commissioner shall review and rule on the merits of the matter pursuant to § 2.7(e). The Commissioner may reaffirm, modify, or overrule his prior decision, in whole or in part, and may grant such other relief or take such other action as he may determine to be warranted.

(j) The Commissioner's reconsideration of any matter relating to a petition submitted pursuant to § 2.6(a)(2) shall be subject to the provisions of § 2.7(f) through (h), (j), and (k).

(k) The record of the administrative proceeding shall consist of the following.

(1) The record of the original petition specified in § 2.7(i).

(2) The petition for reconsideration, including all data and information on which it relies, filed by the Hearing Clerk.

(3) All comments received on such petition, including all data or information submitted as a part of such comments.

(4) The Commissioner's decision on such petition pursuant to paragraph (f) of this section, including all data and information identified or filed by the Commissioner with the Hearing Clerk as part of the record supporting the decision.

(5) Any FEDERAL REGISTER notices or other documents resulting from such petition.

(6) All documents filed with the Hearing Clerk pursuant to § 2.15(h).

(7) If the Commissioner reconsiders the matter, the administrative record relating to such reconsideration specified in § 2.7(i).

§ 2.9 Administrative stay of action.

(a) The Commissioner may at any time stay (including extend) the effective date of any relevant action pending or following his decision on any matter, on his own initiative or on the petition of any interested person.

(b) Any interested person may request the Commissioner to stay the effective date of any administrative action. Such a stay may be requested for a specific time period or for an indefinite time period. Any such request shall be submitted in accordance with § 2.5 and in the following form no later than 30 days after the date of the decision involved. In the case of a decision published in the FEDERAL REGISTER, the day of publication shall be the day of decision.

_____
(Date)

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857

PETITION FOR STAY OF ACTION

The undersigned submits this petition requesting that the Commissioner of Food and Drugs stay the effective date of his action with respect to the following matter.

A. *Decision Involved.*

(The specific administrative action being taken by the Commissioner for which a stay is requested, including the docket number or other citation to the action involved.)

B. *Action Requested.*

(The length of time for which the stay is requested, which may be for a specific or indefinite time period.)

C. *Statement of Grounds.*

(A full statement of the factual and legal grounds upon which the petitioner relies for the stay.)

Very truly yours,

_____
(Signature)

_____
(Name of petitioner)

_____
(Mailing address)

_____
(Telephone number)

(c) A petition for stay of action relating to a petition submitted pursuant to § 2.6(a)(2) shall be subject to the requirements of paragraphs (c) and (d) of § 2.7, except that it shall be filed in the same docket file as the petition to which it relates.

(d) Neither the filing of a petition for a stay of action pursuant to this section nor action taken by an interested person in accordance with any other administrative procedure in this part or in any other section of this chapter, e.g., the filing of a citizen petition pursuant to § 2.7 or a petition for reconsideration pursuant to § 2.8 or a request for an advisory opinion pursuant to § 2.18, shall operate to stay or otherwise delay any administrative action by the Commissioner, including enforcement action of any kind, unless one of the following applies:

(1) The Commissioner, in his discretion, determines that a stay or delay is in the public interest and stays the action.

(2) A statutory provision requires that the matter be stayed.

(3) A court orders that the matter be stayed.

(e) The Commissioner shall promptly review a petition for stay of action. The Commissioner may grant or deny such a petition, in whole or in part, and may grant such other relief or take such other action as he may determine to be warranted by the petition. The Commissioner may grant a stay in any proceeding if he determines that it is in the public interest and in the interest of justice. The Commissioner shall grant a stay in any proceeding if he determines that all of the following apply: (1) The petitioner will otherwise suffer irreparable injury, (2) the petitioner's case is not frivolous and is being pursued in good faith, (3) the petitioner has demonstrated sound public policy grounds supporting the stay, and (4) the delay resulting from the stay is not outweighed by public health considerations or other public interests.

(f) The Commissioner's decision on a petition for stay of action shall be in writing and shall be placed on public display as part of the file on the matter in the office of the Hearing Clerk. A determination to grant a stay shall be published in the FEDERAL REGISTER if the Commissioner's original decision was published in the FEDERAL REGISTER. Any other determination to grant or to deny a stay may also be published in the FEDERAL REGISTER.

(g) A petition for a stay of action submitted later than 30 days after the date of the decision involved shall be denied as untimely. A petition for a stay of action shall be considered as submitted on the day it is received by the Hearing Clerk.

(h) The record of the administrative proceeding shall consist of the following:

(1) The record of the proceeding to which the petition for stay of action is directed.

(2) The petition for stay of action, including all data and information on which it relies, filed by the Hearing Clerk.

(3) All comments received on such petition, including all data or information submitted as a part of such comments.

(4) The Commissioner's decision on such petition pursuant to paragraph (e) of this section, including all data and information identified or filed by the Commissioner with the Hearing Clerk as part of the record supporting the decision.

(5) Any FEDERAL REGISTER notices or other documents resulting from such petition.

(6) All documents filed with the Hearing Clerk pursuant to § 2.15(h).

§ 2.10 Promulgation of regulations for the efficient enforcement of the law.

(a) The Commissioner may propose and promulgate regulations for the efficient enforcement of the laws administered by him whenever he concludes that it is necessary or appropriate to do so. The issuance, amendment, or revocation of any such regulation may be initiated in any of the ways specified in § 2.6.

(1) This section shall apply to any regulation (i) not subject to § 2.12 and Subpart B of this part or (ii) if it is subject to § 2.12 and Subpart B of this part, to the extent that those provisions make this section applicable.

(2) A regulation proposed by an interested person in a petition submitted pursuant to § 2.6(a) shall be published by the Commissioner in the FEDERAL REGISTER as a proposal if he determines that:

(i) The petition contains facts demonstrating reasonable grounds for the proposal.

(ii) The petition contains a substantial showing that the proposal is in the public interest and will promote the objectives of the act and the agency.

(iii) The requested proposal is lawful.

(3) The Commissioner may publish two or more alternative proposed regulations on the same subject in order to obtain comment on the different alternatives.

(4) The Commissioner may publish a regulation proposed by an interested person in a petition submitted pursuant to § 2.6(a) together with the Commissioner's preliminary views on the proposal and any alternative proposal.

(b) Except as provided in paragraphs (d) and (e) of this section, any such regulation shall be the subject of a notice of proposed rule making published in the FEDERAL REGISTER.

(1) Such notice shall contain (i) a general statement in the first or second paragraph describing the substance of the document in easily understandable terms, (ii) a preamble which summarizes the proposal and the facts and policy underlying it, (iii) references to all data and information on which the Commissioner relies for the proposal (copies or a full list of which shall be a part of the administrative file on the matter in the office of the Hearing Clerk), (iv) the authority under which the regulation is proposed, (v) either the terms or substance of the proposed regulation or a description of the subjects and issues involved, (vi) a proposed effective date, (vii) a reference to the existence or lack of need for an environmental impact statement pursuant to § 6.3(a)(3) (ii) or

(iii) of this chapter, (viii) the time, place, and method for interested persons to submit written comments on the proposal, and a statement that comments shall be submitted in accordance with the requirements of this part and (ix) the docket number of the matter, which shall be used to identify the administrative file established by the Hearing Clerk for all submissions relating to the matter, as provided in this part.

(2) Such proposal shall ordinarily provide 60 days for comment, although the Commissioner may reduce or extend this time period for good cause. In no event shall the time for comment be less than 10 days.

(3) After publication of the notice of proposed rule making, any interested person may request the Commissioner to extend the comment period for an additional specified period of time by submitting a written request to the Hearing Clerk stating the grounds therefor. Such requests shall be pursuant to § 2.9, except that the heading shall be "REQUEST FOR EXTENSION OF COMMENT PERIOD."

(i) Any such request shall demonstrate why comments could not reasonably be submitted within the time permitted, or that important new information will shortly be available, or that sound public policy otherwise supports an extension of the time for comment. The Commissioner may grant or deny such request or may grant an extension for a time period different than that requested. Extensions of time to comment will not ordinarily be granted. An extension of time to comment may be limited to specific persons who have made and justified such a request, but shall ordinarily apply to all interested persons.

(ii) Any extension of time to comment of 30 days or longer shall be the subject of a notice published in the FEDERAL REGISTER and shall be applicable to all interested persons. Any extension of time to comment of less than 30 days shall be the subject either of a letter or memorandum filed with the Hearing Clerk or of a notice published in the FEDERAL REGISTER.

(4) Four copies of all comments shall be submitted to the Hearing Clerk, except that individuals may submit single copies of comments. Comments will be stamped with the date of receipt and will be numbered chronologically.

(5) Persons submitting comments critical of a proposed regulation are encouraged to include alternative wording that they believe would be preferable.

(c) After the time for comment on a proposed regulation has expired, the Commissioner shall review the entire administrative record on the matter, including all comments, and shall terminate the proceeding, issue a new proposal, or promulgate a final regulation, by notice published in the FEDERAL REGISTER.

(1) The quality and persuasiveness of the comments shall determine the Commissioner's decision with respect to such comments. The number or length of comments shall not ordinarily be a significant factor in such decision. However, the number of comments may be material where the degree of public interest is a legitimate factor for consideration.

(2) The decision of the Commissioner with respect to the matter shall be based solely upon the administrative record.

(3) The preamble to a final regulation published in the FEDERAL REGISTER shall contain in the first and second paragraphs reference to prior notices relating to the same matter and a general statement describing the substance of the document in easily understandable terms, and shall summarize each type of comment submitted on the proposal and the Commissioner's conclusions with respect to each such type of comment. The preamble shall contain a thorough and comprehensible articulation of the reasons for the Commissioner's decision on each issue.

(4) The notice promulgating a final regulation published in the FEDERAL REGISTER shall specify the effective date. Such effective date shall be not less than 30 days after the date of publication in the FEDERAL REGISTER, except for:

(i) A regulation that grants an exemption or relieves a restriction.

(ii) Any other regulation where the Commissioner finds, and states in the notice, good cause for an earlier effective date.

(d) The provisions for notice and comment in paragraphs (b) and (c) of this section shall apply to interpretive rules and to rules of agency practice and procedure except as provided in paragraph (e) of this section. The provisions of paragraphs (b) and (c) of this section shall not apply to general statements of policy in the form of informational notices published in the FEDERAL REGISTER or to matters involving agency organization.

(e) The requirements of notice and public procedure in paragraph (b) of this section shall not apply in any of the following situations:

(1) When the Commissioner determines for good cause that they are impracticable unnecessary, or contrary to the public interest. In such cases, the notice promulgating the regulation shall state the reasons for such determination, and shall provide an opportunity for the submission of comments to determine whether the regulation should subsequently be modified or revoked. A subsequent notice based on those comments may, but need not, provide additional opportunity for public comment.

(2) To food additive and color additive petitions, which are subject to the provisions of § 2.110(b)(2).

(3) To new animal drug regulations, which shall be promulgated by notice pursuant to section 512(i) of the act.

(f) In addition to the notice and public procedure required pursuant to paragraph (b) of this section, the Commissioner may, in his discretion, also subject any proposed or final regulation, before or after publication in the FEDERAL REGISTER, to any of the following additional procedures, where they are reasonably applicable to the matter involved:

(1) Conferences, meetings, discussions, and correspondence pursuant to § 2.15.

(2) A formal evidentiary public hearing pursuant to Subpart B of this part.

(3) A public hearing before a public Board of Inquiry pursuant to Subpart C of this part.

(4) A public hearing before a public advisory committee pursuant to Subpart D of this part.

(5) A public hearing before the Commissioner pursuant to Subpart E of this part.

(6) A notice published in the FEDERAL REGISTER requesting data, information and views before the Commissioner determines whether to propose a regulation.

(7) A draft of a proposed regulation placed on public display in the office of the Hearing Clerk. If this procedure is used, the Commissioner shall publish an appropriate notice in the FEDERAL REGISTER stating that the document is available and specifying the time within which comments may be submitted orally or in writing on the draft of the proposed regulation.

(8) A revised proposal published in the FEDERAL REGISTER, which shall be subject to all the provisions in this section relating to proposed regulations.

(9) A tentative final regulation or tentative revised final regulation placed on public display at the office of the Hearing Clerk and, if deemed desirable by the Commissioner, published in the FEDERAL REGISTER. If the tentative regulation is placed on display only, the Commissioner shall publish an appropriate notice in the FEDERAL REGISTER stating that the document is available and specifying the time within which comments may be submitted orally or in writing on the tentative final regulation and shall mail a copy of the tentative final regulation and the FEDERAL REGISTER notice to each person who submitted comments on the proposed regulation if one has been published.

(10) A final regulation published in the FEDERAL REGISTER which provides an opportunity for the submission of further comments, in accordance with paragraph (e)(1) of this section, to determine whether the regulation should subsequently be modified or revoked.

(11) Any other specific public procedure established by the provisions in other sections of this chapter and explicitly made applicable to the matter by the terms of those provisions.

(g) The record of the administrative proceeding shall consist of all of the following:

(1) If the regulation was initiated by a petition, the administrative record specified in § 2.7(i).

(2) If any petition for reconsideration or for a stay of action is filed, the administrative record specified in § 2.8(k) and § 2.9(h) respectively.

(3) The notice of proposed rule making published in the FEDERAL REGISTER, including all data and information identified or filed by the Commissioner with

the Hearing Clerk as part of the administrative record supporting the proposal.

(4) All comments received on the proposal, including all data or information submitted as a part of such comments.

(5) The notice promulgating the final regulation, including all data and information identified or filed by the Commissioner with the Hearing Clerk as part of the administrative record supporting the final regulation.

(6) The transcripts, minutes of meetings, reports, FEDERAL REGISTER notices, and other documents resulting from any of the optional procedures specified in paragraph (f) of this section, except that it shall not include any transcript of any closed portion of any public advisory committee meeting.

(7) All documents submitted to the Hearing Clerk pursuant to § 2.15(h).

(h) The record of the administrative proceeding shall be closed as of the date of the Commissioner's decision unless some other date for the closing of the record is specified by the Commissioner. Thereafter any interested person may submit a petition for reconsideration pursuant to § 2.8 and a petition for stay of action pursuant to § 2.9. Any person who wishes to rely upon data, information, or views not included in the administrative record shall submit it to the Commissioner with a new petition to modify the final regulation.

(i) The Hearing Clerk shall maintain a chronological list of all regulations proposed and promulgated pursuant to this section and § 2.12, but excluding regulations resulting from petitions filed and assigned a docket number pursuant to § 2.7, showing:

(1) The docket number, which in the case of a petition submitted directly to a bureau shall be the number or other designation assigned by the bureau, e.g., the number assigned to a food additive petition.

(2) The name of the petitioner, if any.

(3) The subject matter involved.

(4) The disposition of the petition.

§ 2.11 Court review of final administrative action; exhaustion of administrative remedies.

(a) The provisions of this section shall apply to court review of any final administrative action taken by the Commissioner, including action taken pursuant to §§ 2.6 through 2.10 and § 2.500(b), except action subject to the provisions of § 2.12 and Subpart B of this part.

(b) Any request that the Commissioner take or refrain from taking any form of administrative action shall first be the subject of a final administrative decision based upon a petition submitted to the Commissioner pursuant to § 2.6(a) or, where applicable, a hearing pursuant to § 2.500(b) before any legal action is filed in a court complaining of the Commissioner's action or failure to act. If any court action is filed complaining of the Commissioner's action or failure to act prior to the submission of and decision on a petition pursuant to § 2.6(a) or, where applicable, a hearing pursuant to § 2.500(b), the Commissioner will request dismissal of such court action or referral to the agency for an initial administrative determination on the grounds of a failure to exhaust the administrative remedies provided in this part, the lack of final agency action as required by 5 U.S.C. 701 et seq., and the lack of an actual controversy as required by 28 U.S.C. 2201.

(c) Any request that any form of administrative action be stayed shall first be the subject of an administrative decision based upon a petition for stay of action submitted to the Commissioner pursuant to § 2.9 before any request is made that a court stay such action. If any court action is filed requesting a stay of any administrative action taken by the Commissioner prior to the Commissioner's decision on a petition submitted in a timely manner pursuant to § 2.9, the Commissioner will request dismissal of such court action or referral to the agency for an initial administrative determination on the grounds of a failure to exhaust the administrative remedies provided in this subpart, the lack of final agency action as required by 5 U.S.C. 701 et seq., and the lack of an actual controversy as required by 28 U.S.C. 2201. If any court action is filed requesting a stay of any administrative action taken by the Commissioner after a petition for a stay of action is denied because it was submitted after expiration of the 30-day time period specified in § 2.9, or after the time for submitting such a petition has expired, the Commissioner will request dismissal of such court action on the ground of a failure to exhaust the administrative remedies set out in this subpart.

(d) The Commissioner's final decision on a petition submitted pursuant to § 2.6(a), on a petition for reconsideration submitted pursuant to § 2.8, on a petition for stay of action submitted pursuant to § 2.9, on any advisory opinion issued pursuant to § 2.19, on any guideline issued pursuant to § 2.20, on any matter involving administrative action which is the subject of an opportunity for a hearing pursuant to § 2.500(b), or the issuance of any final regulation published in accordance with § 2.10, each constitutes final agency action reviewable in the courts pursuant to 5 U.S.C. 701 et seq. and, where appropriate, 28 U.S.C. 2201.

(1) It is the position of the Food and Drug Administration except as otherwise provided in paragraph (d)(2) of this section that:

(i) Any such final agency action exhausts all administrative remedies and is ripe for preenforcement judicial review as of the date of such final decision, unless applicable law explicitly requires that the petitioner take further action before judicial review is available.

(ii) Any interested person is affected by, and thus has standing to obtain judicial review of, such final agency action.

(iii) It is not appropriate to move to dismiss a suit for preenforcement judicial review of such final agency action on the ground that indispensable parties are not joined or that it is an unconsented suit against the United States if such defect could be cured by amending the complaint.

(2) The Commissioner will object to judicial review of any matter if:

(i) The matter is committed by law to the discretion of the Commissioner, e.g., a decision to recommend or not to recommend civil or criminal enforcement action under sections 302, 303, and 304 of the act.

(ii) Review is not sought in a proper court.

(e) Any interested person may request judicial review of any final decision of the Commissioner in the courts without first petitioning the Commissioner for reconsideration or for a stay of action, except that in accordance with paragraph (c) of this section such person shall request a stay by the Commissioner pursuant to § 2.9 before he may request a stay by the court.

(f) The Commissioner will take the position in any action for judicial review under 5 U.S.C. 701 et seq., whether or not it includes a request for a declaratory judgment under 28 U.S.C. 2201, or in any other case in which the validity of administrative action is properly challenged, that the validity of the action shall be determined solely on the basis of the administrative record specified in §§ 2.7(i), 2.8(k), 2.9(h), 2.10(g), and 2.513(c), or the administrative record applicable with respect to any decision or action under the regulations referenced in § 2.500(b), and that additional data, information, or views may not be considered. Any interested person who wishes to rely upon data, information, or views not included in the administrative record shall submit it to the Commissioner with a new petition to modify the action pursuant to § 2.6(a).

(g) The Commissioner requests that all petitions for judicial review of a particular matter be filed in a single United States district court. If such petitions are filed in more than one jurisdiction, the Commissioner shall take appropriate action to prevent a multiplicity of suits in various jurisdictions, such as:

(1) A request for transfer of one or more suits to consolidate separate actions, pursuant to 28 U.S.C. 1404(a) or 28 U.S.C. 2112(a).

(2) A request that actions in all but one jurisdiction be stayed pending the conclusion of one proceeding.

(3) A request that all but one action be dismissed pending the conclusion of one proceeding, with the suggestion that the other plaintiffs intervene in that one suit.

(4) A request that one of the suits be maintained as a class action in behalf of all affected persons.

(h) Upon judicial review of administrative action pursuant to this section:

(1) If a court determines that the administrative record is inadequate to support the action, the Commissioner shall determine whether he wishes to proceed with such action.

(i) If the Commissioner concludes that such action should be pursued, he

shall either request that the court remand the matter to the agency to reopen the administrative proceeding and record, or on his own initiative reopen the administrative proceeding and record upon receipt of the court determination. Any such reopened administrative proceeding shall be conducted pursuant to the provisions of this part and in accordance with any directions of the court.

(ii) If the Commissioner concludes that the public interest requires that the action remain in effect pending further administrative proceedings, he shall request that the court not stay the matter in the interim and shall expedite the further administrative proceedings.

(2) If a court determines that the administrative record is adequate, but the rationale for the action requires further elucidation:

(i) The Commissioner shall request either that such further explanation be provided in writing directly to the court without further administrative proceedings, or that the administrative proceeding be reopened pursuant to paragraph (h)(1)(i) of this section.

(ii) If he concludes that the public interest requires that the action remain in effect pending further court or administrative proceedings, he shall request that the court not stay the matter in the interim and shall expedite such further proceedings.

§ 2.12 Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing.

(a) The Commissioner shall promulgate regulations and orders after an opportunity for a formal evidentiary public hearing, in accordance with the procedures established in Subpart B of this part, whenever all of the following apply:

(1) The subject matter of the regulation or order involved is subject by statute to an opportunity for a formal evidentiary public hearing.

(2) The person requesting such a hearing has a right to an opportunity for a hearing and submits adequate justification for such a hearing as required by §§ 2.110 through 2.115 and other applicable provisions in this chapter, e.g., §§ 314.200, 430.20(b), 514.200, and 601.7(a).

(b) The Commissioner may order a formal evidentiary public hearing on any matter whenever he determines, in his discretion, that it would be in the public interest to do so.

(c) The statutory provisions which permit a person who would be adversely affected by administrative action an opportunity for a formal evidentiary public hearing are as follows (the foregoing list imparts no right to a hearing where no opportunity for a hearing is provided by the statutory sections listed):

(1) Section 401 of the act relating to definitions and standards for food.

(2) Section 403(j) of the act relating to regulations for labeling of foods for special dietary uses.

(3) Section 404(a) of the act relating to regulations providing for emergency permit control.

(4) Section 406 of the act relating to tolerances for poisonous substances in food.

(5) Section 409(c), (d), and (h) of the act relating to food additive regulations.

(6) Section 501(b) of the act relating to tests or methods of assay for drugs described in official compendia.

(7) Section 502(d) of the act relating to regulations designating habit-forming drugs.

(8) Section 502(h) of the act relating to regulations designating requirements for drugs liable to deterioration.

(9) Section 502(n) of the act relating to prescription drug advertising regulations.

(10) Section 506(c) of the act relating to insulin regulations.

(11) Section 507(f) of the act relating to regulations for antibiotic drug certification.

(12) Section 512(n)(5) of the act relating to regulations for animal antibiotic drugs and certification requirements.

(13) Section 706 (b) and (c) of the act relating to regulations for color additives listing and certification.

(14) Section 4(a) of the Fair Packaging and Labeling Act relating to food, drug, device, and cosmetic labeling.

(15) Section 5(c) of the Fair Packaging and Labeling Act relating to additional economic regulations for food, drugs, devices, and cosmetics.

(16) Section 505 (d) and (e) of the act relating to new drug applications.

(17) Section 512 (d), (e), (m)(3), and (m)(4) of the act relating to new animal drug applications.

(18) Section 515(g) of the act relating to device premarket approval applications.

(19) Section 351(a) of the Public Health Service Act relating to plant and product licenses for a biologic.

§ 2.13 Separation of functions; ex parte communications.

(a) The provisions of this section shall apply with respect to any matter which is subject by statute to an opportunity for a formal evidentiary public hearing, as listed in § 2.12(c), and any matter subject to a public hearing before a Public Board of Inquiry pursuant to Subpart C of this part.

(b) In the case of any matter listed in § 2.12(c) (1) through (10) and (12) through (15):

(1) Any interested person may meet or correspond with any representative of the Food and Drug Administration with respect to any such matter prior to publication in the FEDERAL REGISTER of a notice announcing a formal evidentiary public hearing or a public hearing before a Public Board of Inquiry on the matter. The provisions of § 2.15 shall apply to such meetings and correspondence.

(2) Upon publication in the FEDERAL REGISTER of a notice announcing a formal evidentiary public hearing or a public hearing before a Public Board of Inquiry, the following separation of functions shall apply:

(i) The bureau responsible for the matter involved in the hearing shall, as a party to the hearing, be responsible for all investigative functions and for presentation of the position of the bureau at the hearing and in any pleading or oral argument before the Commissioner. Representatives of the bureau shall not participate or advise in any decision except as witness or counsel in public proceedings. There shall be no other communication between representatives of the bureau and representatives of the office of the Commissioner with respect to the matter involved in the hearing prior to the decision of the Commissioner. The Commissioner may, however, when he determines it necessary to ensure the best use of agency resources in deciding a particular matter, designate representatives of a bureau to advise him, or representatives of his office to advise a bureau. The designation shall be in writing and shall be filed with the Hearing Clerk no later than the time specified in paragraph (b)(2) of this section for the application of separation of functions. All members of the Food and Drug Administration other than representatives of the involved bureau (except those specifically designated otherwise) shall be available to advise and participate with the office of the Commissioner in its functions relating to the hearing and the final decision.

(ii) The Chief Counsel for the Food and Drug Administration shall designate members of his office who shall advise and participate with the bureau in its functions in the hearing and members who shall advise the Commissioner in his functions related to the hearing and his final decision. The members of the office of General Counsel designated to advise and participate with the bureau shall not participate or advise in any decision of the Commissioner except as counsel in public proceedings. Such designation shall be in the form of a memorandum filed with the Hearing Clerk and made a part of the administrative record in the proceeding. There shall be no other communication between those members of the office of General Counsel designated to advise the Commissioner and any other other persons in the office of General Counsel or in the involved bureau with respect to the matter involved in the hearing prior to the decision of the Commissioner. The Chief Counsel may in his discretion assign new attorneys to advise either the bureau or the Commissioner at any stage of the proceedings. The Chief Counsel shall ordinarily advise and participate with the office of the Commissioner in its function relating to the hearing and the final decision.

(iii) The office of the Commissioner shall be responsible for the agency review of and final decision on the matter, with the advice and participation of anyone in the Food and Drug Administration other than representatives of the involved bureau and those members of the office of General Counsel who have been designated to assist in the bureau's functions relating to the hearing.

(c) In the case of any matter listed in § 2.12(c) (11) and (16) through (18),

the specific provisions relating to separation of functions set forth in §§ 314.200 (f), 430.20(b)(9), 514.200, and 601.7(a) of this chapter shall be applicable prior to publication in the FEDERAL REGISTER of a notice announcing a formal evidentiary public hearing or a public hearing before a Public Board of Inquiry. Upon publication of any such notice the rules in paragraph (b)(2) of this section shall apply.

(d) Except as provided in paragraph (e) of this section, between the date that separation of functions applies pursuant to paragraph (b) or (c) of this section and the date of the Commissioner's decision on the matter, communication with respect to the matter involved in the hearing shall be restricted as follows:

(1) No person outside the agency shall have any ex parte communication with the presiding officer or any person representing the office of the Commissioner with respect to the matter involved in the hearing. Neither the presiding officer nor any person representing the office of the Commissioner shall have any ex parte communication with any person outside the agency with respect to the matter involved in the hearing. All such communications shall be public communications, as witness or counsel, in accordance with the applicable provisions of this part.

(2) Any participant in the hearing may submit a written communication to the office of the Commissioner with respect to a proposal for settlement. Such written communications shall be in the form of pleadings and shall be served on all other participants and filed with the Hearing Clerk in the same manner as any other pleading.

(3) Any written communication contrary to this section shall immediately be served on all other participants and filed with the Hearing Clerk, and any oral communication contrary to this section shall immediately be recorded in a written memorandum served on all other participants, and filed with the Hearing Clerk to become a part of the administrative record of the proceeding. Any person, including any representative of any participant in the hearing, who is involved in any such oral communication shall, if possible, be made available for cross-examination during the hearing with respect to the substance of that conversation. Rebuttal testimony pertinent to any such written or oral communication shall be permitted. Any cross-examination and rebuttal testimony shall be transcribed and filed in the administrative record of the proceeding.

(e) The prohibitions specified in paragraph (d) of this section shall apply to any person having knowledge of a notice of hearing in advance of publication from the time such knowledge is acquired.

(f) The making of any communication contrary to this section may, consistent with the interests of justice and the policy of the underlying statute, result in a decision adverse to the person knowingly making or causing the making of such a communication.

§ 2.14 Referral by court.

(a) The provisions of this section shall apply whenever any Federal, State, or local court holds in abeyance, or refers to the Commissioner, any matter for an initial administrative determination pursuant to § 2.6(c) or § 2.11(b).

(b) The Commissioner shall promptly agree or decline to accept such referral. Whenever feasible in light of agency priorities and resources, the Commissioner shall agree to accept any such referral and shall institute a proceeding to determine the matter so referred.

(c) In reviewing such a matter, the Commissioner may, in his discretion, utilize any of the following procedures:

(1) Conferences, meetings, discussions, and correspondence pursuant to § 2.15.

(2) A formal evidentiary public hearing pursuant to Subpart B of this part.

(3) A hearing before a Public Board of Inquiry pursuant to Subpart C of this part.

(4) A public hearing before a public advisory committee pursuant to Subpart D of this part.

(5) A public hearing before the Commissioner pursuant to Subpart E of this part.

(6) A regulatory hearing before the Food and Drug Administration pursuant to Subpart F of this part.

(7) A notice published in the FEDERAL REGISTER requesting data, information, and views before the Commissioner makes his decision on it.

(8) Any other specific public procedure established by the provisions in other sections of this chapter and explicitly made applicable to the matter by those provisions.

(d) If the Commissioner's review of the matter results in the proposal of a regulation, the provisions of § 2.10 or § 2.12 shall also apply.

§ 2.15 Meetings and correspondence.

(a) In addition to the public hearings and proceedings established by the provisions of this part and in other sections of this chapter, meetings may be held and correspondence may be exchanged between representatives of the Food and Drug Administration and any interested person outside the Food and Drug Administration with respect to any matter within the jurisdiction of the laws administered by the Commissioner. Action with respect to such meetings and correspondence does not constitute final administrative action which is subject to judicial review pursuant to § 2.11.

(b) The Commissioner may conclude, in his discretion, that it would be in the public interest to hold an open public meeting to discuss a matter (or class of matters) pending before the Food and Drug Administration, at which any interested person may participate.

(1) The Commissioner shall give public notice through the public calendar described in § 2.22(a) of the time and place of the meeting and of the matters to be discussed, and may also publish such notice in the FEDERAL REGISTER.

(2) The meeting shall be conducted informally, i.e., any interested person may attend and participate fully in the discussion without giving prior notice to the agency or requesting time to make a presentation.

(3) No transcript or recording of any such meeting shall be required. A written memorandum summarizing the substance of the meeting shall be prepared by a representative of the Food and Drug Administration.

(c) Any meeting with any person outside the Department, including any person in the executive or legislative branch of the Federal government, relating to a pending court case, administrative hearing, or other regulatory action or decision, which involves more than a brief description of the matter shall be summarized in a written memorandum which shall be filed in the administrative file on the matter.

(d) Every person outside the Federal government has a right to request and obtain a private meeting with a representative of the Food and Drug Administration in agency offices to discuss any matter in which he is interested.

(1) The person requesting such a meeting may be accompanied by a reasonable number of employees, consultants, or other persons with whom he has a commercial arrangement within the meaning of § 4.81(a) of this chapter. Neither the Food and Drug Administration nor any other person may require the attendance of any person who is not an employee of the Executive Branch of the Federal Government without the agreement of the person requesting the meeting. Any person may attend by mutual consent of the person requesting the meeting and the Food and Drug Administration.

(2) The Food and Drug Administration shall determine which representatives of the Food and Drug Administration shall attend the meeting. The person requesting the meeting may request but not require or preclude the attendance of any specific Food and Drug Administration employee.

(3) Whenever appropriate (e.g., the meeting involved a matter covered by paragraph (c) of this section or any other important matter, a decision on an issue, or statements or advice or conclusions to which future reference may be required as part of an administrative record), a written memorandum summarizing the substance of the meeting shall be prepared by a representative of the Food and Drug Administration.

(4) Any person who wishes to attend a specific private meeting, but who is not permitted to attend because the person requesting the meeting or the Food and Drug Administration does not grant permission for such attendance, or because it is conducted by telephone, may request and obtain a separate meeting with the Food and Drug Administration to discuss the same matter or any additional matter.

(e) Food and Drug Administration employees have a responsibility to meet with all segments of the public in order

to promote the objectives of the laws administered by the Food and Drug Administration and the agency. In pursuing this responsibility the following general policy shall apply where agency employees are invited by persons outside the Federal Government to attend or participate in meetings outside agency offices as representatives of the agency.

(1) A person outside the Executive Branch of the Federal Government may invite an agency representative to attend or participate in a meeting outside agency offices. The agency representative is not obligated to attend or participate in any such meeting, but may do so where he concludes that it is in the public interest and will promote the objectives of the act and the agency.

(2) An agency representative may request that any such meeting be an open meeting when he concludes that this would be in the public interest. The agency representative may agree to decline to participate in any such meeting which is held as a private meeting, depending upon which action he concludes will best serve the public interest.

(3) An agency representative shall not knowingly participate in any meeting which is closed on the basis of sex, race, or religion.

(4) Any such meeting, whether open or closed, shall be subject to the requirements of paragraph (d)(3) of this section with respect to memoranda summarizing the substance of the meeting.

(f) Representatives of the Food and Drug Administration may initiate a meeting or correspondence with any person outside the Federal Government with respect to any matter relating to the laws administered by the Commissioner.

(1) Any meeting initiated by the Food and Drug Administration which involves a small number of interested persons, e.g., a meeting with a petitioner or with two manufacturers of a particular product which requires additional testing or with a trade association employee to discuss an industry labeling problem, may be a private meeting. Any meeting initiated by the Food and Drug Administration which involves a large number of interested persons, e.g., 10 manufacturers of an ingredient to discuss appropriate testing or labeling, shall be held as an open conference or meeting pursuant to paragraph (b) of this section.

(2) Whenever appropriate (e.g., the meeting involved a matter covered by paragraph (c) of this section or any other important matter, a decision on an issue, or statements or advice or conclusions to which future reference may be required as part of the administrative record), a written memorandum summarizing the substance of any meeting shall be prepared by a representative of the Food and Drug Administration.

(g) Any person who participates in any meeting described in paragraphs (b) through (f) of this section may prepare and submit to the Food and Drug Administration for inclusion in the administrative file a written memorandum summarizing the substance of the meeting.

(h) All memoranda of such meetings prepared by a representative of the Food and Drug Administration or by any other person and all correspondence which relate to any matter pending before the agency shall promptly be filed in the relevant administrative file of the proceeding.

(i) Any meeting with a representative of Congress relating to a pending or potential investigation, inquiry, or hearing by a congressional committee or a member of Congress shall be summarized in a written memorandum which shall be forwarded to the Food and Drug Administration, Office of Legislative Services. This provision shall not restrict the right of any agency employee to participate in any such meeting.

(j) Any meeting of an advisory committee shall be subject to the requirements of Subpart D of this part.

(k) Pursuant to 42 U.S.C. 263l(a)(8), a log or summary shall be made of all meetings held between representatives of the Food and Drug Administration and representatives of industry and other interested parties with respect to implementation of the Radiation Control for Health and Safety Act of 1968.

§ 2.16 Documentation of significant decisions in administrative file.

(a) The provisions of this section shall apply to every significant Food and Drug Administration decision on any matter under the laws administered by the Commissioner, whether it is raised formally, e.g., by a petition, or informally, e.g., by correspondence.

(b) The Food and Drug Administration employees responsible for handling any matter shall be responsible for assuring the completeness of the administrative file relating to it. Such file:

(1) Shall contain appropriate documentation of the basis for the decision, including relevant evaluations, reviews, memoranda, letters, opinion of consultants, minutes of meetings, and all other written documents pertinent to the matter.

(2) Shall contain the recommendations and decisions of individual employees, including supervisory personnel, responsible for handling the matter.

(i) Such recommendations and decisions shall reveal any significant controversies or differences of opinion and their resolution.

(ii) Any agency employee working on a matter and, consistent with the prompt completion of his other assignments, any agency employee who has worked on a matter shall have the opportunity to record his views on that matter in a written memorandum, which shall be included in the file.

(c) Each written document placed in such an administrative file:

(1) Shall relate to the factual, scientific, legal, or related issues under consideration.

(2) Shall be dated and signed by the author.

(3) Shall be directed to the file, to appropriate supervisory personnel, and to other appropriate employees, and shall show all persons to whom copies were sent.

(4) Shall avoid defamatory language, intemperate remarks, undocumented charges, or irrelevant matters (e.g., personnel complaints).

(5) Shall, if it records the views, analyses, recommendations, or decisions of any agency employee in addition to the author, be given to such other employees.

(6) Shall, once completed (i.e., typed in final form, dated, and signed), not be altered, added to, or removed. Subsequent additions to, or revisions of, any such document shall be accomplished by the preparation of a new document.

(d) Memoranda or other documents prepared by agency employees not contained in the administrative file shall have no status or effect.

(e) All Food and Drug Administration employees working on a matter shall have access to the administrative file on that matter, as appropriate for the conduct of their work. All Food and Drug Administration employees who have worked on a matter shall have access to the administrative file on that matter so long as their attention to their assignments is not impeded. Reasonable restrictions may be placed upon such access to assure the proper cataloging and storage of documents, the availability of the file to others, and the completeness of the file for review.

§ 2.17 Internal agency review of decisions.

(a) Any decision of a Food and Drug Administration employee, other than the Commissioner, on any matter, e.g., an informal opinion on the need for further animal toxicology tests to support a food additive regulation or new drug application, is subject to review by the employee's supervisor under any of the following circumstances:

(1) At the request of the employee.

(2) On the initiative of the supervisor.

(3) At the request of any interested person outside the agency.

(4) As required by duly promulgated delegations of authority.

(b) Such review shall be accomplished by consultation between the employee and the supervisor or by review of the administrative file on the matter, or both. Such review shall ordinarily follow the established agency channels of supervision or review for that matter.

(c) Any interested person outside the agency may request internal agency review of any such decision through the established agency channels of supervision or review for that matter. Personal review of such matters by bureau directors or the office of the Commissioner shall take place for any of the following purposes:

(1) To resolve an issue which cannot be resolved at lower levels within the agency:

(i) Between two parts of a bureau or other component of the agency, or

(ii) Between two bureaus or other components of the agency, or

(iii) Between the agency and an interested person outside the agency.

(2) To review policy matters requiring the attention of bureau or agency management.

(3) In unusual situations requiring an immediate review in the public interest.

(4) As required by duly promulgated delegations of authority.

(d) Internal agency review of any such decision shall be based upon the data and information available in the administrative file. In the event that any interested person presents new data or information not contained in such file, the matter shall be returned to the appropriate lower level within the agency for a reevaluation based upon such new information.

§ 2.18 Dissemination of draft Federal Register notices and regulations.

(a) Any representative of the Food and Drug Administration may discuss orally or in writing with any interested person ideas and recommendations for FEDERAL REGISTER notices or regulations. The Food and Drug Administration welcomes assistance in developing ideas for, and in gathering the data and information to support, notices and regulations.

(b)(1) Once it is determined that a proposed notice or regulation will be prepared, the general concepts may be discussed by a representative of the Food and Drug Administration with any interested person. Details of a draft of a proposed notice or regulation may be discussed with any person outside the Executive Branch of the Federal Government only with the specific permission of the Commissioner.

(2) A draft of a proposed notice or regulation or its preamble, or any portion thereof, may be furnished to an interested person outside the Executive Branch of the Federal Government only if it is made available to all interested persons by a notice published in the FEDERAL REGISTER. A draft of a proposed notice or regulation so made available may, without the prior permission of the Commissioner, be discussed with any interested person to clarify and resolve questions raised and concerns expressed about the proposal.

(c) After publication of a proposed regulation in the FEDERAL REGISTER, and before preparation of a draft of the final regulation, a representative of the Food and Drug Administration may discuss the proposal with any interested person as provided in paragraph (b)(2) of this section.

(d)(1) Details of a draft of a final notice or regulation may be discussed with any interested person outside the Executive Branch of the Federal Government only with the specific permission of the Commissioner.

(2) A draft of a final notice or regulation of its preamble, or any portion thereof, may be furnished to an interested person outside the Executive Branch of the Federal Government only if it is made available to all interested persons by a notice published in the FEDERAL REGISTER, except as otherwise provided in paragraphs (g) and (j) of this section. A draft of a final notice or regulation so made available to any interested person may, without the prior permission of the Commissioner, be discussed with any interested person as provided in paragraph (b)(2) of this section.

(1) The final notice or regulation and its preamble shall be prepared solely on the basis of the administrative record.

(2) If any additional technical information from a person outside the Executive Branch of the Federal government is necessary to draft the final notice or regulation or its preamble, it shall be requested by the Food and Drug Administration in general terms and furnished directly to the Hearing Clerk to be included as part of the administrative record.

(3) If direct discussion by the Food and Drug Administration of a draft of a final notice or regulation or its preamble is required with a person outside the Executive Branch of the Federal Government, appropriate protective procedures will be undertaken to make certain that a full and impartial administrative record is established. Such procedures may include:

(i) The scheduling of an open public meeting conducted pursuant to § 2.15(b) at which any interested person may participate in review of and comment on the draft document.

(ii) The preparation of a tentative final regulation or tentative revised final regulation pursuant to § 2.10(f)(9), on which all interested persons will be given an additional period of time for oral and written comment.

(e) After a final regulation is published in the FEDERAL REGISTER, a representative of the Food and Drug Administration may discuss any aspect of it with any interested person.

(f) In addition to the requirements of this section, the provisions of § 2.13 shall apply to the promulgation of any regulation subject to the provisions of § 2.12 and Subpart B of this part.

(g) A draft of a final food additive, color additive, or new animal drug regulation or a proposed or final antibiotic regulation may be furnished to the petitioner for comment on the technical accuracy of such regulation. Every meeting with a petitioner relating to such a draft shall be recorded in a written memorandum, and all such memoranda and correspondence shall be filed with the Hearing Clerk as part of the administrative record of the regulation, pursuant to the provisions of § 2.15.

(h) Pursuant to 42 U.S.C. 263f, the Commissioner is required to consult with interested persons in the development of, and with the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC) before prescribing, any performance standard for an electronic product. Accordingly, the Commissioner shall publish in the FEDERAL REGISTER an announcement when a proposed or final performance standard, including any amendment thereof, is being considered for an electronic product, and thereafter any draft of any such document shall be furnished to any interested person upon request and may be discussed in detail with any interested person at any time.

(i) The provisions of § 2.15 shall apply to meetings and correspondence relating to draft FEDERAL REGISTER notices and regulations.

(j) The provisions of this section restricting discussion and disclosure of draft FEDERAL REGISTER notices and regulations shall not apply to those situations covered by §§ 4.83 through 4.89 of this chapter.

§ 2.19 Advisory opinions.

(a) Any person may request an advisory opinion from the Commissioner with respect to any matter of general applicability in which he is interested.

(1) Such request shall be granted whenever feasible.

(2) Such request may be denied if any of the following apply:

(i) The request contains incomplete information on which to base an informed advisory opinion.

(ii) The Commissioner concludes that an advisory opinion cannot reasonably be given on the matter involved.

