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highlights

GUIDE TO FREEDOM OF INFORMATION INDEXES

The guide to agency Freedom of Information indexes which is published quarterly by the Office of the Federal Register will be carried in the quarterly FEDERAL REGISTER INDEXES, beginning January-March 1978. The FEDERAL REGISTER INDEX is included as part of the FEDERAL REGISTER subscription.

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
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	HEW/NIH			HEW/NIH
	HEW/PHS			HEW/PHS

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

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

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

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[3195-01]

Title 3—The President

Executive Order 12056 • **April 28, 1978**

Exemption of G. Joseph Minetti from Mandatory Retirement

G. Joseph Minetti, Member, Civil Aeronautics Board, became subject to mandatory retirement for age on July 31, 1977, under the provisions of Section 8335 of Title 5 of the United States Code unless exempted by Executive Order. Mr. Minetti was exempted from mandatory retirement until September 30, 1977, by Executive Order No. 12006 of July 29, 1977, until October 31, 1977, by Executive Order No. 12011 of September 30, 1977, until January 31, 1978, by Executive Order No. 12016 of October 31, 1977, and until May 1, 1978 by Executive Order No. 12037 of January 31, 1978.

In my judgment, the public interest requires that G. Joseph Minetti continue to be exempted from such mandatory retirement.

NOW, THEREFORE, by virtue of the authority vested in me by subsection (c) of Section 8335 of Title 5 of the United States Code, I hereby exempt G. Joseph Minetti from mandatory retirement until August 31, 1978.

Jimmy Carter

THE WHITE HOUSE,
April 28, 1978.

[FR Doc. 78-12109 Filed 5-1-78; 10:44 am]

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.

[6325-01]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Defense and Department of Housing and Urban Development

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment (1) excepts under Schedule C a position in the Department of Defense because it is confidential in nature, and (2) corrects a final rule appearing on page 5793 in the FEDERAL REGISTER of February 10, 1978 (FR 78-3852) which showed that 213.3384(a)(31) was revoked. This position was revoked in error.

EFFECTIVE DATE: April 18, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3306(a)(52) and 213.3384(a)(31) are added as set out below:

§ 213.3306 Department of Defense.

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

(52) One Personal and Confidential Assistant to the Assistant General Counsel (Intelligence, International and Investigative Programs).

* * * * *

§ 213.3384 Department of Housing and Urban Development.

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

(31) One Special Assistant to the Secretary.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-11707 Filed 5-1-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Consumer Product Safety Commission and National Transportation Safety Board

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment (1) excepts under Schedule C a position in the Consumer Product Safety Commission because it is confidential in nature, and (2) changes the headnote and title of one position at the National Transportation Safety Board because it more appropriately reflects the duties of the position and the current title of the superior.

EFFECTIVE DATE: April 7, 1978

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3360(d), the headnote of 213.3396 (b) and (b)(1) are amended to read as follows:

§ 213.3360 Consumer Product Safety Commission.

* * * * *

(d) One Special Assistant and one Staff Assistant to a Commissioner.

* * * * *

§ 213.3396 National Transportation Safety Board.

* * * * *

(b) Office of the Managing Director.

(1) One Secretary (Steno) to the Managing Director.

(5 U.S.C. 3301, 3302, EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-11708 Filed 5-1-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of the Interior

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: Schedule A exception for positions of teacher, GS-5/7/9, at schools run by the Bureau of Indian Affairs which become vacant during the school year is amended to permit filling of positions during the months of July through May which become vacant after teachers have reported for duty because it is not practicable to hold an examination to fill such vacancies. The authority is also amended to show that appointments may not exceed the last day of the school year in which they are made.

EFFECTIVE DATE: April 17, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 632-4533.

Accordingly, 5 CFR 213.3112(b)(3) is amended as set out below:

§ 213.3112 Department of the Interior.

* * * * *

(b) *Bureau of Indian Affairs* * * *

(3) Positions of teacher, GS-5/7/9, at schools run by the Bureau of Indian Affairs, which become vacant after teachers have reported for duty. Appointments under this authority may be made only during the months of July through May and may not exceed the last day of the school year during which they are made.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-11709 Filed 5-1-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of State and Community Services Administration

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment (1) excepts under Schedule C a position at the Department of State because it is confidential in nature, and (2) changes Staff Assistant, Office of Interagency and External Affairs to Staff Assistant to the Deputy Director, Community Services Administration. This organizational transfer does not effect the Schedule C exception.

EFFECTIVE DATE: April 13, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3304(a)(8) and 213.3373(a)(9) are added and 213.3373(g)(2) is amended as set out below:

§ 213.3304 Department of State.

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

(8) One Staff Assistant to the Ambassador-at-Large.

* * * * *

§ 213.3373 Community Services Administration.

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

(9) One Staff Assistant to the Deputy Director.

* * * * *

(g) *Office of Interagency and External Affairs.* * * *

(2) One Special Assistant to the Associate Director.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-11706 Filed 5-1-78; 8:45 am]

[3410-02]

Title 7—Agriculture

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

[Peach Reg. 1]

PART 918—FRESH PEACHES GROWN IN GEORGIA

Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes minimum grade and size requirements for fresh peaches grown in Georgia for the 1978 season. These requirements are designed to promote orderly marketing in the interest of producers and consumers.

EFFECTIVE DATE: May 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and Order No. 918, as amended (7 CFR part 918), regulating the handling of peaches grown in Georgia, effective under 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 Industry Committee, established under this marketing order, and upon other information, it is found that the limitation of handling of peaches, as hereafter provided, will tend to effectuate the declared policy of the act.

The committee met on April 18, 1978, to consider supply and market conditions and other factors affecting the need for regulation. It recommended minimum grade and size requirements for shipments of fresh peaches grown in Georgia, except for those shipped in bulk to adjacent markets, which it deemed advisable for the 1978 season. The exception of peaches shipped in bulk to adjacent markets from grade, size, and inspection requirements follows the practice of prior years, and is designed to permit shipment of peaches which are of a quality and size acceptable in the adjacent markets but are not suitable for distribution in more distant markets in competition with peaches from other areas. The less stringent size requirements early in the season reflect the fact that earlier-maturing varieties of peaches generally mature at smaller sizes than do later maturing varieties.

The committee reports that it expects 1,800 carlots of inspected peaches to be shipped this season, compared with the past 6-year average of 1,514 carlots. It also reports that the developing crop is of good quality, and the fruit is sizing well. Shipment of this season's Georgia peach crop is expected to begin May 3, and ample supplies of peaches meeting the following requirements are expected to be available to satisfy the demand. Peaches failing to meet these requirements may be marketed in Georgia, shipped to adjacent markets, or utilized in processing.

The following regulations reflect the Department's appraisal of the need for regulation based on the current and prospective crop and market conditions.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 918.320 Peach regulation 1.

(a) No handler shall ship, except peaches in bulk to destinations in the adjacent markets, any peaches which:

(1) During the period May 3 through August 31, 1978, do not grade at least 85 percent U.S. No. 1 quality: *Provided,* That peaches with well-healed hail marks or split pits not scored as serious damage, or peaches with not more than 1 percent decay, may be shipped if they otherwise meet the requirements of this subparagraph.

(2) During the period May 3 through May 15, 1978, are smaller than 1¾ inches in diameter, except that not more than 10 percent, by count, of such peaches in bulk lot or any lot of packages, and not more than 15 percent, by count of such peaches in any container in such lot, may be smaller than 1¾ inches in diameter.

(3) During the period May 16 through August 31, 1978, are smaller than 1⅞ inches in diameter, except that not more than 10 percent, by count, of such peaches in any bulk lot or of any lot of packages, and not more than 15 percent, by count, of such peaches in any container in such lot, may be smaller than 1⅞ inches in diameter.

(b) The inspection requirement contained in § 918.64 shall not be applicable to any shipment of peaches in bulk to destinations in the adjacent markets, except for peaches in new containers, during the period May 3 through August 31, 1978.

(c) The maturity regulations contained in § 918.400 of this part are hereby suspended with respect to shipments of peaches to all destinations other than those in the adjacent markets during the period May 3 through August 31, 1978.

(d) As used in this section, "handler," "adjacent markets," "peaches," "peaches in bulk," and "ship" mean the same as defined in this marketing order, and "U.S. No. 1" and "diameter" means the same as defined in the U.S. Standards for Peaches. (7 CFR 51.1210-51.1223).

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

Dated: April 26, 1978.

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

[FR Doc. 78-11827 Filed 5-1-78; 8:45 am]

[4410-01]

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

ADJUSTMENT OF IMMIGRATION STATUS OF INDOCHINA REFUGEES

Final Rule

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Immigration and Naturalization Service to implement Pub. L. 95-145 enacted October 28, 1977, which provides that under certain stated conditions, refugees who are natives of Vietnam, Laos, and Cambodia, may adjust their immigration status to that of lawful permanent residents of the United States. These amendments are necessary to implement that legislation.

EFFECTIVE DATE: May 2, 1978.

FOR FURTHER INFORMATION CONTACT:

James G. Hoofnagle, Jr., Instructions Officer, Immigration and Naturalization Service, 425 Eye Street NW., Washington, D.C. 20536, telephone 202-376-8373.

SUPPLEMENTARY INFORMATION:

I. INTRODUCTION

On October 28, 1977, Pub. L. 95-145 (91 Stat. 1223) was signed by the President, to take effect upon his approval. Title I of that legislation provides that the Attorney General may, in his discretion, and under such regulations as he may prescribe, adjust the status of any alien who is a native or citizen of Vietnam, Laos or Cambodia, to that of a lawful permanent resident of the United States. This final rulemaking document amends various regulations of the Immigration and Naturalization Service to implement that legislation.

II. OUTLINE OF TITLE I OF PUB. L. 95-145 (91 STAT. 1223)

Section 101(b) provides that the benefits of this legislation shall apply to any alien who is a native or citizen of Vietnam, Laos, or Cambodia, who was paroled into the United States as a refugee from those countries under section 212(d)(5) of the Act subsequent to March 31, 1975, but prior to January 1, 1979 or who was inspected and admitted or paroled into the United States on or before March 31, 1975, and was physically present in the United States on March 31, 1975. Under section 101(a), the alien must apply within 6 years after October 28, 1977; he must be otherwise eligible to receive an immigrant visa and be otherwise admissible to the United States for permanent residence, except for the grounds of excludability specified in secs. 212(a) (14), (15), (20), (21), (25), and (32) of the Immigration and Nationality Act; and he must have been physically present in the United States for at least 2 years.

Section 102 provides that upon approval of the application, the Attorney General shall establish a record of the alien's admission for permanent residence as of March 31, 1975, or the date of the alien's arrival in the United States whichever date is later.

Section 103 provides that an alien described in section 101 who acquired lawful permanent residence status prior to the date of enactment of Pub. L. 95-145, may, upon application, have his admission for permanent residence recorded as of March 31, 1975, or the date of his arrival in the United States, whichever date is later.

Section 104 provides that when an alien has been granted lawful permanent residence under this title, his spouse and children, regardless of nationality, may also be granted such status by the Attorney General if they otherwise qualify under section 101(a). The date of their admission for permanent residence shall be the same as that of the alien through whom they derive benefits under this section.

Section 105 provides that any alien who ordered, assisted, or otherwise participated in the persecution of any person because of race, religion, or political opinion shall be ineligible for permanent residence under any provision of this title.

Section 106 provides that there shall be no reduction in the number of visas authorized to be issued when the application of an Indochinese refugee has been approved. Also, under section 106, no fee is to be charged for the filing of an adjustment application under this title.

Section 107 provides that except as otherwise specifically provided in this title, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this title. Nothing contained in this title shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, and naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this title shall not preclude him from seeking such status under any other provision of law for which he may be eligible.

III. OUTLINE OF AMENDMENTS TO CHAPTER I OF TITLE 8 OF THE CODE OF FEDERAL REGULATIONS

In order to implement Pub. L. 95-145, the following described amendments will be made to the indicated sections of Title 8 of the Code of Federal Regulations.

8 CFR 103.1(m)(3) will be added to provide that decisions on Indochinese refugee applications for adjustment of status may be appealed to the Regional Commissioner.

8 CFR 242.17(a) will be amended to include reference to sections 101 and 104 of Pub. L. 95-145.

8 CFR 245.1(c) will be amended to include reference to sections 101 and 104 of Pub. L. 95-145.

8 CFR 245.1(f) will be amended to provide that no fee will be required for filing of an application to overcome exclusionary grounds filed concurrently with an application for adjustment of status in an Indochinese refugee case.

New 8 CFR 245.1(h) will be added to set forth eligibility requirements for the filing of adjustment applications under section 101 and "roll back" applications under section 103 of Pub. L. 95-145.

8 CFR 245.2(a)(1) will be redrafted for clarity and amended to include reference to sections 101 and 104 of Pub. L. 95-145.

8 CFR 245.2(a)(2) will be amended to include regulations for filing applications for adjustment of status under sections 101 and 104 of Pub. L. 95-145.

8 CFR 245.2(a)(3) will be amended to provide that the date of readmission following a temporary absence abroad will be disregarded for purposes of fixing the date of "arrival" in the case of an Indochinese refugee who has no intention of abandoning his U.S. residence.

8 CFR 245.2(a)(4) will be amended to provide that an appeal shall lie from a decision by the district director in the case of an application for adjustment of status filed by an Indochinese refugee under section 101 or 104 of Pub. L. 95-145.

New 8 CFR 245.2(e) will be added to provide regulations for the filing of an application under section 103 of Pub. L. 95-145.

8 CFR 245.4(b) will be deleted.Enactment of Pub. L. 95-145 renders it unnecessary.

8 CFR 245.6 will be amended to include regulations respecting medical examination of applicants for adjust-

ment of status under the provisions of Pub. L. 95-145.

8 CFR 299.1 will be amended to include reference to Form I-485C "Application for Creation of a Record of Lawful Admission for an Indochina Refugee", the application form to be used in connection with applications for adjustment filed under Pub. L. 95-145.

IV. REGULATIONS PRESCRIBED

The following amendments are hereby prescribed to Chapter I of Title 8 of the Code of Federal Regulations:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. 8 CFR 103.1(m) is amended by adding a new subparagraph (3) to read as follows:

§ 103.1 Delegations of authority

* * * * *

(m) Regional Commissioners. * * *

* * * * *

(3) Decisions on Indochinese refugee applications for adjustment of status, as provided in §§ 245.2(a)(4) and 245.2(e);

* * * * *

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

2. 8 CFR 242.17(a) is amended by revising the first sentence to read as follows:

§ 242.17 Ancillary matters, applications.

(a) *Creation of the status of an alien lawfully admitted for permanent residence.* The respondent may apply to the special inquiry officer for suspension of deportation under section 244(a) of the Act, for adjustment of status under section 245 of the Act, or under section 1 of the Act of November 2, 1966, or under section 101 or 104 of the Act of October 28, 1977, or for creation of a record of lawful admission for permanent residence under section 214(d) or 249 of the Act; such application shall be subject to the requirements contained in Parts 244, 245, and 249 of this chapter. * * *

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

§ 245.1 [Amended]

3. The first sentence of 8 CFR 245.1(c) is amended by adding reference to sections 101 and 104 of the Act of October 28, 1977. As amended, the first sentence of 8 CFR 245.1(c) reads as follows:

* * * * *

(c) *Officials and treaty aliens.* An alien who has a nonimmigrant status under paragraph (15)(A), (15)(E), or (15)(G) of section 101(a) of the Act, or has an occupational status which would, if he were seeking admission to the United States, entitle him to a nonimmigrant status under any of such paragraphs of section 101(a) of the Act is not eligible for the benefits of section 245 of the Act, section 13 of the Act of September 11, 1957, section 1 of the Act of November 2, 1966, or section 101 or 104 of the Act of October 28, 1977, unless he first executes and submits with his application the written waiver required by section 247(b) of the Act and Part 247 of this chapter. * * *

* * * * *

4. 8 CFR 245.1(f) is amended by adding a new sentence to the end thereof, to read as follows:

* * * * *

(f) *Concurrent applications to overcome exclusionary grounds.* * * * No fee shall be required for the filing of an application to overcome exclusionary grounds of the Act filed concurrently with an application for adjustment of status filed pursuant to the provisions of the Act of October 28, 1977, and of this part.

* * * * *

5. 8 CFR 245.1 is amended by adding a new paragraph (h) to read as follows:

* * * * *

(h) *Indochinese refugee.* An alien who ordered, assisted, or otherwise participated in the persecution of any person because of race, religion, or political opinion is not eligible for the benefits under any provisions of the Act of October 28, 1977. An alien is not eligible for the benefits of any provisions of the Act of October 28, 1977, unless he has been physically present in the United States for at least two years subsequent to March 31, 1975 and prior to the date of filing the application for adjustment of status. An alien is not eligible for the benefits of section 101 or 103 of the Act of October 28, 1977, unless he is a native or citizen of Vietnam, Laos, or Cambodia who was paroled into the United States as a refugee from those countries under section 212(d)(5) of the Immigration and Nationality Act subsequent to March 31, 1975, but prior to January 1, 1979; or who was inspected and admitted or paroled into the United States on or before March 31, 1975, and was physically present in the United States on March 31, 1975.

* * * * *

§ 245.2 [Amended]

6. 8 CFR 245.2(a)(1) is revised for clarity and by adding reference to §§ 101 and 104 of the Act of October 28, 1977. As revised, § 245.2(a)(1) reads as follows:

(a) *General*—(1) *Jurisdiction.* An alien who believes he meets the eligibility requirements of section 245 of the Act or section 1 of the Act of November 2, 1966, or section 101 or 104 of the Act of October 28, 1977, and § 245.1 shall apply to the district director having jurisdiction over his place of residence. After an alien has been served with an order to show cause or warrant of arrest, his application for adjustment of status under section 245 of the Act or section 1 of the Act of November 2, 1966 or section 101 or 104 of the Act of October 28, 1977, shall be made and considered only in proceedings under Part 242 of this chapter. An adjustment application by an alien paroled under section 212(d)(5) of the Act, which has been denied by the district director, may be renewed in exclusion proceedings under section 236 of the Act only under the following two conditions: First, the denied application must have been properly filed subsequent to the applicant's earlier inspection and admission to the United States; second, the applicant's later absence from and return to the United States must have been under the terms of an advance parole authorization on Form I-512 granted to permit the applicant's absence and return to pursue the previously filed adjustment application.

* * * * *

7. 8 CFR 245.2(a)(2) is amended by revising the existing eighth sentence; by adding a new ninth sentence between the existing eighth and ninth sentences; by amending the existing tenth sentence; and by adding six new sentences following the existing tenth sentence. The amended provisions of 8 CFR 245.2(a)(2) read as follows:

(a) * * *

(2) *Filing application.* * * * The application under section 245 of the Act shall be made on Form I-485, while the application under section 1 of the Act of November 2, 1966, shall be

made on Form I-485A, and the application under section 101 or 104 of the Act of October 28, 1977, shall be made on Form I-485C. A separate application shall be filed by each applicant. Each application shall be accompanied by executed Form G-325A, if the applicant has reached his 14th birthday, which shall be considered as part of the application. An application under this part shall be accompanied by the documents specified in the instructions which are attached to the application. No fee shall be required for filing an application for the benefits of the Act of November 2, 1966 or the Act of October 28, 1977. An application for adjustment of status under section 101 or 104 of the Act of October 28, 1977, shall not be considered properly filed for acceptance and processing unless filed on or before October 28, 1983. An alien is ineligible for the benefits of the Act of October 28, 1977, unless he has been physically present in the United States for at least two years. An applicant is considered to have been physically present in the United States for at least two years within the meaning of the Act of October 28, 1977, only if he has been actually physically present in the United States for a period or periods in the aggregate of at least two years subsequent to March 31, 1975 and prior to the date of filing the application. An application for adjustment of status under the Act of October 28, 1977, by the spouse or child of a native or citizen of Vietnam, Laos or Cambodia shall not be processed under the provisions of section 104 of that Act unless the applicant is ineligible for adjustment under the provisions of section 101 of that Act. For the purpose of section 104 of the Act of October 28, 1977, a spouse or child, regardless of nationality, of a native or citizen of Vietnam, Laos or Cambodia shall, upon approval of an application for adjustment of status, be accorded permanent residence as of the date accorded the alien through whom such spouse or child derives eligibility under section 104 or the date of such spouse or child's arrival in the United States, whichever is later.

* * * * *

8. 8 CFR 245.2(a)(3) is amended by adding two new sentences at the end thereof to read as follows:

(a) * * *

(3) *Departure.* * * * In determining the date of the alien's "arrival" in the United States within the meaning of section 102 of the Act of October 28, 1977, in the case of an applicant who was physically present in the United States on March 31, 1975 or who was paroled into the United States subsequent to March 31, 1975, but prior to January 1, 1979, and who subsequently departed temporarily with no intention of abandoning his residence in the United States and was readmitted or paroled into the United States upon his return, the date of the applicant's arrival after such temporary absence or absences shall be disregarded. For the purpose of section 102 of the Act of October 28, 1977, the date of the alien's "arrival" in the United States shall be the date of initial parole subsequent to March 31, 1975, but prior to January 1, 1979 as an Indochinese refugee under section 212(d)(5) of the Immigration and Nationality Act.

* * * * *

9. 8 CFR 245.2(a)(4) is revised by amending the existing second sentence, and by adding two new sentences at the end of the existing paragraph. As revised, 8 CFR 245.2(a)(4) reads as follows:

(a) * * *

(4) *Decision.* The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor. Except as otherwise provided in this subparagraph, no appeal shall lie from the denial of an application by the district director but such denial shall be without prejudice to the alien's right to renew his application in proceedings under Part 242 of this chapter, or under Part 236 if the alien is a parolee who meets the conditions specified in subparagraph (1) of this paragraph. An application for adjustment of status under section 245 of the Act as a preference or nonpreference alien shall not be approved until an immigrant visa number has been allocated by the Department of State. An appeal shall lie from the decision of the district director on an application for the benefits of section 101 or 104 of the Act of October 28, 1977; if the application is denied, the applicant shall be advised of his right to appeal in accordance with the provisions of Part 103 of this chapter. No fee shall be required for filing such appeal.

* * * * *

10. 8 CFR 245.2 is amended by adding a new paragraph (e) to read as follows:

* * * * *

(e) *Application under section 103 of the Act of October 28, 1977.* An application by a native or citizen of Vietnam, Laos, or Cambodia who was lawfully admitted to the United States for permanent residence under the provisions of the Immigration and Nationality Act subsequent to March 31, 1975 but prior to October 28, 1977, and who desires such admission to be recorded as of an earlier date pursuant to section 103 of the Act of October 28, 1977, shall be made on Form I-485C. The application shall be submitted to the district director having jurisdiction over the applicant's place of residence in the United States. The decision on the application shall be made by the district director. The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter. No fee shall be required either for the filing of the application or for the filing of the appeal. If the application is approved, the applicant, upon surrender of his Form I-151, will be furnished with a replacement thereof bearing the new date as of which the lawful admission for permanent residence has been recorded.

* * * * *

11. 8 CFR 245.4(b) is deleted.

§ 245.4 Adjustment of status of aliens within the proviso to section 203(a)(7) of the Act.

* * * * *

(b) [Deleted]

* * * * *

12. 8 CFR 245.6 is amended by adding a new second sentence between the existing first and second sentences thereof, to read as follows:

§ 245.6 Medical examination.

* * * Medical examination of an applicant for adjustment of status under the provisions of the Act of October 28, 1977, who was paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act, and who was medically examined when processed for parole by a Service officer in the United States or abroad, shall not be required unless medical grounds for exclusion existed when the applicant was processed for parole or such grounds presently appear to exist. * * *

* * * * *

PART 299—IMMIGRATION FORMS

13. Section 299.1 is amended to add the following form in alphabetical and numerical sequence:

§ 299.1 Prescribed forms.

Form No.	Title and description
*	* * * * *
I-485C	Application for Creation of a Record of Lawful Admission for an Indochina Refugee
*	* * * * *

(Title I of Pub. L. 95-145 enacted October 28, 1977 (91 Stat. 1223), sec. 103 of the Immigration and Nationality Act (8 U.S.C. 1103). Interpret or apply secs. 101, 212, 242 and 245 (8 U.S.C. 1101, 1182, 1252 and 1255).)

The amendments contained in this order are issued pursuant to section 552 of Title 5 of the United States Code (80 Stat. 383), as amended by Pub. L. 93-502 (88 Stat. 1561), and the authority contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103), 28 CFR 0.105(b) and 8 CFR 2.1. Compliance with the provisions of section 553 of Title 5 of the United States Code as to notice of proposed rulemaking and delayed effective date is unnecessary in this instance because these amendments confer benefits on the persons affected thereby, and are being published in implementation of Pub. L. 95-145 which became effective October 28, 1977.

Effective date. The amendments prescribed in this order become effective on: May 2, 1978.

Dated: April 26, 1978.

LEONEL J. CASTILLO,
Commissioner of Immigration and Naturalization.

[FR Doc. 78-11896 Filed 5-1-78; 8.45 am]

[7510-01]

Title 14—Aeronautics and Space

CHAPTER V—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1205—SPACE SCIENCE FLIGHT INVESTIGATIONS

Subpart 1205.1—Policy Concerning Data Obtained From Space Science Flight Investigations

AGENCY: National Aeronautics and Space Administration.

ACTION: Final regulations.

SUMMARY: The National Aeronautics and Space Administration (NASA) finalizes revision to its policy concerning data obtained from Space Science Flight Investigations. This revision is necessary to redefine the roles and responsibilities of individuals conducting space science investigations, Federal officials concerned with implementation of programs, and the National Space Science Data Center (NSSDC) to insure proper use and preservation of space science data. The revised policy, through the use of a Project Data Management Plan, will reduce the amount of data acquired by the NSSDC and insure that the data deposited in the NSSDC is processed in the most efficient, cost effective manner.

DATE: Effective date May 2, 1978.

ADDRESS: SRT Coordinator, Office of Space Science, National Aeronautics and Space Administration, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT:

Franklin G. Tate, 202-755-3833.

SUPPLEMENTARY INFORMATION: On December 28, 1977, a notice of revision to the Policy Concerning Data Obtained from Space Science Flight Investigations was published in the FEDERAL REGISTER (42 FR 64706). The purpose of the revision is to redefine responsiblities of individuals concerned with implementation of programs and the NSSDC to insure proper use and preservation of space science data in the most cost efficient manner. Interested parties were granted 30 days to submit written comments regarding the proposed revisions. No written comments were received.

The proposed revised Policy Concerning Data Obtained from Space Science regulations is hereby adopted without change, as set forth below.

ROBERT A. FROSCH,
Administrator.

Subpart 1205.1—Policy Concerning Data Obtained From Space Science Flight Investigations

Sec.

1205.100 Scope.
1205.101 Policy.
1205.102 Responsibility.
1205.103 Support of research.

Appendix A—Glossary of terms and abbreviations.
Appendix B—Functions and operation of National Space Science Data Center.

AUTHORITY: 42 U.S.C. 2454.

Subpart 1205.1—Policy Concerning Data Obtained From Space Science Flight Investigations

§ 1205.100 Scope.

(a) This subpart continues the policy and responsibilities for reduction, analysis, reposition, preservation, and dissemination of data obtained from space science flight investigations. For glossary of terms and abbreviations, see Appendix A to this subpart.

(b) These provisions apply to all data obtained from space flight experiments processed by the Space Science Steering Committee and approved by the Associate Administrator for Space Science. The policy and procedures for the conduct of the Space Science Program and the responsibilities for the selection and support of scientific investigations and Investigators are set forth in NASA Management Instruction 7100.11 and NASA Handbook 8030.6.

§ 1205.101 Policy.

(a) In conducting space science flight experiments, NASA shall seek to:

(1) Preserve the integrity of each investigation.

(2) Encourage the participation of the best qualified scientists.

(3) Make the results of investigations generally available to the scientific community at the earliest practicable time.

(4) Document the instrument performance and probable cause of malfunctions that occur.

(b) NASA shall rely on individual scientists as Principal Investigators (PIs) to carry out a complete investigation by:

(1) Selecting, when appropriate, associates known as Co-Investigators (COIs) who have supporting roles in the investigation.

(2) Conceiving specific investigations.

(3) Developing, when appropriate, the instrumentation for the investigation.

(4) Participating actively, wherever appropriate, in the actual conduct of the investigation.

(5) Reducing and analyzing the data obtained.

(6) Publishing their findings as soon as practicable.

(7) Making their Reduced Data Records (RDRs) and Analyzed Data Records (ADRs) along with supporting documentation available on a timely basis for use by the scientific community and the news media, in accordance with a Project Data Management Plan (PDMP).

(8) Documenting any significant malfunctions which occur during the lifetime of the experiment.

(c) For certain missions, NASA shall also rely on Guest Investigators to obtain data within the capability of a given mission, which are additional to the mission's primary objectives, and to perform an analysis of the acquired data. Such projects generally maintain a data retrieval and dissemination system or provide a data analysis system for the life of the project. In such cases the PDMP should address the exchange of information with the National Space Science Data Center (NSSDC) so it can act as a switching center by referring data requesters to the appropriate contact or making re-

quests on their behalf and handling the distribution. In addition, the eventual transfer of appropriate data to a more permanent repository prior to termination of the project shall be addressed in the PDMP.

(d) For facility-class payload missions, NASA may rely on Guest Investigators to obtain and analyze data. In connection with such missions a complete analysis activity may be provided for the Investigators; this activity may involve the creation of an institute with a significant lifetime. In such cases the PDMP should address the exchange of information with the NSSDC so it can act as a switching center by referring data requesters to the appropriate contact or making requests on their behalf and handling the distribution. In addition, the eventual transfer of appropriate data to a more permanent repository prior to termination of the mission activity or institute shall be addressed in the PDMP.

(e) A provision for the release of data obtained by the individual Investigator from the investigation shall be included in an agreement with the Investigator at the time of selection to participate. NASA shall take such action as necessary to insure that data are released as required to meet scientific, technological, and public information needs.

(f) Foreign scientists participating in cooperative space science flight investigations shall be governed by appropriate international agreements and/or memoranda of understanding.

§ 1205.102 Responsibility

(a) OSS. The Associate Administrator for Space Science is responsible for the issuance of implementing management instructions and guidelines consistent with the provisions of this subpart. The Assistant Associate Administrator for Space Science (Science) is responsible for the program management of the NSSDC and for insuring that any noncompliance with PDMPs will be factored into future selection considerations.

(b) OSS Program Scientist. (1) Each Program Scientist is responsible for establishing the data analysis policies for each mission including data sharing and collaborations on data analysis. He/she will review the PDMP to assure that data interpretation meetings will be conducted, that wide dissemination of data through presentations and publications will occur and that data and supporting information will be made available to the scientific community in accordance with the PDMP and, along with the Project Scientist, he/she will monitor the execution of the PDMP. He/she will assist NASA public affairs personnel in meeting public information needs.

(2) Each Program Scientist will insure that the letter of notification of selection stipulates that the Principal Investigator (PI), Team Leader (TL), or Guest Investigator (GI) contributes to a PDMP prior to receipt of flight data which documents the plans for data analysis, dissemination of results and for making ADRs, RDRs and supporting documentation available to the scientific community through the designated data dissemination facility. The notification letter will further stipulate that selection for further opportunities will be jeopardized by failure to meet the commitments of the PDMP. The Program Scientist is also responsible for sending information for the Space Investigations Documentation System (SIDS) to the NSSDC after letters of notification have been sent.

(c) Office of Management Operations. The Head, Scientific and Technical Information Branch is responsible for the issuance of instructions to the Scientific and Technical Information Facility (STIF) to provide to the NSSDC a monthly listing of newly acquired articles and documents that contain information about of results from NASA-supported space science flight experiments, especially those which can be identified through the contract, grant, or NSAS Unique Project Numbers (UPN) supplied by the NSSDC.

(d) Field installations. NASA field installations assigned project management responsibility for space science flight projects are responsible for: (1) Insuring that the project plan includes a statement within the project results (or equivalent) section that the Project Scientist or Mission Scientist, the appropriate scientific personnel associated with the investigations that comprise the mission, and the NSSDC acquisition manager will develop a PDMP. This PDMP will be approved by the project manager with concurrence signatures by the Project Scientist and the Director of the NSSDC.

(2) Insuring that the contracts or written agreements negotiated between the PIs, TLs, or GIs institution and the project management center specify the responsibility of the PI, TL, or GI for data reduction, data analysis, publication of results, and, where appropriate, the preparation of selected ADRs, RDRs and necessary documentation for delivery to a data disseminating repository. The contracts or written agreements will stipulate that the contract number or, in the case of a NASA field center Investigator, that the UPN number appear in all reports or articles. Copies of all reports and preprints shall be sent to the STIF and to the NSSDC. This responsibility will be documented in a PDMP to which the Investigators, the Project Scientists, the NSSDC Acquisition Manager, and the appropriate scientific advisory groups will contribute. The PDMP will commit the Investigator, where appropriate, to supply to a specified repository the following documentation upon submission of the selected ADRs and RDRs:

(i) General information about each data set, such as:

(A) Form of data set—hard copy, magnetic tape, microfiche, microfilm, photographic film, etc.

(B) Quantity of data set—number of units of the form.

(C) External identification for each physical unit of the data set—spacecraft, experiment, Investigator's internal ID.

(D) Time period covered by the data set.

(E) Quantity by which data set is ordered—time, orbit number, spatial coordinate, etc.

(F) Supporting documentation—tape formats, catalog, directory, indexes, User's Guide, etc.

(G) Brief description of the data set (not to exceed 250 words).

(ii) Specific information about each data set, such as:

(A) Magnetic tape—track density, recording density, recording mode, recording parity, make and model number of computer used, number of files, size of physical records, logical record format with specification of each field, etc.

(B) Photographic or microform—type of film, frame and/or reel numbers where supporting data and description are located, index of frames and each reel, assurance that all reels are quality controlled to allow proper duplication, etc.

(C) Hard copy—assurance that copy is clean, legible and of proper contrast so it can be photographed; index or catalog if appropriate; form of binding (burst, unburst, loose leaf, bound); etc.

(iii) A Data Users' Guide which includes a summary of the investigation, a description of the instrument, a discussion of calibration procedures and results, a discussion of pertinent events in the operational history that might affect data interpretation, a discussion of over-all data reduction procedures used in generating the various data sets, and other information useful to a scientifically trained recipient of the data.

(iv) A list of all published articles related to the investigation by the investigator group or team and copies of all reports and preprints.

(3) Insuring that Investigators on these projects fulfill the stipulations of the contracts or written agreements pertaining to the responsibilities described in paragraph (d)(1) of this section.

(4) Delivery of EDRs to Investigators on a timely basis. Conditions for discarding or destroying EDRs shall be specified in the PDMP.

(5) Providing to the NSSDC during the writing of the project plan (and

provided updates during revisions and specifically after launch) the following information:

(i) Brief statement of the mission objectives for each launch (not to exceed 200 words).

(ii) The names, addresses and telephone and telex numbers of the program manager, Program Scientist, project manager, and Project Scientists for each mission.

(iii) The launch site, launch vehicle, spacecraft weight, and planned orbit parameters.

(iv) A brief description of the spacecraft, not exceeding 250 words.

(v) For each investigation the names, addresses and telephone and telex number of all the Investigators and the relevant contract or UPN numbers.

(vi) The name of each experiment, its weight, average power, and approximate bit rate.

(vii) A brief description of each experiment, not exceeding 250 words.

(e) The PI, TL, or GI (NASA, Non-NASA, and foreign). At the time an investigation is selected, the PI, TL, or GI will be notified by letter signed by the Associate Administrator for Space Science of his responsibilities for data reduction, prime analysis, and the archiving of appropriate ADRs and RDRs. These responsibilities (subject in the case of foreign scientists to the specifications of the governing international agreement) will include:

(1) Completion of data reduction and prime analysis of the data from his experiment within the period of time agreed upon between the PI, TL, or GI and the Associate Administrator for Space Science.

(2) Publication of the results of his analyses as soon as practicable.

(3) Preparation of selected ADRs and RDRs together with the necessary background information to make them usable by other scientists as specified in the PDMP.

(f) National Space Science Data Center (NSSDC). The Director, Goddard Space Flight Center (GSFC), is responsible for management of the NSSDC, the central data disseminating repository for data obtained from space science flight investigations. For functions and operation of the NSSDC, see Appendix B. The NSSDC Director, appointed by the Director, GSFC, is responsible for:

(1) Implementing the NASA project plan for the operation of the NSSDC.

(2) Recommending through the Director, GSFC, any changes in policies, procedures, and plans for the operation of the NSSDC deemed appropriate to the effective attainment of project objectives.

(3) Preparing budget estimates for operation of the NSSDC.

(4) Recommending fees for the computer and reproduction services performed by the Center to Director, Financial Management Divisions, NASA Headquarters, and obtaining from that office a fee schedule which is consistent with NASA practice.

(5) Based upon information contained in the PDMPs, compiling schedules for transmission of ADRs and RDRs to the NSSDC by investigators on NASA space science flight projects.

(6) Assigning an NSSDC acquisition manager to each flight project to participate in the development of the PDMP and to assure that the plan is carried out on an established schedule concerning the deposition of any data and documentation in the NSSDC.

(7) Providing to the STIF a monthly listing of contract, grant, or UPN numbers for all NASA funded space science flight experiments and related investigations.

(8) Preparing guidelines for the submission to the NSSDC of ADRs and RDRs with documentation from non-NASA missions, and disseminating these guidelines to appropriate individuals and agencies to serve in lieu of a formal PDMP.

(9) Reporting through the Director, GSFC, to the Assistant Associate Administrator for Space Science (Science) semiannually on the data acquisition, request activities and financial status of the NSSDC operations.

(10) Assessing adequacy of the NSSDC facilities and the effectiveness of their utilization; and recommending through the Director, GSFC, the necessary actions to meet future facility requirements.

(11) Maintaining, protecting, and retiring NASA records in the custody of the NSSDC in accordance with the policies and practices of the NASA Records Management Program, NASA Records Disposition Handbook (NASA Handbook 1441.1A) and other pertinent management instructions.

§ 1205.103 Support of research.

The NSSDC will support investigations in space sciences by making available its scientific data and facilities. However, the NSSDC will not provide financial support for such research. The Office of Space Science will entertain proposals for space science research based on data available in the NSSDC.

Appendix A—Glossary of Terms and Abbreviations

Analyzed Data Records (ADRs). Those records which the Investigator designates as the best to display the scientific results of an experiment and provide the physical quantities by applying calibration curves or algorithms to the corrected observed quantities of the Reduced Data Records. The data may be time averaged and may incorporate model-dependent assumptions to obtain the physical quantities. Charts, graphs, tables, correlation coefficients, model parameters, photographs, and plots are possible forms of these records.

Co-Investigator (Co-I). An associate of the Principal Investigator (PI) who is assigned a supporting role in the investigation. In addition, some data rights may be assigned to the Co-I by the PI.

Experiment. A term used interchangeably with investigation (the latter is preferred). Activity or effort aimed at the generation of data obtained by measurement of space phenomena or the use of space to observe earth phenomena and the resulting analysis of such data.

Experiment Data Records (EDRs). Those records provided to the Principal Investigator, Team Leader, Guest Investigator, Co-Investigator, or team member containing all the data from the mission required to carry out the investigation specified in the contract or launch agreement. These records may include orbital position, spacecraft attitude, instrument attitude, commands, housekeeping data, ground time, spacecraft time, data from other investigations and other information as agreed upon. The exact form of these records and manner in which these data are provided may vary depending upon the policies, procedures, and capabilities of the project, the payload or mission control centers, the data acquisition network, and any support processing facilities. These records shall be specified in the Project Data Management Plan.

Facility-Class Payload Mission. A mission in which the payload is an instrument or set of instruments which serve as a facility for a large group of Guest Investigators who may be selected at different times throughout the life of the mission to participate. This type of mission may not have Principal Investigators or Team Leaders and all the data collected from such a mission is generally maintained by the project for use by Guest Investigators. Availability of data for the scientific community at large shall be specified at the Project Data Management Plan.

Guest Investigator (GI). Investigator selected to conduct observations and obtain data within the capability of a NASA mission, which are additional to the mission's primary objectives, or for a facility-class payload mission.

Investigation. Activity or effort aimed at the generation of data obtained by measurement of space phenomena or the use of space to observe earth phenomena and the resulting analysis of such data.

Investigator. A participant in an investigation. This term may refer to a Principal Investigator, Co-Investigator, Team Leader, team member, Guest Investigator, or any other member of an investigation group.

Mission. One or more flights within an approved payload project.

Mission Scientist. A scientist from a NASA field center assigned to a Spacelab mission, the Mission Scientist has similar functions as the Project Scientist with the exception of direct responsibility for the development of any experiments.

National Space Science Data Center (NSSDC). The main central repository for selected data and documentation from space science flight missions that serves as a disseminator of this archived data and supporting information to users throughout the international scientific community. The NSSDC, located at Goddard Space Flight Center, serves as a switching center for requesters who desire data still held individually by Principal Investigators (PIs) or Team Leaders (TLs) by providing a description of the spacecraft and experiment and

the name, address and telephone number of the PI or TL. For missions involving a Guest Investigator program in association with a PI or TL experiment or involving a facility-class payload the role of the NSSDC shall be specified in the Project Data Management Plan.

Principal Investigator (PI). A person who conceives an investigation and is responsible for carrying it out, reporting its results, and providing appropriately selected data and supporting documentation to the scientific community in accordance with the Project Data Management Plan. The PI chooses his Co-Investigators and assigns them roles and privileges. The PI is the primary point of contact with the project office regarding the investigation.

Program Scientist. A NASA Headquarters official assigned to each mission who has a number of roles and responsibilities defined in NASA Management Instruction 7100.11, Attachment D. The most relevant one for this subpart is the responsibility to establish the data analysis, data dissemination, and data archiving policies for the mission, which will be documented in the Project Data Management Plan.

Project Data Management Plan (PDMP). A plan that addresses the total activity associated with the data acquired by a mission from the delivery of the Experiment Data Records to the Investigators to the delivery of selected reduced and analyzed records along with supporting documentation to a specified repository. The plan should provide the milestones in the data reduction, data interpretation, and resource requirements for these phases. Any planned data interpretation meetings, workshops, or other activities should be identified. The type of data records, data products, and compilations that have been selected in concert by the Investigators, the Project Scientist, the Program Scientist, the NSSDC acquisition manager, and any appropriate scientific advisory personnel for general availability to the international scientific community and for delivery to a disseminating repository, such as the NSSDC, shall be specified. For missions where the data will be maintained for many years by the project, the Principal Investigator handling a Guest Investigator program, or by an institute established by the mission, the eventual transfer of appropriate data to a more permanent archive, such as NSSDC or other repository, shall be specified. Conditions for discarding or destroying the Experiment Data Records shall be specified.

Project Scientist. A scientist from a NASA field center assigned to a project to manage the scientific aspects. The roles and responsibilities of this function are given in NASA Management Instruction 7100.11, Attachment E.

Reduced Data Records (RDRs). Those records prepared from the Experiment Data Records by applying corrections, where applicable, for temperature, voltage, gain change, offsets, dead time, drift and other known instrument changes, as well as eliminating unusable noisy periods and periods of questionable instrument performance. The Reduced Data Record should contain all the basic and supporting measurements obtained from the experiment, such as time position, attitude, settings of instrument by command, housekeeping data, and other information needed to analyze the data in an independent fashion. Visual data, such as photographs derived from imaging processing techniques, may also be considered as RDRs.

Scientific and Technical Information Facility (STIF). NASA's document and report acquisition and abstracting facility that produces a biweekly abstract journal, STAR, covering the aerospace report literature and a biweekly abstract journal, IAA, covering the published literature in these fields. The facility also produces microfiche copies of the report literature for primary distribution.

Space Science Flight Investigations. Investigations of natural phenomena of the earth and its environment, the moon, other planets, the sun, interplanetary space, and other celestial objects and regions made from aircraft, balloons, sounding rockets, satellites, probes, and manned spacecraft for the purpose of increasing basic knowledge of these natural phenomena. Biological investigations involving the search for extraterrestrial life are included.

Appendix B—Functions and Operation of National Space Science Data Center

The National Space Science Data Center (NSSDC) has been established at the Goddard Space Flight Center to provide scientific data and facilities in support of investigations in space science.

(a) *Data to be acquired.* The NSSDC will acquire or accept:

(1) RDRs and ADRs from NASA-sponsored space science flight experiments which are deemed appropriate for secondary distribution and archiving by PDMPs or directly by the Program Scientist. The vast majority of records will be from satellite borne instruments. Any departures from a PDMP shall be approved in writing by the Program Scientist, the Project Manager, and the NSSDC Director.

(2) Unclassifed ADRs and RDRs made available from space science flight experiments by other agencies in accordance with interagency agreements providing the data media meet standards for reproduction and the supporting documentation is adequate.

(3) Ground-based correlative data, only when it is considered absolutely necessary for the utilization of data in the NSSDC.

(4) ARDs and RDRs from foreign space science flight experiments made availble by international exchange of data through the World Data Centers or by cooperative agreements.

(b) *Data not to be acquired.* (1) Data obtained from operational observations made for specific applications such as weather forecasting, navigation, communication, tracking and telemetry, medical investigations, and technological investigations which contribute only to the development of space flight hardware will not be acquired by the NSSDC.

(2) Any data from space science flight experiments that is excluded from archiving in the NSSDC by a PDMP.

(3) EDRs (including magnetic tapes, telemetry records, exposed film and meteorite collection panels) will not be acquired by the Center.

(c) *Availability of data.* Data records in the NSSDC will be available to users on the following basis:

(1) To U.S. residents and organizations upon request.

(2) To foreign nationals in accordance with procedures of World Data Center A.

(3) To foreign nationals on the basis of cooperative agreements between NASA and the space agencies of foreign governments or multi-lateral organizations devoted to space research.

(4) To foreign governments on the basis of bilateral intergovernment agreements made by the U.S. on behalf of NASA.

(d) *Preservation of data.* This should be specifically addressed in the PDMP. In general, data in the NSSDC will be preserved for the longest practicable time consistent with the physical life of the record. Records will be reproduced to extend their storage life only if the record of their past utilization justifies such prolongation. Specific categories of data may be reproduced to extend their storage life regardless of past usage in accordance with international or interagency agreements or with the PDMP.

(e) *Interface with other sources of data from NASA missions.* Certain NASA missions such as those involving national facility payloads or those with Guest Investigator programs may maintain the data within the project for many years. The NSSDC will route requesters of such data to the appropriate facility or make request on their behalf depending on the agreement specified in the PDMP. The distribution of catalogs produced by such a mission shall also be determined by the PDMP.

(f) *NSSDC publications.* The NSSDC will issue or provide publications as necessary to facilitate the use of available data. Publications will include:

(1) *Data users guides.* Provides the data user the experiment information and describes the reduced data available. These will usually be written by the Investigators and supplied to the NSSDC as specified in the PDMP;

(2) *Catalogs of data.* Lists of all data from space science flight experiments available from the NSSDC, issued as needed. The forms in which the data are available will also be indicated; i.e., microfilm, tapes, printouts, etc. Catalogs of data available from projects that maintain their own data base, such as Guest Investigator or facility missions, will also be distributed if the PDMP so specifies.

(3) *Data Announcements.* Announces those data sets which are known to have wide appeal when such sets become available.

(g) *Other services.* The NSSDC will provide technical assistance to data users. In some cases, this may involve the conversion of data records into compatible formats to facilitate correlation of data from various sources. When facilities are available the NSSDC will provide lecture rooms, study rooms, and office space for use by visiting scientists for research involving the use of available data.

(h) *User charges.* (1) User charges will, as a matter of policy, be in accordance with the policies set forth in the Bureau of the Budget Circular A-25 and NASA Financial Management Manual 9080. The methods to be used in computing the user charges will be reviewed by the Director, Financial Management Division, NASA Headquarters.

(2) Appropriate fees will be charged for reproduction, computer and dissemination services provided to individual users by the Data Center. The NSSDC may perform conversion of data records and general technical assistance without charge to individual users. Fees for reproduction and dissemination services may be waived by the NSSDC Director if:

(i) The cost of collecting the fee would be an unduly large proportion of the amount of the fee.

(ii) The data furnished are required to accomplish a research task approved by NASA Headquarters or field installations.

(iii) The data are to be used by a Federal, State, or local government agency or by nonprofit organization.

[FR Doc. 78-11862 Filed 5-1-78; 8:45 am]

[6750-01]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 9076]

PART 13—PROHIBITED TRADE PRACTICES AND AFFIRMATIVE CORRECTIVE ACTIONS

Reichhold Chemicals, Inc.

AGENCY: Federal Trade Commission.

ACTION: Final order to cease and desist.

SUMMARY: This order, among other things, requires a White Plains N.Y., manufacturer and distributor of various products, including fiberglass reinforced panels (frp panels) to divest itself completely, within 1 year from service of this order, of The Corrulux Corp., a Houston, Tex., producer of frp panels. Further, the firm is prohibited, for a 2-year period from soliciting (for the purpose of selling fiberglass reinforced plastic panels) those customers who had purchased such panels from Corrulux during the year prior to its acquisition by RCI. Additionally, the order prohibits RCI from acquiring, for 10 years, any domestic company engaged in the production, sale, or distribution of frp panels.

DATES: Complaint issued March 11, 1976; final order issued February 22, 1978.[1]

FOR FURTHER INFORMATION CONTACT:

Alfred F. Dougherty, Director, Bureau of Competition, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580, 202-523-3601.

SUPPLEMENTARY INFORMATION: In the matter of Reichhold Chemicals, Inc., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, are as follows:

Subpart—Acquiring Corporate Stock or Assets: § 13.5 Acquiring corporate stock or assets; 13.5-20 Federal Trade Commission Act.

(Sec. 6, 38 Stat. 721 (15 U.S.C. 46). Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; (15 U.S.C. 45, 18).)

The final order is as follows:

[1]Copies of the complaint, initial decision, and final order filed with the original document.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of respondent from the initial decision; and

The Commission having considered the oral arguments of counsel, their briefs, and the whole record; and

The Commission having denied in full the appeal of respondent's counsel; and

The Commission having determined that the initial decision and order contained therein shall become the decision and order of the Commission, with the following changes:

Page 15, substitute for finding 21:

21. Except for the limited number of instances noted earlier which amount to no more than about 7 percent of industry frp panel production (findings 19 and 20), all of the producers of frp panels use the continuous line process (CX's 306A, B; RX 83, pp. 9-10; Tr. 311, 313-14, 928, 1180).

Page 46, footnote 53, line 21, change "competition" to "conversion."

Page 52, Finding 115, add at end of line:

The rates of return on equity in 1974 for frp panel producers Fiberglass Plastics, Inc., and Kemlite Corp. were 35 and 28 percent respectively (CX's 189B, C, 122R). Kemlite's average annual rate of return on equity for 1965-74 was 23 percent (CX 122R).

Page 64, substitute for footnote 71:

[71]The record indicates that frp panels fulfill a unique range of applications (see finding 23). While such versatility may constitute a "peculiar characteristic" under Brown Shoe, or otherwise contribute to the finding of a relevant submarket, see, e.g., *General Foods Corp.*, 69 F.T.C. 380 415 (1966), *aff'd*, 386 F. 2d 936 (2d Cir. 1967), *cert. denied*, 391 U.S. 919 (1968); *Brillo Mfg. Co., Inc.*, 64 F.T.C. 245, 253-54 (1963); *Union Carbide Corp.*, 59 F.T.C. 614, 654 (1961), we are not persuaded of its relevance here. The record does not show, for example, that this versatility is a basis for consumer preference or that it enables producers to withstand fluctuations in demand for particular end uses better than producers of substitute products which are less versatile.

In addition, complaint counsel failed to demonstrate the significance to an frp submarket of the use of frp panels in garage doors, glazing, water towers, and signs (Findings 55-59).

Page 72, footnote 92, line 7, change "kitting" to "kiting."

Page 75, delete lines 5-8 beginning with "Union Carbide" and substitute:

United States v. *Aluminum Co. of America*, 247 F. Supp. 308, 316 (E.D. Mo. 1964), *aff'd mem.*, 382 U.S. 12 (1965) (order required divestiture of plant built after unlawful acquisition); *Union Carbide Corp., supra*, 59 F.T.C. at 657, 673 (divestiture of all post-acquisition improvements and equipment installed on premises of acquired company); see generally Elzinga, *The Antimerger Law: Pyrrhic Victories*, 12 Journal of L. & Econ. 43 (1969).

Page 75, line 13, following "best market price" add "[97]," with text of footnote as follows:

[97]See *United States* v. *Kennecott Copper Corp.*, 249 F. Supp. 154, 162 (S.D.N.Y.), *aff'd mem.*, 381 U.S. 414 (1965); cf. *Ford Motor Co.* v. *United States, supra*, 405 U.S. at 572.

Page 75, line 22, change "[97]" to "[98]," and renumber footnote accordingly.

Therefore, it is ordered, That the initial decision (as modified above) and the order contained therein, shall become the decision and order of the Commission on the date of issuance of this order.

The order to divest and to cease and desist, including further order requiring report of compliance therewith, contained in the initial devision, is as follows:

ORDER

I

It is ordered, That Respondent, Reichhold Chemicals, Inc. (hereinafter "Reichhold"), a corporation, and its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors, and assigns, shall divest all assets, title, properties, interest, rights, and privileges, of whatever nature, tangible and intangible, including without limitation all real property, buildings, machinery, equipment, raw material reserves, inventory, customer lists, trade names, trademarks, and other property of whatever description acquired by Reichhold as a result of its acquisition of The Corrulux Corp. (hereinafter "Corrulux") together with all additions and improvements to Corrulux which have been made subsequent to the acquisition. Such divestiture shall be absolute, shall be accomplished no later than one (1) year from the service of this order, and shall be subject to the prior approval of the Federal Trade Commission.

II

It is further ordered, That pursuant to the requirements of paragraph 1, none of the stock, assets, properties, rights, privileges, and interests of whatever nature, tangible or intangible, acquired or added by Reichhold, shall be divested, directly or indirectly, to anyone who is at the time of the divestiture an officer, director, employee, or agent of, or under the control, direction or influence of Reichhold, or anyone who owns or controls, directly or indirectly more than one (1) percent of the outstanding shares of the capital stock of Reichhold or to anyone who is not approved in advance by the Federal Trade Commission.

III

It is further ordered, That pending the divestiture required by this order,

Respondent shall not knowingly cause or permit the deterioration of the assets and properties specified in paragraph I in a manner that impairs the marketability of any such assets and properties.

IV

It is further ordered, That at the time of the divestiture required by this order, Respondent shall make available to the acquirer of the divested assets a list of all of respondent's customers for fiberglass reinforced panels who have purchased said panels from respondent within 3 years prior to the date this order becomes final.

V

It is further ordered, That respondent, for a period of two (2) years from the date this order becomes final, shall not solicit (for the purpose of selling fiberglass reinforced plastic panels) any customer who purchased said panels from Corrulux during the year prior to the acquisition by respondent of Corrulux.

VI

It is further ordered, That for a period of one (1) year following the divestiture required by this order, respondent shall provide the acquirer of the divested assets, if the acquirer so requests, such know-how as may reasonably be required to enable such acquirer to manufacture and sell fiberglass reinforced plastic panels. For a period of three (3) years following the divestiture required by this order, respondent shall provide the acquirer of the divested assets, if the acquirer so requests, such amounts of suitable polyester resin as the acquirer may reasonably need to produce fiberglass reinforced plastic panels. Respondent shall charge the acquirer no more than its own costs for providing know-how. Respondent shall charge the acquirer no more than the lowest price that it is then charging, on the open market, regardless of volume, for polyester resin.

VII

It is further ordered, That, for a period commencing on the effective date of this order and continuing for ten (10) years from and after the date of completing the divestiture required by this order, Reichhold shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital, assets, any interest in or any interest of, any domestic concern, corporate or noncorporate, engaged in the manufacture, production, distribution or sale of frp panels nor shall Reichhold enter into any arrangement with any such concern by which Reichhold obtains the market share, in whole or in part, of such concern.

VIII

It is furthered ordered, That on the first anniversary date of the effective date of this order and on each anniversary date thereafter until the expiration of the prohibitions in paragraph VII of this order, Reichhold shall submit a report in writing to the Federal Trade Commission listing all acquisitions, mergers, and agreements to acquire or merge made by Reichhold; the date of each such acquisition, merger, or agreement; the products involved and such additional information as may from time to time be required.

IX

It is further ordered, That within thirty (30) days from the effective date of this order and every sixty (60) days thereafter, until it has fully complied with paragraph I of this order, Reichhold shall submit a verified report in writing to the Federal Trade Commission setting forth in detail the manner and form in which it intends to comply, is complying or has complied therewith. All such reports shall include, in addition to such other information and documentation as may hereafter be requested: (a) A specification of the steps taken by Reichhold to make public its desire to divest Corrulux, (b) a list of all persons or organizations to whom notice of divestiture has been given, (c) a summary of all discussions and negotiations together with the identity and address of all interested persons or organizations, and (d) copies of all reports, internal memoranda, offers, counteroffers, communications, and correspondence concerning said divestiture.

X

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or any other proposed change in the corporation, which may affect compliance obligations arising out of this order.

JAMES A. TOBIN,
Acting Secretary.

[FR Doc. 78-11828 Filed 5-1-78; 8:45 am]

[6750-01]

[Docket No. C-2918]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Ferrara Imports, Ltd., et al.

AGENCY: Federal Trade Commission.

ACTION: Order to cease and desist.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, requires a New York City importer and manufacturer of men's clothing to cease misrepresenting or failing to affix to their products required fiber disclosure labels. The firm is additionally required to furnish affected customers with a copy of the order.

DATE: Complaint and order issued March 24, 1978.[1]

FOR FURTHER INFORMATION CONTACT:

John F. Dugan, Acting Director, New York Regional Office, Federal Trade Commission, 2243-EB Federal Building, 26 Federal Plaza, New York, N.Y. 10007, 212-264-1200.

SUPPLEMENTARY INFORMATION: On Tuesday, January 17, 1978, there was published in the FEDERAL REGISTER 43 FR 2406, a proposed consent agreement with analysis In the Matter of Ferrara Imports, Ltd., a corporation, and Louis Ferrara, individually and as an officer of said corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows:

Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures; 13.533-37 Formal regulatory and/or statutory requirements. Subpart—Misbranding or Mislabeling: § 13.1185 Composition; 13.1185-90 Wool Products Labeling Act; § 13.1200 Content; § 13.1212 Formal regulatory and statutory requirements; 13.1212-90 Wool Products Labeling Act. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1590 Composition; 13.1590-90 Wool Products Labeling Act; § 13.1605 Content; § 13.1623 Formal regulatory and statutory requirements; 13.1623-90 Wool Products Labeling Act. Subpart—Neglecting, Unfairly or Deceptively, to Make Material Disclosure: § 13.1845 Composition; 13.1845-80 Wool Products Labeling Act; § 13.1850 Content; § 13.1852

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

Formal regulatory and statutory requirements; § 13.1852-80 Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interpret or apply sec. 5, 38 Stat. 719, as amended; Secs. 2-5, 54 Stat. 1128-1130; (15 U.S.C. 45, 68).)

JAMES A. TOBIN,
Acting Secretary.

[FR Doc. 78-11830 Filed 5-1-78; 8:45 am]

[6750-01]

[Docket No. 8879-0]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Grolier Inc., et al.

AGENCY: Federal Trade Commission.

ACTION: Final order to cease and desist.

SUMMARY: This order, among other things, requires a New York City publisher and seller of encyclopedia and other educational materials and services, and its subsidiaries to cease misrepresenting, failing to make relevant disclosures, or using any other unfair or deceptive method to recruit door-to-door sales personnel, sell merchandise and services, and collect delinquent accounts.

DATES: Complaint issued January 10, 1973; Final order issued March 13, 1978.[1]

FOR FURTHER INFORMATION CONTACT:

Edward D. Steinman, Acting Assistant Director for Marketing Abuses, Bureau of Consumer Protection, Federal Trade Commission, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580, 202-523-3355.

SUPPLEMENTARY INFORMATION: In the Matter of Grolier, Inc., a corporation, et al. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows:

Subpart—Advertising Falsely or Misleadingly: § 13.15 Business status, advantages or connections; 13.15-5 Advertising and promotional services; 13.15-20 Business methods and policies; 13.15-30 Connections or arrangements with others; 13.15-35 Contracts and obligations; 13.15-105 Identity; 13.15-150 Endorsement; 13.15-155 Institutional connections; 13.15-195 Nature; 13.15-245 Prospects; 13.15-247 Publication services; 13.15-265 Service; § 13.42 Connection of others with goods; § 13.60 Earnings and profits; § 13.75 Free goods or services; § 13.105 Individual's special selection or situation; § 13.110 Endorsements, approval and testimonials; § 13.125 Limited offers or supply; § 13.143 Opportunities; § 13.155 Prices; 13.155-5 Additional charges unmentioned; 13.155-15 Comparative; 13.155-33 Demonstration reductions; 13.155-35 Discount savings; 13.155-70 Percentage savings; 13.155-93 Special or test offers; 13.155-95 Terms and conditions; 13.155-100 Usual as reduced, special, etc.; § 13.160 Promotional sales plans; § 13.205 Scientific or other relevant facts; § 13.240 Special or limited offers; § 13.247 Statutes and regulations; § 13.255 Surveys. Subpart—Claiming or Using Endorsements or Testimonials Falsely or Misleadingly: § 13.330 Claiming or using endorsements or testimonials falsely or misleadingly; 13.330-39 Educators, school authorities, etc.; 13.330-94 Users, in general. Subpart—Coercing and Intimidating: § 13.356 Delinquent debtors. Subpart—Contracting for Sale in any Form Binding on Buyer Prior to End of Specified Time Period: § 13.527 Contracting for sale in any form binding on buyer prior to end of specified time period. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.553-20 Disclosures; 13.533-37 Formal regulatory and/or statutory requirements; 13.533-45 Maintain records. Subpart—Enforcing Dealings or Payments Wrongfully: § 13.1045 Enforcing dealings or payments wrongfully. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1395 Connections and arrangements with others; § 13.1417 Financing activities; § 13.1440 Identity; § 13.1490 Nature; § 13.1545 Research bureau; § 13.1553 Services.—Goods: § 13.1625 Free goods or services; § 13.1663 Individual's special selection or situation; § 13.1665 Endorsements; § 13.1670 Jobs and employment; § 13.1675 Law or legal requirements; § 13.1697 Opportunities in product or service; § 13.1740 Scientific or other relevant facts; § 13.1747 Special or limited offers; § 13.1757 Surveys; § 13.1760 Terms and conditions; 13.1760-50 Sales contract.—Prices: § 13.1778 Additional costs unmentioned; § 13.1800 Demonstration reductions; § 13.1817 Reductions for prospect referrals; § 13.1823 Terms and conditions; § 13.1825 Usual as reduced or to be increased.—Promotional Sales Plans: § 13.1830 Promotional sales plans.—Services: § 13.1843 Terms and conditions. Subpart—Neglecting, Unfairly or Deceptively, to Make Material Disclosure: § 13.1852 Formal regulatory and statutory requirements; § 13.1863 Limitations of product; § 13.1882 Prices; 13.1882-10 Additional prices unmentioned; § 13.1892 Sales contract, right-to-cancel provision; § 13.1895 Scientific or other relevant facts; § 13.1905 Terms and conditions; 13.1905-50 Sales contract. Subpart—Offering Unfair, Improper and Deceptive Inducements to Purchase or Deal: § 13.1935 Earnings and profits; § 13.1955 Free goods; § 13.1960 Free service; § 13.1975 Government penalty; § 13.1985 Individual's special selection or sitution; § 13.2000 Limited offers or supply; § 13.2063 Scientific or other relevant facts; § 13.2080 Terms and conditions. Subpart—Securing Agents or Representatives by Misrepresentation: § 13.2130 Earnings; § 13.2148 Scientific or other relevant facts; § 13.2160 Success, history or standing; § 13.2165 Terms and conditions. Subpart—Threatening Suits, Not in Good Faith: § 13.2264 Delinquent debt collection.

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

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

FINAL ORDER

This matter having been heard by the Commission upon the cross-appeals of complaint counsel and respondents' counsel from the initial decision and upon briefs and oral argument in support thereof and opposition thereto, and the Commission, for the reasons stated in the accompanying Opinion, having determined to sustain the initial decision with certain modifications:

It is ordered, That pages 1-176 of the initial decision of the administrative law judge be, and they hereby are, adopted as the Findings of Fact and Conclusions of Law of the Commission, except to the extent modified or otherwise indicated in the accompanying Opinion and except for the following: Delete in Finding 126 the first sentence and the word "In fact" in the second sentence.

Other Findings of Fact and conclusions of Law of the Commission are contained in the accompanying Opinion.

It is further ordered, That the following Order to Cease and Desist be, and it hereby is, entered:

ORDER

I

It is ordered, That respondents Grolier, Inc., Americana Corp., Grolier Interstate, Inc., Grolier New Era Corp., Madison Enterprises, Inc., R. H. Hinkley Co., the Grolier Society, Inc., Spencer International Press, Inc. and the Richards Co., Inc., corporations,

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

and their successors, assigns, officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the recruitment, training, or orientation of any person to sell, rent, lease, or distribute any textbook, encyclopedia, reference or educational material, training course or teaching machine, or any other publication, merchandise or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, either orally or in writing, that:

(1) Any respondent is offering positions in such fields as advertising, education, public relations, marketing, interviewing, or in any field other than door-to-door sales, if door-to-door sales is included, to any extent, in the position for which persons are being recruited; or misrepresenting, in any manner, the job for which any person is being solicited;

(2) Persons will be trained as management trainees, or for other positions of responsibility concerned with administrative office functions, unless, in fact, a formal management training program is available to persons accepting employment on the basis of such representations; or misrepresenting, in any manner, the amount and type of training that will be given;

(3) Any person who may be employed will contact prospects in their homes or places of business for the purposes of conducting surveys, advertising promotions, educational instruction or other nonselling functions; or misrepresenting, in any manner, the purposes for which any person is engaged.

B. Misrepresenting, in any manner, the amount of income to be earned by any person or that may be earned by any person, the method of payment, or any condition or limitation imposed upon the compensation of any person, or the degree of ease or difficulty in performing any said condition imposed.

C. Failing to disclose, clearly and conspicuously, in all advertising offering employment in any way involving door-to-door sales:

(1) That the respondent concerned is recruiting persons for the sole purpose of soliciting or selling;

(2) That such soliciting or selling will be on an "in home" basis;

(3) That the products or services being sold are encyclopedias or services to be used in connection therewith, or in the event that encyclopedias or such related services are not being sold, the products and services being sold; and

(4) The basis for compensating persons so engaged.

D. Failing to clearly and conspicuously advise, both orally and in writing, any prospective salesperson at the initial face-to-face interview, and prior to executing any employment agreement with any such person, the following information:

(1) All those disclosures set forth in Paragraph I C above;

(2) A complete and detailed description of each condition and limitation imposed upon the receipt of any compensation;

(3) Where applicable, notification that such person will not be paid for time spent during orientation and training;

(4) A complete and detailed description of any expense or expenses any such person may incur in performing the required duties; and

(5) The percentage of persons holding similar positions engaged by the office offering the position during the twelve (12) months immediately preceding the offer, who have actually received an equivalent or greater, income than that promised under the terms of any such agreement.

E. Failing to furnish to each applicant at the initial face-to-face interview and prior to executing any employment agreement with any such person, a copy of Paragraphs I, II and V of this Order together with a cover letter as set forth in *Appendix A* attached hereto.

F. Making, distributing or using any training tapes, sales manuals, or any other document, method or device which contains any representation or instruction inconsistent with any provision of Paragraph I or Paragraph II of the Order.

II

It is ordered, That respondents Grolier, Inc., Americana Corp., Grolier Interstate, Inc., Grolier New Era Corp., Madison Enterprises, Inc., R. H. Hinkley Co., The Grolier Society, Inc., Spencer International Press, Inc., and The Richards Co., Inc., corporations and their successors assigns, officers, agents, representatives, and employees, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the publishing, advertising, offering for sale, sale, rental, lease or distribution of any textbook, encyclopedia, reference or educational material, training course or teaching machine, or any other publication, merchandise or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Disseminating or causing to be disseminated, any advertisement or promotional material which solicits participation in any contest, drawing or sweepstakes, or solicits any response to any offer of merchandise, service or information unless any such solicitation clearly and conspicuously discloses the following statement in 10-point bold-face type:

NOTICE TO CONSUMER—PERSONS WHO REPLY AS REQUESTED MAY BE CONTACTED BY A SALESPERSON FOR THE PURPOSE OF SELLING [insert name of applicable product].

B. Providing any return card, coupon or other device which is used to respond to any advertisement or promotional material covered by Paragraph II A above, unless the following statement clearly and conspicuously appears in 10-point bold-face type in immediate proximity to the space provided for a signature or other identification of the responding party:

NOTICE TO CONSUMER—PERSONS WHO RETURN THIS [insert name of applicable device] MAY BE CONTACTED BY A SALESPERSON FOR THE PURPOSE OF SELLING [insert name of applicable product].

C. Failing to disclose clearly and conspicuously, at the beginning of any telephone call to any prospective customer, the fact that the individual making the call is either soliciting the sale, rental or lease of publications, merchandise or services for respondents, or is arranging for a sales solicitation to be made, and that if the prospective customer so agrees, the respondent concerned will send a salesperson to visit said prospect for the purpose of soliciting the sale, rental or lease of said publications, merchandise or services.

D. Visiting the home or place of business of any person for the purpose of soliciting the sale, rental or lease of any publications, merchandise or service, unless at the time admission is sought into the home or place of business of such person, a card 3 inches by 5 inches in dimension, with all words in 10-point bold-face type, with the following information, and none other, in the indicated order, is presented to such person:

(1) The name of the corporation;

(2) The name of the salesperson;

(3) The term "Encyclopedia Sales Representative" [or other applicable product];

(4) The terminology: "The purpose of this representative's call is to solicit the sale of encyclopedias" [or other applicable product].

E. Failing to present the card, required by Paragraph II D, above, to each such person, to direct each such person to read the information contained on such card, and to provide each such person with an adequate opportunity to read the card before engaging any such person in any sales solicitation.

F. Using the words "Mothers Club" or words of similar import and meaning to represent, directly or by impli-

cation, the existence of a *bona fide* educational program, club, or business entity which provides educational services or benefits to consumers or using any trade name misrepresenting in any manner the nature or purpose of their business.

G. Representing, directly or by implication, either orally or in writing that:

(1) Any person calling on any prospective purchaser is:

(a) Engaged in or connected with "advertising", "marketing", "promotion", "education", or anything other than the sale of encyclopedias or other educational or reference materials;

(b) Conducting, taking or participating in a survey, opinion poll, interview or any other information gathering activity; or

(c) Calling on said prospect for the primary purpose of delivering or disseminating any vacation gift certificate, prize, gift, gift certificate, chance in any contest, or any other merchandise or item of chance;

(2) Only a few minutes will be required to complete the visit inside the prospective purchaser's home or place of business; or misrepresenting, in any manner, the period of time required to complete the sales or other presentation;

(3) Any person contacted has been specially selected to receive any offer; or misrepresenting, in any manner, the persons or class of persons to whom said offer is available;

(4) Any encyclopedia or other reference material is a new publication, or a publication which has not been previously available to the public unless such is the fact, or misrepresenting, in any manner, the extent of editorial revisions, in any encyclopedia or other reference material;

(5) Any offer is limited, must be accepted immediately or within a specified time period, or is a special offer, unless such is a fact, or misrepresenting, in any manner, the nature, scope or duration of any sales offer;

(6) Any publication, merchandise or service is being offered free, without cost, as a bonus, reduced in price or otherwise to any prospective purchaser of any of respondents' publications, merchandise or services agreeing to perform any advertising promotional or selling function, including but not limited to, any of the following acts or similar acts:

(a) Permitting their names to be listed as local owners of the product or services;

(b) Providing the name of any person who may be interested in purchasing any publication, merchandise or service;

(c) Writing a letter evaluating the merits of any publication or other item which may be used in advertising;

(d) Displaying any publication or other item in a conspicuous location in his home;

(e) Keeping any publication or other item current by purchasing an annual yearbook or by purchasing any research service;

(f) Completing installment payments for any item in a period of time less than the period of time initially represented; or

(g) Paying a membership fee in order to participate in the Consumer Buying Educational Service, or any other program, club, service or entity which provides an opportunity for participants to puchase merchandise at a savings from the retail prices for such merchandise, or paying a fee to participate in any similar program, club, service, or entity; or

(h) Misrepresenting, in any manner, that any publication, merchandise or service is being offered free, without cost, as a bonus, or reduced in price to any person;

(7) Any publication, merchandise or service is being offered free, without cost, or is given as a bonus or otherwise to any purchaser of any of respondents' publications, merchandise or services, pursuant to any agreement to purchase, rent or lease any other publication, merchandise, or service, or combination thereof, from such respondent, unless:

(a) The contract price for the purchase, rental or lease of any such other publication, merchandise, service, or combination thereof, has remained at the said price or above for at least six (6) months within the last twelve (12) months immediately preceding the time at which the representation is made;

(b) No publication, merchandise or service has been offered free, without cost or given as a bonus or otherwise with the sale, rental or lease of any such other publication, merchandise, service or combination thereof, to any person for a period of at least six (6) months within the last twelve (12) months immediately preceding the time at which the representation is made;

(c) No publication, merchandise, service, or combination thereof, of equivalent or greater value, has been eliminated by such respondent from any such other publication, merchandise, service, or combination thereof, with which the free, without cost or bonus publication, merchandise or service is being offered;

Provided however, Any such prices as are restricted by Paragraph II G(7)(a) of this Order may be altered at any time by the respondent concerned to reflect bona fide changes in market conditions.

H. Misrepresenting, in any manner, the terms, conditions, method, rate or time of payment actually made available to any person.

I. Representing, directly or by implication, either orally or in writing that:

(a) Any person using any research service will receive answers to questions on any subject; or misrepresenting, in any manner, the scope of, or restrictions imposed upon the use of, any such research service;

(b) Any answer provided by a research service is the product of detailed, exhaustive or original research generated by the specific question asked by any person utilizing said service unless such is the fact; or misrepresenting, in any manner, the extent of individual attention, research, preparation or quality of any answer furnished by any such research service;

(c) Any answer provided by any research service is a suitable or acceptable substitute for any term paper, theme or other report; or misrepresenting, in any manner, the benefit or use of any answer provided by any research service;

(d) Any research service is being offered at any price or that the research service has a retail value unless such is the fact;

(e) The cost to any respondent of any research service represents a retail value.

J. (1) Failing to disclose, clearly and conspicuously, in writing on all promotional materials describing any research service, and orally during the course of any sales or other presentation relating to said service, each condition or limitation placed upon the use of such research service.

(2) Failing to disclose applicable limitations on the time within which answers will be supplied by any research service in writing on all promotional materials and orally during the course of any sales presentations relating thereto.

K. (1) Representing, directly or by implication, through the use of any oral statement, written quotation, picture or any other means that any publication, merchandise or service has received an endorsement, recommendation, or sponsorship from any educational, religious, or other institution or other entity or from any person, unless the stated endorsement is genuine and authentic in all respects, and discloses the year or edition of the publication to which such endorsements pertain, if a publication is involved.

(2) Using, publishing, or referring to any testimonial or endorsement unless (1) such use, publication, or reference is expressly authorized in writing and unless (2) respondents have good reason to believe that at the time of such use, publication, or reference, the person or organization named subscribes to the facts and opinions therein contained.

(3) Representing, in any manner, than an endorsement or testomonial

has been recently executed or is current unless this is the fact.

(4) Misrepresenting, in any manner, that any person is calling on a prospective customer with the endorsement, recommendation, or sponsorship of another person or organization.

L. Failing to disclose:

(1) Clearly to the officials of any educational institution being visited, where a purpose of such visit is to obtain the institution's permission to disseminate through the institution promotional material which solicits the sale of any product to the parents of the children enrolled in the educational institution, and which is designed to secure leads for in-home sales presentations, prior to any such dissemination, that the purpose of disseminating such promotional materials is to secure leads for in-home sales presentations;

(2) Conspicuously on the face of such promotional materials within the scope of L(1) that dissemination of such promotional materials through the educational institution does not constitute an endorsement or a recommendation by the institution or its officials that such materials being promoted should be purchased unless such is the fact.

M. Representing to any person, directly or by implication, either orally or in writing that:

(1) Any price is the retail, regular, usual or words of similar import or effect, price for any publication in any binding, merchandise or service, unless the respondent concerned is making a substantial number of its unit sales for each such publication in each such binding, merchandise or service, individually, at or above the represented price;

(2) Any price is the retail, regular, usual, or words of similar import or effect, price for any set of publications in any binding and in combination with any other publication, merchandise or service, unless the respondent concerned is making a substantial number of its unit sales for each such set of publications in each such binding individually or in combination at or above the represented price;

(3) Savings may be realized by the purchase, rental or lease of any publication, merchandise or service, or any combination thereof, from any of respondents' former prices for its products unless:

(a) Such savings claims are based upon retail, regular, or usual prices, or combination prices, arrived at in accordance with Paragraph II M (1) and (2) above:

(b) Respondents clearly and conspicuously specify the publication, merchandise or service, or combination thereof, and the price from which the savings are to be realized; and

(c) The publication, merchandise or service is of comparable quality in all material respects with the publication, merchandise or service sold at the higher price;

(4) Savings may be realized by the purchase, rental or lease of any publication, merchandise or service, or any combination thereof, from comparable products of competitors unless:

(a) The respondent concerned clearly and conspicuously specifies the publication, merchandise or service, or combination thereof, from which the savings are to be realized;

(b) The price utilized for comparison purposes is the price at which a substantial number of persons have purchased the item referred to in (a) immediately above;

(c) The item referred to in (a) above is of comparable quality in all material respects to the product being sold;

(d) Respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in the trade area where the comparison is made which establishes the validity of said compared price.

N. Misrepresenting in any manner, either orally or in writing:

(1) The amount of savings to be realized by any person who enters into an agreement with any respondent for any publication, merchandise or service; or

(2) That any publication, merchandise or service is being offered free or without charge, or is given to any such person.

O. Failing to comply with any and all provisions of the Commission's Trade Regulation Rule, Cooling-Off Period For Door-To-Door Sales (16 CFR 429.1), which are in effect on the date this Order becomes effective, and with any modifications or changes in the aforesaid Rule which may be made. A copy of the said Rule shall be made a part of this Order for purposes of complying with other provisions hereof.

P. Initiating contact with any purchaser through any means for any reason from the time said purchaser enters into any agreement containing a NOTICE OF CANCELLATION, as required by Paragraph II O of this Order, until said buyer's cancellation period has expired.

Q. Failing to maintain a copy of each NOTICE OF CANCELLATION received pursuant to Paragraph II O of this Order, and making said documents available for inspection and copying by the Commission's staff upon reasonable notice. Any respondent receiving such NOTICE shall maintain it for a period of three (3) years from date of receipt.

R. Failing to create adequate records, which shall be maintained for a period of three (3) years and made available to the Commission's staff for inspection and copying upon reasonable notice, from which the validity of any savings claims, retail price claims, comparative value claims, or other representations of the type described in Paragraphs II G(7), II M and II N of this Order can be determined, and making any pricing claims within the scope of this provision unless there are in existence for at least the six (6) months preceding such claims records from which the validity of such claims can be determined.

S. Failing to attach to any contract for the sale, rental or lease of any publication, merchandise, service or combination thereof a written statement that clearly and conspicuously discloses, and only discloses, the following information in the indicated order and manner:

(1) In 12-point bold-face type size the terminology:

PRICE LIST

THE FOLLOWING PRICES ARE THE *ONLY* AUTHORIZED PRICES AT WHICH THE LISTED ITEMS MAY BE OFFERED. ANY PRICE NOT LISTED BELOW IS UNAUTHORIZED AND FALSE.

(2) A list of all publications, merchandise, services or combination thereof currently offered for sale, rental or lease, and in immediate conjunction thereto each price at which any respondent is authorized to offer said product or service pursuant to Paragraph II M of this Order.

(3) In 12-point bold-face type the terminology, when applicable:

FREE ITEMS

ONLY THE FOLLOWING PRODUCTS AND SERVICES MAY BE OFFERED FREE. YOU ARE PAYING FOR ANY ITEMS RECEIVED AND NOT LISTED BELOW.

(4) A list of all publications, merchandise or services currently offered as free, without cost, or as a bonus pursuant to Paragraph II G(7) of this Order.

T. Failing to orally instruct any person at the time said person signs any contract for sale, rental or lease, of any publication, merchandise, service or combination thereof, pursuant to an oral sales presentation, that a "Price List" is attached to said person's contract.

III

It is further ordered, That respondents Grolier, Inc., American Peoples Press, Inc., Americana Interstate Corp., Career Institute, Inc., Grolier Enterprises, Inc., and Grolier Reading Programs, Inc., corporations, and their successors or assigns, their officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary or division, or other device, in connection with the advertising, offering for sale, sale or distribution of any textbook, encyclopedia, reference or educational materi-

al, training course or teaching machine, or any other publication, merchandise or service through the use of any program, plan, method or device, that provides or purports to provide for the sale or distribution of any of said items to any person on an approval basis, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, either orally or in writing that:

(1) Any person has the option to receive each publication, merchandise or service, separately and individually, and to accept or reject same, unless such person is allowed in all instances to receive and to purchase or reject each such publication, merchandise or service separately and individually;

(2) Any person will not receive any further publication, merchandise or service after the respondent concerned has received a timely notification of the person's cancellation of any such program, plan or method of sale or distribution, unless such is the fact; or misrepresenting, in any manner, any consequence resulting from any person's cancellation of his participation in any such program, plan, or method of sale or distribution; and

(3) Any person incurs no risk or obligation by joining or participating in any such program, plan, or method of sale or distribution; or misrepresenting, in any manner, any condition, right, duty or obligation imposed on any person.

B. Disseminating, or causing the dissemination of, any advertisement which fails to disclose in a clear and conspicuous manner:

(1) A description of the conditions and terms of any such program, plan, or method of sale or distribution, and the duties, risks and obligations of any subscriber thereto; and

(2) A description of each publication, merchandise or service to be offered for sale, the billing charge to be made therefor, the anticipated total number of publications, merchandise or services included in any such program, plan or method of sale or distribution, the number of publications, merchandise or services that will be included in each shipment of such items, and the number of and the intervals between each such shipment.

C. Failing to disclose, clearly and conspicuously, on any return coupon, order form or any other document used for responding to any such program, plan, or method of sale or distribution, the following information:

(1) The anticipated total number of publications, merchandise or services included in any such program, plan, or method of sale or distribution;

(2) The number of publications, merchandise or services that will be included in each shipment of such items; and

(3) The number of and the intervals between each such shipment.

D. Failing to disclose, clearly and conspicuously, in immediate conjunction with any publication, merchandise, service or notice thereof sent to any subscriber the anticipated date on which the respondent from whom the subscriber obtained any of such items will initiate processing of the next shipment of any such item.

E. Failing to provide to any person in conjunction with each notice of any shipment of any publication, merchandise or service, a clear and conspicuous means by which said person may exercise his option or right to cancel said shipment, if such is his right.

IV

It is further ordered, That respondents Grolier, Inc., American Peoples Press, Inc., Americana Corp., Americana Interstate Corp., Federated Credit Corp., Career Institute, Inc., Grolier Interstate, Inc., Grolier New Era Corp., Madison Enterprises, Inc., R. H. Hinkley Co., Spencer International Press, Inc., The Grolier Society, Inc., and The Richards Co., corporations, and their successors, assigns, officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the collection or attempted collection of any debt allegedly due and owing pursuant to any contract or other agreement relating to the purchase or other receipt of any textbook, encyclopedia, reference or educational material, training course or teaching machine, or any other publication, merchandise or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, either orally or in writing that:

(1) Any company, corporation, or entity engaged in collection of monies allegedly due or owing to such concerns or any other company, corporation or entity has separate *bona fide* departments or divisions for legal matters, unless such are the facts; or misrepresenting, in any manner, the existence, or functions of any division or department of any company, corporation or entity;

(2) The Code of Federal Regulations, or any other federal regulation or statute, provides that any employee of the Federal Government who has any outstanding debt due or owing may be subject to dismissal from the federal service for failure to pay said debt unless the respondent concerned can demonstrate that sufficient facts exist with regard to the employee to whom the representation was made which establish the propriety of such claim;

(3) Any person who utilizes the United States mails to obtain any publication, merchandise or service and who fails to pay or becomes delinquent in paying for any such item will be subject to prosecution for mail fraud under federal law unless the respondent concerned can demonstrate that sufficient facts exist, with regard to person to whom the representation was made, which established the propriety of such claim; or misrepresenting, in any manner, the rights, duties or obligations of any person arising from any federal, state, or local statute, ordinance, or regulation;

(4) Any respondent utilizes the services of credit reporting companies or other entities for persons who disseminate credit information in a manner which will adversely affect the public or general credit rating of any person who has become delinquent in paying any debt unless the respondent concerned can demonstrate that sufficient facts exist, with regard to the person to whom the representation was made, which establishes the propriety of such claim, or misrepresenting, in any manner, that any person's public or general credit rating will be adversely affected;

(5) Any letter, notice or other communication which has been prepared, originated or composed by any respondent has been prepared, originated or composed by any other person, firm or corporation;

(6) Suit will be instituted to recover any delinquent debt, or that any delinquent debt will be transferred to any attorney with instructions to institute suit, or that any other legal step to collect any outstanding debt will be taken, unless a definite date is set forth for such action and such are the facts; or misrepresenting, in any manner, respondents' relationship with, or instructions to, any attorney, or the course of action that will be taken by any attorney or misrepresenting in any manner that any account has been transferred to any person or entity for collection unless those are the facts.

B. Using any correspondence forms or any written materials which appear to depict official legal process.

V

For the purpose of the following provisions of this order, the term "respondents" shall apply to each of the respondents named in Paragraph I and II of the Order.

It is further ordered, That respondents:

A. Deliver by registered mail, a copy of this Decision and Order to each of their salesmen, agents, solicitors, or other persons engaged by respondents for the promotion, sale or distribution of any of the publications, merchandise or services included in this Order,

and to any person engaged by respondents to perform such duties in the future at the time such person is so engaged;

B. Obtain from each person described in Paragraph V A, a signed statement setting forth their intention to conform their business practices to the requirements of this Order; retain said statement during the period of three (3) years thereafter; and make said statement available to the Commission's staff for inspection and copying upon reasonable notice;

C. Advise each such present and future salesman, agent, solicitor, or other person engaged by respondents for the promotion, sale or distribution of any of the publications, merchandise or services included in this Order that respondents will terminate the engagement or services of any such person, unless such person agrees to and does furnish to respondents a statement required by Paragraph V B, above; and

D. If any such person will not agree to file a statement with respondents as required by Paragraph V B above, and be bound by the provisions of this Order, the respondents shall immediately terminate the services of such person.

E. Furnish the Commission on a quarterly basis with a list, including business addresses, of those independent or outside distributors who have purchased or otherwise obtained for resale any of the publications, merchandise or services included in this Order.

VI

It is further ordered, That the respondent shall forthwith distribute a copy of this Order to each of their operating divisions.

VII

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in any of the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of which may affect compliance obligations arising out of this Order.

VIII

It is further ordered, That respondents shall, within sixty (60) days after the effective date of this Order, file with the Commission a report in writing setting forth in detail, the manner and form in which they have complied with this Order.

CAROL M. THOMAS,
Secretary.

APPENDIX A

NOTICE

Attached hereto are the pertinent provisions of a cease and desist order entered against Grolier, Incorporated and certain of its subsidiaries, including Grolier Interstate, Inc. by the Federal Trade Commission, an agency of the Federal Government. Violation of any provision of this Order can result in severe monetary penalties to Grolier, Incorporated and Grolier Interstate, Inc. If you are employed by Grolier, Incorporated or any of its subsidiaries, you will be required to observe the provisions of this Order. Violation of any provision of this Order by an employee constitutes a violation of a federal law.

You should carefully read this Order before agreeing to any employment arranged with Grolier, Inc. or any of its subsidiary companies.

President, Grolier, Inc.

[FR Doc. 78-11831 Filed 5-1-78; 8:45 am]

[6750-01]

[Docket No. C-2788]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Johnson Products Co., Inc.

AGENCY: Federal Trade Commission.

ACTION: Order modifying final order.

SUMMARY: This order modifies a consent order issued February 10, 1976, 41 FR 11172, 87 FTC 206, which was remanded to the Commission for reconsideration by the Court of Appeals for the Seventh Circuit. Modifications in the order exclude references to the advertising firm, restrict provisions of the order to hair straightening products, and are designed to eliminate the significant differences between the original order and that of a competitive company (Revlon, Inc.).

DATES: Final order issued February 10, 1976, order modifying final order issued March 20, 1978.[1]

FOR FURTHER INFORMATION CONTACT:

Albert H. Kramer, Director, Bureau of Consumer Protection, Federal Trade Commission, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580, 202-523-3727.

SUPPLEMENTARY INFORMATION: In the Matter of Johnson Products Co., Inc., a corporation. The prohibited trade practices and/or corrective actions. as codified under 16 CFR Part 13, for this case appearing at 41 FR 11172, remain unaltered except for the following deletions: § 13.10-5 Knowingly by advertising agent; 13.533-15 Destruction of records and/or data; and § 13.533-53 Recall of merchandise, advertising material, etc.

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

[1]Copies of the modifying order filed with the original document.

The order modifying final order, is as follows:

ORDER MODIFYING ORDER TO CEASE AND DESIST

On February 10, 1976 the Commission rejected an attempt by respondent Johnson Products Co., Inc. to withdraw from an executed consent order agreement and, on that date, the Commission entered a final cease and desist order. Thereafter, respondent petitioned the Court of Appeals for the Seventh Circuit to review and set aside the order, contending inter alia that the Commission patently abused its discretion by refusing to permit respondent to withdraw from the consent agreement in the face of its claim that the Commission had engaged in an "unfair and arbitrary discrimination between similarly situated competitors * * *" (i.e., Revlon, Inc. and respondent). The Court stayed enforcement of the order and remanded the matter to the Commission, noting the prospect that the proceeding might be reopened and modified to eliminate some or all of the critical disparities between the Revlon and Johnson orders.

After extended negotiations, the parties executed an agreement, which will be treated as a petition to reopen this proceeding, containing an order to cease and desist. The modifications contained in this agreement substantially eliminate the significant differences between the Revlon and Johnson orders.

The Commission has duly considered the modifications encompassed in the agreement and has determined that the order should be so modified. Accordingly,

It is ordered, That the proceeding be, and it hereby is, reopened.

It is further ordered, That the order to cease and desist, as it applies to respondent Johnson Products Co., Inc., be, and it hereby is, modified by striking the section entitled "Order" and substituting therefor the following:

ORDER

I

It is ordered, That respondent Johnson Products Co., Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of Ultra Sheen Creme Relaxer (Ultra Sheen Relaxer) or any hair care product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Representing in writing, orally, visually, or in any other manner, directly or by implication, that:

1. Any hair straightening product is comfortable, gentle or safe.

2. Any hair straightening product is easy to use or to apply.

3. Any hair straightening product feels cool to skin or scalp.

B. Representing, in any manner, directly or by implication, the efficacy of any hair straightening product or the ingredients therein, unless, at the time such representation is made, respondent has in its possession a reasonable basis, consisting of competent and reliable controlled tests to support such representation; or misrepresenting in any manner the nature of any such product or its ingredients or the effect of any such product or its ingredients on hair or skin or any other structure of the body.

C. Representing, in any manner, directly or by implication, the safety of any hair care product or the ingredients therein, unless at the time such representation is made respondent has in its possession a reasonable basis, consisting of competent and reliable controlled test, to support such representation. For purposes of this provision, failure to disclose facts shall not constitute a representation.

D. Disseminating or causing to be disseminated any advertisement of Ultra Sheen Relaxer or any hair straightening product of similar composition, which fails to disclose, clearly and conspicuously, with nothing to the contrary or in mitigation thereof, the following statement exactly as it appears below:

"WARNING: Follow directions carefully to avoid skin and scalp irritation, hair breakage and eye injury."

II

It is further ordered, That respondent Johnson Products Co., Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of Ultra Sheen Relaxer or any hair care product, do forthwith cease and desist from:

A. Disseminating or causing to be disseminated by United States mails or by any means in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, for the purpose of inducing or which is likely to induce, directly or indirectly the purchase of any such product, any advertisement which contains a representation prohibited by Paragraph I of this order or which omits a disclosure for such product required by Paragraph I of this order.

B. Disseminating or causing to be disseminated by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of any such product in or having an effect on commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, any advertisement which contains a representation prohibited by Paragraph I of this order or which omits a disclosure for such product required by Paragraph I of this order.

III

It is further ordered, That respondent Johnson Products Co., Inc., a corporation, its successors and assigns and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device in connection with the offering for sale, sale, or distribution of Ultra Sheen Relaxer or any hair straightening product of similar composition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from failing to include clearly and conspicuously on the information panel of the product package (i.e., the package containing the immediate container of the professional or home use hair straightening product), on the package insert, and on the label of the relaxer container of any such product, with nothing to the contrary or in mitigation thereof, the following disclosures exactly as they appear below:

"WARNING: 1. This product contains sodium hydroxide (lye). You must follow directions carefully to avoid skin and scalp burns, hair loss, and eye injury.

2. Do not use if scalp is irritated or injured.

3. Do not use on bleached hair. Do not use on permanently colored hair which is breaking, splitting or otherwise damaged. For hair that has been permanently colored and shows no sign of damage, use only mild strength formula.

4. If you have previously relaxed your hair, relax only the new growth, as described in the directions.

5. If the relaxer causes skin or scalp irritation, rinse out immediately and wash with the shampoo in the kit. If irritation persists or if hair loss occurs, consult a physician.

6. If the relaxer gets into eyes, rinse immediately and consult a physician."

Provided, however, That if such hair straightening product is offered for sale, sold or distributed without a neutralizing shampoo, respondent will disclose the following in place of Warning No. 5 above:

"5. If the relaxer causes skin or scalp irritation, rinse out immediately and wash with a non-alkaline shampoo (ph below 7). If irritation persists, or if hair loss occurs, consult a physician."

Provided further, however, That respondent may use existing retail product packages, package inserts, and container labels if such packages, inserts and labels conform to the order entered in this matter on February 10, 1976.

IV

It is further ordered, That respondent shall distribute a copy of this order to its present and future officers, directors, and operating division and that respondent secure from each such person a signed statement acknowledging receipt of the order.

V

It is further ordered, That respondent maintain complete business records relative to the manner and form of its continuing compliance with the terms and provisions of this order. Each record shall be retained by respondent for at least three years after it is made.

VI

It is further ordered, That respondent notify the Commission at least thirty days prior to any proposed change in respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries, a change in the corporate name or address, or any other change in the corporation which may affect compliance obligations arising out of this order.

VII

It is further ordered, That the respondent herein shall, within sixty (60) days after service of this order, file with the Commission a written report setting forth in detail the manner and form of its compliance with this order: *Provided, however,* that such compliance report need not contain materials or information previously submitted to the Commission to demonstrate compliance with the order entered in this matter on February 10, 1976.

JAMES A. TOBIN,
Acting Secretary.

[FR Doc. 78-11829 Filed 5-1-78; 8:45 am]

[4810-22]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 78-123]

PART 101—GENERAL PROVISIONS

Field Organization; Fairport Harbor, Ohio

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect

recent changes in the field organization of the Customs Service. The Fairport Harbor, Ohio, Customs station has been placed under the supervision of the port of Ashtabula/Conneaut, Ohio, and the Lorain, Ohio, Customs station has been placed under the supervision of the port of Sandusky, Ohio. Both stations previously were under the supervision of the port of Cleveland, Ohio. These changes have been made to provide better Customs Service to importers, carriers, and the public.

EFFECTIVE DATE: May 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert Schenarts, Inspection and Control Division, U.S. Customs Service, 1301 Constitution Avenue NE., Washington, D.C., 20229, 202-566-8151.

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to importers, carriers, and the public, the Customs Service has placed the Fairport Harbor, Ohio, Customs station under the supervision of the port of Ashtabula/Conneaut, Ohio, and the Lorain, Ohio, Customs station under the supervision of the port of Sandusky, Ohio. Both stations previously were under the supervision of the Customs port of Cleveland, Ohio.

To reflect these changes and to correct the listing for Fairport, Ohio, to its proper name of Fairport Harbor, Ohio, it is necessary to amend § 101.4(c) of the Customs Regulations (19 CFR 101.4(c)), which lists Customs stations and the ports of entry having supervision over these stations.

Because these amendments relate only to matters of agency organization and administration and do not impose any affirmative duty on the public, notice and public procedure thereon are unnecessary, and good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553.

DRAFTING INFORMATION

The principal author of these amendments was Teresa M. Polino, Regulaltions and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

AMENDMENTS TO THE REGULATIONS

Section 101.4(c) of the Customs Regulations (19 CFR 101.4(c)) is amended by making the following changes:

1. "Fairport, Ohio ——" is corrected to read "Fairport Harbor, Ohio ——" in the column headed "Customs stations" opposite the reference to "Cleveland, Ohio" in the column headed "District". "Ashtabula/Conneaut." is substituted for "Cleveland." in the column headed "Port of entry having supervision" opposite the corrected reference to "Fairport Harbor, Ohio ——" in the column headed "Customs stations".

2. "Sandusky." is substituted for "Cleveland." in the column headed "Port of entry having supervision" opposite the reference to "Lorain, Ohio ——" in the column headed "Customs stations".

(Sec. 1, 37 Stat. 434, section 301, 80 Stat. 379; (5 U.S.C. 301, 19 U.S.C. 1).)

G. R. DICKERSON,
Acting Commissioner of Customs.

Approved: April 19, 1978.

BETTE B. ANDERSON,
Under Secretary of the Treasury.

[FR Doc. 78-11897 Filed 5-1-78; 8:45 am]

[4810-22]

[T.D. 78-124]

PART 159—LIQUIDATION OF DUTIES

Waiver of Countervailing Duties—Handbags From Colombia

AGENCY: Department of the Treasury, Customs Service.

ACTION: Waiver of countervailing duties.

SUMMARY: This notice is to inform the public that a determination has been made to waive countervailing duties that would otherwise be required by section 303 of the Tariff Act of 1930 on imports of leather handbags from Colombia. The waiver is being issued based on actions by the Colombian handbag exporters to phase out the effective export subsidy on these items. The waiver will expire on January 4, 1979 unless revoked earlier.

EFFECTIVE DATE: May 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard B. Self, Director, Office of Tariff Affairs, U.S. Treasury Department, 15th and Pennsylvania Avenue NW., Washington, D.C., 202-566-8585.

SUPPLEMENTARY INFORMATION: In T.D. 78-125, published concurrently with this determination, it has been determined that bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303), are being paid or bestowed directly or indirectly upon the manufacture, production, or exportation of handbags from Colombia.

Section 303(d) of the Tariff Act of 1930, as amended by the Trade Act of 1974 (Pub. L. 93-618, January 3, 1975), authorizes the Secretary of the Treasury to waive the imposition of countervailing duties during the 4-year period beginning on the date of enactment of the Trade Act of 1974 if he determines that:

(1) Adequate steps have been taken to reduce substantially or eliminate during such period the adverse effect of a bounty or grant which he has determined is being paid or bestowed with respect to any article or merchandise;

(2) There is a reasonable prospect that under section 102 of the Trade Act of 1974, successful trade agreements will be entered into with foreign countries or instrumentalities providing for the reduction or elimination of barriers to or other distortions of international trade; and

(3) The imposition of the additional duty under this section with respect to such article or merchandise would be likely to seriously jeopardize the satisfactory completion of such negotiations.

Based upon analysis of all the relevant factors and after consultations with interested agencies and parties with direct interest in this proceeding, I have concluded that steps have been taken to reduce substantially the adverse effects of the bounty or grant. Specifically the manufacturers/exporters of leather handbags in Colombia are formally committed to the total elimination of the net bounty derived from the tax rebate certificate program (CAT) (or any equivalent or comparable benefit) on exports to the United States of leather handbags between May 1, 1978, and January 1, 1979. Such elimination will be staged according to the following schedule: 50-percent reduction on or before May 1, 1978; 50-percent reduction of the remaining balance on or before August 22, 1978; and total elimination of any remaining net bounty on or before January 1, 1979. The Government of Colombia, which under law can adjust the CAT payment only in December of each year, has promised the Treasury that it will accept the voluntary payment by the handbag exporters to the Government of a portion of the CAT to reflect the phase-out expressed above.

In addition the waiver is conditioned on the absence of aggressive marketing of Colombian handbags in the United States, which the Colombian handbag exporters have promised will not take place.

After consulting with appropriate agencies, including the Department of State, the Department of Labor, the

Department of Commerce, and the Office of the Special Representative for Trade Negotiations, I have further concluded:

(1) That there is a reasonable prospect that, under section 102 of the Trade Act of 1974, successful trade agreements will be entered into with foreign countries or instrumentalities providing for the reduction or elimination of barriers to or other distortions of international trade; and

(2) That the imposition of countervailing duties on leather handbags from Colombia would be likely to seriously jeopardize the satisfactory completion of such negotiations.

Accordingly, pursuant to section 303(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(d)), I hereby waive the imposition of countervailing duties on handbags from Colombia.

This determination may be revoked, in whole or in part, at any time and shall be revoked whenever the basis supporting such determination no longer exists. Unless sooner revoked or made subject to a resolution of disapproval adopted by either House of the Congress of the United States pursuant to section 303(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(e)), this waiver of countervailing duties will, in any event by statute, cease to have force and effect on January 4, 1979.

On or after the date of publication in the FEDERAL REGISTER of a notice revoking this determination, in whole or in part, the day after the date of adoption by either House of Congress of a resolution disapproving this "waiver of countervailing duties," or January 4, 1979, whichever occurs first, countervailing duties will be assessable on handbags imported directly or indirectly from Colombia in accordance with T.D. 78-125, published concurrently with this determination.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry from Colombia under the commodity heading "Handbags," the number of this Treasury decision in the column heading "Treasury Decision," and the words "Imposition of countervailing duties waived" in the column headed "Action."

(R.S. 251, secs. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2051, 2052 (19 U.S.C. 66, 1303), as amended, 1624)

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

APRIL 24, 1978.

[FR Doc. 78-11811 Filed 5-1-78; 8:45 am]

[4810-22]

[T.D. 78-125]

PART 159—LIQUIDATION OF DUTIES

Leather Handbags From Colombia; Final Countervailing Duty Order

AGENCY: Customs Service, U.S. Treasury.

ACTION: Final countervailing duty order.

SUMMARY: This notice is to advise the public that an investigation has been completed which determined that the Government of Colombia has given benefits considered to be bounties or grants to manufacturers who export leather handbags to the United States. However, countervailing duties are being waived, based upon the criteria established by the Trade Act of 1974, including the actions to be taken by the Colombian handbag exporters to reduce significantly the bounty or grant.

EFFECTIVE DATE: May 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Vincent P. Kane, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On November 1, 1977, a "Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (42 FR 57202). The notice stated that it preliminarily had been determined that benefits had been received by Colombian manufacturers and exporters of leather handbags which may constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as "the Act"). The notice stated that the benefits included the granting to manufacturers and exporters tax certificates ("CATS") upon export of the leather handbags and preferential financing for exporters.

The notice further stated that programs preliminarily determined not to be applicable included transportation subsidies, reduced credit insurance costs, freedom from taxes for firms located in designated free trade zones, and import duty exemptions for capital goods used in the production of exports.

Finally, the notice stated that import duty exemptions on raw materials used in the production of handbags for export was not a bounty or grant.

The notice provided interested parties 30 days from the date of publication to submit relevant data, views, or arguments, in writing, with respect to the preliminary determination.

The handbags subject to this determination are classified under item number 706.0820 of the tariff schedules of the United States as leather handbags, other than reptile. The term "handbags" as used in the petition covers "pocketbooks, purses, shoulder bags, clutch bags, and all similar articles by whatever name known, customarily carried by women or girls, but not including luggage of flatgoods."

Subsequent investigation led to the conclusion that alleged preferential export financing through PROEXPO, the Government agency responsible for the program, is not a bounty or grant since it was established that the terms provided through PROEXPO loans are identical to those available commercially.

The effect of the export subsidy (CAT) is offset by certain other factors. These include:

(1) The fact that the CAT is paid on the domestic value added component of the handbag, which effectively reduces the ad valorem benefit for handbags from 12 percent to 9 percent. Generally 75 percent of the value of a handbag in Colombia is produced from domestic materials;

(2) The discount paid by holders of CATS in the stock exchange, thus effectively not providing full value of the CAT when sold;

(3) Devaluation of the peso to the dollar since the certificate is not received on an average of 9 months after application has been made for it;

(4) Customs duties paid by the leather tanners on imported chemicals used in the tanning process. Such fiscal charge has the effect of being an indirect tax that, while not rebated, but would be eligible under the concept of drawback;

(5) Municipal sales taxes imposed on the handbag manufacturers and tanners, which are indirect taxes directly related to the exported handbag. While not rebated on export, they would be eligible under the act;

(6) The present value effect of the CAT resulting from the inflationary impact on its delayed payment. Treasury considered only that 90-day period which the Government of Colombia assured that no CATS could be tendered under any circumstances.

After consideration of all information received, it is hereby determined that leather handbags from Colombia are subject to bounties or grants within the meaning of section 303 of the Act. The bounties or grants are in the form of the export certificates referred to in the preliminary determination, taking into account the offsets described in this notice. The net amount of bounty or grant has been ascertained and determined to be 5.46 percent of the f.o.b. price for export to the United States of leather handbags from Colombia.

Effective on or after May 2, 1978, and until further notice, upon the entry for consumption of such dutiable leather handbags imported directly or indirectly from Columbia, which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration. To the extent that it can be established to the satisfaction of the Commissioner of Customs that imports of leather handbags from Colombia are benefitting from a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production, or exportation of leather handbags from Colombia.

Notwithstanding the above, a "Notice of Waiver of Countervailing Duties" is being published concurrently with this order which covers leather handbags from Colombia subject to this investigation in accordance with section 303(d) of the Act. At such time as the waiver ceases to be effective, in whole or in part, a notice will be published setting forth the deposit of estimated countervailing duties which will be required at the time of entry, or withdrawal from warehouse, for consumption of each product then subject to the payment of countervailing duties.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting under the column headed "Country," the name "Colombia," and inserting the words "leather handbags," in the column headed "Commodity," the number of this Treasury Decision in the column headed "Treasury Decision," and the words "Bounty Declared-Rate" in the column headed "Action."

(R.S. 251, as amended, secs. 303, 624, 46 Stat. 687, as amended, 759 (19 U.S.C. 66, 1303, 1624).)

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 (Revision 15), March 16, 1978, and the provisions of the Treasury Department Order No. 165, Revised, November 2, 1954, and § 159.47 of the Customs Regulations (19 CFR 159.47); insofar as they pertain to the issuance of a final countervailing duty determination by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM.
General Counsel of the Treasury.

APRIL 24, 1978.

[FR Doc. 78-11812 Filed 5-1-78; 8:45 am]

[4110-03]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER A—GENERAL

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

Advisory Committees; Establishment and Terminations

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463) and the public advisory committee procedures (21 CFR Part 14), this document announces the establishment of one advisory committee and the termination of three others. This document adds to and deletes from the agency's list of standing advisory committees.

EFFECTIVE DATES: May 2, 1978, authority for the committee being established will end on April 10, 1980, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT:

Richard L. Schmidt, Committee Management Office (HFS-20), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-2765.

SUPPLEMENTARY INFORMATION: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463) and § 14.40(b) (21 CFR 14.40(b)), the Food and Drug Administration announces the establishment of the Anti-Infective and Topical Drugs Advisory Committee by the Secretary of the Department of Health, Education, and Welfare.

The committee will review and evaluate data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in infectious diseases, dermatological disorders, and ocular disease, and it will make appropriate recommendations to the Commissioner of Food and Drugs. The committee will consist of 15 members.

Concurrently with the establishment, the Secretary approved the termination of the Anti-Infective Agents Advisory Committee, the Dermatology Advisory Committee, and the Ophthalmic Drugs Advisory Committee. Under § 14.55(b) (21 CFR 14.55(b)), FDA announces the termination of these committees.

Therefore, under the Federal Food, Drug, and Cosmetic Act (section 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), Part 14 is amended in § 14.100 by revising paragraph (c)(2) and deleting paragraphs (c)(8) and (15) and marking them "reserved," as follows:

§ 14.100 List of standing advisory committees.

* * * * * *

(c) * * *

(2) Anti-Infective and Topical Drugs Advisory Committee.

(i) Date established: April 10, 1978.

(ii) Function: Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in infectious diseases, dermatological disorders, and ocular diseases, and makes appropriate recommendations to the Commissioner.

* * * * * *

Effective date: Since this is a technical conforming amendment to Part 14, the Commissioner finds that there is good cause for the rule to be effective immediately upon publication in the FEDERAL REGISTER, May 2, 1978.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)).)

Dated: April 24, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-11718 Filed 5-1-78; 8:45 am]

[4110-03]

SUBCHAPTER H—MEDICAL DEVICES

[Docket No. 77N-0110]

EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL DEVICE REQUIREMENTS

Procedures for Consideration of Applications

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This rule prescribes the procedures for applying to the Food and Drug Administration (FDA) for an exemption from the Federal preemption provisions of section 521 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360k). Section 521(a) preempts certain State or local device laws by providing that no State or local government may establish or

continue in effect any requirement with respect to the safety and effectiveness of a medical device that is different from or in addition to a requirement applicable to the device under the act. Section 521(b) provides that, under certain conditions and in accordance with specified procedures, FDA may exempt a State or local requirement from the preemption provisions of section 521(a).

EFFECTIVE DATE: July 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Joseph M. Sheehan, Bureau of Medical Devices (HFK-70), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Avenue, Silver Spring, Md. 20910, 301-427-7114.

SUPPLEMENTARY INFORMATION: The proposal on which this final regulation is based was published in the FEDERAL REGISTER of June 14, 1977 (42 FR 30383). Interested persons were given until August 15, 1977 to comment on the proposal. Twenty comments were received. Most of the comments questioned the agency's interpretation of section 521 of the Federal Food, Drug, and Cosmetic Act.

Section 521(a) of the act provides for preemption of State and local requirements applicable to a medical device intended for human use that are different from or in addition to requirements applicable under the act. Section 521(b) provides that FDA may, by regulation issued after notice and an opportunity for an oral hearing, exempt a state or local medical device requirement from preemption under such conditions as the Commissioner may prescribe if the requirement is: (1) More stringent than Federal requirements applicable to the device under the act, or (2) required by compelling local conditions and compliance with it would not cause the device to be in violation of any applicable requirement under the act.

In the FEDERAL REGISTER of February 15, 1977 (42 FR 9186), FDA issued a proposal relating to an application for exemption from Federal preemption of medical device requirements filed by the State of California. Interested persons were given 60 days to submit written comments on the proposal. An oral hearing on the proposal was held on July 19, 1977. Many views presented in the written comments and at the oral hearing on the California application relate to the general procedures for applying for exemption from preemption and to FDA's interpretation of the scope of section 521 of the act. Accordingly, these views were also considered in the preparation of this final regulation.

In a related action, FDA's new regulations governing professional and patient labeling and conditions for sale of hearing aids became effective on August 25, 1977. Because these new requirements preempted some existing State and local requirements relating to hearing aids, and because five States had filed applications for exemption from preemption, FDA issued a notice in the FEDERAL REGISTER of October 18, 1977 (42 FR 55648) inviting the remaining State and local governments to file within 30 days, applications for exemption from preemption for requirements governing labeling and conditions for sale of hearing aids. This notice was intended to expedite FDA's consideration of applications for exemption from preemption for hearing aid requirements by encouraging simultaneous submissions by affected State and local governments. FDA stated its intention to evaluate each such application on its own merits, but to publish in a single FEDERAL REGISTER notice a proposed regulation to grant or to deny each such application for exemption, and to hold a single hearing on the proposed regulation. Appropriate FEDERAL REGISTER notices will be published in the near future. When appropriate, the Commissioner intends to adopt this consolidated approach in considering future applications for exemption from preemption.

RESPONSE TO COMMENTS

1. Many comments stated that there is no basis in the act or in the legislative history to justify the interpretation of section 521 of the act set forth in the first sentence of proposed § 808.1(d). That sentence stated that State and local requirements are preempted only when FDA has established specific counterpart regulations or there are other specific requirements applicable to a particular device under the act, thereby making any existing divergent State or local requirements applicable to the device different from, or in addition to, the specific FDA requirements.

The comments generally argued that all State and local medical device requirements were preempted as of May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (Pub. L. 94-295) (the Amendments). Some comments also noted that if there is no FDA requirement then any State requirement is "in addition to" the FDA requirement and is, therefore, preempted by the plain language of section 521 of the act. Other comments disputed the statement in the preamble to the proposal that a regulatory hiatus could result if State and local requirements were considered preempted before FDA could implement Federal requirements. These comments noted that the Amendments provide broad protection to the public from unsafe and ineffective medical devices. Comments also pointed out that the Congressional intent in enacting section 521 was to assure that interstate commerce would not be unduly burdened by the imposition of a substantial number of differing requirements applicable to a medical device by State and local governments and that this indicated that immediate preemption was intended. Comments also compared section 521 of the act to section 903 of S. 510 (the Senate version of the Amendments) which, had it been enacted, would have limited preemption only to devices subject to FDA standards or premarket approval, and to the preemption provisions included in other Federal acts. The thrust of these comments was that the language in section 521 is broader than the language in the other preemption provisions and therefore Congress intended a broader scope of preemption.

The Commissioner believes that both the language of section 521 of the act and the legislative history of the Amendments support the interpretation expressed in the proposal. Section 521(a) clearly states that:

> no State * * * may establish or continue in effect with respect *to a device* intended for human use *any requirement*—
>
> (1) which is different from, or in addition to, any requirement applicable under this Act to *the device*, and
>
> (2) which relates to the safety or effectiveness of *the device* or to any other matter included in a requirement applicable to *the device* under this Act. [Emphasis added.]

Thus, from a plain reading of section 521 of the act it is clear that the scope of preemption is limited to instances where there are specific FDA requirements applicable to a particular device or class of devices. As noted in the preamble to the proposal, a prime example is the preemption of divergent State or local requirements relating to hearing aid labeling and conditions for sale, which occurred when the new FDA hearing aid regulations took effect on August 25, 1977. Here, only requirements relating to labeling and conditions for sale were preempted, not all State or local requirements regulating other facets of hearing-aid distribution.

The language of section 521 of the act also does not support the argument that any State or local requirement is "in addition to" an FDA requirement if there is no FDA requirement. The phrase "or in addition to, any requirement applicable under this Act to the device" means that an FDA requirement must exist before preemption can occur. Moreover, the references in the comments to other Federal preemption statutes and bills do not support a different conclusion.

Finally, the interpretation of section 521 expressed in the regulation is more consistent with the Congressional intent of the Amendments than the

interpretation urged by the comments. The entire thrust of the Amendments is to provide FDA with new and additional authority to assure that only safe and effective medical devices are permitted on the market. See, for example, House of Representatives Rept. No. 94-853, 94th Cong., 2d Sess. 3, 5-13, 17, 23, and 59 (1976); House of Representatives Conference Rept. No. 94-853, 94th Cong., 2d Sess. 51 et seq. (1976). There is nothing in the legislative history to indicate Congress intended that the Amendments should result in less protection for the public, which would be the natural consequence of State Controls being eliminated during the considerable period of time it will take for FDA to implement fully the new authorities provided in the Amendments.

Yet, interpretations urged by the comments would provide less public protection from unsafe and ineffective medical devices because State and local regulation of medical devices would be reduced or eliminated before compensating FDA regulations could become effective. For example, many States have laws governing labeling and conditions for sale of hearing aids. Under the theory espoused in the comments, these laws were preempted on May 28, 1976, although the FDA regulations on hearing aids did not become effective until August 25, 1977. In the interim, presumably, hearing aids were regulated neither by the States nor FDA. In the absence of a specific Congressional directive to this effect, however, the Commissioner will not adopt such a position.

The Commissioner also believes that the interpretation expressed in the regulation will not cause an undue burden on interstate commerce because it merely allows State and local requirements to continue in effect until FDA establishes a national policy on the regulation of specific devices. Thus, since there is no duplication between FDA and State programs, there is no greater burden on interstate commerce than if the Amendments had not been enacted.

2. Several comments stated that there is no basis in the act or in the legislative history for the statement in proposed § 808.1(d)(2) that section 521(a) does not preempt State or local requirements that are equal to, or substantially identical to, requirements imposed by or under the act. Some comments argued that if a State or local requirement is not exactly identical to the FDA requirement it is "different from" the FDA requirement. Other comments argued that even if a State or local requirement is exactly identical to the FDA requirement it is "in addition to" the FDA requirement and therefore preempted. Comments also pointed out that a State or local requirement that is exactly identical in language to the FDA requirement may be interpreted or applied in such a way as to make it "different from" an FDA requirement. Some comments also noted that it is not clear in the proposed regulation when FDA would consider requirements to be substantially identical.

The Commissioner believes that a common sense reading of section 521 of the act supports the "substantially identical" concept in § 808.1(d)(2). Thus, while a State or local requirement may differ in some nonessential manner from an FDA requirement, if it is substantially identical to an FDA requirement it is not "different from" the FDA requirement within the meaning of section 521, and therefore not preempted. It is not necessary that a State or local requirement be exactly identical in wording to an FDA requirement in order to be "substantially identical" so long as there is substantial identity between the FDA and the State or local requirement. In determining whether a State requirement meets this criterion, the Commissioner must consider whether the State requirement is so different as to interfere with the FDA requirement or as to injure public health by imposing an undue burden on interstate commerce. Thus, although the wording of a State or local requirement may not be identical to the FDA requirement, it may be substantially identical if the thrust or effect of the State or local requirement is the same as that of the FDA requirement.

The Commissioner also cannot accept the argument that an identical State or local requirement is preempted because it is "in addition to" the FDA requirement. Such an interpretation of section 521 renders meaningless the "different from" language of section 521 because under this theory any State and local requirement would be preempted whether or not it was actually "different from" an FDA requirement.

When determining whether a State or local requirement is preempted, however, the Commissioner will consider how the requirement is interpreted and applied, not merely the literal language of the applicable statute. This approach is consistent with the recent Supreme Court decision in *Jones* v. *Rath Packing Co.*, 97 S. Ct. 1305, 1309 (1977), a case involving the preemptive effects of food labeling requirements under the Fair Packaging and Labeling Act, the Federal Food, Drug, and Cosmetic Act, and the Wholesome Meat Act. The court there noted that in determining whether or not a Federal statute preempts a State statute, it is necessary "to consider the relationship between state and federal laws as they are interpreted and applied, not merely as they are written."

Finally, to clarify when FDA will consider State or local requirements to be "substantially identical," a new definition of "substantially identical" has been added to § 808.3.

3. Several comments objected to proposed § 808.1(d)(6), which stated that section 521(a) of the act does not preempt State or local requirements respecting general enforcement, such as requirements for inspection of factory records, registration and licensing of manufacturers, and prohibition of adulteration and misbranding of devices. The comments argued that there is no basis in the act or in the legislative history to support the contention that these types of requirements are not requirements with respect to a device within the meaning of section 521 of the act.

The Commissioner believes that State laws relating to inspection, registration, and licensing usually are not requirements "with respect to a device" within the meaning of section 521 of the act because they generally pertain either to persons who manufacture or distribute devices or to places where devices are manufactured, and not directly to devices. In order for a State provision to be a requirement with respect to a device within the meaning of section 521 of the act—and thereby a candidate for preemption—it must relate to the device itself.

Similarly, a State statute prohibiting the sale of an adulterated or misbranded device is not a "requirement with respect to a device" because it applies to the person who would sell the device—and thereby cause the violation—and not to the device itself. Thus, as a general proposition, State prohibitions against the sale of adulterated or misbranded devices are not preempted. Where, however, the State establishes a particular substantive provision defining what constitutes adulteration or misbranding, e.g., a specific type of labeling, this would be a "requirement" within the meaning of section 521 of the act because it relates directly to a device. If such a provision were "different from" or "in addition to" an FDA requirement, it would be preempted. Section 808.1(d)(6) is changed to clarify this position. In determining whether the provision is "different from" or "in addition to" an FDA requirement (that is, in determining whether it is "substantially identical"), the key factor is how the statute is actually applied by the State or local government. Thus, if such a State or local provision, as it is drafted, is "substantially identical" to the adulteration or misbranding provisions of sections 501 and 502 of the act (21 U.S.C. 351 and 352), but it is interpreted or applied to a specific device in such a way as to make it "different from" or "in addition to" the FDA requirements, that interpretation or application would be preempted.

4. Several comments stated that it is unclear in the proposed regulation whether or when State and local premarket approval requirements are preempted.

Like all other medical device requirements, different or additional State and local premarket approval requirements are preempted when FDA establishes specific counterpart regulations or there are other specific requirements applicable to the device under the act. For a device classified in class III under sections 513(f) and 520(l) of the act (21 U.S.C. 360c(f) and 360j(l)), the counterpart FDA requirement—the requirement that the product have premarket approval—was established by operation of the act immediately upon enactment of the Amendments on May 28, 1976. For a device in commercial distribution before the date of enactment of the Amendments (or a substantially equivalent device) that is classified in class I under section 513(d) of the act (21 U.S.C. 360c(d)), the FDA requirement—in this instance actually a determination that the product is not subject to premarket approval or a performance standard—is established on the date of final classification of the device. For a device classified into class II, one part of the FDA requirement—that the product is not subject to premarket approval—is established on the date of final classification; the other part of the FDA requirement will be established when an FDA standard for the product is promulgated. For a device classified in class III under section 513(d) of the act, the counterpart FDA requirement is established on the date the device can not lawfully be marketed without approval of an application for premarket approval under section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)). Once these FDA requirements are established, different or additional State requirements are preempted. The Commissioner believes that no change in the final regulation is necessary to reflect this position.

5. Several comments objected to proposed § 808.5, which provided for the granting of advisory opinions on issues related to preemption of State and local requirements. Some comments suggested that FDA should not issue advisory opinions with respect to whether a State or local requirement or proposed requirement would be exempted from preemption unless FDA has all the information required for an application for exemption from preemption and provides an opportunity for a public hearing. These comments argued that if FDA issues an opinion that a requirement may be exempted from preemption and the State or local government later files an application for exemption, the Commissioner would be prejudiced by his previous opinion. Other comments stated that FDA should not issue advisory opinions with respect to proposed legislation pending before a State or local legislative body because the advisory opinion may be based on incomplete information and may have an undue influence on the legislative process.

The Commissioner believes that enough procedural safeguards are built into the process of issuing FDA advisory opinions to overcome the objections raised by the comments. Section 10.85 (21 CFR 10.85), which is incorporated by reference in proposed § 808.5, provides that the Commissioner may refuse a request for an advisory opinion if the request contains incomplete information on which to base an informed advisory opinion. Section 10.85 also provides that an advisory opinion may be amended or revoked at any time. The Commissioner will carefully review an application for exemption from preemption for a State or local requirement where he has previously issued an advisory opinion indicating whether an exemption might be granted, and the application will be judged on its own merits notwithstanding the earlier advisory opinion. In cases in which the Commissioner issues an advisory opinion on pending legislation, application of the advisory opinion will be limited to the facts presented when the opinion is issued, and the opinion will not apply if the legislation is changed significantly upon enactment.

The Commissioner believes that advisory opinions can be very useful in cases in which preemption is uncertain, and he encourages State and local governments, affected industries, and interested individuals to request advisory opinions in such cases. This practice will enable the Commissioner to clarify the uncertain status of State and local regulation of medical devices. As stated in the preamble to the proposed regulation, future FEDERAL REGISTER announcements of FDA actions that involve medical devices will discuss the preemption impact of the proposed actions of different or additional State or local requirements.

6. Several comments argued that FDA should not grant an exemption from preemption merely on a finding that the State or local requirement is more stringent than the FDA requirement or is required by compelling local conditions and would not cause the device to be in violation of any requirement under the act. The comments suggested that FDA should require the State or local government to show that granting an exemption will not cause an undue burden on interstate commerce and will result in a benefit in proportion to the cost of compliance.

It should be noted that section 521(b) of the act makes the granting of an exemption from preemption discretionary with the Commissioner. The two criteria mentioned in the comments are merely initial determinations that must be made before the Commissioner may exercise this discretion. The Commissioner intends to weigh carefully all of the consequences before granting an application for exemption from preemption.

Proposed § 808.25(g)(3) provided that the Commissioner may not grant an exemption if he determines that the granting of an exemption would not be in the best interest of the public health, taking into account the potential effect on the public health of granting or denying an exemption, e.g., additional cost to consumer, availability of needed products, etc. All other factors such as burdens on interstate commerce, compelling local conditions, and stringency will be weighted against these public health considerations. To enable FDA to make more informed judgments on these matters, § 808.20(c) is changed in the final regulation to require applicants to provide information on how the public health may be benefitted and how interstate commerce may be affected if an exemption is granted.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 521, 701, 52 Stat. 1055-1056 as amended, 90 Stat. 574 (21 U.S.C. 360k, 371)) and under authority delegated to the Commissioner (21 CFR 5.1), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 15—PUBLIC HEARING BEFORE THE COMMISSIONER

1. By revising § 15.1(b) to read as follows:

§ 15.1 Scope.

* * * * *

(b) Pursuant to specific provisions in other sections of this chapter, a matter pending before the food and Drug Administration is subject to a public hearing before the Commissioner. Such specific provisions are in § 330.10(a)(8) of this chapter relating to review of the safety, effectiveness, and labeling of over-the-counter drugs, and in Part 808 of this chapter relating to exemptions from preemption of requirements for devices.

* * * * *

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

2. By adding new § 25.1(d)(6) to read as follows:

§ 25.1 Applicability.

* * * * *

(d) * * *

(6) Promulgation of a regulation exempting from preemption a requirement of a State or political subdivision concerning a device, or publication of a notice denying an application for such exemption.

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3. By adding new Part 808 to read as follows:

PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

Subpart A—General Provisions

Sec.
808.1 Scope.
808.3 Definitions.
808.5 Advisory opinions.

Subpart B—Exemption Procedures

808.20 Application.
808.25 Procedures for processing an application.
808.35 Revocation of an exemption.

Subpart C—Listing of Specific State and Local Exemptions [Reserved]

AUTHORITY: Secs. 521, 701, 52 Stat. 1055–1056 as amended, 90 Stat. 574 (21 U.S.C. 360k, 371).

Subpart A—General Provisions

§ 808.1 Scope

(a) This part prescribes procedures for the submission, review, and approval of applications for exemption from Federal preemption of State and local requirements applicable to medical devices under section 521 of the act.

(b) Section 521(a) of the act contains special provisions governing the regulation of devices by States and localities. That section prescribes a general rule that after May 28, 1976, no State or political subdivision of a State may establish or continue in effect any requirement with respect to a medical device intended for human use having the force and effect of law (whether established by statute, ordinance, regulation, or court decision), which is different from, or in addition to, any requirement applicable to such device under any provision of the act and which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under the act.

(c) Section 521(b) of the act contains a provision whereby the Commissioner of Food and Drugs may, upon application by a State or political subdivision, allow imposition of a requirement which is different from, or in addition to, any requirement applicable under the act to the device (and which is thereby preempted) by promulgating a regulation in accordance with this part exempting the State or local requirement from preemption. The granting of an exemption does not affect the applicability to the device of any requirements under the act. The Commissioner may promulgate an exemption regulation for the preempted requirement if he makes either of the following findings:

(1) That the requirement is more stringent than a requirement under the act applicable to the device; or

(2) That the requirement is required by compelling local conditions and compliance with the requirement would not cause the device to be in violation of any applicable requirement under the act.

(d) State or local requirements are preempted only when the Food and Drug Administration has established specific counterpart regulations or there are other specific requirements applicable to a particular device under the act, thereby making any existing divergent State or local requirements applicable to the device different from, or in addition to, the specific Food and Drug Administration requirements. There are other State or local requirements that affect devices that are not preempted by section 521(a) of the act because they are not "requirements applicable to a device" within the meaning of section 521(a) of the act. The following are examples of State or local requirements that are not regarded as preempted by section 521 of the act:

(1) Section 521(a) does not preempt State or local requirements of general applicability where the purpose of the requirement relates either to other products in addition to devices (e.g., requirements such as general electrical codes, and the Uniform Commercial Code (warranty of fitness)), or to unfair trade practices in which the requirements are not limited to devices.

(2) Section 521(a) does not preempt State or local requirements that are equal to, or substantially identical to, requirements imposed by or under the act.

(3) Section 521(a) does not preempt State or local permits, licensing, registration, certification, or other requirements relating to the approval or sanction of the practice of medicine, dentistry, optometry, pharmacy, nursing, podiatry, or any other of the healing arts or allied medical sciences or related professions or occupations that administer, dispense, or sell devices. However, regulations issued under section 520(e) or (g) of the act may impose restrictions on the sale, distribution, or use of a device beyond those prescribed in State or local requirements. If there is a conflict between such restrictions and State or local requirements, the Federal regulations shall prevail.

(4) Section 521(a) does not preempt specifications in contracts entered into by States or localities for procurement of devices.

(5) Section 521(a) does not preempt criteria for payment of State or local obligations under Medicaid and similar Federal, State or local health-care programs.

(6)(i) Section 521(a) does not preempt State or local requirements respecting general enforcement, e.g., requirements that State inspection be permitted of factory records concerning all devices, registration, and licensing requirements for manufacturers and others, and prohibition of manufacture of devices in unlicensed establishments. However, Federal regulations issued under sections 519 and 520(f) of the act may impose requirements for records and reports and good manufacturing practices beyond those prescribed in State or local requirements. If there is a conflict between such regulations and State or local requirements, the Federal regulations shall prevail.

(ii) Generally, section 521(a) does not preempt a State or local requirement prohibiting the manufacture of adulterated or misbranded devices. Where, however, such a prohibition has the effect of establishing a substantive requirement for a specific device, e.g., a specific labeling requirement, then the prohibition will be preempted if the requirement is different from, or in addition to, a Federal requirement established under the act. In determining whether such a requirement is preempted, the determinative factor is how the requirement is interpreted and enforced by the State or local government and not the literal language of the statute, which may be identical to a provision in the act.

(7) Section 521(a) does not preempt State or local provisions respecting delegations of authority and related administrative matters relating to devices.

(8) Section 521(a) does not preempt a State or local requirement whose sole purpose is raising revenue or charging fees for services, registration, or regulatory programs.

(9) Section 521(a) does not preempt State or local requirements of the types that have been developed under the Atomic Energy act of 1954 (42 U.S.C. 2011 note), as amended, the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602 (42 U.S.C. 263b et seq.)) and other Federal statutes, until such time as the Food and Drug Administration issues specific requirements under the Federal Food, Drug, and Cosmetic Act applicable to these types of devices.

(e) It is the responsibility of the Food and Drug Administration, sub-

ject to review by Federal courts, to determine whether a State or local requirement is equal to, or substantially identical to, requirements imposed by or under the act, or is different from, or in addition to, such requirements, in accordance with the procedures provided by this part. However, it is the responsibility of States and political subdivisions to determine initially whether to seek exemptions from preemption. Any State or political subdivision whose requirements relating to devices are preempted by section 521(a) may petition the Commissioner of Food and Drugs for exemption from preemption, in accordance with the procedures provided by this part.

§ 808.3 Definitions.

(a) "Act" means the Federal Food, Drug, and Cosmetic Act.

(b) "Compelling local conditions" includes any factors, considerations, or circumstances prevailing in, or characteristic of, the geographic area or population of the State or political subdivision that justify exemption from preemption.

(c) "More stringent" refers to a requirement of greater restrictiveness or one that is expected to afford to those who may be exposed to a risk of injury from a device a higher degree of protection than is afforded by a requirement applicable to the device under the act.

(d) "Political subdivision" or "locality" means any lawfully established local governmental unit within a State which unit has the authority to establish or continue in effect any requirement having the force and effect of law with respect to a device intended for human use.

(e) "State" means a State, American Samoa, the Canal Zone, the Commonwealth of Puerto Rico, the District of Columbia, Guam, Johnston Island, Kingman Reef, Midway Island, the Trust Territory of the Pacific Islands, the Virgin Islands, and Wake Island.

(f) "Substantially identical to" refers to the fact that a State or local requirement does not significantly differ in effect from a Federal requirement.

§ 808.5 Advisory opinions.

(a) Any State, political subdivision, or other interested person may request an advisory opinion from the Commissioner with respect to any general matter concerning preemption of State or local device requirements or with respect to whether the Food and Drug Administration regards particular State or local requirements, or proposed requirements, as preempted.

(1) Such an advisory opinion may be requested and may be granted in accordance with § 10.85 of this chapter.

(2) The Food and Drug Administration, in its discretion and after consultation with the State or political subdivision, may treat a request by a State or political subdivision for an advisory opinion as an application for exemption from preemption under § 808.20.

(b) The Commissioner may issue an advisory opinion relating to a State or local requirement on his own initiative when he makes one of the following determinations:

(1) A requirement with respect to a device for which an application for exemption from preemption has been submitted under § 808.20 is not preempted by section 521(a) of the act because it is: (i) Equal to or substantially identical to a requirement under the act applicable to the device, or (ii) is not a requirement within the meaning of section 521 of the act and therefore is not preempted;

(2) A proposed State or local requirement with respect to a device is not eligible for exemption from preemption because the State or local requirement has not been issued in final form. In such a case, the advisory opinion may indicate whether the proposed requirement would be preempted and, if it would be preempted, whether the Food and Drug Administration would propose to grant an exemption from preemption;

(3) Issuance of such an advisory opinion is in the public interest.

Subpart B—Exemption Procedures

§ 808.20 Application.

(a) Any State or political subdivision may apply to the Food and Drug Administration for an exemption from preemption for any requirement that is preempted. An exemption may only be granted to a State or political subdivision for a requirement that it has enacted and that has been enacted, promulgated, or issued in final form by the authorized body or official of the State or political subdivision so as to have the force and effect of law. However, an application for exemption may be submitted before the effective date of the requirement.

(b) An application for exemption shall be in the form of a letter to the Commissioner of Food and Drugs and shall be signed by an individual who is authorized to request the exemption on behalf of the State or political subdivision. Four copies of the letter and any accompanying material, as well as any subsequent reports or correspondence concerning an application, shall be submitted to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857. The outside wrapper of any application, report, or correspondence should indicate that it concerns an application for exemption from preemption of device requirements.

(c) For each requirement for which an exemption is sought, the application shall include the following information to the fullest extent possible, or an explanation of why such information has not been included:

(1) Identification and a current copy of any statute, rule, regulation, or ordinance of the State or political subdivision considered by the State or political subdivision to be a requirement which is preempted, with a reference to the date of enactment, promulgation, or issuance in final form. The application shall also include, where available, copies of any legislative history or background materials pertinent to enactment, promulgation, or issuance of the requirement, including hearing reports or studies concerning development or consideration of the requirement. If the requirement has been subject to any judicial or administrative interpretations, the State or political subdivision shall furnish copies of such judicial or administrative interpretations.

(2) A comparison of the requirement of the State or political subdivision and any applicable Federal requirements to show similarities and differences.

(3) Information on the nature of the problem addressed by the requirement of the State or political subdivision.

(4) Identification of which (or both) of the following bases is relied upon for seeking an exemption from preemption:

(i) The requirement is more stringent than a requirement applicable to a device under the act. If the State or political subdivision relies upon this basis for exemption from preemption, the application shall include information, data, or material showing how and why the requirement of the State or political subdivision is more stringent than requirements under the act.

(ii) The requirement is required by compelling local conditions, and compliance with the requirement would not cause the device to be in violation of any applicable requirement under the act. If the State or political subdivision relies upon this basis for exemption from preemption, the application shall include information, data, or material showing why compliance with the requirement of the State or political subdivision would not cause a device to be in violation of any applicable requirement under the act and why the requirement is required by compelling local conditions. The application shall also explain in detail the compelling local conditions that justify the requirement.

(5) The title of the chief administrative or legal officers of that State or local agency that has primary responsibility for administration of the requirement.

(6) When requested by the Food and Drug Administration, any records concerning administration of any require-

ment which is the subject of an exemption or an application for an exemption from preemption.

(7) Information on how the public health may be benefitted and how interstate commerce may be affected, if an exemption is granted.

(8) Any other pertinent information respecting the requirement voluntarily submitted by the applicant.

(d) If litigation regarding applicability of the requirement is pending, the State or political subdivision may so indicate in its application and request expedited action on such application.

§ 808.25 Procedures for processing an application.

(a) Upon receipt of an application for an exemption from preemption submitted in accordance with § 808.20, the Commissioner shall notify the State or political subdivision of the date of such receipt.

(b) If the Commissioner finds that an application does not meet the requirements of § 808.20, he shall notify the State or political subdivision of the deficiencies in the application and of the opportunity to correct such deficiencies. A deficient application may be corrected at any time.

(c) After receipt of an application meeting the requirements of § 808.20, the Commissioner shall review such application and determine whether to grant or deny an exemption from preemption for each requirement which is the subject of the application. The Commissioner shall then issue in the FEDERAL REGISTER a proposed regulation either to grant or to deny an exemption from preemption. The Commissioner shall also issue in the FEDERAL REGISTER a notice of opportunity to request an oral hearing before the Commissioner or the Commissioner's designee.

(d) A request for an oral hearing may be made by the State or political subdivision or any other interested person. Such request shall be submitted to the Hearing Clerk within the period of time prescribed in the notice and shall include an explanation of why an oral hearing, rather than submission of written comments only, is essential to the presentation of views on the application for exemption from preemption and the proposed regulation.

(e) If a timely request for an oral hearing is made, the Commissioner shall review such a request and may grant a legislative-type informal oral hearing pursuant to Part 15 of this chapter by publishing in the FEDERAL REGISTER a notice of the hearing in accordance with § 15.20 of this chapter. The scope of the oral hearing shall be limited to matters relevant to the application for exemption from preemption and the proposed regulation. Oral or written presentations at the oral hearing which are not relevant to the application shall be excluded from the administrative record of the hearing.

(f) If a request for hearing is not timely made or a notice of appearance is not filed pursuant to § 15.21 of this chapter, the Commissioner shall consider all written comments submitted and publish a final rule in accordance with paragraph (g) of this section.

(g) (1) The Commissioner shall review all written comments submitted on the proposed rule and the administrative record of the oral hearing, if an oral hearing has been granted, and shall publish in the FEDERAL REGISTER a final rule in subpart C of this part identifying any requirement in the application for which exemption from preemption is granted, or conditionally granted, and any requirement in the application for which exemption from preemption is not granted.

(2) The Commissioner may issue a regulation granting or conditionally granting an application for an exemption from preemption for any requirement if the Commissioner makes either of the following findings:

(i) The requirement is more stringent than a requirement applicable to the device under the act;

(ii) The requirement is required by compelling local conditions, and compliance with the requirement would not cause the device to be in violation of any requirement applicable to the device under the act.

(3) The Commissioner may not grant an application for an exemption from preemption for any requirement with respect to a device if the Commissioner determines that the granting of an exemption would not be in the best interest of public health, taking into account the potential burden on interstate commerce.

(h) An advisory opinion pursuant to § 808.5 or a regulation pursuant to paragraph (g) of this section constitutes final agency action.

§ 808.35 Revocation of an exemption.

(a) An exemption from preemption pursuant to a regulation under this part shall remain effective until the Commissioner revokes such exemption.

(b) The Commissioner may by regulation, in accordance with § 808.25, revoke an exemption from preemption for any of the following reasons:

(1) An exemption may be revoked upon the effective date of a newly established requirement under the act which, in the Commissioner's view, addresses the objectives of an exempt requirement and which is described, when issued, as preempting a previously exempt State or local requirement.

(2) An exemption may be revoked upon a finding that there has occurred a change in the bases listed in § 808.20(c)(4) upon which the exemption was granted.

(3) An exemption may be revoked if it is determined that a condition placed on the exemption by the regulation under which the exemption was granted has not been met or is no longer being met.

(4) An exemption may be revoked if a State or local jurisdiction fails to submit records as provided in § 808.20(c)(6).

(5) An exemption may be revoked if a State or local jurisdiction to whom the exemption was originally granted requests revocation.

(6) An exemption may be revoked if it is determined that it is no longer in the best interests of the public health to continue the exemption.

(c) An exemption that has been revoked may be reinstated, upon request from the State or political subdivision, if the Commissioner, in accordance with the procedures in § 808.25, determines that the grounds for revocation are no longer applicable except that the Commissioner may permit abbreviated submissions of the documents and materials normally required for an application for exemption under § 808.20.

Subpart C—Listing of Specific State and Local Exemptions [Reserved]

Effective date: This regulation shall become effective July 3, 1978.

(Secs. 521, 701, 52 Stat. 1055–1056 as amended, 90 Stat. 574 (21 U.S.C. 360k, 371).)

Dated: April 24, 1978.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc. 11719 Filed 5-1-78; 8:45 am]

[4110-03]

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 77F-0374]

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

Sodium Lauryl Sulfate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The food additive regulations are being amended to provide for safe use of sodium lauryl sulfate as a wetting agent in the partition of high and low melting fractions of crude vegetable oils and animal fats. A petition had been filed by DeLaval Separator Co. proposing this safe use.

DATES: Effective May 2, 1978, objections by June 1, 1978.

ADDRESS: Written objections to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Notice was published in the FEDERAL REGISTER of January 17, 1978 (43 FR 2445) that a food additive petition (FAP 6A3170) had been filed by DeLaval Separator Co., 350 Dutchess Turnpike, Poughkeepsie, N.Y. 12602, proposing that the food additive regulations be amended to provide for the use of sodium lauryl sulfate as a wetting agent in the partition of high and low melting fractions of crude vegetable oils and animal fats.

The Commissioner of Food and Drugs, having evaluated data in the petition and other relevant material, concludes that § 172.822 *Sodium lauryl sulfate* (21 CFR 172.822) should be amended as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))), and under authority delegated to the Commissioner (21 CFR 5.1), section 172.822 is amended by adding new paragraph (b)(4) to read as follows:

§ 172.822 Sodium lauryl sulfate.

* * * * *

(b) * * *

(4) As a wetting agent at a level not to exceed 10 parts per million in the partition of high and low melting fractions of crude vegetable oils and animal fats, provided that the partition step is followed by a conventional refining process that includes alkali neutralization and deodorization of the fats and oils.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before (June 1, 1978) submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective May 2, 1978.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)).)

Dated: April 26, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-11807 Filed 5-1-78; 8:45 am]

[4910-22]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER J—HIGHWAY SAFETY

PART 920—PAVEMENT MARKING DEMONSTRATION PROGRAM

Revision

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this document in response to the recommendations of the FHWA Regulations Reduction Task Force. The existing regulations have been amended to eliminate redundancy, reduce detailed instructions, reduce reporting requirements, and provide increased flexibility on the part of FHWA field elements and the States.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. James L. Rummel, 202-426-2131, Office of Highway Safety; or Mrs. Kathleen S. Markman, 202-426-0790, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are Monday through Friday from 7:45 a.m. to 4:15 p.m. e.s.t.

SUPPLEMENTARY INFORMATION: Because these rules contain no substantial changes from the existing pavement marking demonstration program regulations, notice and comments are unnecessary.

NOTE.—The Federal Highway Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Orders 11821 and 11949 and OMB Circular A-107.

In consideration of the above, 23 CFR Part 920 is revised to read as follows:

Sec.
920.1 Purpose.
920.3 Objective.
920.5 Eligibility.
920.7 Procedures.
920.9 Standards.
920.11 Reports.

AUTHORITY: 23 U.S.C. 151 and 315; 49 CFR 1.48.

§ 920.1 Purpose.

The purpose of the regulation is to set forth policies and procedures for implementing Section 151 of Title 23, United States Code, "Pavement Marking Demonstration Program."

§ 920.3 Objective.

The objective of the Pavement Marking Demonstration Program is to improve the pavement marking of all highways and to demonstrate the value of such markings in providing greater vehicle and pedestrian safety.

§ 920.5 Eligibility.

Pavement Marking Demonstration Program funds are eligible for expenditure on all public highways (except Interstate) and may be used for the following:

(a) Application of markings on highways which have never been marked, or upgrading to current standards those existing markings which do not conform to the Manual on Uniform Traffic Control Devices (MUTCD),[1]

(b) Restoration of markings on highways previously marked if the previous markings have been substantially obliterated for a sufficient period to provide adequate base data for evaluation,

(c) Renewal of pavement markings placed under this program in order to maintain their effectiveness for a 2-year evaluation period,

(d) Installation of materials or devices having a design life longer than conventional paint markings,

(e) Installation of delineators,

[1]The Manual on Uniform Traffic Control Devices (Stock Number 5001-0021) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(f) Materials, labor, and equipment rental or depreciation charges associated with the placement of pavement markings and delineators under this program, and

(g) Surveys of pavement marking and delineation needs and the collection, analysis, and evaluation of data to determine the safety benefits attributable to this program.

§ 920.7 Procedures.

(a) *Programing.* Pavement marking projects shall be included in the Federal-aid highway program developed in accordance with 23 CFR Part 630, Subpart A (Federal-Aid Programs Approval and Authorization). The States shall give priority to projects on highways in rural areas.

(b) *Implementation.* Pavement marking projects shall be implemented using normal Federal-aid project procedures modified to incorporate such timesaving procedures as may be developed by the State highway agency and the Federal Highway Administration (FHWA) including the use of abbreviated plans, grouping of projects, and simplified inspection procedures. In addition, the FHWA finds it to be in the public interest to permit a State or local government to use its own forces to implement pavement marking projects, if so requested.

(c) *Release of Funds.* Funds for this program may be released by the Federal Highway Administrator for other safety projects as specified in 23 U.S.C. 151(f). Funds will not be considered for release until all rural public highways in the State with an average daily traffic volume of 250 vehicles or more have been marked with a centerline when the paved surface is 16 feet (4.88 meters) or wider and marked with a center line and edgelines when the paved surface is 20 feet (6.10 meters) or wider. Projects using such released funds shall be developed and implemented in accordance with 23 CFR Part 655, Subpart E (Highway Safety Improvement Program).

§ 920.9 Standards.

Pavement markings or devices placed under this program shall conform to the standards in the Manual on Uniform Traffic Control Devices.[2]

§ 920.11 Reports.

Annually, each State shall submit to the FHWA Division Administrator a report (OMB 04-R2450 and RCS HHS-20-02) on the progress being made in implementing this program and the effectiveness of the improvements made under it. Each State's annual report shall be prepared as follows:

(a) *Content.* The State's report shall include: (1) Data on the progress made in completing the pavement marking demonstration effort. These data shall include current year information on the number of miles marked (centerline and edgeline); railroad-highway grade crossings, pedestrian crossings, and other special area markings completed; and the nature of the work yet to be completed in the program.

(2) An evaluation of the pavement markings placed by comparing accident data for the period following application of the markings with similar data for the period prior to application of the markings. This analysis shall consider the change in number, rate (per million vehicle miles), and severity of accidents, and present a cost-benefit ratio for the improvements accomplished under this program.

(b) *Submission.* The State's report shall be submitted to the FHWA Division Administrator by August 31 of each year until the end of the second year following completion of the total demonstration program in the State.

Issued on: April 24, 1978.

KARL S. BOWERS,
Deputy Administrator.

[FR Doc. 78-11861 Filed 5-1-78; 8:45 am]

[2]The Manual on Uniform Traffic Control Devices (Stock Number 5001-0021) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

[4210-01]

Title 24—Housing and Urban Development

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

[Docket No. R-78-467]

PART 200—INTRODUCTION

Subpart S—Minimum Property Standards

REVISION NO.6 TO HUD'S MINIMUM PROPERTY STANDARDS

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This notice incorporates new standards and reference standards to prevent condensation on metal frame windows, for plastic siding, for ceramic tile, to establish minimum bathtub width, and to establish a minimum distance between the bottom of subsurface absorption fields and water tables. Energy conservation is achieved through permissible reduction of minimum window area requirements for single family housing and through increasing requirements for tightly sealing air ducts. Requirements are also introduced for vapor barriers on cold water piping to reduce condensation problems.

EFFECTIVE DATE: June 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard A. Gray, Chief, Standards Branch, Office of Housing, Department of Housing and Urban Development, Washington, D.C. 20410, telephone 202-755-6590.

SUPPLEMENTARY INFORMATION: HUD Minimum Property Standards are published in handbooks: Minimum Property Standards for One- and Two-Family Dwellings 4900.1, Multifamily Dwellings 4910.1, and Care-Type Housing 4920.1. The Minimum Property Standards are incorporated by reference into 24 CFR 200.929. All substantive changes in the Minimum Property Standards are required by 24 CFR 200.933 to be published in the FEDERAL REGISTER using the same procedure as for the publication of regulations. The Minimum Property Standards for which these changes are proposed are available for examination in all HUD Field Offices and in Room 6170, Headquarters at the above address during business hours.

On October 14, 1977, (42 FR 55229) HUD proposed changes to Minimum Property Standards. Interested persons were given until November 11, 1977, to comment on the proposed amendment. Sixteen comments were received in response to the proposed changes. There is no significant difference between this final notice and the proposal.

DISCUSSION OF MAJOR COMMENTS

The following is a discussion of major comments on the proposed revisions to the Minimum Property Standards for One- and Two-Family Dwellings, Multifamily Housing and Care-Type Housing.

Comments were received concerning the inclusion of the AAMA 1502.6 for improving the performance of metal windows. One commenter was concerned about the shortage of insulating materials. As the material used in manufacturing insulating metal frames is generally some type of plastic which is a low heat conductor, this is not the type of insulating material which is in short supply. A comment from a major wood window manufacturer questioned the validity of requiring compliance to AAMA 1502.6 which they contend may be misleading to the consumer. Although at present the AAMA standard does not include requirements for U values, work is proceeding to establish such criteria. In

the meantime metal windows complying to the present AAMA 1502.6 standard will perform better than those that do not. One aspect of better performance expected from windows complying to AAMA 1502.6 is that they will have fewer condensation problems. This was a major reason for recognizing the AAMA standard.

Two comments pertained to the new criteria in paragraph 515-3.1 which require air ducts in unconditioned spaces to have the seams taped. The objection was centered around the problem of taping longitudinal seams of return air ducts created by the space enclosed by joists and a metal sheet attached to the joists. The intent was to reduce the air leakage from ducts. Taping is a method of doing this but we recognize that it is just one method. To permit other ways of reducing leakage such as using gaskets, this paragraph is changed by dropping the word "taped" and adding the words "tightly sealed."

On Section 615-5.3i of the Minimum Property Standards for Multifamily Dwellings and the MPS for Care-Type Housing, a commenter pointed out that we should require a maximum not a minimum C value to be energy conserving. This confusion has been corrected. Also suggested was to include the English units behind the C value. This, however, is taken care of in Appendix A—Definitions. This commenter also suggested that more specific language be included on how long periods of no flow conditions exist in hot and cold water piping. The requirement for pipe insulation is added not only for freeze protection but for energy conservation and to reduce condensation problems.

Also received were questions on paragraph 401-4.2a which applies to the Minimum Property Standards for One- and Two-Family Dwellings and Multifamily Dwellings.

One question raised was whether the requirement for a bathtub is reasonable. This commenter stated that elderly units are currently exempt from this requirement but no mention is made of an exception for units designed for the handicapped. This is incorrect as the italic type in the MPS applies to housing for both the elderly and handicapped. Further clarification of this is found in paragraph 100-1.2.

Another commenter was concerned with the lack of the inclusion of tolerances. The allowable tolerances are specified in our referenced standard for bathtubs, ANSI A112-19, and need not be repeated in the MPS text.

We received most of the comments on the MPS for Single Family Dwellings paragraph 403-3 concerning the reduction of minimum window sizes. Contrary to the views of some of the commenters, this revision does not require a reduction in window size but it allows such a reduction. Most commenters pointed out the possible energy gains larger windows have over smaller windows. Unfortunately, these grains are realized only when window location and use are properly integrated into the heating and cooling system of the living unit and the occupant adheres to the system's constraints. Also, a consideration for good window design is given in Footnote 3 of Table 6-7.1 of the MPS for Single Family Dwellings. Another commenter pointed out that this change may affect the egress provision of the MPS or model codes. This is not so. Although both egress and light and ventilation requirements have criteria stated in minimums, neither prohibit the use of larger areas or dimensions.

Finally, some reviewers took this opportunity to comment on an issue not included in the proposed revision. These concerns were for the 15% maximum glass to wall area requirement found in paragraph 607-3.3 of the Single Family MPS. Again, Footnote 3 to Table 6-7.1 gives consideration to the well designed residence.

A finding of inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this finding of inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410.

For clarity, the Handbook section will be cited followed by the revised language. Accordingly, Handbooks 4900.1, 4910.1 and 4920.1 incorporated by reference in 24 CFR 200.933 are revised as follows:

The following technical changes apply to the Minimum Property Standards for Single Family Dwellings, 4900.1; Multifamily Dwellings, 4910.1; and Care-Type Housing, 4920.1.

Section 508-5.1 is changed to read:

General. In areas where experience indicates that condensation on windows is a problem, windows with insulating frames shall be used. Windows conforming to the recommendations of AAMA 1502.6 for the climatic conditions in the area are considered as meeting this requirement. Where wood is used as the insulator, it shall be water repellent preservative treated.

Section 515-3.1 is amended as shown below:

Duct insulation. When supply or return air ducts used for heating, cooling, or both are installed in unconditioned spaces, they shall have the longitudinal and transverse seams tightly sealed to reduce air leakage and shall be insulated with or have thermal characteristics equivalent to: * * *

Appendix A is changed to read:

Conductance, thermal. The time rate of heat flow through a unit area of a material, of given thickness, per unit of temperature difference. Value is expressed in Btu/(hr×sq ft×F). (symbol C).

Conductivity, thermal. The time rate of heat flow through a unit area of a homogeneous material under the influence of a unit temperature gradient. Value is expressed in (Btu×in.)/(hr×sq ft×F). (symbol k).

Appendix C.

Section 509-2 Rigid PVC (polyvinyl chloride) plastic siding PS-55 is added.

Section 509-4 and 509-5 Ceramic tile standard TCA 137 replaces ANSI 137.1.

The following changes apply to the Minimum Property Standards for Multifamily Dwellings, 4910.1 and Care-Type Housing 4920.1.

Section 615-5.3i is amended as shown below:

Cold water piping installed in locations of the building subject to freezing temperatures, or where pipe sweating may create a problem shall be insulated and covered with a vapor barrier. All circulating domestic hot water piping shall be insulated with a material having a maximum thermal conductance (C value) of 0.50.

The following changes apply to the Minimum Property Standards for One- and Two-Family Dwellings, 4900.1 and Multifamily Dwellings, 4910.1.

Section 401-4.2a is amended as follows:

Each dwelling unit shall have one bathroom containing a bathtub with a minimum outside width of 30 in., a lavatory and water closet. In other bathrooms showers may be substituted for bathtubs. Bathrooms shall provide for comfortable access to, and use of, each fixture. Bathrooms shall be convenient to the bedrooms.

The following changes apply to the Minimum Property Standards for One- and Two-Family Dwellings, 4900.1.

Section 403-3 Requirements for minimum natural light glazed area and natural ventilation opening as a percentage of room floor area in living units are changed from 10 percent to 8 percent and 5 percent to 4 percent respectively.

Section 615-5.3i is amended to read as follows:

Cold water piping installed in locations of the building subject to freezing temperatures, or where pipe sweating may create a problem shall be insulated and covered with a vapor barrier.

Section 615-9.6

Added requirement for 3 ft minimum from bottom of subsurface absorption field to water table.

(Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).)

Issued at Washington, D.C., April 20, 1978.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing—
Federal Housing Commissioner.

[FR Doc. 78-11961 Filed 5-1-78; 8:45 am]

[4210-01]

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

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-4085]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Suspension of Community Eligiblity

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATE: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), administered by the Federal Insurance Administration, enables property owners to purchase flood insurance at rates made affordable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (24 CFR part 1909 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood insurance is no longer available in the community.

In addition, the Federal Insurance Administration has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the the sixth column of the table. Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elapsed since publication of a flood insurance map. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

§ 1914.6 List of suspended communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Hazard area identified	Dates[1]
Connecticut	New Haven	Guildford, town of.	090077-A	Oct. 20, 1972, emergency; May 1, 1978, regular; May 1, 1978, suspended.	Aug. 2, 1974	May 1, 1978.
Georgia	Tift	Tifton, city of.	130171-B	Dec. 27, 1973, emergency; May 1, 1978, regular; May 1, 1978, suspended.	Jan. 17, 1975 July 9, 1976	Do.
Do	Mitchell	Camilla, city of.	130137-B	Nov. 26, 1973, emergency; May 1, 1978, regular; May 1, 1978, suspended.	Apr. 17, 1974 Jan. 16, 1976	Do.
Illinois	Cook	Arlington Heights, village of.	170056-A	Jan. 28, 1972, emergency; May 1, 1978, regular; May 1, 1978 suspended.	Nov. 16, 1973	Do.
Indiana	Spencer	Unincorporated areas.	180237-A	Aug. 18, 1972, emergency; May 1, 1978, regular; May 1, 1978, suspended.	Jan. 3, 1975	Do
Maine	Penobscot	Milford, town of.	230110-B	May 30, 1975, emergency; Apr. 3, 1978, regular; May 1, 1978, suspended.	May 3, 1974 Oct. 15, 1976	Do.
Do	....do	Old Town, city of.	230112-A	June 25, 1974, emergency; Apr. 17, 1978, regular; May 1, 1978, suspended.	Aug. 2, 1974	Do.
Maryland	Washington	Unincorporated areas.	240070-A	June 18, 1973, emergency; May 1, 1978, regular; May 1, 1978, suspended.	Mar. 21, 1975	Do.
Massachusetts	Norfolk	Canton, town of.	250235-A	Nov. 26, 1973, emergency; Apr. 3, 1978, regular; May 1, 1978, suspended.	Sept. 13, 1974	Do.
Do	....do	Milton, town of.	250245-B	Jan. 14, 1974, emergency; Apr. 3, 1978, regular; May 1, 1978, suspended.	June 28, 1974 Oct. 22, 1976	Do.
Do	Hampshire	Northampton, city of.	250167-A	Apr. 7, 1972, emergency; Apr. 3, 1978, regular; May 1, 1978, suspended.	May 31, 1974	Do.
Do	Hampden	Westfield, city of.	250153-B	May 10, 1973, emergency; May 1, 1978, regular; May 1, 1978, suspended.	July 26, 1974 Feb. 18, 1977	Do.
Minnesota	Wright	Unincorporated areas.	270534-A	Oct. 6, 1972, emergency; May 1, 1978, regular; May 1, 1978, suspended.	May 1, 1978	Do.
Mississippi	Claiborne	....do	280201-A	Feb. 14, 1974, emergency; May 1, 1978, regular; May 1, 1978, suspended.	....do	Do.
Do	Sunflower	Ruleville, town of.	280167-B	May 14, 1973, emergency; May 1, 1978, regular; May 1, 1978, suspended.	May 10, 1974	Do.
Missouri	St. Louis	Clayton, city of.	290341-E	Dec. 23, 1971, emergency; Feb. 14, 1978, regular; May 1, 1978, suspended.	Apr. 5, 1974 Dec. 20, 1974 May 14, 1976 July 23, 1976 July 22, 1977	Do.
Do	Jefferson	Festus, city of.	290191-A	Sept. 3, 1971, emergency; Feb. 14, 1978, regular; May 1, 1978, suspended.	Oct. 18, 1974	Do.
Nebraska	Lancaster	Lincoln, city of.	315273-A	Apr. 17, 1970, emergency; Apr. 23, 1971, regular; May 1, 1978, suspended.	Apr. 27, 1971	Do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Hazard area identified	Dates[1]
New Hampshire	Sullivan	Claremont, city of.	330154-B	Feb. 8, 1974, emergency; Apr. 17, 1978, regular; May 1, 1978, suspended.	Mar. 8, 1974 Nov. 5, 1976	Do.
North Carolina	Edgecombe and Nash	Rocky Mount, city of.	370092-B	Jan. 17, 1974, emergency; May 1, 1978, regular; May 1, 1978, suspended.	Mar. 1, 1974 May 21, 1976	Do.
Oregon	Tillamook	Manzanita, city of.	410199-A	Nov. 8, 1974,emergency; May 1, 1978, regular; May 1, 1978, suspended.	May 1, 1978	Do.
Do	Umatilla	Pendleton, city of.	410211-B	Mar. 3, 1972, emergency; July 13, 1976, regular; May 1, 1978, suspended.	May 4, 1973 Sept. 26, 1975	Do.
Do	Tillamook	Tillamook, city of.	410202-B	Mar. 30, 1973, emergency; May 1, 1978, regular; May 1, 1978, suspended.	June 7, 1974 July 30, 1976	Do.
Pennsylvania	Allegheny	Carnegie, borough of.	420019-B	July 23, 1973, emergency; May 1, 1978, regular; May 1, 1978, suspended.	Feb. 8, 1974 May 7, 1976	Do.
Do	....do	Hampton, township of.	420978-B	Sept. 17, 1973, emergency; May 1, 1978, regular; May 1, 1978, suspended.	Mar. 15, 1974 May 28, 1976	Do.
Do	Perry	Juniata, township of.	421140-B	Mar. 26, 1974, emergency; May 1, 1978, regular; May 1, 1978, suspended.	Aug. 9, 1974 Sept. 24, 1976	Do.
Do	Northumberland	Kulpmont, borough of.	420736-B	Feb. 1, 1974, emergency; May 1, 1978, regular; May 1, 1978, suspended.	May 31, 1974 June 4, 1976	Do.
Do	Montgomery	Lansdale, borough of.	420951-B	Dec. 19, 1973, emergency; May 1, 1978, regular; May 1, 1978, suspended.	June 28, 1974	Do.
Vermont	Bennington	Manchester, town of.	500015-A	Jan. 28, 1972, emergency; Apr. 3, 1978, regular; May 1, 1978, suspended.	Aug. 2, 1974	Apr. 3, 1978.
Do	Addison	New Haven, town of.	500009-A	Oct. 2, 1972, emergency; Apr. 3, 1978, regular; May 1, 1978, suspended.	Oct. 25, 1974	May 1, 1978.
Do	Rutland	Rutland, city of.	500101-C	Aug. 30, 1973, emergency; Apr. 17, 1978, regular; May 1, 1978, suspended.	Mar. 15 1974 Sept. 19, 1975 Oct. 8, 1976	Do.
Do	Windham	Wilmington, town of.	500142-B	May 25, 1973, emergency; May 1, 1978, regular; May 1, 1978, suspended.	May 31, 1974 Mar. 4, 1977	Do.

[1]Certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: April 17, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-11641 Filed 5-1-78; 8:45 am]

[1505-01]

Title 41—Public Contract and Property Management

CHAPTER 60—OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EQUAL EMPLOYMENT OPPORTUNITY, DEPARTMENT OF LABOR

PART 60-4—CONSTRUCTION CONTRACTORS—AFFIRMATIVE ACTION REQUIREMENTS

Correction

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Correction.

SUMMARY: On April 7, 1978, the U.S. Department of Labor published a final rule in the FEDERAL REGISTER (43 FR 14888) to establish specific affirmative action standards for women in construction and consolidate and standardize requirements for construction contractors and subcontractors subject to Executive Order 11246, as amended (30 FR 12319, 32 FR 14303), to promote equal employment opportunity in the construction industry. This document is published to correct critical errors made in the final rule.

EFFECTIVE DATE: The effective date of the regulations was published as May 8, 1979. The correct effective date is May 8, 1978.

FOR FURTHER INFORMATION CONTACT:

William Raymond, Associate Director, OFCCP, 202-523-9477.

Part 60-4 is corrected as follows: In FR Doc. 78-9083, published on April 7, 1978, (43 FR 14888), the last sentence in paragraph e on page 14896 which reads: "The Contractor shall provide notice of these programs to the sources complied under 7b above" should be corrected to read, "The Contractor shall provide notice of these programs to the sources compiled under 7b above."

On page 14897, the last sentence in § 60-4.4 (a) which reads:

Until the Director has issued an order pursuant to § 60-4.6 of this part establishing goals and timetables for minorities in the appropriate geographical areas or for a project covered by Special Bid Conditions, the goals and timetables for minorities to be inserted in the Notice require by 41 CFR 60-4.2 shall be the goals and timetables contained in the Hometown Plan, Imposed Plan or Special Bid Conditions presently covering the respective geographical area or project involved

should be corrected to read:

Until the Director has issued an order pursuant to § 60-4.6 of this part establishing goals and timetables for minorities in the

appropriate geographical areas or for a project covered by Special Bid Conditions, the goals and timetables for minorities to be inserted in the Notice required by 41 CFR 60-4.2 shall be the goals and timetables contained in the Hometown Plan, Imposed Plan or Special Bid Conditions presently covering the respective geographical area or project involved.

On page 14897, the last sentence in § 60-4.6 should be corrected by inserting the word "in" between the words "notices" and "the" so that the sentence reads:

The goals shall be applicable to each construction trade in a covered contractor's or subcontractor's entire workforce which is working in the area covered by the goals and timetables, shall be published as notices in the FEDERAL REGISTER, and shall be inserted by the contracting officers and applicants, as applicable, in the Notice required by 41 CFR 60-4.2.

[6820-24]

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER E—SUPPLY AND PROCUREMENT

[FPMR Amdt. E-219]

PART 101-25—GENERAL

Subpart 101-25.3—Use Standards

USE STANDARDS FOR OFFICE FURNITURE AND CARPETING

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation updates the use standards for office furniture and carpeting to delete references to a volume of the GSA Supply Catalog that has been discontinued and a Bureau of the Budget circular that has been rescinded.

EFFECTIVE DATE: May 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. John I. Tait, Director, Regulations and Management Control Division, Office of the Executive Director, Federal Supply Service, General Services Administration, Washington, D.C. 20406, 703-557-1914.

1. Section 101-25.302-1(a) is revised as follows:

§ 101-25.302-1 Executive type office furniture and furnishings.

(a) The use of executive type wood office furniture, whether new or rehabilitated, shall be limited to personnel in grade GS-15 and above (or the equivalent, including military rank) except as provided for in (b), below. Executive type wood office furniture consists of the unitized, traditional, and modern items of executive wood office furniture listed in the GSA Furniture Catalog. Furnishings matching executive type office furniture are subject to the same grade limitations as executive type office furniture except that carpeting may be supplied for use of other personnel when it is determined to be justified in accordance with the provisions of § 101-25.302-5.

* * * * *

2. Section 101-25.302-5 is revised as follows:

§ 101-25.302-5 Carpeting.

(a) Carpeting is authorized for use where it can be justified over other types of floor covering on the basis of cost, safety, insulation, acoustical control, the degree of interior decoration required, or the need to maintain an environment commensurate with the purpose for which the space is allocated, as when executive or unitized office furniture is authorized under § 101-25.302-1.

(b) In connection with new construction or alteration of space, if it is known that the area will eventually require carpeting, then resilient floor covering should be omitted and the carpeting installed initially.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).)

Dated: April 21, 1978.

ROBERT T. GRIFFIN,
Acting Administrator of General Services.

[FR Doc. 78-11863 Filed 5-1-78; 8:45 am]

[6820-24]

[FPMR Amdt. E-218]

PART 101-30—FEDERAL CATALOG SYSTEM

Standard Form 1303, Request for Federal Cataloging/Supply Support Action

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation announces the redesignation of GSA Form 1303, Request for Federal Cataloging/Supply Support Action, as Standard Form 1303, Request for Federal Cataloging/Supply Support Action. The impending use of the form by the Department of Defense and civilian agencies has necessitated this change. This regulation changes the FPMR to reflect the redesignation of this form.

EFFECTIVE DATE: May 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. John I. Tait, Director, Regulations and Management Control Division, Office of the Executive Director, Federal Supply Service, General Services Administration, Washington, D.C. 20406, 703-557-1914.

The table of contents for Part 101-30 is amended to revise the caption for § 101-30.4901, add § 101-30.4901-1303, reserve § 101-30.4902, and delete § 101-30.4902-1303, as follows:

Sec.
101-30.4901 Standard forms.
101-30.4901-1303 Standard Form 1303, Request for Federal Cataloging/Supply Support Action.
101-30.4902 GSA forms. [Reserved]
101-30.4902-1303 [Deleted]

Subpart 101-30.3—Cataloging Items of Supply

Section 101-30.303(b) is revised as follows:

§ 101-30.303 Responsibility.

* * * * *

(b) Agencies not having the capabilities cited in paragraph (a) of this section shall prepare Standard Form 1303, Request for Federal Cataloging/Supply Support Action (illustrated at § 101-30.4901-1303), or an EAM card of formatted actions for submission to GSA (or to the appropriate Defense Logistics Agency (DLA) supply center for maintenance actions as described in § 101-30.503). GSA of DLA will perform al cataloging functions and/or prepare and transmit data to DLSC. Instructions on the preparation and submission of Standard Form 1303 for requesting Federal cataloging and/or supply support actions and EAM cards for volume add/delete user requests are contained in the GSA Handbook, Federal Cataloging System-Logistics Data (FPMR 101-30.3), issued by the Commissioner, Federal Supply Service.

* * * * *

Subpart 101-30.5—Maintenance of the Federal Catalog System

Section 101-30.503(d) is revised as follows:

§ 101-30.503 Maintenance actions required.

* * * * *

(d) All civilain agencies not authorized to submit catalog data to DLSC shall use Standard Form 1303, Request for Federal Cataloging/Supply Support Action, to request maintenance action. Proposed maintenance requests shall be submitted to GSA for collaboration and submission to DLSC, except that civilian agencies receiving supply support from DLA supply centers, as expressed in the DLSC user record by major organizational entity (MOE) rule, should submit proposed maintenance requests to the appropriate DLA supply center for collaboration and submission to DLSC. When GSA receives maintenance requests for these items, they will be referred to the appropriate DLA supply center.

Subpart 101-30.49—Illustrations of Forms

1. Section 101-30.4901 is revised as follows:

§ 101-30.4901 Standard forms.

(a) Standard forms are illustrated in this § 101-30.4901 to show their text, format, and arrangement and to provide a ready source of reference. The subsection numbers in this § 101-30.4901 correspond with the Standard form numbers.

(b) Standard forms illustrated in this § 101-30.4901 may be obtained by submitting a requisition in FEDSTRIP format to the GSA regional office providing support to the requesting activity.

2. Section 101-30.4901-1303 is added as follows:

§ 101-30.4901-1303 Standard Form 1303, Request for Federal Cataloging/Supply Support Action.

§ 101-30.4902 GSA forms. [Reserved]

3. Section 101-30.4902 is reserved as set forth above.

§ 101-30.4902-1303 [Deleted]

4. Section 101-30.4902-1303 is deleted.

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)).)

NOTE.—The form illustrated in § 101-30.4901-1303 is filed with the original document and does not appear in the FEDERAL REGISTER.

Dated; April 24, 1978.

JAY SOLOMON,
Administrator of General Services.

[FR Doc. 78-11864 Filed 5-1-78; 8:45 am]

[4110-02]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 100a—DIRECT PROJECT GRANT AND CONTRACT PROGRAMS

PART 182—COOPERATIVE EDUCATION PROGRAMS

Rules Governing Awards for Planning, Establishing, Expanding or Carrying Out Programs

AGENCY: Office of Education, HEW.

ACTION: Final regulation.

SUMMARY: This document sets forth rules governing awards for planning, establishing, expanding, or carrying out programs of Cooperative Education, and for support of training, research, or demonstration projects. The document amends the existing Cooperative Education Program regulation in order to implement the legislative changes required by the Education Amendments of 1976 and to simplify the language of the regulation. The principal legislative changes are the provision of Federal assistance for cooperative education programs over a period of five years (formerly three) at annually decreasing percentages, and the inclusion of part-time students in cooperative education programs.

EFFECTIVE DATE: October 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. John L. Chase, Chief, Cooperative Education Branch, Bureau of Higher and Continuing Education, Room 3053, Regional Office Building 3, 7th and D Streets SW., Washington, D.C. 20202, 202-245-2146.

SUPPLEMENTARY INFORMATION:

1. *Background.* The purpose of this program is to enrich the quality and scope of postsecondary education through educationally-related work experiences which afford students an opportunity to earn funds needed for their education, while enabling them to become better prepared to achieve their educational or career objectives. Under the Cooperative Education Program, the Commissioner makes awards to eligible institutions of higher education or combinations of those institutions for planning, establishing, expanding, or carrying out programs of Cooperative Education, and for the support of training, research, or demonstration projects.

The Education Amendments of 1976 amend the Higher Education Act by inserting the Cooperative Education Program under Title VIII (formerly title IV-D), and making certain technical amendments to its provisions. These technical amendments allow alternating periods of work and school attendance to be on other than a full-time basis, and authorize the Commissioner to make grants for up to five fiscal years, instead of three.

2. *Applicability.* Awards for the Cooperative Education Program for Fiscal Year 1978 are being made in accord with the notice published in the FEDERAL REGISTER, November 28, 1977. Awards for Fiscal Year 1979 and thereafter will be made in accordance with these regulations.

3. *Summary of Comments and Responses.* The Commissioner published in the FEDERAL REGISTER, on September 9, 1977, a notice of proposed rulemaking to incorporate the technical changes resulting from the Education Amendments of 1976 into existing program regulations. Both written and oral comments were invited regarding the proposed regulations for the Cooperative Education Program. These comments and the Commissioner's responses are as follows:

Comment: A number of comments were received stating that the wording in § 182.2 of the proposed regulation omits any statement of the objectives of the program. It was suggested that language similar to that in the existing program regulation be added to indicate that the purpose of the program is to enrich the quality and scope of postsecondary education through educationally-related work experience which affords students an opportunity to earn funds needed for their education while enabling them to become better prepared to achieve their educational or career objectives.

Response: The regulation has been changed to reflect this comment. Language to indicate the purpose of the program has been included in § 182.2.

Comment: One commenter suggested that the proposed regulation be examined to assure that it is free of sex bias or sex stereotyping.

Response: No change has been made in the regulation. In the development of this regulation a deliberate effort was made to avoid the use of single sex pronouns and adjectives. This regulation contains no statement which implies the preference of one sex over another.

Comment: One commenter suggested that the proposed regulation be amended to include a definition and guidelines for "educationally-related work experience".

Response: No change is made in the regulation. The regulation is sufficient and a definition is not necessary.

Comment: One comment was received urging that § 182.16(a)(1) should include some condition that the placement of students be supervised by the applicant in order to assure work-school ties.

Response: No change has been made in the regulation. The wording in § 182.16(a) (2) and (3) sufficiently ad-

dresses this concern. Therefore, the recommended modification is not necessary.

Comment: One commenter suggested that the regulation be revised to provide assurances that the needs of disadvantaged and handicapped students, particularly the needs of women and racial and ethnic minorities are addressed by the applicants for funding. The commenter also suggested that in order to protect the needs of women, minorities, and handicapped, a statement should be included to point out that other applicable regulations assuring equal access to these groups are binding on recipients of program funds.

Response: No change has been made in the regulation. However, projects under this regulation, as is true of projects under all other program regulations, are subject to Title VI of the Civil Rights Act, the section 504 regulation assuring access and participation by the handicapped, and the Title IX regulation prohibiting discrimination on the basis of sex.

Comment: Several comments were received which suggested that § 182.17(b), permitting cooperative education students to work at less than comparable pay rates, be modified by inserting the word "non-profit" before "social work" in the last sentence of the subsection. It was further suggested that the sentence relating to work without pay should also be lengthened to add the phrase "provided that the position is not one for which other persons would be paid a salary by that organization," and that the words "at a lesser rate" be omitted.

Response: The regulation has been modified to incorporate the first and second suggestions in § 182.17. The third comment was not adopted because the option to receive some pay, as well as experience, could be a valuable option to the student.

Comment: One commenter suggested that the wording in § 182.18(a)(4) which states that Federal funds may not be used to pay teaching salaries is confusing. The commenter questioned whether faculty evaluation of a student's learning under the Cooperative Education Program and the faculty's coordination and supervision of students at work could be regarded as teaching.

Response: No change was made in the regulation. Under § 182.19 an allowable cost is explained as including release time for faculty to help administer the program through activities such as student counseling and supervision, job location and placement, and promotional activities. For the purposes of this program, the conduct of these activities shall not be classified as "teaching."

Comment: There were a number of commenters who objected to the weighting of criteria in § 182.16. It was the opinion of some of the commenters that, while they support the notion of clearly defined criteria, the proposed point system may ultimately penalize the newer, smaller, and developing Cooperative Education Programs. In addition, other commenters stated that the use of weighted criteria amounts to over-regulation by the Federal government; discourages institutions from being innovative by inhibiting the diversity of programs; and makes proposal evaluation a mechanical procedure.

Response: No change has been made with respect to weighting the criteria. Weighted criteria provide a more objective review and evaluation of proposals. Moreover, weighted criteria provide guidance to applicants in the preparation of applications and the conduct of projects.

Comment: One commenter suggested that § 182.17 of the proposed rules should be amended to remove language which seemed to contradict other provisions of the regulation and to clarify the rate at which cooperative education students should be compensated. It was pointed out that § 182.17(a) implied that student work experience has to be directly related to his or her academic major, contradicting § 182.16(a)(2). In addition, the commenter suggested that § 182.17(b) be changed to require that a student's rate of compensation be comparable to that of trainee employees who do similar work.

Response: The regulation has been changed to incorporate these suggestions in both § 182.17(a) and (b).

Comment: Several commenters pointed out that the funding criteria in § 182.32 address only the training needs of certain groups of individuals at institutions of higher education. It was suggested that training is necessary for cooperative education directors and coordinators, for high school and college guidance counselors, institutional administrators, personnel officials in business enterprises, and community representatives.

Response: The regulation has been amended to incorporate these suggestions with the exception of high school counselors in § 182.32(a). The criteria used in evaluating proposals will include the extent to which the applicant addresses the special responsibilities of institutional representatives in modifying curricula and teaching practices as well as the special needs of student guidance counselors, employer personnel staffs and community representatives. The extent to which the proposed project will train individuals to operate programs in higher education and improve articulation between two- and four-year colleges, employer cooperative education programs, and college community relations, will also be evaluated.

Comment: One commenter suggested that the emphasis on regional training in § 182.32(e) should be lessened. The commenter stated that there are few if any real regional differences in training needs and that the subsection as proposed ignores the special capabilities unique to certain institutions.

Response: The regulation has been amended by adding the phrase "or for training of a specialized nature addressed to a nationwide clientele" to § 182.32(e) in response to the comment. Since only a limited number of centers may be funded, the intent of the proposed criterion had been to encourage training centers to focus their efforts on regional needs not being met by other programs or being offered in places difficult to reach. However, some training centers may devise specialized programs focusing on national concerns.

Comment: One commenter expressed concerns with the funding criteria for research and demonstration projects outlined in § 182.33. One of the concerns was that four of the proposed criteria representing 75 of the 100 points, focused upon content or substantive intent of the proposed research. A second concern of the commenter was that is was unlikely that a single research proposal could be responsive simultaneously to all of the substantive criteria. The commenter suggested a new list of criteria for consideration which are designed to assign greater importance to the methodologies, operating plans, dissemination plan, time frame, and project staff proposed.

Response: Section 182.33 of the proposed regulations has been rewritten entirely to address the concerns which were raised by the commenter.

Comment: Several comments were received suggesting that the funding criteria under § 182.16 permit no discretion on the part of the Commissioner in making awards. It was suggested that the Commissioner be allowed up to 20 points for factors known to the Office of Education, such as an institution's ability to carry out its commitment to establish or maintain its proposed or existing program, its financial viability, accreditation status, and stability of personnel.

Response: No change was made in the regulation. This suggestion is addressed in part by the points awarded for the criteria in 45 CFR 100a.26(b).

Comment: Several comments were also received urging the addition of a funding criterion relating to an applicant's plans for project evaluation. It was suggested that an applicant should be expected to include plans for an external review and evaluation of the program at appropriate times.

Response: The regulation has been modified to make program evaluation an integral part of a program plan by

adding § 182.16(h) to the list of funding criteria.

Comment: A number of commenters urged minor modifications in the wording of several of the funding criteria. It was suggested that: the words "and quality" be inserted in § 182.16(a)(1) after "size and scope"; the words "or will develop" be added after "the applicant has" in § 182.16(c)(6); and "and carrying out" be placed after "specialists in planning" in § 182.16(c). It was further suggested that some adjustments be made in the points assigned to the criteria.

Response: The proposed regulation has been modified to reflect those word and point assignment changes in both the content of the regulation and the funding criteria.

Comment: One commenter suggested that the wording in § 182.18(c) could be interpreted to mean that the expenditure of grant funds for such things as transparencies for use with an overhead projector was forbidden without prior approval by the Commissioner.

Response: The regulation has been modified to allow the development of transparencies or other illustrative materials for small scale classroom use. Prior approval is required, however, of any expenditure for large scale production of audio visual materials for which program funds are to be spent.

NOTE: The 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 Number 13.510; Cooperative Education Institutional Grants)

Dated: March 14, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Approved: April 26, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

Title 45 of the Code of Federal Regulations is amended as follows:

1. Part 100a is amended by revising § 100a.10 to read as follows:

§ 100a.10 Scope.

(a) *Programs.* Unless inconsistent with a statute or regulation, the regulations in this part apply to the following programs:

* * * * *

(25) Cooperative Education programs under Title VIII of the Higher Education Act of 1965 (20 U.S.C. 1133-1133b).

2. Part 182 is revised to read as follows:

Subpart A—General

Sec.
182.1 Scope of part.
182.2 Purpose of the program.
182.3 Definitions.
182.4 General provisions regulations.
182.5 Applications—general.
182.6 Performance reports.

Subpart B—Cooperative Education Programs

182.11 Eligible parties.
182.12 Eligible programs.
182.13 Limit on number of grants.
182.14 Limit on amounts of grants.
182.15 Content of application.
182.16 Funding criteria.
182.17 Student work experience.
182.18 Ineligible costs.
182.19 Allowable costs of administration.

Subpart C—Training, Research, and Demonstration Projects

182.30 Eligible parties.
182.31 Eligible projects.
182.32 Funding criteria for training projects.
182.33 Funding criteria for research and demonstration projects.
182.34 Duration of awards.

AUTHORITY: Title VIII of the Higher Education Act of 1965, as amended, 90 Stat. 2144-2146 (20 U.S.C. 1133-1133b), unless otherwise noted.

Subpart A—General

§ 182.1 Scope of part.

The regulations in this part apply to the Cooperative Education Program (Title VIII of the Higher Education Act of 1965, as amended).

(20 U.S.C. 1133, 1133a, 1133b.)

§ 182.2 Purpose of the program.

(a) The purpose of this program is to enrich the quality and scope of postsecondary education through educationally related work experiences which afford students an opportunity to earn funds needed for their education, while enabling them to become better prepared to achieve their educational or career objectives.

(b) To achieve this purpose, the Commissioner is authorized to make awards to institutions of higher education and combinations thereof, for planning, establishing, expanding, or carrying out programs of cooperative education, and for support of training, research, or demonstration projects for cooperative education.

(20 U.S.C. 1133, 1133a, 1133b.)

§ 182.3 Definitions.

As used in this part:

(a) "Act" means Title VIII of the Higher Education Act of 1965, as amended.

(b) "Cooperative education" means a program of study at an institution of higher education under which students undertake academic study for specified periods of time alternating with work experience in government, industry, business, or social welfare or educational agencies. In cooperative education, work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time.

(c) "Student" means a person who is carrying at least a half-time academic load of course work at an institution of higher education, other than by correspondence. Whether a person comes within this definition must be determined by the institution of higher education on the basis of work loads normally required of students who are full-time degree candidates.

(d) "Institution of higher education" means an institution of higher education as defined in section 1201(a) of the Higher Education Act of 1965, as amended.

(e) "Combination of institutions of higher education" means a group of institutions of higher education which have entered into a cooperative arrangement for the purpose of carrying out a common objective, or a public or private non-profit agency, organization, or institution designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on their behalf.

(20 U.S.C 1133a-1133b, 1141.)

§ 182.4 General provisions regulations.

Assistance provided under this part is subject to the regulations in 45 CFR Parts 100 and 100a (relating to fiscal, administrative, property management, reporting requirements, and other matters).

(20 U.S.C. 1133b, 1133c.)

§ 182.5 Applications—general.

(a) Each applicant under this part shall submit an application which meets the requirements of 45 CFR Part 100a (subpart B).

(b) In addition, each applicant for a continuation award, must submit a satisfactory performance report, as set forth in § 182.6, for each fiscal year for which an award under this part has been previously received.

(20 U.S.C. 1133a, 1133b.)

§ 182.6 Performance reports.

Each recipient under this part shall submit the following performance reports to comply with 45 CFR Part 100a (Subpart Q):

(a) An interim progress report at the end of six months from the beginning of the award period which must include information on:

(1) The extent to which the objectives of the project have been accomplished;

(2) What factors, if any, have prevented the accomplishment of project

objectives, and what, if any, corrective measures are being taken; and

(3) Any highly significant aspects of the project.

(b) A final report which must be submitted with the final financial status report.

(20 U.S.C. 1133a, 1133b; H. (Conf.) Rept. 94-1701 at 199 (1976).)

Subpart B—Cooperative Education Programs

§ 182.11 Eligible parties.

An institution of higher education or a combination of institutions of higher education may apply for an award under this subpart.

(20 U.S.C. 1133(a), 1133a(a).)

§ 182.12 Eligible programs.

The Commissioner may make awards under this subpart to plan, establish, expand, or carry out a progam of cooperative education.

(20 U.S.C. 1133(a), 1133a(a).)

§ 182.13 Limit on number of grants.

No institution of higher education, individually or as a participant in a combination of institutions of higher education, may receive grants under this subpart for more than five fiscal years.

(20 U.S.C. 1133a(c).)

§ 182.14 Limit on amounts of grants.

(a) An institution of higher education may not receive an award of more than $175,000 for any fiscal year. A combination of institutions of higher education may not receive in any fiscal year an award of more than $125,000 multiplied by the number of institutions which apply as participants in the combination.

(20 U.S.C. 1133a(a).)

(b) Each award under this subpart may not include more than the following amounts for administering the program of cooperative education:

(1) 100 percent of the total cost of administering the program in the first fiscal year for which an award is made.

(2) 90 percent of the total cost of administering the program in the second fiscal year for which an award is made.

(3) 80 percent of the total cost of administering the program in the third fiscal year for which an award is made.

(4) 60 percent of the total cost of administering the program in the fourth fiscal year for which an award is made.

(5) 30 percent of the total cost of administering the program in the fifth fiscal year for which an award is made.

(20 U.S.C. 1133a(c).)

§ 182.15 Content of application.

Each application under this subpart must meet the requirements of section 802(b) of the Act.

(20 U.S.C. 1133a(b).)

§ 182.16 Funding criteria.

The Commissioner evaluates applications under this subpart in accordance with the criteria in 45 CFR 100a.26(b) (5 points) and with the following additional criteria (maximum of 115 points):

(a) The extent to which the applicant shows in its application that:

(1) The applicant will use its own resources to increase the size, scope and quality of its cooperative education program during the period of Federal support (15 points);

(2) The applicant has arranged for employment opportunities which to the extent practicable are related to its students' educational, professional, or occupational objectives (10 points);

(3) The applicant supervises its students during the work experience (5 points);

(4) The applicant makes continuing efforts to promote close interaction between its students' work experiences and academic study (5 points);

(5) The President and first-line administrators of the applicant support the program (10 points); and

(6) The applicant has or will develop a record-keeping system that keeps track of each student's status, attendance periods, and work periods (5 points);

(b) Whether the length of work experience is sufficient to make a significant contribution toward meeting the students' educational, professional, and occupational objectives (10 points);

(c) The extent to which the applicant has involved administrators, faculty, students, employers, and cooperative education specialists in both planning and, if the program is already in existence, carrying out the program (5 points);

(d) Whether the applicant has procedures for making curriculum and calendar changes as necessary to meet the partricular needs of students (10 points);

(e) Whether the applicant has a written cooperative education philosophy appropriate to the needs and characteristics of the applicant (5 points);

(f) The extent to which programs in the academic discipline with respect to which the application is made have had a favorable reception by employers (10 points);

(g) The extent to which the applicant demonstrates its intention and ability to continue its cooperative education program after Federal financial assistance ends (10 points); and

(h) Whether the applicant includes plans for an outside review and evaluation by independent consultant-evaluators at appropriate times in the development of the program (15 points).

(20 U.S.C. 1133(a), 1133a(b), 1133a(d).)

§ 182.17 Student work experience.

The recipient of an award under this subpart must insure that:

(a) Each student's work experience is related, where practicable, to the student's program of study; and

(b) The student receives compensation from the employer at a rate comparable to trainee employees who do similar work. However, a student may choose to work without pay or at less than the prevailing rate for full-time employees if the student works for a non-profit, social welfare, or educational organization, *Provided*, That the position is not one for which other persons are or have been paid a higher salary by that organization.

(20 U.S.C. 1133 (a), (c).)

§ 182.18 Ineligible costs.

(a) A recipient may not use funds provided under this subpart to:

(1) Compensate any student for his or her work experience or to provide financial assistance to any student to meet the costs of his or her education;

(2) Purchase or lease equipment, unless specifically authorized by the Commissioner in writing;

(3) Purchase or lease land, or purchase, lease, construct, or improve any building; or

(4) Pay teaching salaries or purchase capital equipment.

(b) A recipient may not use funds provided under this subpart for any program which involves sectarian training or which is intended primarily to prepare students to be ministers or teachers of theological subjects.

(c) A recipient may not use funds provided under this subpart for the development and production of audiovisual materials unless specifically authorized by the Commissioner in writing. This is not intended to exclude the costs of reproducing illustrative materials for small-scale classroom use.

(20 U.S.C. 1133(c), 1133a.)

§ 182.19 Allowable costs of administration.

The costs of administering the project may include the following:

(a) Salaries of the director, any coordinators, and secretaries;

(b) Release time for faculty to help administer the program, including student counseling and supervision, job location and placement, and promotional activities;

(c) Salaries of administrative personnel such as job placement staff, or admission counselors who publicize the programs and recruit students;

(d) Travel costs of administrative staff, and necessary subsistence costs for them; and

(e) Expendable office supplies and promotional literature.

(20 U.S.C. 1133a(c)); H. (Conf.) Report No. 94-1701 at 199 (1976).)

Subpart C—Training, Research, and Demonstration Projects

§ 182.30 Eligible parties.

The Commissioner may make awards under this subpart as follows:

(a) To institutions of higher education or combinations of institutions of higher education; and

(b) To other public or private nonprofit agencies or organizations, if the awards will make an especially significant contribution to attaining the objectives of this subpart.

(20 U.S.C. 1133b.)

§ 182.31 Eligible projects.

The Commissioner may make awards under this subpart for:

(a) Projects to train persons in planning, establishing, administering, or coordinating programs of cooperative education;

(b) Projects to demonstrate or explore the feasibility or value of innovative methods of cooperative education; or

(c) Projects for research into methods of improving, developing, or promoting the use of programs of cooperative education in institutions of higher education.

(20 U.S.C. 1133b.)

§ 182.32 Funding criteria for training projects.

The Commissioner evaluates applications for training projects under this subpart in accordance with the criteria in 45 CFR 100a.26(b) (5 points) and with the following additional criteria (maximum score of 95 points):

(a) The extent to which the applicant proposes to address the responsibilities of (1) cooperative education directors at institutions of higher education to modify existing undergraduate teaching practices, academic calendars and curricula in order to administer cooperative education programs more effectively; (2) undergraduate guidance counselors to understand the relationship of the work experience to the student's academic program; (3) personnel officers of private or public employers to assist in placing and supervising cooperative education students in work situations; or (4) community representatives (15 points);

(b) The extent to which the applicant has based its project on its experience in cooperative education or on successful cooperative education programs, or on innovations which have been used successfully in a cooperative education program (20 points);

(c) The extent to which the applicant has clearly defined procedures that give evidence of comprehensive planning (20 points);

(d) The extent to which the proposed project has promise of developing trainees who can apply their expertise in more than one type of cooperative education program; or in more effective articulation between two and four-year institutions; or in improved employer participation in cooperative education programs; or in improved college-community relations affecting cooperative education programs (20 points); and

(e) The extent to which the applicant provides evidence of a need for the training in its geographical area or for training of a specialized nature addressed to a nationwide clientele (20 points).

(20 U.S.C. 1133b.)

§ 182.33 Funding criteria for research and demonstration projects.

The Commissioner evaluates applications for research or demonstration projects under this subpart in accordance with the criteria in 45 CFR 100a.26(b) (5 points) and with the following additional criteria (maximum of 100 points):

(a) The extent to which the applicant demonstrates that the proposed research is responsive to a real problem or need in cooperative education and, further, that the findings would be of potential value to the cooperative education community, including directors of cooperative education and other institutional administrators (25 points);

(b) The extent to which the proposal includes:

(1) clear and well-delineated research objectives;

(2) well-defined experimental or data collection methodologies;

(3) a well-defined data analysis plan; and

(4) a well-defined plan for dissemination the research findings (50 points);

(c) The extent to which the applicant presents clear and realistic work schedules for the conduct and completion of the proposed research (10 points); and

(d) The extent to which the applicant demonstrates the availability of competent staff and other resources for conducting the proposed research (15 points).

(20 U.S.C. 1133b.)

§ 182.34 Duration of awards.

(a) Awards made under this subpart will be for a period of up to one year.

(b) Applications may be filed proposing a project with a duration in excess of one year. Such application must be accompanied by an explanation of the need for multi-year support, an overview of the objectives and activities proposed, and estimated budgets to obtain these objectives in any proposed subsequent year. If the Commissioner finds that an application demonstrates that multi-year support is needed to carry out the proposed project, the Commissioner may, in the initial notification of award for the project, indicate an intention to assist the project of an appropriate multi-year basis through continuation awards.

(c) (1) Subject to availability of funds, where the Commissioner has made an initial award to support a project proposal requiring more than one year for completion, continuation awards may be made.

(2) An application for a continuation award will be reviewed to determine:

(i) If the applicant has complied with the terms and conditions of the award, the Act, and the regulations;

(ii) The effectiveness of the project to date based on the criteria found in § 182.32 or § 182.33.

(20 U.S.C. 1133b.)

[FR Doc. 78-11964 Filed 5-1-78; 8:45 am]

[6712-01]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

Editorial Amendments Concerning Transmitter Power

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: The Commission is amending § 81.134 of its rules to permit certain radio stations the use of increased transmitter power to overcome power losses between the transmitter and the antenna. Over the years this has been the practice in licensing stations and the rules are being amended to reflect this.

EFFECTIVE DATE: May 5, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Kemp J. Beaty, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION:

Adopted: April 20, 1978.

Released: April 21. 1978.

Order. In the matter of editorial amendment of 81.134(d) of the Commission's rules.

1. Section 81.134(d) limits VHF coast stations to 50 watts carrier power; however, over the years the Commission has allowed licensees of Class III coast stations to use transmitters with an output power of greater than 50 watts to overcome transmission system losses as long as the power into the input terminals of the antenna did not exceed 50 watts.

2. Accordingly, §81.134(d) of the Commission's rules is being amended to reflect this policy. Authority for this amendment is contained in sections 4(i) and 303 (c) and (r) of the Communications Act of 1934, as amended and §0.231(d) of the Commission's rules. Since the amendment is editorial in nature and reflects a long standing policy the public notice, procedure and effective date provisions of 5 U.S.C. 553 do not apply.

3. In view of the above, *It is ordered,* That the rule amendment set forth below is adopted effective, May 5, 1978.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082 (47 U.S.C. 154, 303).)

FEDERAL COMMUNICATIONS COMMISSION,
R. D. LICHTWARDT,
Executive Director.

Part 81 of chapter I of title 47 of the Code of Federal Regulations is amended to read as follows:

In part 81—Stations on Land in the Maritime Services, in §81.134, paragraph (d) table is amended and footnote 2 is added to read as follows:

§81.134 Transmitter power.

* * * * *

(d) * * *

Frequency band (megahertz)	Carrier power (watts)[1]	
	Coast stations[2]	Marine utility stations
156.2625 to 157.4375...	50	10
161.575 to 162.0125.....	50	.....

[1]Higher power may be authorized where a satisfactory showing of need has been made.

[2]Where losses are incurred in the transmission system, between transmitter output terminals and input terminals to the antenna, higher power may be used to compensate for the losses in that transmission system. However, power into the input terminals of the antenna shall not exceed 50 W.

* * * * *

[FR Doc. 78-11898 Filed 5-1-78; 8:45 am]

[4310-55]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 33—SPORT FISHING

Opening of Lake Ilo National Wildlife Refuge, North Dakota, to Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to sport fishing of Lake Ilo National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: May 6, 1978, through September 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Rolland J. Krieger, Acting Project Leader, Des Lacs NWR Complex, Kenmare, N.D. 58746, 701-385-4046.

SUPPLEMENTARY INFORMATION:

§33.5 Special regulations; sport fishing; for individual wildlife refuge areas

Sport fishing is permitted on the Lake Ilo National Wildlife Refuge, North Dakota, only on the areas designated by signs as being open to fishing. These areas comprising 1050 acres are delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colo. 80225. Sport fishing shall be in accordance with all applicable State regulations subject to the following conditions:

1. Fishing shall be limited to daylight hours only.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: April 24, 1978.

ROLLAND J. KRIEGER,
Acting Project Leader, Lake Ilo National Wildlife Refuge, Dunn Center, North Dakota, 58626.

[FR Doc. 78-11809 Filed 5-1-78; 8:45 am]

[4110-35]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER D—GRANTS

PART 50—POLICIES OF GENERAL APPLICABILITY

Abortions and Related Medical Services in Federally Assisted Programs of the Public Health Service

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 449—SERVICES AND PAYMENT IN MEDICAL ASSISTANCE PROGRAMS

Federal Financial Participation in State Claims for Abortions

AGENCY: Public Health Service (PHS), and Health Care Financing Administration (HCFA), HEW.

ACTION: Final rules with comment period; extension of date of Department response.

SUMMARY: This Notice extends the date by which the Department will respond to comments on its regulations governing the Federal funding of abortions. Those regulations were published in final form on February 2, 1978 (43 FR 4570), and republished on February 3, 1978 (43 FR 4832), and the public was given an opportunity to comment. The preamble indicated that the Department would respond to the comments and amend the regulations, if warranted, by publication in the FEDERAL REGISTER no later than May 3, 1978. The Department received a substantial number of comments on this issue, a number of which were comprehensive.

DATE: In order to carefully review and consider all the comments on this extremely important issue, the Department is extending the date by which it will respond in the FEDERAL REGISTER to June 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Cook, Room 4423, Switzer Building, 330 C Street SW., Washington, D.C. 20201, 202-245-0962 (GC).

AUTHORITY: Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302); sec. 101 of Pub. L. 95-205, 91 Stat. 1461, December 9, 1977.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program.)

Dated: April 28, 1978.

HALE CHAMPION,
Acting Secretary.

[FR Doc. 78-12113 Filed 5-1-78; 11:03 am]

[4110-12]

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS); DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 228—SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES: TITLE XX OF THE SOCIAL SECURITY ACT

Federal Financial Participation in State Claims for Abortions

AGENCY: Administration for Public Services (APS), Office for Human Development Services (OHDS), Department of Health, Education, and Welfare.

ACTION: Final rules, with comment period; extension of date of Department response.

SUMMARY: This Notice extends the date by which the Department will respond to comments on its regulations governing the Federal funding of abortions. Those regulations were published in final form on February 2, 1978, (43 FR 4570) and republished on February 3, 1978, (43 FR 4832), and the public was given an opportunity to comment. The preamble indicated that the Department would respond to the comments and amend the regulations, if warranted, by publication in the FEDERAL REGISTER no later than May 3, 1978. The Department received a substantial number of comments on this issue, a number of which were comprehensive.

DATE: In order to carefully review and consider all the comments on this extremely important issue, the Department is extending the date by which it will respond in the FEDERAL REGISTER to June 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Cook, Room 4423, Switzer Building, 330 C Street SW., Washington, D.C. 20201, 202-245-0962 (GC).

AUTHORITY: Sec. 101, Pub. L. 95-205, 91 Stat. 1461, December 9, 1977.

(Catalog of Federal Domestic Assistance Program No. 13.771, Social Services for Low Income and Public Assistance Recipients.)

Dated: April 28, 1978.

HALE CHAMPION,
Acting Secretary.

[FR Doc. 78-12112 Filed 5-1-78; 11:03 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.

[3410-37]

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

[9 CFR Part 318, 320]

COOKING REQUIREMENTS FOR COOKED BEEF ROAST

Notice of Proposed Rulemaking

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to provide alternatives to the minimum cooking requirements for cooked beef roast. The existing rule, published September 2, 1977 (42 FR 44217), requires that all cooked beef roast be prepared by a cooking procedure that producers a minimum internal temperature of 145° F. (63° C.). Since it was published, the rule has apparently accomplished its intended purpose, which was the elimination of Salmonella food poisoning caused by consumption of commerically precooked beef roast. A number of alternative processing procedures have been recently developed which appear to be equally effective. If adopted, this proposed rule would permit the use of these alternative procedures.

DATES: Comments must be received on or before June 1, 1978.

ADDRESSES: Comments to: Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Agriculture Building, Washington, D.C. 20250. See also "Comments" under Supplementary Information.

FOR FURTHER INFORMATION CONTACT:

Dr. Ronald E. Engel, Director, Scientific Services, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-2326.

SUPPLEMENTARY INFORMATION:

COMMENTS

Interested persons are invited to submit comments concerning this proposal. Comments must be sent in duplicate to the Hearing Clerk and should bear a reference to the date and page number of this issue of the FEDERAL REGISTER. All comments submitted pursuant to this notice will be made available for public inspection in the Office of the Hearing Clerk during regular hours of business.

BACKGROUND

Cooking requirements for cooked beef roast were published by the Administrator on September 2, 1977 (42 FR 44217), as an emergency measure to prevent outbreaks of human salmonellosis caused by the consumption of commercially prepared cooked beef roast. The regulation requires that cooked beef roast be prepared by a cooking procedure that produces a minimum temperature of 145° F. (63° C.) in all parts of each roast. This procedure was deemed necessary to destroy all Salmonella bacteria present in the roast.

Salmonella are common bacteria which are often associated with warm blooded animals including man. Many animals which are not clinically ill are nevertheless carriers of these organisms. The physical nature of raw beef roasts in such that the penetration of micro-organisms, including Salmonella, into the deepest portions of the roasts may occur. Gaps in intermuscular fascia, knife cuts and deep folds are some of the physical features that contribute to such penetration. Deep inoculation of Salmonella bacteria and other micro-organisms may also occur during boning, packing, defrosting and precook handling of the raw roasts or by the flow of natural juices during the cooking process. A significant public health hazard is created when the cooking procedure for the product fails to kill the Salmonella.

Although the 145° F. cooking temperature required by the rule published on September 2, 1977, eliminates the public health hazard, it also results in a product which is overcooked. Many consumers prefer "rare" roasts and the popular item of trade is a rare roast. Because they want to preserve this rare appearance, seven trade associations have funded studies conducted by the American Bacteriological and Chemical Research Corp., which operates an independent research laboratory, to determine safe alternative processing procedures. The experimental design of these studies was reviewed and approved by meat and poultry inspection personnel before they were undertaken. The firm issued two reports— "Fate of Salmonella Inoculated into Beef for Cooking" (December 19, 1977) and "Addendum, Fate of Salmonella Inoculated into Beef for Cooking" (January 12, 1978). These documents may be obtained free of charge by writing to Dr. Ronald E. Engel, Director, Scientific Services, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250.

These reports demonstrate that alternative processing procedures can provide a number of acceptable time and temperature combinations for cooking beef roast in such a manner that Salmonella bacteria are eliminated. Each alternative processing procedure provided in these reports is equal in Salmonella destruction to the procedure now required. The proposed regulations would allow a processor to choose one of these alternative processing procedures in producing cooked roast beef. The proposal also includes the requirement that records of these alternative processing procedures be kept, and that processors have sufficient monitoring equipment to assure the accuracy of such processing.

Thermal destruction of bacteria is a function of both time and temperature. At higher temperatures bacterial death occurs within a short time, whereas at lower temperatures longer exposures to the lower temperatures are required to destroy equivalent bacterial numbers. The reports provide data on alternative cooking procedures which yield equivalent lethalities for salmonellae to that achieved when roasts are cooked to an internal temperature of 145° F. Consequently, paragraph (b) of the proposed regulations would include a Table of Alernative Processing Procedures for Cooked Beef Roast. Processors could comply with the procedures specified in this table as an alternative to the minumum current temperature requirement, which is retained in paragraph (a) of the proposed regulations.

Though the rate of thermal destruction of Salmonella is a function of time and temperature, as explained above, the change in color from red to gray of muscle myoglobin is affected by a different time temperature relationship. A temperature of 145° F. (63° C.) causes a rapid change of color of the myoglobin, whereas a temperature of 135° F. for prolonged periods produces little color change. Thus it is possible to destroy Salmonella by exposing roasts to low heat for extended time periods

without causing the meat to turn gray or appear overcooked.

In addition to the documentation of these time and temperature relationships, these studies showed that moisture is also important in the death of Salmonella. Salmonella are much more resistant to heat in a dry environment. This becomes very important in beef that is being dry roasted in ovens operated at low temperatures. Because of this factor, the proposed regulations would also require, during dry cooking, the maintenance of either oven temperatures at or above 250° F. (121° C.) or high relative humidities at temperatures below 250° F. The proposed regulation would also require that dry cooked roasts prepared without high relative humidity must weigh 10 pounds or more before processing. This is required because the data in the reports indicate that all Salmonella may not be destroyed in dry cooked roasts of less than 10 pounds when cooked for the time period specified in the table included in paragraph (b). This is so because the smaller roasts reach the proposed mimimum internal temperatures more rapidly than the larger ones. Consequently, bacteria at or near the surface of the smaller roast are not exposed to heat for a sufficient period of time to assure the destruction of these bacteria in a dry environment.

The proposed regulation would also require that moist cooked roasts be vacuum-packaged in impermeable film prior to water immersion or oven cooking. This is designed to insure that roasts processed in this fashion are cooked in their own juices, thereby facilitating convection heating and proper distribution of heat throughout the roast.

Accordingly, it is proposed that the Federal Meat inspection regulations be amended as follows:

1. Section 318.17 (9 CFR 318.17) would be amended to read as follows.

§ 318.17 Cooking requirements for cooked beef roast.

(a) Cooked beef roast shall be prepared by a cooking procedure that produces a minimum temperature of 145° F. (63° C.) in all parts of each roast or prepared as provided in paragraphs (b) and (c) of this section.

(b) Cooked beef roast may also be prepared by any one of the cooking procedures described in the following table provided that the procedure produces and maintains the minimum temperature required, in all parts of each roast, for at least the stated period:

TABLE FOR ALTERNATIVE PROCESSING PROCEDURES FOR COOKED BEEF ROAST

Minimum internal temperature		Minimum processing time in minutes
°F.	°C	
128	53.3	195
129	53.9	153
130	54.4	121
131	55.0	97
132	55.6	77
133	56.1	62
134	56.7	47
135	57.2	37
136	57.8	32
137	58.4	24
138	58.9	19
139	59.5	15
140	60.0	12
141	60.6	10
142	61.1	8
143	61.7	6
144	62.2	5

(c) Cooked beef roast prepared under the procedures specified in paragraph (b) of this section must also meet one of the following criteria for moist or dry cooking:

(1) Each roast which is moist cooked shall be vacuum-packaged in impermeable films prior to immersion cooking in a water bath or cooking in an oven.

(2)(i) Roasts processed entirely by dry heat must weigh 10 pounds or more before processing and must be dry cooked in an oven maintained at 250° F. (121° C.) or higher throughout the process; or

(ii) An oven temperature less than 250° F. (121° C.) may be used for dry cooking of roasts of any size provided that the relative humidity of the oven in which they are prepared is greater than 90 percent for at least 25 percent of the total cooking time for the process, but in no case for a lesser period than 1 hour. This relative humidity may be achieved by use of steam injection or by sealed ovens capable of producing and maintaining the required 90 percent relative humidity.

(d) A processor who selects any of the alternative procedures specified in paragraphs (b) and (c) of this section shall have sufficient monitoring equipment to assure that the time (within 1 minute), temperature (within 1° F.) and relative humidity (within 5 percent) limits required by his process are being met. The processor shall make and keep a record, using a log, recording device, or other method, of these data and shall make such record available to Food Safety and Quality Service inspection officials upon request, as provided in Part 320 of the regulations in this subchapter.

2. Section 320.1(b) would be amended by adding the following subparagraph (4):

§ 320.1 Records required to be kept.

* * * * *

(b) * * *

(4) Records of alternative processing procedures for cooked beef roast as required in § 318.17(d).

The Food Safety and Quality Service has determined that his document contains a major proposal requiring preparation of a Regulatory Analysis under Executive Order 12044 and certifies that a Regulatory Analysis has been prepared.

Done at Washington, D.C., on April 25, 1978.

ROBERT ANGELOTTI,
Administrator,
Food Safety and Quality Service.

[FR Doc. 78-11777 Filed 5-1-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[Docket No. RN 50-7]

[10 CFR Parts 11, 50 and 70]

AUTHORITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

Notice of Hearing and Related Matters

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Hearing and Related Matters.

SUMMARY: On April 5, 1978 (43 FR 14672, April 7, 1978) the Commission constituted a Hearing Board (hereinafter "Board") in the above-captioned matter and authorized the Board to adopt procedures for hearing, set the date and location of the hearing, and provide for a procedural planning session or prehearing conference, as the Board deems necessary. This notice discusses each of these matters. It also contains a statement from the presiding officer.

The hearing is scheduled for the week of July 10 to 15, 1978, at the Commission's offices in Washington, D.C.; a procedural planning session is set for May 10, 1978. After familiarizing itself with the proposed rule and the comments submitted to date in this proceeding, the Board is of the belief that the substantive and procedural issues involved do not require the convening of a formal prehearing conference.

The expense such a conference would entail for the participants seems unwarranted and the delay it would cause, unnecessary. Therefore the Board is serving a notice which incorporates in one document the matters that must be set out prior to hearing. To permit suggestions, questions and criticisms to the matters covered in this notice, a procedural planning session is schedued at which participants can make their views known in one of three ways: by written submis-

sion, by personal appearance or by telephone communication.

DATES: A procedural planning session will be held on May 10, 1978; a public hearing will be held on July 10, 1978.

ADDRESS: The procedural planning session will be held in Room 1167, 1717 H Street NW., Washington, D.C.; the location of the Public Hearing will be announced later.

FOR FURTHER INFORMATION, CONTACT:

C. W. Reamer, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, phone 202-634-1465.

SUPPLEMENTARY INFORMATION:

HEARING PROCEDURES

The hearing will be conducted as a legislative-type, informal rulemaking hearing, with the opportunity provided for written testimony to be submitted and for questions about the testimony to be proposed to the Board in advance of the hearing. The framework of and general procedures for the hearing were set forth in the Commission's Notice of Hearing on December 28, 1977 (42 FR 64703).

The Board's goal is fully to ventilate all issues in order to provide the Commission with a comprehensive record on which it can decide whether and in what form to issue the proposed rule. Participants should prepare their statements for the hearing with particular attention to the relevant issues identified in the Commission's December notice (42 FR 64704). No questions will be permitted from participants or witnesses during the informal hearing, but an opportunity is provided to request Board permission to conduct cross-examination at the close of the informal hearing (42 FR 64704). The informal hearing process will be conducted by the Board according to the following rules of practice.

1. *Quorum.* A majority of the Board members shall constitute a quorum so long as the presiding officer is present.

2. *Responsibilities and authority of the Board.* The charter of the Board is to conduct a fair and impartial hearing and develop a record that will contribute to informed decisionmaking by the Commission. The Board will take appropriate action to avoid unnecessary delay and maintain order, with the objective of completing the proceedings by the latter part of 1978. The Board has all authority necessary to accomplish these ends, including specifically the authority to:

(a) Rule on offers of proof and receive evidence;

(b) Dispose of procedural requests or similar matters;

(c) Ask questions of witnesses as provided in paragraph 3;

(d) Order consolidation of participants, including panel presentations by witnesses;

(e) Require participants to provide a statement of their positions at an early stage;

(f) Establish an order of presentation by the participants which, if appropriate, may provide for an order of presentation on the basis of subject matter;

(g) Hold conferences before or during the hearing for any proper purpose;

(h) Establish reasonable time limits for the conduct of the proceeding;

(i) Entertain suggestions from participants as to questions which the Board should ask of witnesses for one or more of the other participants as provided in paragraph 3;

(j) Limit the number of witnesses for participants whose testimony may be cumulative;

(k) Strike cumulative or irrelevant evidence of participants;

(l) Certify questions or refer rulings to the Commission for its determination, on the board's initiative, or in its discretion on request by a participant;

(m) Rule on discovery matters as provided in paragraph 4; and

(n) Regulate the course of the hearing and the conduct of the participants.

3. *Evidence and representation.* All participants will be permitted to present evidence at the hearing on matters relevant to the following determination: whether certain individuals in the licensed private sector shall be approved by the Commission for access to or control over special nuclear material under the conditions and implementing regulations as proposed by the Commission (42 FR 14880). Except as provided below, participants' witnesses will be subject to questioning by the Board, either orally at the hearing or in writing before or after the hearing, or both. Questions may be addressed either to individual witnesses or to panels of witnesses. In addition, participants may submit questions to the Board (according to the schedule set out below) which they would like to have answered by the witnesses for other participants. The Board may, in its discretion, refer the questions to the witnesses for response and/or conduct its own examination of the witnesses in the subject areas. No questions will be permitted by the participants or their representatives at the hearing itself. No subpoenas will be granted for attendance and testimony of witnesses or the production of evidence except upon a showing of exceptional circumstances. Any request by a participant for a subpoena shall be in the form of a motion under paragraph 5, but shall be addressed to the Commission. The Board may, for good cause, receive into evidence on behalf of a participant the written testimony of a person who is unable to appear at the hearing. In such cases, the Board may request (but not order) that the person respond to written questions by the Board.

4. *Discovery.* The following rules regarding discovery shall apply:

(a) Pursuant to the Commission's December 28, 1977 notice (42 FR 64703) and except as provided in subparagraph (b) below, there shall be no discovery by document production or otherwise. The NRC staff will make available for public inspection and copying, in a timely fashion, documents which were relied upon in the prepared of its testimony. Documents pertinent to the proposed rule are presently available for inspection and copying in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Participants are encouraged to confer informally for the purpose of exchanging information and documents relied upon in the preparation of their testimony.

(b) Participants seeking Commission documents which they deem relevant but which have not been made publicly available for inspection and copying pursuant to subparagraph (a) may seek documents pursuant to this paragraph. Requests for production of any such additional documents may be served on the NRC staff without leave of the Board. The Board may rule on disputed requests, order production of relevant documents, and grant protective and other appropriate relief.

(c) No request under subparagraph (b) may be served on the NRC staff after the hearing has commenced except by leave of the Board.

5. *Motions or requests.* Except as provided in paragraphs 3 and 4, all motions or requests shall be addressed to the Board. All written motions or requests shall be filed with the Secretary of the Commission and served on participants to the hearing. Service shall be as provided in 10 CFR 2.712. Within 5 days after service of a written motion, or such other times as may be fixed by the Board, any participant may file a written answer in support of, or in opposition to the motion or request. However, the NRC may file such an answer within 10 days after service. Computation of time shall be as provided in 10 CFR 2.710.

6. *Interlocutory appeals; effect of motions, certifications, and referrals.* The Commission's December 1977 and April 1978 notices (42 FR 64703, 43 FR 14672) do not provide for an interlocutory appeal to the Commission from a ruling of the Board. When in the judgment of the Board prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense, the Board may on its own initiative, or in its discretion on request by a participant, refer the ruling or certify the question promptly to the Commission, and notify the partici-

pant either by announcement on the hearing record or by written notice if the hearing is not in session. Unless otherwise ordered, neither the filing of a motion nor the certification of a question or referral of a ruling shall stay any aspect of the proceeding or extend the time for the performance of any act.

7. *Filing of documents; docket; transcripts; public notice of hearing.* Filing of documents in this proceeding by participants shall be as provided in 10 CFR 2.701. All documents shall be served on participants to the hearing, and service shall be as provided in 10 CFR 2.712. A docket for the proceeding shall be maintained as provided in 10 CFR 2.702, and the provisions of 10 CFR 2.750 and 2.751 regarding official reporter, transcript, and public nature of the hearing shall apply.

8. *Requests for additional hearings to permit cross-examination.* It may be that some factual issues in this proceeding cannot be resolved adequately on the basis of a record developed in the manner provided above. As provided for in the Commission's December 1977 notice (42 FR 64704), if any participant believes after completion of the legislative-type hearing provided above that cross-examination on one or more specific factual issues is needed for a sound decision, the participant may request permission for cross-examination. A written request for additional hearings to permit cross-examination should be filed with the Board within 20 days after completion of the legislative-type hearing, or within such greater or lesser time as may be fixed by the Board. Such requests should: (a) Specify with particularlity the factual issue or issues as to which cross-examination is requested; (b) identify the witness or witnesses involved; and (c) demonstrate why in the participant's view the legislative-type procedures have not proved adequate for a sound decision with respect to the particular issue and testimony. Other participants, including NRC staff, may file written responses to such requests within 15 days after service, or within such greater or lesser time as may be fixed by the Board. Should any such request be granted by the Board, a supplemental notice of hearing which identifies the factual issue(s) and any necessary additional procedures will be issued by the Board.

9. *Supplementary statements; certification of record.* (a) Within 30 days after completion of the hearing (including any hearing provided under paragraph 8), a participant may file with the Board such supplementary written statement as may be deemed appropriate in light of the hearing record. Participants who are only interested in one or more aspects of the proceeding may confine their supplementary statements to such aspects. Supplementary statements shall include appropriate citations to the transcript of record and exhibits in support thereof.

(b) Following completion of the hearing (including any hearing provided under paragraph 8), and after the 30-day period referenced in paragraph (a) expires, the Board will certify the hearing record to the Commission for decision without rendering any decision or making any recommendations of its own with regard thereto.

10. *Record.* The hearing record will include the transcript of testimony and exhibits, the transcript of oral and written statements and all papers and requests filed in the proceeding.

HEARING SCHEDULE

May 10, 1978: Procedural planning session at the Commission's offices 1717 H Street NW., Washington, D.C. The purpose of this session is for the Board to receive objections, questions or suggestions about the hearing procedures and hearing schedule here proposed and described. In order to facilitate non-time-consuming and low-cost participation, three alternative ways of making views known to the Board are offered: (I) Participants may submit written comments on the above matters, to be filed with the Board by May 10, 1978. (II) Participants may appear in person or by representatives before the Board from 10 a.m. to 1 p.m. (EDT) on May 10, 1978, in Room 1167. (III) Participants may communicate with the Board members by telephone from 2 p.m. to 5 p.m. (EDT) on May 10, 1978, by calling 202-254-7654 or 202-254-8636. Participants also may attend—but not participate in—the afternoon session (Room 1167). A transcript will be kept for both sessions of the May 10 meeting. Participants should choose the method of communication that best meets needs and capacities, having in mind that oral or telephonic appearances should be thought out in advance and concisely delivered. All comments that can be reduced to writing should be made in that fashion. Participants are requested not to utilize more than one method of communication. The Board will rule promptly on objects or suggestions, if any, that require an amendment to the procedures or schedule herein proposed.

May 15, 1978: Submission of written testimony of Commission staff and other proponents of the proposed rule. The staff and other proponents will circulate their testimony to all participants. The staff will make available for public inspection all documents and other materials on which its testimony relies. Each submission shall be introduced by a concise Statement of Position and shall be cross-referenced, as appropriate, to the relevant issue identified in the Commission's December notice (42 FR 64704).

June 1, 1978: Submission of written testimony of opponents of proposed rule, including rebuttal of proponents' testimony. Written testimony from those who consider themselves neither proponents no opponents of the proposed rule is also due at this time. Each submission shall be introduced by a concise Statement of Position, and shall be cross-referenced, as appropriate, to the relevant issue identified in the Commission's December notice.

June 20, 1978: A. Submission of written proposals from all participants for questions to be propounded by the Board to witnesses at the hearing. Each proposed question should contain a clear and concise explanation of its purpose in order to assist the Board in determining its probity and relevance, and should be cross-referenced, as appropriate, to the relevant issue identified in the Commission's December notice.

B. Submission of rebuttal testimony by proponents to opponents' testimony. (There will not be further opportunity for opponents to submit rebuttal testimony.) Rebuttal testimony shall be cross-referenced in the manner described above.

C. Submission of consolidation of positions and requests for hearing times. Participants should wherever possible consolidate their positions with others of like persuasion. Where prior coordination is impossible, participants should recommend to the Board other participants with whom they might appear in a panel presentation. Hearing times should be limited to no more than one (1) hour, except where exceptional circumstances are stated. Dates and specific times will be assigned within the period of July 11-15, 1978.

June 30, 1978: (a) Submission of written objections to proposed questions; (b) the Board will announce consolidation of positions and schedule of witnesses and any other matters to be determined prior to hearing. This announcement will appear in the FEDERAL REGISTER on July 5, 1978. Participants who desire to be informed of the hearing schedule and who have supplied the Board a telephone number for that purpose, will be called on the afternoon of June 30, 1978.

July 10, 1978: Hearing commences at 9 a.m. (EDT) at 1717 H Street NW., Washington, D.C., room (to be announced). Staff presentation will be first and is anticipated to consume the entire day of July 10. All participants and their representatives are invited to observe the staff's presentation but are reminded that they will not be recognized by the Board for any purpose during the hearing. The presentations

of the other participants will follow beginning on July 11 or as soon thereafter as the staff has completed its presentation. Precise times for appearances will have been previously announced by the Board, but it is anticipated that all of the proponents to the proposed rule will come after the staff, followed by opponents, and then those who have still not taken firm positions on the merits. The Board may call for conferences during the hearing but will state its plans in that regard at the outset of the hearing on July 10.

EX PARTE COMMUNICATIONS

The Notice of Hearing calls upon the Board to conduct a legislative-type hearing. However, it offers the possibility of later cross-examination on specific issues. (par. 8) Given the hybrid nature of the proceeding, the Board expects all participants (and anyone acting in behalf of any of them) to refrain from offering to Board members any evidence or argument concerning any fact or opinion which is material to this proceeding except through the procedures for submission of written statements, testimony, motions or other documents set forth in the Notice of Hearing.

STATEMENT OF PAUL R. VERKUIL

Upon being named presiding officer of the hearing board, I learned that I have a relationship with two participants to this proceeding. I am a member of the American Civil Liberties Union, and I am employed by the University of North Carolina at Chapel Hill, a constituent institution of the University of North Carolina, as is North Carolina State University which is a participant. I have resolved for myself that these connections create no conflict of interest. First of all, the role I am performing here is not one of deciding the merits of the proposed rule, but only that of ensuring that a full and accurate record is prepared on which the Commission can render a sound judgment. Thus, I am in no sense taking positions or exercising judgments that could benefit individual participants in the proceedings. Beyond those considerations, however, my relationship to the ACLU is that of a sustaining, nonpolicy-making member, and I have no contact with officials at North Carolina State University who might be involved in this proceeding. I have not received any communications from these organizations concerning the matters under scrutiny. For these reasons, I do not believe it necessary for me formally to resign from the ACLU during these proceedings or to alter my relationship with the University of North Carolina. I would be pleased to receive any reactions in writing from the participants to the matters I have here discussed.

Dated: April 27, 1978.

For the Hearing Board.

PAUL R. VERKUIL,
Chairman.

[FR Doc. 78-11998 Filed 5-1-78; 8:45 am]

[6750-01]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 732-3312]

AUSTRALIAN LAND TITLE, LTD., ET AL.

Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require a Los Angeles, Calif. seller of undivided interests in Australian land to cease advertising, selling, transferring or collecting payments on such land. Additionally, the firm would be required to return all payments received on or after July 1, 1977; pay property taxes and other charges levied against the tracts as they become due; and provide consumer redress to eligible parties.

DATE: Comments must be received on or before June 29, 1978.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Albert H. Kramer, Director, Bureau of Consumer Protection, Federal Trade Commission, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580, 202-523-3727.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record, together with material submitted to the Commission that is not exempt from public disclosure under the Freedom of Information Act, for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

[File No. 732- 3312]

AUSTRALIAN LAND TITLE, LTD., SAFEGUARD INDUSTRIES, INC. AND MORLAN INTERNATIONAL, INC., CORPORATIONS

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of Australian Land Title, Ltd., Safeguard Industries, Inc., and Morlan International, Inc., corporations, hereinafter sometimes referred to as "proposed respondents," and it now appearing that proposed respondents are willing to enter into an Agreement containing an Order;

It is hereby agreed by and between proposed respondents by their duly authorized officers and their counsel, and counsel for the Federal Trade Commission that:

1. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the facts as alleged in the draft of complaint attached hereto are true or that any law has been violated.

2. Proposed respondent Australian Land Title, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 9060 Santa Monica Boulevard, Los Angeles, Calif.

Proposed respondent Safeguard Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 630 Park Avenue, King or Prussia, Pa.

Proposed respondent Morlan International, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Philmont Avenue and Byberry Road, Philadelphia, Pa.

3. For settlement purposes only proposed respondents admit all the jurisdictional facts set forth in the draft of Complaint here attached.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's Decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement.

5. This Agreement shall not become a part of the official record of the proceeding unless and until it is accepted

by the Commission. If this Agreement is accepted by the Commission it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if, within thirty (30) days after the sixty (60) day period, comments or views submitted to the Commission disclose facts or considerations which indicate that the Order contained in the Agreement is inappropriate, improper, or inadequate.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to the proposed respondents, (1) issue its Complaint corresponding in form and substance with the draft of Complaint here attached and its Decision containing the following Order in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other Orders. The Order shall become final upon service. Mailing of the Complaint and Decision containing the agreed-to Order to proposed respondents' addresses as stated in this Agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondents have read the proposed Compliant and Order contemplated hereby, and they understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order, and that they may be lable for a civil penalty in the amount provided by law for each violation of the Order after it becomes final.

8. It is agreed that the relief set forth in the Order contained herein fully satisfies any claim for redress which the Commission has under sections 5(b) and 19 of the Federal Trade Commission Act, as amended, arising out of the acts and practices alleged in the Complaint. By its final acceptance of this Agreement, with such modifications, if any, which the parties may make prior to said final acceptance, the Commission waives its right to commence a civil action under section 19 of the Federal Trade Commission Act, as amended, with respect to the acts and practices alleged in the Commisison's Complaint.

ORDER

For the purpose of this Order, the following definitions apply, unless otherwise specified herein:

A. "Respondents" mean Australian Land Title, Ltd. ("ALT"), Morlan International, Inc., ("Morlan") and Safeguard Industries, Inc., ("Safeguard") and include their successors and assigns.

B. "Tract" means each parcel of land located in Western Australia identified in Appendix A.

C. "Sales Agreement" means any agreement entered into by ALT or any agent, representative or subsidiary of ALT for the sale of any undivided interest (tenancy in common) in any Tract.

D. "Purchaser" means any person or entity that entered into any Sales Agreement, or the person or entity that received the purchaser's interest in any Sales Agreement by transfer, assignment, inheritance, or otherwise, or the person or entity, that purchased an interest in a Tract other than from any respondent or its representatives or agents, but shall not include any person or entity, other than one who has made all Purchase Payments, whose last Purchase Payment pursuant to any Sales Agreement was received by ALT prior to January 1, 1977, or who has arbitrated, settled, released or litigated to final judgment all claims and rights relating to the purchase of an interest in a Tract.

E. "Defaulter" means any person or entity that entered into any Sales Agreement, or the person or entity that received the purchaser's interest in any Sales Agreement by transfer, assignment, inheritance, or otherwise, or the person or entity, that purchased an interest in a Tract other than from any respondent or its representatives or agents, whose last Purchase Payment pursuant to any Sales Agreement was received by ALT on or after January 1, 1974, but before January 1, 1977, but does not include any person or entity who has made all purchase payments or any Defaulter who has arbitrated, settled, released or litigated to final judgment all claims and rights relating to purchase of an interest in a Tract.

F. "Net Sales Price" means the gross sales price of any Tract less the seller's customary share of state or local sales or transfer taxes, transfer of title fees, and brokerage fees (*Provided*, That a broker has in fact been used and that his fees are not more than the prevailing rate for comparable services in Western Australia); no deduction from gross sales price shall be made for attorneys' fees, sellers' pro rata share of property taxes, payoff of mortgages or other liens or charges against the land, cost of appraisal, advertising costs or court costs associated with a judicial proceeding, or other costs of sale.

G. "Purchase Payments" means all sums including downpayments, and periodic payments of principal and interest paid pursuant to any Sales Agreement and dated and received by ALT prior to July 1, 1977.

H. "Purchase Price" means the total purchase price (including interest or finance charges if any) stated in any Sales Agreement.

The acts and practices, prohibitions, affirmative undertakings, requirements and activities subject to this Order are those in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

I. *It is ordered*, That ALT, Morlan and Safeguard, directly or indirectly, through any corporation, subsidiary, division, or other device, do forthwith cease and desist from advertising, offering for sale, selling, or transferring any undivided interest in land in Australia to any consumer in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, except as permitted by this Order or as otherwise may be permitted by written approval of the Commission. For the purposes of this part, "consumer" shall mean a natural person to whom rspondents offer to sell any undivided interest in land or other real property; *Provided, however*, That the term"consumer" shall not include a natural person who purchases an interest in land in a single transaction for a sum in excess of $50,000.

II. *It is further ordered*, That ALT:

A. Cease and desist from collecting, directly or indirectly, payments, including principal and interest, due from any Purchaser pursuant to any Sales Agreement and return to any Purchaser, within five (5) days of receipt, any payment received from such Purchaser on or after the date this Order becomes final.

B. Return to each Purchaser all payments, including principal and interest, made by such Purchaser pursuant to any Sales Agreement, that were dated and received by ALT, or its representatives or agents, on or after July 1, 1977, but before the date this Order becomes final.

C. Cease and desist from cancelling any Sales Agreement of any Purchaser except where permitted or required by Part III of this Order.

D. Cease and desist from failing to pay all property taxes, mortgages, liens or charges against any Tract on a timely basis as each becomes due.

III. *It is further ordered*, That ALT, consistent with the procedures set forth below and the laws of Western Australia, sell each Tract and distrib-

ute the proceeds. For the purposes of this part, the definition of Purchaser shall not include any person or entity who has sold, devised, assigned, or otherwise transferred his interest in a Tract.

A. Each Tract may be sold by consent of the Purchasers of that Tract or partition and judicial sale pursuant to the Laws of Western Australia: *Provided, however,* That any sale other than by partition and judicial sale shall be made only with the express consent of the Purchasers whose Sales Agreements account for a majority of the undivided interests in that Tract.

B. On or before two years from the date this Order becomes final ALT shall initiate proceedings in the appropriate courts of Western Australia for partition and judicial sale with respect to ten (10) Tracts less the number of Tracts which have been previously sold, or which are already the subjects of partition actions, or which have been excluded pursuant to Paragraph L of this part.

C. On or before three years from the date this Order becomes final ALT shall initiate proceedings in the appropriate courts of Western Australia for partition and judicial sale with respect to twenty (20) Tracts less the number of Tracts which have been previously sold, or which are already the subjects of partition actions under Paragraph B of this part as of that date, or which have been excluded under Paragraph L of this part.

D. On or before four years from the date this Order becomes final ALT shall initiate proceedings in the appropriate courts of Western Australia for the partition and judicial sale of all Tracts which remain unsold and which are not already the subjects of partition actions under Paragraphs B and C of this part as of that date, or which have not been excluded under Paragraph L of this part.

E. ALT shall pursue all such actions for partition and judicial sale pursuant to Paragraphs B–D of this part as expeditiously as possible consistent with the laws and judicial procedures of Western Australia. ALT shall inform the court of the provisions of Part III of this Order at the time any proceeding for partition and judicial sale of a Tract is commenced, and shall provide a copy of Part III of this Order if the court agrees to accept the Order in camera.

F. All Tracts shall be sold and the proceeds distributed within five (5) years from the date this Order becomes final. *Provided, however,* The Commission shall extend the period as to any particular Tract where ALT can establish to the satisfaction of the Commission that a partition action with respect to such Tract was brought and pursued as provided by this part, but that sale and distribution of proceeds cannot reasonable be expected to occur within the period. Upon the granting of such an extension, ALT shall file reports with the Commission every six months until sale and distribution of proceeds have been completed, describing the status of such pending proceeding and any measures taken by ALT to conclude such proceeding. ALT shall bear the costs of the sale of any Tract except such costs as may be duducted from the gross sales price as provided in the definition of Net Sales Price.

G. Except as otherwise provided herein, a share of the Net Sales Price of each Tract shall be distributed to each Purchaser of such Tract in proportion to the percentage interest in the Tract set forth in such Purchaser's Sales Agreement. Each Defaulter who, prior to January 1, 1977, paid one-third or more of the Purchase Price set forth in such Defaulter's Sales Agreement shall receive a cash payment, to be distributed from the remaining proceeds of the Net Sales Price, such payment to be based on the proportion of the Net Sales Price allocable to the percentage interest in the Tract set forth in such Defaulter's Sales Agreement multiplied by the percentage of the Purchase Price actually paid by such Defaulter. *Provided, however,* That any distribution to a Purchaser who is not a citizen or resident of the United States, its territories, or the District of Columbia shall be paid to such Purchaser in an amount equal to the total of his Purchase Payments, and any remainder shall be paid to ALT in an amount equal to the unpaid balance of the Purchase Price, and thereafter any remainder shallbe paid to such Purchaser. *Provided further,* That no Defaulter shall receive from the distribution provided for herein an amount in excess of the total of his Purchase Payments less the distribution provided for in Paragraph B of Part IV of this Order. ALT shall be entitled to the balance of the Net Sales Price remaining after distribution of proceeds to Purchasers and Defaulters under this part.

H. Distributions from the Net Sales Price resulting from the sale of each Tract shall be made to the Purchasers and Defaulters of that Tract within sixty (60) days after the receipt of such proceeds by ALT, except at such other time as the Purchasers may consent to in accordance with paragraph I(ii) of this part or as may be ordered by a court in a proceeding for partition and judicial sale of any Tract.

I. Any Tract may be sold on terms which provide that the buyer will pay the purchase price in installments, or that any payment by the buyer will be deferred for a period in excess of 120 days after the date the sale is consummated: *Provided,* That (i) ALT shall nevertheless distribute to the Purchasers and Defaulters of the Tract, as provided in Paragraph G of this part, an amount equal to the Net Sales Price (not including interest) within sixty (60) days after the sales transaction is consummated, or (ii) ALT shall have first obtained the express consent of the Purchasers whose Sales Agreements account for a majority of the undivided interests in the Tract to the terms of the sale and to distribution of the proceeds of the sale within a specified period exceeding 120 days after the date the sale is consummated. *Provided, however,* ALT shall distribute proceeds received from the installment sale of any Tract in accordance with Paragraph G of this part within sixty (60) days of the receipt of each installment: *And provided further,* That in the event of any default by any buyer, ALT will notify the Commission and prompty initiate proceedings for partition and judicial sale of such Tract.

J. ALT shall not solicit the consent of any Purchaser to any sale of a Tract or any terms of sale without first having obtained, within six (6) months prior to the solicitation, an appraisal from an appraiser licensed in Western Australia who, prior to December 31, 1977, shall not have been employed, retained or otherwise associated with any Respondent, and without having adequately and accurately disclosed to all Purchasers of the Tract whose current addresses have been identified pursuant to the procedures set forth in Part V of this Order (i) the name, address and business of a proposed buyer or buyers; (ii) the nature and extent of any prior or existing relationship—including overlapping ownership interests or business dealings—between the buyers and any of the Respondents; (iii) what efforts, if any, have been made to sell the Tract on cash terms or more favorable terms of sale (including efforts to obtain a higher price or shorter payout) than that offered by the buyers; (iv) what other offers have been made for the Tract; (v) any appraised value of the Tract made within the six month period, and the date of each such appraisal; (vi) the minimum price and conditions upon which the Tract would be sold to any buyer; (vii) that if the Purchasers whose Sales Agreements account for a majority or the undivided interests in the Tract do not consent to such sale, ALT remains obligated to sell the Tract, by partition and judicial sale or otherwise, within five (5) years of the date this Order becomes final.

K. Respondents shall not, directly or indirectly, purchase or acquire any Tract, from any Purchaser, except as follows:

1. In disposing of any Tract through partition and judicial sale, any Re-

spondent may purchase such Tract only if (i) both the Court administering such sale and the Commission are notified at least thirty (30) days in advance of sale of such Respondent's intention to purchase and the terms of the purchase and (ii) such Respondent reports to the Commission, within sixty (60) days after any such purchase, the amount paid by the Respondent and provides the Commission with such other relevant information concerning the sale as the Commission may request.

2. In disposing of any Tract by consent of the Purchasers of the Tract, any Respondent may purchase such Tract only if (i) within six (6) months prior to such purchase an appraisal shall have been obtained from an appraiser licensed in Western Australia who, prior to December 31, 1977, shall not have been employed, retained, or otherwise associated with any Respondent, (ii) the purchase price paid by the Respondent is not less than the appraised value of the Tract, (iii) the Respondent shall have disclosed to the Purchasers the information set forth in Paragraph J of this part, (iv) the Respondent, at least thirty (30) days in advance notifies the Commission of its intention to purchase and provides to the Commission a copy of the appraisal, (v) the Respondent reports to the Commission within sixty (60) days after sale the amount paid by the Respondent and furnishes such other relevant information regarding the sale as the Commission may request.

3. Except as otherwise may be permitted by written approval of the Commission, no Respondent may purchase the individual interest of a Purchaser in a Tract unless such Purchaser—

(a) Has executed a written document acknowledging receipt of the letter required by Paragraph A of Part IV of this Order and declining to dispose of his interest in the manner provided therein, or

(b) Is represented by legal counsel, either individually or as a member of a class in a class action which has been filed in State or Federal court.

L. Notwithstanding Paragraphs A-K of this part, if the Purchasers whose Sales Agreements account for a majority of the undivided interests in a Tract expressly consent to retain their interests in the Tract and to forego permanently disposition of the Tract pursuant to Part III of this Order, the Commission shall entertain a petition to that end. Such a petition shall set forth sufficient information to demonstrate:

1. The procedure used to ascertain that Purchasers whose Sales Agreements account for a majority of the undivided interests in the Tract have expressly consented to forego disposition of the Tract pursuant to Part III of this Order, and the results of such procedure.

2. The risks, benefits, and burdens of such continued ownership in the Tract and the procedures used to ensure that Purchasers were adequately and accurately informed of such information prior to expressing their consent.

3. That prior to any Purchaser's expression of consent, an appraisal of the Tract was obtained from an appraiser (licensed in Western Australia and who, prior to December 31, 1977, had not been employed, retained or otherwise associated with any Respondent) and such appraisal was provided to the Purchasers in the Tract;

4. That adequate provision has been made for Purchasers to dispose of the Tract in the future;

5. That any Purchaser who does not concur in the majority decision was informed of such Purchaser's right to institute, and the required procedure for instituting, an action for judicial partition or sale;

6. That, for the purposes of Parts 4 and 5 of this Paragraph, adequate provision has been made to enable Purchasers who hold only equitable rights in the Tract to exercise full rights of ownership in the Tract.

If the Commission is satisfied that the prerequisites of this Paragraph have been met, and that there is no countervailing public interest to be served by rejection of the petition, the Commission shall grant the petition.

M. The provisions of this part regarding sale of the Tracts and distribution of the proceeds are subject to the laws of Western Australia, and to any judicial decrees or orders thereunder; *Provided, however,* That to the extent that any Respondent might otherwise have rights in connection with the sale of any Tract, or to the proceeds thereof, different from those provided herein, it has waived such rights and shall proceed according to the terms of this Order.

IV. *It is further ordered,* That ALT make cash payments to Purchasers and Defaulters who are citizens or residents of the United States, its territories, or the District of Columbia, in accordance with the following procedures:

A. Within sixty (60) days after this Order becomes final, ALT shall mail, in accordance with the procedures set forth in Part V of this Order, two (2) copies of the letter set forth in Appendix B to all such Purchasers and two (2) copies of the letter set forth in Appendix C to all such Defaulters. *Provided, however,* With prior approval of the Commission, appropriate modifications or deletions may be made in letters to be sent to Purchasers or Defaulters whose rights under this Order are different from those delineated in the letters set forth in Appendices B and C. Enclosed with each pair of letters shall be a postage-prepaid return envelope for the return of the release form.

B. The amount to be offered to each eligible Purchaser and Defaulter, as indicated in the letter to such Purchaser or Defaulter, shall be the percentage of $2,000,000 equal to the percentage that the total Purchase Payments made by that Purchaser or Defaulter is of the total Purchase Payments made by all eligible Purchasers and Defaulters. Moreover, any Purchaser who purchased an interest in a Tract other than from ALT or its representatives or agents (transferee Purchaser), shall participate in the foregoing payment provided, in calculating the amount of the payment to be made, any consideration paid by a transferee Purchaser to a transferor Purchaser shall, if the transferee Purchaser has first furnished to ALT adequate documentation of such Purchaser's purchase of the interest and the amount paid therefor, be treated as a deduction from the Purchase Payments of the transferor Purchaser and treated as an addition to the Purchase Payments of the transferee Purchaser (in no event, however shall a transferee Purchaser be credited with total Purchase Payments in excess of the total Purchase Payments paid to ALT for such interest.)

C. In calculating Purchase Payments, ALT shall attempt to reconcile with its records any response to the letters required by Paragraph A of this part that contest the accuracy of those records.

D. ALT shall make payments to each such Purchaser and Defaulter who shall have elected to participate by tendering the release set forth in Appendices B and C in a total amount equal to the amount calculated pursuant to paragraphs B and C of this part. The first payment shall be made no later than two-hundred and forty (240) days after the date this Order becomes final, with subsequent payments to be made at least annually over a period not to exceed forty-eight (48) months from the date of the first payment. The payments will be made to each such Purchaser or Defaulter in equal installments, except that the first payment may be larger than the succeeding payments and the last payment will include any additional amounts due by reason of the recalculation provided for in paragraph C of this part.

E. Seven years after the date on which the letters required by Paragraph A of this part shall have been mailed, ALT shall distribute an additional payment in the following circumstance. If, as of such date, less than $1,500,000 shall have been distributed pursuant to this part, and if as of such date no class action litigation against any of the Respondents

shall be pending on behalf of any eligible Purchaser or Defaulter, ALT shall distribute to all Purchasers and Defaulters who shall have tendered the release provided in Appendices B and C the balance of $1,500,000 less such amounts as, subsequent to the date this Order becomes final, shall have been paid pursuant to any arbitration, settlement, release, litigation, or judgment relating to the purchase of any interest in a Tract. In the event that any class action litigation is pending on such date, this distribution shall be deferred until ninety (90) days after such action is dismissed or settled, or any judgment thereon is satisfied, and the amount of such distribution shall be reduced by such amounts as may have been paid pursuant to such settlement, litigation or judgment. Payment of the amounts to be paid under this Paragraph shall be made to each Purchaser and Defaultor in the same proportion as payments under Paragraph B of this part; *Provided, however,* That no Purchaser or Defaulter shall receive from this distribution an amount in excess of the total of his Purchase Payments less the distributions provided for in this part.

V. *It is further ordered,* That;

A. Any mailings or communications required by Parts III and IV of this Order shall be by first-class mail, postage-prepaid and address correction requested, directed to each Purchaser and Defaulter at the most recent address for such Purchaser or Defaulter contained in ALT's files.

B. Sixty (60) days after the mailing required by Paragraph A of Part IV of this Order, ALT shall make a second mailing of such letters by certified first-class mail, postage-prepaid, address correction requested, return-receipt requested with delivery to addressee only, to all Purchasers and Defaulters, directed to their most recent addresses contained in the ALT files, except those Purchasers and Defaulters whose first mailing was returned undelivered or who have tendered either the release or the election not to participate.

C. Within twenty (20) days after return to ALT of any undelivered letter mailed pursuant to Paragraphs A or B or within thirty (30) days after mailing any letter mailed pursuant to Paragraph B of this part for which no return receipt has been received, ALT shall attempt to obtain a current or more recent address for the Purchaser or Defaulter to whom such letter was addressed by requesting the Purchaser's or Defaulter's current mailing address from any relative or representative of the Purchaser or Defaulter whose address appears in ALT's files by sending a communication by first-class mail, postage-prepaid and address correction requested, directed to the most recent address for such relative or representative appearing in ALT's files, and by requesting a current address for the Purchaser or Defaulter from a credit reporting agency located nearby the most recent address for the Purchaser or Defaulter appearing in ALT's files, the current or more recent address to be provided by the credit reporting agency within a reasonable time after the request. If a current or more recent address is received through these procedures, a copy of the appropriate letter required by Paragraph A of Part IV of this Order shall be sent within ten (10) days after receipt of the new address to the Purchaser or Defaulter at the new address by certified first-class mail, postage-prepaid, address correction requested, return-receipt requested and delivery to addressee only.

D. After completion of the procedures set forth in Paragraphs A–C of this part, ALT shall maintain such records as will disclose as to each Purchaser and Defaulter, whether such Purchaser or Defaulter (i) signed a release, (ii) elected not to participate, (iii) did not respond to the letter, but received it as evidenced by a signed certified mail return-receipt, (iv) was not reached by any mailing; and the most recent address in ALT's files or obtained through the procedures set forth in Paragraph C of this part.

E. If at any time prior to the fulfillment of the obligations imposed by this Order, ALT learns of the current address of any Purchaser or Defaulter whose letters were returned undelivered or from whom a record of receipt was not obtained, ALT shall send such Purchaser or Defaulter the letters required by certified first class mail, postage-prepaid, address correction requested, return-receipt requested and delivery to addressee only, and such Purchaser or Defaulter shall be entitled to the benefits provided under Parts III and IV of this Order under the terms and conditions provided therein. Except as provided in Paragraph F of this part, ALT shall not thereafter bear any affirmative duty to seek out Purchasers or Defaulters.

F. All payments or distributions to Purchasers or Defaulters pursuant to Parts III or IV of this Order shall be sent by first-class mail, postage-prepaid, address correction requested to the most recent address for each Purchaser or Defaulter appearing in ALT's files. If any such payment is returned undelivered, ALT shall employ the procedures set forth in Paragraph C of this part in an effort to obtain a current address for such Purchaser or Defaulter.

G. If, at the time of the last payment to eligible Purchasers and Defaulters pursuant to paragraph D of Part IV of this Order, less than $1,500,000 shall have been distributed pursuant to Part IV of this Order, ALT shall inform such Purchasers and Defaulters that they may receive an additional payment pursuant to paragraph E of Part IV of this Order and request such Purchasers and Defaulters to advise ALT of any change of address.

VI. *It is further ordered,* That Respondents shall, subsequent to the date this Order becomes final, for a period of six (6) years or until one year after Respondents have complied fully with all parts of this Order, whichever is later, or such shorter period as the Commission may approve in writing:

A. Grant any duly authorized representative of the Federal Trade Commission access to and the right to copy any records required to be maintained by this Order.

B. Maintain records which show the efforts taken to insure continuing compliance with the terms and provisions of this order, including but not limited to the following:

1. All records used by any Respondent in determining whether any person or entity is a Purchaser or Defaulter, as each term is defined in this Order.

2. All records used by any Respondent in determining the amount of money due any Purchaser or Defaulter pursuant to Parts II, III, and IV of this Order.

3. All records evidencing that any Purchaser or Defaulter has arbitrated, settled, released or litigated to final judgment all claims and rights relating to the purchase of an interest in a Tract and that such Purchaser or Defaulter has received payment pursuant to such arbitration, settlement, release or litigation.

4. All records relating to the purchase or transfer of any Purchaser's undivided interest in a Tract, including all documents filed with or issued by any Australian court pursuant to Part III of this Order.

5. Copies of all written communications between any Respondent and any Purchaser or Defaulter, including any communication which is returned to any Respondent as nondeliverable by the U.S. Postal Service, except those between counsel for a Respondent and counsel for such Purchaser or Defaulter.

C. Obtain prior approval by the Commission of any written communication to any Purchaser or Defaulter which is initiated by any Respondent pursuant to Paragraphs I or K of Part III of this Order, except for any communication written pursuant to Paragraph K(3)(b). Such Respondent shall provide to the Commission such relevant information within its possession, custody or control as the Commission may request to evaluate any such communication. If, within 20 days after mailing such communica-

tion to the Commission, the Respondent has received no written notice that the Commission has determined that the communication fails to conform with the provisions of this Order or that the Commission needs additional time to evaluate the communication, the Respondent may send the communication. Otherwise the Commission shall approve the communication or indicate the changes necessary for such approval within 30 days after the submission of such correspondence or as soon thereafter as possible.

D. Send, within 3 days after mailing, copies to the Commission of any written communication, the substance of which has not previously been approved or authorized by the Commission, to any Purchaser or Defaulter which (a) interprets or defines the obligations imposed by this Order, or (b) is written in response to any inquiry from any Purchaser or Defaulter relating to a written communication from any Respondent initiated pursuant to Paragraphs I, K or L of Part III of this Order.

VII. *It is further ordered,* That:

A. Morlan shall be responsible for ALT's compliance with the provisions of this Order and shall be liable for any final judgment against ALT for violating any provision of this Order.

B. Safeguard shall provide such funds on a timely basis as are required for compliance with the provisions of this Order.

C. In the event that ALT is sold, assigned or otherwise disposed of, the agreement for such disposition shall contain a provision requiring the purchaser or assignee to assume the obligations imposed on ALT under this Order.

D. In the event the Commission determines that ALT has failed to comply, or has become incapable of complying, with any provision of this Order, and if the required action is not taken within 30 days after written notice to ALT and Safeguard of such determination, or in the event that the Commission is enjoined, stayed or otherwise prohibited from enforcing any provision of this Order against ALT or Morlan by a bankruptcy court, Safeguard shall assume all obligations (including obligations that have become due, but have not been fulfilled by ALT) remaining to be fulfilled by ALT under this Order; *Provided, however,* That Safeguard shall not be liable for civil penalties by reason of ALT's failure to fulfill such obligations prior to the date of such written notice; *And provided further,* That, in any event, Safeguard shall fulfill the obligations remaining unfulfilled under Part III of this Order either on the dates set forth in such part or twelve (12) months from the date of such written notice, whichever time period is longer. After Safeguard assumes the unfulfilled obligations under this Order by operation of this Paragraph, and upon submission of a petition by Safeguard, the Commission will review each deadline for any unfulfilled obligation and will extend, where appropriate, any deadline which has been established by Safeguard as imposing, under the prevailing circumstances, an unreasonable hardship or burden in its application to Safeguard; *Provided, however,* The Commission need not extend any deadline when extension of the deadline would be contrary to the public interest. The Commission will respond to such petition within 45 days of its submission by Safeguard or as soon thereafter as is possible. Nothing contained in this paragraph shall be construed as otherwise limiting the Commission's authority to pursue against any non-complying Respondent any action for such non-compliance with this Order.

E. ALT shall immediately transfer to Safeguard ownership of one undivided interest in each Tract.

F. Each Respondent herein shall, within ninety (90) days after service upon them of this Order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the applicable provisions of this Order and, commencing 180 days after filing the initial report, shall file semi-annual reports thereafter until it has complied fully with all parts of this Order.

G. For the purposes of this Order, the "Commission" shall include, and all notices, reports, and requests for approval shall be directed to, the Director of the Bureau of Consumer Protection, or his designee, or successor.

H. Should any duty required to be performed on a day certain under this Order fall upon a non-business day, such duty may be performed on the next following business day.

I. The Commission may extend any deadline contained in this Order for good cause shown, and such extension shall not be unreasonably withheld.

J. Each Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, such as dissolution, assignment or sale resulting in the emergency of a successor corporation, the creation or dissolution of any subsidiary corporation or any other change in the corporation which may affect compliance obligations arising out of this Order.

APPENDIX A.—*Listing of parcels of land in Western Australia owned by ALT in which consumers currently hold undivided interests*

Tract No.	Consisting of Victoria location or portions of Victoria locations	Also identified as lot No.
I	10293	
II	10295	

APPENDIX A.—*Listing of parcels of land in Western Australia owned by ALT in which consumers currently hold undivided interests*—Continued

Tract No.	Consisting of Victoria location or portions of Victoria locations	Also identified as lot No.
III	10144	
IV	10609	
V	10574	
VI	10148	
VII	9907	
VIII	10006	
IX	4484	
X	4485	
XI	4584	
XII	3511	
XIII	10001	
XIV	2718	
XV	2545, 2709	9
XVI	9790	13
XVII	1924, 952, 1458	14
XVIII	2798, 1924, 1458, 2317, 9721	15
XIX	2798, 9791, 2737	16
XX	755, 9791, 2737, 8348, 2798	17
XXI	755, 695, 2798	18
XXII	956, 476, 1258, 2170	19
XXIII	1258, 2169	20
XXIV	1258, 2169, 907	21
XXV	907, 2169	22
XXVI	2169, 2718	23
XXVII	2169, 2170, 2718, 476	24
XXVIII	476, 2170, 2718	25
XXIX	2718, 2170	26
XXX	2718	27

APPENDIX B

[ALT Letterhead]

(Name) (Address) (City and State)

Re: Sale of Land in Western Australia and Cash Payments

Dear (Name):

Australian Land Title, Ltd., ("ALT") has entered into an Agreement with the Federal Trade Commission which provides certain benefits for which you are eligible. The Agreement basically provides (a) for the sale of the tract of land in which you hold an interest within 5 years, (b) that no further payments need be made by you, (c) that those payments dated and received by the company on or after July 1, 1977, will be returned to you, (d) that your sales agreement will be treated as paid in full—you will receive a full share in the proceeds of the sale of the land in accord with your sales agreement, and (e) a cash payment will be made to you each year for the next five years upon your signing the Release set forth below agreeing to release any claims that you may have arising out of your acquisition of the undivided interest in land located in Western Australia.

Our records show that you hold a ——— percent interest in [description of land] ———, and that as of June 30, 1977, $——— was paid to ALT on your contract. If your records conflict with any of this information please notify us at once, and provide copies of whatever documents you may have which will help in resolving any conflicts. As mentioned above, all payments you made to ALT after July 1, 1977, are being returned to you.

Sale of Land. ALT will, within the next 5 years, arrange for the sale of the land in Australia in which you hold an interest. You will receive a share of the net sales

price of the land based upon the percentage interest set forth in your sales agreement. It is not possible at this time to estimate the price for which the land will be sold. Before this happens, however, you will be sent complete details concerning how the land will be sold.

Discontinue Payments. ALT is not collecting any further payments due under your contract for the purchase of an undivided interest in land in Western Australia. Accordingly, do not send any additional payments to ALT. ALT will send back to you any payments you made which were dated and received by ALT on or after July 1, 1977. This will not affect your right to participate in the proceeds from the sale of the land in which you hold an undivided interest. You will receive the full share set forth in your sales agreement.

Eligibility for Cash Payment. You are eligible to receive a cash payment from ALT. Cash payments will be made only to purchasers who agree in writing to release any claims they may have arising out of the sale of undivided interests in land in Western Australia. A copy of this letter containing the Release is being provided for your signature. If you sign the Release, you will receive $ ———— which will be paid in five installments. The first payment will be made by [date] ——, and will be in the amount of $ ———— . The four subsequent payments will be made annually. In order to receive the cash payment you must sign the Release and return it in the enclosed postage-paid envelope. You may wish to consult an attorney to determine your rights before signing the Release, and you should be aware that the Federal Trade Commission has expressed no opinion as to whether you should sign the Release.

Even if you do not wish to sign the Release and receive the cash payment, you will still receive you share of the proceeds of the sale of the land in which you have purchased an interest. You should not make any additional payments to ALT and ALT will return any payments you have made since July 1, 1977. If you do not wish to release all claims and participate in the cash payment, sign the statement "I Do Not Wish To Participate In The Cash Payment" and return the copy in the enclosed postage-paid envelope.

Please sign and return the copy of this letter as soon as possible and in no event later than 60 days. Please note your current address and keep us advised of any future change of address, so that we may send you further information, as well as future payments. If you have any questions about this letter, please write to us at once.

Sincerely,

[Title] ————
Australian Land Title, Ltd.

RELEASE

In consideration of the cash payments described above, totaling $ —— , I hereby release Australian Land Title, Ltd., Safeguard Industries, Inc., and Morlan International, Inc., their subsidiaries, predecessors, and affiliates, and their officers, directors, employees, and agents from any and all claims, known or unknown, that I may have against any of them in connection with my purchase of an interest in land as described above.

[Date] ———— [Signature] ————.

Remember, you must sign and date the above Release and return this letter to receive the Cash Payments.

————

I Do Not Wish To Participate in the Cash Payment.

[Date] ———— [Signature] ————.

APPENDIX C

[ALT Letterhead]

(Name)
(Address)
(City and State)

Re: Eligibility for Cash Payments

Dear (Name):

Australian Land Title, Ltd., ("ALT") has entered into an Agreement with the Federal Trade Commission which provides certain benefits for which you are eligible.

Cash Payments. Cash payments will be made to persons whose last payment on their contracts was received by ALT on or after January 1, 1974, but not later than December 31, 1976. According to our records, your last payment to ALT was made on [date] ——. At this time you had paid $—— on your contract of a —— percent interest in the following land: [description of land] ————. If your records conflict with any of this information, please notify us at once, and provide copies of whatever documents you may have which will help in resolving any conflicts.

Based on the foregoing, you are eligible for a cash payment of $ ———— from ALT. You can receive this amount only if you agree to release any claims you may have arising out of the sale of undivided interests in land in Western Australia. A copy of this letter containing the Release is being provided for your signature.

The payment will be made in five installments. The first payment will be made by [date] ——, and will be in the amount of $————. The four subsequent payments will be made annually. In order to receive the cash payment you must sign the Release and return it in the enclosed postage-paid envelope. You may wish to consult an attorney to determine you rights before signing the Release, and you should be aware that the Federal Trade Commission has expressed no opinion as to whether you should sign the Release.

If you do not wish to release all claims and participate in the cash payment, sign the statement "I Do Not Wish To Participate In The Cash Payment" and return the copy in the enclosed postage-paid envelope.

Sale of Land. Even if you do not agree to release all claims and participate in the cash payment described above, you will still be eligible to receive a payment from the proceeds of the sale of the land in which you contracted to purchase an interest. The amount of this payment cannot now be estimated, since it will be based on the sales price of the land, as well as the amount you paid on your contract.

Whether or not you choose to participate in the cash payments, the amount you will receive is limited to the amount that you have paid to ALT. In no event will you receive more than the amount you paid.

Please sign and return the copy of this letter as soon as possible and in no event later than 60 days. Please note your current address, and advise us of any future change of address, so that we may send you further information, as well as future payments.

If you have any questions about this letter, please write us at once.

Sincerely,

Australian Land Title, Ltd.
By ————

Release

In consideration of the cash payments described above, totaling $ ——, I hereby release Australian Land Title, Ltd., Safeguard Industries, Inc., and Morlan International, Inc., their subsidiaries, predecessors, and affiliates, and their officers, directors, employees, and agents from any and all claims, known or unknown, that I may have against any of them in connection with my purchase of an interest in land as described above.

[Date] ————[Signature] ————.

Remember, you must sign and date the above Release and return this letter to receive the Cash Payments.

I Do Not Wish To Participate In The Cash Payment

[Cash] ————[Signature] ————.

AUSTRALIAN LAND TITLE, LTD., ET AL FILE NO. 732-3312

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement containing a proposed consent order from Australian Land Title, Ltd. (ALT), Morlan International, Inc. (Morlan) and Safeguard Industries, Inc. (Safeguard), the named respondents.

The agreement has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review the agreement and the comments received and will decide whether it should withdraw from the agreement of make final the proposed order.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

THE ALLEGATIONS IN COMPLAINT

The complaint accompanying the agreement alleges that ALT, Morlan (ALT's parent corporation as of December 1972) and Safeguard (ALT's parent corporation from February 1970, to December 1972) have engaged in unfair and deceptive practices in connection with the sale of undivided interests (tenancies in common) in land located in western Australia. These practices include the unfair creation and sale of, and the collection and receipt of payments for such undivided interests. The unfairness results from the application of Australian law, the number of tenacies in common, the diversity of citizenship of cotenants and the lack of any means to manage, develop or dispose of the land. These factors make it virtually impossible for the land to be sold or beneficially used. Also, purchasers of the undivided interests were never told of the detrimental legal and practical effects of buying such interests. Moreover, the purchase contracts contain provisions which allowed ALT in the event of default of purchasers to retain payments in excess of its actual damages which imposed unfair penalties on such defaulters.

THE PROPOSED ORDER

A. *Prohibition of Future Sale of Undivided Interests in Australian Land.* The proposed order prohibits the respondents from advertising or offering for sale any undivided interests in land in Australia execpt for non-consumer sales exceeding $50,000.

B. *Classes Entitled to Redress.* The proposed order provides consumer redress to certain persons who previously purchased undivided interest in thirty (30) tracts of land in western Australia. For purposes of the order, categories of eligible persons are created: (1) "purchaser"—any person who completed payments for his or her interest or made a payment on or after January 1, 1977; and (2) "defaulter"—any person who made any payment on or after January 1, 1974, but before January 1, 1977. Anyone who has settled, arbitrated, released or litigated to final judgment all claims relating to purchase of an undivided interests is excluded from being a purchaser or defaulter under the proposed order.

C. *Prohibition of Collection of Contract Payments and Payment of Charges Levied against Australian Land.* The proposed order prohibits any collection of payments, including principal and interest, from purchasers after the order is final. Any payment that is received must be returned within five (5) days of receipt. Also, ALT must return all payments which were dated and received on or after July 1, 1977. Those payments have been placed in an escrow fund which will be distributed to purchasers as part of the proposed order. ALT is required to pay all property taxes and other charges levied against any of the tracts as they become due.

D. *Sale of Australian Property.* Under the proposed order, ALT is required to sell all the tracts within 5 years from the date the order is final. Sale of a tract can be either by consent of a weighted majority of purchasers of the tract or under supervision of an Australian court. However, the Commission can grant an extension of time to sell a tract or agree to the removal of a tract from the mandatory sale provisions of the proposed order. In event of a sale, ALT can only deduct specified costs from the sales price, such as the seller's share of transfer taxes and fees. Furthermore, the proceeds from any sale must be distributed to purchasers and defaulters within sixty (60) days of receipt of the proceeds by ALT. Any other deferred payment of the proceeds must be approved by weighted majority of purchasers. Purchasers are entitled to receive shares of the proceeds equal to their percentage interests in the tracts as set forth in their contracts. Defaulters, who paid in one-third or more of the purchase price of their undivided interests, are entitled to receive shares of the proceeds equal to the percentages of the purchase prices of their contracts which they paid, multipled by their percentage interests in the tracts as set forth in their contracts. Distribution to foreign purchasers is initially limited to the amount of their total purchase payments. Any additional amounts would go first to ALT, up to the amount of the unpaid purchase price, and then to the foreign purchasers. No defaulter may receive a share of the proceeds in excess of the total amount he or she paid to ALT, less any other refund received under the proposed order.

The proposed order allows respondents to purchase a tract or an interest in a tract from purchasers only under specified and limited circumstances.

Respondents have agreed to waive any rights under Australian law relating to the sale of any tracts or the proceeds from such sale where their rights are different from the terms of the proposed order. To the extent that those person who have purchased from ALT may have greater rights under Australian law then are provided by the proposed order, any rights arising under such law will not be reduced by any provision of the order.

E. *Cash Payments from Redress Fund.* Purchasers and defaulters, who are non-foreign, are eligible to receive cash payments from a $2 million redress fund. The amount of each cash payment will be determined by the amount each person paid on his or her contract when compared to the total amount paid by all eligible purchasers and defaulters. To receive a cash payment, a purchasers or defaulter must sign a statement releasing respondents from any liability arising from the purchase of an undivided interest in Australian land. Before the purchasers and defaulters are asked to sign the release, they will be advised, by letter, of the amount of the cash payment, and of the facts that future contract payments will not be collected, and the land will be sold as provided in the proposed order. Those persons who refuse to sign the release still will be excused from future contract payments, and will be entitled to receive shares of the proceeds from the sale of the land. ALT will being making payments to purchasers and defaulters who sign releases within two hundred and forty (240) days after the date the order is final, with subsequent payments to be made annually over the next 4 years.

Moreover, the proposed order provides that at least $1.5 million of the $2 million fund will be distributed, either as a result of cash payments made to eligible purchasers and defaulters or from monies paid pursuant to settlement, arbitration or litigation arising from the sale of the Australian land. If less than $1.5 million has been paid to purchasers and defaulters who sign releases, or pursuant to settlement arbitration or litigation, the unpaid balance will be paid to purchasers and defaulters who sign releases approximately seven years from the date the order becomes final, unless at that time a class action litigation is pending against any respondent. In such an event, the payment will be deferred until ninety (90) days after completion of the litigation. No additional payment will be made to eligible purchasers or defaulters if the class action litigation results in a judgment which exceeds the unpaid balance of the $1.5 million minimum fund.

F. *Procedures for Locating Purchasers and Defaulters.* Under the proposed order, ALT is to inform purchasers and defaulters of the provisions of the order by sending letters to their most recent address contained in ALT's files. For those persons who do not respond to the letters but whose letters were not returned undelivered, ALT must send a second letter by certified mail. ALT is required to attempt to obtain more current addresses for persons whose letters were undelivered by requesting new addresses from any relatives or representatives appearing in ALT's files and requesting more current addresses from credit reporting companies. If at any time prior to fulfilling the obligations imposed by the proposed order ALT learns of current addresses of persons who could not be previously located, they will be entitled to receive the benefits provided under the order.

G. *Liability of Respondents.* ALT is obligated to comply with the provisions of the proposed order. Morlan is responsible for ALT's compliance and is liable for any judgment against ALT for violating the order.

Safeguard is required to supply all the funds necessary for full compliance with the order. Furthermore, it must assume all the remaining unfulfilled obligations of the proposed order if the Commission determines that ALT is unable to comply with any provisions of the order and such non-compliance is not corrected within thirty (30) days after receipt by Safeguard of notice from the Commission, or if a bankruptcy court prohibits enforcement of the order against ALT or Morlan. Upon assuming the unfulfilled obligations of the order, Safeguard will be allowed one year to sell the tracts and distribute the proceeds or it can fulfill the obligations and meet the time deadlines set forth in the order. However, Safeguard is permitted to petition the Commission seeking extensions of deadlines where they will impose an unreasonable hardship or burden.

H. *Procedures to Ensure Compliance.* The respondents are required to maintain records and grant Commission personnel access to them until one year after compliance with all the provisions of the proposed order. These records include information used by respondents to determine the amounts due purchasers and defaulters from the redress fund and sale of the Australian land. Also, the Commission is given the right to approve the contents of certain letters regarding the sale of the Australian land prior to their mailing to purchasers and defaulters. In addition, copies of all letters to purchasers and defaulters which explain the requirements of the order must be sent to the Commission within three (3) days of mailing.

JAMES A. TOBIN,
Acting Secretary.

[FR Doc. 78-11832 Filed 5-1-78; 8:45 am]

[1505-01]

[16 CFR Part 461]

CHILDREN'S ADVERTISING

Proposed Trade Regulation Rulemaking and Public Hearing

Correction

In FR Doc 78-11323 appearing at page 17967 in the issue for Thursday, April 27, 1978, the eighth line of the third paragraph in column three, the room number now reading, "120," should be "130."

[8120-01]

TENNESSEE VALLEY AUTHORITY

[18 CFR Part 307]

NONDISCRIMINATION WITH RESPECT TO HANDICAP IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

Implementation of Section 504 of the Rehabilitation Act of 1973

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to adopt a new Part 307 to TVA's regulations. The new part concerns nondiscrimination with respect to the handicapped in programs receiving Federal financial assistance from TVA. These proposed regulations set forth enforcement procedures, standards for determining which persons are handicapped, and guidelines for determining what practices are discriminatory, in accordance with section 504 of the Rehabilitation Act of 1973, as amended.

DATE: Comments must be received on or before May 31, 1978.

ADDRESS: Comments on the proposal may be sent to Justin M. Schwamm, Sr., Assistant General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E11B25, Knoxville, Tenn. 37902.

FOR FURTHER INFORMATION CONTACT:

Edward F. Hilton, Jr., Division of Personnel, 235 Millers Building, 423 Gay Street, Knoxville, Tenn. 37902, telephone 615-632-2755.

SUPPLEMENTARY INFORMATION: TVA was created by the Tennessee Valley Authority Act of 1933, as amended, as a corporate agency and instrumentality of the Federal Government, with "the duty of constantly studying the whole situation presented by the Tennessee River Valley, and the adjoining territory, with the view of encouraging and guiding in the orderly and balanced development of the diverse and rich resources of that section" (H.R. Rep. No. 130, 73d Cong., 1st Sess. 19 (1933)). Under it broad statutory mandate, TVA engages in a number of programs including experiments and demonstrations concerned with the provision of an ample supply of power for the advancement of the national defense and the physical, social and economic development of the area, the development of agriculture and fertilizers, the improvement of navigation and control of destructive floods, the fostering of recreation, industrial development, and many other things.

The TVA Act does not provide for grants to State or local agencies, as do many Federal social development or welfare programs. However, TVA does carry out many aspects of its programs by contracts which in TVA's view involve the provision of Federal financial assistance within the meaning of section 504 of the Rehabilitation Act of 1973, as amended. The contracts include such activities as providing fertilizer materials to land grant colleges for farm test demonstrations; granting land to State and local entities for recreational purposes; providing recreational planning and other technical services; and providing a variety of other types of assistance to meet the needs of individual communities, including mitigating the effects upon local housing, schools, public health, and law enforcement services, of the construction by TVA of electric power generating plants. Characteristically, the funds and value of property and services involved are relatively small, and the assistance is provided in isolated areas, rather than in regional or statewide areas. Moreover, assistance is often provided on an ad hoc basis as contrasted with the long-range financial assistance programs administered by some Federal departments and other agencies.

The purpose of the proposed regulation is to state the rules which will govern TVA financial assistance contracts in implementing section 504 of the Rehabilitation Act of 1973, as amended, and the enforcement provisions and guidelines which will govern. TVA has generally worked at the local level as the best way of implementing its statutory goals, and understanding and meeting the needs of the people it serves. In the proposed regulation, TVA has paralled the guidelines adopted by the Department of Health, Education and Welfare, so far as is practicable in light of the nature of TVA's programs, the small amount of funds, property or services involved in its financial assistance contracts, and the highly localized impacts.

TVA has attempted to insure sufficient flexibility in the proposed regulations to avoid creating situations in which administrative and other costs required of recipient communities with very limited resources would result in decisions by those communities that these costs exceed the value of the assistance which TVA can provide. Such decisions, of course, would impair the usefulness of both the substantive program carried out by TVA and the purposes of section 504.

All persons who desire to comment on the proposed regulation are encouraged to do so. Comments should be addressed to Justin M. Schwamm, Sr., Assistant General Counsel, 400 Commerce Avenue, E11B25, Knoxville, Tenn. 37902. All communications received on or before May 31, 1978, will be considered before action is taken on the proposed rule, which may be changed in light of the comments. All comments submitted will be available for public inspection at the office of the Director of Information, 400 Commerce Avenue, E12A4, Knoxville, Tenn. 37902, between the hours of 9 a.m. and 4 p.m. Monday through Friday, except federal holidays.

In consideration of the foregoing, it is proposed, under the authority of 16 U.S.C. 831-831dd and section 504 of the Rehabilitation Act of 1974, as amended, 29 U.S.C. 794, to add part 307 to chapter 11 of Title 18 of the Code of Federal Regulations, to read as set forth below.

Dated: April 26, 1978.

H. N. STROUD, Jr.,
Acting General Manager.

Part 307 would be added to read as follows:

PART 307—NONDISCRIMINATION WITH RESPECT TO HANDICAP

Sec.

307.1 Definitions.
307.2 Purpose.
307.3 Application.
307.4 Program discrimination guidelines.
307.5 Employment discrimination guidelines.
307.6 Program accessibility guidelines.
307.7 Assurances required.
307.8 Compliance information.
307.9 Conduct of investigations.
307.10 Procedure for effecting compliance.
307.11 Hearings.
307.12 Decisions and notices.
307.13 Effect on other regulations; supervision and compliance.
307.14-25 [Reserved]

AUTHORITY: TVA Act, 48 Stat. 58 (1933) as amended, 16 U.S.C. secs. 831-831dd (1976), sec. 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794.).

§ 307.1 Definitions.

As used in this part, the following terms have the stated meanings, unless the context otherwise requires.

(a) "Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, as amended.

(b) "Recipient" means any individual, any state or its political subdivision, or any instrumentality of either, and any public or private agency, institution, organization, or other entity to which financial assistance is extended by TVA directly or through another recipient, including any successor, assignee, or transferee of a recipient as hereinafter set forth, but excluding the ultimate beneficiary of the assistance.

(c) "Financial assistance" means the grant or loan of money; the donation of real or personal property; the sale, lease, or license of real or personal property for a consideration which is nominal or reduced for the purpose of assisting the recipient; the waiver of charges which would normally be

made, in order to assist the recipient; the entry into a contract where a purpose is to give financial assistance to the contracting party; and similar transactions.

(d) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(e) "Federal agency" means any department, agency, or instrumentality of the government of the United States, other than TVA.

(f) "Handicapped person" means any individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment, as further defined below:

(1) "Physical or mental impairment" means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; and drug addiction and alcoholism.

(2) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a physical or mental impairment that substantially limits one or more major life activities.

(4) "Is regarded as having such an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities but which is treated by a recipient as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or (iii) does not have a physical or mental impairment as defined paragraph (f)(1) of this section but is treated by a recipient as having such an impairment.

(g) "Qualified handicapped person" means (1) with respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question, and (2) with respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

§ 307.2 Purpose.

The purpose of this part is to effectuate section 504 to the end that no otherwise qualified handicapped individual shall, solely be reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to the discrimination under any program or activity receiving financial assistance from TVA.

§ 307.3 Application.

This part applies to any program in which financial assistance is provided by TVA, except that this part does not apply to any (a) TVA procurement contracts, contracts with other federal agencies, or contracts of insurance or guaranty, (b) money paid, property transferred, or other assistance extended to a recipient under any program before the effective date of this part, or (c) assistance to any individual or entity which is the ultimate beneficiary under any such program.

§ 307.4 Program discrimination guidelines.

(a) *Scope.* This section sets forth guidelines as to general and specific actions which may be found to consititute discrimination on the basis of handicap in programs subject to this part.

(b) *General.* No qualified handicapped person, shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity to which this part applies.

(c) *Specific discriminatory actions.* (1) A recipient under any program to which this part applies shall not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or services available under the program;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others under program;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others under the program;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to other, unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to other under the program;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or entity that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards with respect to the program; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment under the program of any right, privilege, advantage, or opportunity enjoyed by others under the program.

(2) A recipient shall not deny a qualified handicapped person the opportunity to participate under the program in activities that are not separate or different, despite the existence of permissibly separate or different activities.

(3) A recipient shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common adminstrative control.

(4) A receipient shall not, in determining the site or location of a facility under the program, make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(d) The exclusion of nonhandicapped persons from the benefits of a program limited by federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(e) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§ 307.5 Employment discrimination guidelines.

(a) *Scope.* This section sets forth guidelines as to general and specific

actions which may be found to constitute discrimination in employment on the basis of handicap in programs subject to this part.

(b) *General.* No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity subject to this part.

(c) *Specific discriminatory actions.* With respect to a program or activity subject to this part, a recipient shall not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(d) A recipient shall make all decisions concerning employment under any program or activity subject to this part in a manner which ensures that discrimination on the basis of handicap does not occur, including the following activities:

(1) Recruitment, advertising, and processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(e) A recipient shall not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this part, including relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(f) *Reasonable accommodation.* A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of the program or activity subject to this part.

(g) *Employment criteria.* A recipient shall not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(h) *Preemployment inquires.* A recipient shall not conduct a preemployment medical examination or make a preemployment inquiry as to whether an applicant was a handicapped person or as to the nature or severity of a handicap except under the circumstances described in 45 CFR 84.14.

§ 307.6 Program accessibility guidelines.

(a) *Scope.* This section sets out guidelines with respect to general and specific actions which may be found to constitute discrimination with respect to program accessibility on the basis of handicap in programs subject to this part.

(b) *General.* No qualified handicapped person shall, because facilities are inaccessible to or unusuable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program subject to this part.

(c) *Existing facilities.* (1) Each program subject to this part shall be operated so that, viewed in its entirety, it is readily accessible to and usable by qualified handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons.

(2) If the financial assistance from TVA is expected to extend for at least three years, and structural changes will be necessary to make covered programs or activities in existing facilities accessible, such changes shall be made as soon as practicable, but in no event later than three years from the effective date that financial assistance is extended by TVA. If structural changes are necessary, the recipient shall develop, within one year, a transition plan setting forth the steps necessary to complete the changes. The transition plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. TVA may, in its discretion, require structural changes with respect to financial assistance expected to last less than three years, in which case the contract or agreement with the recipient shall specify the date of development of the transition plan.

(3) Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to an usable by handicapped persons.

(d) *New construction.* New facilities required under a program subject to this part shall be designed and constructed to be readily accessible to and usable by handicapped persons.

§ 307.7 Assurances required.

(a) TVA contributes financial assistance only under agreements which contain a provision which specifically requires compliance with this part and the guidelines contained herein. If the financial assistance involves the furnishing of real property, the aggreement shall obligate the recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property is used for a purpose for which the financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where the financial assistance involves the furnishing of personal property, the agreement shall obligate the recipient during the period for which ownership or possession of the property is retained. In all other cases the agreement shall obligate the recipient for the period during which financial assistance is extended pursuant to the agreement. TVA shall specify the form of the foregoing agreements, and the extent to which an agreement shall be applicable to subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program.

(b) In the case of real property, structures or improvements thereon, or interests therein, acquired through a program of Federal financial assistance, or in the case where Federal financial assistance was provided in the form of a transfer by TVA of real property or interest therein, the instrument effecting or recording the transfer of title shall contain a covenant running with the land assuring compliance with this part and the guidelines contained herein for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained by transfer from TVA, the covenant against discrimination may also include a condition coupled with a right to be reserved by TVA to revert title to the property in the event of a breach of the covenant where, in the discretion of TVA, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event, if a transferee of real property proposes to mortgage or otherwise en-

cumber the real property as security for financing construction of new, or improvement of existing facilities, on such property for the purposes for which the property was transferred, TVA may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as it deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 307.8 Compliance information.

(a) *Cooperation and assistance.* TVA shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to TVA timely, complete and accurate compliance reports at such times, and in such form and containing such information, as TVA may determine to be necessary to enable it to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by TVA during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as TVA may require to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and set forth the efforts it has made to obtain the information.

(d) *Information to employees, beneficiaries and participants.* Each recipient shall make available to employees, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives financial assistance, and shall make such information available to them in such manner, as TVA finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§ 307.9 Conduct of investigations.

(a) *Periodic compliance reviews.* TVA shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any individual who claims (individually or on behalf of any specific class of individuals) to have been subjected to discrimination prohibited by this part may, personally or by a representative, file with TVA a written complaint. A complaint must be filed not later than ninety (90) days from the date of the alleged discrimination, unless the time for filing is extended by TVA.

(c) *Investigations.* TVA will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation shall include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, TVA will so inform the recipient and the matter will be resolved by informal means whenever possible. If TVA determines that the matter cannot be resolved by informal means, action will be taken as provided for in § 307.10.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, TVA will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 504 or this part, or because the individual had made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 307.10 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, (2) institution of appropriate proceedings by TVA to enforce the provisions of the agreement of financial assistance or of any deed or instrument relating thereto, and (3) any applicable proceeding under State or local law.

(b) *Noncompliance with § 307.7.* If any entity requesting financial assistance from TVA declines to furnish the assurance required under § 307.7, or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, financial assistance may be refused in accordance with the procedures of paragraph (c) of this section; and for such purposes, the term "recipient" includes one who has been denied financial assistance. TVA shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that TVA shall continue assistance during the pendency of such proceedings where such assistance was due and payable pursuant to an agreement therefor entered into with TVA prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue financial assistance.* No order suspending, terminating or refusing to grant or continue financial assistance shall become effective until (1) TVA has advised the recipient of the failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the recipient to comply with a requirement imposed by or pursuant to this part, including any act of discrimination on the basis of handicap in violation of the guidelines in this part, and (3) the action has been approved by the TVA Board pursuant to § 307.12. Any action to suspend or terminate or to refuse to grant or to continue financial assistance shall be limited to the particular recipient as to whom such a finding had been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance had been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) TVA has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least ten (10) days from the mailing of such notice to the recipient or other person. During this period of at least ten (10) days addi-

tional efforts will be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 307.11 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 307.10, reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected recipient. This notice shall advise the recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and shall either (1) fix a date not less than twenty (20) days after the date of such notice within which the recipient may request of TVA that the matter be scheduled for hearing or (2) advise the recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. A recipient may waive a hearing and submit written information and argument for the record. The failure of a recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing and a consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the time and place fixed by TVA unless it determines that the convenience of the recipient requires that another place be selected. Hearings shall be held before the TVA Board or before a "hearing officer" who shall be either a member of the TVA Board or, at the discretion of the Board, a person designated by the Board who shall not be employed in or under the TVA division through or under which the financial assistance has been extended by TVA to the recipient involved in the hearing.

(c) *Right to counsel.* In all proceedings under this section, the recipient and TVA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both TVA and the recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence will not apply to hearings conducted pursuant to this part, 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 where reasonably necessary by the officer conducting the hearing. That 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 and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal agencies issued under section 504, the TVA Board may, by agreement with such other agency, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 307.12.

§ 307.12 Decisions and notices.

(a) *Decision by a member of the TVA Board or a hearing examiner.* If the hearing is held before a "hearing officer" as defined in § 307.11(b), that hearing officer shall either make an initial decision, if so authorized, or certify the entire record including recommended findings and proposed decision to the TVA Board for a final decision. A copy of such initial decision or certification shall be mailed to the recipient. Where the initial decision is made by a hearing officer, the recipient may file with the TVA Board exceptions to the initial decision, which shall include a statement of reasons therefor. Such exceptions shall be filed within thirty (30) days of the mailing of the notice of initial decision. In the absence of exceptions, the TVA Board may on its own motion within forty-five (45) days after the initial decision serve on the recipient a notice that it will review the decision. Upon the filing of such exceptions or of such notice of review, the TVA Board shall review the initial decision and issue its own decision thereon including the reasons therfor. In the absence of either exceptions or a notice of review, the initial decision shall constitute the final decision of the TVA Board.

(b) *Decisions on record or reivew by the TVA Board.* Whenever a record is certified to the TVA Board for decision or it reviews the decision of a hearing officer pursuant to paragraph (a) of this section, or whenever the TVA Board conducts the hearing, the recipient shall be given reasonable opportunity to file with the Board briefs or other written statements of its contentions, and a copy of the final decision of the Board shall be given in writing to the recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived, a decision shall be made by the TVA Board on the record and a copy of such decision shall be given to the recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part (including violations of guidelines) with which it is found that the recipient has failed to comply.

(e) *Approval by TVA Board.* Any final decision (other than a decision by the TVA Board) which provides for the suspension or termination of, or the refusal to grant or continue financial assistance, or the imposition of any other sanction available under this part or section 504 shall promptly be transmitted to the TVA Board which may approve such decision, vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of section 504 and this part, including provisions designed to assure that no financial assistance will thereafter be extended under such program to the recipient determined by such decision to have failed to comply with this part, unless and until it corrects its noncompliance and satisfied TVA that it will fully comply with this part.

(g) *Posttermination proceedings.* (1) A recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive financial assistance upon satisfaction of the terms and conditions for such eligibility contained in that order, or if the recipient otherwise comes into compliance with this part and provides reasonable as-

surance of future full compliance with this part.

(2) Any recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request that TVA fully restore the recipient's eligibility to receive financial assistance. Any such request shall be supported by information showing that the recipient has met the requirements of subparagraph (1) of this paragraph. If TVA determines that those requirements have been satisfied, it shall restore such eligibility.

(3) If TVA denies any such request, the recipient may submit a request for a hearing in writing, specifying its reasons for believing TVA to have been in error. The recipient shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by TVA. The recipient, upon proving at such a hearing that the requirements of subparagraph (1) of this paragraph are satisfied, will be restored to such eligibility. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 307.13 Effect on other regulations; supervision and coordination.

(a) *Effect on other regulations.* Nothing in this part shall be deemed to supersede or affect any of the following (including future amendments thereof): (1) regulations by TVA and other Federal agencies issued with respect to section 503 of the Rehabilitation Act, or (2) any other regulations or instructions, insofar as they prohibit discrimination on the ground of handicap in any program or situation to which this part is inapplicable, or which prohibit discrimination on nay other ground.

(b) *Supervision and coordination.* TVA may from time to time assign to officials of other Federal agencies, with the consent of such agencies, responsibilities in connection with the effectuation of the purposes of section 504 and this part (other than responsibility for final decision as provided in § 307.12), including the achievement of effective coordination and maximum uniformity within the Executive Branch of the Government in the application of section 504 and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Federal agency acting pursuant to an assignment of responsibility under this part shall have the same effect as though such action had been taken by TVA.

[FR Doc. 78-11901 Filed 5-1-78; 8:45 am]

[4110-07]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 416]

[Reg. No. 16]

SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Evaluating Resources on Basis of Equity Value

AGENCY: Social Security Administriation, HEW.

ACTION: Notice of proposed rule making.

SUMMARY: These proposed rules change the basis for evaluating resources from the current marked values to equity value under the supplemental security income (SSI) program. As the result of a review of the Social Security Administration's (SSA) policy on the evaluation of resources, the Secretary has approved the use of equity value. It is expected that these proposed amendments to the regulations will provide for more euitable determinations regarding eligibility for SSI benefits.

DATE: Comments must be received on or before June 16, 1978.

ADDRESSES: Prior to final adoption of the proposed amendments to the regulations, consideration will be given to any data, comments, or arguments pertaining to the amendments which are submitted in writing to the Acting Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203. Copies of all comments received in response to these proposed amendments will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION, CONTACT:

Mr. Henry D. Lerner, Legal Assistant, Office of Policy and Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-7336.

SUPPLEMENTARY INFORMATION: In the past, the Social Security Administration (SSA) has valued resources on the basis of their current market value, which is the price for which the item would sell on the open market, and SSA regulations reflect that policy. However, regulations pertaining to resources for purposes of the aid to families with dependent children (ADFDC) program permit each State to decide whether to use current market value or equity value in evaluating resources for AFDC. At present, a majority of the States use equity value. Therefore, the Secretary reviewed SSA's former policy and directed that resources be valued on the basis of their equity value when a determination is made regarding an individual's eligibility for supplemental security income benefits. The amendments to the SSA regulations reflect the Secretary's decision.

On Friday, April 28, 1978, SSA published a notice of proposed rule making in the FEDERAL REGISTER (43 FR 18206) increasing the reasonable value of household goods and personal effects from $1,500 to $2,000 and the reasonable value of an automobile from $1,200 to $2,000 (i.e., the extent to which they can be excluded from a person's resources when the person's eligibility for SSI benefits is determined). The subject proposed rules also show the reasonable values as proposed by the previously published notice of proposed rulemaking and in addition change the basis for evaluating household goods, personal effects, and an automobile from market value to equity value.

The proposed amendments are to be issued under the authority in sections 1102, 1613(a), 1614(f), and 1631 of the Social Security Act, as amended; 49 Stat. 647, as amended, 86 Stat. 1470, as amended, 86 Stat. 1471, and Stat. 1475; 42 U.S.C. 1302, 1382b(a), 1382c(f), and 1383.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program.)

NOTE.—The Social Security Administration has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Dated: February 23, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: April 24, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 416.1201 is amended by revising paragraphs (b) and (c) to read as follows:

§ 416.1201 Resources; general.

* * * * *

(b) *Liquid resources; defined.* Liquid resources are those assets that are in cash or are financial instruments

which are convertible to cash. Liquid resourecs include cash on hand, cash in savings accounts or checking accounts, stocks, bonds, mutual fund shares, promissory notes, mortgages, and similar properties. Liquid resources, other than cash, are evaluted according to their equity value.

(c) *Nonliquid resources; defined.* (1) Nonliquid resources include all other properties. The term includes both real and personal property. Nonliquid resources are evaluated according to their equity value except as otherwise provided.

(2) For purposes of this Subpart L, the "equity value" of an item is defined as:

(i) The price that item can reasonably be expected to sell for on the open market in the particular geographic area involved; minus

(ii) Any encumbrances.

2. Paragraph (b) of § 416.1216 is revised to read as follows:

§416.1216 Exclusion of household goods and personal effects.

* * * * *

(b) *Limitation on household goods and personal effects.* In determining the resources of an individual (and spouse, if any), household goods and personal effects are excluded if their total equity value is $2,000 or less. If the total equity value of household goods and personal effects is in excess of $2,000, the excess is counted against the resource limitation.

* * * * *

3. Paragraphs (b) and (d) of § 416.1218 is revised to read as follows:

§ 416.1218 Exclusion of the automobile.

* * * * *

(b) *Limitation on automobile.*—(1) *General.* In determining the resources of an individual (and spouse, if any), an automobile is excluded if its equity value is $2,000 or less. If the equity value of the automobile exceeds $2,000, the excess is counted against the resource limitation.

(2) *Total exclusion.* An automobile is totally excluded:

(i) If it is used for employment; or

(ii) If it is used for the medical treatment of a specific of regular medical problem of the individual; or

(iii) If it is used for the medical treatment of a specific or regular medical problem of a member of the individual's household, or

(iv) If it has been modified for operation by a handicapped person; or

(v) If it has been modified for transportation of a handicapped person.

* * * * *

(d) *Equity value.* The "equity value" of an automobile is:

(1) The average price an automobile of that particular year, make, model, and condition will sell for on the open market (to a private individual) in the particular geographic area involved, minus

(2) Any encumbrances.

[FR Doc. 78-11595 Filed 5-1-78; 8:45 am]

[4110-07]

[20 CFR Part 416]

SUPPLEMENTAL SECURITY INCOME BENEFITS

Replacement of Damaged, Lost, or Stolen Excluded Resources; Decision to Develop Regulations

AGENCY: Social Security Administration, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: The Social Security Administration is planning to publish proposed regulations which will exclude from income and resources any assistance received from any source to repair or replace a damaged, lost, or stolen resource (e.g., home, automobile) the value of which is wholly or partially not countable for the purpose of determining eligibility for supplemental security income benefits. Any interest earned on such assistance will be also excluded from income and resources. The exclusions will apply for specified temporary periods.

FOR FURTHER INFORMATION CONTACT:

Mr. Henry D. Lerner, Room 457, West High Rise Building, 6401 Security Boulevard, Baltimore, Md. 21235, Telephone: 301-594-7336.

Dated: March 30, 1978.

Approved:

DON WORTMAN,
Acting Commissioner of Social Security.

[FR Doc. 78-11960 Filed 5-1-78; 8:45 am]

[1505-01]

DEPARTMENT OF LABOR

Employment Standards Administration

[20 CFR Part 718]

FEDERAL MINE SAFETY AND HEALTH ACT OF 1977, AS AMENDED

Standards for Determining Coal Miner's Total Disability or Death Due to Pneumoconiosis

Correction

In FR Doc. 78-11086 appearing at page 17722 of the issue for Tuesday, April 25, 1978, the first line of the fifth paragraph of the first column should read, "written comments may also be submitted by interested persons on or before June 26, 1978."

[1505-01]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 182, 184, 186]

[Docket No. 78N-0023]

AMMONIUM BICARBONATE, AMMONIUM CARBONATE, AMMONIUM CHLORIDE, AMMONIUM HYDROXIDE, AND MONO AND DIBASIC AMMONIUM PHOSPHATE

Proposed Affirmation of GRAS Status as Human Food Ingredients

Correction

In FR Doc. 78-8590 appearing on page 14064 in the issue for Tuesday, April 4, 1978, in the first line of the second paragraph under "Supplementary Information" the symbol "(NH_4^+)" should have appeared as "(NH_4^+)".

[4110-03]

[21 CFR Part 801]

[Docket No. 77N-0354]

MEDICAL DEVICES

Impact Resistant Lenses in Eyeglasses and Sunglasses; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Extension of comment period on proposed rule.

SUMMARY: This document extends the comment period on a proposed rule which would amend present Food and Drug Administration regulations that require use of impact resistant lenses in most eyeglasses and sunglasses. The proposed rule would allow for technological alternatives in testing to assure that lenses are impact resistant.

DATES: The deadline for written comments was March 7, 1978; it is now extended to June 1, 1978.

ADDRESS: Written comments (preferably four copies) to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Peter B. Carstensen, Bureau of Medical Devices (HFK-210), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, Md. 20910, 301-427-7222.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of January 6, 1978 (43 FR 1106), FDA published a

proposal to amend § 801.410 (21 CFR 801.410) to allow for technological alternatives in the testing of impact resistant lenses for use in eyeglasses and sunglasses. The deadline for written comments was March 7, 1978.

The Food and Drug Administration has received two written requests for an extension of the comment period. The Commissioner has decided that it is appropriate to extend the period for comment on the proposal to June 1, 1978.