(iii) The matter is adequately covered by a prior advisory opinion or a regulation.

(iv) The request covers a particular product or ingredient or label and does not raise a policy issue of broad applicability.

(v) The Commissioner otherwise concludes, in his discretion, that an advisory opinion would not be in the public interest.

(b) A request for an advisory opinion shall be submitted in accordance with § 2.5, shall be subject to the provisions of § 2.7(c) through (l), and shall be in the following form:

_____
(Date)

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857

REQUEST FOR ADVISORY OPINION

The undersigned submits this request for an advisory opinion of the Commissioner of Food and Drugs with respect to _____ (the general nature of the matter involved).

A. *Issues Involved.*

(A concise statement of the issues and questions on which an opinion is requested.)

B. *Statement of Facts and Law.*

(A full statement of all facts and legal points relevant to the request.)

The undersigned certifies that, to the best of his knowledge and belief, this request includes all data, information, and views relevant to the matter, whether favorable or unfavorable to the position of the undersigned, which is the subject of the request.

Very truly yours,

_____
(Signature)

_____
(Person making request)

_____
(Mailing address)

_____
(Telephone number)

(c) The Commissioner may, in his discretion, handle any oral or written request to the agency as a request for an advisory opinion, in which case the request shall be filed with the Hearing Clerk and shall be subject to the provisions of this section.

(d) Any statement of policy or interpretation made in any of the following documents, unless subsequently repudiated by the agency or overruled by a court, shall constitute an advisory opinion:

(1) Any portion of a FEDERAL REGISTER notice other than the text of a proposed or final regulation, e.g., a notice to manufacturers or a preamble to a proposed or final regulation.

(2) Trade Correspondence (T.C. Nos. 1–431 and 1A–8A issued by the Food and Drug Administration between 1938 and 1946.

(3) Compliance Policy Guides issued by the Food and Drug Administration beginning in 1968 and codified in the Compliance Policy Guides manual.

(4) Other documents specifically identified as advisory opinions, e.g., advisory opinions on the performance standard for diagnostic x-ray systems, issued prior to July 1, 1975, and filed in a permanent public file for such prior advisory opinions maintained in the Public Records and Documents Center.

(5) Guidelines issued by the Food and Drug Administration pursuant to § 2.20 (b).

(e) An advisory opinion represents the formal position of the Food and Drug Administration on the matter involved, and except as provided in paragraph (f) of this section obligates the agency to follow it until it is amended or revoked. The Commissioner shall not recommend legal action against any person or product with respect to any action taken in conformity with an advisory opinion which has not been amended or revoked.

(f) In unusual situations involving an immediate and significant danger to health, the Commissioner may take appropriate civil enforcement action contrary to an advisory opinion issued pursuant to this section prior to amending or revoking such advisory opinion as provided in paragraph (g) of this section. Such action shall be taken only with the approval of the Commissioner, which may not be delegated. Appropriate amendment or revocation of the advisory opinion involved shall be expedited.

(g) An advisory opinion may be amended or revoked at any time after it has been issued. Notice of such amendment or revocation shall be given in the same manner in which notice was originally given of the advisory opinion or in the FEDERAL REGISTER, and in any event shall be placed on public display as part of the file on the matter in the office of the Hearing Clerk. The Hearing Clerk shall maintain a separate chronological index of all advisory opinions filed. The index shall specify the date of the request for the advisory opinion, the date of the opinion, and identification of the appropriate file.

(h) Action undertaken or completed in conformity with an advisory opinion issued pursuant to this paragraph which has subsequently been amended or revoked shall remain acceptable to the Food and Drug Administration unless the Commissioner determines that substantial public interest considerations preclude such continued acceptance. Whenever possible, an amended or revoked advisory opinion shall state when it has been determined that action previously undertaken or completed in conformity with a prior advisory opinion does not remain acceptable, and any transition period that may be applicable.

(i) Any interested person may submit written comments on an advisory opinion or modified advisory opinion. Three copies of any comments shall be sent to the Hearing Clerk for inclusion in the public file on the advisory opinion. Individuals may submit only one copy. Such comments shall be considered in determining whether further modification of an advisory opinion is warranted.

(j) An advisory opinion may be used in administrative or court proceedings to illustrate acceptable and unacceptable procedures or standards, but not as a legal requirement.

(k) A statement made or advice provided by an employee of the Food and Drug Administration shall constitute an advisory opinion only if it is issued in writing pursuant to this section. A statement or advice given by a Food and Drug Administration employee orally, or given in writing but not pursuant to this section or § 2.20, is an informal communication that represents the best judgment of that employee at that time but does not constitute an advisory opinion, does not necessarily represent the formal position of the Food and Drug Administration, and thus does not bind or otherwise obligate or commit the agency to the views expressed.

§ 2.20 Food and Drug Administration regulations, guidelines, recommendations, and agreements.

(a) *Regulations.* All Food and Drug Administration regulations having general applicability and legal effect shall be promulgated in the FEDERAL REGISTER pursuant to § 2.10 or § 2.12 and codified in the Code of Federal Regulations. Regulations may contain provisions which will be enforced as legal requirements, or which are intended only as guidelines and recommendations, or both. The dissemination of draft notices and regulations shall be subject to the provisions of § 2.18.

(b) *Guidelines.* All Food and Drug Administration guidelines having general applicability shall be included in the public file of guidelines established by the Hearing Clerk, pursuant to this paragraph, unless they have been published in the FEDERAL REGISTER as regulations pursuant to paragraph (a) of this section.

(1) Guidelines establish principles or practices of general applicability and do not include decisions or advice limited to particular situations. Guidelines relate to such matters as performance characteristics, preclinical and clinical test procedures, manufacturing practices, product standards, scientific protocols, compliance criteria, ingredient specifications, labeling, or other technical or policy criteria. Guidelines state procedures or standards of general applicability that are not legal requirements but that are acceptable to the Food and Drug Administration for a subject matter which falls within the laws administered by the Commissioner, e.g., a protocol for a particular type of animal toxicity test or human clinical trial.

(i) A person may rely upon a guideline with assurance that it is acceptable to the Food and Drug Administration, or may folow different procedures or standards. Where a person chooses to use different procedures or standards, he may, but is in no instance required to discuss the matter in advance with the Food and Drug Administration to prevent the expenditure of money and effort on activity that may later be determined to be unacceptable.

(ii) Use of testing guidelines established by the Food and Drug Administration assures acceptance of a test as scientifically valid, if properly conducted, but does not assure approval of any ingredient or product so tested. The results of any such test or other available information may require disapproval or that additional testing be undertaken.

(2) A guideline represents the formal position of the Food and Drug Administration on the matter involved, and except as provided in paragraph (b)(3) of this section, obligates the agency to follow it until it is amended or revoked. The Commissioner shall not recommend legal action against any person or product with respect to any action taken in conformity with a guideline issued pursuant to this section that has not been amended or revoked.

(3) In unusual situations involving an immediate and significant danger to health, the Commissioner may take appropriate civil enforcement action contrary to a guideline issued pursuant to paragraph (b) of this section prior to amending or revoking such guideline as provided in paragraph (b)(5) of this section. Such action shall be taken only with the approval of the Commissioner, which may not be delegated. Appropriate amendment or revocation of the guideline involved shall be expedited.

(4) A guideline shall be included in the public file upon approval of the guideline by the relevant bureau director and publication by the Commissioner in the FEDERAL REGISTER of a notice of its availability. The notice shall state (i) the title of the guideline, (ii) the subject matter it covers, and (iii) the office or individual responsible for maintaining the guideline.

(5) A guideline may be amended or revoked upon approval of the amended guideline or revocation of the guideline by the relevant bureau director and publication by the Commissioner in the

FEDERAL REGISTER of a notice of such amendment or revocation. The notice shall state (i) the title of the guideline, (ii) the subject matter it covers, and (iii) the office or individual responsible for maintaining the guideline. All original guidelines and subsequent amendments shall be retained in the public file on a permanent basis so that a complete record of the development of each guideline remains available.

(6) Action undertaken or completed in conformity with a guideline issued pursuant to paragraph (b) of this section which has subsequently been amended or revoked shall remain acceptable to the Food and Drug Administration unless the Commissioner determines that substantial public interest considerations preclude such continued acceptance. Such determination may be made at the time of or subsequent to amendment or revocation of the guideline. Whenever possible, the notice of an amended or revoked guideline published pursuant to paragraph (b)(3) of this section shall state when it has been determined that action previously undertaken or completed in conformity with a prior guideline does not remain acceptable, and any transition period that may be applicable.

(7) The notice of a guideline or amended or revoked guideline published pursuant to paragraph (b) (2) or (3) of this section shall state that any interested person may submit written comments on the guideline or amended guideline. Two copies of any comments shall be sent to the Public Records and Documents Center for inclusion in the public file on the guideline and two copies shall be sent to the office or individual designated in the notice as responsible for maintaining the guideline. Such comments shall be considered in determining whether further amendments to or reinstitution of a guideline are warranted.

(8) A guideline may be used in administrative or court proceedings to illustrate acceptable and unacceptable procedures or standards, but not as establishing a legal requirement.

(9) A statement relating to acceptable procedures or standards given by a Food and Drug Administration employee orally, or in writing but not pursuant to § 2.19 or this section, is an informal communication that represents the best judgment of that employee at that time but does not constitute a guideline, does not necessarily represent the formal position of the Food and Drug Administration, and thus does not bind or otherwise obligate the agency to the views expressed.

(10) Because of the large number of analytical methods involved in Food and Drug Administration activities, their length and complexity, and the volume and frequency of amendment, the provisions of paragraph (b)(4) of this section shall not apply to such material except to the extent that the Commissioner concludes, in his discretion, that particular analytical methods should be included in the public file for a particular purpose. Food and Drug Administration analytical methods are available for public disclosure pursuant to the provisions of Part 4 of this chapter.

(11) The dissemination of draft guidelines shall be subject to the same provisions as the dissemination of draft notices and regulations pursuant to § 2.18.

(c) *Recommendations.* In addition to the guidelines subject to paragraph (b) of this section, the Food and Drug Administration often formulates and disseminates recommendations about matters which are authorized by, but do not involve direct regulatory action under, the laws administered by the Commissioner, e.g., model state and local ordinances, or personnel practices for reducing radiation exposure, issued pursuant to 42 U.S.C. 243 and 263d(b). Such recommendations may, in the discretion of the Commissioner, be handled pursuant to the procedures established in paragraph (b) of this section, except that such recommendations shall be included in a separate public file of recommendations established by the Public Records and Documents Center and shall be separated from the guidelines in the notice of availability published in the FEDERAL REGISTER, or be published in the FEDERAL REGISTER as regulations pursuant to paragraph (a) of this section.

(d) *Agreements.* All formal agreements, memoranda of understanding, or other similar written documents executed by the Food and Drug Administration and another person shall be included in the public file on agreements established by the Public Records and Documents Center pursuant to § 4.108 of this chapter. Any such document not included in the public file shall be deemed to be rescinded and shall have no force or effect whatever.

§ 2.21 Participation in outside standard-setting activities.

(a) *General.* This section applies to participation by Food and Drug Administration employees in any standard-setting activities outside the Food and Drug Administration. Standard-setting activities include such matters as the development of performance characteristics, testing methodology, manufacturing practices, product standards, scientific protocols, compliance criteria, ingredient specifications, labeling, or other technical or policy criteria. The Food and Drug Administration encourages employee participation in outside standard-setting activities that are in the public interest.

(b) *Standard-setting activities by other Federal government agencies.* (1) Any Food and Drug Administration employee may participate in such activities after the approval by the appropriate bureau director or the Commissioner of Form PHS-3763 "Request for approval of appointment as liaison representative."

(2) The Form PHS-3763 and all pertinent background information describing such activities shall be included in the public file on standard-setting activities established in the Public Records and Documents Center.

(3) If any members of the public are invited by the Food and Drug Administration to present views to, or to accompany, the Food and Drug Administration employee at any meeting, such invitations shall be extended to a representative sampling of the public, including consumer groups, industry associations, professional societies, and academic institutions.

(4) A Food and Drug Administration employee appointed as the liaison representative to such an activity shall refer all requests for information about or participation in the activity involved to the group or organization responsible for such activity.

(c) *Standard-setting activities by State and local government agencies and by United Nations organizations and other international organizations and foreign governments pursuant to treaty.* (1) Any Food and Drug Administration employee may participate in such activities after the approval by the appropriate bureau director or the Commissioner of Form PHS-3763.

(2) The Form PHS-3763 and all pertinent background information describing such activities shall be included in the public file on standard-setting activities established in the Public Records and Documents Center.

(3) The availability for public disclosure of records relating to such activities shall be governed by the regulations in Part 4 of this chapter.

(4) If any members of the public are invited by the Food and Drug Administration to present views to, or to accompany, the Food and Drug Administration employee at any meeting, such invita-

tions shall be extended to a representative sampling of the public, including consumer groups, industry associations, professional societies, and academic institutions.

(5) A Food and Drug Administration employee appointed as the liaison representative to such an activity shall refer all requests for information about or participation in the activity involved to the group or organization responsible for such activity.

(d) *Standard-setting activities by private groups and organizations.* (1) Any Food and Drug Administration employee may engage in such activities after the approval by the appropriate bureau director or the Commissioner of Form PHS–3763. A request for such official participation shall be made by the group or organization in writing, shall describe the scope of the activity involved, and shall demonstrate that the minimum standards set out in paragraph (d) (5) of this section are met by the activity involved. Except as provided in paragraph (d) (7) of this section, any such request that is granted shall be the subject of a letter from the Commissioner or the bureau director to the organization stating:

(i) Whether participation by the individual will be as a voting or nonvoting liaison representative.

(ii) That participation by the individual shall not connote Food and Drug Administration agreement with, or endorsement of, any decisions reached.

(iii) That participation by the individual disqualifies him from serving as the deciding official on the standard involved if it should later come before the Food and Drug Administration. The "deciding official" is the person who signs a document ruling upon such standard.

(2) The letter requesting official Food and Drug Administration participation, the Form PHS–3763, and the Commissioner's or bureau director's letter, together with all pertinent background information describing the activities involved, shall be included in the public file on standard-setting activities established in the Public Records and Documents Center.

(3) The availability for public disclosure of records relating to such activities shall be governed by the regulations in Part 4 of this chapter.

(4) A Food and Drug Administration employee appointed as the liaison representative to such an activity shall refer all requests for information about or participation in the activity involved to the group or organization responsible for such activity.

(5) The following minimum standards shall apply to all outside private standard-setting activities in which Food and Drug Administration employees participate.

(i) The activities shall be based upon consideration of sound scientific and technological information, shall permit revision on the basis of new information, and shall be designed to protect the public against unsafe, ineffective, or deceptive products or practices.

(ii) The activities and resulting standards shall not be designed for the economic benefit of any company, group, or organization, shall not be used as devices for such antitrust violations as fixing prices or hindering competition, and shall not involve establishment of certification or specific approval of individual products or services.

(iii) The group or organization responsible for the standard-setting activities shall have a procedure through which any interested person shall have an opportunity to provide information and views on the activities and standards involved, without the payment of fees, and such information and views shall be considered. The manner in which this is accomplished, including whether such presentation shall be in person or in writing, shall be decided by the group or organization responsible for the activities.

(6) Membership of a Food and Drug Administration employee in an organization that also conducts standard-setting activities does not invoke the provisions of this paragraph unless the employee participates in such standard-setting activities. Participation in any standard-setting activity shall be subject to the provisions of this paragraph.

(7) The Commissioner may determine in writing that, because direct involvement by the Food and Drug Administration in a particular standard-setting activity is in the public interest and will promote the objectives of the act and the agency, such participation shall be exempt from the requirements set forth in paragraph (d) (1) (ii) and/or (iii) of this section. Any such determination shall be included in this public file on standard-setting activities established by the Public Records and Documents Center and in any relevant administrative file. Such activities may include the establishment and validation of analytical methods for regulatory use, drafting uniform laws and regulations, and the development of recommendations concerning public health and preventive medicine practices by national and international organizations.

(8) Because of the close daily cooperation between the Food and Drug Administration and the associations of State and local government officials listed below, and the large number of agency employees who are members of or work with these associations, such participation in the activities of these associations shall be exempt from the provisions of paragraphs (d) (1) through (d) (7) of this section, except that a list of all committees and other groups of these associations shall be included in the public file on standard-setting activities established in the Public Records and Documents Center:

(i) Association of Food and Drug Officials.

(ii) International Association of Milk, Food and Environmental Sanitarians, Inc.

(iii) Conference of Radiation Control Program Directors.

(iv) Association of American Feed Control Officials, Inc.

(v) National Environmental Health Association.

(vi) National Conference on Weights and Measures.

(vii) American Public Health Association.

(viii) Conference of State Sanitary Engineers.

(ix) National Conference on Interstate Milk Shipments.

(x) National Shellfish Sanitation Program.

(xi) Interstate Seafood Seminar.

(xii) Association of Official Analytical Chemists.

§ 2.22 Public calendar.

(a) *Prospective public calendar of public proceedings.* (1) A public calendar shall be prepared and made publicly available each week showing, to the extent feasible, for the following 4 weeks all public meetings, public conferences, public hearings, public advisory committee meetings, public seminars, and other public proceedings of the Food and Drug Administration, and other significant public events involving the Food and Drug Administration, e.g., congressional hearings and trial or argument of court cases.

(2) A copy of this public calendar shall be placed on public display in the following places:

(i) Office of the Hearing Clerk.

(ii) Office of the Assistant Commissioner for Public Affairs.

(iii) A central place in each bureau.

(iv) A central place in each field office.

(v) A central place at the National Center for Toxicological Research.

(b) *Retrospective public calendar of meetings.* (1) A public calendar shall be prepared and made publicly available each week showing for the previous week all meetings with persons outside the Executive Branch of the Federal Government and other significant events involving the representatives of the Food and Drug Administration designated

under paragraph (b)(3) of this section, except that telephone conversations shall be included on an optional basis and meetings with the working press, except for "house organs" (i.e., publications of firms that manufacture or distribute regulated products, or industry associations), and with on-site contractors shall not be included. Meetings with members of the judiciary, representatives of Congress, or staffs of congressional committees shall be included when the meeting relates to a pending court case, administrative hearing, or other regulatory action or decision and involves more than a brief description of the matter.

(2) Such calendar shall include all meetings, conferences, seminars, social events sponsored by the regulated industry, and speeches. The calendar shall specify the date, the person involved, and the subject matter involved. Where more than one Food and Drug Administration representative is in attendance, only the presiding or head representative shall report the meeting on the public calendar. If a large number of persons are involved, the name of each need not be specified. Meetings the existence of which would prejudice law enforcement activities (e.g., a meeting with an informant) or invade privacy (e.g., a meeting with a candidate for possible employment in the Food and Drug Administration) shall not be reported.

(3) The following Food and Drug Administration representatives and their deputies shall be subject to the requirements of paragraphs (b) (1) and (2) of this section:

(i) Commissioner of Food and Drugs.
(ii) Deputy Commissioner.
(iii) Associate Commissioners.
(iv) Assistant Commissioners.
(v) Executive Director for Regional Operations.
(vi) Director, Office of Legislative Services.
(vii) Director, National Center for Toxicological Research.
(viii) Bureau Directors.
(ix) Chief Counsel for the Food and Drug Administration, or any representative of his office attending in his behalf.

(4) A copy of this public calendar shall be placed on public display in the following places:

(i) Office of the Hearing Clerk.
(ii) Office of the Assistant Commissioner for Public Affairs.
(iii) A central place in each bureau.
(iv) A central place in each field office.
(v) A central place at the National Center for Toxicological Research.

§ 2.23 Representation by an organization.

(a) An organization may represent its members by filing petitions, comments, and objections, and otherwise participating in any administrative proceeding subject to this part.

(b) Any such petitions, comments, objections, or other representations by an organization shall not abridge the right of any member to take any action of a similar type in its own name.

(c) It is requested that each organization participating in Food and Drug Administration administrative proceedings file annually a current list of all of the members of such organization with the Hearing Clerk for permanent filing.

(d) The filing by an organization of an objection or request for hearing pursuant to §§ 2.110 through 2.112 shall not provide to any member any legal right with respect to such objection or request for hearing that the member may exercise in its own name. Any member of an organization wishing to so file an objection or request for a hearing to obtain legal rights thereunder shall do so in its own name.

(e) In any court proceeding in which an organization participates, the Commissioner will take appropriate legal measures to have the case brought or considered as a class action or otherwise as binding upon all members of the organization except those specifically excluded by name for the reason that the organization does not represent their views. Regardless whether the case is brought or considered as a class action or as otherwise binding upon all members of the organization except those specifically excluded by name, the Commissioner will take the position in any subsequent suit involving the same issues and any member of the organization that such issues are precluded from further litigation by such member pursuant to the doctrines of collateral estoppel or res judicata.

§ 2.24 Settlement proposals.

At any time in the course of any proceeding subject to this part, any person may propose settlement of any of the issues involved. All participants in any proceeding shall have an opportunity to consider any proposed settlement. Unaccepted proposals of settlement and related matters, e.g., proposed stipulations not agreed to, shall not be admissible in evidence in any administrative proceeding of the Food and Drug Administration. The Food and Drug Administration will oppose the admission in evidence of any such information in any court proceeding or in any other administrative proceeding.

§ 2.25 Waiver, suspension, or modification of procedural requirements.

The Commissioner or the presiding officer, with respect to matters pending before him, may on his own initiative or at the request of any participant waive, suspend, or modify any provision in Subparts B through F of this part applicable to the conduct of a public hearing by announcement at the hearing or by notice in advance of the hearing, if he determines that no participant will be prejudiced, the ends of justice will thereby be served, and such action is in accordance with law.

PART 6—ENVIRONMENTAL IMPACT CONSIDERATIONS

§ 6.4 [Amended]

4. In Part 6, by amending § 6.4(a)(2) to change the reference to "§ 2.121" to read "Subpart B of Part 5".

PART 8—COLOR ADDITIVES

5. In Part 8, by revising § 8.12 to read as follows:

§ 8.12 Advisory committee on the applicability of the anticancer clause.

All requests for and procedures governing any advisory committee on the anticancer clause shall be subject to the provisions of Subpart D of Part 2, and particularly §§ 2.360 through 2.364, of this chapter.

§§ 8.13, 8.14 [Revoked]

6. By revoking §§ 8.13 and 8.14.

7. By revising §§ 8.18 and 8.19 to read as follows:

§ 8.18 Petition for exemption from certification.

A manufacturer, packer, or distributor of a color additive or color additive mixture may petition for an exemption from certification pursuant to Part 2 of this chapter. Any such petition shall show why such certification is not necessary for the protection of public health.

§ 8.19 Procedure for objections and hearings.

(a) Objections and hearings relating to color additive regulations under sections 706 (b) and (c) of the act shall be governed by Part 2 of this chapter.

(b) The fees specified in § 8.50 shall be applicable.

§§ 8.20, 8.21 [Revoked]

8. By revoking §§ 8.20 and 8.21.

PART 10—DEFINITIONS AND STANDARDS FOR FOOD

9. In Part 10, by revising § 10.2 to read as follows:

§ 10.2 Procedure for establishing a food standard.

(a) The procedure for establishing a food standard under section 401 of the act shall be governed by Part 2 of this chapter.

(b) Any petition for a food standard shall show that the proposal, if adopted, would promote honesty and fair dealing in the interest of consumers.

(c) Any petition for a food standard shall assert that the petitioner commits himself to substantiate the information in the petition by evidence in a public hearing, if such a hearing becomes necessary.

(d) If a petitioner fails to appear, or to substantiate the information in his petition, at a public hearing on the matter, the Commissioner may either (1) withdraw the regulation and terminate

the proceeding or (2) if he concludes that it is in accordance with the requirements of section 401 of the act, continue the proceeding and introduce evidence to substantiate such information.

PART 11—STANDARDS OF QUALITY FOR FOODS FOR WHICH THERE ARE NO STANDARDS OF IDENTITY

10. In Part 11, by revising § 11.1(e) to read as follows:

§ 11.1 General principles.

* * * * *

(e) The Commissioner of Food and Drugs, either on his own initiative or on behalf of any interested person who has submitted a petition, may establish, amend, or repeal, under Subpart B of this Part, a regulation prescribing a standard of quality for a food pursuant to Part 2 of this chapter.

PART 80—DEFINITIONS AND STANDARDS OF IDENTITY FOR FOOD FOR SPECIAL DIETARY USES

11. In Part 80, by amending § 80.1 (as published in the FEDERAL REGISTER of October 19, 1976 (41 FR 46156)) by revising paragraph (a)(5) to read as follows:

§ 80.1 Dietary supplements of vitamins and minerals.

* * * * *

(a) * * *

(5) *Amendments to this standard.* Amendment of the permissible combinations of vitamins and/or minerals, as established in paragraph (b) of this section, or of the permitted range of potency for any vitamin(s) or mineral(s) in a dietary supplement as established in paragraph (c) of this section, or any other amendments to this section, may be proposed by the Commissioner of Food and Drugs on his own initiative or upon petition by an interested person in accordance with the procedure set forth in Part 2 of this chapter. Any such petition shall show that such amendment will promote honesty and fair dealing in the interest of consumers.

* * * * *

PART 90—EMERGENCY PERMIT CONTROL

12. In Part 90, by revising § 90.2(a) to read as follows:

§ 90.2 Establishment of requirements for exemption from section 404 of the act.

(a) Whenever the Commissioner finds after investigation that the distribution in interstate commerce of any class of food may, by reason of contamination with microorganisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered interestate commerce, he shall promulgate regulations in Subpart B of this part establishing requirements and conditions governing the manufacture, processing, or packing of the food necessary to protect the public health. Such regulations may be proposed by the Commissioner on his own initiative or in response to a petition from any interested person pursuant to Part 2 of this chapter.

* * * * *

PART 100—NUTRITIONAL QUALITY GUIDELINES FOR FOODS

13. In Part 100, by revising § 100.2 to read as follows:

§ 100.2 Petitions.

The Commissioner of Food and Drugs, on his own initiative, on the advice of the National Academy of Sciences or other experts, or on behalf of any interested person who has submitted a petition, may issue a proposal to issue, amend, or revoke a regulation prescribing a nutritional quality guideline for a class of foods, pursuant to Part 2 of this chapter.

PART 102—COMMON OR USUAL NAMES FOR NONSTANDARDIZED FOODS

14. In Part 102, by revising § 102.2 to read as follows:

§ 102.2 Petitions.

(a) The Commissioner of Food and Drugs, either on his own initiative or on behalf of any interested person who has submitted a petition, may publish a proposal to issue, amend, or revoke, under Subpart B of this Part, a regulation prescribing a common or usual name for a food, pursuant to Part 2 of this chapter.

(b) If the principal display panel of a food for which a common or usual name regulation is established is too small to accommodate all mandatory requirements, the Commissioner may establish by regulation an acceptable alternative, e.g., a smaller type size. A petition requesting such a regulation, which would amend the applicable regulation, shall be submitted pursuant to Part 2 of this chapter.

PART 121—FOOD ADDITIVES

15. In Part 121, by revising the introductory text of § 121.40(c)(1) to read as follows:

§ 121.40 Affirmation of generally recognized as safe (GRAS) status.

* * * * *

(c)(1) Persons seeking the affirmation of GRAS status of substances as provided for in § 121.3(e), except those subject to the NAS–NRC GRAS list survey (36 FR 20546), shall submit a petition for GRAS affirmation pursuant to Part 2 of this chapter. Such petition shall contain information to establish that the GRAS criteria as set forth in § 121.3(b) have been met, in the following form:

* * * * *

16. By revising § 121.4(b)(1) to read as follows:

§ 121.41 Determination of food additive status.

* * * * *

(b)(1) The Commissioner, on his own initiative or on the petition of any interested person, pursuant to Part 2 of this chapter, may issue a notice in the FEDERAL REGISTER proposing to determine that a substance is not GRAS and is a food additive subject to section 409 of the act. Any petition shall include all relevant data and information of the type described in § 121.74(b). The Commissioner will place all of the data and information on which he relies on public file in the office of the Hearing Clerk and will include in the FEDERAL REGISTER notice the name of the substance, its known uses, and a summary of the basis for the determination.

* * * * *

17. By revising § 121.55 to read as follows:

§ 121.55 Procedure for objections and hearings.

Objections and hearings relating to food additive regulations under section 409 (c), (d), or (h) of the act shall be governed by Part 2 of this chapter.

§§ 121.56, 121.57, 121.58, 121.59, 121.60, 121.61, 121.62, 121.63, 121.64, 121.65, 121.66, 121.67, 121.68 121.69, 121.70, 121.71, 121.73 [Revoked]

18. By revoking §§ 121.56, 121.57, 121.58, 121.59, 121.60, 121.61, 121.62, 121.63, 121.64, 121.65, 121.66, 121.67, 121.68, 121.69, 121.70, 121.71, and 121.73.

19. By revising § 121.72(b) to read as follows:

§ 121.72 Adoption of regulation on initiative of Commissioner.

* * * * *

(b) Action upon a proposal made by the Commissioner shall proceed as provided in Part 2 of this chapter.

20. By revising § 121.74 to read as follows:

§ 121.74 Procedure for amending and repealing tolerances or exemptions from tolerances.

(a) The Commissioner, on his own initiative or on the petition of any interested person, pursuant to Part 2 of this chapter, may propose the issuance of a regulation amending or repealing a regulation pertaining to a food additive or granting or repealing an exception for such additive.

(b) Any such petition shall include an assertion of facts, supported by data, showing that new information exists with respect to the food additive or that new uses have been developed or old uses abandoned, that new data are available as to toxicity of the chemical, or that experience with the existing regulation or exemption may justify its amendment or repeal. New data shall be furnished in the form specified in § 121.51 for submitting petitions.

21. By revising the introductory text of § 121.4000(c) to read as follows:

§ 121.4000 General.

* * * * *

(c) The Commissioner, on his own initiative or on the petition of any inter-

ested person, pursuant to Part 2 of this chapter, may propose an interim food additive regulation. A final order promulgating an interim food additive regulation shall provide that continued use of the substance in food is subject to each of the following conditions:

* * * * *

PART 310—NEW DRUGS

22. In Part 310, by revising § 310.200 (b) to read as follows:

§ 310.200 Prescription-exemption procedure.

* * * * *

(b) *Prescription-exemption procedure for drugs limited by a new drug application.* Any drug limited to prescription use under section 503(b)(1)(C) of the act shall be exempted from prescription-dispensing requirements when the Commissioner finds such requirements are not necessary for the protection of the public health by reason of the drug's toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, and he finds that the drug is safe and effective for use in self-medication as directed in proposed labeling. A proposal to exempt a drug from the prescription-dispensing requirements of section 503(b)(1)(C) of the act may be initiated by the Commissioner or by any interested person. Any interested person may file a petition seeking such exemption, which petition may be pursuant to Part 2 of this chapter, or in the form of a supplement to an approved new drug application.

* * * * *

23. By revising § 310.303(b) to read as follows:

§ 310.303 Continuation of long term studies, records, and reports on certain drugs for which new drug applications have been approved.

* * * * *

(b) A proposal to require additional or continued studies with a drug for which a new drug application has been approved may be made by the Commissioner on his own initiative or on the petition of any interested person, pursuant to Part 2 of this chapter. Prior to issuance of such a proposal, the applicant will be provided an opportunity for a conference with representatives of the Food and Drug Administration. When appropriate, investigators or other individuals may be invited to participate in the conference. All requirements for special studies, records, and reports will be published in § 310.304.

PART 314—NEW DRUG APPLICATIONS

24. In Part 314, by revising the introductory paragraph of § 314.115 to read as follows:

§ 314.115 Withdrawal of approval of an application.

The Commissioner shall notify the person holding an approved new drug application, and all other persons who manufacture or distribute identical, related, or similar drug products as defined in § 310.6 of this chapter, and afford an opportunity for a hearing on a proposal to withdraw approval of the application as provided in section 505(e) of the act and in accordance with the procedure in §§ 314.200 and 314.201, if:

* * * * *

25. By revising § 314.200 to read as follows:

§ 314.200 Notice of opportunity for hearing; notice of participation and request for hearing; grant or denial of hearing.

(a) The notice to the applicant, and to all other persons who manufacture or distribute identical, related, or similar drug products as defined in § 310.6 of this chapter, of an opportunity for a hearing on a proposal by the Director of the Bureau of Drugs to refuse to approve an application or to withdraw the approval of an application will state the reasons for his action and the grounds upon which he proposes to issue his order.

(1) Such notice may be general (i.e., simply summarizing in a general way the information resulting in the notice) or specific (i.e., either referring to specific requirements in the statute and regulations with which there is a lack of compliance, or providing a detailed description and analysis of the specific facts resulting in the notice).

(2) The notice will be published in the FEDERAL REGISTER and will state that the applicant, and other persons subject to the notice pursuant to § 310.6 of this chapter, has 30 days after the date of publication of the notice within which he is required to file a written notice of participation and request for hearing if he elects to avail himself of the opportunity for a hearing. The failure to file such a written notice of participation and request for hearing within that 30 days constitutes an election by the applicant, and other persons subject to the notice pursuant to § 310.6 of this chapter, not to avail himself of the opportunity for a hearing.

(3) It is the responsibility of every manufacturer or distributor of a drug product to review every notice of opportunity for heating published in the FEDERAL REGISTER to determine whether it covers any drug product he manufactures or distributes. Any person may request an opinion of the applicability of such a notice to a specific product he manufactures or distributes that may be identical, related, or similar by writing to the Food and Drug Administration, Bureau of Drugs, Division of Drug Labeling Compliance, HFD-310, 5600 Fishers Lane, Rockville, MD 20857. If such an opinion is requested, the time for filing an appearance and request for hearing and supporting studies and analyses shall begin as of the date or receipt of the opinion from the Food and Drug Administration.

(b) The notice of opportunity for hearing shall be provided to applicants and to other persons subject to the notice pursuant to § 310.6 of this chapter:

(1) To any person who has submitted a new drug application, by delivering the notice in person or by sending it by registered or certified mail to the last address shown in the new drug application.

(2) To any person who has not submitted a new drug application but who is subject to the notice pursuant to § 310.6 of this chapter, by publication of the notice in the FEDERAL REGISTER.

(c)(1) If the applicant, or any other person subject to the notice pursuant to § 310.6 of this chapter, elects to avail himself of the opportunity for a hearing, he shall file with the Hearing Clerk (i) within 30 days after the date of the publication of the notice (or of the date of receipt of an opinion requested pursuant to paragraph (a)(3) of this section) a written notice of participation and request for hearing, and (ii) within 60 days after the date of publication of the notice, unless a different period of time is specified in the notice of opportunity for hearing, the studies on which he relies to justify a hearing as specified in paragraph (d) of this section. The raw data underlying a study submitted may be incorporated by reference from a prior submission as part of a new drug application or other report.

(2) No data or analysis submitted after such 60 days will be considered in determining whether a hearing is warranted unless they are derived from well-controlled studies begun prior to the date of the notice of opportunity for hearing, the results of which were not in existence during that 60 days. Exceptions may be made on the basis of a showing of inadvertent omission and hardship. All studies in progress, the results of which the person requesting the hearing intends later to submit in support of the request for hearing, shall be listed. A copy of the complete protocol, a list of the participating investigators, and a brief status report of the studies shall be included in the submission made pursuant to paragraph (c)(1)(ii) of this section.

(3) Any other interested person who is not subject to the notice of opportunity for hearing may also submit comments on the proposal to withdraw approval of the new drug application. Such comments shall be submitted within the time and pursuant to the requirements specified in this section.

(d) A request for hearing shall be supported by a submission as specified in paragraph (c)(1)(ii) of this section containing the studies (including all protocols and underlying raw data) on which the person relies to justify a hearing with respect to his drug product.

(1) If effectiveness is at issue, a request for hearing shall be supported only by adequate and well-controlled clinical studies meeting all of the precise requirements of § 314.111(a)(5) and, for combination drug products, § 300.50 of this chapter, or by other studies not meeting those requirements for which a waiver has been previously granted by the Food and Drug Administration pursuant to the provisions of § 314.111(a)(5). All adequate and well-controlled clinical studies on the drug product known to the person requesting the hearing shall be sub-

mitted. Any unfavorable analyses, views, or judgments with respect to such studies known to such person shall also be submitted. No other data, information, or studies shall be submitted.

(2) Such submission shall include a factual analysis of all studies submitted. If effectiveness is at issue, such analysis shall specify how each such study accords, on a point-by-point basis, with each criterion required for an adequate well-controlled clinical investigation established in § 314.111(a)(5) and, if the product is a combination drug product, with each of the requirements for a combination drug established in § 300.50 of this chapter, or shall be accompanied by an appropriate waiver previously granted by the Food and Drug Administration. If a study deals with a drug entity or dosage form, or condition of use, or mode of administration other than the one(s) in question, such fact(s) shall be clearly stated. Any study conducted on the final marketed form of the drug product shall be so designated.

(3) Such analysis shall be submitted in the following format, except that the required information relating either to safety or to effectiveness shall be omitted if the notice of opportunity for hearing does not raise any issue with respect to that aspect of the drug; and information on compliance with § 300.50 shall be omitted if the drug product is not a combination drug product. Submissions not made in this format or not containing the required analyses will not be considered and will result in denial of a hearing, except that minor technical deficiencies may be excused if it is apparent that a good faith attempt has been made to comply with the requirements of this section and any deficiencies noted are immediately corrected upon request.

I. Safety data.

A. Animal safety data.

1. Individual active component(s).

a. Controlled studies.

b. Partially controlled or uncontrolled studies.

2. Combinations of the individual active components.

a. Controlled studies.

b. Partially controlled or uncontrolled studies.

B. Human safety data.

1. Individual active component(s).

a. Controlled studies.

b. Partially controlled or uncontrolled studies.

c. Documented case reports.

d. Pertinent marketing experiences that may influence a determination as to the safety of each individual active component.

2. Combinations of the individual active components.

a. Controlled studies.

b. Partially controlled or uncontrolled studies.

c. Documented case reports.

d. Pertinent marketing experiences that may influence a determination as to the safety of each individual active components.

II. Effectiveness data.

A. Individual active components: Controlled studies, with an analysis showing clearly how each such study satisfies, on a point-by-point basis, each of the criteria required by § 314.111(a)(5).

B. Combinations of individual active components.

1. Controlled studies, with an analysis showing clearly how such study satisfies, on a point-by-point basis, each of the criteria required by § 314.111(a)(5).

2. An analysis showing clearly how each requirement of § 300.50 of this chapter has been satisfied.

III. A summary of the data and views setting forth the medical rationale and purpose for the drug and its ingredients and the scientific basis for the conclusion that the drug and its ingredients have been proven safe and/or effective for the intended use. If there is an absence of controlled studies in the material submitted, or the requirements of any element of § 300.50 of this chapter or § 314.111(a)(5) have not been fully met, such fact(s) shall be clearly stated, and a waiver obtained pursuant to § 314.111(a)(1) shall be enclosed.

IV. A statement signed by the person responsible for such submission, that it includes in full (or incorporates by reference as permitted in § 314.200(c)(2)) all studies and information specified in § 314.200(d). (Warning: A willfully false statement is a criminal offense, 18 U.S.C. 1001).

(e) A notice of opportunity for hearing encompasses all issues relating to the legal status of the drug product(s) subject to it, including identical, related, and similar drug products as defined in § 310.6 of this chapter. Any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act, or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962, or for any other reason shall be stated in a notice of appearance and request for hearing pursuant to paragraph (c)(1)(i) of this section and supported by a submission pursuant to paragraph (c)(1)(ii) of this section and shall be the subject of an administrative determination by the Commissioner. The failure of any person subject to a notice of opportunity for a hearing, including any person who manufactures or distributes an identical, related, or similar drug product as defined in § 310.6 of this chapter, to submit a notice of participation and request for hearing or to raise all such contentions on which he relies shall constitute a waiver of any such contentions not so raised.

(1) A contention that a drug product is generally recognized as safe and effective within the meaning of section 201(p) of the act must be supported by submission of the same quantity and quality of scientific evidence as is required to obtain approval of a new drug application for the product, unless a waiver has been obtained from such requirement for effectiveness (as provided in § 314.111(a)(5)) and/or safety for good cause shown. Such submission shall be in the format and with the analyses required by paragraph (d) of this section. The failure to submit such scientific evidence or a submission that is not in the format or does not contain the analyses required by paragraph (d) of this section shall constitute a waiver of any such contention. General recognition of safety and effectiveness shall ordinarily be based upon published studies which may be corroborated by unpublished studies and other data and information.

(2) A contention that a drug product is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938 contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962, shall be supported by submission of evidence of past and present quantitative formulas, labeling, and evidence of marketing, on which reliance is made for such contention. The failure to submit such formulas, labeling, and evidence of marketing in the following format shall constitute a waiver of any such contention.

I. Formulation.

A. A copy of each pertinent document or record to establish the exact quantitative formulation of the drug (both active and inactive ingredients) on the date of initial marketing of the drug.

B. A statement whether such formulation has at any subsequent time been changed in any manner. If any such change has been made, the exact date, nature, and rationale for each change in formulation, including any deletion or change in the concentration of any active ingredient and/or inactive ingredient, shall be submitted, together with a copy of each pertinent document or record to establish the date and nature of each such change including but not limited to the formula which resulted from each such change. If no such change has been made, a copy of representative documents or records showing the formula at representative points in time shall be submitted to support the statement.

II. Labeling.

A. A copy of each pertinent document or record to establish the identity of each item of written, printed, or graphic matter used as labeling on the date the drug was initially marketed.

B. A statement whether such labeling has at any subsequent time been discontinued or changed in any manner. If such discontinuance or change has been made, the exact date, nature, and rationale for each discontinuance or change and a copy of each pertinent document or record to establish each such discontinuance or change shall be submitted, including but not limited to the labeling which resulted from each such discontinuance or change. If no such discontinuance or change has been made, a copy of representative documents or records showing labeling at representative points in time shall be submitted to support the statement.

III. Marketing.

A. A copy of each pertinent document or record to establish the exact date the drug was initially marketed.

B. A statement whether such marketing has at any subsequent time been discontinued. If such marketing has been discontinued, the exact date of each such discontinuance shall be submitted, together with a copy of each pertinent document or record to establish each such date.

IV. Verification.

A statement signed by the person responsible for such submission, that all appropriate records have been searched and to the best of his knowledge and belief it includes a true and accurate presentation of the facts (Warning: A willfully false statement is a criminal offense, 18 U.S.C. 1001).

(3) No drug product, including any active ingredient, which is identical, related, or similar, as defined in § 310.6, to a drug product, including any active ingredient for which a new drug application is or at any time has been effective or deemed approved, or approved under section 505 of the act, will be determined to be exempt from part or all of the new drug provisions of the act.

(4) A contention that a drug product is not a new drug for any other reason must be supported by submission of such factual records, data, and information as is necessary and appropriate to support such contention.

(5) It is the responsibility of every person who manufactures or distributes a drug product in reliance upon a "grandfather" provision(s) of the act to maintain in his files, organized as required by this paragraph, the data and information necessary fully to document and support such status.