Dated: April 26, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-11808 Filed 5-1-78; 8:45 am]

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No FI-4086]

CITY OF SAN LUIS OBISPO, SAN LUIS OBISPO COUNTY, CALIF.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Tenchnical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of San Luis Obispo, San Luis Obispo County, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualifed for participation in the national flood insurance program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the office of the City Engineer, Community Development Department, 990 Palm Street, San Luis Obisop, Calif. Send comments to: Mr. Richard Miller, Administrative Officer, City of San Luis Obispo, P.O. Box 321, San Luis Obispo, Calif. 93406.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581, or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (110-year) flood elevations for the city of San Luis Obisop, Calif., 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 1917.4(a).

These elevations, together with the flood plain management measures required by section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies extablished by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Stenner Creek	North Pomo St.*	187
	U.S. Route 101**	189
	U.S. Route 101*	199
	Santa Rosa St*	230
	Foothill Blvd.**	240
	Foothill Blvd.*	254
	Foothill Blvd.* (0.3 mi)	264
Old Garden Creek	Broad and Lincoln Sts.*	199
	Mission Ave.*	217
	Ramona Dr.*	233
	Center of Felton Way	252
Prefumo Creek	U.S. Route 101*	108
	Madonna Rd.*	125
	Los Osos Valley Rd.**	128
	Los Osos Valley Rd.*	137
San Luis Obisop Creek.	Confluence with Froom Creek.	98
	Prado Road Bridge*	135
	Bianci Lane Bridge*	169
	Broad Street Bridge*	195
	Johnson Avenue Bridge*	236
	Andrews Street Bridge*	275
	U.S. Route 101**	303
	U.S. Route 101*	319
East fork San Luis Obisop Creek.	Broad St.*	160
	Private Dr. approximately 0.16 mi. upstream of Broad St.	168

*Upstream side.
**Downstream 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 (39 FR 2787, January 24, 1974).)

Issued: April 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-11654 Filed 5-1-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-4087]

CITY OF DURANGO, LA PLATA COUNTY, COLO.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Durango, La Plata County, Colo.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Office of the City Planner, 965½ Maine Avenue, Durango, Colo.

Send comments to: Honorable Maxine Peterson, Mayor, City of Durango, P.O. Box 221, Durango, Colo. 81301.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator give notice of the proposed determinations of base (11-year) flood elevations for the City of Durango, Colo., 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 1986 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet national geodetic vertical datum
Animas River	Old U.S. Highway 160 [1]	6,485
	Old U.S. Highway 160 [2]	6,484
	Main Ave. (U.S. Highway 550) [1]	6,509
	Main Ave. (U.S. Highway 550) [2]	6,504
	Denver & Rio Grande Western RR.	6,513
	32d St. [1]	6,542
	32d St. [2]	6,540
Dry Gulch Creek	Columbine Ave.	6,603
	Borrego Dr. [1]	6,688
	Borrego Dr. [2]	6,683
Junction Creek	Denver & Rio Grande Western RR [1]	6,526
	Denver & Rio Grande Western RR [2]	6,520
	West 2d Avenue Bridge [1]	6,569
	West 2d Avenue Bridge [2]	6,568
	Clovis Drive Bridge [1]	6,627
	Clovis Drive Bridge [2]	6,623

[1]Upstream side.
[2]Downstream 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 (39 FR 2787, January 24, 1974).)

Issued: April 11, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-11655 Filed 5-1-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-4088]

LA PLATA COUNTY, COLO.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in La Plata County, Colo.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Office of the Land Use Administration, La Plata County Courthouse, 1060 Second Avenue, Durango, Colo.

Send comments to: Mr. Patrick Conley, Chairman, La Plata County Board of Commissioners, La Plata County Courthouse, P.O. Box 1711, Durango, Colo. 81301.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for La Plata County, Colo., 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 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Animas River near Durango.	Along Denver & Rio Grande Western RR (river side of railroad) approximately 0.2 mile north along U.S. Route 550 from hospital in Durango.	6,553
	Durange corporate limits at Station 66.28 [1].	6,547
	Durango corporate limits at Station 62.40 [2].	6,462
	La Posta Rd (new bridge) [1].	6,454
	La Posta Road (old bridge) [2].	6,453
Junction Creek	Private drive bridge No. 5 [2].	6,824
	Private drive bridge No. 4 [2].	6,772
	Private drive bridge No. 3 [1].	6,763
	Private drive bridge No. 2 [1].	6,758
	Private drive bridge No. 2 [2].	6,755
	Private drive bridge No. 1 [1].	6,749
Dry Gulch Creek	0.8 mile north along dirt road from an intersection in Durango; dirt road is parallel to Dry Gulch Creek River Side Rd.	6,830
	Corporate limits at Station 3750 [2].	6,608
Lightner Creek	Bridge No. 11 [2]	7,160
	Bridge No. 9 [1]	6,916
	Bridge No. 8 [2]	6,771
	Bridge No. 4 [1]	6,579
	Bridge No. 3 [1]	6,539
	Bridge No. 1 [2]	6,485
Vallecito Creek	Upper County Road Bridge [1].	7,835
	Upper County Road Bridge [2].	7,833
	Lower County Road Bridge [1].	7,690
	Lower County Road Bridge [2].	7,689
Los Pinos River at Bayfield.	Highway 160 Bridge [1]	6,888
	Highway 160 (alternate) Bridge [1].	6,865
Los Pinos River at Ignacio.	Bridge No. 2 [1]	6,480
	Bridge No. 2 [2]	6,477
	Bridge No. 1 [1]	6,441
Grimes Creek	First private drive downstream of Upper County Rd.	7,775
	Lower County Road Bridge [1].	7,693

[1]Upstream side.
[2]Downstream 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 (39 FR 2787, January 24, 1974)).

Issued: April 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-11656 Filed 5-1-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-4089]

Proposed Flood Elevation Determinations

TOWN OF NUNN, WELD COUNTY, COLO.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Nunn, Weld County, Colo.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, 755 Third Street, Nunn, Colo.

Send comments to: Mayor Wayne Foster, P.O. Box 171, Nunn, Colo. 80648.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Nunn, Colo., 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 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be constructed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Spring Creek tributary.	Weld County Rd No. 98	5,165
	5th St	5,182
	Roosevelt Ave	5,187
Western flow path to Spring Creek tributary.	Roosevelt Ave	5,187

(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 (39 FR 2787, January 24, 1974).)

Issued: April 11, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-11657 Filed 5-1-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-4090]

TOWN OF LITTLE CREEK, DENT COUNTY, DEL.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Little Creek, Kent County, Del.

These base (100-year) flood elevations are basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Post Office, Little Creek, Del.

Send comments to: Mayor Dorothy K. Wright, Little Creek, Del. 19961.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C., 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Little Creek, Del., 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 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordiances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on is own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Delware Bay	Intersection of Lowe and Main Sts.	9

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968) as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969, amended (39 FR 2787, Jan. 24, 1974).)

Issued: April 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-11658 Filed 5-1-78; 8:45 am]

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR PART 1917]

[Docket No. FI-4091]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR CITY OF SEAFORD, SUSSEX COUNTY, DEL.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Seaford, Sussex County, Del. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

Dates: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Seaford, Del. Send comments to: Honorable William Slatcher, Mayor of Seaford, 302 East King Street, Seaford, Del. 19972.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Seaford, Sussex County, Del. 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 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Herring Run	State Route 20	12
	U.S. Route 13	23

(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 (39 FR 2787, January 24, 1974).)

Issued: April 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-11659 Filed 5-1-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-4092]

CITY OF AURORA, KANE, AND DU PAGE COUNTIES, ILL.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Aurora, Kane, and Du Page Counties, Ill. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for particiaption in the National Flood Insurance Progam (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, 44 East Downer Street, Aurora, Ill. Send comments to: Hon. Albert McCoy, Mayor of Aurora, 44 East Downer Street, Aurora, Ill. 60504.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Aurora, Kane, and Du Page Counties, Ill., 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 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be constructed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet national geodetic vertical datum
Fox River	Downstream corporate limit at Ashland Ave.	622
	Elgin, Joliet & Eastern RR.	623
	Burlington Northern RR. at west channel.	626
	North Ave	628
	Burlington Northern RR.	628
	Convergence of east and west channel.	629
Fox River, west channel.	Holbrook St. at west channel Downer St. at west channel.	629 630

Source of Flooding	Location	Elevation in feet national geodetic vertical datum
	Galena St. at west channel.	630
	Downstream Aurora Dam at west channel.	630
	Upstream Aurora Dam at west channel.	635
	New York St. at west channel.	635
Fox River, east channel.	Benton St. at east channel.	630
	Fox St. at east channel ..	630
	Main St. at east channel	630
	Downstream Aurora Dam at east channel.	630
	Upstream Aurora Dam at east channel.	635
	New York St. at east channel.	635
Fox River	Divergence of east and west channel.	635
	Confluence of Indian Creek.	636
	Illinois Ave.....	636
	Indian Trail Rd.....	637
Indian Creek.....	Confluence with Fox River.	636
	Chicago Aurora & Elgin RR.	637
	Private bridge 100 ft downstream of Broadway St.	642
	Broadway St.....	645
	Burlington Northern RR. sidings upstream of Broadway St.	645
	Burlington Northern RR. 300 ft downstream of High St.	649
	High St.....	654
	Wood St.....	667
	Ohio St.....	672
	Rural St	684
	Austin Ave	691
	Farnsworth Ave.....	692
	Private bridge 1,300 ft upstream of Austin Ave.	693
	Private bridge 1,400 ft upstream of Austin Ave.	695
	Sheffer Rd.....	699
	Private bridge 500 ft downstream of Farnsworth Ave.	703
	Farnsworth Ave. downstream crossing.	704
	Reckinger Rd	706
	Marshall Blvd	709
	Farnsworth Ave. upstream crossing.	710
	Molitor Rd.....	713
	Confluence of Selmarten Creek.	715
	East-West Tollway	718
	Bilter Rd	724
Selmarten Creek...	Confluence with Indian Creek.	715
	Seminary Creek Dam	716
	Seminary Rd	716
	Upstream corporate limits approximately 4,200 ft upstream of Seminary Rd.	716
Waubansee Creek .	Downstream corporate limits approximately 2,500 ft downstream of Kautz Rd.	672
	Kautz Rd.	674
	Montgomery Rd	675
	Upstream corporate limits approximately 160 ft downstream of Elgin Joliet & Eastern RR.	683

(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 (39 FR 2787, January 24, 1974).)

Issued: April 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-11660 Filed 5-1-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3173]

CITY OF MISSION HILLS, JOHNSON COUNTY, KANS.

Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appear on page 42 FR 38297 of the FEDERAL REGISTER of July 27, 1977.

EFFECTIVE DATE: July 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

The following:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Brush Creek.....	Mission Hill Country Club Rd..	853

Should be corrected to read:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Brush Creek.....	700 ft. downstream of Mission Hill Country Club Rd.	853

(National Flood Insurance Act 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 (39 FR 2787, January 24, 1974).)

Issued: April 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-11661 Filed 5-1-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket FI-3765]

CITY OF ATTLEBORO, BRISTOL COUNTY, MASS.

Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 42 FR 64280 of the FEDERAL REGISTER of December 22, 1977.

EFFECTIVE DATE: December 22, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581, or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

The following:

Source of flooding	Location	Elevation in feet national geodetic vertical datum
Tenmile River.....	At Olive St.....	112
Sevenmile River....	Water Works Dam	104
Chartley Brook	At town boundary of North Attleborough.	105

Should be corrected to read:

Source of flooding	Location	Elevation in feet national geodetic vertical datum
Ten Mile River	1,200 ft downstream of Olive St.	112
Sevenmile River....	Water Works Dam	103
Chartley Brook	At town boundary of Norton.	105

(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 (39 FR 2787, Janurary 24, 1974).)

Issued: April 6, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-11662 Filed 5-1-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-4094]

TOWN OF MAYNARD, MIDDLESEX COUNTY, MASS.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Maynard, Middlesex County, Mass. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Clerk's Office, Maynard, Mass. Send comments to: Mr. Alfred T. Whitney, Chairman, Board of Selectmen, Town Hall, Maynard, Mass. 01754.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gived notice of the proposed determinations of base (100-year) flood elevations for the town of Maynard, 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. 448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4 (a).

These elevations, together with the flood plain management measures required by section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Assabet River	At Acton-Maynard town line.	146
	120 ft downstream of Waltham St.	146
	700 ft upstream of Waltham St.	152
	At Walnut St	155
	Just downstream of Florida Rd.	160
	1,500 ft upstream of Florida Rd.	165
	100 ft downstream of Mill St.	169
	100 ft upstream of Mill St.	170
	130 ft upstream of Great Rd.	174
	Just downstream of American Woolen Co. Dam.	175
	Just upstream of American Woolen Co. Dam.	179
	At western corporate limits.	180
Fort Pond, brook branch.	160 ft upstream of Stone Culvert.	200
	60 ft upstream of Rockland St.	205
Taylor Brook	At confluence with Assabet River.	179
	20 ft upstream of abandoned Boston & Main RR.	180

(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, 43 FR 7719.)

Issued: April 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-11663 Filed 5-1-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-4095]

CITY OF GRAND RAPIDS, KENT COUNTY, MICH.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Grand Rapids, Kent County, Mich. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to quality or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 300 Monroe Avenue, Grand Rapids, Mich.

Send comments to: Mr. John L. Hornbach, City Engineer, city of Grand Rapids, City Hall, 300 Monroe Avenue, Grand Rapids, Mich. 49503.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Grand Rapids, Mich., 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 1917.4(a).

These elevations, together with the flood plain management measures required by section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Grand River	North Park St [1]	619
	Ann St [2]	617
	Sixth St [1]	615
	Bridge St [2]	611
	Conrail [2]	609
	Interstate Highway 296 [2].	607
	New York Central RR [1]..	606
Plaster Creek	Corporate limits at Station 45700 [2].	678
	Kalamazoo Ave [1]	672
	Kalamazoo Ave [2]	671
	Eastern Ave [1]	660
	Madison St [1]	650
	Buchanon St [1]	640
	Kirkland Ave [1]	630
	Burton St [1]	627
	Chicago Dr [1]	616
	Market St [1]	608

[1]Upstream side.
[2]Downstream 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 (39 FR 2787, January 24, 1974).)

Issued: April 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-11664 Filed 5-1-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-4096]

THE TOWNSHIP OF KAWKAWLIN, BAY COUNTY, MICH.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the township of Kawkawlin, Bay County, Mich.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP)

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Township Hall, 1379 East Beaver Road, Kawkawlin, Mich.

Send comments to: Mr. Lloyd Pajot, Township Supervisor, Township of Kawkawlin, Township Hall, 1379 East Beaver Road, Kawkawlin, Mich. 48631.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Kawkawlin, Mich., 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 1917.4(a).

These elevations, together with the flood plain management measures required by section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Kawkawlin River (North Branch).	M-13 Expressway	590
	Beaver Rd	595
Saginaw Bay	Le Bourdais Rd (extended).	585
	Boutell Rd (extented)	585
Railroad Drain	Detroit and Mackinac RR.	585
	Elevator Rd	585
	Expressway M-13	592
Rosebush Drain	Detroit & Mackinac RR.	585
	Linwood Rd	585
Tap-Gove Drain	M-13 Expressway	594
	Linwood Rd	596

(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, 43 FR 7719.)

Issued: April 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-11665 Filed 5-1-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-4097]

TOWNSHIP OF PORTSMOUTH, BAY COUNTY, MICH.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the township of Portsmouth, Bay County, Mich.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Township Hall, 310 Sheridan Court, Bay City, Mich.

Send comments to: Mr. Donald Krzewinski, Township Supervisor, township of Portsmouth, 110 Stanley Drive, Bay City, Mich. 48706.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Portsmouth, Mich., 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 1917.4(a).

These elevations, together with the flood plain management measures required by section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Saginaw River	Russell Rd. between Trumbull and Lincoln Rds.	586
	Munger Rd. between Scheurman and Green Rds.	586
	Intersection of German Rd. and Michigan Ave.	586

(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, 43 FR 7719.)

Issued: April 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-11666 Filed 5-1-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-4098]

CITY OF ZILWAUKEE, SAGINAW COUNTY, MICH.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Zilwaukee, Saginaw County, Mich.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program. (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 319 Tittabawassee Drive, Saginaw, Mich.

Send comments to: Mr. Jack Tany, Director of Public Works, city of Zilwaukee, City Hall, 319 Tittabawassee Drive, Saginaw, Mich. 48604.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Zilwaukee, Mich., 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 1917.4 (a).

These elevations, together with the flood plain management measures required by section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain managment requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Saginaw River	Interstate Highway 75....	588
	Upstream corporate limit.	589

(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 (39 FR 2787, January 24, 1974)).

Issued: April 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-11667 Filed 5-1-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-4099]

TOWNSHIP OF ZILWAUKEE, SAGINAW COUNTY, MICH.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the township of Zilwaukee, Saginaw County, Mich.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Home of the Township Supervisor, 7600 Melborne Road, Saginaw, Mich.

Send comments to: Mr. David Bradt, Township Supervisor, township of Zilwaukee, 7600 Melborne Road, Saginaw, Mich. 48601.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line

800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Zilwaukee, Mich., 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 1917.4(a).

These elevations, together with the flood plain management measures required by section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Saginaw River	Downstream corporate limit.	586
	Interstate Highway 75....	588

(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 (39 FR 2787, January 24, 1974)).

Issued: April 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-11668 Filed 5-1-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3559]

CITY OF BELLEFONTAINE NEIGHBORS, ST. LOUIS COUNTY, MO.

Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 43 FR 11792 of the FEDERAL REGISTER of March 21, 1978.

EFFECTIVE DATE: March 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

The following:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Stormwater Creek	At Forest Home Dr	445

Should be corrected to read:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Stormwater Creek	At Forest Home Dr	444

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective Janurary 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and the Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).

Issued: April 12, 1978.

GLORIA M. JIMENEZ.
Federal Insurance Administrator.

[FR Doc. 78-11669 Filed 5-1-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-4100]

TOWN OF BOW, MERRIMACK COUNTY, N.H.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Bow, Merrimack County, N.H.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to quality or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Office, Bow, N.H.

SEND COMMENTS TO:

Mr. Walter E. Jones, Administrative Assistant, town of Bow, Selectmen's Office, 10 Grandview Road, Bow, N.H. 03301.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Bow, 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 1917.4(a).

These elevations, together with the flood plain management measures required by section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Merrimack River...	South corporate limit.....	198
	500 ft downstream of Garvins Falls Dam.	205

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	500 ft upstream of Garvins Falls Dam.	225
	North corporate limit.....	230

(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 the Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: April 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-11670 Filed 5-1-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-4101]

TOWN OF CANTERBURY, MERRIMACK COUNTY, N.H.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Canterbury, Merrimack County, N.H.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Offices, Canterbury, N.H.

Send comments to: Ms. Mary E. Fifield, Chairwoman, Board of Selectmen, Town Offices, Canterbury, N.H. 03224.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Canterbury, 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 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Merrimack River...	South corporate limit.....	254
	Just upstream of West Road Bridge.	260
	West corporate limit.....	266

(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, 43 FR 7719.)

Issued: April 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-11671 Filed 5-1-78; 8:45 am]

[4510-47]

DEPARTMENT OF LABOR

Wage and Hour Division

[29 CFR Part 575]

WAIVER OF CHILD LABOR PROVISIONS FOR AGRICULTURAL EMPLOYMENT OF 10 AND 11 YEAR OLD MINORS IN HAND-HARVESTING OF SHORT SEASON CROPS

Hearing Concerning Provisions Governing Application for and Issuance of a Waiver

NOTE.—This document originally appeared in the FEDERAL REGISTER for Monday May 1, 1978. It is reprinted in this issue to meet requirements for publication on an assigned day of the week. (See the inside cover of this issue for information about agencies publishing on assigned days of the week.)

AGENCY: Wage and Hour Division.

ACTION: Notice of hearing concerning proposed rule.

SUMMARY: The Administrator of the Wage and Hour Division has proposed regulations to implement section 13(c)(4) of the Fair Labor Standards Amendments of 1977. This proposed regulation would provide a waiver from the child labor provisions of the Act for the agricultural employment of 10 and 11 year old minors in the hand-harvesting of short season crops under certain conditions as provided in the proposal published in the FEDERAL REGISTER on April 4, 1978, at page 14068. This hearing will provide an additional forum for comment.

DATES: All comments are due on or before the close of the hearing. The hearing will commence on May 11, 1978, at 9:30 a.m., e.d.t.

ADDRESS: The hearing will be held in Room S-5215 A, B, and C, New Department of Labor Building, 200 Constitution Ave, NW. Washington, D.C. 202110.

FOR FURTHER INFORMATION CONTACT:

Lucille C. Pinkett, Wage and Hour Division, Room S-3022, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C., 20210, telephone 202-523-8412.

SUPPLEMENTARY INFORMATION: In order to give all interested parties an opportunity to present supporting and contrary views and to assist the Administrator in reaching a decision in this matter the Administrator of the Wage and Hour Division, has determined that an informal hearing is desirable.

Beginning at 9:30 a.m., e.d.t., on May 11, 1978, the presiding officer will hold a prehearing conference in order to establish the order and time for the presentations and in order to settle any other matters relating to the proceedings. All persons intending to make presentations should attend the prehearing conference, which is open to

the public. The public hearing will immediately follow the prehearing conference.

The oral proceedings shall be reported verbatim. The use of prepared statements by witnesses is encouraged. An original and two copies of all documents to be used should be submitted at the hearing.

Comments submitted in accordance with the notice of April 4,1978, need not be resubmitted as they will be incorporated in and made a part of this record.

The presiding officer shall have all the powers necessary or appropriate to conduct a full and fair informal hearing, including the powers:

(a) To regulate the course of the hearing;

(b) To dispose of procedural requests, objections, and comparable matters;

(c) To confine the presentations to matters pertinent to the requested information;

(d) To regulate the conduct of those present at the hearing by appropriate means;

(e) To permit and to limit cross examination; and

(f) In his discretion, to keep the record open for a short, stated period of time to receive written data from any person who has participated in the oral proceeding.

Following the close of the hearing, the presiding officer shall certify the record thereof to the Administrator of the Wage and Hour Division. The Administrator of the Wage and Hour Division shall, after consideration of the record and other pertinent information, take such action as he deems appropriate.

A copy of the record or portions thereof as it becomes available will be open for public inspection and examination at the office of Xavier M. Vela, Administrator, Room S-3502, Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210. The entire record or any part thereof may be purchased as provided in 29 CFR 70.62(c) at the actual cost of duplication as computed pursuant to the fee schedule in 29 CFR 70.62(b).

The harvest season during which the 10 and 11 year old minors will be employed commences about June 1. In order that appropriate action may be promptly taken it is necessary that less than 15 days notice of the hearing be given.

Signed at Washington, D.C., on this 27th day of April 1978.

HERBERT J. COHEN,
Assistant Administrator,
Wage and Hour Division.

[FR Doc. 78-11963 Filed 4-28-78; 8:45 am]

[4510-43]

Mine Safety and Health Administration

[30 CFR Part 75]

USE OF FILTER TYPE AND SELF-CONTAINED SELF-RESCUERS IN UNDERGROUND COAL MINES

Public Hearing

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of Public hearing.

SUMMARY: A public hearing will be held under the provisions of the Federal Mine Safety and Health Act of 1977 (Mine Act). The hearing is being conducted in response to requests for a hearing filed with comments and objections concerning proposed amendments to Labor's regulations on availability of approved self-rescue devices; instruction in use and location. The proposed changes would, after a two-year phase-in period, require the use of self-contained self-rescuers in underground coal mines. The proposed amendments would also permit several alternative methods of utilizing and providing access to these self-rescue devices and impose inspection, testing and maintenance requirements.

DATES: The hearing will be held on June 1, 1978, beginning at 9 a.m. Requests to make oral statements for the record at the hearing should be received by May 26, 1978.

ADDRESS: The hearing will be held at the Bureau of Mines Auditorium, 4800 Forbes Avenue, Pittsburgh, Pa. 15213. Persons wishing to make statements at the hearing should make their requests in writing to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 831, 4015 Wilson Boulevard, Arlington, Va. 22203.

FOR FURTHER INFORMATION CONTACT:

Frank A. White, Office of Standards, Regulations and Variances, 4015 Wilson Boulevard, Arlington, Va. 22203, phone 703-235-1910.

SUPPLEMENTARY INFORMATION: On November 16, 1977, the Mining Enforcement and Safety Administration, Department of the Interior, published in the FEDERAL REGISTER (42 FR 59300) proposed amendments to 30 CFR Part 75 that would govern the use of filter type and self-contained self-rescuers. Interested persons were afforded a period of 49 days to submit written comments, suggestions, objections and requests for hearing.

Under the Federal Mine Safety and Health Amendments Act of 1977 (Amendments Act), the responsibilities of the Secretary of the Interior under section 101 of the Federal Coal Mine Health and Safety Act of 1969 (Coal Act), were transferred to the Secretary of Labor on March 9, 1978. Rulemaking commenced by the Department of the Interior under the Coal Act was authorized to be continued by the Department of Labor under the provisions of the Amendments Act.

Therefore, a public hearing will be held, pursuant to section 101(a)(3) of the Mine Act, in order to receive relevant evidence including oral statements, written comments and data. The following issues have been raised by the written comments received in response to the November 16, 1977, proposed rule:

GENERAL

1. Whether the self-contained self-rescuers, as they have been developed to this point, are reliable and safe to use and store in underground mines.

2. Whether there are viable options, in addition to those contained in the proposed rules, for making the self-contained self-rescuer available for use by miners.

3. Whether an Economic Impact statement should have been prepared under Executive Orders 11821 and 11949. (Note also E.O. 12044, 43 FR 12661.)

SECTION 75.1714

4. Whether the term "person" in paragraph (a) should be changed to "miner" in order to exclude government agency inspectors and visitors from this requirement.

5. Whether the words "and train" in paragraph (b) should be deleted on the grounds that the training of miners is covered under section 115 of the Mine Act and will be the subject of other regulations, and that other persons, such as visitors to the mine, are not subject to the training requirements.

SECTION 75.1714-1

6. Whether the standard should permit self-contained self-rescue devices with a greater capacity then ten minutes to be used in conjunction with a one-hour device as such devices may be developed and approved.

SECTION 75.1714-2

7. Whether the requirement in paragraph (c) that the self-rescue shall be located no more than 25 feet from the person is unreasonable under some circumstances and should be revised.

8. Whether the term "hazardous to the person" in paragraph (c) should be clarified.

9. Whether the term "available at all times" in paragraph (e)(2) should be clarified.

10. Whether the Mine Safety and Health Administration (MSHA) should set forth specific requirements for the use of a ten minute self-con-

tained self-rescuer used in conjunction with a one hour self-contained self-rescuer, which would be applicable to all underground coal mines, in lieu of individual operator plans submitted for approval by the District Manager in paragraph (e)(2).

11. Whether the applicability of the eye protection requirement contained in paragraph (f) should be clarified.

SECTION 75.1714-3

12. Whether there should be a requirement that each self-contained self-rescuer have a visual indicator to determine the integrity of the seal.

13. Whether the proposed requirement in paragraph (b) that a specially trained person perform the inspections should be revised to require each miner to be trained to perform such inspections.

14. Whether the 90-day testing cycle required by paragraph (c) should be revised to permit less frequent testing.

15. Whether paragraph (d) should be revised to clarify that manufacturers will be required to submit testing instructions to MSHA for approval and that operators must test the devices in accordance with the manufacturer's approved instructions.

16. Whether the requirement that test results be recorded in a book should be deleted.

The hearing will be conducted by Frank A. White, Office of Standards, Regulations and Variances. MSHA, and Herschel H. Potter, Chief, Division of Safety, Coal Mine Safety and Health, MSHA. It will be conducted in an informal manner. Each oral presentation will be limited to 20 minutes. There will be no cross-examination of those persons making statements, although at the discretion of the chairman, supplemental statements by those presenting evidence may be permitted. Although formal rules of evidence will not apply, the chairman may, in his discretion, exclude irrelevant or unduly repititous material. A verbatim transcript of the proceedings will be taken. All written comments and data shall be included in the record. The transcript of the proceedings shall be available for public inspection. The record shall remain open until June 15, 1978, for the submission of supplementary statements or data. Within 90 days after the certification of the record, the Secretary of Labor shall promulgate, modify or withdraw the proposed amendments and shall publish his reasons therefor.

Dated: April 24, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 11737 Filed 5-1-78; 8:45 am]

[4110-02]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 121i]

MEDIA SERVICES

Decision to Develop Regulations

AGENCY: Office of Education, HEW.

ACTION: Notice of decision to develop regulations.

SUMMARY: The Commissioner of Education proposed to make technical changes in the regulations which govern the Media Services and Captioned Films Program. The purposes are to: Eliminate sections of the regulations in Subpart E Area Learning Resource Centers and Subpart G Special Offices which regulated projects that no longer exist; amend Subpart D Research and Training to provide for award of discretionary grants as well as contracts as prescribed by recent legislation; amend Subpart F National Center for Educational Media and Materials for the Handicapped to permit multiple centers as prescribed by the Education for all Handicapped Act; and clarify ambiguous language in Supart A General, Supart B Loan Services for the Deaf and Subpart C Loan Service for Other Handicapped. The regulations increase flexibility in administration of the program and increase the number of grant recipients.

FOR FURTHER INFORMATION CONTACT:

Barry E. Katz, Division of Media Services, Office of Education, 400 Maryland Avenue SW., Room 4819-Donohoe, Washington, D.C. 20202, 202-472-4640.

(Catalog of Federal Domestic Assistance Number 13.446; Handicapped Media Services and Captioned Films.)

Dated: March 1, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

[FR Doc. 78-11965 Filed 5-1-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 63]

[CC Docket No. 78-72]

MTS AND WATS MARKET STRUCTURE

Order Extending Time for Filing Suggestions on Issues and Areas of Explorations

AGENCY: Federal Communications Commission.

ACTION: Extension of time. The FCC has extended the time for filing suggestions on issues and areas of exploration in Common Carrier Docket 78-72 from April 25, 1978 to May 24, 1978.

DATE: Comments must be filed on or before May 24, 1978.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Ruth Reel, 203-632-6363.

SUPPLEMENTARY INFORMATION:

Adopted: April 20, 1978.

Released: April 21, 1978.

Order. In the matter of MTS and WATS Market Structure, CC Docket No. 78-72.

1. Pursuant to the Notice of Inquiry and Proposed Rulemaking issued in this proceeding on March 3, 1978 (FCC 78-144) (43 FR 9505), comments suggesting issues and areas of exploration are presently due by April 25, 1978. On April 14, 1978 the U.S. Court of Appeals for the District of Columbia Circuit granted a motion by MCI Telecommunications Corp. et al. for an order directing the Commission and American Telephone and Telegraph Co. to comply with the Court's mandate in *MCI Telecommunications Corp.* v. *FCC*, 561 F. 2d 365 (D.C. Cir. 1977), cert. denied, U.S., 46 U.S.L. Week 3446 (January 16, 1978). In view of the possible relevance of this judicial action to issues which may be pertinent for consideration in this Docket, we have decided to extend, on our own motion, the April 25 deadline for suggestions by the parties.

2. *Accordingly, it is ordered*, Pursuant to § 0.303 of the Commission's rules and regulations, that the time for filing suggestions on issues and areas of explorations is extended to May 24, 1978.

WALTER HINCHMAN,
Chief, Common Carrier Bureau.

[FR Doc. 78-11899 Filed 5-1-78; 8:45 am]

[6712-01]

[47 CFR Part 73]

[Docket No. 21109; RM-2748; RM-2853]

TELEVISION BROADCAST STATIONS IN MEDFORD AND GRANTS PASS, OREG

Order Extending Time for Filing Replies to Opposition to Petition for Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing replies to the oppostion to the petition for reconsideration concerning television assignments in Medford, and Grants Pass, Oreg. Counsel for petitioner, Oregon Broadcasting Co., states that the addi-

tional time is needed because the National Association of Broadcasters Convention intervened, thereby delaying the work of preparing material for reply.

DATE: Replies to opposition must be filed on or before May 3, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 21, 1978.

Released: April 24, 1978.

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Medford and Grants Pass, Oreg., Docket No. 21109, RM-2748, RM-2853.[1]

1. On February 9, 1978, petitions for reconsideration were filed by Sierra Cascade Communications, Inc., licensee of television Station KTVL, and Oregon Broadcasting Co., licensee of television Station KOBI, both of Medford, Oreg., concerning the above-captioned matter. The date for filing replies to oppositions is April 18, 1978.

2. On April 11, 1978, counsel for Oregon Broadcasting Co., filed a request for an extension of time to and including May 3, 1978, to file a reply to a Limited Opposition to Petition for Reconsideration filed by the Oregon State Board of Higher Education. Counsel states that additional time is needed because the national convention of the National Association of Broadcasters intervened, thereby delaying the work of preparing the material for KOBI's reply. Counsel states that counsel for the Oregon State Board of Higher Education interposes no objection to the request for additional time.

3. We are of the view that the public interest would be served by granting the additional time so that Oregon Broadcasting Co., may file any information which may be helpful to the Commission in resolving the issues in this proceeding.

4. *Accordingly, it is ordered,* That the date for filing replies to the opposition to the petition for reconsideration in Docket 21109, is extended to and including May 3, 1978.

5. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-11720 Filed 5-1-78; 8:45 am]

[1]See 43 FR 13629, March 31, 1978.

[7035-01]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1056]

[Ex Parte No. MC-19 (Sub-No. 23)[1]]

PRACTICES OF MOTOR COMMON CARRIERS OF HOUSEHOLD GOODS

Investigation into Estimating Practices

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: As a result of the investigation into estimating practices of household goods carriers which the Interstate Commerce Commission has conducted in this proceeding, the Commission proposes to amend its regulations governing estimating. The proposed regulations would make estimates binding on carriers when those estimates are provided for individual c.o.d. shippers of household goods. The Commission also proposes to amend other regulations to conform to the modified estimating requirements. New estimating forms would also be adopted.

DATES: Comments are due on or before June 30, 1978.

ADDRESS: Send comments to Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Michael Erenberg, Assistant Deputy Director, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423, 202-275-7292.

SUPPLEMENTARY INFORMATION: The Interstate Commerce Commission has concluded its investigation into the estimating practices of motor common carriers of household goods. That investigation was instituted in Ex Parte No. MC-19 (Sub-No. 23), Practices of Motor Common Carriers of Household Goods (Experiment for Improving the Accuracy of Estimates—Reentitled—Investigation into Estimating Practices), 125 MCC 307 (1976), and all motor common carriers were made parties to the proceeding. Motor carriers and other participants in that investigation were directed to answer a series of questions concerning estimating, with a view toward determining what changes in the Commission's estimating regulations (49 CFR 1056.8) should be adopted to make estimating more meaningful for the household goods shipper.

After examining the submissions of various motor carrier parties, interested transportation and other regulatory agencies and members of the shipping public, the Commission proposes to modify its estimating regulations substantially and to adopt new estimating documents. The proposed amendments reflect the Commission's concern with the intolerable number of underestimates being provided by motor common carriers of household goods, and the inability of the individual c.o.d. shipper to comprehend fully the so-called "110 percent rule" (49 CFR 1056.8(b)). Under the terms of that rule, carriers may collect no more than 110 percent of an estimate upon delivery of a shipment and must defer collection of any remaining charges for a period of 15 working days. The Commission has found that in many instances carriers fail to explain the implications of that rule to individual c.o.d. shippers, with the result that individual shippers select the carrier that provides the lowest estimate with the expectation that charges will be no more than 110 percent of that estimate, Although the 110 percent rule was intended to protect the individual household goods shipper from abusive estimating practices, that rule has not had that effect. Rather, that rule has permitted carriers to hold out the illusory promise of competitive pricing without requiring them to meet the expectations generated.

The Commission, therefore, intends to make estimates binding upon the carriers which provide them when those estimates are provided for individual c.o.d. shippers of household goods, and to that end, it proposes to adopt the rules set forth in the appendix to this notice. The proposed regulations would provide that charges for shipments tendered by individual c.o.d. shippers would be the lesser of (i) the charges as determined by application of the carrier's published tariffs, or (ii) the charges stated in the estimate given to the shipper. The estimate would be binding upon the carrier furnishing it. In the Commission's opinion, the adoption of this rule would tend to eliminate some of the problems associated with "weight bumping" (the use of various devices to increase artificially the weight of a household goods shipment) and to protect consumers from the higher charges which result from weight bumping. The entire text of proposed § 1056.8 (including portions which would not be amended) is set forth in the appendix.

Section 1056.8(a)(1) would continue the requirement that estimates be both mandatory and free. The Commission found no reason to permit car-

[1]The Commission's report in this proceeding embraces its discussion of uniform household goods transportation documentation in Ex Parte No. MC-19 (Sub-No.20) Practices of Motor Common Carriers of Household Goods (Limitations of Liability).

riers to select those persons for whom it would provide estimates and no reason to require potential customers to pay for what amount to sales solicitations by carriers.

If proposed § 1056.8(a)(2) is adopted, the Commission would discontinue the requirement that a volume/weight conversion factor of not less than 7 pounds per cubic foot be used to determine the estimated weight of a shipment. In place of that requirement, the regulations would specify that an estimator must use a variable density factor (between 4 and 12 pounds per cubic foot) and must apply that factor to each article included in the estimate. As the regulations concerning the use of the proposed estimating forms and the instructions issued with those forms make clear, the estimator would be required to estimate the volume and weight of each article and to indicate on the estimating form the number of pieces into which the article will be divided or broken down for shipment. Proposed § 1056.8(a)(2) would also limit the validity of an estimate to a period not exceeding 60 days. The 60-day expiration period is proposed in order to eliminate problems arising when shippers rely on estimates which no longer reflect the conditions surrounding the move.

Modified § 1056.8(a)(4) would describe the circumstances under which the carrier or the shipper may request that an additional estimate be performed. This provision is intended to emphasize to both shipper and carrier the importance of updating the estimating document to reflect changed transportation conditions, and is designed to implement the Commission's policy to place responsibility for the contents and quality of an estimate fully and exclusively upon the carrier.

Proposed § 1056.8(a)(5) contains the basic, operative rule making estimates binding. The provisions of this subsection would not apply to so-called "national account" shippers (generally corporations which arrange or pay for transportation of their employees' household goods). Although the Commission found that making estimates binding would be a suitable remedy for problems of underestimating encountered by individual c.o.d. shippers, it also found that making estimates binding when provided for national account shippers would be detrimental to competition between those shippers and within the household goods transportation industry. In the event that estimates were made binding when provided for national account shippers, favored shippers would be able to extract undue favors from carriers in return for the furnishing of "low-ball" estimates. Because of the competitive relationship between these national account shippers, a concession to one such shipper would be prejudicial to its competitor and would result in the second shipper's being placed at a competitive disadvantage. Under these circumstances, making estimates binding when furnished for national account shippers would be contrary to the purposes of the Interstate Commerce Act (49 U.S.C. 1 et seq. to prevent unjust, undue, and unreasonable preference and prejudice as between shippers and carriers.

Accordingly, proposed § 1056.8(a)(5) would not apply to national account shippers. For the purposes of that subsection, a national account shipper is identified as a shipper whose employer is responsible, directly or indirectly, for arranging or paying for transportation of the employee's household goods.

Different circumstances surround the shipments of individual c.o.d. shippers. Those shippers do not maintain competitive relationships with one another, nor do they have the economic leverage to extract concessions from carriers as national account shippers can. Making estimates binding is an appropriate remedial measure to alleviate the problems of underestimating, and the Commission is of the view that no preference to one individual or prejudice to another could result *solely* from the operation of the proposed rules. Proposed § 1056.8(a)(5) would also require carriers to publish a tariff rule specifying that estimates will be binding when shipments are transported for individual c.o.d. shippers when the transportation of their household goods is neither arranged nor paid for by their employers.

In order to call attention to the fact that these regulations are not intended to permit carriers to engage in unfair or anticompetitive practices under the guise of compliance with these regulations, the Commission proposes to adopt § 1056.8(a)(6). This subsection would essentially prohibit unfair or anticompetitive acts or practices in connection with the furnishing or use of an estimate.

In light of the proposal to make estimates binding when furnished for individual c.o.d. shippers, the Commission declined to impose a penalty for inaccurate estimates. A penalty system would offer no additional protection for the individual shipper, and under these circumstances the Commission is reluctant to assume the additional burded of administering such a penalty system.

If § 1056.8(a)(7) is adopted, carriers would be required to give potential shippers written notice if the carrier intended to change its rates between the time of the estimate and the time the shipment is tendered to the carrier. That proposed subsection would require carriers to give potential shippers brief notice of the fact that carriers intended to change their rates and of the nature of that rate change and the effective date.

The provisions of § 1056.8(a)(5), which make estimates binding when furnished for individual c.o.d. shippers, would serve the same purpose as the present 110 percent rule. Corporate shippers and others identified as national account shippers for the purpose of this proceeding may obtain credit from motor common carriers of household goods under the provisions of 49 CFR Part 1322. Accordingly, present § 1056.8(b), which contains the 110 percent rule, would be eliminated from the Commission's estimating regulations. However, persons commenting on the proposed regulations are requested to address the issue of whether the 110 percent rule would continue to serve a purpose for employees of national account shippers when those employees are required to pay full charges for transportation of their shipments subject to subsequent reimbursement by their employers. Under the proposed regulations, such an employe would be required to arrange financing for additional charges not stated in an estimate, and the Commission questions whether the 110 percent rule should continue in force to protect such employees in the event that an estimate substantially understated the applicable charges.

No substantive changes have been proposed to present § 1056.8(c), which permits carriers to supply self-estimating forms for the use of potential shippers, or to present § 1056.8(d), which requires the carrier to notify the shipper of actual charges due upon request of that shipper. However, § 1056.8 (c) and (d) would be relettered (b) and (c), respectively, to reflect the deletion of present § 1056.8(b).

Present § 1056.8(d) requires carriers to file quarterly reports of over- and under-estimates. Although that reporting requirement has assisted the Commission in spotlighting problems arising from the estimating practices of motor common carrier of household goods, it would serve little purpose if the proposed regulations were adopted. Accordingly, present § 1056.8(d) would be deleted from the Commission's estimating regulations. Present § 1056.7(b) (ii) and (iii), which require carriers to list the number of over- and under-estimates as part of their performance reports, would also be deleted. The remaining subsections of § 1056.7(b) would be appropriately renumbered.

New estimating forms and printing specifications for those forms would also be adopted. New § 1056.8(d), as proposed, provides minimum printing specifications for household goods transportation estimating forms. The Commission intends to request the Government Printing Office (GPO) to print and sell the forms we prescribe.

While carriers will be permitted to arrange for printing of these forms through the firms whose services they now use, the availability of GPO-printed forms will eliminate many problems which this Commission has encountered in attempting to ensure uniformity between the estimating forms of various carriers and will permit all carriers to purchase proper estimating documents on a uniform basis. Proposed § 1056.8(d)(1) provides that estimating documents purchased from GPO will be deemed to comply with the printing requirements specified in that subsection.

Section 1056.8(d)(2) would contain the estimating form which the Commission intends to prescribe. Page 1 of that form includes appropriate blocks for insertion of an expiration date for the estimate provided and continues the requirement that the shipper acknowledge receipt of a copy of ICC Form BOp 103, Summary of Information for Shippers of Household Goods. In addition, the proposed forms contain conspicuous notices and warnings that the estimate covers only the articles and services listed, that shippers are responsible for charges for additional services requested, and that the shipper should independently examine the estimate to ensure its accuracy.

Blocks are provided on page 2 of the form for the estimator to indicate the method by which charges due for the shipment will be calculated. Estimators will be required to sign their names on page 2 of the form and to indicate their full name, the name of their employer, and their business address and telephone number. Requiring this information on the estimating form will eliminate the need to register estimators, since the information to be recorded as part of a registration process could readily be obtained from the estimating document in the event problems arise concerning that estimate.

Page 2 also contains a description of the valuation charges imposed by carriers.

Pages 3 through 5 of the estimating form contain a list of commonly-requested household goods transportation services. Carriers will be required to complete the description of each line number by indicating both the item number applicable to the service requested and by providing a complete description of the charges imposed for that service. Although the proposed estimating documents contain what the Commission believes to be a list of the most commonly requested services, parties and other participants are encouraged to suggest other generally-required services which might properly be included in that list.

Page 6 of the form includes a list of containers and a separate statement of both packing and unpacking charges. This page of the form reflects the proposed amendment to § 1056.3(b) of the Commission's household goods regulations to provide that labor charges for packing and unpacking be separately stated in a carrier's tariffs as an amount per hour and that charges for containers be separately stated in amounts per container. Use of hourly rates for packing and unpacking services (as opposed to rates stated in amounts per container) will eliminate many of the problems associated with "balloon packing" (use of excess packing materials) and will permit a more appropriate allocation of charges for those services. No change is contemplated to the requirement that charges for containers themselves be stated as amounts per container.

Space is provided on the proposed estimating forms for the carrier to indicate the estimated cubic measurements of each article, the volume/weight conversion factor used for that article, the number of articles of each type, the weight of those articles, the number of pieces into which those articles will be broken down or divided for shipment, and the total volume of all articles in a particular class.

The most significant change to the estimating form is the use of generic descriptions for household articles. Elimination of the Commission's presently-required room-by-room list of household items will considerably simplify the estimator's task by eliminating many superfluous items from the list of items included in the estimate. Ample space is provided on the proposed forms for estimators to indicate articles which are not to be shipped. The proposed estimating form may also be used as an inventory document, and sufficient space is provided for the carrier's employees to indicate articles loaded and unloaded.

A set of instructions is included with the proposed estimating forms.

The proposed estimating forms (9 pages in addition to instructions) are longer than the Commission's presently-required estimating forms (2 pages). However, despite their increased length, the proposed forms require little information not now required on existing forms. A great deal of the increased length is accounted for by the application of the proposed minimum printing specifications to those estimating documents.

In the Commission's opinion, that increase in length is more than justified by the increased readability of those forms.

In response to the Commission's order in Ex Parte No. MC 19 (Sub-No. 20), Practices of Motor Common Carriers of Households Goods (Limitations of Liability), Allied Van Lines, Inc., and the American Movers Conference submitted comments on the matter of uniform household goods transportation documents. Essentially, Allied and AMC ask whether the public would be better served if the Commission were to require uniform, simplified language to be used in household goods transportation rather than specifying both the form and contents of those documents. They argue that specifying the format of all household goods transportation documents might interfere with carrier data processing operations and would not necessarily guarantee that shippers better understand the terms and conditions of their shipments.

The uniform estimating form proposed in this proceeding meets many of the objections raised by the parties to the estimating proceeding, and the Commission believes that this form clearly provides the information necessary for the shipper to understand the estimating process and to verify the information placed on that form. That estimating form is subject to further revisions in the public interest, and further comments on that proposed form are invited. The comments of Allied and AMC on the matter of uniform household goods transportation documents have been incorporated in the record in this proceeding, and further consideration will be given to the issue of uniform household goods transportation documentation after final estimating regulations are adopted.

The Commission also proposes to modify slightly certain other regulations governing transportation of household goods.

The Commission's regulation governing weighing of shipments (49 CFR 1056.6) would be modified to permit the person paying the freight charges, the shipper, or the representative of either of them, upon request, to require the carrier to inform that person of the numbers of the vehicles which will be used for transportation of that shipment and to permit that person to observe the weighing of the vehicle both before and after loading. This added requirement will permit household goods shippers to protect themselves from unscrupulous weight practices (including weight bumping).

Minor changes are also contemplated to the regulations governing the order for service (49 CFR 1056.9) and the bill of lading (49 CFR 1056.10). Amendments to § 1056.9(a) (9) and (10) would reflect the fact that applicable charges to be computed under proposed § 1056.8(a)(5) and listed on the order for service. The order for service regulations would also be amended to require carriers to indicate whether the shipper had an opportunity to obtain an estimate under the provisions of 49 CFR 1056.8 but declined to do so.

The Commission also proposes to add a new § 1056.9(d) to the order for

service requirement. This subsection essentially would require that when a carrier has provided an estimate, it must amend that estimate prior to modifying the order for service. It is the Commission's intention to make the estimate the controlling document, and the carrier will be expected to indicate to the shipper the reason for any change in the applicable charges subsequent to the completion of that estimate.

Sections 1056.10(b) (7) and (8) would be modified to require carriers to indicate on the bill of lading the method by which charges will be computed under the provisions of § 1056.8(a)(5), when that provision is applicable.

Section 1056.10(b)(9) would be modified to provide that when an individual c.o.d. shipper receives an estimate under the provisions of proposed § 1056.8(a)(5), that shipper must certify on the bill of lading, in his own handwriting, that he is solely responsible for arranging and paying for the transportation of that shipment.

Although the Commission does not now intend to certify estimators or to regulate the contents of estimator training programs, the administration of estimator training programs by an industry association such as the National Institute of Certified Moving Consultants raises several complex problems. Of particular concern is the possibility that carriers which are influential in the operation of the NICMC may attempt to use that agency to engage in anticompetitive practices. The Commission, therefore, has made NICMC a party to this proceeding and has directed that organization to answer the following questions.

(1) Should standards be developed for or restrictions placed on organizations engaged in training and certification of estimators to prevent those organizations from engaging in unfair competitive practices and from engaging in acts which might be deceptive to the shipping public?

(2) Are organizations such as the NICMC so constituted as to be subject to the exemption from the antitrust laws which the Commission may approve under the provisions of section 5(a) of the Interstate Commerce Act (49 CFR § 5(b))?

NICMC has been requested to include with its response copies of its articles of incorporation, its by-laws and rules of procedure and its canons of conduct and to furnish a complete description of its training programs, a description of the standards used by NICMC to certify estimators, and a description of the measures used by NICMC to enforce those certification requirements. We have also requested the Federal Trade Commission which has been working with the NICMC to improve its program, to participate in this proceeding and to suggest methods by which the Commission can prevent such organizations from engaging in unfair competitive tactics and in practices which deceive the public. Other interested persons are invited to comment on the matter of estimator training and certification by organizations of motor carriers such as the NICMC.

The Commission's Form BOp 103, Summary of Information for Shippers of Household Goods, and its Public Advisory No. 4 require revision in light of several changes which the Commission has recently made to its household goods transportation regulations. The Commission intends to combine these two documents and to simplify them considerably. Because of the importance of the estimating investigation and the significant changes which the Commission proposes to make to those regulations, revisions of these documents will not be made until revisions to final estimating regulations are adopted. Persons commenting on the proposed estimating regulations are, however, encouraged to suggest revisions which might be made to Form BOp 103 and Public Advisory No. 4 to make them simpler and more meaningful to household goods shippers.

Copies of the order in this proceeding, which contains a full discussion of each of the proposed provisions, are available through the Secretary of the Commission.

Persons and parties interested in filing representations and comments as to the matters referred to above and the regulations proposed in this proceeding are hereby invited to comment by the submission of written data, views, statements, or argument. Data, views, statements, or argument should be submitted to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423. When possible, an original and 15 copies should be filed. All submissions become part of the record in this proceeding, and interested persons or parties may view these submissions at the Commission's office in Washington, D.C., during normal business hours. No oral hearings will be scheduled for the receipt of testimony at this time.

This notice of proposed rulemaking is issued under the authority of part II of the Interstate Commerce Act (49 U.S.C. 301 et seq.) and of 5 U.S.C. 552, 553, and 559 (the Administrative Procedure Act).

Issued in Washington, D.C., on the 10th day of April 1978.

H. G. Homme, Jr.
Acting Secretary.

Proposed Regulations

The Interstate Commerce Commission proposes to amend its household goods transportation regulations (49 CFR Part 1056) in the following manner. If the proposed regulations are adopted, § 1056.8 would read as follows:

§ 1056.8 Estimates; charges when estimates furnished.

(a) *Estimates by the carrier.* (1) Every motor common carrier engaged in the transportation of household goods, in interstate or foreign commerce, shall upon request of a shipper of household goods cause to be given to such shipper at no charge an estimate of the charges for proposed services, including specific tariff authority for such charges, in the manner and form specified below.

(2) The estimate shall be made only after a visual inspection of the goods by the estimator. The person performing the estimate shall include, in the appropriate spaces provided on the estimating form described in § 1056.8(d), the estimate volume in (cubic feet) of each article to be shipped and must apply to each article a weight factor of between 4 and 12 pounds per cubic foot. The weight of each article and the total weight of the shipment must be calculated and included on that estimating form, and the estimator must specify the number of pieces into which each article listed in the estimate will be broken down or divided for shipment. The estimate shall be prepared on the form described in § 1056.8(d) in accordance with the instructions printed on that form. No estimate shall be valid for more than 60 days. An estimate shall be binding upon the carrier in the manner specified in § 1056.8(a)(5) if, during the period in which the estimate is valid, the prospective shipper transmits to the carrier a request to perform the services described in that estimate or signs a written order for service.

(3) The estimating form specified in this section shall be fully executed as appropriate in each case and in accordance with this paragraph shall be delivered to the shipper, and a copy of that form shall be retained by the carrier as part of its record of shipment.

(4) A prospective shipper for whom an estimate has been provided may request that an additional estimate be performed, and the carrier must perform such an estimate. If the prospective shipper requests the carrier to perform such an estimate, the carrier may, after completion of that additional estimate, cancel any previous estimates and substitute the additional estimate for its previous estimates. If no order for service has been completed, the carrier may, without the shipper's consent, substitute an additional estimate for a previous estimate only if (i) the prospective shipper requests the carrier to perform additional services not specified in the previous estimate or requests the carrier to transport additional goods not included in that previous estimate and (ii) the car-

rier, in writing, provides the shipper a complete description of the changes made to the previous estimate and a complete statement of the differences in costs which such changes may have caused. If an order for service has been signed, a carrier may amend that order for service only if it modifies the estimate upon which that order for service was based in the manner specified in paragraph (a)(4) (i) and (ii) of this section.

(5) The lawful charges for any shipment on which an estimate has been requested and performed shall be (i) the total tariff charges determined in accordance with the carrier's tariffs, or (ii) the charges stated in the written estimate given to the shipper by the carrier, whichever will result in the lowest charge to the shipper, whether or not the charges stated in that estimate are based upon a misquotation of the tariff provisions. The provisions of this subsection shall only apply to the determination of charges due when those charges are to be collected upon delivery and shall only apply to transportation of household goods as defined in § 1056.1(a)(1). The provisions of this subsection do not apply to the transportation of shipments of household goods when the employer of the owner of those household goods is responsible, directly or indirectly, for arranging or paying for such transportation. When charges due for transportation of a shipment are calculated under the provisions of this subsection, those charges shall be calculated on the basis of the estimated or actual weight of the shipment, whichever is lower. Every motor common carrier of household goods shall publish, as part of its tariffs, a rule which reads as follows: "The charges for any shipment on which an estimate has been performed under the provisions of 49 CFR 1056.8(a) shall be either (*a*) the total tariff charges determined in accordance with the carrier's tariff, or (*b*) the charges stated in the written estimate given to the shipper by the carrier, whichever will result in the lowest charge to the shipper. The provisions of this rule shall only apply to the determination of charges due when those charges are to be collected upon delivery, and shall only apply to transportation of household goods as defined in 49 CFR 1056.1(a)(1). The provisions of this rule shall not appy to the transportation of shipments of household goods when the employer of the owner of those goods is responsible, directly or indirectly, for arranging or paying for such transportation. When charges due for transportation of a shipment are calculated under the provisions of this subsection, those charges shall be calculated on the basis of the estimated or actual weight of the shipment, whichever is lower."

(6) Each estimate shall be prepared in accordance with these regulations, but no person shall, in connection with the preparation, application, or use of such an estimate, engage in unjust, unfair, unreasonable or deceptive acts or practices.

(7) When there is pending before the Commission a proposed change in rates or charges which would affect the cost of a shipment for which an estimate is provided under this section, the carrier, in writing shall inform the person for whom an estimate is furnished of the proposed change in rates and charges and shall further inform that person of the time when the proposed changes in rates or charges are scheduled to become effective and of the general nature of the changes in those rates and charges.

(b) *Estimate form for shipper's use.* Carriers may furnish to shippers or prospective shippers an estimate form which may contain statements of the weights of average pieces of furniture and other household articles of various types for use by the shipper in making his own estimate of the total weight of his goods. Any instructions necessary to enable the shipper to use the estimate for shall be printed in the form. If cubic-foot measurements are used in arriving at the weight, the form shall state that a weight factor of 7 pounds per cubic foot shall be used.

(c) *Notification to shipper of charges.* Whenever the shipper specifically requests notification of the actual weight and charges on a shipment and supplies the carrier with an address or telephone number at which the communication will be received, the carrier shall comply with such request immediately upon determining the actual weight and charges. Such notification shall be made by telephone, telegraph, or in person at the carrier's expense unless the carrier provides in its tariff that the actual cost of such notification shall be collected from the shipper.

(d) *Estimating forms.* (1) Whenever an estimte must be furnished, that estimate shall be executed on the form specified in § 1056.8 (d)(2). All estimating forms shall be plainly printed, planographed, sterotyped, or prepared by other similar durable process, in black ink on white paper of good quality. All information required to be included in those forms shall be presented in a clearly eligible manner. The items included on each page of the estimating form in § 1056.8 (d)(2) shall be included on the corresponding page of each form used to prepare an estimate. The type used shall be of size not less than 8-point or its equivalent (if systems not employing the printers' points standards are used), but in no case may there be more than 9 lines to the vertical inch and 16 printed characters to the horizontal inch, with fractional inches of material to be in proportion. Characters, words, and lines shall be spaced in an uncrowded manner to assure easy readability of the material. The Interstate Commerce Commission reserves the right to require discontinuance of the use of any form if, upon examination of that form it appears that the form in question does not comply with the provisions of this subsection. Forms printed by the Government Printing Office under the direction of the Interstate Commerce Commission shall be deemed to comply with the provisions of this subsection.

(2) The following form shall be used to prepare each estimate.

ESTIMATED COST OF SERVICE	DATE OF ESTIMATE
THIS ESTIMATE IS VALID UNTIL (Not more than 60 days from date of estimate)	THIS ESTIMATE SUPERSEDES THIS CARRIER'S ESTIMATE WRITTEN ON
NAME AND ICC NO. OF CARRIER	ADDRESS OF CARRIER (Include Zip Code)
TELEPHONE NUMBER OF CARRIER	
NAME OF SHIPPER	ADDRESS OF SHIPPER (Include Zip Code)

SHIPMENT MOVING

FROM TO

SHIPPER'S DESTINATION CONTACT

PACKING DATE REQUESTED	LOADING DATE REQUESTED	DELIVERY DATE OR PERIOD OF TIME REQUESTED

NOTICE TO THE SHIPPER — THIS ESTIMATE COVERS ONLY THE ARTICLES AND SERVICES LISTED. CHARGES FOR ADDITIONAL ARTICLES OR SERVICES WHICH YOU REQUEST WILL BE ADDED TO THE CHARGES LISTED IN THIS ESTIMATE.

I hereby acknowledge that I have received a copy of *Summary of Information for Shippers of Household Goods*, ICC Form BOp-103, from (check one):

[ ] the carrier supplying this estimate

[ ] a carrier supplying another estimate

[ ] other source (specify) _____

_____
SIGNATURE OF SHIPPER OR REPRESENTATIVE DATE

If the prospective shipper has not previously been furnished with the *Summary of Information for Shippers of Household Goods*, ICC Form BOp-103, as required by the Interstate Commerce Commission, that form should be furnished to the shipper at this time.

ESTIMATE OF TOTAL CHARGES APPLICABLE TO THIS SHIPMENT (from page 5)

$ _____

Upon completion of this estimate, the shipper is advised to determine whether the carrier has listed in this estimate all of the items to be shipped and all of the services requested. If there are any discrepancies between the items to be shipped or the services requested and the items and services listed by the carrier in this estimate, those discrepancies should be reported to the carrier immediately upon discovery.

COMPUTATION OF CHARGES DUE UPON DELIVERY (Check the provision applicable)

1. [ ] This section applies to shipments of household goods by individual householders when charges are to be collected on delivery. This section does not apply when the employer of the owner of the goods being shipped is responsible for arranging for their transportation.

   The total charges due for transportation of your shipment will be the lesser of (i) the charges determined in accordance with the carrier's tariffs, or (ii) the charges stated in this estimate.

   All charges are due upon delivery of your shipment.

2. [ ] This section applies when the employer of the owner of the goods being shipped is responsible, directly or indirectly, for arranging or paying for their transportation. The total charges applicable to a shipment when the employer of the owner of the goods being shipped is responsible for arranging or paying for their transportation are determined solely by application of the governing tariff to the actual weight of that shipment and the services which the carrier performs. This estimate is not a final statement of the charges applicable to this shipment; those charges will be determined only after completion of the move.

SIGNATURE OF ESTIMATOR	PRINT OR TYPE FULL NAME OF ESTIMATOR
NAME OF COMPANY EMPLOYING ESTIMATOR	BUSINESS ADDRESS OF ESTIMATOR (Include Zip Code)
TELEPHONE NUMBER OF ESTIMATOR (Include Area Code)	

NOTICE TO THE SHIPPER — SHOULD THE NUMBER OF ITEMS TO BE SHIPPED OR THE SERVICES REQUIRED FOR YOUR SHIPMENT CHANGE BETWEEN THE TIME THIS ESTIMATE IS PERFORMED AND THE TIME OF YOUR MOVE, YOU ARE ADVISED TO INFORM THE CARRIER OF THESE FACTS. YOU MAY, IF YOU WISH, REQUEST THE CARRIER TO PERFORM ANOTHER ESTIMATE, AND THE CARRIER MUST PERFORM THAT ESTIMATE. THE CARRIER ALSO HAS THE RIGHT TO CANCEL A PREVIOUS ESTIMATE WHEN IT FINDS THAT THE CONDITIONS SURROUNDING YOUR MOVE HAVE CHANGED. THE CARRIER MUST THEN SUBSTITUTE A NEW ESTIMATE FOR THAT PREVIOUS ESTIMATE.

VALUATION CHARGES
(Line number 4 on page 3 of this estimate)

(1) Protection for your shipment up to, but not exceeding, 60 cents per pound per article is provided at no additional cost to you. Under this valuation provision, if the carrier damages an article weighing 40 pounds, its liability would be $24, or 60 cents times 40 pounds; the mover's liability would be limited to $24, whether or not the article is worth more than that amount.

(2) If you wish to be paid full value for lost or damaged items, you must pay the extra charge described on line number 4 on page 3 of this estimate. If you do not declare a value or if you sign the valuation statement included in the bill of lading provided by the carrier upon signing an order for the mover's services, the mover's maximum liability is automatically set at $1.25 times the weight of your shipment in pounds. Thus, if your shipment weighs 4,000 pounds, lump sum valuation would be $5,000, or $1.25 times 4,000 pounds.

You may also choose to declare a lump sum valuation you consider adequate to cover your shipment. That valuation cannot be less than $1.25 times the weight of your shipment. In the event you choose to state a lump sum valuation, the mover is responsible for the full value of that shipment.

In the event that you choose a valuation under paragraph (2) of this notice, you will be charged 50 cents per $100 valuation for this higher protection.

ESTIMATED COST OF SERVICES
COMPUTATION OF COSTS

NOTICE TO THE SHIPPER — THIS ESTIMATE COVERS ONLY THE ARTICLES AND SERVICES LISTED. THE COST OF YOUR SHIPMENT IS COMPUTED ONLY ON THE BASIS OF THOSE ARTICLES AND SERVICES. CHARGES FOR ADDITIONAL ARTICLES WHICH YOU INTEND TO SHIP OR FOR ADDITIONAL SERVICES WHICH YOU REQUEST WILL BE ADDED TO THE CHARGES LISTED IN THIS ESTIMATE.

This Estimate is Based On

NAME AND NUMBER OF TARIFF APPLICABLE | MF - I.C.C. NO.

LINE NO.	TARIFF ITEM NOS.	DESCRIPTION OF CHARGES	ESTIMATED CHARGES
1.		TRANSPORTATION: Estimated weight (from page 8):_____lbs. _____miles; @ $_____per 100 lbs.	$
		TOTAL TRANSPORTATION CHARGES.....	
2.		EXPEDITED SERVICE: $_____per 100 lbs.	
		TOTAL EXPEDITED SERVICE CHARGES.....	
3.		EXCLUSIVE USE OF VEHICLE: $_____per 100 lbs.	
		TOTAL CHARGES, EXCLUSIVE USE OF VEHICLE.....	
4.		VALUATION CHARGE: for liability on part of carrier in excess of that assumed when its lowest rates are charged On Transportation: $_____@ 50¢ per $100 valuation, or fraction thereof; TRANSPORTATION VALUATION CHARGE.....	
		On Storage-In-Transit: $_____@_____¢ per 100 lbs. (10% of monthly storage rate); STORAGE-IN-TRANSIT VALUATION CHARGE.....	
5.		ORIGIN SURCHARGE: $_____per 100 lbs.	
		TOTAL ORIGIN SURCHARGE.....	
6.		DESTINATION SURCHARGE: $ per 100 lbs.	
		TOTAL DESTINATION SURCHARGE.....	
7.		EMPTY MILEAGE CHARGE: $_____per mile_____miles;	
		TOTAL EMPTY MILEAGE CHARGE.....	
8.		BRIDGE, FERRY, TOLL AND TUNNEL CHARGES (list): $	
		$	
		$	
		$	
		TOTAL BRIDGE, FERRY, TOLL AND TUNNEL CHARGES.....	
9.		PICKUP OR DELIVERY FOR STORAGE IN TRANSIT: _____lbs. @ $_____per 100 lbs., for each 30 days or fraction thereof;	
		TOTAL PICKUP OR DELIVERY FOR STORAGE IN TRANSIT CHARGES.....	
10.		STORAGE IN TRANSIT: Location_____ $_____per 100 lbs. for each 30 days or fraction thereof;	
		TOTAL STORAGE IN TRANSIT CHARGES.....	
11.		WAREHOUSE HANDLING: Location_____ _____lbs., @_____¢ per 100 lbs. (one time charge)	
		TOTAL WAREHOUSE HANDLING CHARGES.....	
12.		EXTRA PICKUP OR DELIVERY AT_____	
13.		SERVICING OF APPLIANCES AT ORIGIN: $_____for first article $_____for each additional article Number of articles_____	
		TOTAL APPLIANCE SERVICING CHARGES, ORIGIN.....	
14.		SERVICING OF APPLIANCES AT DESTINATION: $_____for first article $_____for each additional article Number of articles_____	
		TOTAL APPLIANCE SERVICING CHARGES, DESTINATION.....	
15.		PIANO OR ORGAN HANDLING AND FLIGHT CARRY CHARGES: Type of piano or organ_____ Handling charge at origin $_____ Handling charge at destination $_____	
		TOTAL PIANO OR ORGAN HANDLING CHARGES.....	
		FLIGHT CARRY CHARGES, INDOOR, AT ORIGIN: $_____each flight; number of flights:_____	
		TOTAL FLIGHT CARRY CHARGES, INDOOR AT ORIGIN.....	
		FLIGHT CARRY CHARGES, OUTDOOR, AT ORIGIN: $_____each flight; number of flights:_____	
		TOTAL FLIGHT CARRY CHARGES, OUTDOOR AT ORIGIN.....	
		FLIGHT CARRY CHARGES, INDOOR, AT DESTINATION: $_____each flight; number of flights:_____	
		TOTAL FLIGHT CARRY CHARGES, INDOOR AT DESTINATION.....	
		FLIGHT CARRY CHARGES, OUTDOOR, AT DESTINATION: $_____each flight; number of flights:_____	
		TOTAL FLIGHT CARRY CHARGES, OUTDOOR AT DESTINATION.....	
16.		ELEVATOR, STAIR, AND EXCESSIVE DISTANCE CARRY CHARGES: WEIGHT OF SHIPMENT (from page 8)_____ Elevator: $_____per 100 lbs. at origin;	
		ELEVATOR CHARGES, ORIGIN.....	
		Elevator: $_____per 100 lbs. at destination;	
		ELEVATOR CHARGES, DESTINATION.....	
		STAIRS, INSIDE AT ORIGIN: $_____per 100 lbs. per flight; number of flights:_____	
		STAIR CHARGES, INSIDE AT ORIGIN.....	
		STAIRS, OUTSIDE AT ORIGIN: $_____per 100 lbs. per flight; number of flights:_____	
		STAIR CHARGES, OUTSIDE AT ORIGIN.....	
		STAIRS, INSIDE AT DESTINATION $_____per 100 lbs. per flight; number of flights:_____	
		STAIR CHARGES, INSIDE AT DESTINATION.....	
		STAIRS, OUTSIDE AT DESTINATION: $_____per 100 lbs. per flight; number of flights:_____	
		STAIR CHARGES, OUTSIDE AT DESTINATION.....	
		EXCESSIVE DISTANCE CHARGE, ORIGIN: $_____per 100 lbs. for each_____feet or fraction thereof beyond the first_____feet between vehicle and entrance to house or apartment	
		TOTAL EXCESSIVE DISTANCE CHARGE, ORIGIN.....	
		EXCESSIVE DISTANCE CHARGE, DESTINATION: $_____per 100 lbs. for each_____feet or fraction thereof beyond the first_____feet between vehicle and entrance to house or apartment	
		TOTAL EXCESSIVE DISTANCE CHARGE, DESTINATION.....	
17.		CONTAINERS (from page 9).....	
18.		PACKING (from page 9).....	
19.		UNPACKING (from page 9).....	

LINE NO.	TARIFF ITEM NO	DESCRIPTION OF CHARGES	ESTIMATED CHARGES
20.		OVERTIME LOADING OR UNLOADING: $_____ per person, per hour; number of persons required _____ number of hours required _____ TOTAL OVERTIME LOADING OR UNLOADING CHARGES.....	
21.		OTHER SERVICES: (Explain fully, including number of units of service required, and charges for each unit of service. Indicate total charges in right-hand column)	
22.		TOTAL ESTIMATED CHARGES (ENTER ON PAGE 1).....	

ESTIMATED COST OF CONTAINERS

TYPE	ESTIMATED NUMBER	COST EACH	TOTAL
BARREL, dish-pack, drum, et cetera.....			
BOXES, not over 5 cu. ft.....			
BOXES, over 5, not over 8 cu. ft.....			
BOXES, over 8 cu. ft.....			
CARTONS, less than 1-1/2 cu. ft.....			
CARTONS, 1-1/2 - 3 cu. ft.....			
CARTONS, 3 - 4-1/2 cu. ft.....			
CARTONS, 4-1/2 - 6 cu. ft.....			
CARTONS, 6-1/2 cu. ft. or more.....			
WARDROBE CARTON.....			
Crib Mattress Carton.....			
MATTRESS CARTON (not exceeding 54" x 75").....			
MATTRESS CARTON (exceeding 54" x 75").....			
MATTRESS COVER (plastic or paper).....			
NEWSPRINT AND OTHER PACKING MATERIAL.....			
CRATES AND CONTAINERS (designed for mirrors, paintings, glass or marble tops or similar fragile items).....			
GROSS MEASUREMENT OF CRATE OR CONTAINERS _____			
TOTAL ESTIMATED CONTAINER COSTS *(enter on page 4)*...			

PACKING COSTS

LABOR CHARGES: $_____ per person, per hour or fraction thereof
Number of hours required _____

TOTAL ESTIMATED PACKING COSTS $_____ *(enter on page 4)*

UNPACKING COSTS

LABOR CHARGES: $_____ per person, per hour or fraction thereof
Number of hours required _____

TOTAL ESTIMATED UNPACKING COSTS $_____ *(enter on page 4)*

TABLE OF MEASUREMENTS AND INVENTORY (non-Partnership)

ARTICLES LOADED	ARTICLES UNLOADED	ARTICLES NOT TO BE SHIPPED	ARTICLE	CUBIC FEET PER ARTICLE	POUNDS PER CUBIC FOOT	NUMBER OF ARTICLES	WEIGHT	NO. OF PIECES PER ARTICLE	CUBIC FEET
			FURNITURE						
			Bar, Portable						
			Bathinette						
			Bed inc. sprg. & mattress						
			Double						
			Single						
			Hollywood						
			Bunk Bed (set of 2)						
			King						
			Rollaway						
			Youth						
			Baby						
			Day						
			Bench						
			Fireside						
			Picnic						
			Piano						
			Vanity						
			Bookcase						
			Bookshelves (Sec.)						
			Buffet						
			Cabinet, China						
			Corner						
			Filing						
			Kitchen						
			Chair, Arm						
			Boudoir						
			Breakfast						
			Child's						
			High						
			Occasional						
			Lawn						
			Overstuffed						
			Porch						
			Rocker						
			Straight						
			Chaise lounge						
			Chest, Cedar						
			Toy						
			Clock, Grandfather						
			Clothes Hamper						
			Cot, Folding						
			Davenport/Hide-A-Bed						
			2 Cushion						
			3 Cushion						
			Love Seat						
			Desk, Small						
			Secretary						
			Office						
			Dresser						
			Dresser, Triple						

ARTICLES LOADED	ARTICLES UNLOADED	ARTICLES NOT TO BE SHIPPED	ARTICLE	CUBIC FEET PER ARTICLE	POUNDS PER CUBIC FOOT	NUMBER OF ARTICLES	WEIGHT	NO. OF PIECES PER ARTICLE	CUBIC FEET
			FURNITURE (Continued)						
			Fireplace Equipment						
			Foot Locker						
			Lamp, Floor						
			Magazine Rack						
			Organ, Small						
			Large						
			Piano, Upright						
			Baby Grand						
			Parlor						
			Spinet						
			Radio, Table						
			Phono						
			Rugs, Large Roll, Pad						
			Rugs, Small Roll, Pad						
			Porch, Large						
			Server						
			Settee						
			Glider						
			Stool, Foot						
			Bar						
			Table						
			Breakfast						
			Card						
			Child's						
			Coffee, End or Nest						
			Drop Leaf						
			Occasional						
			Dining						
			Kitchen						
			Library						
			Night						
			Picnic						
			Tea Cart						
			TV Comb.						
			TV/Radio Comb.						
			TV, Table Model						
			TV, Portable						
			Vanity						
			Wardrobe, Small						
			Large						
			APPLIANCES						
			Air Conditioner, Window						
			Dishwasher						
			Dryer, Electric or Gas						
			Edger						
			Fan						
			Freezer, Cubic Capacity						
			10 or Less						
			11 to 15						
			16 and Over						

ARTICLES LOADED	ARTICLES UNLOADED	ARTICLES NOT TO BE SHIPPED	ARTICLE	CUBIC FEET PER ARTICLE	POUNDS PER CUBIC FOOT	NUMBER OF ARTICLES	WEIGHT	NO. OF PIECES PER ARTICLE	CUBIC FEET
			APPLIANCES (Continued)						
			Heater, Gas or Electric						
			Lawn Mower, Hand						
			Power						
			Mangle						
			Range, Electric or Gas						
			Refrigerator, Cubic Capacity						
			6 or Less						
			7 to 10						
			11 and Over						
			Vacuum Cleaner						
			Washing Machine						
			MISCELLANEOUS						
			Ash/Trash Can						
			Bar-B-Q						
			Bird Bath						
			Carriage, Baby						
			Folding, Doll						
			Child's Slide						
			Gym						
			Swing						
			Wagon						
			Garden Hose/Tool						
			Golf Bag/Clubs						
			Bag/Clubs/Cart						
			Ironing Board						
			Ladder, Ext.						
			Step						
			Play Pen						
			Roaster						
			Sand Box						
			Sled						
			Tool Chest						
			Tricycle						
			Umbrella						
			Wheelbarrow						
			Work Bench						
			MISCELLANEOUS (Other)						
			Automobile Boat/Trailer						

ARTICLES LOADED	ARTICLES UNLOADED	ARTICLES NOT TO BE SHIPPED	ARTICLE	CUBIC FEET PER ARTICLE	POUNDS PER CUBIC FOOT	NUMBER OF ARTICLES	WEIGHT	NO. OF PIECES PER ARTICLE	CUBIC FEET
			CONTAINERS PACKED AT TIME OF ESTIMATE Barrels						
			Cartons						
			Small						
			Medium						
			Large						
			Dish Packs						
			Wardrobe						
			ESTIMATED TO BE PACKED BY MOVER Barrels						
			Cartons						
			Small						
			Medium						
			Large						
			Dish Packs						
			Wardrobe						
			ESTIMATED TO BE PACKED BY SHIPPED Barrels						
			Cartons						
			Small						
			Medium						
			Large						
			Dish Packs						
			Wardrobe						
			BULK CUBE IN Attic						
			Basement						
			Carport						
			Utility Room						

Total weight, page 5_____ Total cubic feet, page 5 _____

Total weight, page 6_____ Total cubic feet, page 6 _____

Total weight, page 7_____ Total cubic feet, page 7 _____

Total weight, page 8_____ Total cubic feet, page 8 _____

TOTAL ESTIMATED WEIGHT *(add subtotals from pages 6, 7, 8, and 9; enter in Item 1, page 3)* _____

TOTAL CUBIC FEET_____

INSTRUCTIONS

PAGE 1: Fill in the date on which the estimate is performed, and indicate the date on which the estimate expires. If this estimate supersedes a previous one, indicate the date of the prior estimate.

Indicate in the appropriate box the name and certificate or docket number of the carrier performing the estimate, but do not include any subnumbers which may have been assigned to that certificate or docket number.

List the address and telephone number of the carrier performing the estimate and the name and address of the prospective shipper. If the employer of the owner of the goods being shipped is responsible for arranging for their transportation, include the names of both the employer and the owner in the box marked NAME OF SHIPPER, and indicate the employer's address in the box marked ADDRESS OF SHIPPER.

In the box marked SHIPMENT MOVING indicate the addresses from and to which the shipment will be moving. Complete the boxes marked PACKING DATE REQUESTED, LOADING DATE REQUESTED, and DELIVERY DATE OR PERIOD OF TIME REQUESTED.

The owner of the goods being transported or the owner's representative must indicate, by checking the appropriate box, whether (and from what source) a copy of ICC Form BOp-103 has been received. The owner of the goods or the owner's representative must acknowledge the receipt of Form BOp-103 by placing his or her signature on the line provided.

After the estimate has been completed, indicate the total estimated charges from page 5 of the estimating form.

PAGE 2: Check the appropriate box to indicate the method by which total charges due for the shipment will be calculated. Item 1 on page 2 applies only when the shipment is tendered by an individual householder when charges are to be collected upon delivery; item 1 does NOT apply when the employer of the owner of the goods is responsible, directly or indirectly, for arranging or paying transportation of the shipment. Item 2 on page 2 applies in all other instances.

The estimator must sign his or her name in the appropriate box on page 2 and print or type his or her name, the name of the company employing the estimator, and the estimator's business address and telephone number in the spaces provided.

PAGES 3, 4, and 5 (COMPUTATION OF COSTS): Enter the name and carrier's number of the tariff applicable to this shipment and the MF-I.C.C. number of that tariff in the space provided on page 3.

Line numbers 1 through 20 on pages 3, 4, and 5 contain descriptions of various types of charges commonly applicable to household goods shipments. For each service requested, enter the tariff item number governing that service and complete the description of each item by indicating, as appropriate, the weight, distance, charge, surcharge, valuation, number of articles, and other factors pertinent to that item. Enter on line numbers 17 through 19 the charges for containers, packing and unpacking computed on page 5 of this form. If a service is requested which is not listed in line numbers 1 through 20, indicate on line number 21 the tariff item governing that service and explain fully the type of service requested, the price per unit of service, and the number of units of service requested.

Indicate in the column marked ESTIMATED CHARGES the total charge for each service requested and described on line numbers 1 through 21.

Add the estimated charges listed in the ESTIMATED CHARGES column on line numbers 1 through 21 and enter the total amount on line number 22 on page 5 and in the appropriate space on page 1.

On page 5, indicate the number of cartons of each type required, the cost for each type of carton, and the total cost for cartons of each type. Enter that information in the appropriate space. Additional space is provided to list the gross measurements of crates and containers designed for various fragile items.

Compute the total estimated container costs and enter that amount on line number 17 on page 4.

Indicate, in the spaces provided, the labor charges for packing and unpacking and the number of hours estimated for packing and unpacking. Enter the total estimated packing and unpacking costs on the appropriate lines. Also enter the total estimated packing costs on line number 18 on page 4, and enter the total estimated unpacking costs on line number 19 on page 4.

PAGES 6, 7, 8 and 9 (TABLE OF MEASUREMENTS AND INVENTORY):

To compute the estimated weight of a shipment, the estimator must follow these steps:

1. Estimate the cubic measurements of each article to be shipped; enter these measurements in the column marked CUBIC FEET PER ARTICLE on pages 6 through 9.

2. Estimate the density of each article to be shipped in pounds per cubic foot. For each article, the estimator must use density of not less than 4 pounds per cubic foot nor more than 12 pounds per cubic foot. Do not use fractions. Enter the density of each article in the column marked POUNDS PER CUBIC FOOT on pages 6 through 9.

3. Indicate the number of articles of each type to be shipped in the column marked NUMBER OF ARTICLES on pages 6 through 9.

4. Multiply the numbers entered on each line in the column marked CUBIC FEET PER ARTICLE by the numbers entered on those lines in that column marked POUNDS PER CUBIC FOOT. Then multiply that figure by the numbers entered on each line in the column marked NUMBER OF ARTICLES. Enter the total in the column marked WEIGHT.

5. In the column marked NO. OF PIECES PER ARTICLE on pages 6 through 9, enter for each article listed in the estimate the number of pieces into which that article will be broken down or divided for shipment.

6. Enter the total weight of the articles listed on each page in the spaces provided on page 9.

7. The estimator must multiply the cubic measurements shown on each line in the column marked CUBIC FEET PER ARTICLE on pages 6 through 9 by the number of articles shown in the column marked NUMBER OF ARTICLES shown on those lines to determine the estimated volume (in cubic feet) of that shipment. Enter the total on the appropriate line in the column marked CUBIC FEET on pages 6 through 9. Enter the total estimated volume of the articles listed on each page in the appropriate spaces provided on page 9.

This form may also be used as an inventory document. For each item loaded, place a mark in the ARTICLES LOADED column. When the shipment is unloaded, indicate the number of each type of article unloaded in the ARTICLES UNLOADED column.

Enter in the appropriate blocks on page 9 the total weight and cubic feet from the columns marked WEIGHT and CUBIC FEET on pages 6 through 9. Add these weights and indicate the total weight of the shipment in the space marked TOTAL ESTIMATED WEIGHT. Enter the total estimated weight in the space provided and in item 1 on page 3.

Add the number of cubic feet from pages 6 through 9 and enter that figure in the space on page 9 marked TOTAL CUBIC FEET.

OTHER MODIFICATIONS TO COMMISSION REGULATIONS

§ 1056.3 [Amended]

Section 1056.3(b) would be modified by deleting present § 1056.3(b) and substituting for that subsection the following:

* * * * *

(b) The tariff charges so established for containers, packing, and unpacking shall provide for separate charges for containers, for packing, and for unpacking, stated for containers as an amount per container, and for packing and unpacking as an amount per hour. Charges for other services shall be separately stated on a unit or hourly, basis whichever is appropriate.

§ 1056.6 [Amended]

Section 1056.6(a) would be modified by deleting the last two sentences from that subsection and substituting for those sentences the following:

(a) * * * The person paying the freight charges, the shipper, or the representative of either of them upon request, shall be permitted without charge to observe the determination of the tare weight of the vehicle into which that shipment will be loaded. The carrier shall, upon request, furnish in writing the vehicle numbers of the vehicles (including power unit) which will be used for the transportation of that shipment. The person paying the freight charges, the shipper, or the representative of either of them, upon request, shall be permitted without charge to accompany, in their own conveyance, the carrier to the weighting station and to observe the weighting use a certified scale which will permit any of the above named persons to observe the weighting of the shipment without causing delay, and the carrier must, prior to any weighing, inform the person paying the freight charges, the shipper, or the representative of either of them, in writing, of the location (including street address) of the scale upon which any such weighing will be performed. The weight upon which the actual charges due for a shipment for which an estimate is performed under § 1056.8(a)(5) of these regulations shall be the lower of the estimated weight of the actual weight of that shipment.

* * * * *

§ 1056.7 [Amended]

Section 1056.7(b) would be modified by deleting § 1056.7(b) (ii) and (iii) from that section and by renumbering § 1056.7(b) (iv) through (xi) as § 1056.7(b) (ii) through (ix), respectively.

§ 1056.9 [Amended]

Section 1056.9(a) would be amended by deleting present § 1056.9(a) (9) and (10) and substituting for those subsections the following, and by adding to § 1056.9(a) a new § 1056.9(a)(12):

(a) * * *

(9) Amount of estimated charges and method of payment of applicable charges.

(10) Maximum amount required to be paid in cash, certified check, or money order to relinquish possession of c.o.d. shipment when the transportation of that shipment is neither arranged nor paid for by the employer of the owner of the goods.

(12) Whether the shipper had an opportunity to obtain an estimate under the provisions of 49 CFR 1056.8 but declined to do so.

Section 1056.9 would also be modified by adding to that section a new § 1056.9(d), as follows:

* * * * *

(d) If a carrier provides an additional estimate under the provisions of § 1056.8(a) (4), it may amend any order for service which it may have prepared to reflect any changes in the amount of the charges listed in its previous estimate. The carrier must furnish an additional estimate or amend its previous estimate prior to amending the order for service with respect to the amount of charges to be collected from the shipper.

Section 1056.10 would be amended by deleting from that section § 1056.10(b) (7) and (8) and by substituting the following for those subsections:

* * * * *

(b) * * *

(7) Amount of estimated charges and method of payment of applicable charges.

(8) Maximum amount required to be paid in cash, certified check, or money order to relinquish possession of c.o.d. shipment when the transportation of that shipment is neither arranged nor paid for by the employer of the owner of the goods being shipped.

* * * * *

Section 1056.10(b)(9) would be modified to read as follows:

* * * * *

(b) * * *

(9) Whether the shipper requests notification of actual charges and where such communication will be received. On the same line on which the tare weight is to be entered, there shall be printed the words, "Shipper: The tare weight of the vehicle must be entered on this line prior to loading your shipment on the vehicle." Immediately above the warning required in the next sentence of this subsection, each individual c.o.d. shipper for whom an estimate has been furnished under the provisions of § 1056.8(a)(5) of these regulations shall be required, in his own handwriting, to certify that he is solely responsible for the arrangement of and payment for the shipment in question and shall affix his signature to that certification. Across the bottom of the receipt or bill of lading, and any copies, there shall be printed in red letters not less than ⅛ inch high the words "Any motor carrier, or other person, or any officer, agent, employee, or representative thereof, who shall knowingly and willfully neglect or fail to make full, true, and correct entries or who shall knowingly and willfully falsify, destroy, mutilate, or alter this receipt or bill of lading, shall be subject to a penalty of $5,000 for each such offense. (Sec 222; 49 U.S.C. 322)."

[FR Doc. 78-11894 Filed 5-1-78; 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.

[3410-07]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Designation Number A601]

LOUISIANA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Louisiana Parishes as a result of drought May 2 through July 15, 1977, and excessive rainfall July 28 through November 30, 1977, in both East Feliciana and West Feliciana Parishes; and drought June 15 through September 10, 1977, in Richland Parish.

Therefore, the Secretary has designated these areas as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended, and the provisions of 7 CFR 1904 Subpart C, Exhibit D, Paragraph V B, including the recommendation of Governor Edwin W. Edwards that such designation be made.

Applications for emergency loans must be received by this Department no later than October 17, 1978, for physical losses and April 20, 1979, 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, D.C., this 24th day of April, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 78-11819 Filed 5-1-78; 8:45 am]

[3410-07]

[Designation Number A602]

MICHIGAN

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Michigan Counties as a result of drought May 1 through July 6, 1977, and excessive rainfall July 7 through November 30, 1977, in Emmet County; drought April 1 to July 18, 1977, excessive rainfall July 19 to October 21, 1977, and late spring frost May 7, May 9, June 3, and June 9, 1977, in Kalkaska County; and drought April 1 through July 31, 1977, and excessive rainfall August 1 through October 31, 1977, in Mackinac County.

Therefore, the Secretary has designated these areas as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended, and the provisions of 7 CFR 1904 Subpart C, Exhibit D, Paragraph V B, including the recommendation of Governor William C. Milliken that such designation be made.

Applications for emergency loans must be received by this Department no later than October 17, 1978, for physical losses and April 20, 1979, 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, D.C., this 24th day of April, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 78-11820 filed 5-1-78; 8:45 am]

[3410-07]

[Designation Number A603]

NEW MEXICO

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in Roosevelt County, New Mexico, as a result of hot weather and dry winds causing abnormal infestation of the Banks grass mite and other insects May 31 through October 31, 1977.

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, and the provisions of 7 CFR 1904 Subpart C, exhibit D, Paragraph V B, including the recommendation of Governor Jerry Apodaca that such designation be made.

Applications for emergency loans must be received by this Department no later than October 17, 1978, for physical losses and April 20, 1979, 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, D.C., this 24th day of April, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 78-11821 Filed 5-1-78; 8:45 am]

[3410-11]

Forest Service

COOPERATIVE GYPSY MOTH SUPPRESSION AND REGULATORY PROGRAM—1978 ACTIVITIES

Notice of Availability of Final Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the forest Service, and Animal and Plant Health Inspection Service, Department of Agriculture, have prepared for the 1978 activities, a Final Environmental Statement for the Cooperative Gypsy Moth Suppression and Regulatory Program, USDA-FS-APHIS (Adm.) 78-02.

The Final Statement concerns a cooperative suppression program with the States of Pennsylvania and New Jersey to protect forests and forest resources on about 171,079 acres of high-value, high-use forest land from unacceptable damage by the gypsy moth. Most areas will be sprayed with carbaryl, trichlorfon, and Dimilin insecticides. The cooperative regulatory program is designed to prevent artificial long-distance spread and to eradicate remote infestations in the United States.

This Final Statement was filed with EPA on April 26, 1978.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Building, Room 3210, 12th and Independence Ave. SW., Washington, D.C. 20013.
USDA Animal and Plant Health Inspection Service, Administration Building, Room 302-E, 12th and Independence Ave. SW., Washington, D.C. 20250.
USDA, Forest Service, 370 Reed Road, Broomall, Pa. 19008.

A limited number of single copies are available upon request to John R. McGuire, Chief, U.S. Forest Service, South Agriculture Building, 12th and Independence Avs. SW., Washington, D.C. 20013.

Copies of the Final Environmental Statement have been sent to various Federal, State, and local agencies as outlined in the EPA guidelines.

Date: April 24, 1978.

R. MAX PETERSON,
Deputy Chief, Forest Service.

[FR Doc. 78-11825 Filed 5-1-78; 8:45 am]

[3410-11]

LAND MANAGEMENT PLAN KING PLANNING UNIT—KLAMATH NATIONAL FOREST

Availability of Draft Supplement to the Final Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft supplement to the final environmental statement for the Land Management Plan, King Planning Unit, Klamath National Forest, California, USDA-FS—R5-FES(Adm)-76-03(S). The draft supplement adds to and revises information contained in the final environmental statement.

The final environmental statement proposed a land management plan for 49,000 acres of the Klamath National Forest known as the King Planning Unit, Siskiyou County, Calif. In addition to the 11,100 acres within the marble Mountain Wilderness, a total of 28,200 acres within the King Planning Unit has been inventoried as roadless and undeveloped lands, 1,800 acres of which is proposed for Wilderness study. Under the preferred alternative, about 17,600 acres will be managed intensively, primarily for the production of timber. The remaining 18,500 acres will be managed for the protection and development of watershed, recreational, visual, cultural, and other resource values. These include the Klamath River area, the Pick-Ya-Wish cultural area, and the Ukonom Creek management area. The proposed plan does not apply to the 500 acres of private land within the Planning Unit boundary.

The draft supplement develops an additional land management alternative; considers a variation of one alternative; and corrects inaccurate or incomplete information in the final environmental statement. The preferred alternative is the same as in the final environmental statement.

The final environmental statement was transmitted to the Council on Environmental Quality on April 5, 1977. The draft supplement to the final environmental statement was transmitted to the Environmental Protection Agency (EPA) on April 24, 1978.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Building, Room 3210, 12th Street and Independence Avenue SW., Washington, D.C. 20250.
Forest Supervisor, Klamath National Forest, 1215 South Main Street, Yreka, Calif. 96097.
Regional Forester, U.S. Forest Service, Room 529, 630 Sansome Street, San Francisco, Calif. 94111.
District Ranger, Happy Camp Ranger District, Happy Camp, Calif. 96039.
District Ranger, Ukonom Ranger District, Somes Bar, Calif. 95568.

A limited supply of single copies of the final environmental statement and draft supplement are available upon request from the Forest Supervisor, Klamath National Forest, 1215 South Main St., Yreka. Calif. 96097.

Copies of the enviromental statement and the draft supplement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

Comments on the draft supplement are invited from the public, from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental effects for which comments have not been specifically requested.

Comments and requests for additional information should be addressed to Forest Supervisor Dan B. Abraham, Klamath National Forest, 1215 South Main Street, Yreka, Calif. 96097. Comments must be received within 60 days after transmittal to EPA in order to be considered in the preparation of the final supplement.

Dated: April 24, 1978.

ROBER W. CERMAK,
Acting Regional Forester.

[FR Doc. 78-11796 Filed 5-1-78; 8:45 am]

[3410-11]

Forest Service

FOREST SERVICE POLICY ON PESTICIDE USE

Revised Policy

AGENCY: Forest Service.

ACTION: Notice.

SUMMARY: The Forest Service, in response to concerns raised at the National Symposium on the Use of Herbicides in Forestry, is revising its policy on pesticide use to emphasize quality control, special aerial application considerations, and environmental monitoring. Policy changes will be published as an Interim Directive in the Forest Service Manual.

FOR FURTHER INFORMATION CONTACT:

David Graham, Forest Insect and Disease Management Staff, telephone: 703-235-8209.

SUPPLEMENTARY INFORMATION: The Forest Service uses an integrated approach to managing pests and vegetation in forests and rangelands. This can include the use of pesticides along with biological, silvicultural, manual, and mechanical methods in a fully coordinated program which achieves acceptable effectiveness and environmental safety. However, pesticides will only be used in accordance with the following policies:

1. Pesticides may be recommended and used in operational projects only after consideration of alternatives—based on competent analyses of effectiveness, specificity, environmental impacts, and benefit-cost—clearly demonstrates that use of the pesticide is essential to meet management goals. The full range of alternatives—including manual, mechanical, and silvicultural methods—must be considered. High-priority attention should be given to the utilization of employment opportunity programs and other opportunities to create jobs.

2. The requirements of Title I of the National Environmental Policy Act of 1969 (Pub. L. 91-190) must be met by following the process required in FSM 1950. Title I of NEPA requires Federal agencies to "* * * maintain conditions under which man and nature can exist in productive harmony."

3. Only pesticides registered by the U.S. Environmental Protection Agency (EPA) in full accordance with Federal Insecticide, Fungicide, and Rodenticide Act, as amended, may be used, except as otherwise provided in regulations, orders, or permits issued by EPA. All such exceptions will be closely monitored. EPA-approved label instructions will be followed to the letter.

4. The herbicides 2,4,5-T, Silvex, or other materials containing TCDD may be used only where no other environmentally acceptable and economically feasible alternative, nonchemical or chemical, is registered or available. Cost-effectiveness will not be the sole criterion. When a decision is made to use these pesticides, the Assistant Secretary for Conservation, Research and Education shall be provided the oppor-

tunity to review the decision prior to implementation.

5. Where endangered or threatened animal or plant species habitat is involved, pesticides may be used only after it is determined, in conjunction with Federal and State wildlife management agencies through the environmental impact statement process, that such use will adversely affect neither the species nor its critical habitat.

6. Pesticides will not be used in Wildlife areas; exceptions to this prohibition may be only where necessary to prevent the loss of significant aspects of the Wilderness area or to prevent significant losses to resource values on public or private lands bordering the Wilderness. The use of pesicides in a designated Wilderness must be approved by the Chief.

7. Pesticide application and use must be controlled in a manner that assures adequate safety. Spills, accidents, misapplication, and any other contamination are to be avoided. Quality control monitoring will include a determination of the adequacy of application procedures and accomplishments of objectives. Treated areas will be posted with appropriate signs indicating the name of the material used and date of application to insure that potential forest users, such as berrypickers, are informed of possible exposure to pesticides. In addition, the project officer will confirm that all persons in or near the treatment area are notified in time to leave the area.

8. Pesticides and pesticide containers will be transported, stored, and disposed of in accordance with Federal, State, and local laws and regulations in a manner which will safeguard public health and wildlife, prevent damage to plants, and prevent soil and water contamination.

9. All Forest Service project applications will be supervised by Forest Service personnel trained in pesticide use and with authority to suspend operations, such as when atmospheric conditions change abruptly or other factors make it necessary.

10. The rights-of-way management plans of highway, road, transmission line, railroad maintenance departments and others, and County weed control plans will be reviewed and approved by the Forest Supervisor to ensure that all uses of pesticides on National Forest System lands conform to this Directive and Department policy, and that chemical treatments are necessary and properly applied. Use of alternatives to chemical herbicide treatment may be required.

11. When applying pesticides in sensitive situations, appropriate environmental monitoring will be carried out to determine amount of drift, if any, into nontarget areas and to detect unanticipated nontarget effects.

12. A comparison of ground and aerial applications—including costs, safety, effectiveness, and possible consequences of drift to adjacent lands or water—must be made whenever herbicides are to be used. Aerial application methods shall be used only when advantages over ground methods are significant. Herbicide aerial applications should be made with invert emulsions, particulating agents, or similar materials to ensure positive placement. The possibilities of drift to nontarget areas will be minimized in all applications.

13. Special attention will be given to all restricted-use pesticide handling and use precautions. Restricted-use pesticides shall be used only by personnel who are certified or who are under the direct supervision of a certified applicator (FSM 2143.2).

In addition, it is Forest Service policy to conduct and support research to develop and to evaluate the effectiveness and environmental safety of pest management technology—including new and improved pesticides, formulations, application timing, pest management tools, and methods—and to effectively transfer this technology to minimize costs and adverse environmental and health impacts.

JOHN R. MCGUIRE,
Chief.

[FR Doc. 78-11949 Filed 5-1-78; 8:45 am]

[3410-02]

Packers and Stockyards Administration

FARMERS AND RANCHERS LIVESTOCK AUCTION, INC., CHARLOTTE, ARK., ET AL.

Posted Stockyards

Pursant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. et seq.), it was ascertained that the livestock markets named below were stockyards within the difinition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on the respective dates specified below.

Facility No., name, and location of stockyard	Date of posting
AR-158, Farmers and Ranchers Livestock Auction, Inc., Charlotte, Ark.	Apr. 6, 1978.
FL-125, Madison Stockyard, Inc., Madison, Fla.	Feb. 21 1978.
KY-163, New Farmers Livestock Market, Somerset, Ky.	Jan. 4, 1978.
MO-243, Adair County Livestock Market Center, Inc., Kirksville, Mo.	Mar. 22, 1978.
VA-150, Lynchburg Livestock Market, Inc., Lynchburg, Va.	Arp. 11, 1978.

Done at Washington, D.C. this 25th day of April, 1978.

EDWARD L. THOMPSON,
Chief, Registrations, Bonds, and Reports Branch Livestock Marketing Division.

[FR Doc. 78-11823 Filed 5-1-78; 8:45 am]

[3410-02]

VALLEY LIVESTOCK AUCTION COMPANY, FRUITA, COLO, ET AL.

Proposed Posting of Stockyards

The Chief, Registrations, Bonds, and Reports Branch, Packers and Stockyards, Agriculture Marketing Service, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisons of the Act.

CO-148, Valley Livestock Auction Company, Fruita, Colo.
MO-246, Tina Feeder Pig Auction, Tina, Mo.
MO-245, MFA Livestock Association, Inc., West Plains Concentration Point, West plains, Mo.
TX-315, Southwest Livestock Exchange, Inc., Uvalde, Tex.
VA-151, Abingdon Livestock Market, Inc., Abingdon, Va.

Notice is hereby given, therefore, that the said Chief, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C.181 et seq.), propose to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the Act as provided in Section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule, may do so by filing them with the Chief, Registrations, Bonds, and Reports Branch, Packers and Stockyards, Agriculture Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, by May 17, 1978.

All written submissions made pursuant to this notice shall be made available for public inspection at such times and places in a manner convenient to the public business (7 U.S.C. 1.27(b)).

Done at Washington, D.C., this 25th day of April, 1978.

EDWARD L. THOMPSON,
Chief, Registrations, Bonds, and Reports Branch Livestock Marketing Division.

[FR Doc. 78-11822 Filed 5-1-78; 8:45 am]

[3410-02]

MONTROSE AUCTION CO., MONTROSE, COLO., ET AL.

Deposting of Stockyards

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
CO-133, Montrose Auction Co., Montrose, Colo.	Mar. 11, 1957.
IL-119, Heinold Livestock Sales, El Paso, Ill..	Nov. 20, 1959.
IA-216, Spencer Livestock Sales, Inc.,.	Apr. 16, 1958.
NY-144, Wallkill Livestock Market, Walden, N.Y.	Aug. 8, 1960.
NC-139, West Jefferson Livestock Market, West Jefferson, N.C.	Apr. 8, 1959.
TX-101, Ranchers and Farmers Livestock Commission Company, Abilene, Tex.	Nov. 19, 1948.
TX-123, Bridgeport Auction Barn, Bridgeport, Tex.	Feb. 15, 1960.
TX-275, Southwest Livestock Exchange, Inc. (Yard B), Uvalde, Tex.	June 12, 1957.

Notice or other public procedure has not preceded promulgation of the foregoing rule. There is no legal justification for not promptly deposting a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a rule relieving a restriction and may be made effective in less than 30 days after publication in the FEDERAL REGISTER. This notice shall become effective May 2, 1978.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 et seq.)

Done at Washington, D.C. this 25th Day of April, 1978.

EDWARD L. THOMPSON,
Chief Registrations, Bonds, and Reports Branch Livestock Marketing Division.

[FR Doc. 78-11824 Filed 5-1-78; 8:45 am]

[3410-15]

Rural Electrification Administration

WESTERN FARMERS ELECTRIC COOPERATIVE, ANADARKO, OKLA.

Proposed Loan Guarantee

Under the authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider: (a) Providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $26,143,000 to Western Farmers Electric Cooperative of Anadarko, Okla., and (b) supplementing such a loan with an insured REA loan at 5-percent interest in the approximate amount of $10,000,000 to this cooperative. These loan funds will be used to finance a project consisting of approximately 320 miles of 138 kV transmission line and related facilities. Also included are funds for additional headquarters facilities at Anadarko and McAlester, Okla.

Legally organized lending agencies capable of making, holding, and servicing the loan proposed to be guaranteed may obtain information on the proposed project, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. Maynard Human, Manager, Western Farmers Electric Cooperative, P.O. Box 429, Anadarko, Okla. 73005.

In order to be considered, proposals must be submitted on or before June 1, 1978, to Mr. Human. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as Western Farmers and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Information Services Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C., 20250.

Dated at Washington, D.C., this 24th day of April 1978.

DAVID A. HAMIL,
Administrator, Rural Electrification Administration.

[FR Doc. 78-11733 Filed 5-1-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Docket 30697]

CARIBBEAN AREA SERVICE INVESTIGATION

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on June 1, 1978, at 9:30 a.m. (local time), in Room 1003, Hearing Room A, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and six copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) proposed requests for information and for evidence; (4) statements of positions; and (5) proposed procedural dates. The Bureau of Pricing and Domestic Aviation will circulate its material on or before May 15, 1978, and the other parties on or before May 30, 1978. The submisions of the other parties shall be limited to points on which they differ with the Bureau of Pricing and Domestic Aviation, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., April 25, 1978.

WILLIAM A. KANE, Jr.,
Adminsitrative Law Judge.

[FR Doc. 78-11902 Filed 5-1-78; 8:45 am]

[6320-01]

[Dockets 28515, 28604 and 28578; Order 78-4-151]

VARIOUS AIR CARRIERS

Order Relating to Approval of Various Control Relationships Under Section 408 of the Act or an Exemption Therefrom

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 24th day of April 1978.

By Order 77-11-42, we granted final approval to the proposals of various air carriers to acquire control of tour operator subsidiaries abroad which would market foreign-originating, noninclusive tour type charters. By that order, we deferred action, however, on the requests of three carriers—Pan American, Trans International (TIA), and World—for additional and expanded authority.[1] By these requests, in Dockets 28515, 28604, and 28578, respectively, Pan American is seeking expanded authority to control its subsidiary in the United Kingdom to the extent that the subsidiary would market inclusive tours in conjunction with its scheduled services; TIA is seeking authority to control additional wholly owned tour operator subsidiaries to market foreign-originating, noninclusive tour type charters in Luxemburg and Switzerland; and World is seeking blanket authority to acquire control of such tour operator subsidiaries in any country in which the flag-carrier of that nation already controls a tour operator.

In support of these requests for further authority, Pan American states

[1]These requests were filed subsequent to the issuance of our show cause order, Order 77-6-34, and therefore, were not considered on their merits in our final order, Order 77-11-42.

that it needs expanded authority to market inclusive tours in scheduled service through its subsidiary in the United Kingdom because of the requirement of the Association of British Travel Agents that these programs be marketed through a separate subsidiary, rather than on an inhouse basis; TIA states that both Switzerland and Luxemburg have followed liberal policies with respect to the marketing of charters originating in those countries, and that it believes it would be competitively desirable for it to integrate vertically in those countries; and World submits that a grant of blanket authority would enable it to respond more promptly to competitive threats abroad.

We are tentatively prepared to approve the requests of Pan American and TIA for further authority, but have decided to deny World's request for a blanket authorization. Although no answers or comments were received in response to the former requests and although these requests do not appear to raise any significant questions of law, policy or material fact not considered previously by us in Orders 77-6-34 and 77-11-42, we, nonetheless, believe that interested persons should be provided with an opportunity to comment on these proposals and our tentative decision to approve them. As indicated, Pan American is seeking authority to employ its subsidiary in the United Kingdom to market inclusive tours in conjunction with its scheduled services. It states it requires this authority because the Association of British Travel Agents permits the marketing of inclusive tours only through a separate subsidiary, rather than on an in-house basis. Thus, for Pan American, such control is a prerequisite for it to market inclusive tours in the United Kingdom.

Scheduled airlines are already permitted to market inclusive tours on their regularly scheduled flights. By Order 76-12-101, we denied two petitions for rulemaking aimed at precluding such activity. In so doing, we did not find the marketing of these tours to be either adverse to the public interest or anticompetitive. In essence, as far as we are concerned, Pan American is merely seeking authority to do through a subsidiary what it is already permitted to do directly. Moreover, as was the case with the control relationship which we considered in Orders 77-6-34 and 77-11-42, the primary competitive effects of Pan American's expanded control of its subsidiary will take place in the United Kingdom. In view of the foregoing, we tentatively find that Pan American's request for this expanded authority should be granted. Consistently with our earlier findings, we tentatively find that a grant of this authority to Pan American will not affect the control of any air carrier directly engaged in the operation of aircraft in air transportation, result in creating a monopoly or otherwise tend to restrain competition.[2]

TIA is requesting authority to control additional tour operator subsidiaries in Switzerland and Luxemburg. By Order 77-11-42, we permitted the company to acquire control of wholly owned tour operator subsidiaries in Belgium, France, the Federal Republic of Germany, Italy, the Netherlands and the United Kingdom to market noninclusive tour type charters originating in those countries. TIA is now seeking identical authority for similar subsidiaries in Switzerland and Luxemburg. We believe that the policy considerations which prompted us to conclude that it should be permitted to control the other subsidiaries are equally applicable here. Moreover, the primary competitive effect of TIA's control of these additional subsidiaries will take place in foreign markets. Thus, we tentatively find that TIA's request to control these additional subsidiaries should be approved. A grant of such authority would appear to be consistent with the action we took in Order 77-11-42. Moreover, it does not appear that a grant of this additional authority would affect the control of any air carrier directly engaged in the operation of aircraft in air transportation, result in creating a monopoly or otherwise tend to restrain competition.

All interested persons will be given twenty (20) days following the date of service of this order to show cause why our tentative findings, set forth above, should not be made final. Answers to these objections will be due ten (10) days after the time for filing objections to support their objections with legal precedent, detailed facts and economic analysis. If further hearing procedures are requested, the objecting party should state in detail why such procedures are considered necessary, and what relevant and material facts can be expected to be established through such procedures which cannot be established through written pleadings. General, vague or unsupported allegations will not be considered.

We see some merit to World's request for blanket authority to acquire tour operators in countries where the national carrier already controls a tour operator. Many foreign countries allow such control relationships to be established quickly, with only a minimum of government review. If U.S. carriers are subject to formal proceedings before such relationships can be established, they may suffer a competitive disadvantage until the proceedings are completed. This seems all the more unfortunate in light of our findings here and in Order 77-11-42 that the experience in a number of countries failed to demonstrate that such control relationships have adverse consequences for the public. Nevertheless, the World request is rather broad, and it comes at a particularly difficult time for us to make sweeping changes in the relationships between air carriers and tour organizers.

The Board will be receiving public comments soon on very significant liberalizations of the rules governing charter air transportation. A final charter rule is expected by this summer. Many of the proposed liberalizations—elimination of advance purchase and roundtrip requirements, for example—would remove differences between charter and scheduled air transportation that have been cited as factors in the legal distinction between the two types of air transportation. The fact that charter transportation is marketed and sold to the public by a tour operator also has been considered quite relevant to this legal distinction. If we are to allow generalized changes in the relationships between tour organizers and air carriers, it would seem wiser to do so only after the legal implications of our new charter rules are somewhat clearer.

For these reasons, we will deny World's request at this time. At the same time, we emphasize that we do not intend to impose an unnecessary marketing handicap on U.S. air carriers' overseas operations. We will give the speediest possible consideration to specific requests for approval of control relationships of this type in the future.

Accordingly, *It is ordered* That: 1. All interested persons be directed to show cause why the Board should not issue an order making final its tentative findings and conclusions set forth in this order;

2. Any interested person having objection to the issuance of an order making final any of the proposed findings or conclusions set forth in this order shall, within twenty (20) days after the date of service of this order, file with the Board and serve upon all the parties noted in paragraph 5 a statement of objections supported by legal precedent, detailed facts and economic analysis; answers to the objections will be due ten (10) days after the time for the filing of objections has expired;

3. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Board may proceed to enter an order in accordance with the tentative findings and conclusions set forth in this order;

[2] We will grant the motion Pan American filed requesting that an order be issued pursuant to Order 77-11-42.

4. The outstanding request of World Airways, Inc., in Docket 28578, for further authority be denied; and

5. The motion of Pan American that an order be issued pursuant to Order 77-11-42 be granted.

This order shall be published in the FEDERAL REGISTER, and served on all parties of record in Dockets 28515, 28604 and 28578.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,[3]
Secretary.

[FR Doc. 78-11903 Filed 5-1-78; 8:45 am]

[3510-25]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

EXPORT MONITORING REPORT FOR COAL AND COKE OF COAL

Week Ending March 31, 1978

Total bituminous coal exports for this week were 214,163 short tons compared with 550 short tons exported the preceding week. All exports for the week were of metallurgical grade. The weighted average price of coal exports for this week was $52.07 per short ton with a high and low price of $60 and $48.73 per short ton, respectively. With the current level of export activity, only a small number of firms reported coal shipments during the week. A breakdown of these exports by volatility and area of destination is, therefore, withheld from this report to prevent disclosure of information deemed to be confidential pursuant to section 7(c) of the Export Administration Act of 1969, as amended.

Exports of coke manufactured from coal for this week were 4,317 short tons compared with 4,488 short tons exported the preceding week and a weekly average of 11,600 short tons for the preceding 6 weeks. The weighted average price of this commodity for the week was $127.48 per short tons with a reported high and low price of $142.79 and $122 per short ton, respectively. Coke of coal export prices for the week indicate no price changes.

Domestic coal production for the week was 11,945,000 short tons, and increase from the 8,355,000 short tons produced the preceding week. On March 24, 1978, the United Mine Workers of America and the Bituminous Coal Operators Association approved a new labor contract which officially ended the coal strike that started on December 6, 1977. This week's increase in production reflects the resumption of mining operations with the end of the strike.

Total bituminous coal consumption for this week was estimated to be 9,655,000 short tons compared with 9,431,000 short tons consumed the preceding week. Total end-of-week coal inventories were estimated to be 81,314,000 short tons, a decrease of 745,000 short tons from the preceding week. This relatively small decrease in total coal inventories indicates that domestic consumer receipts and consumption of coal are approaching a balance.

No movement in domestic coal prices is noted for the week ending March 31, 1978.

STANLEY J. MARCUSS,
Deputy Assistant Secretary for Trade Regulation.

[3] All Members concurred.

TABLE 1.—*U.S. exports of bituminous coal and coke of coal, in short tons*

[For week ending Mar. 31, 1978]

EXPORTS

Commodity	Weekly average			Week ending			
	December 1975	December 1976	November 1977	Dec. 9, 1977	Dec. 16, 1977	Dec. 23, 1977	Dec. 30, 1977
Low volatile metallurgical coal [1]	NA	NA	***133,877	199,136	96,895	(4)	(4)
Medium volatile metallurgical coal [2]	NA	NA	NA	283,420	118,632	(4)	(4)
High volatile metallurgical coal [3]	NA	NA	NA	47,055	176,827	(4)	(4)
Total metallurgical coal	NA	NA	889,125	*550,459	**436,605	521,109	128,822
Other bituminous coal	NA	NA	158,326	129,424	351,669	59,500	0
Total bituminous coal	1,023,827	1,044,281	1,047,451	679,883	788,274	580,609	128,822
Coke of coal	16,646	7,287	33,179	3,922	9,624	2,843	3,922

	Average		Week ending			
	January 1976	January 1977	Jan. 6, 1978	Jan. 13, 1978	Jan. 20, 1978	Jan. 27, 1978
Low volatile metallurgical coal [1]	NA	NA	(4)	(4)	(4)	(4)
Medium volatile metallurgical coal [2]	NA	NA	(4)	(4)	(4)	(4)
High volatile metallurgical coal [3]	NA	NA	(4)	(4)	(4)	(4)
Total metallurgical coal	NA	NA	174,709	311,331	97,800	262,585
Other bituminous coal	NA	NA	0	0	0	0
Total bituminous coal	834,857	483,983	174,709	311,331	97,800	262,585
Coke of coal	12,326	20,514	4,466	5,062	29,143	30,634

	Weekly average		Week ending			
	February 1976	February 1977	Feb. 3, 1978	Feb. 10, 1978	Feb. 17, 1978	Feb. 24, 1978
Low volatile metallurgical coal [1]	NA	NA	(4)	(4)	(4)	(4)
Medium volatile metallurgical coal [2]	NA	NA	(4)	(4)	(4)	(4)
High volatile metallurgical coal [3]	NA	NA	(4)	(4)	(4)	(4)
Total metallurgical coal	NA	NA	251,327	72,569	139,143	206,762
Other bituminous coal	NA	NA	0	(4) R	0	0
Total bituminous coal	736,138	769,840	251,327	72,569	139,143	206,762
Coke of coal	22,185	12,805	3,998	75,173	43,315	8,595

	Weekly average		Week ending				
	March 1976	March 1977	Mar. 3, 1978	Mar. 10, 1978	Mar. 17, 1978	Mar. 24, 1978	Mar. 31, 1978
Low volatile metallurgical coal [1]	NA	NA	(4)	(4)	(4)	0	(4)
Medium volatile metallurgical coal [2]	NA	NA	(4)	(4)	(4)	0	(4)
High volatile metallurgical coal [3]	NA	NA	(4)	(4)	(4)	0	(4)
Total metallurgical coal	NA	NA	162,451	102,698	*24,182	0	214,163
Other bituminous coal	NA	NA	(4) R	0	0	550	0

TABLE 1.—*U.S. exports of bituminous coal and coke of coal, in short tons*

EXPORTS

Commodity	Weekly average		Week ending				
	March 1976	March 1977	Mar. 3, 1978	Mar. 10, 1978	Mar. 17, 1978	Mar. 24, 1978	Mar. 31, 1978
Total bituminous coal	898,473	765,515	162,451	102,698	24,182	550	214,163
Coke of coal	19,541	24,320	4,998	4,651	3,359	4,488	4,317

[1] 22 pct or less volatile matter.
[2] 31 pct or less and more than 22 pct volatile matter.
[3] More than 31 pct volatile matter.
[4] Due to a limited number of firms reporting this data, precise figures have been withheld to prevent disclosure of information deemed to be confidential pursuant to sec. 7(c) of the Export Administration Act of 1969, as amended.
[5] Subject to revision. Less than 10,000 short tons of additional bituminous coal may have been exported; the Department of Commerce is seeking to verify this information.
* Includes 20,848 short tons of metallurgical grade coal not identified as to volatility.
** Includes 44,251 short tons of metallurgical grade coal not identified by volatility.
*** Partial, in content tons.
[R] Revised.

NA—Not available.

Sources: Office of Export Administration and Bureau of the Census.

TABLE 2.—*Contracts for export of bituminous coal and coke of coal, in short tons*

[For week ending Mar. 31, 1978]

Commodity	Contracts Week ending							
	Apr. 7, 1978	Apr. 14, 1978	Apr. 21, 1978	Apr. 28, 1978	May 5, 1978	May 12, 1978	Next 6 weeks	Total for 12 weeks
Low volatile metallurgical coal [1]	204,849	90,955	90,953	110,253	188,753	108,953	945,808	1,740,524
Medium volatile metalurgical coal [2]	160,694	205,890	304,619	412,658	411,136	219,588	2,299,739	4,014,324
High volatile metallurgical coal [3]	22,608	22,608	30,610	152,440	31,510	31,510	246,676	537,962
Total metallurgical coal	388,151	319,453	426,182	675,351	631,399	360,051	3,492,223	6,292,810
Other bituminous coal	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Coke of coal	3,228	3,228	2,963	2,853	2,793	2,733	38,896	56,694

[1] 22 pct or less volatile matter.
[2] 31 pct or less and more than 22 pct volatile matter.
[3] More than 31 pct volatile matter.
[4] Due to a limited number of firms reporting this data, precise figures have been withheld to prevent disclosure of information deemed to be confidential pursuant to sec. 7(c) of the Export Administration Act of 1969, as amended.

Sources: Office of Export Administration and Bureau of the Census.

TABLE 3.—*U.S. exports by commodity and area of destination, in short tons*

[For week ending Mar. 31, 1978]

EXPORTS

Commodity and area of destination	Weekly average		Week ending				
	December 1975	December 1976	November 1977	Dec. 9, 1977	Dec. 16, 1977	Dec. 23, 1977	Dec. 30, 1977
Low volatile metallurgical coal: [1]							
Asia			7,458	111,525	24,808	(4)	(4)
Europe			43,463	40,893	69,440	(4)	(4)
Western Hemisphere			82,956	46,718	2,647	(4)	(4)
Total	NA	NA	**133,877	199,136	96,895	(4)	(4)
Medium volatile metallurgical coal: [2]							
Asia				102,906	93,291	(4)	(4)
Europe				173,711	15,958	(4)	(4)
Western Hemisphere				6,803	9,383	(4)	(4)
Total	NA	NA	NA	283,420	118,632	(4)	(4)
High volatile metallurgical coal: [3]							
Asia				11,331	0	(4)	(4)
Europe				0	76,532	(4)	(4)
Western Hemisphere				35,724	100,295	(4)	(4)
Total	NA	NA	NA	47,055	176,827	(4)	(4)
Total metallurgical coal:							
Asia			377,151	225,762	118,099	134,389	(4)
Europe			269,606	214,604	161,930	206,831	(4)
Western Hemisphere			224,411	*110,093	*112,325	136,928	(4)
Total	NA	NA	***889,125	*550,459	*436,605	521,109	128,822

TABLE 3.—*U.S. exports by commodity and area of destination, in short tons*—Continued

EXPORTS

Commodity and area of destination	Week ending						
	Jan. 6, 1978	Jan. 13, 1978	Jan. 20, 1978	Jan. 27, 1978	Feb. 3, 1978	Feb. 10, 1978	Feb. 17, 1978
Low volatile metallurgical coal: [1]							
Asia	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Medium volatile metallurgical coal: [2]							
Asia	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total	(4)	(4)	(4)	(4)	(4)	(4)	(4)
High volatile metallurgical coal: [3]							
Asia	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total metallurgical coal:							
Asia	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total	174,709	311,331	97,800	262,585	251,327	72,569	139,143

	Week ending					
	Feb. 24, 1978	Mar. 3, 1978	Mar. 10, 1978	Mar. 17, 1978	Mar. 24, 1978	Mar. 31, 1978
Low volatile metallurgical coal: [1]						
Asia	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)
Total	(4)	(4)	(4)	(4)	(4)	(4)
Medium volatile metallurgical coal: [2]						
Asia	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)
Total	(4)	(4)	(4)	(4)	(4)	(4)
High volatile metallurgical coal: [3]						
Asia	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)
Total	(4)	(4)	(4)	(4)	(4)	(4)
Total metallurgical coal:						
Asia	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)
Total	206,762	162,451	102,698	[5]24,182	0	214,163

	Weekly average			Week ending			
	December 1975	December 1976	November 1977	Dec. 9, 1977	Dec. 16, 1977	Dec. 23, 1977	Dec. 30, 1977
Other bituminous coal	NA	NA	158,326	129,424	351,669	59,500	0
Total bituminous coal	1,023,827	1,044,281	1,047,451	679,883	788,274	580,509	128,822
Coke of coal	16,646	7,287	33,179	3,922	9,624	2,843	3,922

	Week ending						
	Jan. 6, 1978	Jan. 13, 1978	Jan. 20, 1978	Jan. 27, 1978	Feb. 3, 1978	Feb. 10, 1978	Feb. 17, 1978
Other bituminous coal	0	0	0	0	0	0	0
Total bituminous coal	174,709	311,331	97,800	262,585	251,327	72,569	139,143
Coke of coal	4,466	5,062	29,143	30,634	3,998	75,173	43,315

	Week ending					
	Feb. 24, 1978	Mar. 3, 1978	Mar. 10, 1978	Mar. 17, 1978	Mar. 24, 1978	Mar. 31, 1978
Other bituminous coal	0	0	0	0	550	0

TABLE 3.—*U.S. exports by commodity and area of destination, in short tons*—Continued

Commodity and area of destination	EXPORTS Week ending Feb. 24, 1978	Mar. 3, 1978	Mar. 10, 1978	Mar. 17, 1978	Mar. 24, 1978	Mar. 31, 1978
Total bituminous coal	206,762	162,451	102,698	[5] 24,182	550	214,163
Coke of coal	8,595	4,998	4,651	3,359	4,488	4,317

[1] 22 pct or less volatile matter.
[2] 31 pct or less and more than 22 pct volatile matter.
[3] More than 31 pct volatile matter.
[4] Due to a limited number of firms reporting this data, precise figures have been withheld to prevent disclosure of information deemed to be confidential pursuant to sec. 7(c) of the Export Administration Act of 1969, as amended.
[5] Subject to revision. Less than 10,000 short tons of additional bituminous coal may have been exported; the Department of Commerce is seeking to verify this information.
*Includes 44,251 short tons of metallurgical grade coal not identified by volatility.
**Partial, in content tons.
***Includes 17,957 short tons of metallurgical grade coal to destinations not listed above.
NA—Not available.

Sources: Office of Export Administration and Bureau of the Census.

TABLE 4.—*Anticipated exports by commodity and area of destination, in short tons*

[For week ending Mar. 31, 1978]

Commodity and area of destination	Contracts—Week ending Apr. 7, 1978	Apr. 14, 1978	Apr. 21, 1978	Apr. 28, 1978	May 5, 1978	May 12, 1978	Next 6 weeks	Total for 12 weeks
Total metallurgical coal: [1]								
Asia	135,598	73,342	125,862	333,912	201,042	155,642	1,377,723	2,403,121
Europe	210,560	220,918	274,125	275,294	326,914	170,314	1,402,930	2,881,055
Western Hemisphere	41,993	25,193	26,195	66,145	103,443	34,095	424,570	721,634
Total	388,151	319,453	426,182	675,351	631,399	360,051	*3,492,223	*6,292,810
Other bituminous	([2])	([2])	([2])	([2])	([2])	([2])	([2])	([2])
Total bituminous coal								([2])
Coke of coal	3,228	3,228	2,963	2,853	2,793	2,733	38,896	56,694

[1] Volatility data by destination have been withheld to prevent disclosure of information deemed to be confidential pursuant to sec. 7(c) of the Export Administration Act of 1969, as amended.
[2] Less than 100,000 tons. Due to a limited number of firms reporting this data, precise figures have been withheld to prevent disclosure of information deemed to be confidential pursuant to sec. 7(c) of the Export Administration Act of 1969, as amended.
[3] Data withheld to avoid disclosure of data withheld above. See footnote 2.
*Includes 287,000 tons to destinations not listed above.

Sources: Office of Export Administration and Bureau of the Census.

TABLE 5.— *Export prices of bituminous coal and coke of coal, in dollars per short ton*

[Week ending Mar. 31, 1978]

Commodity	Average March 1976	March 1977	November 1977	Weighted	High	Low
Low volatile metallurgical coal [1]	NA	NA	NA	([4])	([4])	([4])
Medium volatile metallurgical coal [2]	NA	NA	NA	([4])	([4])	([4])
High volatile meallurgical coal [3]	NA	NA	NA	([4])	([4])	([4])
Total metallurgical coal	NA	NA	53.84	52.07	60.00	48.73
Other bituminous coal	NA	NA	35.01			
Total bituminous coal	50.79	50.64	50.99	52.07	60.00	48.73
Coke of coal	62.97	57.19	79.70	127.48	142.79	122.00

[1] 22 pct or less volatile matter.
[2] 31 pct or less and more than 22 pct volatile matter.
[3] More than 31 pct volatile matter.
[4] Due to a limited number of firms reporting this data, precise figures have been witheld to prevent disclosure of information deemed to be confidential pursuant to sec. 7(c) of the Export Administration Act of 1969, as amended.

[1] NA—Not available.

TABLE 6.—*U.S. trade in bituminous coal and coke of coal, in short tons*

[For week ending Mar. 31, 1978]

	Weekly average December 1975	December 1976	November 1977	Week ending Dec. 9, 1977	Dec. 16, 1977	Dec. 23, 1977	Dec. 30, 1977
Imports:							
Bituminous coal [1]	20,097	21,452	31,158	NA	NA	NA	NA
Coke of coal	20,774	28,903	41,267	NA	NA	NA	NA

TABLE 6.—*U.S. trade in bituminous coal and coke of coal, in short tons*—Continued

	Weekly average			Week ending			
	December 1975	December 1976	November 1977	Dec. 9, 1977	Dec. 16, 1977	Dec. 23, 1977	Dec. 30, 1977
Exports:							
Bituminous coal [1]	1,023,827	1,044,281	1,047,451	679,883	788,274	580,609	128,822
Coke of coal	16,646	7,287	33,179	3,922	9,624	2,843	3,922
	Average			Week ending			
	January 1976	January 1977	Jan. 6, 1978	Jan. 13, 1978	Jan. 20, 1978	Jan. 27, 1978	
Imports:							
Bituminous coal [1]	16,346	27,198	NA	NA	NA	NA	
Coke of coal	3,483	5,987	NA	NA	NA	NA	
Exports:							
Bitiminous coal	834,857	483,983	174,709	311,331	97,800	262,585	
Coke of coal	12,326	20,514	4,466	5,062	29,143	30,634	
	Weekly average			Week ending			
	February 1976	February 1977	Feb. 3, 1978	Feb. 10, 1978	Feb. 17, 1978	Feb. 24, 1978	
Imports:							
Bituminous coal [1]	NA	NA	NA	NA	NA	NA	
Coke of coal	NA	NA	NA	NA	NA	NA	
Exports:							
Bituminous coal [1]	736,138	769,840	251,327	72,569	139,143	26,762	
Coke of coal	22,185	12,805	3,998	75,173	43,315	8,595	
	Weekly average			Week ending			
	March 1976	March 1977	Mar. 3, 1978	Mar. 10, 1978	Mar. 17, 1978	Mar. 24, 1978	Mar. 31, 1978
Imports:							
Bituminous coal [1]	NA	NA	NA	NA	NA	NA	NA
Coke of coal	NA	NA	NA	NA	NA	NA	NA
Exports:							
Bituminous coal [1]	898,473	765,515	162,451	102,698	[2]24,182	550	214,163
Coke of coal	19,541	24,320	4,998	4,651	3,359	4,488	4,317

[1] Includes both metallurgical grade and steam coal.
[2] Subject to revision. Less than 10,000 short tons of additional bituminous coal may have been exported; the Department of Commerce is seeking to verify this information.

Sources: Office of Export Administration and Bureau of the Census.

TABLE 7.—*Bituminous coal and coke of coal* production, consumption, and stocks, in thousand short tons*

[For week ending Apr. 1, 1978]

	Weekly average			Week ending			
	December 1975	December 1976	November 1977	Dec. 10, 1977	Dec. 17, 1977	Dec. 24, 1977	Dec. 31, 1977
Total bituminous coal production**	12,019	12,593	14,798	9,100	5,080	(R)5,515	5,700
Consumption:							
Metallurgical***	1,519	1,568	NA	1,290	1,368	1,364	1,324
Other bituminous:							
Electric utility	8,414	9,387	NA	9,228	9,550	9,398	8,928
General industry	1,358	1,421	NA	1,330	1,252	1,163	1,146
Total other	9,772	10,808	NA	10,558	10,802	10,561	10,074
Total bituminous	11,291	12,376	NA	11,848	12,170	11,925	11,398
Bituminous coal stocks (end of specified periods):							
Metallurgical***	8,671	9,804	NA	(R)15,084	14,776	13,982	13,088
Other bituminous:							
Electric utility	109,707	117,468	NA	(R)146,171	141,691	136,993	131,308
General industry	8,504	6,900	NA	9,495	9,248	8,896	8,425
Total other	118,211	124,368	NA	155,666	150,939	145,889	139,713
Total bituminous	126,882	134,172	NA	170,750	165,715	159,871	152,801
	Weekly average			Week ending			
	January 1976	January 1977	Jan. 7, 1978	Jan. 14, 1978	Jan. 21, 1978	Jan. 28, 1978	Feb. 4, 1978
Total bituminous coal production**	11,627	9,520	5,755	(R)5,260	(R)5,045	(R)4,970	5,440
Consumption:							
Metallurgical***	1,505	1,428	1,291	1,192	1,221	1,161	1,129

TABLE 7.—*Bituminous coal and coke of coal* production, consumption, and stocks, in thousand short tons*—Continued

	Weekly average		Week ending				
	January 1976	January 1977	Jan. 7, 1978	Jan. 14, 1978	Jan. 21, 1978	Jan. 28, 1978	Feb. 4, 1978
Other bituminous:							
Electric utility	9,009	9,730	9,359	9,652	9,763	9,765	9,386
General industry	1,211	1,442	1,220	1,298	1,199	1,152	1,185
Total other	10,220	11,172	10,579	10,950	10,962	10,917	10,571
Total bituminous	11,725	12,600	11,870	12,142	12,183	12,078	11,700
Bituminous coal stocks (end of specified periods):							
Metallurgical***	8,115	8,107	11,992	10,900	9,771	8,821	(R)7,772
Other bituminous:							
Electric utility	104,456	103,883	126,268	119,399	112,535	105,945	(R)99,244
General industry	6,425	5,960	8,046	7,579	7,246	6,811	6,484
Total other	110,881	109,843	134,314	126,978	119,781	112,756	(R)105,728
Total bituminous	118,996	117,950	146,306	137,878	129,552	121,577	(R)113,500

	Week ending							
	Feb. 11, 1978	Feb. 18, 1978	Feb. 25, 1978	Mar. 4, 1978	Mar. 11, 1978	Mar. 18, 1978	Mar. 25, 1978	Apr. 1, 1978
Total bituminous coal production**	(R)6,110	6,570	6,680	(R)7,330	7,580	(R)8,335	(R)8,355	11,945
Consumption:								
Metallurgical***	1,069	1,035	970	969	926	866	880	932
Other bituminous:								
Electric utility	9,479	8,923	8,660	8,360	8,034	7,474	7,450	7,614
General industry	1,189	1,188	1,167	1,222	1,183	1,179	1,101	1,109
Total other	10,668	10,111	9,827	9,582	9,217	8,653	8,551	8,723
Total bituminous	11,737	11,146	10,797	10,551	10,143	9,519	9,431	9,655
Bituminous coal stocks (end of specified periods):								
Metallurgical***	6,888	6,024	(R)5,479	(R)4,834	(R)4,353	(R)3,993	(R)3,673	3,360
Other bituminous:								
Electric utility	92,937	87,692	(R)83,421	(R)79,604	(R)76,697	(R)74,883	(R)73,183	72,757
General industry	6,121	5,882	5,706	5,483	5,352	5,245	5,203	5,197
Total other	99,058	93,574	(R)89,127	(R)85,087	(R)82,049	(R)80,128	(R)78,386	77,954
Total bituminous	105,946	99,598	(R)94,606	(R)89,921	(R)86,402	(R)84,121	(R)82,059	81,314

* Data on coke of coal production, consumption, and stocks are not available on a weekly basis.
** More detailed production data are not available.
*** More detailed date in terms of volatile content are not available.
(R) Revised.

Data source: Department of Energy.

[FR Doc. 78-11747 Filed 5-1-78; 8:45 am]

[3510-08]

National Oceanic and Atmospheric Administration

PUBLIC HEARINGS ON DRAFT Environmental Impact Statement

Notice is hereby given that the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold public hearings for the purpose of receiving comments on the Draft Environmental Impact Statement for the Coastal Management Program of the State of Maine.

The hearings will be held on May 22, 1978, in the Council Chambers at the Hampden Town Hall on Main Road, in Hampden, Maine; on May 23, 1978, in Room 113 of the State Office Building on Capitol Street, in Augusta, Maine; and on May 24, 1978, in Room 318 at the Greater Portland Council of Governments, at 331 Veranda Street, in Portland, Maine. Each of the hearings will begin at 7:30 p.m.

The views of interested persons and organizations are solicited. These may be expressed orally or in written statements.

Presentations will be scheduled on a first-come, first-serve basis, but may be limited to a maximum of 10 minutes or as otherwise appropriate. Priority will be given to those with written statements. Time will be available at the end of the meeting for persons without statements to present their views orally. The Office of Coastal Zone Management staff may question any speaker following presentation of his/her statement. No verbatim transcript of the hearing will be maintained; but staff present will record the general thrust of the remarks.

Persons or organizations wishing to be heard on this matter should contact the Office of Coastal Zone Management as soon as possible so that an appearance schedule may be drawn up and definite times established for presentations. Please contact:

June Cradick, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven St. NW. phone: 202-634-4242, Washington, D.C. 20235.

Written comments may also be submitted by mail to the Office of Coastal Zone Management. Such comments should be received before June 12, 1978, to assure adequate consideration for inclusion in the Final Environmental Impact Statement.

Copies of the Draft Environmental Impact Statement may be obtained by contacting the Office of Coastal Zone Management or:

Esther Lacognata, State Planning Office, Resource Planning Division, 189 State Street, phone: 207-289-3155, Augusta, Maine 04333.

Comments may address the adequacy of the impact statement and/or the nature of the Maine Coastal Management Program.

Following consideration of the comments received at these hearings, as well as written comments submitted, the Office of Coastal Zone Management will prepare the final environmental impact statement pursuant to the National Environmental Policy

Act of 1969 and implementing guidelines.

Dated: April 26, 1978.

R. L. CARNAHAN,
Acting Assistant Administrator for Administration.

[FR Doc. 78-11858 Filed 5-1-78; 8:45 am]

[3510-22]

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

SEA WORLD, INC.

Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take and import marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: (a) Name: Sea World, Inc., Dr. Lanny Cornell, Vice President. (b) Address: 1720 South Shores Road, Mission Bay, San Diego, Calif. 92109.

2. Type of permit: Public Display and Scientific Research.

3. Name and number of animals: Killer whales (*Orcinus orca*), 4.

4. Type of take: To capture and maintain in a permanent facility. Animals will be utilized for public display, opportunistic research and captive propagation.

5. Location of activity: North Atlantic waters, Iceland or Scandinavia.

6. Period of activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the FEDERAL REGISTER the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Mass. 01930.

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, Calif. 90731.

Dated: April 24, 1978.

ROLAND FINCH,
Acting Deputy Assistant, Director for Fisheries Management, National Marine Fisheries Service.

[FR Doc. 78-11958 Filed 5-1-78; 8:45 am]

[3510-04]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $0.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications can be purchased from the National Technical Information Service (NTIS), Springfield, Va. 22161 for $4 ($8 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE ARMY, Office of Judge Advocate General, Patent Division, Room 2C-455, Pentagon, Washington, D.C. 20314.

Patent 3,995,792: Laser Missile Guidance System; filed Oct. 15, 1974; patented Dec. 7, 1976; not available NTIS.

Patent 4,001,287: Reaction Product of Normal Lead Beta Resorcylate and Monobasic Cupric Salicylate; filed Feb. 18, 1972; patented Jan. 4, 1977; not available NTIS.

Patent 4,002,064: Rifled Soft Recovery System; filed Feb. 19, 1976; patented Jan. 11, 1977; not available NTIS.

Patent 4,002,123: Dual Channel Redundant Fuze; filed July 11, 1975; patented Jan. 11, 1977; not available NTIS.

Patent 4,003,659: Single Plane Corner Reflector Guidance System; filed Nov. 15, 1974; patented Jan. 18, 1977; not available NTIS.

Patent 4,003,953: Purification of TNT with Magnesium Sulfite-Bisulfite Mixtures; filed Feb. 23, 1976, patented Jan. 18, 1977; not available NTIS.

Patent 4,004,754: High-Speed, High-G Air Bearing Optical Mount for Rosette Scan Generator; filed July 11, 1974; patented Jan. 25, 1977; not available NTIS.

Patent 4,005,931: Sealed Cassette for Optical Sound Projection; filed Jan. 15, 1974, patented Feb. 1, 1977; not available NTIS.

U.S. DEPARTMENT OF AGRICULTURE, Research and Agreements and Patent Branch, General Services Division, Federal Building, Agricultural Research Service, Hyattsville, Md. 20782.

Patent 4,056,354: Process for Rapid Dyeing of Textiles. Filed Feb. 10, 1976; patented Nov. 1, 1977; not available NTIS.

Patent 4,064,283: Preparation of Protein Concentrates from Whey and Seed Products; filed June 14, 1976; patented Dec. 20, 1977; not available NTIS.

Patent 4,069,106: Immobilization of Enzymes on Keratin; filed Jan. 13, 1977; patented Jan. 17, 1978; not available NTIS.

U.S. DEPARTMENT OF COMMERCE, National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22161.

Patent application 868,356: Inverse Fourth Power Photometric Calibrator; filed Jan. 10, 1978.

U.S. Department of Energy, Assistant General Counsel for Patents, Washington, D.C. 20545.

Patent 4,016,242: Salts of the Iodine Oxyacids in the Impregnation of Adsorbent Charcoal for Trapping Radioactice Methyliodide; filed Feb. 26, 1976; patented Apr. 5, 1977; not available NTIS.

Patent 4,016,304: Method for Applying Pyrolytic Carbon Coatings to Small Particles; filed June 17, 1975, patented Apr. 5, 1977; not available NTIS.

Patent 4,017,253: Fluidized-Bed Calciner with Combustion Nozzle and Shroud; filed Sept. 16, 1975; patented Apr. 12, 1977; not available NTIS.

Patent 4,017,417: Immobilization of Iodine in Concrete. Filed July 30, 1976; patented Apr. 12, 1977; not available NTIS.

Patent 4,020,004: Conversion of Radioactive Ferrocyanide Compounds to Immobile Glasses; filed Nov. 21, 1975; patented Apr. 26, 1977; not available NTIS.

Patent 4,020,692: Ultrasonic Thermometer Isolation Standoffs; filed Sept. 26, 1975; patented May 3, 1977; not available NTIS.

Patent 4,020,693: Acoustic Transducer for Nuclear Reactor Monitoring; filed Apr. 12, 1976; patented May 3, 1977; not available NTIS.

Patent 4,021,300: Improved Nuclear Fuel Assembly Grid Spacer; filed May 23, 1975; patented May 3, 1977; not available NTIS.

Patent 4,021,676: Waste Canister for Storage of Nuclear Wastes; filed May 7, 1976; patented May 3, 1977; not available NTIS.

Patent 4,025,602: Recovery of Transplutonium Elements from Nuclear Reactor Waste: filed May 25, 1976; patented May 24, 1977; not available NTIS.

Patent 4,026,763: Liquid-Metal Dip Seal with Pneumatic Spring; filed Apr. 12, 1976; patented May 31, 1977; not available NTIS.

Patent 4,027,156: X-ray Source Safety Shutter; filed May 25, 1976; patented May 31, 1977; not available NTIS.

Patent 4,028,180: Support Grid for Fuel Elements in a Nuclear Reactor; filed Mar. 16, 1976; patented June 7, 1977; not available NTIS.

Patent 4,028,265: Process for Converting Sodium Nitrate Containing, Caustic Liquid Radioactive Wastes to Solid Insoluble Products; filed Aug. 25, 1975; patented June 7, 1977; not available NTIS.

Patent 4,028,545: Method of Simulating Spherical Voids for Use as a Radiographic Standard; filed Feb. 17, 1976; patented June 7, 1977; not available NTIS.

Patent 4,028,811: Tubular Gage for a Liquid-Metal-Cooled Fast Breeder Reactor; filed Mar. 2, 1976; patented June 14, 1977; not available NTIS.

Patent 4,029,123: Pump Tank Divider Plate for Sump Suction Sodium Pumps; filed Aug. 20, 1975; patented June 14, 1977; not available NTIS.

4,031,387: Method of Determining Whether Radioactive Contaminants Are Inside or Outside a Structure; filed Aug. 5, 1976; patented June 21, 1977; not available NTIS.

Patent 4,032,400: Nuclear Reactor Fuel Element with Vanadium Getting on Cladding; filed Feb. 17, 1976; patented June 28, 1977; not available NTIS.

Patent 4,032,614: Process for the Disposal of Alkali Metals; filed Oct. 20, 1975; patented June 28, 1977; not available NTIS.

Patent 4,032,615: Method for the Safe Disposal of Alkali Metal; filed Jan. 27, 1976; patented June 28, 1977; not available NTIS.

Patent 4,033,813: Method of Detecting Leakage of Reactor Core Components of Liquid Metal Cooled Fast Reactors; filed Oct. 22, 1975; patented July 5, 1977; not available NTIS.

Patent 4,036,688: Apparatus for Controlling Molten Core Debris; filed Apr. 9, 1975; patented July 19, 1972; not available NTIS.

U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Md. 20014.

Patent application 817,377: Preparation of 2,4,5,6-Tetraaminopyrimidine from 2,4,6-Triaminopyrimidine; filed July 20, 1977.

Patent application 823,142: Slide Valve; filed Aug. 9, 1977.

[FR Doc. 78-11845 Filed 5-1-78; 8:45 am]

[3510-04]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $0.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications can be purchased from the National Technical Information Service (NTIS), Springfield, Va. 22161 for $4 ($8 outside North American Continent). Requests for copies of patent applications must include the patent application number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE ARMY, Office of Judge Advocate General, Patent Division, Room 2C-455, Pentagon, Washington, D.C. 20314.

Patent 4,011,014: Polarization Rotation Analyzer; filed March 8, 1974; patented March 8, 1977; not available NTIS.

Patent 4,011,788: Stripper/De-linking Mechanism; filed January 16, 1976; patented March 15, 1977; not available NTIS.

Patent 4,012,465: Alkyl and Cycloalkyl Methylphosphonofluoridothioates; filed November 13, 1962; patented March 15, 1977; not available NTIS.

Patent 4,012,640: X-Ray Generator; filed August 30, 1973; patented March 15, 1977; not available NTIS.

Patent 4,015,266: Radar Dipole Antenna Array; filed March 5, 1976; patented March 29, 1977; not available NTIS.

Patent 4,015,532: Energy Generator for Rotating Projectiles; filed February 11, 1976; patented April 5, 1977; not available NTIS.

Patent 4,017,743: Elimination of Crosstalk in Two Sequentially Operated Darlington Amplifier Channels; filed September 26, 1975; patented April 12, 1977; not available NTIS.

Patent 4,018,534: Aerosol Average-Density Determining System; filed May 21, 1975; patented April 19, 1977; not available NTIS.

Patent 4,021,760: EMP Circuit Board Filter Using MOV Devices; filed January 19, 1976; patented May 3, 1977; not available NTIS.

Patent 4,021,814: Broadband Corrugated Horn with Double Ridged Circular Waveguide; filed January 19, 1976; patented May 3, 1977; not available NTIS.

Patent 4,023,103: Synchronizer for Frequency Hopping Receiver; filed January 26, 1976; patented May 10, 1977; not available NTIS.

Patent 4,023,110: Pulse Comparison System; filed December 4, 1975; patented May 10, 1977; not available NTIS.

Patent 4,025,921: Technique for Obtaining Wide Bandwidth with Optically Fed Array; filed November 19, 1975; patented May 24, 1977; not available NTIS.

Patent 4,027,168: Rapid Shutter Mechanism; filed September 9, 1975; patented May 31, 1977; not available NTIS.

Patent 4,027,256: Low Level Broadband Limiter having Ferrite Rod Extending through Dielectric Resonators; filed July 9, 1976; patented May 31, 1977; not available NTIS.

Patent 4,027,264: Phase Lock Loop Multitone Interference Canceling System; filed February 24, 1976; patented May 31, 1977; not available NTIS.

Patent 4,027,948: Low Loss Laser Modulater; filed March 15, 1976; patented June 7, 1977; not available NTIS.

Patent 4,028,534: Automatic Span Circuit; filed April 14, 1976; patented June 7, 1977; not available NTIS.

Patent 4,028,645: Automatic Impedance Matching Using Resistive and Reactive Diodes; filed June 21, 1976; patented June 7, 1977, not available NTIS.

Patent 4,028,673: Crosswind Measurements through Pattern Recognition Techniques; filed October 31, 1975; patented June 7, 1977; not available NTIS.

Patent 4,040,686: Anti-Friction Bearing; filed October 23, 1975; patented August 9, 1977; not available NTIS.

U.S. DEPARTMENT OF THE NAVY, Assisstant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217.

Patent application 868,360: An Excimer-Pumped Blue-Green Laser; filed January 10, 1978.

Patent 3,693,440: Electromagnetic Flowmeter; filed March 21, 1969; patented September 26, 1972; not available NTIS.

Patent 4,010,250: Radioactive Iodine (1251) Labeling of Latex Particles; filed March 6, 1975; patented March 1, 1977; not available NTIS.

Patent 4,022,602: Method of fabrication Low-Loss Channel Optical Waveguides; filed October 30, 1975; patented May 10, 1977; not available NTIS.

Patent 4,031,005: controllable Sorbent Broadcaster; filed August 23, 1976; patented June 21, 1977; not available NTIS.

Patent 4,031,488: Multiple Polarization Switch; filed April 5, 1976; patented June 21, 1977; not available NTIS.

Patent 4,034,611: Particulate Sampling Probe; filed December 3, 1976; patented July 12, 1977; not available NTIS.

Patent 4,036,581: Igniter; filed September 3, 1976; patented July 19, 1977; not available NTIS.

Patent 4,039,494: Fungus Resistant Protective Coatings; filed February 26, 1976; patented August 2, 1977; not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, D.C. 20546.

Patent application SN 858,765: Apparatus and Method for Stabilized Phase Detection for Binary Signal Tracking Loops; filed December 8, 1977.

Patent application 853,676: Rotary Target V-Block; filed November 21, 1977.

Patent application 853,705: Simultaneous Treatment of SO_x Containing Stack Gases and Waste Water; filed November 21, 1977.

Patent application 856,461: Fluid Velocity Measuring Device; filed November 30, 1977.

Patent application 856,464: External Bulb Variable Volume Maser; filed November 30, 1977.

Patent application 858,764: Time Domain Phase Measuring Apparatus; filed December 8, 1977.

Patent application 858,770: Low Profile Circularly Polarized Antenna; filed December 8, 1977.

Patent 4,061,812: Honeycomb-Laminate Composite Structure; filed June 22, 1976; patented December 6, 1977; not available NTIS.

Patent 4,061,856: Trimerization of Aromatic Nitriles; filed October 10, 1974; patented December 6, 1977; not available NTIS.

Patent 4,061,974: Ultra Stable Frequency Distribution System; filed June 21, 1976; patented December 6, 1977; not available NTIS.

Patent 4,062,227: Cw Ultrasonic Bolt Tensioning Monitor: filed December 23, 1976; patented December 13, 1977; not available NTIS.

Patent 4,062,347: Solar Heating System; filed August 24, 1976; patented August 24, 1976; not available NTIS.

Patent 4,062,650: Thermoluminescent Aerosol Analysis; filed December 29, 1976; patented December 13, 1977; not available NTIS.

Patent 4,062,996: Transmitting and Reflecting Diffuser; filed June 18, 1973; patented December 13, 1977; not available NTIS.

Patent 4,063,088: Method of and Means for Testing a Glancing-Incidence Mirror System of an X-Ray Telescope; filed November 25, 1975; patented December 13, 1977; not available NTIS.

Patent 4,063,092: Selective Image Area Control of X-Ray Film Exposure Density; filed April 9, 1976; patented December 13, 1977; not available NTIS.

[FR Doc. 78-11846 Filed 5-1-78; 8:45 am]

[3510-13]

Office of the Secretary

NATIONAL LABORATORY ACCREDIATION CRITERIA COMMITTEE FOR THERMAL INSULATION MATERIALS

Open Meeting

The National Laboratory Accreditation Criteria Committee for Thermal Insulation will hold its first meeting on May 22-23, 1978, in the Main Commerce Building, 14th Street and Constitution Avenue NW., Washington, D.C. (public entrance to the building is on 14th Street, between Constitution Avenue and E Street NW.). The Committee will meet from 10 a.m. to 7 p.m. on May 22 in Room 6802 and from 9 a.m. to 1 p.m. in Room 4833 on May 23.

The Committee was established on October 12, 1977 (42 FR 55020) to develop and recommend to the Secretary of Commerce, general and specific criteria for accrediting testing laboratories that test thermal insulation materials. The Committee consists of 21 members; 10 of whom represent producers, distributors, users, consumers, academia, testing laboratories, and general interests in the private sector; 6 of whom represent Federal agency interests; and 4 of whom represent state and local government interests. The Committee is chaired by Dr. Howard I. Forman, Deputy Assistant Secretary for Product Standards, of the Department of Commerce.

Tentative agenda items include:

1. Discussion of Committee objectives and schedules.
2. Background of the National Voluntary Laboratory Accreditation Program for Thermal Insulation Materials.
3. The role of the National Bureau of Standards (NBS) and a discussion of the practical aspects of evaluating laboratories.
4. Concepts used in preparing suggested laboratory evaluation criteria.
5. Suggestions for general and specific criteria.
6. Sources of and criteria for laboratory assessors.

The meeting will be open to public observation. The public may submit written statements or inquiries to the Chairman before or after the meeting. A limited number of seats will be available to the public and to the press on a first-come, first-served basis.

Copies of the minutes and material distributed will be made available for reproduction, following certification by the Chairman, in accordance with the Federal Advisory Committee Act, at the U.S. Department of Commerce Central Reference Service and Inspection Facility, Washington, D.C. 20230.

Additional information may be obtained from Mr. John W. Locke, Coordinator, National Voluntary Laboratory Accreditation Program, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: 202-377-5872.

Dated: April 27, 1978.

JORDAN J. BARUCH,
Assistant Secretary for Science and Technology.

[FR Doc. 78-11968 Filed 5-1-78; 8:45 am]

[3510-25]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

REPUBLIC OF CHINA

Announcing an Additional Exempt Textile Product

APRIL 27, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Exempting traditional Chinese caps from the levels of restraint established under the terms of the bilateral textile agreement between the Governments of the United States and the Republic of China.

SUMMARY: The Governments of the United States and the Republic of China have agreed to exempt traditional Chinese caps from the levels of restraint established under the terms of the Interim Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 16, 1977, as amended, in addition to other handmade and traditional textile products, previously designated (See 41 FR 30212). Accordingly, there is published below a letter of April 27, 1978 from the Chairman, Committee for the Implementation of Textile Agreements, to the Commissioner of Customs, directing that traditional Chinese caps be added to the list of items which are currently exempt from the agreement. A complete list of exempt items is published as an enclosure to that letter.

EFFECTIVE DATE: May 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Judith L. McConahy, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, 202-377-5423.

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

APRIL 27, 1978.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive of April 19, 1973 from the Chairman, Committee for the Implementation of Textile Agreements, which established a certification procedure to exempt certain traditional textile products from the levels of restraint of bilateral textile agreements between the Governments of the United States and the Republic of China.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 16, 1977, as amended, between the Governments of the United States and the Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, the directive of April 19, 1973, is further amended, effective on May 1, 1978, to exempt traditional Chinese caps, in addition to those items previously designated, when they are properly certified. A complete list of currently exempt items is enclosed.

The actions taken with respect to the Government of the Republic of China and with respect to imports of cotton, wool and man-made fiber textile products from the Republic of China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

DESIGNATED EXEMPT TEXTILE PRODUCTS FROM THE REPUBLIC OF CHINA

1. Pincushions.

2. Embroideries (needlework), of man-made fabrics with designs embroidered with wool thread.
3. Handmade carpets, i.e., in which the pile was inserted or knotted by hand.
4. Christmas or Easter ornaments having a non-textile core or an non-textile structured frame and man-made fiber textile covering.
5. Toy (novelty) animals, birds or insects with a plastic, wire, or other non-textile core that are covered or decorated with textile thread or fiber.
6. Judo Uniforms.
7. Karate Uniforms.
8. Kung Fu Uniforms.
9. Traditional Chinese Padded Jackets.
10. Traditional Chinese Caps.

[FR Doc. 78-11987 Filed 5-1-78; 8:45 am]

[6351-01]

COMMODITY FUTURES TRADING COMMISSION

PROPOSED FUTURES CONTRACTS

Notice of Availability

The Commidity Futures Trading Commission ("Commission") is making available and requesting public comment on three proposed futures contracts:

1. A cattle contract submitted by the Mid-America Commodity Exchange;
2. A 30 day commercial paper contract submitted by the Chicago Board of Trade; and
3. A Government National Mortgage Association—backed certificate delivery contract submitted by the Chicago Board of Trade.

These Exchanges have applied to the Commission, pursuant to section 6 of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. 8 (1976), for contract market designation to trade futures contracts in these three commodities under sections 5 and 5a of the Act, 7 U.S.C. 7 and 7a (1976).

Copies of these proposed contracts will be available at the Commission's offices in Washington, New York, Chicago, Minneapolis, Kansas City and San Francisco. The Commission will also furnish copies upon request made to the Executive Secretariat.

Any person interested in expressing views on the terms and conditions of any of these proposed contracts should send comments by July 3, 1978 to Ms. Jane Stuckey, Executive Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.D., 20581. 202-254-6316. Copies of all comments will be available for inspection at the Commission's Washington office.

Issued in Washington on April 27, 1978.

WILLIAM T. BAGLEY,
Chairman.

[FR Doc. 78-11838 Filed 5-1-78; 8:45 am]

[6351-01]

PROPOSED FUTURES CONTRACTS

Notice of Availability

The Commodity Futures Trading Commission ("Commission") is making available and requesting public comment on the proposed futures contract in Government National Mortgage Association-backed certificates ("GNMA's") submitted by the newly formed Amex Commodities Exchange, Inc. ("ACE"). ACE has applied to the Commission, pursuant to section 6 of Commodity Exchange Act, as amended (Act"), 7 U.S.C. 8 (1976), for contract market pursuant to sections 5 and 5a of the Act 7 U.S.C. 7 and 7a (1976). The ACE is in its formative stages and the GNMA contract, if approved, will be the first futures contract to trade on that exchange. In making the proposed contract available to the public, the Commission is not passing upon the merits of the ACE designation request.

Copies of the proposed GNMA contract will be available at the Commission's offices in Washington, New York, Chicago, Minneapolis, Kansas City, and San Francisco. The Commission will also furnish copies upon request to the Executive Secretariat.

Any person interested in expressing views on the terms and conditions of this proposed contract should send comments by July 3, 1978, to Ms. Jane Stuckey, Executive Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, 202-254-6316. Copies of all comments will be available for inspection at the Commission's Washington office.

Issued in Washington on April 27, 1978.

WILLIAM T. BAGLEY,
Chairman.

[FR Doc. 78-11839 Filed 5-1-78; 8:45 am]

[6351-01]

PROPOSED FUTURES CONTRACTS

Notice of Availability

The Commodity Futures Trading Commission ("Commission") is making available and requesting public comment on the proposed futures contracts in milled rice, cotton, and soybeans submitted by the now forming New Orleans Cotton and Commodity Exchange ("NOCCE"). The NOCCE has applied to the Commission, pursuant to section 6 of Commodity Exchange Act, as amended ("Act"), 7 U.S.C. 8 (1976), for contract market designation to trade futures in these three commodities under sections 5 and 5a of the Act 7 U.S.C. 7 and 7a (1976). The NOCCE is in its formative stages. In seeking public comment on these three contracts, the Commission is not passing upon the merits of the designation request.

Copies of the proposed contracts will be available at the Commission's offices in Washington, New York, Chicago, Minneapolis, Kansas City, and San Francisco. The Commission will also furnish copies upon request made to the Executive Secretariat.

Any person interested in expressing views on the terms and conditions of these proposed contracts should send comments by July 3, 1978, to Ms. Jane Stuckey, Executive Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, 202-254-6316. Copies of all comments will be available for inspection at the Commission's Washington office.

Issued in Washington on April 27, 1978.

WILLIAM T. BAGLEY,
Chairman.

[FR Doc. 78-11840 Filed 5-1-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1115]

Petitions for Reconsideration of Actions in Rulemaking Proceedings Filed

APRIL 26, 1978.

Docket or RM No.	Rule No.	Subject	Date received
19995, RM-2275	Pt. 76, subpt. F	Amendment of subpt. F of pt. 76 of the Commission's rules and regulations with respect to network program exclusivity protection by cable television systems. Filed by Arthur B. Goodkind, attorney for Amaturo Group, Inc., KCST, Inc., McGraw-Hill Broadcasting Co., Inc., and NEP Communications, Inc.	Apr. 12, 1978

Docket or RM No.	Rule No.	Subject	Date received
21116	Pt. 2	Amendment of pt. 2 of the Commission's rules to prohibit the marketing of external radio frequency amplifiers capable of operation on any frequency from 24 to 35 MHz. Filed by C. G. Sullivan, attorney for the Heath Co.	Apr. 19, 1978

NOTE.—Oppositions to petitions for reconsideration must be filed on or before May 17, 1978. Replies to an opposition must be filed within 10 days after time for filing oppositions has expired.

FEDERAL COMMUNICATIONS COMMISSION.
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-11860 Filed 5-1-78; 8:45 am]

[6315-01]

COMMUNITY SERVICES ADMINISTRATION

SUMMER YOUTH RECREATION PROGRAM

Acceptance of Applications

Notice is hereby given that the Community Services Administration is accepting applications from eligible agencies for the Summer Youth Recreation Program funded under Section 222(a)(13) of the Economic Opportunity Act of 1964, as amended.

Eligible agencies, application procedures, and rules and regulations governing this program are the same as those promulgated for last year's program with the exception that deadline for submission of applications is extended to May 10, 1978. They can be found in 42 FR 13292 (March 10, 1977) and in CSA Instruction 6168-2b.

Applicants are reminded that the Clearinghouse notification and review process is applicable to this program and, therefore, it is in their best interest to file their notice of intent immediately upon determination to apply for funds from CSA under this program.

Copies of CSA Instruction 6168-2b with an updated list of State School Lunch Directors will be forwarded to SYRP grantees in approximately three to four weeks.

GRACIELA (GRACE) OLIVAREZ,
Director.

[FR Doc. 78-11852 Filed 5-1-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

PRIVACY ACT OF 1974

Systems of Records; Proposed Amendment to System FEA 14

AGENCY: Department of Energy

ACTION: Proposal to revise existing system of records.

SUMMARY: Pursuant to section (3)(o) of the Privacy Act of 1974, 5 U.S.C. 552a(o); the Office of Management and Budget (OMB) Guidelines issued thereunder; and OMB Circular No. 108, September 30, 1975, the Department of Energy (DOE) hereby publishes a notice of proposed revision of an existing System of Records.

DOE has submitted to Congress and to OMB a New System Report, as required by the Privacy Act and the OMB Guidelines. A copy of the report is available for inspection at the DOE Public Document Room, 20 Massachusetts Avenue NW., Washington, D.C. 20545.

The system to be revised was established by the former Federal Energy Administration (FEA) as FEA System 14. Public notice of the existence and character of the system was last previously published on September 30, 1977. 42 FR 53488 (1977). At that time a notice of proposed amendment to FEA 14 was also published. 42 FR 52483 (1977). No comment was received which resulted in a change and the system became effective as therein amended. The authority to maintain FEA 14 was transferred to the Department of Energy, effective October 1, 1977, by notice published on October 11, 1977. 42 FR 54856 (1977). The system will continue to be known as FEA 14 until a consolidated DOE system of records is developed and notice of any changes are published.

The system description, including the proposed revisions, is published in its entirety. The "system location" is amended to indicate that the System of Records is now partially located at the Richland Operations Office. "Categories of individuals" covered by the system is amended to include employees of the Richland Operations Office, of DOE contractors and of other nearby employees. The Headquarters portion of the system is amended to include all DOE employees in the Washington D.C. Metropolitan area.

"Categories of records" in the system is expanded to include participants' payroll or other assigned number, telephone number, and carpooling information. "Routine uses" of records maintained in the system is amended to indicate that the information will be made available to individuals seeking to join a carpool which operates from their residence area. "Storage" is amended to indicate that magnetic tape is used as a storage medium.

"Retrievability" is amended to add address, license number and payroll or other assigned number as retrieval methods. The description of "safeguards" is amended to indicate that magnetic tapes will be stored in a restricted area and paper records in lockable file cabinets. Access to the records is limited to DOE personnel who need the information to perform their official duties. "Retention and disposal" is amended to indicate that carpool records will be retained for two years and that parking records will be retained until new parking assignments are made (approximately six months).

"System manager" is amended to add, for records at the Richland Operations Office, Manager, Richland Operations Office, Department of Energy, P.O. Box 550, Richland, Wash. 99352. The "system manager" for Headquarters is Director, Office of Administrative Services, Department of Energy, 20 Massachusetts Avenue NW., Washington, D.C. 20545.

Interested persons who wish to submit written comment or suggestions for consideration in connection with this notice should send them to George Barrow, Department of Energy, 20 Massachusetts Avenue NW., Washington, D.C. 20545. Comments on the proposed document may be examined at the Richland Operations Office, Department of Energy, Richland, Wash. and the DOE Public Document Room, 20 Massachusetts Avenue NW., Washington, D.C. If no comments are received, the DOE will institute the system as amended on June 1, 1978. Should DOE receive any comments in response to this notice of proposed revision which would result in a change in the amended system description as published herein, DOE will publish notice of such changes and amend the description of the system of records.

In consideration of the foregoing DOE hereby proposes to amend the notice of September 30, 1977 last previously publishing FEA System 14 (42 FR 53488 (1977)) to read as set forth below.

Issued in Washington, D.C., April 26, 1978.

WILLIAM S. HEFFELFINGER,
Director of Administration.

FEA-14

System name:

Employee Carpool Parking.

Security classification:

Unclassified.

System location:

For Headquarters the location of records is:

Office of Administrative Services, Department of Energy, 20 Massachusetts Avenue NW., Washington, D.C. 20545.

For the Richland Operations Office the location of records is:

Richland Operations Office, Department of Energy, P.O. Box 550, Richland, Wash. 99352.

Categories of individuals covered by the system:

All DOE employees located in Washington D.C. Metropolitan area who apply as members of a carpool of DOE controlled parking spaces; and employees of DOE, of DOE contractors and of nearby employers at Richland, Wash.

Categories of records in the system:

Name; Federal service computation date; payroll or other assigned number; office address and telephone; home address and telephone; make, year, state of registration, and tag number of pool vehicles; and number of days per week in the carpool; and carpooling information.

Authority for maintenance of the system:

Department of Energy Organization Act, Pub. L. 95-91; Federal Management Circular 1-74.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Dissemination to individuals seeking to join a carpool which operates from their residence area. Other routine uses are listed in Appendix B.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records and magnetic tape.

Retrievability:

Name, location of parking assignment, home address, payroll or other assigned number, and license number.

Safeguards:

Paper records are maintained in a lockable metal file cabinet. Magnetic tapes are stored in a restricted area. Access is limited to DOE and contractor personnel who need the information to perform their official duties.

Retention and disposal:

Parking records are retained until new parking assignments are made (approximately six months). Carpool records are retained for two years.

System manager(s) and address:

For records at Headquarters:

Director, Office of Administrative Services, Department of Energy, 20 Massachusetts Avenue NW., Washington, D.C. 20545.

For records at the Richland Operations Office:

Manager, Richland Operations Office, Department of Energy, P.O. Box 550, Richland, Wash. 99352.

Notification procedure:

Requests by an individual to determine if a system of records contains information about him should be directed to the Privacy Act Officer, Department of Energy, Washington, D.C. 20461, in accordance with DOE's Privacy Act Regulations (10 CFR 206.3, 42 FR 53578 (September 30, 1977)).

Record access procedures:

Requests by an individual for access to a system of records that contains information about him should be directed to the Privacy Act Officer, Department of Energy, Washington, D.C. 20461, in accordance with DOE's Privacy Act Regulations (10 CFR 206.3, 42 FR 53578 (September 30, 1977)).

Contesting record procedures:

Request by an individual to correct or amend the content of a record containing information about him should be directed to the Privacy Act Officer, Department of Energy, Washington, D.C. 20461, in accordance with DOE's Privacy Act Regulations (10 CFR 206.7, 42 FR 53581 (September 30, 1977)).

Record source categories:

The individual who is the subject of the record.

Systems exempted from certain provisions of the act:

None.

[FR Doc. 78-11835 Filed 5-1-78; 8:45 am]

[6740-02]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP78-49]

ALABAMA-TENNESSEE NATURAL GAS CO.

Order Accepting for Filing and Suspending Proposed Rate Increase, Initiating Hearing, and Establishing Procedures

APRIL 24, 1978.

On March 24, 1978, Alabama-Tennessee Natural Gas Co. (Alabama-Tennessee) tendered for filing in the captioned docket proposed changes to its FERC Gas Tariff [1] which would increase its jurisdictional rates by approximately $1,100.00 based on costs and sales volumes for the 12 months ended December 31, 1977, as adjusted for known and measureable changes through September 30, 1978. Alabama-Tennessee requests that the proposed increase be permitted to become effective on April 25, 1978. For the reasons stated below, the Commission shall accept the proposed rate increase for filing, suspend it for five months, and set the matter for hearing.

Public notice of Alabama-Tennessee's filing was issued on April 10, 1978, providing for protests or petitions to intervene to be filed on or before April 21, 1978.

Alabama-Tennessee states that the principal reasons for its proposed rate increase are (1) increases in its operating costs, (2) the need to recover fixed costs over the reduced volumes of gas available for sale, and (3) the need for increases in its allowed depreciation rate and rate of return. Alabama-Tennessee claims an increase in its depreciation rate from 4 percent to 5.75 percent, and an overall rate of return of 13.65 percent, including a return of 15.50 percent on common equity.

Based on a review of Alabama-Tennessee's filing herein, the Commission finds that the proposed higher rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept Alabama-Tennessee's proposed rate increase for filing, suspend its use for five months or until September 25, 1978, when it shall be permitted to become effective, subject to refund, and shall set the matter for hearing, as hereinafter conditioned.

Alabama-Tennessee has included in its filing costs associated with certain facilities which have not been certificated and placed in service at this time. Consequently, Alabama-Tennessee shall be required to file revised rates and supporting materials reflecting the elimination of costs associated with facilities not certificated and placed in service by September 25, 1978, the effective date of the rates suspended by this order.

For purposes of its filling, Alabama-Tennessee has used the Atlantic-Seaboard [2] method of cost classification in determining rates. The Commission believes that the use of the Atlantic Seaboard method may be inadequate and contrary to the public interest under the present conditions of gas

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[1] The following revised sheets to FERC Gas Tariff Third Revised Volume No. 1 were tendered; Twenty-fifth Revised Sheet No. 3-A, Second Revised Sheet No. 5, Second Revised Sheet No. 6, Second Revised Sheet No. 11, First Revised Sheet No. 13-B, Second Revised Sheet No. 14, and Third Revised Sheet No. 36-F.

[2] Atlantic Seaboard Corporation, 11 FPC 43 (1953).

supply shortages and resulting curtailments of service. The Commission also notes that because of successive pipeline rate filings which create locked-in periods, the Commission's efforts to adopt a just and reasonable cost classification, allocation, and rate design differing from Atlantic Seaboard may be frustrated. To the extent that the rate structure found just and reasonable for Alabama-Tennessee after hearing and decision departs from the Atlantic Seaboard methodology by assigning additional fixed costs to the commodity component of its rates, undercollections may occur. Alabama-Tennessee is hereby placed on notice that it may be subject to undercollections if, after hearing and decision, the Commission finds its proposed use of the Atlantic Seaboard method to be improper.

We note that section 21.1 of the General Terms and Conditions of Alabama-Tennessee's Tariff provides that Alabama-Tennessee shall refund to its resale customers only those amounts "* * * which have been received by Seller from Supplier pursuant to final and non-appealable action by the Commission or the Courts in any pending or other proceeding." This tariff provision may not be in the public interest in that it could be used to prevent the timely flow-through of supplier refunds which have been ordered by the Commission. Accordingly, we direct the parties to this proceeding to address the issue of whether this tariff provision is just and reasonable.

The Commission finds: It is necessary and proper in the public interest and in carrying out the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates propposed by Alabama-Tennessee and that the same be accepted for filing and suspended as hereinafter ordered.

The Commission orders: (A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, 9, and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held concerning the lawfulness of the increased rates proposed by Alabama-Tennessee.

(B) Pending hearing and decision, Alabama-Tennessee's proposed rate increase is accepted for filing and suspended until September 25, 1978, when it shall be permitted to become effective, subject to refund, upon motion filed by Alabama-Tennessee in accordance with the provisions of the Natural Gas Act.

(C) Alabama-Tennessee shall file revised tariff sheets on or before September 25, 1978, reflecting the elimination of costs included in the proposed rates associated with facilities which have not been certificated and placed in service by September 25, 1978. Alabama-Tennessee shall also submit supplemental cost and revenue data reflecting the elimination of such costs from its cost of service.

(D) The Commission Staff shall prepare and serve top sheets on all parties on or before August 4, 1978.

(E) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, for that purpose (18 CFR 3.5(d)), shall convene a settlement conference in this proceeding to be held within 10 days after the service of top sheets by the staff, in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary and to rule upon all motions (except motions to consolidate, sever, or dismiss), as provided for in the rules of practive and procedure.

(F) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission. Chairman Curtis voted present.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11870 Filed 5-1-78; 8:45 am]

[6740-02]

[Docket No. CP78-123]

ALCAN PIPELINE CO. (NORTHWEST ALASKAN PIPELINE CO.)

Filing for Succession in Interest, Transfer of Conditional Certificate, and Approval of Partnership Agreement

APRIL 24, 1978.

Take notice that on April 19, 1978, Northwest Alaskan Pipeline Co. (Northwest Alaskan) and Alaskan Northwest Natural Gas Transportation Co., a partnership formed under the laws of the State of New York (the Partnership), filed in the above-captioned proceeding a document entitled "Notice of Succession in Interest and Application for Transfer of Certificate of Public Convenience and Necessity (Application)." The Application recites that it is being filed pursuant to the provisions of the Alaska Natural Gas Transportation Act of 1976 (ANGTA), the Natural Gas Act and the Rules and Regulations of the Federal Energy Regulatory Commission (FERC).

By order issued December 16, 1977, the Commission, acting pursuant to ANGTA and in accordance with the President's Decision and Report to Congress on the Alaska Natural Gas Transportation System, issued conditional certificates of public convenience and necessity to the sponsors of the Alcan Pipeline Project Alcan Pipeline Co. received such a certificate in Docket No. CP78-123 to construct and operate that portion of the Alaskan pipeline project lying within the State of Alaska.

The instant Application states that, effective January 1, 1978, the name of "Alcan Pipeline Co." was changed to "Northwest Alaskan Pipeline Co." The Application further states that, on March 3, 1978, Northwest Alaskan Pipeline Co. entered into an agreement which provided for the formation of a partnership effective January 31, 1978 to act as a successor to the rights, titles and interests of Alcan Pipeline Co. under ANGTA, the President's Decision and Report, and related Commission proceedings and orders. A copy of this partnership agreement is appended to the instant Application.

In light of the circumstances described above, Applicants request appropriate orders from the Commission transferring the conditional certificate heretofore issued to Alcan Pipeline Co. to the successor Partnership, and approval of the Partnership arrangements. Applicants further request an order by the Commission that the Partnership provided for in the Partnership Agreement, and the manner of its formation, is in all things and in all respects consistent with and in conformity with the Presidential Decision and Report and related FERC orders and as such is accepted and approved.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C., 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 15, 1978. Protests will be considered by the Commission in determining the action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-11871 Filed 5-1-78; 8:45 am]

[6740-02]

[Project No. 2821]

CITY OF PORTLAND, OREG.

Extension of Time

APRIL 21, 1978.

On April 18, 1978, the Northwest Environmental Defense Center and John T. Gibbon filed a motion to extend the time for filing petitions to intervene in

the above-referenced proceeding. By Notice issued February 9, 1978, the Commission established April 17, 1978, as the deadline for filing petitions to intervene or protests to the captioned license application.

The instant motion states that recent developments indicate that the City of Portland, Oreg., intends to modify and supplement its application in order to reduce the project's potential impact on water quality. The motion further states that such modifications may significantly reduce the number of contested issues in this proceeding.

Upon consideration, notice is hereby given that an extension of time is granted to and including May 15, 1978, within which to file petitions to intervene or protests in the above referenced proceeding.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11872 Filed 5-1-78; 8:45 am]

[6740-02]

[Docket Nos. ER78-19 (Phase I) and ER78-81]

FLORIDA POWER & LIGHT CO.

Briefing Schedule

APRIL 24, 1978.

The Initial Decision in this proceeding was filed with the Secretary on April 24, 1978. As provided by §§ 1.30(a) and 1.31 of the rules of practice and procedure, Briefs On Exceptions would be due on or before May 24, 1978, and Briefs Opposing exceptions would be due on or before June 13, 1978.

As the Presiding Judge pointed out in a memorandum to the Secretary accompanying the Initial Decision, it is stated in the Initial Decision that the parties agreed to file Briefs On exceptions on or before May 8, 1978, and Briefs Opposing Exceptions on or before May 12, 1978, because of the expiration of the suspension period in this case on June 1, 1978. Notice is hereby given that the briefing schedule is shortened as the parties have agreed.

The parties are reminded, however, that the proper method for altering dates for briefs on an Initial Decision is through a formal motion to the Commission as provided for in the Commission's Rules, so that the Commission has an opportunity to rule on matters coming before it and so that the change and reasons therefor are formally called to the attention of the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-11873 Filed 5-1-78; 8:45 am]

[6740-02]

[Docket No. RI77-128]

HERBERT S. WOODS & ASSOCIATES

Amended Petition for Special Relief

APRIL 25, 1978.

Take notice that on April 1, 1978, Herbert S. Woods & Associated (Woods), P.O. Box 1367, El Dorado, Ark. amended his petition for special relief to a reduced rate of $1.55/Mcf for the sales of his estimated 200,000 Mcf of remaining recoverable reserves to Natural Gas Pipe Line Co. of America.

Woods' original petition pursuant to 18 CFR 2.76 was noticed September 29, 1977.

Any person desiring to be heard or to make any protest with reference to said petition should on or before May 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). 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 party 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11874 Filed 5-1-78; 8:45 am]

[6740-02]

[Docket No. ES78-22]

IOWA PUBLIC SERVICE CO.

Order Authorizing the Issuance of Common Stock

APRIL 24, 1978.

On February 21, 1978, Iowa Public Service Co. (Applicant) filed an application seeking an order pursuant to section 204 of the Federal Power Act authorizing the issuance of up to 100,000 shares of Common Stock (par value $5 per share), in the manner, and at prices determined pursuant to a formula, described below.

Applicant is incorporated under the laws of the State of Iowa, with its principal business office in Sioux City, Iowa, and is engaged in the electric utility business in northwestern, north central and east central Iowa and a few small communities in South Dakota.

Applicant proposes to sell the Common Stock pursuant to its Dividend Reinvestment and Stock Purchase Plan, a voluntary plan whereby employees and stockholders are able to (a) have dividends on their shares of Common and/or Preferred Stock automatically reinvested in additional shares of the Applicant's Common Stock or (b) continue to receive their cash dividends on shares registered in their names and invest in the Applicant's Common Stock by making optional cash payments of not less than $10 per payment nor more than $10,000 per quarter or (c) invest both their cash dividends and such optional cash payments. Employee participants are able to make optional cash payments through payroll deductions. No service charge or commission is paid by participants in connection with purchases under this plan, and no underwriting fee is involved. The purchase price of shares is the average of the high and low sales prices of Applicant's Common Stock on the New York Stock Exchange on each investment date (or the next preceding day on the investment date). If no trading occurs in the Applicant's Common Stock on the investment date, the purchase price is the average of the reported bid and asked prices on the New York Stock Exchange on that date. Participants are able to withdraw from the plan at any time.

The net proceeds from the sale of the Common Stock will be used to reduce existing short-term loans and those to be incurred prior to the sales. The revenue will also be used for construction purposes or for other lawful corporate purposes.

Applicant requests an exemption from the competitive bidding requirements of § 34.1a of the Commission's regulations. Applicant argues that the lack of underwriting fees, the sale of stock based upon the market price, and the ability of the small investor to purchase shares without payment of a brokerage commission or service charge warrants an exemption from competitive bidding pursuant to § 34.1a(a)(4) of the regulations.

Written notice of this application has been given to the Public Service Commissions of South Dakota and Iowa and to the Governors of those States. Notice was also given by publication in the FEDERAL REGISTER stating that any person desiring to be heard or to make any protest with reference to said application, shall file petitions or protests on or before March 15, 1978, with the Federal Energy Regulatory Commission, Washington, D.C. No petition, protest, or request to be heard in opposition has been received.

The Commission finds: (1) Iowa Public Service Company, a corporation, is a public utility within the meaning of section 204 of the Federal Power Act, subject to the jurisdiction of the Federal Energy Regulatory Commission as heretofore described and set forth in the Federal Power Commission Order issued August 22,

1963, *Iowa Public Service Company*, Docket No. E-7115 (30 FPC 536).

(2) The proposed issuance and sale of Common Stock as described above, will constitute an issuance of securities within the purview of section 204 of the Federal Power Act.

(3) Applicant is not organized and operating under the laws of a state in which the security issue here involved is regulated by a State Commission within the meaning of section 204(f) of the Federal Power Act. The proposed issuance of securities is, therefore, not exempt by virtue of that section from the requirements of section 204 of the Federal Power Act.

(4) Under the circumstances of the case, sufficient cause has been shown for exempting the proposed issuance of Common Stock from the competitive bidding requirements of § 34.1a(b) and (c) of the regulations under the Federal Power Act.

(5) The proposed issuance and sale of Common Stock, as hereinafter authorized, will be for a lawful object within the corporate purposes of the Applicant and compatible with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(6) The period of public notice given in this matter is reasonable.

The Commission orders: (A) The proposed issuance and sale of 100,000 additional shares of Common Stock, par value $5 per share, upon the terms and conditions and for the purposes specified in the application, as described above, is hereby authorized subject to the provisions of this order.

(B) The proposed issuance of Common Stock shall be exempted from compliance with the competitive bidding requirements of § 34.1a(b) and (c) of the regulations under the Federal Power Act.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

(E) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11875 Filed 5-1-78; 8:45 am]

[6740-02]

[Docket No. RI77-26]

J & J ENTERPRISES, INC. ET AL.

Order Accepting Settlement Agreement, Granting Special Relief and Permitting Intervention

APRIL 25, 1978.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (August 4, 1977) and Executive Order No. 12009, 42 FR 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977.

The "savings provisions" of section 705(b) of the DOE Act provide that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the function under the DOE Act and regulations promulgated thereunder. The functions which are the subject of these proceedings were specifically transferred to the FERC by section 402(a)(1) of the DOE Act.

The joint regulation adopted on October 1, 1977 by the Secretary and the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the FERC," 10 CFR—provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above mentioned authorities.

On January 14, 1977, J & J Enterprises, Inc., Fairman Drilling Co., Castle Gas Co. Inc. (Original Producers) filed a petition seeking special relief pursuant to § 2.56a(g) and § 2.76 of the General Policy and Interpretations and § 154.107(e) of the Commission's [1] regulations from the area rates for the Appalachian Basin Area prescribed in Order No. 411, as amended, to collect a rate of 55.02 cents per Mcf at 14.73 psia. Also the original producers sought relief from the national rates prescribed by Opinion No. 699-H, as amended, and Opinion Nos. 770 and 770-A to collect a rate of 177.99 cents per Mcf at 14.73 psia for post-January 1, 1973 sales.

The special relief petition was noticed by the Commission on January 31, 1977. Columbia Gas Transmission Corp. and Consolidated Gas Supply Corp. filed timely interventions. National Fuel Gas Supply Corp. filed for leave to intervene out of time.

On February 18, 1977, the Original Producers filed to amend their petition by the inclusion of Additional Parties, [2] (Additional Producers). The petition for inclusion of Additional Parties was noticed by the Commission on March 14, 1977.

On February 13, 1978, J & J Enterprises, Inc., *et al*, (Petitioners), thirty-three independent small producers [3] (as defined in § 157.40 of the regulations) in Pennsylvania who are selling gas in jurisdictional transactions to three interstate pipelines [4] filed a settlement agreement and a motion to waive hearing with the Commission in the above-captioned docket.

In the settlement agreement, the Petitioners have agreed to request a rate of 61 cents per Mcf for all gas sold from Eligible Stripper Gas Wells [5] (Old

[1] Prior to October 1, 1977, "The Commission" refers to the Federal Power Commission; subsequent to that date, it refers to the Federal Energy Regulatory Commission.

[2] Boyd & Shriver, Mid-East Oil Co., Harry Brunt, Lee E. Minter, Ohio Lease Operating Co., Zenith Exploration Co., A. A. Lollar, I. L. Greer & Sons, Union Drilling Company, Joseph L. Dunn, Reeves Lewenthal, D. A. Dorwood, Dorvo Corp. and Pennsylvania Oil & Gas Association who seeks to be made a party on behalf of all its members who are small producers of natural gas having jurisdictional sales in Pennsylvania. Ohio Lease Operating Co. and I. L. Greer & Sons are not included as Petitioners in the final settlement agreement.

[3] J & J Enterprises, Inc.; Fairman Drilling Co.; Castle Gas Co., Inc.; Boyd & Shriver; Mid-East Oil Co.; Armclar Gas Co.; Arthur H. Denton; B. J. Oil Company; Butcher & Singer; D. A. Dorward, et al.; Fox Oil & Gas, Inc.; Harry Brunt; J. Gerald Ackley; Joseph L. and Betty Dunn; Kaib & Kaib; Lawrence Faes; Lee E. Minter; Mays Gas & Coal Co.; Natural Resources Development Division, U.G.I. Development Company; I.P.S.C.O.; R. Nelson & A. Johnson; N. Y. Petro-Min Corp.; Orville Eberly, William E. Snee, Robert E. Eberly; Reeves Lewenthal; Union Drilling, Inc.; W. F. Glover; W. C. Hurtt Drilling Co.; W. R. Maxson; Zenith Exploration Co.; A. F. Carino Oil & Gas Interests; A. A. Lollar; R. Taylor Mosier; and Weir Walker.

[4] Columbia Gas Transmission Corp. (Columbia), Consolidated Gas Supply Corp. (Consolidated), National Fuel Gas Supply Corp. (National).

[5] Eligible Stripper Gas Wells (Old Gas Stripper Wells) shall mean those wells first commencing production prior to January 1, 1973, from which gas is sold to the Buyers under the Contracts and which continously produced or shall have produced an average of 60 Mcf per day or less per well during any continuous 12-month period commencing with the 12-month period ended December 31, 1975, or any continuous 12-month period thereafter; provided, however that the average production volume for each well whose production is measured by a single multiwell meter shall be determined for any such 12-month period by dividing the aggregate production of all wells measured by such meter by the number of wells whose production is so measured. If a well shall once have qualified for purposes hereof as an Eligible Strip-

Footnotes continued on next page

Gas Stripper Wells) and to the applicable area or national rates per Mcf for all gas from all other wells from which gas is sold pursuant to the contracts[6] subject to adjustments for production or severance taxes, Btu content, gathering allowances, escalation and other similar matters sanctioned by the Commission. In addition, the Petitioners request an annual escalation of 1 cent per Mcf commencing as of January 1, 1978, for gas purchased from Old Gas Stripper Wells. The settlement agreement, inter alia, also sets forth provisions for Petitioners to file for an increase in rates should the Old Gas Stripper Well rate prove to be uneconomical; however, should the Commission approve this settlement agreement and grant special relief, the Petitioners have agreed not to seek increased rates for gas sold pursuant to the contracts earlier than January 1, 1979 (unless eligible for special pricing arrangements under future Federal legislation or regulation applicable to such gas).

The settlement agreement was noticed by the Commission on March 7, 1978; Columbia, Consolidated, and National filed timely comments in support of the settlement agreement.

Cost Data

Data from four[7] of the thirty-three producers was used by Staff as a cost sample for pre-1973 wells. These four producers have sales encompassing over 50 percent of the total small producer jurisdictional sales in Pennsylvania. As well, this cost sample represents the cost, production and reserve experience of 240 gas wells. The other small producers have inadequate or imcomplete records with the resultant inability to furnish the data necessary for cost and gas reserve estimates. The accounting firm of Arthur Anderson & Co. and geologic consultants, Huntley & Huntley Inc. were hired by Petitioners and worked with Staff to obtain and verify the necessary basic cost, production and reserve data.

Staff also relied on the case record developed in IOGA in which the Commission approved the request of three-hundred West Virginia small producers for special relief based on the same cost methodology at a base price of 2.85 cents plus 1 cent annual escalations for pre-1973 wells. It should be noted that there is a similarity between the geology and gas well drilling of West Virginia and Pennsylvania.

The Cost Method

The method approved by the Commission in IOGA and employed by Staff in this case, permits recovery of and return on net remaining investment averaged over the remaining 13.81 year life of the 240 well sample. This cost consists of the drilling and equipping cost of the gas wells as other investment costs such as lease acquisition are insignificant. For purposes of determining a return allowance, a rate base consistent with *Permian I*[8] methodology was employed which means a 15 percent rate of return is applied to 50 percent of net remaining investment for each year of the average remaining life of the wells. Other methods such as the DCF method require more precise projections of annual production data which is difficult to determine for 240 pre-1973 drilled wells of various age spud dates involved herein. Staff estimated that the remaining gas reserves as of 1975 were about 20 Bcf or 27.16 percent of the original reserves and that on the average the pre-1973 wells would produce for another 13.81 years.

Staff noted that the projected 13.81 years of operating expense of $4,264,680 is very conservative. This amount represents $309,811 per year for 240 gas wells or $1,287 per well per year or $107 per well per month. This is hardly an adequate amount if proper labor and maintenance is to be applied to these wells; in fact, the rental of one compressor would cost from $1,000 to $1,500 per month depending on the size. The subject wells are known to have poor deliverability averaging about 40 Mcf per day.

The Petitioners initially sought a Federal Income Tax (FIT) allowance at the full statutory corporate rate of 48 percent contending that the Petitioners consist mainly of partnerships with hundreds of individual taxpayers in the 50 percent tax bracket. Staff and Arthur Anderson and Co. reviewed some of the tax returns and partnership agreements and found it would be virtually impossible to determine an actual effective tax rate projected into the future for the hundreds of small individual investors in the subject wells. Staff therefore agreed to an effective tax rate of 38 percent as the "typical investor" within the Pennsylvania group. See attached Appendix A.

On the basis of this investigation, Staff agrees with Petitioners that the settlement provisions for a rate of 61 cents per Mcf for all gas sold from Old Gas Stripper Wells plus an annual escalation of 1 cent per Mcf commencing on January 1, 1978 is cost justified.

Staff believes that a 61 cent price for stripper gas wells will serve many purposes benefitting both the consumer and the producer. The higher price is particularly beneficial in Pennsylavania where small producers and low deliverability wells are commonplace. Most importantly the higher price should be compensatory of future costs such as increased unit operating costs by virtue of added maintenance and declining production as well as provide incentive to producers to invest in workovers, facilities etc., necessary to save production. The higher price would be a preventive measure which would eliminate where possible premature abandonment requests and special relief applications where producers have the resources to comply with the requirements. However, many small producers do not have the necessary resources for special relief. The Pennsylavania producers will receive about a $5 million cash flow above operating costs and FIT over about the next 14 years to repair, workover or replace well equipment and facilities for 240 wells. This amounts to about $21,000 per well which is very conservative compared to those indicated in special relief cases.

Upon consideration of the data submitted and Staff's analysis thereof, we conclude that the settlement should be accepted and special relief granted.

The Commission orders: (A) The settlement agreement filed by the Petitioners on February 13, 1978 is approved.

(B) Effective upon the date of issuance of this order, Petitioners are authorized to collect a total rate of 61 cents per Mcf at 14.73 psia for all gas sold from Old Gas Stripper Wells plus an annual escalation of 1 cent per Mcf commencing on January 1, 1978.

(C) Columbia, Consolidated and National are permitted to intervene in the above-captioned proceeding subject to the rules and regulations of the Commission: *Provided, however,* That participation of said intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene: and *Provided, further,* That the admission of said intervenors shall not be construed as recognition by the Commission that it might be aggrieved because of any order of the Commission entered in this proceeding and that said intervenors agree to accept the record as it now stands.

Footnotes continued from last page

per Gas Well, subsequent changes in its production or metering shall not thereafter disqualify it as an Eligible Stripper Gas Well.

[6]Contracts shall mean those contracts, whether or not now in existence, by and between the Petitioners and each of the Buyers for the sale of gas by the Petitioners to the Buyers in jurisdictional transactions for wells in Pennsylvania.

[7]J & J Enterprises, Inc., Fairman Drilling Co., Boyd & Shriver, Mid-East Oil Co; 1975 test year data was used.

[8]*Opinion and Order Determining Just and Reasonable Rates For Natural Gas In The Permain Basin (1965)* 34 FPC 159, affirmed, in re. *Permian Basin Area Rate Cases,* 390 U.S. 747.

By the Commission.

KENNETH F. PLUMB,
Secretary.

APPENDIX A

J&J Enterprises, Inc. et al., Docket No. RI77-26 Estimated Average Unit Cost of Gas Wells Commenced Prior to January 1, 1973 for the Period 1975 to Depletion (240 well sample)

(1) Volume thousands cubic feet at 14.73 lb/in² a
(2) Remaining gas reserves, G.W.I. 100 percent 19,977,355 1,000 ft³
(3) Remaining gas reserves, N.W.I. 86.07 percent 17,194,509 1,000 ft³

Cost summary	Amount (a)	Unit cost, cents per 1,000 ft³ (b)
(4) Production expense	$4,264,680	24.80
(5) D.D.&A. expense	[1]2,400,324	13.96
(6) Return allowance at 15 percent.	[2]2,566,098	14.92
(7) Regulatory expense	17,195	0.10
(8) Federal income tax at 38 percent effective rate.	[3]1,572,770	9.15
(9) Total Cost	10,821,067	62.93

Cost elements

(10) Remaining gas reserves as a percent of original reserves, 27.16 percent.
(11) Average remaining life from 1975 of pre-1973 wells, 13.81 yrs.
(12) Gross investment in the 240 wells, $8,837,717.
(13) Average net remaining investment, $8,837,717 × 27.16 percent ÷ 2 = $1,200,162.
(14) Average working capital, $4,264,680 ÷ 13.81 yrs. × ⅛ = $38,601.
(15) Total rate base, line 13 + 14 = $1,238,763.

[1] $8,837,717 (line 12) × 27.16 percent (line 10).
[2] $1,238,763 (line 15) × 15 percent × 13.81 yrs. (line 11).
[3] $2,566,098 (line 6) × .38/.62.
[4] Amounts in Col. (a) divided by line 3.

[FR Doc. 78-11876 Filed 5-1-78; 8:45 am]

[6740-02]

[Docket Nos. CP77-368; CS72-1181]

LONE STAR GAS CO. (A DIVISION OF ENSERCH CORP. AND GORDON OIL CO., INC.)

Order Deferring Hearing and Instituting Investigation

APRIL 25, 1978.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (August 4, 1977) and Executive Order No. 12009, 42 FR 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977.[1]

[1] The "Commission" when used in the context of an action taken prior to October 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

The "savings provisions" of section 705(b) of the DOE Act provide that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE Act and regulations promulgated thereunder. The functions which are the subject of this proceeding were specifically transferred to the FERC by section 402(a)(1) or 402(a)(2) of the DOE Act.

The joint regulation adopted on October 1, 1977, by the Secretary and the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the FERC," 10 CFR ——, provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above mentioned authorities.

On March 13, 1978, Commission counsel, on behalf of the Commission's Office of Enforcement, filed a motion requesting the Commission to indefinitely defer hearings in the above-referenced consolidated proceeding and to institute an investigation therein to be conducted by the Office of Enforcement.

This proceeding involves a Commission-ordered hearing into possible violations of the Natural Gas Act by Lone Star Gas Co. (Lone Star) and Gordon Oil Co. (Gordon). Lone Star is alleged to have diverted gas produced from the Sherman Field, Grayson County, Tex., from its interstate transmission line to its intrastate system during the period 1961-1976. Gordon, one of a number of producers in the Sherman Field, appears to have abandoned certain previously certificated sales to Lone Star in the Sherman Field for a period of 40 days commencing on January 1, 1977, without receiving approval of this Commission pursuant to section 7(b) or the Natural Gas Act.

On April 22, 1977, Lone Star filed in Docket No. CP77-368 a petition for a declaratory order requesting the Commission to declare exempt from its jurisdiction natural gas proposed to be taken by Lone Star from its intrastate system to pay back any deficiencies caused by past diversions of gas from its interstate syste,. On September 12, 1977, Lone Star filed a supplement to its petition for a declaratory order proposing to pay back approximately 17 Bcf of gas over a three year period. In response to Lone Star's petition, the Commission on November 4, 1977, issued an order which consolidated the captioned dockets and initiated a hearing into the matter in order to establish the facts surrounding Lone Star's apparent violation of the Natural Gas Act. The order also directed Gordon to show cause why it should not be held in violation of section 7(b) of the Act. Procedural dates in the case have been previously deferred and no hearings have been held.

In its motion, the Office of Enforcement states that the case was referred to it on December 19, 1977, and that on February 15, 1978, it transmitted a data request to Lone Star. However, after reviewing the documents submitted by Lone Star in response to its data request, the Office of Enforcement states that "signficant unanswere questions remain." The Office of Enforcement further states that the development of the issues in this proceeding can best be accomplished in an "investigatorial setting" and that this procedure will permit it to "either further refine the present issues or expand the scope of the proceeding as the facts dictate."

On March 20, 1978, Lone Star filed an answer to the staff's motion, stating that while it does not oppose the deferral of hearings, it does question the need to institute a formal investigation. Lone Star argues that the issues involved in this proceeding can be resolved informally through discussion and stipulations with the Commission staff, and that it would be more expeditious to proceed on the basis of a cooperative effort than to convert the proceeding into a formal investigation. In support of its position Lone Star in its answer states as follows:

> As indicated in the Staff motion filed March 13, not only did Lone Star bring this situation to the Commission's attention last April through the filing of its petition, and subsequently proposed a specific method to restore the balance between its intrastate and interstate lines, but also Lone Star has willingly provided vast quantities of documents and responses to Staff data requests. These were furnished within the 10-day and 20-day periods, respectively, as requested by the Staff.
>
> * * * * *
>
> Lone Star has previously requested the opportunity to discuss with the Staff appropriate means to restore the balance, or otherwise resolve the proceeding. It is entirely possible that this can be accomplished after adequate opportunity is avilable for completion of the Staff's analysis, together with additional data, if any, that may be needed.
>
> * * * * *
>
> In view of the foregoing, Lone Star does not object to the postponement of further proceedings, but is anxious to bring the matter to an appropriate conclusion as soon as possible. We believe this can be accomplished more readily through the flexible procedure initiated by the Staff through its data and information requests, to be followed hopefully by an agreed-upon disposition, rather than instituting a formal investigation.

These proceedings involve serious questions regarding possible violations

of the Natural Gas Act and the appropriate remedy or remedies therefor. We believe it is important that sufficient flexibility be provided the Commission's Office of Enforcement to investigate the background facts and issues in this matter before moving into formal hearing procedures should that be deemed necessary after full investigation and consideration of appropriate remedies, if any. The Commission finds that the Office Of Enforcement should be accorded some latitude in developing procedures for carrying out its assigned responsibilities. Therefore the motion of the Office of Enforcement for deferral of hearings and for an investigation shall be granted. Moreover, we will appoint officers pursuant to section 14(c) of the Natural Gas Act. Such officers shall have the authority to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant and material to the inquiry and to perform all other duties in connection therewith as prescribed by law.

The investigation herein ordered shall involve any and all matters related to the activities surrounding the above cited alleged violations of the Natural Gas Act by Lone Star Gas Co. and Gordon Oil Co., and their affiliates and/or subsidiaries. Upon completion of its investigation, the Office of Enforcement shall report its findings with recommendations to the Commission.

Lone Star and Gordon are entitled to a prompt resolution of the allegations which have been made against them. Lengthy delay have been experienced in this proceeding and the investigative phase necessary to the preparation of the staff's case has not according to staff's motion, yet been completed. The investigation ordered herein should therefore be carried out without further delay and completed as soon as possible.

The Commission orders: (A) Pursuant to the Natural Gas Act, particularly section 14, and the Commission's rules and regulations, an investigation is hereby directed to be instituted by the Office of Enforcement to determine whether the actions of Lone Star and Gordon referred to in this order and in the order of November 4, 1977, were in violation of the Natural Gas Act or any rule, regulation, or order of the Commission.

(B) In carrying out its investigation, the Office of Enforcement is authorized to exercise fully the powers specified in section 14(c) of the Natural Gas Act. More specifically, it is ordered, pursuant to the provisions of section 14(c) of the Natural Gas Act that for the purpose of this investigation, Jeanne M. Zable, Joel F. Zipp, and James L. Lewis, and each of them, are hereby designated officers of this Commission and are empowered to administer oaths, and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant and material to the inquiry and to perform all other duties in connection therewith as prescribed by law.

(C) Hearings in this proceeding are deferred pending completion of the investigation instituted by this order and further Commission order.

(D) Upon completion of its investigation, the Office of Enforcement shall report its findings with recommendations to the Commission.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11877 Filed 5-1-78; 8:45 am]

[6740-02]

[Docket Nos. G-6083 et al.]

MESA PETROLEUM CO., ET AL.

Applications for Certificates, Abandonment of Service and Petitions to Amend Certificates; Correction

APRIL 24, 1978.

Tabulation, Page 4, Docket No. CI78-556—Cotton Petroleum Corp. (successor in interest to Manning Gas & Oil Co. and Northwest Production Corp:

In FR Doc 78-8311 issued March 24, 1978, and appearing at page 13610 of the issue of Friday, March 31, 1978, on page 13611, under column headed "Purchaser and location" insert "Northwest Pipe Line Co." as purchaser in lieu of "El Paso Natural Gas Co."

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-11878 Filed 5-1-78; 8:45 am]

[6740-02]

[Docket Nos. RI77-102; CI65-421; FERC Gas Rate Schedule No. 551]

SUERTE OIL CO. (OPERATOR), ET AL., AND ATLANTIC RICHFIELD CO.

Order Granting Special Relief and Amending Certificate To Delete Assigned Acreage

APRIL 25, 1978.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (Aug. 4, 1977) and Executive Order No. 12009, 42 FR 46267 (Sept. 15, 1977), the Federal Power Commission (FPC) ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977.

The "savings provisions" of section 705(b) of the DOE Act provide that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE Act and regulations promulgated thereunder. The functions which are the subject of these proceedings were specifically transferred to the FERC by section 402(a)(1) of the DOE Act.

The joint regulation adopted on October 1, 1977 by the Secretary and the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the FERC," 10 CFR ——, provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above-mentioned authorities.

On June 8, 1977, Suerte Oil Co. (Suerte)[1] filed in Docket No RI77-102 a petition for special relief pursuant to § 2.76 of the Commission's General Policy and interpretations (18 CFR 2.76) with respect to a sale of natural gas to Kansas-Nebraska Natural Gas Co., Inc. (Kansas-Nebraska) from the F. E. Good No. 1 Well located in Hamilton County, Kans. Suerte also requested waiver of § 157.40(c) of the Commission's regulations (18 CFR 157.40(c)) in order to amend its small producer certificate to cover sales of natural gas previously covered under Atlantic Richfield Co.'s (ARCO's) FERC Gas Rate Schedule No. 551.[2]

Suerte is the operator of the F. E. Good No. 1 Well and owns a 45 percent working interest in the well. Western owns the remaining 55 percent working interest. Suerte was issued a small producer certificate in Docket No. CS74-248 on April 15, 1974, and Western was issued a small producer certificate in Docket No. CS72-307 on January 17, 1972.

On July 1, 1970, Suerte and Western acquired Skelly Oil Co.'s 50 percent interest in the subect well, and have since been making sales of gas attrib-

[1] Suerte filed on behalf of itself and Western Petroleum Co., Inc. (Western).

[2] Suerte requested waiver of § 157.40(c) as that provision existed prior to July 14, 1977, the date of issuance of Order No. 568, Order Amending and Clarifying Small Producer Regulations, in Docket No. RM76-15. Order No. 568 eliminated prospectively the need for a waiver in a situation such as is presented here.

utable to such interest to Kansas-Nebraska pursuant to a gas sales agreement dated May 28, 1963. On January 1, 1977, Suerte and Western succeeded to ARCO's 50 percent interest in the subject well, and propose to continue sales of gas attributable to such interest to Kansas-Nebraska pursuant to a gas sales agreement dated October 20, 1964. Prior to the assignment of its intrerest to Suerte and Western, ARCO had been making sales of gas to Kansas-Nebraska under its FERC Gas Rate Schedule No. 551. ARCO filed a copy of the assignment with the Commission on March 28, 1977, as a supplement to its rate schedule.

The F. E. Good No. 1 well is currently shut-in. In order to restore the well to production, Suerte proposes to install well pumping equipment and to rework the well to repair a casing leak. Suerte requests authorization to collect a rate of 60.58 cents per Mcf [3] for the sales to Kansas-Nebraska to compensate for the proposed work. On April 1, 1977, Suerte and Kansas-Nebraska executed an amendment to their contracts by which Kansas-Nebraska agreed to pay a rate approved by the Commission for the subject sales.

Notice of Suerte's petition for special relief was issued on July 6, 1977, and appeared in the FEDERAL REGISTER on July 13, 1977, at 42 FR 36028. No protests or petitions to intervene have been filed.

Suerte proposes to invest $25,800 to perform the operations necessary to restore the well to production. Based on data submitted by Suerte, Staff accepts as resonable Suerte's remaining net book investment of $3,455, its proposed investment of $25,800, and its estimated production expenses, which Staff projects to be $42,436 over the remaining life of the well, using a 5 percent annual inflation factor. Staff estimates that a total of 96,960 Mcf of gas reserves remain to be produced from the subject well over a period of five years.

Using the above costs and reserves in a traditional cost study, Staff has determined that the requested rate is cost-supported

Upon consideration of the data submitted and Staff's analysis thereof, we conclude that it is in the public interest to grant special relief to Suerte and Western.

On January 30, 1978, the Commission issued an order in Docket No. RM76-15 [4] in which the Commission granted all requests for waiver of § 157.40(c) involving sales made by small producer certificate holders from developed reserves acquired in place from large producers that were pending at the time of issuance of Order No. 568. Although Suerte and Western were not included in the appendices which listed all known pending requests for waiver, the Commission's order effectively granted their requests for waiver, effective as of the date of motion for waiver, June 8, 1977. Suerte and Western may therefore make under their small producer certificates sales of gas from the F. E. Good No. 1 Well attributable to the acreage acquired from ARCO, effective June 8, 1977, subject to the condition that between June 8, 1977 and the effective date of the special relief rate authorized herein, Suerte and Westen are entitled to collect for the sales of such gas rates that are no higher than those which ARCO would be entitled to collect for sales from such reserves.

Suerte's contract amendment with Kansas-Nebraska authorizing the special relief rate contains impermissible indefinite pricing provisions. We will waive § 154.93 of the Commission's regulations to the extent necessary to permit the filing of the contract amendment.

The Commission orders: (A) the petition for special relief filed by Suerte on June 8, 1977, is hereby granted.

(B) Suerte and Western are authorized to collect a total rate of 60.58 cents per Mcf at 14.65 psia, inclusive of Btu adjustment, for the sale of natural gas to Kansas-Nebraska from the F. E. Good No. 1 well located in Hamilton County, Kans., effective as of the date of issuance of this order or the date of completion of the reworking of the well and the installation of the well pumping equipment, whichever is later, subject to the conditions set forth in Ordering Paragraphs (C) and (D).

(C) Within 30 days of the effective date of the rate authorized herein, Suerte shall file a statement signed by Kansas-Nebraska that the proposed work has been completed to the satisfaction of Kansas-Nebraska.

(D) Within 30 days of the date of issuance of this order, Suerte shall file an appropriate notice of rate change reflecting the rate authorized herein in accordance with § 154.94 of the Commission's Regulations under the Natural Gas Act (18 CFR 154.94).

(E) The contract amendment between Suerte and Western and Kansas-Nebraska, dated April 1, 1977, is accepted for filing, to be effective as of the effective date specified in Ordering Paragraph (B). Section 154.93 of the Commission's regulations is hereby waived to accept for filing the contract amendment, which contains impermissible pricing provisions. The granting of such waiver, however, does not constitute approval of such provisions, and any rate increase based on said pricing provisions to the extent it is inconsistent with the provisions of § 154.93 of the Commission's regulations is subject to rejection.

(F) The assignment dated February 28, 1977, and filed by ARCO on March 28, 1977, pursuant to which Suerte and Western acquired interests from ARCO, is accepted for filing as Supplement No. 6 to ARCO's FERC Gas Rate Schedule No. 551 effective as of January 1, 1977, the date of transfer of the property involved, and the subject acreage is hereby deleted from dedication under the related certificate issued to ARCO in Docket No. CI65-421.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11879 Filed 5-1-78; 8:45 am]

[3] In a letter filed with the Commission on July 15, 1977, Suerte specified that its requested rate is 60.58 cents per Mcf inclusive of Btu adjustment.

[4] "Order Granting Motion For Supplemental Order," Regulation of Small Poducers, Docket No. RM76-15.

[6740-02]

[Docket No. ER78-205]

UTAH POWER & LIGHT CO.

Cancellation

APRIL 24, 1978.

Take notice that Utah Power & Light Co. (Utah), on April 5, 1978, tendered for filing, proposed changes in its FERC Electric Service Tariff, Volume No. 1.

Utah states that these changes were necessitated by a change in voltage, from 46 Kv to 138 Kv, for Utah's delivery to Strawberry Water Users Association. Utah further states that Utah has been delivering Colorado River Storage Project power to Stawberry at 46 Kv under a wheeling agreement with the United States Government and recently has been supplying Strawberry's requirements in excess of CRSP amounts under Utah's FERC Electric Tariff. Utah indicates that Utah has also been delivering power and energy to the City of Springville, Utah, at 46 Kv under the same circumstances. Utah further indicates that with the increase in delivery voltage to Strawberry, the contract with Springville was terminated, since Strawberry will hereafter furnish Springville's requirements.

Utah proposed an effective date of December 20, 1978, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Captiol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 1, 1978. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Secretary.

[FR Doc. 78-11880 Filed 5-1-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

1979 WARC

Eighth Notice of Inquiry

The Federal Communications Commission on April 18 adopted an "Eighth Notice of Inquiry" in its preparation for the 1979 World Administrative Radio Conference (WARC) of the International Telecommunication Union to be convened in Geneva, Switzerland, on September 24, 1979.

The document consists of approximately 180 pages. Because of the cost of printing so voluminous a text, it will not be published in the FEDERAL REGISTER. However, the FCC has prepared a limited number of copies that are available upon request at its Public Information Office, Room 202, 1919 M Street NW., Washington, D.C. 20554.

The Commission said the eighth notice was designed to present for comment, revisions to the table of frequency allocations as contained in article 5 of the international radio regulations. This notice of inquiry is a coordinated effort between the FCC and the Office of Telecommunications Policy (now National Telecommunications and Information Administration—NTIA).

The Commission invited public comments on the proposed table of frequency allocations, highlighting a number of problem areas affecting public and Federal Government needs. These included: High frequency (HF) requirements; mobile requirements between 27.5 and 1215 MHz; and mobile satellite requirements and feeder links between 1215 MHz-10.7 GHz.

Comments are due by June 30 and reply comments July 21, 1978.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-11726 Filed 5-1-78; 8:45 am]

[6712-01]

[Docket No. 20271; FCC 78-263]

PREPARATION FOR A GENERAL WORLD ADMINISTRATIVE RADIO CONFERENCE OF THE INTERNATIONAL TELECOMMUNICATION UNION

Revision of the International Radio Regulation; Sixth Notice of Inquiry

AGENCY: Federal Communications Commission.

ACTION: Sixth Notice of Inquiry (Docket No. 20271) issued seeking comments from interested parties about proposed changes in the International Radio Regulations and Additional Radio Regulations regarding methods of accounting and operating for public correspondence in maritime mobile service.

SUMMARY: The CCITT has adopted provisional Recommendations for presentation to the 1979 World Administrative Radio Conference (WARC) concerning methods of accounting and operating for public correspondence in maritime mobile service. The purpose of the Sixth Notice of Inquiry is to determine whether the Commission should recommend that the U.S. continue to support adoption of the recommendations by the 1979 WARC or whether it should submit alternative proposals.

DATES: Interested persons may file comments on or before June 2, 1978, and reply comments on or before June 19, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Earl S. Barbely, International Programs Staff, Common Carrier Bureau, 202-632-3214.

Adopted: April 18, 1978.

Released: April 25, 1978.

In the matter of an inquiry relative to preparation for a General World Administrative Radio Conference of the International Telecommunication Union to consider revision of the International Radio Regulations, Docket No. 20271.[1]

1. The Commission initiated this proceeding for the purpose of preparing U.S. Proposals for the General World Administrative Radio Conference (WARC) of the International Telecommunication Union (ITU) to be held in 1979. Five notices of inquiry have been adopted seeking comments about proposed changes in the International Radio Regulations and Additional Radio Regulations.[1] This Sixth Notice of Inquiry seeks comments from interested parites regarding proposals of the Joint Working Party for Maritime Mobile Service (SMM) of the International Telegraph and telephone Consultative Committee (CCITT) for changes in the methods of accounting and operating for public correspondence in maritime mobile service.[2]

2. The proposals consist of two draft CCITT Recommendations (see Appendix A and Appendix B) and draft Regulatory Provisions (see Appendix C) to be considered by the WARC as amendments to the ITU Radio Regulations and Additional Radio Regulations. The draft Recommendations were prepared as a result of a study conducted by a CCITT Study Group (Joint Working Party SMM) to determine improvements on current methods of accounting and operating for public correspondence in maritime mobile service. That study was requested by the World Maritime Administrative Radio Conference (Geneva, 1974) in its Resolutions Nos. Mar 2-22 and Mar 2-23 asking the CCITT to determine:

(1) What Amendments to the principles and methods of accounting for public correspondence in maritime radio communications are necessary to improve present methods, including accounting for ship charges, and to provide for foreseeable future developments?

(2) To what extent is it useful and desirable to revise those parts of Chapter IX of the Radio Regulations and those of the Additional Radio

[1] Notice of Inquiry, FCC 75-6 No. 29504, January 10, 1975, (40 FR 3245, January 20, 1975); Second Notice of Inquiry, FCC 75-990, No. 36758, September 19, 1975 (40 FR 44606, September 29, 1975); Third Notice of Inquiry, FCC 26-1099, No. 43086, December 6, 1976, (41 FR 54309, December 13, 1976); Fourth Notice of Inquiry, FCC 77-285, May 17, 1977, Fifth Notice of Inquiry, FCC 77-349, No. 69533, May 23, 1977 (42 FR 27756, May 31, 1977). See also 42 FR 55641, October 18, 1977.

[2] The CCITT is an international consultative committee of the ITU concerned with the study of technical, operating and tariff question relating to telephone and telegraphy, including data communication. All ITU member countries and certain private companies operating telecommunications services can participate in its work. The CCITT may entrust the study of questions put before it to Study Groups composed of experts from different countries. The Study Groups draw up Recommendations which are submitted to a CCITT Plenary Assembly for adoption and publication. The bulk of the CCITT Recommendations specify standard design parameters and operating procedures for international communication facilities and services. Unlike the ITU Convention, which has treaty status, the Recommendations are not legally binding on the administrations of ITU member countries. However, compliance is virtually universal in actual practice since they provide the technical and operational basis for a unified global communications network.

Regulations not already included in the study carried out under Resolution No. Mar 2-22 and to transfer them to the CCITT Recommendations?

The Resolutions recommended that the requested CCITT report include a complete set of basic and detailed accounting rules to be produced as a CCITT Recommendation and that administrations and recognized private operating agencies bring these draft rules into use as soon as possible following their approval as Recommendation by CCITT VIth Plenary Assembly, October, 1976, Geneva, Switzerland. They also recommended that Administrations make proposals to the next competent World Administrative Radio Conference as to which, if any, of the draft rules should be included in the Radio Regulatons.

3. The Joint Working Party SMM initially prepared two draft Recommendations for submittal to the CCITT VIth Plenary Assembly in 1976 which the VIth Plenary Assembly adopted in principle with the exception of points relating to ship station charges and a single accounting authority.[3] The VIth Plenary Assembly requested the Joint Working Party SMM to further consider these points. The Joint Working Party SMM continued its studies and, as a result, prepared the draft Recommendations now before us for consideration. It determined that the Recommendations should not enter into force until any conflicting Articles in the Radio Regulations and the Additional Radio Regulations have been amended or revoked by the 1979 WARC. To this end, it prepared the draft Regulatory Provisions also now before us.

4. The Joint Working Party decided to circulate the draft Recommendations to Adminsitrations of ITU member countries for provisional approval since Plenary Assembly approval could not be obtained before the 1979 WARC. The United States cast its vote in favor of provisional approval during the worldwide letter balloting. Provisional approval was announced by the CCITT on November 7, 1977. The Recommendations therefore now have a status as if they had been approved in full by a CCITT Plenary Assembly and can be presented by the ITU Secretary-General to the 1979 WARC for consideration. The purpose of this inquiry is to determine whether this Commission shoud recommend that the U.S. continue to support adoption of the Joint Working Party's draft Recommendations and the draft Regulatotry Provisions by the 1979 WARC or whether it should submit alternative proposals.

5. Generally, the draft Recommendations and Regulatory Provisions would restructure the framework in which ITU Accounting Provisions currently exist. They would remove most of those provisions in the Radio Regulations and Additional Radio Regulations relating to accounting and transfer them to CCITT Recommendations. Only certain basic provisions considered to require continued regulatory status would remain in the Radio Regulations including provisions involving accounting responsibility, exchange and verification of maritime accounts, payment of balances, and period of retention of accounting records. This approach is intended to permit easier amendment of most of the accounting provisions to meet changing circumstances and, where possible, allow the elimination of many differences concerning accounting procedures and operations that now exist between the Radio Regulations and Additional Radio Regulations and the Telegraph and Telephone Regulations.

6. Additionally, the draft Recommendations and Radio Regulations would effectuate specific changes in accounting and operating procedures for public correspondence in maritime mobile service. In particular, they would (1) reduce the number of accounting authorities in each country to which accounts for the services of maritime mobile stations may be sent by setting a maximum number of 25, (2) define the responsibility of each Administration for payment of bad debts incurred by ship stations licensed by it, (3) eliminate by 1988 ship station charges for shore-to-ship traffic from all international accounts, and (4) propose uniform rates for ship stations charges that would be effective until such charges are eliminated in 1988. The rates proposed, of course, could be imposed by ship stations only pursuant to the authority of the Administration that has issued their license.

7. Pursuant to applicable procedures set forth in § 1.415 of the Commission's Rules, interested persons may file comments on or before June 2, 1978, and reply comments on or before June 19, 1978. All relevant and timely comments and reply comments, along with any pertinent information which the Commission may have available, will be considered.

8. Although § 1.419 of the Commission's Rules requires that an original and five copies of all statements, briefs or comments be filed in response to a Notice, the Commission's conference preparatory organization necessitates the filing of an original and nineteen copies. All responses received will be available for public inspection during regular business hours in the Comission's Public Reference Room at its headquarters in Washington, D.C.

9. This Notice is issued pursuant to the authority set forth in section 4(i) of the Communications Act of 1934, as amended 47 U.S.C. 154(i).

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[3] In addition to providing comprehensive recommendations regarding maritime accounting and charging, the draft Recommendations provided, that accounting for mobile station charges should be specified more accurately, including a limitation on the number of accounting addresses.

APPENDIX A

DRAFT RECOMMENDATION D. 90/F. 111 ("X")

Charging, Accounting and Refunds in the Maritime Mobile Service

INTRODUCTORY NOTES

1. For the purposes of this Recommendation, the term Maritime Mobile Service should be understood to embrace the Maritime Mobile Satellite Service as well as the MF, HF and VHF radio media, unless specifically stated otherwise.

2. Throughout this Recommendation the Asterisk * used after "Administration(s)" means that recognized private operating agency/agencies are included.

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PREAMBLE

The CCITT

considering

(a) Resolution No. Mar 2-22 of the World Maritime Administrative Radio Conference (Geneva, 1974) relating to accounting for public correspondence in maritime radiocommunications;

(b) Recommendation No. Mar 2-18 of the same conference relating to the same subject;

(c) Resolution No. Sat-10 of the World Administrative Radio Conference for the planning of the Broadcasting Satellite Service in the 12 GHz band (Geneva, 1977) relating to the possible rearrangement of the Radio Regulations and the Additional Radio Regulations;

(d) That the provisions of the Telegraph Regulations and the Telephone Regulations (Geneva, 1973) and the Protocols annexed thereto, taking into account CCITT Recommendations (particularly those in the E and F Series) shall apply to radiocommunications;

(e) That the VIth Plenary Assembly of the CCITT (Geneva, 1976) adopted the Recommendation below, with the exception of the points relating to mobile station charges and a single accounting authority, which points have now been considered further and have resulted in amendments being carried into the texts given below;

(f) That the provisions for charging, accounting and refunds in the Maritime Mobile Service and in the Maritime Mobile Satellite Service are presently contained in the Radio Regulations and the Additional Radio Regulations, which will remain in force until they are reviewed by the World Admininstrative Radio Conference (1979).

recommends

That Administrations take this Recommendation into account when formulating their proposals for consideration at the World Administrative Radio Conference for the General Revision of the Radio Regulations and the Additional Radio Regulations (Geneva, 1979). Annex 2 shows the correspondence between the 1976 edition of the Radio Regulations and the Additional Radio Regulations and the provisions of this recommendation. Annex 3[4] offers a preliminary draft Article that includes all the basic provisions considered to require regulatory status. A consequence of this is that Article 40A of the Radio Regulations and Articles 4A, 5A, 5B, 6A and 8 of Section I of the Additional Radio Regulations would no longer be required.

NOTE.—Administrations may also wish to consider whether Article 40 of the Radio Regulations and those parts of the Additional Regulations not listed above would also no longer be required.

Division A

INTRODUCTION

I. Definitions

A1 1. *Accounting authority.*

The administration of the country that has issued the license for a mobile station (or the recognized private operating agency or other entity/entities designated by the Administration in accordance with C1 to C6) to whom maritime accounts in respect of mobile stations licensed by that country may be sent.

[4]Appendix C herein.

A2 2. *Maritime account*

The account issued by the Admininstration* operating a land station in respect of telecommunication traffic exchanged between the land station and a mobile station.

A3 3. *Landline charge*

The charge relating to transmission over the general network of telecommunication channels, national and international.

A4 4. *Land station charge*

The charge relating to the use of facilities provided by the land station.

A5 5. *Mobile station charge*

The charge relating to the use of facilities provided by the mobile station.

Division B

CHARGING

I. General

1. *General*

B1 1.1 The charges for radiocommunications consist of:

B2 (a) the landline charges;

B3 (b) the land station charges;

B4 (c) the mobile station charges (if any);

B5 (d) any charges for special services for telegrams that have to be considered in the accounting; and

B6 (e) any special charges for special facilities.

B7 1.2 The landline charge for national telecommunication channels applicable to readiocommunications between a mobile station and the country of the land station is notified in gold francs to the Secretary-General of the ITU by the land station Administration*.

B8 1.3 The landline charges applicable to radiocommunications between a mobile station and a country other than that of the land station, are the collection charges fixed or applied for telecommunication services in the international relation concerned; they shall be notified in gold francs to the Secretary-General of the ITU by the land station Administration*.

B9 1.4 The land station charges shall be expressed in gold francs; Adminstrations* shall notify to the Secretary-General of the ITU the charges fixed by them.

B10 1.5 The landline and land station charges notified to the Secretary-General of the ITU in accordance with B7 to B9 will be published in Part IV of ITU List IV, the List of Coast Stations.

NOTE.—For countries that have not introduced banded collection charges for international services, only a limited number of charges, for routes in frequent use, will be published. Adminstrations* of these countries should indicate to the Secretary-General of the ITU which charges should be published in the List of Coast Stations.

B11 1.6 Where mobile station charges are applied, the Adminstration of the country that has issued the licence shall so notify the Secretary-General of the ITU for inclusion of this information in the List of Ship Stations.

B12 1.7 Mobile station charges may be applied in the radiotelegram, radiotelephone and radiotelex services in the MF and HF bands. They shall not be applied in any of the VHF services nor in any of the Mobile Satellite Services, nor in any service with automatic operation; however, mobile station charges may also be applied for radiotelegrams transmitted via VHF.

B13 1.8 Mobile station charges shall be abolished for traffic exchanged after 2359 hours GMT 31 December 1987.

B14 1.9 Until 31 December 1987, the following standardized mobile station charges shall be applied worldwide:

B15 (a) radiotelegrams, 0.40 gold francs per ordinary word;

B16 (b) radiotelephone calls in the MF band, 1.50 gold francs per minute;

B17 (c) radiotelephone calls in the HF band, 2.00 gold francs per minute;

B18 (d) radiotelex calls in the MF and HF bands, 1.50 gold francs per minute.

B19 1.10 The Adminstration of the country that has issued the license for a mobile station may authorize it to collect on board and to retain mobile station fees when mobile station charges are no longer applicable. The Administration may set an upper limit to these fees.

B20 1.11 Mobile stations must be acquainted with the tariffs necessary for charging. However, they are authorized, where necessary, to obtain such information from land stations. Charges furnished by land stations are expressed in gold francs.

2. *Tariff changes*

B21 2.1 New or modified charges shall not come into effect for international traffic for countries other than that which establishes the charges until the first day of the month following the expiry of the following periods, counted from the day after the despatch of the first notification by the Secretary-General of the ITU:

B22 (a) for traffic from mobile station to land, 1 month and 15 days;

B23 (b) for traffic from land to mobile station, 15 days, except that for changes to bring charges into line with those on competing routes the period shall be 10 days.

3. *Radiocommunications between mobile stations*

B24 3.1 When a single land station is used as an intermediary between mobile stations, two land station charges are collected. If the land station charge applicable to traffic with the origin mobile station is different from that applicable to traffic with the destination mobile station, the sum of these two charges is collected.

B25 3.2 When it is necessary to use two land stations as intermediaries between two mobile stations, the land station charge for each station is collected and also the landline charge for the section between the two land stations.

II. Radiotelegrams

1. *General*

B26 1.1 The land station charge and the mobile station charge are fixed on the basis of a word charge.

B27 1.2 The total charge for radiotelegrams is collected from the sender, with the exception of charges applicable to radiotelegrams to be redirected as the request of the addressee (as provided in Recommendation F.1).

B28 1.3 No additional charge shall be made when acknowledgement of receipt of a radiotelegram is made through another mobile station or land station by service advice, or when an intermediate mobile station assists in the forwarding of a radiotelegram.

2. *Special charging arrangements*

2.1 *Radiotelegrams of immediate general interest*

B29 2.1.1 No charge for radio transmission in the mobile service is made for radiotelegrams of immediate general interest, provided that they are:
B30 (a) distress radiotelegrams or replies thereto;
B31 (b) radiotelegrams originating in mobile stations notifying the presence of icebergs, derelicts, mines and other dangers to navigation, or announcing cyclones and storms;
B32 (c) radiotelegrams announcing unexpected phenomena threatening air navigation or the sudden occurrence of obstacles at airports;
B33 (d) radiotelegrams originating in mobile stations notifying sudden changes in the position of buoys, the working of lighthouses, devices connected with buoyage, etc.; or,
B34 (e) service radiotelegrams relating to the mobile service.

2.2 *Radiotelegrams relating to medical advice*

B35 2.2.1 No charge for radio transmission is made for radiotelegrams relating to medical advice provided that:
B36 (a) they are exchanged directly between mobile stations and land stations that are shown in the List of Radiodetermination and Special Service Stations as providing such a service, and,
B37 (b) they are addressed in accordance with the conditions indicated in that List.

2.3 *Meteorological radiotelegrams*

B38 2.3.1 Land station charges and mobile station charges applicable to meteorological readiotelegrams (see Recommendation F.1) should be reduced by at least 50 percent in all relations.

2.4 *Radiotelegrams concerning persons protected in time of war*

B39 2.4.1 Radiotelegrams concerning persons protected in time of war by the Geneva Conventions of 12 August 1949, are accepted under the conditions specified in number 4 of the Annex to the Telegraph Regulations (Geneva, 1973) taking into account CCITT Recommendation (F.1).
B40 2.4.2 The land station charges and the mobile station charges for these RCT radiotelegrams shall be decreased in the same proportion as the charges for transmission on the general network of telecommunication channels.

2.5 *Press radiotelegrams*

B41 2.5.1 For those land stations that accept press radiotelegrams, for the relations admitted the land station charge and the mobile station charge should be the same as those for ordinary private radiotelegrams reduced by 50 percent.
B42 2.5.2 Press radiotelegrams are subject to any landline press rate that may be in force in the land station country or between the land station and destination countries.

3. *Radiomaritime letters*

B43 3.1 Except as otherwise provided in B44 to B47, radiomaritime letters may be accepted, taking into account CCITT Recommendations relating to letter telegrams, if the telegram service is used to convey radiomaritime letters.
B44 3.2 The total charge shall include the postal charge (by ordinary letter or airmail letter) due for delivery in the land station country.
B45 3.3 An additional charge may be collected where delivery is to be made to a country other than that of the land station.
B46 3.4 The following charges are added where applicable:
B47 (a) charges due for special services;
B48 (b) the landline charge when transmission on the land section is exceptionally by telegraph.

III. Radiotelephone and radiotelex calls

1. *Land station and landline charges*

B49 1.1 If no uniform charges apply in respect of the land stations of a country, different land station charges shall be fixed for the MF, HF and VHF bands.
B50 1.2 The unit charge is the charge for an ordinary private call of one-minute duration.
B51 1.3 The minimum charge for a call with manual or semi-automatic operating is three charge units.
B52 1.4 Fully automatic calls should be charged by one of the following two methods, taking into account CCITT Recommendations:
B53 (a) charging minute by minute;
B54 (b) charging by periodic pulses of the type used in the national automatic service.
B55 1.5 The charge for a call is normally collected from the calling party with the exception of collect calls (if collect calls are admitted). For collect calls, the charge shall be payable by the called party.
B56 1.6 When handled through a land station, the chargeable duration of a call will be fixed at the end of the call by the land station; if two land stations are participating in the handling of the call, the opinion of that land station will prevail which has accepted the call from the originating mobile station.
B57 1.7 The decision of this land station will also be valid for international accounting.

2. *Special charges*

B58 2.1 The special charges for personal radiotelephone calls (from mobile station to land) and collect calls, if admitted, shall be applied.
B59 2.2 The charge for special call facilities shall be calculated on the basis used for an international call, applied to either:
B60 (a) the landline charge only; or
B61 (b) all components of the call charge.
B62 2.3 When the booking of a radiotelephone call that is liable to the payment of a special charge (for example, a collect call) is accompanied by a booking of a personal call, only one special charge shall be collected.

Division C

ACCOUNTING

I. General

C1 1. Charges for radiocommunications from ship-to-shore are in principle, and subject to national law and practice, to be collected from the maritime mobile station licensee:
C2 (a) by the Administration that has issued the licence, or
C3 (b) by a recognized private operating agency, or
C4 (c) by other entity or entities designated by the Administration to carry out this accounting.
C5 2. The Administration or the recognized private operating agency or the designated entity (or entities) is referred to in this Division as the "accounting authority".
C6 3. The name(s) and address(es) of the accounting authority(ies) shall be notified to the Secretary-General of the ITU for inclusion in the List of Ship Stations; the number of such names shall be limited as far as possible and should not exceed 25.
C7 4. For responsibility for payment of accounts rendered in accordance with C1 to C6, see C46 to C49.

II. Establishment of accounts

1. *Maritime accounts*

C8 1.1 In the case of radiocommunications originating in mobile stations, the land station Administration* shall depit the accounting authority for the origin mobile station with:
C9 (a) the land station charges;
C10 (b) the landline charges;
C11 (c) the total charges collected for prepaid replies;
C12 (d) any charges for special services for telegrams;
C13 (e) where appropriate, the special charges for radiotelephone calls with special facilities;
C14 (f) where appropriate, postal charges on radiomaritime letters.
C15 1.2 In the case of radiocommunications addressed to mobile stations and originating in a country other than that of the land station, the land station's Administration* shall debit the Administration* of the country from which the radiocommunication originated with:
C16 (a) the land station charges; and
C17 (b) the mobile station charges (if any).
C18 1.3 In the case of a radiotelegram that has been forwarded by means other than radio (see Recommendation E.190/F.110; B57 and B58), only the land station charge shall be debited.
C19 1.4 In the case of a completed radiocommunication in the direction to a mobile station, the land station Administration* credits the accounting authority for the destination mobile station with:
C20 (a) the mobile station charge (if any), and
C21 (b) the total charge collected for or prepaid reply, if occasion arises.
C22 1.5 In the case of radiocommunication exchanged between mobile stations:
C23 1.5.1 through the medium of a single land station: the land station Administration* debits the accounting authority for the origin mobile station with the appropriate charges. Thereafter, if occasion arises, the provisions of C19 to C21 are applied.
C24 1.5.2 through the medium of two land stations: the first land station Administration* debits the accounting authority for the origin mobile station with the appropriate charges, taking into account C8 to C14. Thereafter, C15 to C18 and C19 to C21 are applied by the second land station, the first land station being regarded as the office of origin as far as the accounts are concerned.
C25 1.6 For accounting purposes, collect calls shall be regarded as originating in the destination country or mobile station.
C26 1.7 Accounts are prepared monthly by the land station Administration* and rendered by it to the accounting authority responsible for the mobile station, with the exception referred to in C30.

2. *International accounts*

C27 2.1 The international landline charges shall be included in the international

telegraph and telephone accounts and shall be accounted for in accordance with the provisions of the Telegraph Regulations and Telephone Regulations, taking into account CCITT Recommendations. The agreed international accounting rates shall apply.

C28 2.2 The country on whose territory is established a land station serving as intermediary for the exchange of radiocommunications betwen a mobile station and another country, is considered, as far as the application of landline charges is concerned, as the origin or destination country and not as a transit country.

C29 2.3 In principle, land station charges and mobile station charges shall not be entered in the international telegraph and telephone accounts.

C30 2.4 However, by previous agreements, Administrations* may establish a system by which the land station charges and the mobile station charges are included in the international accounts by the origin Administration*.

3. *Accounting for Single-operator Service*

C31 3.1 Except as otherwise provided, the following provisions apply to single-operator radiotelephone and radiotelex services, in which land subscribers and land station operators of different countries call each other without the aid of an intermediate operator.

C32 3.2 The operating and charging procedures are described in Recommendation E.190/F.110.

C33 3.3 The billing and settlement procedures for single-operator radio-maritime calls to mobile stations are as follows:

C34 3.3.1 Except as provided for in C36, the call details are forwarded at least monthly to the Administration* in question in the caller's country.

C35 3.3.2 The Administration* charges the call in its internal billing system and includes the total amount in a quarterly statement of accounts to the credit of the land station Administration*.

C36 3.3.3 In the case of collect radiotelephone calls to a mobile station in the international maritime mobile service (if admitted by the land station Administration*), the total amount of the bill shall be debited to the mobile station licensee in the maritime accounts (see C8 to C14).

C37 3.3.4 If bilaterally agreed between the Administrations* concerned, the land station Administration* may collect the charge by presenting a bill directly either to the foreign subscriber who booked the call or to his registered representative in the land station country.

III. Exchange and verification of maritime accounts

C38 1. Exchange and verification of accounts shall be carried out in accordance with the Telegraph Regulations and the Telephone Regulations, taking into account CCITT Recommendations.

C39 2. The accounts, in duplicate, are forwarded before the end of the third month following that to which they relate.

C40 2. Radiotelegrams, radiotelephone calls and radiotelex calls shall be entered individually with all necessary particulars in the monthly accounts that serve as a basis for the accounting mentioned in this division.

C41 4. The entries in accounts shall be spaced in such a way that the duplicate of the account can be divided and used for the accounting with the mobile station licensee by the accounting authority for the mobile stations. The entries shall be grouped under mobile station name and call sign, with a total charge shown for each mobile station.

C42 5. However, Administrations* may establish accounts for each mobile station with all necessary particulars mentioned above. These individual accounts shall be included in a recapitulatory statement.

C43 6. A specimen statement is given in Annex 1.

C44 7. In principle, an account shall be considered as accepted without the need for specific notification of acceptance to the Administration* that sent it.

C45 8. However, any accounting authority shall have the right to question the contents of an account for a period of six months after dispatch of the account.

C46 9. All maritime accounts shall be paid by the accounting authority without delay and in any case within 6 months after dispatch of the account.

C47 10. If international maritime accounts remain upaid after 6 months, the Administration that has licensed the mobile station shall on request take all possible steps, within the limits of applicable national law, to ensure settlement of the accounts from the licensee.

C48 11. In the case referred to in C45, if the account is seriously delayed in transit, the receiving accounting authority should at once notify the originating Administration* that queries and payment may be delayed. However, the delay shall not exceed 3 months from the date of receipt of the account.

C49 12. The debtor accounting authority may refuse the settlement and adjustment of accounts presented more than eighteen months after the date of handing-in of the radiotelegrams or the date of establishment of the radiotelephone calls or radiotelex calls to which the accounts relate.

IV. Payment of balances

C50 1. Payment of balances shall be carried out in accordance with the Telegraph Regulations and the Telephone Regulations.

V. Archives

C51 1. The originals of radiotelegrams and documents relating to radiotelegrams, radiotelephone calls and radiotelex calls retained by the Administrations* shall be held, with all necessary precautions from the point of view of secrecy, until the settlement of the relative accounts and, in any case, for at least six months counting from the month in which the accounts were sent. Administrations* may preserve the information by any other means, e.g. magnetic or electronic records.

C52 2. However, should an Administration* deem it desirable to destroy such documents before the above-mentioned period, and hence is not in a position to carry out an inquiry in respect of the services for which it is responsible, such Administration* shall bear all the consequences both as regards refund of charges and any difference in the accounts in question that might otherwise have been observed.

Division D

REFUNDS

I. Radiotelegrams

1. *General*

D1 1.1 The provisions of Recommendation F.42, Division C shall apply with the following exceptions.

2. *Radiomaritime letters*

D2 2.1 When a radiomaritime letter fails to reach its destination due to the failure of the postal service, only the charges in respect to the services not carried out are refunded.

D3 2.2 Refund of charges is admitted when, through the fault of the telegraph or radiotelegraph service, a radiomaritime letter has not reached its destination, as well as in the cases provided for in Article 12 of the Telegraph Regulations (Geneva, 1973), taking into account CCITT Recommendations.

II. Radiotelephone and radiotelex calls

D4 1. When, through any fault of the service, the booking of a call is not followed by the calling and called stations being placed in communication, no charge shall be payable. If the amount of the charge has been paid, it shall be refunded.

D5 2. In order to simplify operating and accounting procedures, Administrations* may decide that no charge shall be payable when a requested connection has not been set up, whatever the reason.

D6 3. However, Administration* may decide to collect charges in cases where there is no fault of service. In that case the basis of charging shall be notified to the Secretary-General of the ITU for inclusion in the List of Coast Stations.

D7 4. When, through any fault of the service, difficulty is experienced in the course of a call, the chargeable duration of the call shall be reduced to the total time during which transmission conditions have been satisfactory, taking into account CCITTRecommendations.

ANNEX 1

[To recommendation D.90/F.111]

Specimen form of statement of maritime accounts

Account between country A and country B in respect of radiotelegrams, radiotelephone calls, and radiotelex calls sent through the land stations of country A during the month of——

Date	Land station	Origin	Call sign	Destination	Number of		Category	Credit or debit for country A (gold francs)		Remarks
					Words	Minutes		Credit	Debit	

[To recommendation D.90/F.111]

Correspondence between the 1976 edition of the radio regulations and the additional radio regulations and the provisions of recommendation D.90/F.111

Radio regulations		Status	Recommendation D.90/F.111	Remarks
Article	Provision			
37A	1496A			See the annex to recommendation E.190/F.110.
38	1497 to 1499			Do.
39	1500 to 1504			Do.
40A	1559AA	SUP		
	1559AAA	MOD	A1	
	1559AAB	MOD	A3	
	1559AB	NOC	C29	C30 added to cover special agreements.
	1559AC to AE	MOD	B1 to B6	Combined with 2062 AA to AE, 2087 AB to AF, and 2087 BB to BF.
	1559AF	MOD		Covered in considering d.
	1559AG	MOD	C27	Combined with 1559 BH, BL, and BP.
	1559AH and AH.1	MOD	C29 and C30	
	1559AI	MOD	C26	
	1559AJ	MOD	C28	
	1559AK	SUP		See C1 to C7.
	1559AL	MOD	C26	
	1559AM	MOD	C47	
	1559AN	MOD	C6	
	1559AO	MOD	C8 to C14	Expanded to cover radiotelex and radiotelephone and to include postal charges for radiomaritime letters; combined with 1559 BC and BK.
	1559AP	SUP		See 1559 AF and AG above.
	1559 AQ and AR	MOD	B8	Combined with 1559 BE and BM.
	1559AS	SUP		Covered in recommendations F.1 and F.42.
	1559AT	MOD	C15 to C18	Combined with 1559 BG and BO.
	1559AU	MOD	C19	Radiotelex and radiotelephone included (1559 BN and BF).
	1559AV	MOD	C20	Do.
	1559AW	MOD	C21	Do.
	1559AX	SUP		Covered in recommendations F.1 and F.42; see also C25.
	1559AY	MOD	C22	Includes radiotelex and radiotelephone.
	1559AZ	SUP		
	1559BA	MOD	C23	Do.
	1559BB	MOD	C24	Do.
	1559BC	MOD	C8 to C14	Expanded to cover radiotelegrams and radiotelex; combined with 1559 AO and BK.
	1559BD	SUP		See 1559 AF and AG.
	1559BE	MOD	B8	Combined with 1559 AQ, AR, and BM.
	1559BF	MOD	C19 and C20	Combined with 1559 AU, AV, and BN.
	1559BG	MOD	C15 to C17, C19, and C20	Combined with 1559 AT and BO.
	1559BH	SUP		See 1559 AF and AG.
	1559BI	SUP		See 1559AY–BB.
	1559BJ	MOD	C25	Combined with 1559BR.
	1559BK	MOD	C8 to C10	Combined with 1559 AO and BC.
	1559BL	SUP		See 1559 AF and AG.
	1559BM	MOD	B8	Combined with 1559 AQ, AR, and BE.
	1559BN	MOD	C19 and C20	Combined with 1559 AU, AV, and BF.
	1559BO	MOD	C15 to C17, C19, and C20	Combined with 1559 AT and BG.
	1559BP	SUP		See 1559 AF and AG.
	1559BQ	SUP		See 1559 AY to BB.
	1559BR	MOD	C25	Combined with 1559BJ.
	1559BS	MOD	C38 and C50	
	1559BT	MOD	C39	
	1559BU	MOD	C40 to C43	
	1559BV	MOD	C44	
	1559BW	MOD	C45	
	1559BX	MOD	C48 and C49	
	1559BY	MOD	C51	Provision made for magnetic or electrical recording of accounting data.
	1559BZ	NOC	C52	
App. 21A		MOD	C43	See annex 1 to this recommendation.
Additional radio regulations				
1A	2004A–D			See recommendation E.190/F.110.
2	2005 to 2014			Do.

Correspondence between the 1976 edition of the radio regulations and the additional radio regulations and the provisions of recommendation D.90/F.111—Continued

Radio regulations		Status	Recommendation D.90/F.111	Remarks
Article	Provision			
3	2015 to 2017			See recommendation E.190/F.110.
4A	2062AA	MOD	B1	Combined with 1559AC-AE, 2087AB-AF, and 2087BB-BF.
	2062AB	MOD	B4	Do.
	2062AC	MOD	B3	Do.
	2062AD	MOD	B2	Do.
	2062AE	MOD	B5	Do.
	2062AF	MOD	B26	Minimum numbers of words for the various telegram classes are shown individually in recommendation F.1.
	2062 AG and AH	MOD	B7 to B10 and B11	Combined with 2087 AJ and BK.
	2062AI	MOD	B24	Combined with 2087 AK, AL, BL, and BM.
	2062AJ	MOD	B25	Do.
	2062AK	SUP		See recommendation E.190/F.110.
	2062AL	MOD	B7	Combined with 2087 AH and BI.
	2062 AM and AN			See recommendation E.190/F.110.
	2062AO-AR	MOD	B27	Alined with recommendation F.1 (express delivery deleted, inadmissible combinations or alterations of words no longer applicable).
	2062AS	MOD	B20	Combined with 2087 AT and BU.
	2062AT	SUP		See B9 and B20.
	2062AU to AY	MOD	B21 to B23	
	2062AZ	MOD	B29 to B34	Based on art. 4, 2046 to 2051; see also recommendation F.1.
	2062BA	MOD	B35 to B37	Based on art. 4, 2052.
	2062BB	MOD	B38	Based on art. 4, 2053 to 2057 but see recommendation F.1 for the detailed conditions of acceptance.
	2062 BC to BF	MOD	B41 and B42	Detailed provisions in recommendation F.1.
	2062BG	MOD	B39	Do.
	2062BH	MOD	B40	Do.
5A	2087AA	SUP		
	2087 AB to AF	MOD	B1 to B6	Combined with 1559 AC to AE, 2062 AA to AE, and 2087 BB to BF.
	2087AG	MOD	B49 to B51	Combined with 2087BG.
	2087AH	MOD	B7	Combined with 2067AL and 2087BI.
	2087AI	MOD	B12, B16, and B17	
	2087AJ	MOD	B9 and B11	Combined with 2062AG, 2062AH, and 2087BK.
	2087AK	MOD	B24	Combined with 2062 AI and AJ; 2087 BL and BM.
	2087AL	MOD	B25	Do.
Additional radio regulations				
	2087AM	MOD	B56 and B57	Combined with 2087BN.
	2087AN	SUP		
	2087AO	MOD	D4	Combined with 2087BP.
	2087AP	MOD	D5	Combined with 2087BQ.
	2087AQ	MOD	D6	Combined with 2087BR.
	2087AR	MOD	D7	Combined with 2087BS.
	2087AS	MOD	B55	Combined with 2087BT.
	2087AT	MOD	B20	Combined with 2062AS and 2087BU.
	2087AU	SUP		See 2062 AU to AY.
	2087 AV to AZ	MOD	B58 to B62	Combined with 2087 BW to BZ.
5B	2087BA	SUP		
	2087 BB to BF	MOD	B1 To B6	Combined with 1559 AC to AE, 2062 AA to AE, and 2087 AB to AE.
	2087BG	MOD	B49 to B51	Combined with 2087AG.
	2087BH	MOD	B52 to B54	
	2087BI	MOD	B7	Combined with 2062AL and 2087AH.
	2087BJ	MOD	B12 and B18	
	2087BK	MOD	B9 and B11	Combined with 2062 AG and AH, 2087AJ.
	2087BL	MOD	B24	Combined with 2062 AI and AJ, 2087 AK and AL.
	2087BM	MOD	B25	Do.
	2087BN	MOD	B56 and B57	Combined with 2087AM.
	2087BO	SUP		
	2087BP	MOD	D4	Combined with 2087AO.
	2087BQ	MOD	D5	Combined with 2087AP.
	2087BR	MOD	D6	Combined with 2087AQ.
	2087BS	MOD	D7	Combined with 2087AR.
	2087BT	MOD	B55	Combined with 2087AS.
	2087BU	MOD	B20	Combined with 2062AS and 2087AT.
	2087BV	SUP		See 2062 AU to AY.
	2087 BW to BZ	MOD	B58 to B62	Combined with 2087 AV to AZ.
6A	2106A-F			See recommendation E.190/F.110.
	2106G	MOD	B43	See also recommendation E.190/F.110 B72.
	21 OH and I			See recommendation E.190/F.110.
	2106J	MOD	B44 and B45	
	2106K-M	MOD	B46 to B48	
	2106N			Do.
	2106O	SUP		Covered in division C.
	2106P	NOC	D2	
	2106Q	MOD	D3	
7a	2123			See recommendation E.190/F.110.
8	2124 to 2136			Do.
9	2137 to 2151			Do.
10A	2158A to 2158D			Do.
11	2159 and 2160			Do.

Notes

1. Under "status," MOD=modified, SUP=suppressed, and NOC=no change (except for the cases in note 2).
2. Where necessary the term "coast station" has been replaced with "land station," "aeronautical station" with "land station," "ship" with "mobile station," and "message" with "telegram."

APPENDIX B

DRAFT RECOMMENDATION E.190/F.110 ("Y")

Operational Provisions for the Maritime Mobile Service

INTRODUCTORY NOTES

1. For the purposes of this Recommendaton, the term "Maritime Mobile Service" should be understood to embrace the Maritime Mobile Satellite Service as well as the MF, HF, and VHF radio media, unless specifically stated otherwise.

2. Throughout this Recommendation the asterisk * used after "Administration (s)" means that recognized private operating agency/agencies are included.

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2. Priority.
3. Routing of calls.
4. Information to be supplied by the calling party.
5. Call duration.
6. Validity of requests.
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Chapter II Traffic from mobile stations:
1. Manual service.
2. Single-operator service.
3. Automatic service.
4. Procedures.

Chapter III Traffic to mobile stations:
1. Manual procedure.
2. Single-operator procedure.
3. Automatic procedure.

Annex—Correspondence between the 1976 Edition of the Radio Regulations and the Additional Radio Regulations and the Provisions of Recommendation E.190/F.110

PREAMBLE

The CCITT

considering

(a) Resolution No. Mar2-23 of the World Maritime Adminstrative Radio Conference (Geneva, 1974) relating to the interpretation of the provisions affecting the public correspondence services;

(b) Resolution No. Sat-10 of the World Administrative Radio Conference for the planning of the broadcasting satellite service in the 12 GHz band relating to the possible re-arrangement of the Radio Regulations and the Additional Radio Regulations;

(c) That the provisions of the Telegraph Regulations and the Telephone Regulations (Geneva, 1973) and the Protocols annexed thereto, taking into account CCITT Recommendations (particularly those in the E and F series) shall apply to radiocommunications;

(d) That the VIth Plenary Assembly of the CCITT (Geneva, 1976) adopted the Recommendation below, with the exception of the points relating to mobile station charges and a single accounting authority, which points have now been considered further and have resulted in amendments being carried into the texts given below;

(e) That the operational provisions for the Maritime Mobile Service and the Maritime Mobile Satellite Service are presently contained in the Radio Regulations and the Additional Radio Regulations, which will remain in force until they are reviewed by the World Administrative Radio Conference (1979),

recommends

That Administrations take this Recommendation into account when formulating their proposals for consideration at the World Administrative Radio Conference for the General Revision of the Radio Regulations and the Additional Radio Regulations (Geneva, 1979). The Annex shows the correspondence between the 1976 edition of the Radio Regulations and the Additional Radio Regulations and the provisions of this Recommendation. It is considered that all the basic operating provisions in this Recommendation are covered in the Telegraph and Telephone Regulations (Geneva, 1973) and therefore the only provision that requires regulatory status is one requiring observance of those Regulations in the Maritime Mobile Service (see section I of the preliminary draft Article in Annex 3[5] of Recommendation D.90/F.111[6]). A consequence of this is that Articles 37A, 38 and 39 of the Radio Regulations and Articles 1A, 7A and 10A of the Additional Radio Regulations would no longer be required.

NOTE.—Administrations may also wish to consider whether Article 37 of the Radio Regulations and those parts of the Additional Radio Regulations not listed above would also no longer be required.

Division A

GENERAL

I. Order of priority

A1. 1. The order of priority for communications[7] in the maritime mobile service shall be as follows, except where technically impracticable:

A2 1.1 Distress calls, distress messages and distress traffic;

A3 1.2 Communications preceded by the urgency signal;

A4 1.3 Communications preceded by the safety signal;

A5 1.4 Communications relating to radio direction-finding;

A6 1.5 Communications relating to the navigation and safe movement of aircraft engaged in search and rescue operations;

A7 1.6 Communications relating to the navigation, movements and needs of ships, and weather observation messages destined for an official meteorological service;

A8 1.7 Radiotelegrams relative to the application of the United Nations Charts (ETATPRIORITENATIONS);

A9 1.8 Government radiotelegrams with priority (ETATPRIORITE) and government calls for which priority has been expressly requested;

A10 1.9 Service communications relating to the working of the telecommunication service or to communications previously exchanged;

A11 1.10 Government communications other than those shown in A9, ordinary private communications, RCT radiotelegrams and press radiotelegrams;

A12 1.11 Radiomaritime letters.

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[5] Appendix C herein.

[6] Published in GM SMM-No. 16.

[7] The term *communication* as used in A1 to A12 means radiotelegram, radiotelephone calls and radiotelex calls.

Division B

RADIOTELEGRAMS

I. Preparation and handing-in of radiotelegrams

1. *Plain language*

B1 1.1 Groups of letters and figures from the International Code of Signals are considered as plain language in radiotelegrams.

2. *Indication of station of origin*

B2 2.1 When, because of duplication of names, the name of a station is followed by it call sign, the latter shall be joined to the name of the station by a fraction bar. Examples: OREGON/OZOC (not OREGONOZOC); ROSE/DDOR (not ROSEDDOR).

B3 2.2 When a land station retransmits over the general network of telecommunication channels a radiototelegram received from a mobile station, it shall transmit, as office of origin, the name of the mobile station in which the radiotelegram originated as this name appears in the appropriate list of stations, followed by its own name. Where appropriate, B2 shall also apply.

B4 2.3 In order to avoid any confusion with a telegraph office or a fixed station of the same name, the land station may, if desirable, complete the indication of the name of the mobile station of origin by the work SHIP of AIRCRAFT, placed before the station of origin.

3. *Time of handing-in*

B5 3.1 In the transmission of radiotelegrams originating in a mobile station, the date and time of handing-in at this station are given by two groups of figures in the preamble line, the first indicating the day of the month (1 to 31) and the second consisting of a group of figures (0001 to 2400) indicating the hours and the minutes.

B6 3.2 The time of handing-in is indicated in Greenwich Mean Time (GMT).

4. *Address*

B7 4.1 The address of radiotelegrams destined for mobile stations must be as complete as possible and must include:

B8 (a) the name or the designation of the addressee, with supplementary particulars, if necessary;

B9 (b) the name of the mobile station followed, when necessary, by its call sign, the letter joined by a fraction bar to the name of the station as shown in the List of Ship Stations;

B10 (c) the name of the land station through which the radiotelegram is to be forwarded, as it appears in the appropriate list of stations.

B11 4.2 If the mobile station does not appear in the List of Ship Stations, the sender should, if possible, indicate the nationality and route followed by the mobile station.

B12 4.3 However, the name and call sign required under B9 may be replaced, at the risk of the sender, by particulars of the passage made by such mobile station, indicated by the names of the ports or airports of departure and of destination, or by any equivalent indication.

B13 4.4 Mobile stations not suplied with the international List of Telegraph Offices may add to the telegraph office of destination:
the name of the territorial subdivision;
the destination or country;
both of the above;
if it is doubtful whether, without such addition, the radiotelegram could be correctly routed without difficulty.

B14 4.5 The land station operator receiving the radiotelegram retains or deletes these particulars, or further amends the name of the office of destination as is necessary or sufficient for forwarding the radiotelegram to its proper destination.

II. Counting of words

B15 1. The word count of the office of origin is decisive in the case of radiotelegrams destined for mobile stations, and that of the land station is decisive in the case of radiotelegrams originating in mobile stations.

B16 2. If two land stations participate in the handling of a radiotelegram, the opinion of the land station that has accepted the radiotelegram from the originating mobile station will prevail. The decision of this land station will also be valid for international accounting.

III. Routing of Radiotelegrams

B17 1. Radiotelegrams should be routed via the land station that is considered most suitable in relation to the mobile station concerned.

B18 2. However, to expedite or to facilitate the routing of radiotelegrams to a land station, a mobile station may transmit them to another mobile station. The latter shall dispose of such radiotelegrams in the same manner as if they originated with itself (see B38 to B41).

B19 3. If the sender of a radiotelegram handed in at a mobile station has indicated the land station to which he desires his radiotelegram to be sent, the mobile station shall, in order to effect this transmission to the land station indicated wait, if necessary until the conditions specified in B17 and B18 are fulfilled.

B20 4. In order to facilitate disposal of traffic, and subject to such restrictions as individual Administrations may impose, land stations may, in exceptional circumstances and with discretion, without incurring additional charges, exchange radiotelegrams and service messages relating thereto.

IV. Transmission of Radiotelegrams

1. *Doubtful reception*

B21 1.1 In the mobile service, when communication becomes difficult, the two stations in communication make every effort to complete the radiotelegram in course of transmission. The receiving station may request not more than two repetitions of a radiotelegram of which the reception is doubtful.

B22 1.2 If this triple transmission is ineffective, the radiotelegram is kept on hand in case a favourable opportunity for completing its transmission occurs.

B23 1.3 If the transmitting station considers that it will not be possible to re-establish communication with the receiving station within twenty-four hours, it proceeds as follows:

B24 1.3.1 If the transmitting station is a mobile station, it immediately informs that sender of the reason for the non-transmission of his radiotelegram. The sender may then request:

B25 (a) that the radiotelegram be transmitted through another land station or through other mobile stations; or

B26 (b) that the radiotelegram be held until it can be transmitted without additional charge; or

B27 (c) that the radiotelegram be cancelled.

B28 1.3.2. If the transmitting station is a land station, it applies the provisions of B42 to B58 to the radiotelegram.

B29 1.4 When a mobile station subsequently transmits a radiotelegram thus held to the land station that incompletely received it, this new transmission must bear the service instruction AMPLIATION at the end of the preamble line of the radiotelegram.

B30 1.5 However, if the radiotelegram is transmitted to another land station subject to the same Administration*, the new transmission must bear, at the end of the preamble line, the service instruction AMPLIATION VIA . . . (insert here the call sign of the land station to which the radiotelegram was transmitted in the first instance) and the Administration* in question may claim only the charges relating to a single transmission.

B31 1.6 The other land station, which thus forwards the radiotelegram, may claim from the origin mobile station any additional charges resulting from the transmission of the radiotelegram over the general network of telecommunication channels between itself and the office of destination.

B32 1.7 When the lans station designated in the address as the station by which the radiotelegram is to be forwarded cannot reach the destination mobile station and has reason to believe that such mobile station is within the service area of another land station of the Administration* to which it is itself subject, it may, if no additional charge is incurred thereby, forward the radiotelegram to this other land station.

B33 1.8 A station of the mobile service that has received a radiotelegram and has been unuable to acknowledge its receipt in the usual way, must take the first favourable opportunity to give such acknowledgement.

B34 1.9 When the acknowledgement of receipt of a radiotelegram transmitted between a mobile station and a land station cannot be given direct, it is forwarded through another mobile or land station by service advice if the latter is able to communicate with the station that has transmitted the radiotelegram is question. In any case, no additional charge shall result.

2. *Long distance radiocommunications*

B35 2.1 Administrations* reserve the right to organize a long-distance radiocommunication service between land stations and mobile station, with deferred acknowledgement of receipt or without any acknowledgement of receipt.

B36 2.2 Each Administration* designates the land station or stations participating in the long-distance radio service. An indication to this effect shall appear in the list of Coast Stations.

B37 2.3 When there is doubt about the accuracy of any part of a radiotelegram transmitted under either of the systems mentioned in B35, the indication "doubtful reception" is entered on the copy delivered to the addressee, and the doubtful words or groups of words are underlined. If words are missing, blanks are left in the places where these words should be.

3. Routing retransmission by mobile stations

B38 3.1 When a land station cannot reach the mobile station for which a radiotelegram is destined, the land station may, in order to forward the radiotelegram to its destination, have recourse to the help of another mobile station provided that the latter consents. The radiotelegram is then transmitted to this other mobile station. The help of the latter is given free of charge.

B39 3.2 The same provision is also applicable to traffic from mobile stations to land stations, when necessary.

B40 3.3 The station assisting in the free retransmission in accordance with B38 and B39 must enter the service abbreviation QSP . . . (name or call sign of the mobile station) at the end of the preamble line of the radiotelegram.

B41 3.4 In order that a radiotelegram thus forwarded may be considered as having reached its destination, the station that has made use of this indirect route must have obtained the regular acknowledgement of receipt, either direct or by an indirect route, from the mobile station for which the radiotelegram was destined or from the land station to which it was to be forwarded, as the case may be.

4. Period of retention of radiotelegrams at land stations

B42 4.1 The sender of a radiotelegram destined for a mobile station may specify the number of days during which the land station may hold the radiotelegram.

B43 4.2 In that case, the service indication Jx (x days), specifying the number of days (ten at the most) exclusive of the day of handing-in of the radiotelegram, shall be shown before the address.

B44 4.3 When it has not been possible for a land station to transmit to a mobile station:

(a) a radiotelegram bearing the service indication Jx within the prescribed period, or

(b) a radiotelegram not bearing this service indication up to the morning of the fourth day following the date of handing-in,

the land station informs the office of origin, which notifies the sender.

B45 4.4 The sender of the radiotelegram may then ask, by paid service advice addressed to the land station, either that his radiotelegram be cancelled as regards the section between the land station and the mobile station or that further attempts at transmitting it to the mobile station be made during a period of another seven days at the most.

B46 4.5 Failing such a request, the radiotelegram is treated as undelivered by the land station three days after the dispatch of the advice of non-transmission.

B47 4.6 The same applies upon the expiry of any period for further attemtps that may have been requested by the sender if it has been impossible to reach the mobile station.

B48 4.7 The office of origin shall be immediately advised if the land station transmits the radiotelegram during the period of three days mentioned in B46. The same shall apply if the land station transmits the radiotelegram during any additional period that may have been requested by the sender.

B49 4.8 On the morning of the day following that day on which a radiotelegram to a mobile station, is treated as undelivered by the land station, the latter shall advise the office of origin, which notifies the sender.

B50 4.9 The periods mentioned in B44 to B47 shall be ignored if the land station is sure that the mobile station will soon come within its service area.

B51 4.10 On the other hand, the lapse of those periods is not awaited when the land station is sure that the mobile station, being in course of a voyage, either has definitely left its service area or will not enter it.

B52 4.11 If there is reason to believe that no other land station of the Administration* to which it is subject is or will be in touch with it, the land station cancels the radiotelegram as far as concerns the section between itself and the mobile station and informs the office of origin, which notifies the sender.

B53 4.12 In the contrary case, the land station forwards the radiotelegram to the land station believed to be in touch with the mobile station, provided, however, that no additional charge results therefrom.

B54 4.13 The land station that carries out the redirection alters the address of the radiotelegram by placing after the name of the mobile station that of the new land station charged with the transmission and adding at the end of the preamble line the service instruction REDIRECTED FROM . . . RADIO, which must be transmitted throughout the course of the radiotelegram.

B55 4.14 If, within the limits of the requisite period of retention of radiotelegrams, the land station that has redirected a radiotelegram to another land station is subsequently in a position to transmit the radiotelegram direct to the destination mobile station, it does so by inserting the service instruction AMPLIATION at the end of the preamble line.

B56 4.15 It shall then transmit to the land station to which the radiotelegram had been redirected a service advice informing the latter of the transmission of the said radiotelegram.

B57 4.16 When a radiotelegram cannot be transmitted to a mobile station owing to the arrival of the latter in a port near the land station, the latter station may, according to circumstances, forward the radiotelegram to the mobile station by other means of communication, at the same time informing the office of origin by service advice of the delivery.

B58 4.17 In this case (B57), the land station charge is retained by the Administration* to which the land station is subject and the mobile station charge is refunded to the sender by the origin Administration*.

V. Advice of Non-delivery

B59 1. When, for any reason, a radiotelegram originating in a mobile station and destined for a place on land cannot be delivered to the addressee, an advice of non-delivery is addressed to the land station that received the radiotelegram.

B60 2. After checking the address, the land station forwards the advice, when possible, to the mobile station, if necessary by way of another land station of the same country or of a neighbouring country, as far as existing conditions or special agreements permit.

B62 4. In the case of a radiotelegram originating on land, this service advice is sent, whenever possible, to the land station through which the radiotelegram passed, or, if necessary, to another land station of the same county or of a neighbouring country, as far as existing conditions or special arrangements permit.

B63 5. In such cases the name or call sign of the station from which the radiotelegram was received is quoted.

VI. Radiomaritime Letters

B64 1. Each Administration* may organize a service of radiomaritime letters between mobile stations and its land stations.

B65 2. Such correspondence is transmitted by radio between the mobile and the land stations.

B66 3. They may be forwarded on the land section:

B67 (a) wholly or partly by post (ordinary or airmail);

B68 (b) exceptionally by telegraph, in which case delivery is subject to the periods of delay fixed for letter telegrams.

B69 4. Radio retransmission of radiomaritime letters is not permitted in the mobile service.

B70 5. Radiomaritime letters shall be addressed only to places in the country in which the land station is situated, unless it is indicated in the List of Coast Stations that the station concerned will accept such traffic for onward transmission by post to places in other countries.

B71 6. Radiomaritime letters bear the service indication SLT. This indication precedes the address.

B72 7. Except as otherwise provided in B64 to B74, radiomaritime letters may be accepted, taking into account CCITT Recommendations relating to letter telegrams, if the telegram service is used to convey radiomaritime letters.

B73 8. The address must enable delivery to be effected without enquiry or requests for information. Registered or abbreviated addresses are admitted when, exceptionally, radiomaritime letters are forwarded telegraphically on the land section.

B74 9. Radiomaritime letters rank for radio transmission after ordinary radiotelegrams on hand. Those that have not been transmitted within 24 hours of handing-in are sent concurrently with ordinary radiotelegrams.

VII. Special Services

B75 1. Telegrams with special services are admitted, provided that the Administrations* concerned accept them.

B76 2. Refer to Recommendation F.1 A362 to A422 for the provisions concerning special services that may be applied for telegrams.

Division C

RADIOTELEX

I. General

1. Routing of calls

C1 1.1 A radiotelex call should be set up via the land station that is considered most suitable in relation to the mobile station concerned.

C2 1.2 For radiotelex calls in the direction land station to mobile station, the caller should give the geographical position if possible and may also indicate the land station to be used. Such requests should be respected as far as is practicable.

C3 1.3 For radiotelex calls in the direction mobile station to land station, the mobile station shall call the land station it desires to use. The land station shall either handle the call itself or advise the mobile station to use another land station that is more suitable to the mobile station.

2. *Information to be supplied, as necessary, by the calling party*

C4 2.1 Calls to a mobile station:
(a) telex number and/or answerback code of the calling subscriber;
(b) telex number of the mobile station;
(c) name or call sign of the mobile station; (d) telex number and/or name of the land station to be used, or the approximate geographical position of the mobile station.

C5 2.2 Calls from a mobile station:
(a) telex number of the mobile station;
(b) destination country and/or network;
(c) called subscriber's telex number and/or answerback code.

3. *Call duration*

C6 3.1 When handled through a land station, the chargeable duration of a call will be fixed at the end of the call by the land station.

C7 3.2 If two land stations participate in the handling of the call, the opinion of the land station that has accepted the call from the originating mobile station shall prevail.

C8 3.3 When, through any fault of the service, difficulty is experienced in the course of a call, the chargeable duration shall be reduced automatically or manually to the total time during which transmission conditions were satisfactory, taking into acount CCITT recommendations (F.60 and F.61).

4. *Validity of requests*

C9 4.1 If it becomes obvious that the required mobile station is outside the coverage area of the land station, the caller shall be informed as soon as possible in order to have the call cancelled.

5. *Exchange of radiotelegrams by radiotelex*

C10 5.1 Stations of the maritime service that are equipped for radiotelex may transmit and receive radiotelegrams by means of radi telex.

II. Traffic from mobile stations.

1. *Manual service*

C11 1.1 The land station operator applies manual procedures; i.e. he will contact the international telex centre in his own country if neither single-operator (C12) nor automatic working is possible.

2. *Single-operator service*

C12 2.1 The land station operator applies semi-automatic procedures; i.e. he selects the called subscriber directly via the automatic telex network if fully automatic working is not possible.

3. *Automatic service*

C13 3.1 Whenever possible fully automatic procedures should be used; i.e. the calling subscriber should contact the called subscriber directly without the aid of an operator.

C14 3.2 After connection with the desired land station is established, the mobile station operator should select directly the appropriate telex destination code (Recommendation F.69) and the number of the subscriber of an Administraton's* telex network.

4. *Procedures*

C15 4.1 The manual, semi-automatic and fully automatic procedures for the terrestrial telex network, as laid down in Recommendations F.60 and F.61, should be taken into account.

III. Traffic to mobile stations

1. *Manual procedure*

1.1 *Booking*

C16 1.1.1 The subscriber should make his booking at the international telex centre of the outgoing country or network.

C17 1.1.2 If conditions permit, the international telex position should select the foreign land station in question directly. Otherwise the international telex position of the land station country should be selected to give the necessary assistance to obtain contact with the land station in question.

1.2 *Setting up*

C18 1.2.1 The land station operator obtains the caller directly or with the assistance of his own international telex position, which selects the caller. Otherwise he selects his own international telex position in order to be connected to the international telex position of the outgoing country, which then selects the caller.

C19 1.2.2 Within 24 hours of the call's termination, the land station shall pass the following information to the international telex centre of the origin country, where it is recorded for charging and accounting purposes:
(a) the calling subscriber's telex number;
(b) the mobile station's call sign;
(c) the chargeable duration of the call;
(d) the landstation charge to be collected;
(e) the mobile station charge to be collected.

2. *Single-operator procedure* (direct access by the calling subscriber to a foreign land station)

2.1 *Booking*

C20 2.1.1 The subscriber selects the foreign land station in question using automatic direct selection and submits the call details to the land station operator.

C21 2.1.2 Where an Administration* permits its subscribers to book a call directly with a land station in another country, the charges set by the land station must be levied by the calling subscriber's Administration*.

C22 2.1.3 In addition to the information in C4, the calling subscriber must designate his national telex network.

C23 2.1.4 As an alternative to C21 and C22, land stations may accept direct calls from foreign subscribers provided that the calling subscriber supplies the name and address of a party in the land station's country that will take responsibility for the payment of charges.

C24 2.1.5 The procedures described in C21 and C23 may only be applied when an appropriate bilateral agreement exists between the two Administrations* concerned. If such an agreement does not exist, the land station should refuse such calls to avoid accounting difficulties.

C25 2.1.6 In C20 and C23 above, the call to the foreign land station will be charged as an ordinary international telex call for its entire duration, regardless of whether it merely serves the purpose of booking the radiotelex call or whether the land station can extend the connection to the mobile station without having to recall the originating subscriber.

2.2 *Setting-up*

C26 2.2.1 When demand operation cannot be used, the caller will be disconnected until the mobile station is available. The land station operator then recalls the caller using automatic direct selection; the land station's country being considered as the outgoing country for the call.

C27 2.2.2 In case C26, the land station includes in the bill:
(a) the landline charge;
(b) the land station charge;
(c) the mobile station charge.

C28 2.2.3 When demand operation has been used, the bill made out by the land station operator includes only:
(a) the land station charge;
(b) the mobile station charge.

C29 2.2.4 All information regarding collection of charges for single-operator calls (see C12) should be submitted by the land station Administration* on a regular basis to be determined by the Aminstrations* involved.

C30 2.2.5 The methods to be used in collecting the charges are described in Recommendation D.90/F.111.

3. *Automatic procedure* (direct access by the calling subscriber to the called subscriber)

C31 3.1 Whenever possible fully automatic procedures should be used; i.e. the calling subscriber should contact the called subscriber directly without the aid of an operator.

C32 3.2 The subscriber of an Administration's* telex network should select the appropriate address code, if necessary including the ocean area and mobile station number, to connect him through a land station with which his Administration* has established routing of maritime traffic for the ocean area desired.

C33 3.3 If for some technical reason contact cannot be established with the mobile station, the subscriber may select the international telex position of his Administration* to determine if alternate routing is available.

C34 3.4 On international telex links the destination code 58x will be used in accordance with Recommendation F.69, unless otherwise agreed bilaterally.

DIVISION D

RADIOTELEPHONE

I. General

1. *Language to be used*

D1 1.1 Where applicable and where language difficulties exist, the abbreviations and signals in appendix 13A of the Radio Regulations and the Phonetic Alphabet and Figure Code in Appendix 16 of the Radio Regulations should be used in radiotelephone communications between land stations and mobile stations.

2. *Priority*

D2 2.1 Apart from the general order of priority shown in A1 to A12, radiotelephone calls shall have precedence, so far as possible, over other telephone calls of the same class.

3. *Routing of calls*

D3 3.1 A radiotelephone call should be set up via the land station that is considered most suitable in relation to the mobile station concerned.

D4 3.2 For radiotelephone calls in the direction land station to mobile station, the caller should give the geographical position if possible and may also indi-

cate the land station to be used. Such requests should be respected as far as is practicable.

D5 3.3 For radiotelephone calls in the direction mobile station to land station, the mobile station shall call the land station it desires to use. The land station shall either handle the call itself or advise the mobile station to use another land station that is more suitable to the mobile station.

4. *Information to be supplied by the calling party*

D6 4.1 Calls to a mobile station:
(a) complete telephone number of the calling subscriber;
(b) appropriate identification of the mobile station;
(c) name of the land station to be used or the approximate geographical position of the mobile station;
(d) name of the called party.

D7 4.2 Calls from a mobile station:
(a) appropriate identification of the mobile station;
(b) the information specified in Article 60 of the Instructions for the International Telephone Service.

5. *Call duration*

D8 5.1 When handled through a land station, the chargeable duration of a call will be fixed at the end of the call by the land station.

D9 5.2 If two land stations participate in the handling of the call, the opinion of the land station that has accepted the call from the originating mobile station shall prevail.

D10 5.3 When, through any fault of the service, difficulty is experienced in the course of a call, the chargeable duration shall be reduced automatically or manually to the total time during which transmission conditions were satisfactory, taking into account CCITT Recommendations.

6. *Validity of Requests*

D11 6.1 In principle the provisions of Article 74 of the Instructions for the International Telephone Service shall apply.

D12 6.2 However, if it becomes obvious that the required mobile station is outside the coverage area of the land station, the caller shall be informed as soon as possible in order to have the call cancelled.

7. *Exchange of Radiotelegrams by Radiotelephony*

D13 7.1 Stations of the maritime mobile service that are equipped for radiotelephony may transmit and receive radiotelegrams by means of radiotelephony.

II. Traffic from mobile stations

1. *Manual service*

D14 1.1 The land station operator applies manual procedures; i.e. he will contact the international telephone centre in his own country if neither single-operator (D15) nor automatic working is possible.

2. *Single-operator service*

D15 2.1 The land station operator applies semi-automatic procedures; i.e., he selects the called subscriber directly via the automatic telephone network if fully automatic working is not possible.

3. *Automatic service*

D16 3.1 Whenever possible, fully automatic procedures should be used; i.e. the calling subscriber should contact the called subscriber directly without the aid of an operator.

D17 3.2 After connection with the desired land station is established, the mobile station operator should select directly the appropriate telephone country code (Recommendation E.160) and the number of the subscriber of an Administration's* telephone network.

4. *Procedures*

D18 4.1 The manual, semi-automatic and fully automatic procedures for the terrestrial telephone network, as laid down in Recommendation E. 141 and the Instruction for the International Telephone Service should be taken into account.

III. Traffic to mobile stations

1. *Manual procedure*

1.1 *Booking*

D19 1.1.1 The subscriber should make his booking at the international centre of the outgoing country.

D20 1.1.2 If conditions permit, the international position should select the foreign land station in question directly. Otherwise the international position of the land station country should be selected to give the necessary assistance to obtain contact with the land station in question.

1.2 *Setting up*

D21 1.2.1 The land station operator obtains the caller directly or with the assistance of his own international telephone centre which selects the caller. Otherwise he selects his own international telephone centre in order to be connected to the international telephone centre of the outgoing country, which then selects the caller.

D22 1.2.2 After the call's termination, the land station shall pass the following information to the international telephone centre of the origin country, where it is recorded for charging and accounting purposes:
(a) the calling subscriber's telephone number;
(b) the mobile station's call sign;
(c) the chargeable duration of the call;
(d) the land station charge to be collected;
(e) the mobile station charge to be collected.

D23 1.2.3 Otherwise all information regarding collection of charges should be submitted to the caller's Administration* on a regular basis to be determined by the Administrations* involved.

2. *Single-operator procedure* (direct access by the calling subscriber to a foreign land station).

2.1 *Booking*

D24 2.1.1 The subscriber selects the foreign land station in question using automatic direct selection. The land station operator records the call details.

D25 2.1.2 Where an Administration* permits its subscribers to book a call directly with a land station in another country, the charges set by the land station must be levied by the calling subscriber's Administration*.

D26 2.1.3 In addition to the information in D6, the calling subscriber must designate his country and national telephone number.

D27 2.1.4 As an alternative to D24 and D25, land stations may accept direct calls from foreign subscribers provided that the calling subscriber supplies the name and address of a party in the land station's country that will take responsibility for the payment of charges.

D28 2.1.5 The procedures described in D25 and D27 may only be applied when an appropriate bilateral agreement exists between the two Administrations* concerned. If such an agreement does not exist, the land station should refuse such calls to avoid accounting difficulties.

D29 2.1.6 In D24 and D27 above, the call to the foreign land station will be charged as an ordinary international telephone call for its entire duration, regardless of whether it merely serves the purpose of booking the radiotelephone call or whether the land station can extend the connection to the mobile station without having to recall the originating subscriber.

2.2 *Setting up*

D30 2.2.1 When demand operation cannot be used, the caller will be disconnected until the mobile station is available. The land station operator then recalls the caller using automatic direct selection; the land station country being considered as the outgoing country for the call.

D31 2.2.2 In case C26, the land station includes in the bill:
(a) the landline charge;
(b) the land station charge;
(c) the mobile station charge.

D32 2.2.3 When demand operations has been used, the bill made out by the land station operator includes only:
(a) the land station charge;
(b) the mobile station charge.

D33 2.2.4 All information regarding collection of charges for single-operator calls (see D15) should be submitted by the land station Administration* on a regular basis to be determined by the Administrations* involved.

D34 2.2.5 The methods to be used in collecting the charges are described in Recommendation D.90/F.111.

3. Automatic procedure (direct access by the calling subscriber to the called subscriber)

D35 3.1 Whenever possible, fully automatic procedures should be used; i.e. the calling subscriber should contact the called subscriber directly without the aid of an operator.

D36 3.2 The subscriber of an Administration's* telephone network should select the appropriate address code, if necessary including the ocean area and the mobile station number, to connect him through a land station with which his Administration* has established routing of maritime traffic for the ocean area desired.

D37 3.3 If for some technical reason contact cannot be established with the mobile station, the subscriber may select the international telephone centre of his Administration* to determine if alternate routing is available.

ANNEX

[To recommendation E.190/F.110]

Correspondence between the 1967 edition of the radio regulations and the additional radio regulations and the provisions of recommendation E.190/F.110

Radio regulations				
Article	Provision	Status	Recommendation E.190/F.110	Remarks
37A	1496A	MOD	A1 to A12	Aligned with recommendation F.1; radiomaritime letters added.
38	1497	MOD	B2	Aligned with recommendation F.1.
	1498	NOC	B3	
	1499	NOC	B4	
39	1500	MOD	B17	
	1501	NOC	B18	
	1502	SUP		See RR 937 to 976 and 1007 to 1011.
	1503	MOD	B19	
	1504	MOD	B20	
40A	1559AA-BZ			See recommendation D.90/F.111.
Additional radio regulations				
1A	2004A, B			Covered in "considering" (c)
	2004C	MOD	B1	
	2004D	SUP		
2	2005	NOC	B7	
	2006	NOC	B8	
	2007	MOD	B9	Aligned with recommendation F.1.
	2008	SUP		Concerns aircraft stations.
	2009	NOC	R10	
	2010	NOC	B11	
	2011	NOC	B12	
	2012	SUP		Contrary to recommendation F.1.
	2013	NOC	B13	
	2014	SUP		Contrary to recommendation F.1.
3	2015, 2016	MOD	B5, B6	
	2017	SUP		
4A	2062AA to AL			See recommendation D.90/F.111.
	2062AM	MOD	B15, B16	Aligned with recommendation F.1.
	2062AN	SUP		See simplified work counting rules in recommendation F.1.
	2062AO-BH			See recommendation D.90/F.111.
5A	2087AA-AZ			Do.
5B	2087BA-BZ			Do.
6A	2106A	NOC	B64 to B66	
	2106B	NOC	B67	
	2106C	NOC	B68	
	2106D	NOC	B69	
	2106E	NOC	B70	
	2106F	NOC	B71	
	2106G	MOD	B72	See also recommendation D.90/F.111B43.
	2106H	MOD	B75, B76	Combined with 2123A.
	2106I	NOC	B73	
	2106J to M			See recommendation D.90/F.111.
	2106N	NOC	B74	
	2106O to Q			See recommendation D.90/F.111.
7A	2123A	MOD	B75	Combined with 2106H.
8	2124	MOD	B42	
	2125	MOD	B43	Aligned with recommendation F.1.
	2126	NOC	B44 to B48	
	2127	MOD	B49	
	2128	NOC	B50	
	2129	MOD	B51 to B53	
	2130	NOC	B54	
	2131	MOD	B55, B56	
	2132	MOD	B57, B58	
	2133 to 2136	SUP		Concerns radiotelegrams for aircraft in flight.
9	2137	NOC	B21, B22	
	2138	NOC	B23	
	2139	NOC	B24	
	2140	NOC	B25	
	2141	NOC	B26	
	2142	NOC	B27	
	2143	MOD	B28	
	2144	MOD	B29 to B31	
	2145	MOD	B32	
	2146	NOC	B33	
	2147	NOC	B34	
	2148	NOC	B35	
	2149	NOC	B37	
	2150	SUP		
	2151	NOC	B36	
10A	2158A	NOC	B38	
	2158B	NOC	B39	
	2158C	MOD	B40	
	2158D	NOC	B41	
11	2159	NOC	B59, B60	
	2160	NOC	B61 to B63	

NOTES

1. Under "Status" below, MOD=modified, SUP=suppressed and NOC=no change (except for the cases in Note 2.)

2. Where necessary the term "coast station" has been replaced with "land station," "aeronautical station" with "land station," "ship" with "mobile station," "message" with "telegram" and "preamble" with "preamble line."

APPENDIX C

DRAFT REGULATORY PROVISIONS

Radio Regulations Article "Z"

Public Correspondence in the Maritime Mobile Service

Section I. General

1. The provisions of the Telegraph Regulations and the Telephone Regulations and the Protocols annexed thereto, taking into account CCITT Recommendations, shall apply to radiocommunications in so far as the provisions of the Radio Regulations do not provide otherwise.

Section II. Accounting Authority

1. Charges for radiocommunications from ship-to-shore are in principle, and subject to national law and practice, to be collected from the maritime mobile station licensee:

(a) by the Administration that has issued the license; or

(b) by a recognized private operating agency; or

(c) by other entity or entities designated by the Administration to carry out this accounting.

2. The Administration or the recognized private operating agency or the designated entity (or entities) is referred to in this Article as the "accounting authority".

3. The name(s) and address(es) of the accounting authority(ies) shall be notified to the Secretary-General of the ITU for inclusion in the List of Ship Stations; the number of such names and addresses shall be limited as far as possible, taking into account CCITT Recommendations.

Section III. Accounting

1. Exchange and verification of accounts shall be carried out in accordance with the Telegraph Regulations and the Telephone Regulations, taking into account CCITT Recommendations.

2. The accounts shall be sent as promptly as possible but in any case before the end of the third month following that to which they relate.

3. In principle, an account shall be considered as accepted without the need for specific notification of acceptance to the Administration* that sent it.

4. However, any accounting authority shall have the right to question the contents of an account for a period of six months after dispatch of the account.

5. All maritime accounts shall be paid by the accounting authority without delay and in any case within 6 months after dispatch of the account.

6. If international maritime accounts remain unpaid after 6 months, the Administration that has licensed the mobile station shall on request take all possible steps, within the limits of applicable national law, to ensure settlement of the accounts from the licensee.

7. In the case referred to in 4 above, if the account is seriously delayed in transit, the receiving accounting authority should at once notify the originating Administration* that queries and payment may be delayed. The delay shall, however, not exceed 3 months from the date of receipt of the account.

8. The debtor accounting authority may refuse the settlement and adjustment of accounts presented more than eighteen months after the date of handing-in of the radiotelegrams or the date of establishment of the radiotelephone calls or radiotelex calls to which the accounts relate.

Section IV. Payment of Balances

1. Payment of balances shall be carried out in accordance with the Telegraph Regulations and the Telephone Regulations.

Section V. Archives

1. The originals of radiotelegrams and documents relating to radiotelegrams, radiotelephone calls and radiotelex calls retained by the Administrations* shall be held, with all necessary precautions from the point of view of secrecy, until the settlement of the relative account and, in any case, for at least six months counting from the month in which the accounts were sent. Administrations* may preserve the information by any other means, e.g. magnetic or electronic records.

2. However, should an Administration* deem it desirable to destroy such documents before the above-mentioned period, and hence is not in a position to carry out an inquiry in respect of the services for which it is responsible, such Administration* shall bear all the consequences both as regards refund of charges and any difference in the accounts in question that might otherwise have been observed.

*or recognized private operating agency/agencies.

[FR Doc. 78-11727 Filed 5-1-78; 8:45 am]

[6712-01]

[Docket No. 20271; FCC 78-264]

PREPARATION FOR A GENERAL WORLD ADMINISTRATIVE RADIO CONFERENCE OF THE INTERNATIONAL TELECOMMUNICATION UNION

Revision of the International Radio Regulations; Seventh Notice of Inquiry

AGENCY: Federal Communications Commission.

ACTION: Seventh Notice of Inquiry (Docket No. 20271) issued seeking comments from interested parties concerning proposed changes to the International Radio Regulations relating to the procedural provisions of advance publication, coordination, notification and recording of frequency assignments.

SUMMARY: The 1979 World Administrative Radio Conference (WARC) will review Articles 9 and 9A, and related Appendices. The purpose of the Seventh Notice of Inquiry is to obtain public comments on draft proposed changes to these provisions and to determine if other changes should be proposed.

DATES: Interested persons may file comments on or before June 9, 1978, and reply comments on or before June 23, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Donald F. Weiland, International and Operations Division, Office of Chief Engineer, 202-632-7054.

Adopted: April 18, 1978.

Released: April 26, 1978.

In the matter of an inquiry relative to preparation for a General World Administrative Radio Conference of the International Telecommunication Union to consider revision of the International Radio Regulations, Docket No. 20271.[1]

1. The Commission instituted this Docket in January 1975 for the purpose of eliciting public comments for consideration in the development of our national proposals to be considered at the World Administrative Radio Conference to be convened in Geneva, Switzerland on September 24, 1979. Six Notices of Inquiry have been issued to date.

2. The emphasis of previous Notices has been on possible changes to the in-

[1] See 42 FR 55641, Oct. 18, 1977.

ternational table of frequency allocations and technical matters related to the use of the spectrum. The purpose of this Notice is to solicit comments on the procedural provisions of the International Radio Regulations relating to the requirements for the advance publication, co-ordination and notification of frequency assignments. These procedures, the bulk of which are contained in Articles 9 and 9A, afford protection to administrations who follow certain prescribed steps. Article 9 specifies the procedures for terrestrial frequency assignments. The Commission believes that the procedures which deal with the determination of the status of a terrestrial assignment with respect to other terrestrial assignments is satisfactory and substantial changes are therefore not proposed. Nevertheless, the Commission would consider any new ideas which may be offered in response to this Notice.

3. The procedures relating to frequency assignments to stations in the space services and also to terrestrial stations in bands shared with the space services are the primary concern of this Notice. These procedures are embodied in section IIB of Article 9, Article 9A and Resolution Spa2-3 of the International Radio Regulations. Although they are lengthy and complex, they are also important, useful and allow for the orderly introduction of satellite technology. In the absence of a viable alternative, it is not only desirable to maintain these procedures but also to improve and clarify those provisions for which there is some degree of uncertainty as to their intent. The proposals which appear in the attached Appendix 1 of this Notice were drafted with this in mind, and comments on them are requested.

4. Comments are also sought as to the desirability of retaining the Amateur-Satellite Service under the provisions of Article 9A. Administrations authorizing stations to operate in the Amateur-Satellite Service are currently required to send data to the International Frequency Registration Board on the basic characteristics of their systems as outlined in Appendices 1A and 1B to the international Radio Regulations for the purpose of advance publication of the information, co-ordination (if a geostationary satellite is to be used), and subsequent notification, just as in all other satellite services. If this is considered to be an unnecessary requirement for the Amateur-Satellite Service, substantial justification should be provided in light of the position of most administrations at the 1971 WARC for Space Telecommunications that the Article 9A procedures apply to all satellite systems.

5. Comments are also solicited concerning the adequacy of the data currently required for the co-ordination and notification of terrestrial and space frequency assignments as set forth in Appendices 1, 1A and 1B of the international Radio Regulations. It should be realized that when frequency assignments are registered internationally pursuant to the procedures of Articles 9 and 9A, this data is the basis for determining the international status of those assignments and is published by the International Telecommunication Union (ITU) in the form of a list (International Frequency List) for use by administrations in their frequency management activities.

6. The ITU publishes a number of lists, as shown in Appendix 4 to this Notice, which are derived from much of the data obtained through the procedures of Articles 9 and 9A. List I is the International Frequency List (already mentioned) and is of primary interest to administrations. List II through VIIIA relate to specific services and contain information of interet to those operating stations in these services. The Commission therefore solicits comments from those receiving these publications with regard to their usefulness in their present form; should they be improved or are they not needed? If improvements are desired, what are they and how would they best be incorporated into these publications? The Commission believes that Lists IIIA and IIIB relating to HF Broadcasting no longer serve a useful purpose and is therefore proposing that they be discontinued for the reasons set forth in the Fifth Notice in this proceeding.

7. In addition to the procedural provisions of the Radio Regulations, there are several related technical matters which impact Article 9A. For example, the maximum interference level in a telephone channel of the Fixed-Satellite Service would be raised to 1500 pWOp (pw, psophometrically weighted) or 2000 pWOp if revised CCIR Recommendation 466 (attached Appendix 2) is adopted by the CCIR XIV Plenary Assembly. This relaxation of the maximum total interference level would permit the placement of more satellites in orbit. Individual satellite capacity would be slightly reduced; however, overall orbit efficiency would increase. Comments on the advisability of incorporating into the International Radio Regulations a CCIR draft recommendation (attached Appendix 3), which specifies the maximum interference level in a telephone channel of the Fixed-Satellite Service using digital emission, and Recommendation 466 are requested.

8. In response to the Fourth Notice of Inquiry of this proceeding, several parties have commented on the permissible level of interference into a satellite from another satellite. The single entry level could be independent of the orbital separation or could be a function at the orbital separation subject to a 400 pWOp maximum. Another possibility would have satellites of like characteristics clustered together with interference into another satellite specified as some equitable function of orbital separation; satellites which are grouped irrespective of characteristics could have an interference level into unlike satellites limited to 400 pWOp regardless of orbital separation. Further comments are invited on this subject, particularly concerning the interference from one satellite into another and its variation with orbital separation and satellite characteristics. New ideas and thoughts, rather than a repetition of material already submitted in this docket are invited.

9. Appendix 28 of the International Radio Regulations prescribed the procedures for determining of the co-ordination area around an earth station sharing frequency bands with terrestrial services. This procedure is fairly complex and time consuming. There are cases where this procedure may be overly complex and where more simplified procedures might be applied. For example, for reception of video signals, reception of a satisfactory signal can be based on a desired carrier to interference (C/I) ratio. This simplifies calculations and results in a smaller co-ordination area. Rainfall can disperse signals, and there are procedures which determine the co-ordination distance for rain-scatter. In ares where there is sufficiently small precipitation and for emissions which can tolerate interference for more than .01 percent of the time, the rain-scatter co-ordination might be omitted. Also, there are situations when it may be necessary to move an earth station from place to place and to operate it at fixed locations only. Although the locations cannot be precisely identified in advance, the operational area of the earth station could be specified in advance. In such cases, an earth station may be co-ordinated, in advance, with all terrestrial stations located within the area under consideration. This could be called an "area co-ordination". Comments are thus solicited on simplified procedures which might be less burdensome, particularly for such systems as low capacity earth stations, and would still result in reasonable protection of both earth and terrestrial station frequency assignments.

10. Comments are solicited regarding possible changes to Appendix 29 of the International Radio Regulations, "Method of Calculation to Evaluate the Degree of Interference between Geostationary Satellite Networks Sharing the Same Frequency Bands." Some confusion concerning the pur-

pose of this Appendix has resulted and may be attributed, in part, to its title which is perhaps misleading. Since the purpose of the calculation is only to serve as a "trigger" for determining when the co-ordination procedures of Article 9A should be initiated, it may be more accurate if the title were modified to read "Method for Determining When Co-ordination is Required Between Geostationary Satellite Networks Sharing the Same Frequency Bands." Some have expressed the view that the 2 percent increase in noise temperature criterion set forth in this Appendix is too stringent and results in the initiation of co-ordination in an unnecessarily large number of cases. Others feel that this calculation does not adequately protect some of the sensitive low capacity systems and have suggested that a satellite orbital separation angle of about 15 degrees should determine when detailed co-ordination sould be initiated for these systems. Further thoughts and ideas on establishing a new criterion or set of criteria for the purpose of determining when the international coodination procedures should be initiated for the variety of satellite systems to be employed over the next twenty years are desired.

11. Pursuant to applicable procedures set forth in § 1.415 of the Commission's Rules, interested persons may file comments on or before June 9, 1978, and reply comments on or before June 23, 1978. All relevant and timely comments and reply comments, along with any pertinent information which we may have available, will be considered. When commenting, it sould be borne in mind that this effort is directed toward international and not domestic issues.

12. Although § 1.419 of the Commission's Rules requires that an original and five copies of all statements, briefs or comments be filed in response to a Notice, our conference preparatory organization necessitates the filing of an original and nineteen copies. All responses received will be available for public inspection during regular business hours in the Commission's Public Reference Room at its Headquarters in Washington, D.C.

13. This Notice is issued pursuant to the authority set forth in section 4(I) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i).

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

APPENDIX 1—DRAFT PROPOSALS FOR ARTICLES 9 AND 9A OF THE INTERNATIONAL RADIO REGULATIONS

ARTICLE 9

NOC

Notification and Recording in the Master International Frequency Register of Frequency Assignments[1] to Terrestrial Radiocommunication Stations[2]

NOC

Section I. Notification of Frequency Assignments and Co-ordination Procedure to be Applied in appropriate Cases

NOC

Footnote 1 and Footnote 2.

Reason: These provisions are time-proven and meet foreseeable needs.

NOC 486, 486.1, 486.2

NOC 487 through 492A, 492A.1

Reason: These provisions are time-proven and meet foreseeable needs.

MOD 492B

An administration with which co-ordination is sought under No. 492A shall acknowledge receipt of the coordination data immediately by telegram. If no acknowledgement is received within fifteen days of dispatch, the administration seeking co-ordination may dispatch a telegram requesting acknowledgement of receipt of the co-ordination data, to which the receiving administration shall reply. Upon receipt of the co-ordination data an administration shall promptly examine the matter with regard to interference[1] which would be caused to the services rendered by its earth stations operating in accordance with the Convention and these Regulations (*especially the Table of Frequency Allocations*) or to be so operated within the next three years, with the proviso that in this latter case coordination specified in No. 639AN has been effected or that the coordination procedure has already been initiated; and shall, within an overall period of sixty days from dispatch of the coordination data, either notify the administration requesting coordination of its agreement to the proposals or, if this is not possible, indicate the reasons therefor and make such suggestions as it may be able to offer with a view to a satisfactory solution of the problem.

Reason: To align with the provisions of Nos. 501 and 639BM.

492B.1

[1]The criteria to be employed in evaluating interference levels shall be based upon relevant C.C.I.R. Recommendations or, in the absence of such Recommendations, shall be agreed between the administrations concerned.

NOC 492C through 492FC

Reason: These provisions are time-proven and meet foreseeable needs.