(f) Upon receipt of any request for hearing, the Director of the Bureau of Drugs shall prepare an analysis of the request and a proposed order ruling upon the matter. The analysis and proposed order, the request for hearing, and any proposed order denying a hearing and response pursuant to paragraph (g) (2) or (3) of this section, shall be submitted to the office of the Commissioner for independent review and decision. No representative of the Bureau of Drugs shall participate or advise in the review and decision by the Commissioner. The office of the General Counsel shall observe the same separation of functions.

(g) A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing with respect to the particular drug product(s) specified in the request for hearing.

(1) Where a specific notice of opportunity for hearing (as defined in paragraph (a)(1) of this section) is used, it shall state that, if it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the refusal to approve the application or the withdrawal of approval of the application, e.g., no adequate and well-controlled clinical investigations meeting each of the precise elements of § 314.111(a)(5) and, for a combination drug product, § 300.50 of this chapter, showing effectiveness have been identified, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing. Any such order entering summary judgment shall set forth the Commissioner's findings and conclusions in detail and shall specify why each study submitted fails to meet the requirements of the statute and regulations or why the request for hearing does not raise a genuine and substantial issue of fact or shall specify the requirements of this section with respect to format or analyses with which there is a lack of compliance.

(2) Where a general notice of opportunity for hearing (as defined in paragraph (a)(1) of this section) is used and the Director of the Bureau of Drugs concludes that summary judgment against the person(s) requesting a hearing should be considered, he shall serve upon such person(s) by registered mail a proposed order denying a hearing. Such person(s) shall have 60 days after receipt of such proposed order to respond with sufficient data, information, and analyses to demonstrate that there is a genuine and substantial issue of fact which justifies a hearing.

(3) Where a general or specific notice of opportunity for hearing is used and the person(s) requesting a hearing submits data or information of a type required by the statute and regulations, and the Director of the Bureau of Drugs concludes that summary judgment against such person(s) should be considered, he shall serve upon such person(s) by registered mail a proposed order denying a hearing. Such person(s) shall have 60 days after receipt of such proposed order to respond with sufficient data, information, and analyses to demonstrate that there is a genuine and substantial issue of fact which justifies a hearing.

(4) If review of the data, information, and analyses submitted warrants the conclusion that the ground(s) cited in the notice are not valid, e.g., that substantial evidence of effectiveness exists, the Commissioner shall deny the hearing, enter summary judgment for the person(s) requesting the hearing, and rescind the notice of opportunity for hearing.

(5) If a hearing is requested and is justified the hearing will commence no more than 90 days after the expiration of such 30 days unless the parties otherwise agree in the case of denial of approval, and as soon as practicable in the case of withdrawal of approval.

(6) A hearing shall be granted if there exists a genuine and substantial issue of fact or if the Commissioner concludes, in his discretion, that a hearing would otherwise be in the public interest.

(7) If the manufacturer or distributor of a drug product that may be an identical, related, or similar drug product requests and is granted a hearing the issue whether the product is in fact identical, related, or similar to the drug subject to new drug application is properly encompassed within the hearing.

(8) A request for hearing, and any subsequent grant or denial of a hearing, shall be applicable only to the particular drug product(s) named in such documents.

(h) Any drug product subject to a notice of opportunity for hearing, including any identical, related, or similar drug product as defined in § 310.6 of this chapter, for which an opportunity for a hearing is waived or for which a hearing is denied shall promptly be the subject of a notice withdrawing the new drug application approval and declaring all such products unlawful. The Commissioner may, in his discretion, defer or stay such action pending a ruling on any related request for a hearing or pending any related hearing or other administrative or judicial proceeding.

26. By adding a new § 314.201 to read as follows:

§ 314.201 Procedure for hearings.

Hearings relating to new drugs under section 505 (d) and (e) of the act shall be governed by Part 2 of this chapter.

§§ 314.202, 314.203, 314.204, 314.205, 314.206, 314.220, 314.221, 314.222, 314.230, 314.231, 314.232, [Revoked].

27. By revoking §§ 314.202, 314.203, 314.204, 314.205, 314.206, 314.220, 314.221, 314.222, 314.230, 314.231 and 314.232.

28. By revising § 314.235 to read as follows:

§ 314.235 Judicial review.

(a) The transcript and record shall be certified by the Commissioner. In any case in which the Commissioner enters an order without a hearing pursuant to § 314.200(g), the requests for hearing together with the data and information submitted and the Commissioner's findings and conclusions shall be included in the record certified by the Commissioner.

(b) Judicial review of an order withdrawing approval of a new drug application, whether or not a hearing has been held, may be sought by a manufacturer or distributor of an identical, related, or similar drug product, as defined in § 310.6 of this chapter, in a United States court of appeals pursuant to section 505 (h) of the act.

PART 501—ANIMAL FOOD LABELING

28a. By revising § 501.2(f) to read as follows:

§ 501.2 Information panel of package for animal food.

* * * * *

(f) If the label of any package of food is too small to accommodate all of the information required by §§ 501.4, 501.5, 501.8, and 501.17, the Commissioner may establish by regulation an acceptable alternative method of disseminating such information to the public, e.g., a type size smaller than one-sixteenth inch in height, or labeling attached to or inserted in the package or available at the point of purchase. A petition requesting such a regulation, as an amendment to this paragraph shall be submitted pursuant to Part 2 of this chapter.

PART 503—COMMON OR USUAL NAMES FOR NONSTANDARDIZED FOODS

28b. In Part 503, by revising § 503.22 to read as follows:

§ 503.22 Petitions.

(a) The Commissioner of Food and Drugs, either on his own initiative or on behalf of any interested person who has

submitted a petition, may publish a proposal to issue, amend, or revoke, under Subpart B of this part, a regulation prescribing a common or usual name for a food, pursuant to Part 2 of this chapter.

(b) If the principal display panel of a food for which a common or usual name regulation is established is too small to accommodate all mandatory requirements, the Commissioner may establish by regulation an acceptable alternative, e.g., a smaller type size. A petition requesting such a regulation, which would amend the applicable regulation, shall be submitted pursuant to Part 2 of this chapter.

PART 508—EMERGENCY PERMIT CONTROL

28c. In Part 508, by revising § 508.19 (a) to read as follows:

§ 508.19 Establishment of requirements for exemption from section 404 of the act.

(a) Whenever the Commissioner finds after investigation that the distribution in interstate commerce of any class of food may, by reason of contamination with microorganisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered interstate commerce, he shall promulgated regulations in Subpart B of this part establishing requirements and conditions governing the manufacture, processing, or packing of the food necessary to protect the public health. Such regulations may be proposed by the Commissioner on his own initiative or in response to a petition from any interested person pursuant to Part 2 of this chapter.

* * * * *

PART 514—NEW ANIMAL DRUG APPLICATIONS

29. In Part 514, by revising § 514.201 to read as follows:

§ 514.201 Procedure for hearings.

Hearings relating to new animal drugs under section 505 (d), (e), (m)(3), and (m)(4) of the act shall be governed by Part 2 of this chapter.

§§ 514.202, 514.203, 514.204, 514.205, 514.206 514.220, 514.221, 514.222, 514.230, 514.231, 514.232 [Revoked]

30. By revoking §§ 514.202, 514.203, 514.204, 514.205, 514.206, 514.220, 514.221, 514.222, 514.230, 514.231, and 514.232.

31. By revising § 514.235 as follows:

§ 514.235 Judicial review.

(a) The transcript and record shall be certified by the Commissioner. In any case in which the Commissioner enters an order without a hearing pursuant to § 314.200(g) of this chapter, the request(s) for hearing together with the data and information submitted and the Commissioner's findings and conclusions shall be included in the record certified by the Commissioner.

(b) Judicial review of an order withdrawing approval of a new drug application, whether or not a hearing has been held, may be sought by a manufacturer or distributor of an identical, related, or similar drug product, as defined in § 310.6 of this chapter, in a United States court of appeals pursuant to section 505 (h) of the act.

PART 564—DEFINITIONS AND STANDARDS FOR ANIMAL FOOD

31a. In Part 564, by revising § 564.5 to read as follows:

§ 564.5 Procedure for establishing a food standard.

(a) The procedure for establishing a food standard under section 401 of the act shall be governed by Part 2 of this chapter.

(b) Any petition for a food standard shall show that the proposal, if adopted, would promote honesty and fair dealing in the interest of consumers.

(c) Any petition for a food standard shall assert that the petitioner commits himself to substantiate the information in the petition by evidence in a public hearing, if such a hearing becomes necessary.

(d) If a petitioner fails to appear, or to substantiate the information in his petition, at a public hearing on the matter, the Commissioner may either (1) withdraw the regulation and terminate the proceeding or (2) if he concludes that it is in accordance with the requirements of section 401 of the act, continue the proceeding and introduce evidence to substantiate such information.

31b. By adding a new paragraph (l) to § 564.17 to read as follows:

§ 564.17 Temporary permits for interstate shipment of experimental packs of food varying from the requirements of definitions and standards of identity.

* * * * *

(l) Any person who contests denial, modification, or revocation of a temporary permit shall have an opportunity for a regulatory hearing before the Food and Drug Administration pursuant to Subpart F of Part 2 of this chapter.

PART 570—FOOD ADDITIVES

31c. By revising § 570.15(b) to read as follows:

§ 570.15 Adoption of regulation on initiative of Commissioner.

* * * * *

(b) Action upon a proposal made by the Commissioner shall proceed as provided in Part 2 of this chapter.

31d. In Part 570, by revising the introductory text of § 570.35(c)(1) to read as follows:

§ 570.35 Affirmation of generally recognized as safe (GRAS) status.

* * * * *

(c)(1) Persons seeking the affirmation of GRAS status of substances as provided for in § 570.30(e), except those subject to the NAS–NRC GRAS list survey (36 FR 20546), shall submit a petition for GRAS affirmation pursuant to Part 2 of this chapter. Such petition shall contain information to establish that the GRAS criteria as set forth in § 570.30(b) have been met, in the following form:

* * * * *

31e. By revising § 570.38(b)(1) to read as follows:

§ 570.38 Determination of food additive status.

* * * * *

(b)(1) The Commissioner, on his own initiative or on the petition of any interested person, pursuant to Part 2 of this chapter, may issue a notice in the FEDERAL REGISTER proposing to determine that a substance is not GRAS and is a food additive subject to section 409 of the act. Any petition shall include all relevant data and information of the type described in § 571.130(b) of this chapter. The Commissioner will place all of the data and information on which he relies on public file in the office of the Hearing Clerk and will include in the FEDERAL REGISTER notice the name of the substance, its known uses, and a summary of the basis for the determination.

* * * * *

PART 571—FOOD ADDITIVE PETITIONS

31f. By revising § 571.110 to read as follows:

§ 57.110 Procedure for objections and hearings.

Objections and hearings relating to food additive regulations under section 409 (c), (d), or (h) of the act shall be governed by Part 2 of this chapter.

§ 571.120 [Revoked]

31g. By revoking § 571.120.

31h. By revising § 571.130 to read as follows:

§ 571.130 Procedure for amending and repealing tolerances or exemptions from tolerances.

(a) The Commissioner, on his own initiative or on the petition of any interested person, pursuant to Part 2 of this chapter, may propose the issuance of a regulation amending or repealing a regulation pertaining to a food additive or granting or repealing an exception for such additive.

(b) Any such petition shall include an assertion of facts, supported by data, showing that new information exists with respect to the food additive or that new uses have been developed or old uses abandoned, that new data are available as to toxicity of the chemical, or that experience with the existing regulation or exemption may justify its amendment or repeal. New data shall be furnished in the form specified in § 571.1 for submitting petitions.

§§ 571.200, 571.202, 571.203, 571.204, 571.205, 571.206, 571.208, 571.210, 571.212, 571.214, 571.220, 571.221, 571.222, 571.230 571.232, 571.235 [Revoked]

31. By revoking §§ 571.200, 571.202, 571.203, 571.204, 571.205, 571.206, 571.208, 571.210, 571.212, 571.214, 571.220, 571.221, 571.222, 571.230, 571.232, and 571.235.

PART 601—LICENSING

32. In Part 601, by revoking §§ 601.4, 601.5, and 601.6(c), by redesignating the remainder of § 601.6 as § 601.12, by adding new §§ 601.4 through 601.9, and by revising § 601.22 to read as follows:

§ 601.4 Issuance and denial of license.

(a) An establishment or product license shall be issued upon a determination by the Commissioner that the establishment or the product, as the case may be, meets the applicable standards established in this chapter. Licenses shall be valid until suspended or revoked.

(b) If the Commissioner determines that the establishment or product does not meet the standards established in this chapter, he shall deny the application and inform the applicant of the grounds for, and of an opportunity for a hearing on, his decision. If the applicant so requests, the Commissioner shall issue a notice of opportunity for hearing on the matter pursuant to § 2.111(b) of this chapter.

§ 601.5 Revocation of license.

(a) An establishment or product license shall be revoked upon application of the manufacturer giving notice of intention to discontinue the manufacture of all products or to discontinue the manufacture of a particular product for which a license is held, and waiving an opportunity for a hearing on the matter.

(b) If the Commissioner finds that (1) authorized Food and Drug Administration employees after reasonable efforts have been unable to gain access to an establishment or a location for the purpose of carrying out the inspection required under § 600.21 of this chapter, (2) manufacturing of products or of a product has been discontinued to an extent that a meaningful inspection or evaluation cannot be made, (3) the manufacturer has failed to report a change as required by § 601.12, (4) the establishment or any location thereof, or the product for which the license has been issued, fails to conform to the applicable standards established in the license and in this chapter designed to ensure the continued safety, purity, and potency of the manufactured product, (5) the establishment or the manufacturing methods have been so changed as to require a new showing that the establishment or product meets the standards established in this chapter in order to protect the public health, or (6) the licensed product is not safe and effective for all of its intended uses or is misbranded with respect to any such use, he shall notify the licensee of his intention to revoke the license, setting forth the grounds for, and offering an opportunity for a hearing on, the proposed revocation. Except as provided in § 601.6 and in cases involving willfulness, the notification required in this paragraph shall provide a reasonable period for the licensee to demonstrate or achieve compliance with the requirements of this chapter, before proceedings will be instituted for the revocation of the license. If compliance is not demonstrated or achieved and the licensee does not waive the opportunity for a hearing, the Commissioner shall issue a notice of opportunity for hearing on the matter pursuant to § 2.111(b) of this chapter.

§ 601.6 Suspension of license.

(a) Whenever the Commissioner has reasonable grounds to believe that any of the grounds for revocation of a license exist and that by reason thereof there is a danger to health, he may notify the licensee that his license for the establishment or the product is suspended and require that the licensee (1) notify the selling agents and distributors to whom such product or products have been delivered of such suspension, and (2) furnish to the Director, Bureau of Biologics, complete records of such deliveries and notice of suspension.

(b) Upon suspension of a license, the Commissioner shall either (1) proceed pursuant to the provisions of § 601.5(b) to revoke the license, or (2) if the licensee agrees, hold revocation in abeyance pending resolution of the matters involved.

§ 601.7 Procedure for hearings.

(a) A notice of opportunity for hearing, notice of appearance and request for hearing, and grant or denial of hearing for a biological drug pursuant to this Part, for which the exemption from the Federal Food, Drug, and Cosmetic Act in § 310.4 of this chapter has been revoked, shall be subject to the provisions of § 314.200 of this chapter except to the extent that the notice of opportunity for hearing on the matter issued pursuant to § 2.111(b) of this chapter specifically provides otherwise.

(b) Hearings pursuant to §§ 601.4 through 601.6 shall be governed by Part 2 of this chapter.

(c) When a license has been suspended pursuant to § 601.6 and a hearing request has been granted, the hearing shall proceed on an expedited basis.

§ 601.8 Publication of revocation.

Notice of revocation of a license, with statement of the cause therefor, shall be issued by the Commissioner and published in the FEDERAL REGISTER.

§ 601.9 Licenses; reissuance.

(a) *Compliance with standards.* An establishment or product license, previously suspended or revoked, may be reissued or reinstated upon a showing of compliance with required standards and upon such inspection and examination as may be considered necessary by the Commissioner.

(b) *Exclusion of noncomplying location.* An establishment or product license, excluding a location or locations that fail to comply with required standards, may be issued without further application and concurrently with the suspension or revocation of the license for noncompliance at the excluded location or locations.

§ 601.22 Products in short supply; initial manufacturing at other than licensed establishment.

Licenses issued to a manufacturer for an establishment shall authorize persons other than such manufacturer to conduct at places other than such establishment the initial, and partial manufacturing of a product for shipment solely to such manufacturer only to the extent that the names of such persons and places are registered with the Commissioner of Food and Drugs and he finds upon application of such manufacturer, that (a) the product is in short supply due either to the peculiar growth requirements of the organism involved or to the scarcity of the animal required for manufacturing purposes, and (b) such manufacturer has established with respect to such persons and places such procedures, inspections, tests or other arrangements as will assure full compliance with the applicable regulations of this subchapter related to continued safety, purity, and potency. Such persons and places shall be subject to all regulations of this subchapter except §§ 601.1 to 601.6, 601.9, 601.10, 601.20, 601.21, 601.30 to 601.33, and 610.60 to 610.65 of this chapter. Failure of such manufacturer to maintain such procedures, inspections, tests, or other arrangements, or failure of any person conducting such partial manufacturing to comply with applicable regulations shall constitute a ground for suspension or revocation of the authority conferred pursuant to this section on the same basis as provided in §§ 601.6 to 601.8 with respect to the suspension and the revocation of licenses.

§§ 601.40, 601.41, 601.42, 601.43, 601.44 [Revoked].

33. By revoking §§ 601.40 through 601.44.

PART 701—COSMETIC LABELING

34. In Part 701, by revising § 701.3 (b) and (e) to read as follows:

§ 701.3 Designation of ingredients.

* * * * *

(b) The declaration of ingredients shall appear with such prominence and conspicuousness as to render it likely to be read and understood by ordinary individuals under normal conditions of purchase. The declaration shall appear on any appropriate information panel in letters not less than 1/16 of an inch in height and without obscuring design, vignettes, or crowding. In the absence of sufficient space for such declaration on the package, or where the manufacturer or distributor wishes to use a decorative container, the declaration may appear on a firmly affixed tag, tape, or

card. In those cases where there is insufficient space for such declaration on the package, and it is not practical to firmly affix a tag, tape, or card, the Commissioner may establish by regulation an acceptable alternate, e.g., a smaller type size. A petition requesting such a regulation as an amendment to this paragraph shall be submitted pursuant to Part 2 of this chapter.

* * * * *

(e) Interested persons may submit a petition requesting the establishment of a specific name for a cosmetic ingredient pursuant to Part 2 of this chapter. The Commissioner may also propose such a name on his own initiative.

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

35. In Part 809, by revising § 809.30(a) (formerly § 328.30 prior to recodification published in the FEDERAL REGISTER of February 13, 1976 (41 FR 6907)) to read as follows:

§ 809.30 Procedure for establishing, amending or repealing standards.

(a) *Basis for standards and available approaches to developing standards.* Whenever in the judgment of the Commissioner the establishment of a product class standard is necessary to reduce or eliminate unreasonable risk of illness or injury associated with exposure to or use of an in vitro diagnostic product and there are no other more practicable means to protect the public from such risk, he may propose such a standard. In proposing a product class standard he shall consider, and publish in the FEDERAL REGISTER findings on, the degree of risk or injury associated with the use of the product, the availability of information relating to the sciences upon which the products or their uses are based, the approximate number of products subject to the standard, the medical need for the products, and the probable effect of the standard upon the utility, cost, or availability of the product, and available means of achieving the objective of the standard with a minimal disruption of supply and of reasonable manufacturing and other commercial practices. Three procedures are available for developing product class standards and may be proposed on the initiative of the Commissioner or by petition of interested persons, pursuant to Part 2 of this chapter: (1) An existing standard may be utilized, (2) interested persons outside of the Food and Drug Administration may develop a proposed standard or (3) the Food and Drug Administration may develop the standard.

* * * * *

Effective date: These regulations shall be effective February 24, 1977.

Dated: January 14, 1977.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc.77-2224 Filed 1-24-77;8:45 am]

federal register

TUESDAY, JANUARY 25, 1977

PART VIII



DEPARTMENT OF LABOR

Employment and Training Administration

■

MIGRANT AND SEASONAL FARMWORKERS

Employment Service Complaint System, Monitoring, and Enforcement

Title 20—Employees' Benefits

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

MIGRANT AND SEASONAL FARMWORKERS

Employment Service Complaint System, Monitoring, and Enforcement

On October 5, 1976, at 41 FR 44014, the Employment and Training Administration of the Department of Labor proposed for 20 CFR Parts 651, 653, and 658 regulations under the Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq., governing services to migrant and seasonal farmworkers by the Federal-State public employment service system.

The Department also proposed for 20 CFR Part 658, subpart E, regulations for the establishment and operation of an employment service complaint system for the administrative handling of complaints alleging violations of Employment Service regulations by employers or by the Employment Service.

Finally, the Department proposed for 20 CFR Part 658, subparts F, G, and H regulations governing the monitoring of all Employment Service activities, and the enforcement of Employment Service regulations.

The proposed regulations were part of the Department's continuing effort to publish comprehensive Employment Service regulations which are intended to replace the 4,000 page Employment Security Manual and the multitude of Employment Service directives currently in effect.

The proposed regulations paralleled the court order in the case of *NAACP, Western Region, et al.*, Civil Action No. 2010–72, U.S.D.C., D.C., Aug. 9, 1974 as follows:

1. The proposed 20 CFR Part 653, subpart B, Services for Migrant and Seasonal Farmworkers, (MSFWs) related to Sec. I of the court order, "Provision of Service to Migrant and Seasonal Farmworkers" and to Sec. II of the court order, "Information System".

2. The proposed 20 CFR Part 658, subpart G, Review and Assessment of State Agency Compliance with Employment Service Regulations, related to Sec. III of the court order, "Monitoring", and Sec. V of the court order, "Assurance of State Compliance with Federal Law".

3. The proposed 20 CFR Part 658, subpart E, Employment Service Complaint System, related to Sec. IV of the court order, "Complaint Resolution".

4. The proposed 20 CFR Part 658, subpart H, Federal Application of Remedial Action to State Agencies, related to Sec. V of the court order, "Assurance of State Compliance with Federal Law".

The Department is now publishing the above-described regulations in final form.

These regulations replace Secs. 1765–1769, 2000–2008, and 2056–2059 of the Employment Security Manual. The regulations also replace General Administrative Letter (GAL) 10–75, Field Memorandum (FM) 360–75, and other current directives governing the provision and administration of services to migrant and seasonal farmworkers including the Secretary's "13 Points" of April, 1972 to the extent that the "13 Points" relate to Employment Service activities under the Wagner-Peyser Act.

These regulations supersede the regulations at 20 CFR Parts 601–604 to that extent that the regulations at Parts 601–604 conflict with these regulations. The regulations also supersede all Department of Labor and State agency directives which conflict with the regulations.

Interested persons were invited to submit written comments, data, and arguments on the proposed regulations to the Assistant Secretary for Employment and Training until November 5, 1976. On November 5, 1976 the Department published a notice in the FEDERAL REGISTER extending the comment period to December 6, 1976.

Comments were received from about 75 agencies, organizations and private individuals, including a great many State employment service agencies, several employer organizations and several legal service groups. Comments were received on practically every sentence of Part 653, subpart B—Services for Migrant and seasonal Farmworkers (MSFWs). Comments on Part 658 were mostly general and conceptual in nature rather than specific. The comments were very diverse. Some commentators suggested that the regulations include a number of additional specific protections and benefits for MSFWs. Other commentors stated that many of the provisions and protections included in the proposed regulations were too paternalistic with respect to MSFWs and that, were the Department to require such benefits and protections for MSFWs, other applicant groups might believe themselves shortchanged.

In drafting these final regulations the Department used the following principles:

(1) ES services to MSFWs have traditionally been, and are today, an area of national concern. Because of the migratory nature of MSFW work and MSFW use of the ES interstate clearance system, and because MSFWs are often not working within a State long enough to be eligible for certain State benefits, the Department believes that there is sufficient reason to set forth special regulations on ES services to MSFWs.

(2) It would be self-defeating, however, and a disservice to MSFWs to offer services and benefits to MSFWs, which neither the Department nor the State agencies can realistically provide. Over the last several years the number of MSFWs in the nation has declined substantially. The overall American labor force, however, has increased by many millions. Meanwhile, ES funding has not significantly changed. Nor is there any statutory mechanism for ES funding to automatically increase during periods of high unemployment. The final regulations on services to MSFWs, therefore, were drafted with an eye not only on MSFWs but also on the rest of the American labor force, to which the ES is required by statute to offer service.

(3) The use of the ES system by employers is voluntary (except in the case of certain government contractors and employers seeking to employ foreign workers). If the ES places requirements on employers which the employers consider unreasonable, the employers may take their business elsewhere thus removing their MSFW employees from ES-required benefits and protections. The Department believes that the vast majority of agricultural employers are concerned with the welfare of their MSFW employees. The final regulations on services to MSFWs, therefore, were drafted to contain requirements with respect to employers which the Department believes are reasonably designed to encourage the use of the ES system by employers so that ES-required benefits and services for MSFWs will be able to be extended to the greatest possible number of MSFWs.

The most significant comments, and the Department's response thereto, were as follows:

1. A great many commentators, State agencies, employer groups, and legal service groups, suggested changes to the definitions of "Migrant," "applicant," "seasonal farmworkers" and other definitions. The specific changes suggested were many and diverse. The Department is studying these suggestions and has initially concluded that the definitions can be improved. Nevertheless, because of the complexity of the review process, the extensive change in ETA reporting systems any changes would require, and because of the expense involved, the definitions in the final regulations, with minor clarifications, are the same as in the proposed rulemaking. The Department believes that the definitions are reasonable ones and that they are consistent with present and past practice.

2. Many comments showed that the proposed definition for "intrastate job order" was unsatisfactory for States which use Statewide Job Bank systems. The definition has been clarified to state that a job order is an intrastate order when the order taker determines that workers will be needed who live beyond commuting distance from the worksite.

3. One commentor suggested that counseling, job development and testing be listed as basic services of the ES. This was not accepted. Sec. 3 of the Wagner-Peyser Act mandates the basic service of the ES as a no-fee labor exchange.

4. One commentor suggested that day-hauls be required to offer the full range of ES services. This was not accepted. Not only is this a practical impossibility, but it would negate the entire day-haul concept to change day-hauls into what would in effect be additional local offices. Workers at day-hauls will, however, be informed of the full range of ES services available at local offices.

5. One commentor suggested that "minimum levels" be established for all ES services. This was not accepted except to the extent that minimum requirements are set forth in the regulations. MSFWs, like other job applicants, may or may not

need or may or may not desire specific ES services or a specific "level" of services beyond those required to be afforded them in the regulations.

6. Several commentors objected to the terms "if feasible" and "if appropriate" which occurred several times in the proposed rule-making especially with reference to Spanish language requirements. The final regulations avoid the use of these terms whenever possible. Local offices which serve a significant number of MSFWs (such offices will be designated by the ETA national office) must have bilingual (English-Spanish) staff if a substantial portion of the MSFWs they serve are fluent and/or literate in Spanish but are not fluent or literate in English.

7. Many commentors expressed confusion over the proposed "Job Bank information" Section. Most thought it was tautological or, if not tautological, hard to understand. The section has been retitled "job information" and has been clarified and simplified.

8. Many commentors expressed dissatisfaction with the wording of the Waiver Form. Some State agencies suggested meritorious alternate wording. The waiver forms are already in print and being used. However, upon approval of the Administrator, a State agency may use a form it thinks will be clearer to the MSFWs.

9. Some commentors questioned whether State agencies should be permitted to establish day-hauls but not operate them. The final regulations no longer permit a State agency to establish a day-haul without operating it. Further, no referrals may be made to day hauls not operated by the State agency or another State agency.

10. In response to one comment, the day haul section has been clarified to require ES personnel to report apparent law violations to the local office manager.

11. In response to many comments, the outreach section has been amended to preclude political and unionization activities and to omit language which many commentors interpreted as encouraging officious attempts to disrupt the work which the MSFW has scheduled for himself or herself. The MSFW, however, will be informed of ES services such as referral to year round job opportunities and supportive services.

12. In response to several comments, the requirements in the proposed regulations regarding the job description portion of interstate job orders have been extended to intrastate job orders.

13. Two commentors suggested that employers be required to guarantee a certain amount of work to MSFWs. This was rejected as being too much of a burden on employers.

14. One commentor requested that discrimination by "marital status" on job orders be prohibited. This was not accepted. The regulations do prohibit discrimination by sex, but do not go beyond current Federal statutes which do not prohibit discrimination by marital status per se.

15. Some commentors suggested that all MSFWs be given copies of interstate job orders. The Department, however, believes that the present requirement of giving such job orders on request has adequately served both the MSFWs and the administrative process of the Department. Some 19,000 of such job orders were given on request last year. The Department is, however, requiring employers to give a copy of the work contract to all agricultural workers recruited through the ES interstate or intrastate clearance system.

16. One commentor suggested that the "changes in crop situations" section be amended to address changes due to over-recruitment. This has been done.

17. One commentor suggested that field checks be done on all employers to which the ES has referred workers. This was not accepted. The Department believes that field checks are a reasonable service for MSFWs who migrate using the ES clearance system. To expand this to the millions of employers served by the ES including State governments, hospitals, mines, factories, Indian reservations, the military, etc. would be seriously impractical and prohibitively expensive and would involve the ES in enforcement activities expressly committed by Congress and State legislatures to specially authorized, funded and trained enforcement agencies. The Department believes that in requiring field checks for migratory MSFWs, the Department has gone a long way indeed toward reasonably looking after the employment rights of MSFWs, a group for which the Department has a genuine national concern.

18. One commentor suggested that the head of the State agency have overall responsibility for State agency self-monitoring. This has been done.

19. Some commentors suggested that the ES-complaint system handle complaints which are not ES-related, that is, which are not against the ES itself or against an employer for allegedly violating ES regulations. In addition to the legal question as to whether the ES may use Wagner-Peyser funds to finance a complaint system for arguably non-ES related complaints, the ES has to consider that, with present funding and staffing, the ES system serves far less of the general labor force than it could potentially serve. To significantly divert ES funds to handle non-ES related complaints would not best serve the interests of the ES system or of the employers or applicants, including MSFWs.

20. One commentor suggested that the ES fund institutions who would, in turn, bring complaints on behalf of MSFWs against the ES system. This comment was not accepted. The Department believes that legal service groups and even MSFWs themselves are capable of representing the interests of MSFWs.

21. One comment stated that, since the complaint system will handle complaints against employers, a complainant would have to exhaust the system before bringing, for example, a contract action against an employer. The Department, however, intends the complaint system, with respect to complaints against employers, to preclude, before the exhaustion of the complaint system, only court actions alleging an employer's breach of ES regulations.

22. One commentor noted that it is the "outcome of services" such as placement which "actually affect the lives of farmworkers" and objected to the section of the proposed regulations which stated that State agencies do not have substantial control over outcomes. While it may well be true that MSFWs are affected more by outcomes than by anything else, it is also true that State agencies have only indirect control over these outcomes. That is simply the nature of the system set up by the Wagner-Peyser Act and of the nation's free contractual employment system. The Department believes, however, that, if the requirements set forth in the regulations are adhered to, the outcomes for MSFWs will be considerably, if indirectly, enhanced.

23. One commentor asked that judicial review be provided after final DOL action against a State agency. This was not accepted. Judicial review should be determined on a case-by-case basis.

24. Some commentators suggested replacing the complaint system with a compulsory arbitration system. This was not accepted. The complaint system will be concerned, not with the give and take of contractual rights, but with adjudicating violations of Federal regulations. Thus, the procedure set forth in the regulations is a system with the full extent of procedural due process.

25. One commentor suggested that the role of the Governor be more clearly set forth in the regulations. The Department intends to deal with this comment very carefully in its drafting of 20 CFR Part 652—Basic Organization of the ES System and Part 657—Grants to State Agencies.

26. One commentor requested that State agencies be allowed to seek regional office review of State hearing officer decisions. This comment is being held in abeyance. The Department will carefully monitor the complaint system to see whether the regulations should be so amended at a future date.

27. One commentor objected to the language in the proposed rulemaking which stated that the ES complaint system would supersede the system at 29 CFR Part 31. Thus, there will not be two alternate systems for handling complaints alleging unlawful discrimination by race, color or national origin.

28. Some State agencies raised questions on funding and with respect to the Resource Allocation Formula. The Department will continue to work closely with the State agencies on this problem and has sent copies of these comments to the groups who are now engaged in special studies on the funding matter.

29. Some commentors suggested that State agencies be given an opportunity for a hearing whenever any remedial action or disallowance is applied. This suggestion has been accepted. With regard to certain remedial actions, an opportunity for a prior conference with the Assistant Secretary has also been added.

30. At the suggestion of many commentors the requirement that the employer sign an intrastate or interstate job order "in the presence of the order taken" has been omitted.

31. As a result of a great many comments, the term "employer-related complaint" has been dropped. All complaints handled by the ES-complaint system are now called "ES-related" complaints.

32. Many commentors suggested that the ES monitor not only employers but also employees and that the ES refuse to service employees who are truant, tardy, lazy, obstinate, or who say they are qualified for jobs for which they turn out not to be qualified. Although there appears to be a logical symmetry to this request, the Department would like to emphasize that the ES is not an enforcement agency; it is basically, under the statute, a labor exchange agency. The ES enforces only its own regulations. That the regulations on MSFWs place more requirements on employers than do the vast majority of ES regulations comes from the Department's desire to provide reasonable employment protections for this especially vulnerable group of workers. The Department hopes that most employers will understand and accept this reasoning and that they will continue to use the ES and to assist the ES in affording appropriate employment for MSFWs.

33. Many commentors criticized the "full-application-waiver" procedures as being too cumbersome and time consuming and of very little real usefulness to MSFWs. A few commentors, however, suggested that the full procedure be mandated at day hauls. The procedure is substantially the same as in the proposed rule-making. The Department will continue to assess this issue.

34. Many commentors stated that the time limits for handling complaints were too long; many said they were too short. Most commentors, however, did not question them. The final regulations have the same time limits as the proposed rule-making.

35. Many other clarifying, editorial and technical changes have been made.

Accordingly 20 CFR Chapter V is amended, effective February 24, 1977, to read as follows:

PART 601—ADMINISTRATIVE PROCEDURE

§ 601.6 [Amended]

1. In paragraph (b), first paragraph, the phrase "central office of the Administration" is changed to "ETA national office".

2. In paragraph (b), second paragraph, the term "Administration" is changed to "ETA national office".

3. In paragraph (c), the phrase "Director of the Employment Service" is changed to "ETA national office" each time it appears, and the term "Director" is changed to "ETA national office".

§ 601.8 [Amended]

4. The term "Director" is changed to "Secretary".

5. The phrase "Post Office Department" is changed to "U.S. Postal Service" each time it appears.

§ 601.9 [Amended]

6. The phrase "State Audit Branch, Division of Business Management" is deleted.

7. The term "Director" is changed to "ETA".

PART 602—FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM

8. In the table of contents for Part 602, §§ 602.9 and 602.21 are deleted.

§ 602.1 [Amended]

9. In paragraph (a), the words "and all rules, regulations, and standards promulgated thereunder" are deleted.

§ 602.9 [Deleted]

10. § 602.9 is deleted.

§ 602.15 [Amended]

11. The words "ETA 'Standards for a Merit System of Personnel Administration' " are changed to "the Civil Service Commission regulations at 45 CFR Part 70".

§ 602.18 [Amended]

12. In paragraph (a), the term "Director" is changed to "Administrator".

§ 602.21 [Deleted]

13. Section 602.21 *Delegation of Authority*, is deleted.

PART 603—STATE PROGRAM BUDGET PLANS UNDER THE WAGNER-PEYSER ACT

14. The title of the Part is changed to STATE PROGRAM BUDGET PLANS UNDER THE WAGNER-PEYSER ACT.

§ 603.1 [Amended]

15. The phrase "plan of operation", each of the three times it appears, is changed to "program budget plan".

§ 603.2 [Amended]

16. In paragraph (a) the phrase "Title IV of the Servicemen's Readjustment Act of 1944 as amended" is changed to read "38 U.S.C. Chapters 41 and 42".

17. Section 603.3 is revised to read as follows:

§ 603.3 Compliance with USES regulations.

Each State agency shall submit a statement, as part of its State program budget plan, that it will comply with the regulations of the USES at 20 CFR Parts 601–604, 620, 621, 651–658, and at 29 CFR Part 8.

§ 603.5 [Amended]

18. The phrase "plan of operation" is changed to "program budget plan".

PART 604—POLICIES OF THE UNITED STATES EMPLOYMENT SERVICE

19. Paragraphs (b) and (c) are revised to read as follows:

§ 604.2 Clearance.

* * * * *

(b) To recruit qualified workers from local sources before resorting to clearance unless a shortage of local workers is anticipated.

(c) To place into clearance only those job orders which specify at least the applicable Federal or State minimum wage, and to place job orders for agricultural workers into intrastate and interstate clearance in accordance with the regulations at § 653.108 of this Chapter.

* * * * *

§ 604.5 [Amended]

20. Everything after the phrase "and related industries" is deleted.

21. The following new Part 651 is added to Title 20.

PART 651—GENERAL PROVISIONS GOVERNING THE FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM

Sec.

651.1 Scope and purpose of the Federal-State employment service system.
651.2 Basic structure of the employment service system.
651.3 Federal statutes governing the employment service system.
651.4 Executive Orders affecting the employment service system.
651.5 Format of the regulations for the employment service system.
651.6 Consolidated table of contents for Parts 651–658.
651.7 Definitions of terms used in Parts 651–658.

AUTHORITY: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq., unless otherwise noted.

§ 651.1 Scope and purpose of the Federal-State employment service system.

(a) The basic purpose of the Federal-State employment service system is to provide a national system of public employment offices through which no-fee employment services are provided to workers who are seeking employment and to employers who are seeking job applicants. The basic employment service of the employment service system, therefore, is the referral of workers to jobs through the operation, without fee, of a labor-exchange system.

(b) The employment service system also performs other functions related to its basic labor-exchange function. Such ancillary functions include developing job openings, employment counseling and testing, assisting employers with certain employment-related problems, the processing of labor certification applications for the temporary and permanent employment of foreign workers in the United States, the conducting of prevailing wage surveys, and the performance of other employment-related activities as set forth in the regulations at

Parts 601–604, 620, 621 and 651–658 of this Chapter and at 29 CFR Parts 8, 26, and 75.

§ 651.2 Basic structure of the employment service system.

(a) Sec. 1 of the Wagner-Peyser Act of 1933 (Act) established as a component of the Department of Labor a United States Employment Service (USES). Sec. 3(a) of the Act sets forth basic responsibility of the USES. It states:

> It shall be the province and duty of the bureau [USES] to promote and develop a national system of employment offices for men, women, and juniors who are legally qualified to engage in gainful occupations, including employment counseling and placement services for handicapped persons, to maintain a veterans' service to be devoted to securing employment for veterans, to maintain a farm placement service, and, in the manner hereinafter provided, to assist in establishing and maintaining systems of public employment offices in the several States and the political subdivisions thereof in which there shall be located a veterans' employment service. The bureau [USES] shall also assist in coordinating the public employment offices throughout the country and in increasing their usefulness by developing and prescribing minimum standards of efficiency, assisting them in meeting problems peculiar to their localities, promoting uniformity in their administrative and statistical procedure, furnishing and publishing information as to opportunities for employment and other information of value in the operation of the system, and maintaining a system for clearing labor between the several States.

(b) Sec. 4 of the Act provides that any State which wishes to receive funds under the Act must, through its legislature, accept the provisions of the Act and must designate or authorize the creation of a State agency vested with all the powers necessary to cooperate with the USES under the Act.

(c) Sec. 8 of the Act requires that State agencies submit to the Secretary of Labor detailed plans for carrying out the provisions of the Act within the State.

(d) Sec. 9 of the Act requires State agencies to make operational and expenditures reports as prescribed by the Secretary of Labor. It requires the Secretary to monitor State agencies operations and expenditures, and authorizes the Secretary to apply remedial actions to State agencies which have violated the Secretary's rules and regulations, after notice to the State agency.

(e) Sec. 11 of the Act establishes a Federal Advisory Council to advise the Secretary on the operation of the employment service system. It also requires that State agencies establish similar advisory councils.

(f) Sec. 12 of the Act authorizes the Secretary to make such rules and regulations as may be necessary to carry out the provisions of the Act.

§ 651.3 Federal statutes governing the employment service system.

(a) The Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq., sets forth the basic responsibilities of the employment service system.

(b) In addition to Wagner-Peyser Act responsibilities, the employment service system is governed or affected by the following Federal statutes:

(1) The Social Security Act, Titles III, IX and XII;

(2) 38 U.S.C. Chapters 41 and 42;

(3) Titles VI and VII of the Civil Rights Act of 1964;

(4) Sec. 212(a)(14) of the Immigration and Nationality Act;

(5) The Consolidated Farm and Rural Development Act of 1972; and

(6) The Farm Labor Contractor Registration Act of 1963, as amended.

§ 651.4 Executive Orders affecting the employment service system.

The following Executive Orders have an impact upon the employment service system:

(a) Executive Order 10582—Implementing the Buy American Act;

(b) Executive Order 10650—Relating to the Selection of Persons with Critical Skills for Enlistment in the Ready Reserves;

(c) Executive Order 11190—Relating to the Screening of the Ready Reserve;

(d) Executive Order 11075—Providing for the Implementation of the Trade Expansion Act;

(e) Executive Order 11141—Declaring a Public Policy Against Discrimination on the Basis of Age;

(f) Executive Order 11246—Relating to Equal Employment Opportunity;

(g) Executive Order 11478—Relating to Equal Employment in the Federal Government;

(h) Executive Order 11307—Providing for the Coordination of Federal Programs Affecting Agricultural and Rural Area Development;

(i) Executive Order 11490—Relating to Emergency Preparedness Functions;

(j) Executive Order 11575—Relating to the Disaster Relief Act;

(k) Executive Order 11701—Relating to Employment of Veterans by Federal Agencies and Government Contractors and Subcontractors.

§ 651.5 Format of the regulations for the employment service system.

(a) Part 651 contains the general provisions governing the Federal-State employment service system.

(b) Part 652, when published, will set forth the basic requirements relative to the establishment and organization of State employment service agencies.

(c) Part 653 contains the requirements governing the principal services of the employment service system.

(d) Part 654, when published, will set forth the provisions governing special services of the employment service system.

(e) Part 655, when published, will contain the labor certification process for the temporary employment of foreign workers in the United States.

(f) Part 656 contains the regulations governing the labor certification process for the permanent employment of foreign workers in the United States.

(g) Part 657, when published, will set forth the requirements for State agency program budget plans, including their development, submission, and approval, and the allocation of funds to the State agencies.

(h) Part 658 contains the general administrative provisions of the employment service system, including personnel, fiscal, reporting, and nondiscrimination standards, the employment service complaint system, and monitoring and enforcement standards.

§ 651.6 Consolidated table of contents for Parts 651–658.

The table of contents for Parts 651–658 is as follows:

PART 651—GENERAL PROVISIONS GOVERNING THE FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM

Sec.
651.1 Scope and purpose of the Federal-State employment service system.
651.2 Basic structure of the employment service system.
651.3 Federal statutes governing the employment service system.
651.4 Executive Orders affecting the employment service system.
651.5 Format of the regulations for the employment service system.
651.6 Consolidated table of contents for Parts 651–658.
651.7 Definitions of terms used in Parts 651–658.