ADD *492FCA*

The time limits set forth in Nos. MOD 492B, 492D and 492FC may be extended only where the concurrence of the administration seeking coordination has been secured.

Reasons: To provide for an extension where a genuine need may exist without running the risk of contravening the letter of the Radio Regulations, and to preclude an extension should the administration seeking coordination not agree thereto.

NOC 492G through 492GB

Reason: These provisions are time-proven and meet foreseen needs.

NOC 493 through 496

Reason: These provisions are time-proven and meet foreseeable needs.

MOD 497

Upon receipt of a complete notice, the Board shall include the particulars thereof, with the date of receipt, in a weekly circular sent by airmail to Administrations, Members [and Associate Members] of the Union; this circular shall contain the particulars of all such notices received since the publication of the previous circular.

Reason: Editorial.

NOC 498 through 539

Reason: These provisions are time-proven and meet foreseeable needs.

MOD 540

The provisions of Nos. 537 to 539 do not apply to frequency assignments which are in conformity with the Allotment Plans appearing in Appendices 25 Mar. 2, 26, [and] 27 *and 27 Revised* to these Regulations; such frequency assignments shall be entered in the Master Register on receipt of the notice by the Board.

Reason: To take cognizance of the Final Acts of the 1978 World Administrative Radio Conference for the Aeronautical Mobile (R) Service.

NOC 541

NOTE.—This and other provisions may require editorial adjustment if Article 5 is changed.

SUP 541.1

Reason: Consequential to suppression of Resolution Mar 2-12.

NOC 542 through 546

Reason: These provisions are time-provisions are time-proven and meet foreseeable needs.

NOC 547

NOTE.—SEE No. 541.

SUP 547.1

Reason: Consequential to suppression of Resolution Mar 2-12.

NOC 548 through 551

Reason: These provisions are time-proven and meet foreseeable needs.

NOC 552

NOTE.—See No. 541.

NOC 553 through 560

Reason: These provisions are time-proven and meet foreseeable needs.

NOC 561

NOTE.—See No. 541.

NOC 562 through 570AC

Reason: These time-proven provisions meet foreseeable needs.

MOD 570AD

(c) where appropriate, with respect to the probability of harmful interference to the service rendered by an earth receiving station for which a frequency assignment already recorded in the Master Register *either*

(i) bears a favorable finding, or

(ii) lacks a favorable finding although it is in conformity with the provisions of No. 639BM, and [if] the corresponding frequency assignment to the space transmitting station has not, in fact, caused harmful interference to any frequency assignment in conformity with No. 501 or 570AB, as appropriate, previously recorded in the Master Register.

Reason: See reason for MOD 639BQ.

NOC 570AE through 570AL

NOC 570AN through 570BH

NOC 571, 572

NOC 573

NOTE.—This and other provisions may require editorial adjustment if Article 5 is changed.

NOC 574, 575

NOC 576, 577

NOTE.—This and other provisions may require editorial adjustment if Article 5 is changed.

Reason: These provisions are time proven and meet foreseeable needs.

SUP 577.1

Reason: We are proposing suppression of Resolution No. Mar 2-12.

NOC 578 through 581

NOC 582

NOTE.—This and other provisions may require editorial adjustment if Article 5 is changed.

Reason: These provisions are time proven and meet foreseeable need.

SUP 582.1

Reason: We are proposing suppression of Resolution No. Mar 2-12.

NOC 583 through 586

NOC 587

NOTE.—This and other provisions may require editorial adjustment if Article 5 is changed.

NOC 588 through 599

NOC 600

NOTE.—This and other provisions may require editorial adjustment if Article 5 is changed.

NOC 601, 602

NOC 603

NOTE.—This and other provisions may require editorial adjustment if Article 5 is changed.

NOC 604 through 625

Reason: These provisions are time proven and meet foreseeable needs.

MOD 626

(c) In cases where, due to harmful interference, two or more frequencies of the same [megacycle] *megahertz* order are being used alternately to maintain communication on a circuit requiring only one frequency of that order; and

Reason: Editorial.

NOC 627 through 638

Reason: These provisions are time proven and meet foreseeable needs.

MOD 639

§ 51. In case a Member [or Associate Member] of the Union avails itself of the provisions of Article 50 of the Convention, the Board shall, upon request, make its records available for such proceedings as are prescribed in the Convention for the settlement of international disputes.

Reason: Editorial.

ARTICLE 9A

Co-ordination, Notification and Recording in the Master International Frequency Register of Frequency Assignments[1] to Radio Astronomy and Space Radiocommunication Stations except Stations in the Broadcasting-Satellite Service.

NOC

Footnote 1.

NOC

Section I. Procedure for the Advance Publication of Information on Planned Satellite Systems.

NOC 639AA through 639AH

Reason: These provisions are time-proven and meet foreseeable needs as drafted.

MOD 639AI

An administration on behalf of which details of planned satellite networks in its system have been published, in accordance with the provisions of Nos. 639AA to 639AC, shall periodically inform the Board whether or not comments, *envisioned by the provisions of No. 639AD,* have been received and of the progress made, with other administrations, in resolving any difficulties. The Board shall publish this information in a special section of its weekly circular and shall also, when the weekly circular contains such information, so inform all administrations by circular telegram.

Reason: To remove any ambiguity as to what comments are to be made known to the Board. For example, there would appear to be no useful purpose served by an administration's informing the Board that another administration had advised that it had no comment.

NOC

Section II. Co-ordination Procedures to be applied in appropriate Cases.

MOD 639AJ

Before an administration notifies to the Board or brings into use any frequency assignment to a space station on a geostationary satellite or to an earth station that is to communicate with a space station on a geostationary satellite, it shall effect coordination of the assignment with any other administration whose assignment in the same band for a space station on a geostationary satellite or for an earth station that communicates with a space station on a geostationary satellite is recorded in the Master Register *with a finding favorable with respect to No. 639BM as a minimum,* or has been coordinated or is being coordinated under the provisions of this paragraph. For this purpose, the administration requesting coordination shall send to any other such administration the information listed in Appendix 1A.[1]

Reason: To preclude the possibility that any assignment to a geostationary system which is proposed to be in accordance with ther Convention, the Table of Frequency Allocations and the other provisions of the Radio Regulations except those relating to the probability of harmful interference need be coordinated with an administration having an assignment to a geostationary space system which is *not* in accord with the Convention, the Table of Frequency Allocations and/or the other provisions of the Radio Regulations.

ADD 639AJ.1

[1] *Where coordination is requested for a space station assignment, the administration shall supply the information listed in Sections B and C of Appendix 1A for a typical earth station if coordination is not being simultaneously requested for the earth stations to communicate with the space station.*

Reason: Interference calculations with respect to inter-satellite interference needed to effect coordination of a space station frequency assignment can not be done without the earth station parameters listed in Sections B and C of Appendix 1A.

MOD 639AK

(2) No co-ordination under No. 639AJ is required:

(a) when the use of a new frequency assignment will cause, to any service of another administration, an increase in the noise temperature of any space station receiver or earth station receiver, or an increase in the equivalent satellite link noise temperature, as appropriate, not exceeding the predetermined increase of noise temperature calculated in accordance with the method given in Appendix 29; [or]

(b) when an administration proposes to change the characteristics of an existing assignment in such a way as will, in respect of any service of another administration, meet the requirements of sub-paragraph (a) above, or, where this assignment has previously been coordinated, will cause an increase in [noise temperature] *the level of interference* not exceeding the value agreed during coordination; *or*

(c) *when an administration proposes to add a new earth station to an existing satellite network for which coordination has already been successfully effected pursuant to No. 639AJ and the assignment will not cause an increase in the level of interference which exceeds the value agreed during coordination.*

Reason: (1) As a practical matter, coordination agreements are not based on increases in noise temperature, which is a trigger to determine when coordination is required between space systems, but on interference levels or other operating parameters such as which frequencies are used by particular types of carriers.

(2) As a satellite network grows with the addition of new earth stations, it should not be necessary to coordinate each station under No. 639AJ if the technical parameters or potential interference levels are within the limits agreed to during the initial coordination of the network.

NOC 639AL through 639AM

Reason: These provisions are time-proven and meet foreseeable needs as drafted.

NOC 639AN.1, 639AN.2

Reason: The basis for updating these provisions and/or expanding them does not exist as yet. (See narrative paragraph 9.)

NOC 639AO, 639AO.1

NOC 639AP, 639AP.1

Reason: The basic provisions are time-proven and appear to meet foreseeable needs adequately. No basis now exists to amend the footnotes to the basic provisions.

NOC 639AQ through 639BH, 639BF.1

Reason: These provisions are time-proven and appear to meet foreseeable needs.

MOD 639BI

Upon receipt of a complete notice, the Board shall include the full particulars thereof, with the date of receipt, in the weekly circular referred to in No. 497, which shall contain the particulars of all such notices received since the publication of the previous circular.

Reason: To ensure that all ancillary details forwarded to the Board as part of a complete notice are included in the weekly circular referred to in No. 497.

NOC 639BJ through 639BL, 639BF.1

Reason: These provisions are time-proven and meet foreseeable needs.

NOC 639BM through 639BO

Reason: These provisions are in many respects analogous to Article 9 procedures which are entirely satisfactory, and in and of themselves time-proven, and will continue to meet future needs.

MOD 639BP

(d) where appropriate, with respect to the probability of harmful interference to the service rendered by a space radiocommunication station for which a frequency assignment already recorded in the Master Register *either bears a favorable finding or* is in conformity with the provisions of No. 639BM if this frequency assignment has not in fact caused harmful interference to any frequency assignment in conformity with No. 639BM previously recorded in the Master Register;

Reason: Same as for No. 639BQ.

MOD 639BQ

(e) where appropriate, with respect to the probability of harmful interference to the service rendered by a terrestrial radiocommunication station for which a frequency assignment already recorded in the Master Register *either bears a favorable finding or* is in conformity with the provisions of No. 501 or 570AB, as appropriate, if this frequency assignment has not, in fact, caused harmful interference to any frequency assignment in conformity with No. 639BM previously recorded in the Master Register;

Reason: As presently drawn, these provisions would preclude an existing space (639BP) or terrestrial (639BQ) operation which has received an entirely favorable finding and has been recorded in the MIFR from consideration by the Board as a possible recipient of harmful interference from the station or system(s) subject of the notices in hand if the recorded operation had at any time caused harmful interference. This irrational circumstance does not parallel those analogous Article 9 provisions which date from not later than 1959. Later, the modified provisions above are thought to have been the intent of the WARC-ST, 1971. (Note: No. 570AD, also written by the WARC-ST, is similarly defective, does not date from 1959 or earlier, and must be similarly amended.)

NOC 639BR

Reason: This provision is time-proven and appears to meet foreseeable needs.

NOTE.—With reference to the two immediately preceding proposals, 639BR does not require that the existing terrestrial radiocommunication station never have been the source of harmful interference for protection to accrue. This circumstance would tend to lend support to the immediately preceding Reason.

NOC 639BS through 639CD

Reason: These provisions are time-proven and appear to meet foreseeable needs.

Where the Board finds that either of the co-ordination procedures mentioned in Nos. 639BN and 639BO has not been applied, and the notifying administration requests the Board to effect the required co-ordination, the Board shall take appropriate action and shall inform the administrations concerned of the results obtained. If the Board's efforts *toward securing agreement* are successful, the notice shall be treated in accordance with No. 639CD. If the Board's efforts *toward securing agreement* are unsuccessful, the notice shall be examined by the Board with respect to the provisions of Nos. MOD 639BP, MOD 639BQ and 639BR, as appropriate.

Reason: To preclude the possibility that an administration might interpret the Board's having received a response, as opposed to the Board's having received a favorable response, as the satisfactory culmination of the co-ordination process, thereby perhaps leading to a protracted situation in respect to determining the status of the entry once it reaches the Master Register.

NOC 639CF through 639CX

Reason: These provisions are time-proven and appear to meet foreseeable needs.

MOD 639CY

If, within thirty days after the projected date of bringing into use, the Board receives confirmation from the notifying administration of the date of putting into use, the special symbol shall be deleted from the Remarks column. [In the case where the Board,] [i] *In* the light of a request from the notifying administration received before the end of the thirty-day period, *the Board shall grant an extension of this period not to exceed 120 days. In the case where an administration requests an extension longer than 120 days and the Board* finds that exceptional circumstances warrant *such* an extension of this period, the extension shall in no case exceed *a total of 500 days from the original projected date of bringing into use* [one hundred and fifty days].

Reason: Unforeseen circumstances involving booster failures, launch windows, weather conditions, labor strikes, and the like may result in delays of many months before a successful launch takes place.

NOC 639CZ through 639DN

Reason: These provisions are time-proven and meet foreseeable needs.

MOD 639DO

Whenever it appears to the Board from the information available that a recorded assignment has not been brought into regular operation in accordance with the notified basic characteristics, [or] is not being used in accordance with those basic characteristics *or has been in use for a period or not less than five years without the Board having received reconfirmation from the notifying administration that the assignment is in regular use with the basic characteristics unchanged,* the Board shall consult the notifying administration and, subject to its agreements, shall [either] cancel, [or] suitably modify *or confirm the basic characteristics of* the entry.

Reason: To provide for automatic review of space radiocommunication entries in the Master International Frequency Register. This will tend to eliminate entries which might not otherwise appear to the Board to be inactive and will tend to keep entries accurate.

NOC 639DP through 639DW

Reason: These provisions are time-proven and meet foreseen needs.

MOD 639DX

In case a Member [or Associate Member] of the Union avails itself of the provisions of Article 50 of the Convention, the Board shall, upon request, make its records available for such proceedings as are prescribed in the Convention for the settlement of international disputes.

Reason: Editorial.

APPENDIX 2

WORKING GROUP 4–C

DRAFT REVISION OF RECOMMENDATION 466–1 (REV. 76)

MAXIMUM LEVEL OF INTERFERENCE IN A TELEPHONE CHANNEL OF A GEOSTATIONARY SATELLITE NETWORK IN THE FIXED-SATELLITE SERVICE EMPLOYING FREQUENCY MODULATION WITH FREQUENCY-DIVISION MULTIPLEX, CAUSE BY OTHER NETWORKS OF THIS SERVICE

(Draft Study Programme 2J–1/4 (Rev. 76))

The CCIR,

CONSIDERING

(a) That geostationary-satellite networks in the fixed satellite service operate in the same frequency bands;

(b) That interference between networks in the fixed satellite service contributes to the noise in the network;

(c) That it is desirable that the interference noise in the telephone channels of networks in the fixed satellite service caused by transmitters of different networks in that service should be such as to give a reasonable orbit utilization efficiency;

(d) That the overall performance of a network should essentially be under the control of the system designer;

(e) That it is necessary to protect a network in the fixed satellite service from interference by other such networks;

(f) That it is necessary to specify the maximum permissible interference power in a telephone channel, to determine space-station and earth-station characteristics;

(g) That the value selected for the maximum permissible single entry of interference noise should not result in too wide a minimum orbital spacing;

(h) That for coordination between two satellite networks, it is necessary to know the maximum permissible level of interference in a telephone channel of the wanted network caused by transmitters of the other network;

(j) That networks in the Fixed-Satellite Service may receive interference both into the space-station receiver and into the earth-station receiver;

(k) that the mean interference noise power should be an appropriate fraction of the total noise power permitted in the hypothetical reference circuit;

(l) That in many cases the largest interference contributions to a geostationary-satellite network will be from the networks using geostationary satellites nearby in orbit and serving an overlapping coverage area and the value of interference from any other network will generally be less;

(m) that the accumulation of interference from many entries from other satellite net-

works and from terrestrial stations is not likely to be equal to the arithmetic sum of the individual interference entries at their maximum value across the band, and the total interference noise level in any single channel may be significantly less;

(n) That the levels of interference between geostationary-satellite networks in the fixed satellite service operating in frequency bands below 10 GHz are not expected to exhibit a large variation with time;

RECOMMENDS

1. That different geostationary-satellite networks in the fixed satellite service operating in the same frequency bands, below 10 GHz, be designed in such a manner that the interference noise power at a point of zero relative level in any telephone channel of a hypothetical reference circuit of a network in the fixed satellite service, employing frequency modulation, caused by the aggregate of the earth-station and space-station transmitters of other networks, should not exceed:

1.1 In frequency bands in which the network does not practice frequency re-use; 2,000 pW, psophometrically weighted one minute mean power for 20% of any month;

1.2 In frequency bands in which the network practices frequency re-use; 1,500 pW, psophometrically weighted one minute mean power for 20% of any month;

2. That the maximum level of the interference noise power at a point of zero relative level in any telephone channel of the hypothetical reference circuit of a geostationary satellite network in the Fixed-Satellite Service employing frequency modulation, caused by the transmitters of another network, should not exceed 400 pW, psophometrically weighted one minute mean power, for more than 20% of any month;

3. That the maximum level of interference noise power caused to that network should be calculated on the basis of the following values for the receiving earth station antenna gain in a direction at an angle θ (in degrees) referred to the main beam direction:

$$G = 32 - 25 \log \theta \text{ (dB) } 10 < \theta < 48$$

$$G = -10 \text{ (dB) } 48 < \theta < 180$$

except when the actual gain is known and is less than the above value, in which case the actual value should be used.

4. That the following Notes should be regarded as part of this Recommedation:

NOTE 1.—The values quoted in §§ 1.1 and 1.2 do not apply to networks for which an advance publication has been submitted to the IFRB by the time of the XIVth Plenary Assembly; for such networks the aggregate interference power in any telephone channel should not exceed 1,000 pW psophometrically weighted one minute mean power for 20% of any month.

NOTE 2.—Only a small fraction of the channels of a network will experience the maximum value of interference from any single network and therefore the aggregate level for many channels will be less than the totals contained in § 1. System designers may provide for a lower value in their noise budgets for a large portion of the spectrum. The way in which the aggregate values are to be taken into account in the general noise objectives for networks in the Fixed-Satellite Service is defined in Note 8 of draft Recommendation 353-2 (Rev. 76).

NOTE 3.—In some cases it may be necessary to limit the single entry value to less than the value quoted in § 2 above in order that the total value recommended in § 1 may not be exceeded. In other cases, particularly in congested arcs of the geostationary satellite orbit, administrations may agree bilaterally to use higher single entry interference value than those quoted in § 2 above, subject to evidence being available that the aggregate value recommended in § 1 is not exceeded.

NOTE 4.—There is a need for urgent study to be given to means of increasing the single entry interference level quoted in § 2 above without causing the total interference noise level to exceed the values quoted in § 1; this study should include, for example, the feasibility of reconciling the inhomogeneity of satellite signals which interfere with one another.

NOTE 5.—There is an urgent need for study of the acceptability of an increase in the maximum total interference noise values recommended in § 1 and more particularly that given § 1.2 for satellite networks in which frequency re-use is practised.

NOTE 6.—In segments of the geostationary satellite orbit not likely to be crowded, interference allowances less than those recommended in § 1 above, may be utilized, allowing a corresponding increase in other noise contributions within total acceptable noise limits.

WORKING GROUP 4-C

DRAFT REVISION OF RECOMMENDATION 466-1 (REV. 76)

MAXIMUM LEVEL OF INTERFERENCE IN A TELEPHONE CHANNEL OF A GEOSTATIONARY SATELLITE NETWORK IN THE FIXED-SATELLITE SERVICE EMPLOYING FREQUENCY MODULATION WITH FREQUENCY-DIVISION MULTIPLEX, CAUSED BY OTHER NETWORKS OF THIS SERVICE

(Draft Study Programme 2J-1/4 (Rev. 76))

(a) In § (n), the text should begin "that the levels of interference* * *".

(b) In § 1, the sixth line of the English text (and as appropriate in the French and Spanish texts) should be amended to read "* * * earth-station and space-station transmitters of other *fixed-satellite* networks, * * *".

(c) In § 2, the fourth line of the English text (and as appropriate in the French and Spanish texts) should be amended to read "* * * caused by the transmitters of another *fixed-satellite* network, * * *".

(d) In Note 1, the beginning of the text should be amended to read "The values quoted in §§ 1.1 and 1.2 do not apply to networks for which *a complete* advance publication * * *".

(e) In Note 3, the last two lines should be amended to read "* * * higher single entry interference values than those quoted in § 2 above, but any interference noise power in excess of the value recommended in § 2 should be disregarded in calculating whether the total value recommended in § 1 is exceeded".

(f) In Note 4, the second half of the sentence should be amended to read "this study should include, for example, the feasibility of *overcoming problems of interference which result from inhomogeneous network parameters.*"

(g) In Note 5, the second line of the English text (and as appropriate in the French and Spanish texts) should be amended to read "* * * interference noise values recommended* * *".

APPENDIX 1

WORKING GROUP 4-C

DRAFT NEW RECOMMENDATION

MAXIMUM PERMISSIBLE LEVELS OF INTERFERENCE IN A GEOSTATIONARY-SATELLITE NETWORK IN THE FIXED-SATELLITE SERVICE USING 8-BIT PCM ENCODED TELEPHONY CAUSED BY OTHER NETWORKS OF THIS SERVICE

(Study Programme 2J-1/4)

The CCIR,

CONSIDERING

(a) That geostationary-satellite networks in the Fixed-Satellite Service operate in the same frequency bands;

(b) That interference between networks in the Fixed-Satellite Service degrades the bit error-rate performance relative to its value in the absence of frequency sharing;

(c) That it is desirable that the bit-error-rate in networks in the Fixed-Satellite Service caused by transmitters of different networks in that service should be such as to give a reasonable orbit utilization efficiency;

(d) That the overall performance of a network should essentially be under the control of the system designer;

(e) That it is necessary to protect a network in the Fixed-Satellite Service from interference by other such networks;

(f) That it is necessary to determine the maximum permissible interfering radio frequency power in a satellite system to establish space-station and earth-station characteristics such as required protection ratios and minimum orbital spacing;

(g) That networks in the Fixed-Satellite Service may receive interference both into the space-station receiver and into the earth-station receiver;

(h) That it is desirable that the increase in bit error-rate due to interference from other satellite networks should be a controlled fraction of the total bit error-rate as set out in draft Recommendation AA/4;

(j) That where adjacent satellites serve networks with similar characteristics the largest interference contributions to a geostationary-satellite network will be from the networks using those adjacent satellites; but this may not be true where network characteristics are inhomogeneous;

(k) That the levels of interference between geostationary-satellite networks in the Fixed-Satellite Service below 10 GHz are not expected to exhibit a large variation with time and under these conditions it is preferable to define the permissible interference limit as a fraction of the pre-demodulator noise power, as this allows multiple interference entries to be superimposed on each other on the basis of RF power addition:

RECOMMENDS

1. That networks in the Fixed-Satellite Service operating in the same frequency bands below 10 GHz, and using geostationary satellites be designed and operated in such a manner that the total interference to an 8-bit PCM telephony system in the Fixed-Satellite Service caused by the earth-station and space-station transmitters of all other networks should conform provisionally to the following limits;

1.1 In frequency bands in which the network does not practise frequency re-use the interference power level, averaged over any ten minutes, should not exceed, for more than 20% of any month, 20% of the total noise power level at the input to the demo-

dulator that would give rise to a bit error rate of 1 in 10^6;

1.2 In frequency bands in which the network practises frequency re-use the interference power level, averaged over any ten minutes, should not exceed, for more than 20% of any month, 15% of the total noise power level at the input to the demodulator that would give rise to a bit error rate of 1 in 10^6;

2. That the maximum level of interference power in any such 8-bit PCM telephony system caused by the transmitters of another fixed-satellite network, averaged over any ten minutes, should not exceed, for more than 20% of any month, 4% of the total noise power level at the input to the demodulator that would give rise to a bit error rate of 1 in 10^6;

3. That the maximum level of interference noise power caused to that network should be calculated on the basis of the following values for the receiving earth station antenna gain in a direction at an angle θ (in degrees) referred to the main beam direction:

$$G = 32 - 25 \log \theta \text{ (dB)} \quad 1 \; 0 \; \theta < 48$$

$$G = -10 \text{ (dB)} \quad 48 \; 0 \; \theta \; 0 \; 180$$

except when the actual gain is known and is less than the above value, in which case the actual value should be used;

4. That the following notes should be regarded as part of this Recommendation:

NOTE 1.—It is assumed in this Recommendation that the interference from other satellite networks is of a continuous nature; further study is required in respect of cases where interference is not of a continuous nature.

NOTE 2.—The values quoted in §§ 1.1 and 1.2 do not apply to networks for which a complete advance publication has been submitted to the IFRB by the time of the XIVth Plenary Assembly; for such networks the aggregate interference power level, averaged over any ten minutes, should not exceed, for more than 20% of any month, 10% of the total noise power level at the input to the demodulator that would give rise to a bit error rate of 1 in 10^6.

NOTE 3.—In some cases it may be necessary to limit the single entry value to less than the value quoted in § 2 above in order that the total value recommended in § 1 may not be exceeded. In other cases, particularly in congested arcs of the geostationary satellite orbit, administrations may agree bilaterally to use higher single entry interference values than those quoted in § 2 above, but any interference noise power in excess of the value recommended in § 2 should be disregarded in calculating whether the total value recommended in § 1 is exceeded.

NOTE 4.—There is a need for urgent study to be given to means of increasing the single entry interference level quoted in § 2 above without causing the total interference noise level to exceed the values quoted in § 1; this study should include, for example, the feasibility of overcoming problems of interference which result from inhomogeneous network parameters.

NOTE 5.—There is an urgent need for study of the acceptability of an increase in the maximum total interference noise values recommended in § 1 and more particularly that given in § 1.2 for satellite networks in which frequency re-use is practised.

NOTE 6.—In segments of the geostationary satellite orbit not likely to be crowded, interference allowances less than those recommended in § 1 above, may be utilized, allowing a corresponding increase in other noise contributions within total acceptable noise limits.

APPENDIX 4

SERVICE DOCUMENTS PUBLISHED BY THE INTERNATIONAL TELECOMMUNICATION UNION PURSUANT TO ARTICLE 20 OF THE INTERNATIONAL RADIO REGULATIONS.

List	Title
I	International Frequency List.
II	List of Fixed Stations Operating International Circuits.
IIIA	List of Broadcasting Stations Operating in Bands below 5950 kHz.
IIIB	List of Broadcasting Stations Operating in Bands between 5950 and 26100 kHz.
IV	List of Coast Stations.
V	List of Ship Stations.
VI	List of Radiodetermination and Special Service stations.
VIIA	Alphabetical List of Call Signs of Stations used by the Maritime Mobile Service (Coast, Ship, Radiodetermination and Special Service Stations), Ship Station Selective Call Numbers or Signals and Coast Station Identification Numbers or Signals.
VIIB	Alphabetical List of Call Signs of Stations other than Amateur Stations, Experimental Stations and Stations of the Maritime Mobile Service.
VIII	List of International Monitoring Stations.
VIIIA	Lists of Stations in the Space Service and in the Radio Astronomy Service.

[FR Doc. 78-11728 Filed 5-1-78; 8:45 am]

[6712-01]

NATIONAL INDUSTRY ADVISORY COMMITTEE

Citizens Band Radio Communications Subcommittee; Meeting

APRIL 27, 1978.

Pursuant to the provisions of Pub. L. 92-463, announcement is made of a public meeting of the Citizens Band Radio Communications Subcommittee of the National Industry Advisory Committee to be held Thursday, May 25, 1978, beginning at 10 a.m. The Subcommittee will meet at the Federal Communications Commission annex building, 1229 20th Street NW., Washington, D.C. in room A-110.

Purpose: To consider emergency communications matters.
Agenda: As follows:
Items:

1. Chairman's opening remarks.
2. Review and approve minutes of the March 28, 1978 meeting.
3. Members' reports on cooperating organizations.
4. Discussion of existing resources.
5. Draft outline for national plan.
6. Recommendations and assignments for additional study.
7. Other business.
8. Establish date for next meeting.
9. Closing comments and adjournment.

Any member of the general public may attend or file a written statement with the committee either before or after the meeting. Any member of the public wishing to make an oral statement must consult with the Committee prior to the meeting. Those desiring more specific information about the meeting may telephone the Emergency Communications Division, FCC, 202-632-7232.

FEDERAL COMMUNICATIONS COMMISSION
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-11859 Filed 5-1-78; 8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

FIRST STATE BANCSHARES, INC.

Formation of Bank Holding Company

First State Bancshares, Inc., Raytown, MO., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80.18 percent of the voting shares of First State Bank of Raytown, Raytown, Mo. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. § 1842(c)).

First State Bancshares, Inc., Raytown, Mo., has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c) (8)) and § 225.4(b) (2) of the Board's Regulation Y (12 CFR 225.4(b) (2)), for permission to acquire an insurance agency business offering the sale of life, accident, and health insurance directly related to extensions of credit by First State Bank of Raytown, Raytown, Mo. Notice of the application was published on April 7, 1978, in The Kansas City Star, a newspaper circulated in Kansas City, Mo.

Applicant states that the proposed subsidiary would engage in the activities described above. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be excepted to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence

the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than May 26, 1978.

Board of Governors of the Federal Reserve System, April 26, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-11841 Filed 5-1-78; 8:45 am]

[6210-01]

HAWKEYE BANCORP., DES MOINES, IOWA

Acquisition of Bank

Hawkeye Bancorp., Des Moines, Iowa, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a) (3)) to acquire 100 per cent of the voting shares of First State Bank, Chariton, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than May 26, 1978.

Board of Governors of the Federal Reserve System, April 26, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-11842 Filed 5-1-78; 8:45 am]

[6210-01]

NORTHEAST UNITED BANCORP, INC. OF TEX.

Acquisition of Bank

Northeast United Bancorp., Inc. of Texas, Forth Worth, Tex., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares (less director's qualifying shares) of American National Bank of Dallas, Dallas, Tex., a *de novo* bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than May 25, 1978.

Board of Governors of the Federal Reserve System, April 26, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-11843 Filed 5-1-78; 8:45 am]

[6210-01]

FEDERAL OPEN MARKET COMMITTEE

Longer Run Ranges for Monetary Aggregates

On April 18, 1978, the Federal Open Market Committee adopted the following ranges for rates of growth in monetary aggregates for the period from the first quarter of 1978 to the first quarter of 1979: M-1, 4 to 6½ percent; M-2, 6½ to 9 percent; and M-3, 7½ to 10 percent. The associated range for bank credit is 7½ to 10½ percent.

By order of the Federal Open Market Committee, April 25, 1978.

ARTHUR L. BROIDA,
Secretary.

[FR Doc. 78-11844 Filed 5-1-78; 8:45 am]

[6820-25]

GENERAL SERVICES ADMINISTRATION

[FCC Docket No. CC-78-72; Intervention Notice 61]

FEDERAL COMMUNICATIONS COMMISSION

PROPOSED INTERVENTION IN COMMUNICATIONS RULEMAKING PROCEEDING; INQUIRY INTO MTS AND WATS MARKET STRUCTURE

The General Services Administration (GSA) seeks to intervene in a proceeding before the Federal Communication Commission (FCC) concerning the Notice of Proposed Rulemaking concerning MTS and WATS Market Structure announced by the FCC on February 23, 1978, 43 FR 9505. The GSA represents the interests of the executive agencies of the United States Government as users of utility services.

Persons desiring to make inquiries of GSA concerning this case should submit them, in writing, to Mr. Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, telephone 202-566-0726.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any person parties of record in the proceeding.

(Section 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4).)

Dated: April 19, 1978.

JAY SOLOMON,
Administrator of General Services.

[FR Doc. 78-11854 Filed 5-1-78; 8:45 am]

[6820-24]

[Docket No. 1776; Intervention Notice 62]

PUBLIC UTILITY COMMISSION OF TEXAS

Proposed Intervention in Alternative Rate Designs

The Adminstrator of General Services seeks to intervene in a proceeding before the Public Utility Commission of Texas involving alternative rate designs in light of their economic impact, conservation impact, and other consequences. The Administrator of General Services represents the interests of the executive agencies of the United States Government as users of utility services.

Persons desiring to make inquiries of GSA concerning this case should submit them, in writing, to Mr. Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, telephone 202-566-0726, within thirty (30) days of the publication of this notice in the FEDERAL REGISTER, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Section 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4).)

Dated: April 19, 1978.

JAY SOLOMON,
Administrator.

[FR Doc. 78-11853 Filed 5-1-78; 8:45 am]

[4110-88]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

ADVISORY COMMITTEES

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 June 1978:

PSYCHIATRY EDUCATION REVIEW COMMITTEE

Date, time, and place: June 12-13, 10 a.m., Conference Room F, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857.
Type of meeting: Open.
Contact: Ms. Connie Verney, Room 8C-12, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-2120.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to psychiatry education and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 10 a.m., June 12, through early afternoon, June 13, the meeting will be open for discussion of administrative announcements, program developments and review criteria in the light of new initiatives and priorities of the Institute.

Substantive program information may be obtained from the contact person listed above. The NIMH Information Officer who will furnish, upon request, summaries of the meeting and rosters of the committee members is Dr. Jacquelyn Hall, Acting Chief, Public Information Branch, Division of Scientific and Public Information, National Institute of Mental Health, Room 15C-17 Parklawn Building, 5600 Fishers Lane, Rockville, Md. 301-443-3473.

Dated: April 25, 1978.

CAROLYN T. EVANS,
Committee Management Officer Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 11701 Filed 5-1-78; 8:45 am]

[4110-88]

ADVISORY COMMITTEES

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 June 1978:

EPIDEMIOLOGIC STUDIES REVIEW COMMITTEE

June 12-13, 9 a.m., University of Iowa, 500 Newton Road, Iowa City, Iowa. Open: June 12, 9 to 10 a.m. Closed: Otherwise. Contact: Lavinia Walsh, Room 10C-09, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3774.

Purpose. The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to research and training activities in the field of epidemiology and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda. From 9 to 10 a.m., June 12, 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 552b(c)(6), title 5 U.S. Code and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Substantive program information may be obtained from the contact person listed above. The NIMH Information Officer who will furnish upon request summaries of the meeting and rosters of the committee members is Dr. Jacquelyn Hall, Acting Chief, Public Information Branch, Division of Scientific and Public Information, NIMH, Room 15C-17, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4573.

Dated: April 26, 1978.

CAROLYN T. EVANS,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 78-11803 Filed 5-1-78; 8:45 am]

[4110-03]

Food and Drug Administration

ARTHRITIS ADVISORY COMMITTEE

Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 1770-776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Arthritis Advisory Committee by the Secretary, Department of Health, Education, and Welfare.

DATE: Authority for this committee will expire on April 5, 1980, unless the Secretary formally determines that continuance is in the public interest.

FOR FURTHER INFORMATION CONTACT:

Richard L. Schmidt, Committee Management Officer (HFS-20), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-2765.

Dated: April 24, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-11704 Filed 5-1-78; 8:45 am]

[4110-03]

TRANSFER OF ADMINISTRATIVE RESPONSIBILITY FOR DENTAL DEVICES PREVIOUSLY CONSIDERED OVER-THE-COUNTER DRUGS

Implementation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces that the Food and Drug Administration (FDA) has transferred administrative responsibility for over-the-counter (OTC) dental devices from the Bureau of Drugs to the Bureau of Medical Devices (BMD). In addition, data and information developed by, and all submissions to, the Advisory Review Panel on OTC Dentifrices and Dental Care Agents on dental devices have been transferred to BMD. This action was taken to implement the medical device amendments of 1976, under which several products previously regarded as drugs now come within the definition of a medical device intended for human use.

FOR FURTHER INFORMATION CONTACT:

Joseph L. Hackett, Bureau of Medical Devices (HFK-403), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7443, or
William E. Gilbertson, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In a notice published in the FEDERAL REGISTER of January 30, 1973 (38 FR 2781), the Commissioner of Food and Drugs requested the submission of data and information on all OTC dental care drug products. The data and information received in response to the notice have been reviewed by the FDA Advisory Review Panel on OTC Dentifrices and Dental Care Agents under the procedures in § 330.10 (21 CFR 330.10) for classifying OTC drugs as generally recognized as safe and effective and not misbranded and for establishing on OTC drug monograph for the products. On May 28, 1976, the medical device Amendments of 1976 (Pub. L. 94-295) were enacted and several products previously regarded as drugs and under review by the Panel were placed within the definition of a device under section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)). The Commissioner has reviewed the articles previously regarded as drugs and has concluded that the following fall within the definition of a device: Denture cushions, dental adhesives, dental reliners and repair kits, denture cleansers, and plaque-disclosing kits.

In a notice published in the FEDERAL REGISTER of December 16, 1977 (42 FR 63472), the Commissioner issued a notice of implementation of the transitional provisions of the medical device amendments for articles previously considered new drugs or antibiotic drugs. The notice explained the transitional provisions of the amendments, listed generic types of medical devices previously regarded as drugs, explained which of these types are to be

subject to premarket approval requirements, indicated which Bureau in FDA regulates the products, and explained how manufacturers and importers can petition for changes in the regulatory classification of medical devices intended for human use.

This present notice announces that FDA has transferred the administrative responsibility for OTC dental care devices from the Bureau of Drugs to the Bureau of Medical Devices. In addition, the Advisory Review Panel on OTC dentifrices and dental care agents has recommended that the Commissioner transfer that portion of its report concerning articles now regarded as medical devices intended for human use, together with the data and information submitted in response to the January 30, 1973, notice to BMD. The Panel has prepared a summary representing its conclusions concerning the safety, effectiveness, and labeling, as OTC drugs, of denture cushions, dental adhesives, dental reliners and repair kits, denture cleansers (all of which were reviewed by the Panel as "denture aids"), and plaque-disclosing kits. After it is approved by the Panel, the summary will be available as an appendix to the minutes of the appropriate Panel meeting. The summary has been prepared independently of FDA and does not necessarily represent the agency's position on these articles.

The data and information received by FDA in response to the January 30, 1973, notice which were classified by the Panel as applying to denture aids and dental plaque-disclosing agents have been transferred to BMD with the related data and information developed by the Panel. Persons will be notified by letter of the transfer to BMD of the data or information which they submitted on these products.

Dated: April 24, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-11703 Filed 5-1-78; 8:45 am]

[4110-03]

[Docket No. 75N-0139; DESI No. 9955]

CERTAIN ORAL PROTEOLYTIC ENZYMES

Denial of Hearing; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs (1) denies a hearing and withdraws approval of two proteolytic enzyme products whose sponsor had requested a hearing but did not submit any data to support those requests and (2) withdraws approval of one proteolytic enzyme product whose sponsor did not request a hearing. The products have been used to control edema and inflammation associated with various disorders.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific drug product should be directed to the Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs, 5600 Fishers Lane, Rockville, Md. 20857.

EFFECTIVE DATE: May 12, 1978.

FOR FURTHER INFORMATION CONTACT:

Nathan J. Treinish, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 9955) published in the FEDERAL REGISTER of June 25, 1970 (35 FR 10393), the Commissioner of Food and Drugs announced his conclusions pursuant to the evaluation of reports received from the National Academy of Sciences-National Research Council (NAS-NRC), Drug Efficacy Study Group concerning oral proteolytic enzymes. The drugs were classified as possibly effective and lacking substantial evidence of effectiveness. The notice also stated that additional evidence was required to fully establish their effectiveness.

Data and clinical studies that were subsequently submitted by the sponsors were found not to support the effectiveness of the drugs, and in a notice of opportunity for hearing published in the FEDERAL REGISTER of July 24, 1975 (40 FR 30995) (DESI 9955) (Docket No. 75N-0139, formerly FDC-D-588), the Director of the Bureau of Drugs reclassified the drugs to lacking substantial evidence of effectiveness for all indications and proposed to withdraw approval of the new drug applications for the products. The holders of the new drug applications named below requested hearings and submitted supporting material concerning their drug products. The hearing requests are under review and will be the subject of a future FEDERAL REGISTER notice. Marketing of these drug products may continue pending a ruling on the hearing requests.

NDA 11-783; Orenzyme Enteric-coated Tablets containing 50,000 or 100,000 units of trypsin and 4,000 or 8,000 units of chymotrypsin; Merrell-National Laboratories, Division of Richardson-Merrell, Inc., 100 East Amity Rd., Cincinnati, Ohio 45215.

NDA 12-178; Chymoral enteric-coated Tablets containing trypsin and chymotrypsin equivalent to 50,000 or 100,000 units enzyme activity; Armour Pharmaceutical Co.

NDA 12-293; Papase Tablets containing enzymes extracted from carica papaya equivalent to 10,000 units enzyme activity; Warner-Chilcott Laboratories, Division of Warner-Lambert Pharmaceutical Co., 201 Tabor Rd., Morris Plains, N.J. 07950.

NDA 12-527; Ananase Enteric-coated Tablets containing bromelains equivalent to 50,000 or 100,000 units enzyme activity; William H. Rorer, Inc., 500 Virginia Dr., Fort Washington, Pa. 19034.

NDA 12-626; Avazyme Enteric-coated Tablets containing 20 mg chymotrypsin; Wampole Laboratories, Division of Denver Chemical Manufacturing Co., 35 Commerce Rd., Stamford, Conn. 06904.

NDA 12-724; that part of NDA 12-724 pertaining to Wilzyme Enteric-coated Tablets containing 50,000 units of proteolytic activity (approximately 3 to 1 ratio of trypsin activity to chymotrypsin activity); Wilson Laboratories, Division of Wilson Pharmaceutical and Chemical Corp., 2600 Bond St., Park Forest South, Chicago, Ill. 60466.

NDA 12-724; that part of NDA 12-724 pertaining to Chymolase Enteric-coated Tablets containing 50,000 units of protoeolytic activity (approximately 3 to 1 ratio of trypsin to chymotrypsin activity); distributed by the Warren-Teed Products Co., subsidiary of Rohm & Haas Co., 582 W. Goodale St., Columbus, Ohio 43215.

The current notice pertains only to the following drugs which were also included in the notice of July 24, 1975.

I. THE DRUGS

NDA 9-955; Cytolav Capsules containing 7,000 Armour units chymotrypsin; formerly marketed by Armour Pharmaceutical Co., Division of Armour & Co., Greyhound Tower, Phoenix, Ariz 85077. Armour requested a hearing but did not submit any supporting data or argument.

NDA 11-908; Chymar Buccal Tablets containing 10,000 Armour units chymotrypsin; formerly marketed by Armour Pharmaceutical Co. Armour requested a hearing but did not submit any supporting data or arguments.

NDA 12-724; that part of NDA 12-724 pertaining to Haugase Enteric-coated Tablets, containing 50,000 units of proteolytic activity (approximately 3-to-1 ration of trypsin activity to chymotrypsin activity) distributed by Madland Laboratories, Inc., 125 W. Wisconsin Ave., Milwaukee, Wis 53203. Madland did not request a hearing.

No other person filed a written appearance of election as provided for by said notice. The failure to file such an appearance constitutes election by such persons not to avail themselves of the opportunity for a hearing.

All drug products that are identical, related, or similar to the drugs named above and are not the subject of an ap-

proved new drug application are covered by the new drug applications reviewed and are subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Divison of Drug Labeling Compliance (address given above).

II. FINDINGS

On the basis of the foregoing, the Commissioner finds that (1) there is a lack of substantial evidence that Armour's Cytolav Capsules, and Chymar Buccal Tablets and Madland's Haugase Enteric-coated Tablets have the effects they are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling, and (2) there is a lack of substantial evidence that each component of Haugase Enteric-coated Tablets, a combination product, contributes to the total effects claimed. In addition, Armour has failed to offer any data or legal reason to demonstrate the existence of a genuine and substantial issue of fact requiring a hearing concerning Cytolav or Chymar.

Therefore under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053, as amended (21 U.S.C. 355)), and under the authority delegated to the Commissioner (21 CFR 5.1), the request for a hearing for Cytolav Capsules (NDA 9-955) and Chymar Buccal Tablets (NDA 11-908) is denied, and approval of the new drug applications for these drugs and that part of NDA 12-724 pertaining to Haugase Enteric-coated Tablets is withdrawn, effective May 12, 1978.

Dated: April 24, 1978.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc. 78-11702 Filed 5-1-78; 8:45 am]

[4110-03]

[Docket No. 78N-0081]

DRUGS FOR HUMAN USE

Drug Efficacy Study Implementation; Revocation of Exemption

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice revokes the temporary exemption for continued marketing of two poorly absorbed sulfonamides for oral use. Under the exemption, the drugs have been allowed to remain on the market beyond the time limit scheduled for implementation of the drug efficacy study.

EFFECTIVE DATE: May 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Mary E. Catchings, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice appearing elsewhere in this issue of the FEDERAL REGISTER, the Food and Drug Administration is reclassifying the possibly effective indications for the two poorly absorbed sulfonamides (succinylsulfathiazole and phthalylsulfacetamide) described below (DESI 5803) to lacking substantial evidence of effectiveness. These products have been allowed to remain on the market beyond the time limit established for implementation of the drug efficacy study (DESI) on the condition that manufacturers undertake additional clinical studies to determine the products' effectiveness. The temporary exemption to permit continued marketing was announced in a notice published in the FEDERAL REGISTER of August 8, 1973 (38 FR 21442). Because no person has submitted additional data or expressed an intent to perform additional studies for the drugs described below, the temporary exemption granted by the August 8, 1973 notice, as it pertains to these two drugs, is hereby revoked.

1. NDA 4-687; that portion of the NDA pertaining to Sulfasuxidine Tablets, containing succinylsulfathiazole; Merck, Sharp & Dohme, Division of Merck & Co., Inc., West Point, Pa. 19486.

2. NDA 6-593; Thalmyd Tablets, containing phthalylsulfacetamide; Schering Corp., Galloping Hill Road, Kenilworth, N.J. 07003.

The phthalylsulfathiazole products (Cremothalidine Suspension and Sulfathalidine Tablets) named in the August 8, 1973 notice remain exempt for the present because a study to determine the effectiveness is being conducted by Merck, Sharp & Dohme.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 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).

Dated: April 24, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-11801 Filed 5-1-78; 8:45 am]

[4110-03]

[Docket No. 78N-0081; DESI 5803]

CERTAIN POORLY ABSORBED SULFONAMIDES FOR ORAL USE

Opportunity for Hearing on Proposal To Withdraw Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice reclassifies certain poorly absorbed sulfonamides for oral use to lacking substantial evidence of effectiveness, proposes to withdraw approval of the new drug applications, and offers an opportunity for a hearing on the proposal.

DATE: Hearing requests due on or before June 1, 1978.

ADDRESSES: Communications forwarded in response to this notice should be identified with the reference number DESI 5803 and the docket number appearing in the heading of this notice, and addressed to the Food and Drug Administration, 5700 Fishers Lane, Rockville, Md. 20857. Request for Hearing: Hearing Clerk, Food and Drug Administration (HFC-20), Room 4-65. Request for opinion of the applicability of this notice to a specific product: division of Drug Labeling Compliance (HFD-310), Bureau of Drugs, Food and Drug Administration.

FOR FURTHER INFORMATION CONTACT:

Mary E. Catchings, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 5803; Docket No. FDC-D-379 (now Docket No. 78N-0081)) published in the FEDERAL REGISTER of September 19, 1970 (35 FR 14666), the Food and Drug Administration classified poorly absorbed sulfonamides for oral or rectal use as possibly effective or lacking substantial evidence of effectiveness for their various indications for gastrointestinal use, such as adjunctive therapy in the management of ulcerative colitis.

Subsequently, in a notice published in the FEDERAL REGISTER of August 8, 1973 (38 FR 21441), poorly absorbed oral sulfonamides were temporarily exempted from the time limit established for completing certain phases of the Drug Efficacy Study (DESI) program. The exemption was granted because there is believed to be a definable population who have an intolerance to salicylazosulfapyridine, the drug that is effective for use as adjunctive therapy in the management of ulcerative colitis. The purpose of the exemption was to allow time for studies to be conducted to determine the effectiveness of the poorly absorbed sulfonamides.

No person has submitted data or portocols or has expressed an intention to perform additional clinical studies on the drug products described below, and the drugs are now reclassified to lacking substantial evidence of effectiveness. The temporary exemption granted by the August 8, 1973

notice, as it pertains to these drugs, is revoked in a notice appearing elsewhere in this issue of the FEDERAL REGISTER.

1. NDA 4-687; that portion of the NDA pertaining to Sulfasuxidine Tablets, containing succinylsulfathiazole; Merck Sharp & Dohme, Division of Merck & Co., Inc., West Point, Pa. 19486.

2. NDA 6-593; Thalamyd Tablets, containing phthalylsulfacetamide; Schering Corp., Galloping Hill Road, Kenilworth, N.J. 07003.

Other drugs included in the September 19, 1970 notice are not affected by this notice.

On the basis of all 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(s).

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 affect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

In addition to the holder(s) of the new drug application(s) 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(s) 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 that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

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 products 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 products named above and of all identical, related, or similar products.

An applicant or any other person subject to this notice pursuant to 21 CFR 310.6 who decides to seek a hearing shall file (1) in or before June 1, 1978, a written notice of appearance and request for hearing, and (2) on or before July 3, 1978, the data, information, and analyses on which the person 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 the person not to make use of the opportunity for a hearing concerning the action proposed with respect to the product and constitutes 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, Room 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 between the hours of 9 a.m. and 4 p.m., 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 5.82).

Dated: April 6, 1978.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 78-11802 Filed 5-1-78; 8:45 am]

[4110-12]

Office of the Secretary

NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Directive on the Application of Title IX to Intercollegiate Athletics

AGENCY: Office for Civil Rights, HEW.

ACTION: Notice of Directive on the implementation of the Title IX requirements and an opinion from the General Counsel.

SUMMARY: The Department has received requests from colleges and university officials and interested groups on the implementation of the Title IX athletic requirements. On April 25, 1978, the Secretary issued a directive to the General Counsel and the Director and Deputy Director of the Office for Civil Rights asking them to arrange for a review of the implementation of Title IX with respect to revenue-producing sports to assure that practical guidance and technical assistance are available. Persons wishing to relate any experiences with respect to

Title IX should send their comments to the address below.

Attached to the directive is an opinion from the General Counsel, dated April 18, 1978, which concludes that institutions of higher education receiving Federal financial assistance must comply with Title IX in the administration of their revenue-producing athletic activities.

FOR FURTHER INFORMATION CONTACT:

Director, Office for Civil Rights, HEW, 330 Independence Avenue SW., Washington, D.C. 20201.

Dated: April 27, 1978.

DAVID TATEL,
Director, Office for Civil Rights.

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C. April 25, 1978.

MEMORANDUM

To: Peter Libassi, General Counsel; David Tatel, Director, Office for Civil Rights; Cynthia Brown, Deputy Director, Office for Civil Rights.
Subject: Application of Title IX to Intercollegiate Athletics.

The three-year transition period for achieving compliance with Title IX in the area of athletics will end on July 25, 1978. I have received and am attaching an opinion from the General Counsel which concludes that institutions of higher education receiving Federal financial assistance must comply with Title IX in the administration of their revenue-producing athletic activities. The opinion also concludes that the current Title IX regulations and Department policies allow flexibility in their application to those activities.

Colleges and university officials and interested groups have requested additional clarification on the implementation of the athletic requirements. You, therefore, should arrange for a review of the implementation of Title IX with respect to intercollegiate athletics with particular attention to revenue-producing sports. The purposes of this review are to assure that practical guidance and technical assistance on the application of the Title IX regulations and Department policies are available to college and university officials, and to determine if the development of further policies is necessary.

As part of this effort the review should include the experiences of colleges and universities over the last three years in achieving compliance with Title IX. We need to learn of the achievements of these institutions in expanding athletic opportunities for women, as well as any difficulties they have encountered.

You should conduct this review by relying, to the greatest extent possible, on the people who are involved in these issues. In particular, I would like you to explore with representatives of the university community, women's groups and other interested parties the active roles they might play in providing guidance and technical assistance in connection with the implementation of Title IX.

A central concern of your review should be to preserve what flexibility now exists under the regulations and to avoid the issuance of the kind of detailed regulations and guidelines that are counterproductive to the objectives of non-discrimination we all share. This Department has issued far too many and detailed regulations in the past and we must avoid doing so in the future.

In light of the widespread interest in the issue of implementing Title IX with respect to intercollegiate athletics, I am asking that you have this directive and the opinion of the General Counsel published in the FEDERAL REGISTER.

Please keep me informed of developments.

JOSEPH A. CALIFANO, JR.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, THE OFFICE OF THE SECRETARY,
Washington, D.C. 20201.
April 18, 1978.

MEMORANDUM

To: The Secretary.
From: F. Peter Libassi.
Subject: Applicability of Title IX of the Education Amendments of 1972 to Revenue Producing Intercollegiate Athletics.

ISSUE

You have asked our opinion as to whether an institution of higher education which is receiving Federal financial assistance must comply with the prohibition against sex discrimination imposed by Title IX of the Education Amendments of 1972 and the regulations promulgated thereunder (45 CFR Part 86) in the administration of its revenue producing intercollegiate athletic activities.

CONCLUSION

Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) prohibits sex discrimination in any "education program or activity" receiving Federal financial assistance. In our opinion, a revenue producing intercollegiate athletic program is (a) an education program or activity within the meaning of Title IX, and (b) an integral part of the general undergraduate education program of an institution of higher education. Accordingly, in our opinion, an institution of higher education must comply with the prohibition against sex discrimination imposed by that title and its implementing regulations in the administration of any revenue producing intercollegiate athletic activity if either the athletic activity or the general education program of which the athletic activity is a part is receiving Federal financial assistance.

DISCUSSION

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

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

There is no reference anywhere in Title IX to revenue producing athletics, and the term "education program or activity" is not defined. There is, however, some indication that Congress intended that term to have an expansive meaning. Section 901(a) of Title IX provides a series of exemptions from the general prohibition. Among them are exemptions for the Boy Scouts, the Girl Scouts, and social fraternities and sororities. we assume that absent the exemptions, each of these groups of organizations would be subject to the prohibition against sex discrimination as an education program or activity. In our view as definition of "education program or activity" that encompasses social fraternities and sororities also encompasses intercollegiate athletics, including revenue producing athletics as well.

The limited legislative history for Title IX tends to support a broad view of what is an education program or activity, but is less clear with respect to whether athletics, and particularly revenue producing intercollegiate athletics, are included in the term. In the only comments of any length on the subject, Senator Bayh, the Senate sponsor of Title IX, stated:

"What we are trying to do is provide equal access for women and men students to the educational process and the extracurricular activities in a school, where there is not a unique facet such as football involved. We are not requiring that intercollegiate football be desegregated, nor that the men's locker room be desegregated." Cong. Rec. S. 13554 (daily ed. August 6, 1971).[1]

However, any ambiguity as to whether revenue producting intercollegiate athletics are an education program or activity under Title IX was eliminated in 1974 by the enactment of section 844 of the Education Amendments of 1974. The language of that section and its history make it clear that it is Congress' intent that revenue producing intercollegiate athletics be included in the term.

On May 20, 1974 Senator John Tower of Texas introduced an amendment to Titl IX exempting revenue producing athletics. It stated:

"[T]his section [§ 901 of Title IX] shall not apply to an intercollegiate athletic activity to the extent such activity does or may provide gross receipts or donations to the institution necessary to support that activity."Cong. Rec. S. 8488 (daily ed. May 20, 1974).

The amendment was adopted on the floor of the Senate by voice vote. The Conference Committee on the Education Amendments of 1974 deleted Senator Tower's amendment. Instead the Conference adopted what was to become section 844 of the 1974 Amendments, commonly referred to as the "Javits Amendments." It provides as follows: "The Secretary [of HEW] shall prepare and publish . . . proposed regulations implementing the provisions of Title IX of the Education Amendments of 1972 relating to the prohibition of sex discrimination in Federally assisted education programs *which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of the particular sports.*" (Emphasis added.)

In our judgment, Congress has made it clear, by rejecting an exemption from Title IX for revenue producing athletics and adopting section 844, which requires the promulgation of Title IX regulations that include reasonable provisions concerning intercollegiate athletic activities, that revenue producing intercollegiate athletics are an "education program or activity" within the

[1]Other comments in the debates refer, in passing, to the possible need to maintain separate physical education facilities, S. 1769 (daily ed., Feb. 15, 1972), 92d Cong., 2d Sess., comments of Sen. Bayh; and S. 2747 (daily ed., Feb. 28, 1972), 92d Cong., 2d Sess., comments of Sen. Bayh.

meaning of Title IX.[2] An institution of higher education must, therefore, comply with the prohibition against sex discrimination imposed by Title IX in the administration of any revenue producing intercollegiate athletic activity if the activity is receiving Federal financial assistance, directly or indirectly.

There are some revenue producing intercollegiate athletic activities that clearly receive direct Federal financial assistance. Funds provided under Title VII of the Higher Education Act, for example, may be used to build facilities that are used, in part, for revenue producing athletics. While it is clear that assistance of this kind which directly supports an intercollegiate athletic program would subject the program to the requirements of Title IX and the implementing regulations, such direct assistance is not common. Other kinds of assistance that bear a less direct relationship to revenue producing intercollegiate athletics, particularly student financial assistance, are more common.

It is well established that general student financial assistance, such as guaranteed student loans and grants, provided by the Federal Government to assist a student in paying the cost of attending an institution of higher education is Federal financial assistance to the institution. *Bob Jones University* v. *Johnson*, 396 F. Supp. 597 (D.S.C. 1974), *aff'd sub nom., Bob Jones University* v. *Roudebush*, 529 F. 2d 514 (4th Cir. 1975). Historically, intercollegiate athletics have been described as an integral part of general undergraduate education. For example, the 1976-77 Manual of the National Collegiate Athletic Association, the private association that regulates much of the nation's intercollegiate athletics, contains the following statement of fundamental policy:

"The competitive athletic programs of the colleges are designed to be a vital part of the educational system. A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body, and, by so doing, retain a clear line of demarcation between college athletics and professional sports." *Manual*, at 5.

In our view, therefore, student financial assistance is Federal financial assistance to the revenue producing athletic programs of the student's institution of higher education.

The inclusion of revenue-producing intercollegiate athletics within the education programs and activities receiving Federal financial assistance is not the only basis on which an institution of higher education is required to comply with Title IX in the administration of such programs. It is well settled, with respect to the prohibition against discrimination on the basis of race, religion, color, or national origin imposed by title VI of the Civil Rights Act of 1964, that Federal financial assistance may not be provided to any program or activity which is either administered in a discriminatory manner or "infected by a discriminatory environment." *Board of Public Institution of Taylor County, Florida* v. *Finch*, 414 F. 2d 1068, 1078 (5th Cir. 1968).

Under this infection doctrine, a Federal grantee is required to comply with Title VI in the administration of an activity that does not receive Federal financial assistance if that activity is so closely related to, and such an integral part of, a program or activity that does receive Federal financial assistance that discrimination in the administration of the former would infect the latter.

The infection doctrine is as applicable to Title IX of the Education Amendments of 1972 as it is to Title VI of the Civil Rights Act of 1964. As indicated previously, historically intercollegiate athletics have been described as an integral part of general undergraduate education. In our view, revenue producing intercollegiate athletics are so integral to the general undergraduate education program of an institution of higher education that sex discrimination in the administration of a revenue producing athletic activity would necessarily infect the general undergraduate education program of the institution.

Therefore, in our opinion, an institution of higher education which is receiving Federal financial assistance for its general undergraduate education program must comply with the prohibitions against sex discrimination imposed by Title IX in the administration of its revenue producing intercollegiate athletic activities regardless of whether those athletic activities are themselves receiving Federal financial assistance.

The Secretary, in fulfilling his obligation to assure that institutions of higher education receiving Federal financial assistance comply with Title IX, is authorized to promulgate regulations and policies defining what constitutes discrimination prohibited by that title. In our opinion, the provisions of the current Title IX regulations and the Department's policies that deal specifically with athletics, including revenue producing intercollegiate athletics, are consistent with the statute and are a proper exercise of the Secretary's discretion. The text of the regulations. 45 CFR 86.41, is attached at Tab B.

It should also be noted that in our view the current Title IX regulations and policies allow flexibility in their application to revenue producing intercollegiate athletics.

Congressional Attempts To Exempt Revenue-Producing Sports From Title IX

The following is a brief description of attempts by Congress, all of which were unsuccessful, to exempt revenue-producing sports from coverage of Title IX.

A. *Amendments or Proposed Amendments of Statute.*

May 20, 1974, Senator Tower introduced an amendment to the Education Amendments of 1974 to exempt revenue-producing sports from Title IX. [Adopted by the Senate but deleted by the Conference Committee.]*

June 1975, Representative O'Hara introduced H.R. 8394 to allow revenue-producing sports to use their profits to maintain their own teams before diverting any profits to other men's or women's teams. [Bill was referred to the House Subcommittee on Postsecondary Education, considered, and reported to the full Committee, which voted 30-8 to recommit it to the Subcommittee where no further action was taken.]

July 15, 1975, Senator Tower, Bartlett and Hruska co-sponsored S2106, a bill to exclude coverage of revenue-producing sports from Title IX. [Referred to the Senate Subcommittee on Education, was considered in hearings on September 16 and 18, 1975, but was never reported out of committee.

B. *Proposed Concurrent Resolutions Disapproving the HEW Title IX Regulation.* Under Section 431 (d) and (f) of the General Education Provisions Act, HEW was required to submit any Title IX regulation to Congress for review 45 days before its effective date. During the 45-day period, the law allows Congress, by concurrent resolution, to disapprove the regulation in whole or in part. On June 4, 1975, the present Title IX regulation was transmitted to Congress. Several concurrent resolutions were proposed, some of which concerned revenue-producing sports.

June 5, 1975, Senator Helms introduced S. Con. Res. 46 disapproving the entire Title IX regulation. [No action was taken.]

June 17, 1975, Representative Martin introduced H. Con. Res. 310, disapproving the entire Title IX regulation, and H. Con. Res. 311, disapproving the regulation's provisions on intercollegiate athletics. [Both resolutions were considered and rejected by the House Postsecondary Education Subcommittee.]

July 16, 1975, Senators Laxalt, Curtis, and Fannin co-sponsored S. Con. Res. 52, disapproving the application of Title IX to intercollegiate athletics. [Resolution was referred to the Subcommittee on Education of the Senate Committee on Labor and Public Welfare where no action was taken on it.]

C. *Independent Bills on the Subject of Athletics.* In addition to the foregoing proposed amendments to Title IX, two independent bills have been introduced that would have, or would have had, the effect of exempting intercollegiate athletics from Title IX.

July 21, 1975, Senator Helms introduced S2146, a bill that prohibited federal agencies from enforcing regulations pertaining to athletics where participation in those athletic activities was not a required part of the curriculum of an educational institution. [No action taken on this bill during the 94th Congress.]

January 31, 1977, Senator Helms reintroduced what had been S2146 (see previous item) as S535. [No action has yet been taken on this bill.]

Tab B

45 Code of Federal Regulations 86.41 and 86.37(c)

§ 86.41 *Athletics.*

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where

[2]The history of Congressional action on other proposals for amending Title IX with respect to intercollegiate athletics and on proposals for Congressional disapproval of the Department's regulations implementing that Title tend to further support this conclusion. A brief summary of that history is attached at Tab A.

*In lieu of the proposed Tower Amendment, in July 1974 Senator Javits proposed to the Conference Committee an amendment to require HEW to include in its Title IX regulation with respect to intercollegiate athletics, "reasonable provisions considering the nature of particular sports." This amendment was included in the Education Amendments of 1974 enacted in August 1974.

selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously beem limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose of major activity fo which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

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

(8) Provision of medical training facilities and services;

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

(10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not consittute noncompliance with this section, but the Director may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844. Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484.)

[40 FR 21428, June 4, 1975; 40 Fr 39506, Aug. 23, 1975]

§ 86.37 *Financial assistance.*

(c) *Athletic scholarships* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 86.41 of this part.

(Secs. 901, 902. Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682, and Sec. 844. Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484,)

[FR Doc. 78-11959 Filed 5-1-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[INT DES 78-9]

WYOMING

Correction

Notice of availability of draft Regional Environmental Statement and holding of Public Hearings for proposed development of coal resources in Southwest Wyoming.

This Notice corrects the notice of availability which appeared on page 14747 of the FEDERAL REGISTER dated April 7, 1978. The last paragraph of the Notice is corrected to read as follows:

Written requests to testify orally at the public hearings should be submitted to the Team Leader, Coal ES Team, Bureau of Land Management, P.O. Box 1869, 205 Broadway, Lea Building, Rock Springs, Wyo. 82901 prior to close of business May 15, 1978. Persons wishing to give oral comments are requested to limit their testimony to ten (10) minutes. Copies of complete oral statements or other written comments are encouraged and will be accepted at the hearings and made part of the official record.

Dated: April 27, 1978.

GEORGE L. TURCOTT,
Director,
Bureau of Land Management.

[FR Doc. 78-11805 Filed 5-1-78; 8:45 am]

[4310-84]

Bureau of Land Management

ALASKA

Application for Pipeline Right-of-Way, AA-13573

APRIL 24, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by Pub. L. 93-153 approved November 16, 1973 (87 Stat. 575), the Alaska Pipeline Company, P.O. Box 6288, Anchorage, Alaska 99502, has applied for a thirty (30) foot wide permanent pipeline right-of-way across the following public lands:

T. 6 N., R. 11 W., Seward Meridian
Sec. 3.
T. 7 N., R. 11 W., Seward Meridian
Secs. 33 and 34.

The proposed pipeline is located for the most part within an existing electric transmission line right-of-way to Homer Electric Company (A-057316), and is located northeast of Kenai, Alaska.

The 8-inch buried pipeline will convey natural gas across approximately 3 miles of public land.

The purpose of this notice is to inform the public that the United States Department of the Interior, Bureau of Land Management will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send them to the State Director, Alaska State Office, Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510.

ROBERT E. SORENSON,
Chief, Branch of Lands, and Minerals Operations.

[FR Doc. 78-11855 Filed 5-1-78; 8:45 am]

[4310-03]

Heritage Conservation and Recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before April 21, 1978. 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, Office of Archeology and Historic Preservation, 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 May 12, 1978.

WILLIAM J. MURTAGH,
Keeper of the National Register.

ALASKA

Juneau Division

Juneau, *Alaskan Hotel,* 167 S. Franklin St.

ARIZONA

Pima County

Tucson, *Fort Lowell Multi-Cultural District,* Craycroft and Fort Lowell Rds.

CALIFORNIA

Los Angeles County

Sierra Madre vicinity, *Old Shortcut Ranger Station,* N of Sierra Madre in Angles National Forest.

DELAWARE

New Castle County

Middletown, *Middletown Historic District*, roughly bounded by Redding, Scott, Lockwood, and Catherine Sts.

Sussex County

Millsboro vicinity, *Nanticoke Indian Community*, E of Millsboro.

ILLINOIS

Cook County

Chicago, *Michigan-Wacker Historical District*, Michigan Ave. and Wacker Dr. and environs.
Chicago, *New Masonic Building and Oriental Theater*, 20 W. Randolph St.
Evanston, *Ridgewood*, 1703–1713 Ridge Ave.

McLean County

Hudson, *Hubbard House*, 310 Broadway.
Towanda vicinity, *Duncan Manor*.

Marshall County

Sparland, *Waugh, Robert, House*, 202 School St.

Monroe County

Maeystown, *Maeystown Historic District*, SR 7.
Waterloo, *Waterloo Historic District*, roughly bounded by Moore, Magnolia, Market and Park Sts.

Rock Island County

Rock Island, *Rodman, Gen. Thomas, House*, 2532 8½ Ave.

Scott County

Naples, *Naples Archeological District*, central Illinois.

MAINE

Somerset County

Hinckley vicinity, *Quincy Building (L. C. Bates Museum)*, S of Hinckley.

MARYLAND

Washington County

Boonsboro vicinity, *Ingram-Schipper Farm*, *N of Boonsboro*.

NEW HAMPSHIRE

Merrimack County

Northfiled, *Hall Memorial Library*, Park St.

NEW JERSEY

Bergen County

Edgewater, *Alcoa Edgewater Works*, 700 River Rd.

TENNESSEE

Greene County

Greeneville vicinity, *New Bethel Cumberland Presbyterian Church*, NW of Greeneville on TN 70.

VERMONT

Windsor County

Springfield, *Hartness House*, 30 Orchard St.

WEST VIRGINIA

Harrison County

Clarksburg, *Waldomore*, W. Pike and N. 4th Sts.

Ohio County

Wheeling, *List, Henry K., House*, 827 Main St.

Pocahontas County

Huntersville, *Huntersville Presbyterian Church*, WV 39 and SR 21.

[FR Doc. 78-11764 Filed 5-1-78; 8:45 am]

[4310-03]

NATIONAL REGISTER OF HISTORIC PLACES

Additions, Deletions, and Corrections

By notice in the FEDERAL REGISTER of February 7, 1978, Part II, there was published a list of the properties included in the National Register of Historic Places. Further notice is hereby given that certain amendments or revisions in the nature of additions, deletions, or corrections to the previously published list are adopted as set out below.

It is the responsibility of all Federal agencies to take cognizance of the properties included in the National Register as herein amended and revised in accordance with section 106 of the National Historic Preservation Act of 1966, 80 Stat. 16 U.S.C. 470 et seq. (1970 ed.), and the procedures of the Advisory Council on Historic Preservation, 36 CFR Part 800.

WILLIAM J. MURTAGH,
Keeper of the National Register.

The following list of properties have been added to the National Register of Historic Places since notice was last given in the February 7, 1978, FEDERAL REGISTER. National Historic Landmarks are designated by NHL; properties recorded by the Historic American Buildings Survey are designated by HABS; properties recorded by the Historic American Engineering Record are designated by HAER; properties receiving grants-in-aid for historic preservation are designated by G.

ALABAMA

Mobile County

Mobile, *Emanuel Building* (Bank of Mobile), 100 N. Royal St. (3-21-78).

ALASKA

Anchorage Division

Anchorage vicinity, *Buluga Point Site*, S of Anchorage (3-30-78).

Sitka Division

Sitka, *See House (Peter Trimble Rowe House)*, 611 Lincoln St. (3-30-78).

ARIZONA

Coconino County

Flagstaff, *Weatherford Hotel*, 23 N. Leroux St. (3-30-78).
Flagstaff, vicinity, *Fern Mountain Ranch*, N of Flagstaff (3-29-78).

Yavapai County

Poland vicinity, *Poland Tunnel*, W of Poland off AZ 69 (3-29-78).

ARKANSAS

Lafayette County

Lewisville, *King-Whatley Building*, 2nd and Maple Sts. (3-30-78).

Quachita County

Camden vicinity, *Oakland Farm (Tate House)*, S of Camden at Tate and Oakland Sts. (3-24-78).

Pope County

Russellville, *Wilson House*, 214 E. 5th St. (3-29-78).

Van Buren County

Fairfield Bay vicinity, *Lynn Creek Shelter* (3-21-78).

CALIFORNIA

Alameda County

Berkeley, *Golden Sheaf Bakery*, 2069-2071 Addison St. (3-31-78).

Fresno County

Fresno, *Southern Pacific Passenger Depot*, 1033 H St. (3-21-78).
Fresno, *Warehouse Row*, 722, 744, and 764 P St. (3-24-78).

Los Angeles County

Los Angeles, *Stimson House*, 2421 S. Figueroa St. (3-30-78).

Marin County

Larkspur, *Green Brae Brick Yard*, 125 E. Sir Francis Drake Blvd. (3-24-78).

Mariposa County

El Portal vicinity, *Yosemite Village Historic District*, E of El Portal in Yosemite National Park (3-30-78).

Napa County

Napa, *Migliavacca House*, Division St. (3-30-78).

Riverside County

Riverside, *Riverside Municipal Auditorium and Soldier's Memorial Building*, 3485 7th St. (3-31-78).

Sacramento County

Carmichael vicinity, *Nisenan Village Site*, SE of Carmichael at Oak and California Sts. (3-21-78).
Sacramento, *Sacramento Memorial Auditorium*, 16th and J Sts. (3-29-78).

San Diego County

Ramona vicinity, *Castle, The*, W of Ramona (3-30-78).

San Mateo County

Atherton, *Watkins-Cartan House*, 25 Isabella Ave. (3-30-78). HABS.

Shasta County

Mineral vicinity, *Prospect Peak Fire Lookout*, NE of Mineral (3-30-78).
Redding, *Pine Street School*, 1135 Pine St. (3-21-78).

Solano County

Rio Vista vicinity, *Delta King*, 3 mi. (4.8 km) N of Rio Vista on CA 84 (3-31-78).

Tulare County

Mineral King vicinity, *Barton-Lackey Cabin*, N of Mineral King in Kings Canyon National Park (3-30-78).
Three Rivers vicinity, *Groenfeldt Site*, Sequoia and Kings Canyon National Parks (3-30-78).

COLORADO

Boulder County

Boulder, *Colorado Chautauqua*, Chautauqua Park (3-21-78).

Denver County

Denver, *Elitch Theatre*, W. 38th Ave. and Tennyson St. (3-21-78).

Rio Blanco County

Meeker, *St. James Episcopal Church*, 368 4th St. (3-30-78).

CONNECTICUT

Hartford County

Hartford, *Keney Tower*, Main and Ely Sts.(3-30-78).

Windham County

Killingly vicinity, *Daniel's Village Archeological Site*, N of Killingly (3-30-78).

DELAWARE

New Castle County

Middletown vicinity, *Rumsey Farm*, W of Middletown on DE 4 (3-30-78).

Sussex County

Bethany Beach vicinity, *Wilgus Site*, NW of Bethany Beach (3-30-78).

GEORGIA

Baldwin County

Milledgeville vicinity, *Rutherford, John, House*, 550 Allen Memorial Dr. (3-21-78).
Milledgeville vicinity, *Thalian Hall*, Allen Memorial and Ivey Drs. (3-21-78).

Fulton County

Atlanta, *Atlanta Waterworks Hemphill Avenue Station*, 1210 Hemphill Ave., NW. (3-29-78).

Jenkins County

Millen vicinity, *Camp Lawton*, N of Millen (3-24-78).

HAWAII

Hawaii County

Hilo, *Lyman, Rev. D. B., House*, 276 Haili St. (3-24-78).
Kapaau vicinity, *Bond District*, SE of Kapaau off HI 27 (3-30-78).

Kauai County

Lihue vicinity, *Lihue Hongwanji Mission*, N of Lihue at HI 56 (3-21-78).

IDAHO

Bonneville County

Idaho Falls, *First Presbyterian Church*, 325 Elm St. (3-29-78).

Idaho County

Dixie vicinity, *Moore, Jim, Place*, Salmon River Canyon (3-29-78).

Lemhi County

Salmon, *Shoup Building*, Center and Main Sts. (3-31-78).

Twin Falls County

Twin Falls, *Smith, C. Harvey, House*, 255 4th Ave. E.(4-3-78).
Twin Falls, *Twin Falls City Park Historic District*, 2nd N., 2nd E., and Shoshone Sts., 4th and 6th Aves. (3-30-78).

ILLINOIS

Cook County

Chicago, *Orchestra Hall*, 220 S. Michigan Ave. (3-21-78).

Kane County

Aurora, *Chicago, Burlington, & Quincy Roundhouse and Locomotive Shop*, Broadway and Spring Sts. (2-16-78).
Aurora, *Copley, Col. Ira C., Mansion*, 434 W. Downer Pl. (3-29-78).

Woodford County

Metamora, *Metamora Courthouse, 113 E. Partridge St. (3-30-78).*

INDIANA

Decatur County

Greensburg, *Knights of Pythias Building and Theatre*, 215 N. Broadway (3-28-78).

Marion County

Indianapolis, *Northside Historic District*, roughly bounded by I-65, 16th Bellefontaine, and Pennsylvanis Sts. (3-24-78).

IOWA

Dubuque County

Dubuque, *German Bank*, 342 Main St. (3-28-78).

Jefferson County

Fairfield, *Beck, James A., House*, 401 E. Burlington Ave. (3-29-78).

Johnson County

Iowa City, *Pentacrest*, bounded by Clinton, Madison, Jefferson, and Washington Sts. (3-29-78).

Linn County

Cedar Rapids, *Peoples Savings Bank*, 101 3rd Ave., SE. (3-29-78).

Muscatine County

Nichols vicinity, *Nichols, Samuel, House*, E of Nichols off IA 22 (3-31-78).

Tama County

Tama, *Lincoln Highway Bridge*, E. 5th St. (3-30-78).

KANSAS

Clark County

Ashland vicinity, *Bear Creek Redoubt*, N of Ashland (3-30-78).

KENTUCKY

Boone County

Francisville vicinity, *Moore, John, House*, 6 mi. (9.6 km) NW of Francisville (3-29-78).

Franklin County

Frankfort vicinity, *Dills Site (Site 15 Fr 302 A)*, NW of Frankfort (3-21-78).
Harvieland vicinity, *Archeological Site 16 FR 26*, E of Harvieland (3-31-78).
Polsgrove vicinity, *Hutcherson Site (Site 15 Fr 7)*, S of Polsgrove (3-21-78).

Gallatin County

Warsaw, *Montz, Dr. Lucy Dupuy, House*, 200 W. High St. (3-30-78).

Jefferson County

Louisville, *Fifth Ward School*, 743 S. 5th St. (3-31-78).
Louisville, *Hikes Family Houses*, 4118 Taylorsville Rd., 2806 Meadow Dr., 3026 Hikes Lane (3-21-78).
Louisville, *Levy Brothers Building*, 235 W. Market St. (3-24-78).
Louisville, *Loew's and United Artists State Theatre*, 625 S. 4th St. (3-28-78).
Louisville, *Old Presbyterian Theological Seminary (Jefferson Community College)*, 109 E. Broadway (3-24-78).

Lincoln County

Stanford, *Baughman's Mill and Stanford Railroad Depot*, Depot and Mill Sts. (3-29-78).

Mercer County

Harrodsburg vicinity, *Greek Revival Houses of Mercer County: Lynnwood, Walnut Hall, Glenworth*, N and E of Harrodsburg off U.S. 127 (3-30-78).

Shelby County

Shelbyville, *Shelby County Courthouse and Main Street Commercial District*, roughly bounded by Washington, Clay, 4th and 6th Sts. (3-21-78).

LOUISIANA

Lafourche Parish

Thibodaux vicinity, *Laurel Valley Sugar Plantation*, NE of Thibodaux off LA 308 (3-24-78).

Orleans Parish

New Orleans, *Tulane University of Louisiana*, St. Charles Ave., S. Claiborne, Broadway, and Calhoun Sts. (3-24-78).

MAINE

Androscoggin County

Lewiston, *Trinity Episcopal Church*, Bates and Spruce Sts. (3-30-78).

Cumberland County

Falmouth vicinity, *Hall's Tavern*, W of Falmouth at 377 Gray Rd. (3-30-78).

Hancock County

Bar Harbor, *Redwood*, Barberry Lane (4-3-78).
Southwest Harbor, *Claremont Hotel*, Claremont Rd. (3-29-78).

Lincoln County

South Bristol vicinity, *Sproul Homestead*, N of South Bristol on ME 129 (3-21-78).

Washington County

Dennysville, *Lincoln House*, U.S. 1 (3-29-78).

York County

Saco, *Seavey, A. B., House,* 90 Temple St. (3-31-78).
South Berwick, *Berwick Academy,* Academy St. (3-29-78).

MARYLAND

Dorchester County

Cambridge vicinity, *Yarmouth,* SE of Cambridge (3-29-78).

Talbot County

Bellevue vicinity, *Orem's Delight,* S of Bellevue off Ferry Neck Rd. (4-4-78).

Washington County

Hagerstown vicinity, *Paradise Manor,* N of Hagerstown at 2550 Paradise Dr. (3-31-78).

MASSACHUSETTS

Bristol County

Taunton, *Bristol County Courthouse Complex,* 9, 11, 15 Court St. (3-28-78).

Essex County

Newburyport, *Dalton House,* 95 State St. (3-29-78).

Middlesex County

Arlington, *Butterfield-Whittemore House,* 54 Massachusetts Ave. (3-30-78).
Arlington, *Cutter, Ephraim, House,* 4 Water St. (3-29-78).
Bedford, *Page, Nathaniel, House,* 89 Page Rd. (3-29-78).
Cambridge, *Harvard Lampoon Building,* 44 Bow St. (3-30-78).

Norfolk County

Brookline, *Cottage Farm Historic District,* roughly bounded by Amory, Dummer, Lenox, Brookline and Beacon Sts. (3-29-78).

Plymouth County

Brockton, *Bixby Block-Home Bank Building,* 106 Main St. (3-29-78).
Duxbury, *King Caesar House,* King Caesar Rd. (3-29-78).

Worcester County

Worcester, *Worcester City Hall and Common,* 455 Main St. (3-29-78).

MICHIGAN

Mackinac County

Pointe Aux Pins vicinity, *Juntunen Site,* Bois Blanc Island (3-21-78).

Marquette County

Marquette, *Marquette County Courthouse,* 400 S. 3rd St. (3-29-78).

Menominee County

Menominee vicinity, *Riverside Site,* southern Menominee County (3-24-78).

Shiawassee County

Perry, *Calkins, Charles H., House,* 127 E. 1st St. (3-29-78).

Washtenaw County

Ypsilanti, *Ypsilanti Historic District,* irregular pattern along Huron River with boundaries extending to Forest Ave., Grove, Buffalo, and Hamilton Sts. (4-11-78).

MINNESOTA

McLeod County

Hutchinson, *Maplewood Academy,* 700 N. Main St. (3-31-78).

Rice County

Northfield, *Baker, Laura, School,* 211 Oak St. (3-29-78).

Winona County

Winona, *Sugar Loaf Brewery,* jct. U.S. 14/61 and MN 43 (3-31-78).

MISSISSIPPI

Adams County

Natchez, *Smith-Buntura-Evans House,* 107 Broadway St. (3-29-78) HABS.

DeSoto County

Hernando, *Labauve, Felix, House,* 235 Magnolia Dr. (3-29-78).

Lowndes County

Columbus, *Gatchell, Kenneth, House,* 1411 College St. (3-21-78).

Panola County

Como vicinity, *Fredonia Church,* 6 mi. (9.6 km) E of Como on Old Union Rd. (3-30-78).

Tallahatchie County

Philipp vicinity, *Jacks Site,* SE of Philipp (3-24-78).

Wilkinson County

Woodville, *Branch Banking House,* Bank St. (3-30-78).

MISSOURI

Jackson County

Kansas City, *Scarritt, William Chick, House,* 3240 Norledge Ave. (3-21-78).

Ripley County

Currentview vicinity, *Price Site,* W of Currentview (4-3-78).

NEBRASKA

Adams County

Hastings, *Burlington Station,* 1st St. and St. Joseph Ave. (3-29-78).

Valley County

Elyria vicinity, *Fort Hartsuff,* N of Elyria (3-24-78).

NEVADA

Carson City (independent city)

Nevada State Printing Office, 101 S. Fall St. (3-29-78) HABS.

Storey County

Virginia City vicinity, *Lagomarsino Petroglyph Site,* N of Virginia City (3-24-78).

NEW JERSEY

Essex County

Nutley, *Kingsland Manor,* 3 Kingsland St. (3-24-78) HABS.

Mercer County

Hopewell vicinity, *Vandyke, Jeremiah, House,* Featherbed Lane (3-29-78).

Monmouth County

Long Branch, *Guggenheim, Murry, House,* Cedar and Norwood Aves. (3-28-78).
West Long Branch, *Shadow Lawn,* Cedar and Norwood Aves. (3-28-78).

NEW MEXICO

Bernalillo County

Albuquerque, *Southwestern Brewery and Ice Company,* 601 Commercial St., NE. (3-30-78).

Santa Fe County

Santa Fe, *Second Ward School,* 312 Sandoval St. (3-30-78).

NEW YORK

Bronx County

Bronx, *Valentine Varian House,* 3266 Bainbridge Ave. (3-21-78).

Oneida County

Waterville, *Waterville Triangle Historic District,* Stafford Ave., Main and White Sts. (4-4-78).

Saratoga County

Saratoga Springs, *Union Avenue Historic District,* Union Ave. (4-4-78).

Sullivan County

Liberty, *Liberty Village Historic District,* N. Main, Academy, and Law Sts. (4-11-78).

NORTH CAROLINA

Alleghany County

New Haven vicinity, *Gambill, J. C., Site,* N of New Haven (4-3-78).

Ashe County

Crumpler vicinity, *Brinegar Sites,* N of Crumpler (3-21-78).

Buncombe County

Asheville, *Church of St. Lawrence,* 97 Haywood St. (3-24-78).

Dare County

Buxton vicinity, *Cape Hatteras Light Station,* SE of Buxton off NC 12 (3-29-78).

Martin County

Jamesville, *Burras House,* on U.S. 64 (3-30-78).

NORTH DAKOTA

Wilton, *Soo Line Depot,* 1st St. and McLean Ave. (3-29-78).

OHIO

Ashland County

Hayesville, *Vermilion Institute,* Main and College Sts. (3-29-78).

Ashtabula County

Coneaut, *Harwood Block,* 246, 250, 256 Main St. (3-21-78).

Auglaize County

New Bremen vicinity, *Boesel, Julius, House,* N of New Bremen on Quellhorst Rd (3-30-78).

Brown County

Georgetown, *Buckner, Dr. Philip, House and Barn,* 610 S. Main St. (3-30-78).

Butler County

Middletown, *South Main Street District*, S. Main St. (3-21-78).

Clermont County

Batavia vicinity, *East Fork Site*, S of Batavia (3-30-78).
Felicity vicinity, *Bullskin Creek Site*, S of Felicity (3-30-78).
Goshen vicinity, *Devanney Site*, W of Goshen (3-30-78).

Crawford County

Galion, *Howard, Adam, House*, 230 S. Boston St. (3-30-78).

Cuyahoga County

Cleveland, *Crawford-Tilden Apartments*, 1831-1843 Crawford Rd. and 1878-1888 E. 84th St. (3-21-78).

Fairfield County

Lancaster, *Medill, William, House*, 319 N. High St. (3-30-78).

Franklin County

Westerville, *Alkire House*, 259 N. State St. (3-30-78).

Huron County

Greenwich vicinity, *Mead-Zimmerman House*, E of Greenwich on OH 13 (3-30-78).

Lake County

Painesville, Morley, Lewis, House, 231 N. State St. (3-30-78).

Lorain County

Lorain, *Palace Theatre Building*, Broadway and 6th St. (3-30-78).
Lorain vicinity, *Burrell Fort*, N of Lorain (4-4-78).

Lucas County

Maumee, *Hull, Isaac, Store*, 114 E. Harrison St. (3-30-78).

Medina County

Sharon Center vicinity, *Chandler, Matthew, House*, S of Sharon Center at 6908 Ridge Rd. (3-30-78).

Meigs County

Middleport, *Grant, William H., House*, 453 Grant St. (3-30-78).

Montgomery County

Clayton vicinity, *Flory, Joseph, House*, NW of Clayton on Diamond Mill Rd. (3-29-78).

Muskingum County

Norwich vicinity, *West Union School*, S of Norwich on SR 200 (3-30-78).
Roseville, *Roseville High School*, Stokeley and Perry Sts. (3-30-78).
Zanesville, *Seborn, Frederick Augustus, House*, 1115-1119 Maysville Pike (4-4-78).

Warren County

Harveysburg vicinity, *Hatton Farm*, E of Harveysburg on OH 73 (3-29-78).
Morrow vicinity, *Stubbs Earthworks*, W of Morrow (4-4-78).
Oregonia vicinity, *Taylor Mound and Village Site*, N of Oregonia (3-31-78).

Wood County

Bowling Green vicinity, *Dodge Site*, N of Bowling Green (3-29-78).

OKLAHOMA

Oklahoma County

Oklahoma City, *Hales, W. T., House*, 1521 N. Hudson Ave. (3-29-78).
Oklahoma City, *Oklahoma County Home for Girls*, 6300 N. Western Ave. (3-21-78).

OREGON

Wasco County

The Dalles, *Indian Shaker Church and Gulick Homestead*, jct. U.S. 80-N and U.S. 197 (4-4-78).

PENNSYLVANIA

Adams County

Gettysburg vicinity, *Black Horse Tavern*, W of Gettysburg on PA 116 (3-30-78) HABS.

Armstrong County

Cowansville vicinity, *St. Patrick's Roman Catholic Church*, W of Cowansville off PA 268 (3-21-78).

Bucks County

Cornwells Heights, *St. Elizabeth's Convent*, 1663 Bristol Pike (3-21-78).

Centre County

State College, *Thompson, Gen. John, House*, E. Branch Rd. (3-29-78).

Chester County

Birchrunville, *Birchrunville General Store*, Hollow and Flowing Springs Rds. (3-21-78).
Phoenixville vicinity, *Hare's Hill Road Bridge*, W of Phoenixville on Hare's Hill Rd. (3-28-78).

Erie County

Erie, *Erie Land Lighthouse*, Dunn Blvd., Lighthouse Park (3-30-78) HABS.

McKean County

Kane, *Kane, Thomas L., Memorial Chapel*, 30 Chestnut St. (3-29-78).

Payette County

Belle Vernon vicinity, *Cook, Col. Edward, House*, E of Belle Vernon (3-29-78).

Westmoreland County

Greenburg, *Westmoreland County Courthouse*, N. Main St. (3-30-78).

Newport County

Portsmouth, *Oak Glen*, 745 Union St. (3-29-78).

Providence County

North Scituate, *Smithville Seminary*, Institute Lane (3-29-78).

SOUTH CAROLINA

Charleston County

Charleston vicinity, *Magnolia Cemetery*, N of Charleston off U.S. 52 (3-24-78).

Marlboro County

Clio vicinity, *McLaurin House*, E of Clio on SR 40 (3-24-78).

Sumter County

Sumter, *White, Elizabeth, House*, 421 N. Main St. (3-21-78).

Union County

Union, *Central Graded School*, 309 Academy St. (3-30-78).

SOUTH DAKOTA

Brookings County

Brookings, *SDSU Extention Building*, Rotunda Lane (3-21-78).

Butte County

Belle Fourche, *Wide Awake Grocery Building*, 520 State St. (3-30-78).

Clay County

Hub City vicinity, *Anderson Homestead*, E of Hub City (3-30-78).

Codington County

Watertown vicinity, *Emminger, Corson, Round Barn*, S of Watertown on U.S. 81 (3-30-78).

Douglas County

Armour, *Douglas County Courthouse and Auditor's Office*, U.S. 281 (3-21-78).

Hyde County

Highmore, *Hyde County Courthouse*, 412 Commercial St., SE. (3-30-78).

Lyman County

Presho, *Vernon, Edgar, House*, off U.S. 16 (3-30-78).

Spink County

Redfield, *Redfield Light Plant and Fire Station*, 614 1st St. E. (3-21-78).

Turner County

Hurley, *Brough-Martinson House*, off SD 19 (3-30-78).
Hurley, *Farrar House*, off SD 19 (3-21-78).
Hurley, *Graves, Dr. Harry S., House*, Center Ave. and Monroe St. (3-21-78).

TENNESSEE

Davidson County

Nashville, *Eighth Avenue South Reservoir*, 8th Ave. S. (3-30-78).

Knox County

Knoxville, *Ag, U. T., Farm Mound*, Neyland Dr. (3-30-78).

Loudon County

Lenoir City vicinity, *Bussell Island Site*, S of Lenoir City (3-29-78).

TEXAS

Blanco County

Round Mountain, *Round Mountain Stagecoach Inn and Stable*, Sr 962 off U.S. 281 (3-31-78).

Burnet County

Marble Falls vicinity, *Page, Louis, Archeological Site*, E of Marble Falls (3-30-78).

Dallas County

Dallas, *Waples-Platter Coffee Roaster Building*, 2211 N. Lamar St. (3-24-78).

Galveston County

Galveston, *Elissa*, Seawolf Park (3-21-78).

Harris County

Houston, *Houston Turn-Verein*, 5202 Almeda Rd. (3-21-78).

Jim Wells County

Alice vicinity, *Hinojosa Site*, N of Alice (3-30-78).

Lamar County

Pin Hook vicinity, *Ellis II Site*, N of Pin Hook (3-30-78).
Pin hook vicinity, *Loma Alto Site*, N of Pin Hook (3-29-78).
Pin Hook vicinity, *Swindle Site*, W of Pin Hook (3-29-78).

Travis County

Austin, *Millett Opera House*, 110 E. 9th St. (3-21-78).

TRUST TERRITORY OF THE PACIFIC ISLANDS

Truk District

Tol Island, *Fauba Archeological Site*, Truk Lagoon (3-21-78).

UTAH

Salt Lake County

Salt Lake City, *McDonald, J. G., Chocolate Company Building*, 155-159 W. 300 South (3-29-78).
Salt Lake City, *Whitaker, John M., House*, 975 Garfield Ave. (3-30-78).

Wasatch County

Midway, *Midway School*, 1st North and 1st West (3-29-78).

Weber County

Ogden, *Shupe-Williams Candy Company Factory*, 2605 Wall Ave. (3-30-78).

VIRGIN ISLANDS

St. John Island

Cruz Bay vicinity, *Cathrineberg-Jockumsdahl-Herman Farm*, E of Cruz Bay (3-30-78).

VIRGINIA

Augusta County

Crimora vicinity, *Coiner House*, NW of Crimora off VA 865 (3-30-78).

WASHINGTON

Clallam County

Pysht vicinity, *Hoko River Archeological Site*, W of Pysht (3-21-78).
Sequim vicinity, *Manis Mastodon Site*, S of Sequim (3-21-78).

Grays Harbor County

Aberdeen, *Sierra (motor ship)*, 1401 Sargent Blvd. (3-29-78).

Walla Walla County

Waitsburg, *Waitsburg Historic District*, Main St. (3-31-78).

WISCONSIN

Ashland County

La Pointe vicinity, *Basswood Island Brownstone Quarry*, N of LaPointe on Basswood Island (3-29-78).

Brown County

Wrightstown, *Mueller-Wright House*, Washington and Mueller Sts. (3-29-78).

Green County

Monroe, *Green County Courthouse*, Courthouse Sq. (3-21-78).

Rock County

Beloit, *St. Paul's Episcopal Church*, 212 W. Grand Ave. (4-4-78).

Trempealeau County

Galesville vicinity, *Arnold, Capt. Alexander A., Farm*, N of Galesville off U.S. 53 (3-21-78).

WYOMING

Albany County

Laramie, *Wyoming Territorial Penitentiary*, off WY 130/230 (3-29-78).

Carbon County

Saratoga, *Saratoga Masonic Hall*, 1st and Main Sts. (3-29-78).
Saratoga vicinity, *Ryan Ranch*, S of Saratoga off WY 130 (3-29-78).

Fremont County

Riverton vicinity, *Delfelder Schoolhouse (Delfelder Hall)*, N of Riverton off U.S. 26 (3-29-78).

* * * * *

The following is a list of corrections to properties previously listed in the FEDERAL REGISTER.

MICHIGAN

Keweenaw County

Isle Royale National Park, *Minong Mine Historic District*, W of McCargoe Cove (11-11-77) (formerly listed as Copper Harbor vicinity).

NEW YORK

New York County

New York, *New York County Courthouse*, 52 Chambers St. (9-25-74) NHL (formerly listed as Tweed Courthouse).

* * * * *

The following properties have been demolished and/or removed from the National Register of Historic Places.

NEBRASKA

Pawnee County

Pawnee City, *Hotel Pawnee*, 700 G St.

PENNSYLVANIA

Philadelphia County

Philadelphia, *Odd Fellows Hall*, 800 N. 3rd St.
Philadelphia, *Wannamaker, John, House*, 2032 Walnut St.

* * * * *

Determinations of eligibility are made in accordance with the provisions of 36 CFR 63, procedures for requesting determinations of eligibility, under the authorities in section 2(b) and 1(3) of Executive Order 11593 and section 106 of the National Historic Preservation Act of 1966, as amended, as implemented by the Advisory Council on Historic Preservation's procedures, 36 CFR part 800. Properties determined to be eligible under section 63.3 of the procedures for requesting determinations of eligibility are designated by (63.3).

Properties which are determined to be eligible for inclusion in the National Register of Historic Places are entitled to protection pursuant to section 106 of the National Historic Preservation Act of 1966, as amended, and the procedures of the Advisory Council on Historic Preservation, 36 CFR part 800. Agencies are advised that in accord with the procedures of the Advisory Council on Historic Preservation, before any agency of the Federal Government may undertake any project which may have an effect on an eligible property, the Advisory Council on Historic Preservation shall be given an opportunity to comment on the proposal.

The following list of additions, deletions, and corrections to the list of properties determined for inclusion in the National Register is intended to supplement the cumulative version of that list published in February of each year.

ARIZONA

Mohave County

Mt. Trumbull vicinity, *Temple Trail*, Old wagon trail from Mt. Trumbull, AZ, to St. George, MT.

Pinal County

Kohatk vicinity, Vekol Hills Archeological sites, Vekol Hills Cooper Mining Project.

ARKANSAS

Boone County

Harrison, *U.S. Post Office-Courthouse, Rush Ave. and Vine St. (63.3).*

CALIFORNIA

Humbolt County

Orleans vicinity, *Karok Panamenil World Renewal Ceremony District.*

Lassen County

Susanville vicinity, *Archeological Site PS-05-06-58-25*, Pikes Point Marina Development Project.

COLORADO

Douglas County

South Platte Canyon, *Deansburry Bridge*, Foothills Project 7.7 mi. (12.3 km) W from gate at Kassler Treatment Plant along access road (also in Jefferson County).

Jefferson County

South Platte vicinity, *Denver and Rio Grande Rockwork and Railroads*, Foothills Project.

GEORGIA

Bartow County

Cartersville, *Old Bartow County Courthouse*, 4 E. Church St. (63.3).

Forsyth County

Cumming vicinity, *Buffington Tavern*, Hightower Rd. (63.3).
Cumming vicinity, *Sherrill House*, Hightower Rd. (63.3).

Gilmer County

Ellijay vicinity, *Substation Site 9Gi (DOT) 3*, 5.5 mi. (8.8 km) S of Ellijay on GA5.
Ellijay vicinity, *White Path Site 9Gi (DOT) 5*, 6 mi. (9.6 km) N of Ellijay on GA5.

Pickens County

Talking Rock, *Kirk House*, off GA5 (63.3).

Union County

Blairsville, *Haralson-Carr house*, jct. of GA2 and U.S. 129 (63.3).

INDIANA

Tippecanoe County

Lafayette, *Big Four Depot*, jct. of 2nd and South Sts. (63.3).
Lafayette, *Capitol Hotel*, 9 S. 2nd St. (63.3).
Lafayette, *8 North Third St.*, Lafayette Railroad Relocation Project (63.3).
Lafayette, *Former Monon Railroad Building*, 500 Salem St. (63.3).
Lafayette, *112 North Third St.*, Lafayette Railroad Relocation Project (63.3).
Lafayette, *Purdue Block*, 8 N. 2nd St. (63.3).

Wayne County

Richmond, *Richmond Gas Company Building*, Between Whitewater River and C & O RR. Tracks N of Main St. Bridge.
Richmond, *Starr Piano Factory District*, Roughly bounded by C & O RR. tracks, G St. Bridge, and Whitewater River.

MICHIGAN

Houghton County

Houghton, *Soo Line Railway Company Depot*, Lake and Huron Sts. (63.3).

MISSOURI

Clay County

Kansas City vicinity, *Smithville Multi-Resource Area (archeological resources)* NW Missouri (also in Clinton County) (63.3).

Jefferson County

House Springs vicinity, *Archeological District 23JE392-23JE395, 23JE400, and 23JE401*, Route W Project (63.3).

Maries County.

Gasconade River vicinity, *Archeological Sites 23MS12, 23MS35, 23MS57, 23MS77, 23MS78, 23MS79, 23MS80, 23MS81 and unverified rock cairn*, (63.3).

MONTANA

Glacier County

St. Mary vicinity, *St. Mary Ranger Station.*

Granite County

Garnet, *Garnet Ghost Town*, (63.3).

Roosevelt County

Culbertson vicinity, *Bemer Coal Mine Structures*, 6 mi. (9.6 km) SE of Culbertson.

NEW JERSEY

Middlesex County

Piscataway, *Landing Lane Archeological District*, (63.3).

Morris County

Morristown, *Morristown Aqueduct Distribution Reservoir*, Court and Ann Sts.
Morristown, *Residences on Court Street*, 30, 32, 36, 38, 40, and 42 Court St.

NORTH DAKOTA

Dunn County

Haliday vicinity, *Archeological Site 32DU2*, Highway 8 Project, (63.3).

OHIO

Fairfield County

Richland, *R. F. Baker Bridge*, Thornville Rd. and Little Rush Creek.

PENNSYLVANIA

Berks County

Wernersville, *Staudt Farm, The*, R.D. No. 1.

Lancaster County

Lititz, *Mueller, Johannes, House*, 146 E. Main St. (63.3).

Philadelphia County

Philadelphia, *Stetson, John B., Company*, 1801 Germantown Ave. (63.3).

SOUTH CAROLINA

Fairfield County

Winnsboro vicinity, *Archeological Sites 38 FA 161 and 38 FA 162*, Jackson-Mill Creeks Watershed (63.3).

SOUTH DAKOTA

Corson County

Mobridge vicinity, *Jake White Bull (39C06) Archeological Site*, (63.3).

TENNESSEE

Hamilton County

Chattanooga, *Amnicola House*, Amnicola Hwy.
Chattanooga, *East Tennessee Iron Manufacturing Company*, Walnut St.
Chattanooga, *Guid, Jo Conn, House*, 950 Vine St.
Chattanooga, *Thomas, Benjamin F., House*, 938 McCallie Ave.

VIRGIN ISLANDS

St. John Island

Cruz Bay, *Trunk Bay Sugar Factory*, Cruz Bay Quarter.

VIRGINIA

Bath County

George Washington National Forest vicinity, *Archeological Areas 1, 2, and 3*, (63.3).
George Washington National Forest vicinity, *Archeological Sites A-4, A-5, A-6, A-7, A-8, A-9, A-10*, (63.3).
George Washington National Forest vicinity, *Zion Hill Church*, (63.3).
George Washington National Forest vicinity, *Pine Grove House Site*, (63.3).
George Washington National Forest vicinity, *Posey Hall Farm*, (63.3).
George Washington National Forest vicinity, *Hacken Run Site Complex Sites A-4 through A-10*, (63.3).

* * * * *

The following is a list of corrections to properties previously listed in the FEDERAL REGISTER as determined eligible for inclusion in the National Register of Historic Places:

MARYLAND

Baltimore City County

Canton Historic District, Eastern Ave., Conkling St., Boston St. between Conkling and Canton Sts., line through Northwear Harbor, and Chester St. (boundary revision).

* * * * *

The following properties have been either demolished or placed on the National Register and are therefore removed from the Determinations for Eligibility Listing:

INDIANA

Monroe County

Bloomington, *Carnegie Library.*

NEW YORK

Ulster County

Saugerties, *Upper Dock Site.*

* * * * *

[FR Doc. 78-11765 Filed 5-1-78; 8:45 am]

[7020-02]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-3]

DOXYCYCLINE

Order Dismissing a Respondent, Adding a Respondent, and Accepting a Revised Amended Complaint

This matter comes before the Commission as a result of the recommendation of the presiding officer to dismiss USV Pharmaceutical Corp., add Danbury Pharmacal, Inc., and to replace complainant's April 13, 1973, complaint with its revised amended complaint of March 10, 1978, as modified by parts 4 and 5 of the presiding officer's Recommendation and Order of March 31, 1978.

After considering the presiding officer's recommendations hereinabove stated, his Recommendation and Order of March 31, 1978, the Preliminary Conference Report of March 31, 1978, Complainant's motions 3-2 and 3-3 with its accompanying support papers, as well as other relevant evi-

dence in the record, the Commission has decided to adopt the above three recommendations by approving motions 3-2 and 3-3 as modified by parts 4 and 5 of the pending officer's Recommendation and Order of March 31, 1978.

It is, therefore, hereby *Ordered*, That: 1. The motion of Pfizer, Inc. (M3-2) to replace its April 13, 1973, complaint with its revised amended complaint of March 10, 1978, as modified by parts 4 and 5 of the presiding officer's Recommendation and Order of March 31, 1978, is Granted.

(a) As part of this motion, Danbury Pharmacal is added as a respondent; and

(b) only claim 10 of U.S. Letters Patent 3,200,149 will be in issue.

2. The motion of Pfizer, Inc. (M3-3) to dismiss USV Pharmaceutical Corp. as a respondent, is Granted.

Issued: April 21, 1978.

By order of the Commission:

KENNETH R. MASON,
Secretary.

[FR Doc. 78-11969 Filed 5-1-78; 8:45 am]

[4510-28]

DEPARTMENT OF LABOR

Office of the Secretary

[TA-W-2949]

ALABAMA BY-PRODUCTS CORP., TARRANT, ALA.

Negative Determination Regarding Eligibility To Apply for Worker Admustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2949: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 25, 1978 in response to a worker petition received on January 10, 1978, which was filed by the United Steelworkers of America on behalf of workers and former workers producing coke at the Tarrant, Ala. plant of the Alabama By-Products Corp.

The Notice of Investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7068). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Alabama By-Products Corp., the United Steelworkers of America, 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. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

The investigation revealed that layoffs did occur at the Tarrant, Ala. plant from January 6, 1977, one year prior to the date of this petition to the present. Pollution control problems and some mechanical repair work resulted in the temporary shutdown of plant operations in October and November 1977 and January 1978. The layoffs at the Tarrant plant from January 6, 1977 to the present were due to environmental control shutdowns and maintenance shutdowns.

CONCLUSION

After careful review, I conclude that all workers at the Tarrant, Ala. plant of Alabama By-Products Corp. are denied eligibility to apply for adjustment assistance under title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11908 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-3023]

ANDAVE SPORTSWEAR, INC., PENNS GROVE, N.J.

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 2, 1978 in response to a worker petition received on January 30, 1978 which was filed by the International Ladies Garment Workers Union on January 19, 1978 on behalf of workers and former workers producing women's dresses at Andave Sportswear, Inc. (formerly Pennsgrove Dress Co.) Penns Grove, N.J. The investigation revealed that the name of the company was Andave Sportswear, Inc.

Notice of investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7064). No public hearing was requested and none was held.

The petitioner, International Ladies Garment Workers Union, requested withdrawal of this petition. In a letter the Business Agent of the ILGWU cited no adverse impact of imports on workers at Andave Sportswear as the reason for the withdrawal. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 14th day of April 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-11909 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2757]

THE ARROW CO., ALBERTVILLE, ALA.

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-2757: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 12, 1977 in response to a worker petition received on December 6, 1977 which was filed by The Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's dress shirts at the Albertville, Ala. plant of The Arrow Co.

The notice of investigation was published in FEDERAL REGISTER on December 30, 1977 (42 FR 65306). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of The Arrow Co., 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 Act must be met. It is concluded that all of the requirements have been met.

Imports of men's and boys' woven dress and business shirts increased from 30,800,000 units in 1975 to 64,283,000 units in 1976, representing an increase of 108.7 percent. During the first half of 1977, imports were recorded at 32,443,000 units and represented an increase of 20.6 percent compared to 26,906,000 units in the first half of 1976.

The ratio of imports to domestic production increased from 36.2 percent in 1975 to 67.1 percent during 1976.

Company imports of men's dress shirts increased in quantity in 1975 compared to 1974 and decreased in 1976 compared to 1975. During the first three quarters of 1977, company imports of men's dress shirts increased

150.7 percent compared to the first three quarters of 1976. The ratio of company imports to company sales increased from 5.2 percent in the first three quarters of 1976 to 12.3 percent in the same period of 1977.

A survey of customers of The Arrow Co. indicated that some decreased purchases of men's dress shirts from Arrow while increasing purchases of imported shirts in 1976 and the first nine months of 1977. Price was the main factor influencing the decision to purchase imported shirts.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's dress shirts produced at the Albertville, Ala. plant of the Arrow Co. contributed importantly to the decrease in production and to the total or partial separations of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Albertville, Ala. plant of the Arrow Co. who became totally or partially separated from employment on or after June 18, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11910 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-3004]

ARMOR-SAN FRANCISCO GALVANIZING, INC., SAN FRANCISCO, CALIF.

Notice of 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-3004: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 2, 1978 in response to a worker petition received on January 19, 1978 which was filed by the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (AFL-CIO), on behalf of workers and former workers engaged in hot dip galvanizing at Armor-San Francisco Galvanizing, Inc., San Francisco, Calif.

The Notice of Investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7066). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Armor-San Francisco Galvanizing, Inc., the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, 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. The Department has determined that services are not "articles" within the meaning of section 222 of the Act, and that independent firms for which the subject firm provides services cannot be considered to be the "workers' firm."

The Department's investigation revealed that Armor-San Francisco Galvanizing, Inc., San Francisco, Calif., which closed February 1, 1977, provided a galvanizing service to iron fabricators and jobbers. Workers at the firm did not produce an article within the meaning of section 222 of the Act.

Armor-San Francisco Galvanizing, Inc. is not financially or corporately involved in the business of any of its customers. The workers on whose behalf this petition was filed were hired and paid by and subject to the control of Armor-San Francisco Galvanizing, Inc. personnel only. All employment benefits enjoyed by the workers were provided and maintained by Armor. Thus, Armor-San Francisco Galvanizing, Inc. must be considered the workers' firm.

CONCLUSION

After careful review, I conclude that all workers at Armor-San Francisco Galvanizing, Inc., San Francisco, Calif. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11911 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-3069]

ARTHUR WINER AND CO., GARY, IND.

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 7, 1978 in response to a worker petition received on that date which was filed by the Amalgamated Clothing and Textile Workers' Union on January 10, 1978 on behalf of workers and former workers producing men's trousers.

Notice of investigation was published in the FEDERAL REGISTER on February 26, 1978 (43 FR 7744). No public hearing was requested and none was held.

During the course of investigation, it was established that all workers of Arthur Winer & Co. were previously certified eligible to apply for adjustment assistance on June 15, 1976 (See TA-W-735).

The existing certification remains in effect until two years from its date of issuance, unless terminated by the Secretary of Labor, Workers newly separated totally or partially are covered by the existing certification provided such separation occurred on or after the impacted date (March 9, 1975) and before the certification expiration date (June 15, 1978).

Thus, a new investigation would serve no purpose; consedquently, the investigation has been terminated.

Signed at Washington, D.C. this 14th day of April, 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-11912 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2873]

THE BALTIMORE & OHIO RAILROAD CO., SUBDIVISION 6, BENWOOD, W.VA.

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-2873: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 9, 1978 in response to a worker petition received on December 19, 1977 which was filed on behalf of workers and former workers engaged in transport operations at Subdivision 6 of Baltimore & Ohio Railroad, Benwood, W. Va.

The Notice of Investigation was published in the FEDERAL REGISTER on January 27, 1978 (43 FR 3778). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Baltimore & Ohio Railroad Co. 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 Act must be met. The Department has de-

termined that services are not "articles" within the meaning of section 222 of the Act, and that independent firms for which the subject firm provides services cannot be considered to be the "workers' firm".

The Department's investigation revealed that The Baltimore & Ohio Railroad Co. is a rail transport firm founded in 1827 and incorporated in Maryland. The B & O Railroad Co. including all regions, divisions, and subdivisions thereof, is licensed and regulated by the Interstate Commerce Commission as a rail common carrier. Workers at the company are engaged in transport operations and perform no production operations.

Workers at The Baltimore & Ohio Railroad Co. do not produce an article within the meaning of section 222(3) of the Act. This Department has already determined that the performance of services is 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 any of The Baltimore & Ohio Railroad's customers, i.e., firms which produce an article and for whom the service is provided, can be considered the "workers' firm." See Notice of Determination in *Nu-Car Driveaway, Incorporated* (TA-W-393, 41 FR 12749).

The Baltimore & Ohio Railroad Co., including all regions, divisions, and subdivisions thereof, is not financially, corporately, or otherwise involved in the business of any of its customers. The Baltimore & Ohio Railroad Co. is solely and directly controlled by the Chesapeake & Ohio Railway Co.

The workers on whose behalf this petition was filed were hired by and are paid by the subject to the control of B & O Railroad Co. personnel only. All employment benefits enjoyed by the workers are provided and maintained by The B & O Railroad Co. Thus, The B & O Railroad Co. must be considered the workers' firm.

CONCLUSION

After careful review, I conclude that all workers at the Baltimore & Ohio Railroad Co., Subdivision 6, Benwood, W. Va. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11913 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2647]

BETHLEHEM MINES CORP., DIVISION OF BETHLEHEM STEEL CORP., HANOVER QUARRY, HANOVER, PA.

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-2647: 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 23, 1977 in response to a worker petition received on November 14, 1977, which was filed on behalf of workers and former workers producing processed limestone and metallurgical stone for the direct production of steelmaking at the Hanover Quarry, Hanover, Pa. of Bethlehem Mines Corp., division of Bethlehem Steel Corp.

The notice of investigation was published in the FEDERAL REGISTER on December 6, 1977 (42 FR 61695). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Bethlehem Steel Corp., 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 Act must be met. The investigation has revealed that all of the requirements have been met.

The Hanover Quarry operates within the Bethlehem Mines Corporation Division of Bethlehem Steel Corp. The metallurgical stone produced is used principally by the Sparrows Point, Md. and Johnstown, Pa. plants of the Bethlehem Steel Corp. in steelmaking, and accounts for approximately 61 percent of shipments from the Hanover Quarry. Production and shipments of metallurgical stone from Hanover are directly related to the steel operating rate at Sparrows Point and Johnstown.

In a determination issued on December 20, 1977, workers at the Sparrows Point plant producing carbon steel plate, continuous weld pipe, electric weld pipe, carbon steel rods, tin plate, hot and cold rolled sheet, galvanized sheets, and wire strand were certified as eligible to apply for adjustment assistance.

In a determination issued on February 13, 1978, all workers at the Johnstown plant were certified as eligible to apply for adjustment assistance.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the steel products produced at the Johnstown, Pa. and Sparrows Point, Md. plants of Bethlehem Steel Corp. contributed importantly to the decline in sales and production and to the total or partial separations of workers producing processed limestone and metallurgical stone at the Hanover Quarry, Hanover, Pa., of Bethlehem Mines Corp. In accordance with the provisions of the Act, I make the following certifications:

All workers at the Hanover Quarry, Hanover, Pa., of the Bethlehem Mines Corp. who became totally or partially separated from employment on or after January 1, 1977 are certified as eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11914 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2750]

C & P SPORTSWEAR, PATERSON, N.J.

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-2750: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 8, 1977, in response to a worker petition received on November 29, 1977, filed on behalf of workers and former workers producing women's coats at C & P Sportswear in Paterson, N.J.

The notice of investigation was published in the FEDERAL REGISTER on December 30, 1977 (42 FR 65307). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of C & P Sportswear and its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, 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. It is concluded that all of the requirements have been met.

Imports of the category including women's, misses', and children's coats and jackets increased from 1,478 thousand dozen in 1974 to 1,517 thousand dozen in 1975, then increased 48.5 percent to 2,252 thousand dozen in 1976. Imports increased 23.9 percent from 1,680 thousand dozen in the first three-quarters of 1976 to 2,081 thousand dozen in the first three-quarters of 1977. The ratio of imports to domestic production increased from 38.9 percent in 1975 to 57.5 percent in 1976.

C & P Sportswear produces women's coats under contract for a number of manufacturers of women's apparel. These manufacturers had either increased their contracts placed for the production of women's coats with foreign contractors or had increased their purchases of imported finished women's coats while at the same time reducing contracts placed with the subject firm in 1977 compared with 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's coats produced by C & P Sportswear of Paterson, N.J. contributed importantly to the total or partial separation of workers at the plant. In accordance with the provisions of the Act, I make the following certification:

All workers at C & P Sportswear of Paterson, N.J. who became totally or partially separated from employment on or after November 25, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 21st day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11915 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2666]

CF & I STEEL CORP., MAXWELL MINE, WESTON, COLO.

Revised Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a certification of eligibility to apply for adjustment assistance on January 27, 1978, applicable to workers and former workers producing coal at the Maxwell Mine of the CF & I Steel Corp., Weston, Colo. The Notice of Certification was published in the FEDERAL REGISTER on February 7, 1978 (43 FR 5085).

At the request of the petitioner, a further investigation was instituted by the Director of the Office of Trade Adjustment Assistance. A review of the case revealed that a significant number of the workers were placed on partial weeks near the end of October 1977. These workers were not covered by the original impact date of October 30, 1977.

The intent of the certification is to cover those workers at the Maxwell Mine, CF & I Steel Corp., Weston, Colo., who were affected by the decline in the production of coal related to import competition. The certification, therefore, is revised providing a new impact date of October 21, 1977.

The revised certification applicable to TA-W-2666 is hereby issued as follows:

All workers at the Maxwell Mine of CF & I Steel Corp., Weston, Colo., who became totally or partially separated from employment on or after October 21, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 24th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11916 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-3169]

COHEN CLOTHES, BROOKLYN, N.Y.

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 21, 1978, in response to a worker petition received on February 6, 1978, which was filed by the Amalgamated Clothing & Textile Workers Union on January 31, 1978, on behalf of workers and former workers producing men's and boys' tailored clothing at Cohen Clothes, Brooklyn, N.Y.

Notice of investigation was published in the FEDERAL REGISTER on March 3, 1978 (43 FR 8864). No public hearing was requested and none was held.

The petitioner, Amalgamated Clothing & Textile Workers Union, requested withdrawal of this petition. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 13th day of April 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-11917 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2435]

COLONIAL WOOD HEEL CO., LYNN, MASS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Departmentof Labor herein presents the results of TA-W-2435: 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 11, 1977 in response to a worker petition received on October 4, 1977, which was filed on behalf of workers and former workers producing finished heels for ladies' shoes at the Colonial Wood Heel Co., Inc., Lynn, Mass.

The Notice of Investigation was published in the FEDERAL REGISTER on October 25, 1977 (42 FR 56375). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Colonial Wood Heel Co., 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. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

A survey of shoe manufacturers which contracted orders for covered heels from Colonial Wood Heel Co., Inc., revealed that none of these manufacturers purchased imported covered heels for use in the production of women's shoes.

Some manufacturers reported decreased orders for covered heels because of increaed imports of women's shoes.

Imports of shoes which incorporate heels are not "like or directly competitive" with heels within the meaning of section 222(3) of the Trade Act of 1974.

CONCLUSION

After careful review, I conclude that all workers at Colonial Wood Heel Co., Inc., Lynn, Mass., are denied eligibility to apply for adjustment assistance under title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11918 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2941]

CONSOLIDATED RAIL CORP., MARTINSFERRY, OHIO

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-2941: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 23, 1978, in response to a worker petition received on January 3, 1978, which was filed on behalf of workers and former workers engaged in employment related to transporting freight at the Martinsferry, Ohio, subdivision of the Consolidated Rail Corp., Pittsburgh, Pa.

The notice of investigation was published in the FEDERAL REGISTER on February 3, 1978 (43 FR 4696). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Consolidated Rail Corp. and the 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 Act must be met. The Department has determined that services are not "articles" within the meaning of section 222 of the Act, and that independent firms for which the subject firm provides services cannot be considered to be the "workers' firm".

The Department's investigation revealed that the Consolidated Rail Corp. (Conrail), a Pennsylvania corporation based in Pittsburgh, is a railroad company operating throughout 17 Eastern states. Conrail is licensed and regulated by the Interstate Commerce Commission as a common carrier. The company offers its transportation services to a wide variety of customers in the market area through which its railroad network extends. Conrail is not engaged in any production operations. The Martinsferry, Ohio, subidivison of Conrail provided transportation services for customers in southeastern Ohio and in West Virginia. Workers in this subdivision are engaged in transportation operations.

Workers at the Martinsferry, Ohio, subdivision of Conrail do not produce an article within the meaning of section 222(3) of the Act. This Department has already determined that the performance of services is 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 any of Conrail's customers i.e., firms which produce articles, and for whom the service is provided, can be considered the "workers firm." See Notice of Determination in *Nu-Car Driveaway, Incorporated* (TA-W-393, 41 FR 12749).

The Martinsferry, Ohio, subidivison of Conrail is not financially, corporately, or otherwise involved in the business of any of its customers. The workers on whose behalf this petiton was filed were hired and are paid by and subject to the control of Conrail personnel only. All employment benefits are provided and maintained by Conrail. Thus, Conrail must be considered the workers' firm.

CONCLUSION

After careful review, I conclude that all workers at the Martinsferry, Ohio, subdivision of the Consolidated Rail Corp., Pittsburgh, Pa. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11919 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2842]

CONSOLIDATED RAIL CORP., LOGANSPORT SUBDIVISION OF FORT WAYNE DIVISION, LOGANSPORT, IND.

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-2842: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 4, 1978, in response to a worker petition received on December 15, 1977, which was filed on behalf of workers and former workers engaged in transport operations at Consolidated Rail Corp., Logansport Subdivision of the Fort Wayne Division, Logansport, Ind.

The Notice of Investigation was published in the FEDERAL REGISTER on January 27, 1978 (43 FR 3777). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Consolidated Rail Corp. 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. The Department has determined that services are not "articles" within the meaning of section 222 of the Act, and that independent firms for which the subject firm provides services cannot be considered to be the "workers' firm."

The Department's investigation revealed that Consolidated Rail Corporation is a rail transport firm based in Philadelphia, Pa. The Corporation is a consolidation of several Northeastern railroads which was established April 1, 1976, pursuant to Title II of Pub. L. 93-236, the Regional Rail Reorganization Act of 1973.

Consolidated Rail Corp., including all regions, divisions, and subdivisions thereof, is licensed and regulated by the Interstate Commerce Commission as a rail common carrier. Workers at the firm are engaged in transport operations and perform no production operations.

Workers at Consolidated Rail Corp. do 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 is not covered by the adjustment assistance program. See Notice of Determination *Pan American World Airways, Incorporated* (TA-W-153, 40 FR 54639). The only question in this case is whether any of the Consolidated Rail Corp.'s customers, i.e., firms which produce an article and for whom the service is provided, can be considered the "workers' firm." See Notice of Determination in *Nu-Car Driveaway, Incorporated* (TA-W-393, 41 FR 12749).

Consolidated Rail Corp. is not financially, corporately, or otherwise involved in the business of any of its customers. The workers on whose behalf this petition was filed were hired by and are paid by and subject to the control of Consolidated Rail Corp personnel only. All employment benefits enjoyed by the workers are provided and maintained by Consolidated Rail Corp. Thus, Consolidated Rail Corp. must be considered the workers' firm.

CONCLUSION

After careful review, I conclude that all workers at Consolidated Rail Corp., Logansport Subdivision of the Fort Wayne Division, Logansport, Ind., are denied eligibility to apply for adjust-

ment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11920 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2815]

CONSOLIDATED RAIL CORP., EASTERN REGION, READING DIVISION, READING, PA.

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-2815: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 27, 1977, in response to a worker petition received on December 9, 1977, which was filed on behalf of workers and former workers engaged in transportation of freight by rail at the Eastern Region, Reading Division of Consolidated Rail Corp., Reading, Pa.

The Notice of Investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1555). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Consolidated Rail Corp. 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. The Department has determined that services are not "articles" within the meaning of section 222 of the Act, and that independent firms for which the subject firm provides services cannot be considered to be the "workers' firm."

The Department's investigation revealed that Consolidated Rail Corp. is a rail transport firm based in Phildelphia, Pa. The Corporation is a consolidation of several Northeastern railroads which was established April 1, 1976, pursuant to Title II of Pub. L. 93-236, the Regional Rail Reorganization Act of 1973.

Consolidated Rail Corp., including all regions, divisions, and subdivisions thereof, is licensed and regulated by the Interstate Commerce Commission as a rail common carrier. Workers at the firm are engaged in transport operations and perform no production operations.

Workers at Consolidated Rail Corp. do 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 is 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 any of Consolidated Rail Corp.'s customers, i.e., firms which produce an article and for whom the service is provided, can be considered the "workers' firm." See Notice of Determination in *Nu-Car Driveaway, Incorporated* (TA-W-393, 41 FR 12749).

Consolidated Rail Corp. is not financially, corporately, or otherwise involved in the business of any of its customers. The workers on whose behalf this petition was filed were hired by and are paid by and subject to the control of Consolidated Rail Corp. personnel only. All employment benefits enjoyed by the workers are provided and maintained by Consolidated Rail Corp. Thus, Consolidated Rail Corp. must be considered the worker's firm.

CONCLUSION

After careful review, I conclude that all workers at the Eastern Region, Reading Division of Consolidated Rail Corp., Reading, Pa. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11921 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2602]

FLORSHEIM SHOE CO., PADUCAH, KY.

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-2602: 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 14, 1977 in response to a worker petition received on November 3, 1977, which was filed by the Boot & Shoe Workers Union on behalf of workers and former workers producing men's shoes at the Paducah, Ky., plant of the Florsheim Shoe Co.

The notice of investigation was published in the FEDERAL REGISTER on December 16, 1977 (42 FR 63484). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Florsheim Shoe Co., the 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 Act must be met. It is concluded that all of the requirements have been met.

Imports of men's dress and casual footwear increased, in absolute terms, from 1972 to 1973, declined from 1973 to 1974, and increased from 1974 to 1975. Imports increased 23.6 percent from 1975 to 1976, and declined 1.6 percent in the first nine months of 1977 compared to the same period of 1976. The ratios of imports to domestic production and consumption increased from 58.7 percent and 37.0 percent, respectively, in 1975 to 70.4 percent and 41.3 percent, respectively, in 1976. The same ratios increased from 69.1 percent and 40.9 percent, respectively, in the first nine months of 1976, to 75.0 percent and 42.8 percent, respectively, in the same period of 1977.

The U.S. International Trade Commission recently found that certain footwear articles, including men's dress and casual shoes, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing such articles. In the case of men's dress and casual footwear, the ratio of imports to domestic production has been greater than 50 percent in each of the past five years, reaching a peak level of 75.0 percent in the first nine months of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's dress and casual shoes produced at the Paducah, Ky., plant of the Florsheim Shoe Co. contributed importantly to the decline in production and to the total or partial separation of workers at the plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Paducah, Ky., plant of the Florsheim Shoe Co. who became totally or partially separated from employment on or after October 6, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 24th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11922 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2798]

FLORSHEIM SHOE CO., MOUNT VERNON, ILL.

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-2798: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 21, 1977 in response to a worker petition received on December 8, 1977, which was filed by the United Shoe Workers of America on behalf of workers and former workers producing women's shoes at the Mount Vernon, Ill., plant of the Florsheim Shoe Co.

The Notice of Investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1556). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Florsheim Shoe Co., the 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 Act must be met. It is concluded that all of the requirements have been met.

Imports of women's nonrubber footwear, except athletic, increased in absolute terms from 1972 to 1973, declined from 1973 to 1974, and increased from 1974 to 1975. Imports increased 0.2 percent from 1975 to 1976 and declined 8.9 percent in the first nine months of 1977 compared to the same period of 1976. The ratios of imports to domestic production and consumption declined from 119.1 percent and 54.4 percent, respectively, in 1975 to 117.9 percent and 54.1 percent, respectively, in 1976. The same ratios increased from 119.9 percent and 54.5 percent, respectively, in the first nine months of 1976 to 124.9 percent and 55.5 percent, respectively, in the first nine months of 1977.

The U.S. International Trade Commission recently found that certain footwear articles, including women's shoes, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing such articles. The Commission had considered factors other than imports that have been alleged as more important causes of injury, but concluded that, although such factors may have contributed in part, imports have been the most important cause of injury.

In the case of women's nonrubber footwear, the ratio of imports to domestic production has been greater than 99 percent in each of the past five years, reaching a peak level of 124.9 percent in the first nine months of 1977.

Florsheim Shoe Co. began importing women's shoes in November 1975. The company increased its imports from 1976 to 1977.

CONCLUSION

After careful review of the facts obtained in the investigaton, I conclude that increases of imports like or directly competitive with women's shoes produced at the Mount Vernon, Ill., plant of the Florsheim Shoe Co. contributed important to the total or partial separation of workers at the plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Mount Vernon, Ill., plant of the Florsheim Shoe Co. who became totally or partially separated from employment on or after December 3, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 24th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11923 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2471]

FLORSHEIM SHOE CO., DAVIE DRIVE, ANNA, ILL.

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-2471: investigation regarding certification of eligibility to apply for adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 17, 1977 in response to a worker petition received in October 4, 1977 which was filed by the Retail Clerk's International Union on behalf of workers and former workers producing fitted shoe uppers for men's shoes at the Davie Drive, Anna, Ill. plant of the Florsheim Shoe Co. The Notice of Investigation incorrectly stated that the petition had been filed by the United Shoe Workers of America.

The Notice of Investigation was published in the FEDERAL REGISTER on November 8, 1977 (42 FR 58210). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Florsheim Shoe Co., the Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

The footwear "uppers" produced at the Davie Drive plant are used by other Florsheim plants in producing men's shoes. The plant, therefore, is part of an integrated production process by Florsheim resulting in men's dress and casual shoes.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of men's dress and casual footwear increased 23.6 percent from 1975 to 1976, and declined 1.6 percent in the first nine months of 1977 compared to the same period of 1976. The ratios of imports to domestic production and consumption increased from 58.7 percent and 37.0 percent, respectively, in 1975 to 70.4 percent and 41.3 percent, respectively, in 1976. The same ratios increased from 69.1 percent and 40.9 percent, respectively, in the first nine months of 1976, to 75.0 percent and 42.8 percent, respectively in the same period of 1977.

The U.S. International Trade Commission recently found that certain footwear articles, including men's dress and casual shoes, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing such articles. In the case of men's dress and casual footwear, the ratio of imports to domestic production has been greater that 50 percent in each of the past five years, reaching a peak level of 75.0 percent in the first nine months of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's dress and casual shoes produced by the Florsheim Shoe Co. contributed importantly to the decline in production of men's shoe uppers and to the total or partial separation of workers at the Davie Drive, Anna, Ill. plant. In accordance with the provisions of the Act, I make the following certification.

All workers at the Davie Drive, Anna, Ill. plant of the Floresheim Shoe Co. who became totally or partially separated from employment on or after September 22, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11924 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2009]

GENERAL MOTORS CORP., CHEVROLET TRANSMISSION PLANT MUNCIE, IND.

Revised Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 222 of the Trade Act of 1974 and in accordance with section 223(a) of such Act, the Department of Labor issued on September 19, 1977 a notice of determinations regarding eligibility to apply for adjustment assistance that applied to workers and former workers who produce component parts for subcompact cars at twenty-one (21) plants of the General Motors Corp., Detroit, Mich. (TA-W-2002-2022).

Pursuant to that notice, workers at the Muncie, Ind. Chevrolet transmission plant (TA-W-2009) were denied eligibility to apply for trade adjustment assistance.

The notice of determinations was published in the FEDERAL REGISTER on September 30, 1977 (42 FR 52509).

Subsequent to the publication of the determinations, the Office of Trade Adjustment Assistance received an inquiry from the International Union, United Automobile, Aerospace and Agriculture Implement Workers of America (U.A.W.) on behalf of workers and former workers who produce 70 MM transmissions for use in subcompact cars at the Muncie, Ind. Chevrolet transmission plant of the General Motors Corp.

Workers at the Muncie Ind. Chevrolet transmission plant were denied eligibility to apply for trade adjustment assistance because the Department's investigation revealed that: (1) Only subcompact car production at General Motors was adversely affected by increased imports; (2) workers at the Muncie plant produce parts for use in various automotive vehicles in addition to subcompact cars; (3) workers at the Muncie plant cannot be identified by product line; and (4) parts for use in subcompact cars did not constitute a significant proportion of total plant output.

A further investigation revealed that the 70 MM transmission produced at the Muncie, Ind. plant is used solely for the Chevette and Acadian car lines (both subcompact car lines) and that workers can be identified by product line. Employees in Departments 20, 21, 22, 23, 24, 25, 26, and 28 of the Muncie, Ind. plant work exclusively on the 70 MM transmission and contribute more than half of the total labor content of this transmission.

Workers in other departments which account for the remaining labor content of the 70 MM transmission are involved in the production of all component lines at the Muncie plant. An insignificant proportion of these components is used in the production of subcompact cars.

CONCLUSION

Based on additional evidence, a review of the entire record, and in accordance with the provisions of the Act, I make the following revised determination

All workers exclusively engaged in employment related to the production of 70 MM transmissions, in departments 20,21, 22, 23, 24, 25, 26 and 28, at the Muncie, Ind. Chevrolet transmission plant of the General Motors Corp. who became totally or partially separated from employment on or after March 28, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

I further conclude that all remaining employees at the Muncie, Ind. Chevrolet transmission plant of the General Motors Corp. are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C. this 25th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11925 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2844]

INGERSOLL STEEL CO., NEW CASTLE, IND.

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-2844: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 4, 1978 in response to a worker petition received on December 13, 1977 which was filed by the United Auto Workers on behalf of workers and former workers producing stainless plate steel. Subsequent investigation revealed that the New Castle plant also produced plow steel and saw steel.

The Notice of Investigation was published in the FEDERAL REGISTER on January 27, 1978 (43 FR 3777). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Ingersoll Steel Co., 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. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

A survey was conducted of customers representing a majority of the Ingersoll Co.'s sales in 1977. Most customers reported no import purchases at all. Those customers that did purchase imports also increased purchases from Ingersoll.

Company officials attributed declines in sales of plow steel to the lack of demand for such products by agricultural users. They attributed their decline in sales of stainless steel plate to a shift in preference by purchasers of this product to a wider size plate.

CONCLUSION

After careful review I conclude that all workers at the New Castle, Ind. plant of Ingersoll Steel Co. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11926 Filed 5-1-78; 8:45 am]

[4510-28]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision

thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meetings these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 15, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 15, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 18th day of April 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Airco Industrial Gases, Division of Airco, Inc., (USWA).	Johnstown, Pa	Apr. 10, 1978	Apr. 1, 1978	TA-W-3,514	Oxygen and nitrogen.
Alabama Casual Co., Inc. (workers).	Uniontown, Ala	Apr. 6, 1978	Apr. 3, 1978	TA-W-3,515	Contractor of ladies' jeans.
Anchor Motor Freight, Inc. (Teamsters).	Wilmington, Del	do	do	TA-W-3,516	Contract carrier for General Motors, hauls new cars.
Asarco, Inc., Ground Hog Unit (USWA).	Vanadium, N. Mex	Apr. 5, 1978	Mar. 30, 1978	TA-W-3,517	Mines zinc ore.
Asarco, Inc., Deming Mill (USWA).	Deming, N. Mex	do	do	TA-W-3,518	Produces lead and zinc concentrate.
Boeing Vertol Co., Service Transportation Systems Branch (workers).	Riddley Township, Pa	Apr. 4, 1978	Mar. 31, 1978	TA-W-3,519	Light rail vehicles.
Boyn-Tan Leathers, Inc. (company).	Milton Mills, N.H	Apr. 10, 1978	Apr. 5, 1978	TA-W-3,520	Lambskins and sheepskin for linings for men and women's shoes.
Brawer Brothers, Inc., Empire Dyeing Division (ACTWU).	Haledon, N.J	do	Apr. 4, 1978	TA-W-3,521	Dye and print yarn used for cloth, rugs, and tapestry, etc.
G & G Food Corp., Inc. (company).	Newark, N.J	do	Mar. 17, 1978	TA-W-3,522	Smoke, cure, and bone meats.
Helga, Inc. (ILGWU)	Los Angeles, Calif	do	Apr. 5, 1978	TA-W-3,523	Ladies, ready-to-wear clothing.
G. LeBlanc Corp. (workers)	Kenosha, Wis	Apr. 5, 1978	Apr. 3, 1978	TA-W-3,524	Saxaphones, flutes, and piccolo's.
Newark Boneless Meat Products, Inc. (company).	Newark, N.J	Apr. 10, 1978	Mar. 17, 1978	TA-W-3,525	Smoke, cure, and bone meat.
Norristown Apparel Co. (Eastern Pennsylvania Clothing Workers Joint Board).	Norristown, Pa	Apr. 6, 1978	Apr. 3, 1978	TA-W-3,526	Men's suit coats.
Penn Meat Fabricators (company).	Pittston, Pa	Apr. 10, 1978	Mar. 17, 1978	TA-W-3,527	Bone and fabricate meat.
Pori, Inc. (USWA)	Baltimore, Md	do	Apr. 5, 1978	TA-W-3,528	Reclaim rolling oil.
Rosenkranz Brothers, Inc. (workers).	Brooklyn, N.Y	Apr. 11, 1978	Mar. 31, 1978	TA-W-3,529	Ladies' slacks and skirts.
Victory Beef Company, Inc. (workers).	Paterson, N.J	do	Apr. 4, 1978	TA-W-3,530	Meat packaging.
Do	Bordentown, N.J	do	do	TA-W-3,531	Slaughtering of meat.
Viner Brothers, Inc. (workers).	Bangor, Maine	do	do	TA-W-3,532	Women's casual shoes.

[FR Doc. 78-11906 Filed 5-1-78; 8:45 am]

[4510-28]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 15, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 15, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 11th day of April 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Asarco El Paso Smelting Works (USWA).	El Paso, Tex	Mar. 31, 1978	Mar. 30, 1978	TA-W-3,484	Buys or tolls ores and concentrates and produces impure metal products.
The Bunker Hill Co., Pan American Mine & Caselton Concentrator (workers).	Pioche, Nev	Mar. 30, 1978	Mar. 27, 1978	TA-W-3,485	Mining and concentrating of zinc.
City Clothing Co. Inc. (ILGWU).	Newburgh, N.Y	Mar. 31, 1978	Mar. 22, 1978	TA-W-3,486	Women's rainwear.
City Terrace Sportswear, Inc. (ILGWU).	....do	....do	....do	TA-W-3,487	Ladies' coats and raincoats.
Cross Country Clothes, Inc. (ACTWU).	Egypt, Pa	Feb. 21, 1978	Jan. 31, 1978	TA-W-3,488	Men's tailored clothing.
Do	Easton, Pa	....do	....do	TA-W-3,489	Do.
Do	Northampton, Pa	....do	....do	TA-W-3,490	Do.
Do	Geneva, Ohio	Jan. 27, 1978	Jan. 4, 1978	TA-W-3,491	Do
Darling & Co. (Amalgamated Meat Cutters & Butcher Workmen of North America).	Chicago, Ill	Apr. 3, 1978	Mar. 16, 1978	TA-W-3,492	Bone glue and related products from animal bones.
Favorite Overall Co., Inc. (company).	Boston, Mass	Mar. 29, 1978	Mar. 24, 1978	TA-W-3,493	Boy's jeans.
Haspel, Inc. (ACTWU)	Tylertown, Miss	Mar. 31, 1978	....do	TA-W-3,494	Men's suits and sportscoats.
Horace T. Potts Steel Service (workers).	Philadelphia, Pa	Mar. 24, 1978	Mar. 17, 1978	TA-W-3,495	Selling, buying and cutting of steel.
Loring Coat Co., Inc. (ILGWU).	Newburgh, N.Y	Mar. 31, 1978	Mar. 22, 1978	TA-W-3,496	Ladies' rainwear.
S & F Coat Co., Inc. (ILGWU).	Beacon, N.Y	....do	....do	TA-W-3,497	Do.
Sea-Land Service, Inc. (Teamsters Union).	Miami, Fla. (37th Ave.)	Mar. 27, 1978	Mar. 21, 1978	TA-W-3,498	Ocean carriage of freight.
Do	Miami, Fla. (12th St.)	....do	....do	TA-W-3,499	Do.
Tick Tock Frocks, Inc. (workers).	Fall River, Mass	....do	Mar. 24, 1978	TA-W-3,500	Ladies' dresses.
Tima, Inc. (workers)	Greensboro, N.C	....do	Mar. 15, 1978	TA-W-3,501	Knits polyester and cotton yard into fabrics for garment industries.
Zenith Radio Corp. of New York (workers).	New York, N.Y. (5th Ave.)	Mar. 20, 1978	....do	TA-W-3,502	Wholesaler and distributor for Zenith Radio Corp. products.
Do	New York, N.Y. (West 13th St.).	....do	....do	TA-W-3,503	Repairing and warehousing of all Zenith Radio Corp. products.

[FR Doc. 78-11907 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-3000]

KENTUCKY ELECTRIC STEEL CO., COALTON, KY.

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-3000: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 31, 1978, in response to a worker petition received on January 10, 1978, which was filed by the United Steelworkers of America on behalf of workers and former workers producing various steel products at Kentucky Electric Steel Co. in Coalton, Ky. The investigation revealed that only hot and cold rolled carbon bars and bar-size light shapes are produced at Kentucky Electric Steel.

The Notice of Investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7067). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Kentucky Electric Steel, 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. Without regard to whether any of the other criteria have been met the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

The Coalton, Ky. plant of Kentucky Electric Steel Co. produces only two products: hot and cold rolled carbon bars and bar-size light shapes.

Sales of hot and cold rolled carbon bars and bar-size light shapes increased in value in 1977 compared to 1976. Production increased in quantity in 1977 compared to 1976.

CONCLUSION

After careful review I conclude that all workers at the Kentucky Electric Steel Co. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 24th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11927 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2393]

MEDFORD KNITWEAR MILLS, INC., MEDFORD, N.J., WRIGHTSTOWN, N.J., LEBANON, PA.

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-2393: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on September 28, 1977 in response to a worker petition received on September 23, 1977 which was filed on behalf of workers and former workers producing girls' sportswear and women's tops at Medford Knitwear Mills, Inc., Medford, N.J. The investigation was expanded to include branch facilities at Wrightstown, N.J. and Lebanon, Pa.

The Notice of Investigation was published in the FEDERAL REGISTER on October 14, 1977 (42 FR 55316). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Medford Knitwear Mills, 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 Act must be met. The investigation has revealed that all of the requirements have been met.

Imports of women's, misses' and children's slacks and shorts increased 10 percent from 1975 to 1976 and increased 6 percent from January-September 1976 to January-September 1977. The ratio of imports to domestic production increased from 35.2 percent in 1975 to 36.4 percent in 1976.

Imports of women's, misses' and children's skirts increased 53 percent from 1975 to 1976. Imports declined 36 percent January-September 1976 to January-September 1977. The ratio of imports to domestic production increased from 10.8 percent in 1975 to 11.2 percent in 1976.

Imports of women's, misses' and children's blouses and shirts increased 16 percent from 1975 to 1976. Imports increased 1 percent from January-September 1976 to January-September 1977. The ratio of imports to domestic production increased from 70.4 percent in 1975 to 74.8 percent in 1976.

A survey of customers revealed that most respondants decreased purchases from Medford Knitwear Mills, Inc. in 1976 and 1977 and increased purchases of imported women's tops and girls' sportswear during the same period.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's tops and girls' sportswear produced at Medford Knitwear Mills, Inc., Medford, N.J. and its branch facilities at Wrightstown, N.J. and Lebanon, Pa. contributed importantly to declines in sales or production and to total or partial separations of workers at that firm. In accordance with the provisions of the Trade Act of 1974, I make the following certification:

All workers of Medford Knitwear Mills, Inc., Medford N.J. and its branch facilities at Wrightstown, N.J. and Lebanon, Pa. (also known as Demford Manufacturing Co., Inc.) who became totally or partially separated from employment on or after September 16, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11928 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2638]

PITTSBURGH ANNEALING BOX CO., PITTSBURGH, PA.

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-2638: 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 21, 1977 in response to worker petition received on November 10, 1977, which was filed by the United Steelworkers of America on behalf of worker and former workers producing annealing covers and general metals fabrication at Pittsburgh Annealing Box Co., Pittsburgh, Pa.

The notice of investigation was published in the FEDERAL REGISTER on December 6, 1977 (42 FR 61696). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Pittsburgh Annealing Box Co., 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. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or division have contributed importantly to the separations, or

threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that imports of fabricated platework in general and annealing covers in particular are negligible when compared to domestic production. Imports of fabricated platework represented less than one percent of domestic production from 1972 through the third quarter of 1977. A survey by this Office of the major domestic steel companies accounting for more than 75 percent of raw steel production in 1976, revealed that there are no significant imports of annealing covers into the United States.

CONCLUSION

After careful review, I conclude that all workers at Pittsburgh Annealing Box Co., Pittsburgh, Pa. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 19th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11929 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2737]

PITTSBURGH METALS PURIFYING CO., SAXONBURG, PA.

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-2737: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 8, 1977, in response to a worker petition received on November 28, 1977, which was filed by International Molders' & Allied Workers' Union on behalf of workers and former workers producing hot tops, Soffelex insulator board and exothermic compounds at the Saxonburg, Pa., plant of the Pittsburgh Metals Purifying Co.

The notice of investigation was published in the FEDERAL REGISTER on December 30, 1977 (42 FR 65308). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Pittsburgh Metals Purifying Co., 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 Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations, or threat thereof, and to the decline in sales or production.

The petition contends that the importation of steel products has adversely affected production and production-related employment at the Saxonburg plant of the Pittsburgh Metals Purifying Co.

However, imported steel cannot be considered to be like or directly competitive with hot tops, Soffelex insulator board or exothermic compounds. Hot tops, insulator board and exothermic compounds must be considered in determining import injury to workers producing hot tops, Soffelex insulator board or exothermic compound at the Saxonburg plant.

There is no separately identifiable import data on hot tops, insulator board and exothermic compound in the TSUSA. A Department survey of the major domestic steel companies, accounting for approximately 75 percent of raw steel produciton in 1976, revealed that there are no significant imports of hot tops, insulator board or exothermic compounds into the United States. Transportation costs are a major component of the total costs of production and, as such, limit the geographical market area available to producers, effectively excluding all significant import competition.

Additionally, the Department surveyed customers of Pittsburgh Metals who purchased hot tops, insulator board or exothermic compounds. Respondents to the survey do not purchase imported hot tops, insulator board or exothermic compounds and do not know of any imports of these products.

Production of hot tops, Soffelex insulator board and exothermic compounds increased respectively from 1976 to 1977. A decrease in the produciton of hot tops occuring in the first quarter of 1977 was offset by an increase in the production of Soffelex insulator board, a competitive substitute for hot tops, during that same period of time.

CONCLUSION

After careful review, I conclude that all workers at the Saxonburg, Pa. plant of the Pittsburgh Metals Purifying Co. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of April 1978.

JAMES F. TAYLOR
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11930 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2584]

RCA CORP., MEADOW LANDS, PA.

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-2584: 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 9, 1977, in response to a worker petition received on November 1, 1977, which was filed by three workers on behalf of workers and former workers producing handheld transmitter/receiver units, language laboratory units, and citizens band transceiver units at the Meadow Lands, Pa., plant of RCA Corp. The investigation revealed that citizens band units and language laboratory units are not produced at the Meadow Lands plant.

The notice of investigation was published in the FEDERAL REGISTER on November 18, 1977 (42 FR 59565). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of RCA Corp., 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. Without regard to whether any of the other criteria have been met the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

The Department's investigation revealed that imports of articles like or directly competitive with the TACTEC portable transmitter/receiver produced by RCA Corp. of Meadow Lands, Pa., have been negligible since 1972. The principal factor that affected sales of TACTEC units in 1977 was strong domestic competition.

CONCLUSION

After careful review I conclude that all workers at the RCA Corp., Meadow Lands, Pa., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11931 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-3299]

RTE CORP., WAUKESHA, WIS.

Notice of 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-3299: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 2, 1978, in response to a worker petition received on February 1, 1978, which was filed by three individuals on behalf of workers and former workers producing computer programs, drawings, specifications, methods, and assembled transformers at the RTE Corp., Waukesha, Wis.

Notice of Investigation was published in the FEDERAL REGISTER on March 17, 1978 (43 FR 11276). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the RTE Corp., Waukesha, Wis., and the petitioners. In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, it must be found that a significant number of the workers have been or are threatened to become totally or partially separated from employment.

In the present instance, it was determined that two of the workers petitioning for assistance had been separated from employment more than one year from the date of the petition, and the third worker was employed at a different company facility. Also, monthly employment levels at the firm had increased substantially since February 1976. Employment in February 1978 was more than 60 percent greater than the same month in 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers of the firm have not been and are not threatened to become totally or partially separated from the firm as required in section 222 of the Trade Act of 1974. The petition is, therefore, denied.

Signed at Washington, D.C., this 24th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11934 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2464]

RICHARD TANNING COMPANY, INC., SALEM, MASS.

Notice of 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-2464: 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, 1977, in response to a worker petition received on October 6, 1977, which was filed on behalf of workers and former workers producing tanned sheepskin suede garmet leather at Richard Tanning Co., Salem, Mass.

The notice of investigation was published in the FEDERAL REGISTER on October 25, 1977 (43 FR 205). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Richard Tanning Co., 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 Act must be met. Without regard to whether any of the other criteria have been met, the following cirterion has not been met:

That a significant number or proportion of the workers in the worker's firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

The Department's investigation revealed that the average number of production workers and the average weekly hours worked at the subject firm increased in 1976 compared to 1975, increased in 1977 compared to 1976, and increased in the first two months of 1978 compared to the same period in 1977. The layoffs that do occur at the subject firm are seasonal in nature.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that all workers at Richard Tanning Co., Inc., Salem, Mass., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11932 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2770]

ROCHESTER SHOE CORP., ROCHESTER, N.H.

Notice of 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-2770: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 12, 1977, in response to a worker petition received on December 5, 1977, which was filed on behalf of workers and former workers producing women's dress and casual shoes at Rochester Shoe Corp., Rochester, N.H.

The Notice of investigation was published in the FEDERAL REGISTER on December 30, 1977 (42 FR 65306). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Rochester Shoe Corp., 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 22 of the Trade Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in the sales or production.

A survey of one of Rochester Shoe's customers which accounted for over 90

percent of Rochester's sales revealed that the customer's purchases from Rochester in 1977 were the same as in 1976 while its purchases of other domestic footwear increased in 1977 and of imported footwear decreased in 1977.

Further, average employment at Rochester Shoe Corp. declined by less than one percent in 1977 compared to 1976. The average hours worked per worker increased in 1977 over the previous year. There is no threat of separations of a significant number or proportion of workers.

CONCLUSION

After careful review, I conclude that all workers at Rochester Shoe Corp. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 18th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11933 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2771]

SAN FRANCISCO SHIRT WORKS, INC., SAN FRANCISCO, CALIF.

Notice of Determinations 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-2771: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 12, 1977, in response to a worker petition received on December 1, 1977, which was filed on behalf of workers and former workers cutting material for women's, misses', and children's blouses and T-shirts in the Cutting Division of the San Francisco Shirt Works, San Francisco, Calif.

The notice of investigation was published in the FEDERAL REGISTER on December 30, 1977 (42 FR 65306). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the San Francisco Shirt Works, 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 Act must be met. With respect to workers performing warehousing, shipping, administrative, executive, and designing duties without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Since 1976, over 80 percent of total sales of the San Francisco Shirt Works are of imported apparel items. Employees in the Warehousing, Shipping, Administrative, Executive, and Designing Divisions are engaged in employment related to the importation of shirts.

With respect to workers cutting material for women's, misses', and girl's blouses and T-shirts in the Cutting Division all of the group eligibility requirements of section 222 of the Act have been met.

Imports of women's, misses', and children's blouses and shirts increased annually from 20,549 thousand dozen in 1974 to 30,273 thousand dozen in 1976. Imports increased from 24,016 thousand pairs in the first 9 months of 1976 to 24,036 thousand pairs in the first 9 months of 1977. Imports as a percentage of production increased annually from 54.6 percent in 974 to 74.8 percent in 1976.

In November 1977 the Cutting Division was phased out of operation by the San Francisco Shirt Works. This termination of production is attributable to the company's decision to import all of its products. With the closing of the Cutting Division, 100 percent of the blouses and shirts sold by San Francisco Shirt Works are imported.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's, misses' and children's blouses and T-shirts cut by the Cutting Division, San Francisco Shirt Works, San Francisco, Calif., contributed importantly to the decline in production and to the separation of workers in the division. In accordance with the provisions of the Act, I make the following certification:

All workers at the Cutting Division, San Francisco Shirt Works, San Francisco, Calif. who became totally or partially separated from employment on or after October 18, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

I further conclude that workers engaged in employment related to the processing of imported shirts in the Warehousing, Shipping, Administrative, Executive, and Designing Divisions of San Francisco Shirt Works are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C., this 19th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11935 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2822]

SERVOMATION CORP., WARREN-YOUNGSTOWN DICTRICT, WARREN, OHIO

Notice of 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-2822: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 27, 1977, in response to a worker petition received on December 9, 1977, which was filed by the International Brotherhood of Teamsters, Chauffers, Warehousemen, and Helpers of America (Ind.) on behalf of workers and former workers of Servomation, Warren, Ohio providing food canteens and vending machine operation. During the course of the investigation it was determined that the firm is Servomation Corp., Warren-Youngstown District, Warren, Ohio.

The Notice of Investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1555). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Servomation Corp., Warren-Youngstown District 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. The Department has determined that services are not "articles" within the meaning of Section 222 of the Act, and that independent firms for which the subject firm provides services cannot be considered to be the "workers' firm."

The Department's investigation revealed that Servomation Corp., Warren-Youngstown District, Warren, Ohio is a vending and food service company which is part of Servomation Corp., a New York, N.Y. based firm also engaged invending and food service.

Workers at Servomation Corp., Warren-Youngstown District do not produce an article within the meaning of section 222(3) of the Act. This Department has already determined tha the performance of services is not covered by the admustment 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 Youngstown Sheet & Tube Co., i.e., a firm which produces an article, namely steel, and for whom the service is provided, can be considered the "workers' firm." See Notice of Determination in *Nu-Car Diveaway, Incorporated* (TA-W-393, 41 FR 12749).

Servomation Corp. is not financially, corporately or otherwise involved in the business of Youngstown Sheet & Tube Co. The workers on whose behalf this petition was filed were hired and are paid by and subject to the control of Servomation Corp., Warren-Youngstown District personnel only. All employment benefits enjoyed by the workers are provided and maintained by Servomation Corp., Warren-Youngstown District. Thus, Servomation Corp., Warren-Youngstown District must be considered the workers' firm.

CONCLUSION

After careful review, I conclude that all workers at Servomation Corp., Warren-Youngstown District, Warren, Ohio are denied eligibility to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11936 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2251]

SHELDAHL, INC., EAST PROVIDENCE, R.I.

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-2251: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act

The investigation was initiated on August 10, 1977 in response to a worker petition received on August 5, 1977, which was filed on behalf of workers and former workers producing Polyethelene Bag Making Machines, Ritesize Box Machines and Laminators at the East Providence, R. I. plant of Sheldahl, Inc., Packaging Machinery Division.

The notice of investigation was published in the FEDERAL REGISTER on August 27, 1977 (42 FR 27330). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Sheldahl, 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 Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of plastic bag making machines increased in value from $3,360,000 in 1975 to $4,033,000 in 1976 and to $4,435,000 in 1977.

The imports to domestic production ratio for plastic bag making machines increased from 21.0 percent in 1975 to 22.1 percent in 1976 and then declined to 20.2 percent in 1977.

U.S. imports of machines for making paper boxes, cartons, and similar rigid containers increased in value from $14,484,000 in 1975 to $23,952,000 in 1976 and increased to $25,519,000 in the first ten months of 1977, compared to $19,427,000 in the same period of 1976.

The imports to domestic production ratio for machines for making paper boxes, cartons, and similar rigid containers increased from 13.4 percent in 1975 to 21.8 percent in 1976.

The Packaging Machinery Division of Sheldahl, Inc. lost several bids to foreign competitors for production of poly bag making machines during fiscal year 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with packaging machines produced by Sheldahl, Inc., Packaging Machinery Division, East Providence, R. I., contributed importantly to the decrease in sales and production and to the total or partial separation of workers at that division. In accordance with the provisions of the Act, I make the following certification:

All workers at Sheldahl, Inc., Packaging Machinery Division, East Providence, R. I., who became totally or partially separated from employment on or after August 2, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11937 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2347]

STANDARD RUBBER PRODUCTS, INC., HANOVER, MASS.

Notice of 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-2347: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on September 12, 1977, in response to a worker petition received on September 12, 1977, which was filed on behalf of workers and former workers producing rubber soling compound at Standard Rubber Products, Inc. in Hanover, Mass.

The Notice of Investigation was published in the FEDERAL REGISTER on October 4, 1977 (42 FR 54031). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Standard Rubber Co., 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. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

Evidence developed during the Department's investigation revealed that Standard Rubber Co. produces shoe soles from rubber soling compound and rubber sheets from rubber soling compound. The value of the rubber sheets increased in the first 9 months of 1977 compared to the same period of 1976. Rubber sheets are produced exclusively for one company, which does not purchase imported rubber sheets for shoe soles.

Sales of rubber soles decreased in the first 9 months of 1977 compared to the same period of 1976. The decline in sales was the result of Standard Rubber's major customer discontinuing the manufacture of completed shoes in early 1977. Although workers at this shoe manufacturer were certified as eligible to appply for adjust-

ment assistance, imports of shoes which incorporate bottom stock of the same origin are not like or directly competitive with bottom stock (shoe soles) produced by Standard Rubber Products. This shoe manufacturer did not import bottom stock.

CONCLUSION

After careful review, I conclude that all workers at Standard Rubber Products, Inc. in Hanover, Mass. be denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11938 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2863]

SUPERIOR CUTTING DIE CO., ST. LOUIS, MO.

Notice of 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-2863: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 5, 1978, in response to a worker petition received on December 20, 1977, which was filed by the International Association of Machinists and Aerospace Workers on behalf of workers and former workers producing cutting dies used in the production of leather garments and shoes at Superior Cutting Die Co., St. Louis, Mo.

The Notice of Investigation was published in the FEDERAL REGISTER on January 20, 1978 (43 FR 2952). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Superior Cutting Die Co., 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 Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

During the five year period from 1973 through 1977, imports of cutting dies remained less than one-half of one percent (0.5) of domestic production. The impact of imported cutting dies on domestic production can be termed "negligible". Declines in domestic production can be attributed to declines in aggregate domestic production of shoes, the production of which employs cutting dies.

CONCLUSION

After careful review, I conclude that all workers at Superior Cutting Die Co., St. Louis, Mo. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11939 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2775]

TENNESSEE FORGING STEEL CORP., NEWPORT, ARKANSAS DIVISION

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-2775: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 22 of the Act.

The investigtion was initiated on December 14, 1977, in response to a worker petition received on December 6, 1977, which was filed on behalf of workers and former workers producing carbon steel structural shapes and re-shapes and re-bars at the Newport, Ark., Division of Tennessee Forging Steel Corp. During the course of the investigation it was determined that the workers produced carbon steel structural shapes and carbon steel bar-size light shapes.

The Notice of Investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1556). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Tennessee Forging Steel Corp., 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 22 of the Act must be met. The investigation has revealed that all of the requirements have been met.

Imports of carbon steel bar-size light shapes increased from 164 thousand tons in 1976 to 263 thousand tons in 1977. Imports of carbon steel bar-size light shapes relative to domestic production increased from 19.5 percent in 1976 to 26.5 percent in 1977. Imports of carbon steel structural shapes increase from 1311 thousand tons in 1976 to 1604 thousand tons in 1977. Imports of carbon steel structural shapes relative to domestic production increased from 38.8 percent in 1976 to 45.0 percent in 1977.

Customers of the Newport, Tenn., Division of Tennessee Forging Steel increased purchases of carbon steel bar-size light shapes and carbon steel structural shapes from foreign suppliers in 1977 while reducing purchases from Tennessee Forging Steel Corp.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with carbon steel bar-size light shapes and carbon steel structural shapes the Newport, Ark., Division of the Tennessee Forging Steel Corp., contributed importantly to the decline in sales or production at those facilities. In accordance with the provisions of the Act, I make the following certification:

All workers at Newport, Ark., Division of Tennessee Forging Steel Corp., who became totally or partially separated from employment on or after September 23, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 21st day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11941 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-3155]

TOWER FASHIONS, NEW YORK, N.Y.

Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 3, 1978 in response to a worker petition received on that date which was filed by the International Ladies Garment Workers Union on December 14, 1977, on behalf of workers and former workers producing ladies coats at Tower Fashions, New York, N.Y.

Notice of investigation was published in the FEDERAL REGISTER on

March 3, 1978 (43 FR 8863). No public hearing was requested and none was held.

During the course of the investigation it was established that the ILGWU does not represent the workers at Tower Fashions. The ILGWU represented workers employed at Latest Fashions, Inc. Evidence developed indicates that all workers were separated from employment at Latest Fashions, Inc., on November 6, 1975, more than one year from the filing date of this petition (Dec. 14, 1977).

In a letter dated March 17, 1978, the petitioner, the ILGWU, requested that this petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 18th day of April, 1978.

MARVIN M. FOOKS,
Director, Office
Trade Adjustment Assistance.

[FR Doc. 78-11942 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2563]

UNION CARBIDE CORP., METALS DIVISION, SHEFFIELD, ALA.

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-2563: 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 3, 1977, in response to a worker petition received on October 27, 1977, which was filed on behalf of workers and former workers producing ferroalloys at the Sheffield, Ala., Metals Division plant of Union Carbide Corp. The investigation revealed that the workers produced ferrosilicon.

The Notice of Investigation was published in the FEDERAL REGISTER on November 18, 1977 (42 FR 59583). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Union Carbide Corp., 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 Act must be met. It is concluded that all of the requirements have been met.

Imports of ferrosilicon increased in absolute terms from 1972 to 1973, increased from 1973 to 1974 and decreased from 1974 to 1975. Imports increased 40 percent from 1975 to 1976 and increased 18 percent in the first 11 months of 1977 compared to the first 11 months of 1976. The ratios of imports to domestic production and consumption increased from 11.9 percent and 11.2 percent, respectively, in 1975 to 15.3 percent and 13.5 percent, respectively in 1976 and from 15.1 percent and 13.3 percent, respectively, in the first 11 months of 1976 to 18 percent and 15.5 percent respectively, in the first 11 months of 1977.

Customers of Union Carbide Corp., were surveyed for their purchases of ferrosilicon. Customers had decreased purchases from Union Carbide Corp., in 1977 from the previous year and increased purchases of imported ferrosilicon.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ferrosilicon produced at the Sheffield, Ala., Metals Division plant of Union Carbide Corp. contributed importantly to the total or partial separation of workers at that plant.

In accordance with the provisions of the Act, I make the following certification:

All workers at the Sheffield, Ala., Metals Division plant of Union Carbide Corp. who became totally or partially separated from employment on or after November 13, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C., this 21st day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11943 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2866]

U.S. STEEL CORP., SAXONBURG, PA.

Notice of 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-2866: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 5, 1978, in response to a worker petition received on December 9, 1977, which was filed by the United Steelworkers of America on behalf of workers and former workers producing steel products at the Saxonburg, Pa., and Rankin, Pa., plants of U.S. Steel Corp. The investigation revealed that sintered iron ore is produced at the Saxonburg plant. The investigation also revealed that all workers at the Rankin plant were previously certified eligible to apply for adjustment assistance on September 22, 1977 (see TA-W-1562).

The notice of investigation was published in the FEDERAL REGISTER on January 20, 1978 (43 FR 2952). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of U.S. Steel Corp., 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. Without regard to whether any of the other criteria have been met, the following cirterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

Average annual employment at the Saxonburg plant increased from 1975 to 1976 and from 1976 to 1977. Layoffs which occurred at the plant during this time were seasonal in nature and were not related to imports.

CONCLUSION

After careful review, I conclude that all workers at Saxonburg, Pa., plant of U.S. Steel Corp., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11944 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2779]

U.S. STEEL CORP., JOHNSTOWN-CANTON WORKS, JOHNSTOWN, PA.

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-2779: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 14, 1977, in response to a worker petition received on December 9, 1977, which was filed by the United Steelworkers of America on behalf of workers engaged in employment related to the production of steel products at the Johnstown, Pa., plant of the Johnstown-Canton Works of the U.S. Steel Corp. The investigation revealed that castings and specialty fabricated products are produced at the plant.

The Notice of Investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1556). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the U.S. Steel Corp., 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. The investigation has revealed that all of the criteria have been met.

The evidence developed during the investigation revealed that the Johnstown plant produces specialty fabricated products and castings. Almost all of the production of each product category is used in the production of steel products at other company manufacturing facilities. A large amount of the castings and the specialty fabricated products produced at the Johnstown plant in 1977 were shipped to U.S. Steel manufacturing facilities for which certifications of eligibility to apply for adjustment assistance have previously been issued by the Department.

Employment at the Johnstown plant declined in 1976 compared to 1975 and continued to decline in the first 11 months of 1977 compared to the like period in 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the steel products produced at various plants of the U.S. Steel Corp. have contributed importantly to the total or partial separation of workers at the Johnstown, Pa., plant of the U.S. Steel Corp. as required for certification under section 222 of the Trade Act of 1974. In accordance with the provisions of the Act, I make the following certification:

All wokers at the Johnstown, Pa., plant of the U.S. Steel Corp., who became totally or partially separated from employment on or after December 7, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C. this 20th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11945 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2778]

U.S. STEEL CORP., JOHNSTOWN-CANTON WORKS, CANTON, OHIO

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-2778: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 14, 1977, in response to a worker petition received on December 9, 1977, which was filed by the United Steelworkers of America on behalf of workers engaged in employment related to the production of steel products at the Canton, Ohio, plant of the Johnstown-Canton Works of the U.S. Steel Corp. The investigation revealed that iron rolls are produced at the Canton plant.

The Notice of Investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1556). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the U.S. Steel Corp., and its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analyst, 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. The investigation revealed that all of the criteria have been met.

The evidence developed during the investigation revealed that almost all of the total production of iron rolls at the Canton, Ohio, plant in 1977 were shipped to other company facilities for which certifications have previously been issued by the Department. The rolls are used in bar mills where steel bars are produced.

Employment at Canton declined 3 percent in 1977 compared to 1976. In the fourth quarter of 1977, employment decline significantly compared to the like period in 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or dircectly competitive with the steel products produced at various plants of the U.S. Steel Corp. have contributed importantly to the total or partial separation of workers at the Canton, Ohio, plant of the Johnstown-Canton Works of the U.S. Steel Corp. as required for certification under section 222 of the Trade Act of 1974. In accordance with the provisions of the Act, I make the following certification:

All workers at the Canton, Ohio, plant of the U.S. Steel Corp. who became totally or partially separated from employment on or after October 1, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C. this 20th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11946 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2551, 2552]

WIDE AWAKE SHIRT CO., READING, PA.; POTTSTOWN, PA.

Notice of 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-2551, 2552: 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 1, 1977, in response to a worker petition received on October 20, 1977, which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of workers and former workers producing uniform shirts at the Reading, Pa., and Pottstown, Pa., plants of Wide Awake Shirt Co.

The notice of investigation was published in the FEDERAL REGISTER on November 15, 1977 (42 FR 59131). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Wide Awake Shirt Co., 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 Act must be met. Without regard to whether any of the other criteria have

been met, the following cirterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

The Department's investigation revealed that there are no separately identifiable imports of uniform shirts. The product is not listed as a separate item of any U.S. Tariff Schedule grouping. However, industry sources have indicated that there are negligible imports of civilian uniform shirts. There are no imports of U.S. Military uniforms due to Armed Service Procurement Regulations.

None of the customers of Wide Awake Shirt Co. that were surveyed purchased imported uniform shirts. Customers confirmed that import influence in the uniform shirt industry is negligible and that uniform shirts are not competitive with other shirt styles.

CONCLUSION

After careful review I conclude that all workers at the Reading, Pa., and Pottstown, Pa., plants of Wide Awake Shirt Co. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11947 Filed 5-1-78; 8:45 am]

[4510-28]

[TA-W-2747]

WITTEMAN STEEL MILLS, FONTANA, CALIF.

Notice of 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-2747: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 7, 1977 in response to a worker petition received on November 28, 1977 which was filed on behalf of workers and former workers producing steel reinforcing rod at Witteman Steel Mills, Fontana, Calif.

The notice of investigation was published in the FEDERAL REGISTER on December 30, 1977 (42 FR 65308). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Witteman Steel Mills, its customers, the American Iron and Steel Institute, 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 Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with those produced by the firm or subdivision have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

Most customers which decreased purchases of rebars from Witteman also decreased purchases of imported rebars. Witteman attempted to improve its competitiveness by shifting from ingot mold production to continuous casting. However, the depressed state of the construction industry combined with lowered prices offered by major domestic rebar manufacturers made it diffiucult for independent rebar firms to operate profitably and Witteman was forced to close.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that all workers at Witteman Steel Mills, Fontana, Calif. are denied eligibility to apply for trade adjustment assistance.

Signed at Washington, D.C. this 21st day of April 1978.

HARRY J GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11948 Filed 5-1-78; 8:45 am]

[1410-03]

LIBRARY OF CONGRESS

AMERICAN FOLKLIFE CENTER BOARD OF TRUSTEES

Open Meeting

As required by Pub L. 92-463, notice is hereby given that a meeting of the Board of Trustees of the American Folklife Center will be held beginning at 9:30 a.m., Tuesday, May 23, 1978, in the Whittall Pavilion of the Library of Congress.

This meeting is a regularly scheduled meeting of the Board. The meeting is open to the public. Any member of the public wishing to attend or to obtain additional information should contact Raymond L. Dockstader, Deputy Director of the American Folklife Center, 202-426-6590 by close of business, May 12.

RAYMOND L. DOCKSTADER,
Deputy Director, American Folklife Center.

MAY 5, 1978.

[FR Doc. 78-11818 Filed 5-1-78; 8:45 am]

[7536-01]

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

HUMANITIES PANEL ADVISORY COMMITTEE

Meeting

APRIL 26, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in Room 807, from 9 a.m. to 5:30 p.m. on May 22, 1978.

The purpose of this meeting is to review NEH Archaeology Program applications submitted to the National Endowment for the Humanities for projects beginning after September 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee, Management Officer.

[FR Doc. 78-11866 Filed 5-1-78; 8:45 am]

[7536-01]

HUMANITIES PANEL ADVISORY COMMITTEE

Meeting

APRIL 20, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806

15th Street NW., Washington, D.C. 20506, in room 807, from 9 a.m. to 5:30 p.m. on May 24, 1978.

The purpose of the meeting is to review NEH College Library Program applications submitted to the National Endowment for the Humanities for projects beginning after October 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee, Management Officer.

[FR Doc. 78-11867 Filed 5-1-78; 8:45 am]

[7536-01]

HUMANITIES PANEL ADVISORY COMMITTEE

Meeting

APRIL 21, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 1130, from 9 a.m. to 5 p.m. on May 25 and 26, 1978.

The purpose of the meeting is to review NEH Pilot Grant applications submitted to the National Endowment for the Humanities for projects beginning after October 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee, Management Officer.

[FR Doc. 78-11868 Filed 5-1-78; 8:45 am]

HUMANITIES PANEL ADVISORY COMMITTEE

Meeting

APRIL 26, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in Room 807, from 9 a.m. to 5:30 p.m. on June 2, 1978.

The purpose of this meeting is to review NEH History Program applications submitted to the National Endowment for the Humanities for projects beginning after September 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee, Management Officer.

[FR Doc. 78-11869 Filed 5-1-78; 8:45 am]

[7555-01]

NATIONAL SCIENCE FOUNDATION

AD HOC SUBCOMMITTEE ON RIVFLO

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Ad Hoc Subcommittee on Riverine Flux to the Oceans (RIVFLO) of the Advisory Committee for Ocean Sciences.

Date and time: 19 May 1978—9 a.m. to 5 p.m.

Place: National Science Foundation, 1800 G Street NW., Room 643, Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Lauriston R. King, Acting Head, International Decade of Ocean Exploration Section, Room 605, National Science Foundation, Washington, D.C. 20550, telephone 202-632-7356.

Purpose of subcommittee: To provide advice and recommendations concerning support for research on RIVFLO.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals 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. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine 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 such determinations by the Acting Director, NSF, on February 19, 1977.

Dated: April 27, 1978.

M. REBECCA WINKLER,
Committee Management Coordinator.

[FR Doc. 78-11836 Filed 5-1-78; 8:45 am]

[7555-01]

ADVISORY COMMITTEE FOR INFORMATION SCIENCE AND TECHNOLOGY

Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463); it is hereby determined that the establishment of the Advisory Committee for Information Science and Technology is necessary, appropriate, and in the public interest in connection with the performance of the duties imposed upon the Director, National Science Foundation (NSF) by the National Science Foundation Act of 1950, as amended, and other applicable law. This determination follows consultation with the Committee Management Secretariat, pursuant to the Federal Advisory Committee Act and OMB Circular No. A-63, Revised.

Name of committee: Advisory Committee for Information Science and Technology.

Purpose: To provide advice, recommendations, and oversight concerning support for activities related to the Foundation's programs in information science and technology.

Effective date of establishment and duration: The establishment of the Committee is effective upon filing the charter with the Director, NSF, and the standing committees of Congress having legislative jurisdiction of the NSF. The Committee will operate on a continuing basis contingent upon its renewal every two years.

Membership: The Committee will consist of up to 15 distinguished persons. Members of the Committee will include information scientists, information managers, and

users of information. Specific expertise will be sought from many disciplines and fields including: basic and applied information science research, information science research applications, economics, behavioral and social sciences, computer science, information and communication policy, library science, publishing and communication services, scientists, engineers, and R&D management.

Operation: The Committee will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463); NSF policy and procedures, OMB Circular No. A-63, Revised, and other directives and instructions issued in implementation of the Act.

Dated: April 27, 1978.

RICHARD C. ATKINSON,
Director.

[FR Doc. 78-11837 Filed 5-1-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-528, STN 50-529, STN 50-530]

ARIZONA PUBLIC SERVICE CO., ET AL

Issuance of Amendment to Construction Permits

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 1 to Construction Permit Nos. CPPR-141, CPPR—142 and CPPR-143 issued to the Arizona Public Service Co. Salt River Project Agricultural improvement and Power District, El Paso Electric Co., Southern California Edison Co. and the Public Service Co. of New Mexico. The amendment reflects a change in the ownership of the Palo Verde Nuclear Generating Station, Units 1, 2 and 3 (the facilities) located in Maricopa County, Ariz. The amendment is effective as of its date of issuance.

The amendment provides for the deletion of Arizona Electric Power Cooperative, Inc., as an applicant for all licenses previously requested for the facilities and the transfer of 1.0 percent ownership interest to Arizona Public Service Co., 1.0 percent interest to Salt River Project Agricultural Improvement and Power District, and 0.4 percent ownership interest to Southern California Edison Co., of the 2.4 percent ownership interest held by Arizona Electric Power Cooperative, Inc. in the facilities.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the amendment.

For further details with respect to this action, see (1) the application for amendment contained in a letter dated July 8, 1977, (2) Amendment No. 1 to Construction Permit Nos. CPPR-141, CPPR-142 and CPPR-143, and (3) the Commission's related Safety Evaluation supporting Amendment No. 1 to the above construction permits. All of these items and other related material are available for public inspection at the Commission's Public Document Room, 1717 H Street N.W., Washington, D.C., and the local Public Document Room located in the Phoenix Public Library, Science and Industry Section, 12 East McDowell Road, Phoenix, Ariz.

A copy of items (2) and (3) may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, ATTN: Director, Division of Project Management.

Dated at Bethesda, Md. this 19 day of April 1978.

For the Nuclear Regulatory Commission.

JOHN F. STOLZ,
Chief, Light Water Reactors Branch No. 1, Division of Project Management.

[FR Doc. 78-11866 Filed 5-1-78; 8:45 am]

[7590-01]

[Docket Nos. 50-329A 50-330A]

CONSUMERS POWER CO.

Order

APRIL 26, 1978.

On April 19, 1978 in ALAB-468, the Appeal Board entered an Order in this proceeding vacating the schedule established by the Licensing Board for a prehearing conference and the commencement of an evidentiary hearing related to the framing of appropriate antitrust license conditions. The Board was directed to take those steps which it believed appropriate to encourage a settlement and thus to avoid unnecessary litigation. It was assumed that the Board will wish to obtain regular progress reports from the parties to satisfy itself that the negotiations are being diligently carried on, and to insure that if settlement should be unlikely, the evidentiary hearing will then take place with no unnecessary further delay.

In accordance with ALAB-468, our notice and order dated April 17, 1978 is canceled, and the prehearing conference scheduled for May 12 and the evidentiary hearing to commence on June 6, 1978 are vacated. The briefs and other documents specified in our prior order will not be required at this time.

In order to monitor the progress of the pending negotiations and to obtain progress reports at regular intervals, a conference with counsel will be held at 9:30 a.m., local time, on May 31, 1978 in the Nuclear Regulatory Commission's Hearing Room, 5th Floor, East West Towers, located at 4350 East West Highway, Bethesda, Md. 20014.

Dated at Bethesda, Md. this 26th day of April 1978.

It is so ordered.

For the Atomic Safety and Licensing Board.

HUGH K. CLARK,
Chairman.

[FR Doc. 78-11887 Filed 5-1-78; 8:45 am]

[7590-01]

[Dockets Nos. 50-245 and 50-336]

NORTHEAST NUCLEAR ENERGY CO., ET AL.

Issuance of Amendments to Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 48 to Provisional Operating License No. DPR-21 and Amendment No. 40 to Facility Operating License No. DPR-65 to Northeast Nuclear Energy Co., The Connecticut Light and Power Co., The Hartford Electric Light Co., and Western Massachusetts Electric Co., which revised Technical Specifications for operation of the Millstone Nuclear Power Station, Units Nos. 1 and 2, located in the Town of Waterford, Conn. The amendments are effective as of their date of issuance.

These amendments modify the Environmental Technical Specifications to incorporate restrictions on the radioactive waste effluent which could potentially be discharged from the condensate polishing waste neutralizing sumps into the Long Island Sound.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings are required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for

amendments dated February 17, 1978, (2) Amendments Nos. 48 and 40 to Licenses Nos. DPR-21 and DPR-65, respectively, and (3) the Commission's letter transmitting these amendments. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Conn. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 21st day of April 1978.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 78-11888 Filed 5-1-78; 8:45 am]

[7590-01]

[Docket No. 50-336]

NORTHEAST NUCLEAR ENERGY CO., ET AL.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 39 to Facility Operating License No. DPR-65 to Northeast Nuclear Energy Co., the Connecticut Light & Power Co., the Hartford Electric Light Co., and Western Massachusetts Electric Co., which revised Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 2, located in the town of Waterford, Conn. The amendment is effective as of its date of issuance.

This amendment revises the Technical Specifications to allow reactor start- up with the reed switch position indicator channel inoperable on Control Element Assembly A-42.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings are required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated April 20, 1978, (2) Amendment No. 39 to License No. DPR-65, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Conn. A copy of items (2) and (3) may obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 21st day of April 1978.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 78-11889 Filed 5-1-78; 8:45 am]

[7590-01]

[Docket No. 50-344]

PORTLAND GENERAL ELECTRIC CO., ET AL.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 25 to Facility Operating License No. NPF-1 issued to Portland General Electric Co., the city of Eugene, Oreg., and Pacific Power & Light Co. which revised Technical Specifications for operation of the Trojan Nuclear Plant (the facility), located in Columbia County, Oreg. The amendment is effective as of its date of issuance.

The amendment revises the Design Features section of the Technical Specifications to indicate that the spent fuel pool is designed with siphon breakers in the piping extending into the pool which prevent inadvertent draining of the pool below elevation 83'-11".

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amnedment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated February 15, 1978, as supplemented March 24, 1978, (2) Amendment No. 25 to License No. NPF-1, and (3) the Commission's related Safety Evaluation. All of these items are available for pulic inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, and at the Columbia County Courthouse, Law Library, Circuit Court Room, St. Helens, Oreg. 97051. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 10th day of April 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-11890 filed 5-1-78; 8:45 am]

[7590-01]

[Docket No. 50-272]

PUBLIC SERVICE ELECTRIC & GAS CO.

Hearing on Amendment of Facility Operating License

Pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities," Part 51, "Licensing and Regulatory Policy and Procedures for Environmental Protection," and Part 2, "Rules of Practice," notice is hereby given that a hearing will be held before an Atomic Safety and Licensing Board to consider the application of the Public Service Electric & Gas Co. (the Licensee) for an amendment to its Facility Operating License No. DPR-70, which presently authorizes the Licensee to possess, use and operate the Salem Nuclear Generating Station, Unit 1, located in Salem County, N.J. The proposed amendment would allow modification of the spent fuel storage pool of this facility so as to increase its capacity from 264 to 1,170 fuel assemblies in accordance with Licensee's revised application for amendment dated February 14, 1978. Approval of the proposed

modification would result in issuance of an amendment to the above license revising the technical specifications for the facility in order to reflect its increased capacity to store spent fuel.

The hearing, which will take place in the vicinity of the facility, will be conducted by an Atomic Safety and Licensing Board (the Licensing Board) which has been designated by the Chairman of the Atomic Safety and Licensing Board Panel. The Board consists of Mr. Glenn O. Bright and Dr. James C. Lamb III, Members, and Mr. Gary L. Milhollin, Chairman.

A notice entitled "Proposed Issuance of Amendment to Facility Operating License" was published by the Nuclear Regulatory Commission in the FEDERAL REGISTER on February 8 1978 (43 FR 5443). The notice provided that any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene. Petitions were filed by the township of Lower Alloways Creek (Salem County, N.J.), by Alfred C. Coleman, Jr. and Eleanore G. Coleman (the Colemans), by "the Sun People"—Alternative Energy Advocates (South Dennis, N.J.). and by the State of New Jersey. The township of Lower Alloways Creek was admitted as a party to the proceeding, but the petitions of the Colemans and the Sun People were denied with leave to amend within ten (10) days from the date of service of this Board's order. The State of New Jersey was granted leave to participate under 10 CFR 2.715(c).

A prehearing conference or conferences will be held by the Licensing Board designated to preside over this matter. The date and place of the hearing will be set at or after the prehearing conference. Notices of the dates and places of the prehearing conference and the hearing will be published in the FEDERAL REGISTER. The Licensing Board will determine the specific issues to be considered at the hearing.

For further details with respect to the matters under consideration, see the Licensee's revised application for amendment dated February 14, 1978, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and the Salem Free Public Library, 112 West Broadway, Salem, N.J.

Any person who wishes to make an oral or written statement in this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715 of the Commission's Rules of Practice. Limited appearance will be permitted at the time of the hearing in the discretion of the Licensing Board, within such limits and on such conditions as that Board may determine. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, not later than June 1, 1978. A person permitted to make a limited appearance does not become a party, but may state his position and raise questions which he would like to have answered, provided that the questions are within the scope of the hearing as specified above. A member of the public does not have the right to participate unless he has been granted the right to make a limited appearance or to intervene as a party.

An answer to this notice, pursuant to the provisions of 10 CFR 2.705 must be filed by the parties to this proceeding (other than the Regulatory Staff) not later than May 22, 1978.

Papers required to be filed in this proceeding may be filed by mail or telephone addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Pending further order of the Licensing Board designated for this proceeding, the parties are required to file, pursuant to the provisions of 10 CFR 2.708 of the Rules of Practice, an original and twenty (20) conformed copies of each such paper with the Commission.

It is so ordered

Dated at Madison, Wis., this 26th day of April 1978.

For the Atomic Safety and Licensing Board designated to rule on petitions for leave to intervene.

GARY L. MILHOLLIN,
Chairman.

[FR Doc. 78-11891 Filed 5-1-78; 8:45 am]

[7590-01]

[Docket No. 50-206]

SOUTHERN CALIFORNIA EDISON CO., AND SAN DIEGO GAS AND ELECTRIC CO.

Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 34 to Provisional Operating License No. DPR-13, issued to Southern California Edison Co. and San Diego Gas and Electric Co. (the licensee), which revised condition 3.E of License No. DPR-13 for the San Onofre Nuclear Generating Station, Unit No. 1 (SO-1), (the facility) located in San Diego County, Calif. The amendment is effective as of its date of issuance.

The amendment changes license condition 3.E to permit the resumption of power operation of SO-1 and the continuation of power operation for twelve cumulative months with the primary coolant temperature greater than 350° F from April 20, 1978. This action is based on the results of the steam generator denting inspection program described in the licensee's April 17, 1978 submittal and request for approval to resume power operation.

The request complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) Amendment Nos. 25 and 32 to License No. DPR-13 dated April 1, 1977 and March 24, 1978, respectively and the related Safety Evaluations, (2) the licensee's submittal dated April 17, 1978, and the report enclosed thereto entitled "Steam Generator Denting Inspections", (3) Amendment No. 34 to License No. DPR-13, and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Mission Viejo Branch Library, 24851 Chrisanta Drive, Mission Viejo, Calif. 92676. A single copy of items (1), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 20th day of April, 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-11892 Filed 5-1-78; 8:45 am]

[7590-01]

[Docket No. 50-281

VIRGINIA ELECTRIC AND POWER CO.

Order for Modification of License

I

Virginia Electric and Power Co. (the licensee), is the holder of Facility Operating License No. DPR-37 which authorizes the operation of the nuclear power reactor known as Surry Power Station, Unit No. 2 (the facility) at steady state reactor power levels not in excess of 2441 thermal megawatts (rated power). The reactor is a pressurized water reactor (PWR) located at the licensee's site in Surry County, Va.

II

On April 1, 1977, the NRC staff issued an Order for Modification of License No. DPR-37 which addressed operation of Surry Power Station Unit No. 2 under conditions in which steam generator tubes have been plugged as a result of tube denting caused by corrosion of the tube support plate in the annular spaces between tube and the tube support plate. On August 17, 1977, an Order was issued to permit continued operation of unit No. 2, to September 15, 1977, under the conditions of the April 1, 1977 Order. The licensee was required to perform an inspection after the September 15, 1977 shutdown. The licensee's fuel cycle for Surry Unit No. 2 ended before September 15, 1977, and during the resulting shutdown the licensee performed the required inspection. On October 8, 1977, an Order was issued to permit continued operation of Unit No. 2 for six equivalent months of operation beyond October 8, 1977. On March 20, 1978, Surry Unit No. 2 shut down for steam generator tube inspection and the results were submitted on April 4, 1978 as supplemented April 6, 1978. The data derived from the inspection demonstrates that the denting has followed the pattern predicted by the preventive plugging criteria established by the licensee with the NRC staff. The additional plugging performed as a result of the inspection using the preventive plugging criteria will provide adequate steam generator integrity under the conditions of this Order for continued operation for an additional six month period. The NRC staff has evaluated the results of this inspection and repair program and has assessed continued safe operation of the facility. This evaluation is set forth in the staff's concurrently issued Safety Evaluation relating to steam generator tube integrity.

Continued growth of the tube support plate continues to impose stresses on the tubes and may result in the development of stress corrosion cracks in denting locations. The NRC staff has considered the effect of the development of stress corrosion cracking during the course of operation of this facility, and has assessed the effect of such cracks in conjunction with the steam line break and loss of coolant accident events. The NRC staff has concluded that under the limitations on tube leakage set forth in this Order, the effect of continued denting on LICA events or on the consequences of the steam line break event would continue to be within those considered in connection with the April 1, 1977 Order. The limitations set forth in this Order will provide reasonable assurance that the public health and safety will not be endangered.

The licensee has proposed in its April 4, 1978, submittal to continue the limitations applicable to this facility in the manner set forth in this Order. The NRC staff believes that the licensee's actions, under the circumstances are appropriate and should be confirmed by NRC Order.

Copies of the following documents are available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, and at the Swen Library, College of William and Mary, Williamsburg, Va., (1) licensee's submittal of April 4, 1978, (2) Orders for Modification of License, dated April 1, 1977, August 17, 1977, and October 8, 1977, (3) this Order for Modification of license, In the Matter of Virginia Electric and Power Co., Surry Power Station, Unit No. 2, Docket No. 50-281, and (4) the Commission's concurrently issued Safety Evaluation supporting this Order.[1]

III

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, *it is ordered* That Facility Operating License No. DPR-37 is hereby amended by replacing in its entirety existing paragraph 3.E. of the license with the following:

E. STEAM GENERATOR INSPECTION

(1) Unit No. 2 shall be brought to the cold shutdown condition in order to perform an inspection of the steam generators within six months of equivalent operation from April 7, 1978.

Nuclear Regulatory Commission approval shall be obtained before resuming power operation following this inspection.

Equivalent operation is defined as operation with th reactor coolant at or above 350° F.

(2) Reactor coolant leakage from the reactor coolant system (RCS) to the secondary system (SS) through the steam generator tubes shall be limited to 0.3 gpm per steam generator, as described in the NRC Safety Evaluation of April 1, 1977. With any steam generator tube leakage greater than this limit the reactor shall be brought to the cold shutdown condition within 24 hours. Nuclear Regulatory Commission approval shall be obtained before resuming reactor operation.

(3) Reactor operation will be terminated if RCS to SS leakage which is attributable to 2 or more steam generator tubes occurs during a 20 day perod. Nuclear Regulatory Commission approval shall be obtained before resuming reactor operation.

(4) The concentration of radioiodine in the reactor coolant shall be limited to 1 μCi/gram during normal operation and to 10 μCi/gram during power transients as defined in Appendix A-1 to the Technical Specifications of the license. Appendix A-1 was issued with the April 1, 1977 Order and shall remain in effect for six equivalent months from April 7, 1978.

Dated at Bethesda, Md. this 7th day of April 1978.

For the Nuclear Regulatory Commission.

VICTOR STELLO, Jr.,
Director, Division of Operating Reactors, Office of Nuclear Reactor Regulation.

[FR Doc. 78-11893 Filed 5-1-78; 8:45 am]

[1] A copy of items identified in (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating reactors.

[7590-01]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON THE MAINE YANKEE NUCLEAR PLANT

Meeting Postponed

The May 2, 1978 meeting of the ACRS Subcommittee on the Maine Yankee Nuclear Plant scheduled to be held in Washington, D.C. has been postponed indefinitely. (Notice of this meeting was made in the FEDERAL REGISTER on April 17, 1978.)

Dated: April 28, 1978.

JOHN C. HOYLE,
Advisory Committee, Management Officer.

[FR Doc. 78-12085 Filed 5-1-78; 9:10 am]

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

PREVENTING WAGE BUSTING FOR PROFESSIONALS

Procedures for Evaluating Contractor Proposals for Service Contracts

AGENCY: Office of Federal Procurement Policy (OFPP, Office of Management and Budget).

ACTION: Notice of a policy concerning procedures for evaluating contractor proposals for service contracts.

SUMMARY: The following letter was signed and issued on March 29, 1978, by Mr. Lester A. Fettig, Administrator for Federal Procurement Policy. It is

to be effective on an interim basis and will be implemented through regulatory guidance to be issued under both the Defense Acquisition Regulation and Federal Procurement Regulations. It is being published simultaneously in the FEDERAL REGISTER for comment prior to implementation of permanent regulations.

POLICY

The Federal Government has for many years contracted with American industry for a variety of services in support of Federal programs. In most cases the contracts have been entered into as a result of competitive procurement procedures and they normally are subject to periodic recompetition.

Unwarranted reductions in salaries and fringe benefits can occur during competition for Government service contracts. Since the costs of wage and fringe benefits constitute the largest cost element in a service contract, competitiors often have driven down wage rates to unrealistically low levels, even though the employees that will perform the work under the new contract are the same performing the work under the predecessor contract.

The Service Contract Act of 1965 (Pub. L. 89-286), as amended, was enacted to prevent such "wage busting" practices with respect to blue collar and some white collar workers. The Department of Labor sets and maintains wage determinations for these service contract employees. Federal laws setting minimum standards for wages, working conditions or other labor standards do not, however, apply to professional employees. In addition, professional employees traditionally have not been represented by union collective bargaining agreements.

The Government shares a deep concern for inequities such as "wage busting" practices generated in our procurement system. The Government should not inadvertently contribute to unwarranted, severe, and abrupt reductions in compensation provided to Federal service contract employees. This has happened to some professional employees, especially in areas of concentrated Federal support such as Cape Canaveral, Fla., Houston, Tex., Huntsville, Ala., and several areas of California. In these and other areas, experience has in some cases been bad; the potential for further problems is worse.

The Federal Government cannot allow the protracted labor instability, loss of morale, and undermined mission performance that comes from the fact or fear or "wage busting." The human impact on longstanding careers, family dislocations, and personal economic distress makes the problem even more compelling, even if it could be confined to isolated locales.

Therefore, pursuant to the authority vested in me under Pub. L. 93-400, it is the declared policy of the Federal Government that all service employees, including professional employees, employed by contractors providing services to the U.S. Government, be fairly and properly compensated. Federal procurement procedures shall be developed to assure equitable compensation for all such employees. This policy clearly recognizes the fact that there is a predictable and essential link between personnel compensation and work performance. Therefore, evaluation of bids and proposals for service contract work shall take into account the realism of the offeror's proposed personnel compensation plan to assure that the offeror has a proper understanding of the resources required to perform high quality work on an uninterrupted basis.

Therefore, all future solicitations shall include the language contained in the attachment to this Policy whenever professional employees are expected to be needed to perform the services. If the procuring agency feels that a particular procurement covered by this policy statement does not warrant the use of such language in the solicitation, the agency shall request approval from the Administrator, Office of Federal Procurement Policy (OFPP) before omitting the criteria from any solication.

Implementation of the policy to be effective April 1, 1978, shall be made through regulatory guidance to be issued under both the Defense Acquisition Regulation and Federal Procurement Regulations.

This Office has a statutory responsibility to promote uniformity in procurement regulations to the extent it is feasible to do so. Accordingly, each agency is required, not later than 6 months from the date of this Policy, to submit a report to this Office for our review and assessment as to the actions which have been taken to implement this important policy. Following this review and assessment, we will determine whether additional guidance from this Office is required.

INSTRUCTIONS TO BIDDERS

Total compensation (salary and fringe benefits) of professional employees under service contracts may in some cases be lowered by recompetition of such contracts. Such lowering of compensation can be detrimental in obtaining the necessary quality of professional services needed for adequate performance of service contracts. It is therefore in the best interest of the Government that professional employees be properly and fairly compensated in such contracts. The following evaluation factors and criteria, therefore, will be used in assessing the total compensation package submitted by each bidder.

EVALUATION FACTORS AND CRITERIA

Understanding the Requirement: In establishing compensation levels for employees not otherwise covered by the Service Contract Act, the total compensation (both salaries and fringe benefits) proposed, shall reflect a clear understanding of the requirements of the work to be accomplished and the suitability of the proposed compensation structure to obtain and retain qualified personnel to meet mission objectives. The salary rates or ranges must recognize the distinct differences in professional skills and the complexity of varied disciplines as well as job difficulty. They shall reflect the professional contributions, abilities, professional status, responsibility, and value of the education and experience of such professional employees.

Cost Factor: Proposals which are unrealistically low or do not reflect a reasonable relationship of compensation to the job categories so as to impair the contractor's ability to recruit and retain competent personnel may be deemed reflective of failure to comprehend the complexity of the contract requirement. This agency is concerned with the quality and stability of the work force to be employed on this contract. The compensation data required will be used in evaluation of your understanding of the contract requirement. An assessment of the potential for adverse effect upon performance and maintenance of harmonious labor relations with employees resulting from an unrealistic low compensation structure will also be made.

Evaluation of Bids: This agency will evaluate the total compensation (both salaries and fringe benefits) to be paid to professional employees to assure that such compensation reflects an understanding of the requirements to be performed as outlined above. It will include an assessment of the bidder's ability to provide uninterrupted work of high quality. The total compensation proposed will be evaluated in terms of enhancing recruitment of personnel and its realism and consistency with a total plan for compensation (both salary and fringe benefits).

Bids offering total compensation levels less than currently being paid by the predecessor contractor for the same work will be evaluated, in addition to the above, on the basis of maintaining program continuity and availability of required competent professional personnel. Bidders are cautioned that instances of lowered compensation for essentially the same work may be an indication of lack of sound management.

Negotiations: During written and oral discussions, if provided for, bidders will be afforded an opportunity to clarify and support their total compensation plans. Supporting information will include data such as recog-

nized national and regional compensation surveys and studies of professional public and privatre organizations used in establishing the total compensation structure. Failure to correct compensation weaknesses disclosed by agency evaluation may be cause for rejection of the bid.

The Contract: The bidder's proposed total compensation plan will be incorporated into any contract resulting from this solicitation. This will serve to lend authenticity to the plan proposed and reflect a commitment of the bidder to pay the compensation stated therein.

FOR FURTHER INFORMATION AND COMMENTS CONTACT:

Mr. Thomas F. Williamson, Associate Administrator for Acquisition Law, 202-395-3100.

VELMA BALDWIN,
Assistant to the Director for Administration.

[FR Doc. 78-11800 Filed 5-1-78; 8:45 am]

[4710-01]

DEPARTMENT OF STATE

[Pub. Notice CM-8/51]

SHIPPING COORDINATING COMMITTEE; SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group on safety of navigation of the Shipping Coordinating Committee's Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on Tuesday, May 23, 1978 in Room 7202 of the Department of Transportation, 400 Seventh Street SW., Washington, D.C.

The purpose of this meeting is to:

Discuss the results of last year's twentieth session of the Subcommittee on Navigation of the Intergovernmental Maritime Consultative Organization's (IMCO) Maritime Safety Committee (MSC), and

Prepare for the twenty-first session of the IMCO Subcommittee, which will address matters relating to, inter alia, ships' routing, navigational aids and equipment, single-handed voyages, and the 1972 Regulations for the Prevention of Collisions at Sea (1972 COLREGS).

Requests for further information on the SOLAS working group meeting should be directed to either Commander D.L. Parr or Lt. Commander J.D. Bannan, Commandant (G/WLE-4/73), U.S. Coast Guard, 400 Seventh Steet SW., Washington, D.C. 20590, telephone 202-426-4958.

RICHARD K. BANK,
Chairman,
Shipping Coordinating Committee.

APRIL 24, 1978.

[FR Doc. 78-11856 Filed 5-1-78; 8:45 am]

[4710-01]

[Public Notice CM-8/53[

SECRETARY OF STATE'S ADVISORY COMMITTEE ON PRIVATE INTERNATIONAL LAW—STUDY GROUP ON MARITIME LAW MATTERS

Notice of Meeting

A meeting of the Study Group on Maritime Law Matters, a subgroup of the Secretary of State's Advisory Committee on Private International Law, will be held at 10:30 a.m. on Tuesday, May 23, 1978, in room 5519 of the Department of State. Members of the general public may attend up to the limits of the capacity of the meeting room and participate in the discussion subject to instructions of the Chairman.

The purpose of the meeting will be to hear the report of the United States delegation to the Hamburg Conference on the Carriage of Goods by Sea, and to consider future action with respect to the Convention produced by the Conference.

Entrance to the Department of State building is controlled, and members of the general public should use the C Street entrance. Entry will be facilitated if arrangements are made in advance, and it is requested that members of the general public who plan to attend the meeting inform their name, affiliation, and adress to Ms. Dorothy Fagan, Office of the Legal Adviser, Department of State, prior to May 23, 1978. The telephone number is area code 202-632-8134.

Dated: April 27, 1978

RICHARD D. KEARNEY
Chairman.

[FR Doc. 78-11950 Filed 5-1-78; 8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Customs Service

CERTAIN FOOTWEAR FROM INDIA

Notice of Receipt of Countervailing Duty Petition and Initiation of Investigation

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Initiation of Countervailing Duty Investigation.

SUMMARY: This notice is to advise the public that a satisfactory petition has been received and that a countervailing duty investigation has been started to determine if benefits are paid by the Government of India to manufacturers or exporters of certain footwear which constitute the payment of a bounty or grant within the meaning of the U.S. Countervailing Duty Law. A preliminary determination will be made not later than September 10, 1978, and a final determination not later than March 10, 1979.

EFFECTIVE DATE: May 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Leon McNeill, Operations Officer, Technical Branch, Duty Assessment Division, Office of Operations, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: A petition in satisfactory form was received on March 10, 1978, alleging that benefits conferred by the Government of India upon the manufacture, production or exportation of certain footwear from India constitute the payment or bestowal of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

For purposes of this notice "certain footwear" includes footwear classifiable in items 700.05 through 700.85 inclusive, of the Tariff Schedules of the United States Annotated (except items 700.28, 700.51, 700.52, 700.53, 700.54, 700.60, and 700.8510). It also includes other leather articles cut or partly manufactured into forms or shapes suitable for conversion into footwear, classifiable in item 791.25 of the Tariff Schedules of the United States Annotated. Alleged bounties or grants as provided in the petition include the following:

1. Direct cash assistance provided to exporters of footwear upon exportation ranging up to 20 percent of f.o.b. value of the export product.

2. Direct tax credits of 15 percent of export value which may be applied against payment of any outstanding income or business taxes.

3. Deduction of 150 percent of overseas expenses for export promotion from taxable income. Through the Market Devlopment Fund, the Indian Government may make outright grants for export promotion to individual firms.

4. Remission of Customs duties and excise taxes on machinery and equipment used in export production.

5. Comprehensive export insurance and low rate export credits available to Indian exporters for overseas market development, available through the Export Credit and Guarantee Corporation and the Industrial Development Bank of India, both Indian Government entities.

6. Favorable treatment with respect to import licenses and foreign exchange as a reward for export performance.

7. Special foreign exchange concessions and financial assistance for purchase of equipment to firms located in the Kandla Free Trade Zone.

The unfinished footwear from India specified in the petition which is classifiable under item 791.25 of the Tariff

Schedules of the United States annotated (TSUSA) is eligible for duty-free entry under the Generalized System of Preferences. In the event that it becomes necessary to refer this matter to the United States International Trade Commission (ITC) pursuant to section 303(a) (2), Tariff Act of 1930, as amended, (19 U.S.C. 1303(a) (2)), there is evidence on record concerning injury to, or likelihood of injury to, an industry in the United States.

This evidence includes information indicating that in recent years a sharp rise in foot-wear imports has occurred, causing employment in foot-wear manufacturing to decline substantially. In addition, there is information contained in the petition which indicates that the unempolyment rate in the footwear industry is double the national average. However, information of greater specificity may be required by the ITC before countervailing duties are assessed linking imports of the product defined by a single TSUS number to the alleged injury or threatened injury to the domestic industry, in the event that Treasury determines a bounty or grant is being paid or bestowed on the manufacture, production or exportation of this product.

Pursuant to section 303(a) (4) Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(4)), the Secretary of the Treasury is required to issue a preliminary determination as to whether or not a bounty or grant is being bestowed within the meaning of that statute within 6 months of receipt, in satisfactory form, of a petition alleging the payment or bestowal of a bounty or grant. A final determination must be issued within 12 months of the receipt of such petition.

Therefore, a preliminary determination on this petition will be made no later than September 10, 1978, as to whether or not the alleged payments or bestowal conferred by the Government of India upon the manufacture, production or exportation of the merchandise described above constitutes a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended. A final determination will be issued no later than March 10, 1979.

This notice is published pursuant to section 303(a) (3) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a) (3)), and section 159.47(c), Customs Regulations (19 CFR 159.47(c)).

Pursuant to Reorganization Plan No. 26 to 1950 and Treasury Department Order 190 (Revision 15), March 16, 1978, the provisions of the Treasury Department Order No. 165, Revised, November 2, 1954, and section 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the initiation of a countervailing duty investigation by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

APRIL 25, 1978.

[FR Doc. 78-11895 Filed 5-1-78; 8:45 am]

[4810-22]

Office of the Commissioner of Customs

[TD 78-127]

AURORA STEEL PRODUCTS

Notice of Recordation of Trade Name

APRIL 26, 1978.

On March 10, 1978, there was published in the FEDERAL REGISTER (43 FR 9911), a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name Aurora Steel Products used by Aurora Steel Products, division of Hupp, Inc. and a wholly owned subsidiary of White Consolidated Industries, Inc. The notice advised that prior to final action on the application, filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), consideration would be given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than June 1, 1978. No responses were received in opposition to the application.

The name "Aurora Steel Products" is hereby recorded as the trade name of Aurora Steel Products, division of Hupp, Inc., a corporation organized under the laws of the State of Delaware, located at 580 South Lake Street, Aurora, Ill. 60507, when applied to desks, chairs, bookcases, tables, shelving, and storage equipment namely, lockers, library shelving, storage cabinets and shelf storage cabinets and shelf filing systems, manufactured in the United States. No foreign person, partnership, subsidiary, related company or parent company is authorized to use the trade name.

LEONARD LEHMAN,
Assistant Commissioner, Regulations and Rulings.

[FR Doc. 78-11881 Filed 5-1-78; 8:45 am]

[4810-22]

[T.D. 78-126]

DAWN IMPORTS INTERNATIONAL, INC.

Recordation of Trade Name

APRIL 26, 1978.

On March 10, 1978, there was published in the FEDERAL REGISTER (43 FR 9911-9912), a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name Dawn Imports International, Inc. used by Dawn Imports International, Inc. The notice advised that prior to final action on the application, filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), consideration would be given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than 30 days from the date of publication of the notice. No response were received in opposition to the application.

The name "Dawn Imports International, Inc." is hereby recorded as the trade name of Dawn Imports International, Inc., a corporation organized under the laws of the State of New York, located at 500 Seventh Avenue, New York, N.Y. 10018, when applied to ladies outerwear coats and ladies outerwear sweaters, in various fabrics and styles manufactured in Taiwan and Korea. No foreign parent, subsidiary or any company under common ownership or control is authorized to use the trade name.

LEONARD LEHMAN,
Assistant Commissioner, Regulations and Rulings.

[FR Doc. 78-11882 Filed 5-1-78; 8:45 am]

[4810-35]

Fiscal Service

[Dept. Circ. 570, 1977 Rev., Supp. No. 18]

SURETY COMPANIES ACCEPTABLE ON FEDERAL BONDS

Change in State of Incorporation

On December 31, 1977, Puritan Insurance Company, Stamford, Connecticut changed its State of incorporation from New York to Connecticut. The company was last listed as an acceptable surety on Federal bonds at 42 FR 34077, July 1, 1977.

A certificate of authority as an acceptable surety on Federal bonds is hereby issued by the Secretary of the Treasury, under Sections 6 to 13 of Title 6 of the United States Code, to Puritan Insurance Company, incorporated in the State of Connecticut. This new certificate replaces the company's former Treasury certificate, effective December 31, 1977. An underwriting limitation of $805,000 has been established for the company. The underwriting limitation is the same as was established as of July 1, 1977, under the certificate issued to the company in its previous State of incorporation.

Certificates of authority expire on June 30, each year, unless sooner revoked, and new certificates are issued on July 1, so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1, in Department Circular 570, with details as to under-

writing limitations, areas in which licensed to transact surety business and other information. Copies of the circular, when issued, may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: April 25, 1978.

D. A. PAGLIAI,
Commissioner, Bureau of Government Financial Operations.

[FR Doc. 78-11904 Filed 5-1-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[AB 34 (SDM)]

ST. JOSEPH & GRAND ISLAND RAILROAD CO.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in title 49 of the Code of Federal Regulations, Part 1121.23, that the St. Joseph & Grand Island Railroad Co., has filed with the Commission its amended color-coded system diagram map in Docket No. AB 34 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on march 29, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 34 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-11779 Filed 5-1-78; 8:45 am]

SYSTEM DIAGRAM MAP of the ST. JOSEPH & GRAND ISLAND RAILROAD CO. AB No. 34 prepared in conjunction with I.C.C. Order Ex Parte No. 274 (Sub-No. 2) and Title 49 of the code of Federal Regulation 1121.

* L E G E N D *

Lines or portions of lines anticipated to be the subject of an abandonment or discontinuance application within three years shown ..... (1)

Lines or portions of lines potentially subject to abandonment which are under study and which may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues shown .. (2)

Lines or portions of lines for which an abandonment or discontinuance application is pending before the Interstate Commerce Commission shown ..... (3)

Lines or portions of lines which are being operated under rail service continuance provisions shown ..... (4)

All other St. Joseph & Grand Island Railroad Co. lines shown ..

0 50 100
SCALE IN MILES

Standard Metropolitan Statistical Area (SMSA) shown ....

City outside of an (SMSA) with a population of 5,000 or more persons according to 1970 U.S. Census reports shown .....

State boundaries shown .....

Boundaries of counties in which proposed abandonments are located shown ..... County



Certified to be a true copy of the original document

G. M. Tabor

[7035-01]

[AB 121 (SDM)]

SPOKANE INTERNATIONAL RAILROAD

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in the Title 49 of the Code of Federal Regulations, Part 1121.23, that the Spokane International Railroad Co., has filed with the Commission its amended color-coded system diagram map in Docket No. 121 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on March 29, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operated and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting Docket No. AB 121 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-11778 Filed 5-1-78; 8:45 am]

SYSTEM DIAGRAM MAP of the SPOKANE INTERNATIONAL RAILROAD AB No. 121 prepared in conjunction with I.C.C. Order Ex Parte No. 274 (Sub-No. 2) and Title 49 of the code of Federal Regulation 1121.

LEGEND

Lines or portions of lines anticipated to be the subject of an abandonment or discontinuance application within three years shown ---------- (1)

Lines or portions of lines potentially subject to abandonment which are under study and which may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues shown -- (2)

Lines or portions of lines for which an abandonment or discontinuance application is pending before the Interstate Commerce Commission shown ---------- (3)

Lines or portions of lines which are being operated under rail service continuance provisions shown ---------- (4)

All other Spokane International Railroad lines shown

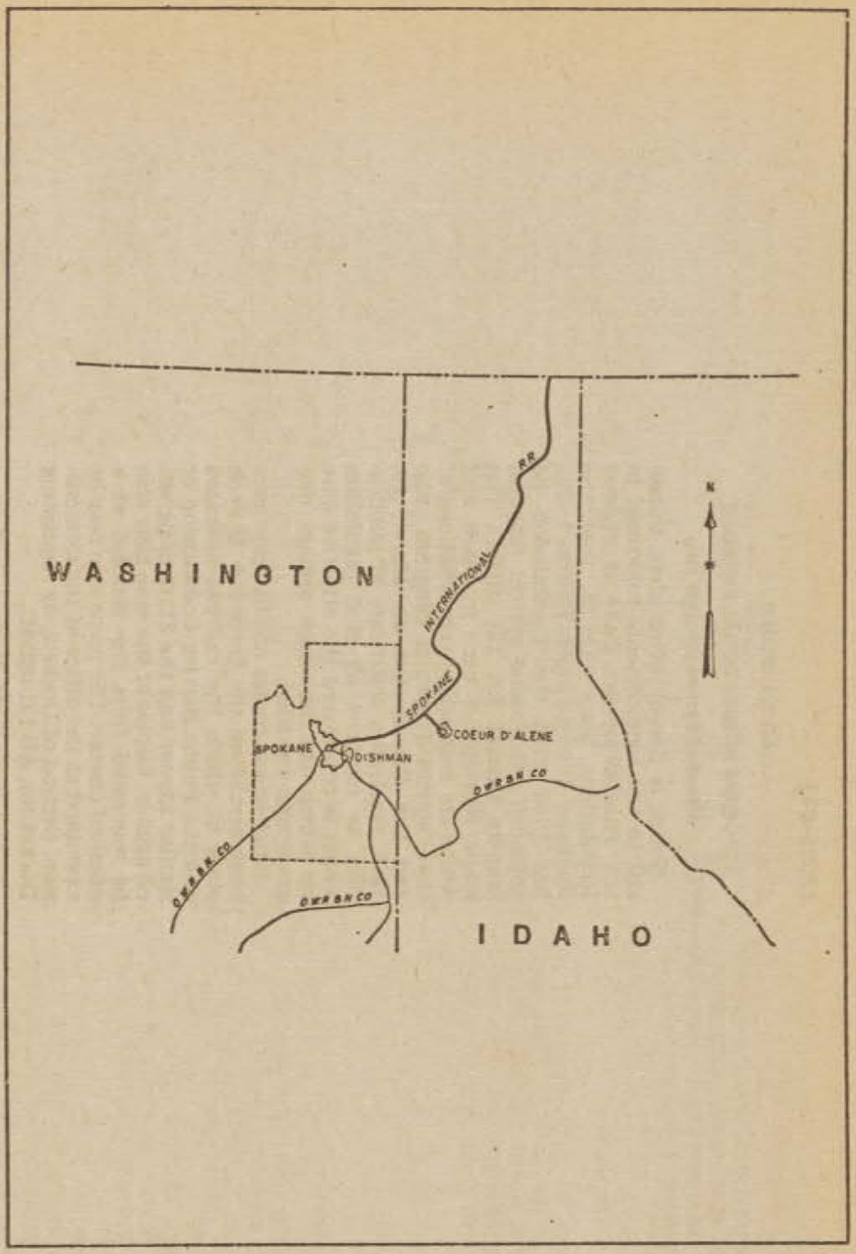
0 50 100
SCALE IN MILES

Standard Metropolitan Statistical Area (SMSA) shown ----

City outside of an (SMSA) with a population of 5,000 or more persons according to 1970 U.S. Census reports shown ----------

State boundaries shown ----------

Boundaries of counties in which proposed abandonments are located shown ---------- County



Certified to be a true copy of the original document

[1505-01]

[Volume No. 83]

PETITIONS, APPLICATIONS, FINANCE MATTERS (INCLUDING TEMPORARY AUTHORITIES), RAILROAD ABANDONMENTS ALTERNATE ROUTE DEVIATIONS, AND INTRASTATE APPLICATIONS

Correction

In FR Doc. 78-10605 appearing at page 16855 in the issue for Thursday, April 20, 1978, in the third column of page 16855, change "No. MC 11994 (Sub-No. 6)" to read "No. MC 119944 (Sub-No. 6)".

[1505-01]

[Notice No. 58]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-10307 appearing at page 16242 in the issue for Monday, April 17, 1978, make the following corrections:

(1) On page 16243, first column, the *second* reference to No. MC 82492 (the second full paragraph of the column), change "No. MC 82492 (Sub-No. 184TA)" to read "No. MC 82492 (Sub-No. 185TA)".

(2) On page 16244, third column, change "No. MC 123225 (Sub-No. 150TA)" to read "No. MC 123255 (Sub-No. 150TA)".

(3) On page 16245, first column, change "No. MC 124997 (Sub-No. 50TA)" to read "No. MC 124887 (Sub-No. 50TA)".

[7035-01]

FOURTH SECTION APPLICATION FOR RELIEF

APRIL 27, 1978.

This application for long-and-short-haul relief has been filed with the ICC.

Protests are due at the ICC on or before May 17, 1978.

FSA No. 43535, Sea-Land Service, Inc., No. 97, on intermodal rates on general commodities, between rail terminals at Portland, Ore., and Seattle, Wash., on the one hand, and ports in the Caribbean Sea, Central America, South America, and West Indies, on the other, by way of New Orleans, La., and Houston, Tex., in its tariff 277, ICC No. 114, and other schedules named in the application, to become effective May 24, 1978.

Grounds for relief—water competition.

By the Commission.

H. G. HOMME, JR.,
Acting Secretary.

[FR Doc. 78-11957 Filed 5-1-78; 8:45 am]

[7035-01]

[Rev. S.O. No. 1322]

DISTRIBUTION OF GRAIN CARS

At a session of the Interstate Commerce Commission, Railroad Service Board, acting as an appellate board, held at its office in Washington, D.C., on the 20th day of April, 1978.

Upon consideration of the petitions filed by Beker Industries Corp. and by Owens-Illinois, Inc., on April 14, 1978, both seeking revocation or exceptions to Service Order No. 1322 with respect to the transportation of their traffic.

Service Order No. 1322 was issued by the Railroad Service Board in accordance with applicable law upon its determination that an acute shortage of covered hopper cars and boxcars for transporting grain exists throughout the western part of the United States and that these shortages are particularly prevalent at country grain elevators.

As a result of a review of the massive volume of comments received from the railroads named in the order and from shippers dependent upon these railroads for their car supplies, the order was revised effective 12:01 a.m., April 17, 1978, to eliminate its appliction to boxcars. In addition exceptions were granted to the Union Pacific Railroad Co. (UP) which is the origin carrier mentioned in Owens-Illinois' petition and is also the carrier serving the Idaho, Nebraska and Wyoming points named in Beker's petition, and to the Missouri Pacific Railroad Co. (MP) the railroad serving Taft, La., the remaining origin point provided by Beker. These exceptions require the MP and the UP to use fifty-five (55) percent of their serviceable ownerships of jumbo covered hopper cars in grain service in lieu of the seventy (70) percent requirement of the order.

In the opinion of the Railroad Service Board, the relief requested by the petitioner has been substantially granted by revision of the order and by the exceptions granted to the UP and to the MP.

It is ordered, That the petitions be, and they are, denied

By the Commission, Railroad Service Board, acting as an appellate board. Joel E. Burns, Robert S. Turkington and John R. Michael.

JOEL E. BURNS,
Chairman.

[FR Doc. 78-11952 Filed 5-1-78; 8:45 am]

[7035-01]

Office of Proceedings

[Notice No. 63]

MOTOR CARRIERS TEMPORARY AUTHORITY APPLICATIONS

APRIL 18, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official name in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIER OF PROPERTY

No. MC 6078 (Sub-No. 87TA) (Correction), filed February 16, 1978, and published in the FEDERAL REGISTER issue of March 29, 1978, and republished as corrected this issue. Applicant: D. F. BAST, INC., P.O. Box 2288, 1425 North Maxwell Street, Allentown, PA 18001. Applicant's representative: Eugene M. Malkin, 5 World Trade Center, Suite 6193, New York, NY 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Zincrometal steel coils*, from facilities of Enamel Products & Plating, Inc., at or near Portage, IN, to Hamilton, OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Enamel Prod-

ucts & Plating Co., P.O. Box 279, Portage, IN 46368. Send products to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106. The purpose of this republication is to correct the commodity description.

No. MC 8472 (Sub-No. 3TA), filed March 21, 1978. Applicant: SOUTH END CARTAGE CORP. OF DELAWARE, 4222 South Knox Avenue, Chicago, IL 60632. Applicant's representative: Abraham A. Diamond, 29 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, restricted to shipments in steamship and rail containers having a prior or subsequent movement by rail or by water, from rail yards and steamship piers and facilities in the Chicago Commercial Zone as defined by the Commission to the facilities of Vista Corporation in or near Kenosha, WI, and empty steamship or rail containers and chassis on return movements to the Chicago Commercial Zone as defined by the Commission, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Alltransport Incorporated, Philip R. Carvatta, Vice President, 300 South Wacker Drive, Chicago, IL 60606. Send protests to: Patricia A. Roscoe Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 27089 (Sub-No. 6TA), filed March 20, 1978. Applicant: CHIWAUKEE TRUCK LINES, INC., 1501 West Pershing Road, Chicago, IL 60609. Applicant's representative: George T. Drake, 1501 W. Pershing Road, Chicago, IL 60609; David G. Abraham, 6400 Goldsboro Road, Washington, D.C. 20034. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt, carbonated and cereal beverages, beverage containers, and advertising matter*, from Minneapolis-St. Paul, to Chicago, IL, and *empty malt, carbonated and cereal beverage containers*, and rejected shipments of the above-specified commodities, from Chicago, IL, to Minneapolis-St. Paul, MN; (2) *cleaning, scouring or washing compounds, noi, prepared food, noi, candy or confectionary, noi, toilet preparations, noi, plastic articles, Magazine or periodicals, parts thereof, paper*, from Chicago, IL, to Minneapolis-St. Paul, MN; (3) *Freight*—All Kinds (FAK, forwarder traffic), between Chicago, IL, and Milwaukee, WI, and from Chicago, IL to Minneapolis-St. Paul, MN, under a continuing contract, or contracts, with Metropolitan Distributors, Shaklee Corporation, and Moran Freight Systems, Inc., for 180 days. Supporting Shipper(s): Metropolitan Distributors, Frederick E. Lieber, President, 4444 W. Berteau, Chicago, IL 60641. (2) Shaklee Corporation, Tom H. Adams, Transportation Manager, P.O. Box 3625, Hayward, CA 94540. (3) Moran Freight Systems, Inc., Tom Moran, President, P.O. Box 1293, Milwaukee, WI 53201. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 47583 (Sub-No. 68 TA), filed March 20, 1978. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Road, Kansas City, KS 66115. Applicant's representative: D. S. Hults, P.O. Box 225, Lawrence, KS 66044. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Feed and feed ingredients*, (1) from the plantsite and storage facilities of Kal Kan Foods, Inc., located at or near Columbus, OH, to all points and places in the states of AR, CO, CT, DE, IL, LIA, KS, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NY, OK, PA, RI, TX, VT and WI; and (2) from the plantsite and storage facilities of Kal Kan Foods, Inc., located at or near Indianapolis, and Terre Haute, IN, to all points and places in the states of CT, DE, IL, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI and VT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Kal Kan Foods, Inc., 3386 E. 44th Street, Vernon, CA 90058. Send protests to: Vernon V. Coble District Suervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 55896 (Sub-No. 66 TA), filed March 23, 1978. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI 48180. Applicant's representative: George E. Batty, 20225 Goddard Road, Taylor, MI 48180. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Castings*, from East Jordan, MI, and Fort Atkinson, WI, to Siloam Springs, AR, and (2) *Castings, wheels, wheel assemblies and accessories, and materials, equipment and supplies* used in the manufacture of castings, wheels, and wheel assemblies and accessories, between Lebanon, IN, on the one hand, and, on the other, Siloam Springs, AR, and Fort Atkinson, WI, restricted in (1) and (2) above to traffic originating at or destined to the plantsite or storage facilities utilized by Webb Division, Marmon Industries, Inc., at the named points, for 180 days. Supporting shipper(s): Marmon Industries, Inc., Webb Division, 510 Indianapolis Avenue, Lebanon, IN 46502. John T. Donahue Materials Manager. Send protests to: Timothy S. Quinn District Supervisor, Interstate Commerce Commission, Bureau of Operations, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Blvd., Detroit, MI 48226.

No. MC 55896 (Sub-No. 67TA), Filed March 23, 1978. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goodard Road, Taylor, MI. 48180. Applicant's representative: George E. Batty, 20225 Goddard Road, Taylor, MI. 48180. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals, plastic products, materials and supplies* used in the manufacturing and packaging of chemicals and plastic products (except commodities in bulk), between facilities utilized by Dow Chemical Co. at or near Midland, MI, on the one hand, and , on the other, points in Il and WI., for 180 days Supporting Shipper (s): Dow Chemical Co., 690 Building, Midland, MI. 48640. (Harry J. Ignatowski, Senior Traffic Analyst). Send protests to: Timothy S. Quinn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 231 West Lafayette Boulevard, 604 Federal Building and U.S. Courthouse, Detroit, MI. 48226.

No. MC 56679 (Sub-No. 104TA), filed March 1, 1978. Applicant: BROWN TRANSPORT CORP., 352 University Avenue SW., Atlanta, GA 30315. Applicant's representative: John T. Coon, 352 University Avenue, SW., Atlanta, GA 30315. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, and except dangerous explosives, household goods as defined in Practices of Motor Common Carriers of Household Goods, 17 MCC 467, commodities in bulk, and those requiring special equipment), to serve the Georgia Power Co.'s Nuclear Generating Plant (Plant Vogtle), located in Vogtle, Burke County, GA, as an off-route point in connection with carrier's existing regular routes, between Savannah, GA, and Augusta, GA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Georgia Power Co, 270 Peachtree Street NW., P.O. Box 4545, Atlanta, GA 30303. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

No. MC 63417 (Sub-No. 133TA (Correction), filed March 7, 1978, and published in the FEDERAL REGISTER issue of April 3, 1978, and republished as corrected this issue. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447 Roanoke, VA 24034. Applicant's representative: William E. Bain, P.O. Box 13447, Roanoke, VA 24034. Authority sought to operate as a *common carrier*, by motor vehicle, over *irregular routes*, transporting: *Gas and electrical appliances and parts, materials, supplies and equipment used in the manufacture, distribution or repair of appliances* (restricted against the transportation of commodites in bulk) between the facilities of Whirlpool Corp. at or near Clyde, Findlay and Marion, OH and Evansville, IN on the one hand and on the other points in AL, AR DE, DC, FL, GA, IL, IN, KY, LA, MD, MI, MS, MO, NJ, NY, NC, OH, OK, PA, SC, TN, TX, VA, WV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper (s): Whirlpool Corp. Benton Harbor, MI. Send protests to: Irene W. Yost, Secretary, Bureau of Operations, Interstate Commerce Commission, P.O. Box 210, Roanoke, VA 2411. The purpose of this republication is to coorect the territorial description.

No. MC 63417 (Sub-No. 143TA), filed March 23, 1978. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Applicant's representative: William E. Bain, P.O. Box 13447, Roanoke, VA 24034. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, accessories and materials, equipment and supplies* used in the manufacture and distribution of glass containers, and container accessories, from the facilities of Brockway Glass Co. located at Lapel, Marion County, IN, and Zanesville, Muskigam County, OH, to the NC Counties of Rockingham, Stokes, Coswell, Guilford, Alamance, Forsyth, and Vance and the VA Counties of Pittsylvania, Henry and Halifax, for 180 days. supporting shipper(s): Brockway Glass Co., Inc., Brockway, PA 15824. Send protests to: Herman R. White, Acting District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 210, Roanoke, VA 24011.

No. MC 81412 (Sub-No. 34TA), filed March 23, 1978. Applicant: VALLEY TRANSFER & STORAGE CO., INC., P.O. Box 2101, Bethlehem, PA 18001. Applicant's representative: Alan Kahn, 1920 Two Penn Center Plaza, Philadalphia, PA 19102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel transmission poles and parts and accessories therefor*, between facilities of Meyer Industries, Division of International Telephone & Telegraph Corp., in the borough of West Hazelton and the township of Hazle, Luzerne County, PA, on the one hand, and, on the other, Canton, OH, and from facilities of Meyer Industries, Division of International Telephone & Telegraph Corp., in the borough of West Hazelton and the township of Hazle, Luzerne County, PA, to points in NY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Meyer Industries, a Division of International & Telegraph Corp., P.O. Box L, Hazelton, PA 18201. Send protests to: T. M. Esposito Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106. The purpose of this republication is to correct the territory description.

No. MC 100666 (Sub-No. 383TA) (Correction), filed February 28, 1978, and published in the FEDERAL REGISTER issue of March 29, 1978, and republished as corrected this issue. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, 1129 Grimmett Drive, Shreveport, LA 71107. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Building, 3535 N.W. 58th Street, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pallets*, from Bearden, AR, to Memphis, TN, and its commercial zone, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Arkansas Pallet Manufacturing Co., P.O. Box 157, Bearden, AR 71720. Send protests to: Ray C. Armstrong, Jr., District Supervisor, Interstate Commerce Commission, T-9038, U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113. The purpose of this republication is to correct the territorial description.

No. MC 110563 (Sub-No. 223TA), filed March 23, 1978. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, State Route 29 North, Sidney, OH 45365. Applicant's representative: Victor J. Tambascia (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Chicago, IL, to points in NY and PA, for 180 days. Supporting shipper(s): Fasano Pie Co., 6201 West 65th Street, Chicago, IL 60638. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

No. MC 110563 (Sub-No. 225TA), filed March 23, 1978. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, State Route 29 North, Sidney, OH 45365. Applicant's representative: Victor J. Tambnascia (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts and articles distributed by meat packinghouses*, as described in sections A and C of Appendix I to the report in Descriptions in Motor Carriers Certificates, 61 MCC 209 and 766, (except hides and commodities in bulk), from the facilities of United Packing Co., located at or near Denver, CO, to Calhoun, GA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): United Packing Co., 5000 Clarkson Street, Denver, CO 80216. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

No. MC 113908 (Sub-No. 430TA), filed March 23, 1978. Applicant: ERICKSON TRANSPORT CORP., P.O. Box 3180 G.S.S., 2105 East Dale Street, Springfield, MO 65804. Applicant's representative: B. B. Whitehead, P.O. Box 3180 G.S.S., Springfield, MO 65804. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Beverage bases, beverages, beverage concentrates, fruit emulsions, and fruit juices*, (in bulk), in three (3) compartment, stainless steel, insulated tank vehicles, from Chicago, IL, and the commercial zone thereof, to North East, PA, and the commercial zone thereof, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): A. E. Staley Manufacturing Co., 2222 Kensington Court, Oak Brook, IL 60521. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 114211 (Sub-No. 352 TA), filed March 21, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, 210 Beck Street, Waterloo, IA 50704. Applicant's representative: Daniel Sullivan, Suite 1600, 10 South La Salle, Chicago IL 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic pipe, plastic pipe fittings, and accessories* used in the installation thereof, (except commodities in bulk, in tank vehicles, and plastic pipe and fittings

used in or in connection with the discovery, development, distribution of natural gas and petroleum and their products and by-products), from the facilities of Creek ne Plastic Pipe Co., Inc., at Council Bluffs, IA, to points in the United States, (except AK, AZ, CO, HI, NM and UT), and (2) *Materials, supplies and accessories* used in the manufacture and distribution of plastic pipe, plastic fittings, and acessories used in the installation thereof, (except commodities in bulk, in tank vehicles), from all points in the United States, (except AK, AZ, CO, HI, NM and UT), to the facilities of Cresline Plastic Pipe Co., Inc., at Council Bluffs, IA, for 180 days. Supporting shipper(s): Crestline Plastic Pipe Co., Inc., 955 Diamond Avenue East, Evansville, IN 47717. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 114632 (Sub-No. 150 TA), filed February 27, 1978, and published in the FEDERAL REGISTER issue of March 23, 1978, and republished as corrected this issue. Applicant: APPLE LINES, INC., 212 S.W. Second Street, P.O. Box 287, Madison, SD 57024. Applicant's representative: Michael L. Carter (same as above). Authority sought to operate as a *common carrier,* by motor vehicle, over *irregular routes,* transporting: (1) *Irrigation systems* and *pipe, and parts and accessories of irrigation systems,* from Elk Point, SD to points in AL, AR, CO, GA, IL, IN, IA, KS, KY, LA, MI, MN, MO, MS, NE, NM, ND, OH, OK, SD, TN, TX, and WI. (2) *Materials, parts and supplies* used in the manufacture, assembly, and distribution of irrigation systems and pipe form points named in (1) above to Elk Point, SD. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Terra Chemical International, Inc., 4th Jackson, Sioux City, IA 51101, Robert A. Stone, Traffic Manager. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Bldg., Pierre, SD 57501. The purpose of this republication is to correct the territorial description.

No. MC 117119 (Sub-No. 679TA), filed March 23, 1978. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Applicant's representative: L. M. McLean, P.O. Box 188, Elm Springs, AR 72728. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale and retail discount, variety, and department stores, (except commodities in bulk, and foodstuffs), from Charlotte, NC, to the facilities of Howard Bros., Discount Stores at Monroe, LA, and the facilities of TG&Y Stores at Shreveport, LA, for 180 days. Supporting shipper(s): (1) Howard Bros., Discount Stores, Inc., 3030 Aurora, Monroe, LA 71201. (2) TG&Y Stores, P.O. Box 25967, Oklahoma City, OK 73125. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

No. MC 127840 (Sub-No. 61TA), filed March 8, 1978 (Correction) and published in the FEDERAL REGISTER issue of April 3, 1978, and republished as corrected this issue. Applicant: MONTGOMERY TANK LINES, INC., 17550 Fritz Drive, P.O. Box 382, Lansing, IL 60438. Applicant's representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. Authority sought to operate as a *common carrier,* by motor vehicle, over *irregular routes,* transporting: *Diethylene Glycol, Dipropylene Glycol and Recovered Glycols,* from Tallulah, LA, to Chicago, IL; Covington, KY; Hicksville, NY; Collierville, TN; Saukville, WI; and Chatham, VA, for 180 days. Supporting shipper(s): Resource Economics Corporation, Dawn Butler, Traffic Coordinator, 1742 Sherman Avenue, Evanston, IL 60201. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604. The purpose of this republication is to correct the territorial description.

No. MC 133318 (Sub-No. 10TA), filed March 23, 1978. Applicant: VAN DE HOGEN CARTAGE LIMITED, 2590 Dougall Avenue, Windsor, Ontario, Canada. Applicant's representative: William J. Hirsch, Suite 1125, 43 Court Street, Buffalo, NY 14202. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Rough and dressed lumber and waferboard,* for the account of Empire Wholesale Lumber Co., from ports of entry on the International Boundary Line between the United States and Canada, located in MI and NY, to points in DE, IL, IN, KY, MD, MI, NJ, NY, NC, OH, PA, VA, WV, and DC, restricted to traffic originating at Windsor and St. Catherines, Ontario, Canada, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Empire Wholesale Lumber Co., Miami and Gault Street, Akron, OH 44311. Send protests to: Timothy S. Quinn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 604 Federal Building and U.S. Courthouse, 231 W. Lafayette Blvd., Detroit, MI 48226.

No. MC 134150 (Sub-No. 16TA), filed March 21, 1978. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, P.O. Box 9596, Chattanooga, TN 37412. Applicant's representative: Patrick E. Quinn, 2931 South Market Street, P.O. Box 9696, Chattanooga, TN 37412. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Nutritional supplements,* from Elgin and Greenville, IL; to Kenner, LA; East Brunswick, NJ; Dallas, TX; Tukwila, WA; Ogden, UT; and Chattanooga, TN. Restrictions: Restricted against the transportation of commodities in bulk, further restricted to traffic destined to the facilities of Cutter Laboratories, Inc., further restricted to a transportation service to be performed, under a continuing contract, or contracts, with Cutter Laboratories, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Cutter Laboratories, Inc., 4th and Parker Streets, Berkeley, CA 94710. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422 U.S. Court House, 801 Broadway, Nashville, TN 37203.

No. MC 134286 (Sub-No. 51TA), filed March 23, 1978. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Applicant's representative: Charles J. Kimball, Suite 350, Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Ferrous sulfate, fertilizer and feed grade, other than USP grade* (except commodities in bulk, restricted to transportation in vehicles equipped with mechanical refrigeration), from the plantsite and/or storage facilities of Quality Chemicals, Ltd., located at or near Baltimore, MD, to Quincy, Rock Island, and Chicago, IL; Marian, Ladora, Sioux City, Council Bluffs, and Des Moines, IA; Omaha, NE; and Manistee, MI, and all points in the commercial zones of each city named above, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Donald Gordon, President, Quality Chemicals, Ltd., 4800 Boston Street, Baltimore, MD 21224. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

No. MC 135078 (Sub-No. 21TA), filed March 24, 1978. Applicant: AMERICAN TRANSPORT, INC., 7850 "F" Street, Omaha, NE 68127. Applicant's representative: Arthur J. Cerra, 2100 Ten Main Center, P.O. Box 19251, Kansas City, MO 64141. Authority

sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or sold by retail department or discount stores, including precious jewels and jewelry featuring precious gems (except commodities in bulk), from the commercial zones of Boston, MA; Jersey City, NJ; New York, NY; and Philadelphia, PA, to the facilities of Mid-West Pool Car Shipping Association, Inc., located at or near Denver, CO, for 180 days. Supporting shipper(s): A. R. McKean, Executive Vice President, Mid-West Car Pool Shipping Association, Inc., 1911 Nineteenth Street, P.O. Box 5686, Terminal Annex, Denver, CO 80217. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

No. MC 135861 (Sub-No. 28TA), filed March 23, 1978. Applicant: LISA MOTOR LINES, INC., P.O. Box 4550, 2715 Ellis Avenue, Ft. Worth, TX 76106. Applicant's representative: Billy R. Reid, P.O. Box 9093, Ft. Worth, TX 76107. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Medicines and related advertising materials and display racks*, (1) from New Brunswick, Somerset and South Plainfield, NJ, to Michigan City, IN; (2) from Michigan City, IN, to La Mirado, CA, and (3) from New Brunswick, Somerset and South Plainfield, NJ, to Sharonville, OH, under a continuing contract, or contracts, with E. R. Squibb & Sons, Inc., for 180 days. Supporting shipper(s): E. R. Squibb & Sons, Inc., 5 Georges Rd., New Brunswick, NJ 08903. Send protests to: Robert J. Kirspel, District Supervisor, Room 9A27 Federal Building, 819 Taylor St., Ft. Worth, TX 76102.

No. MC 136650 (Sub-No. 3TA) (Correction), filed January 30, 1978, and published in the FEDERAL REGISTER issue of February 28, 1978, and republished as corrected this issue. Applicant: FOOTE & DAVIES TRANSPORT CO., 3101 McCall Drive, Doraville, GA 30340. Applicant's representative: Frank D. Hall, Suite 713, 3384 Peachtree Rd. NE., Atlanta, GA 30326. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dated printed matter;* from the warehouse and storage facilities utilized by Magazine Shippers Association, Inc., at or near Bridgeport, CT to points in the states of GA, NC, FL, AL, MS, LA, SC, and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Magazine Shippers Association, Inc., 955 Union Avenue, Bridgeport, CT 06607. Send protests to: Sara K. Davis, Transportation Assistant, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309. The purpose of this republication is to correct the territorial description.

No. MC 136981 (Sub-No. 6TA), filed March 23, 1978. Applicant: BLAIR CARTAGE, INC., 13658 Auburn Road, P.O. Box 52, Newbury, OH 44065. Applicant's representative: Lewis S. Witherspoon, 88 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by wholesale, retail, and chain grocery and food business houses, from the plantsite of the Clorox Company at or near Chicago, IL, to points and places in the State of IN, under a continuing contract, or contracts, with The Clorox Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Clorox Company, P.O. Box 24305, Oakland, CA. Send protests to: James Johnson, District Supervisor, Interstate Commerce Commission, 731 Federal Bldg., 1240 East Ninth Street, Cleveland, OH 44199.

No. MC 138126 (Sub-No. 25TA), filed March 23, 1978. Applicant: WILLIAMS REFRIGERATED EXPRESS, INC., P.O. Box 47, Old Denton Road, Federalsburg, MD 21632. Applicant's representative: Chester A. Zyblut, 1030 15th Street NW., Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen pizza*, from the plantsite of Ore-Ida Foods, Inc., at Massillon, OH, to Greenville, MI, and points in NY, NJ, PA and DE, for 150 days. Applicant has also filed an underlyng ETA seeking up to 90 days of operating authority. Supporting shipper(s): Donald C. Fowle, Senior Manager, Traffic, Ore-Ida Foods, Inc., P.O. Box 10, Boise, ID 83707. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 814-B Federal Building, Baltimore, MD 21201.

No. MC 138313 (Sub-No. 30TA), (correction), filed January 9, 1978, and published in the FEDERAL REGISTER issue of March 14, 1978, and republished as corrected this issue. Applicant: BUILDERS TRANSPORT, INC., 409 14th Street NW., Great Falls, MT 59404. Applicant's representative: Miss Irene Warr, 430 Judge Bldg., Salt Lake City. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum wallboard, joint systems and materials and supplies* used in the application thereof, from the Great Falls, MT, to the ports of entry located on the International Boundary line between the United States and Canada located at Blaine, Sumas, Oroville, Ferry, Danville, Laurier, Frontier and Metaline Falls, WA; Porthill and Eastport, ID; and Roosville, Gateway, Piegan, Sweetgrass, Simpson, Morgan, Opheim, Scobey and Raymond, MT; restricted to traffic destined to the provinces of Alberta, Saskatchewan and British Columbia, CD, for 180 days. Interlining is sought at Great Falls, MT. Supporting shipper(s): Scott A. Keller, transportation Specialist, Georgia Pacific Corporation, 900 S.W. 5th Ave., Portland, OR 97204. Send protests to: District Supervisor, Paul J. Labane, Interstate Commerce Commission, 2602 1st Ave. North, Billings, MT 59101. The purpose of this republication is to add a statement concerning interlining.

No. MC 138627 (Sub-No. 26 TA) (Correction), filed March 6, 1978, and published in the FEDERAL REGISTER issue of April 3, 1978, and republished as corrected this issue. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Route 4, Fort Dodge, IA 50501. Applicant's representative: Arlyn L. Westergren, Suite 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hides, skins and pelts*, and *pieces therefrom*, (except commodites in bulk), from the hide plant of Iowa Beef Processors, Inc., at or near Dakota City, NE; to points in AR, IL IN, KS, KY, LA, MO, MI, OH, NC, TN, TX, VA, WV, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Iowa Beef Peocessors, Inc., Dakota City, NE 68731. Send protests to: Herbert W. Allen, District Supervisor, Intestate Commerce Commission, Bureau of Operations, 518 Federal Building, Des Moines, IA 50309. The purpose of this republication is to correct the territorial description.

No. MC 139482 (Sub-No. 43TA), filed March 23, 1978. Applicant: NEW ULM FRIEGHT LINES, INC., County Road 29 West, New Ulm, MN 56073 Applicant's representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs*, (except commodities in bulk), from Counties of Dodge, Fon du Lac, Jefferson, Washara, Milwaukee and Columbia, WI; destined to all points in the states of IL, IN, OH, MI, KY, TN, and MO, and (2) *Foodstuffs*, (except commodities in bulk), from Belvidere, IL, and its commercial zone, to all points in the states of OH, IN, MI, KY, WV, WI, MO, TN, MS, NJ, Sharon, Pa, and New York, NY, for 180 days. Supporting shipper(s): Green Giant Company, Le

Suerur, MN 56058. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerice Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

No. MC 140024 (Sub-No. 92TA), filed March 23, 1978. Applicant: J. B. MONTGOMERY, INC., 5565 East 52nd Avenue, Commerce City, CO 80022. Applicant's representative: John DeCock, 5565 East 52nd Avenue, Commerce City, CO 80022. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bakery goods, frozen*, from the facilities of White Castle System, Inc., at or near Carteret, NJ, to the facilities of White Castle System, Inc., at or near Chicago, IL, and St. Louis, MO, for 180 days. Supporting shipper(s): White Castle System, Inc., 110 Raskulinecz Road, Carteret, NJ 07008. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 721 19th Street, Denver, CO 80202.

No. MC 141776 (Sub-No. 23TA), filed March 23, 1978. Applicant: FOODTRAIN, INC., Spring and South Center Streets, Ringtown, PA 17967. Applicant's representative: Pauline E. Myers, Suite 407 Walker Building, 734 15th Street NW., Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, in mechanically refrigerated equipment (except in bulk), from the facilities of Ore-Ida Foods, Inc., at Greenville, MI, to points in the States of CT, DE, ME, MD, NH, NJ, NY, PA, VA, VT, WV and DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 25 days of operating authority. Supporting shipper(s): Ore-Ida Foods, Inc., P.O. Box 10, Boise, ID 83707. Send protests to: Paul J. Kenworthy, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 314 U.S. Post Office Building, Scranton, PA 18503.

No. MC 142485 (Sub-No. 3TA), filed March 20, 1978. Applicant: KENDRICK MOVING AND STORAGE, INC., P.O. Box 209, Lebanon, OH 45036. Applicant's representative: James M. Burtch, 100 East Broad Street, Columbus, OH 54215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Roofing and building materials, and materials* used in the installation and application of such commodities (except commodities in bulk), from Franklin, OH, to points in IL, IN, KY, MI, PA, TN and WV; and (2) *materials, equipment and supplies* used in the manufacture, instalation or application of roofing or building materials (except commodities in bulk), from points in IL, IN, KY, MI, PA, TN and WV, to Franklin, OH, for 180 days. Supporting shipper(s): Georgia-Pacific Corp., Robert A. Cronk, Transportation Supervisor, 1062 Lancaster Avenue, Rosemont, PA 19010. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

No. MC 142672 (Sub-No. 18TA), filed March 23, 1978. Applicant: DAVID BENEUX PRODUCE AND TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Applicant's representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Electric lamps, lighting fixtures, Christmas Tree Lamp Outfits, electric cord sets, dry cell batteries and portable battery chargers;* and (2) *Materials, equipment and supplies* used in the manufacture and distribution of the commodities named in (1) above, from Bellevue, Cleveland, Warren, Youngstown, Ravenna, Bucyrus and Circleville, OH, to points in AZ, Ca, UT, ID, Co, NM, NV, WY, MT, OR, and WA, for 180 days. Supporting shipper(s): General Electric Co., Nela Park, Cleveland, OH 44112. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

No. MC 143267 (Sub-No. 12TA), filed March 2, 1978, and published in the FEDERAL REGISTER issue of March 29, 1978, and republished as corrected this issue. Applicant: CARLTON ENTERPRISES, INC., 4588 State Route 82, Mantua, OH 44255. Applicant's representative: Peter A. Green, 900 17th Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Refractory products*, from the facilities of Harbison-Walker Refractories, Division of Dresser Industries, Inc., at or near Hammond, IN; Fulton and Vandalia, MO; Windham and Portsmouth, OH; Templeton, PA; and Baltimore, Jennings and Leslie, MD; to points in IL, IN, IA, KY, MD, MI, NY, OH, PA, TN, VA, WV and Kenosha, Milwaukee, Racine, and Waukesha Counties, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Harbinson-Walker Refractories, Division of Dresser Industries, Inc., 2 Gateway Center, Pittsburgh, PA 15222. Send protests to: James Johnson, District Supervisor, Interstate Commerce Commission, 731 Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199. The purpose of this republication is to correct the territorial description.

No. MC 143794 (Sub-No. 2TA) (Correction), filed December 19, 1978, and published in the FEDERAL REGISTER issue of March 3, 1978, and republished as corrected this issue. Applicant: EAST-WEST MOTOR FREIGHT, INC., 7270 Hobgood Road, Fairburn, GA 30312. Applicant's representative: Richard M. Tettelbaum, Serby & Mitchell, P.C., Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Central heating and air conditioning units, furnaces, air coolers, water evaporators, condensing units, compressors*, and (2) *parts, equipment, and supplies* used in the manufacture and installation of the commodities in (1) above, from the facilities of Heil-Quaker Corp. in Davidson County, TN, to points in CA, MT, UT, and WA, under a continuing contract or contracts with Heil-Quaker Corp., for 180 days. Supporting shipper(s): Heil-Quaker Corp, 1714 Heil-Quaker Boulevard, Lavergne, TN 37080 Send protests to: E. A. Bryant, District Supervisor, Interstate Commerce Commission, Room 300, 1252 West Peachtree St. NW., Atlanta GA 30309. The purpose of this republication is to correct the authority requested which is contract, in lieu of common authority, which was previously published in error.

No. MC 144041 (Sub-No. 6TA) (Correction), filed March 7, 1978, and published in the FEDERAL REGISTER issue of March 29, 1978, and republished as corrected this issue. Applicant: DOWNS TRANSPORTATION CO., INC., 2705 Canna Ridge Circle NE., Atlanta, GA 30345. Applicant's representative: Ralph B. Matthews, 1200 Atlanta Gas Light Tower, Atlanta, GA 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Footwear, department store findings, and footwear display cabinets*, from the facilities of of Meldisco Shoe Corp. at or near Morrow, GA, to points in the states of AR, LA, MO, OK, MS, and TX, for 180 days. Supporting shipper(s): Meldisco Shoe-Division of Melville Shoe Corp., Morrow Industrial Park, Morrow, GA 30260. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree St. NW., Room 300, Atlanta, GA 30309. The purpose of this republication is to correct the territorial description.

No. MC 144482 TA, filed March 23, 1978. Applicant: ANTONIO FLORES SANCHEZ, d.b.a. TRANSPORTES MEXICO-BAJA CALIFORNIA, S.A. de C.V., Hidalgo Y Salazar 150, Tecate, Baja California Norte, Republic of Mexico. Applicant's representative: William J. Monheim, 13710 E. Whittier Blvd., Suite 203, P.O. Box 1756, Whittier, CA 90609. Authority sought

to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Electrical capacitors and materials, equipment and supplies* used in the manufacture, sale and distribution of electrical capacitors, between the port of entry between the United States and the Republic of Mexico at Nogales, AZ, and Ogallala, NE, under a continuing contract, or contracts, with TRW Capacitors, division of TRW, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): TRW Capacitors, Division of TRW, Inc., 301 West O Street, Ogallala, NE 69153. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 144485 TA, filed March 24, 1978. Applicant: WEST COAST DISTRIBUTING CO., INC., 539 N. 170th Place, Seattle, WA 98133. Applicant's representative: Philip G. Skofstad, P.O. Box 594, Gresham, OR 97030. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Business, office, and school supply paper, including, but not limited to, pads, tablets, machine tape and drawing papers*, from Everett, WA, to Los Angeles, Compton, Riverside, Pomona, Santa Monica, Santa Barbara, Garden Grove, Costa Mesa, Pasadena, Culver City, San Francisco, Davis, Berkeley, Brisbane, Sacramento, Santa Clara, San Jose, Stockton, and San Diego, CA, under a continuing contract, or contracts, with Everett Pad & Paper Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Everett Pad & Paper Co., Inc., 2216 36th Street, Everett, WA 98201. Send protests to: Hugh H. Chaffee, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 858 Federal Building, 915 Second Avenue, Seattle WA 98174.

No. MC 144518 (Sub-No. 1TA), filed March 27, 1978. Applicant: LEE'S READY MIX & TRUCKING, INC., 130 North State, North Vernon, IN 47265. Applicant's representative: Norman R. Garvin, 815 Merchants Bank Bldg., Indianapolis, IN 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Forgings, castings, and steel*, from the plantsite of North Vernon Forge, Inc., in North Vernon, IN, to Detroit, Dearborn, and Tecumseh, MI; Sidney and Marion, OH; and Louisville, and Somerset, KY, restricted to a contract or continuing contracts, with North Vernon Forge, Inc., for 180 days. Supporting shipper(s): North Vernon Forge, Inc., Hoosier Street, North Vernon, IN 47265. Send protests to: Beverly J. Williams, Transportation Assistant, Interstate Commerce Commission, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

No. MC 144558 (Sub-No. 1TA), filed March 27, 1978. Applicant: EARL WILLIAMS & SON TRUCKING, INC., 3033 Losee Road, Las Vegas, NV 89030. Applicant's representative: Norman Ty Hilbrecht, Esq., 600 E. Charleston Blvd., Las Vegas, NV 89104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cinders (volcanic ash)* used in the manufacture of building blocks, in bulk, in dump trucks, from Cima, CA, to Las Vegas, NV, under a continuing contract or contracts with W. M. K. Builders Products, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): W. M. K. Builders Products, 3900 Cheyenne Rd., Las Vegas, NV 89109. Send protests to: District Supervisor W. J. Huetig, Interstate Commerce Commission, 203 Federal Building, 705 North Plaza Street, Carson City, NV 89701.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-11954 Filed 5-1-78; 8:45 am]

[7035-01]

[Notice No. 66]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

April 25, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interestate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Motor Carriers of Property

No. MC 5470 (Sub-No. 143TA), filed March 28, 1978. Applicant: TAJON, INC., R.D. 5, P.O. Box 146, Mercer, PA 16137. Applicant's representative: Richard W. Sanguigni (Same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brass residue* for recycling only, in dump trucks, from Waterbury, CT to Kearny, NJ, for 180 days. Supporting shipper(s): Interstate Metals Separating Corp., 275 Dukes Street, Kearny, NJ 07032. Sent protests to: John J. England, District Supervisor, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

No. MC 8472 (Sub-No. 4 TA), 4 filed March 22, 1978. Applicant: SOUTH END CARTAGE CORPORATION OF DELAWARE, 4222 South Knox Avenue Chicago, IL 60603; Applicant's representative: Abraham A. Diamond, 29 South LaSalle Street, Chicago, IL 60603 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, restricted to shipments in steamship and rail demountable containers, without chassis, from rail and steamship facilities in the Chicago Commercial Zone as defined by the Commission, to points in IL, IN, MI, WI, IA and MN, and empty steamship and rail demountable containers, without chassis, from point in IL, IN, MI, WI, IA and MN, to steamship and rail facilities in the Chicago Commercial Zone as defined by the Commission, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers(s): Cast North America, Ltd., Guenther Quellmalz, General Manager, One Westmount Square, Montreal, P.Q. Canada. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604

No. MC 51146 (Sub-No. 588 TA), filed March 28, 1978. Applicant: SCHNEIDER TRANSPORT, INC. P.O. Box 2298, 2661 South Broadway, Green Bay, WI 54306. Applicant's representative: John R. Patterson 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. Authority sought operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning compounds and fabric softeners* from Lima, OH to points in IL (except Will, Lake, Cook, Kane, DuPage, and Kendall Counties), IA, WI, MN and ND, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Proctor & and Gamble Distributing Co., P.O. Box 599, Cincinnati, OH 45201, (Norman Homleid). Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

No. MC 63417 (Sub-No. 148TA), filed March 29, 1978. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Applicant's representative: William E. Bain, P.O. Box 13447, Roanoke, VA 24034. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers and container accessories and materials, equipment, and supplies* used in the manufacture and distribution of glass containers and container accessories, from the facilities of Brockway Glass Co., Inc., located in Washington County, PA, and Montgomery County, AL, to the NC counties in Rockingham, Stokes, Caswell, Guilford, Alamance, Forsyth, and Vance and the VA, counties of Pittsylvania, Henry, and Halifax, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Brockway Glass Co., Inc., Brockway, PA. Send protests to: Herman R. White, Acting District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 210, Roanoke, VA 24011.

No. MC 69833 (Sub-No. 128TA), filed March 28, 1978. Applicant: ASSOCIATED TRUCK LINES, INC., Vandenberg Center, Grand Rapids, MI 49503. Applicant's representative: Harry Pohlad (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (regular routes): (1) *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Evart Products, Evart, MI as an off-route point in connection with carrier's authorized regular route authority. Irregular routes: (2) *Auto parts and related articles*, from the facilities of Evart Products, Evart, MI to American Motors Corp., Kenosha, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Evart Products Co., 601 West 7th Street, Evart, MI 49631. (2) American Motors Corp., 5626 25th Avenue, Kenosha, WI 53140. Send protests to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 225 Federal Building, Lansing, MI 48933.

No. MC 78228 (Sub-No. 78TA), filed March 30, 1978. Applicant: J. MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, PA 15220. Applicant's representative: William A. Gray, Wick, Vuono & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime* (in dump vehicles), from Huron, OH, to Detroit, MI, for 180 days. Applicant has also fied an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Federal Lime & Stone Co., 20600 Chagrin Boulevard, Room 420, Shaker Heights, OH 44122. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

No. MC 82492 (Sub-No. 193TA), filed March 28, 1978. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., 2109 Olmstead Road, P.O. Box 2853, Kalamazoo, MI 49003. Applicant's representative: William C. Harris (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk) from the facilities of Welch Foods, Inc., at or near Lawton, MI to points in KS, MO, and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Welch Foods, Inc., 2 South Portage Street, Westfield, NY 14787. Send protests to: C. R. Fleming, District Supervisor, Interstate Commerce Commission, Room 225 Federal Building, Lansing, MI 48933.

No. MC 95540 (Sub-No. 1012TA), filed March 29, 1978. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, P.O. Box 1636, Lakeland, FL 33801. Applicant's representative: Benjy W. Fincher, 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy, confectionery products, and foodstuffs*, in vehicles equipped with mechanical refrigeration, from the facilities of Standard Brands, Inc., located at or near Chicago and Franklin Park, IL, located within the Chicago, IL, commercial zone, to Morrow, GA, and Jacksonville, FL, for 180 days. There is no environmental impact involved in this application. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Standard Brands Confectionery, Division of Standard Brands, Inc., 3401 Mt. Prospect Road, Franklin Park, IL 60131. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, 8410 N.W., 53rd Terrace, Monterey Building, Room 101, Miami, FL 33166.

No. MC 105566 (Sub-No. 165TA), filed March 16, 1978. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Applicant's representative: Thomas F. Kilroy, Suite 406, 6901 Old Keene Mill Road, Springfield, VA 22150. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Heating and air conditioning equipment and parts and accessories* used in the manufacture or installation thereof (except commodities the transportation of which because of size or weight requires the use of special equipment), from Elyria, OH, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Luxaire, Inc., Filbert Street, Elyria, OH 44035. Send protests to: Peter E. Binder, District Supervisor, Room 1465, 210 North 12th Street, St. Louis, MO 63101.

No. MC 109689 (Sub-No. 335TA), filed March 28, 1978. Applicant: W. S. HATCH CO., a Utah corporation, 643 South 800 West, Woods Cross, UT 84087. Applicant's representative: Mark K. Boyle, 345 South State Street, Salt Lake City, UT 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime and limestone*, in bulk, from Caselton, NV, to Utah Power & Light plants near Huntington and Castle Dale, UT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Sierra Chemical Co., 1490 East 2nd Street, Reno, NV 89502 (Stanley K. Kinder, President). Send protests to: District Supervisor, Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State Street, Salt Lake City, UT 84138.

No. MC 112573 (Sub-No. 9TA), filed March 30, 1978. Applicant: RYE

McILLWAIN, 127 East Main Street, Parsons, TN 38363. Applicant's representative: Rye McIllwain, 127 East Main Street, Parsons, TN 38363. Authroity sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Untreated cross ties and untreated lumber*, from points in Wayne, Hardin, Decatur, Perry, Lewis, Hickman, Humphreys, Benton, Henderson, and Carroll Counties, TN, to Guthrie, KY, under a continuing contract, or contracts, with Koppers Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Koppers Co., Inc., 850 Koppers Building, Pittsburgh, PA 15219. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

No. MC 112962 (Sub-No. 11TA), filed March 29, 1978. Applicant: CRUPPER TRANSPORT CO., INC., 25 South Third, Kansas City, KS 66118. Applicant's representative: Tom B. Kretsinger, 910 Brookfield Building, 101 West 11th Street, Kansas City, MO 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing, building and insulating materials*, (1) from the plantsite of CertainTeed Corp., in Kansas City, MO, to points in TX; and (2) from the plantsite of CertainTeed Corp., in Dallas, TX, to Kansas City, MO, restricted to traffic originating at said origin points, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): CertainTeed Corp., 1248 Crystal, Kansas City, MO. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 113908 (Sub-No. 432TA), filed March 30, 1978. Applicant: ERICKSON TRANSPORT CORP., P.O. Box 3180 G.S.S., 2105 East Dale Street, Springfield, MO 65804. Applicant's representative: B. B. Whitehead, P.O. Box 3180 G.S.S., Springfield, MO 65804. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcoholic liquors* (in bulk), from Silverton, OH, and the commercial zone thereof, to Peoria, IL, and the commercial zone thereof, for 180 days. Supporting shipper(s): Hiram Walker & Sons, Inc., P.O. Box 479, Peoria, IL 61601. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 114332 (Sub-No. 9TA), filed March 29, 1978. Applicant: O. C. TRANSPORTATION CO., INC., P.O. Box 8, Collingswood, NJ 08108. Applicant's representative: Robert B. Einhorn, 3220 PSFS Building, 12 South 12th Street, Philadelphia, PA 19107. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sugar*, packaged in bags, bundles, or cartons, between the plantsite of National Sugar Refining Co., Philadelphia, PA, and the plantsite of Food Packaging, Inc., Xenia, OH, under a continuing contract, or contracts, with National Sugar Refining Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): National Sugar Refining Co., 1037 North Delaware Avenue, Philadelphia, PA 19125. Send protests to: District Supervisor, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, NJ 08608.

No. MC 114457 (Sub-No. 363TA), filed March 15, 1978. Applicant: DART TRANSIT CO., 2102 University Avenue, St. Paul, MN 55114. Applicant's representative: James H. Wills 2102 University Avenue St. Paul MN 55114. Authority sought to operate as a *common carrier* , by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts; dairy products; articles distibuted by meat packinghouses; and such commodities* as are used by meat packers in the conduct of their business when distined to and for use by meat packers (except hides and comodities in bulk), as described in section A, B, C, and D of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, from Mason City, IA, and its Commercial Zone to CT, DE, DC, IL, IN, ME, MD, MA, MI, (lower peninsula) Kansas City and St. Joseph, MO, NH, NJ, NY, Fargo and Grand Forks, ND, PA, RI, VT, VA, and WV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Armour Food Co., P.O. Box 341, Mason City, IA 50401. Sent protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

No. MC 114896 (Sub-No. 63TA), filed March 28, 1978. Applicant: PUROLATOR SECURITY, INC., 3333 New Hyde Park Road, New Hyde Park, NY 11040. Applicant's representative: Elizabeth L. Henoch, Assistant Secretary (same as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Foreign and domestic currency*, from Baltimore, MD, to New York, NY, and all points in its Commercial Zone, under a continuing contract, or contracts with I. C. Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: I. C. Inc., Suite 305, 1107 Kenilworth Drive, Towson, MD, 21204. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

No. MC 115311 (Sub.-No. 278TA), filed March 30, 1978. Applicant: J&M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Applicant's representative: K. Edward Wolcott, Watkins & Daniell, Atlanta Gas Light Tower, Suite 1200, 235 Peachtree Street, NE., Atlanta, GA 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products*, from the facilities of Diamond Crystal Salt Co. at St. Clair, MI, and Jefferson Island, LA, to points in NC, SC, TN, and VA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Diamond Crystal Salt Co., 916 South Riverside Avenue, St. Clair, MI 48079. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

No. MC 115311 (Sub-No. 279TA), filed March 30, 1978. Applicant: J&M TRANSPORTATION CO. INC., P.O. Box 488, Milledgeville, GA 31061. Applicant's representative: K. Edward Wolcott, Suite 1200, Gas Light Tower, 235 Peachtree Street, NE., Atlanta, GA 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of Armco Steel Corp., at Ashland, KY, to points in AL, AR, GA, FL, LA, MS, NC, SC, TN, TX, and VA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Armco Steel Corp., 24 North Main Street, Middletown, OH 45043. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

No. MC 11564 (Sub-No. 86TA), filed March 30, 1978. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Applicant's representative: Henry E. Seaton, 915 Pennsylvania Building, 425 13th Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by wholesale and retail grocery houses, from Fostoria and Cincinnati, OH, to

points in KY and WV, restricted to traffic originating at the facilities of Fostoria Distribution Service Co., Inc., at Fostoria, OH, for 180 days. Supporting shipper: Fostorial Distribution Service Co., Inc., P.O. Box D, Jones Road, Fostoria, OH 44830. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

No. MC 115826 (Sub-No. 303TA), filed March 30, 1978. Applicant: W. J. DIGBY, INC., 1960 31st Street, P.O. Box 5088, Terminal Annex, Denver, CO 80217. Applicant's representative: Howard Gore, 1960 31st Street, Denver, CO 80217. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from points in CA, to points in CO for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately (12) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Herbert C. Ruoff, District Supervisor, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

No. MC 115826 (Sub-No. 304TA), filed March 30, 1978. Applicant: W. J. DIGBY, INC., 1960 31st Street, P.O. Box 5088, Terminal Annex, Denver, CO 80217. Applicant's representative: Howard Gore, 1960 31st Street, Denver, CO 80217. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat and ingredients* used in the manufacture of pet foods (except commodities in bulk), from Fillmore, UT, to Hillsboro, OR, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Nielsen Pet Foods, Star Route Box 171, Fillmore, UT 84631. Send protests to: H. C. Ruoff, District Supervisor, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

No. MC 116254 (Sub-No. 201TA), filed March 29, 1978. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, AL 35630. Applicant's representative: Randy C. Luffman, P.O. Box 339, Florence, AL 35630. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal tar products* (in bulk, in tank vehicles), from Detroit, MI, to Pell City, AL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Riverside Clay Company, P.O. Box 551, Pell City, AL 35125. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

No. MC 116474 (Sub-No. 38TA), filed March 29, 1978. Applicant: L. AVITTS FREIGHT SERVICE, INC., 3855 Marcola Road, Springfield, OR 97477. Applicant's representative: David C. White, 2400 S.W., Fourth Avenue, Portland, OR 97201. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Treated poles and piling*, from the facilities of McCormick and Baxter Creosoting Co., at Portland, OR, to points in CA, NV, and WA, under a continuing contract or contracts, with McCormick and Baxter Creosoting Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): McCormick & Baxter Creosoting Co., P.O. Box 3048, Portland, OR 97208. Send protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 S.W., Yamhill Street, Portland, OR.

No. MC 117815 (Sub-No. 285TA), filed March 29, 1978. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E., 20th Street, Des Moines, IA 50317. Applicant's representative: Dewey Marsell, 405 S.E., 20th Street, Des Moines, IA 50317. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper, paper articles, and polyethylene articles* (except commodities in bulk), from the plantsite and storage facilities of Jemco Packaging Products, Inc., at Jackson, TN, to points in IL, IN, IA, KS, MI, MN, MO, NE, OH, and WI, restricted to the transportation of traffic originating at the above named origin an destined to the named destinations, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Jemco Packaging Products, Inc., Bonwood Industrial Park, Jackson, TN 38301. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 118130 (Sub-No. 86TA), filed March 28, 1978. Applicant: SOUTH EASTERN XPRESS, INC., P.O. Box 6985, Ft. Worth, TX 76115. Applicant's representative: Billy R. Reid, P.O. Box 9093, Ft. Worth, TX 76107. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Fruits, canned in containers*, from Delta, CO, to points in AZ, CA, KS, NM, OK and TX, for 180 days. Supporting shipper(s): Skyland Food Corp., P.O. Box 250, Delta, CO 81416. Send protests to: Robert J. Kirspel, District Supervisor, Room 9A27 Federal Building, 819 Taylor Street, Ft. Worth, TX 76102.

No. MC 124170 (Sub-No. 84TA), filed March 27, 1978. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Applicant's representative: William J. Boyd, 600 Enterprise Drive, Suite 222, Oak Brook, IL 60521. Authority sought to operate as *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectionery and related products*, from the plantsite or storage facilities of M. & M. Mars, a Division of Mars, Inc., at or near Elizabeth, NJ, Hackettstown, NJ and Elizabethtown, PA, to points in the States of OH, IL, MI, and from Chicago, IL, to points in the States of OH and MI, in vehicles equipped with mechanical refrigeration, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): M. & M. Mars, Division of Mars, Inc., High Street, Hackettstown, NJ 07840. (Daniel B. Craver Traffic Manager). Send protest to: Timothy S. Quinn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 605 Federal Building and U.S. Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226.

No. MC 125777 (Sub-No. 217TA), filed March 29, 1978. Applicant: JACK GRAY TRANSPORT, INC., 4600 East 15th Avenue, Gary, IN 46403. Applicant's representative: Duane O'Donnell, 4600 East 15th Avenue, Gary, IN 46403. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ferro alloys*, in dump vehicles, from Erie, PA, and East Liverpool, OH, to points in IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): International Minerals & Chemicals Corp., Inc., Sid Lapidus General Traffic Manager, 245 Park Avenue, New York, NY 10017. Send protest to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 126358 (Sub-No. 16TA), filed March 30, 1978. Applicant: BENNETT TRUCKING CO., P.O. Box 526, Hawkinsville, GA 31036. Applicant's representative: Paul M. Daniell, Suite 1200, Atlanta Gas Light Tower, 235 Peachtree Street, Atlanta, GA 30303. Authority sought to operate as *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lumber*, (except plywood and veneer), and wooden pallets, from Abbeville, GA, to points in FL, AL, SC, NC, VA and TN.; and (2) *Lumber* (except plywood and

veneer), from Perry, GA, to points in AL, MS, SC, NC, FL, KY, TN, and VA, for 180 days. Supporting shipper(s): (1) Clements Hardwood Lumber Co., P.O. Box 325, Abbeville, GA 31001. (2) Tolleson Lumber Co., Inc., P.O. Drawer E. 903 Jernigan, Perry, GA 31069. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

No. MC 126706 (Sub-No. 4TA), filed March 28, 1978. Applicant: KLEYSEN TRANSPORT LTD., 2100 McGillivary Boulevard, Winnipeg, Manitoba, Canada. Applicant's representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum wallboard, and materials and supplies* used in the installation thereof, from ports of entry on the United States-Canada boundary line in MN., and ND, to points in MN, ND, and SD. Restriction: Restricted to traffic originating at the facilities of Westroc Industries, Ltd., located at or near Winnipeg, Manitoba, Canada, and moving in foreign commerce, under a continuing contract, or contracts, with Westroc Industries, Ltd., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Westroc Industries, Ltd., 2650 Lakeshore Hwy, Mississauga, Ontario, Canada. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268 Federal Building and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

No. MC 133566 (Sub-No. 107TA), filed March 28, 1978. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN 46947. Applicant's representative: Charles W. Beinhauer, One World Trade Center, Suite 4959, New York, NY 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs* (except commodities in bulk) in vehicles, equipped with mechanical refrigeration, from the plantsite and storage facilities of La Choy Food Products, Inc., at or near Archbold, OH to points in the states of IL, IA, WI, NE, MN, MO, CO, KS and TN, for 180 days. Supporting shipper(s): La Choy Food Products, P.O. Box 220, Archbold, OH 43502. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

No. MC 135121 (Sub-No. 3TA), filed March 28, 1978. Applicant: DODSWORTH, INC., P.O. Box 366, 928 West 19th Street, Erie, PA 16512. Applicant's representative: Robert E. McFarland, McFarland & Bullard, 999 West Big Beaver Road, Suite 1002. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, limited to individual articles not exceeding 100 pounds in weight, moving as shipments not exceeding 500 pounds in weight, from one consignor to one consignee in a single day, on bills of lading of surface, interstate freight forwarders. Between Mahoning, Ashtabula, Trumbull and Cuyahoga Counties, OH; Erie, Crawford, Mercer, Venango, Warren, Lawrence, Butler, Beaver and Alleheny Counties, PA; and Chautauqua and Cattaraugus Counties, NY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): American Delivery Systems, Inc., 300 East Seven Mile Road, Detroit, MI. Send protests to: John J. England, District Supervisor Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

No. MC 135283 (Sub-No. 35TA), filed March 28, 1978. Applicant: GRAND ISLAND MOVING & STORAGE CO., INC., P.O. Box 2122, 432 South Stuhr Rd., Grand Island, NE 68801. Applicant's representative: Gailyn L. Larsen, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Internal combustion engines*, from Milwaukee, WI, to the facilities of Ag Tronic, Inc., at or near Kearney, NE. (2) *Power shafts*, from Clinton, IA, to the facilities of Ag Tronic, Inc., at or near Kearney, NE. (3) *Wheels and semi-pneumatic tires*, from Chicago Ridge, IL, to the facilities of Ag Tronic, Inc., at or near Kearney, NE. (4) *Cardboard cartons* from Butler, IN, to the facilities of Ag Tronic, Inc., at or near Kearney, NE. (5) *Gears*, from Dubuque, IA, to the facilities of Ag Tronic, Inc., at or near Kearney, NE. (6) *Generator parts*, from Chicago, IL, to the facilities of Ag Tronic, Inc., at or near Kearney, NE., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Bernard L. Domandle, Purchasing Agent, Ag Tronic, Inc., R.R. 1 Airport Road, Kearney, NE 68847. Send protests to: Max H. Johnson, District Supervisor, 285 Federal Building and Courthouse, 100 Centennial Mall North, Lincoln, NE 68508.

No. MC 136343 (Sub-No. 130TA), filed March 28, 1978. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, R.D. No. 1, Milton, PA 17847. Applicant's representative: George A. Olsen, P.O. Box 357, Gladstone, NY 07934. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from the sites of International Paper Co., at or near Cornith and Ticonderoga, NY, to points in IL, IN, MI, and OH, for 180 days. Supporting shipper: International Paper Co., 220 East 42nd Street, New York, NY 10017. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Federal Square Station, Harrisburg, PA 17108.

BY the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-11955 Filed 5-1-78; 8:45 am]

[7035-01]

[Notice No. 67]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

April 25, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the Completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Motor Carriers of Property

No. MC 126844 (Sub-No. 48TA), filed March 30, 1978. Applicant: R.D.S.

TRUCKING CO., INC., 1713 North Main Road, Vineland, NJ 08360. Applicant's representative: Terrence D. Jones, 2033 K Street NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and frozen foodstuffs*, from Archbold, OH, to points in CT, MD, MA, NJ, NY, PA and VA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): LaChoy Food Products, 901 Stryker Street, P.O. Box 220, Archbold, OH. 43502. Send protests to: District Supervisor, Interstate Commerce Commission, 428 State Street, Room 204, Trenton NJ 08608.

No. MC 127096 (Sub-No. 8TA), filed March 30, 1978. Applicant: HENNES TRUCKING CO., 338 South 17th Street, Milwaukee, WI 53233. Applicant's representative: Beery & Spurlock Co., LPA, 275 East State Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement* (in bulk), from the plantsite of Medusa Cement Co. at Wampum, PA, to points in OH, restricted to shipments moving on bills of lading issued by Columbia Cement Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Columbia Cement Corp., 3059 East Mound Street, Columbus, OH 43209 (Darrell Miller). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

No. MC 128217 (Sub-No. 22TA), filed March 30, 1978. Applicant: REINHART MAYER, d.b.a. MAYER TRUCK LINE, 1203 South Riverside Drive, Jamestown, ND 58401. Applicant's representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural, industrial, and construction machinery and equipment, and parts and subassemblies* for agricultural, industrial and construction machinery and equipment, from the facilities of clark Equipment Co., Melrose Division, located at or near Gwinner, ND, to points in ID, IL, IN, MI, MT, OH, OR, WA and WI, under a continuing contract, or contracts, with Clark Equipment Co., Melrose Division, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Clark Equipment Co., Melrose Division, Gwinner, ND 58040. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268, Federal Building and U.S. Post Office, 657 2d Avenue North, Fargo, ND 58102.

No. MC 129032 (Sub-No. 46TA), filed March 30, 1978. Applicant: TOM INMAN TRUCKING, INC., 6015 South 40th West Avenue, Tulsa, OK 74107. Applicant's representative: David R. Worthington, 6015 South 49th West Avenue, Tulsa, OK 74107. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* for human consumption, in mechanically refrigerated equipment (except commodities in bulk, in tank vehicles), from Kraft, Inc., plant facilities to Garland, TX, to points in the States of LA, MS, and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Kraft, Inc., 500 Peshtigo Court, Chicago, IL 60690. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Courthouse Building, 215 Northwest Third, Oklahoma City, OK 73102.

No. MC 134134 (Sub-No. 26TA), filed March 29, 1978. Applicant: MAINLINER MOTOR EXPRESS, INC., 4202 Dahlman Avenue, Omaha, NE 68107. Applicant's representative: Gailyn L. Larsen, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizers, tree and weed killing compounds, insecticides and fungicides*, in bags and containers, from the facilities of Swift Agricultural Chemical Co., at or near East St. Louis, IL, to points in IA, KS, MN, NE, ND, OK and SD, restricted to traffic originating at the above-named facility and destined to the above-named destination States, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Mike Raymond, Regional Transportation Manager, Swift Agricultural Chemical Co., P.O. Box 338, East St. Louis, IL 62202. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

No. MC 136161 (Sub-No. 11TA), filed March 29, 1978. Applicant: ORBIT TRANSPORT, INC., Box 163, Spring Valley, IL 61362. Applicant's representative: William B. Welbers, P.O. Box 163, Spring Valley, IL 61362. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mill supplies, windows, sash, doors, and materials* used in the manufacture and installation thereof, between Oglesby, IL, on the one hand, and all points in the United States in and east of the Rocky Mountains, to include MT, WY, CO, and MN, other than bulk, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Illinois Millwork Corp., John F. Ryan, Traffic Manager, 517 Walnut, Oglesby, IL 61348. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 136268 (Sub-No. 12TA), filed March 29, 1978. Applicant: WHITEHEAD SPECIALTIES, INC., 1017 Third Avenue, Monroe, WI 53566. Applicant's representative: Michael J. Wyngaard, 150 E. Gilman Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic articles*, from Warren, IL, to points in WI; Coffeyville, KS; Madison Heights and St. Joseph, MI; Evansville and Seymour, IN; Herndon, PA; Wayne, NJ; and Fayetteville, NC, and (2) *Plastic articles*, from Mt. Horeb, WI, to points in IL, Coffeyville, KS; St. Joseph, MI; Herndon, PA; and Fayetteville, NC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Janlin Plastic of Wisconsin, Inc., 1204 East Lincoln Street, Mt. Horeb, WI 53572. Send Protests to: Ronald A. Morken, District Supervisor, Interstate Commerce Commission, 139 West Wilson Street, Room 202, Madison, WI 53703.

No. MC 136553 (Sub-No. 58TA), filed March 30, 1978. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th Street, Dubuque, IA 52001. Applicant's representative: Thomas E. Leahy, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing materials*, from the facilities of the Certain Teed Corp., at Chicago Heights, IL, to points in IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Certain Teed Corp., P.O. Box 860, Valley Forge, PA 19482. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 138627 (Sub-No. 28TA), filed March 29, 1978. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Route 4, Fort Dodge, IA 50501. Applicant's representative: Arylyn L. Westergren, Suite 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority

sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Wall paneling and accessories,* from Elkhart, IN, to Newton and Emporia, KS; Boonville, MO; West Bend, WI, and New Ulm, MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Panel Decor, Inc., 23789 Cooper Drive, Elkhart, IN 46514. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 138882 (Sub-No. 60TA), filed March 29, 1978. Applicant: WILEY SANDERS, INC., P.O. Drawer 707, Troy, AL 36081. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Canned goods* (except frozen and in bulk), (1) from the plantsite of the Joan of Arc facilities at or near Hoopeston and Princeville, IL, to points in AL, AR, CT, FL, GA, LA, ME, MD, MA, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, and WV, and (2) from the plantsite of the Joan of Arc facility at Mayville, WI, to points in AL, AR, CT, FL, GA, LA, ME, MD, MA, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV, and IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Joan of Arc Co., Inc., 2231 West Altorfer Drive, Peoria, IL 61614. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

No. MC 139482 (Sub-No. 48TA), filed March 30, 1978. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 347, County Road 29 West, New Ulm, MN 56073. Applicant's representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except meat and meat products), from Cameron, Vesper, Menominee, Eau Claire and Wisconsin Rapids, WI, and their commercial zones, to points in the states of IA, NE, KS, MO, and AR, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Sanna Division, Beatrice Foods Co., 2801 West Beltline Highway, Madison, WI 53701. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

No. MC 139482 (Sub-No. 49TA), filed March 30, 1978. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 347, County Road No. 39 West, New Ulm, MN 56073. Applicant's representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Dairy products* (except commodities in bulk), from New Ulm, MN, and its commercial zone to points in FL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Associated Milk Producers, Inc., New Ulm, MN 56073. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

No. MC 139658 (Sub-No. 24TA), filed March 30, 1978. Applicant: HARRY POOLE, INC., 2322 Kensington Road, Macon, GA 31201. Applicant's representative: William Addams, Suite 212, 5299 Roswell Road NE., Atlanta, GA 30342. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials* (in bulk, in dump trucks), between the plantsites of Pelham Phosphate Co., at or near Pelham, GA, and Kerr-McGee Co. at or near Cottondale, FL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Pelham Phosphate Co., Box 468, Pelham, GA 31779. (2) Stoller Chemical Co., Inc., 8705 Katy Freeway, Suite 400, Houston, TX 77024. (3) Chemical Enterprises, Inc., 8705 Katy Freeway, Suite 307, Houston, TX 77024. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, Ga 30309.

No. MC 140756 (Sub-No. 3TA), filed March 29, 1978. Applicant: FANN McKELVEY, d.b.a. McKELVEY TRUCKING, 5240 West Missouri, Glendale, AZ 85301. Applicant's representative: Baldo J. Lutich, 1441 E. Thomas Road, Phoenix, AZ 85014. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Cartons* for *packing fruits and vegetables,* from Compton, CA, to points and places in Maricopa County, AZ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Service Container Co., 301 W. Walnut Street, Compton, CA 90220. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020 Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

No. MC 140883 (Sub-No. 17TA), filed March 30, 1978. Applicant: DOWNS TRANSPORTATION CO., INC., 2705 Canna Ridge Circle NE., Atlanta, GA 30345. Applicant's representative: K. Edward Wolcott, Watkins & Daniell, Suite 1200, Peachtree Center Gas Light Tower, 235 Peachtree St. NE., Atlanta, GA 30303. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Charcoal briquettes and fireplace logs,* from Marion, OH, to points in the United States on and east of Hwy 85 (except AK and HI), under a continuing contract, or contracts, with Great Lakes Carbon Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Great Lakes Carbon Corp., 299 Park Avenue, New York, NY 10017. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 Peachtree Street NW., Room 300, Atlanta, GA 30309.

No. MC 141823 (Sub-No. 5TA), filed March 30, 1978. Applicant: GLASS CONTAINER TRANSPORT, INC., Route 1, Box 271, Ridgeway, SC 29130. Applicant's representative: Archie B. Culbreth, 2200 Century Parkway, Suite 202, Atlanta, GA 30345. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Glass containers and container accessories,* from the facilities of Kerr Glass Manufacturing Corp., located at or near Dunkirk (Jay County), IN, to points in MI, under a continuing contract, or contracts, with Kerr Glass Manufacturing Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kerr Glass Manufacturing Corp., P.O. Box 97, Sand Springs, OK. Send protests to: E. E. Strotheid, District Supervisor, Room 302, Interstate Commerce Commission, 1400 Building, 1400 Pickens Street, Columbia, SC 29201.

No. MC 141914 (Sub-No. 34TA), filed March 29, 1978. Applicant: FRANKS & SON, INC., Route 1, Box 108A, Big Cabin, OK 74332. Applicant's representative: Kathrena J. Franks, Route 1, Box 108A, Big Cabin, OK 74332. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Wooden products,* such as ice cream sticks and spoons, coffee stirrers, cocktail forks, skewers, tongue depressors, and cervical scrapers, from Guilford, ME, to points in CA, CO, ID, IL, IA, MT, NV, NM, OK, OR, SD, UT, WA, and WY (except Los Angeles, CA, San Francisco, CA, and Seattle, WA), for 180 days. Supporting shippers(s): Hardwood

Products Co, School Street, Guilford, ME, 04443. Send protests to: Connie Stanley Transportation Assistant, Room 240 Old Post Office & Courthouse Building, 215 N.W., 3rd, Oklahoma City, OK 73102.

No. MC 142152 (Sub-No. 3TA), filed March 27, 1978. Applicant: N.A.T. TRANSPORTATION, INC., 229 North Main Street, Bradner, OH 43406. Applicant's representative: Robert J. Gill, Abraham A. Diamond, Ltd., 29 South LaSalle Street, Chicago, IL. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Machinery, equipment and apparatus* used in the analysis, movement and treatment of gasses, liquids and solids, and (2) *parts, materials, equipment, accessories and supplies* (except commodities in bulk), used in the manufacture, operation and installation of the commodities in (1) above, between the facilities of Application Engineering Corp. at or near Elk Grove Village, IL, on the one hand, and, on the other, all points in the United States, (except AK and HI), under a continuing contract, or contracts, with Application Engineering Corp. for 180 days. Supporting shipper(s): Application Engineering Corp., 850 Pratt Boulevard, Elk Grove Village, IL 60007. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Building 234 Summit Street, Toledo, OH 43604.

No. MC 142368 (Sub-No. 11TA), filed March 30, 1978. Applicant: DANNY HERMAN TRUCKING, INC., 15252 Valley Boulevard, P.O. Box 3048, City of Industry, CA 91744. Applicants's representative: William J. Monheim, 13710 East Whittier Boulevard, P.O. Box 1756, Whittier, CA 90609. Authority sough to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Inedible pet food ingredients, frozen*, (2) *empty pallets*, (1) from Amarillo, TX, and points in its commercial zone to Vernon, CA (2) from Vernon CA, to Amarillo, TX, and points in its commercial zone, for 180 days. Supporting shippers (s): Consolidated Pet Food, Inc., P.O. box 30488, Amarillo, TX 79120. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 142606 (Sub-No. 6TA), filed March 30, 1978. Applicant: WESCO TRANSPORTATION, INC., 2222 West Garvey, Suite L, West Covina, CA 91790. Applicant's representative: William J. Monheim, 13710 East Whittier Boulevard, Suite 203, P.O. Box 1756, Whittier, CA 90609. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Furniture parts*, (a) from Georgetown, KY, to Vernon, CA, (b) from Delaplain, KY, to points in AZ, CA, CO, MA, MN, MO, NJ, OR, and TX, under a continuing contract, or contracts, with Hoover Universal, Spring Systems Division, for 180 days. Supporting shipper(s): Hoover Universal spring systems Division, Route 2, Tri Port Road, Georgetown, KY 40324. Send protests to: Irene Carlos Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 144221 (Sub-No. 1TA), filed March 29, 1978. Applicant: KINGSWAY FREIGHTLINES LTD., 212 24 Street NE., Calgary, AB, Canada. Applicant's representative: Jerome Anderson, 100 Transwestern Building, 404 North 31st Street, Billings, MT 59101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between Sweetgrass, MT, and the boundary of the United States and Canada: From Sweetgrass, MT, over Interstate Hwy 15 to the boundary of the United States and Canada, and return over the same route, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Wayne S. Green, Vice President-Commerce, Garrett Freightlines, Inc., P.O. Box 4048, Pocatello, ID 83201. Send protests to: Paul J. Labane District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

NO. MC 144341 (Sub-No. 1TA), filed March 30, 1978. Applicant: DONALD W. HARMON, Route 2, Orlando, OK 73073. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Building, 3535 N.W., 58th Street, Oklahoma City, OK. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, (except those of unusual value, class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Perry, OK, on the one hand, and, on the other, points in Garfield, Logan, Noble and Payne Counties, OK, restricted to traffic having a prior or subsequent movement by rail, for 180 days. Supporting shipper(s): Mercury Marine, division of the Brunswick Corp., 1 Brunswick Plaza, Skokie, IL 60076. Send protests to: Connie Stanley, Transportation Assistant, Room 240 Old Post Office and Courthouse Building, 215 N.W., 3rd, Oklahoma City, OK 73102.

No. MC 144349 (Sub-No. 1 TA), filed March 30, 1978. Applicant: RONALD L. MILLER, d.b.a. MILLER TRUCKING CO., Route 6, Box 110, Merrill, WI 54452. Applicant's representative: Donald L. Miller Route 6, Box 110 Merrill, WI 54452. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Peoria, IL, to Hurley, Rhinelander, and Merrill, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: (1) Ament & Sons, Inc., 601 S. Alexander, Merrill, WI (2) Santini Distributing Co., Inc., 505 Copper Street, Hurley, WI. (3) Jeds Distributing Co., Inc., Route 3, Rhinelander, WI. Send protests to: Ronald A. Morken, District Supervisor, Interstate Commerce Commission, 139 West Wilson Street, Room 202, Madison, WI 53703.

No. MC 144484 (TA), filed March 24, 1978. Applicant: FREIGHTWAYS, INC. 512 East Second Street, Eldon, MO 65026. Applicant's representative: Darrell Webery, 412 East Second Street, Eldon, MO 65026. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Such commodities* as are dealt in by manufacturers or distributors of heat transfer, refrigeration, and air-conditioning units; and (2) *parts and attachments* for the commodities described in Part (1) above; and (3) *equipment, materials and supplies* for commodities described in Part (1) above, to and from the plantsite of Sundstrand Corp. in Camdenton, MO, on the one hand, and all points in the states of TX, OK, KS, AR, MI, IN, TN, AL, OH, NE, ND, SD, WI, IL, MS, GA, on the other hand, for 180 days. Supporting shipper(s): Sundstrand Corp., Camdenton, MO. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64105.

No. MC 144496 (TA), filed March 27, 1978. Applicant: ECKS TRUCKING, INC., 1081 Pleasant Street, Norwood, MA 02062. Applicant's representative: James F. Martin, Jr., 8 W. Morse Road, Bellingham, MA 02019. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Beverages and beverage supplies*, between Walpole, MA, and points in NY, NJ, RI, CT, ME, NH, VT, and PA, as a contract carrier, under a continuing contract, or contracts, with Walpole Bottling Co., Walpole, MA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Charles V. Zarba, Inc., d.b.a. Walpole Bottling Co., 1600 Boston Providence Highway, Walpole, MA 02081. Send

protests to: John B. Tomas, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 150 Causeway Street, Boston, MA 02114.

No. MC 14515 (Sub-No. 1TA), filed March 30, 1978, Applicant: CENTRAL PIGGYBACK SERVICE, INC., P.O. Box 134, Lugoff, SC 29078. Applicant's representative: Henry P. Willimon, P.O. Box 1075, Greenville, SC 29602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* having a prior or subsequent movement in rail piggyback service, between the railhead in Camden, SC, on the one hand, and, on the other, points in Bethune, Elgin, Lugoff, and Pontiac, SC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: E. I. duPont De Nemours Co., Inc., 1007 Mraket Street, Wilmington, DE. Send protests to: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Room 302, 1400 Building, 1400 Pickens Street, Columbia, SC 29201.

No. MC 144527 (Sub-No. 1TA), filed March 27, 1978. Applicant: BULS EYE TRANSPORT, INC., Suite 2424, 33 North Dearborn Street, Chicago, IL 60602. Applicant's representative: Patrick H. Smyth, 19 South LaSalle Street, Suite 521, Chicago, IL 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, packing-house products and commodities used by packing-houses*, as described in Appendix I of the Report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except commodities in bulk, section D, and hides), from the facilities of Swift & Co. at Bradley, Chicago, IL (including its commercial zone), Rockelle and St. Charles, IL, to CT, DE, ME, MD, MA, NH, NJ, OH, PA, RI, VT, VA, WV, and DC, under a continuing contract, or contracts, with Swift & Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Swift & Co., John H. Groth, manager, Claims and Service, 115 West Jackson Boulevard, Chicago, IL 60604. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinely Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary

[FR Doc. 78-11953 Filed 5-1-78; 8:45 am]

[7035-01]

[Ex Parte No. 297 (Sub-No. 4)]

REOPENING OF SECTION 5a APPLICATION PROCEEDINGS TO TAKE ADDITIONAL EVIDENCE

Clarification of Procedural Rules

AGENCY: Interstate Commerce Commission.

ACTION: Clarification of procedural rules.

SUMMARY: The Commission has received various requests for clarification of procedural rules governing the filings in this proceeding. This notice provides for statements of intent to participate, and the preparation of service lists by the Commission and clarifies the notice served January 6, 1978, and published in the FEDERAL REGISTER on January 11, 1978, at pages 1666 to 1668.

DATES: Statements of intent to participate are due 25 days before the initial statement in each review proceeding is due.

ADDRESS: Statements of intent to participate should be sent to Office of Proceedings, Room 5342, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Deputy Director Janice Rosenak or Assistant Deputy Harvey Gobetz, Section of Rates, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7693.

SUPPLEMENTARY INFORMATION: Comment from various parties has revealed a need to clarify the rules of procedure governing proceedings instituted by Notice published in the FEDERAL REGISTER on January 11, 1978 at pages 1666 to 1668 as corrected by Notice published in the FEDERAL REGISTER on January 31, 1978 at page 4154. The clarifications are as follows:

1. *Consolidation of proceedings.* In its Notice published in the FEDERAL REGISTER on January 11, 1978, the Commission required that all approved and pending agreements, under section 5a of the Interstate Commerce Act be reopened for the purpose of taking evidence to determine whether those agreements still qualify for Commission approval. In view of this proceeding, all new and amendatory agreements currently being considered for approval by the Commission will be consolidated for decision with the appropriate Ex Parte No. 297 (Sub-No. 4) proceeding.

2. *Statements of intent to participate.* All carrier parties to agreements, or their representative, intending to submit an initial statement shall indicate their intent to the Commission no later than 25 days prior to the date the initial statement is due. Due dates are set forth in the notice published in the FEDERAL REGISTER on January 11, 1978 at p. 1668. All other parties intending to participate in a review proceeding shall also indicate to the Commission their intent to participate no later than 25 days before the initial statement in that proceeding is due. The Commission will prepare a service list for each proceeding and distribute the list in time to enable parties filing initial statements to serve the other parties. Parties intending to participate in more than one proceeding may indicate their intent in a single statement. Statements of intent to participate, in an original and one copy, should be sent to the address provided above.

This document was approved April 24, 1978.

By the Commission, Chairman O'Neal.

REOPENING OF SECTION 5a APPLICATION PROCEEDINGS TO TAKE ADDITIONAL EVIDENCE

For the reasons set forth in the attached notice,

It is ordered. That the rules of procedure and other instructions set forth in the attached Notice, as well as the Interstate Commerce Commission Rules of Procedures not displaced in the attached notice, govern the review proceedings instituted by Order entered December 30, 1977, in this proceeding.

Decided April 24, 1978.

By the Commission, Chairman O'Neal.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-11971 Filed 5-1-78; 8:45 am]

[7035-01]

Office of Hearings

[Notice No. 649]

ASSIGNMENT OF HEARINGS

APRIL 27, 1978.

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.

No. MC 44914 (Sub-No. 3), Willamette Valley Transfer Co., now assigned May 1, 1978, at Salem, Oreg., is postponed indefinitely. MC 28536 Sub 16, Fox & Ginn, Inc., is now assigned for prehearing conference May 8, 1978, at the offices of the Interstate Commerce Commission, Washington, D.C.

No. MC 144004, John Treff, Jr., d.b.a. Treff Trucking, now being assigned May 22, 1978 (2 days), at Kansas City, Mo., in Room No. 609, Federal Office Building, 911 Walnut Street.

MC 142268 Sub 28, Gorski Bulk Transport, Inc., is assigned for continued hearing on August 9, 1978, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 141776 Sub 12, Foodtrain, Inc., now assigned May 4, 1978, at Philadelphia, Pa., is canceled; application dismissed.

MC-F-13106, Branch Motor Express Co.—Control—Great Lakes Express Co.; MC-F-13096, Herriott Trucking Co., Inc.—Purchase (Portion)—Great Lakes Express Co.; MC-F-13233, Arkansas Best Freight—Purchase (Portion)—Great Lakes Express Co.; MC-F-13116, Gra-Bell Truck Line, Inc.—Purchase (Portion)—Great Lakes Express Co.; MC-F-13100, the Cleveland Columbus & Cincinnati Highway, Inc.—Purchase (Portion)—Great Lakes Express Co.; MC-3419 Sub 11, the Cleveland, Columbus & Cincinnati Highway, Inc.; MC-F-13101, Red Star Express Lines of Auburn, Inc., d.b.a. Red Star Express Lines—Purchase (Portion)—Great Lakes Express Co.; MC-F-13102, Maiers Motor Freight Co.—Purchase (Portion)—Great Lakes Express Co.; and MC-F-13103, United Trucking Service, Inc.—Purchase (Portion)—Great Lakes Express Co., now assigned June 13, 1978 at Washington, D.C., is postponed to July 11, 1978 at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 136371 Sub 24, Concord Trucking Co., Inc., is now assigned for hearing June 5, 1978 (1 day) at New York, N.Y., at a location to be later designated.

No. MC 115841 (Sub-No. 599), Colonial Refrigerates Transportation, Inc., now being assigned May 11, 1978 (2 days), at Omaha, Nebr., in Room 616, Union Pacific Plaza, 110 North 14th Street, 14th and Dodge.