PART 652—BASIC ORGANIZATION OF THE EMPLOYMENT SERVICE SYSTEM [RESERVED]

PART 653—SERVICES OF THE EMPLOYMENT SERVICE SYSTEM

SUBPART A—BASIC SERVICES OF THE EMPLOYMENT SERVICE SYSTEM [RESERVED]

SUBPART B—SERVICES FOR MIGRANT AND SEASONAL FARMWORKERS (MSFWS)

Sec.
653.100 Purpose and scope of subpart.
653.101 Provision of services to migrant and seasonal farmworkers (MSFWs).
653.102 Job information.
653.103 MSFW job applications.
653.104 Job applications of MSFW families and crew members.
653.105 Situations requiring neither full applications nor waivers.
653.106 ES day-haul responsibilities.
653.107 Outreach.
653.108 Requirements for intrastate and interstate job orders seeking agricultural workers.
653.109 Changes in crop and recruitment situations.
653.110 Field checks.
653.111 State agency self-monitoring.
653.112 Data collection.
653.113 Disclosure of data.
653.114 State agency staffing requirements.
653.115 State agency program budget plans.

SUBPART C—SERVICES FOR VETERANS

653.200 Purpose and scope of subpart.
653.201 Definitions of terms used in subpart.

FEDERAL ADMINISTRATION

653.210 Role of the Administrator.
653.211 Role of the Veterans Employment Service (VES).
653.212 Role of Regional Administrator (RA).

Sec.
653.213 Assignment and role of Regional Veterans' Employment Representatives (RVERs).
653.214 Assignment and role of State Veterans' Employment Representatives (SVERs).

STANDARDS OF PERFORMANCE GOVERNING STATE AGENCY SERVICES TO VETERANS AND ELIGIBLE PERSONS

653.220 Standards of performance.
653.221 Standards of performance governing State agency services.
653.222 Performance standard on facilities for VES staff.
653.223 Performance standards on reporting.
653.224 Performance standards governing the assignment and role of Local Veterans' Employment Representatives (LVERs).
653.225 Standards of performance governing State agency cooperation and coordination with other agencies and organizations interested in the employment development of veterans and eligible persons.
653.226 Standards of performance governing complaints of veterans and eligible persons.

FEDERAL MONITORING OF STATE AGENCY COMPLIANCE

653.230 Veterans preference indicators of compliance.
653.231 Secretary's annual report to Congress.

PART 654—SPECIAL RESPONSIBILITIES OF THE EMPLOYMENT SERVICE SYSTEM [RESERVED]

PART 655—LABOR CERTIFICATION PROCESS FOR THE TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES [RESERVED]

PART 656—LABOR CERTIFICATION PROCESS FOR THE PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

SUBPART A—PURPOSE AND SCOPE OF PART 656

656.1 Purpose and scope of Part 656.
656.2 Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder.

SUBPART B—OCCUPATIONAL LABOR CERTIFICATION DETERMINATIONS

656.10 Schedule A.
656.11 Schedule B.

SUBPART C—LABOR CERTIFICATION PROCESS

656.20 Introduction.
656.21 Basic labor certification application process.
656.22 Applications for labor certifications for Schedule A occupations.
656.23 Applications for labor certifications for Schedule B occupations; requests for waivers from Schedule B.
656.24 Labor certification determinations.
656.25 Procedures following a labor certification determination.
656.26 Administrative-judicial review of denials of labor certification.
656.27 Hearings.
656.28 Document transmittal following the granting of a labor certification.
656.29 Filing of a new application after the denial of a labor certification.
656.30 Validity of and invalidation of labor certifications.
656.31 Labor certification applications involving fraud or willful misrepresentation.
656.32 Fees for services and documents.

SUBPART D—DEFINITIONS

Sec.
656.50 Definitions, for purposes of this Part, of terms used in this Part.

SUBPART F—ADDRESSES OF DEPARTMENT OF LABOR REGIONAL OFFICES

656.60 Addresses of Department of Labor regional offices.

PART 657—PROVISIONS GOVERNING GRANTS TO STATE AGENCIES FOR EMPLOYMENT SERVICES ACTIVITIES (RESERVED)

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE EMPLOYMENT SERVICE SYSTEM

SUBPART A—(RESERVED)

SUBPART B—[RESERVED]

SUBPART C—[RESERVED]

SUBPART D—[RESERVED]

SUBPART E—EMPLOYMENT SERVICE COMPLAINT SYSTEM

658.400 Purpose and scope of subpart.
658.401 Types of complaints handled by ES complaint system.

STATE AGENCY ES COMPLAINT SYSTEM

658.410 Establishment of State agency ES complaint systems.
658.411 Initial handling of complaints by the State or local office.
658.412 State agency officials responsible for handling ES-related complaints.
658.413 Action on ES-related complaints concerning employers.
658.414 Action on ES-related complaints concerning the State agency.
658.415 Hearings.
658.416 Decision of the hearing official.

FEDERAL ES COMPLAINT SYSTEM

658.420 Establishment of the ES complaint system at the ETA regional office.
658.421 Handling of complaints by the RA.
658.422 Hearings.
658.423 Decision of the DOL Hearing Officer.

SUBPART F—DISCONTINUATION OF SERVICES TO EMPLOYERS BY THE EMPLOYMENT SERVICE SYSTEM

658.500 Scope and purpose of subpart.
658.501 Informal resolution.
658.502 Discontinuation of services.

SUBPART G—REVIEW AND ASSESSMENT OF STATE AGENCY COMPLIANCE WITH EMPLOYMENT SERVICE REGULATIONS

658.600 Scope and purpose of subpart.
658.601 State agency responsibility.
658.602 ETA national office responsibility.
658.603 ETA regional office responsibility.
658.604 Assessment and evaluation of program performance data.
658.605 Communication of findings to State agencies.

SUBPART H—FEDERAL APPLICATION OF REMEDIAL ACTION TO STATE AGENCIES

658.700 Scope and purpose of subpart.
658.701 State agency violations of ES regulations.
658.702 Initial action by the RA.
658.703 Disallowance of expenditures; corrective action plans.
658.704 Remedial actions.
658.705 Decision to decertify.
658.706 Notice of remedial action.
658.707 Requests for hearings.
658.708 Hearings.
658.709 Conduct of hearings.
657.710 Decision of the Hearing Officer.
658.711 Decision of the Secretary.

§ 651.7 Definitions of terms used in Parts 651–658.

"Administrator, United States Employment Service (Administrator)" shall mean the chief official of the United States Employment Service (USES) or the Administrator's designee.

"Agricultural worker" shall mean a worker, whose primary work experience has been in industries with a Standard Industrial Classification (SIC) of 01–07, except 027, 074, 0752, 0761, and 078, whether alien or citizen, who is legally allowed to work permanently in the United States.

"Applicant" shall mean a person who contacts a local office to seek employment or employability development services.

"Application Card" shall mean the basic local office record for an applicant.

"Day-haul" shall mean the assembly of workers at a pick-up point, transportation of them to agricultural employment, and the return of the workers to the pick up point on the same day.

"DOL" shall mean the Department of Labor.

"D.O.T." shall mean the Dictionary of Occupational Titles, the reference work published by the USES which contains brief, non-technical definitions of U.S. job titles, distinguishing number codes, and worker trait data.

"Employment and Training Administration (ETA)" shall mean the component of the Department of Labor containing the United States Employment Service (USES).

"Employment Service (ES)" shall mean the nationwide system of public employment offices consisting of the United States Employment Service (USES), its grantee State agencies, and the various offices of the State agencies.

"ES" shall mean "employment service".

"ES regulations" shall mean the Federal regulations at 20 CFR Parts 601–604, 620, 621, and 651–658, and at 29 CFR Parts 8, 26 and 75.

"ETA" shall mean the Employment and Training Administration.

"Hearing Officer" shall mean a Department of Labor official, hearing officer or Administrative Law Judge, designated to preside at DOL administrative hearings.

"Interstate job order" shall mean a job order describing one or more hard-to-fill job openings which a State agency uses to request recruitment assistance from other State agencies. Job orders used for day-haul operations which extend across State lines and Job Banks which extend across State lines are not included in this definition.

"Intrastate job order" shall mean a job order describing one or more hard-to-fill job openings, which a local office uses to request recruitment assistance from other local offices within the State. Placement into a Statewide Job Bank system in and of itself does not make a job order an intrastate job order. The job order shall be an intrastate job order only if the job order taker makes the

determination that workers are needed from other parts of the State which are not within commuting distance of the worksite.

"Job Bank" shall mean the employment service's computerized job data storage system.

"Job Information Service (JIS)" shall mean a unit or an area within an ES local office where applicants primarily, on a self-service basis or with minimum professional help, can obtain specific and general information on where and how to get a job.

"Local office" shall mean a local employment service office which is part of a State agency. A local office which serves a significant number of MSFWs shall mean a local office which is officially designated as such by the ETA.

"Local office manager" shall mean the ES official in charge of all ES activities in a local office of a State agency.

"Local Veterans' Employment Representative (LVER)" shall mean the local office official designated by the State Director to serve veterans and eligible persons as defined at § 653.201 of this chapter.

"LMI" shall mean labor market information.

"Migrant" shall mean both:

(1) "Migrant Farmworker," that is, a seasonal farmworker whose farmwork experience during the preceding 12 months required travel such that the worker was unable to return to his/her residence (domicile) in the same day; and

(2) "Migrant Food Processing Worker," that is, a person who has had experience during the preceding 12 months doing food processing (as classified in the 1972 Standard Industrial Classification (SIC) definitions 201, 2033, 2035, and 2037 for food processing establishments) for a scheduled period of less than 150 days, provided that it required travel such that the worker was unable to return to his/her residence (domicile) in the same day.

"MSFW" shall mean a migrant or seasonal farmworker.

"RA"; see "Regional Administrator".

"Program Budget Plan (PBP)" shall mean the annual planning document for the SESA required by Sec. 8 of the Wagner-Peyser Act containing the SESA's detailed planning, programming and budget for carrying out employment security activities. For the purpose of ES regulations, this definition shall be restricted to the employment service portion of the PBP.

"Regional Administrator, Employment and Training Administration (RA)" shall mean the chief DOL Employment and Training Administration (ETA) official in each DOL regional office.

"Regional Veterans' Employment Representative (RVER)" shall mean the Federal official designated by the Director, Veterans Employment Service (VES) in each DOL regional office who, under the RA, serves veterans and eligible persons as defined at § 653.201 of this Chapter.

"Seasonal farmworker" shall mean a person who has had at least 25 days experience during the preceding twelve months working for wages in farmwork for a scheduled period of less than 150 consecutive days at any one establishment engaged in agricultural production or agricultural services (as classified in the 1972 Standard Industrial Classification (SIC) definitions included in industries 01 through 07, except 027, 074, 0752, 0761 and 078). Nonmigrant individuals who are full-time students are excluded, as are migrant workers who are full-time students but who travel in organized groups rather than with their families.

(1) For purposes of this definition an "establishment" shall mean an economic unit, generally at a single physical location, where business is conducted or where (or from which) services are performed. (For example, a farm, orchard, ranch, or an organization providing agricultural commodities or services from a single location.) Farm labor contractors and crew leaders are not considered establishments, but the organizations to which they supply workers are to be considered establishments for purposes of this definition.

(2) For purposes of this definition, an individual who is hired repeatedly on a short term basis is a seasonal farmworker even if this results in his/her working for any one agricultural establishment for a period of 150 consecutive days or more.

(3) There are two types of seasonal farmworkers—migrant and non-migrant.

"Secretary" shall mean the Secretary of Labor or the Secretary's designee.

"SESA"; see "State Employment Security Agency".

"Solicitor" shall mean the chief legal officer of the U.S. Department of Labor or the Solicitor's designee.

"State" shall include the fifty states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

"State Administrator" shall mean the chief official of the State Employment Security Agency (SESA).

"State agency" shall mean the State employment service agency designated under section 4 of the Wagner-Peyser Act to cooperate with the USES in the operation of the employment service system.

"State Director" shall mean the chief official of the State employment service agency (State agency).

"State Employment Security Agency (SESA)" shall mean the State agency which, under the State Administrator, contains both the State employment service agency (State agency) and the State unemployment compensation agency.

"State hearing official" shall mean a State official designated to preside at State administrative hearings convened to resolve ES-related complaints pursuant to subpart E of Part 658 of this Chapter.

"United States Employment Service (USES)" shall mean the component of the Employment and Training Admnistration of DOL which was established under the Wagner-Peyser Act of 1933 to promote and develop a national system of public employment service offices.

"Veterans Employment Service (VES)" shall mean the organizational component within the United States Employment Service which is concerned with policies and services relating to employment development on behalf of veterans and eligible persons as defined at § 653.201 of this Chapter.

PART 652—BASIC ORGANIZATION OF THE EMPLOYMENT SERVICE SYSTEM [RESERVED]

22. Part 652 is added and reserved.

PART 653—SERVICES OF THE EMPLOYMENT SERVICE SYSTEM

23. Subpart B is added to Part 653.

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Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)

Sec.

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Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)

AUTHORITY: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 *et seq.*, unless otherwise noted.

§ 653.100 Purpose and scope of subpart.

This subpart sets forth the principal regulations of the USES for counseling, testing, and job and training referral services for migrant and seasonal farmworkers (MSFWs) on a basis which is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs. It also contains requirements that State agencies establish a system to monitor their own compliance with USES regulations governing services to MSFWs, including the regulations under this subpart.

§ 653.101 Provision of services to migrant and seasonal farmworkers (MSFWs).

(a) Each State agency and each local office shall offer to migrant and seasonal farmworkers (MSFWs) the full range of employment services, benefits and protections, including the full range of counseling, testing, and job and training referral services as are provided to

non-MSFWs. In providing such services, the State agency shall consider and be sensitive to the preferences, needs and skills of individual MSFWs and the availability of job and training opportunities.

(b) Each State agency shall assure that, in a local area, the same local offices, including itinerant and satellite offices, but exclusive of day-haul operations and temporary seasonal facilities, offer service to both non-MSFWs and MSFWs. Separate farm labor service local offices, which offer only farmwork to agricultural workers while another local office serving the same geographic area offers other ES services to other applicants, are prohibited so that all applicants are able to receive employment services on the same basis.

§ 653.102 Job information.

(a) Each State agency shall assure that the same job information, including Job Bank order information, which is regularly provided to areas not containing a significant number of MSFWs, shall be extended into nearby areas which contain a significant number of MSFWs.

(b) State agencies shall assist MSFWs to use job information.

§ 653.103 MSFW job applications.

(a) Every local office shall determine whether or not applicants are MSFWs as defined at § 651.7 of this Chapter.

(b) Except as provided in § 653.105 of this subpart, when an MSFW applies for a job or registers for work at a local office, the local office shall explain to the MSFW orally and/or in writing the benefits which might follow from the filing of a full application, such as counseling, job development and testing. Local offices which serve a significant number of MSFWs shall give or write the explanation in Spanish whenever a significant number of such MSFWs are fluent and/or literate in Spanish but are not fluent or literate in English. Other local offices shall provide such MSFWs with the same services whenever this is feasible.

(c) If the MSFW wishes to file a full application, the local office shall make sure that the application is complete and cludes the significant history of the MSFW's prior employment, training and educational background and a statement of any desired training and/or employment. All applicable items shall be completed according to the ETA instructions for preparation of the application card (ES–511). Additional D.O.T. codes shall be assigned based on the MSFW's work history, training, and skills, knowledges, and abilities, and secondary cards shall be completed and separately filed.

(d)(1) If an MSFW does not wish to file a full application, a partial application shall be taken and the MSFW shall be requested to sign a waiver of additional ES services at that time except for job referral and referral to training or supportive services. In no case may job referral or referral to training or supportive services be refused because an MSFW has waived a full application. The MSFW shall then be offered job referral services and referral to available training and supportive services, with the assistance of a staff member and/or through self-selection in a Job Information Service (JIS), if a JIS is available.

(2) If the waiver form is in English, it shall be worded as follows unless the Administrator has approved a State agency's alternate wording:

WAIVER OF FULL APPLICATION

I have been advised of my right to complete this application and I have been told of the additional services I may get if I do. I do not want these additional services and I do not want to complete the full application at this time.

Date: _____
Signature of Applicant

_____
Employment Service Representative

(3) If a Spanish waiver form is used, it shall be worded as follows (except that it may be revised to accommodate colloquial differences) unless the Administrator has approved a State agency's alternate wording:

RENUNCIA DE SOLICITUD ENTERA

Me han avisado de mi derecho de llenar todas las partes de esta solicitud y me han informado de los servicios adicionales que pudiera recibir si lo hago. No deseo estos servicios adicionales, ni deseo llenar la solicitud entera a este tiempo.

Fecha: _____
Firma del Solicitante

_____
Representante del Servicio de Empleo

(4) Local offices, which keep applications in a computer file, shall use an additional hard copy waiver form which shall be signed by the applicant and the interviewer.

(e) If an MSFW does not wish to file a full application or sign a waiver, the interviewer shall try to obtain enough information to complete a partial application and shall then sign the waiver on the ES representative line noting that the applicant did not wish to sign, and, if possible, the reason. The interviewer shall offer to refer the applicant to any available jobs for which the MSFW may be qualified, and shall advise the MSFW that the MFSW may file a full application at any time.

(f) If a partial application is taken, the local office shall assure that the following items are completed on the application card:

(1) Social Security Number;
(2) Applicant Type (new or renewal);
(3) Name;
(4) Address, including name of county, and phone number;
(5) Sex;
(6) Birth date;
(7) Highest school grade completed;
(8) County code;
(9) Group;
(10) Spanish-American;
(11) Seasonal Farmworker/migrant/migrant food processing worker;
(12) Registration date;
(13) Employment status;
(14) Claimant;
(15) Local office; and
(16) Any additional characteristics which apply (such as Veteran, Handicapped, and food stamp).

(g) Partial applications for MSFWs shall be filed in accordance with local office procedures for filing other partial applications.

(h) At least those MSFWs who file full or partial application shall be issued an Identification Card at the initial visit and shall be advised to show it whenever they use employment service facilities or services.

§ 653.104 Job applications of MSFW families and crew members.

(a) Except as provided at §§ 653.103 (e) and 653.105 of this subpart, no local office shall refer an MSFW family or crew unless each working member of the family or crew, and the crew leader or family head (if the crew leader or family head is a working member), has either filed a full application or signed a waiver either at the local office or in the presence of an outreach worker. Local offices, however, may provide general information, such as on types of crops, to crew leaders and family heads prior to the registration of all working members.

(b) No local office shall service a farm labor contractor on a job order for agricultural workers unless the farm labor contractors shows a valid Federal Farm Labor Contractor (FLC) certificate, where required by Federal law, and a valid State certificate where required by State law. If a farm labor contractor is temporarily without his or her valid FLC certificate, the local office shall try to verify the existence of the valid FLC by telephoning the Department of Labor's Employment Standards Administration regional office. The local office, however, shall not serve the farm labor contractor until the existence of the valid FLC is verified.

§ 653.105 Situations requiring neither full job applications nor waivers.

(a) If a MSFW has been referred on an interstate or intrastate order and it is known to the order-holding local office that the MSFW has completed a full application or waiver in the applicant-holding office or elsewhere, an additional application or waiver need not be taken by the order-holding office unless the MSFW requests ES services in addition to referral on the interstate or intrastate job order.

(b) If the State agency is operating a day-haul facility, a full application shall be taken whenever an MSFW requests the opportunity to file a full application unless this is impractical at that time. Waivers need not be obtained. In such cases, a full application shall be taken at the earliest practical time.

§ 653.106 ES day-haul responsibilities.

(a) This section applies not only to MSFWs, but to all workers who use State agency operated day-hauls.

(b) State agencies may establish an agricultural day-haul to facilitate the employment of workers living within daily commuting distance of places of employment. State agency staff shall operate any day-haul established by the State agency. No applicant shall be referred to any day-haul which is not operated by State agency staff.

(c) Before it establishes an agricultural day haul, a State agency shall conduct a survey to determine need and feasibility. The State agency shall document the method and results of the survey.

(d) State agency operated day-hauls may extend across State lines, provided the State agencies involved enter into written working agreements. Such agreements shall provide for offices in each State to communicate directly with each other. Such agreements may provide for the visiting of "demand" State employers by "supply" State agency personnel, the active participation of "demand" State agency personnel in the recruitment and referral activities of the "supply" State, and other arrangements designed to facilitate the flow of labor. State agencies shall secure the written approval of the RA before putting such an interstate agreement into effect, or of both RAs if the States are in different ETA regions.

(e) At State agency operated day-hauls:

(1) Job applications shall be taken pursuant to § 653.105(b) of this subpart. Workers using day-hauls shall be informed of the availability of ES services such as counseling, testing, and referral to jobs, training and supportive services.

(2) Information such as posters and pamphlets concerning the ES complaint procedure, appropriate unemployment compensation programs, wage and hour information, equal opportunity, age discrimination, and worker protection and benefits shall be made available at day-haul facilities. Such posters and pamphlets shall be printed in English and, if the day-haul is used by workers who are fluent and/or literate in Spanish but not in English, in Spanish.

(3) To the extent feasible, job order information shall be used to expose applicants to a wide range of job opportunities, and assistance in the use of such information shall be provided.

(4) In taking employer job orders, ES staff shall record the number of workers needed, the work to be performed, the transportation arrangements, the wages, and the length of the working day and other relevant working conditions. The employer shall be told to notify the day-haul site or appropriate local office of any change in labor needs, working conditions, etc. which would materially affect the job order.

(5) ES staff shall monitor the compliance by employers and their agents and by crew leaders with ES regulations. To the extent of their expertise, they shall also observe the compliance by employers and their agents and by crew leaders with relevant Federal and State laws governing vehicle registration, wages, hours, working conditions, and nondiscrimination. If the ES staff observes an apparent violation of ES regulations, they shall report this to the local office manager and the procedures set forth at subpart F of Part 658 of this Chapter shall be followed. If ES staff observe an apparent violation of laws other than ES regulations, they shall report this to the local office manager and the local office manager shall refer the matter to the appropriate Federal or State enforcement agency.

(f) State agencies are encouraged to develop written agreements with enforcement agencies, in accord with which the enforcement agencies will spot-check for law violations at day-hauls operated by the State agency.

§ 6653.107 Outreach.

(a) State agencies shall operate outreach programs for MSFWs who may be in need of service both in home-base areas while they are in residence and in places along the migrant stream.

(b) The outreach program shall include an active effort to contact MSFWs who do not come to local offices by seeking out such workers in their living areas and/or if possible, in their work places. The program shall also involve developing and improving ES relationships with public and private community agencies, MSFW groups and employers. State agencies shall also explore the possibility of conducting and/or coordinating outreach through public and private community agencies and MSFW groups.

(c) Both home base and in-stream outreach for MSFWs shall attempt to explain to MSFWs available local office services with respect to referral to long-range, year-round employment opportunities, alternatives to seasonal or migratory agricultural work, training opportunities, social services, including Federal and State assistance programs, and with respect to the ES complaint procedures set forth in subpart E of Part 658 of this Chapter. Outreach workers, however, shall not include, as part of their outreach activities, political or unionization activities.

§ 6653.108 Requirements for intrastate and interstate job orders seeking agricultural workers.

(a) This section contains the requirements for intrastate and interstate job orders seeking agricultural workers. This section, therefore, contains requirements which affect not only MSFWs, but which affect all agricultural workers who are recruited through the ES intrastate or interstate clearance systems.

(b) (1) In view of the statutorily established basic function of the employment service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted of recruited upon by the ES constitute a contractual job offer to which the ETA or a State agency is in any way a party. Nevertheless, if the ETA or a State agency discovers that an employer's job order contains a material misrepresentation, the procedures at Subpart F of Part 658 of this Chapter shall be followed.

(2) As soon as it is administratively convenient, intrastate and interstate job orders shall be amended to include the language of the first two sentences of paragraph (b)(1) of this section.

(c) No local office shall place a job order for agricultural workers into intrastate clearance unless:

(1) The job order does not contain an unlawful discriminatory specification by race, color, religion, national origin, age, sex, citizenship, mental or physical status unrelated to job performance (handicap), or veteran or nonveteran status;

(2) The employer has signed the statement required by paragraph (c)(3) of this section that the job offer states all the material terms and conditions of the employment, including:

(i) The crop;

(ii) The nature of the work;

(iii) The anticipated period and hours of employment;

(iv) The anticipated starting date of employment and the anticipated number of weeks and days thereafter for which work will be available;

(v) The hourly wage rate or the piece rate estimated in hourly wage rate equivalents;

(vi) Any deductions to be made from wages;

(vii) Any non-monetary benefits to be provided by the employer;

(viii) Any days or weeks for which work is guaranteed, and, for each guaranteed week of work, the exclusive manner in which the guarantee may be abated due to weather conditions or other Acts of God beyond the employer's control;

(ix) Any bonus or work incentive payments or other expenses which will be paid by the employer in addition to the basic wage rate, including the anticipated time period(s) within which such payments will be made. No such payments, however, shall be made contingent upon the worker continuing employment beyond the period of employment specified in the job order or, in the case of any worker with children of school age who has migrated away from home with such children, beyond the time needed to return home for the beginning of the school year;

(x) An assurance that the working conditions comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration and other employment-related laws; and

(xi) An assurance that the employer will provide a copy of the work contract to the worker, which shall be written in Spanish if the worker is fluent or literate in Spanish but is not fluent or literate in English.

(3) The employer has read the order and has verified that the job order contains all the material terms and conditions of the job, and that all items

therein are actual conditions of the job offer by signing the following statement: "This job offer describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job";

(4) The wages and working conditions offered are not less than the prevailing wages and working conditions among similarly employed agricultural workers in the area of intended employment or the applicable Federal or State minimum wage, whichever is higher. If a base rate and a bonus is offered, the base rate must be not less than the prevailing wage rate or applicable Federal or State minimum wage, whichever is higher;

(5) The employer has agreed to provide or pay for the transportation of the workers on at least the same terms as transportation is commonly provided by employers in the area of intended employment to agricultural workers recruited from the same area of supply;

(6) If the workers are to be housed, the employer has signed an assurance that its housing meets the full set of standards set forth at Part 620 of this Chapter or the full set of standards set forth at 29 CFR 1910.142; and

(7) The local office and the employer have attempted and have not been able to obtain sufficient workers within the local labor market area, or the local office anticipates a shortage of local workers.

(d) No State agency shall place a agricultural job order into interstate clearance unless:

(1) It meets the requirements set forth at paragraphs (c)(1) through (c)(5) of this section;

(2) The employer will provide housing for the workers which meets the full set of standards set forth at Part 620 of this Chapter or the full set of standards set forth at 29 CFR 1910.142; and

(3) The State agency and the employer have attempted and have not been able to locate sufficient workers within the State, or the State agency anticipates a shortage of workers within the State.

(e)(1) The local office shall use the agricultural clearance form prescribed by ETA, and shall see that all necessary items on the form are completed, including items on attachments to the form prescribed by ETA.

(2)(i) The original of an interstate agricultural clearance form shall be retained for the order-holding local office files. At a minimum, additional copies of the form with all attachments shall be distributed as follows:

(A) At least one clear copy to each of the State agencies selected for recruitment (areas of supply);

(B) One copy to each applicant-holding ETA regional office;

(C) One copy to the order-holding (area of employment) State office;

(D) Two copies to order-holding ETA regional office, one of which shall be forwarded immediately upon receipt to the ETA national office; and

(ii) One copy of the form with all attachments shall be provided to the referred worker by the applicant-holding office upon the request of the worker.

(f) The local office may place an intrastate or interstate agricultural order for a specific crew leader or worker preferred by the employer provided the order meets ES nondiscrimination criteria. The order would not meet such criteria, for example, if it requested a "white male crew leader" or "any white male crew leader".

(g) Local offices, which serve a significant number of agricultural workers who are fluent and/or literate in Spanish but are not fluent or literate in English, shall us bilingual (English-Spanish) staff to assist such workers to understand the terms and conditions of intrastate and interstate job orders. Other local offices shall provide such workers with the same services if feasible, and/or, to the extent feasible, shall provide such workers with checklists in Spanish showing wage payment schedules, working conditions and other material specifications of the job order. As soon as it is administratively convenient, such checklists shall be amended to include the language of the first two sentences of § 653.108(b)(1) of this subpart.

(h) With respect to intrastate job orders, local offices with access to statewide Job Banks using microfiche viewers shall provide workers with a statement showing wage payment schedules, working conditions, and the other material specifications of the job order. If needed or requested by a worker, a local office, which serves a significant number of agricultural workers who are fluent and/or literate in Spanish but are not fluent or literate in English, shall provide such statements in Spanish. As soon as it is administratively convenient, such statements shall be amended to include the language of the first two sentences of § 653.108(b)(1) of this subpart.

§ 653.109 Changes in crop and recruitment situations.

The labor demand State agency, through the labor supply State agency, shall inform, as quickly as possible, crews and families scheduled through the ES clearance system that a crop is maturing earlier or later than expected or that other material factors including recruitment factors have changed so that the State agencies involved may adjust arrangements on behalf of such crews or families. If weather conditions, overrecruitment or other conditions have eliminated the scheduled job opportunities, the State agencies involved shall make every effort to refer the workers to alternate job opportunities.

§ 653.110 Field checks.

(a) State agencies, through their local offices or otherwise, shall conduct periodic, unannounced field checks on agricultural worksites to which MSFW referrals have been made through the intrastate or interstate clearance system to determine and document whether wages, hours, working and housing conditions are as specified in job orders. If State agency personnel find reason to believe that worksite conditions are not as stated or promised on the job order, the State agency shall follow the procedures set forth at subpart F of Part 658 of this Chapter. If State agency personnel find reason to believe that an employer is violating an employment-related law other than ES regulations, they shall report these findings to the local office manager and the local office manager shall refer the matter in writing to the appropriate Federal or State enforcement agency.

(b) State agencies, to the extent feasible, shall make formal or informal arrangements with appropriate State and Federal enforcement agencies, pursuant to which such agencies will agree to conduct periodic field checks on agricultural worksites to which the State agency has referred MSFWs and to inform the State agency if worksites conditions are not as stated or promised on the job order.

§ 653.111 State agency self-monitoring.

(a) State Directors shall assure that their State agencies monitor their own compliance with the regulations under this subpart on an ongoing basis. The State Director shall have overall responsibility for State agency self-monitoring.

(b) The State Director or State Administrator shall designate a State Monitor Advocate, who shall devote full-time to the duties of the State Monitor Advocate at the State office level unless the Administrator permits the use of a part-time State Monitor Advocate based upon documentary evidence submitted by the State agency showing a paucity of MSFWs and that the duties required of the State Monitor Advocate by ES regulations will be adequately performed by a part-time State Monitor Advocate. The State Monitor Advocate shall:

(1) Review or supervise all aspects of the monitoring;

(2) Participate in on-site local office formal monitoring reviews on a selective basis;

(3) Assure that local offices serving a significant number of MSFWs are reviewed on-site at least once a year, and that, if necessary, those local offices in which significant problems are revealed by required reports, management information, the ES complaint system or otherwise are reviewed as soon as possible;

(4) Participate in arranging cooperative agreements authorized under this subpart between the State agency and enforcement agencies;

(5) Maintain cooperative relationships with organizations involved in MSFW activities including employer organizations;

(6) Review State agency directives which are likely to have a significant impact on MSFWs; and

(7) Review State agency compliance with the data collection requirements of § 653.112 of this subpart.

(c) State agencies shall conduct on-site local office formal monitoring reviews to review services to MSFWs.

(1) Before beginning such a review, the reviewer(s) shall study the data on the local office in required reports and ES complaint system complaints originating from the local office.

(2) The monitoring review format, developed by ETA, shall be used by re-

viewers as a guideline when they conduct local office on-site formal monitoring reviews.

(3) Upon completion of a local office on-site formal monitoring review, the reviewer(s) shall hold one or more wrap-up sessions with the local office manager and staff to discuss any obvious findings and offer initial recommendations and appropriate technical assistance.

(4) After each review the reviewer(s) shall conduct an in-depth analysis of the review data. The conclusions and recommendations of the reviewer(s) shall be put in writing, shall be sent to the State Monitor Advocate, and shall then be discussed with the official of the State agency with line authority over the local office.

(5) If needed, the State agency shall develop a written corrective action plan. The plan shall direct the local office to correct or to make major steps to correct the problem pursuant to the plan within 30 days or if the plan allows for more than 30 days for full compliance, the length of, and the reasons for, the extended period shall be specifically stated.

(6) State agencies shall be responsible for assuring and documenting that the local office is in compliance within the time period designated in the plan. State agencies shall submit to the appropriate ETA regional offices summary data on the on-site local office formal monitoring reviews, along with a narrative statement of significant overall findings pursuant to ETA instructions.

§ 653.112 Data collection.

State agencies shall: (a) Collect data on MSFWs including data on the number registering for service, referred to jobs, placed in jobs, enrolled in training, receiving counseling, receiving job development, receiving testing, referred to supportive service, receiving some service, placed according to wage rates, and placed according to duration.

(b) Collect data on the number of MSFWs who were served as to whether they were male, female, black, Spanish-American or American Indian.

(c) Provide necessary training to State agency, including local office, personnel to assure accurate reporting of data;

(d) Collect, and submit to the ETA as directed by the ETA, data comparing the quantity and quality of services to MSFWs as compared to services for non-MSFWs; and

(e) Submit additional reports to the ETA at such times and containing such items as the ETA directs.

§ 653.113 Disclosure of data.

(a) State agencies shall disclose to the public, on written request, the data collected by State and local offices pursuant to § 653.112 of this subpart, if possible within 10 working days after receipt of the request.

(b) If a request for data which is held by a State agency is made to the ETA national or regional office, the ETA shall forward the request to the State agency for response by the State agency.

(c) If the requested data cannot be supplied within 10 working days of its receipt by the State agency, the State agency shall respond to the requestor in writing, giving the reason for the delay and specifying the date by which it expects to be able to comply.

(d) State agency intra-agency memoranda and reports (or parts thereof) and memoranda and reports (or parts thereof) between the State agency and the ETA, however, to the extent that they contain statements of opinion rather than facts, may be withheld from public disclosure provided this reason for withholding is given to the requestor in writing. Similarly, documents or parts thereof, which, if disclosed, would constitute an unwarranted invasion of personal or employer privacy, may also be withheld provided the reason is given to the requestor in writing.

§ 653.114 State agency staffing requirements.

State agencies shall assure that bilingual (English-Spanish) regular and outreach staff are assigned to every local office which serves a significant number of MSFWs whenever a substantial portion of such MSFWs are primarily fluent and/or literate in Spanish but are not fluent or literate in English. State agencies shall develop written affirmative action plans as part of their program budget plans to implement this requirement. State agencies shall also undertake affirmative action to recruit MSFWs and persons from MSFW backgrounds for their State agency staffs, and shall include a description of the specific efforts they are planning to make in their program budget plans.

§ 653.115 State agency program budget plans.

Each State agency, in its annual program budget plan, shall describe its plans to carry out the requirements of this subpart in the following year. For example, each State agency shall describe its proposed level of outreach activity, taking into consideration the amount of MSFW employment in the State, the State agency's level of resources, the extent of activities required by ES regulations for other applicants, and other relevant factors. The RA shall review the plan in light of the requirements of this subpart and shall make an initial written determination as to whether or not the program budget plan, including this part of the State agency program budget plan, is acceptable.

PART 654—SPECIAL RESPONSIBILITIES OF THE EMPLOYMENT SERVICE SYSTEM (RESERVED)

24. Part 654 is added and reserved.

PART 655—LABOR CERTIFICATION PROCESS FOR THE TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES (RESERVED)

25. Part 655 is added and reserved.

PART 656—LABOR CERTIFICATION PROCESS FOR THE PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

26. Part 656 is added and reserved.

PART 657—PROVISIONS GOVERNING GRANTS TO STATE AGENCIES FOR EMPLOYMENT SERVICES ACTIVITIES (RESERVED)

27. Part 657 is added and reserved.

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE EMPLOYMENT SERVICE SYSTEM

28. Part 658 is added as follows:

Subpart A—(Reserved)

Subpart B—(Reserved)

Subpart C—(Reserved)

Subpart D—(Reserved)

Subpart E—Employment Service Complaint System

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658.704 Remedial actions.
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658.708 Hearings.
658.709 Conduct of hearings.
658.710 Decision of the Hearing Officer.
658.711 Decision of the Secretary.

Subpart E—Employment Service Complaint System

AUTHORITY: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq.; 38 U.S.C. Chapters 41 and 42; unless otherwise noted.

§ 658.400 Purpose and scope of subpart.

This subpart sets forth the regulations governing the employment service complaint system at both the State and Federal levels.

§ 658.401 Types of complaints handled by the ES complaint system.

(a) The types of complaints which shall be handled by the ES complaint system (ES-related complaints) are as follows: (1) Complaints alleging an employer's failure to comply with ES regulations; and (2) Complaints by any individual, organization or employer about employment service actions or omissions under ES regulations.

(b) Complaints by veterans alleging employer violations of the mandatory listing requirements under 38 U.S.C. 2012 shall not be handled under this subpart. The State agency shall handle such complaints under the Department's regulations at 41 CFR Part 60-250.

(c) Complaints alleging employer violations of employment-related State or Federal laws other than ES regulations shall not be handled under the procedures set forth in this subpart. If a State agency or the ETA receives such a complaint, the State agency or ETA shall direct the complainant to the appropriate State or Federal enforcement agency. The State agency need not make a record of such referrals nor is any further action required.

STATE AGENCY ES COMPLAINT SYSTEM

§ 658.410 Establishment of State agency ES complaint systems.

(a) Each State agency shall establish and maintain an employment service complaints system pursuant to this subpart.

(1) State agencies shall ensure that centralized control procedures are established for the handling of complaints and files relating to the handling of those complaints.

(2) State agencies shall ensure that any action taken on a complaint by the responsible official is fully documented in a file containing such information as a copy of the original complaint form, copies of any related correspondence, and a log of related telephone calls.

(b) State agencies shall ensure that information pertaining to use of the complaint system is publicized. This shall include the prominent display of the approved ETA complaint system poster in each local office, satellite office, and at each State agency operated day-haul facility.

§ 658.411 State agency officials responsible for handling ES-related complaints.

(a) *State office level.* The State Director shall have overall responsibility for the operation of the State agency ES complaint system.

(1) The handling of all ES-related complaints received by the State office alleging unlawful discrimination by race, color, religion, national origin, sex, age, citizenship, physical or mental status unrelated to job performance (handicap), or veteran or non-veteran status shall be assigned to a State EEO representative. The handling of all other ES-related complaints received by the State office shall be assigned to a State Monitor Advocate designated by the State Administrator or State Director.

(2) The State Director shall assure that all ES-related complaints, and all correspondence relating thereto are logged with a notation of the nature of each item.

(b) *Local office level.* At the local office level, the local office manager shall be responsible for the overall operation of the ES complaint system. The local office manager shall assure that all ES-related complaints, and all correspondence relating thereto, are logged with a notation of the nature of each item.

(1) All ES-related complaints alleging unlawful discrimination as described in paragraph (a)(1) of this section shall be assigned to a local office EEO representative if the local office has a trained and designated EEO Representative, or, if the local office does not have such a Representative, shall be sent immediately to the State EEO Representative.

(2) All ES-related complaints from veterans, except those from veterans who are MSFW's and ES-related complaints from veterans alleging unlawful discrimination as discrimination as described in paragraph (a)(1) of this section shall be assigned to the Local Veterans' Employment Representative (LVER) if the local office has an LVER. If the local office does not have an LVER, such complaints shall be sent immediately to the State Monitor Advocate.

(3) All ES-related complaints other than those described in paragraphs (b)(1) and (2) of this section may be personally handled by the local office manager or may be assigned by the local office manager to another local office employee.

§ 658.412 Initial handling of complaints by the State or local office.

(a) Whenever any type of complaint by any individual, organization or employer is received by a State or a local office, the responsible official shall determine whether it is an ES-related complaint.

(b) If the complaint is not ES-related, the official shall refer the complainant to an attorney, consumer advocate, enforcement or other public agency or to other appropriate assistance. No written record need be made of such referrals, nor is any further action required.

(c) If the complaint is ES-related complaint, the official shall require the complainant to put the complaint in writing on the ES Complaint Form prescribed or approved by the ETA. The official shall offer to assist the complainant in filling out the form and shall do so if the complainant desires such assistance. If the complainant represents several complainants, all such complainants shall be named on the ES Complaint Form.

(1) The ES Complaint Form shall be used for all ES-related complaints, including complaints by veterans and complaints about discrimination.

(2) A copy of the completed ES Complaint Form shall be given to the complainant.

(d) Whenever an ES-related complaint deals with an employer in another State or another State agency, the State agency shall send the ES Complaint Form to the ETA Regional Office with jurisdiction over the State agency in which it was received for transmission to the other State agency. A copy of the referral letter shall be sent to the complainant.

§ 658.413 Action on ES-related complaints concerning employers.

(a) The State agency official, in handling an ES-related complaint against an employer, shall:

(1) Offer to assist the complainant through the provision of appropriate ES services, such as referral to another job; and

(2) With respect to the employer alleged to have violated ES regulations, follow the procedures set forth at Subpart F of this Part.

(b) The provisions of S 658.414-416 of this subpart are not applicable to ES-related complaints against employers.

§ 658.414 Action on ES-related complaints concerning the State agency.

(a) The State agency official who handles an ES-related complaint from an individual, organization or employer against the State agency shall: (1) Offer the complainant appropriate ES services; and (2) Investigate and attempt to informally resolve the complaint.

(b) If a local office official is attempting to informally resolve a complaint under this section, and if informal resolution has not been achieved within 15 working days, or five working days with respect to complaints by MSFWs, the local office official shall send the complaint to the State office and shall notify the complainant in writing of the referral.

(c) If a State office official is attempting to resolve a complaint under this section, and if informal resolution has not been accomplished within 30 working days (20 working days with respect to complaints by MSFWs) after its receipt by the State office (whether the complaint was received directly or from a local office pursuant to paragraph (b) of

this section), the State office shall send a written notice to the complainant, with a copy to the RA, explaining why the complaint has not yet been resolved and offering the complainant a hearing before a State hearing official. The notice shall advise the complainant that the complainant must advise the State office in writing within 30 calendar days of the date of the notice, as to whether the complainant desires a hearing.

(d) If the State office, within 30 calendar days of the notice provided for in paragraph (c) of this section, receives a written request from a complainant, the State office shall refer the complaint to a State hearing official for hearing. The complainant shall then be notified in writing by the State office that:

(1) The complainant will be notified of the date, time and place of the hearing;

(2) The complainant will have opportunity to be represented at the hearing;

(3) The complainant may be represented at the hearing by an attorney or other representative;

(4) The complainant may bring witnesses and/or documentary evidence to the hearing;

(5) The complainant may cross-examine opposing witnesses at the hearing;

(6) The decision on the compaint will be based on the evidence presented at the hearing;

(7) The State hearing official may reschedule the hearing at the request of the complainant, the complainant's representative, or other party; and

(8) The complainant or the complainant's representative may withdraw the request for hearing in writing before the hearing.

§ 658.415 Hearings.

(a) Hearings shall be held by State hearing officials. A State hearing official may be any State official authorized to hold hearings under State law. Thus, they may be, for example, the same referees who hold hearings under the State unemployment compensation law and/or the Work Incentive Program or any official of the State agency, authorized by State law to preside at State administrative hearings.

(b) The State hearing official, upon the referral of a case for a hearing, shall:

(1) Notify all involved parties of the date, time and place of the hearing; and

(2) Re-schedule the hearing, as appropriate.

(c) In conducting a hearing the State hearing official shall:

(1) Regulate the course of the hearing;

(2) Issue subpoenas, if necessary;

(3) Assure that all relevant issues are considered;

(4) Rule on the introduction of evidence and testimony; and

(5) Take any other actions, consistent with due process, which are necessary to insure an orderly hearing.

(d) The testimony at the hearing shall be recorded and may be transcribed when appropriate.

(e) The parties shall be afforded the opportunity to present, examine, and cross-examine witnesses.

(f) The State hearing official may elicit testimony from witnesses, but shall not act as advocate for any party.

(g) The State hearing official shall receive, and make part of the record documentary evidence offered by any party and accepted at the hearing. Copies thereof shall be made available by the party submitting the document to other parties to the hearing upon request.

(h) The case record, or any portion thereof, shall be available for inspection and copying by any party at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual.

(i) The State hearing official shall, if feasible, resolve the dispute by conciliation at any time prior to the conclusion of the hearing.

§ 658.416 Decision of the State hearing official.

(a) The State hearing official may:

(1) Rule that the case is improperly before it, that is, that there is a lack of jurisdiction over the case;

(2) Rule that the complaint has been withdrawn in writing;

(3) Rule that reasonable cause exists to believe that the request has been abandoned or that repeated requests for re-scheduling are arbitrary and for the purpose of unduly delaying or avoiding a hearing; or

(4) Render such other rulings as are appropriate to the issues in question. However, the State hearing official shall not have jurisdiction to consider the validity or constitutionality of ES regulations or of the Federal statutes under which they are promulgated.

(b) Based on the entire record including any evidence provided at the hearing, the State hearing official shall prepare a written decision. The State hearing official shall send a copy of the decision stating the findings and conclusions of law and fact and the reasons therefor to the complainant, the State office, the RA, and the Solicitor of Labor Attn: Associate Solicitor for Employment and Training Legal Services, Department of Labor, Room N2101, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

(c) All decisions of a State hearing official shall be accompanied by a written notice informing the complainant that, if the complainant is not satisfied, the complainant may, within 30 calendar days of the date of the decision, file a complaint in writing with the RA. The notice shall give the address of the RA.

FEDERAL ES COMPLAINT SYSTEM

§ 658.420 Establishment of ES complaint system at the ETA regional office.

(a) Each RA shall establish and maintain an ES complaint system at the DOL regional office level.

(b) The RA shall designate DOL officials to handle ES-related complaints as follows:

(1) The handling of all ES-related complaints alleging discrimination by race, color, religion, national origin, sex, age, citizenship, physical or mental status unrelated to job performance (handicap), or veteran or non-veteran status shall be assigned to a Regional Equal Employment Opportunity Representative (REEOR);

(2) The handling of all ES-related complaints from veterans, except from veterans who are MSFWs, and complaints from veterans about discrimination as described in paragraph (b)(1) of this section shall be assigned to the Regional Veterans' Employment Representative (RVER);

(3) The handling of all ES-related complaints other than those described in paragraphs (b)(1) and (2) of this section, shall be assigned to a Regional Monitor Advocate.

(c) The RA shall assure that all ES-related complaints and all correspondence relating thereto are logged, with a notation of the nature of each item.

§ 658.421 Handling of complaints by the RA.

(a) No ES-related complaint, shall be handled at the ETA regional office level until the complainant has exhausted the State agency administrative remedies set forth at SS 658.410–416 of this subpart. Therefore, if the RA determines that any complainant, who has filed an ES-related complaint with the regional office, has not yet exhausted the administrative remedies at the State agency level, the RA shall inform the complainant in writing that the complainant must first exhaust those remedies before the complaint may be filed in the regional office. A copy of this letter shall be sent to the State Director.

(b) Upon receipt of a complaint by the RA after the exhaustion of State agency administrative remedies, the RA shall send for the complete State agency file, including the original *ES Complaint Form*.

(c) The RA shall review the file in the case and shall determine whether any further investigation or action is appropriate.

(d) If the RA determines that no further action is warranted, the RA shall send this determination in writing to the complainant, and may offer the complainant a hearing before a DOL Hearing Officer provided the complainant requests such a hearing in writing from the RA within 30 calendar days of the date of the RA's offer of hearing.

(e) If the RA determines that further investigation or other action is warranted, the RA shall undertake such an investigation, informal resolution or other action.

(f) If the RA finds reason to believe that an employer has violated ES regulations, the RA shall direct the State agency to follow the procedures set forth at Subpart F of this Part.

(g) If the RA finds reason to believe that a State agency or one of its local offices has violated ES regulations, the RA shall follow the procedures set forth at Subpart H of this Part.

(h) If the complaint is not resolved to the complainant's satisfaction, the RA may offer the complainant in writing a hearing before a DOL Hearing Officer provided the complainant requests such a hearing in writing from the RA within 30 calendar days of the date of the RA's offer of hearing.

(i) If the complainant requests a hearing pursuant to paragraphs (d) or (h) of this section the RA shall:

(1) Send the complainant a written notice containing the statements set forth at § 658.414(d) of this subpart;

(2) Compile four hearing files containing copies of all documents relevant to the case, indexed and compiled chronologically;

(3) Send simultaneously one hearing file to the DOL Chief Administrative Law Judge, 1111 20th Street, N.W., Washington, D.C. 20036, one hearing file to the ETA national office, and one hearing file to the Solicitor of Labor, Attn: Associate Solicitor for Employment and Training, and retain one hearing file.

(j) Upon the receipt of a hearing file, the DOL Hearing Officer designated by the Chief Administrative Law Judge shall notify the complainant, the State agency, the RA, the Administrator, and the Solicitor of the receipt of the case and shall afford them 30 days to submit written evidence and/or legal arguments in the case. After the 30 days elapse, the Hearing Officer shall schedule a hearing.

§ 658.422 Hearings.

(a) The DOL Hearing Officer shall:

(1) Notify all involved parties of the date, time and place of the hearing; and

(2) Re-schedule the hearing, as appropriate.

(b) In conducting a hearing the DOL Hearing Officer shall:

(1) Regulate the course of the hearing;

(2) Issue subpoenas if necessary;

(3) Consider all relevant issues which are raised;

(4) Rule on the introduction of evidence and testimony;

(5) Take any other action, consistent with due process, which is necessary to insure an orderly hearing.

(c) The testimony at the hearing shall be recorded, and shall be transcribed if appropriate.

(d) The parties to the hearing shall be afforded the opportunity to present, examine, and cross-examine witnesses.

(e) The DOL Hearing Officer may elicit testimony from witnesses, but shall not act as advocate for any party.

(f) The DOL Hearing Officer shall receive, and make part of the record, documentary evidence offered by any party and accepted at the hearing. Copies thereof shall be made available by the party submitting the documentary evidence, to any party to the hearing upon request.

(g) The case record, or any portion thereof, shall be available for inspection and copying by any party to the hearing at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual concerned.

(h) The DOL Hearing Officer shall, if feasible, encourage resolution of the dispute by conciliation at any time prior to the conclusion of the hearing.

§ 658.423 Decision of the DOL Hearing Officer.

(a) The DOL Hearing Officer may:

(1) Rule that there is a lack of jurisdiction over the case;

(2) Rule that the complaint has been withdrawn in writing;

(3) Rule that reasonable cause exists to believe that the request has been abandoned or that repeated requests for re-scheduling are arbitrary and for the purpose of unduly delaying or avoiding a hearing; or

(4) Render such other rulings as are appropriate to the issues in question. However, the Hearing Officer shall not have jurisdiction to consider the validity or constitutionality of ES regulations or of the Federal statutes under which they are promulgated.

(b) Based on the entire record including any evidence provided at the hearing, the DOL Hearing Officer shall prepare a written decision. The DOL Hearing Officer shall send a copy of the decision stating the findings and conclusions of law and fact and the reasons therefor to the complainant, the State office, the RA, the Administrator, and the Solicitor.

(c) The decision of the Hearing Officer shall be the final decision of the Secretary.

Subpart F—Discontinuation of Services to Employers by the Employment Service System

AUTHORITY: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq., unless otherwise noted.

§ 658.500 Scope and purpose of subpart.

This subpart contains the regulations governing the discontinuation of services to employers by the employment service system.

§ 658.501 Informal resolution.

(a) Whenever a State agency receives a complaint filed under subpart E of this Part which alleges that an employer has violated ES regulations, and whenever a local office manger or higher State official has reason to believe that an employer has violated ES regulations, a State agency official shall attempt to informally resolve the issue with the employer. If the issue cannot be resolved within 30 calendar days, the State agency official shall refer the matter in writing to the State Director for formal investigation.

(b) The employer shall be notified in writing of the outcome of the State agency investigation. If the case arose through a complaint filed under the ES complaint system at subpart E of this Part, the complainant shall also be notified in writing of the outcome of the investigation. The notice shall also state that, if the complainant is not satisfied, the complainant may file a complaint with the RA. If the State Director determines that a violation of ES regulations has occurred, the employer shall be notified in writing of the determination, the reasons therefor, and that termination of all the ES services to the employer will be initiated in 30 calendar days unless the employer provides conclusive, documented evidence within the 30 day period that it is not in violation or that the violation has been corrected. Notices under this paragraph shall inform the employer that State agency personnel will be available to assist in resolving the dispute during the 30 day period.

§ 658.502 Discontinuation of services.

(a) If the issue has not been resolved within the 30 calendar days described in § 658.501 of this subpart, the State Director shall send a written notice to the employer that all services will be terminated in 15 calendar days unless within that period the employer requests a hearing by mailing a written request for hearing to the State Director, or unless within that period the employer provides conclusive, documented evidence that the violation has been corrected or that the violation does not exist.

(b) Unless otherwise provided in ES regulations, if the employer fails to request a hearing or has not given adequate evidence of correction or non-existence of the violation within the 15 calendar day period, all ES services to the employer shall be terminated until such time as the employer provides conclusive, documented evidence that the violation has been corrected or does not exist.

(c) If the employer makes a timely request for a hearing, the State agency shall follow the procedures set forth at § 658.415–416 of this Part.

Subpart G—Review and Assessment of State Agency Compliance With Employment Service Regulations

AUTHORITY: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq.; 5 U.S.C. 301 et seq.

§ 658.600 Scope and purpose of subpart.

This subpart sets forth the regulations governing review and assessment of State agency compliance with the Employment Service regulations at 20 CFR Parts 601, 602, 603, 604, 620, 621, 651–658 and 29 CFR Part 8.

§ 658.601 State agency responsibility.

(a) Each State agency shall establish and maintain a State agency Self-Appraisal System pursuant to ETA standards, and shall use this system to evaluate and assess its ES program, and to assure its compliance with ES regulations.

(b) Each State Director and local office manager shall assure that their staffs know and carry out ES regulations, including regulations on performance standards and program emphases, and

any corrective action plans imposed by the State agency or by the ETA.

(c) Each State Director shall assure that the State agency complies with its approved program budget plan.

(d) Each State Director shall assure to the maximum extent feasible the accuracy of data entered by the State agency into ETA required management information systems. Each State agency shall establish and maintain a data validation system pursuant to ETA instructions. The system shall review every local office at least once every four years. The system shall include the validation of time distribution reports and the review of data gathering procedures.

§ 658.602 ETA national office responsibility.

The ETA national office shall: (a) Monitor ETA regional offices' carrying out of ES regulations;

(b) From time to time, conduct such special reviews and audits as necessary to monitor ETA regional office and State agency compliance with ES regulations;

(c) Offer technical assistance to the ETA regional offices and State agencies in carrying out ES regulations and programs;

(d) Have reports validation surveys conducted in support of resource allocations;

(e) Develop tools and techniques for reviewing and assessing State agency performance and compliance with ES regulations; and

(f) Assign to a National Monitor Advocate the responsibility to:

(1) Develop and maintain monitoring and evaluating instruments for monitoring the delivery of services to migrant and seasonal farmworkers (MSFWs);

(2) Develop and maintain instruments for monitoring and assessing the ES complaint system set forth at Subpart E of this Part;

(3) Provide technical assistance to ETA regional office and State agency staffs for administering the ES complaint system; and

(4) As appropriate, participate in reviews of State agency performance and monitoring reports with respect to services for MSFWs and the ES complaint system.

§ 658.603 ETA regional office responsibility.

(a) The RA shall have responsibility for the regular review and assessment of State agency performance and compliance with ES regulations.

(b) The RA shall review and initially approve annual program budget plans for the State agencies within the region. In reviewing the program budget plans the RA shall consider relevant factors including the following:

(1) State agency compliance with ES regulations;

(2) State agency performance against the goals and objectives established in the previous year's program budget plan;

(3) The effect which economic conditions and other external factors considered by the ETA in the resource allocation process may have had or are expected to have on State agency performance;

(4) State agency adherence to national program emphasis; and

(5) The adequacy and appropriateness of the program budget plan for carrying out ES programs.

(c) The RA shall assess the overall performance of State agencies on an ongoing basis through desk reviews and the use of required reporting systems and other available information.

(d) As appropriate, RAs shall conduct or have conducted:

(1) Comprehensive on-site reviews of State agencies and their offices to review State agency organization, management, and program operations;

(2) Periodic performance reviews of State agency operation of ES programs to measure actual performance against the program budget plan, past performance, the performance of other State agencies, etc.;

(3) Audits of State agency programs to review State agency program activity and to assess whether the expenditure of grant funds has been in accordance with the approved budget. RAs may also conduct audits through other agencies or organizations or may require the State agency to have audits conducted;

(4) Validations of data entered into management information systems to assess;

(i) The accuracy of data entered by the State agencies into management information system;

(ii) Whether the State agencies' data validating and reviewing procedures conform to ETA instructions; and

(iii) Whether State agencies have implemented any corrective action plans required by the ETA to remedy deficiencies in their validation programs;

(5) Technical assistance programs to assist State agencies in carrying out ES regulations and programs; and

(6) Reviews to assess whether the State agency has complied with corrective action plans imposed by the ETA or by the State agency itself.

(e) The RA shall provide technical assistance to State agencies to assist them in carrying out ES regulations and programs;

(f) Each RA shall designate a Regional Monitor Advocate who shall:

(1) Have primary responsibility at the ETA regional level for monitoring the effectiveness of the ES complaint system set forth at Subpart E of this Part, apprising appropriate State and ETA officials of problems with respect to the complaint system, and providing technical assistance to State Monitor Advocates, as appropriate; and

(2) With respect to State agencies' services to MSFWs, provide input to regional reviews of State agency program budget plans, monitor and evaluate State agency services to MSFWs, and participate in on-site local office formal monitoring reviews, as appropriate.

§ 658.604 Assessment and evaluation of program performance data.

(a) State agencies shall compile program performance data required by ETA including statistical information on program operations.

(b) The ETA shall use the program performance data in assessing and evaluating whether the State agencies have complied with ES regulations and their State agency program budget plans.

(c) In assessing and evaluating program performance data, the ETA shall act in accordance with the following general principles:

(1) The fact that the program performance data from a State agency, whether overall or relative to a particular program activity, indicate poor program performance is not in itself a breach of ES regulations or of the State agency's responsibilities under its State agency program budget plan;

(2) Program performance data, however, may so strongly indicate that a State agency's performance is poor that the data may raise a presumption (prima facie case) that a State agency is violating ES regulations or the State agency program budget plan. In such cases, the ETA shall afford the State agency an opportunity to rebut the presumption of poor performance pursuant to the procedures at Subpart H of this Part.

(3) The ETA shall take into account that certain program performance data may measure items over which State agencies have direct or substantial control while other data may measure items over which the State agency has indirect or minimal control.

(i) Generally, for example, a State agency has direct and substantial control over the delivery of employment services such as referrals to jobs, job development contacts, applicant counseling and referrals to supportive services.

(ii) State agencies, however, have only indirect control over the outcome of services. State agencies, for example, cannot guarantee that an employer will hire a referred applicant, nor can they guarantee that the terms and conditions of employment will be as stated on a job order.

(iii) Outside forces, moreover, such as a sudden heavy increase in unemployment rates, a strike by State agency employees, or a severe drought or flood may skew the results measured by program performance data;

(4) The ETA shall consider a State agency's failure to keep accurate and complete program performance data required by ES regulations as a breach of the ES regulations.

§ 658.605 Communication of findings to State agencies.

(a) The RA shall inform State agencies in writing of the results of review and assessment activities and, as appropriate, shall discuss with the State Administrator and the State Director the impact or action required by ETA as a result of review and assessment activities.

(b) The ETA national office shall transmit the results of any review and assessment activities conducted by it to the RA, who shall send the information to the State agency.

(c) Whenever the review and assessment indicates a State agency violation

of ES regulations or of its State agency program budget plan, the RA shall follow the procedures set forth at Subpart H of this Part.

(d) RAs shall follow-up any corrective action plan imposed on a State agency under Subpart H of this Part by further review and assessment of the State agency pursuant to this subpart.

Subpart H—Federal Application of Remedial Action to State Agencies

AUTHORITY: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq.; 5 U.S.C. 301 et seq.

§ 658.700 Scope and purpose of subpart.

This subpart sets forth the procedures which ETA shall follow when State agencies are not adhering to ES regulations.

§ 658.701 State agency violations of ES regulations.

It is the policy of the Employment and Training Administration (ETA) to receive information concerning alleged violations by State agencies of the ES regulations at 20 CFR Parts 601–604, 620, 621, and 651–658 and at 29 CFR Part 8 from any person or organization.

§ 658.702 Initial action by the RA.

(a) Whenever an RA discovers or is apprised of possible State agency violations of ES regulations by the review and assessment activities under subpart G of this Part, required reports, or complaints from individuals, organizations or employers which are filed with ETA after the exhaustion of State agency administrative remedies, the RA shall investigate the matter. If the matter concerns a possible violation of ES regulations by a local office, the RA may refer the matter to the State Director for investigation with instructions that the State Director report the results of the investigation to the RA within a specified time.

(b) When the RA review and/or the investigation is complete, the RA shall prepare written initial findings. If the RA determines that there is no probable cause to believe that a State agency has violated ES regulations, the RA need take no further action. If the RA determines that there is probable cause to believe that a State agency has violated ES regulations, the RA shall follow the procedures set forth in § 658.703 of this subpart.

§ 658.703 Disallowance of expenditures; corrective action plans.

Whenever the RA, in the written initial findings, finds probable cause to believe that a State agency has violated ES regulations, the RA shall send the findings to the State agency, giving the reasons therefor. The State agency shall have 20 working days to comment on the findings, or a longer period if the RA determines that such a longer period is appropriate. After the period elapses, the RA shall prepare written final findings. If, in the final findings, the RA determines that the State agency has not violated ES regulations, the RA need take no further action. If the RA determines that a State agency has violated ES regulations:

(a) If the matter involves the misspending of grant funds, the RA may issue a disallowance of the expenditure and may either demand repayment or withhold future funds in the amount in question. If the RA disallows costs, the RA shall send a written notice of disallowance by registered mail, to the State agency, giving the reasons for the disallowance, informing the State agency that the disallowance is effective immediately and that no more funds may be spent in the unallowed manner, and offering the State agency the opportunity to request a hearing pursuant to § 658.707 of this subpart. The offer, or the acceptance of an offer of a hearing, however, shall not stay the effectiveness of the disallowance.

(b) If the violation does not involve mis-spending of grant funds or the RA judges that the circumstances warrant other action:

(1) The RA shall notify the State agency by registered mail of the specific violation(s) and shall direct the State agency to implement a specific corrective action plan to correct all violations within a specified time. The specified time period shall commence with the date of signature on the registered mail receipt.

(2) When the time period provided for in paragraph (b)(1) of this section elapses, ETA staff shall review the State agency's efforts by follow-up visit or otherwise.

(3) If the RA determines that the State agency has corrected the violation(s), the RA need take no further action except to document that fact.

(4) If the State agency has not corrected the violation(s) and has not made good faith efforts and adequate progress to that end, the RA shall apply remedial actions to the State agency pursuant to § 658.704 of this subpart.

(5) If adequate progress has been made toward correcting the violation(s) so that it appears that the violation(s) will be fully corrected within a reasonable time period, the State agency shall be advised by registered mail of this conclusion, of remaining deficiencies, of further needed corrective action, and that all deficiencies must be corrected within a specified new time period beginning with the date of signature on the receipt.

(6) If the State agency has been given an additional time period pursuant to paragraph (b)(5) of this section, ETA staff shall review the State agency's efforts at the end of the time period by follow-up visit or otherwise. If the State agency has corrected the violation(s), no further action, except to document the fact, need be taken by the RA. If the State agency has not corrected the violation(s), the RA shall apply remedial actions to the State agency pursuant to § 658.704 of this subpart.

§ 658.704 Remedial actions.

If a State agency fails to carry out a corrective action plan imposed under § 658.703 of this subpart, the RA shall apply one or more of the following remedial actions to the State agency:

(a) Imposition of special reporting requirements for a specified period of time;

(b) Restrictions of obligational authority within one or more expense classifications;

(c) Implementation of specific operating systems or procedures for a specified time;

(d) Requirement of special training for State agency personnel;

(e) With the approval of the Assistant Secretary and after affording the State Administrator or State Director the opportunity to request a conference with the Assistant Secretary, elevation of specific decision making functions from the State Director to the RA and/or imposition of Federal staff in key State agency positions;

(f) Funding of the State agency on a quarterly or other short-term basis;

(g) With the approval of the Assistant Secretary and after affording the State Administrator or State Director the opportunity to request a conference with the Assistant Secretary, withholding of funds for a specific function or for a specific geographical area;

(h) Holding of public hearings in the State on the State agency's deficiencies;

(i) Disallowance of funds pursuant to § 658.703(a) of this subpart; or

(j) If the matter is a serious or a continual violation, formal designation of the State agency as out of compliance with ES regulations and initiation of decertification procedures against the State agency. The RA shall initiate decertification by notifying the State agency by registered mail that decertification may be forthcoming, stating the reasons therefor. Whenever such a notice is sent to a State agency, the RA shall prepare five indexed copies containing, in chronological order, all the documents pertinent to the case. One copy shall be retained. Three shall be sent to the ETA national office, and one shall be sent to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training.

§ 658.705 Decision to decertify.

(a) Upon receipt of a request for decertification, the Assistant Secretary for Employment and Training shall review the case and shall decide whether decertification is appropriate.

(b) If the Assistant Secretary decides that decertification is not appropriate, the Assistant Secretary, if appropriate, shall instruct that an alternate remedial action or actions be applied.

(c) If the Assistant Secretary decides that decertification is appropriate, the Assistant Secretary shall submit the case to the Secretary giving the reasons for the recommendation of decertification. The Secretary shall then decide whether decertification is appropriate or whether other remedial actions should be applied.

§ 658.706 Notice of Remedial Action.

(a) Whenever a decision has been made to apply a remedial action to a State agency, the RA, or the Secretary in cases of decertification, shall send a

Notice of Remedial Action to the State agency by registered mail.

(b) If the remedial action is decertification, the notice shall state that the decertification will take effect in 30 calendar days unless the State agency requests a hearing in writing by filing the request for hearing pursuant to § 658.707 of this subpart with the Secretary within 30 calendar days of the State agency's receipt of the notice. If a timely request for hearing is filed, decertification shall be stayed pending the outcome of the hearing procedures.

(c) If the remedial action is other than decertification, the notice shall state that the remedial action shall take effect immediately. The notice shall also state that the State agency may request a hearing pursuant to § 658.707 of this subpart by filing a request, in writing with the RA pursuant to § 658.707 of this subpart within 30 calendar days of the State agency's receipt of the notice. The offer of hearing, or the acceptance thereof, however, shall not stay the implementation of the remedial action.

(d) The *Notice of Remedial Action* shall set forth the reasons for the remedial action.

§ 658.707 Requests for hearings.

(a) Any State agency which received a *Notice of Remedial Action* under § 658.706 of this subpart or a notice of disallowance under § 658.703 of this subpart may request a hearing on the issue by filing a written request for hearing with the RA (or Secretary in cases of decertification) within 30 calendar days of receipt of the *Notice of Remedial Action* or notice of disallowance stating the reasons the State agency believes the bases of the decision to be wrong, and signed by the State Director or State Administrator.

(b) When an RA receives a request for hearing from a State agency, the RA shall make five indexed and tabulated copies of a file containing, in chronological order, all materials and correspondence relevant to the case. The RA shall retain one file and sent two copies of the appeal file to the ETA national office, one to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training, and one to the Chief Administrative Law Judge of the Department of Labor.

(c) In decertification cases, the Administrator shall send a copy of the file to the Chief Administrative Law Judge.

§ 658.708 Hearings.

(a) Upon receipt of a hearing file by the Chief Administrative Law Judge, the case shall be docketed and notice sent by registered mail, return receipt requested, to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training, the Administrator, the RA and the State Director. The notice shall set a time, place and date for a hearing on the matter and shall advise the parties that:

(1) They may be represented at the hearing;

(2) They may present oral and documentary evidence at the hearing;

(3) They may cross-examine opposing witnesses at the hearing; and

(4) They may request re-scheduling of the hearing if the time, place or date set are inconvenient.

(b) The Solicitor of Labor or the Solicitor's designee shall represent the Department at the hearing.

§ 658.709 Conduct of hearings.

(a) The hearing shall be conducted in accordance with Sections 5–8 of the Administrative Procedure Act, 5 U.S.C. 553 et seq.

(b) Technical rules of evidence shall not apply, but rules or principles designed to assure production of the most credible evidence available, and to subject testimony to test by cross-examination, shall be applied if necessary by the Hearing Officer conducting the hearing. The Hearing Officer may exclude irrelevant, immaterial or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties. Opportunity shall be given to refute facts and arguments advanced on either side of the issue. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record.

(c) The general provisions governing discovery as provided in the Rules of Civil Procedure for the United States District Court, Title V, 28 U.S.C., Rules 26 through 37, may be made applicable to the extent that the Hearing Officer concludes that their use would promote the proper advancement of the hearing.

(d) When a public officer is a respondent in a hearing in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the proceeding does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantive rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

§ 658.710 Decision of the Hearing Officer.

(a) The Hearing Officer shall have jurisdiction to decide all issues of fact and related issues of law and to grant or deny appropriate motions, but shall not have jurisdiction to decide upon the validity of Federal statutes or regulations.

(b) The decision of the Hearing Officer shall be based on the hearing record, shall be in writing and shall state the factual and legal bases of the decision.

(c) Except when the case involves the decertification of a State agency, the decision of the Hearing Officer shall be the final decision of the Secretary.

(d) If the case involves the decertification of a State agency, the decision of the Hearing Officer shall contain a notice stating that, within 30 calendar days of the decision, the State agency or the Administrator may appeal to the Secretary by sending by registered mail, return receipt requested, a written appeal to the Secretary, care of the Hearing Officer who made the decision.

§ 658.711 Decision of the Secretary.

(a) Upon the receipt of an appeal to the Secretary, the Hearing Officer shall certify the record in the case to the Secretary, who may take additional evidence, provided time to rebut such new evidence is given to the opposing party, or who may make a decision to decertify or not on the basis of the hearing record.

(b) The decision of the Secretary shall be final, shall be in writing, and shall set forth the factual and legal bases for the decision.

Signed at Washington, D.C. this 19th day of January, 1977.

WILLIAM H. KOLBERG,
Assistant Secretary for Employment and Training.

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TUESDAY, JANUARY 25, 1977
PART IX



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Consumer Affairs and Regulatory Functions

■

CONDOMINIUM DOCUMENTATION

Statement of Proposed Policies

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Consumer Affairs and Regulatory Functions

[Docket No. N-77-684]

CONDOMINIUM DOCUMENTATION

Statement of Proposed Policies

INTRODUCTION

In August, 1975, the U.S. Department of Housing and Urban Development (HUD) organized a Condominium Task Force composed of HUD, Veterans Administration (VA), Federal National Mortgage Association (FNMA) and Federal Home Loan Mortgage Corporation (FHLMC). This action was taken as a result of a Congressionally-mandated study of condominiums and cooperatives which HUD completed in 1975. The study had identified that a major problem confronting consumers, builders, lenders and others was a lack of uniformity in legal and underwriting policies for condominium mortgages insured, guaranteed, or purchased by the four Task Force members. The purpose of the Task Force was to maximize agreement on condominium requirements by the four organizations. It is hoped that the development of more uniform policies among the member organizations will facilitate the purchase, insurance or guarantee of condominium mortgages for those desiring to utilize the services of the member organizations, with resulting direct or indirect benefits for the public.

The U.S. Department of Housing and Urban Development, in its capacity as chair of the Condominium Task Force, publishes for public comment the Task Force's first major document: "Statement of Proposed Policies Relating to Condominium Documentation".

The members of the Task Force intend, through publication of these proposed policies, to reach the broadest possible spectrum of the public, and strongly encourage comment by all interested parties.

TASK FORCE APPROACH

The Task Force is organized into two standing committees. The first, the Legal Committee, deals with matters of legal significance pertaining to insuring, guaranteeing, or purchasing mortgages on condominium units. Most of the matters addressed in this initial statement relate to provisions usually contained in the condominium Decraration or equivalent recorded instrument. It is planned that the Legal Committee next consider issues arising from the application of the present requirements of the member organizations to resales of existing units.

The second committee, the Risk Determination Committee, is charged with seeking maximum agreement among the four members on such risk determination issues as appraisal requirements, architectural considerations and mortgage credit conditions.

It is contemplated that each committee will follow the same general process of issue analysis and development of proposed policies and that on the basis of preliminary agreements reached among the members, public comment will be sought. Following receipt of the comments the member organizations will reconsider the proposed policies and make such changes in their programs as they believe advisable. For example, if the comments do not suggest any sound reasons for not doing so, HUD intends to discontinue requiring use of its model forms for condominium organization. It is contemplated that this process will be an on-going mode of operation for the Task Force.

The applicable regulations and related publications of the Department of Housing and Urban Development and the Veterans Administration and the basic contracts and guides of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation should be consulted for a complete statement of the respective policies of the Task Force member organizations governing their approval of condominiums or unit mortgages.

STATEMENT OF PROPOSED POLICIES FOR CONDOMINIUM DOCUMENTATION

The Task Force considered those elements which should be included in the basic condominium instruments, primarily the Declaration, in order for those instruments to be acceptable to the participants.

The Statement of Proposed Policies represents the current consensus by the four member organizations as to many provisions of legal significance relating to condominium documentation; however, these provisions do not necessarily represent existing policies of the organizations.

This document is not a complete list of legal documentation policies for condominiums. Each member organization is willing to accept the proposed policies as maximum requirements for proposed condominiums or partially sold or completed condominiums where the documents are capable of being amended, leaving to each organization the right to accept a provision less stringent for both proposed or existing units. A condominium document that contains less stringent requirements, though, while acceptable to one organization, may not be acceptable to others. In addition to the proposed policies, each organization has companion policies in complementary areas.

The members also recognize that State laws differ as to the way they treat certain provisions and as to which documents must contain specific provisions. Therefore, the members agree that treatment of the provisions found in the Statement of Proposed Policies is subject to the law of the jurisdiction within which the condominium is located. The Task Force has kept in mind advances in State legislation and the development of a proposed Uniform Condominium Act by the National Conference of Commissioners on Uniform State Laws. The Task Force is also concerned with the issue of adequate disclosure of information to interested parties.

Comments are invited on any topic in the Statement of Proposed Policies or any other topic which falls within the jurisdiction of the Task Force. Suitable justification should be included.

Comment is particularly invited on the subject of condemnation and staged, phased, or expandable developments. Comments on insurance requirements for condominiums from the perspective of the mortgage holder, unit owner, and owners association are also invited.

Comments are also invited on what, if any, additional provisions should be contained in the basic organizational documentation for condominiums.

Comments received prior to April 1, 1977, will be considered by the Task Force members as they re-evaluate the proposed statement. Comments are to be sent to the Rules Docket Clerk, Department of Housing and Urban Development, Room 10141, Washington, D.C. 20410. Comments received will be distributed by HUD to all members of the Task Force.

STATEMENT OF PROPOSED POLICIES RELATING TO CONDOMINIUM DOCUMENTATION

1. Types of condominiums.
2. Estate of unit owner.
3. Condominium documentation:
(a) Compliance with local law; (b) Recordation; (c) Availability.
4. Property description.
5. Declarant's rights and restrictions:
(a) Acts and reserved rights which are usually unacceptable; (b) Reserved rights which are usually acceptable.
6. Transfer of control for single phased condominium regimes.
7. Owners association's rights and restrictions:
(a) Right of entry upon units and common elements; (b) Assessments:
(i) Levy and collection; (ii) Reserves and working capital; (iii) Priority of lien.
8. Unit owners' rights and restrictions:
(a) Obligation to pay expenses; (b) Ingress and egress of unit owners; (c) Easements for encroachments—units and common elements; (d) Right of first refusal; (e) Leasing restrictions.
9. First lien holders' rights:
(a) Notices of action; (b) Inspection of association books and records.
10. Amendment to documents.
11. Condemnation.
12. Rights of action.
13. Staged, phased or expandable developments.

1. TYPES OF CONDOMINIUMS

The following types of basic ownership arrangements are generally acceptable provided they are established in compliance with the condominium enabling statute of the applicable jurisdiction:

(a) Ownership of units by individual owners coupled with an undivided interest in all common elements.

(b) Ownership of units by individual owners coupled with an undivided interest in general common elements and specified limited common elements.

The agencies and corporations will consider for approval, on an individual case basis, an arrangement involving ownership of units by individual owners coupled with an undivided interest in the general common elements and/or limited common elements, with title to additional property for common use vested in an association of unit owners, where such a configuration of ownership is not precluded by the applicable condominium enabling statute. As to this type of ownership arrangement, in addition to compliance with the requirements of the organizations' respective condominium programs there must be compliance with the applicable requirements of the organizations' respective planned unit development (PUD) programs.

The above description of types of ownership arrangements are not intended to exclude other variations. Other forms of ownership may be acceptable, on an individual case basis, to any or all of the agencies and corporations.

2. ESTATE OF UNIT OWNER

The legal estate of each unit owner must generally be held in fee simple or acceptable leasehold estate. The acceptability of leasehold estates varies among the member organizations.

3. CONDOMINIUM DOCUMENTATION

(a) *Compliance with local law.* The declaration, by-laws and other regime enabling documentation shall conform to the condominium enabling statutes governing the establishment and maintenance of condominium regimes within the jurisdiction in which the condominium is located, and to all other laws which apply to each condominium.

(b) *Recordation.* The declaration and all amendments or modifications thereof shall be placed of record in the manner prescribed by the appropriate jurisdiction. If recording of plats, plans, by-laws or equivalent documents and all amendments or modifications thereof is the prevailing practice or is required by law within the jurisdiction where the project is located, then such documents shall be placed of record. If the by-laws are not recorded, then covenants, restrictions and other matters requiring record notice should be contained in the Declaration or equivalent document.

(c) *Availability.* During normal business hours or under other reasonable circumstances, the owners association shall have available for inspection by owners, lenders and prospective purchasers, current copies of the declaration, by-laws and other rules govering the operation of the condominium regime.

4. PROPERTY DESCRIPTION

The description of the units, the common elements, any recreational facilities and other amenities appurtenant to the condominium, and any limited common elements shall be clear and unambiguous and in conformity with the law of the jurisdiction where the project is located.

There must be no ambiguity concerning responsibility for maintenance and repair of any portion of the condominium.

5. DECLARANT'S RIGHTS AND RESTRICTIONS

Any rights reserved by the declarant shall be reasonable and consistent with the overall plan.

(a) *Acts and reserved rights which are usually unacceptable.* The following actions on the part of the declarant, the developer, an affiliate of the declarant, the sponsor of a project, or any other party, (collectively referred to as "declarant") usually would be unacceptable:

(1) Reserving the right to include in the condominium adjoining land without adequate restrictions assuring that its future improvement will be of compatible style, quality, size and cost.

(2) Retaining rights, without adequate restrictions, to change the style, floor plan, size and quality of future buildings to be constructed as part of the condominium projects.

(3) Binding the owners association to any contract or lease which is not bona fide or which is not commercially reasonable to the unit owners at the time entered into under the circumstances then prevailing.

(4) Binding the owners association to any of the following agreements unless the owners association shall have a right of termination thereof which is exercisable at any time without penalty upon not more than 90 days' notice to the other party thereto:

(a) Any management contract, employment contract or lease of recreational or parking areas or facilities;

(b) Any contract or lease, including franchises and licenses, to which a declarant is a party.

As used in the foregoing, "affiliate of a declarant" shall mean any person who controls, is controlled by, or is under common control with, a declarant. A person shall be deemed to control a declarant if that person is a partner, officer, director, or employee of the declarant or if that person directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares of the declarant, or controls in any manner the election of a majority of the directors of the declarant. A person shall be deemed to be controlled by a declarant if that declarant is a partner, officer, director, or employee of the person or if that declarant directly or indirectly or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares of that person, or controls in any manner the election of a majority of the directors of that person.

(b) *Reserved rights which are usually acceptable.* The following rights in the common elements may usually be reserved by the declarant for a reasonable period of time:

(1) Easement over and upon the common elements and upon lands appurtenant to the condominium for the purpose of completing improvements for which provision is made in the declaration, but only if access thereto is otherwise not reasonably available.

(2) Easement over and upon the common elements for the purpose of making repairs required pursuant to the declaration or contracts of sale made with unit purchasers.

(3) Right to maintain in the common area sales and management offices, model units, and advertising signs during the sales period of the condominium project, such items to be identified in the declaration.

6. TRANSFER OF CONTROL FOR SINGLE PHASED CONDOMINIUM REGIMES

Control of the owners association shall pass to the purchasers of units within the project not later than the earlier of the following: (a) 120 days after the earliest date on which the aggregate voting strength of all purchasers of units to whom title thereto has been conveyed shall comprise at least 75 percent of the total voting strength of the project, or (b) the last date of a specified period of time following the first conveyance of title to a unit within the project, such period of time to be a reasonable period for the particular project and to be subject to approval in each instance by the agency or corporation concerned. The maximum permissible length of the period of time referred to in (b) above usually will be from three to five years. Declarants should provide for and foster early participation of unit owners in the management of the project. The foregoing requirements apply only to transfers of control in single-phased condominium regimes.

7. OWNERS ASSOCIATION'S RIGHTS AND RESTRICTIONS

(a) *Right of entry upon units and common elements.* The owners association shall be granted a right of entry upon the unit premises and any limited common elements to effect emergency repairs and a reasonable right of entry thereupon to effect other repairs, improvements, or replacements, or maintenance deemed necessary.

(b) *Assessments.* (i) *Levy and collection.* The declaration or its equivalent shall describe the authority of the owners association to levy and enforce the collection of general and special assessments for common expenses and shall describe adequate remedies for failure to pay such common expenses. Allocation of common expenses shall be made on an equitable basis. The common expenses assessed against any unit, with interest, costs and reasonable attorney's fees shall be a continuing lien upon such unit until fully paid. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such unit at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them.

Common expenses as used in this Statement of Policies shall mean expenditures made or liabilities incurred by or on behalf of the owners association, together with any assessments for the creation and maintenance of reserves.

(ii) *Reserves and working capital.* There shall be established an adequate reserve fund for the periodic maintenance, repair and replacement of the common elements, which fund shall be maintained out of regular assessments for common expenses. Additionally, a working capital fund must be established for the initial months of the project operations equal to at least a two months' estimated common area charge for each unit.

(iii) *Priority of lien.* To the extent permitted by applicable law, the declaration shall provide for the subordination of any lien of the owners association for common expense charges and assessments to any first mortgage on any unit recorded prior to the date on which such lien of the association arises. Such a lien for common expense charges and assessments shall not be affected by any sale or transfer of a unit except that a sale or transfer pursuant to a foreclosure shall extinguish a subordinate lien for common expense charges and assess-

ments which became payable prior to such sale or transfer. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a unit from liability for, nor the unit so sold or transferred from the lien of, any common expense charges thereafter becoming due.

8. UNIT OWNERS' RIGHTS AND RESTRICTIONS

(a) *Obligation to pay expenses.* The declaration or equivalent document shall establish a duty on each unit owner to pay a pro rata share of common expenses upon being assessed therefor by the owners association. Such a pro rata share shall be clearly described and reasonably related to the percentage of ownership, or value in relation to the overall condominium project, attributable to the unit owned.

(b) *Ingress and egress of unit owners.* There may not be any restriction upon any unit owner's right of ingress and egress to his or her unit. It is recommended that the declaration affirmatively provide for the right of ingress to and egress from such unit, with such right being perpetual and appurtenant to the unit ownership.

Appropriate cross-easements over common elements for unit owners shall be clearly set forth in the declaration.

(c) *Easements for encroachments—units and common elements.* In the event any portion of the common elements encroaches upon any unit or any unit encroaches upon the common elements or another unit as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. The declaration may provide, however, reasonable limits on the extent of any easement created by the overlap of units, common elements, and limited common elements resulting from such encroachments.

(d) *Right of first refusal.* The right of a unit owner to sell, transfer, or otherwise convey his or her unit in a condominium shall not be subject to any right of first refusal or similar restriction. It is recommended that the declaration affirmatively provide that a unit owner may transfer his or her unit free of any such restriction.

(e) *Leasing restrictions.* (i) All of the agencies and corporations agree that unit owners should be prohibited from leasing their units for less than 30 days, that all leases be in writing and subject to the declaration and by-laws.

(ii) FNMA, HUD and VA agree that unit owners should be prohibited from leasing their units for less than 30 days, but that no prohibition related to the term of a lease shall apply to a lease having a term exceeding six months. The restrictions in this paragraph are not required by FHLMC; however, FHLMC would not object to such restrictions.

(iii) FHLMC deals with items (i) and (ii) above by restricting use of units in condominium regimes through a requirement that at least 80 percent of all units within the regime must be sold to or occupied by unit owners as their primary, year-round residence.

9. FIRST LIEN HOLDERS' RIGHTS

(a) *Notices of action.* A holder or insurer of a first mortgage, upon written request to the owners association, (such request to state the name and address of such holder or insurer and the unit number), will be entitled to timely written notice of:

1. Any proposed amendment of the condominium instruments effecting a change in (1) the boundaries of any unit, (2) the undivided interest in the common elements appertaining to any unit or the liability for common expenses appertaining thereto, (3) the number of votes in the owners association appertaining to any unit or (4) the purposes to which any unit or the common elements are restricted;

2. Any proposed termination of the condominium regime;

3. Any condemnation or eminent domain proceeding affecting the condominium regime or any portion thereof;

4. Any significant damage or destruction to the common elements; and

5. Any default under the declaration or by-laws which gives rise to a cause of action against the owner of a unit subject to the mortgage of such holder or insurer, where the defalut has not been cured in 60 days.