MC 33641 Sub 96M1, IML Freight, Inc., is now assigned for hearing July 11, 1978 (4 days) at San Francisco, Calif., at a location to be later designated.

MC 58522 Sub 11, River Trails Transit Lines, Inc., is now assigned for hearing July 17, 1978 (1 week) at Davenport, Iowa, at a location to be later designated.

MC 113855 Sub 396, International Transport, Inc., is now assigned for hearing July 24, 1978 (2 days) at Chicago, Ill., at a location to be later designated.

MC 142069 Sub 1, Camionetas Modernas, is now assigned for hearing July 26, 1978 (3 days) at Chicago, Ill., at a location to be later designated.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-11956 Filed 5-1-78; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6325-01]

1

CIVIL SERVICE COMMISSION.

TIME AND DATE OF MEETING: 1:30 p.m., Wednesday, May 10, 1978.

PLACE: Commissioners' Meeting Room, Room 5H09 (fifth floor), 1900 E Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The National Association of Air Traffic Specialists has requested a meeting with the Commissioners for further discussion of the reclassification of the GS-2152 series Air Traffic Control Specialist/Station positions. The Commissioners have scheduled the requested meeting as shown above.

CONTACT PERSON FOR MORE INFORMATION:

Georgia Metropulos, Office of the Executive Assistant to the Commissioners, telephone 202-632-5556.

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

[S-904-78 Filed 4-28-78; 10:50 pm]

[6714-01]

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

NOTICE OF CHANGE IN SUBJECT MATTER OF AGENCY MEETING

At the commencement of its open meeting held at 11:30 a.m. on April 25, 1978, the Corporation's Board of Directors determined, on motion of Chairman George A. LeMaistre, seconded by Director John G. Heimann (Comptroller of the Currency), that Corporation business required the following changes in the subject matter of the meeting and that no earlier notice of the changes was practicable:

Addition of a request by Jamaica Savings Bank, New York (Jamaica), N.Y., for a hearing in connection with the Corporation's interpretation of its regulations regarding the advertising and compounding of interest on deposits in a leap year.

Deletion of a resolution proposing a reorganization of the Office of Corporate Planning.

Dated: April 25, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[S-906-78 Filed 4-28-78; 10:50 am]

[6714-01]

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

NOTICE OF CHANGE IN SUBJECT MATTER OF AGENCY MEETING

At the commencement of its closed meeting held at 11 a.m. on April 25, 1978, the Corporation's Board of Directors determined, on motion of Chairman George A. LeMaistre, seconded by Director John G. Heimann (Comptroller of the Currency), with Director William M. Isaac concurring with the motion, that Corporation business required the following changes in the subject matter of the meeting and that no earlier notice of the changes was practicable:

Addition of an application of Commerce Bank of New Jersey, Evesham Township (P.O. Marlton), N.J., for consent to establish a branch on Stokes Road at Skeet Road, Medford, N.J.

Addition of a request of an insured bank for financial assistance from the Corporation pursuant to section 13(c) of the Federal Deposit Insurance Act.

Addition of a request by Bank Leumi Trust Co. of New York, New York, N.Y., for modification of certain provisions of the capital note purchased by the Corporation in conjunction with the bank's purchase of certain assets and assumption of the deposit liabilities of American Bank & Trust Co., New York, N.Y.

Addition of a recommendation (Case No. 43,495-L) regarding the liquidation of assets acquired by the Corporation from Banco Credito y Ahorro Ponceno, Ponce, P.R.

Addition of a resolution creating an Office of Congressional Relations and establishing the office's organization and Manning Table.

Deletion of a recommendation (Legal Division memorandum dated April 14, 1978) regading the liquidation of assets acquired by the Corporation from Franklin National Bank, New York, N.Y.

The Board further determined by the same unanimous vote, on the basis of certifications furnished by the Corporation's General Counsel, that the matters added to the agenda were eligible for consideration in a meeting closed to the public observation, pursuant to subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act," since the public interest did not require consideration of the matters in a meeting open to public observation.

Dated: April 25, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[S-907-78 Filed 4-28-78; 10:50 am]

[6714-01]

4

FEDERAL DEPOSIT INSURANCE CORPORATION.

NOTICE OF AGENCY MEETING

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:00 a.m. on Friday, May 5, 1978, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b(c)(2), (6), (8), (9)(A)(ii), (9)(B), and (10) of title 5, United States Code, to consider the following matters:

Applications for consent to establish branches:

Unity Bank & Trust Co., Boston (Roxbury), Mass., for consent to establish branches at 592 Washington Street, Boston (Dorchester), Mass., and at 1630 Blue Hill Avenue, Boston (Mattapam), Mass.

Application for consent to change a main office location:

Unity Bank & Trust Co., Boston (Roxbury), Mass., for consent to change the location of its main office from 416 Warren Street to 2343 Washington Street, both locations within Boston (Roxbury), Mass.

Application for consent to reduce outstanding capital stock:

Home Bank & Trust Co., Meriden, Conn.

Application for reversal of Division of Bank Supervision finding that 1976 financial reports subject to Part 335 of the Corporation's rules and regulations were improperly prepared:

Industrial Valley Bank & Trust Co., Jenkintown, Pa.

Request pursuant to section 19 of the Federal Deposit Insurance Act for consent to service of a person convicted of an offense involing dishonesty or a breach of trust as a director, officer, or employee of an insured bank:

Name of person and of bank authorized to be exempt from disclosure pursuant to the provisions of subsection (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6)).

Application for consent to merge and establish branches:

Flagship Bank of Sanford, Sanford, Fla., an insured State nonmember bank, for consent to merge under its charter, and with the title of "Flagship Bank of Seminole," with Flagship U.S. Bank of Seminole, Sanford, Fla., also an insured State nonmember bank, and for consent to establish the two offices of Flagship U.S. Bank of Seminole as branches of the resultant bank.

Applications for consent to purchase or acquire assets, assume liabilities, and establish branches:

The Town & Country Bank, Raritan Township (P.O. Flemington), N.J., an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in the Phillipsburg and Pohatcong branches of New Jersey Bank (National Association), Clifton, N.J., and for consent to establish those two branches as branches of the Town & Country Bank.

The Commercial Savings Bank, Upper Sandushky, Ohio, an insured State nonmember bank, for consent to acquire the assets of and assume liability to pay deposits made in the Harpster Bank, Harpster, Ohio, also an insured State nonmember bank, and for consent to establish the sole office of the Harpster Bank as a branch of the Commercial Savings Bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 43,468-L—South Texan Bank, Houston, Tex.

Case No. 43,486-SR—Sharpstown State Bank, Houston, Tex.

Case No. 43,487-L—First State Bank of Northern California, San Leandro, Calif.

Case No. 43,488-NR—San Francisco National Bank, San Francisco, Calif.

Case No. 43,490-L—American City Bank & Trust Co., National Association, Milwaukee, Wis.

Case No. 43,491-L—Northeast Bank of Houston, Houston, Tex.

Case No. 43,493-SR—Sharpstown State Bank, Houston, Tex.

Case No. 43,498-L—American Bank & Trust, Orangeburg, S.C.

Memorandum re Franklin National Bank, New York, N.Y.

Recommendations with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal proceedings against certain insured banks or officers or directors thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Request for authorization to examine a branch of a national bank in connection with the application of a proposed new bank for Federal deposit insurance and for consent to purchase the assets and assume liabilities of the branch:

Names and locations of banks authorized to be exempt from disclosure pursuant to subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act (5 U.S.C. (c)(8) and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, seperations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in Room 6135 of the FDIC Building located at 550 17th Street NW., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Alan R. Miller, Executive Secretary of the Corporation, at 202-389-4446.

Dated: April 28, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[S-911-78 Filed 4-28-78; 3:20 pm]

[6714-01]

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

NOTICE OF AGENCY MEETING

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 11:30 a.m., Friday, May 5, 1978, to consider the following matters:

Disposition of minutes of previous meetings.

Recommendation regarding liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 43,485-L—First Citizens Bank & Trust Co. of Utica, Utica, N.Y.

Recmmendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Morgan, Lewis & Bockius, Philadelphia, Pa., in connection with the liquidation of Centennial Bank, Philadelphia, Pa.

Recommendation with respect to the amendment of Corporation rules and regulations:

Memorandum and resolution proposing the final adoption of amendments to Part 329 of the Corporation's rules and regulations, entitled "Interest on Deposits," so as to permit preauthorized, automatic transfers from savings to other deposit accounts.

Memorandum proposing the payment of a second dividend of 15 percent in connection with the receivership of Coronado National Bank, Denver, Colo.

Memorandum proposing the adoption of a Corporation Merit Promotion Plan.

Memorandum proposing the adoption of a Corporation Training Policy.

Memorandum and resolutions proposing the delegation to the Administrative Counsel of the responsibility for processing grievances and discrimination complaints filed by employees of the Office of Employee Relations.

Memorandum proposing the appointment of an agent for service of process in the State of Indiana.

Memorandums proposing the amendment of leases in order to expand the Kansas City and Omaha Regional Offices.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Report of the Executive Secretary regarding his transmittal of "no significant effect" competitive factor reports.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Chief, Division of Liquidation, detailing all disbursements in excess of $10,000 and all sales of real estate properties in connection with the liquidation of the Hamilton National Bank of Chattanooga, Chattanooga, Tenn., during the period February 16, 1978 through April 16, 1978.

Reports of security transactions authorized by the Chairman.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Alan R. Miller, Executive Secretary of the Corporation at 202-389-4446.

Dated: April 28, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[S-912-78 Filed 4-28-78; 3:21 pm]

[6740-02]

6

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: To be published, May 1, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., May 3, 1978.

CHANGE IN THE MEETING: The following items have been added:

Item No., Docket No., and Company

RP-4.—RP75-30, United Gas Pipe Line Co.
RP-5.—RP73-3 (PGA76-2), RP73-69 and RP72-99 (EPGA76-3), Transcontinental Gas Pipe Line Corp.
CI-5.—RI78-4, Superior Oil Co.
CP-5A.—CP75-362, El Paso Natural Gas Co.
CP-5B.—CP77-140, Delhi Gas Pipeline Corp., CP77-307, Northern Natural Gas Co., CP77-328, Natural Gas Pipeline Co. of America.
CP-6A.—CP78-171, Southern Natural Gas Co., Texas Gas Transmission Corp. and United Gas Pipe Line Co.
CP-6B.—CP77-612, Texas Gas Transmission Corp.
M-4.—Contract Provisions under section 154.93.
M-5.—Inflated rate increase filings.
ER-5.—ES78-42, Pacific Power & Light Co.
P-5.—Project No. 199, South Carolina Public Service Authority.

KENNETH F. PLUMB,
Secretary.

[S-910-78 Filed 4-28-78; 2:27 pm]

[3510-13]

7

UNITED STATES METRIC BOARD.

APRIL 28, 1978.

TIME AND DATE: 10 a.m., Wednesday, May 10, 1978.

PLACE: Room 6802, Commerce Building, 14th Street and Constitution Avenue, Washington, D.C. 20230.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO CONSIDERED:

Portions open to the public:
(1) Budget review.
(2) Program review.

Portions closed to the public:
(1) Personnel matters.

CONTACT PERSON FOR MORE INFORMATION:

Alban Landry, 301-921-3815.

LOUIS POLK,
Chairman,
United States Metric Board.

[S-909-78 Filed 4-28-78; 2:27 pm]

[7590-01]

8

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Thursday, May 4, 1978.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

9:30 A.M.

1. Discussion of petition for rulemaking regarding pat-down physical searches (approximately 1 hour—public meeting).
2. Discussion of reconsideration of Board notification procedure (approximately 1 hour—public meeting).
3. Affirmation items (approximately 5 minutes—public meeting):
   a. Subsidiary arrangements to the US/IAEA safeguards agreement.
   b. Action plan for modifying the ECCS rule in 10 CFR § 50.46 and Appendix K.

1:30 P.M.

1. Discussion of Nuclear Nonproliferation Act including changes to Part 110 (approximately 1 hour—public meeting).

NOTE.—May be affirmed without discussion.

2. Joint NRC/ACRS MEETING (approximately 1 hour)—open and closed:
   a. Review of operations at "Stretch" Power.
   b. ACRS comments concerning the establishment of a statutorily independent, quasi-judicial board for evaluation of reactor accidents.
   c. Planned meetings with FRG Reactor Safety Committee and French Groupe Permanent.
   d. Proposed use of "Class 9" Accidents in Site Comparisons (78-137).
   e. ACRS fellowship program.
   f. Recent papers by Dr. Ernest Sternglass concerning the effects of normal releases of radioactive materials on the health of the general public living in the vicinity of nuclear power plants.

NOTE:—The Committee will not report on the above item but will be prepared to answer questions, if any. (above items will be open.)

g. New members (closed—exemption 6).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

ROGER M. TWEED,
Office of the Secretary.

[S-905-78- Filed 4-28-78; 10:50 am]

[7910-01]

9

THE RENEGOTIATION BOARD.

DATE AND TIME: Tuesday, May 9, 1978; 10 a.m.

PLACE: Conference Room, 4th Floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Matters 1 through 10 are open to public observation. Matters 11 and 12 are closed to public observation. Matters 13 and 14 are not applicable for status.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of meeting held May 2, 1978, and other Board meetings, if any.
2. Report of the Chairman concerning:
   a. Budget.
   b. Case Processing.
   c. Personal Actions.
   d. Organization Progress of the Staff.
   e. Rulemaking and Regulations.
3. Partial mandatory exemption of new durable productive equipment:
   Eastman Kodak Co., fiscal years ended December 29, 1968, and December 28, 1969.
4. Partial mandatory exemption of new durable productive equipment:
   Kearney & Trecker Corp., fiscal year ended September 30, 1967.
5. Recommended clearances without assignment (list 1902):
   A. Triangle Refineries, Inc., fiscal year ended December 31, 1974.
   B. Kerr McGee Chemical Corp., fiscal year ended December 31, 1974.
   C. Kerr McGee Nuclear Corp., fiscal year ended December 31, 1974.
   D. Southwestern Refining Corp., fiscal year ended December 31, 1974.
   E. Cato Oil and Grease Co., fiscal year ended December 31, 1974.
6. Recommended clearances without assignment (list 1903):
   A. Williams Research Corp., fiscal year ended December 31, 1975.
   B. Swedlow, Inc., fiscal year ended March 28, 1976.
   C. Alcan Aluminum Corp., fiscal year ended December 31, 1975.
   D. Esterline Corp., fiscal years ended October 31, 1974 and 1975.
7. Claim for partial mandatory exemption of new durable productive equipment:
   Buffalo Forge Co., fiscal year ended November 30, 1975.
8. Recommended clearances without assignment (list 1904):
   A.CapTech Inc., fiscal year ended December 31, 1975.
   B. Intermetrics, Inc., fiscal year ended February 29, 1976.
   C. Ainslie Corp., fiscal years ended July 31, 1975 and 1976.
   D. Hydronautics, Inc., fiscal year ended June 30, 1976.
   E. Carleton Controls Corp., fiscal year ended September 30, 1975.
   F. Dyna-Empire, Inc., fiscal year ended July 31, 1976.
   G. A. C. Ball Co., fiscal year ended August 31, 1976.
   H. Thames Valley Steel Inc., fiscal year ended May 31, 1975.
   I. Auto Specialties Manufacturing Co., fiscal year ended August 1, 1976.
9. Assignment to division:
   Kaiser Aerospace & Electronics Corp., fiscal year ended December 31, 1972.
10. Recommended clearance:
   A. Kaiser Steel Corp., fiscal years ended December 31, 1970, 1971, and 1972.
   B. Myers Drum Co., fiscal year ended December 31, 1972.
   C. Kaiser Industries Corp., fiscal year ended December 31, 1972.
   D. Kaiser Engineers, Inc., fiscal year ended December 31, 1972.
   E. Henry J. Kaiser Co., fiscal year ended December 31, 1972.
11. Organization and operations of the regional boards.
12. Personnel matter.
13. Approval of agenda for meeting to be held May 23, 1978.
14. Approval of agenda for other meetings, if any.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M

Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: April 26, 1978.

GOODWIN CHASE,
Chairman.

[S-908-78 Filed 4-28-78; 2:27 pm]

[8010-01]

10

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 16883, April 20, 1978.

STATUS: Open meeting; closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, April 27, 1978, 10 a.m.

RESCHEDULED TIME: Thursday, April 27, 1978, 9 a.m.

CHANGES IN THE MEETING: The following additional items will be considered by the Commission at the open meeting scheduled for Thursday, April 27, 1978, at 9 a.m.:

1. Consideration of rules and interpretations relating to transactions by members of national securities exchanges under Section 11(a) of the Securities Exchange Act of 1934. (Section 11(a) prohibits a member from effecting a transaction for its own account.)
2. Consideration of proposed rule changes filed by the New York Stock Exchange, Inc., and the American Stock Exchange, Inc., concerning floor trading.
3. Proposed transmittal of comments to the House Committee on Government Operations regarding H.R 10749, the Federal Acquisition Act of 1977.
4. Proposed transmittal of comments to the Senate Subcommittee on Securities of the Committee on Banking, Housing, and Urban Affairs regarding S. 1815, the Small Business Venture Capital Act of 1977.

The following item will not be considered by the Commission at the open meeting scheduled for Thursday, April 27, 1978, at 9 a.m.;

Proposed submission of the Commission's Annual Report to Congress for the fiscal year ended September 30, 1977, and transition quarter to the Government Printing Office for publication.

The following additional items will be considered by the Commission at the closed meeting scheduled for Thursday, April 27, 1978, immediately following the open meeting:

Formal orders of investigation.
Referral of investigatory files to Federal, State or Self-Regulatory authorities.
Regulatory matters bearing enforcement implications.
Consideration of amicus participation.
Other litigation matters.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be so considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)A and (10) and 17 CFR 200.402(a)(8)(9)(i) and (10).

Chairman Williams, Commissioners Loomis, Evans, and Karmel determined the Commission business required the above changes and that no earlier notice thereof was possible.

APRIL 26, 1978.

[S-902-78 Filed 4-28-78; 9:46 am]

[8010-01]

11

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be printed May 1, 1978.

STATUS: Open meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

TIME AND DATE PREVIOUSLY ANNOUNCED: Thursday, April 27, 1978, 9 a.m.

The following additional item was considered by the Commission at the open meeting scheduled for Thursday, April 27, 1978, at 9 a.m., which was delayed, in part, until 10:10 a.m.:

Proposed delay in effective date of Rule 11Acl-1 under the Securities Exchange Act of 1934. The rule governs dissemination of quotation information as to which last sale information is reported.

Chairmam Williams, Commissioners Loomis, Evans, and Karmel determined that Commission business required consideration of this item and that no earlier notice thereof was possible.

APRIL 27, 1978.

[S-903-78 Filed 4-28-78; 9:46 am]

federal register

TUESDAY, MAY 2, 1978
PART II



DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

■

FOOD STAMP ACT OF 1977

[3410-30]

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR Parts 271, 272, 273, 274, 278, 279, 282]

[Amdt. No. 132]

FOOD STAMP ACT OF 1977

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking discusses major aspects of the Food Stamp Act of 1977, including the issuance of allotments at no cost, eligibility criteria, certification and issuance procedures, research and demonstration authority, fraud disqualification requirements, and retailer/wholesaler participation. The changes are intended to tighten eligibility criteria, to facilitate participation by eligible households, to strengthen program administration, and to reduce program fraud and abuse.

DATES: Comments should be received on or before June 16, 1978.

ADDRESS: Comments should be submitted to: Nancy Snyder, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Alberta Frost, Food Stamp Regulation Task Force, Food and Nutrition Service, Washington, D.C. 20250, 202-447-6993.

SUPPLEMENTARY INFORMATION:

INTRODUCTION

The Food Stamp Act of 1977 (the Act) is the most comprehensive and detailed statutory revision of the Food Stamp Program (FSP) since its inception. That Act, as reported by the House Committee on Agriculture, "* * * represents the culmination of two and one-half years works by the Committee," and is a "* * * tightly inter-related package of provisions that accomplishes several major objectives." These objectives include simplifying and tightening program administration, facilitating access to the program for eligible and potentially eligible households, eliminating households with high gross incomes, and reducing the potential for errors and program fraud or abuse.

In preparing this regulatory proposal, the Department actively sought the advice and assistance of other Federal agencies, State public assistance departments, State and local food stamp agencies, food advocacy groups, public interest organizations, and the general public. The Department was especially interested in soliciting the views of persons likely to be substantially affected by these massive program changes. Some of the procedures employed to encourage public participation in this unique and extensive program revision are taken from the official recommendations of the Administrative Conference of the United States (Administrative Conference). This organization, which is authorized under Federal law (5 U.S.C. 571-576),[1] as a "* * * permanent independent agency, * * *" is composed of Federal "* * * agency heads, other Federal officials, private lawyers, university professors, and other experts in administrative law and government * * *." 1 CFR 301.2[2] In this regard,[3] the Department sponsored 17 public hearings in October 1977.[4] The hearings were publicized through the media, the display of posters and FEDERAL REGISTER notice.[5] (42 FR 44251, Sept. 2, 1977).[6] Numerous invitations were sent to individuals and organizations from mailing lists prepared by the Department's national and regional offices.[7] 862 individuals testified at these public hearings. To insure the adequate representation of the poor at these hearings, the Department paid the personal expenses of certain persons to enable them to testify.[8] Person unable to present comments at the hearings were invited to submit written suggestions. A total of 7,191 transcript pages were generated and 316 letters were received pursuant to Departmental efforts to encourage public participation.

The Department also met with various organizations with technical expertise, experience or knowledge concerning more specific aspects of the program such as the National District Attorneys' Association, the American Public Welfare Association, the Southern California Grocery Association, the Food Research and Action Center,[9] retail food chain representatives and various Federal agencies and Departments. Additionally, copies of a working draft[10] of proposed regulations were issued to participants at the Third Annual Food Stamp Conference (Jan. 29-Feb. 1, 1978). Participants included Food and Nutrition Service Regional Administrators and staff, representatives of various State and county agencies, public interest law and nutritional advocacy organizations, and staff from the FNS headquarters in Washington, D.C.

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[1] This reference is to Title 5 of the United States Code (U.S.C.), sections 571 to 576. The U.S.C. should be available in all law libraries and most public libraries.

[2] This reference is to Title 1 of the Code of Federal Regulations (CFR), section 301.2. The CFR should be available in law libraries.

[3] Recommendation 68-5 of that Administrative Conference provides:

1. Federal agencies should engage more extensively inaffirmative, self-initiated efforts to ascertain directly from the poor their views with respect to rulemaking that may effect them substantially.

(a) Agencies should seek to inform the poor of all rulemaking proposals that may affect them substantially and should provide opportunities for the poor to submit their views concerning these and related proposals.

(b) Agencies should hold formal public hearings or informal conferences in close geographic proximity to the poor substantially affected by contemplated rulemaking.

(c) Agencies should take care to invite individuals constituting a representative crosssection of the poor to submit their views orally or in writing as to proposed rules substantially affecting the poor.

(d) Agencies should conduct field surveys among the poor to discover their attitudes concerning particular government policymaking substantially affecting them.

(e) Agencies should use advisory committees made up of representatives of the poor as continuing consultants for all programs having a substantial effect on such persons.

(f) When necessary to assure adequate representation for the poor, agencies should pay the personal expenses and wage losses incurred by individuals incident to their participation in rulemaking hearings * * * 1 CFR 305.68-5 (Jan. 1, 1977).

[4] See Administrative Conference Recommendation 68-5(A)(2)(b). Moreover, the Administrative Conference recommends two cycles of notice and comment rulemaking where complex issues are involved. 1 CFR 305.76-3. The Department modified this Recommendation by holding public hearings and reviewing the extensive public input in preparing this proposal for further public scrutiny.

[5] The Administrative Conference has recommended that: Each agency should utilize such methods as may be feasible, in addition to the FEDERAL REGISTER'S official public notice, to inform the public and citizen groups about proceedings . . . where their participation is appropriate. Among the techniques which should be considered are factual press releases written in lay language, public service announcements on radio and television, direct mailings, and advertisements where the affected public is located, and express invitations to groups which are likely to be interested in and able to represent otherwise unrepresented interests and views. 1 CFR 305.71-6. (Jan. 1, 1977).

[6] 42 F.R. 44251 refers to Volume 42 of the FEDERAL REGISTER, page 44251. The FEDERAL REGISTER should be available in many law libraries.

[7] See Administrative Conference Recommendation 71-6(E) and 68-5(A)(2)(c).

[8] See Administrative Conference Recommendation 68-5(a)(2)(f).

[9] The Food Research and Action Center is a legal advocacy group representing program participants in litigation against the Department.

[10] Copies of that working draft have been made available upon request. 43 F.R. 10568 (March 13, 1978).

The public hearing transcripts[11] and suggestions from State and local agencies, public interest organizations, advocacy groups, and other Federal Departments, were carefully considered in drafting these proposals.

The legislative history was closely examined to determine the purpose and intent of statutory provisions.[12] *Nonetheless, the written comment period which follows this notice represents the critical opportunity to affect final regulatory policies. The Department, therefore, encourages careful public scrutiny of this proposal and welcomes detailed written criticism and comment.*

While the current regulations are approximately thirty pages in length, those current regulations are interpreted by a "Food Stamp Certification Handbook" (FNS Instruction 732-1), which is one hundred forty-five pages in length, in addition to hundreds of pages of other written instructions. To insure that the public has an opportunity to comment on all significant aspects of these massive statutory changes, the Department has decided to publish a detailed, explicit and extensive proposal. It is hoped that intensive public scrutiny, even of rules which merely interpret and explain statutory provisions, will assist the Department in drafting final regulations. Provisions of the proposed regulations which are unlikely to significantly affect the public may not have been analyzed in the preamble. However, comments on all aspects of the proposed rules will be considered.

ELIMINATION OF THE PURCHASE REQUIREMENT

The Act of 1977 will result in the issuance of food stamp benefits to eligible households at no charge. While no provision or section of the Act of 1977 specifically eliminates the charge for coupons required by the Act of 1964, the regulatory implementation of certain provisions of the Act of 1977 will result in the issuance of coupons at no cost. This should result in program simplification, reduced administrative costs, increased access to the program and the elimination of the potential for fraud in the handling of cash.

The Department wishes to make clear that, under the Act, most households will receive a smaller allotment than would have been provided under the Act of 1964. Under the Act of 1964 households received the full value of the "Thrifty Food Plan"[13] upon payment of the purchase requirement. Under the new Act, households will receive coupons equal in value to the Thrifty Food Plan reduced by 30 percent of net income as defined under the new Act. Only the poorest households will receive allotments equivalent to the full cost of Thrifty Food Plan. All other households will have to spend cash, in addition to the stamps, to purchase the equivalent of the Thrifty Food Plan.

IMPLEMENTATION

The Act contains no specific implementation schedule. It does, however, direct the Secretary to implement the Act "* * * as expeditiously as possible consistent with the efficient and effective administration of the food stamp program." Many of the proposed changes are closely interrelated and should be concurrently implemented to achieve a smooth and orderly transition to the new program. To expedite the implementation of significant statutory revisions which directly affect households, the Department has divided the implementation of the Act into at least two major notice and comment rulemaking packages. This first package contains the major legislative changes affecting eligibility and benefit levels, as well as related certification, issuance and hearing procedures necessary for a coherent implementation of these new provisions.

Implementation of the first package requires careful timing. It will take place in two distinct phases. The first phase occurs after publication of final regulations. During this phase, States must prepare, print and distribute the necessary instructions and forms, train staff on the new procedures, reprogram data-processing equipment, and inform the public of the new program regulations.

The second phase involves converting the current caseload to the new program, as well as certifying all applicants under the new procedures. As households come due for recertification, they will be converted according to the new regulations. All households which would not normally have been recertified during phase two shall be converted through State agency reviews of each case file (desk reviews).

In general, States agencies would be allowed between 3 and 4 months from the publication date of final regulations for phase one implementation and an additional 120 days to complete phase two conversion. While the Department would have preferred to simultaneously convert the entire caseload in one month, that is not feasible. Under normal circumstances, local food stamp offices handle less than one-third of the caseload in any given month. It would be impossible to triple that workload, especially while using new income computation, issuance and certification procedures. Moreover, an increased influx of applicants, complaints and inquiries is anticipated during that initial conversion period.

Based on an examination of prior rulemakings, as the House Report pointed out, the House Committee "somewhat optimistic[ally]" discussed a 90-day conversion period. The Department believes that 120 days is more realistic considering the extent of this program revision.[14] However, the Department believes that staggered implementation of the free coupon issuance provisions would be administratively impossible. State agencies have indicated that computer and data systems limitations mandate a single free coupon conversion date. Moreover, a gradual phase out of the purchase requirement will prolong and complicate cash accountability for FNS and coupon issuers. A gradual phase out may discourage current coupon issuers from continuing to provide service to participants. Issuance of free coupons to some households, and not others, will induce confusion, information requests and program dissatisfaction. Numerous households are likely to demand free issuances while others will forward unneeded money orders or checks. Many households could fail to send in needed purchase requirements, thus delaying the receipt of coupons. To avoid these and other problems, and for the effective and efficient conversion to a new program, the Department will authorize free coupon issuances for all households simultaneously with the completion of phase one implementation. As a result, some currently participating households will temporarily receive the old bonus amount until the desk review or recertification is done. Thus, until converted to the new program, currently participating households will continue to receive the level of benefits (only

[11] These transcripts are available for public inspection and copying during regular business hours at 500 12th St., S.W., Room 698, Washington, D.C.

[12] The legislative history includes, among other documents, the extensive and through report of the House Committee on Agriculture (H. Rept. 95-464; June 24, 1977); the report of the Senate Committee on Agriculture, Nutrition and Forestry (S. Rept. 95-180; May 16, 1977); and the Conference Committee Report (H. Rept. 95-599; Sept. 12, 1977).

[13] The Thrifty Food Plan is the diet required to feed a family of four persons. The Department has adjusted this diet for different household sizes.

[14] A gradual food stamp program conversion affecting levels of program benefits was recently upheld. The Federal district court note: "The defendants [USDA] decided to implement the utility standard on a case-by-case basis, as recipients were certified or recertified, because this was * * * administratively convenient * * * A mass review of all [State] recipients would have involved substantially more work and time, delaying the date when the utility standard could be made available to *any* recipient." The court found that this gradual conversion was "eminently rational," did not violate the equal protection clause, and was consistent with due process. *Newberry* v. *Bergland*, USDC, S.D. Ga, Civ. No. 277-67 (Mar. 3, 1978).

the bonus amount) authorized by the Act of 1964, as amended. Currently participating households, which are converted, all recertified households and *all new applicants* will receive the level of benefits authorized by the Act of 1977. The Department recognizes that *currently participating households*, not yet converted, could temporarily receive benefits less than or greater than those benefits which would have been provided a similar household under the Act of 1977. Nonetheless, no household would receive a level of benefits not authorized by either Act of 1964 or 1977. No new applicant could receive the bonus allotment under the Act of 1964, as amended. Providing bonus amounts, under the Act of 1964, to new applicants without charging a purchase requirement would expand the food stamp program in a manner not contemplated by either Act. The Department believes that this gradual conversion is a legitimate response to the inability to convert every household in the same month.[15] The Department proposes the following specific implementation procedures.

Phase 1. Not later than the first of the month beginning no less than 3 nor more than 4 months after publication of final regulations, State agencies must implement the new eligibility criteria, application processing procedures and timeliness standards (including expedited certification), reporting requirements, recertification procedures, notice and fair hearing requirements for all new applicants and households undergoing recertification. The joint recertification procedures, for households receiving public assistance and general assistance, the fraud disqualification procedures and all other recertification and issuance related procedures, except as noted below, must also be in effect at this time. All forms and notices, including the standard application form, must also be in use by the above date.

Phase 2 It is proposed that all currently certified households be converted to the new program within 120 days after the start of phase 2. implementation. Households coming due for recertification during this time will be converted to the new program at the recertification review. Remaining households must be converted by a desk review during phase two. The new income definition, deductions, and allotment calculations must be completed for all households which are desk reviewed. Formerly exempt household members who must register for work under the new regulations shall be advised of the need to register and be provided a reasonable opportunity to comply. To the extent that the case file and other information available to the State so permits, other eligibility factors (such as resources, tax dependency, and alien status) shall be considered during the desk review. Otherwise, nonincome changes shall be deferred until the household is recertified. In no event will a household's certification period be extended at the desk review. Subsequent recertification action for these households must be in accord with all provisions of the final regulations.

Other changes. It is proposed that the outreach requirements for the transition period must be in effect one month prior to the implementation of phase 1. Within six months of the publication date of final regulations, the State agency must have implemented any remaining portions of these regulations.

In addition, within six months of the publication of final regulations, State agencies without a currently approved utility standard must have an FNS approved utility standard in use for all new applicants as of the first of the month following FNS approval. Currently certified households will be advised of the standard and will be allowed to use the standard in lieu of actual utility costs. Otherwise, actual utility costs will continue to be used until the household is recertified or desk reviewed, whichever comes first. The Department will provide technical assistance to those States which request help in developing a utility standard methodology.

Regulations regarding retailer/wholesaler provisions will be effective as of the date the final rulemaking on these proposed regulations is published.

Extensions. FNS may grant extensions to some, but not all, of the above implemention schedules. In particular, implementation of the basic financial and nonfinancial eligibility criteria and free coupon issuance shall not be extended for any reason. For other provisions, extensions may be granted by FNS upon submission by the State agency of compelling justification and an acceptable alternative schedule.[16] When extensions are granted, the current relevant Department regulations will remain in effect until superseded by implementation of the new rules. For example, if an extension is granted for expedited action on zero income applicants, the State agency must continue the current rules pertaining to waiving verification for zero income households and the special rules for migrant income mandated by *Gutierres* v. *Bergland*, 415 F. Supp. 827 (D.C. 1976). In no event will the Department grant an extension in excess of 120 days, from the specified implementation date.

The Department is particularly interested in receiving comments regarding the proposed timetable for implementation of new regulations. The remaining sections of the preamble discuss policies and procedures in the same order in which they are presented in the proposed regulations.

General Purpose and Scope

Coupons as obligations of U.S. crimes and offenses

Coupon issuer penalties and the monitoring of coupon issuer activity received considerable attention prior to passage of the Food Stamp Act of 1977. The Emergency Food Stamp Vendor Accountability Act, Pub. L. 94-339, was enacted in 1976 in response to reports of vendor abuses involving the loss, embezzlement and theft of coupons and cash. As noted in the House Report, the need for strict controls will be greatly reduced by implementation of the Act of 1977 since coupon issuers will handle a reduced volume of stamps and will not handle any cash. The Department hereby withdraws the proposed regulations regarding Pub. L. 94-339 published at 42 FR 1479, January 7, 1977, and instead proposes new regulatory standards for coupon and inventory security. These proposals are discussed under the heading "Issuance and Use of Food Coupons."

Penalties. In accord with the Act, the proposed regulations require coupon issuers and bulk storage points to submit monthly activity reports to FNS through the State agency. The State agency will be required to closely monitor the day-to-day activities of all of its coupon issuers and bulk storage points and report any violations to FNS. The Act and regulations provide that any coupon issuer or bulk storage point convicted of falling to provide required monthly reports shall be subject to a fine of not more than $1,000 or imprisoned for not more than one

[15] The total conversion of the current caseload on one date, as compared to a phase in beginning on that date, would reduce the overall level of benefits provided those households during that period. The Act of 1964, *for most of the existing caseload*, provides a level of benefits in excess of that provided under the Act of 1977. The legislative history does not seem to prohibit this proposed gradual conversion. In making its budget predictions to the Senate and House Committees the Department assumed, as it now proposes, that States would issue all coupons at no cost beginning on an exact date and would gradually phase in other regulatory provisions.

[16] Under the Supremacy Clause of the U.S. Constitution, State notice and comment rulemaking requirements (State Administrative Procedure Acts) may not delay implementation of this program beyond deadlines set forth in the final Federal regulations. States desiring local input to formulate optional rules and operating procedures may wish to provide for comment periods, in advance of implementation requirements, so as not to impede or delay that process.

year, or both. In addition, as required by the Act, any coupon issuer or bulk storage point convicted of knowingly providing false information on the required reports shall be subject to a fine of not more than $10,000 or imprisoned for not more than five years, or both.

Requirements for Participating State Agencies

Program administration and personnel requirements

Staffing standards. The Department intends, after appropriate study, to develop comprehensive standards aimed at improving the quality, timeliness and efficiency of services while recognizing the diversity of program operations from project area to project area. The standards will be published as proposed rulemaking and comments will be solicited and analyzed prior to adoption of final rules. Until that final publication, it is proposed that State agencies employ sufficient staff to certify and issue benefits to eligible households and process fair hearing requests within the appropriate timeliness standards as required by the Act and final regulations.

Bilingual requirements. The legislation requires that State agencies "* * * use appropriate bilingual personnel and printed material in the administration of the program in those portions of political subdivisions in the State in which a substantial number of members of low-income households speak a language other than English."

The House Report states that, at a minimum, bilingual printed material would include "* * * all application forms, instruction sheets, and outreach and nutrition education material." While that report stresses that hiring quotas are not mandated by the Act, neither the report nor the Act is explicit regarding the caseload concentrations that trigger the need for bilingual services.[17] The Department is concerned that data on the numbers of low-numbers of low-income non-English-speaking households may not be readily available for many areas. States will have to use a variety of sources to secure pertinent information.

The proposed regulations require bilingual service based on the total number of households needing that service compared to the number of low-income households in a given project area. bilingual service is mandated where, at least, 150 households of a single language low income group[18] reside in projects with 3,000 or more low-income households. Project areas with fewer than 3,000 low-income households, in which at least 50 single-language low-income households reside, must also provide bilingual service.

The Department rejected a uniform percentage test since that could require bilingual service in areas with few low-income households where only very few single non-English language households resided.

Theoretically, the presence of one household could exceed a percentage test. Even worse, in densely populated low-income areas significant concentrations of non-English-speaking households might not be entitled to bilingual service.

Under the Department's proposal, no matter how low a percentage 150 same-language non-English-speaking households constituted (as compared to the total number of low-income households), those 150 or more households would receive bilingual service. Conversely, concentrations of fewer than 50 same-language non-English-speaking households, no matter how high a percentage of low-income households that represented, would not be entitled to bilingual service. If this standard is adopted, the Department intends to closely monitor its effectiveness to develop data on which to base possible future rulemaking.

States may provided bilingual service under stricter numerical requirements than are provided in the proposed regulations where the State believes this would be appropriate. Imposition of bilingual service does not mean that certification staff would have to be released and other staff hired to meet the criteria. It does mean, however, that States must have a staffing plan that would move toward meeting the minimum Federal requirements as expeditiously as possible. Paid or volunteer interpreters may be used to meet the need where appropriate.

Areas that anticipate an influx of non-English-speaking households during certain seasons must be prepared to respond with bilingual staff and program materials. The use of interpreters or temporary employees for these periods is acceptable. The proposed numerical standards for determining the need for bilingual staff and materials apply during influx periods.

States may find, in large project areas with more than one certification office, that bilingual capabilities are not needed in all offices. In these situations bilingual staff can be concentrated in those offices where the need exists. Bilingual materials must be developed and distributed for use by program participants and the potentially eligible as expeditiously as possible.

Divisons of responsibilities. The current requirements (FNS(FS) Instruction 734-2 and FNS Notice 77-30) on the division of certification and issuance responsibilities are included in these proposed regulations. While the Department recognizes that limitations in staff and funding may necessitate the combining of certification and issuance functions, such a combination of responsibilities seriously weakens controls and involves risks of losses. The proposed regulations require that the State agency divide the responsibility for eligibility determinations and coupon issuance between certification, data management and issuance units. However, with prior Departmental approval, a project area may combine unit responsibilities where other alternatives have been explored and determined to be not feasible. The conditions under which such approvals will be provided are spelled out in the proposed regulations.

Training. The Act requires the State agency to provide a "* * * continuing, comprehensive program of training for all personnel undertaking [Food Stamp] certification." The proposed regulations expand the training requirement beyond the certification worker to help ensure more effective and efficient program operations. Those included in the expanded training program are outreach workers and others who pre-screen or provide other services to applicants.

The proposed regulations require States to designate a training coordinator to develop training materials, supervise training sessions, ensure that appropriate personnel receive training, and monitor compliance with the standards for public participation in training sessions. States shall also designate additional staff at either the State or local level to provide training.

The House Report expressed an interest in allowing "* * * community groups and volunteers * * * to participate in training sessions so that they can more accurately perform prescreening and assist in completing application forms." A minimum of 10 percent of the training slots or 10 training slots, whichever number is smaller, at State, region, or city-wide sessions must be reserved for the public.

The effectiveness of State and local training will be evaluated through the performance reporting system and appropriate corrective action will be taken.

Outreach

The outreach provisions of the new law require comprehensive informa-

[17] This phrase refers to households which speak the same non-English language and which do not contain adults fluent in English as a second language.

[18] The 5 percent staring point (150/3,000) is reflected in the voting Rights Act of 1965, as amended, which requires bilingual materials where 5 percent of the voting age population speak a language other than English. Localities might have developed useful statistical analyses based on implementation of that Act.

tional activities to advise low-income households of the benefits of program participation. Proposed regulations to implement the outreach requirements will be published in subsequent rulemaking. However, there is a critical need during the transition from the current to the new program for the dissemination of clear and accurate information.

The House Report states "* * * this legislation will drastically change eligibility requirements and procedures. Low-income families should be informed about how the 'new' food stamp program would work and about participant duties and responsibilities under the new program." The Department proposes special outreach procedures for the transition period to avoid confusion and misunderstanding during implementation. These procedures would be an addition to existing requirements contained in FS regulations and FNS(FS) Instruction 732-6(Rev. 1). Current requirements, as well as the special outreach procedures, would be in effect until such time as the changes in outreach required by the Act are implemented.

These special procedures direct the States to place emphasis on informing current food stamp participants of program changes. The special procedures also include distribution of printed materials describing program changes and the installation of toll-free hotlines to facilitate the answering of questions. The proposal requires that written notices be provided to participating households, recipients of public assistance, and recipients of a State-administered SSI supplemental payments at least once prior to implementation. Other printed materials describing the new program would be available in local food stamp and welfare offices and may be available through local social security, State employment security, and unemployment compensation offices. Printed materials would be made available to the public upon request. The Department will provide a basic publication on program changes which State agencies may supplement.

At the same time information efforts are initiated, State agencies would begin the operation of State level toll-free hotlines which can be used by participants and potential participants to secure information. The proposal permits the use of hotlines in local areas where large numbers of low-income households reside. Individuals staffing the hotlines must be knowledgeable in program rules and procedures and must ensure that complaints are referred to the proper officials. Hotlines are to operate, at a minimum, during normal business hours. There must be at least one hotline for caseloads of less than 100,000 people, two hotlines when the caseload is between 100,000 and 500,000, three hotlines where the caseload is between 500,000 and 1,000,000 and four hotlines where the caseload exceeds 1,000,000. In situations where local hotlines are used, the above requirements for State level hotlines could be reduced accordingly, except that there must continue to be at least one toll-free hotline at the State agency level. Hotline numbers must be extensively publicized. In addition, the proposal requires the use of press releases and radio spots to publicize program changes and permits the use of TV spots.

These procedures, and particularly the use of hotlines, were chosen as the most expeditious way of disseminating information without greatly burdening local project areas.

Non-Discrimination Compliance

Non-discrimination. The proposal includes non-discrimination criteria required by the Food Stamp Act and Title 6 of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Most of these requirements are now imposed by Departmental regulation and FNS Instruction. Reporting and monitoring requirements will be included in a later publication of regulations.

Complaints. The complaint procedure provides that individuals who believe that they have suffered discriminatory treatment while applying for or participating in the program may direct complaints to the Administrator, FNS or the Secretary. State agency personnel must also accept all such complaints and forward them to the Administrator or the Secretary. This ensures a review of each complaint at a high level of authority and experience and will provide a uniform and consistent review process. The location of all files at one site will facilitate effective review of civil rights policies in relation to the Food Stamp Program. The 180 day time period for filing a complaint is in accord with current Departmental regulations (7 CFR 15.6). These are not significant changes but provide more specific direction to program administrators.

Public notification. The proposed requirement to publicize civil rights complaint procedures is a part of an overall effort to inform applicants and recipients of program rights.

Civil rights data. The data standards require numerical measures of racial and ethnic factors regarding potential eligibles, participation rates, applications, certifications, denials, fair hearings and office staffing. These data will provide program administrators with a useful tool for analyzing the impact of racial or ethnic factors and for identifying possible civil rights abuses. While legitimate factors may explain seemingly disparate treatment of certain groups of individuals, examination of exact data may alert administrators to situations needing closer review.

Certification of Eligible Households

HOUSEHOLD CONCEPT

Cooking facilities. The common cooking facilities requirement imposed by the Food Stamp Act of 1964 has been omitted from the new Act. The House Report appropriately noted that there "* * * is no nutritional necessity to eat hot or cooked food."

Economic unit. The Act of 1977 does not include the provision in the Food Stamp Act of 1964 that permitted persons sharing living quarters, but who were separate economic units, to apply for food stamps as separate households. The House Report notes that what household members do with food money is more relevant to the household concept than how they handle nonfood costs. The primary concern of the new Act is with "food units" rather than economic units. The Act provides that person living together who both purchase food and prepare meals together constitute a food stamp household, provided they are not residents of institutions or commercial boarding houses. Persons who do not perform these two functions together, or persons who purchase food and prepare meals with others but are boarders by virtue of paying compensation for such meals, constitute separate households.

Household definition. A new definition of household was written into law. As is currently the case, residents of federally subsidized housing for the elderly and residents of FNS approved drug or alcoholic treatment centers are the only residents of institutions that may participate in the program. Other than ineligible residents of commercial boarding houses or institutions, any of the following individuals or groups of individuals may make up a household: (1) An individual living alone; (2) An individual living with others, but who customarily purchases food and prepares meals for home consumption separate and apart from the others; (3) An individual who is a boarder, in a noncommercial boarding house, living with others and paying reasonable compensation to the others for meals for home consumption; (4) A group of individuals living together and customarily purchasing food and preparing meals together for home consumption; or (5) A group of individuals who are boarders, in a noncommercial boarding house living with others as a group and paying reasonable compensation to the others for meals for home consumption.

The Department proposes that State agencies accept household statements regarding household status and that

home visits not be required for verification. Unless the reported household status is inconsistent with other information known to the State agency, it would seem that the cost and effort expended in verification would not be justified in most circumstances. The House Report notes that, "[i]f a group of persons sharing living quarters state that they do purchase food and prepare meals together and do not pay compensation for the meals, they should be treated as a household * * * without any significant burden of proof unless the State agency has good cause to believe that the applicants are misrepresenting the facts." The report further states that if individuals state that they do not meet the household criteria, they should be treated as separate households.

Nonhousehold members. The Department proposes to continue disregarding the following individuals as household members when determining household size and allotment: Roomers, boarders, live-in-attendants, ineligible aliens, SSI recepients in "cash-out" States, ineligible student tax dependents, disqualified individuals, and individuals who share living quarters with the household, but who do not customarily purchase food and prepare meals with the household. The proposed definition allows boarders or groups of boarders in noncommercial boarding situations to participate in the program. The Department proposes prohibiting the assignment of boarder status to spouses, including common-law spouses, or to minors under 18 years of age if they are under the parental control of a member of the household. In such instances it is very likely that the spouses and the children are integral members of the primary household as opposed to being boarders. Application of these specific provisions will provide a uniform national policy.[19]

The Department proposes to maintain certain requirements on the amount which must be paid for meals to qualify household members as boarders. Boarders will be classified as members of the primary household unless they contribute one of the following monthly amounts for meals:

(1) An amount which equals or exceeds the amount of the Thrifty Food Plan for the appropriate household size, for example, under current coupon allotment standards these amounts would be $52 for a single boarder, or $96 for two boarders.

(2) An amount which is less than the appropriate Thrifty Food Plan if the local community has a prevailing rate for board which is less than the amount of the Thrifty Food Plan, and the boarder is paying an amount equal to or in excess of that local rate. The Department proposes that State standards for board be prohibited because local rates for board may vary from one project area to another or may vary within neighborhoods in one project area.

(3) An amount which corresponds to the number of meals the boarder eats with the primary household. Thus, if the boarder routinely eats meals outside of the board arrangement, the State agency must prorate the board payment to determine if that payment is adequate to properly compensate for the meals eaten under the board arrangement. It is proposed that the amount be calculated by multiplying the number of meals routinely eaten outside of the board arrangement by a standard 60 cents per meal. The proposed 60 cents per meal is the approximate average amount allotted by the program for each meal.

Boarding house. The Department proposes defining boarding houses as establishments that are recognized by the community as commercial enterprises which offer meals and lodging for compensation. Current policy defines a boarding house as a place where three or more individuals are funished meals, or lodging and meals, for compensation. The House Report indicated that the strictly numerical approach to the definition should be abandoned in favor of considering the commercial nature of the boarding house. The report notes that "[t]he Committee does not want the Department to allow States to assume that any time three or more persons contribute to a household's meal costs, the household automatically becomes a boarding house regardless of the relationship of the parties involved. If the contribution to food costs involves friends or relatives and is not part of a commercial enterprise, the home is not a boarding house, and those who eat there remain eligible for food stamps if they satisfy the other eligibility criteria." The Department decided not to use licensing to determine if a particular residence is in fact a boarding house because there is little uniformity in licensing ordinances and because commercial boarding houses may be functioning in some States without licenses or licensing requirements.

The Department proposes to eliminate the current restrictions which prevent the households of boarding house operators from participating in the program since, as the House Report notes, the source of a household's income should not determine its eligibility for food stamps.

Head of household. The title "head of household" is currently assigned to the person in whose name application is made for the program. The Department proposes that the State agency shall classify as head of household that household member who "* * * was responsible for acquiring the greatest amount of financial support within the last 60 days." The change is proposed in response to the statutory requirement that a household not already certified be ineligible for program benefits for 60 days after the "head of household" voluntarily quits a job without good cause. This statutory disqualification places new importance on the definition of household head. The Congressional purpose is to prevent the family bread winner from voluntarily quitting work and then immediately relying on the program for support. The Department's proposed head of household definition enforces that purpose.

Residents of institutions. Residents of federally subsidized housing for the elderly and drug addicts or alcoholics residing in FNS approved treatment and rehabilitation centers will continue to be the only individuals who may qualify for program benefits while residing in an institution. The Act specifically allows these two exceptions and no others.

Authorized representatives. The legislation requires "* * * that any applicant household may be represented in the certification process * * * by a person other than a member of the household so long as that person has been clearly designated * * * and, where the certification process is concerned, the representative is an adult who is sufficiently aware of the relevant household circumstances."

The proposed regulations would implement this policy, and represent little change from the current approach. Authorized representatives are allowed to make application, obtain coupons and purchase food on behalf of the household because of employment, health, transportation or other problems.

Because of the special needs of addicts and alcoholics, employees of approved addict/alcoholic treatment centers shall act as authorized representatives for eligible resident members of the center. Additionally, in an effort to limit program abuse as recommended by the House Report, authorized retailers and employees of public welfare departments are prohibited under this proposal from acting as authorized representatives unless they are specifically allowed to do so by the local welfare director.

APPLICATION PROCESSING

Food stamp application form. The new law requires that the Secretary design a simplified, uniform national application form which contains, in understandable terms and in promi-

[19]Common law marriage standards do vary from State to State. Nonetheless, since many States define this status and accordingly impose marital support obligations, the Department proposes to treat common law marriages in the same manner as formal marriage relationships.

nent bold face lettering, a description of the civil and criminal penalties for violating provisions of the Act.

The Department has contracted out the design of this application form along with the application worksheet, the participant reporting form, the notice of eligibility/denial, the notice of adverse action, the notice of expiration, the tax dependency form, and the demand letters for claims against households.

Since several State agencies have requested that they be involved in the design of the application form, the Department plans to invite persons from outside the Department to assist in evaluating the forms designed by the contractor. The contract requires that the forms be tested on volunteer food stamp participants and volunteer workers in several food stamp offices.

Once the model forms are designed and tested, State agencies will be expected to print State forms using the same format and design, unless a deviation is granted by the Department. The Act specifies that a deviation from the model application form may be granted only where: (1) the State agency plans to use a combined public assistance/food stamp application form for all households; (2) the requirements of a computer system necessitate a different format; or (3) the deviation is required by "* * * other exigencies as determined by the Secretary." The Department also proposes that all other FNS model forms be adopted on a uniform basis, with deviations granted only under the same conditions as would permit a deviation on the application form. The Act requires that State agencies use bilingual forms in those areas in which a substantial number of low-income households speak a language other than English. Therefore, State agencies will be required to provide bilingual application forms in certain areas.

Household cooperation. The Act requires that "[n]o household shall be eligible to participate * * * if it refuses to cooperate in providing information * * * necessary for making a determination of its eligibility or for completing any subsequent review of its eligibility." The legislation emphasizes the importance of the household's cooperation in the certification process by enforcing the current practice of denying applications for refusal to cooperate at initial or subsequent certification, as well as disqualifying households which do not cooperate in subsequent reviews of eligibility, such as quality control reviews. However, the House Report makes clear that such denials or terminations can only be for refusals to cooperate, "* * * not merely a negligent omission to provide information, but a positive denial of requested data." For example, the application can be denied if the household refuses to be interviewed, but not because the household failed to keep a scheduled interview.

The proposed regulations include an obligation for the State agency to assist households which are unable to complete the certification or review process. As such, the State agency is directed to assist households in overcoming an inability to cooperate. Suggested aids include out-of office certification procedures, assistance in obtaining needed verification, and use of foreign language materials and staff.

Interview. The Department currently requires, with few exceptions, that all food stamp households, including those who submit applications by mail, be personally interviewed prior to certification. The interview represents a critical exchange between the State agency and the household and serves to satisfy the eligibility worker and the applicant household that all necessary information has been provided. The interview provides a mechanism for the eligibility worker to understand the household's circumstances and provides an avenue for the household to obtain a basic understanding of the program. On the basis of past experience, the Department believes that the interview is critically important to the certification process and must be carefully monitored and regulated. Proposed rules which impact on the interview process are discussed throughout the preamble.

The regulations provide that the interview "[f]acilities * * * be of adequate size and layout to preserve privacy and confidentiality * * *," and to protect the dignity of the applicants. It also requires that "[h]ouseholds shall be advised of their rights and responsibilities during the interview." To protect the integrity of the program, the Department proposes that the interview process "* * * explore and resolve * * * unclear and incomplete information." While the face-to-face interview will remain the primary interview technique, modifications to the interview process are proposed under certain special circumstances, as required by the Act.

Upon household request, the State agency is required to waive the office interview if the household is unable to appoint an authorized representative and has no adult member able to visit the office because of age (65 or older) or mental or physical handicap. In addition, the State agency may waive the office interview for households unable to appoint an authorized representative and which have no responsible member able to come to the food stamp office because of hardships such as illness, lack of transportation, bad weather or work hours that preclude in-office certification.

Where an office interview is waived, the proposal requires a home visit or a telephone interview. This rule should increase program accessibility without inviting program abuse. To ensure equal treatment for these households, it is proposed that States not be allowed to alter the length of the certification period solely because of waiver of the office interview. Since verification may become even more critical without face-to-face interviews, waivers will not exempt households from verification requirements, although special procedures may be developed to facilitate timely verification compliance. Moreover, State agencies are required to schedule all interviews promptly, to meet the 30 day benefit delivery standard.

Verification and documentation. The Act provides that nonexempt gross income must be verified along with "* * * such other eligibility factors as the Secretary determines necessary * * *." Presently, States are required to verify income and other eligibility factors that are unclear, incomplete or inconsistent. Some States utilize the "prudent worker concept" and allow individual eligibility workers to decide what should be verified and how much verification is needed. Others have expanded verification requirements on a statewide basis to mandate uniform verification of eligibility factors, in addition to income.

Under the proposed rules, all gross nonexempt income shall be verified. If all attempts by the State agency and the household to verify income have been unsuccessful (such as where an employer refuses to provide a wage statement to the applicant), the eligibility worker shall determine an amount to be used for certification purposes based on the best available information. Nonfinancial and resource information will be verified only if inconsistent with other information known to the State agency and if the applicant is unable to satisfactorily explain the apparent inconsistency or contradiction. The reason for additional verification must be noted in the case file to allow for subsequent review.

The proposals limit verification requirements concerning citizenship status and certain deductible expenses. Only utility or other shelter cost components which exceed State standards shall be verified. The proposals also limit verification to expenses which would actually result in a deduction. It is unnecessary, for example, to verify shelter expense components in excess of the $75 maximum limit.

The Department proposes that asserted alien status be verified since many aliens may not know into which technical Federal alien category they have been placed. A person's exact alien classification is critical, under the Act, to program eligibility. The

Department further proposes to verify statements concerning citizenship only when there is good cause to believe that the citizenship of a household member is being misrepresented. The proposed regulations prohibit States from routinely requiring applicants to produce verification of citizenship. While the law mandates that illegal aliens not participate in the program, the House Report notes that this specific statutory exclusion should not be used as an excuse to harass "* * * applicants who appear to be of foreign extraction, be they urban residents or seasonal farmworkers."

These proposed standards afford States sufficient flexibility to develop appropriate verification standards but insure that applicants will not be harassed or suffer delays over items with little or no bearing on eligibility or level of benefits. At recertification, it is proposed that unchanged information, as determined by a participant's statement, and previously verified income and expenses which have changed by less than $25, not be routinely verified.

Documentary evidence provided by the household will, in most cases, be accepted by the State agency. However, acceptance of such documentation does not preclude the State agency from initiating an investigation, if the State agency has reason to believe the evidence is fraudulent.

Normal processing standards. In accord with the statute, the proposed regulations specifically prohibit the withholding of applications until an interview can be scheduled. Applications must be immediately provided to all persons who "* * * make what may reasonably be interpreted as an oral or written request for food stamp assistance * * *." However, the regulations do not require States to provide same day interviewing. Households whose initial contact with the office is on the telephone or by mail shall have an application mailed to them the day the request for assistance is received. The regulations stress that application forms must be accessible to potentially eligible households at the certification office and require that forms be made available to outreach groups. To ensure households are advised of this rule, the same day filing requirement and procedures shall be clearly indicated on the application forms and outreach materials and be posted in certification offices.

The regulations provide for the 30-day benefit delivery standard specified in the Act. The 30-day processing standard begins with receipt of an identifiable application. An identifiable application contains the applicant's name, address, and the signature of either a responsible member of the household or the household's authorized representative. The application need not be complete to start the 30-day standard. For households exercising the same day filing rights, the 30 days will begin the day of initial contact with the certification office. For households which decide not to file an application that day or which contact the office by mail or telephone, the 30 days will start when an identifiable application is returned to the office.

Within the 30 days following the filing of an application, the household must complete the application, be interviewed, have certain information verified, be notified of eligibility or ineligibility, and, if eligible, be provided an opportunity to participate. Providing an opportunity to participate is not merely the mailing of an ATP card. Eligible households must be allowed at least two days to receive mailed ATP cards so as to be able to exchange them at an issuance office within the 30 days. The regulations stress that 30 days is a maximum standard and that all applications should be processed as quickly as possible.

Expedited service. The Act requires that households with no income, after appropriate exclusions and deductions, be provided expedited certification and issuance services. The House Report also suggests use of expedited service for households whose ATP cards or coupons are lost or stolen.

The proposed regulations identify two different types of "no income" situations—(1) households with zero net income for the month, and (2) households that are destitute of income at the time the application is filed, but expect to receive or have received income at some other time during the month. Expedited service must be provided to both types of households.

Households that are destitute of income at the time the application is filed are those households who currently have no income although they may start receiving some new income later in the month, and those households who lost their sole income source earlier in the month and now are without income.

To be considered destitute of income at the time the application is filed, the household's only income during the month of application must be "nonrecurring"[20] and must not be received in the same quarter of the month the application is filed. For households that have lost a source of income, income will be considered nonrecurring if it will not be received again from the same source during the balance of the month of application and the following month. For households that currently have no income but anticipate a new source of income later in the month, the income will be considered nonrecurring if income, from that same source, has not been received within 30 days prior to the date the application was filed. To determine whether the nonrecurring income is received in the same quarter of the month the application is filed, the month will be divided into four quarters (1-7, 8-15, 16-22, 23—end of month). For households that anticipate but have not yet received a new source of income, the Department is proposing that these households be entitled to a special calculation of their income in addition to being entitled to expedited service. These special procedures are explained in more detail under the section entitled "Determining Household Eligibility and Benefit Levels."

For those households which are eligible for expedited service and which are in especially dire straits because they (1) have insufficient food to enable them to wait even two working days and (2) have liquid resources less than the value of the Thrifty Food Plan for a one-person household, an opportunity to participate must be provided the same day the application is filed. (This same-day service does not apply to residents of drug addict or alcoholic treatment centers.) Generally, households entitled to same day service should have an opportunity to obtain the full monthly allotment. However, if an issuance facility is not immediately available or open, the food stamp office shall provide the household with at least one-fourth of its entitlement on the same day the application is filed and shall provide the remainder within five working days. The use of limited issuance will preclude food stamp offices from having to maintain a large supply of coupons in their office.

Same day service for all zero income households was rejected because the increased risks to ATP and coupon security did not warrant the marginal increase in service, except for the few households whose immediate need dictates a same day response.

In accord with the House Report and to prevent abuse of this provision a collateral contact or other verification of the household's identity and residence is mandated. The State agency is responsible for promptly acting on the collateral contacts provided by the household. Households certified under expedited procedures shall be certified for the month of application only. However, if the household provides the verification which was postponed within 30 days of the date the application was filed, the State agency shall extend the certification period as appropriate. In this way, households would not be required to submit a new application. Eligibility

[20] The distinction between recurring and nonrecurring income is made because recurring income typically represents the income which the household should be required to budget.

for future coupons based on that application will be determined by normal processing standards, including normal verification requirements. Successive certification under expedited standards is permitted, provided that verification postponed by the initial expedited service has been provided before the next expedited issuance. Households denied expedited service shall be eligible for an expedited fair hearing under § 273.15, upon request.

The Department proposes emergency replacements for coupons which have been lost or stolen after the household has received its coupons. To guard against possible program abuse, the household must report the loss or theft to the police and provide the State agency with a copy of the official report or shall provide other information showing that the loss was reported to the police. To reduce the potential for abuse, replacements will be allowed only once in each three month period. If adopted, the effectiveness and usefulness of this three month limit will be monitored. Replacement of lost or stolen ATP cards is addressed in part 274 of the proposed regulations.

Delays in processing. The Department proposes that applications be denied at the end of 30 days if a certification determination cannot be reached solely because the household failed to take a required action after a reasonable period of time. If verification is lacking, the State agency shall deny the application only if the household has had at least 10 days from the date of the State agency's last request for verification and the State agency has met all of its responsibilities to help the household obtain the verification. The denial notice must advise the household exactly what information is needed to complete the application, and that the State agency will reopen the case without requiring a new application if the household provides the requested information within the additionsl 30 days. Households that take the necessary action within the additional 30-day period and are found to be eligible will be provided an opportunity to obtain benefits retroactive to the month of application.

This procedure allows State agencies to close the casefile in situations where it appears the household has abandoned its application and requires that households initiate action to reopen its case. This procedure protects the household in that it avoids jeopardizing a household's entitlement to benefits, retroactive to the month of application, if the household takes the required action within the additional 30 days. The household is not required to file a new application.

If, however, the certification process is not completed due to failure or inaction on the part of the State agency, the State agency must take whatever additional processing time is required to make an eligibility determination. If a determination of eligibility is reached and an opportunity to participate is provided to the household within 60 days of the date of application, the household will receive a lump-sum payment of coupons back to the original month of application. Should the certification be completed beyond 60 days from the date of application, the household will receive its current month's entitlement and retroactive benefits back to the month of application, as provided in § 273.17. State agencies are out of compliance if they do not fulfill all of their responsibilities and, as a result, exceed the 30-day processing standard.

Requiring that States hold applications pending, when the State is at fault, eliminates unnecessary reapplications by the household and maintains the household's entitlement to benefits retroactive to the period of application.

If deductions are questionable and not verified, the household will not be denied or held pending if otherwise eligible. The application should be processed without allowing the unverified expense. Only if such expense is the difference between eligibility and ineligibility should the application be pended. If the household can demonstrate that the State agency contributed to its inability to properly verify such expenses (such as scheduling the interview or asking for verification too late in the process for the household to timely comply), and the household subsequently provides the necessary verification within 60 days of the initial date of application, the household will be entitled to any benefits lost as a result of the disallowance of the expense.

RESIDENCY

The proposed regulations continue to prohibit any durational residency requirement and yet require that an individual live in a project area to receive food stamp benefits. The proposed regulations emphasize that a fixed residence is not required. Physical presence within a project area coupled with the intention to reside there at least temporarily is sufficient, except that persons in a project area solely for vacation purposes are not to be considered residents for food stamp elgibility. Thus, presence at a migrant camp site would meet the residency requirement.

CITIZENSHIP AND ALIEN STATUS

Citizenship. The Act establishes five categories of aliens eligible for program benefits. Among those omitted from the list are aliens not lawfully present, alien visitors, tourists, diplomats, temporary laborers, and trainees.

The proposed regulations require verification when the applicant declares that a member of the household is an alien. The Immigration and Naturalization Service (INS) has assured the Department that eligible aliens should have no difficulty in providing proper identification for verification purposes. Actual documentation is necessary when the applicant declares a household member to be an alien since many aliens might not know into which technical alien category they fall under Federal law.

Income and resources. In accord with the House Report, the proposed regulations disregard the income and resources of an ineligible alien when determining eligibility for the other household members. Likewise, the individual is not counted in determining the applicable eligibility limits or level of benefits for the household. Consideration of those resources and income could result in the reduction of food stamp benefits for the remainder of the household because of the technical alien status of the ineligible member, even though the reaminder of the household is already receiving reduced benefits since the ineligible member is not counted in determining the vaule of the allotment.

TAX DEPENDENCY

The Act of 1977 has made the current tax dependency critieria as amended, more stringent by declaring that a student 18 years of age or older is ineligible if the student is properly or *could be properly claimed* as a dependent by a taxpayer in an ineligible household, whether or not the taxpayer intends to claim the student as a dependent.

The House Report notes that, "* * * what matters is the actual fact of considerable support of the person applying for food stamps and not how that support is handled for income tax purposes by a person not seeking eligibility." The report explains that the "* * * complexity of the tax dependency critieria was singled out as a major concern of state and local administrators * * *." In addition "* * * community groups cited * * * certification delays caused by the tax dependency criteria as a significant problem for student applicants." To avoid these delays and complications, the Department proposes that information provided by the student can be sufficient for a determination of tax dependency. Verification of tax dependency status is required if information provided on the application is inconsistent, contradictory or other documented evidence indicates likely tax dependency stauts. A review of the student's source of income for educational and living expenses will assist in determin-

ing if the information provided is inconsistent or indicates likely tax dependency.

Only when an application indicates that the student is a tax dependent, or other information would indicate that the student could be claimed as a tax dependent,[21] would the student be asked to supply the taxpayer's household size and gross income. If the student does not know the tax dependent status or is unable to provide the taxpayer's household size and gross income, a simplified verification form will be used in corresponding with the taxpayer household. The verification form will require the taxpayer to state whether the student is claimed or could be claimed as a tax dependent. If the student is or could be claimed as a dependent, the taxpayer will be required to provide basic information that will facilitate a determination of the taxpayer household's potential eligibility for food stamps based on gross income. This gross income analysis should expedite certification and reduce the detail required of the eligibility worker as well as the taxpayer.

Income and resources. In situations where additional verification is required, remaining household members may be certified while awaiting the student member's verification. In such instances, the income and resources of the student are not considered in determining eligibility or coupon allotment levels. This eliminates the possibility of penalizing the remaining household members because of tax dependency complications.

This procedure strikes a fair balance between the need to enforce the statutory tax dependency restrictions and the student's interest in a timely determination of eligibility while taking into consideration the food needs of the rest of the student's household.

Taxpayer failure to supply requested verification may result in a denial of program benefits to the student. However, students will be allowed to present other evidence to support their program eligibility despite taxpayer failure to cooperate.

[21] The Act of 1977 focuses on whether the student is a "* * * dependent child for Federal income tax purposes * * *." Normally, a child is a dependent of the taxpayer's household if that household supplies over half of the child's support. That support includes cash payments, a place to live, clothes, medical and dental care, and the cost of education. IRS does not count scholarships in determining the total amount of support provided to the student.

Federal income tax law also may define a child as a dependent when less than half of the support is provided by the taxpayer's household. These situations involve students receiving support under multiple support agreements or under separation or divorce arrangements. These circumstances will be resolved by use of the special verification form when appropriate.

WORK REGISTRATION

Congress retained the requirement that able-bodied household members must register for and accept suitable employment as a condition of eligibility. Hence, with only very specific exceptions, all household members between the ages of 18 and 60 must register for work at the time of application and every six months thereafter. The House Report explains that the provision was designed to strenthen the work requirement through some modifications but to retain its current structure. The report notes that, to the extent that the Employment Service is involved, joint regulations between USDA and the Department of Labor (DOL) should be established concerning the manner in which work registration requirements shall be administered. However, transferring the point of actual registration to ES Offices was prohibited. Those parts of the legislation that require joint rulemaking with DOL will be covered in subsequent rulemaking.

In most cases, the work registration provisions contained in these regulations are required by the Act or specifically addressed in the legislative history.

Exemptions from work registration. Several changes were made in defining those required to register for work and those exempt. Congress lowered the maximum work registration age from 65 to 60, exempted persons registered for work under the AFDC–WIN program or the unemployment insurance (or unemployment compensation) programs; provided an exemption to the caretaker of a child as long as another member in the household is work-registered, and exempted those working at least 30 hours per week or working less than 30 hours but earning an amount equivalent to 30 hours times the Federal minimum wage. In addition, the law allows an exemption to those who care for dependent children under the age of 12 (previously under 18), requires students 18 or over to register for full-time work during any school recess of more than 30 days and further requires college students to register for 20 hours of work per week or to earn an amount equivalent to 20 hours times the Federal minimum wage during the school year. College students who are participating in Federally financed work study programs and certain students who are heads of households or are otherwise exempt from work registration would not have to register for 20 hours work per week.

Providing exemptions to unemployment compensation insurance (UI) recipients and persons in households, where one member is a already work-registered, and decreasing the maximum work registration age from 65 to 60 avoids duplicative work registration efforts unlikely to lead to any increased employment. Lowering the age of the dependent child from 18 to 12 means fewer people will be able to claim an exemption from work registration to care for a dependent child. College students who were previously totally exempt must now fulfill work registration requirements.

With regard to students, Congress passed two requirements. First, a student 18 years of age or older and enrolled at least half-time at the high school or college level must register for and accept full time employment whenever any recess or vacation exceeds thrity days. The second requirement applies only to students enrolled in institutions of higher learning. During the regular school year, students enrolled at least half-time must register for 20 hours work per week. Exceptions to this requirement apply to students already working 20 hours or working less than 20 hours if they are earning an equivalent of 20 hours times the Federal minimum wage. Additionally, students participating in a federally financed work-study program, or students who are heads of households containing one or more other persons to whom the student supplies more than half of the individuals' support, or students already exempt for another reason, such as being a WIN registrant, are also exempt.

Additionally, the Department has reviewed the work exempt status of Volunteers in Service to America (VISTA) program participants. Since VISTAs receive compensation for the service provided, and are considered to be employed, no change in VISTA work registration status is proposed.

Voluntary quit. Congress added a provision to disqualify for sixty days a household where the household head quits a job without good cause, unless the household was on the Food Stamp Program at the time of the quit. This provision will be discussed in subsequent rulemaking.

Job search. Implementation of this provision will be accomplished in subsequent rulemaking.

Failure to comply. The Department proposes that the penalty for failure to comply with the work registration requirements without good cause be set at sixty days, or until the household has come back into compliance with those work registration requirements. This proposal is consistent with the House Report and with the 60-day disqualification specified in the Act for voluntarily quitting a job.

Additionally, the Act distinguishes between all students over 18 who fail to comply during a 30-day recess and college students who fail to meet the 20 hours work requirement during the school year. In the former case, as provided by the Act, failure to comply results in disqualification of the entire

household; in the latter, disqualification pertains to the individual student.

Good cause. The House Report indicates that the current regulations on good cause be retained except that the proposed regulations allow a household member to reestablish eligibility for refusal to accept a bonafide offer of employment by accepting employment of less than 30 hours if the weekly earnings are equivalent to 30 hours times the Federal minimum hourly wage. The household can also reestablish eligibility by accepting other employment of less than 30 hours a week, as long as the earnings are equivalent to the job refused. This recommendation seems appropriate so as not to punish household members that obtain employment at the minimum wage, or higher, even though they refuse a job referred by the Employment Service.

Suitable employment. For a job offer to be considered suitable, the Act requires that the wage offered be at least the applicable Federal or State minimum wage, or if neither applies, 80 percent of the Federal minimum wage. Previously, a job paying as low as $1.30 could have been considered suitable work. Suitable work does not include any employment which interferes with "religious observances, convictions or beliefs." The House Report emphasizes that the "* * * Department should administer the work registration requirement in such a fashion so as to avoid infringing upon any individuals religious convictions and beliefs." For college students, work which disrupts class hours or that requires over 20 hours work per week may be considered unsuitable. Interference with class room attendance or the reduction in available study time beyond 20 hours may seriously impede the person's ability to obtain an education.

The House Report noted that *Jaramillo* v. *Santa Clara County*[22] "* * * held invalid the Department's regulation and instruction limiting the term 'strike' to mean only strikes which have not been determined to be unlawful by a court decision (injunction or other order) currently in force * * *. The court noted that Congress in the Act of 1964 had not itself made any distinction between lawful and unlawful strikers, but instead had expressly, unqualifiedly, and mandatorily provided that households with a striking member not be denied participation on that ground alone. Accordingly, the court found that the Department had exceeded its authority in adopting such a rule."

The House Report observes that the House Committee failed to make "any distinction between lawful and unlawful strikers" in the Act of 1977. In fact, the 1977 statutory language is basically identical to that 1964 statutory language which was determined, by *Jaramillo* not to allow for the disqualification of "unlawful" strikers. In consideration of these developments, the Department decided to carefully reexamine its regulatory position on strikers regarding the Act of 1977.

Under the current regulations, the Department has experienced difficulty in defining and fairly applying the phrase "unlawful strike." Court orders about a particular labor dispute often concern only a particular union. Sympathy strikers, not under court order, can be eligible while original strikers are declared ineligible. Courts have not been consistent in determining whether a given strike was "unlawful." Moreover, similarly situated strikers in adjacent States could be subject to variously worded injunctions issued by different courts. The same court could issue several decrees, one after the other, regarding the same dispute. Thus, persons working in the same industry a few miles from each other could be subject to different and changing court decrees. Each of these injunctions would have to be carefully reviewed to determine food stamp eligibility.

To avoid the inequities and uncertainties caused by the current policy, the Department recommends a much more precise and uniform striker disqualification provision.

The Department proposes that "suitable employment" include employment at a site or plant subject to a strike which has been enjoined pursuant to court order issued under section 208 of the Labor-Management Relations Act (29 U.S.C. 178), commonly known as the Taft-Hartley Act. To enjoin a strike under the Taft-Hartley Act the appropriate Federal court must determine, upon petition of the President of the United States through the Attorney General, that a "* * * threatened or actual strike affecting an entire industry or a substantial part thereof * * *" will "* * * imperil the national health or safety * * *." (29 U.S.C 178). The U.S. Supreme Court has explained that the Taft-Hartley Act recognizes "* * * certain rights in the public to have unimpeded for a time production in industries vital to the national health or safety." *United Steel Workers of America* v. *U.S.*, 361 U.S. 37 (1962).

The Department proposes, in those critical and unusual situations, that the entire household of the work registrant who refuses an offer of employment at the struck plant shall be disqualified. Even a limited issuance to the household could undermine the intent of the Taft-Hartley Act, at a time of national crises and could prolong the strike enjoined by court order.[23]

Registrants for other programs. Public assistance households residing in project areas with no available WIN program must register for work as any other food stamp household. However, State agencies may be granted an exception to this requirement for public and general assistance households if they have work registration procedures at least as strict as those for regular food stamp work registrants. Sanctions against household members which fail to comply must be equivalent to those in the Act. These procedures would avoid "double" registration for work by these households while assuring that equal or more stringent work requirements are being applied.

RESOURCES

Uniform standards. The Food Stamp Act of 1977 establishes uniform household resource limits which must be applied to all households, including those in which all members receive public assistance and/or supplemental security income.

Maximum allowable resources. The Act raises the maximum resource limit from $1,500 to $1,750 for all households except those consisting of two or more persons when at least one person is 60 years of age or older. The statutory resource limit for these elderly households will remain at $3,000.

Definition of resources. The Act requires that the Department, in establishing inclusions and exclusions from resources, shall "* * * follow the regulations in force as of June 1, 1977, and shall, in addition * * *", include as resources certain specified types of vehicles and mobile or vacation homes. Those June 1 regulatory exclusions include, among other resource exclusions: (1) income producing property which is producing income consistent with its fair market value; (2) property deemed essential to the employment of a household member; (3) the fair market value, less encumbrances, of one licensed vehicle; (4) household goods and personal effects; and (5) resources whose cash value is not accessible to the household.

A major concern of Congress was the treatment of the value of automobiles and other licensed vehicles in determining a household's eligibility. The Act and the House Report provide a

[22] United States District Court, N.D. Calif., April 19, 1976 (No. 75-1445 WTS).

[23] The legislative history of that labor statute notes that the emergency provisions "* * * provide for the extreme cases which threaten national paralysis." 93 Congressional Record 4281. U.S. Supreme Court Justices Frankfurter and Harlan explained that those provisions "* * * were the comprehensive interest of the community [and] * * * they must be construed to give full effect to the protections they seek to afford." 381 U.S. at 54.

detailed framework for determining the resource value and exempt status of vehicles.

The law requires that licensed vehicles will be totally exempt if used "to produce earned income." To qualify for this exemption, the vehicle must actually be involved in generating income, e.g., a taxi, tractor, or truck. Vehicles used only for transporting household members to work will not qualify as income producing vehicles.

The Department has some discretion in determining which vehicles qualify for the exemption as "income producers." The proposed regulations define income producing vehicles as those vehicles which are used primarily (over 50 percent of the time the vehicle is used) to produce income or those which annually produce income consistent with their fair market value. If necessary to determine if a vehicle is exempt, income produced by the vehicle on a seasonal basis will be averaged over the year to determine the annual income. The exemption will also apply during temporary periods of unemployment when the vehicle is not in use. This defintion is fair to households as it allows an exemption for vehicles used mostly for producing income, even if the business enterprise is not earning a profit at the time of certification. It also exempts vehicles annually earning income consistent with the fair market value, even if used less than 50 percent of the time for income producing purposes. This definition should protect the program from abuse by setting specific and uniform standards for income producing vehicles, rather than extending the exemption to all vehicles which are occasionally used to produce income, e.g., a snowmobile or boat which is used by the household mostly for recreation and which is rented occasionally.

The law requires that all nonincome producing licensed vehicles will be individually evaluated for fair market value. The portion of the value which exceeds $4,500 will be counted in full toward the household's resource level, regardless of any encumbrances on the vehicle. To determine the fair market value of vehicles, the Department proposes, in accord with the House Report, using the publications written for the purpose of providing guidance to automobile dealers. The publications are usually referred to as "blue books." The "average trade in value" or "wholesale value" as listed in blue books will be considered the fair market value if the car in question is in average condition for its age. If the car is in less than average condition for any reason, such as body damage or inoperability, the household will be given the opportunity to present evidence of the actual value from a reliable source. If such an appraisal shows that the car is worth less than blue book value, the State agency will assign the lesser value as the fair market value.

The "blue books" referred to in the House Report, such as the "NADA Used Car Guide Book," are updated monthly and are universally available for reference. The Department proposes that the "blue books" used by the State agencies be updated at least once every six months. Reliance on these estimates greatly simplifies cost determinations and program administration. Use of "the average trade in value" or "wholesale value," instead of the average retail value, establishes an appraisal the best reflects the price that most households would likely receive for vehicles sold or traded in.

The law also requires that nonincome-producing licensed vehicles, other than the household's primary vehicle, also be evaluated for equity value (fair market value minus encumbrances), if the vehicles are not necessary for household members to seek employment or to transport household members to and from employment. As is currently the case, the equity value will be counted toward the household's resource level, except in those few cases where both equity and fair market value for the same vehicle must be considered. This situation is dealt with below.

In summary, the Act requires that each licensed vehicle be handled as follows: First, it will be evaluated to determine if it is exempt as an income producer. If not exempt, it will be evaluated to determine if its fair market value is more than $4,500. If worth more than $4,500, the portion in excess of $4,500 for each vehicle will be attributed to the household's resources. The vehicle will also be evaluated, to see if it is equity exempt as the household's only vehicle *or* if it is equity exempt as necessary for transportation to work. If not exempt, these regulations approved by Congress require that the value the household has invested in the vehicle (fair market value less encumbrances) will be considered as a resource. If both the fair market value, in excess of $4,500, and the equity value are considered for a particular vehicle, the amount counted as a resource shall be the greater of the two. Otherwise, if a household's "second car" were worth $5,000 and were not necessary to transport a household member to work, the State agency would have to consider not only the $500 excess fair market value, but also the equity value of the car. To avoid this double counting (excess value plus equity value) it is proposed that the greater of the two amounts will be counted as a resource.

Home and lot exclusion. In the past, The Department has received numerous comments regarding difficulties State agencies have encountered administering the Department's current resource exemption for "* * * the home and lot normal to the community". There has been no uniformity or consistency in the application of this exemption. This area is targeted for review as part of the Department's study of assets, which is mandated by the new Act. In the interim, for purposes of consistency and program efficiency, the Department proposes to exempt the home and all surrounding property which adjoins the plot on which the home is located. This standardized and revised definition of home and lot normal to the community is easy to apply and will eliminate the need for State agencies to establish acreage limits or lot size limits. It will also establish a uniform national policy and eliminate the need for the Department to determine if State-approved acreage limits are appropriate.

Income-producing property exclusion. As required by the regulations in force on June 1, 1977, which were incorporated by the Act, the Department proposes that property (such as land used for farming or houses used for rental purposes) be allowed a resource exemption if annually producing income consistent with fair market value, or if essential to the employment or self-employment of a member of the household.

The Department proposes allowing an exemption for vacation homes only if the home is annually producing income consistent with the fair market value. If the vacation home is not producing adequate income, the household will not be able to claim an employment exemption for the property as it would with non-vacation property. This proposal is consistent with the House Report which favored a restrictive approach to vacation home exclusions.

Also excluded from resources would be any other property which is needed for purposes of employment, such as the tools of a tradesman or the machinery of a farmer, which are deemed essential to the employment of a household member. Property sold under an installment contract, even where the title is temporarily retained, would be exempt as an inaccessible resource to the seller since the property could not be sold again. The value of the installment contract, itself, is also exempt since it would be producing income consistent with its value.

Disaster payment exclusion. The Department proposes a resource exemption for governmental payments which are made to a household to restore the household's home which has been damaged in a disaster. This exemption will not apply unless the household is subject to a legal sanction if the funds are not used as intended. Under the

proposed regulations, governmental payments which are made to restore property damaged in a disaster are already exempt as income in the month received. The effects of the disaster and the shortage of supplies or service often make it not possible for households to repair damaged homes the same month the governmental payment is received. Therefore, the Department feels that the household should not have the funds, which are earmarked for that purpose, counted as a resource in the following months if the household is unable to purchase the necessary replacement or repairs. Counting such funds as resources could disqualify needy households which have recently suffered disaster damage which has caused both a loss of income and a loss of property.

Trust funds. The Department proposes to continue the exemption for resources which have a cash value that is inaccessible to the household. To prevent confusion regarding trust funds, a new paragraph has been added to the regulations to explain when a trust fund will be considered inaccessible.

Federal law exclusions. The Department proposes allowing exclusions for only those funds which are cited in Federal law as specifically exempt or intended to be exempt as resources for the Food Stamp Program. A list of these statutory resource exclusions is contained in the regulations.

Handling of excluded funds. The Department also proposes a system for identifying excluded resources if the funds are commingled in a bank account with other resources which are not excluded. Excluded resources will retain the exclusion indefinitely, if kept in a separate account easily identified by the State agency. If exempt resources are commingled in an account with other funds, the exempt resources will retain an exempt status for six months from the date of deposit. If the household's total resources exceed the allowable limits after that time, the following method is proposed to determine what portion of the total resources are exempt funds. The household will establish for the State agency the total amount of exempted funds which were deposited, the total amount of withdrawals subsequent to the date of deposit, and the current balance. All withdrawals after the deposit of exempt funds will be treated as withdrawals from all remaining exempt funds. The earliest deposited exempt funds will be considered exhausted first. Suppose $400 of exempt funds is deposited on December 1, into an account with $200 in nonexempt funds, and $100 more of exempt funds is deposited into that account on December 15. If $300 is withdrawn on June 1, $200 worth of exempt funds remain. When the amount withdrawn equals or exceeds the amount of the exempted funds, the exempted funds will be considered spent. The Department feels that this method is equitable because it allows the participant to provide evidence that the exempt funds have not been spent; and yet in most situations should not be overly complex. In effect, this rule assumes that commingled excludable resources are exhausted after a six-month time limit. The participant is then, however, free to provide evidence that the exempt funds have not been spent. This may be accomplished by presentation of a current bank book or any other verification that would support the participant's statement.

Transfer of resources. The Act prohibits households from transferring resources for the purpose of qualifying or attempting to qualify for food stamp benefits. However, this rule does not restrain the bona fide sale of property for a price at or near fair market value or any sale of property not done in an attempt to qualify for benefits. Likewise, the transfer of assets which would not otherwise affect eligibility is not affected by this provision. For example, transferring a family heirloom to a non-household member would not affect eligibility since that particular property is exempt as a personal effect. Also, a household gift of $500 to a relative would not be an improper transfer unless that $500 (or a portion thereof) would have affected the household's eligibility by reducing the household's assets to within the resource limit and the transfer was made with the intent of qualifying for program benefits. The Department also proposes that households be permitted to transfer assets to other members of the household, because such transfers would not affect eligibility.

The transfers to be considered are those which involve non-exempt resources, which affect eligibility and which are transferred for less than fair market value for the purpose of qualifying for food stamps.

The first issue to arise concerning asset transfers is the length of time which has expired between the time the asset was transferred and the time the household makes application for food stamps. Far ranging investigations of asset transfers are likely to greatly delay the certification process and unreasonably burden certification offices. For that reason and because of the difficulties in establishing intent, the Department proposes that the assets transferred in the three months prior to application or during the prior certification period be taken into consideration. At the time of application, initial applicants will be asked if they have transferred any assets in the past three month period. At recertification, households will be asked about transfers during the previous certification period. If a household reports that it has transferred assets which would have affected eligibility, the State agency must then explore the basis for the transfer to determine if it was knowingly made to qualify for program benefits.

The proposed regulations require State agencies to evaluate each transaction individually to determine whether or not the transfer affects eligibility, and the reason for the transfer. If it appears that the transaction was for fair market value, detailed verification should not be required for program eligibility.

If it is established that a household knowingly transferred non-exempt assets to qualify or attempt to qualify for program benefits, the law requires that the household be disqualified for a period of up to one year from the date of the discovery. The Department proposes that the period of the disqualification be directly related to the value of the asset transferred. A chart demonstrating the proposed periods of disqualification is printed in the proposed rules. The period of disqualification increases as the value of the resource transferred increases. The establishment of strictly defined periods of disqualification will eliminate the need to deliberate over a suitable period of disqualification and will ensure uniform national disqualification periods. The sliding scale establishes an appropriate relationship between the value of the transfer and the period of disqualification.

INCOME AND DEDUCTIONS

Income eligibility standards. The Act provides that the income standards of eligibility shall be the annual nonfarm income poverty guidelines prescribed by the Office of Management and Budget (OMB). To insure that these guidelines are current, the Act requires the Department to make an annual adjustment in the OMB poverty guidelines effective July 1, 1978. The adjustment is computed by multiplying the most recent income poverty guideline by the change between the average 1977 Consumer Price Index (CPI) and the CPI for March 1978 and rounding the result in accordance with procedures prescribed by OMB. The income poverty guidelines for future periods are to be similarly adjusted.

The adjustment is necessary to correct an inequity produced by the current method of establishing income poverty guidelines. The new poverty lines are announced each spring, based on the previous calendar year's average CPI. The poverty line announced in the spring of 1978 will reflect prices during the calendar year 1977. Since those poverty lines would be used in

the Food Stamp Program from July 1978 through June 1979, they could be two years behind by the end of the time period. The adjustment lessens this problem by using the more recent data on changes in price.

Below are the income eligibility standards, prior to rounding, which would have existed on January 1, 1978, if the legislation had been implemented at that time. These standards were derived by taking the OMB nonfarm income poverty guidelines published in May 1977 and increasing them by the percent change between the average 1976 CPI and the CPI for March 1977.

	Monthly	Annual
1	$259	$3,104
2	342	4,107
3	426	5,111
4	510	6,114
5	593	7,118
6	677	8,121
7	760	9,124
8	844	10,128

Add $84 monthly or $1,003 annually for each additional household member.

The income eligibility standards which will be effective after July 1978 cannot be computed until the OMB poverty guidelines are published in May 1978, and then increased by the percent change between the average 1977 CPI and the CPI for March 1978. These income limits apply to household income *after* application of all income exclusions and deductions. Thus, households with gross income in excess of the guidelines would be eligible for program benefits.

For outlying areas. The Department proposes to use the same income eligibility standards in Puerto Rico, Guam, and the Virgin Islands as in the contiguous United States. This proposal is consistent with the practices of other federal programs that use eligibility standards based on the poverty line. If separate eligibility standards were calculated for these outlying areas employing the same methodology used to determine the poverty line for the contiguous United States, the standards for Puerto Rico, Guam, and the Virgin Islands would be higher because of the high cost of food in these areas. However, the Food Stamp Act requires that the income eligibility limit in Puerto Rico, Guam, and the Virgin Islands not exceed the OMB poverty guidelines for the 48 States. Therefore, a separate calculation for these areas would be pointless. The Department will monitor use of the established poverty guideline in the outlying areas and may propose changes in the future, if appropriate.

For Alaska and Hawaii, the regulations follow the statutory directive that the net income limits be based on the OMB poverty guidelines specifically issued for those States.

Definition of Income. The Act states that household income "* * * shall include all income from whatever source * * *," except for specified exclusions and deductions. The House Report notes that its "* * * broad-guaged definition of income [is] rational and equitable, since [the Committee] intends to measure income as broadly as possible to be fair to all recipients as well as the tax-paying public and not simply by reference to purchasing power available for food." The proposed regulatory definition of income follows the all encompassing language of the statute. Monies not specifically cited as includable will be considered as income, unless specifically excluded.

The regulations distinguish between earned and unearned income to allow application of the statutory deduction for 20 percent of earned income. The regulations continue to define training allowances as earned income. The House Report notes that "* * * the term 'earned income' * * * appl[ies] to any household member who is involved in any training program recognized by any Federal, State, or local government agency." To simplify program administration, the proposed regulations limit the definition of a training allowance to those payments received directly from a training program recognized by the Federal, State or local government, such as WIN. Allowances received by trainees from other sources will be treated as unearned income. The House Report emphasizes that the earned income deduction applies only to nonexcluded earnings. For example, any portion of the training allowance which is excluded as a reimbursement for work-related expenses shall be disregarded prior to computing the deduction.

The regulations also propose treating certain assistance payments as earned income. This policy applies to assistance payments which are provided in lieu of wages or salary, to individuals required to work as a condition of receiving the assistance. In some areas, persons seeking general assistance must take public service jobs, without compensation other than the assistance payment and, perhaps, an additional work allowance. In such cases, since the individual actually works for the assistance payments, the household will receive the deduction for work related expenses the same as any other employed household.

While the statutory definition of income is broad, the Department believes that there are two instances of "payments" which are not encompassed in the income definition and are, therefore, disregarded under the proposal. These payments are recoupments of prior overpayments and the surrender of child support payments to the Title IV-D agency (Child Support Enforcement Program). In the typical recoupment situation, a household may be overpaid cash benefits in another program for a period of time. The agency which issued that overpayment then lowers the amount of its current payment below the proper level to recoup the full amount of the overpayment over a period of time. Thus, an AFDC household entitled to $100 per month, which received $120 per month for five months, might then be issued only $80 per month for the next five months. Under the proposed regulations, the household should have the entire $120 considered income during those months that the household is receiving the excessive payment of $120 per month. When the household's payment is reduced to $80 per month, the Department proposes to count the household's income as $80 a month. Since the $20 recoupment had previously been counted in income, computing benefit levels based on $100 per month would result in double counting of the $20 per month. In certain situations, the prior overpayment might not have been actually used to calculate food stamp income because the household did not apply for food stamps until after the recoupments began. However, to simplify program administration and avoid certification delays, the Department proposes the general rule that recoupments not be considered as income.

Title IV-D of the Social Security Act involves the Federal and State governments in the enforcement of collection of child support payments. Under the terms of Title IV-D, a child support payment due to an AFDC household must go directly to the Title IV-D agency rather than to the family. The State agency then forwards the child support payment to the household by adjusting the household's AFDC payment to reflect the amount of child support received by the Title IV-D agency. For food stamp purposes, the AFDC payment to the household, but not the child support payment which went directly to the Title IV-D agency, is considered income to the household. However, there are limited situations in which the AFDC household receives the child support payment directly. The household must then turn the payment over to the Title IV-D agency to maintain their AFDC eligibility. The child support payment is then used by the State agency to adjust the AFDC payment in the same manner as if the Title IV-D agency had received the payment directly. To maintain equity between these households, the Department proposes not to count as income child support payments surrendered by households to the Title IV-D agency.

The definition of income specifies that the income of individuals disqualified from program participation,

less that member's prorated share, shall continue to be attributed to the household from which the member was disqualified. The regulations provide that the prorated share is computed by dividing the disqualified member's gross income, less exclusions, equally among all household members, including the individual being disqualified. The disqualified member's prorated share is then subtracted from the individual's gross income and the remaining amount is attributed to the household as available income. This procedure is explained more fully under the section of the preamble entitled "Certifying Households with Special Income Circumstances."

INCOME EXCLUSIONS

1. *Inkind benefits and vendor payments.* The Act provides for the exclusion of "* * * any gain or benefit which is not in the form of money payable directly to the household." As the House Report notes, this provision would exclude from income "* * * inkind benefits, such as meals, clothing, or shelter, [and] * * * money payments made on behalf of a household to another party by a third party * * *," commonly known as vendor payments. Neither the statute nor the legislative history makes any distinction between public and private vendor payments, nor do they limit the vendor payment exclusion by the type of expense being paid. Therefore, the proposed regulations exclude any payments made on the household's behalf by a third party from that party's funds. For example, rent subsidies from the Department of Housing and Urban Development (HUD), payments to service providers under Title XX of the Social Security Act, and mortgage payments by a nonhousehold member, such as an absent spouse, are all excludable vendor payments.

The House Report makes it clear that "* * * any money *payable* to a household, but diverted from it to a third party, either of the household's own free will (e.g., an arrangement with an employer to deduct the rent and mail it to the landlord) or involuntarily (e.g., a court-ordered garnishment of wages) would be counted as income. * * *" Even though the household does not directly receive these monies, the entire wage is considered income and no exclusion is allowed as a vendor payment. Otherwise, households could intentionally alter their financial arrangements so as to increase food stamp benefits.

Similarly, money deducted or otherwise diverted from the household's public assistance grant for purposes of managing the household's expenses shall be treated as income and not excluded as a vendor payment. These situations (sometimes termed protective payments) typically arise where the household has demonstrated inability to properly budget the grant. As with garnishments, this policy prevents households from increasing food stamp benefits by altering their financial arrangements. This policy does not apply to payments over and above the AFDC grant which are paid directly to service providers by the State agency, such as payments under Title XX.

Except for these diverted payments the regulations will exclude payments which go directly to a third party, but will not exclude monies actually received by the household, even though earmarked or legally obligated for a particular expense. An exception is proposed for certain experimental HUD programs in which a rent subsidy is paid to the household. In order to maintain a consistent policy on treatment of HUD housing subsidies, and to avoid interfering with the results of these existing experimental projects, the regulations propose to exclude as vendor payments both the HUD housing subsidies which go directly to the landlord and the payments, in those few experimental projects, which go through the household to the landlord.

2. *Irregular income.* The Act excludes "* * * any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $30 in a quarter." As the House Report notes, this "* * * exclusion is reasonable because counting and documenting such income * * * would present administrative difficulties and because the amounts of money involved are too small to justify [the needed administrative time]." The proposed regulatory provision follows the language of the Act.

3. *Tuition and mandatory fees.* The legislation continues to count scholarships, deferred education loans, fellowships, veteran's educational benefits, and the like as income. Instead of the current education deduction, the Act substitutes an income exclusion to the extent that the above benefits are used for "tuition and mandatory school fees at an institution of higher education or school for the handicapped." The House Report points out that the "* * * idea is to count as income that portion of a scholarship that goes for living expenses, but not to count the portion that is clearly unavailable because it is used for tuition and fees." The Senate and House Reports, read together, indicate that the statutory phrase "institution of higher education" would include vocational, correspondence or technical schools. The Department proposes adopting this broad definition so as to treat students receiving the above educational benefits in a similar fashion.

Additionally, the House Report provides that the statutory phrase mandatory fees "* * * would encompass an *expense required* by a school in order to attend or enroll in a particular course. * * *" [Emphasis added.] The House Report recognizes that lab fees and expenses for equipment (e.g., a microscope) which are required for *all* students taking a particular course would be an excludable mandatory fee. However, expenses for books, transportation and personal "maintenance" are listed by the House Report as examples of nonmandatory expenses. Normally, uniform expenses for these items would not be required by institutions. For example, books that are required reading for courses may be borrowed or purchased used.

While this regulatory provision may seem unfair to some students, on balance, the requirement that the expense, itself, be uniformly required by the school should reduce program abuse and avoid the administrative inconvenience and the delay of determining and verifying disparate individual costs to each student for numerous items. However, reimbursements for certain educational expenses which are not mandatory fees are excludable under § 273.9(c)(5) of the proposed regulations.

4. *Loans.* The legislation continues the current income exclusion for "all loans other than educational loans on which repayment is deferred." The exclusion for loans covers monies obtained from both private and commercial sources. The purpose for which the money is borrowed will not affect the exempt status of the money. In accord with the House Report, the proposed regulations mandate that, when verification of a loan from private sources is needed, a signed statement by both parties attesting to the loan is sufficient. No formal payment schedule is necessary.

5. *Reimbursements.* The Act excludes reimbursements "* * * which do not exceed expenses actually incurred and which do not represent a gain or benefit to the household." The legislation extends the current exclusion for volunteer reimbursements to others, such as employees and trainees who receive work or training related reimbursements.

The House Report makes clear that flat allowances received in advance of an expected expense should be treated as a reimbursement, as well as monies paid after the expense has been incurred. It is equitable that the timing of compensation for expenses borne by the participant not determine whether or not the compensation should be excluded. Monthly travel allowances provided to students or trainees are, therefore, excludable as reimbursements.

The House Report does place two clear limitations on what monies can

be excluded as a reimbursement. The first limitation is that the reimbursement not exceed the actual expense. However, to avoid verification complications, the House Report suggests that reimbursements not be considered excessive unless the household or the provider of the reimbursement indicates the amount may be in excess of actual costs. Since most reimbursements are for small amounts, the State agency is not obligated to check with providers about the level of reimbursements or the amount of actual expenses, but should do so in cases where the claimed reimbursement is inconsistent with other known information. Serious delays could result if the State agency had to verify numerous individual expenses covered by reimbursements. In those cases of excessive reimbursement, however, the amount up to the actual expense is excludable; the amount in excess of actual costs is income.

The second statutory limitation is that the reimbursement not be a gain or benefit to the household. The phrase "gain or benefit" raised issues unresolved by the legislative history. How should "indirect" or "intangible" benefits (education, travel, or practical experience) be treated? If the person retains a tangible item (book, uniform or tool), is there a gain and what is the amount of the gain? Is there always a "benefit" if the reimbursement covers an expense that particular household would normally have borne on its own? If a uniform can be worn off the job, is there a gain and what is the amount of the gain?

The Department believes that payments received for normal living expenses of the household, such as rent, mortgage, personal clothing, or food eaten at home, will always represent a direct benefit to the household and therefore, should not be excluded. Most of these households would save money which would have otherwise been spent to cover these typical household costs.

However, to simplify program administration, reimbursements for intangible benefits other than normal living expenses and even reimbursements where the person retains a tangible item, such as a book, will not be considered a gain to the household. To involve the State agency in the complex problems of valuing indirect benefits or tangible goods would not be cost effective considering the small value usually associated with reimbursements. The regulations cite common examples of excludable reimbursements or allowances, such as the out-of-pocket expenses of volunteers, or job and training expenses for travel, per diem, or uniforms.

6. *Third-party funds.* The Act exempts ". . . money received and used for the care and maintenance of a third-party beneficiary who is not a household member." Such money flows through the household to the nonhousehold member and is spent for the nonhousehold member's maintenance. To the extent that the money is not used for the nonhousehold member's benefit, it must be included in household income.

This provision of the legislation does not exclude all monies paid to a third party, such as support or alimony payments. The legislation clearly provides an exclusion only for money which is received by the household on behalf of a nonhousehold member and is then used for the care and maintenance of that nonhousehold member. The provision excludes, for example, social security, public assistance or other payments received by the household for the care and maintenance of a nonhousehold member, e.g., a person receiving institutionalized care. In the event the State agency is unable to determine the amount of the payment that has been allotted for the nonhousehold member, the exclusion will apply on a prorated basis to payments received jointly where the nonhousehold member was intended as a beneficiary of the payment.

7. *Earnings of children.* The legislation continues the exclusion for monies received by a child under 18 who is at least a half-time student. As the House Report notes ". . . any attempt to include child earnings would create administrative complexity and result in the counting of small and difficult to document sums of money." The regulations, in conformance with the House Report, provide that the exclusion continues during school breaks, if the student intends to resume schooling at least half-time after the break. However, emancipated minors or students living alone are not allowed the exclusion as they do not qualify as children living with the household.

The Department recognizes that migrant families containing students may present an unusual problem. In some cases, the entire family may be paid for labor without differentiating which member earned what amount. Therefore, the student's earnings could not be identified and excluded. To simplify this problem, the regulations require that if the earnings of or amount of work performed by the student cannot be separated from that of other household members, the total earnings shall be prorated evenly among the working members and the student's prorated share will be excluded.

8. *Lump-sum payments.* The Act provides an exclusion ". . . for monies received . . . as nonrecurring lump sum payments." The House Report notes that the ". . . list of . . . nonrecurring lump sum payments is intended to be openended." Lump-sum payments made from other programs, such as AFDC, are excluded under this provision. While excluded as income, the Act requires that lump-sum payments be counted as a resource when received, unless they are otherwise excluded.

9. *Cost of self-employment.* The legislation continues the current regulatory exclusion for the costs of producing self-employment income. These exclusions are discussed in section 273.11, "Certifying Households With Special Income Circumstances."

10. *Income excluded by other laws.* The legislation recorgnizes an exclusion for "* * * any income that any other law specifically excludes from consideration as income for the purpose of determining eligibility for the food stamp program." The other Federal statutory exclusions need not mention the Food Stamp Program by name so long as it is clear that the exclusion applies to the Program. For example, section 356 of the Youth Employment and Demonstration Projects Act of 1977 provides: "Earnings received by any youth under this part [Youth Employment Demonstration Programs] shall be disregarded in determining the eligibility of the youth's family for, and the amount of, any benefits based on need under any Federal or federally assisted programs." Since that language excludes earnings from being considered for all Federal eligibility or benefit level computation purposes, the Department believes that it must be excluded for Food Stamp Program purposes.[24]

As new legislation is enacted it will be reviewed in light of its specific terms and the associated intent of Congress to determine if exclusion from food stamp income is appropriate. The list of legislative income exclusions found in the regulations will then be revised as required. State agencies will be immediately notified of any statutory changes which affect food stamp benefit computations. To insure uniform standards, State agencies are required to abide by the Department's interpretation of Federal law.

The list of legislative exclusions contained in the regulations does not include benefits excluded under the provisions of their own legislation if they are also excluded under other income

[24] An examination of the legislative history of the Youth Employment and Demonstration Projects Act of 1977 confirms the Departmental analysis that the all exclusive statutory language would apply to food stamp benefits. House Report 95-314 (May 13, 1977) notes that "[w]ithout such a provision, youth might be deterred from entering these programs by the prospect that their families' welfare or food stamp benefits would be reduced because of their participation."

exclusions of the Food Stamp Act of 1977. For example, the value of supplemental food assistance provided under the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), the National School Lunch Act (42 U.S.C. 1960(e)), and the Nutrition Program for the Elderly (Title VII, Older Americans Act of 1965), is excluded under the Food Stamp Act as an in-kind benefit, although those three laws also exclude their benefits from treatment as income by the Food Stamp Program. Similarly, refunds of Federal income taxes, including earned income tax credits, are excluded as nonrecurring lump sum payments.

Income deduction. The Act specifies deductions which will be allowed in computing a household's net income for determining eligibility and the level of benefits. The statutory deductions eliminate current itemized deductions for medical expenses in excess of $10 a month; ten percent of earned income, up to $30 a month; court-ordered support and alimony payments; mandatory payroll deductions; employment related child care payments; disaster or casualty losses; shelter costs in excess of 30 percent of income; and tuition and mandatory school fees.

Instead of these itemized deductions, the Act provides a monthly standard deduction for all households, a deduction of 20 percent of earned income, and a limited dependent care deduction for working households, and a limited shelter deduction for costs in excess of 50 percent of income after all other deductions. In the 48 States and the District of Columbia, the standard deduction will be $60 and the dependent care and shelter deductions will be limited to $75 a month. The $75 maximum will apply singly to either the dependent care or shelter deduction, or, if the same household is claiming both expenses, the combined deductions cannot exceed $75. In Alaska, Hawaii, Guam, Puerto Rico, and the Virgin Islands, the amount of the standard deduction will be adjusted by a ratio of current average itemized deductions for each of those areas to the average itemized deductions in the 48 States and the District of Columbia. Similarly, the limit on the shelter/dependent care deduction will be adjusted for each of these areas based on a similar comparison of shelter costs.

20 percent of earned income. Households with earned income recieve a deduction of 20 percent of gross earnings. This standardized deduction replaces itemized deductions for taxes and other mandatory withholdings, as well as the former deduction of 10 percent of earnings, up to the maximum of $30 per household per month. As noted earlier, the regulations specify that the 20 percent earned income deduction applies not only to wages and salaries, but also to certain training allowances, self-employment income, and certain general assistance payments.

Dependent care deduction. The Act allows a deduction for the actual costs of dependent care "* * * when such care enables a household member to accept or continue employment, or training or education which is preparatory for employment," subject to a $75 maximum.

As the House Report makes clear, this statutory dependent care deduction applies only to direct compensation to the care provider. If a live-in-attendant provides these services, only direct payments to the attendant will be permitted, not the cost of in-kind benefits, such as meals and lodging.

The report explains that this deduction also covers dependent care expenses which allow "job search" activities. To ensure uniform application of this rule and to reduce possible abuse, the Department proposes that a dependent care deduction for job seekers only be allowed if the effort meets the job search requirements, regardless of whether the job seeker is required to comply with job search requirements as a condition of eligibility or is doing so voluntarily.

Shelter deduction. The Act provides a deduction for shelter expenses to the extent that the allowable shelter costs exceed 50 percent of household income after all other income exclusions and deductions are allowed. The maximum excess shelter cost deduction is $75. However, if the household also claims dependent care expenses, the statute provides that the combined dependent care and shelter cost deductions for any household cannot exceed $75 in any given month. The proposal encompasses all the current allowable shelter costs such as rent, mortgage, insurance, taxes, and utilities such as, electricity, heating, cooling, and water costs. In addition, it has been broadened to include initial installation fees for utilities.

The proposed regulations also continue the use of standard utility allowances in lieu of actual utility expenses in computing the shelter deduction. Although the House Report would appear to prohibit utility standars, the House bill was amended in conference and the Act, as passed, allows the Department the flexibility of continuing the current standard utility allowance.

Congressman Foley noted in the *Congressional Record* (H. 9534; September 16, 1977) that the "* * * shelter deduction does not have to reflect as it did in the House version of the bill actual expenses paid * * * standard utility allowances could ease the paperwork burden on both recipient and administrator. * * *"

This standardization can also expedite the certification process and reduce errors and administrative costs. The Department proposes to mandate that all States establish a utility standard under guidelines provided by the Department. The regulations continue the present practice of allowing participants the option of choosing the standard utility allowance or providing verification of actual costs. The regulations propose that households be allowed to switch between actual utility costs and the utility standard at any time.

The regulations also propose two situations in which shelter costs would be allowed on a home not currently occupied by the household. If the home is temporarily not being used as a residence because of employment away from home, such as households involved in migrant labor, or abandonment of the home caused by a natural disaster or casualty loss, the household may claim both the costs of its actual residence and the costs of the unoccupied home for purposes of computing the shelter deduction. The household is still subject to the maximum $75 ceiling on total excess shelter/dependent care costs.

To claim these shelter costs the household must intend to return to the home and must demonstrate that the current occupants of the home, if any, are not claiming the same shelter costs for food stamp purposes. Additionally, the household is not entitled to an excess shelter cost deduction for homes which are rented. Leased homes are treated as self-employment property and, therefore, certain expenses of the home (but not payments on the principal) would be excluded as a cost of doing business rather than as part of the household's current shelter costs. (See the section of the preamble on self-employment income for a detailed treatment of this issue.)

Adjustment of deductions. In order to keep allowable deductions as up-to-date as possible, the legislation provides for cost of living adjustments. Starting July 1, 1978, standard deductions shall be adjusted semiannually every July 1 and January 1 to the nearest $5. The adjustments are to reflect changes in the Consumer Price Index for items other than food for the six months ending the preceding March 31 and September 30, respectively. The House Report specifies that amounts below $2.50 should be rounded down to the nearest $5 and amounts of $2.50 and above should be rounded upward.

The legislation provides that the combined shelter/dependent care deductions shall be adjusted only annually, beginning on July 1, 1978. The adjustments shall be to the nearest $5 increment to reflect changes in the shelter, fuel, and utilities components

of housing costs in the Consumer Price Index for the twelve-month period ending the preceding March 31.

DETERMINING HOUSEHOLD ELIGIBILITY AND BENEFIT LEVELS

Period of application. The Act requires that a household's initial benefits be issued within 30 days of the filing of an application and be retroactive to the period of application. The Act itself does not define the period of application. However, the House Report implies that the Department should review various accounting periods for eligibility determinations including consideration of periods of time of less than a month.

The proposed regulations define the period of application as the calendar month in which the household applies. The household's initial eligibility will be determined based on income received, expenses billed, and other relevant circumstances during the month of application. The calendar month is a convenient, easily understood and explained, measure of time. Households customarily incur, budget and pay expenses on a monthly basis. The month of application provides a workable time frame within which to determine household income and expenses. However, use of the month of application can adversely affect certain households which have no income at the time of application, but are anticipating income later in the month. Rather than alter the period of application for these households, to concentrate benefits only in the that portion of month when they are without income, the Department proposes special income handling rules to cover those situations. These rules are described in the preamble under the section entitled "Destitute households anticipating income."

The period of application is, in most circumstances, also the first month of the household's certification period. In rare instances, the household may be ineligible for the period of application, but anticipate, at time of application, changes which will result in eligibility for subsequent months, such as an anticipated loss of income. In those instances, the household will not be required to return in the subsequent month to file a new application, but may be both denied for the period of application and certified for a subsequent certification period based on a single application. In this way, households do not have to file an additional application and the State agency can save administrative time and cost. Additionally, if income is expected to change from one month to another during the certification period, the State agency may vary the household's benefit level from month to month within that certification period rather than assigning a shorter certification period.

Determining income. The Act requires the State agencies to consider both the income received in the 30 days prior to application as well as the income anticipated for the remainder of the certification period to determine the income to be used in determining eligibility and the level of benefits. According to the House Report, the income from the last 30 days is used "* * * solely to find out whether the income actually received in those 30 days offers a sufficiently strong basis to predict precisely what income would be actually available in the upcoming certification period. * * * The past is thus not totally excluded from the purview of the certifier, but it is subordinate to the central task of reasonably predicting the future availability of funds."

The regulations continue the current policy of basing eligibility and benefits on anticipated income. However, the regulations make clear that if the amount or date of receipt of income is uncertain, the income should not be counted. Income will be counted only in the month in which it is received. Averaging of income over the certification period is permitted at the household's option, provided the difference between the highest and lowest total monthly income received during the certification period does not exceed $50. The greater the difference in monthly income, the greater the likelihood that benefit levels based on average monthly income would not be representative of the household's food needs in any given month. While the Department proposes that $50 be used to determine when averaging may be used, it will monitor the effectiveness of that choice in balancing household and administrative convenience against the importance of focusing on exact monthly income.

The Act provides different requirements for determining the income of students and those households which derive annual income in periods of time shorter than one year, such as certain self-employed persons and teachers. Students receiving deferred education loans, scholarships, or other such lump-sum education payments shall have that income averaged over the period it is intended to cover.

For the self-employed and those under contract which derive annual incomes in periods less than a year, the Act requires that income be averaged over twelve months. To attribute the annual income of these households only in the months received would result in overstating their financial circumstances when the income is received, since it must be used not only for expenses that month but also for expenses in future non-income months. Similarly, it would understate their financial circumstances in the non-income months. A farmer who sells one crop each year does not spend the income from that crop only in the month received. Therefore, the regulations propose that the gross income from the sale of the crop, minus the cost of producing that crop, be averaged over the next twelve months. The regulations propose the use of past income and costs for these households as it is the net income from the sale of the most recent crop which the household actually has available to defray current expenses, not the anticipated profit from the sale of a future crop.

Determining deductions. On November 30, 1977, the Department published final rules (42 FR 60916) which changed FNS provisions for determining allowable deductions as far as utility and heating costs are concerned. Those regulations allowed the costs of utilities on an "as billed" basis (rather than the previous "as paid" method) in calculating excess shelter costs. For the kinds of expenses that are allowed as deductions under the new Act, "paying" and "billing" are virtually synonymous. Additionally, it is easier to verify a bill as opposed to verifying when the bill was in fact paid. The "as billed" approach is more convenient for program participants and administers alike. Expenses billed on other than a monthly basis shall be averaged forward over the period the billing is intended to cover or deducted at the household's option in the month billed. The household cannot claim an expense more than once, even if billed more than once. The regulation also proposes that households may elect to have expenses averaged over the certification period if the anticipated difference between the highest and lowest amounts if $25 or less. This household option should simplify the certification process. To ensure more equitable treatment among households with similar financial circumstances an expense will not be deductible if covered by vendor payments or reimbursements. If otherwise deductible expenses were allowed to households meeting these expenses through a vendor payment or reimbursement, these households would, in effect, receive a double benefit.

Determining eligibility and benefits. The proposed regulations provide certain criteria for rounding computations in eligibility calculations. All cents shall be dropped at various stages in the computation, with the exception of shelter expenses. Exact shelter costs will be computed and any cents in the total figure will then be dropped prior to subtracting from 50 percent of income. It was determined that use of whole dollars except in shelter computations would facilitate the income calculation process without significantly affecting households. However, because of the number of

components included in shelter computations, rounding each shelter expense down, and then summing them, could reduce the total figure by several dollars.

Destitute households anticipating income. The proposed regulations provide for special eligibility and benefit calculation procedures for households which have no current income, but which anticipate income from a new source during the month. Without these procedures temporarily destitute households could be without income and coupons for that portion of the month when the need for food assistance is the greatest. For example, a household may anticipate income from a new job late in a month, but have no income at the time of application. Basing eligibility and benefits on total anticipated monthly income could result in the household being ineligible for the month or in providing too few coupons to meet food needs until the income from the new job is received.

The House Report indicates that one method of meeting the needs of destitute households which anticipate income later in the month would be to expand the rules currently applicable to destitute migrants under the *Gutierrez* v. *Butz*, 415 F. Supp 827 (D.C. 1976) court order. The *Gutierrez* procedures require a half-month certification for newly arrived destitute migrants anticipating income prior to the 15th of the month, and the disregard of that initial payment for the first period of eligibility. Destitute migrants, under that order, receive a half or full month allotment at no cost, depending on how late in the month they anticipate income from a new source.

The Department has determined that the continuation of these procedures is inappropriate under the new Act. The *Gutierrez* court was concerned with situations in which the anticipation of income resulted in coupon purchase requirements which destitute migrants could not pay since the income was not currently available. The purchase-requirement, however, will be eliminated under the 1977 Act and proposed regulations. Moreover, these proposed regulations specify that only reasonably anticipated income may be counted in determining eligibility.

The total disregard of income from a new source, particularly if the household anticipates receipt within a few days, would significantly understate the household's financial circumstances for the month compared to another household anticipating the same amount of income, but from a recurring source. In addition, continuation of the *Gutierrez* half-month certification periods is complicated because the standard deduction and shelter and dependent care limits are, by law, monthly amounts. It is unclear if these amounts would be divided between the two half-month periods or applied only in the period in which income is received. Eligibility limits and processing standards make half-month certifications a further administrative problem. While some households would benefit, others, such as those households applying only in the second half of the month, would lose benefits under half-month certification. Finally, even with half-month certification periods, the household anticipating significant income toward the very end of the certification period could be determined ineligible or be eligible for only a minimal amount of benefits.

In light of all these factors, the Department proposes a special eligibility and benefit calculation which provides destitute households with coupons for periods of the month when they are without income. The proposed procedures preserve the responsiveness of the program to households in special need while also applying these procedures to nonmigrant households.

Under the special income calculation procedure, the food stamp adjusted net income is calculated using monthly income and expense figures. However, the amount of the food stamp benefit level received by the household is dependent on the household's adjusted net income and on the day in the month income from a new source is anticipated to be received.

For purposes of the special income procedure, the month is divided into two distinct periods. The first period encompasses the time in which the household is without the new income (the pre-income period); the second (the post-income period) includes that portion of the month in which the new income is anticipated to be received. For administrative convenience in determining how much of the month will fall into the pre-income and post-income periods, the month is divided into four quarters (1st-7th, 8th-15th, 16th-22nd, 23rd-the end of the month). The pre-income period will take into account those quarter(s) prior to anticipated receipt of income. The post-income period will encompass the quarter in which the new income is received and all subsequent quarters remaining in the month. For example, if income from the new source is anticipated on the 10th of the month, the pre-income period would consist of one quarter (1-7) and the post-income period would include three quarters (8-15, 16-22, 23-end of the month). The allotment levels are then distributed evenly over these quarters, i.e., one quarter corresponds to ¼ an allotment, two quarters compares with ½, three quarters corresponds with ¾ and four quarters equals a fully Thrifty Food Plan allotment.

In determining the household's entitlement to benefits, the State agency would first compute the adjusted net income in the normal fashion (gross monthly income minus allowable exclusions and deductions equals the food stamp adjusted net income). The adjusted net income will then be multiplied by 30 percent, as is also normally the case in figuring food stamp benefits levels.

In a normal income computation the resulting amount is then subtracted from the monthly cost of the Thrifty Food Plan to determine the household's benefit level. It is here, however, that a somewhat different procedure is followed for the special households. The amount equal to 30 percent of the household's net income is compared to that portion of the Thrifty Food Plan (¼, ½, or ¾) that corresponds to the number of quarters in the household's post-income period. If the amount equal to 30 percent of net income *exceeds* the portion of the Thrifty Food Plan corresponding to the number of quarters in the post-income period, then the household receives no benefits for the post-income period, but receives full benefits for the pre-income period. This is accomplished simply by providing the household with an allotment equal to the portion of the Thrifty Food Plan that corresponds to the number of quarters in the pre-income period.

For example, assume a one-person household expects to receive income from a new source in the fourth quarter of the month, and has no other income for the month. The household thus has a pre-income period of three quarters and a post-income period of one quarter. Also assume that the amount of income expected from the new source, after exclusions and deductions, is $140. The $140 is multiplied by 30 percent to yield an amount of $42. This amount of $42 is compared to one quarter of the Thrifty Food Plan for a one-person household, or $13. Since the $42 exceeds $13, the household is not entitled to benefits for the final quarter of the month (the post-income period), but it is entitled to full benefits for the other three quarters (the pre-income period). The household receives, for these other three quarters, ¾ or the Thrifty Food Plan for a one-person household, or $39. This will provide the household with food until the new income is actually available.

Had benefits for this same household been calculated in the normal fashion, the household would have received only $10 in benefits. This special income calculation procedure thus is responsive to the needs of households that otherwise might have received few if any food stamps during a

period when they actually had no income with which to buy food.

It should be noted that if the State agency finds that 30 percent of the household's net income for the month *is equal to or less than* the portion of the Thrifty Food Plan corresponding to the number of quarters in the post-income period, then no special calculation is needed. In such instances, the household's benefits can be figured in the normal fashion. For example, assume that a one-person household is expecting net income of $30 from a new source in the fourth quarter. The houshold has a pre-income period of three quarters and a post-income period of one quarter. The $30 of net income is multiplied by 30 percent to yield an amount of $9. This amount is compared to one-quarter of the Thrifty Food Plan for a one-person household, or $13. Since $9 is less than $13, no special income calculation is necessary. The $9 is simply substracted in the normal fashion from the full Thrifty Food Plan level of $52, and the household's benefits are $43. No special calculation is used in this situation because it would not make any difference. If the household had received the difference between $13 (one quarter of the Thrifty Food Plan) and $9 for the post-income period, and also received three-quarters of the Thrifty Food Plan ($39) for the pre-income period, it would end up with exactly the same benefit level of $43.

Households that have no income at the time of application for food stamps because they have recently lost their sole source of income, but that did receive final income from this source earlier in the month, are eligible for expedited service but are not eligible for the special income calculation. The Department has chosen not to provide these households with a special calculation of their income, since income received early in the month is as available for the remainder of the month for these households as for households receiving like amount from sources which have not been terminated.

Thrifty Food Plan. The Act bases benefits on the value of the Thrifty Food Plan reduced by 30 percent of household income. The value of this plan, as the Act specifies, is the cost of the "* * * diet required to feed a family of four persons," taking into account adjustments for different size families. The Act requires that the Secretary make cost adjustments for Alaska and Hawaii to reflect the cost of food in those States. The Act provides that a Thrifty Food Plan for Alaska and Hawaii may be higher than the amount in the other 48 States. The Thrifty Food Plan for Guam, Puerto Rico, and the Virgin Islands will also be adjusted to reflect the cost of food in those areas, provided that their Thrifty Food Plans not exceed the cost of food for the 50 States. The Thrifty Food Plan, by law, shall be adjusted semiannually to reflect increases in the price of food. The semiannual adjustments shall be rounded to the nearest whole dollar.

Certification periods. For the most part, the Act places into law current policy regarding the length of certification periods. This current policy places emphasis on the probability of changes in household circumstances. Under the proposed regulations, the minimum certification period will be one month and the maximum will remain one year.[25]

In accord with the intent expressed in the House Report, it is proposed that all households be assigned the longest certification period possible in light of household circumstances. As a general rule, short certification periods create an administrative burden upon State agency staff and result in unnecessary inconvenience to participating households. Given the inconvenience to households, especially in rural areas where distance and transportation problems create additional hardships, the Department believes that households should not be scheduled for recertification any more often than is absolutely necessary, as determined by individual circumstances. Consequently, these regulations propose that, at the time of certification, the State agency may increase certification periods of three months or less by one month, if the certification process is completed after the 15th day of the month of application. For example, if a household makes application in January and a determination of eligibility is not completed until the end of that month or early February, the certification period should include both January and February, if it appears the household is also eligible for February benefits. This one month increase will postpone the household's return to the certification office and will lessen the State agency's administrative burden.

The Act provides that certification periods shall not be less than three months except for households where there is a "* * * substantial likelihood of frequent and significant changes in income or household status * * *" The Department believes that the assignment of certification periods of less than three months may be appropriate for the following types of households: Migrant farm workers, especially when they initially arrive at a worksite or when employment opportunities are uncertain; strikers; initial applicants whose circumstances are subject to change; and any other household with extremely uncertain circumstances. Those procedures are described in § 273.10(f)(3).

Additionally, State agencies have, in the past, encountered many difficulties coordinating the reviews of public assistance (PA) and general assistance (GA) households with recertification interviews for food stamps.

Those State agencies which review the PA/GA caseload on a timely basis may assign definite certification periods which expire the month after the PA/GA review. Most AFDC households will therefore, receive a 7-month certification period.

However, for those State agencies which, due to staffing problems or other difficulties, are unable to accurately predict the month in which each PA/GA review will be conducted, the Department proposes the following method of assigning certification periods. Upon approval for PA/GA and food stamps, the household will be notified that its certification period will expire the month after the next PA/GA review, or in one year, whichever comes first. Since a definite expiration date is not assigned, the food stamp certification period will not expire in advance of the PA/GA review date, unless that review is not done within a year. In that event, recertification of food stamps must be accomplished prior to the continuation of food stamp benefits. However, under usual circumstances, the PA/GA review will be accomplished within a year and the household will complete a joint interview for the PA/GA review and the food stamp recertification.

To comply with the requirement for notices of expiration for PA/GA households, as explained in section 273.14(b), it is essential that State agencies develop a system for determining, in advance, when a certification period will end. State agencies must also develop a system for completing the recertification in time to prevent an interruption in food stamp benefits. The assignment of certification periods that expire the month after the month of the PA/GA review should enable State agencies to accomplish timely recertifications. In addition, State agencies should use safeguards to ensure that food stamp eligibility and basis of issuance are examined each time a PA/GA grant is changed or terminated.

The Department proposes retaining the maximum one year certification period for all households consisting entirely of elderly or disabled members whose income and other circumstances are not likely to change.

Certification notices to households. The proposed regulations make specific references to notices which must be sent to applicants and participants.

[25] The House Report indicated that even for public or general assistance households the maximum certification period should be one year.

The proposed regulations specify the information which must be included on such notices and when they must be sent. In addition, the Department is currently working with a private contractor to develop model notices for use by State agencies. Deviations from use of the model forms will be granted only under the same conditions as would permit a deviation on the application form. (See "Application processing" in this preamble.)

Identification cards. In response to concerns about the lack of security over the identification (ID) cards, the proposed regulations would require that ID cards be serialized and handled by the State agency as accountable documents. The ID cards should contain the names of persons most likely to use the card to obtain food coupons.

The proposed regulations allow State agencies to use photo ID cards, if the household consents. The unwillingness or inability to be photographed will not affect eligibility or benefit levels.

CERTIFYING HOUSEHOLDS WITH SPECIAL INCOME CIRCUMSTANCES

Self-employed households. The new Act continues the current regulatory provision of excluding the costs of producing self-employment income. The kinds of expenses that are currently allowable as a cost of producing self-employment income have remained basically the same under the proposed regulations, with two exceptions.

The Department proposes to count depreciation as an allowable cost of producing self-employment income.[26] The House Reports suggests that simplified schedules of depreciation "covering entire categories of equipment," be provided for administrative ease. The Department proposes to base depreciation on the household's federal tax form, regardless of whether the household claimed a straight-line or accelerated form of depreciation. After reviewing IRS rules on depreciation, the Department decided, for administrative ease and the convenience of applicants, to rely strictly on amounts claimed for federal income tax purposes. In cases where the federal tax form is not available, the proposed regulations provide a calculation methodology for depreciation using IRS guidelines (the Asset Depreciation Range tables) for assigning the useful life of the asset. The Department will supply State agencies with appropriate depreciation tables. The second change from the current rules is the proposal to compensate self-employed households for taxes, retirement costs, and other work-related personal expenses (such as transportation to and from work) through the 20 percent earned income deduction rather than allowing itemized exclusions as a cost of producing self-employment income. This approach is endorsed by the House Report and simplifies and expedites the calculation of these costs.

Households with boarders. The House Report states that since "* * * the income received from a boarder for meals or meals and lodging would be self-employment income * * *" there would be an income exclusion for the expenses incurred in producing that income * * *." For households that own and operate a commercial boarding house, the Department proposes that the cost of producing income be calculated in the same manner as any other self-employed household. However, since many households with boarders may not keep itemized records of the cost of providing meals, the Department proposes that the value of the Thrifty Food Plan for a household size that is equal to the number of boarders be used as the cost of producing the income, unless the household can demonstrate higher actual costs. This approach is endorsed by the House Report and will expedite the certification process.

Boarders as households. The Act specifies that a boarder may be eligible as a food stamp household as long as the boarder is not a resident of a boardinghouse. The Department proposes that the boarder household receive a deduction for identifiable shelter costs or, if it makes a single payment for both room and board, for the amount of the boarder payment which exceeds a reasonable payment for board, as defined in § 273.1(b)(ii).

Treatment of income and resources of a disqualified member. Under the new Act, individuals can be disqualified for fraud or for failure to comply with the student work registration requirement during the school year. Although the House Report states that the income and resources of disqualified members are to be excluded, Senator Dole subsequently pointed out (*Congressional Record,* September 9, 1977; S. 14578) that it was not intended that a household benefit if one or more of its member was disqualified for fraud. Disallowing the income and resources of disqualified persons would significantly hinder the Department's ability to deter fraud or noncompliance with the student work registration requirements. Since the head of the household and primary wage earner will, in most cases, be the individual disqualified, excluding that income would leave the remaining household members with increased benefits. As a result, the household and the disqualified individual could benefit by intentionally defrauding the program or intentionally failing to comply with the student work registration requirements. The Department believes that adoption of such a policy could serve to encourage fraud and noncompliance with the student work registration requirements and would thus contravene the intent of the Act. The Department is, therefore, proposing that a pro rata share of the income of the disqualified member be counted when determining the eligibility of the remaining members.

This pro rata share is calculated by subtracting allowable exclusions from the disqualified member's income and dividing this amount evenly among the household members, including the disqualified member. All but the disqualified member's share is counted as income to the remaining members. In addition, the Department proposes that any allowable shelter or dependent care expenses paid by or billed to the disqualified member be prorated in the same way that the income is prorated. If the prorated income was earned by the disqualified member, the household would also receive the 20 percent earned income deduction.

Under the proposal, the remaining members would not be provided a notice of adverse action, if the benefits are reduced or terminated within the certification period because one of the households members has been disqualified for fraud. The rationale for not providing a notice of adverse action in these cases is discussed in "Notice of Adverse Action."

Treatment of income and resources of other nonhousehold members. The Department proposes that the income and resources of all nonhousehold members, except disqualified members, be entirely disregarded. Since the ineligibility of certain aliens, tax dependents, and SSI recipients in cash-out States is predetermined by the Act and is not intended to be a penalty, the Department believes no penalty should be suffered by the remaining eligible household members by having a pro rata share of the ineligible member's income counted.

Addicts and alcoholics. The proposed regulations permit participation by narcotics addicts or alcoholics who reside in a treatment and rehabilitation center, in accordance with provisions of the Act. As recommended by the House Report, the proposed regulations continue the current provision that requires the center to designate an authorized representative to apply on behalf of the addict or alcoholic and to spend the coupon allotment for the meals of such addict or alcoholic.

[26]The House Report indicates that the Department should allow depreciation since "* * * some factor for wear and tear of machinery and buildings, obsolescence and accrued replacement costs should be inherent in doing business, * * * (although) the accelerated forms of depreciation afforded under the Internal Revenue Code as a matter of legislative grace would not necessarily constitute costs of doing business * * *".

The proposed regulations place responsibility upon the institution for providing the appropriate information at certification and for the accurate and prompt reporting of changes in household circumstances. The regulations hold the institution liable for food coupons held on behalf of resident participants and for all overissuances. The proposed regulations authorize FNS to disqualify the institution as an authorized firm when a finding is made that the institution has misappropriated coupon allotments or has used the coupons for purposes other than for food for its household.

Narcotics addicts or alcoholics residing in a drug addict or alcoholic treatment center will be entitled to one half of their authorized coupon allotment upon leaving the treatment program prior to the 16th day of the allotment month. Since a coupon allotment is an entitlement of the household, not the institution, it is appropriate that there be some return to the household. A prorated return based on the exact number of days a household resided in an institution was discarded. That approach would require complicated calculations and ignores the fact that centers need to purchase food for future meals to take advantage of economies of scale.

In addition, the proposed regulations state that addicts or alcoholics residing in an authorized treatment and rehabilitation program are entitled to notice of adverse action, fair hearings, and lost benefits in the same manner as any other food stamp household.

REPORTING CHANGES

Household responsibility to report. The Act gives the Secretary discretion in the area of reporting requirements. Departmental regulations have, in the past, required households to report changes of $25 or more in income or deductions to the State agency within ten days of the date the change becomes known to the household. This policy was adopted because the current income brackets are in increments of $10. Therefore, changes of less than $25 frequently do not affect the household's level of benefits. Additionally, State agencies could avoid diverting administrative time to process insignificant changes that did not affect household benefit levels.

However, it has been brought to the Department's attention that the $25 reporting requirement is difficult for households to understand and causes confusion. For example, if the household has two sources of income each of which increases by $13, those changes *cumulatively* exceed $25 and must be reported under current regulations. Most households would, however, look at each change separately and fail to report them as each is under $25.

In addition, the $25 rule does not conform to AFDC reporting rules which require that all changes be reported. Therefore, PA households are, in effect, required to report all changes while nonassistance households are required to report only those changes over $25. This results in disparate treatment between assistance and nonassistance households.

The Department proposes that households be required to report all changes in income. This proposal is consistent with AFDC income reporting requirements and can be readily understood by households. Since even the smallest change in income can affect the household's benefits under the 30 percent benefit reduction rate, this policy also assures that benefits are determined by the statutory formula.

In addition to public comment on the proposed regulatory provision for reporting of and State action on all income changes, the Department solicits public comment on two alternative requirements which are also under consideration:

1. The household reports all income changes, but the state agency does not have to act on monthly changes of $10 or less. Action would be required when a single change in income was more than $10, when multiple changes cumulatively exceed $10, or at recertification, whichever is earlier.

2. The household is only required to report monthly changes in income of $20 or more. This requirement differs from the current reporting requirement in that the $20 would apply separately to each income source and would not be cumulative in nature. The State would have to act on any changes reported.

While the Department's preliminary analysis led to the proposal of reporting and acting on all income changes, additional comment is sought on the administrative efficiency, cost effectiveness, and affect on households' benefits of all three alternatives.

The Department further proposes that households be *required* to report changes in dependent care or shelter costs only at recertification. To require a report each month on changes such as monthly fluctuations in utility bills would result in an enormous amount of paperwork and would not be cost effective. Changes of this nature are generally small and the $75 cap limits both the number of changes that would affect a household's benefit level and the degree to which such changes would affect benefits. Households are, of course, free to report these changes if they wish.

Report form. The Act requires that households report changes in income or household circumstances on a form designed or approved by the Secretary. The Department has contracted for the design of a model form for use by State agencies. Deviations from this design would only be approved on the same basis under which deviations on application forms would be granted. (See section 273.2(b) "Food Stamp Application Form".)

State action on changes. The Act does not specifically address the issue of State action on changes reported by the household. However, the House Report indicates that States are expected to act promptly, particularly if income anticipated at the start of the certification period later turns out to be unavailable. The House Report states that "[i]f anticipation does not comport with reality and no income or less income than projected appears, then anticipation must be scrapped and swiftly in favor of operating on the basis of what has occurred." Inresponse to these concerns, the Department proposes that State agencies expedite action on changes which have a significant impact on the household's circumstances and result in an increase in benefits. Significant changes are defined as those which reduce a household's total gross monthly income by more than $50 or result from the addition of a new household member. If the reduction in gross monthly income of $50 or more also reduces the household's net monthly income to zero, the proposed regulations require even faster action. In most of these case, the household will be entitled to an adjustment in the current month's allotment if the household had not already participated, or to a supplemental ATP card if the household has already transacted its ATP. In this way, the household would not be left without income or coupons to meet food needs until the next normal allotment is received.

For those changes which do not require expedited action and those changes which result in a decrease in benefits, the Department proposes that current procedures remain in effect.

The Department proposes that households be disqualified for failure to report only if the failure to report was fraudulent, as determined by either an administrative fraud hearing or a court of law. However, whether or not fraud is involved, the State agency shall establish a claim against the household. It is proposed that liability for the overissuance begin in the month the change became known to the household. This policy assures that households which fail to report are not better off than households that timely report changes. Making participating households aware of this policy could help to preclude intentional failure to report and operate as an incentive for reporting changes promptly.

Mass changes. The Department proposes that overall adjustments in PA payments, Federal adjustments in the food stamp eligibility standards and deductions, and State adjustments to the utility standards be handled as mass changes. Mass adjustments to GA payments will also be handled as a mass change if the State agency administers the GA program. Although households are not entitled to a notice of adverse action for mass changes the regulations propose that States send households an individual notice which informs the household of the change but does not grant the household continuation rights if the household appeals the State agency action. In this way, households are advised of the change and can adjust household budgets accordingly.

For those mass changes in Federal benefits, such as Social Security or SSI, the household has primary responsibility for reporting changes. The State agency may not get enough information concerning these changes to make the change effective when it occurs. In addition, States have experienced problems in obtaining accurate information on these mass changes. States that have the capability may, however, use mass change procedures to adjust food stamp benefit levels as a result of changes in SSI and SSA benefits.

PA households. In accordance with current procedures, State agencies are required to establish procedures and controls to ensure that communication is maintained among PA, food stamp and issuance offices to assure that timely action is taken on changes reported by PA participants to PA workers. Since a termination of the PA grant does not necessarily result in a termination of food stamp benefits, the proposed regulations require that State agencies review the household's circumstances to determine the effect of the termination on the household's food stamp eligibility and benefit level. If there is not enough information to determine how the termination of the PA grant affects the household's food stamp benefits, the proposed regulations require that State agencies send the household a notice of expiration. The use of these procedures for handling changes in the PA grant should ensure that a household's food stamp benefits are not interrupted if the household remains eligible for the Food Stamp Program.

NOTICE OF ADVERSE ACTION

Use of Notice. The Department estimates that when State agencies apply the eligibility criteria as mandated by the new law, many households will receive decreases in benefits or will be terminated from the program. The Department proposes, as recommended by the House Report, that State agencies send an individual notice of adverse action to each household that will receive a reduced bonus allotment or that will be terminated as a consequence of implementation of the new Act. The proposed adverse notice must explain the reason for the forthcoming reduction or termination of benefits and the amount of the new allotment, if any. The proposed notice must also include an explanation of the household's right to request a fair hearing and should explain that the reduction or termination of benefits is the result of changes in Federal law. The notice will advise that benefits will not be continued while the household awaits the fair hearing, unless the issue raised is that the household is being adversely affected by State misinterpretation or misapplication of Federal law or that benefits have been miscalculated. The Department does not believe that all those households which experience a reduction or termination of benefits under the new Act, and request a fair hearing, should be entitled to a continuation of the level of benefits provided under the Act of 1964.

After the mass implementation is accomplished, routine reductions or terminations of benefits will be treated as follows:

State agencies, with the exception described below, will continue to provide a 10 day advance notice period before reducing or terminating a household's benefits. It is proposed that adverse notices which are mailed should allow for an additional two days from the postmarked date to compensate for delivery time. Also, if the adverse notice period ends on a weekend or holiday, the notice period must be extended to the next work day.

The Department also proposes to offer each State agency the option of adopting the adverse notice period it uses for the public assisance caseload, provided that period is no shorter than the minimum 10-day advance notice requirement. For example, those States which use a 15 day adverse notice period for AFDC recipients may also apply that notice period to food stamp households. This should enable State agencies to better coordinate and manage both programs.

The Department proposes to expand the adverse notice to include, in understandable language, the following information: the proposed action; the reason for the proposed action; the household's right to request a fair hearing; the name and telephone number of the person to contact for additional information; the availability of continued benefits; and the potential liability of the household for any overissuance received while awaiting a fair hearing. Additionally, if free legal advice is available in the community the State should advise the household of the presence of this service.

The Department is working with a private firm to develop a standard national adverse action form. Since State agencies may, under certain conditions, request exemptions from the national form, the Department believes it necessary to include in the regulations all adverse notice form requirements.

The Department proposes to maintain the current exemption for an adverse action notice when the household provides a written statement that benefits are no longer desired or which acknowledges that information it has provided will lead to a reduction or termination of benefits.

The Department proposes new exemptions for the adverse action notice under certain circumstances. Households that have been receiving an increased allotment to restore lost benefits should not receive a notice of adverse action to indicate that all lost benefits have been restored to the household. It is proposed that these households simply be notified in writing of the anticipated termination of the increased allotment. This reduction in benefits does not represent an actual decrease in the household's basic eligibility and, therefore, those households should not be entitled to a continuation of benefits pending a hearing.

Adverse action notices would not be required for households which receive a variable basis of issuance within the certification period, if the household was notified at the time of certification of the forthcoming changes. This policy would facilitate the issuance of coupon allotments on a variable basis of issuance. Variable issuances are assigned to households to tailor the benefit levels to anticipated income in specific future months. State use of variable bases of issuance will increase the length of certification periods and reduce the number of times households have to reapply for benefits. Adverse notice requirements, for changes meant to accommodate household circumstances, could discourage State agencies from providing variable issuance.

The Department proposes that adverse action notices not be required for households which make joint application for PA and food stamp benefits and receive food stamp benefits pending approval of the PA grant, if the household was notified at the time of certification that food stamp benefits would be reduced upon approval of the PA grant. This exemption will allow State agencies to assign longer certification periods and thus reduce the number of times households have to reapply for benefits. Without this exemption, households awaiting the

approval of a PA grant would likely be certified for only one or two months.

Household members disqualified for fraud, and the remaining household members whose benefits are reduced or terminated as a result of the fraud disqualification, would be sent special notices under subsection 273.16. The individual disqualified for fraud has already received a hearing prior to termination of benefits, which reduces the need for a fair hearing under the regular notice of adverse action provisions.

In addition, providing a notice of adverse action to the remaining household members would negate the fraud disqualification if the household requested a fair hearing and received a continuation of benefits pending the appeal.

Finally, adverse action notices would not be required for households containing a striker or a person subject to a lockout, when the strike or lockout ends and the household is again receiving income, if a waiver of the adverse notice was signed by the household at the time of certification. This waiver would enable the State agency to assign a longer certification period than is normally allowed for such households, because the State agency could reduce or terminate benefits immediately upon resumption of income because the strike or lockout has been settled. These households should, nonetheless, receive a notice of termination or reduction in benefits to advise the household of changes in future assistance levels.

RECERTIFICATION

Notice of expiration. The Act requires the State agency to notify households, prior to the expiration of the current certification period, that a new application must be submitted in order to renew eligibility for benefits. Households which file an application by the 15th of the last month of certification shall, if determined eligible, receive uninterrupted benefits. The statute further provides that households determined ineligible or eligible for fewer benefits shall not continue to participate at the former basis of issuance level once the current certification expires, even if a timely fair hearing request is made.

Public concern over recertification procedures were recently aired in response to a proposed rulemaking published in June 1977. These concerns were resolved with the publication of final rulemaking on December 23, 1977 (42 FR 64357-64360), which is in general conformity with the provisions of the Food Stamp Act of 1977. Those regulations are essentially republished in this package for further public comment, except that the Department eliminated the State agency's option to set the date for timely reapplication. In accord with the Act, the 15th will be the date used in all States, except in cases where the notice of expiration is provided at the time of application.

The proposed regulations require that the notices be mailed far enough in advance of the 15th to provide the household a reasonable opportunity to comply. Therefore, notices of expiration must be received by the household no later than the 1st of the last month of certification and no earlier than the 15th of the prior month. This notice schedule provides the household adequate opportunity to file a timely reapplication and maximizes the State agency's processing time, without delaying benefits. The final regulations published on December 17, 1977, specified that households certified for one month are to be provided a notice of expiration at the time of certification, since it is impossible to provide these households with a notice of expiration by the 1st of the last month of the household's certification period. If the State agency assigns a two-month certification period but the household is not certified until the month following the month of application it would also be impossible for States to provide the notice of expiration prior to the 1st of the last month. Therefore, the Department proposes that these households also be provided a notice of expiration at the time of certification. A timely reapplication for such households will be 15 days from the date the notice is received (allowing two days for mail lag if the notice is mailed). Households redetermined eligible shall have an opportunity to participate no later than 30 days after the date the household first had an opportunity to obtain its last allotment.

In the past, the Department has been asked to permit the use of an abbreviated application form for reapplication which would focus on changes in circumstances rather than redocumenting all factors of eligibility. The Act requires households to file a "new application" in order to renew eligibility. The Department does not believe that filing a change report will satisfy that requirement. However, the proposed regulations do not prohibit States from designing a form more appropriate for reapplications than the uniform application form. Departmental approval would be required to insure that the forms meet minimum Federal requirements.

As with initial applications, the State agency is required by the Act to promptly process reapplications and provide timely benefits. However, the Act does not authorize extensions of the former basis of issuance for households which are not timely processed. These regulations, therefore, require that the State agency take extraordinary means, if necessary, to provide households whose timely reapplications have been delayed in processing an immediate opportunity to participate once eligibility is determined. Any benefits lost by such households due to the State agency's untimely processing shall be restored as part of future issuances.

FAIR HEARINGS

While Act does not require any specific changes to the current fair hearing procedures, the following proposals are made in an effort to improve existing hearing procedures.

Timely action on hearings. The House Report notes that the bill "* * * would retain the fair hearings provision of the (food stamp) law intact and would encourage the Department to enforce its excellent regulations and instructions on the subject." The report suggests, however, that the Department "* * * reduce the sixty day maximum decision period should that prove to be administratively feasible."

The Department is concerned that the 60 day period for processing appeals is too lengthy and results in hardships to households. However, the Department recognizes that upon implementation of these new regulations States will have the tremendous task of redetermining the eligibility or basis of issuance of every household. Also, States are likely to encounter an increase in fair hearing requests as a result of reductions or terminations of benefits resulting from implementation of new eligibility criteria. Thus, blanket acceleration of fair hearing procedures at this time would be difficult. A reduction in the time allowed for most State level fair hearings is not proposed in this rulemaking. However, a study of the fair hearing procedures is being conducted to determine the feasibility of reducing the time limit on processing appeals.

For the present, the Department proposes that State agencies which choose to use the local level hearing system, with appeal rights to a State level hearing, must complete the local hearing process within 45 days of the hearing request. In addition, if the local level decision is appealed, the State level hearing process must also be completed within 45 days of that appeal. This reduction in the time limits allowed for the two tiered hearing system enables households to receive a final decision on an appeal within 90 days, as compared with the current 120 days. State agencies will also be required to expedite fair hearing procedures for those households which are denied emergency benefits under the expedited certification procedures described in § 273.2(i). The expedited hearing provisions require State agencies to schedule an agency

conference within two working days of the request for a hearing, unless the household wishes to waive the conference and instead be scheduled for a hearing. These agency conferences will seek an informal resolution of grievances and, if successful, will eliminate the need for further action. However, the agency conferences are not intended to replace hearing procedures for those households which do not wish to attend the conferences or which are dissatisfied with the results of the conferences. The expedited hearing regulations require a State level hearing as soon as is reasonably possible so that a hearing decision can be rendered within 15 working days after the hearing request. If the hearing official reaches a decision in favor of the household, the State agency will be required to provide that household with an opportunity to participate within two working days of receipt of the decision. The Department feels that this requirement will ensure that households with little or no income will not be subjected to lengthy waiting periods before the hearing is completed.