(b) *Inspection of association books and records.* The declaration shall provide that the holder and insurer of the first mortgage on a unit shall be entitled, upon request, to: (a) inspect the books and records of the owners association during normal business hours and (b) require the preparation of and, if preparation is required, receive an annual audited financial statement of the owners association for the immediately preceding fiscal year, except that such statement need not be furnished earlier than 90 days following the end of such fiscal year. The declaration shall also provide that all unit owners have reasonable access to inspect the books, records and financial statements of the owners association, including annual audited financial statements when such are prepared.

10. AMENDMENT TO DOCUMENTS

(a) The consent of all unit owners shall be required for any amendment of condominium instruments effecting a change in (1) the boundaries of any unit, (2) the undivided interest in the common elements appertaining to the unit or the liability for common expenses appertaining thereto, (3) the number of votes in the owners association appertaining to the unit, or (4) the fundamental purposes to which any unit or the common elements are restricted.

(b) The consent of owners of units to which at least 80 percent of the votes of the owners association appertain and the approval of the eligible holders of first mortgages on units to which at least 75 percent of the votes of units subject to a mortgage appertain shall be required to terminate the condominium regime.

(c) Except as provided in (a) and (b) above, the agreement of owners of units to which at least 65 percent of the votes of the owners association appertain and the approval of the eligible holders of the first mortgages on units to which at least 51 percent of the votes of units subject to a mortgage appertain shall be required to amend the condominium declaration or its equivalent; provided, however, that (except as provided in (a) and (b) above) the instruments may otherwise be amended pursuant to specific criteria which are subject to the approval of the agencies and corporations concerned, in order to effectuate a satisfactory plan of expansion or phased development as expressly set forth in the declaration, or where the amendment, by reason of its subject matter, would not reasonably require agreement or approval by owners and first mortgage holders in the percentages provided above. In instances where the condominium instruments are permitted to be amended with less than the above-stated percentage of votes or approvals, the subject matter and manner of effecting such amendment, including the percentage of votes or approvals required, together with any other pertinent criteria, must be clearly and expressly stated in the declaration.

(d) For first mortgagees to be eligible holders under paragraphs (b) and (c) above, they must request notice in accordance with the provisions of Section 9(a).

(e) HUD and VA will accept, but do not require, the provisions of paragraphs (b) and (c) relating to mortgagee approval.

11. CONDEMNATION

The declaration should contain adequate provisions for fair and equitable disposition or distribution of condemnation proceeds, reallocation of interests and restoration and repair of the regime and units therein.

12. RIGHTS OF ACTION

The owners association and any aggrieved unit owner shall be granted a right of action against unit owners for failure to comply with the provisions of the declaration, by-laws, or equivalent documents, or with decisions of the owners association which are made pursuant to authority granted the owners association in such documents. Unit owners shall have similar rights of action against the owners association.

13. STAGED, PHASED, OF EXPANDABLE DEVELOPMENTS

The condominum documents shall disclose in clear and precise terms the proposed improvements and alternatives thereto, a time period for undertaking these improvements and the method and timing of transfer of control. (See also Sections 5 and 6.)

Issued at Washington, D.C., January 18, 1977.

CONSTANCE B. NEWMAN,
Assistant Secretary for Consumer Affairs and Regulatory Functions.

[FR Doc.77-2268 Filed 1-24-77;8:45 am]

federal register

TUESDAY, JANUARY 25, 1977

PART X

DEPARTMENT OF STATE

Office of Fisheries Affairs

■

APPLICATIONS FOR PERMITS TO FISH OFF THE COASTS OF THE UNITED STATES

Pursuant to Fishery Conservation and Management Act, 1976

PL-77-0001 to
PL-77-0033

DEPARTMENT OF STATE

Office of Fisheries Affairs

[Public Notice 513]

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Applications for Permits To Fish Off the Coasts of the United Sates

The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to section 204 of the Act.

The Act also requires that all applications for such permits be published in the FEDERAL REGISTER.

Applications for fishing beginning March 1, 1977, have been received from the Governments of Poland and the German Democratic Republic, and are published herewith.

Dated: January 18, 1977.

ALBERT L. ZUCCA,
Director, Office of Fisheries Affairs.

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

APPLICATION FOR VESSEL PERMITS TO FISH WITHIN THE FISHERY CONSERVATION ZONE OF THE UNITED STATES, OR FOR ANADROMOUS SPECIES OR CONTINENTAL SHELF FISHERY RESOURCES

PL-77-0001 to

DATE 1-3-77 APPLICATION NO. PL-77-0033
for use of issuing Officer

In accordance with the provision of Section 204 of the Fishery Conservation and Management Act of 1976, (16 U.S.C. 1801-1882), and the governing international fisheries agreement entered into with the Government of the United States of America, which entered into force on _____,
date

the government (or competent authority) of Poland

hereby submits this application for permits for fishing vessels under its jurisdiction to fish within the fishery conservation zone of the United States, or beyond that zone for anadromous species or Continental Shelf fishery resources subject to the jurisdiction of the United States.

The following information is submitted in support of this application (Use additional sheets as required).

A completed Fishing Vessel Identification Form for each permit that is requested; and a compilation of data contained in questions 5 and 20 in the attached Fishing Vessel Identification Form.

Submitted January 3, 1977
Date

Jozef Soldaczuk
Signature of Authorized Official

Economic Counselor
Title

SUMMARY OF APPLICATION FOR FISH QUOTA FOR 1977

NORTH EAST PACYFIC *

PL-77-0001 to PL-77-0012

STATE : P O L A N D

No	Type of Vessel	Number of Vessel	Hake	Jack mkrel	Pollock	Rock -fish	Atkamakrel	Cod	Plaice
1.	Stern trawler B-22	3	5.000	2.000	6.000	1.500	1.500	1.550	3.000
2.	Stern trawler B-419	2	5.000	2.000	3.000	750	1.000	650	1.500
3.	Stern trawler B-414	2	4.000	1.500	2.500	550	900	600	1.300
4.	Stern trawler B-418	3	9.000	3.000	6.000	1.500	1.800	1.500	3.000
5.	Stern-trawler B-417	2	3.000	1.500	2.500	700	800	700	1.200
	T o t a l	12	26.000	10.000	20.000	5.000	6.000	5.000	10.000

*/ Includring California - Washington, Gulf of Alaska, Berring Sea and Aleutian Islands

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Pl-77-0001

Permit Period Applied For: 1977 — Application No. For Use of Issuing Office: Pl-77-0001

State: POLAND

1. Name of Vessel: LEPUS
2. Vessel No.: Hull No. GDY-325 Registration No. 44162
3. Name and Address of Owner — Name and Address of Charterer

Name: DEEP SEA FISHERY AND FISHING SERVICE ENTERPRISE

Address: GDYNIA
Z. W. M. 10

Cable Address: Dalmor - Gdynia

4. Homeport and State of Registry: GDYNIA
5. Type of Vessel: stern trawler, B-22
6. Tonnage (Gross) 2691 (Net) 1069
7. Length 87,96 M. 8. Breadth 14,52 M. 9. Draft 5,60 M.
10. Horsepower 2500 shp. 11. Maximum Speed 13,0 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),
Other
13. Date Built 1969
14. Number and Nationality of Personnel 100 Poles
Officers 18 Crew 82 Other (Specify)
15. Communications: VHF-FH (X), AM/SSB, Voice (X), Telegraphy (X),
Other
International Radio Call Sign SQAD
Radio Frequencies Monitored 500 kHz
Other Working Frequencies 2506 kHz
Schedule 20,00 - 22,00 on the zone times

16. Navigation Equipment: Loran C ( ), Loran A (X), Omega ( ),
Decca (X), Navsat ( ), Radar (X), Fathometer (X),
Other

17. Cargo Capacity (MT)

Salted Fish		Freezer	3
Fresh Fish		Dry Hold	1
Frozen Fish	870,3	Tanks	4
Fish Meal	235,0	Other	
Other	Fish oil 54		

18. Cargo Space

Number	Name
3	I, II, III
1	IV
4	16SB, 16BB, 17SB, 17BB

19. Processing Equipment (Indicate daily capacity, MT)

Lime production:	Baader - 188	20 t per/day
	Baader - 181	15 t per/day
	Baader - 150	40 t per/day
Fish meal	F.M. - 35	35 t per/day raw mat.
Fish oil	De Laval	0,5 t per/day
Plate freezers /units 4/		30 t per/day

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	1.500 ton	Midwater otter trawl
		Jack Mackerel	500 ton	Bottom otter trawl
		Pollock	2.000 ton	
		Attka Mackerel	500 ton	
		Rockfish	500 ton	
		Plaice	1.000 ton	
		Cod	600 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. — Official Representative
Two World Trade Center, — Ireneusz Urzędniewski
Suite 2222, New York, N.Y. 10048 — Fisheries Attache
~~Polish Embassy Office~~
New York

PL-77-0002

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period Applied For: 1977

Application No. PL-77-0002 For Use of Issuing Office

State: POLAND

1. Name of Vessel LYRA
2. Vessel No.: Hull No. GDY-323 Registration No. 44147
3. Name and Address of Owner DEEP SEA FISHERY AND
   Name FISHING SERVICE ENTERPRISE
   Address GDYNIA
   Z. W. M. 10
   Cable Address
   Dalmor - Gdynia
   Name and Address of Charterer
4. Homeport and State of Registry: GDYNIA
5. Type of Vessel stern trawler, B-22
6. Tonnage (Gross) 2687 (Net) 1066
7. Length 87,96 M. 8. Breadth 14,52 M. 9. Draft 5,60 M.
10. Horsepower 2,500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ),
    Other
13. Date Built 1968
14. Number and Nationality of Personnel 100 Poles
    Officers 18 Crew 82 Other (Specify)
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x).
    Other
    International Radio Call Sign SPYZ
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies 2506 kHz
    Schedule 20,00 - 22,00 on the zone times

16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X),
    Decca (X), Navsat ( ), Radar (X), Fathometer (X),
    Other

17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	870,3
Fish Meal	235
Other	Fish oil 54

18. Cargo Space

Number	Name
Freezer 3	I, II, III
Dry Hold 1	IV
Tanks 4	16SB, 16DB, 17SB, 17DB
Other	

19. Processing Equipment (Indicate daily capacity, MT)

Line production:	Beader - 188	20 t per/day
	Beader - 150	40 t per/day
	Beader - 99	50-60 t per/day
Fish meal	F.M. - 35	35 t per/day raw mat.
Fish oil	De Laval	0,5 t per/day
Plate freezers /units 4/		30 t per/day

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	1.500 ton	Midwater otter trawl
		Jack Mackerel	500 ton	Bottom otter trawl
		Pollock	2.000 ton	
		Attka Mackerel	500 ton	
		Rockfish	500 ton	
		Plaice	1.000 ton	
		Cod	600 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. Official Representative
Two World Trade Center, Ireneusz Urzędniewski
Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0003

Permit Period Applied For: 1977

Application No. PL-77-0003 For Use of Issuing Office

State: POLAND

1. Name of Vessel TUCANA
2. Vessel No.: Hull No. GDY-328 Registration No. 44176
3. Name and Address of Owner
   Name DEEP SEA FISHERY AND FISHING SERVICE ENTERPRISE
   Address GDYNIA
   Z. W. M. 10
   Cable Address
   Dalmor - Gdynia
   Name and Address of Charterer
4. Homeport and State of Registry: GDYNIA
5. Type of Vessel stern trawler, B-22
6. Tonnage (Gross) 2691 (Net) 1069
7. Length 87,94 M. 8. Breadth 14,51 M. 9. Draft 5,60 M.
10. Horsepower 2,500 shp. 11. ~~Nominal~~ Speed 14,1 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ),
    Other
13. Date Built 1972
14. Number and Nationality of Personnel 100 Poles
    Officers 18 Crew 82 Other (Specify)
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x),
    Other
    International Radio Call Sign SQDN
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies 2506 kHz
    Schedule 20,00 - 22,00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (x), Omega ( ),
    Decca (x), Navsat ( ), Radar (x), Fathometer (x),
    Other
17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	870,3
Fish Meal	235
Other Fish oil	54

18. Cargo Space

	Number	Name
Freezer	3	I, II, III
Dry Hold	1	IV
Tanks	4	16SB, 16SB, 17SB, 17SB.
Other		

19. Processing Equipment (Indicate daily capacity,MT)

Line production:	Baader - 188	20 t per/day
	Baader - 181	15 t per/day
	Baader - 150	40 t per/day
Fish meal	F.M. - 35	35 t per/day raw mat.
Fish oil	De Laval	0,5 t per/day
Plate freezers /units 4/		30 t per/day

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	2.000 ton	Midwater otter trawl
		Jack Mackerel	1.000 ton	
		Pollock	2.000 ton	Bottom ottertrawl
		Attka Mackerel	500 ton	
		Rockfish	500 ton	
		Plaice	1.000 ton	
		Cod	350 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. Official Representative
Two World Trade Center, Ireneusz Wrzaśniewski
Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0004

Permit Period Applied For: 1977

Application No. PL-77-0004 For Use of Issuing Office

State: POLAND

1. Name of Vessel PERSEUS
2. Vessel No.: Hull No. GDY-332 Registration No. 44191
3. Name and Address of Owner: DEEP SEA FISHERY AND FISHING SERVICE ENTERPRISE
   Address: GDYNIA
   Z. W. M. 10
   Cable Address: Dalmor - Gdynia
   Name and Address of Charterer
4. Homeport and State of Registry: GDYNIA
5. Type of Vessel stern trawler, B-419
6. Tonnage (Gross) 2655 (Net) 1128
7. Length 88,14 M. 8. Breadth 15,03 M. 9. Draft 5,60 M.
10. Horsepower 3.600 shp. 11. Maximum Speed 15,4 kt.
11. Propulsion: Diesel ( ), Steam ( ), Diesel/Electric ( ),
    Other
13. Date Built 1975
14. Number and Nationality of Personnel 85 Poles
    Officers 16 Crew 69 Other (Specify)
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
    Other
    International Radio Call Sign SQDW
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies 2506 kHz
    Schedule 20,00 - 22,00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (X), Omega ( ),
    Decca (X), Navsat ( ), Radar (x), Fathometer (x),
    Other
17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	890
Fish Meal	192,4
Other	Fish oil 35

18. Cargo Space

	Number	Name
Freezer	3	I, II, III
Dry Hold	1	IV
Tanks	3	1BB, 2BB, 3SB
Other		

19. Processing Equipment (Indicate daily capacity,MT)

Line production: 2 x Baader - 188		20 t per/day
Baader -181		15 t per/day
Baader - 150		40 t per/day
Fish meal	F.N. - 35	35 t per/day raw mat.
Fish oil	De Laval	o,5 t per/day
Plate freezers /units 4/		35 t per/day

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	3.000 ton	Midwater otter trawl
		Jack Mackerel	1.000 ton	Bottom otter trawl
		Pollock	1.000 ton	
		Attka Mackerel	500 ton	
		Rockfish	500 ton	
		Flaice	500 ton	
		Cod	300 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. Official Representative
Two World Trade Center, Ireneusz Wrzesniewski
Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0005

Permit Period Applied For: 1977

Application No. PL-77-0005 For Use of Issuing Office

State: POLAND

1. Name of Vessel DENEBOLA
2. Vessel No.: Hull No. GDY-333 Registration No. 44192
3. Name and Address of Owner: DEEP SEA FISHERY AND
   Name FISHING SERVICE ENTERPRISE
   Address GDYNIA
   Z. W. M. 10
   Cable Address
   Dalmor - Gdynia
   Name and Address of Charterer
4. Homeport and State of Registry: GDYNIA
5. Type of Vessel stern trawler, B-419
6. Tonnage (Gross) 2653,74 (Net) 1127,6
7. Length 88,22 M. 8. Breadth 15,03 M. 9. Draft 5,60 M.
10. Horsepower 3,600 shp. 11. Maximum Speed 15,4 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),
    Other
13. Date Built 1974
14. Number and Nationality of Personnel 85 Poles
    Officers 16 Crew 69 Other (Specify)
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x),
    Other
    International Radio Call Sign SQDT
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies 2506 kHz
    Schedule 20,00 - 22,00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (X), Omega ( ),
    Decca (x), Navsat ( ), Radar (x), Fathometer (x),
    Other
17. Cargo Capacity (MT)

Salted Fish		Freezer	3
Fresh Fish		Dry Hold	1
Frozen Fish	890	Tanks	3
Fish Meal	192,4	Other	
Other Fish oil	35		

18. Cargo Space

Number	Name
3	I, II, III
1	IV
3	1SB, 2SB, 3SB

19. Processing Equipment (Indicate daily capacity,MT)

Line production:	Baader - 188	20 t per/day
	Baader -181	15 t per/day
	Baader - 189	35 t per/day
Fish meal	F.M. - 35	35 t per/day raw mat.
Fish oil	De Laval	0,5 t per/day
Plate freezers /units 4/		35 t per/day

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	2.000 ton	Midwater otter trawl
		Jack Mackerel	1.000 ton	
		Pollock	2.000 ton	Bottom otter trawl
		Attka Mackerel	500 ton	
		Rockfish	250 ton	
		Plaice	1.000 ton	
		Cod	350 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. Official Representative
Two World Trade Center, Ireneusz Krzemieński
Suite 2222, New York, N.Y.10048.

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0006

Permit Period Applied For: 1977

Application No. PL-77-0006 For Use of Issuing Office

State: POLAND

1. Name of Vessel POLLUX
2. Vessel No.: Hull No. GDY-336 Registration No. 440220
3. Name and Address of Owner ~~DEEP SEA FISHERY AND~~

Name FISHING SERVICE ENTERPRISE

Address GDYNIA

E. W. M. 10

Cable Address

Dalmor - Gdynia

Name and Address of Charterer

4. Homeport and State of Registry: GDYNIA
5. Type of Vessel stern trawler, B-414
6. Tonnage (Gross) 2584,26 (Net) 1069,6
7. Length 89,01 M. 8. Breadth 15,03 M. 9. Draft 5,60 M.
10. Horsepower 3600 shp. 11. ~~MAXIMUM~~ Speed 15,4 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),

Other

13. Date Built 1976
14. Number and Nationality of Personnel 85 Poles

Officers 16 Crew 69 Other (Specify)

15. Communications: VHF-FM (X), ~~AM~~/SSB, Voice (X), Telegraphy (X),

Other

International Radio Call Sign SQQL

Radio Frequencies Monitored 500 kHz

Other Working Frequencies 2506 kHz

Schedule 20,00 - 22,00onthe zone times

16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X), Decca (X), Navsat ( ), Radar (X), Fathometer (X),

Other

17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	792,4
Fish Meal	234
Other	Fish oil 55

18. Cargo Space

Number	Name
Freezer 2	I, II
Dry Hold 1	III
Tanks 2	Nr 1, Nr 2
Other	

19. Processing Equipment (indicate daily capacity,MT)

Line production:	Baader - 188	20 t per/day
	~~Baader - 181~~	~~15 t per/day~~
	Baader - 189	35 t per/day
Fish meal	F.M. - 50	50 t per/day raw mat.
~~Fish oil~~	~~De Laval~~	~~0,5 t per/day~~
Plate freezers /units 5/		45 t per/day

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	3.000 ton	Midwater otter trawl
		Jack Mackerel	1.000 ton	Bottom otter trawl
		Pollock	1.000 ton	
		Attka Mackerel	500 ton	
		Rockfish	250 ton	
		Plaice	500 ton	
		Cod	300 ton	

21. Name and Address of Agent appointed to receive legal process issued in the United States:

Amerpol International Inc. Official Representative

Two World Trade Center, Ireneusz Trześniewski

Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0007

Permit Period Applied For: 1977

Application No. For Use of Issuing Office: PL-77-0007

State: POLAND

1. Name of Vessel: GRIFFAL
2. Vessel No.: Hull No. SWI - 210 Registration No. 440200
3. Name and Address of Owner / Name and Address of Charterer
   Name: DEEP SEA FISHING COMPANY "ODRA"
   Address: 72-602 Swinoujście
   Jana Sołtana 1
   Cable Address:
   Odra - Swinoujście
4. Homeport and State of Registry: Swinoujście
5. Type of Vessel: stern trawler, B-418
6. Tonnage (Gross) 2475 (Net) 1030
7. Length 88,96 M. 8. Breadth 15,03 M. 9. Draft 6,30 M.
10. Horsepower 2700 shp. 11. Maximum Speed 13,5 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ),
    Other:
13. Date Built: 1973
14. Number and Nationality of Personnel: 80 Poles
    Officers 16 Crew 64 Other (Specify)
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
    Other:
    International Radio Call Sign: SQBZ
    Radio Frequencies Monitored: 500 kHz
    Other Working Frequencies: 2506 kHz
    Schedule: 08,00 - 12,00, 20,00 - 22,00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X),
    Decca (X), Navsat ( ), Radar (x), Fathometer (x),
    Other:
17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish	Freezer	2	1, 2
Fresh Fish	Dry Hold	1	
Frozen Fish 900	Tanks	3	13, 14, 15
Fish Meal 160	Other		
Other Fish oil 35			

19. Processing Equipment (Indicate daily capacity,MT)
    Baader-33/unit 1/-140 fish/min, filleting line B-181, B-47,
    Trio- 4-10 tons/day, filleting line B-188, B-413, B-47/units 2/-
    5-21 tons/day. Plate freezers /units 5/ - 30 tons/day.
    Fish meal and oil plant F.M.-25, 25 tons/day raw mat.
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	3.000 ton	Midwater otter trawler
		Jack Mackerel	1.000 ton	Bottom otter trawl
		Pollock	2.000 ton	
		Rockfish	500 ton	
		Attka Mackerel	600 ton	
		Cod	500 ton	
		Plaice	1.000 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Reprezentative
    Two World Trade Center, Ireneusz Wrześniewski
    Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0008

Permit Period Applied For: 1977

Application No. For Use of Issuing Office PL-77-0008

State: POLAND

1. Name of Vessel GARNELA
2. Vessel No.: Hull No. SWI - 208 Registration No. 440173
3. Name and Address of Owner / Name and Address of Charterer
   Name DEEP SEA FISHING COMPANY "ODRA"
   Address 72-602 Swinoujście
   Jana Sołtana 1
   Cable Address
   Odra - Swinoujście
4. Homeport and State of Registry: Swinoujście
5. Type of Vessel stern trawler B-418
6. Tonnage (Gross) 2501 (Net) 1066
7. Length 88,74 M. 8. Breadth 15,03 M. 9. Draft 6,30 M.
10. Horsepower 2700 shp. 11. Maximum Speed 13,5 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),
    Other
13. Date Built 1971
14. Number and Nationality of Personnel 80 Poles
    Officers 16 Crew 64 Other (Specify)
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
    Other
    International Radio Call Sign SQBB
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies 2506 kHz
    Schedule 08.00-12.00, 20.00-22.00 on the zone times

16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X),
    Decca (X), Navsat ( ), Radar (x), Fathometer (x),
    Other

17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	900
Fish Meal	160
Other	Fish oil 35

18. Cargo Space

	Number	Name
Freezer	2	1, 2
Dry Hold	1	
Tanks	3	13, 14, 15
Other		

19. Processing Equipment (Indicate daily capacity,MT)
    Beader-33/unit 1/- 140 fish/min, filleting line B-181, B-47,
    Trio- 4-10tons/day, filleting line B-188, B-421, B-47/units 2/-
    5-21 tons/day. Plate freezers/units 4/-30 tons/day.
    Fish meal and oil plant F.M.-25, 25 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	3.000 ton	Midwater otter trawl
		Jack Mackerel	1.000 ton	Bottom otter trawl
		Pollock	2.000 ton	
		Rockfish	500 ton	
		Attka Mackerel	600 ton	
		Cod	500 ton	
		Plaice	1.000 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Representative
    Two World Trade Center, Ireneusz Wrześniewski
    Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0009

Permit Period Applied For: 1977

Application No. For Use of Issuing Office PL-77-0009

State: POLAND

1. Name of Vessel WALEN
2. Vessel No.: Hull No. SWI - 209 Registration No. 440178
3. Name and Address of Owner / Name and Address of Charterer

Name DEEP SEA FISHING COMPANY "ODRA"

Address 72-602 Swinoujście
Jana Sołtana 1.

Cable Address
Odra - Swinoujście

4. Homeport and State of Registry: Swinoujście
5. Type of Vessel stern trawler, B-418
6. Tonnage (Gross) 2475 (Net) 1030
7. Length 88,96 M. 8. Breadth 15,03 M. 9. Draft 6,30 M.
10. Horsepower 2700 shp. 11. Maximum Speed 13,5 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ),
Other
13. Date Built 1973
14. Number and Nationality of Personnel 80 Poles
Officers 16 Crew 64 Other (Specify)
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x),
Other
International Radio Call Sign SQDI
Radio Frequencies Monitored 500 kHz
Other Working Frequencies 2506 kHz
Schedule 08.00-12.00, 20.00-22.00 on the none times

16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X),
Decca (X), Navsat ( ), Radar (x), Fathometer (x),
Other

17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	900
Fish Meal	160
Other Fish oil	35

18. Cargo Space

Name	Number
Freezer	2
Dry Hold	1
Tanks	3
Other	

Number	Name
2	1, 2
3	13, 14, 15

19. Processing Equipment (Indicate daily capacity,MT)
Baader-33/unit 1/- 140 fish/min, fileting line B-181, B-47,
Trio- 4-10 tons/day, filleting line B-188, B-413, B-47/units 2/-
5-21 tons/day. Plate freezers /units 5/- 30 tons/day,
Fish meal and oil plant F.M.-25, 25 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	3.000 ton	Midwater otter trawl
		Jack Mackerel	1.000 ton	Bottom otter trawl
		Pollock	2.000 ton	
		Rockfish	500 ton	
		Attka Mackerel	600 ton	
		Cod	500 ton	
		Plaice	1.000 ton	

21. Name and Address of agent authorized to receive any legal process issued in the United States:

Amerpol International Inc. Official Representative
Two World Trade Center, Ireneusz Urzędniewski
Suite 2222, New York, N.Y.10048.

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0010

Permit Period Applied For: 1977

Application No. ~~PL77-0010~~ For Use of Issuing Office

State: POLAND

1. Name of Vessel WŁÓCZNIK
2. Vessel No.: Hull No. SWI - 225 Registration No. 440207
3. Name and Address of Owner — Name and Address of Charterer
   - Name DEEP SEA FISHING COMPANY "ODRA"
   - Address 72-602 Swinoujście
     Jana Sołtana 1.
   - Cable Address
     Odra - Swinoujście
4. Homeport and State of Registry: Swinoujście - P-ANY
5. Type of Vessel stern trawler, B-414
6. Tonnage (Gross) 2584 (Net) 1069
7. Length 88,56 M. 8. Breadth 15,02 M. 9. Draft 5,60 M.
10. Horsepower 3600 shp. 11. Maximum Speed 15 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ),
    Other
13. Date Built 1975
14. Number and Nationality of Personnel 78 Poles
    Officers 16 Crew 62 Other (Specify)
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x),
    Other
    International Radio Call Sign SQDO
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies 2506 kHz
    Schedule 08.00-12.00, 20.00-22.00 on the zone times

PL-77-0010

16. Navigation Equipment: Loran C ( ), Loran A (x), Onega (x),
    Decca (x), Navsat ( ), Radar (x), Fathometer (x),
    Other

17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	800
Fish Meal	180
Other Fish oil	40

18. Cargo Space

Name	Number
Freezer	2
Dry Hold	1
Tanks	2
Other	-

Number	Name
2	1, 2
1	
2	1t, 2t
-	

19. Processing Equipment (Indicate daily capacity, MT)

Filleting line Baader-181, Trio- 4-10 ton/day, filleting line B-188, Technet OFD-1/unitms 2/- 5-21 tons/day, filleting line B-189, Technet OFD-1/units 2/- 5-21 tons/day, B-694/unit 1/, B-33/unit 1/- 140 fisch/min.

Plate freezers /units 5/- 45 tons/day.
Fish meal and oil plant F.M.-50, - 50 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	1.000 ton	Midwater otter trawl
		Jack Mackerel	500 ton	Bottom otter trawl
		Pollock	1.500 ton	
		Rockfish	300 ton	
		Attka Mackerel	400 ton	
		Cod	300 ton	
		Plaice	800 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. Official Naprezentative
Two World Trade Center, Ireneusz Wrześniewski
Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0011

Permit Period Applied For: 1977

Application No. For Use of Issuing Office: ~~PL-77-0011~~ PL-77-0011

State: POLAND

1. Name of Vessel: OTOL
2. Vessel No.: Hull No. SWI- 216 Registration No. 440212
3. Name and Address of Owner / Name and Address of Charterer
   Name: DEEP SEA FISHING COMPANY "ODRA"
   Address: 72-602 Swinoujście
   Jana Sołtana 1.
   Cable Address:
   Odra - Swinoujście
4. Homeport and State of Registry: Swinoujście
5. Type of Vessel: stern trawler, B-417
6. Tonnage (Gross) 2395 (Net) 998
7. Length 89,88 M. 8. Breadth 15,03 M. 9. Draft 6,50 M.
10. Horsepower 3600 shp. 11. Maximum Speed 15,0 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ),
    Other:
13. Date Built: 1976
14. Number and Nationality of Personnel: 78 Poles
    Officers 16 Crew 62 Other (Specify)
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x),
    Other:
    International Radio Call Sign: SQGX
    Radio Frequencies Monitored: 500 kHz
    Other Working Frequencies: 2506 kHz
    Schedule: 08.00-12.00, 20.00-22.00 on the zone times

16. Navigation Equipment: Loran C ( ), Loran A (x), Omega (x),
    Decca (x), Navsat ( ), Radar (x), Fathometer (x),
    Other:

17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	810
Fish Meal	180
Other Fish oil	40

18. Cargo Space

Number	Name
Freezer 2	1, 2
Dry Hold 1	
Tanks 2	19, 20
Other	

19. Processing Equipment (Indicate daily capacity,MT)
Bander-33/unit 1/- 140 fish/min., B-694/unit 1/, Technet/unit 1/, filleting line B-181, Trio- 4-10 tons/day, filleting line B-189, B-423, OFD-1/units 2/- 5-21 tons/day, filleting B-188, B-413, OFD-1 /units 2/- 5-21 tons/day. Plate freezers /units 5/ - 60 tons/day. Fish meal and oil plant F.M.-50, - 50 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	2.000 ton	Midwater otter trawl
		Jack Mackerel	1.000 ton	
		Pollock	2.000 ton	Bottom otter trawl
		Rockfish	500 ton	
		Attka Mackerel	600 ton	
		Cod	500 ton	
		Plaice	1.000 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
Amerpol International Inc. Official Representative
Two World Trade Center, Ireneusz Wrzesniewski
Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0012

Permit Period Applied For: 1977 — Application No. For Use of Issuing Office PL-77-0012

State: POLAND

1. Name of Vessel: MUSTEL

2. Vessel No.: Hull No. ŚWI - 218 Registration No. 440224

3. Name and Address of Owner — Name and Address of Charterer

Name: DEEP SEA FISHING COMPANY "ODRA"

Address: 72-602 Swinoujście
Jana Sołtana 1,

Cable Address: Odra - Swinoujście

4. Homeport and State of Registry: Swinoujście

5. Type of Vessel: stern trawler, B-417

6. Tonnage (Gross) 2395 (Net) 988

7. Length 89,80 M. 8. Breadth 15,03 M. 9. Draft 6,50 M.

10. Horsepower 3600 shp. 11. Maximum Speed 15,0 kt.

11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),
Other

13. Date Built 1977

14. Number and Nationality of Personnel 78 Poles
Officers 16 Crew 62 Other (Specify)

15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
Other
International Radio Call Sign SQQP
Radio Frequencies Monitored 500 kHz
Other Working Frequencies 2506 kHz
Schedule 08.00-12.00, 20.00-22.00 on the zone times

16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X),
Decca (x), Navsat ( ), Radar (x), Fathometer (x),
Other

17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	810
Fish Meal	180
Other	Fish oil 40

18. Cargo Space

	Number	Name
Freezer	2	1, 2
Dry Hold	1	
Tanks	2	19, 20
Other		

19. Processing Equipment (Indicate daily capacity/MT)
Bader-33/unit 1/- 140 fish/min., Bader-604/unit 1/, Technet /unit 1/, filleting line B-181, Trio- 3-10 tons/day, filleting line B-189, B-423, OFD-1/units 2/ 5-21 tons/day, filleting line B-188, B-413, OFD-1/units 2/- 5-21 tons/day. Plate freezers /units 5/ - 60 tons/day. Fish meal and oil plant F.M.-50 - 50 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	1,000 ton	Midwater otter trawl
		Jack Mackerel	500 ton	Bottom otter trawl
		Pollock	500 ton	
		Rockfish	200 ton	
		Attka Mackerel	200 ton	
		Cod	200 ton	
		Plaice	200 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. — Official Representative
Two World Trade Center, — Ireneusz Wrześniewski
Suite 2222, New York, N.Y. 10048

SUMMARY OF APPLICATION FOR FISH QUOTA FOR 1977

PL-77-0013 to PL-77-0027

STATE: POLAND — N W Atlantic

No	Type of Vessel	Number of Vessel	Mackrel	Herring	Squids	Other
1.	Stern trawler B-29	5	10.100	2.550	4.310	3.100
2.	Stern trawler B-18	5	5.600	1.850	3.110	1.750
3.	Stern trawler B-418	2	2.300	700	1.200	700
4.	Stern trawler B-414	1	1.100	-	-	325
5.	Stern trawler B-417	1	1.100	-	-	325
6.	Reefer	1	-	-	-	
	Total	15	20.200	5.100	8.620	6.200

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period Applied For: 1977

Application No. For Use of Issuing Office PL-77-0013

State: POLAND

1. Name of Vessel: FOKA
2. Vessel No.: Hull No. SWI-195 Registration No. 44039
3. Name and Address of Owner / Name and Address of Charterer

Name: DEEP SEA FISHING COMPANY "ODRA"

Address: 72-602 Swinoujscie
Jana Soltana 1.

Cable Address:
Odra - Swinoujscie

4. Homeport and State of Registry: Swinoujscie
5. Type of Vessel: Stern trawler, B-18
6. Tonnage (Gross) 2495 (Net) 1041
7. Length 87.29 m. 8. Breadth 14,17 m. 9. Draft 5,40 m.
10. Horsepower 2250 shp. 11. Maximum Speed 12,5 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ).
Other
13. Date Built 1985
14. Number and Nationality of Personnel 80 Poles
Officers 16 Crew 64 Other (Specify)
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
Other
International Radio Call Sign SUVP
Radio Frequencies Monitored 500 kHz
Other Working Frequencies kHz:410,425,454,468,480,512

Schedule 08.00-1200, 20.00-22.00 on the zone times

16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X), Decca (x), Navsat ( ), Radar (x), Fathometer (x).
Other PL-77-0013

17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish	Freezer	3	1, 2, 3
Fresh Fish	Dry Hold	1	
Frozen Fish 750	Tanks	3	19, 20, 21
Fish Meal 100	Other		
Other Fish oil 50			

19. Processing Equipment (Indicate daily capacity,MT)
Baader-33 /unit 2/ - 140 fish/min.
Freezing tunnel /unit 1/ - 18 tons/day.
Plate freezers /units 3/ - 18 tons/day
Fish meal and oil plant "Don Thor" /unit 1/- 30 tons/day raw mat

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	1.100 ton	Midwater otter trawl
		Squid	650 ton	[illegible]
		Herring	400 ton	
		Other	350 ton	

2 nd Tier about 2.000 ton

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
Amerpol International Inc. — Official Representative
Two World Trade Center — Ireneusz Urzednicki
Suite 2222, New York, N.Y. 10048 — Fisheries Attache
Polish Embassy
Office New York

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Pl-77-0014

Permit Period Applied For: 1977

Application No. For Use of Issuing Office Pl-77-0014

State: POLAND

1. Name of Vessel PIETWAL

2. Vessel No.: Hull No. SWI - 197 Registration No. 44037

3. Name and Address of Owner / Name and Address of Charterer

Name DEEP SEA FISHING COMPANY "ODRA"

Address 72-602 Swinoujście
Jana Sołtana 1.

Cable Address
Odra - Swinoujście

4. Homeport and State of Registry: Swinoujście

5. Type of Vessel stern trawler, B-18

6. Tonnage (Gross) 2495 (Net) 1041

7. Length 87,29 M. 8. Breadth 14,17 M. 9. Draft 5,40 M.

10. Horsepower 2250 shp. 11. Maximum Speed 12,5 kt.

11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),
Other

13. Date Built 1965

14. Number and Nationality of Personnel 80 Poles
Officers 16 Crew 64 Other (Specify)

15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
Other

International Radio Call Sign SNVV

Radio Frequencies Monitored 500 kHw

Other Working Frequencies kHz: 410,425,454,468,480,512

Schedule 08.00-12.00, 20.00-22.00 on the zone times

16. Navigation Equipment: Loran C ( ), Loran A (x), Omega (x),
Decca (X), Navsat ( ), Radar (X), Fathometer (X),
Other

17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	750
Fish Meal	100
Other	Fish oil 50

18. Cargo Space

	Number	Name
Freezer	3	1, 2, 3
Dry Hold	1	
Tanks	3	19, 20, 21
Other		

19. Processing Equipment (Indicate daily capacity,MT)
Baader-33/unit 1/- 140 fish/min., Arenco CDI/unit 1/-145 fish/min.
Freezing tunnel /unit 1/ - 18 tons/day,
plate freezers /units 3/ - 18 tons/day.
Fish meal and oil plant /"Dan Thor"/unit 1/ - 50 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	1,100 ton	Midwater otter trawl
		Squid	650 ton	
		Herring	350 ton	
		Other	350 ton	
		2 nd Tiar about	2,000 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. Official Reprezentetive
Two World Trade Center Ireneusz Urzędniewski
Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0015

Permit Period Applied For: 1977

Application No. For Use of Issuing Office PL-77-0015

State: POLAND

1. Name of Vessel LANGUSTA
2. Vessel No.: Hull No. SWI - 200 Registration No. 440023
3. Name and Address of Owner / Name and Address of Charterer

Name DEEP SEA FISHING COMPANY "ODRA"

Address 72-602 Swinoujście

Jana Sołtana 1,

Cable Address

Odra - Swinoujście

4. Homeport and State of Registry: Swinoujście
5. Type of Vessel stern trawler, B-18
6. Tonnage (Gross) 2495 (Net) 1041
7. Length 87,27 M. 8. Breadth 14,17 M. 9. Draft 5,40 M.
10. Horsepower 22,50 shp. 11. Maximum Speed 12,5 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),

Other

13. Date Built 1966
14. Number and Nationality of Personnel 80 Poles

Officers 16 Crew 64 Other (Specify)

15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x),

Other

International Radio Call Sign SNVY

Radio Frequencies Monitored 500 kHz

Other Working Frequencies kHz: 410,425,454,468,480,512

Schedule 08.00-12.00, 20.00-22.00 the zone times

16. Navigation Equipment: Loran C ( ), Loran A (x), Omega (x),

Decca X), Navsat ( ), Radar (X), Fathometer (X),

Other

17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	750
Fish Meal	100
Other	Fish oil 50

18. Cargo Space

Number	Name
Freezer 3	1, 2, 3
Dry Hold 1	
Tanks 3	19, 20, 21
Other	

19. Processing Equipment (Indicate daily capacity.MT)

Baader-33/unit 1/ - 140 fish/min., Arenco CIM/CIP/unit 1/- 145 fish/min. Freezing tunnel /unit 1/ - 18 tons/day, plate freezers /units 3/ - 18 tons/day

Fish meal and oil plant "Dan Thor"- 30 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	1.100 ton	Midwater otter trawl
		Squid	650 ton	
		Herring	400 ton	
		Other	350 ton	

2nd Tiar about 2.000 ton

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. Official Representative

Two World Trade Center Ireneusz Wrześniewski

Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0016

Permit Period Applied For: 1977 — Application No. For Use of Issuing Office: PL-77-0016

State: P O L A N D

1. Name of Vessel: SEJWAL
2. Vessel No.: Hull No. SWI - 203 Registration No. 440026
3. Name and Address of Owner / Name and Address of Charterer
   Name: DEEP SEA FISHING COMPANY "ODRA"
   Address: 72-602 Swinoujście
   Jana Sobtana 1.
   Cable Address:
   Odra - Swinoujście
4. Homeport and State of Registry: Swinoujście
5. Type of Vessel: stern trawler, B-18
6. Tonnage (Gross) 2480 (Net) 1042
7. Length 87,14 M. 8. Breadth 14,17 M. 9. Draft 5,40 M.
10. Horsepower 2250 shp. 11. Maximum Speed 12,5 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ),
    Other
13. Date Built 1969
14. Number and Nationality of Personnel 80 Poles
    Officers 16 Crew 64 Other (Specify)
15. Communications: VHF-FM ( ), AM/SSB, Voice ( ), Telegraphy ( ),
    Other
    International Radio Call Sign SPYB
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies kHz: 410,425,454,468,480,512
    Schedule 08.00-12.00, 20.00-22.00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (x), Omega (x),
    Decca (x), Navsat ( ), Radar (x), Fathometer (x),
    Other
17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	750
Fish Meal	100
Other Fish oil	50

18. Cargo Space

	Number	Name
Freezer	3	1, 2, 3
Dry Hold	1	
Tanks	3	19, 20, 21
Other		

19. Processing Equipment (Indicate daily capacity, MT)
    Bander-33 /unit 2/ - 140 fish/min.
    Freezering tunnel /unit 1/ - 18 tons/day
    plate freezers /units 3/ - 18 tons/day.
    Fish meal and oil plant F.M.-25, - 25 tons/day raw mat.
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	1.200 ton	Midwater otter trawl
		Squid	510 ton	
		Herring	350 ton	
		Other	350 ton	
		2 nd Tiar about	2.000 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. — Official Representative
    Two World Trade Center — Ireneusz Wrześniewski
    Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0017

Permit Period Applied For: 1977

Application No. For Use of Issuing Office PL-77-0017

State: POLAND

1. Name of Vessel KASZALOT

2. Vessel No.: Hull No. SWI - 202 Registration No. 440025

3. Name and Address of Owner — Name and Address of Charterer

Name DEEP SEA FISHING COMPANY "ODRA"

Address 72-602 Swinoujście

Jana Sołtana 1.

Cable Address

Odra - Swinoujście

4. Homeport and State of Registry: Swinoujście

5. Type of Vessel stern trawler, B-18

6. Tonnage (Gross) 2478 (Net) 1041

7. Length 87,05 M. 8. Breadth 14,17 M. 9. Draft 5,40 M.

10. Horsepower 2250 shp. 11. Maximum Speed 12,5 kt.

11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),

Other

13. Date Built 1968

14. Number and Nationality of Personnel 80 Poles

Officers 16 Crew 64 Other (Specify)

15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),

Other

International Radio Call Sign SPYL

Radio Frequencies Monitored 500 kHz.

Other Working Frequencies kHz: 410,425,454,468,480,512

Schedule 08.00-12.00, 20.00-22.00 on the zone times

16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X),

Decca (X), Navsat ( ), Radar (X), Fathometer (X),

Other

17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	750
Fish Meal	100
Other	Fish oil 50

18. Cargo Space

Name	Number	Name
Freezer	3	1, 2, 3
Dry Hold	1	
Tanks	3	19, 20, 21
Other		

19. Processing Equipment (Indicate daily capacity,MT)

Beader-33/unit 1/- 140 fish/min., Arenco CIM/unit 1/- 145 fish/min, Bibun D`luxe/unit 1/. Freezering tunnel/unit 1/- 18 tons/day, plate freezers/units 3/ - 18 tons/day. Fish meal and oil plant F.M.-25, - 25 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	1.100 ton	Midwater otter trawl
		Squid	650 ton	
		Herring	350 ton	
		Other	350 ton	

2nd Tiar about 2.000 ton

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. — Official Representative

Two World Trade Center — Ireneusz Wrzesniewski

Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0018

Permit Period Applied For: 1977 — Application No. For Use of Issuing Office: PL-77-0018

State: POLAND

1. Name of Vessel: GARNELA
2. Vessel No.: Hull No. SWI - 208 — Registration No. 440173
3. Name and Address of Owner — Name and Address of Charterer
   Name: DEEP SEA FISHING COMPANY "ODRA"
   Address: 72-602 Swinoujście
   Jana Sołtana 1,
   Cable Address: Odra - Swinoujście
4. Homeport and State of Registry: Swinoujście
5. Type of Vessel: stern trawler, B-418
6. Tonnage (Gross) 2501 (Net) 1066
7. Length 88,74 M. 8. Breadth 15,03 M. 9. Draft 6,30 M.
10. Horsepower 2700 shp. 11. Maximum Speed 13,5 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),
    Other
13. Date Built 1971
14. Number and Nationality of Personnel 80 Poles
    Officers 16 Crew 64 Other (Specify)
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
    Other
    International Radio Call Sign SQBB
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies kHz: 410,425,454,468,480,512.
    Schedule 08.00-12.00, 20.00-22.00 on the zone times

16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X),
    Decca (X), Navsat ( ), Radar (X), Fathometer (X),
    Other

17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	900
Fish Meal	160
Other	Fish oil 35

18. Cargo Space

	Number	Name
Freezer	2	1, 2
Dry Hold	1	
Tanks	3	13, 14, 15
Other		

19. Processing Equipment (Indicate daily capacity, MT)
Baader-33/unit 1/- 140 fish/min., filleting line B-181, B-47, Trio- 4-10 tons/day, filleting line B-188, B-421, B-47/units 2/- 5-21tons/day Plate freezers /units 4/- 30 tons/day.
Fish meal and oil plant F.M.-25, - 25 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	1.100 ton	Midwater otter trawl
		Squid	600 ton	
		Herring	350 ton	
		Other	350 ton	

2 nd Tiar about 2.000 ton

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. — Official Representative
    Two World Trade Center — Ireneusz Urzędniewski
    Suite 2222, New York, N. Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0019

Permit Period Applied For: 1977

Application No. PL-77-0019 For Use of Issuing Office

State: POLAND

1. Name of Vessel HUMBAK

2. Vessel No.: Hull No. SWI - 206 Registration No. 440171

3. Name and Address of Owner / Name and Address of Charterer

Name DEEP SEA FISHING COMPANY "ODRA"

Address 72-602 Swinoujście
Jana Sołtana 1.

Cable Address
Odra - Swinoujście

4. Homeport and State of Registry: Swinoujście

5. Type of Vessel stern trawler, B-418

6. Tonnage (Gross) 2501 (Net) 1066

7. Length 88,75 M. 8. Breadth 15,03 M. 9. Draft 6,30 M.

10. Horsepower 2700 shp. 11. Maximum Speed 13,5 kt.

11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),
Other

13. Date Built 1971

14. Number and Nationality of Personnel 80 Poles
Officers 16 Crew 64 Other (Specify)

15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy ( ),
Other

International Radio Call Sign SQBA

Radio Frequencies Monitored 500 kHz

Other Working Frequencies kHz: 410,425,454,468,480,512

Schedule 08.00-12.00, 20.00-22.00 on the zone times

16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X),
Decca (X), Navsat ( ), Radar (X), Fathometer (X),
Other

17. Cargo Capacity (MT) / 18. Cargo Space

		Number	Name
Salted Fish	Freezer	2	1, 2
Fresh Fish	Dry Hold	1	
Frozen Fish 900	Tanks	3	13, 14, 15
Fish Meal 160	Other		
Other Fish oil 35			

19. Processing Equipment (Indicate daily capacity, MT)
Baader-33/unit 1/- 140 fish/min., filleting line B-181, B-47, Trio-4-10 tons/day, filleting line B-188, B-421, B-47 /units 2/- 5-21 tons/day. Plate freezers /units 4/- 30 tons/day.
Fish meal and oil plant F.M.-25, - 25 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	1.200 ton	Midwater otter trawl
		Squid	600 ton	
		Herring	350 ton	
		Other	350 ton	

2nd Tiar about 2.000 ton

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. Official Representative
Two World Trade Center Ireneusz Wrześniewski
Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Pl-77-0020

Permit Period Applied For: 1977

Application No. Pl-77-0020 For Use of Issuing Office

State: POLAND

1. Name of Vessel WŁÓCZNIK

2. Vessel No.: Hull No. SWI - 225 Registration No. 440207

3. Name and Address of Owner / Name and Address of Charterer

Name DEEP SEA FISHING COMPANY "ODRA"

Address 72-602 Swinoujście
Jana Sołtana 1.

Cable Address
Odra - Swinoujście

4. Homeport and State of Registry: Swinoujście

5. Type of Vessel stern trawler, B-414

6. Tonnage (Gross) 2584 (Net) 1069

7. Length 88,56 M. 8. Breadth 15,02 M. 9. Draft 5,60 M.

10. Horsepower 3600 shp. 11. Maximum Speed 15 kt.

11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ),
Other

13. Date Built 1975

14. Number and Nationality of Personnel 78 Poles

Officers 16 Crew 62 Other (Specify)

15. Communications: VHF-FM (x), AM/SSB, Voice (X), Telegraphy (X),
Other

International Radio Call Sign SQDG

Radio Frequencies Monitored 500 kHz

Other Working Frequencies kHz:410,425,454,468,480,512

Schedule 08.00-12.00, 20.00-22.00 on the some times

16. Navigation Equipment: Loran C ( ), Loran A (x), Omega (x),
Decca (x), Navsat ( ), Radar (x), Fathometer (x),
Other

17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	800
Fish Meal	180
Other	Fish oil 40

18. Cargo Space

	Number	Name
Freezer	2	1, 2
Dry Hold	1	
Tanks	2	1t, 2t
Other		

19. Processing Equipment (Indicate daily capacity,MT)

Filleting line B-181, Trio- 4-10 ton/day, filleting line B-188, Technet OFD-1 /units/2/- 5-21 tons/day, filleting line B-189, Technet OFD-1/units 2/- 5-21 tons/day, Baader 694/unit 1/, Baader-33/unit 1/- 140 fish/min. Plate freezers /units 5/- 45 tons/day. Fish meal and oil plant F.M.-50, -50 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	1.100 ton	Midwater otter trawl
		Other	325 ton	

2nd Tiar about 1.000 ton

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. — Official Representative
Two World Trade Center — Ireneusz Urzędniewski
Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0021

Permit Period Applied For: 1977

Application No. PL-77-0021 For Use of Issuing Office

State: POLAND

1. Name of Vessel OTOL

2. Vessel No.: Hull No. SWI - 216 Registration No. 440212

3. Name and Address of Owner

Name DEEP SEA FISHING COMPANY "ODRA"

Address 72-602 Swinoujście

Jana Sołtana 1.

Cable Address

Odra - Swinoujście

Name and Address of Charterer

4. Homeport and State of Registry: Swinoujście

5. Type of Vessel stern trawler, B-417

6. Tonnage (Gross) 2395 (Net) 988

7. Length 89,88 M. 8. Breadth 15,03 M. 9. Draft 6,50 M.

10. Horsepower 3600 shp. 11. Maximum Speed 15,0 kt.

11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),

Other

13. Date Built 1976

14. Number and Nationality of Personnel 78 Poles

Officers 16 Crew 62 Other (Specify)

15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),

Other

International Radio Call Sign SQOX

Radio Frequencies Monitored 500 kHz

Other Working Frequencies kHz: 410,425,454,468,480,512

Schedule 08.00-12.00, 29.00-22.00 on the zone times

16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X),

Decca (X), Navsat ( ), Radar (X), Fathometer (X),

Other

17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	810
Fish Meal	180
Other	Fish oil 40

18. Cargo Space

	Number	Name
Freezer	2	1, 2
Dry Hold	1	
Tanks	2	19, 20
Other		

19. Processing Equipment (Indicate daily capacity, MT)

Beader-33/unit 1/- 140 fish/min. B-694/unit 1/, Technet/unit 1/, filleting line B-181, Trio- 4-10tons/day, filleting line B-189, B-423, OFD-1/units 2/-5-21tons/day, filleting B-188, B-413, OFD-1/units 2/- 5-21 tons/day. Plate freezers /units 5/- 60 tons/day. Fish meal and oil plant FM-50, - 50 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	1,100 ton	Midwater otter trawl
		Other	325 ton	

2 nd Tiar about 1.050 ton

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. Official Reprezentative

Two World Trade Center Ireneusz Wrześniewski

Suite 2232, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

L R 4100 PL-77-0022

Permit Period Applied For: 1977

Application No. PL-77-0022 For Use of Issuing Office

State: POLAND

1. Name of Vessel "KABRYL"
2. Vessel No.: Hull No. SZM-92 Registration No. 440174
3. Name and Address of Owner
   Name: Deep Sea Fishing Company "Gryf"
   Address: Pl. Batorego 4,
   70-952 Szczecin, Poland
   Cable Address: Gryfmor - Szczecin
   Name and Address of Charterer: none
4. Homeport and State of Registry: Szczecin-Poland
5. Type of Vessel: stern trawler B-29
6. Tonnage (Gross) 1435 (Net) 531
7. Length 71,71 M. 8. Breadth 12,72M. 9. Draft 5,05 M.
10. Horsepower 2,500 shp. 11. Maximum Speed 14,9 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ), Other: no
13. Date Built 1971
14. Number and Nationality of Personnel 60 Polish
    Officers 14 Crew 46 Other (Specify) eventually assistant
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X), Other: no
    International Radio Call Sign S Q A W
    Radio Frequencies Monitored 500 KHz
    Other Working Frequencies 410,425,454,468,480,512 KHz
    Schedule 8.00 - 12.00, 20.00 -22.00 by zone time
16. Navigation Equipment: Loran C ( ), Loran A ( ), Omega ( ), Decca (x), Navsat ( ), Radar (x), Fathometer (x), Other
17. Cargo Capacity (MT)

Salted Fish	no	Freezer	2
Fresh Fish	no	Dry Hold	2
Frozen Fish	450	Tanks	1 oil tank no 23
Fish Meal	70	Other	2 refrigerated sea water tanks
Other	fish oil 16		1 ice store room

18. Cargo Space

Number	Name
2	no 1, no2
2	no 3, no 4

19. Processing Equipment (Indicate daily capacity,MT)

vertical plate freezer "JACKSTON" 4 units x 7,5 MT/24 hours
filleting machine "BAADER 33" 2 units x 130 fish/min
fish meal factory FM-25, 1 unit x 5 MT/ 24 hours
production of fish oil ALFA LAVAL, 1 unit x 1MT/24hours

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	2.050 ton	Midwater otter trawl
		Squide	870 ton	
		Other	700 ton	

2nd Tiar about 2.900 ton

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
Amerpol International Inc., Two World Trade Center, Suite 2222, New York, N.Y. 10048

Official Representative
Ireneusz Urzędniewski

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0023

Permit Period Applied For: 1977

Application No. PL-77-0023 For Use of Issuing Office

State: POLAND

1. Name of Vessel "LODOWIK"
2. Vessel No.: Hull No. SZW-81 Registration No. 440153
3. Name and Address of Owner
   Name: Deep Sea Fishing Company "Gryf"
   Address: Pl. Batorego 4,
   70-952 Szczecin, Poland
   Cable Address: Gryfmor-Szczecin

   Name and Address of Charterer: none
4. Homeport and State of Registry: Szczecin-Poland
5. Type of Vessel: stern trawler B-29
6. Tonnage (Gross) 1480 (Net) 584
7. Length 71,94 M. 8. Breadth 12,72 M. 9. Draft 5,05 M.
10. Horsepower 2500 shp. 11. Maximum Speed 14,5 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),
    Other: no
13. Date Built 1969
14. Number and Nationality of Personnel 60 Polish
    Officers 14 Crew 46 Other (Specify) eventually assistant
15. Communications: VHF-FM (X), AM ~~(X)~~, Voice (X), Telegraphy (X),
    Other: no
    International Radio Call Sign SPZB
    Radio Frequencies Monitored 500 KHz
    Other Working Frequencies ~~410,425,454,468,480,512~~ KHz
    Schedule 8.00 - 12.00, 20.00 - 22.00 by zone time

16. Navigation Equipment: Loran C ( ), Loran A ( ), Omega ( ), A/C Enac-Triton
    Decca (X), Navsat ( ), Radar (X), Fathometer (X),
    Other

17. Cargo Capacity (MT)

Salted Fish	no
Fresh Fish	no
Frozen Fish	450
Fish Meal	70
Other	fish oil 16

18. Cargo Space

Number	Name
Freezer 2	no 1, no 2
Dry Hold 2	no 3, no 4
Tanks	1 oil tank no 23
Other	2 refrigerated sea water tanks
	1 ice store room

19. Processing Equipment (Indicate daily capacity, MT)
    vertical plate freezer "JACKSTONE" 4 units x 7,5MT/24 hours
    filleting machine "BAADER 33"2units, x 130 fish/min
    fish meal factory FM-25, 1 unit x 5 MT/24 hours
    production of fish oil ALFA LAVAL, 1 unit x 1 MT/24 hours

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	2.050 ton	Midwater otter trawl
		Squide	870 ton	
		Other	500 ton	
		2 nd Tiar about	2.800 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc., Two World Trade Center, Suite 2222, New York, N.Y.10048

Official Representative

Ireneusz Wrzesniewski

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0024

Permit Period Applied For: 1977

Application No. PL-77-0024 For Use of Issuing Office

State: POLAND

1. Name of Vessel "LASKARA"

2. Vessel No.: Hull No. SZM-79 Registration No. 440152

3. Name and Address of Owner
Name: Deep Sea Fishing Company "Gryf"
Address: Pl. Batorego 4,
70-952 Szczecin, Poland
Cable Address: Gryfmor - Szczecin

Name and Address of Charterer: none

4. Homeport and State of Registry: Szczecin - Poland

5. Type of Vessel: storm trawler B-29

6. Tonnage (Gross) 1479 (Net) 583

7. Length 71,56 M. 8. Breadth 12,72 M. 9. Draft 5,05 M.

10. Horsepower 2.500 shp. 11. Maximum Speed 14,5 kt.

11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),
Other: no

13. Date Built 1969

14. Number and Nationality of Personnel 60 Polish
Officers 14 Crew 46 Other (Specify) eventually assistant

15. Communications: VHF-FM (X), AM/~~SSB~~, Voice (X), Telegraphy (X),
Other: no
International Radio Call Sign S P Y N
Radio Frequencies Monitored 500 KHz
Other Working Frequencies 410,425,454,463,480,512 KHz
Schedule 8.00 - 12.00, 20.00 - 22.00 by zone time

16. Navigation Equipment: Loran C ( ), Loran A ( ), Omega ( ), A/C Rmnc Triton
Decca (X), Navsat ( ), Radar (X), Fathometer (X),
Other

17. Cargo Capacity (MT)

Salted Fish	no	Freezer	2
Fresh Fish	no	Dry Hold	2
Frozen Fish	450	Tanks	1 oil tank no 23
Fish Meal	70	Other	2 refrigerated sea water tanks
Other	fish oil 16		1 ice store room

18. Cargo Space

Number	Name
2	no 1, no 2
2	no 3, no 4

19. Processing Equipment (Indicate daily capacity, MT)
vertical plate freezer "JACKSTONE" 4 units x 7,5 MT/24 hours
filleting machine "BADER 33" 2 units x 130 fish/min
fish meal factory FW-25, 1 unit x 5 MT/24 hours
production of fish oil ALFA LAVAL, 1 unit x 1 MT/24 hours

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	2.050 ton	Midwater otter trawl
		Herring	850 ton	
		Squide	500 ton	
		Other	500 ton	

2 nd Tiar about 3.150 ton

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
Amerpol International Inc., Two World Trade Center, Suite 2222, New York, N.Y. 10048

Official Representative

Ireneusz Brzeźniewski

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period Applied For: 1977

Application No. For Use of Issuing Office: PL-77-0025

State: POLAND

1. Name of Vessel "LIKODYM"
2. Vessel No.: Hull No. SZM-82 Registration No. 440154
3. Name and Address of Owner
   Name: Deep Sea Fishing Company "Gryf"
   Address: Pl. Batorego 4,
   70-952 Szczecin, Poland
   Cable Address: Gryfmor – Szczecin

   Name and Address of Charterer
4. Homeport and State of Registry: Szczecin – Poland
5. Type of Vessel stern trawler B-29
6. Tonnage (Gross) 1482 (Net) 582
7. Length 71,55 M. 8. Breadth 12,70 M. 9. Draft 5,05 M.
10. Horsepower 2.500 shp. 11. Maximum Speed 14,5 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ).
    Other: no
13. Date Built 1968
14. Number and Nationality of Personnel 60 Polish
    Officers 14 Crew 46 Other (Specify) eventually assistant
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X).
    Other: no
    International Radio Call Sign: S P Ø E
    Radio Frequencies Monitored: 500 KHz
    Other Working Frequencies: 410,425,454,468,480,512 KHz
    Schedule: 8.00 – 12.00, 20.00 – 22.00 by zone time

PL-77-0025

16. Navigation Equipment: Loran C ( ), Loran A ( ), Omega ( ), A/C Emac Triton
    Decca (X), Navsat ( ), Radar (X), Fathometer (X),
    Other
17. Cargo Capacity (MT)

Salted Fish	no
Fresh Fish	no
Frozen Fish	450
Fish Meal	70
Other	fish oil16

18. Cargo Space

Number	Name
Freezer 2	no 1, no 2
Dry Hold 2	no 3, no 4
Tanks	1 oil tank no 23
Other	2 refrigerated sea water tanks
	1 ice store room

19. Processing Equipment (Indicate daily capacity, MT)
    vertical plate freezer "JACKSTON" 4 units x 7,5 MT/24 hours
    filleting machine "BAADER 33" 2 units x 130 fish/min
    fish meal factory FM-25, 1 unit x 5 MT/24 hours
    production of fish oil ALFA LAVAL, 1 unit x 1 MT/24 hours
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	2.000 ton	Midwater otter trawl
		Herring	850 ton	
		Squids	870 ton	
		Other	700 ton	
		2nd Tiar about	3.500 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc., Two World Trade Center,
    Suite 2222, New York, N.Y. 10048

Official Representative

Ireneusz Wrześniewski

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period Applied For: 1977

Application No. For Use of Issuing Office: 77-00240

State: POLAND

1. Name of Vessel "KORNIK"
2. Vessel No.: Hull No. SZM - 91 Registration No. 440165
3. Name and Address of Owner
   Name: Deep Sea Fishing Company "Gryf"
   Address: Pl. Batorego 4,
   70-952 Szczecin, Poland
   Cable Address
   Gryfmor - Szczecin
   Name and Address of Charterer: none
4. Homeport and State of Registry: Szczecin - Poland
5. Type of Vessel: stern trawler B-29
6. Tonnage (Gross) 1485 (Net) 570
7. Length 71,76 M. 8. Breadth 12,72M. 9. Draft 5,05 M.
10. Horsepower 2,500 shp. 11. Maximum Speed 14,5 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),
    Other: no
13. Date Built 1969
14. Number and Nationality of Personnel 60 Polish
    Officers 14 Crew 46 Other (Specify) eventually assistant
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
    Other: no
    International Radio Call Sign: S P E X
    Radio Frequencies Monitored: 500 KHz
    Other Working Frequencies: 410,425,454,468,480,512 KHz
    Schedule: 8.00 - 12.00, 20.00 - 22.00 by zone time

77-00240

16. Navigation Equipment: D-X Navigator
    Loran C ( ), Loran A ( ), Omega ( ),
    Decca (X), Navsat ( ), Radar (X), Fathometer (X),
    Other
17. Cargo Capacity (MT)
    Salted Fish: no
    Fresh Fish: no
    Frozen Fish: 450
    Fish Meal: 70
    Other: fish oil 16
18. Cargo Space

	Number	Name
Freezer	2	no 1, no 2
Dry Hold	2	no 3, no 4
Tanks		1 oil tank no 23
Other		2 refrigerated sea water tanks
		1 ice store room

19. Processing Equipment (Indicate daily capacity,MT)
    vertical plate freezer "JACKSTONE" 4 units x 7,5 MT/24 hours
    filleting machine "BAADER 33" 2 units x 130 fish/min
    fish meal factory FM-25, 1 unit x 5 MT/24 hours
    production of fish oil ALFA LAVAL, 1 unit x 1 MT/24 hours
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	1.950 ton	Midwater otter trawl
		Herring	850 ton	
		Squide	1.200 ton	
		Other	700 ton	

2 nd Tiar about 3.700 ton

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc., Two World Trade Center, Suite 2222, New York, N.Y. 10048

Official Representative

Ireneusz Wrześniewski

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0027

Permit Period Applied For: 1977

Application No. PL-77-0027 For Use of Issuing Office

State: POLAND

1. Name of Vessel KASZUBY II
2. Vessel No.: Hull No. _____ Registration No. 440198
3. Name and Address of Owner

Name PPURM "TRANSOCEAN"

Address 70-952 Szczecin

Odrowąża 1 P08,631 Poland

Cable Address

Transocean - Szczecin

Name and Address of Charterer

4. Homeport and State of Registry: Szczecin
5. Type of Vessel Reefer
6. Tonnage (Gross) 8033 (Net) 3722
7. Length 146,77 M. 8. Breadth 20,60 M. 9. Draft 7,40 M.
10. Horsepower 4800x2 shp. 11. Maximum Speed 18 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ),

Other _____

13. Date Built 1976
14. Number and Nationality of Personnel 157 - Poles

Officers 21 Crew 136 Other (Specify) 4

15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x),

Other _____

International Radio Call Sign SQGG

Radio Frequencies Monitored 500, 2182

Other Working Frequencies 480, 2058, 4190, 6285, 8380

Schedule 17.30-17.35 on the zone times

16. Navigation Equipment: Loran C ( ), Loran A ( ), Omega (X), Decca (X), Navsat ( ), Radar (X), Fathometer (X),

Other _____

17. Cargo Capacity (MT)

Salted Fish _____

Fresh Fish _____

Frozen Fish 5000

Fish Meal 1400

Other oil 400

18. Cargo Space

Number	Name
Freezer 4	I, II, III, IV
Dry Hold or 1	IV
Tanks 1	
Other	

19. Processing Equipment (Indicate daily capacity,MT)

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977 January February			

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. Official Representative

Two World Trade Center Ireneusz Wrześniewski

Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

IX-77-(C28

Permit Period Applied For: 1977

Application No. IX-77-(C28 For Use of Issuing Office

State: POLAND

1. Name of Vessel m/s "Buran"
2. Vessel No.: Hull No. _____ Registration No. 110872
3. Name and Address of Owner — Name and Address of Charterer

Name PPURH "TRANSOCEAN"

Address 70-952 Szczecin

ul.Odrowąża 1, PCB.631 Poland

Cable Address Transocean Szczecin

4. Homeport and State of Registry: Szczecin - Poland
5. Type of Vessel Reefer
6. Tonnage (Gross) 5126 (Net) 2492
7. Length 113,35 M. 8. Breadth 17,01 M. 9. Draft 7,30 M.
10. Horsepower 8400 shp. 11. Maximum Speed 18 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),

Other _____

13. Date Built 1972
14. Number and Nationality of Personnel 37 - Poles

Officers 14 Crew 23 Other (Specify) _____

15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),

Other _____

International Radio Call Sign SQDK

Radio Frequencies Monitored 500, 2182

Other Working Frequencies 480, 2058, 4190, 6285, 8380

Schedule 17.30 - 17.35 on the zone times

16. Navigation Equipment: LR4100 Loran C (X), Loran A ( ), Omega ( ),

Decca (X), Bawsat ( ), Radar (X), Fathometer (X),

Other _____

17. Cargo Capacity (MT)

Salted Fish	_____
Fresh Fish	_____
Frozen Fish	2250
Fish Meal	750
Other	oil 100

18. Cargo Space

Number	Name	
Freezer	4	I,II,III,/IV/
Dry Hold or	1	/IV/
Tanks	1	
Other		

19. Processing Equipment (Indicate daily capacity,MT)

_____

_____

_____

_____

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977			

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. Official Representative

Two World Trade Center Ireneusz Wrzaśniewski

Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-C027

Permit Period Applied For: 1977

Application No. PL-77-C027 For Use of Issuing Office

State: POLAND

1. Name of Vessel m/s "Halniak"
2. Vessel No.: Hull No. _____ Registration No. 110870
3. Name and Address of Owner / Name and Address of Charterer

Name PPURM "TRANSOCEAN" _____

Address 70-952 Szczecin _____

ul. Odrowąża 1, POB.631, Poland _____

Cable Address Transocean Szczecin _____

4. Homeport and State of Registry: Szczecin - Poland
5. Type of Vessel Reefer
6. Tonnage (Gross) 5.126 (Net) 2492
7. Length 113,29 M. 8. Breadth 17,02 M. 9. Draft 7,30 M.
10. Horsepower 8400 shp. 11. Maximum Speed 18 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ), Other _____
13. Date Built 1971
14. Number and Nationality of Personnel 37 - Poles

Officers 14 Crew 23 Other (Specify) _____

15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (x), Other _____

International Radio Call Sign SQBJ

Radio Frequencies Monitored 500, 2182

Other Working Frequencies 480, 2058, 4190, 6285, 8380

Schedule 17.30 - 17.35 on the zone times

16. Navigation Equipment: Loran C (x), Loran A ( ), Omega ( ), Decca (X), Navsat ( ), Radar (x), Fathometer (x), Other _____ LR4100

17. Cargo Capacity (MT)

Salted Fish _____

Fresh Fish _____

Frozen Fish 2250

Fish Meal 750

Other oil 100

18. Cargo Space

Number	Name
Freezer 4	I,II,III,IV
Dry Hold or 1	IV
Tanks 1	
Other	

19. Processing Equipment (Indicate daily capacity,MT)

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977			

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. Official Representative
Two World Trade Center Ireneusz Urzędniczki
Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period Applied For: 1977

Application No. For Use of Issuing Office 77-77-CCC

State: POLAND

1. Name of Vessel M/s "Lewanter"
2. Vessel No.: Hull No. _____ Registration No. 110871
3. Name and Address of Owner / Name and Address of Charterer
   Name PPURM "TRANSOCEAN"
   Address 70-952 Szczecin
   ul.Odrowąża 1, POB. 631, Poland
   Cable Address Transocean Szczecin
4. Homeport and State of Registry: Szczecin - Poland
5. Type of Vessel Reefer
6. Tonnage (Gross) 5124 (Net) 2496
7. Length 113,40 M. 8. Breadth 17,01 M. 9. Draft 7,30 M.
10. Horsepower 8400 shp. 11. Maximum Speed 18 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ),
    Other _____
13. Date Built 1972
14. Number and Nationality of Personnel 37 - Poles
    Officers 14 Crew 23 Other (Specify) _____
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
    Other _____
    International Radio Call Sign SQDC
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 480, 2058, 4190, 6285, 8380
    Schedule 17.30 - 17.35 on the zone times
16. Navigation Equipment: LR4100 Loran C (x), Loran A ( ), Omega ( ),
    Decca (x), Navsat ( ), Radar (x), Fathometer (X),
    Other _____
17. Cargo Capacity (MT)

Salted Fish		Freezer	4
Fresh Fish		Dry Hold or	1
Frozen Fish	225 0	Tanks	1
Fish Meal	750	Other	
Other	oil 100		

18. Cargo Space

Number	Name
4	I,II,III,/IV/
1	/IV/
1	

19. Processing Equipment (Indicate daily capacity,MT)
    _____
    _____
    _____
    _____
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977			

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Representative
    Two World Trade Center Ireneusz Wenckiewski
    Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PE-77-(1)31

Permit Period Applied For: 1977

Application No. PE-77-(1)31 For Use of Issuing Office

State: POLAND

1. Name of Vessel m/s "Pomorze"
2. Vessel No.: Hull No. _____ Registration No. 440145
3. Name and Address of Owner
   Name PPURM "TRANSOCEAN"
   Address 70-952 Szczecin
   ul. Odrowąża 1 POB. 631 Poland
   Cable Address Transocean Szczecin

   Name and Address of Charterer
4. Homeport and State of Registry: Szczecin - Poland
5. Type of Vessel Reefer
6. Tonnage (Gross) 13875 (Net) 6444
7. Length 155,16 M. 8. Breadth 21,30 M. 9. Draft 7,80 M.
10. Horsepower 7200 shp. 11. Maximum Speed 15 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),
    Other _____
13. Date Built 1967
14. Number and Nationality of Personnel 234 - Poles
    Officers 23 Crew 211 Other (Specify) 4
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x),
    Other _____
    International Radio Call Sign SZVR
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 480, 2058, 4190, 6285, 8380
    Schedule 17.30 - 17.35 on the zone times

LJ11

16. Navigation Equipment: Loran C (x), Loran A ( ), Omega ( ),
    Decca (X), Navsat ( ), Radar (X), Fathometer (x),
    Other _____
17. Cargo Capacity (MT)

Salted Fish	_____
Fresh Fish	_____
Frozen Fish	4600
Fish Meal	800
Other	oil 210

18. Cargo Space

	Number	Name
Freezer	5	I,II,III,IV,V.
Dry Hold or	1	V
Tanks	2	
Other		

19. Processing Equipment (Indicate daily capacity,MT)
    Freezing plant x 2 = 80 MT
    Arenco CIS - 2, Arenco CIS/CIP - 2 = 75 MT
    Fish meal factory = 14 MT
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977			

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Representative
    Two World Trade Center Ireneusz Wrześniewski
    Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

AP-77-1032

Permit Period Applied For: 1977

Application No. For Use of Issuing Office AP-77-1032

State: POLAND

1. Name of Vessel m/s "Vineta"
2. Vessel No.: Hull No. _____ Registration No. 440197
3. Name and Address of Owner
   Name PPURH "TRANSOCEAN"
   Address 70-952 Szczecin
   ul. Odrowąża 1 POB,631 Poland
   Cable Address Transocean
   Szczecin
   Name and Address of Charterer
4. Homeport and State of Registry: Szczecin - Poland
5. Type of Vessel Reefer
6. Tonnage (Gross) 8032 (Net) 3773
7. Length 146,77 M. 8. Breadth 20,60 M. 9. Draft 7,40 M.
10. Horsepower 4800x2 shp. 11. Maximum Speed 18 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),
    Other _____
13. Date Built 1976
14. Number and Nationality of Personnel 157 - Poles
    Officers 21 Crew 136 Other (Specify) 4
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x),
    Other _____
    International Radio Call Sign SQGP
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 480, 2058, 4190, 6285, 8380
    Schedule 17.30 - 17.35 on the some times
16. Navigation Equipment: Loran C ( ), Loran A ( ), Omega (X),
    Decca (x), Navsat ( ), Radar (x), Fathometer (x),
    Other _____
17. Cargo Capacity (MT)

Salted Fish		Freezer	4
Fresh Fish		Dry Hold	or 1
Frozen Fish	5000	Tanks	1
Fish Meal	1400	Other	
Other	oil 400		

18. Cargo Space

Number	Name
4	I,II,III,IV
or 1	IV

19. Processing Equipment (Indicate daily capacity,MT)
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NE Pacyfic	1977			

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Representative
    Two World Trade Center Ireneusz Wrześniewski
    Suite 2222, New York, N.Y.10048

PL-77-0033

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period Applied For: 1977 Application No. For Use of Issuing Office

State: POLAND

1. Name of Vessel m/s "Duran"

2. Vessel No.: Hull No. _____ Registration No. 110872

3. Name and Address of Owner

Name PPURM "TRANSOCEAN"

Address 70-952 Szczecin

ul.Odrowąża 1, POB.631 Poland

Cable Address Transocean Szczecin

Name and Address of Charterer

4. Homeport and State of Registry: Szczecin - Poland

5. Type of Vessel Reefer

6. Tonnage (Gross) 5126 (Net) 2492

7. Length 113,35 M. 8. Breadth 17,01 M. 9. Draft 7,30 M.

10. Horsepower 8400 shp. 11. Maximum Speed 18 kt.

11. Propulsion: Diesel ( ), Steam ( ), Diesel/Electric ( ),

Other _____

13. Date Built 1972

14. Number and Nationality of Personnel 37 - Poles

Officers 14 Crew 23 Other (Specify) _____

15. Communications: VHF-FM (x), AM/SSS, Voice (x), Telegraphy (x).

Other _____

International Radio Call Sign SQDX

Radio Frequencies Monitored 500, 2182

Other Working Frequencies 480, 2058, 4190, 6285, 8380

Schedule 17.30 - 17.35 on the zone times

PL-77-0033

16. Navigation Equipment: Loran C LR4100 (x), Loran A ( ), Omega ( ), Decca (x), Navsat ( ), Radar (x), Fathometer (x),

Other _____

17. Cargo Capacity (MT)

Salted Fish _____

Fresh Fish _____

Frozen Fish 2250

Fish Meal 750

Other: oil 100

18. Cargo Space

Number	Name
Freezer 4	I,II,III,/IV/
Dry Hold or1	/IV/
Tanks 1	
Other	

19. Processing Equipment (Indicate daily capacity,MT)

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NE Pacyfic	1977			

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. Official Representative

Two World Trade Center Ireneusz Wrześniewski

Suite 2222, New York, N.Y.10048

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

APPLICATION FOR VESSEL PERMITS TO FISH WITHIN THE FISHERY CONSERVATION ZONE OF THE UNITED STATES, OR FOR ANADROMOUS SPECIES OR CONTINENTAL SHELF FISHERY RESOURCES

GC-77-0001 to GC-77-0027

DATE December 15, 1976

APPLICATION NO. ## for use of issuing Officer

In accordance with the provision of Section 204 of the Fishery Conservation and Management Act of 1976, (16 U.S.C. 1801-1882), and the governing international fisheries agreement entered into with the Government of the United States of America, which entered into force on _____ date

the government (or competent authority) of German Democratic Republic

hereby submits this application for permits for fishing vessels under its jurisdiction to fish within the fishery conservation zone of the United States, or beyond that zone for anadromous species or Continental Shelf fishery resources subject to the jurisdiction of the United States.

The following information is submitted in support of this application (Use additional sheets as required).

A completed Fishing Vessel Identification Form for each permit that is requested; and a compilation of data contained in questions 5 and 20 in the attached Fishing Vessel Identification Form.

Submitted December 20, 1976
Date

Signature of Authorized Official

Director
Title

GC-77-0001 to GC-77-0027

Annex: Data compilation of questions contained in Section 5 and 20

No.	Ocean Area	Name of Vessel	Typ of Vessel	Period (from-to)	Species	Contemplated catch (mt)	Gear to be Used
1.	ICNAF-Division 5 Ze	"Magdeburg"	Side Trawler	15.8.-30.9.77	Herring	no catch	only processed to salted fish
2.	ICNAF-Division 5 Ze	"Mansfeld"	Side Trawler	15.8.-30.9.77	Herring	no catch	only processed to salted fish
3.	ICNAF-Division 5 Ze	"Leuna"	Side Trawler	15.8.-30.9.77	Herring	no catch	only processed to salted fish
4.	ICNAF-Division 5 Ze	"Eisenach"	Side Trawler	15.8.-30. 9.77	Herring	no catch	only processed to salted fish
5.	ICNAF-Division 5 Ze	"Gotha"	Side Trawler	15.8.-30.9.77	Herring	no catch	only processed to salted fish
	Subarea 5 and Stat.Area 6	"Gotha"	Side Trawler	1.12.-31.12.77	Mackerel	no catch	only processed to salted fish
6.	ICNAF-Division 5 Ze	"Ölsnitz i.V."	Side Trawler	15.8.-30.9.77	Herring	no catch	only processed to salted fish
7.	ICNAF-Division 5 Ze	"Weimar"	Side Trawler	15.8.-30.9.77	Herring	no catch	only processed to salted fish
	Subarea 5 and Stat.Area 6	"Weimar"	Side Trawler	1.12.-31.12.77	Mackerel	no catch	only processed to salted fish
8.	ICNAF-Division 5 Ze	"Brandenburg"	Side Trawler	17.8.-30.9.77	Herring	no catch	only processed to salted fish
9.	ICNAF-Division 5 Ze	"Gera"	Side Trawler	17.8.-30.9.77	Herring	no catch	only processed to salted fish

GC-77-0001 to GC-77-0027

- 2 -

No.	Ocean Area	Name of Vessel	Typ of Vessel	Period (from-to)	Species	Contemplated catch (mt)	Gear to be Used
10.	ICNAF-Division 5 Ze	"Görlitz"	Side Trawler	16.8.-30.9.77	Herring	no catch	only processed to salted fish
11.	ICNAF-Division 5 Ze	"Cottbus"	Side Trawler	16.8.-30.9.77	Herring	no catch	only processed to salted fish
12.	ICNAF-Division 5 Ze	"Breitling"	Transportvessel	21.8.-30.9.77	Herring	no catch	only handling of salted fish
13.	ICNAF-Division 5 Ze	"A. Becker"	Stern Trawler	15.8.-30.9.77	Herring	490	OTM 2
	Subarea 5 and Stat.Area 6	"A. Becker"	Stern Trawler	1.12.-31.12.77	Mackerel	340	OTM 2
14.	ICNAF-Division 5 Ze	"E.Eisenschneider"	Stern Trawler	19.8.-30.9.77	Herring	490	OTM 2
15.	ICNAF-Division 5 Ze	"Herta Lindner"	Stern-Trawler	19.8.-30.9.77	Herring	490	OTM 2
	Subarea 5 and Stat.-Area 6	"H.Lindner"	Stern-Trawler	1.12.-31.12.77	Mackerel	340	OTM 2
16.	ICNAF-Division 5 Ze	"Rudi Arndt"	Stern Trawler	15.8.-30.9.77	Herring	490	OTM 2
17.	ICNAF-Division 5 Ze	"Grete Walter"	Stern Trawler	17.8.-30.9.77	Herring	470	OTM 2
	Subarea 5 and Stat.Area 6	"G. Walter"	Stern-Trawler	1.12.-31.12.77	Mackerel	340	OTM 2
18.	ICNAF-Division 5 Ze	"Karl-Wolf"	Stern Trawler	16.8.-30.9.77	Herring	475	OTM 2
	Subarea 5 and Stat.Area 6	"K. Wolf"	Stern Trawler	1.12.-31.12.77	Mackerel	340	OTM 2
19.	ICNAF-Division 5 Ze	"Eugen Schönhaar"	Stern Trawler	15.8.-30.9.77	Herring	490	OTM 2
	Subarea 5 and Stat.Area 6	"Eug.Schönhaar"	Stern Trawler	1.12.-31.12.77	Mackerel	340	OTM 2
20.	ICNAF-Division 5 Ze	"Philipp Müller"	Stern Trawler	17.8.-30.9.77	Herring	470	OTM 2
	Subarea 5 and Stat.Area 6	"Ph. Müller"	Stern-Trawler	1.12.-31.12.77	Mackerel	340	OTM 2
21.	ICNAF-Division 5 Ze	"Peter Göring"	Stern Trawler	15.8.-30.9.77	Herring	490	OTM 2
22.	Subarea 5 and Stat.Area 6	"P. Heil..."	Stern Trawler	1.11.-31.12.77	Mackerel	610	OTM 2

GC-77-0001 to GC-77-0027

- 3 -

No.	Ocean Area	Name of Vessel	Typ of Vessel	Period (from-to)	Species	Contemplated catch (mt)	Gear to be Used
23.	Subarea 5 and Stat.Area 6	"Walter Dehmel"	Stern Trawler	11.11.-31.12.77	Mackerel	520	OTM 2
24.	ICNAF-Division 5 Ze	"Willi Bredel"	Stern Trawler	17.8.-30.9.77	Herring	470	OTM 2
	Subarea 5 and Stat-Area 6	"Willi Bredel"	Stern Trawler	1.10.-31.12.77	Mackerel	815	OTM 2
25.	Subarea 5 and Stat.Area 6	"Junge Garde"	Base ship	1.12.-31.12.77	-	-	-
26.	Subarea 5 and Stat.Area 6	"Litten Klein"	Transportvessel	1.11.-31.12.77	-	-	-
27.	Subarea 5 and Stat.Area 6	"Eversbagen"	Transportvessel	15.8.-30.9.77	-	-	-

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0001

Permit Period Applied For: 1977 Application No. (For use of Regional Office) —

State: German Democratic Republic

1. Name of Vessel Magdeburg
2. Vessel No.: Hull No. ROS 206 Registration No. 2264
3. Name and Address of Owner / Name and Address of Charterer

Name: VEB Fischkombinat Rostock

Address: VEB Fischkombinat

Rostock, GDR 251 Rostock 5

Cable Address

31121 Fiko dd

4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: ~~Side~~ ~~Stern~~ trawler
6. Tonnage (Gross) 671,84 (Net) 214,32
7. Length 54,40 M. 8. Breadth 9,03 M. 9. Draft 4,00 M.
10. Horsepower 920 shp. 11. Maximum Speed 14 kt.
11. Propulsion: Diesel (1), Steam (—), Diesel/Electric (—).

Other —

13. Date Built 1959
14. Number and Nationality of Personnel 26, GDR

Officers 7 Crew 19 Other (Specify) —

15. Communications: VHF-FM (—), MF/SSB, Voice (2), Telegraphy (—).

Other —

International Radio Call Sign DNDU

Radio Frequencies Monitored 500, 2182

Other Working Frequencies 425,450,480,514,[illegible]

Schedule zone time: 6.00-10.00; 16.00-20.00 o'clock

GC-77-0001

16. Navigation Equipment: Loran C (—), Loran A (1), Omega (—).

Decca (1), Navsat (—), Radar (2), Fathometer (2).

Other Direction finder (1) —

17. Cargo Capacity (MT)

Salted Fish 130

Fresh Fish

Frozen Fish

Fish Meal

Other

18. Cargo Space

Number	Cap.
Freezer	
Dry Hold 2	fish room
Tanks	
Other	

19. Processing Equipment (indicate daily capacity, MT)

2 headers, 10 tons/d

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear (if Other, Specify)
—				
NW-Atlantic ICNAF-Division 5 Ze	15.8. - 30.9.77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) GC-77-0002

Permit Period Applied for: 1977 Application No. ---- For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Mansfeld
2. Vessel Nat. Hull No. ROS 209 Registration No. 292
3. Name and Address of Owner Name and Address of Charterer

Name VEB Fischkombinat Rostock

Address VEB Fischkombinat

Rostock, GDR 251 Rostock 5

Cable Address

31121 Fiko dd

4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel Side ~~trawl~~ trawler
6. Tonnage (Gross) 671,44 (Net) 214,35
7. Length 54,40 B. P. Breadth 9,03 M. M.
10. Horsepower 920 shp. 11. Maximum Speed 10 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-), Other -
13. Date Built 1955
14. Number and Nationality of Personnel: (No. Nat.)

Officers 7 Crew 19 Other (Specify) -

15. Communications: VHF-FM (-), AM/SSB, Voice (1), Telegraphy (1), Other -

International Radio Call Sign DIXI

Radio Frequencies Monitored 500, 2182

Other Working Frequencies 425,454,468,512,2046,2049,2101

Schedule zone time: 8.00-10.00; 18.00-20.00 o'clock

GC-77-0002

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-), Decca (1), Navaid (-), Radar (2), Fathometer (2), Other Direction finder
17. Cargo Capacity (MT)

Salted Fish 130 Frozen

Fresh Fish Dry Hold 2 Fish room

Frozen Fish Tanks

Fish Meal - Other

Other

18. Cargo Space: Number Area
19. Processing Equipment (Indicate daily capacities):

2 headers, 10 tons/d

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic 15.8.-30.9.77		-	-	-
ICNAF-Division 5 Ze				

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) GC-77-0003

Permit Period Applied For: 1977

Application No. ~~3/311~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Leuna
2. Vessel No.: Hull No. ROS 211 Registration No. 2234
3. Name and Address of Owner / Name and Address of Charterer

Name VEB Fischkombinat Rostock

Address VEB Fischkombinat
Rostock, GDR 251 Rostock 5

Cable Address
31121 Fiko dd

4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel side ~~stern~~ trawler
6. Tonnage (Gross) 696,39 (Net) 261,59
7. Length 54,56 M. 8. Breadth 9,03 M. 9. Draft 4,00 M.
10. Horsepower 960 shp. 11. Maximum Speed 10 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),
Other -
13. Date Built 1954
14. Number and Nationality of Personnel 26, GDR
Officers 7 Crew 19 Other (Specify) -
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X
Other -
International Radio Call Sign DHXK
Radio Frequencies Monitored 500, 2182
Other Working Frequencies 425,454,468,512,2046,2049,2101
Schedule zone time: 8.00-10.00; 18.00-20.00 o'clock

GC-77-0003

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
Decca (1), Navsat (-), Radar (2), Fathometer (2),
Other Direction finder
17. Cargo Capacity (MT)

Salted Fish	130	Freezer	
Fresh Fish		Dry Hold	2
Frozen Fish		Tanks	
Fish Meal	-	Other	
Other			

18. Cargo Space

Number	Name
2	fish rooms

19. Processing Equipment (Indicate daily capacity,MT)

2 headers, 10 tons/d

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
-		-	-	
NW-Atlantic ICNAF-Division 5 Ze	15.8.-30.9.77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC 77-0004

Permit Period Applied For: 1977

Application No. ~~4/312~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Eisenach

2. Vessel No.: Hull No. ROS 212 Registration No. 2239

3. Name and Address of Owner / Name and Address of Charterer

Name VEB Fischkombinat Rostock

Address VEB Fischkombinat Rostock

GDR 251 Rostock 5

Cable Address

31121 Fiko dd

4. Homeport and State of Registry: Rostock, GDR

5. Type of Vessel: ~~Diesel~~ Stern trawler

6. Tonnage (Gross) 696,39 (Net) 261,59

7. Length 54,56 M. 8. Breadth 9,03 M. 9. Draft 4,00 M.

10. Horsepower 920 shp. 11. Maximum Speed - kt.

11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),

Other -

13. Date Built 1954

14. Number and Nationality of Personnel 26 GDR

Officers 7 Crew 19 Other (Specify) -

15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x

Other -

International Radio Call Sign DHXL

Radio Frequencies Monitored 500, 2182

Other Working Frequencies 425,454,468,512,2046,2049,2101

Schedule zone time: 08.00-10.00, 18.00.-20.00 o'clock

GC 77-0004

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),

Decca (1), Navsat (-), Radar (2), Fathometer (2),

Other Direction finder

17. Cargo Capacity (MT)

Salted Fish 130

Fresh Fish

Frozen Fish

Fish Meal

Other

18. Cargo Space Number / Name

Freezer

Dry Hold 2 fish rooms

Tanks

Other

19. Processing Equipment (Indicate daily capacity, MT)

2 headers, 10 tons/d

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	15.8. - 30.9.77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0005

Permit Period Applied For: 1977

Application No. ~~5/814~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Gotha
2. Vessel No.: Hull No. ROS 214 Registration No. 2240
3. Name and Address of Owner / Name and Address of Charterer

   Name VEB Fischkombinat Rostock

   Address VEB Fischkombinat Rostock

   GDR 251 Rostock 5

   Cable Address

   31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel ~~side~~ ~~stern~~ trawler
6. Tonnage (Gross) 696,39 (Net) 261,59
7. Length 54,56 M. 8. Breadth 9,03 M. 9. Draft 4,00 M.
10. Horsepower 920 shp. 11. Maximum Speed 10 kt.
11. Propulsion: Diesel (1), Steam (X), Diesel/Electric (X),

    Other -
13. Date Built 1954
14. Number and Nationality of Personnel 26, GDR

    Officers 7 Crew 19 Other (Specify) -
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X)

    Other -

    International Radio Call Sign DHKN

    Radio Frequencies Monitored 500, 2182

    Other Working Frequencies 425,454,468,512,2046,2049,2101

    Schedule some time: 08.00-10.00, 18.00-20.00 o'clock

GC-77-0005

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),

    Decca (1), Navsat (-), Radar (2), Fathometer (2),

    Other Direction finder (1)
17. Cargo Capacity (MT)

    Salted Fish 130

    Fresh Fish

    Frozen Fish

    Fish Meal

    Other
18. Cargo Space

Number	Name
	Freezer
2	Dry Hold — fish rooms
	Tanks
	Other

19. Processing Equipment (Indicate daily capacity, MT)

    2 headers (10 tons per day)
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW-Atlantic	15.8.-30.9.77	-	-	-
-"-	1.12.-31.12.77	-	-	-

ICNAF-Division 5 Ze
Subarea 5 and Stat.Area 6

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) GC-77-00060

GC-77-00060

Permit Period Applied For: 1977 Application No. ~~6/278~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Oelsnitz i.V.
2. Vessel No.: Hull No. ROS 218 Registration No. 2264
3. Name and Address of Owner Name and Address of Charterer

Name VEB Fischkombinat Rostock

Address VEB Fischkombinat Rostock

GDR 251 Rostock 5

Cable Address

31121 Fiko dd

4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel ~~Stern~~ trawler
6. Tonnage (Gross) 696,34 (Net) 258,28
7. Length 54,56 M. 8. Breadth 9,03 M. 9. Draft 4,00 M.
10. Horsepower 976 shp. 11. Maximum Speed 1o kt.
11. Propulsion: Diesel (1), Steam (_), Diesel/Electric (_), Other -
13. Date Built 1956
14. Number and Nationality of Personnel 26 GDR

Officers 7 Crew 19 Other (Specify) -

15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x)

Other -

International Radio Call Sign DHXR

Radio Frequencies Monitored 5oo, 2182

Other Working Frequencies 425,454,468,512,2o46,2o49,21o1

Schedule zone time: o8.oo-1o.oo, 18.oo- 2o.oo o'clock

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (_), Decca (1), Navsat (-), Radar (2, Fathometer (2),

Other Direction finder

17. Cargo Capacity (MT)

Salted Fish 13o

Fresh Fish

Frozen Fish

Fish Meal

Other

18. Cargo Space

Number	Name
Freezer	
Dry Hold 2	fish rooms
Tanks	
Other	

19. Processing Equipment (Indicate daily capacity,MT)

2 headers, 1o tons/d

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	15.8.-3o.9.77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

NOTICES

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0007

Permit Period Applied For: 1977

Application No. ~~7/000~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel: Weimar
2. Vessel No.: Hull No. BOS 220 Registration No. 2260
3. Name and Address of Owner / Name and Address of Charterer
   Name: VEB Fischkombinat Rostock
   Address: VEB Fischkombinat Rostock
   GDR 251 Rostock 5
   Cable Address: 31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: ~~Stern~~ Side trawler
6. Tonnage (Gross) 696,34 (Net) 258,28
7. Length 54,56 M. 8. Breadth 9,03 M. 9. Draft 4,00 M.
10. Horsepower 920 shp. 11. Maximum Speed - kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),
    Other -
13. Date Built 1956
14. Number and Nationality of Personnel 26GDR
    Officers 7 Crew 19 Other (Specify) -
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy x
    Other -
    International Radio Call Sign DEXT
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425,454,468,512,2046,2049,2101
    Schedule zone time: 08.00-10.00, 18.00-20.00 o'clock

GC-77-0007

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navsat (-), Radar (2), Fathometer (2),
    Other Direction finder
17. Cargo Capacity (MT)

Salted Fish	130	Freezer	
Fresh Fish		Dry Hold	2
Frozen Fish		Tanks	
Fish Meal		Other	
Other			

18. Cargo Space Number: 2 Name: fish rooms
19. Processing Equipment (Indicate daily capacity, MT)
    2 headers, 10 tons/d
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic	15.8.-30.9.77	-	-	-
	1.12.-31.12.77	-	-	-

ICNAF-Division 5 Ze
Subarea 5 and Stat.Area 6

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) GC-77-0008

Permit Period Applied For: 1977 — Application No. For Use of Issuing Office: ~~8/221~~

State: German Democratic Republic

1. Name of Vessel: Brandenburg
2. Vessel No.: Hull No. ROS 221 — Registration No. 2362
3. Name and Address of Owner — Name and Address of Charterer
   - Name: VEB Fischkombinat Rostock
   - Address: VEB Fischkombinat
     Rostock, GDR 251 Rostock 5
   - Cable Address
     31121 Piko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: side ~~stern~~ trawler
6. Tonnage (Gross) 938,54 (Net) 290,03
7. Length 60,04 M. 8. Breadth 10,32 M. 9. Draft 4,65 M.
10. Horsepower 1.420 shp. 11. Maximum Speed 12 kt.
11. Propulsion: Diesel (2), Steam (-), Diesel/Electric (-),
    Other -
13. Date Built 1959
14. Number and Nationality of Personnel 29, GDR
    Officers 7 Crew 22 Other (Specify) -
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x)
    Other -
    International Radio Call Sign DHXU
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425,454,468,2046,512,2049,2101
    Schedule zone time: 8.00-10.00; 18.00-20.00 o'clock

GC-77-0008

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navsat (-), Radar 2), Fathometer (2),
    Other Direction finder
17. Cargo Capacity (MT)

Salted Fish	120	Freezer	
Fresh Fish		Dry Hold	2
Frozen Fish		Tanks	2
Fish Meal	40	Other	1
Other	fish oil tank 22		

18. Cargo Space Number / Name: fish rooms; fish oil tank; fish meal room
19. Processing Equipment (Indicate daily capacity, MT)
    2 headers, 10 tons/d
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	17.8.-30.9.77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0009

Permit Period Applied For: 1977

Application No. ~~9/009~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel: Gera
2. Vessel No.: Hull No. ROS 223 Registration No. 2393
3. Name and Address of Owner / Name and Address of Charterer

   Name: VEB Fischkombinat Rostock

   Address: VEB Fischkombinat
   Rostock, GDR 251 Rostock 5

   Cable Address:
   31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: ~~Side Stern~~ trawler
6. Tonnage (Gross) 942,89 (Net) 291,28
7. Length 60,04 M. 8. Breadth 10,32 M. 9. Draft 4,65 M.
10. Horsepower 1.420 shp. 11. Maximum Speed 12 kt.
11. Propulsion: Diesel (2), Steam (-), Diesel/Electric (-),
    Other -
13. Date Built 1959
14. Number and Nationality of Personnel 29, GDR
    Officers 7 Crew 22 Other (Specify) -
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x)
    Other -
    International Radio Call Sign DHXY
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425, 454, 468, 512, 2046,2049,210
    Schedule zone time: 8.00-10.00; 18.00-20.00 o'clock

GC-77-0009

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-), Decca (1), Navsat (-), Radar (2), Fathometer (2),
    Other Direction finder
17. Cargo Capacity (MT)

Salted Fish	120	Freezer	
Fresh Fish		Dry Hold	2
Frozen Fish		Tanks	2
Fish Meal	40	Other	1
Other	fish oil tank 22		

18. Cargo Space

Number	Name
2	fish rooms
2	fish oil tanks
1	fish meal room

19. Processing Equipment (Indicate daily capacity, MT)
    2 headers, 10 tons/d
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	17.8.-30.9.77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) GC-77-0010

Permit Period Applied For: 1977 Application No. ~~10/224~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Görlitz
2. Vessel No.: Hull No. BOS 224 Registration No. 2392
3. Name and Address of Owner
   Name VEB Fischkombinat Rostock
   Address VEB Fischkombinat
   Rostock, GDR 251 Rostock 5
   Cable Address
   31121 Piko dd

   Name and Address of Charterer

4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel ~~Side Stern~~ trawler
6. Tonnage (Gross) 942,89 (Net) 291,28
7. Length 60,04 M. 8. Breadth 10,32 M. 9. Draft 4,65 M.
10. Horsepower 1.420 shp. 11. Maximum Speed 12 kt.
11. Propulsion: Diesel (X), Steam (-), Diesel/Electric (-),
    Other -
13. Date Built 1960
14. Number and Nationality of Personnel 29, GDR
    Officers 7 Crew 22 Other (Specify) -
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X
    Other -
    International Radio Call Sign DHXV
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425,454,468,2046,2049,2101
    Schedule zone time: 8.00-10.00; 18.00-20.00 o'clock

GC-77-0010

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navsat (-), Radar (2), Fathometer (2),
    Other Direction finder
17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish	120	Freezer	
Fresh Fish		Dry Hold	2 fish rooms
Frozen Fish		Tanks	2 fish oil tanks
Fish Meal	40	Other	1 fish meal room
Other	fish oil tank 22		

19. Processing Equipment (Indicate daily capacity,MT)
    2 headers, 10 tons/d
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	16.8.-30.9.77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) GC-77-0011

Permit Period Applied For: 1977 Application No. ~~11/225~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Cottbus

2. Vessel No.: Hull No. ROS 225 Registration No. 2394

3. Name and Address of Owner Name and Address of Charterer

Name VEB Fischkombinat Rostock

Address VEB Fischkombinat

Rostock, GDR 251 Rostock 5

Cable Address

31121 Fiko dd

4. Homeport and State of Registry: Rostock, GDR

5. Type of Vessel ~~side stern~~ trawler

6. Tonnage (Gross) 942,89 (Net) 291,28

7. Length 60,04 M. 8. Breadth 10,32 M. 9. Draft 4,65 M.

10. Horsepower 1.420 shp. 11. Maximum Speed 12 kt.

11. Propulsion: Diesel (2), Steam (-), Diesel/Electric (-),

Other -

13. Date Built 1959

14. Number and Nationality of Personnel 29, GDR

Officers 7 Crew 22 Other (Specify) -

15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x)

Other -

International Radio Call Sign DHXZ

Radio Frequencies Monitored 500, 2182

Other Working Frequencies 425, 454, 468, 512, 2046, 2049,210

Schedule zone time: 8.00-10.00; 18.00-20,00 o'clock

GC-77-0011

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),

Decca (1), Navsat (-), Radar (2), Fathometer (2),

Other Directien finder

17. Cargo Capacity (MT)

Salted Fish	120	Freezer	
Fresh Fish		Dry Hold	2
Frozen Fish		Tanks	2
Fish Meal	40	Other	1
Other fish oil tank 22			

18. Cargo Space

Number	Name
2	fish rooms
2	fish oil tanks
1	fish meal room

19. Processing Equipment (Indicate daily capacity,MT)

2 headers, 10 tons/d

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	16.8.-30.9.77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0012

Permit Period Applied For: 1977

Application No. ~~12/318~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Breitling
2. Vessel No.: Hull No. ROS 318 Registration No. 2657
3. Name and Address of Owner Name and Address of Charterer

   Name VEB Fischkombinat Rostock

   Address VEB Fischkombinat Rostock

   GDR 251 Rostock 5

   Cable Address

   31121 Fiko dd
4. Homeport and State of Registry: Rostock GDR
5. Type of Vessel transport vessel
6. Tonnage (Gross) 2780,42 (Net) 1207,22
7. Length 94,61 M. 8. Breadth 14,03 M. 9. Draft 6,40 M.
10. Horsepower 2800 KW ~~shp~~. 11. Maximum Speed 14 kt.
11. Propulsion: Diesel (X), Steam (-), Diesel/Electric (-),

    Other -
13. Date Built 1968
14. Number and Nationality of Personnel 61 GDR

    Officers 19 Crew 42 Other (Specify) -
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X

    Other -

    International Radio Call Sign DEKN

    Radio Frequencies Monitored 500, 2182

    Other Working Frequencies 425,454,468,512,2046,2049,2101

    Schedule zone time: 06.00-12.00,12.30 -14.30,18.00-20.00 o'clock

GC-77-0012

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),

    Decca (1), Navsat (-), Radar (2), Fathometer (1),

    Other Direction finder (1)
17. Cargo Capacity (MT)

Salted Fish	-
Fresh Fish	-
Frozen Fish	1700
Fish Meal	
Other	

18. Cargo Space

Number	Name
Freezer 3	refrigerating hold
Dry Hold	
Tanks	
Other	

19. Processing Equipment (Indicate daily capacity, MT)

    —
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	21.8.-30.9.77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) GC-77-0013

Permit Period Applied For: 1977 Application No. ~~15/401~~ For Use of Issuing Office

State: German Demokratic Republic

1. Name of Vessel Artur Becker
2. Vessel No.: Hull No. ROS 401 Registration No. 2533
3. Name and Address of Owner Name and Address of Charterer

Name VEB Fischkombinat Rostock

Address VEB Fischkombinat Rostock
GDR 251 Rostock 5

Cable Address 31121 Fiko dd

4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel stern trawler
6. Tonnage (Gross) 998,05 (Net) 312,05
7. Length 58,15 M. 8. Breadth 10,62 M. 9. Draft 4,70 M.
10. Horsepower 1500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),

Other -

13. Date Built 1964
14. Number and Nationality of Personnel 22, GDR

Officers 7 Crew 15 Other (Specify)

15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X)

Other -

International Radio Call Sign DAZQ

Radio Frequencies Monitored 500, 2182

Other Working Frequencies 425,454,468,512,2046,2049,2191

Sthedule Zone time: 08.00-10.00, 18.00-20.00 o'clock

GC-77-0013

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
Decca (1), Navsat (-), Radar (2), Fathometer (2),
Other Autopilot (1), Direction finder (1)

17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	90
Frozen Fish	
Fish Meal	
Other	

18. Cargo Space

Number	Name
	Freezer
	Dry Hold
	Tanks
2	Other fish storage space

19. Processing Equipment (Indicate daily capacity, MT)

-

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic	15.8.-30.9.77	Herring	490	OTM 2
"	1.12.-31.12.77	Mackerel	340	"

Subarea 5 and Stat.Area 6

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0014

GC-77-0014

Permit Period Applied For: 1977

Application No. ~~44/404~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel: Elvira Eisenschneider
2. Vessel No.: Hull No. ROS 404 Registration No. 2563
3. Name and Address of Owner / Name and Address of Charterer

   Name: VEB Fischkombinat Rostock

   Address: VEB Fischkombinat
   Rostock, GDR 251 Rostock 5

   Cable Address: 31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: stern trawler
6. Tonnage (Gross) 998,05 (Net) 312,02
7. Length 58,99 M. 8. Breadth 10,62 M. 9. Draft 4,70 M.
10. Horsepower 1.500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),
    Other: -
13. Date Built: 1966
14. Number and Nationality of Personnel: 22, GDR

    Officers 7 Crew 15 Other (Specify) -
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
    Other: -

    International Radio Call Sign: DAZT

    Radio Frequencies Monitored: 500, 2182

    Other Working Frequencies: 425, 454, 468, 512, 2046, 2049, 2191

    Schedule: Zone time: 8.00-10.00; 18.00-20.00 o'clock
16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navsat (-), Radar (2), Fathometer (2),
    Other: Autopilot (1), Direction finder(1)
17. Cargo Capacity (MT)

    Salted Fish: ____ Freezer

    Fresh Fish: 90 Dry Hold

    Frozen Fish: ____ Tanks

    Fish Meal: ____ Other: 2 fish storage space

    Other: ____
18. Cargo Space Number / Name
19. Processing Equipment (Indicate daily capacity, MT)

    ____

    ____

    ____

    ____
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	19.8.-30.9.77	Herring	490	OTM 2

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

    ____

    ____

    ____

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0015

GC-77-0015

Permit Period Applied For: 1977

Application No. For Use of Issuing Office ~~45/405~~

State: German Democratic Republic

1. Name of Vessel Herta Lindner
2. Vessel No.: Hull No. ROS 405 Registration No. 2565
3. Name and Address of Owner / Name and Address of Charterer
   Name VEB Fischkombinat Rostock
   Address VEB Fischkombinat Rostock
   GDR 251 Rostock 5
   Cable Address 31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel stern trawler
6. Tonnage (Gross) 998,05 (Net) 312,02
7. Length 59,04 M. 8. Breadth 10,62 M. 9. Draft 4,70 M.
10. Horsepower 1500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),
    Other -
13. Date Built 1966
14. Number and Nationality of Personnel 22, GDR
    Officers 7 Crew 15 Other (Specify) -
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
    Other -
    International Radio Call Sign DAZU
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425,454,468,512,2046,2049,2191
    Schedule Zone time:08.00-10.00, 18.00-20.00 o'clock
16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navsat (-), Radar (2), Fathometer (2),
    Other Autopilot (1), Direction finder (1)
17. Cargo Capacity (MT)

Salted Fish		Freezer	
Fresh Fish	90	Dry Hold	
Frozen Fish		Tanks	
Fish Meal		Other	2 fish storage space
Other			

18. Cargo Space Number Name
19. Processing Equipment (Indicate daily capacity,MT)
    -
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic	19.8.-30.9.77	Herring	490	OTM 2
-"-	1.12.-31.12.77	Mackerel	340	OTM 2

Subarea 5 and Stat.Area 6

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) GC-77-0016

Permit Period Applied For: 1977 Application No. ~~76/115~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Rudi Arndt
2. Vessel No.: Hull No. ROS 410 Registration No. 2592
3. Name and Address of Owner / Name and Address of Charterer

   Name VEB Fischkombinat Rostock

   Address VEB Fischkombinat Rostock

   GDR 251 Rostock 5

   Cable Address 31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel stern trawler
6. Tonnage (Gross) 963,63 (Net) 304,43
7. Length 58,96 M. 8. Breadth 10,62 M. 9. Draft 4,70 M.
10. Horsepower 1500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),

    Other -
13. Date Built 1966
14. Number and Nationality of Personnel 22, GDR

    Officers 7 Crew 15 Other (Specify) -
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x),

    Other -

    International Radio Call Sign DAZZ

    Radio Frequencies Monitored 500, 2182

    Other Working Frequencies 425,454,468,512,2046,2049,2191

    Schedule Zone time: 08.00-10.00, 18.00-20.00 o'clock

GC-77-0016

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),

    Decca (1), Navsat (-), Radar (2), Fathometer (2),

    Other Autopilot (1), Direction finder (1)
17. Cargo Capacity (MT)

    Salted Fish _____

    Fresh Fish 90

    Frozen Fish _____

    Fish Meal _____

    Other _____
18. Cargo Space

Number	Name
	Freezer
	Dry Hold
	Tanks
2	fish storage space

19. Processing Equipment (Indicate daily capacity, MT)

    -
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	15.8.-30.9.77	Herring	490	OTM 2

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

~~GC-77-0017~~
GC-77-0017

GC-77-0017

Permit Period Applied For: 1977

Application No. For Use of Issuing Office ~~17/412~~

State: German Democratic Republic

1. Name of Vessel Grete Walter
2. Vessel No.: Hull No. ROS 412 Registration No. 2599
3. Name and Address of Owner / Name and Address of Charterer
   Name: VEB Fischkombinat Rostock
   Address: VEB Fischkombinat Rostock, GDR 251 Rostock 5
   Cable Address: 31121 Fisch-kombinat dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel stern trawler
6. Tonnage (Gross) 963,63 (Net) 304,43
7. Length 59,06 M. 8. Breadth 10,62 M. 9. Draft 4,70 M.
10. Horsepower 1.500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-).
    Other -
13. Date Built 1966
14. Number and Nationality of Personnel 22, GDR
    Officers 7 Crew 15 Other (Specify) -
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x).
    Other -
    International Radio Call Sign DEXB
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425, 454, 468, 512, 2046, 2049,2191
    Schedule Zone time: 8.00-10.00; 18.00-20.00 o' clock

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-), Decca (1), Navsat (-), Radar (2), Fathometer (2),
    Other Autopilot (1), Direction finder(1)
17. Cargo Capacity (MT)

Salted Fish		Freezer	
Fresh Fish	90	Dry Hold	
Frozen Fish		Tanks	
Fish Meal		Other	2 fish storage space
Other			

18. Cargo Space Number / Name
19. Processing Equipment (Indicate daily capacity, MT) -
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic	17.8.-30.9.77	Herring	470	OTM 2
"	1.12.-31.12.77	Mackerel	340	"

Subarea 5 and Stat.Area 6

21. Name and Address of Agent appointed to receive any legal process issued in the United States: -

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0018

GC-77-0018

Permit Period Applied For: 1977

Application No. For Use of Issuing Office: ~~10/417~~

State: German Democratic Republic

1. Name of Vessel: Karl Wolf
2. Vessel No.: Hull No. ROS 413 Registration No. 2612
3. Name and Address of Owner / Name and Address of Charterer

   Name: VEB Fischkombinat Rostock

   Address: VEB Fischkombinat Rostock, GDR 251 Rostock 5

   Cable Address: 31121 Fisch-kombinat dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: stern trawler
6. Tonnage (Gross) 963,63 (Net) 304,43
7. Length 59,10 M. 8. Breadth 10,62 M. 9. Draft 4,70 M.
10. Horsepower 1.500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),

    Other: -
13. Date Built: 1966
14. Number and Nationality of Personnel: 22, GDR

    Officers 7 Crew 15 Other (Specify) -
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),

    Other: -

    International Radio Call Sign: DEXC

    Radio Frequencies Monitored: 500, 2182

    Other Working Frequencies: 425, 454, 468, 512, 2046, 2049, 2191

    Schedule: zone time: 8.00-10.00; 18.00-20.00 o'clock
16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),

    Decca (1), Navsat (-), Radar (2), Fathometer (2),

    Other: Autopilot (1), Direction finder (1)
17. Cargo Capacity (MT)

    Salted Fish: ____

    Fresh Fish: 90

    Frozen Fish: ____

    Fish Meal: ____

    Other: ____
18. Cargo Space

Number	Name
	Freezer
	Dry Hold
	Tanks
2	Other: fish storage space

19. Processing Equipment (Indicate daily capacity, MT)

    -
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic	16.8.-30.9.77	Herring	475	OTM 2
"	1.12.-31.12.77	Mackerel	340	"

Subarea 5 and Stat.Area 6

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

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FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0019

GC-77-0019

Permit Period Applied For: 1977

Application No. ~~49/416~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel: Eugen Schönhaar
2. Vessel No.: Hull No. ROS 416 Registration No. 2632
3. Name and Address of Owner / Name and Address of Charterer
   - Name: VEB Fischkombinat Rostock
   - Address: VEB Fischkombinat Rostock, GDR 251 Rostock 5
   - Cable Address: 31121 Fisch-kombinat dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: stern trawler
6. Tonnage (Gross) 998,05 (Net) 312,02
7. Length 59,42 M. 8. Breadth 10,62 M. 9. Draft 4,70 M.
10. Horsepower 1.500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),
    Other: -
13. Date Built: 1967
14. Number and Nationality of Personnel: 22, GDR
    Officers 7 Crew 15 Other (Specify) -
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
    Other: -
    International Radio Call Sign: DEKP
    Radio Frequencies Monitored: 500, 2182
    Other Working Frequencies: 425, 454, 468, 512, 2046, 2049, 2191
    Schedule: Zone time: 8.00-10.00; 18.00-20.00 o'clock
16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navsat (-), Radar (2), Fathometer (2),
    Other: Autopilot (1), Direction finder (1)
17. Cargo Capacity (MT)

Salted Fish		Freezer	
Fresh Fish	90	Dry Hold	
Frozen Fish		Tanks	
Fish Meal		Other	2 fish storage space
Other			

18. Cargo Space Number / Name
19. Processing Equipment (Indicate daily capacity, MT)
    -
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
-				
NW-Atlantic	15.8.-30.9.77	Herring	490	OTM 2
"	1.12.-31.12.77	Mackerel	340	"

Subarea 5 and Stat.Area 6

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0020

Permit Period Applied For: 1977

Application No. ~~20/419~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel: Phillip Müller
2. Vessel No.: Hull No. ROS 419 Registration No. 2639
3. Name and Address of Owner / Name and Address of Charterer
   Name: VEB Fischkombinat Rostock
   Address: VEB Fischkombinat Rostock, GDR 251 Rostock 5
   Cable Address: 31121 Fisch-kombinat dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: stern trawler
6. Tonnage (Gross) 998,05 (Net) 312,02
7. Length 59,08 M. 8. Breadth 10,62 M. 9. Draft 4,70 M.
10. Horsepower 1.500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),
    Other: -
13. Date Built: 1967
14. Number and Nationality of Personnel: 22, GDR
    Officers 7 Crew 15 Other (Specify) -
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (x),
    Other: -
    International Radio Call Sign: DEXI
    Radio Frequencies Monitored: 500, 2182
    Other Working Frequencies: 425, 454, 468, 512, 2046, 2049, 2191
    Schedule: zone time: 8.00-10.00; 18.00-20.00 o'clock

GC-77-0020

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navsat (-), Radar (2), Fathometer (2),
    Other: Autopilot (1), Direction finder (1)
17. Cargo Capacity (MT)

Salted Fish		Freezer	
Fresh Fish	90	Dry Hold	
Frozen Fish		Tanks	
Fish Meal		Other	2
Other			

18. Cargo Space

Number	Name
2	fish storage space

19. Processing Equipment (Indicate daily capacity,MT)
    -
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic	17.8.-30.9.77	Herring	470	OTM 2
"	1.12.-31.12.77	Mackerel	340	"

Subarea 5 and Stat.Area 6

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    -

AC-77-0021

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

AC-77-0021

Permit Period Applied For: 1977

Application No. 21/421 For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel: Peter Göring
2. Vessel No.: Hull No. ROS 421 Registration No. 2645
3. Name and Address of Owner: Name: VEB Fischkombinat Rostock; Address: VEB Fischkombinat Rostock, GDR 251 Rostock 5; Cable Address: 31121 Fisch-kombinat dd
   Name and Address of Charterer:
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: stern trawler
6. Tonnage (Gross) 998,05 (Net) 312,02
7. Length 59,32 M. 8. Breadth 10,62 M. 9. Draft 4,70 M.
10. Horsepower 1.500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (–), Diesel/Electric (–),
    Other: –
13. Date Built: 1968
14. Number and Nationality of Personnel: 22, GDR
    Officers 7 Crew 15 Other (Specify) –
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
    Other: –
    International Radio Call Sign: DEIK
    Radio Frequencies Monitored: 500, 2182
    Other Working Frequencies: 425, 454, 468, 512, 2046, 2049, 2191
    Schedule: zone time: 8.00-10.00; 18.00-20.00 o'clock
16. Navigation Equipment: Loran C (–), Loran A (1), Omega (–),
    Decca (1), Navsat (–), Radar (2), Fathometer (2),
    Other: Autopilot (1), Direction finder (1)
17. Cargo Capacity (MT)

Salted Fish		Freezer	
Fresh Fish	90	Dry Hold	
Frozen Fish		Tanks	
Fish Meal		Other	2
Other			

18. Cargo Space Number: 2 Name: fish storage space
19. Processing Equipment (Indicate daily capacity, MT)
    –
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	15.8.-30.9.77	Herring	490	OTM 2

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0022

GC-77-0022

Permit Period Applied For: 1977

Application No. 22/307 For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel: Peter Moll

2. Vessel No.: Hull No. ROS 307 Registration No. 2870

3. Name and Address of Owner / Name and Address of Charterer

Name: VEB Fischkombinat Rostock

Address: VEB Fischkombinat

Rostock, GDR 251 Rostock 5

Cable Address:

31121 Fiko dd

4. Homeport and State of Registry: Rostock, GDR

5. Type of Vessel: stern trawler

6. Tonnage (Gross) 2962,13 (Net) 1319,31

7. Length 81,86 M. 8. Breadth 13,52 M. 9. Draft 5,80 M.

10. Horsepower 2.300 shp. 11. Maximum Speed 11 kt.

11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),

Other: -

13. Date Built: 1963

14. Number and Nationality of Personnel: 80, GDR

Officers 16 Crew 64 Other (Specify) -

15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),

Other: -

International Radio Call Sign: DAZH

Radio Frequencies Monitored: 500, 2182

Other Working Frequencies: 425,454, 468, 512, 2046,2049,2191

Schedule: zone time: 8.00-12.00;12.30-14.30;18.00-20.00 o'clock

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),

Decca (1), Navsat (-), Radar (2), Fathometer (2),

Other: Autopilot (1), Direction finder (1)

17. Cargo Capacity (MT)

Salted Fish	-
Fresh Fish	-
Frozen Fish	594
Fish Meal	132
Other	fish oil tanks 72

18. Cargo Space

Number		Name
Freezer	3	refrigerating holds
Dry Hold	1	fish meal holds
Tanks	4	fish oil tanks
Other		

19. Processing Equipment (Indicate daily capacity, MT)

2x Baader 666 (66 tons per day), 1x Baader 181 (5 tons per day)
1x Baader 338 (6 tons per day), 5x Baader 47 (6 tons per day)
3x Baader 150 (6 tons per day), 1x KM 60 (8 tons per day)
3x Baader 33 (8 tons per day)

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic Subarea 5 and Stat.Area 6	1.11.- 31.12.77	Mackerel	61o	OTM 2

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) GC-77-0023

GC-77-0023

Permit Period Applied For: 1977

Application No. 23/308 For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Walter Dohnel
2. Vessel No.: Hull No. ROS 308 Registration No. 2471
3. Name and Address of Owner / Name and Address of Charterer

Name VEB Fischkombinat Rostock

Address VEB Fischkombinat Rostock, GDR, 251 Rostock 5

Cable Address 31121 Fisch- kombinat dd

4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel stern trawler
6. Tonnage (Gross) 2917,64 (Net) 1147,99
7. Length 81,35 M. 8. Breadth 13,52 M. 9. Draft 5,80 M.
10. Horsepower 2.300 shp. 11. Maximum Speed 11 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),

Other -

13. Date Built 1963
14. Number and Nationality of Personnel 80, GDR

Officers 16 Crew 64 Other (Specify) -

15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),

Other -

International Radio Call Sign DAZI

Radio Frequencies Monitored 500, 2182

Other Working Frequencies 425, 454, 468, 512, 2046, 2191,2049

Schedule Zone time: 8.00-12.00; 12.30-14.30; 18.00-20.00 o' clock

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-), Decca (1), Navsat (-), Radar (2), Fathometer (2),

Other Autopilot (1); Direction finder (1)

17. Cargo Capacity (MT)

Salted Fish	-
Fresh Fish	-
Frozen Fish	630
Fish Meal	132
Other	fish oil tanks 72

18. Cargo Space

	Number	Name
Freezer	3	refrigerating holds
Dry Hold	1	fish meal holds
Tanks	4	fish oil tanks
Other		

19. Processing Equipment (Indicate daily capacity,MT)

2x Baader 666 (66 tons per day); 5x Baader 47 (6 tons per day)

1x Baader 338 (6 tons per day); 1x KM 60 (8 tons per day)

3x Baader 33 (8 tons per day);

1x Baader 181 (5 tons per day);

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic Subarea 5 and Stat.Area 6	11.11.- 31.12.77	Mackerel	52o	OTM 2

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0024

Permit Period Applied For: 1977

Application No. -24/313 For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel: Willi Bredel

2. Vessel No.: Hull No. ROS 313 Registration No. 2562

3. Name and Address of Owner / Name and Address of Charterer

Name: VEB Fischkombinat Rostock

Address: VEB Fischkombinat
Rostock, GDR 215 Rostock 5

Cable Address:
31121 Fiko dd

4. Homeport and State of Registry: Rostock, GDR

5. Type of Vessel: stern trawler

6. Tonnage (Gross) 3169,34 (Net) 1478,12

7. Length 83,91 M. 8. Breadth 14,23 M. 9. Draft 8,89 M.

10. Horsepower 2.900 shp. 11. Maximum Speed 12 kt.

11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),
Other -

13. Date Built 1966

14. Number and Nationality of Personnel 80, GDR
Officers 16 Crew 64 Other (Specify) -

15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
Other -

International Radio Call Sign DAZP

Radio Frequencies Monitored 500, 2182

Other Working Frequencies 425, 454, 468, 512, 2046, 2049, 2191

Schedule zone time: 8.00-12.00; 12.30-14.30; 18.00-20.00 o'clock

GC-77-0024

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
Decca (1), Navsat (-), Radar (2), Fathometer (2),
Other Autopilot (1), Direction Finder (1)

17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	760
Fish Meal	160
Other	fish oil tanks 90

18. Cargo Space

Number	Name	
Freezer	2	refrigerating holds
Dry Hold	3	fish meal holds
Tanks	4	fish oil tanks
Other		

19. Processing Equipment (Indicate daily capacity, MT)
1x Baader 666 (66 tons/d); 2x Baader 46 (10 tons/d)
1x Baader 99 (10 tons/d)
3x Baader 33 (8 tons/d)
1x KD 60 (8 tons/d)

20: Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplatdd Catch (MT)	Gear to be Used
NW-Atlantic Subarea 5 and Stat.Area 6	17.8.-31.12.77	Herring Mackerel	1.285	OTM 2

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) GC-77-0025

GC-77-0025

Permit Period Applied For: 1977

Application No. -25/317- For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel: Junge Garde
2. Vessel No.: Hull No. ROS 317 Registration No. 2605
3. Name and Address of Owner / Name and Address of Charterer

Name: VEB Fischkombinat Rostock

Address: VEB Fischkombinat Rostock
GDR 251 Rostock 5

Cable Address
31121 Fiko dd

4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: base ship
6. Tonnage (Gross) 9641,91 (Net) 4779,43
7. Length 135,96 M. 8. Breadth 21,25 M. 9. Draft 13,09 M.
10. Horsepower 5000 shp. 11. Maximum Speed 15 kt.
11. Propulsion: Diesel (-), Steam (-), Diesel/Electric (4),
Other -
13. Date Built 1966
14. Number and Nationality of Personnel 165, GDR
Officers 25 Crew 140 Other (Specify)
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x),
Other data transmission device
International Radio Call Sign DHXM
Radio Frequencies Monitored 500, 2182
Other Working Frequencies 425,454,468,512,2046,2049,2101
Schedule 24 hours

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
Decca (1), Navsat (-), Radar (3), Fathometer (2),
Other Autopilot (1), Direction finder (2)

17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	4240
Fish Meal	1000
Other	fish oil tanks 520

18. Cargo Space

Number	Name
Freezer 3	refrigerating holds
Dry Hold 1	fish meal holds
Tanks 8	fish oil tanks
Other	

19. Processing Equipment (Indicate daily capacity,MT)

3x Baader 99(1o tons per day),6 x Baader 46 (1o tons per day)
4x Baader 33(8 tons per day),14x Baader 47 (6 tons per day)
3x Baader 338(6 tons per day), 3x KM 6o (8 tons per day)
4x Baader 15o(6 tons per day)

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic Subarea 5 and Stat.Area 6	1.12.- 31.12.77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

GC-77-0026

GC-77-0024

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period Applied For: 1977

Application No. For Use of Issuing Office ~~26/319~~

State: German Democratic Republic

1. Name of Vessel Lütten Klein
2. Vessel No.: Hull No. ROS 319 Registration No. 2220
3. Name and Address of Owner / Name and Address of Charterer

   Name VEB Fischkombinat Rostock

   Address VEB Fischkombinat Rostock

   GDR 251 Rostock 5

   Cable Address

   31121 Piko dd
4. Homeport and State of Registry: Rostock GDR
5. Type of Vessel transport vessel
6. Tonnage (Gross) 5227,37 (Net) 2541,43
7. Length 122,94 M. 8. Breadth 16,83 M. 9. Draft 7,90 M.
10. Horsepower 8850 shp. 11. Maximum Speed 15 kt.
11. Propulsion: Diesel (4), Steam (-), Diesel/Electric (-),

    Other -
13. Date Built 1971
14. Number and Nationality of Personnel 61 GDR

    Officers 19 Crew 42 Other (Specify) -
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),

    Other -

    International Radio Call Sign DEKO

    Radio Frequencies Monitored 500, 2182

    Other Working Frequencies 425,454,468,512,2046,2049,2101

    Schedule zone time: 08.00-12.00, 12.30-14.30,18.00-20.00 o' clock
16. Navigation Equipment: Loran C (-), Loran A (4), Omega (-),

    Decca (1), Navsat (-), Radar (2), Fathometer (4),

    Other Direction finder (1)
17. Cargo Capacity (MT)

    Salted Fish

    Fresh Fish

    Frozen Fish 4000

    Fish Meal

    Other
18. Cargo Space

Number	Name
Freezer 4	refrigerating holds
Dry Hold	
Tanks	
Other	

19. Processing Equipment (Indicate daily capacity,MT)

    -
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic Subarea 5 and Stat.Area 6	Nov./Dez. 77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0027

Permit Period Applied For: 1977

Application No. ~~77/300~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Eversbagen
2. Vessel No.: Hull No. R03 320 Registration No. 2724
3. Name and Address of Owner Name and Address of Charterer

Name VEB Fischkombinat Rostock

Address VEB Fischkombinat Rostock

GDR 251 Rostock 5

Cable Address

31121 Fiko dd

4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel transport vessel
6. Tonnage (Gross) 5229,16 (Net) 2522,61
7. Length 122,94 M. 8. Breadth 16,83 M. 9. Draft 7,90 M.
10. Horsepower 8850 shp. 11. Maximum Speed 15 kt.
11. Propulsion: Diesel (4), Steam (-), Diesel/Electric (-),

Other -

13. Date Built 1971
14. Number and Nationality of Personnel 61 GDR

Officers 19 Crew 42 Other (Specify) -

15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x),

Other -

International Radio Call Sign DEXP

Radio Frequencies Monitored 500, 2182

Other Working Frequencies 425,454,468,512,2046,2049,2101

Schedule zone time: 08.00-12.00, 12.30-14.30, 18.00-20.00 o'clock

GC-77-0027

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),

Decca (1), Navsat (-), Radar (2), Fathometer (1),

Other Direction finder (1)

17. Cargo Capacity (MT)

Salted Fish

Fresh Fish

Frozen Fish 4000

Fish Meal

Other

18. Cargo Space Number Name

Freezer 4 refrigerating holds

Dry Hold

Tanks

Other

19. Processing Equipment (Indicate daily capacity,MT)

-

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic Subarea 5 and Stat.Area 6	Aug./Sept. 77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

[FR Doc.77-2170 Filed 1-21-77:8:45 am]