Note that the time limits on regular fair hearing procedures will not apply to the time within which a decision must be rendered, but to the time within which the household must be provided an opportunity to participate at the benefit level determined by the hearing decision.

Time period for requesting hearing. The Department proposes to allow households a standard period of one year within which to appeal an adverse action. A household may request a hearing on any action by the State agency or any loss of benefits which occurred in the past 12 months. The policy currently in effect allows households "* * * a reasonable period of time * * *" to appeal an adverse action. Most State agencies have incorporated the State public assistance standard into the State food stamp manual. Those standards usually allow a household between 30 and 90 days within which to appeal an adverse action. The adoption of a uniform national standard will avoid the disparity of time limits currently imposed by States, and should afford adequate time to file appeals.

Hearing official. The Department proposes using the term "hearing official" to describe what the current regulations refer to as both the hearing authority and the hearing official. The two terms unnecessarily lead to confusion. Criteria for who may act in the capacity of a hearing official are proposed along with the proposed powers and duties of the hearing official.

Attendance at hearing. It is proposed that each hearing be attended by the household and/or its representative and by a representative of the State agency who initiated the action being challenged.

Conduct of hearing. To ensure household access to all necessary information prior to scheduled fair hearings, the proposed regulations require the State agency to make the contents of the case record available to the household and/or its representative. If requested, the State agency must also provide free copies of the relevant documents. However, the Department proposes to permit the State agency to withhold information which is confidential in nature such as information regarding pending criminal investigations, or the names of informants that may have provided information about the household. Confidential information not provided to a household or its representative shall not be considered in deciding the case. Thus, while the State agencies will have to identify the verification which determined the reduction or termination of benefits, such as a wage stub, it would not be necessary to provide the name of the person who provided the name of the employer.

Hearings decisions. The Department proposes standards for the implementation of both local level and State level decisions. These standards were introduced to ensure that all decisions are acted upon in a timely fashion, equitable to both the household and the State agency. The proposed regulations expand the current policy to ensure that local agency administrators, as well as households, may appeal to the State agency level the hearing decisions made by local level hearing officials.

The Department proposes that State agencies with local level hearing systems be required to routinely review those hearing decisions. If excessive numbers of local level decisions are appealed and reversed, the State agency must evaluate the situation and take appropriate corrective action.

The Department is also considering procedures for Regional office review of certain fair hearing decisions. Those procedures will be published as proposed rulemaking at the same time that the procedures for review of State claims, required by section 13 of the Act, are proposed.

FRAUD DISQUALIFICATIONS

Under the current regulations, State agencies may disqualify a household for fraud for a period of time specified by the State. Fraud disqualification procedures and punishments vary widely from State to State. The proposed regulations, in accordance with the Act, would limit these variations by establishing disqualification time ranges, requiring that fraud determinations be made at administrative or judicial hearings, and prohibiting the disqualification of innocent household members. Individuals suspected of fraud will be allowed to participate pending the fraud hearing determination if they are otherwise eligible, but will be subject to a claim for any overissued benefits resulting from the continued participation if the hearing results in a fraud disqualification.

Fraud disqualification penalties. The Act requires that individuals found guilty of fraud at an administrative hearing shall be ineligible to participate in the Food Stamp Program for three months, and individuals found guilty of criminal or civil fraud by a court of appropriate jurisdiction shall be ineligible for not less than six months and not more than twenty-four months, as determined by the court.

Definition of fraud. While no definition of fraud can guarantee uniform application and treatment, the Department proposes a definition which provides some guidance to hearing authorities and participants. The critical element of the definition is that the fraud must be committed "* * * knowingly, willfully and with deceitful intent." The mere failure, for example, to report a change in circumstances does not automatically mean that fraud has been committed. Before such action can be considered fraudulent, the State agency must prove that the individual intentionally failed to report the change in an attempt to get food stamp benefits which the person knew would exceed the proper level. The proposed definition also includes a catch-all provision which covers "* * * any other fraudulent act * * *" to obtain unauthorized food stamp benefits and other acts related to the misuse of coupons. The Department believes this broad language is necessary to avoid technical legal defenses regarding intentional and deliberate deceptive schemes. In addition, the proposed regulations specify that any disqualification must be based on clear and convincing evidence.

Administrative disqualifications. The Act does not specify the kind of administrative hearing that should be conducted to determine fraud. The Department proposes that the procedures for conducting administrative fraud hearings be similar to those for hearings requested by households. Those hearing procedures were commended by the House Report and seem fully applicable to fraud determinations. The Department expects that most State agencies will simply expand the system used to provide fair hearings to include fraud hearings. There are, however, a few ways in which the proposed fraud hearing procedures would differ from the proposed fair hearing procedures. These differences are as follows:

(1) *Fraud hearing procedures.* Unlike fair hearings, administrative fraud

hearings are initiated by the State agency. In addition, for a fraud hearing the individual must be eligible and participating when the hearing is initiated.

(2) *Advance notice.* The household member suspected of fraud must be provided a written notice of the date of the hearing and other pertinent information. The notice must be received by the household member at least 30 days in advance of the hearing and the State agency must mail the notice by certified mail, return receipt requested.

(3) *Scheduling of hearings.* Fraud hearings can be conducted without the household member or representative, if the household member or representative cannot be located or fails to appear at the hearing without good cause. However, the hearing official cannot draw any negative inference because the household member was not present or represented. If the household member demonstrates good cause for that absence, the previous adverse hearing decision is void and a new hearing must be conducted.

(4) *Participation during appeal.* In the case of fair hearings, a household's benefits can be continued at the benefit level authorized immediately prior to the notice of adverse action if the adverse action is to be taken during its certification period. In this way, households are not harmed by an adverse action if the fair hearing official later rules the adverse action is incorrect. In the case of fraud hearings, the household member cannot be disqualified prior to the fraud hearing. However, the eligibility and benefit level of the household must be determined the same as any other household. For example, the State agency shall reduce or terminate the household's benefits if the State agency has facts to substantiate that the household is ineligible or eligible for fewer benefits even if these facts led to the suspicion of fraud and the resulting fraud hearing. If benefit levels could not be appropriately reduced pending the fraud hearing, then households containing persons accused of fraud would be more favorably treated than other households.

(5) *Appeal rights of household members.* A household appealing a local fair hearing can receive a new or "de novo" hearing at the State level only if the household specifically requests one. However, in fraud hearings, a de novo hearing will be conducted every time an individual appeals a local level decision to the State level. In a de novo hearing, the prior hearing decision is not taken into consideration.

The regulations propose that an individual can be disqualified based on an administrative finding of fraud at a local hearing only if the individual fails to timely appeal that decision to a hearing at the State level. Therefore, unlike fair hearings, adverse decisions made at a local administrative fraud hearing do not take effect if the individual appeals the local level decision within 15 days of the date the individual receives the notice. For the State to accurately calculate the date the notice is received, States are required to send the notice by certified mail, return receipt requested.

Court imposed disqualifications. The Act and the proposed regulations make clear that individuals found to have committed fraud by a court can be disqualified only if the court orders disqualification and only for the length of time specified by the court. State agencies should encourage State or county attorneys to request this judicial disqualification determination. In the event the court does not address disqualification, State agencies cannot impose a period of disqualification based on that fraud determination. However, administrative disqualification may be pursued in addition to, or independently of, judicial action.

Entitlement to lost benefits. The proposed regulations specify that a disqualified household member may be entitled to lost benefits if the decision to disqualify a household is subsequently vacated or reversed. This is explained in the preamble under "Restoration of Lost Benefits."

RESTORATION OF LOST BENEFITS

Entitlement. The current food stamp regulations specify that lost benefits are to be restored only if the loss was caused by an administrative error on the part of the State agency. The Department proposes that lost benefits be restored whenever the loss was not caused by an intentional act or omission on the part of the household. For example, when a household fails to timely apply for recertification with good cause, the household would be entitled to restoration of any resulting lost benefits.

Time limit for establishing entitlement to lost benefits. After carefully considering the advantages and disadvantages of establishing a time limit for discovering and requesting lost benefits, the Department decided to propose a 12 month time limit. Under the proposed regulations, benefits shall not be restored if they were lost more than 12 months prior to the date the State agency receives information or a notice which indicates that coupons may have been underissued to a household. This information may come from the State's own review system, the Department's Office of Audit, the participant or a variety of other sources.

The 12 month limit should provide adequate opportunity to discover suspected lost benefits and yet establish a definite limit which avoids the problem of computing and documenting claims from periods far in the past. Additionally, since the Food Stamp Program is designed to respond to immediate food needs, compensation for failure to provide for those needs more than a year after the loss does not seem justified in light of the difficulty for both State agencies and households in establishing such old claims. The proposed 12 month time limit is also consistent with the time limit for establishing nonfraud claims.

The proposed rulemaking retains the current provision which allows State agencies to offset the amount to be restored against any unpaid claim owed by the household. Since the offset is only against amounts to be restored and will not affect the current entitlement to food coupon assistance, the household is not nutritionally harmed by the offset.

Disputed benefits. The Department believes that households should not be required to request a fair hearing to receive a restoration of lost benefits if the State agency and household agree on the amount of benefits owed to the household. This approach was adopted by the Department in final regulations published in the FEDERAL REGISTER on March 19, 1976 (41 FR 11464). The Department proposes to continue that policy. In this way, the household and the State agency would be free to resolve these cases without conducting pointless fair hearings.

Computing the amount to be restored. In cases where benefits have been wrongfully denied or terminated, it is difficult to compute the amount to be restored since it is difficult to predict how long the erroneous action acted as a barrier to participation. To assure that States uniformly calculate the length of time affected by erroneous denials and terminations, the Department proposes that the erroneous action not be considered to be in effect the first month the error is corrected, the first month the household is correctly found to be ineligible, or the first month the household reapplied. For example, if a household's benefits were erroneously denied in May, and the State agency, after calculating the correct allotment the household would have been eligible to receive during May and all subsequent months, finds the household is ineligible in September, the household would be entitled to restoration of lost benefits for May through August. If there is no information in the household's case file to document that the household was actually eligible during those months, the proposed regulations specify that it is the household's responsibility to provide the necessary information to determine eligibility. Otherwise, the household will be considered ineligible for the month documentation is not provided.

The House Report specifies that when benefits are delayed, benefits are to be provided retroactive to the period of application. However, to avoid providing households with large sums of coupons at one time and thus inviting the exchange of coupons for cash, the Department proposes that eligible households be provided benefits retroactive to the period of application only if benefits are delayed less than 60 days from the date the application was filed. If benefits are delayed more than 60 days by the State agency, the benefits lost are to be restored under the normal procedures for restoring lost benefits.

Lost benefits to individuals disqualified for fraud. Both the legislation and the House Report are silent on the issue of whether a disqualifed household member is entitled to a restoration of lost benefits if the decision to disqualify for fraud is subsequently reversed.

The Department proposes that lost benefits be provided to individuals only if the specific action which resulted in disqualification is reversed. Therefore, if a conviction for criminal fraud is reversed on appeal by the appropriate appellate court, or is otherwise overturned by the proper judicial authorities, lost benefits should be provided. However, this same reversal of a criminal conviction would not affect a determination of fraud at an administrative fraud hearing. Inability of the State to satisfy the stringent criminal burden of proof does not demonstrate that the administrative hearing burden of proof has not been met. In other words, even though the evidence may not be strong enough to support a criminal conviction, this finding would not invalidate the administrative determination and disqualification. The administrative finding, itself, would have to be specifically reversed or overturned to entitle the household to lost benefits.

Method of restoring lost benefits. The Act requires that States promptly restore in coupons any food stamp benefits that were wrongfully denied. Although the legislation does not indicate how many coupons a household can receive at one time, the Conference Report does allow "* * * that the Secretary may distribute these restored benefits over such period of time as the Secretary determines to be appropriate."

The proposed regulations state that households will receive not more than 100 percent of the maximum allotment, according to household size, *in addition to* the allotment the household is normally eligible to receive. Therefore, if a four person household is entitled to $300 in lost benefits and is eligible to receive $137 in coupons each month, the household would receive $170 in lost benefits during the first month, assuming $170 is the maximum allotment for the household's size. When added to the household's normal allotment of $137, the household would receive a total of $307 in food stamp benefits for the first month. In the second month the household would receive the remaining $130 in lost benefits plus its normal allotment of $137 which would total $267 in food stamp benefits during the second month. This procedure requires little computational effort by the eligibility worker and can be easily computerized. Also, this method is equitable to all households, regardless of income or current eligibility.

Furthermore, it restores lost benefits in a reasonable amount of time without providing households with more coupons than might be used for food in one month, thus minimizing the potential for abuse.

Another significant change in the way benefits are currently restored is the Department's proposal to promptly restore lost benefits to ineligible households rather than waiting until the household is once again eligible. This proposed change is endorsed by the House Report and appears equitable in that it provides all households that have lost benefits with the same remedy.

CLAIMS AGAINST HOUSEHOLDS

The Act provides broad authority for the Department to establish, settle, adjust or compromise fraud and nonfraud claims against households. The Act specifically provides that this broad settlement and adjustment authority regarding claims against participants may be delegated to the State agencies. To reduce the current duplication of effort between State and Federal levels on the handling of claims, the proposed regulation delegates this settlement and compromise authority to State agencies. In turn, the Department will focus its attention on monitoring each State's overall activities in handling all fraud and nonfraud claims. States will, however, be required to follow certain minimum requirements specified in these proposed regulations for handling claims. These minimum requirements generally follow the guidelines established under the Federal Claims Collection Act of 1966 for collecting claims owed the Federal Government. However, modifications to these general guidelines have been made, when appropriate, to take into consideration the low income levels of most households owing claims for food stamp overissuances.

Nonfraud claims—Procedural errors. In some instances, households are technically ineligible to participate in the program even though the household is eligible for needed food benefits based on all other financial and nonfinancial eligibility standards.

For example, a household may be eligible to participate in the program based on the household's income and resources even though the State failed to ensure that the required work registration form was completed or that the application was signed. Collection of claims for procedural errors is unfair where the household was in need of food assistance and would have been determined eligible except for the procedural error. Therefore, the Department proposes that States not establish claims against households for amounts which the household would have been entitled to receive but for the unintentional technical error.

Nonfraud claims—Agency errors. The Department proposes that households be liable for non-procedural agency errors even if the household is not at fault. Since the household has received the benefit of the State's error, the Department proposes that the household be required to return this benefit. Other Federal programs do not automatically decline collection of losses caused solely by agency error. This procedure is consistent with the general guidelines provided in the joint regulations published by the General Accounting Office and the Department of Justice under the authority of the Federal Claims Collection Act. Eliminating collection activity on all agency errors would have the net effect of writing off significant amounts of potentially collectible money owed the Federal Government.

However, the Department believes, in some circumstances, that the cost of collection activities may exceed the possible returns. Therefore, the Department proposes that State agencies not be required to initiate collection action on agency errors or errors caused by household misunderstanding if the amount of the claim is less than $35 or if the State agency has information which documents that the household cannot be located. (The $35 amount is the current minimum amount for claims against retailers and wholesalers.) Additionally, the proposed regulations allow State agencies to terminate collection of nonfraud claims in situations where there is little likelihood that the household will pay or where the claim has been held in suspense for more than 3 years.

The Department also proposes a 12-month time limit for establishing nonfraud claims. This time limit eliminates the administrative burden of documenting and computing errors that occurred more than a year prior to discovery and is consistent with the 12-month limit proposed for restoring lost benefits. In those cases where auditors discover errors dating back

several years, the Department believes it would be more cost efficient to concentrate on correcting the cause of the error, rather than trying to compute a claim which could be difficult to collect.

Fraud claims. The Department proposes that a fraud claim be established if a determination of fraud has been made by either a court, an administrative fraud hearing or by the State agency's fraud investigators. Prior to the fraud finding, the claim shall be handled as a nonfraud claim. In cases where the determination of fraud was made by the State's fraud investigators, the proposed regulations specify that the State agency is not allowed to coerce a household into paying a claim by threatening to initiate an administrative fraud hearing or by threatening to prosecute.

The proposed procedures for establishing and collecting fraud claims are similar to nonfraud procedures except that there is no 12-month time limit for establishing a fraud claim and States are required to send additional demand letters. The length of time needed to prosecute and investigate fraud claims makes imposition of a 12-month time limit unwarranted.

Criteria for suspending action—Fraud and Nonfraud. The Department proposes that States suspend but not terminate collection action on any claim if the household is financially unable to currently pay the claim but may be able to pay the claim at some future time. For example, nearly all claims which currently participating households are financially unable to pay will be held in suspense, since a possibility exists that the household may be entitled to restoration of lost benefits which could be used to offset the claim. States can also hold a claim in suspense until the household's circumstances have improved. States will not be required to hold any claim in suspense for more than 3 years. This rule benefits both States and households in that households can arrange for repayment at a time when it will cause the household the least hardship and States need not continue sending demand letters to households that are financially unable to pay at the present time.

Submission of payments. In the past, the Department has allowed States to submit to FNS individual claims checks received from households. This procedure, together with the delays in the receipt of payments, has created problems in that the checks are often stale and will no longer be honored by banks. In addition, the likelihood is increased that there are insufficient funds to cover the payment. Therefore, the Department proposes that each State submit a single consolidated check, draft, or warrant to FNS which consolidates all of the payments collected at the State or local level during the previous calendar month. To assure timely submission of payments, the Department proposes that the consolidated check be due no later than the 15th of each calendar month and that no more than 45 days elapse between the date a household makes a payment on a claim and the date the payment is submitted.

To effectively monitor State claims activities, the Department proposes that each State agency submit a report to FNS which summarizes the State's activities relating to claims during the previous calendar month. This report is also due on the 15th of each calendar month and shall be submitted even if the State agency has not collected any payments. A draft of this report form is included in the proposed rulemaking.

60-DAY CONTINUATION OF CERTIFICATION

The Act of 1977 provides that certified households moving between project areas will remain certified for participation in the new project area for sixty days after the move. The House Report emphasizes the need for States to comply with this requirement even though other provisions of the new Act will expedite certification in the new project area. The House Report, in quoting testimony supporting the 60 day continuation, noted that without that provision and "* * * despite the family's need and dependency upon food stamps, that family would not be eligible [because of adminisrative delays] to participate in the program."

The Department is aware of a need to make the availability of the transfer procedure better known to households. The Department is considering a requirement that information on this provision be printed on the food stamp application and change report forms, and be included in outreach materials. These regulations propose that households be advised that they have the option in the new project area of using the transferred eligibility, or of reapplying under emergency certification provisions if their income has been substantially reduced.

The proposed regulations retain the current requirements governing the transfer of eligibility, except that one change from current procedures has been introduced. Recent audits have indicated that households certified under these procedures may begin receiving substantial income in the new project area which would otherwise render them ineligible. Similarly, households may not be using the current transfer procedures because income in the new project is less than shown on the transfer form. Therefore, the regulations require that when the household submits a transfer form in the new project area, it must report any changes in circumstances. The State agency shall then process these changes as described below.

Unless the household is eligible for expedited participation in the new project area, the first month's benefits will be based on the information provided on the transfer document. The second issuance will be based on the reported changes. Households which receive significant increases in income after the move could receive zero benefits during the second month, whereas households with reductions in income could receive an increased allotment. The Department believes that this approach is consistent with the intent of the Act as a whole and is in accord with the 60 day certification for participation statutory language.

The transfer form will be redesigned to facilitate updating the household's circumstances in the new project area. As the Department has encountered complaints from State agencies that States are required to maintain larger supplies of accountable transfer documents than actually needed, the Department will take steps to ensure that States are not overburdened with unnecessary supplies of transfer forms.

ISSUANCE AND USE OF FOOD COUPONS

This part of the proposed regulations deals with more technical aspects of program administration and should be of special interest to State agencies, coupon issuers, bulk storage points and the U.S. Postal Service. The sections concerning the use or redemption of coupons by eligible households, the close-out of coupon issuers and the return of coupons are of more general interest. Briefly, this section discusses (1) State agency issuance responsibilities, (2) types of issuance systems that shall be used, (3) mail issuance standards, (4) distribution of bulk supplies of coupons, (5) responsibilities of coupon issuers and bulk storage points, (6) reconciliation of issuance records and their retention and security, (7) State agency reporting, (8) procedures for the close out of coupon issuers, and (9) requirements concerning the use and return of coupons. The Department encourages interested parties to carefully examine this proposed regulatory language and make specific and detailed comments.

In large part, these proposed regulations are based on past experience with various coupon issuance methods. Those procedures which the Department believes have worked well in the past are being proposed in this rulemaking. As a result, much of the proposal is similar or identical to existing Departmental requirements. Some of the proposed regulations, however, represent changes from current requirements because a cash purchase

requirement will no longer be collected from participants.

STATE AGENCY RESPONSIBILITIES

State Financial Protection. Under the Act, State agencies are "* * * responsible * * * for any financial losses involved in the acceptance, storage and issuance of coupons." The Department proposes to change the current policy of requiring State agencies to carry bonding and allow States the additional option of self-insuring. The Department believes that States should be accorded flexibility to appropriately tailor insurance and security standards according to State priorities.

State monitoring of coupon issuers. The Act requires the Department to develop procedures for determining and monitoring the level of coupon inventories held by coupon issuers. To fulfill this requirement, the proposed regulations require State agencies to establish accountability systems to monitor the day-to-day activities of all coupon issuers. In addition, the State agency is required to conduct an on site review, including a count of coupons on hand, of each coupon issuer and bulk storage point at least once a year.

ISSUANCE SYSTEMS

System classification. States may issue food coupons through a variety of methods, including a direct coupon mailing system. A direct coupon mailing system does not utilize an authorization document. This system is an outgrowth of an earlier policy which allowed States to send food coupons to zero purchase households without using Authorization To Participate (ATP) cards.

The Department will encourage direct coupon mailing in rural areas due to limited access to issuance facilities; and will discourage its use in high risk urban areas, due to on-going problems with thefts of coupons. Direct coupon mailing, when used appropriately, will simplify issuance procedures and will improve State agency accountability.

Household Issuance Record (HIR) Issuance. The proposed regulations would provide that States with an HIR issuance system may stagger issuance of coupons to households through the 15th of the month, as long as each household can obtain coupons on or about the same day of the month during the certification period. In an HIR system, the State agency must also provide households that are certified after the 25th of the month with the option of obtaining the coupon allotment for the month of certification in the next month. This will insure that households have an opportunity to obtain benefits for which they were certified.

ATP Issuance. Currently, most States use ATP cards as the means by which households obtain food stamp coupons. Expiration dates on ATP cards facilitate the State agencies ability to reconcile issuance while still providing the houshold with a reasonable opportunity to obtain the full coupon allotment in the period of certified need.

Since households no longer have to coordinate income flow with coupon purchasing, the proposed regulations require that normally only one ATP be issued per month and that each ATP be clearly marked with an expiration date. The expiration date insures that coupon receipt coincides with periods of documented need for food assistance. Use of undated ATP's could encourage the exchange of coupons for cash. The ATP shall be valid only for the month of issuance unless an ATP has been issued after the 25th day of the month. In such situations the ATP shall not expire until the end of the following month.

To avoid crowded issuance offices and long waits by participants to obtain the coupons, the proposed regulations provide that the State agency may stagger the issuance of ATP's to certified households through the 15th day of the month, provided that each household cycle is established so that it receives its ATP at the same time each month in its certification period.

Issuance of coupons to special households. Instructions currently provide that, at the participant's request, blind persons may be issued coupon allotments in coupon books of one denomination. It is proposed that this policy be extended to any visually handicapped participants.

ISSUANCE OF COUPONS THROUGH THE MAIL

Types of mail issuance systems. The Act imposes the responsibility for the issuance, control and accountability of coupons to States. The proposed regulations allow States to issue all or part of the coupon allotments either by "regular mail issuance" or direct coupon mailing. A regular mail issuance system is one which uses as an intermediate step an authorization document which must be redeemed before coupons can be issued. A direct coupon mailing system, as its name implies, consists of the direct mailing of coupons to households.

Coupons lost in the mail. The Department is concerned over current loss rates of coupons in "high risk" urban areas and over the difficulties which participants encounter when attempting to obtain replacement issuances. The proposed regulations require State agencies to use certified mail for regular or direct mailing programs when the value of monthly coupon replacements for an area exceeds the monthly cost of certified mail.

Nonetheless, the Department will continue to accept liability for losses of coupons placed in the mail if the allotments are mailed in accordance with FNS requirements. However, State agencies must take corrective action to report, trace and eliminate mail losses. If State agencies fail to initiate corrective action or if the action taken fails to significantly reduce the losses, FNS may notify the State that the loss rate is unacceptable. Financial liability may then be transferred to the State and all further mailings shall be at the risk of the State agency. States which refuse to use certified mail as required by FNS shall be held liable for future mail issuance losses.

Mail issuance controls and records. States with direct mailing systems must, under the Department's proposal, stagger the mailing of coupons to certified households through the 10th day of the month and may stagger mailings through the 15th, provided that each household's cycle is established so that it receives coupons at the same time each month. As an additional means of curtailing losses, States are prohibited from mailing coupons to large concentrations of households with the same zip code on the same day. Waivers from these requirements will be considered, for example where the mail issuance caseload is so small that a staggered mail system is unnecessary.

RECONCILIATION

Reconciliation of ATP's with the HIR Master File. New procedures for replacement of lost or stolen coupons and for valid coupon issuance into a subsequent month mandate certain changes in reconciliation procedures. Currently, States must merge the records of the emergency and replacement ATP issuances with the HIR master file prior to posting and reconciling the transacted ATP's. However, because ATP's issued after the 25th of the month can be redeemed in the following month, States will now be required to establish a mechanism for the redemption of two valid ATP's in one month, and the reconciliation and posting to the correct month of issuance. In addition, replacement ATP's issued as a result of lost or stolen coupons, as well as the original ATP's, must be reported and posted on the HIR master file as valid issuances for the month.

STATE AGENCY REPORTING AND DESTRUCTION OF UNUSUABLE COUPONS

State agency reporting. The Department is currently reevaluating all reporting requirements to determine if any of the reporting burdens on State agencies can be alleviated. The results

of the study may lead to further changes in the reporting requirements beyond those reflected in the proposed regulations. In the proposed regulations, due dates of certain issuance activity reports are extended to allow State agencies additional time to submit correct and complete reports. The Department has added a new report for all State agencies with ATP systems. This report will record the results of the reconciliation of transacted ATP's to the HIR master file. The identification of all unreconciled ATP's will enable the States and the Department to establish the liabilities for those cards and will allow the Department to monitor any corrective action or claims action taken by the State agencies.

State agency destruction of unusable coupons. Coupons that are unusable because they have been mutilated or improperly manufactured are currently returned to the Department through the mail. To allow for improved accountability and control over these coupons and for savings on postage fees, the proposed regulations require the State agency to destroy the coupons and to report the destruction to the Department. This destruction authority is limited to not more than $200 per coupon issuer or bulk storage point per month. If the value of the coupons to be destroyed exceeds $200, the Department must be consulted prior to destruction, to determine what steps should be taken.

CLOSE-OUT OF A COUPON ISSUER

Maintenance of participant service. Proposed regulations will prohibit State agencies from using an issuer or bulk storage point any longer than 30 days from the date a decision to terminate a coupon issuer for noncompliance with contractual requirements has been reached. States will further be required to perform on site reconciliation of the issuer's activity on a weekly basis. Food stamp participants using a coupon issuer that is to be terminated must be notified 30 days prior to the close-out of the issuer. Additionally, the State must take whatever action is necessary to maintain participant service. Notification of participants is proposed to ensure that States remain responsive to the needs of participants and that participants continuously receive timely service.

PARTICIPATION OF RETAILER FOOD STORES, WHOLESALE FOOD CONCERNS, AND BANKS

This section of the preamble discusses changes required as a result of the new Act regarding participation by food retailers and wholesalers. Because existing provisions regarding retailer/wholesaler activities have generally been considered successful, major portions of this section are a restatement of existing regulations, instructions or procedures. The Department encourages detailed comments on this section, especially from organizations, businesses or persons likely to be directly affected by its provisions.

Staple food. The proposed regulations implement language in the Act defining staple food as food intended for "* * * home preparation and consumption, such as meat, poultry, fish, bread, cereals, vegetables, fruits, dairy products, and the like, but not including accessory food items, such as coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices * * *." The statute provides that retail food stores would be authorized to accept food stamps only if food sales are more than 50 percent staple foods. The list of staple food items in the proposed regulations includes fruit and vegetable juices, which are not specifically mentioned in the list of staple food items in the Act. This is a logical extension of the kinds of items named in the Act, but would not necessarily be readily inferred from that list. The staple food list is only relevant to the definition of "retail food store" and does not limit the types of foods households may purchase with food coupons.

Eligible food. The proposed regulations implement the statutory requirement that "* * * hot foods or hot food products ready for immediate consumption * * *" no longer be eligible for purchase with food stamps.

Approval of retail food stores and wholesale food concerns. The proposed regulations implement the statutory requirement that retail food stores have a food sales volume that is more than half staple foods. FNS does not expect this requirement to adversely affect any large group of retail food stores. The House Report explains that retailers should not be required to set up any elaborate system of record keeping to prove to FNS that the sales of staple foods warranted authorization. The intention is to eliminate certain stores, such as candy and ice cream stores, spice stores, donut shops which do not also sell bread products, and house-to-house delivery routes which sell primarily food items that are not staple foods.

Concern has been expressed that these changes would withdraw the authorization of large numbers of small rural groceries, convenience stores, health food stores, or dairies and other stores which sell a single kind of food. Such fears are unfounded. The House report notes that "* * * there should be no question that the retail food store definition would not disqualify such places as gasoline stations that handle food items as a recognized separate line or department * * * or drug stores that stock eligible food items or specialty stores, such as bakeries, that sell a line of staple products * * *."

The Act does not change the present criteria regarding retail store authorizations, except for the requirement that retailers must have food sales that are more than 50 percent staple foods. The Department has, however, clarified authorization requirements in the proposed regulations to provide more guidance concerning specific participation criteria. In addition, the location of a store may be considered when determining whether the store could be expected to attract food stamp business.

The proposed regulations list farmers markets "* * * which are involved in the direct marketing of farmers' produce to the public * * *" as one category of food store which can be expected to be authorized. Where farmers rent space on a routine basis in these markets, each farmer would be authorized individually. In addition, where a roadside stand or market is operated by a single farmer the farmer would be authorized individually. However, where farmers participate in a farmers market but do not rent space on a routing basis, the market itself (rather than the individual farmers) would be authorized. A farmer who is certified to receive food stamps as a participating household may also be authorized to accept food stamps as a retailer.

When reviewing a firm's authorization request, the Department may consider records of criminal convictions, removal from other programs, civil suits reflecting on business integrity, and fraudulent misuse of food stamps.

Concern has been expressed that stores which raise prices when welfare checks or food coupons are issued should not be allowed to participate. The Act prohibits the Department from specifying the prices at which food may be sold. However, if there is evidence that a store is manipulating its prices to increase profits at the expense of program participants, the proposed regulations, as well as present regulations, allow the Department to consider that evidence in reevaluating the store's authorization. Further, compliance with the local and State regulations on sanitation and food safety should be considered in determining a firm's business integrity.

The proposed regulations authorize wholesalers only if staple foods make up over 50 percent of the total food sales and an authorized retailer (retail food store, meal service, nonprofit food purchasing venture, or drug addict or alcoholic treatment and rehabilitation center) depends on the wholesaler to redeem food stamps. This provision will remove a number of wholesalers from participation in the program. The Act states that no

firm may be simulateneously authorized as both a retailer and a wholesaler. This requirement will require firms, which meet the criteria for both retailers and wholesalers, to choose whether they wish to be authorized to redeem food stamps as retailers or as wholesalers.

These changes in the criteria for authorizing wholesalers are warranted by program changes that have taken place over the years. In the early days of the program, authorizing numerous wholesalers served an important function by making it easier for retailers, without access to banks, to redeem food stamps. This, in turn, encouraged retailers to participate in the program. Retailers currently have better access to banks, and wholesalers are, for the most part, not a vital part of the redemption process. Moreover, the authorization of large numbers of wholesalers increases administrative and enforcement burdens.

Participation of retail food stores. The Act states that participating households may receive cash in change in amounts less than $1. The proposed regulations implement this directive. The House Report notes that the intent was to replace credit slips and tokens with cash change. Mandating cash change will relieve retailers of the burdens of providing, issuing, and accounting for credit slips or tokens. Food stamp participants will be relieved of the burden of returning to the stores where credit slips or tokens were issued.

In order to minimize any potential for abuse, the regulations provide that store personnel may not knowingly enter into a series of small transactions for less than $1 with the same food stamp participant when such transactions are designed to allow the food stamp participant to accumulate cash change.

The proposed regulations implement language in the Act which allows private nonprofit food purchasing ventures to accept and redeem coupons before delivering the food orders bought with the coupons. The proposed regulations require that private nonprofit food purchasing ventures deliver the food bought with coupons within 10 days of receiving the member's coupons for the order. This added requirement will protect participating households without interfering with the operations of private nonprofit food-purchasing ventures which may have capitalization problems.

Disqualification of retail food stores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications. To implement the Act, the proposed regulations state that FNS may fine a firm up to $5,000 per violation in lieu of disqualifying the firm for violations, if a disqualification would cause hardship to participating households. It has been suggested that the Department establish a table of specific fines for various kinds of violations, increasing in severity with the increase in the seriousness of the violation. This approach was rejected because it does not allow for differences in ability to pay among stores, or for differences in the effect of disqualification on profits. The method adopted takes into account that a disqualified firm will lose regular food and nonfood sales, as well as food stamp sales, and that the firm's overhead will not necessarily drop in proportion to the drop in business as a result of disqualification.

In conjunction with the guidelines on determining the amounts of the civil money penalties, the proposed regulations list the standard periods of disqualification and the criteria used to determine which period of disqualification should be used. The sliding scale of disqualification periods provides for longer periods of disqualification for violations which are considered more serious.

Demonstration, Research, and Evaluation Authority

Legislative authority. The Department has been provided with statutory authority to conduct demonstration, research, and evaluation projects. While developing the proposed regulations, contacts were made with representatives from the Departments of Labor; Health Education and Welfare; and Housing and Urban Development to determine how these Departments administer demonstration, research and evaluation projects. The Department obtained significant guidance in the development of the proposed regulations and on the subject of actual project operations. These proposed regulations supersede proposed rules on demonstration projects which were published in the Federal Register on June 11, 1976 (41 FR 23720).

Demonstration projects. The demonstration project authority allows the Department to waive specific requirements of the Act and regulations to conduct tests designed to improve program administration and benefit delivery. As required by the law, no project will be undertaken if it would lower or further restrict the income or resource standards or benefit levels established in the Act.

Research projects. Such projects are authorized to study means to improve both program administration and the effectiveness of the program in delivering nutrition related benefits.

Evaluation projects. The law mandates an annual evaluation of the program's impact on the nutritional and economic status of participating households, the agricultural economy, and the program's fairness to program participants.

In establishing demonstration project priorities for fiscal year 1979 (FY 1979), the Department will review the proposals already received and the specific comments on project operations made during proposed rulemaking. This publication, however, is not intended to solicit comments on particular demonstration projects. The Department will take the initiative in determining the types of demonstration and evaluation projects that should be undertaken, either through publication of a Notice of Intent in the Federal Register or a solicitation made in conformance with the Federal Procurement Regulations. This should assure that the Department achieves its demonstration project priorities given the limited availability of funds for this purpose.

Approval of proposals. Proposals will be evaluated by a panel consisting of Departmental and Agency personnel. Selection will be based on the bidder's responsiveness to both general and specific project criteria.

Pre-Operational rulemaking procedures. Applicable rulemaking requirements contained in the Administrative Procedure Act will be followed prior to project implementation.

Federal financial participation. The Department will assume up to 100 percent of State agency costs involved in demonstration projects, to the extent that such costs exceed those usual and customary to program operations.

All cross-referenced "reserved" sections of the proposed regulations refer to future rulemaking. Current regulations relevant to reserved sections will remain in force until revoked, superseded or modified by future regulatory language.

All comments received on sections of the proposed rulemaking that impact on current HEW regulations will be taken into consideration in analyzing and developing the final proposal.

Reorganization of the Regulations

The food stamp regulations have been extensively revised and restructured. When reviewing the reorganized material, please note that several new provisions are reserved since these provisions will be proposed rulemaking in a second package of regulations. In addition, several provisions in the current regulations are expected to change when the second package of proposed rulemaking is published. To show that these current provisions have not been deleted but will remain in force and effect until the second package is published as final rulemaking, these provisions in the current regulations are retained by reference but are not restated.

Certain sections of the Food Stamp Act are effective without publication of regulations. These sections include: 4(c) (notice and comment rulemaking

requirements, advance copies of rules to the Committees); 7(c) (coupon design); and 11(g) (injunctive relief against State agencies).

To help in relating the current regulations to the proposed regulation, the following table of redesignations has been compiled:

TABLE OF REDESIGNATIONS

Old	New
	270 Reserved.
270.1(a)	271.1(a).
270.1(b)	271.1(b).
270.2(a)[1]	271.2
270.2(b)	Deleted.
270.2(c)	271.2
270.2(d)	Deleted.
270.2(e)	271.2
270.2(f)–(l)	Deleted.
270.2 (m) and (n)	271.2
270.2 (o) and (p)	Deleted.
270.2(q)–(s)	271.2
270.2(t)	Deleted.
270.2 (u) and (v)	271.2
270.2 (w) and (x)	Deleted.
270.2(y)	271.2
270.2 (z) and (aa)	Deleted.
270.2 (bb)	271.2
270.2 (cc) and (dd)	Deleted.
270.2(ee)	271.2
270.2(ff)–(ll)	Deleted.
270.2 (mm), (oo), and (pp)	271.2
270.2 (qq) and (rr)	Deleted.
270.2(ss)	271.2
270.2(tt)	Deleted.
270.2 (uu) and (vv)[1]	271.2
270.2(ww)–(yy)	Deleted.
270.2(zz)	271.2
270.3(a)	271.3(a).
270.3(b)	271.4(a).
270.3(c)	272.4(a)(2).
270.4(a)	271.5(a).
270.4(b)	271.5(b).
270.4(c)	271.5(c).
270.4(d)	273.16 (a) and (b); 271.5(b).
270.5(a)	271.3(b).
270.5(b)	271.6(b)
270.5(c)	Deleted.
271.1(a)[1]	272.8 Reserved.
271.1(b)	272.1(a).
271.1(c)[1]	272.1(b).
271.1(d)	272.7(a).
271.1(e)	273.2 (f)(1)(iv) and 273.3.
271.1(f)	272.1(c).
271.1(g)	272.4(a)(1).
271.1(h)[1]	277 Reserved.
271.1(i)[1]	272.2 Reserved; 272.3 Reserved.
271.1(j)	271.4(a).
271.1(k)[1]	272.6(a)–(c) Reserved.
271.1(l)	272.1(e).
271.1(m)	272.1(f) and 274.7.
271.1(n)(1)	273.13(a) (1) and (2).
271.1(n)(2)	273.13(b).
271.1(n)(3)	273.12(e) (1)(ii); (2)(ii).
271.1(n)(4)	273.15(k).
271.1(o)	273.15.
271.1(p)	273.17(i).
271.1(q)	273.17.
271.1(r)[1]	272.1(d) Reserved.
271.1(s)	272.1(g).
271.1(t)[1]	276 Reserved.
271.2[1]	277 Reserved.
271.3(a)(1)	273.1 (a) and (b).
271.3(a)(1) (i) and (ii)	273.2(d).
271.3(a)(1)(iii)	273.12.
271.3(a)(2)	274.10(b).
271.3(a)(3)	274.10(c).
271.3(a)(4)	274.10(d); 273.11(e); 273.1(f)(iv).
271.3(a)(5)	274.10(e).
271.3(b)	Deleted.
271.3(c)—Introductory paragraph	273.8(a) and 273.9(a).

TABLE OF REDESIGNATIONS—Continued

Old	New
271.3(c)(1)(i)	273.9(b).
271.3(c)(1)(i)(a)	273.9(b)(1)(i).
271.3(c)(1)(i)(b)	273.9(b)(1)(ii); 273.9(c)(9); 273.11(a).
271.3(c)(1)(i)(c)	273.9(b)(1)(ii); 273.9(c)(9); 273.11(a).
271.3(c)(1)(i)(d)	273.9(b)(1)(ii); 273.9(c)(9); 273.11(b).
271.3(c)(1)(i)(e)	273.9(b)(2)(ii).
271.3(c)(1)(i)(f)	273.9(b)(2)(i).
271.3(c)(1)(i)(g)	273.9(b)(2)(v).
271.3(c)(1)(i)(h)	273.9(c)(1)(ii).
271.3(c)(1)(i)(i)	273.9(b)(2)(iv).
271.3(c)(1)(i)(j)	273.9(b)(2)(iv).
271.3(c)(1)(i)(k)	273.9(b)(2)(iii).
271.3(c)(1)(i)(l)	Deleted.
271.3(c)(1)(i)(m)	Do.
271.3(c)(1)(ii)(a)	273.9(c)(7).
271.3(c)(1)(ii)(b)	273.9(c)(10)(i).
271.3(c)(1)(ii)(c)	273.9(c)(1)(i).
271.3(c)(1)(ii)(d)	273.9(c)(2).
271.3(c)(1)(ii)(e)	273.9(c)(8).
271.3(c)(1)(ii)(f)	273.9(c)(4).
271.3(c)(1)(ii)(g)	273.9(c)(10)(iii).
271.3(c)(1)(ii)(h)	273.9(c)(10)(iv).
271.3(c)(1)(iii)(a)	273.9(d)(2).
271.3(c)(1)(iii)(b)	Deleted.
271.2(c)(1)(iii)(c)	Do.
271.3(c)(1)(iii)(d)	273.9(d)(3).
271.3(c)(1)(iii)(e)	Deleted.
271.3(c)(1)(iii)(f)	273.9(c)(3).
271.3(c)(1)(iii)(g)	Deleted.
271.3(c)(1)(iii)(h)	273.9(d)(4).
271.3(c)(2)(i)–(iv)	273.10(c).
271.3(c)(3)	273.9(a).
271.3(c)(4)(i)	273.8(b).
271.3(c)(4)(ii)	273.8(c).
271.3(c)(4)(iii)	273.8(e).
271.3(c)(4)(iv)	273.8(g).
271.3(d)	273.7.
271.3(e)	273.3.
271.3(f)	Deleted.
271.4(a)(1)	273.2(k).
271.4(a)(2)(i)	273.2 (a) and (b).
271.4(a)(2)(ii)	273.2(e).
271.4(a)(2)(iii)	273.2(f); 273.2(l)(4)(i).
271.4(a)(3)(i)	273.2(g); 273.10(g)(1); 273.2(h)(2).
271.4(a)(3)(ii)—Introductory paragraph	273.14(a).
271.4(a)(3)(ii)(a)	273.14(b).
271.4(a)(3)(ii)(b)	273.14(e).
271.4(a)(3)(ii)(c)	273.14(c).
271.4(a)(3)(ii)(d)	273.14(d).
271.4(a)(3)(ii)(e)	273.14(f).
271.4(a)(4)	273.10(f).
271.4(a)(5)	273.19.
271.4(a)(6)	273.10(g)(3).
271.4(a)(7)[1]	272.5 Reserved.
271.5	273.10(e).
271.6(a)	274.4(e).
271.6(b)	274.4(c).
271.6(c)	274.4 (a) and (b).
271.6(d)—Introductory paragraph	274.1.
271.6(d)(1)	274.3.
271.6(d)(2)	Deleted.
271.6(d)(3)	Do.
271.6(d)(4)	Do.
271.6(d)(5)	274.2(d)(3).
271.6(e)	Deleted.
271.6(f)	274.6.
271.6(g)[1]	272.5 Reserved.
271.6(h)	274.1(d).
271.6(i)	274.11(e).
271.7(a)–(d)[1]	276 Reserved.
271.7(e)	273.16 and 273.18.
271.7(f)	273.18.
271.8[1]	272.3 Reserved.
271.9(a)	274.10(a).
271.9(b)	274.10(f).
271.9(c)	274.10(g).
271.9(d)	274.10(h).
271.9(e)	273.16.

TABLE OF REDESIGNATIONS—Continued

Old	New
271.9(f)–(j)	274.11.
271.9(k)	Deleted.
271.10	273.6.
272	278.
273	279.
274[1]	280 Reserved.
275[1]	277 Reserved.

[1]The language in these paragraphs of the old regulations will remain in full force and effect.

The proposed structure of subchapter C is as follows:

SUBCHAPTER C—FOOD STAMP PROGRAM

Part
270 [Reserved]
271 General information and definitions.
272 Requirements for participating State agencies.
273 Certification of eligible households.
274 Issuance and use of food coupons.
275 Program monitoring systems (reserved).
276 State agency liabilities and federal sanctions (reserved).
277 Payment of certain administrative costs of State agencies (reserved).
278 Participation of retail food stores, wholesale food concerns and banks.
279 Administrative and judicial review—food retailers and food wholesalers.
280 Emergency food assistance for victims of disasters (reserved).
281 Designation of Indian tribes as State agencies (reserved).
282 Demonstration, research, and evaluation projects.

PART 270 [RESERVED]

1. Part 270 is revised and redesignated as Part 271. The new Part 270 is reserved. The definitions in paragraphs (a), (uu), and (vv) of former section 270.2 remain in force and effect but are redesignated in Part 271. The new Part 271 reads as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

Sec.
271.1 General purpose and scope.
271.2 Definitions.
271.3 Delegations to FNS for administration.
271.4 Delegations to States for administration.
271.5 Coupons as obligations of the United States, crimes, and offenses.
271.6 Complaint procedures.

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027).

§ 271.1 General purpose and scope.

(a) *Purpose of the Food Stamp Program.* The Food Stamp Program is designed to promote the general welfare and to safeguard the health and well being of the Nation's population by raising the levels of nutrition among low-income households. Section 2 of the Food Stamp Act of 1977 states, in part:

Congress hereby finds that the limited food purchasing power of low-

income households contributes to hunger and malnutrition among members of such households. Congress further finds that increased utilization of food inestablishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of the Nation's agricultural abundance and will strengthen the Nation's agricultural economy, as well as result in more orderly marketing and distribution of foods. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.

(b) *Scope of the regulations.* Part 271 contains general information, definitions and other material applicable to all parts of this subchapter. Part 272 sets forth policies and procedures governing State agencies which participate in the Program. Part 273 describes the eligibility criteria to be applied by State agencies and related processing requirements and standards. Part 274 provides requirements for the issuance of coupons to eligible households and establishes related issuance responsibilities. Part 275 sets forth guidelines for monitoring the Food Stamp Program, analyzing the results and formulating corrective action. Part 276 establishes State agency liability and certain Federal sanctions. Part 277 outlines procedures for payment of administrative costs of State agencies. Part 278 delineates the terms and conditions for the participation of retail food stores, wholesale food concerns, meal services and banks. Part 279 establishes the procedures for administrative and judicial reviews requested by food retailers, food wholesalers and meal services.. Part 280 explains procedures for issuing emergency coupon allotments to certain victims of disasters unable to purchase adequate amounts of food. Part 281 sets forth guidelines for designating Indian tribes as State agencies. Part 282 provides guidelines for initiation, selection and operation of demonstration, research and evaluation projects.

§ 271.2 Definitions.

"Affidavit" (reserved).

"Allotment" means the total value of coupons a household is authorized to receive during each month or other time period.

"Application for participation" means the application to participate in the program, as designed or approved by FNS, which is completed by a household member or authorized representative.

"Authorization to participate card (ATP)" means a document which is issued by the State agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.

"Bulk storage point" means an office of the State agency or any person, partnership, corporation, organization, political subdivision, or other entity with which a State agency has contracted for, or to which it has assigned responsibility for, the security and storage of food coupons.

"Communal dining facility" means a public or nonprofit private establishment, approved by FNS, which prepares and serves meals for elderly persons, or for Supplemenmtal Security Income (SSI) recipients, and their spouses. It shall include senior citizens' centers, apartment buildings occupied primarily by elderly persons or SSI households, public or private nonprofit establishments (eating or otherwise) that feed elderly persons or SSI recipients, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It shall also include private establishments that contract with an appropriate State or local agency to offer meals at concessional prices to elderly persons or SSI recipients.

"Coupon" means any coupon, stamp, or certificate provided pursuant to the provisions of this subchapter for the purchase of eligible food.

"Coupon issuer" means any office of the State agency or any person, partnership, corporation, organization, political subdivision, or other entity with which a State agency has contracted for, or to which it has assigned responsibility for, the issuance of coupons to households.

"Drug addiction or alcoholic treatment and rehabilitation program" means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private nonprofit organization or institution which is certified by the State agency or agencies designated by the Governor as responsible for the administration of the State's programs for alcoholic and drug addicts puruant to Pub. L. 91-616, "Comprehensive Alcohol Abuse and Alcoholism Prevention Treatment and Rehabilitation Act of 1970" and Pub. L. 92-255, "Drug Abuse Office and Treatment Act of 1972" as providing treatment that can lead to the rehabilitation of drug addicts or alcoholics.

"Elderly person" means a person 60 years of age or older.

"Eligible food" means: (1) any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption; (2) seeds and plants to grow foods for the personal consumption of eligible households; (3) meals prepared and delivered by an authorized meal delivery service, or served by a communal dining facility for the elderly or SSI households, to elderly persons, SSI households, and their spouses, and to households eligible to use coupons under § 274.10 (b) or (c); (4) Meals prepared and served by an authorized drug addict or alcoholic treatment and rehabilitation center to households eligible to use coupons under § 274.10(d) and (5) in the case of certain eligible households living in areas of Alaska as specified in § 274.10(e), equipment for the purpose of procuring food for eligible households, including nets, lines, hooks, fishing rods, harpoons, knives, and other equipment necessary for subsistence hunting and fishing but not equipment for the purpose of transportation, clothing, or shelter nor firearms, ammunition, or other explosives.

"Federal fiscal year" means a period of 12 calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

"FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.

"Food Stamp Act" means the Food Stamp Act of 1977 (P.L. 95-113), including any amendments.

"General assistance (GA)" means cash assistance which is financed entirely by State or local funds and which is administered by the State agency, as defined in this section.

"Identification (ID) card" means a serially numbered card which identifies the bearer as eligible to receive and use food coupons.

"Immigration and Naturalization Service (INS)" means the Immigration and Naturalization Service, U.S. Department of Justice.

"Institution of higher education" means any institution providing post-high school education, including but not limited to, colleges, universities, and vocational and technical schools at the post-high school level.

"Low-income household" means a household whose annual income does not exceed 125 percent of the Office of Management and Budget poverty guidelines.

"Meal delivery service" means a political subdivision, a private nonprofit organization, or a private establishment with which a State or local agency has contracted for delivered meals, which prepares and delivers meals and meets the requirements of § 278.1(d).

"Medicaid" means medical assistance under title XIX of the Social Security Act, as amended.

"Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.

"Overissuance" means the amount by which coupons issued to a household exceed the amount it was eligible to receive.

"Program" means the Food Stamp Program conducted under the Food Stamp Act and regulations.

"Project area" means the county or geographic entity designated by a State as the administrative unit for program operations. Upon FNS approval, a county, city, Indian reservation, welfare district, or any other entity with clearly defined geographic boundaries, or any combination of such entities, may be designated as a project area, or States as a whole may be designated as single project areas.

"Public assistance (PA)" means any of the following programs authorized by the Social Security Act of 1935, as amended: Old-Age Assistance, Aid to Families with Dependent Children (AFDC), including AFDC for children of unemployed fathers, Aid to the Blind, Aid to the Permanently and totally Disabled and Aid to Aged, Blind or Disabled.

"Regulations" means the provision of this subchapter. Regulatory citations refer to provisions of this subchapter unless otherwise specified.

"Retail food store" means: (1) an establishment or recognized department of an establishment, or a house-to-house trade route, whose food sales volume is more than 50 percent staple food items for home preparation and consumption; (2) public or private communal dining facilities and meal delivery services and drug addict or alcoholic treatment and rehabilitation programs; (3) any store selling equipment for procuring food by hunting and fishing to eligible households in Alaska, as specified in the definition of eligible food; (4) any private nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food; and (5) a farmers market.

"Secretary" means the Secretary of the U.S. Department of Agriculture.

"Staple food" means those food items intended for home preparation and consumption, which include meat, poultry, fish, bread, cereals, vegetables, fruits, fruit and vegetable juices, and dairy products. Accessory food items, such as coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices are not staple foods for the purpose of qualifying a firm to participate in the program as a retail food store.

"State" [Reserved].

"State agency" [Reserved].

"Supplemental security income (SSI)" means monthly cash payments made by the Social Security Administration to an aged, blind or disabled individual who meets the requirements for such aid under title XVI of the Social Security Act, as amended, and also includes State supplementary payments made by a State on a regular basis.

"Thrifty Food Plan" means the diet developed by the Department that includes specific foods, in quantities, the cost of which is the basis for the allotments issued to households according to household size and income.

"Wholesale food concern" means an establishment which sells eligible food to retail food stores or to meal services for resale to households.

§ 271.3 Delegations to FNS for administration.

(a) *Delegation.* Within the Department, FNS shall act on behalf of the Department in the administration of the program. When authority is delegated to FNS, it may be carried out by the Administrator or by another official of FNS as designated. The Secretary reserves the right at any time to withdraw, modify, or amend any delegation of authority to FNS.

(b) *Claims settlement.* FNS shall have the power to determine the amount of and to settle and adjust any claim arising under the provisions of the Act or this subchapter, and to compromise or deny all or part of any claim.

(c) *Demonstration authority.* FNS is authorized to undertake demonstration projects which test new methods designed to improve program administration and benefit delivery. FNS is authorized to initiate program research and evaluation efforts for the purposes of improving and assessing program administration and effectiveness. The procedure for initiating and conducting these projects is established in Part 282.

§ 271.4 Delegations to State agencies for administration.

(a) *General delegation.* The State agency shall be responsible for the administration of the program within the State, including, but not limited to: (1) Certification of applicant households; (2) Issuance, control, and accountability of coupons; (3) Outreach activities; (4) Developing and implementing complaint procedures; (5) Developing, implementing, and evaluating training; (6) Conducting reviews; (7) Keeping records necessary to determine whether the program is being conducted in compliance with these regulations; and (8) Submitting accurate and timely financial and program reports.

(b) *Claims delegation.* FNS delegates to the State agency, subject to the standards in § 273.18, the authority to determine the amount of, and settle, adjust, compromise, or deny all or part of any claim which results from fraudulent or nonfraudulent overissuances to participating households.

§ 271.5 Coupons as obligations of the United States, crimes and offenses.

(a) *Coupons as obligations.* Pursuant to section 15(d) of the Food Stamp Act, coupons are an obligation of the United States within the meaning of 18 United States Code (U.S.C.) 8. The provisions of title 18 of the United States Code, "Crimes and Criminal Procedure," relative to counterfeiting, misuse and alteration of obligations of the United States are applicable to coupons.

(b) *Penalties.* Any unauthorized issuance, use, transfer, acquisition, alteration, possession, or presentation of coupons or ATPs may subject any individual, partnership, corporation, or other legal entity to prosecution under sections 15 (b) and (c) of the Food Stamp Act or under any other applicable Federal, State or local law, regulation or ordinance.

Sections 15 (b) and (c) of the Food Stamp Act read as follows:

(b) Whoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards in any manner not authorized by this Act or the regulations issued pursuant to this Act shall, if such coupons or authorization cards are of the value of $100 or more, be guilty of a felony and shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, or, if such coupons or authorization cards are of a value of less than $100, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both.

(c) Whoever presents, or causes to be presented, coupons for payment or redemption of the value of $100 or more, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Act or the regulations issued pursuant to this Act shall be guilty of a felony and shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, or, if such coupons are of a value of less than $100, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both.

(c) *Security for coupons and ATPs.* All individuals, partnerships, corporations, or other legal entities including State agencies and their delegatees (referred to in this paragraph as "persons") having custody, care and control of coupons and ATPs shall at all times take all precautions necessary to avoid acceptance, transfer, negotiation, or use of spurious, altered, or counterfeit coupons and ATPs and to avoid any unauthorized use, transfer, acquisition, alteration or possession of coupons and ATPs. These persons shall safeguard coupons and ATPs from theft, embezzlement, loss, damage, or destruction.

(d) *Fraud.* Participant fraud is defined in § 273.16.

(e) *Coupon issuers.* (1) Any coupon issuer or any officer, employee or

agent, thereof convicted of failing to provide the monthly reports required in § 274.5 or convicted of violating Part 274 shall be subject to a fine of not more than $1,000, or imprisoned for not more than one year, or both.

(2) Any coupon issuer or any officer, employee or agent, thereof, convicted of knowingly providing false information in the reports required under § 274.5 shall be subject to a fine of not more than $10,000, or imprisoned not more than five years, or both.

§ 271.6 Complaint procedure.

(a) *State agency responsibility.* (Reserved)

(b) *Regional office responsibility.* (1) Persons or agencies desiring program information or wishing to file a complaint may contact the appropriate FNS Regional Office.

(i) For Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, the Virgin Islands of the United States, and West Virginia: Mid-Atlantic Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 1 Vahlsing Center, Route 526, Robbinsville, New Jersey 08691.

(ii) For Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 1100 Spring Street, N.W., Room 200, Atlanta, Georgia 30309.

(iii) For Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 536 South Clark Street, Chicago, Illinois 60605.

(iv) For Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 1100 Commerce Street, Suite 5-C-30, Dallas, Texas 75242.

(v) For Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon and Washington: Western Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 550 Kearny Street, Room 400, San Francisco, California 94108.

(vi) For Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont: New England Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 33 North Avenue, Burlington, Mass. 01803.

(vii) For Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 2420 West 26th Avenue, Suite 430-D, Denver, Colo. 80211.

(2) Complainants shall be advised by Regional Office personnel of the appropriate State complaint handling and fair hearing procedures. Discrimination complaints shall be handled by FNS. Other complaints shall be pursued by FNS, rather than the State agency, upon household request, unless the complaint is one upon which the complainant wishes to request a fair hearing.

2. Part 271 is extensively revised and the contents redesignated among the new Parts 272 through 277. The following paragraphs of former Part 271 remain in force and effect but are redesignated:

271.1(a) as 272.8; 271.1(c) as 272.1(b); 271.1(h) as 277.16; 271.1(i) as 272.2; 271.1(k) as 272.6(b); 271.1(r) as 272.1(d); 271.1(t) as 276; 271.2 as 277; 271.4(a)(7) as 272.5(a); 271.6(g) as 272.5(b); 271.7(a)-(d) as 276; and 271.8 as 272.3.

The new Part 272 reads as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

Sec.

272.1 General terms and conditions.
272.2 Federal/State agreement (Reserved).
272.3 Plans of Operation (Reserved).
272.4 Program administration and personnel requirements.
272.5 Operating guidelines (Reserved).
272.6 Outreach.
272.7 Nondiscrimination compliance.
272.8 Dual operations (Reserved).

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027).

§ 272.1 General terms and conditions.

(a) *Coupons as income.* The allotment provided any eligible household shall not be considered income or resources for any purpose under any Federal, State, or local laws including, but not limited to, laws on taxation, welfare, and public assistance programs.

(b) *No aid reduction.* (Reserved)

(c) *Disclosure.* Use or disclosure of information obtained from applicant households, exclusively for the Program, shall be restricted to persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or Regulations.

(d) *Information available to the public.* (Reserved)

(e) *records and reports.* Each State agency shall keep such records and submit such reports and other information as required by FNS.

(f) *Retention of records.* Each State agency shall retain all program records in an orderly fashion, for audit and review purposes, for a period of three years from the month of origin of each record. The State agency shall retain fiscal records and accountable documents for three years from the date of fiscal or administrative closure. Fiscal closure means that obligations for or against the Federal government have been liquidated. Administrative closure means that the State agency has determined and documented that no further action to liquidate the obligation is appropriate. Fiscal records and accountable documents include, but are not limited to claims, documentation of lost benefits, and form FNS-286, "Certification of Transfer of Household Benefits." Retention methods for ATP cards are provided in Part 274.

(g) *Implementation.* The implementation schedule for any amendment to the regulations shall be specified in the amendment.

§ 272.2 Federal/State Agreement [Reserved]

§ 272.3 Plans of Operations [Reserved]

§ 272.4 Program administration and personnel requirements.

(a) *Merit personnel.* (1) State agency personnel used in the certification process shall be employed in accordance with the current standards for a Merit System of Personnel Administration or any standards later prescribed by the United States Civil Service Commission under section 208 of the Intergovernmental Personnel Act of 1970.

(2) State agency employees meeting the standards outlined in paragraph (1) of this section shall perform the interviews required in § 273.2(e). Exceptions to the use of State Merit System personnel in the interview and certification process are SSI households certified under § 273.2(1) and disaster victims certified under Part 280. Volunteers and other non-State agency employees shall not be used for certification interviews or to certify food stamp applicants. Volunteers may be used in related activities such as outreach, prescreening, assisting applicants in completing the application, and securing needed verification. Individuals and organizations who are parties to a strike or lockout, and their facilities, may not be used in the certification process except as a source of verification for information supplied by the applicant. Only authorized employees of the Sate agency, coupon issuers, coupon bulk storage points and federal employes involved in administration of the program shall be permitted access to food coupons, ATPs or other issuance documents.

(b) *Staffing standards.* The State agency shall employ sufficient staff to certify and issue benefits to eligible households and process fair hearing requests within the timeliness standards set forth in these regulations. Outreach activities and other program functions shall be performed as specified in these regulations.

(c) *Bilingual requirements.* State agencies shall provide bilingual staff and materials as required by this subsection.

(1) The requirements for use of bilingual staff and materials are based

on the estimated total number of low income households in a project area compared to the number of low income households which speak the same non-English language (a single-language minority). Single language minority refers to households which speak the same non-English language and which do not contain adult(s) fluent in English as a second language. These households shall include both participating and nonparticipating low income households. When there are 150 or more low income households of a single-language minority in a project area with 3000 or more low income households, bilingual service shall be provided. Bilingual service is also required in project areas with less than 3,000 low income households, where there are 50 or more single-language minority low income households.

(2) State agencies shall use sufficient bilingual certification staff or interpreters, and bilingual materials in projects meeting the criteria in paragraph (c)(1) of this section. In large project areas that have more than one certification office and that are subject to the requirements of paragraph (c)(1) of this section, bilingual needs must be appraised and service provided on the basis of need at specific sites.

(3) Bilingual services shall be provided in project areas with seasonal influxes of non-English speaking households, if during the seasonal influx the project area meets the requirements of paragraph (c)(1) of this section.

(4) State agencies shall ensure that projects meeting the population criteria outlined in paragraph (c)(1) of this section provide sufficient bilingual capability for the timely processing of non-English speaking applicants.

(5) Bilingual materials shall include application forms, required notices and basic program information material.

(6) State agencies and local offices shall develop estimates of the numbers of low income single language-minority households and their ratios to the total number of low income households for each project area by utilizing census data (including the Census Bureau's *Current Population Report: Population Estimates and Projections*, Series p. 25, No. 627) and knowledge of project areas. Local Bureau of Census offices, Community Services Administration offices, Community Action Agencies, planning agencies, and school officials may be important sources of information in determining the scope of bilingual need.

(7) State agencies shall provide FNS with the data used to determine the need for bilingual services.

(d) *Divisions of responsibilities.* (1) *Requirements.* The State agency shall divide the responsibility for eligibility determinations and food coupon issuance between certification, data management, and issuance units. The certificaiton unit shall be responsible for the determination of household eligibility and the creation of records and documents to authorize the issuance of coupons to eligible households. The data management unit, in response to input from the certificaiton unit, shall create and maintain the household issuance record (HIR) master file on cards, computer discs, tapes, or similar memory devices. The issuance unit shall provide certified households with the authorized allotments.

(2) *Exceptions.* With prior written FNS approval as a part of its Plan of Operation, a project area may combine unit responsibilities where all other alternatives have been explored and found to be administratively infeasible.

(i) To approve combined operations, the State agency shall establish special review requirements which at a minimum shall include:

(A) Biweekly reconcilation and verification of transactions; and

(B) Semiannual comparison of HIR cards and case records as required by § 274.6(d) and, at least once every other month, second party review of certification actions.

(ii) The State agency shall annually determine whether each combined operation continues to be justified and shall so advise FNS in writing. If the combined operation is to continue, the reasons for the determination shall be provided.

(e) *Training.* The State agency shall institute a comprehensive and continuing training program for all personnel who are assigned responsibility for the certification of applicant households, outreach staff including hotline operators, and individuals involved in prescreening activities.

(1) *Minimum Requirements.* (i) The State agency shall designate a State training coordinator who develops training materials, supervises the conducting of training sessions, ensures that appropriate personnel receive training and assures compliance with the public participation standards specified in paragraph (e)(1)(iv) of this section. In addition, the State agency shall designate additional staff at either the State or local level to provide training to the appropriate personnel.

(ii) State agency training programs shall cover eligibility criteria, certification procedures, household rights and responsibilities, and other job-related responsibilities concerning the certification of households. The content of training programs shall be reviewed on a semiannual basis in light of performance deficiencies identified through the State agency's performance reporting system and modifications made where warranted. Changes in policy or procedures stemming from court actions or revisions to legislation and regulations shall be promptly reflected in State training programs.

(iii) Training shall be provided to all new employees who are assigned responsibility for the certification of households prior to the assumption of those duties and shall also be provided periodically to existing staff. Periodic training to existing staff shall be provided based on individual performance, performance data drawn from the Performance Reporting System, and the degree to which policy changes occur.

(iv) The State agency shall allow public attendance at formal certification training sessions that are conducted on a statewide, citywide or regional (multiproject area) basis. Public attendance at these training sessions shall be allowed for ten percent of the total attendance at the session, or ten training slots, whichever number is smaller. The State training coordinator shall notify the public of these training sessions through appropriate means.

(v) Training shall also be provided to State agency outreach workers, including hotline operators, and others who pre-screen or provide other services to applicants. Although this training need not be as comprehesive as that for certification personnel, it should be in sufficient detail and frequency to ensure that low income households have access to accurate program information and that accurate pre-screening determinations are made.

(vi) Training shall also be provided to volunteers and to staff of other organizations and agencies involved in outreach, pre-screening, and disbursement of program information. The training should be in sufficient detail and frequency to ensure that information provided to low income households is accurate.

(vii) Training shall be provided to each State agency hearing official at least once during the first year of official's tenure. This training shall represent a detailed and comprehensive study of the Act, regulations and State agency hearing procedures.

(2) *FNS Review.* (i) FNS will review and approve State agency procedures for training as a part of the review of the Plan of Operation required by § 272.3.

(ii) FNS will review the effectiveness of State agency training based on information obtained from the Performance Reporting System, audits and other sources.

(f) *Locations and hours of certification and issuance service.* (reserved)

§ 272.5 Operating guidelines [Reserved]

§ 272.6 Outreach.

(a) *General purpose.* [Reserved]

(b) *Minimum requirements.* [Reserved]

(c) *Staff.* [Reserved]

(d) *Monitoring.* [Reserved]

(e) *Outreach plan.* [Reserved]

(f) *Additional minimum procedures for the transition.* State agencies shall develop special procedures for informing low-income households about the program changes required by these regulations.

(1) *Printed information.* (i) *Notices.* Participating households shall be provided with at least one notice explaining the program changes. The notice may be mailed separately or with the ATP or may be otherwise given to each household. At a minimum, the notice shall describe the new financial eligibility requirements, elimination of the purchase requirement, participant hearing and appeal rights, and the timing of program changes. Notices shall be provided to individual households no later than one month prior to implementation of new eligibility and other regulation changes, and shall also be available at all certification offices for a minimum of six months thereafter.

In addition, a similar notice shall be provided to all recipients of public assistance and SSI if the State administers a supplemental payments program. These notices shall be provided according to the same schedule as the notices to food stamp households and shall also be available at all public assistance offices. When the project area meets the criteria described in § 272.4(c), notice shall be provided in languages other than English.

(ii) *Other printed materials.* State agencies shall also make available written information, such as brochures or pamphlets that describe all financial and nonfinancial eligibility criteria, benefit levels, the application process and participant rights and responsibilities. This written information shall be provided at food stamp certification offices and public assistance offices and shall be made available to local social security offices, State employment services offices, and local offices that administer unemployment compensation programs. This written information shall be available no later than one month prior to implementation.

(2) *Other publicity efforts.* State agencies shall publicize program changes through use of press releases issued in each project area and radio spots. State agencies are also encouraged to use TV spots to alert low-income households to these changes. These publicity efforts shall be initiated no later than one month prior to implementation and shall continue for six months thereafter.

(3) *Hotlines.* During the time period described in paragraph (f)(1)(i) of this section, State agencies shall operate toll-free hotlines at the State level that can be used to secure information on program changes. Project areas may also operate hotlines. Hotlines shall be staffed by employees or volunteers who are generally knowledgeable in food stamp requirements and procedures so that accurate information is provided and complaints are referred to the appropriate officials for resolution. State agencies shall install an adequate number of telephone lines that operate during normal business hours to ensure that callers have reasonable access to program information. At a minimum, State agencies shall install one telephone line for caseloads of less than 100,000 people, two lines for caseloads between 100,000 and 500,000, three lines for caseloads of between 500,000 and one million, and four lines for caseloads of over one million. State agencies may substitute project area lines for State level lines provided that the project area lines meet the minimum requirements contained in this subsection and there is at least one toll-free hotline at the State level. The hotline number shall be posted in certification offices and included in the printed materials required in paragraph (f)(1)(ii) of this section. In addition, State agencies may publicize the hotline number through radio and TV.

(4) *Volunteers.* State agencies shall notify groups and organizations identified in outreach plans as well as other groups and organizations that can assist in contacting low-income households of the availability of training and printed materials on the new program requirements. State agencies shall provide training and printed materials described in paragraph (f)(1) of this section to interested groups and organization upon request.

§ 272.7 Nondiscrimination compliance.

(a) *Requirement.* State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, sex, religious creed, national origin or political beliefs.

(b) *Complaints.* (1) People who believe that they have been subject to discrimination as specified in paragraph (a) of this section may file a complaint with the Secretary or the Administrator, FNS.

(2) A complaint must be filed no later than 180 days from the date of the alleged discrimination. However, the time of filing may be extended by the Secretary.

(3) The State agency shall accept all complaints of discrimination, written or verbal, and forward them promptly to the Secretary or the Administrator, FNS.

(4) In the event an individual verbally alleges that a discriminatory act has been committed but the individual does not put it in writing, the person receiving the complaint shall do so. If possible, the following information shall be solicited from the complainant:

(i) Name, address and telephone number or other means of contacting the person alleging discrimination.

(ii) Location and name of the organization or office which is accused of discriminatory practices.

(iii) The nature of the incident, action, or the aspect of program administration that led the person to allege discrimination.

(iv) The reason for the alleged discrimination (age, race, sex, religious creed, national origin or political belief).

(v) Names, titles (if appropriate), and addresses of persons who may have knowledge of the discriminatory acts.

(vi) The date or dates on which the alleged discriminatory actions occurred.

(5) Written complaints will be accepted by the Secretary or the Administrator, FNS, even if the information specified in paragraph (b)(4) of this section is not complete. Persons who file written complaints are encouraged to provide this information to facilitate investigation. Investigations will be conducted only if information concerning paragraphs (b)(4) (ii), (iii), (iv) of this section is provided.

(6) Discrimination is prohibited on the basis of § 11(c) of the Food Stamps Act and additionally discrimination on the basis of race, color or national origin is prohibited by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought pursuant to either or both authorities. Matters brought pursuant to Title VI shall be processed in accord with 7 CFR part 15.

(c) *Reviews.* (Reserved)

(d) *Public notification.* State agencies shall: (1) Publicize the procedures described in paragraph (b) of this section.

(2) Ensure that all offices involved in administering the program and that also serve the public, display the nondiscrimination poster "* * * And Justice for All."

(3) Ensure that participants and other low income households have access to information regarding nondiscrimination statutes and policies, complaint procedures, and the rights of participants, within ten days of the date of a request.

(e) *Data Collection.* (1) The State agency shall require the eligibility worker to record the racial/ethnic category of the household. The racial/ethnic categories are: American Indian or Alaskan Native, Asian or Pacific Is-

lander, Black (not of Hispanic origin), Hispanic, and White (not of Hispanic origin). The assigned category will be based on the eligibility worker's observation during the certification interview.

(2) State agencies shall develop and implement a recordkeeping system that contains data by project area and racial/ethnic category for the following:

(i) Total population;
(ii) Low income caseload;
(iii) Applications received;
(iv) Applications certified;
(v) Applications denied;
(vi) Actual participation;
(vii) Fair hearings requested;
(viii) Fair hearings decided in favor of complainant; and
(ix) Staff employed by food stamp offices.

(f) *Reports.* (Reserved)

§ 272.8 Dual Operation [Reserved]

3. Parts 272 and 273 are revised and redesignated as Parts 278 and 279, respectively. The new Part 273 reads as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

Sec.
273.1 Household concept.
273.2 Application processing.
273.3 Residency.
273.4 Citizenship and alien status.
273.5 Tax dependency.
273.6 SSI cash-out States.
273.7 Work registration requirement.
273.8 Resource eligibility standards.
273.9 Income and deductions.
273.10 Determining household eligibility and benefit levels.
273.11 Certifying households with special income circumstances.
273.12 Reporting changes.
273.13 Notice of adverse action.
273.14 Recertification.
273.15 Fair hearings.
273.16 Fraud disqualification.
273.17 Restoration of lost benefits.
273.18 Claims against households.
273.19 Sixty day continuation of certification.

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027).

§ 273.1 Household concept.

(a) *Household definition.* A household may be composed of any of the following individuals or groups of individuals, provided that such individuals or groups are not residents of an institution, except as otherwise specified in § 273.1(d), or commercial boarding house:

(1) An individual living alone;

(2) An individual living with others, but who customarily purchases food and prepares meals for home consumption separate and apart from the others;

(3) An individual who is a boarder, living with others and paying reasonable compensation to the others for meals for home consumption;

(4) A group of individuals living together and customarily purchasing food and preparing meals together for home consumption; or

(5) A group of individuals who are boarders, living with others and paying reasonable compensation to the others for meals for home consumption.

(b) *Nonhousehold members.* The following individuals residing with a household shall not be considered household members in determining the household's eligibility or allotment:

(1) *Roomers.* Individuals to whom a household furnishes lodging, but not meals, for compensation.

(2) *Boarders.* Individuals to whom a household furnishes lodging and meals with the following restrictions:

(i) Boarder status shall not be extended to a spouse (or to a common law spouse) of a member of the household; or to children under 18 years of age, if under the parental control of a member of the household.

(ii) Boarder status shall not be extended to persons paying less than a reasonable monthly payment for meals. An individual furnished both meals and lodging by the household, but paying compensation of less than a reasonable amount, will be considered a member of the household which provides the meals and lodging. When the boarder's payments for room are distinguishable from the payments for meals, only the amount paid for meals will be evaluated to determine if reasonable compensation is being paid for meals. A reasonable monthly payment for meals shall be any of the following:

(A) An amount which equals or exceeds the Thrifty Food Plan for the appropriate size of the boarder household;

(B) An amount recognized by the State agency as the prevailing local rate for board in the low income area, if less than the amount of the Thrifty Food Plan;

(C) An amount which corresponds to the number of meals for which the boarder is paying compensation to the household. Boarders may pay less than the Thrifty Food Plan because they do not receive all their meals through the board arrangement. In that event, a reasonable monthly amount shall be computed by multiplying the number of meals eaten under the board arrangement by 60 cents per meal.

(3) *Live-in-attendants.* Individuals who reside in a household to provide medical, housekeeping, child care or other similar personal services.

(4) *Ineligible aliens.* Individuals who do not meet the citizenship or permanent alien status in § 273.4(a).

(5) *SSI recipients in "cash-out" States.* Recipients of SSI benefits who reside in a State designated by the Secretary of Health, Education, and Welfare to have specifically included the value of the coupon allotments in its State supplemental payments.

(6) *Student tax dependents.* Students who are or could be properly claimed as tax dependents for Federal income tax purposes by a member of a household which is not eligible to participate in the Food Stamp Program, in accordance with § 273.5.

(7) *Disqualified individuals.* Individuals disqualified for fraud, as set forth in § 273.16, or college students disqualified for failure to meet the school year work registration requirements, as set forth in § 273.7(b)(7)(i).

(8) *Others.* Other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household.

(c) *Boarding house.* Residents of boarding houses are not eligible for program benefits. For program purposes, a boarding house shall be defined as an establishment which is recognized by the community as a commercial enterprise which offers meals and lodging for compensation. The number of boarders residing in a boarding house shall not be used to determine if a boarding house is a commercial enterprise. The household of the proprietor of a boarding house may participate in the program separate and apart from the residents of the boarding house, if that household meets all of the eligibility requirements for program participation.

(d) *Head of household.* The household member who was responsible for acquiring the greatest amount of earned income within the previous 60 days shall be classified as the head of the household. For example, if a person who earned the household's greatest amount of income in the 60 days prior to applying for benefits is unemployed at the time of application and temporarily has less income than another household member, the unemployed person would still be classified as the head of household. This classification is made primarily for enforcing § 273.7(c) which imposes a 60-day disqualification period upon households if it is established that the head of household voluntarily quit a job without good cause. State agencies shall not impose additional requirements based on the classification of head of household, such as requiring that the head of household, rather than another responsible member of the household, appear at the certification office to make application for benefits. In the event no member of the household had earned income the applicant shall designate the head of the household.

(e) *Residents of institutions.* Individuals shall be considered residents of

an institution when the institution provides them with the majority of their meals as part of the institution's normal services. Residents of institutions are not eligible for participation in the Program, with the following two exceptions:

(1) Residents of federally subsidized housing for the elderly, built under either section 202 of the Housing Act of 1959 or section 236 of the National Housing Act.

(2) Narcotic addicts or alcoholics who for the purpose of regular participation in a drug or alcohol treatment and rehabilitation program reside at a facility or treatment center as described in paragraph (f)(1)(iv) of this section.

(f) *Authorized representatives.* (1) The head of the household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in one or all of the following capacities:

(i) *Making application for the program.* When the head of the household or the spouse cannot make application, another household member may apply or an adult nonhousehold member may be designated as the authorized representative for that purpose. The head of the household or the spouse should prepare or review the application whenever possible, even though another household member or the authorized representative will actually be interviewed. The State agency shall inform the household that it will be held liable for any overissuance which results from erroneous information given by the authorized representative, except as provided in § 273.11(e)(6). Adults who are nonhousehold members may be designated as authorized representatives for certification purposes only under the following conditions:

(A) The authorized representative has been designated in writing by the head of the household, or the spouse, or another responsible member of the household; and

(B) The authorized representative is an adult who is sufficiently aware of relevant household circumstances.

(ii) *Obtaining the coupons.* An authorized representative may be designated to obtain coupons. These designations shall be made at the time the application is completed and any authorized representative shall be named on the ID card. The authorized representative for coupon issuance may be the same individual designated to make application for the household or may be another individual. Even if a household member is able to make application and obtain coupons, the household should be encouraged to name an authorized representative for obtaining coupons in case of illness or other circumstances which might result in an inability to obtain coupons. The household may also designate an emergency authorized representative at a later date. An emergency authorized representative is someone not already listed on the ID card who obtains coupons when neither a household member nor the authorized representative is able to obtain them because of unforeseen circumstances. State agencies shall provide for a system that permits the designation, in writing, of an emergency authorized representative to obtain coupons with a particular ATP. A separate written designation is needed each time an emergency authorized representative is used.

(iii) *Using the coupons.* The authorized representative may use coupons to purchase food for the household, with the full knowledge and consent of the household, provided the authorized representative has the household's ID card.

(2) *Drug addict/alcoholic treatment centers as authorized representatives.* Narcotics addicts or alcoholics who regularly participate in a drug or alcoholic treatment program on a resident basis may elect to participate in the Food Stamp Program if the treatment center in which they reside has been authorized by FNS to accept food coupons. The residents shall apply and be certified for Program participation through the use of an authorized representative who shall be an employee of and designated by the private nonprofit organization or institution that is administering the treatment and rehabilitation program. The organization or institution shall apply on behalf of each addict or alcoholic and shall receive and spend the coupon allotment for food prepared by and/or served to the addict or alcoholic. The organization or institution shall also be responsible for complying with the requirements set forth in § 273.11(e).

(3) In the event the only adult living with a household is classified as a nonhousehold member as defined in paragraph (b) of this section, that individual may be the authorized representative for the minor household members.

(4) The following restrictions apply to authorized representatives:

(i) State agency employees who are involved in the certification and/or issuance processes and retailers that are authorized to accept food coupons may not act as authorized representatives without the specific written approval of the designated State agency official and only if that official determines that no one else is available to serve as an authorized representative.

(ii) Individuals disqualified for fraud shall not act as authorized representatives during the period of disqualification except as provided in paragraph (f)(3) of this section.

(iii) The State agency shall ensure that authorized representatives are properly designated. The name of the authorized representative shall be contained in the household's case file. Limits shall not be placed on the number of households an authorized representative may represent. Each certification office shall maintain a current listing of authorized representatives who are not members of the households they represent. This listing will facilitate periodic reviews, which the State agency should conduct, to ensure that authorized representatives with access to large numbers of ATPs or coupons are handling them in conformance with these regulations.

§ 273.2 Application processing

(a) *General purpose.* The application process includes filing and completing an application form, being interviewed, and having certain information verified. The State agency shall act promptly on all applications and provide food stamp benefits retroactive to the period of application to those households that have completed the application process and have been determined eligible. Expedited service shall be available to households in immediate need. Specific responsibilities of households and State agencies in the application process are detailed below.

(b) *Food stamp application form.* All State agencies shall use an application form designed by FNS. FNS may approve a deviation from that form to accommodate the use of a combined PA/food stamp application form, the requirements of a computer system, or other exigencies for which the State agency can submit adequate justification, provided the form is understandable to applicants and easy to complete. Each application form shall contain a description in understandable terms in prominent and bold face lettering of the civil and criminal provisions and penalties for violations of the Food Stamp Act.

(c) *Filing an application.* (1) *Household's right to file.* Households must file a food stamp application by submitting the form to the food stamp office either in person, through an authorized representative or by mail. The amount of time a State agency has to deliver benefits is calculated from the date the application is filed. Each household has the right to file an application form on the same day it contacts any food stamp office during office hours in the project area in which it resides. The household shall be advised that it does not have to be interviewed before filing the application and may file an incomplete application form as long as the form contains the applicant's name and address, and is signed by a responsible

member of the household or the household's authorized representative. Where there is more than one certification office in a project area, any office must accept applications when filed, but may subsequently refer the household to another office for the eligibility determination.

(2) *Contacting the food stamp office.* State agencies shall encourage households to file an application form the same day the household or its representative contacts the food stamp office in person or by telephone and expresses interest in obtaining food stamp assistance. If the household has contacted the food stamp office by telephone but does not come to the office to file the application that same day, or the household has requested food assistance in writing, the State agency shall mail an application form to the household on the same day the written request or telephone call is received.

(3) *Availability of the application form.* The State agency shall make application forms readily accessible to potentially eligible households and those groups and organizations involved in outreach efforts.

(4) *Notice of right to file.* The State agency shall post signs in the certification office which explain the application processing standards and the right to file an application on the day of initial contact. The State agency shall include similar information about same day filing in outreach materials and on the application form.

(d) *Household cooperation.* To determine eligibility, the application form must be completed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household refuses to cooperate with the State agency in completing this process, the application shall be denied at the time of refusal.

To be denied, the household must refuse to cooperate, not merely fail to cooperate or be unable to do so. The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility, including reviews generated by reported changes, recertifications, or as part of program review and evaluation. Once denied or terminated for refusal to cooperate, the household may reapply but shall not be determined eligible until it cooperates.

(e) *Interviews.* (1) All applicant households, including those submitting applications by mail, shall have a face-to-face interview in a food stamp office or other certification site, with a qualified eligibility worker prior to initial certification and all recertifications. The individual interviewed may be the head of household, spouse, any other responsible member of the household, or an authorized representative. The interviewer shall not simply review the information that appears on the application, but shall explore and resolve with the household unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview. The interview shall be conducted as an official and confidential discussion of household circumstances and shall be limited strictly to facts that relate directly to food stamp eligibility criteria. The applicant's right to privacy shall be protected during the interview. Facilities shall be of adequate size and layout to preserve the privacy and confidentiality of the interview.

(2) The office interview shall be waived if requested by any household which is unable to appoint an authorized representative and which has no household members able to come to the food stamp office because they are 65 years of age or older, or are mentally or physically handicapped. The State agency may waive the office interview on a case by case basis for any household which is unable to appoint an authorized representative and which has no household members able to come to the food stamp office because of transportation difficulties or similar hardships. These hardship conditions include, but are not limited to: illness, care of a household member, bad weather, or work hours which preclude in-office certification. The State agency shall determine if the transportation difficulty or hardship reported by a household warrants a waiver of the office interview and shall document this determination in the case file.

(i) The State agency shall offer households for whom the office interview is waived either a telephone interview or a home visit. Home visits shall be used only if the time of the visit is scheduled in advance with the household.

(ii) Waiver of the face-to-face interview does not exempt the household from the verification requirements, although special procedures may be used to permit the household to provide verification and thus obtain its benefits in a timely manner.

(iii) Waiver of the face-to-face interview shall not affect the length of the household's certification period.

(3) The State agency shall schedule all interviews as promptly as possible to ensure eligible households receive an opportunity to participate within 30 days after the application is filed.

(f) *Verification.* Verification is the use of third party information or documentation to establish the accuracy of statements on the application.

(1) *Verification requirements.* (i) Gross nonexempt income shall be verified for all households prior to certification. However, where all attempts to verify the income have been unsuccessful, either because the person or organization providing the income has failed to cooperate with the household and the State agency, or because other sources of verification are unavailable, the eligibility worker shall determine an amount to be used for certification purposes based on the best available information.

(ii) Resource information or the exempt status of income shall be verified prior to certification only if inconsistent with other information on the application, previous applications, or other documented information known to the State agency. In the case of loans, a legally binding agreement is not required to verify that income is exempt as a loan. A simple statement, signed by both parties, shall be sufficient to verify loans.

(iii) Nonfinancial information, except for statements concerning citizenship, shall be verified prior to certification only if inconsistent with other information on the application, previous applications, or other documented information known to the State agency. The State agency shall verify the alien status of those household members identified on the application as aliens. INS documentation in the possession of the household member shall be used to establish eligibility. Verification of a household's statement that its members are U.S. citizens is discussed in paragraph (f)(iv) of this section.

(iv) U.S. citizenship shall be verified only when the citizenship statement is inconsistent with other information on the application, previous applications, or other documented information known to the State agency. For example, verification would be required where a household presented an apparently counterfeit social security card, an employment office report stated that an individual was denied a job due to lack of U.S. citizenship, or a student reported that tax dependency was not an issue because the parents resided in another country. When verification is required, the household shall be asked to provide the appropriate verification. Appropriate verification of citizenship may consist of birth certificates, religious records, or certificates of citizenship or naturalization provided by INS, such as Identification Cards for Use of Resident Citizens in the United States. (INS Form I-179 or INS Form I-197) or U.S. Passports. If the household cannot provide any of these forms of verification, the State agency may accept other forms of verification. If the household is unable to acquire the necessary verification, the State agency shall assist the household by contacting the proper sources. Benefits shall not be delayed for lack of verification of citizenship if the household meets all

other eligibility criteria. The State agency shall deny or terminate a household's benefits only if the State agency can substantiate that a household member is not a U.S. citizen and does not qualify as an eligible alien.

(v) Deductible expenses shall only be verified when the expense claimed would actually result in a deduction and one of the following criteria are met:

(A) The household wishes to claim utility expenses in excess of the State agency's utility standard. In the absence of verification, the standard utility allowance shall be used, provided the household is billed for utilities other than the telephone, separately from other shelter costs.

(B) Shelter costs, other than utilities, exceed an amount established by the State agency as reasonable for that shelter component.

(C) Other documented information is inconsistent with the household's claim that it incurs a dependent care expense or that the expense is incurred for reasons specified in § 273.9.

(2) *Sources of verification.* (i) *Documentary evidence.* State agencies shall use documentary evidence as the primary source of verification. Documentary evidence consists of a written confirmation of a household's circumstances. Examples of documentary evidence include wage stubs, rent receipts and utility bills. Although documentary evidence shall be the primary source of verification, acceptable verification shall not be limited to a single document and may be obtained through the household or other source. Where information from another source contradicts statements made by the household, the household shall be immediately afforded the opportunity to resolve the discrepancy. Whenever documentary evidence cannot be obtained, State agencies shall use alternate sources of verification such as collateral contacts and home visits.

(ii) *Collateral contacts.* A collateral contact is a verbal confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made either in person or over the phone. the acceptability of a collateral contact shall not be restricted to a particular individual but may be anyone that can be expected to provide an accurate third party verification of the household's statements. Examples of acceptable collateral contacts are employers, community action groups, migrant service agencies and neighbors of the household.

(iii) *Home visits.* Home visits shall be used as verification only if documentary evidence cannot be obtained and the visit is scheduled in advance with the household.

(3) *Responsibility for obtaining verification.* (i) The household has primary responsibility for providing documentary evidence to support its income statements and to resolve any inconsistent information. Households may supply documentary evidence in person, through the mail, or through an authorized representative. The State agency shall accept any reasonable documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application. If it would be difficult or impossible for the household to obtain the documentary evidence in a timely manner, the State agency shall offer assistance to the household in obtaining the documentary evidence.

(ii) Whenever documentary evidence cannot be obtained, the State agency shall substitute a collateral contact or a home visit. The State agency shall rely on the household to provide the name of the collateral contact. The household may request assistance in designating a collateral contact. However, the State agency is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide an accurate third party verification. If the collateral contact designated by the household is unacceptable, the State agency shall ask the household to designate another collateral contact. The State agency is responsible for obtaining verification from acceptable collateral contacts.

(4) *Documentation.* Case files must be documented to support eligibility, ineligibility, and benefit level determinations. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination. Where verification was required to resolve inconsistent information, the State agency shall document why the information was considered inconsistent and what documentation was used to resolve the inconsistent information. The State agency shall also document the reason why an alternate source of verification, such as a collateral contact or home visit, was needed, and the reason a collateral contact was rejected and an alternate requested.

(5) *Bendex.* If documentary evidence of social security benefits is not readily available from the applicant, the State agency may verify the income through the Beneficiary Data Exchange (Bendex). The amount of social security benefits reported on the application shall be used to compute the household's eligibility and benefit level pending receipt of verification from Bendex. Any household member whose social security benefits will be verified through Bendex must sign an information release form prior to submission of the request for verification.

(6) *State Data Exchange (SDX).* (Reserved)

(7) *Verification subsequent to initial certification.* (i) *Recertification.* Unchanged information shall not be verified at recertification unless the State agency has reason to believe the information has changed because of inconsistent information on the application form or other documented information known to the State agency. Changes reported at the time of recertification shall be subject to the same verification procedures as apply at initial certification, except that previously verified income and expenses which have changed by $25 or less since the last time they were verified shall not be verified again.

(ii) *Changes.* Changes reported during the certification period shall be subject to the same verification procedures as apply at initial certification, except that previously verified income or expenses which change by $25 or less since the last time they were verified shall not be verified again.

(g) *Processing standards.* The State agency shall provide eligible households that complete the initial application process an opportunity to participate as soon as possible, but not later than 30 days after the application was filed. If the 30th day falls on a weekend or holiday, the 30 day standard shall be extended to the next working day. An application is filed the day the State agency receives an application containing the applicant's name and address, which is signed by either a responsible member of the household or the household's authorized representative.

(1) *Opportunity to participate.* An opportunity to participate consists of providing households with an ATP or other authorization and having an issuance facility open and available for the household to obtain its allotment.

If the ATP or coupons are mailed, two days shall be allowed for delivery before determining if the household has been provided an opportunity to participate. A household has not been provided an opportunity to participate within 30 days of application if the ATP or allotment is mailed on the 29th or 30 day. Neither has an opportunity to participate been provided if the ATP is mailed on the 28th day but no issuance facility is open on the 30th day where the household can obtain coupons. The household must both have two days in which to receive a mailed ATP and be able to transact the ATP after receipt.

(2) *Unverified deductible expenses.* If a deductible expense cannot be verified before the 30 days expires, the State agency shall determine the household's eligibility and benefit level without providing a deduction for the claimed but unverified expense. The utility standard shall be used if the household wishes to claim utility expenses in excess of the

State's standard but the higher amounts cannot be verified. If the household is eligible without allowing the expense, an allotment which does not reflect a deduction of the expense shall be provided within 30 days after the application was filed. Once the expense is verified, the household shall be entitled to restoration of any benefits lost as a result of the disallowance of the expense, if the State agency contributed to the inability to verify the expense within the initial 30 day period. If the household would be ineligible unless the expense is allowed, the household's application shall be handled as provided in § 273.2(h) of this section.

(h) *Delays in processing.* If it appears that the State agency will not be able to determine a household's eligibility and provide an opportunity to participate within 30 days of the date the application was filed, the State agency shall take the following action:

(1) *Delays caused by the household.* (i) If the State agency cannot take any further action on the application solely because of some action the household is responsible for taking, and the State agency has documented that it has met all of its responsibilities to assist the household in completing the application process, the State agency shall issue a notice of denial to the household on the 30th day after the application was filed. The State agency shall, however, reopen the case without requiring a new application if the household takes action to complete the application process within 30 days of the date the notice of denial was mailed. However, if verification is incomplete, the State agency shall not deny the application unless the household has had at least 10 days to provide verification, from the date of the State agency's last request for verification, and the State agency has provided appropriate verification assistance. Otherwise, the application shall be held pending as provided in paragraph (h)(2) of this section. The notice of denial requirements are explained in § 273.10 (g)(1)(ii).

(ii) Households which take the necessary action to complete the application process within 30 days from the notice of denial and are found to be eligible shall be provided an opportunity to obtain benefits retroactive to the period of application within 60 days of the date the household originally filed the application.

(2) *Delays caused by the State agency.* Whenever the State agency is out of compliance with the 30 day processing standard, it must take immediate corrective action. The State agency shall not deny the application but shall instead notify the household by the 30th day that the application process has not been completed and that the application is being processed. If the State agency still needs information the State agency shall continue to process the application until it determines if the household is eligible.

If an eligible household's benefits are delayed less than 60 days from the date the application was filed, the State agency shall provide benefits retroactive to the period of application. If benefits are delayed more than 60 days, the State agency shall restore any benefits that were lost back to the period of application in accordance with § 273.17.

(i) *Expedited service.* (1) *Two day service.* State agencies shall provide an opportunity to participate within two working days of the date the application is filed to those households that are otherwise eligible and have zero net monthly income, as computed in § 273.10, or are destitute of income, as defined in this paragraph. To be considered destitute, the household's only income during the period of application must be from a nonrecurring source and must not be received or anticipated in the quarter of the month the application is filed. The quarter of the month the application is filed shall be determined by dividing the period of application into quarters as follows: 1st–7th, 8th–15th, 16th–22nd, and 23rd through the end of the month. Destitute households are divided into the following categories to determine if the income is nonrecurring:

(i) *Households losing a source of income.* Income from a terminated source shall be considered nonrecurring if it will not be received again during the balance of the month of application and the following month, or, if normally received less often than monthly, during the balance of the month of application and the normal interval between payments. For example, if income is normally received once every three months, the income is considered nonrecurring if it is not anticipated during the balance of the month of application and is not anticipated within three months of its last receipt.

(ii) *Household's anticipating new income.* Income anticipated from a new source after the quarter of the month the application is filed shall be considered nonrecurring if it has not been received from that source 30 days prior to the date the application was filed. However, if income is normally received less often than monthly, the normal interval between payments shall be substituted for the preceding 30 days to determine if the income is nonrecurring. In addition to being entitled to expedited service, households that are destitute because they are anticipating a new source of income shall be entitled to a special income calculation as provided in § 273.10.

(2) *Same day service.* State agencies shall provide destitute households and households with zero net monthly income an opportunity to participate the same day the application is filed provided:

(i) The household states that it does not have sufficient food through the next two working days;

(ii) The household's liquid resources, as defined in § 273.8, are less than the value of the Thrifty Food Plan for a one-person household; and

(iii) The household is not a resident of a drug addict or alcoholic treatment center. Residents of drug addict or alcoholic treatment centers may, however, be eligible for expedited service within two working days.

(3) *Identifying households needing expedited service.* The State agency's application procedures shall be designed to identify households eligible for expedited service at the time the household requests assistance. For example, a receptionist, volunteer, or other employee may be responsible for screening applications as they are filed or as individuals come in to apply.

(4) *Special procedures for expediting service.* The State agency shall use the following procedures when expediting certification and issuances:

(i) To expedite the certification process, the State agency shall postpone the verification required by § 273.2(f). However, the household's identity and residency shall be verified through a collateral contact or readily available documentary evidence. If possible, the household's income statements should also be verified at the same time.

(ii) Once the household has supplied the name of a collateral contact or has asked the State agency for assistance in locating a collateral contact, the State agency shall promptly contact the collateral contact or otherwise assist the household in obtaining the necessary verification.

(iii) When a household is eligible for same day service but normal issuance services cannot provide an opportunity to participate on the same day or the State agency has failed to complete the collateral contact, the State agency shall issue at least one-fourth of the allotment on the same day. Similarly, where a household is eligible for service within two working days but the State agency has failed to complete the collateral contact, the State agency shall provide at least one-fourth of the allotment within the two working days. In such instances, the collateral contact shall be promptly completed and the balance of the allotment shall be issued within five working days.

(iv) Households certified on an expedited basis shall be certified only for the month of application. The household shall receive no further benefits until the household completes the ver-

ification requirements which were postponed to expedite initial issuance. If verification is obtained within 30 days of the date the application was filed and the household is eligible for subsequent months, the State agency shall extend the certification period as appropriate without requiring that the household submit a new application and without interrupting the household's benefits.

(v) There is no limit to the number of consecutive times a household can be certified under expedited procedures, so long as, prior to each expedited certification, the household completes the verification requirements that were postponed at the last expedited certification.

(vi) Households requesting, but not entitled to, expedited service shall have their applications processed according to normal standards.

(j) *Households requesting replacement allotments.* (1) Households may request a replacement allotment for that portion of the allotment which has been lost, stolen or destroyed after receipt. Households requesting a replacement allotment shall report the loss to the local police and sign a statement at the food stamp office attesting to the loss of the allotment. Households shall obtain either a copy of the police report or provide other information showing that the loss was reported to the police.

(2) State agencies shall provide the household an opportunity to obtain a replacement allotment within two working days of the day a loss is reported, to the State agency, provided the household filed the police report and the household has signed the statement attesting to the loss. The State agency shall not issue a replacement allotment to any household more often than once within a three-month period.

(k) *PA and GA households.* To facilitate their participation in the program, households in which all members are applying for public assistance (PA) or State agency administered general assistance (GA) shall be allowed to apply for food stamp benefits at the same time they apply for PA or GA benefits. The household's food stamp eligibility and benefit level shall be based solely on food stamp eligibility criteria and the household shall be certified in accordance with notice, procedural and timeliness requirements of the food stamp regulations.

(1) *PA households.* (i) The application for AFDC or other public assistance shall contain all the information necessary to determine a household's food stamp eligibility and level of benefits. Information only relevant to food stamp eligibility shall be contained in the PA form or shall be an attachment to it. The PA application shall have a place for the household to indicate if it does not wish to apply for food stamps. The application shall clearly indicate that the household is providing information for both program purposes, is subject to the criminal penalties for false statements of both programs, and waives the notice of adverse action as specified in paragraph (k)(1)(v) of this section. The joint PA/food stamp application used for PA households may also be used for all food stamp households, provided the application form is approved by FNS.

(ii) PA applications, except those on which the household has indicated it does not want food stamps, shall be processed as a food stamp application in accordance with all timeliness standards and procedures specified in this section. If the application is unclear as to the household's desire for food stamps, the State agency shall determine at the interview, or in prior contact with the household, whether or not the household wants the PA application processed for food stamp purposes.

(iii) The State agency shall conduct a single interview at initial certification for both public assistance and food stamp purposes. PA households shall not be required to see a different eligibility worker or otherwise be subjected to two interview requirements in order to obtain the benefits of both programs. Following the single interview, the application may be processed by separate workers to determine eligibility and benefit levels for food stamps and public assistance. A household's eligibility for food stamp out-of-office interview procisions in § 273.2(e)(2) does not relieve the household of any responsibility for a face-to-face interview to be certified for PA.

(iv) If verification requirements for PA differ from the verification required in § 273.2(f), the determination of food stamp eligibility shall not be delayed or denied for failure to comply with PA verification requirements.

(v) As a result of differences in PA and food stamp application processing procedures and timeliness standards, the State agency may have to determine food stamp eligibility prior to determining the household's eligibility for PA payments. Action on the food stamp portion of the application shall not be delayed nor the application denied on the grounds that the PA determination has not been made. If the State agency can anticipate the amount and the date of receipt of the initial PA payment, but the payment will not be received until a subsequent month, the State agency shall vary the household's food stamp benefit level according to the anticipated receipt of the payment and notify the household. Portions of initial payments intended to retroactively cover a previous month shall be disregarded as a Lump sum payment under § 273.9(c)(8). If the amount or date of receipt of the initial PA payment cannot be reasonably anticipated at the time of the food stamp eligibility determination, the PA payments shall be handled as a change in circumstances. However, the State agency is not required to send a notice of adverse action if the receipt of the PA grant reduces or terminates the household's food stamp benefits, provided the household is notified in advance that its benefits may be reduced or terminated when the grant is received. Households whose PA applications are denied shall not be required to file a new food stamp application but shall have their food stamp eligibility determined or continued on the basis of the original application filed jointly for PA and food stamp purposes and any other documented information obtained subsequent to the application which may have been used in the PA determination and which is relevant to food stamp eligibility or level of benefits.

(vi) Households may be required to file a separate application for food stamps if the food stamp household contains members which are not included in the unit filing for public assistance.

(2) *GA households.* State agencies which operate GA programs with formalized application procedures and eligibility criteria that test the level of income and resources shall permit GA applicants to apply for food stamp benefits using the procedure outlined in paragraph (k)(1) of this section. Use of joint application procedures for GA households and any application forms must be approved by FNS. Households receiving benefits through GA programs that do not meet the above criteria should be advised of the availability of food stamp benefits.

(l) *SSI households.* **(Reserved).**

§ 273.3 Residency.

A household must be living in the project area in which it files an application for participation. No individual may participate as a member of more than one household or in more than one project area in any month. Residency shall not mean domicile nor shall the State impose any durational residency requirements. Residency shall not mean an intent to permanently reside in the State or project area; however, persons in a project area solely for vacations shall not be considered residents. A fixed residence is not required; for example, migrant campsites satisfy the residency requirement.

§ 273.4 Citizenship and alien status.

(a) *Citizenship.* State agencies shall prohibit participation in the program by any person who is not:

(1) A resident of the United States, and

(2) One of the following:

(i) A United States citizen.

(ii) An alien lawfully admitted for permanent residence as an immigrant pursuant to sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act.

(iii) An alien who entered the United States prior to June 30, 1948, or some later date as required by law, and has continuously maintained residency in the United States since then, and is not ineligible for citizenship, but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the Immigration and Nationality Act.

(iv) An alien who qualified for conditional entry because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by a catastrophic natural calamity pursuant to section 203(a)(7) of the Immigration and Nationality Act. Many of the Vietnamese refugees were admitted under this statutory provision.

(v) An alien lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act. A majority of the Vietnamese and Cuban refugees were admitted under this statutory provision.

(vi) An alien living within the United States to whom the Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act.

(b) *Ineligible aliens.* No aliens other than those described above shall be eligible to participate in the program as a member of any household. Among those excluded are aliens who are visitors, tourists, diplomats and students.

(c) *Verification.* The State agency shall verify lawful permanent resident alien status (as defined in paragraphs (a)(2) (i) and (ii) of this section by using Immigration and Naturalization Service (INS) Form I-151 or I-551, "Alien Registration Receipt Card," or the "Reentry Permit," a passport booklet for lawful permanent resident aliens. The other three resident alien categories, as defined in paragraphs (a)(2) (iv), (v), and (vi) of this section, are identified by INS Form I-94, Arrival-Departure Record. This form should state that the bearer is either a refugee granted conditional entrance status, or paroled for an indefinite period, or granted indefinite voluntary departure or entitled to an indefinite stay of deportation; and is usually stamped "Employment Authorized." Aliens unable to furnish the above identification are ineligible. These aliens shall be advised that upon presentation of the proper INS forms, they will be eligible to apply for program benefits.

(d) *Income and resources.* The income and resources of an ineligible alien living in a household shall not be considered in determining eligibility or level of benefits of the household.

§ 273.5 Tax dependency.

(a) *Tax dependent.* No individual who is a member of a household otherwise eligible to participate in the Program shall be eligible to participate as a member of that or any other household if the individual:

(1) Has reached age eighteen;

(2) Is enrolled at least half time in an institution of higher education; and

(3) Is properly claimed or could be properly claimed for the current tax year as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household. "Child" and tax "dependent" are defined in §§ 151 and 152 of the Internal Revenue Code (I.R.C.) of 1954, as amended.

(b) *Eligibility of taxpayer's household.* (1) Prior to determining the eligibility of students who are or could be properly claimed tax dependents, the eligibility of the taxpayer's household shall be determined. A proper claim of tax dependency exists when the taxpayer provides or will provide over half of the student's support for the current tax year. A proper claim also exists when the taxpayer is or will be treated as having provided over half of the student's support under Internal Revenue Service (IRS) rules for "Children of divorced or separated parents" (§ 152(e) I.R.C.) or dependents supported by two or more taxpayers (§ 152(c) I.R.C.). "Support" is defined in §§ 151-152 of the I.R.C.

(2) The eligibility of the taxpayer's household shall be based on information provided by the student or the taxpayer. If the taxpayer's household is not currently certified for food stamps, its eligibility shall be determined by the household's size and monthly gross income. The allowable gross income limits shall be calculated by increasing the current net income eligibility limits in § 273.9(a) by the standard deduction in § 273.9(d), the maximum shelter deduction in § 273.9(d), and the 20 percent earned income deduction in § 273.9(d). Self-employed households shall have their gross income determined on an annual, rather than a monthly basis, minus the cost of doing business, but prior to deducting taxes. FNS shall provide gross income eligibility tables by household size.

(c) *Verification.* (1) Tax dependency status and the eligibility of the taxpayer's household shall be verified for students when information provided in the application is inconsistent, contradicts other documented evidence, or indicates likely tax dependency status. Verification shall be accomplished by mailing a simple form to the student's parent. The verification form will require the taxpayer to state whether the student is claimed or could be claimed as a tax dependent. If the student is or could be claimed as a tax dependent, the parent will be requested to indicate whether the parent's household is currently certified for food stamps. If the parent's household is not certified, the parent will be asked to provide household size and gross income figures so an eligibility determination can be made based on the FNS gross income tables, discussed in § 273.5(b).

(2) If the student is or could be claimed as a tax dependent then information must be provided on the taxpayer household. The application should state whether or not the taxpayer household is certified and if it is not the taxpayer's household size and gross income must be provided. The student may provide the needed information or request the State to use the verification form mentioned in paragraph (c)(1) of this section to obtain the needed information.

(3) In some instances, a student may not be aware of his or her tax dependency status. In such cases the student must provide verification or he/she may request that the State use the verification form cited in paragraph (c)(1) of this section.

(4) The parents failure to supply requested information, or a parental response which indicates student ineligibility, is grounds for declaring a student ineligible. Students shall have an opportunity to appeal a decision of ineligibility under § 273.15.

(d) *Certifying the household.* (1) While awaiting student tax dependency verification from the parent taxpayer(s), the remaining household members shall be certified based on household size minus the student.

(2) An ineligible student or a student awaiting verification of information is not a member of the household and the student's income and resources are not considered in determining eligibility or the coupon allotment for the remaining household members.

(3) If remaining members of a student's household have been certified while the student is awaiting tax dependency verification, then the result of the verification can affect the participating household in two ways. If the student is or could be the tax dependent of an ineligible household, the participating household will continue participating on the same basis that it was certified. If the student is not and could not be claimed as a tax dependent, or if the student is or could be claimed but the taxpayer house-

hold is eligible for food stamps, then the participating household's eligibility and benefits must be redetermined to include the student.

§ 273.6 SSI Cash-Out States.

(a) *Ineligibility.* No individual who receives supplemental security income benefits and/or State supplementary payments and resides in the States of California or Massachusetts is eligible to receive food stamp benefits. The Secretary of Health, Education, and Welfare has determined that the SSI payments in these States have been specifically increased to include the value of the food stamp allotment.

(b) *Income and resources.* In California and Massachusetts the income and resources of the SSI recipient who resides with an applicant household shall not be considered available to the household for eligibility or coupon allotment purposes. The SSI recipient's presence in the household shall not be considered in determining eligibility and the level of benefits.

§ 273.7 Work registration requirement.

(a) *Persons required to register.* Each household member who is (1) physically and mentally fit, (2) 18 years of age or over, but not 60 years or over, and (3) not exempted by paragraph (b) of this section shall register for employment prior to certification and once every six months after initial registration. Household members shall register at the food stamp office by completing the work registration form provided by the State agency. The State agency shall forward work registration forms to the appropriate State employment service office.

(b) *Exemptions from work registration.* The following persons are exempt from the work registration requirement:

(1) A household member subject to and participating in the Work Incentive Program (WIN) under Title IV of the Social Security Act, as amended.

(2) A parent or other household member responsible for the care of a dependent child under 12 or an incapacitated person.

(3) A parent or other caretaker of a child under 18 in a household where another able-bodied parent is registered for work, or is exempt as a result of employment.

(4) A person receiving unemployment compensation. Persons who have applied for, but are not yet approved for unemployment compensation shall not qualify for this exemption.

(5) A regular participant in a drug addiction or alcoholic treatment and rehabilitation program.

(6) A person who is employed or self-employed and working a minimum of thirty hours weekly or receiving weekly earnings equal to the Federal minimum wage mutiplied by thirty hours.

(7) A student enrolled at least half time in any recognized school, training program, or institution of higher education except that:

(i) During the regular school year, students enrolled at least half time in an institution of higher education must register for 20 hours of work per week by completing the work registration form provided by the State agency unless they are: (A) employed for a minimum of 20 hours per week or participating in a federally financed work study program; (B) employed less than 20 hours per week but earning an amount at least equal to the Federal minimum wage multiplied by 20 hours; (C) the head of a household containing one or more other persons to whom the student supplies more than one-half of their total support; or (D) otherwise exempt from the work registration requirement.

(ii) When any school, training program or institution of higher education recess or vacation will exceed thirty days, individuals otherwise exempt because of their student status shall register for full time work by completing the work registration form provided by the State agency, and must comply with the requirements of paragraphs (d) and (e) of this section.

(iii) Students 18 or over, enrolled in an institution of higher education at least half time, and who could be claimed as tax dependents must also meet the requirements of § 273.5 to be eligible.

(c) *Voluntary quit.* [Reserved]

(d) *Job search.* [Reserved]

(e) *Additional work requirements.* Work registrants shall also:

(1) Report for an interview upon the reasonable request of the appropriate State employment service office;

(2) Respond to a request from the State employment service office for supplemental information regarding employment status or availability for work;

(3) Report to an employer to whom referred by the State employment service office;

(4) Accept a bona fide offer of suitable employment, as defined in paragraph (i) of this section, to which referred by the State employment service office; and

(5) Continue suitable employment to which referred by the State employment service office. Household members shall continue such employment until it is no longer considered suitable in accordance with paragraph (i) of this section, until they are terminated from employment due to circumstances beyond their control, or until they become exempt from the work registration requirement as provided in paragraph (b) of this section.

(f) *Failure to comply.*

(1) If the State agency determines that a household member, except any student as defined in paragraph (b)(7)(i) of this section, has refused or failed without good cause to comply with the requirements of this section, the household shall be ineligible to participate until the member complies with the requirements in paragraph (h) of this section, the member becomes exempt, or for 60 days, whichever is earlier.

(2) Any student which the State agency determines has failed or refused without good cause to comply with the requirements of paragraphs (b)(7)(i) or (e) of this section to register for and accept 20 hours work per week during the regular school year shall be ineligible to participate as a member of any household. The disqualification shall apply to the individual student alone and not to the entire household. The disqualified student shall be ineligible until the student complies with the requirements in paragraph (h) of this section, the student becomes exempt, or for 60 days, whichever is earlier.

(g) *Determining good cause.* In determining if good cause existed for failure to comply with any registration requirement, the State agency shall consider all facts and circumstances, including information submitted by the State employment service office, the household member involved and the employer. Good cause shall include circumstances beyond the member's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency or unavailability of transportation.

(h) *Ending disqualification.* Following the end of the 60-day disqualification period, a household or student may apply again to establish eligibility. Eligibility may be established or reestablished within a disqualification period if the household or student is otherwise eligible and the member or student becomes exempt from the work requirement or the member or student complies as follows:

(1) Refusal to register—registration by the household member or student.

(2) Refusal to report for interview to the State employment service office—reporting for the required interview.

(3) Refusal to respond to a request from the State employment service office requiring supplemental information regarding employment status or availability for work—compliance with the State employment service office request.

(4) Refusal to report to an employer to whom referred by the State employment service office—reporting to this employer or another employer to whom referred.

(5) Refusal to accept a bona fide offer of suitable employment to which referred by the State employment service office—acceptance of this employ-

ment, of any other employment which yields earnings per week equivalent to the refused job, of any other employment of at least 30 hours per week, or of any employment of less than 30 hours per week with weekly earnings equal to the Federal minimum wage multiplied by 30 hours.

(6) Refusal to continue suitable employment to which referred by the State employment service office—returning to this employment, or acceptance of any other employment which yields earnings per week equivalent to the refused job, or of any other employment of at least 30 hours per week or of less than 30 hours per week but with weekly earnings equal to the Federal minimum wage multiplied by 30 hours.

(i) *Suitable employment.* (1) Any employment shall be considered unsuitable if:

(i) The wage offered is less than the highest of:

(A) The applicable Federal minimum wage;

(B) The applicable State minimum wage; or

(C) Eighty percent (80%) of the Federal minimum wage.

(ii) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified in paragraph (i)(1)(i) of this section.

(iii) The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.

(iv) The work offered is at a site subject to a strike or lockout at the time of the offer unless the strike has been enjoined under § 208 of the Labor-Management Relations Act (29 U.S.C. 178).

(2) In addition, employment shall be considered suitable unless the household member involved can demonstrate or the State agency otherwise becomes aware that:

(i) The degree of risk to health and safety is unreasonable.

(ii) The member is physically or mentally unfit to perform the employment, as documented by medical evidence or by reliable information from other sources.

(iii) The employment offered within the first 30 days of registration is not in the member's major field of experience.

(iv) The distance from the member's home to the place of employment is unreasonable considering the expected wage and the time and cost of commuting. Employment shall not be considered suitable if daily commuting time exceeds 25 percent of daily work time.

(v) The working hours or nature of the employment interferes with the member's religious observances, convictions or beliefs. For example, a Sabbatarian could refuse to work on the Sabbath and not affect the household's eligibility.

(vi) For students, the employment is offered during class hours or is more than 20 hours per week.

(j) *Participation of strikers.* No household shall be denied participation solely on the grounds that a member of the household is not working because of a strike or a lockout at his or her place of employment unless the strike has been enjoined under § 208 of the Labor-Management Relations Act (29 U.S.C. 178).

(k) *Registration of PA and GA households.* (1) In project areas where a WIN program is in operation, registrants for the WIN program are exempt from food stamp work registration as provided in paragraph (b) of this section.

(2) In project areas where there is no WIN program, PA households shall register for work as provided in paragraph (a) of this section, unless the household members are exempt as provided in paragraph (b) of this section. The State agency may request a waiver of this procedure for PA and GA households under the conditions described in paragraph (k)(3) of this section.

(3) State agencies may request approval from FNS to substitute State procedures for work registration for PA households in project areas with no WIN program and for GA households. To receive approval, State agencies must demonstrate that:

(i) The PA or GA work registration procedures are at least equivalent to food stamp work registration requirements.

(ii) Registrants' activities are monitored so that appropriate sanctions as required by these regulations will be applied.

(iii) All PA or GA household members which are not exempt under the regulations are either registered for work under the PA or GA work requirement procedures or are registered for work as provided in paragraph (a) of this section.

(4) Household members who are required to register for work under WIN or unemployment compensation and fail to comply with the work registration requirements of those programs shall not be denied food stamp benefits solely for this failure. These members lose their exemption under paragraph (b) of this section and must register for work if required to do so in paragraph (a) of this section.

§ 273.8 Resource eligibility standards.

(a) *Uniform standards.* Each State agency shall apply the uniform national resource standards of eligibility to all applicant households, including those in which members are recipients of federally aided public assistance, general assistance or supplemental security income.

(b) *Maximum allowable resources.* The maximum allowable resources, including both liquid and nonliquid assets, of all members of the household shall not exceed $1,750 for the household, except that, for households of two or more members including a member or members age 60 or over, such resources shall not exceed $3,000.

(c) *Definition of resources.* In determining the resources of a household, the following shall be included and documented by the State agency in sufficient detail to permit verification in the event it becomes necessary because of inconsistent information or for quality control review:

(1) Liquid resources, such as cash on hand, money in checking or savings accounts, savings certificates, stocks or bonds; and

(2) Nonliquid resources, personal property, licensed vehicles, buildings, land, recreational properties and any other property, not specifically excluded under paragraph (e) of this section.

(d) *Jointly owned resources.* Resources held jointly by separate households shall be considered available in their entirety to each household, unless it can be demonstrated by the applicant household that such resources are inaccessible to that household.

(e) *Exclusions from resources.* In determining the resources of a household, only the following shall be excluded:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others. Public rights of way, such as roads which run through the surrounding property and separate it from the home, will not affect the exemption of the property. The home and surrounding property shall remain exempt when temporarily unoccupied for reasons of employment, illness, vacation, or inhabitability caused by casualty or natural disaster, if the household intends to return.

(2) Household goods, personal effects, including one burial plot per household member, and the cash value of life insurance policies and pension funds, including funds in pension plans such as a Keogh Plan or an Individual Retirement Account (IRA) as long as the funds are not withdrawn from the pension plans.

(3) The entire value of any licensed vehicle, such as, but not limited to, a taxi, tractor, or fishing boat, if the vehicle is used primarily (over 50 percent of the time the vehicle is used) for income producing purposes, or, if the vehicle annually produces income con-

sistent with its fair market value, even if only used on a seasonal basis. This exemption will apply when the vehicle is not in use because of temporary unemployment.

(4) One licensed vehicle, other than vehicles excluded under paragraph (3) of this section, to the extent that the fair market value is less than $4,500, and additional licensed vehicles necessary for household members to seek employment or to transport household members to and from employment, to the extent that the fair market value of each vehicle is less than $4,500. A vehicle customarily used to transport household members to and from employment shall be covered by this exclusion during temporary periods of unemployment.

(5) Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis.

(6) Property, such as farm land and rental homes, or work related equipment, such as the tools of a tradesman or the machinery of a farmer, which is essential to the employment or self-employment of a household member, except that rental homes which are used by households for vacation purposes at some time during the year shall be counted as resources unless excluded by paragraph (5) of this section.

(7) Installment contract for the sale of land or other property if the contract or agreement is producing income consistent with its fair market value and the value of any property sold under contract or held as security in exchange for a purchase price consistent with the fair market value of that property.

(8) Any governmental payments, such as those made by the Individual and Family Grant Program or the Small Business Administration, which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended.

(9) Resources whose cash value is not accessible to the household, such as but not limited to, irrevocable trust funds, property in probate and property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. In such cases, the State agency shall establish that the property is for sale and that the household will accept a reasonable offer. Any funds transferred to a trust, and the income produced by that trust, shall be considered accesible to the household unless:

(i) The trust is under the control and management of an institution, corporation or organization (the trustee) which is not under the direction or ownership of any household member;

(ii) That trustee acts in a fiduciary capacity and uses the funds solely to make investments on behalf of the trust or to pay the educational expenses of any person named by the household creating the trust;

(iii) The trust investments do not directly involve or assist any business or corporation under the control, direction or influence of a household member;

(iv) The trust arrangement will not likely cease during the certification period; and

(v) No household member has the power to revoke the trust arrangement or change the name of the student beneficiary during the certification period.

(10) Resources, such as those of students or self-employed persons, which have been counted as income under § 273.9. The handling of student income is explained in § 273.10(c) and the handling of self-employment income is explained in § 273.11(a).

(11) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs; and

(12) Resources which are excluded for food stamp purposes by express provision of Federal law. The following is the current listing of resources excluded by Federal law:

(i) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92-203, section 21(a)) or the Sac and Fox Indian claims agreement (Pub. L. 94-189);

(ii) Payments received by certain Indian tribal members under Pub. L. 94-114, section 6, regarding submarginal land held in trust by the United States;

(iii) Benefits received from the Special Supplemental Food Program for Women, Infants and Children (WIC) (Pub. L. 92-443, section 9);

(iv) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91-646, section 216);

(v) Earned income credits received as a result of the Tax Reform Act of 1976 (Pub. L. 94-455, section 402), the Revenue Readjustment Act of 1975 (Pub. L. 94-164, section 2(d)) and payments received under section 102 of the Tax Reduction Act of 1975 (Pub. L. 94-12);

(vi) Payments received from the Youth Incentive Entitlement Pilot Projects, the Youth Community Conservation and Improvement Projects, and the Youth Employment and Training Programs under the Youth Employment and Demonstration Project Act of 1977 (Pub. L. 95-93), but not payments from the Young Adults Conservation Corps under that Act nor any payments under the Comprehensive Employment and Training Act (CETA) (Pub. L. 93-203).

(f) *Handling of excluded funds.* Excluded monies that are kept in a separate account, and that are not commingled in an account with nonexcluded funds, shall retain the resource exclusion for an unlimited period of time. Those excluded monies which are commingled in an account with nonexcluded funds shall retain their exemption for six months from the date they are commingled. If the household's total resources including all funds in the commingled account exceed the allowable limit after that time, the following method shall be used to determine what portion of the total resources are exempt funds. Each withdrawal of funds, after deposit of exempt funds into an account, shall reduce any exempt funds in that account by the value of the withdrawal. When the total amount withdrawn from an account equals or exceeds the total amount of exempted funds deposited into that account, the exempted funds will be considered totally spent. Households desiring to exempt commingled funds, six months after commingling, must document: the dates and amounts of exempt fund deposits and subsequent withdrawals; the amounts and dates of withdrawals after the date of first commingling; and the current account balance.

(g) *Value of resources.* (1) The value of resources shall be determined at fair market value less encumbrances, except for licensed vehicles which shall be handled as follows:

(i) Licensed vehicles are totally exempt if the vehicles' primary use (over 50 percent of the time it is used) is for income producing purposes, if the vehicle annually produces income consistent with its fair market value, or if exempt under § 273.8(e)(1).

(ii) All licensed vehicles not exempt under paragraph (g)(1)(i) of this section shall individually be evaluated for fair market value and that portion of the value which exceeds $4,500 shall be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicles. For example, a household owning an automobile with a fair market value, as defined in paragraph (2) below, of $5,500 shall have $1,000 applied toward its resource level. Any value in excess of $4,500 shall be attributed to the household's resource level, regardless of the amount of the household's investment in the vehicle, and regardless of whether or not the vehicle is used to transport household members to and from employment. Each vehicle shall be appraised individually. The values of two or more vehicles shall not be added together to reach a total fair market value in excess of $4,500.

(iii) All non-income producing licensed vehicles, other than the household's primary vehicle and vehicles necessary for household members to seek employment or to transport household members to and from em-

ployment shall also be evaluated for equity value. The equity value shall be attributed toward the household's resource level.

(iv) In the event a licensed vehicle is assigned both a fair market value in excess of $4,500 (under paragraph (g)(1)(ii) of this section) and an equity value (under paragraph (g)(1)(iii) of this section) only the greater of the two amounts shall be counted as a resource. For example, a second car which is not used to transport a household member to work will be evaluated for both fair market value and for equity value. If the fair market value is $5,000 and the equity value is $1,000, the household shall be credited with only the $1,000 equity value.

(2) The fair market value of licensed automobiles, trucks, and vans will be determined by the "average trade-in value" or the "wholesale value" of those vehicles as listed in publications written for the purpose of providing guidance to automobile dealers and loan companies. Publications listing the value of vehicles are usually referred to as "blue books." The State agency shall ensure that the blue book used to determine the value of licensed vehicles is updated a minimum of once every six months. The National Automobile Dealers Association's (NADA) Used Car Guide Book is a commonly available and frequently updated publication. The State agency shall assign the blue book value to vehicles, unless a household indicates that for some reason, such as body damage or inoperability, the vehicle is in less than average condition. Any household which claims that the blue book value does not apply to its vehicle shall be given the opportunity to acquire verification of the true value from a reliable source. Also, households shall be asked to acquire verification of the value of licensed antique, custom made, or classic vehicles, if the State agency is unable to make an accurate appraisal.

(h) *Transfer of resources.* (1) At the time of application, households shall be asked to provide information regarding any resources which any household member has transferred within the three month period immediately preceding the date of application. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamp benefits shall be disqualified from participation in the program for up to one year from the date of the discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the three month period prior to application or if they are transferred knowingly after the household is determined eligible for benefits. An example of the latter would be assets which the household acquires after being certified for benefits and which are then transferred to prevent the household from exceeding the maximum resource limit.

(2) Eligibility for the program will not be affected by the following transfers: (i) Resources which would not otherwise affect eligibility, for example, resources consisting of excluded personal property such as furniture or of money that, when added to other household resources, totalled less at the time of the transfer than the allowable resource limits; (ii) Resources which are sold or traded at, or near, fair market value; (iii) Resources which are transferred between members of the same household; and (iv) Resources which are transferred for reasons other than qualifying or attempting to qualify for food stamp benefits, for example, a parent placing funds into an educational trust fund described in paragraph (e)(9) of this section.

(3) The length of the disqualification period shall be based on the amount by which nonexempt transferred resources, when added to other countable resources, exceed the allowable resource limits. For example, if a one person household with $1,500 in a bank transferred ownership of a car worth $5,000, $250 of that transfer would be considered because the first $4,500 of the car's value was exempt and an additional $250 of the transferred asset was applied toward the $1,750 resource limit. The following chart will be used to determine the period of disqualification:

Amount in excess of the resource limit	Period of disqualification
0 to $249	1 mo.
$250 to $999	3 mo.
$1,000 to $2,999	6 mo.
$3,000 to $4,999	9 mo.
$5,000	12 mo.

(i) *Resources of nonhousehold members.* The resources of nonhousehold members, as provided in § 273.1(b), shall not be counted as available to the household, unless the member:

(1) Is disqualified from the program, in accordance with § 273.16 for fraud; or

(2) Is a student and is disqualified from the program, in accordance with § 273.7(e)(2), for failing to comply with the work registration requirement during the school year.

§ 273.9 Income and deductions.

(a) *Income eligibility standards.* Participation in the program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet.

(1) The income eligibility standards for the Food Stamp Program shall be uniform for the contiguous 48 States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam. The income eligibility standards are derived from the Office of Management and Budget (OMB) nonfarm income poverty guidelines for the 48 States and the District of Columbia. The income eligibility standards for Alaska and Hawaii are derived from separate OMB nonfarm income poverty guidelines. The annual income poverty guidelines shall be devided by 12 to determine the monthly net income eligibility standards.

(2) The monthly income eligibility standards shall be adjusted annually on July 1, by multiplying the most recent OMB nonfarm poverty income guidelines by the change between the average Consumer Price Index (CPI) for the 50 States and the District of Columbia for the preceding calendar year and the CPI for March of the current year.

(3) The income eligibility standards for the 48 States the District of Columbia, Puerto Rico, the Virgin Islands and Guam; for Alaska; and for Hawaii will be published as an appendix to this section.

(b) *Definition of income.* Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.

(1) Earned income shall include:

(i) All wages and salaries for services performed as an employee. Assistance payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves shall be considered earned income to the extent that the payments actually subsititute for wages or salaries.

(ii) The total gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business. Payments from a roomer or boarder and returns on rental property shall be considered self-employment income.

(iii) Training allowances from vocational and rehabilitative programs recognized by Federal, State or local governments, such as the Work Incentive Program, and programs authorized by the Comprehensive Employment and Training Act, to the extent they are not a reimbursement.

(2) Unearned income shall include, but not be limited to:

(i) Assistance payments from Federal or federally aided public assistance programs, such as Supplemental Security Income (SSI) or Aid to Families with Dependent Children (AFDC), general assistance (GA) programs, or other assistance programs based on need except as provided in paragraph (b)(1)(i) of this section.

(ii) Annuities; pensions; retirement, veteran's, or disability benefits; work-

man's or unemployment compensation; old-age, survivors, or social security benefits; strike benefits; foster care payments for children or adults.

(iii) Support or alimony payments made directly to the household from nonhousehold members.

(iv) Scholarships, educational grants, fellowships, deferred payment loans for education, veteran's educational benefits and the like in excess of amounts excluded under § 273.9(c).

(v) Payments from government-sponsored programs such as Agricultural Stabilization and Conservation Service programs, dividends, interest, royalties, and all other direct money payments from any source whatever which can be construed to be a gain or benefit.

(3) The earned or unearned income of an individual disqualified from the household for fraud in accordance with § 273.16 or for failing to comply with the student work registration requirements in § 273.7(b)(7)(i) shall continue to be counted as income, less the pro rata share for the individual. Procedures for calculating this pro rata share are described in § 273.11.

(4) Income shall not include the following:

(i) Monies withheld from an assistance payment, earned income, or other income source, or monies received from any income source which are voluntarily or involuntarily returned to repay a prior overpayment received from that income source, provided that the overpayment was not excludable under paragraph (c) of this section.

(ii) Child support payments received by AFDC recipients which must be transferred to the agency administering Title IV-D of the Social Security Act of 1935. as amended, to maintain AFDC eligibility.

(c) *Income exclusions.* Only the following items shall be excluded from household income and no other income shall be disregarded:

(1) Any gain or benefit which is not in the form of money payable directly to the household, including:

(i) *In-kind income.* Nonmonetary or in-kind benefits, such as meals, clothing, public housing, or produce from a garden.

(ii) *Vendor payments.* A payment made in money on behalf of a household shall be considered a vendor payment whenever a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. For example, if a relative, who is not a household member, pays the household's rent directly to the landlord, the payment is considered a vendor payment and is not counted as income to the household. Wages garnished by employers, or money deducted or otherwise diverted from a household's public assistance grant by a State for purposes of managing the household's expenses shall not be considered a vendor payment, since the person or organization making the payment is using money payable to the household rather than its own funds. Payments made directly to the household are counted as income and are not excluded as a vendor payments; except that rent or housing subsidies paid to a landlord by the Housing and Urban Development (HUD) Department shall be considered a vendor payment regardless of whether the payment is made directly to the landlord or paid to the landlord through the household.

(2) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $30 in a quarter.

(3) Educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits and the like to the extent that they are used for tuition and mandatory school fees at an institution of higher education, a correspondence school or a school for the physically or mentally handicapped. Mandatory fees are those charged to all students or those charged to all students within a certain curriculum. For example, uniforms, lab fees, or equipment charged to all students in order to enroll in a chemistry course would be excluded. However, transportation, supplies and text book expenses are not uniformly charged to all students and, therefore, would not be excluded as mandatory fees.

(4) All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred.

(5) Reimbursements for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household. Reimbursements for normal household living expenses such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are not excluded. To be excluded, these payments must be provided specifically for an identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount by which a reimbursement exceeds the actual incurred expense shall be counted as income. However, reimbursements shall not be considered to exceed actual expenses, unless the provider or the household indicates the amount is excessive. Examples of excludable reimbursements which are not considered to be a gain or benefit to the household are:

(i) Reimbursements or flat allowances for job or training related expenses such as travel, per diem, uniforms, and transportation to and from the job or training site. Reimbursements for these expenses are excluded; however, these expenses, if not reimbursed, are not otherwise deductible.

(ii) Reimbursements for out-of-pocket expenses of volunteers incurred in the course of their work.

(iii) Medical or dependent care reimbursements.

(iv) Reimbursements or allowances to students for specific education expenses, such as travel or books, but not allowances for living expenses, such as food or clothing. Portions of a general grant or scholarship must be specifically earmarked for education expenses rather than for living expenses to be excludable as a reimbursement.

(v) Reimbursements received by households to pay for services provided by Title XX of the Social Security Act.

(6) Monies received and used for the care and maintenance of a third-party beneficiary who is not a household member. If the intended beneficiaries of a single payment are both household and nonhousehold members, any identifiable portion of the payment intended and used for the care and maintenance of the nonhousehold member shall be excluded. If the nonhousehold member's portion cannot be readily identified, the payment shall be evenly prorated among intended beneficiaries and the exclusion applied to the nonhousehold member's pro rata share or the amount actually used for the nonhousehold member's care and maintenance, whichever is less.

(7) The earned income (as defined in paragraph (b)(1) of this section) of children who are members of the household, who are students at least half-time, and who have not attained their eighteenth birthday. The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings or amount of work performed cannot be differentiated from that of other household members, the total earnings shall be prorated equally among the working members and the child's prorata share excluded. Individuals are not considered children for purposes of this provision if they are emancipated.

(8) Money received in the form of a nonrecurring lump sum payment, including, but not limited to, income tax refunds, rebates, or credits; retroactive

lump-sum social security, SSI, public assistance, railroad retirement benefits or other payment; or retroactive lump-sum insurance settlements. These payments shall be counted as resources in the month received, unless specifically excluded from consideration as a resource by other Federal laws.

(9) The cost of producing self-employment income. The procedures for computing the cost of producing self-employment income are described in § 273.11.

(10) Any income that is specifically excluded by any other law from consideration as income for the purpose of determining eligibility for the Food Stamp Program. The following laws provide such an exclusion:

(i) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91-646, Section 216).

(ii) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92-203, Section 21(a));

(iii) Any payment to volunteers under programs covered by the Domestic Volunteer Services Act of 1973 (Pub. L. 93-113) as amended. Included under this Act are Title I (VISTA), Title II (RSVP, Foster Grandparents, and others) and Title III (SCORE and ACE).

(iv) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94-114, Section 6).

(v) Payments from the Special Crisis Intervention Program (SCIP), the Crisis Intervention Program (CIP) and the Emergency Energy Assistance Program (EEAP) administered by the Community Services Administration (CSA).

(vi) Payments received from the Youth Incentive Entitlement Pilot Projects, The Youth Community Conservation and Improvement Projects, and the Youth Employment and Training Programs under the Youth Employment and Demonstration Project Act of 1977 (Pub. L. 95-93), but not payments from the Young Adults Conservation Corps under that Act nor any other payments under the Comprehensive Employment and Training Act.

(d) *Income deductions.* Deductions shall be allowed only for the following household expenses:

(1) *Standard deduction.* A standard deduction of $60[1] per household per month for the 48 contiguous States and the District of Columbia. The standard deductions applicable in Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands will be published as an appendix to this section.

(2) *Earned income deduction.* Twenty percent of gross earned income as defined in paragraph (b)(1) of this section, less earnings exluded in paragraph (c) of this section.

(3) *Dependent care.* Payments for the actual costs for the care of a child or other dependent when necessary for a household member to accept or continue employment, seek employment in compliance with the job search criteria (or an equivalent effort by those not subject to job search), or attend training or pursue education which is preparatory to employment. This deduction shall not exceed $75[1] in the 48 contiguous States and the District of Columbia, or an amount that will be specified in the appendix to this section for Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands.

(4) *Shelter costs.* Monthly shelter costs in excess of 50 percent of the household's income after all other deductions in § 273.9(d) (1), (2), and (3) have been allowed. The shelter deduction alone, or in combination with the dependent care deduction in § 273.9(d)(3), shall not exceed $75 in the 48 contiguous States and the District of Columbia, or an amount that will be specified in the appendix to this section for Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands. Shelter costs shall include only the following:

(i) Continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments.

(ii) Property taxes, State and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.

(iii) Charges for heating and cooking fuel; cooling and electricity; water and sewer; garbage and trash collection fees; the basic service fee for one telephone, including tax on the basic fee; and fees charged by the utility provider for initial installation of the utility. One time deposits shall not be included as shelter costs.

(iv) The shelter costs for the home if not occupied by the household because of employment away from home, illness or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any, must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household. To facilitate certification, the household may be certified taking into account the costs on the unoccupied home pending verification of these costs. However, verification must be obtained prior to recertification.

(5) *Standard utility allowances.* The State agency shall develop a method, subject to FNS approval, for calculating a standard utility allowance for use in calculating shelter costs of those households which incur utility costs, other than telephone costs, separate and apart from their rent or mortgage. The household shall be advised that actual utility costs which exceed the standard shall be deducted if the household can verify these costs. Households may change between actual utility costs and the utility standard at any time. Households shall be reminded on the change report form of the right to claim actual utility costs if they exceed the standard at any time. The State agency shall review, at least annually, and adjust the utility standard as necessary to reflect changes in the costs of utilities. State agencies may use data gathered through quality control sampling, surveys of utility company rates, or another method for establishing and updating the standard developed by the State and approved by FNS. The amount of the standard shall vary seasonally unless the State agency can demonstrate that such variations are not warranted. In addition, the State agency may have other variations in its standard to reflect other differences, such as geographical variations or separate standards for each utility.

(6) *Semiannual adjustment of standard deductions.* Effective July 1, 1978, the standard deductions shall be adjusted on January 1 and July 1 to the nearest $5. The adjustment shall reflect changes in the CPI for items other than food for the six months ending the preceding September 30 and March 31, respectively. The semiannual adjustment shall be based on the previous half year's unrounded number, and the result of the adjustment rounded to the nearest $5.

(7) *Annual adjustment of shelter deduction.* Effective July 1, 1978, the maximum limit on shelter and dependent care deductions shall be adjusted on July 1 to the nearest $5. The adjustment shall reflect changes in the shelter, fuel, and utilities components of the CPI for the 12-month period ending the preceding March 31. The annual adjustment shall be based on the previous year's unrounded numbers, and the result rounded to the nearest $5.

[1] The actual amounts of the standard deduction and of the limit on the child care and shelter deduction that will apply when these regulations are implemented will be determined according to the cost of living adjustments described in this section and will be published as an appendix to these regulations.

APPENDIX (RESERVED)

§ 273.10 Determining household eligibility and benefit levels.

(a) *Period of application.* (1) The period of application for all households submitting an initial application is the calendar month in which the household filed its application. In most cases, the month of application will be the first month of the household's initial certification period. The State agency shall determine a household's eligibility and benefit level during the month of application based on the household's circumstances for the entire calendar month, even if the household filed its application on the last day of that calendar month.

(2) There is no "period of application" for applications for recertification filed during the current certification period. Eligibility and the basis of issuance for recertifications shall be determined based on circumstances anticipated for the calendar month following the expiration of the current certification period. If an application for recertification is not received until after the current certification period has expired, the period of application shall be the month in which the application was filed, as for any initial application.

(3) As a result of anticipated changes, a household may be eligible for the month of application, but ineligible in subsequent months. The household shall be entitled to benefits for the month of application even if the processing of its application results in the benefits being issued in a subsequent month. Similarly, a household may be ineligible for the month of application, but eligible in subsequent months due to anticipated changes in circumstances. Even though denied for the month of application, the household does not have to reapply in the subsequent month. The same application shall be acted on both for the denial for the month of application and the determination of eligibility for subsequent months, within the timeliness standards in § 273.2, provided that benefits are not issued prior to the start of the household's certification period.

(b) *Determining resources.* The household's resources at the time the application is filed shall be used to determine whether or not the household's resources are below the maximum allowable resources described in § 273.8.

(c) *Determining income.* (1) *Anticipating income.* (i) For the purpose of determining the household's eligibility and basis of issuance, the State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that will be received, or when it will be received, is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or public assistance benefits recently applied for, may be uncertain as to the timing and amount of the initial payment. These monies shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received or in what amount. Households are required in § 273.12 to report the income when it is received.

(ii) Income received during the past thirty days shall be used as an indicator of anticipated income. However, past income shall not be used for any month in which a change in income has occurred or can be anticipated.

(iii) As a result of anticipating changes, the household's allotment for the month of application may differ from its allotment in subsequent months. The State agency shall establish a certification period for the longest possible period over which the household's circumstances can be reasonably anticipated. The household's allotment shall vary month to month within the certification period to reflect changes anticipated at the time of certification, unless the household elects the averaging techniques in paragraphs (c)(3) and (d)(3) of this section.

(2) *Income only in month received.* (i) Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15. Nonrecurring lump-sum payments shall be counted as a resource starting in the month received and shall not be counted as income.

(ii) Wages held at the request of the employee shall be considered income to the household in the month the wages would otherwise have been paid by the employer. However, wages held by the employer as a general practice, even if in violation of law, shall not be counted as income to the household, unless the household anticipates that it will ask for and receive an advance, or the household anticipates that it will receive income from previously held wages. Advances on wages shall only count as income if reasonably anticipated as defined in paragraph (c)(1) of this section.

(3) *Income averaging.* (i) Households may elect to have income averaged if the difference between the anticipated highest and lowest amounts during the certification period is $50 a month or less.

(ii) Households that derive their annual income in a period of time shorter than one year shall have that income averaged over a 12-month period, provided the income is not received on an hourly or piecework basis. These households may include school employees, share croppers, farmers, and other self-employed households. However, these provisions do not apply to migrant or seasonal farm workers. The procedures for averaging self-employed income are described in § 273.11.

(iii) Households receiving scholarships, deferred educational loans, or other educational grants shall have such income, after exclusions, averaged over the period for which it was provided.

(d) *Determining deductions.* Deductible expenses include only certain costs of dependent care and shelter as described in § 273.9.

(1) *Disallowed expenses.* (i) An expense covered by an excluded reimbursement or vendor payment shall not be deductible. For example, the portion of rent covered by excluded vendor payments shall not be calculated as part of the household's shelter cost.

(ii) Expenses shall only be deductible if the service is provided by someone outside of the household and the household does not provide compensation for the service through an in-kind benefit. For example, a dependent care deduction shall not be allowed if another household member provides the care, or compensation for the care is provided in the form of an in-kind benefit, such as food.

(2) *Billed expenses.* Except as provided in paragraph (d)(3) of this section, a deduction shall be allowed only in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense. For example, rent which is due each month shall be included in the household's shelter costs, even if the household has not yet paid the expense. Amounts carried forward from past billing periods are not deductible, even if included with the most recent billing and actually paid by the household. In any event, a particular expense may only be deducted once.

(3) *Averaging expenses.* Households may elect to have an expense averaged if the anticipated difference between the highest and lowest amounts during the certification period is $25 a month or less. Households may elect to have expenses which are billed less often than monthly averaged forward over the interval between scheduled

billings, or, if there is no scheduled interval, averaged forward over the period the expense is intended to cover. For example, if a household receives a single bill in February which covers a three-month supply of fuel oil, the bill may be averaged over February, March, and April. The household may elect to have one-time only expenses averaged over the entire certification period in which they are billed.

(4) *Anticipating expenses.* The State agency shall calculate a household's expenses based on the expenses the household expects to be billed for during the certification period. Anticipation of the expense shall be based on the most recent month's bills, unless the household is reasonably certain a change will occur. When the household is not claiming the utility standard, the State agency may anticipate changes during the certification period based on last year's bills from the same period updated by overall price increases; or, if only the most recent bill is available, utility cost increases or decreases over the months of the certification period may be based on utility company estimates for the type of dwelling and utilities used by the household. The State agency shall not average past expenses, such as utility bills for the last several months, as a method of anticipating utility costs for the certification period.

(e) *Calculating net income and benefit levels.* (1) *Net monthly income.* (i) To determine a household's net monthly income, the State agency shall:

(A) Add the gross monthly income earned by all household members minus earned income exclusions, to determine the household's total gross earned income.

(B) Multiply the total gross earned income by 20 percent and subtract that amount to determine the net monthly earned income (or multiply the total gross earned income by 80 percent).

(C) Add to net monthly earned income the total monthly unearned income of all household members, minus income exclusions.

(D) Subtract the standard deduction.

(E) Subtract monthly dependent care expenses, if any, up to the maximum amount allowed for the area (see appendix to § 273.9). If dependent care costs equal or exceed the maximum amount allowed, the household's net monthly income has been determined. If not, the household's adjusted income has been determined and shall be used to compute excess shelter expenses in subparagraph (F) of this section.

(F) Total the allowable shelter expenses to determine shelter costs. Subtract from total shelter costs 50 percent of the adjusted income (the household's monthly income after all the above deductions have been subtracted). The remaining amount, if any, is the excess shelter cost. If there is no excess shelter cost, the net monthly income has been determined. If there is excess shelter cost, compute the shelter deduction in subparagraph (G) of this section.

(G) Subtract from the adjusted income in subparagraph (E) of this section the excess shelter cost up to the maximum amount allowed for the area. The maximum amount allowed for shelter is the maximum used in subparagraph (E) of this section, minus the amount of dependent care expenses, if any. The household's net monthly income has been determined.

(ii) In calculating net monthly income, the amounts shall be rounded down to whole dollar amounts by dropping all cents. Such rounding shall occur before and after each calculation, except for the computation of shelter costs. For example, any cents in gross weekly earnings shall be dropped prior to the application of the weekly conversion factor. Any cents resulting from that multiplication shall then be dropped prior to the computation of the 20 percent earned income deduction. The cents shall be dropped from this deduction prior to being subtracted from earned income. However, because these procedures could result in a signficant decrease in the shelter expenses the household may be entitled to use in determining excess shelter cost, the individual costs used in paragraph (e)(1)(i)(F) of this section shall be computed using exact dollars and cents. The cents will be dropped from the total shelter costs prior to determining the shelter deduction for the household's net monthly income.

(2) *Eligibility and benefits.* (i) Except for households considered destitute in paragraph (e)(3) of this section the household's net monthly income as calculated in paragraph (e)(1) of this section shall be compared to the monthly income eligibility standards for the appropriate household size to determine eligibility for the month.

(ii) The household's monthly allotment shall be equal to the Thrifty Food Plan for the household's size reduced by 30 percent of the household's net monthly income as calculated in paragraph (e)(1) of this section. After multiplying the net income by 30 percent, the result shall be rounded by dropping all cents prior to subtracting that amount from the Thrifty Food Plan. All eligible one and two person households shall receive a minimum monthly allotment of $10.

(3) *Elibility and benefits for destitute households.* A special eligibility and benefit determination shall be used for households which anticipate income from a new source later in the month, but which do not have any income available for their current food needs. Households which anticipate income from a new job or are awaiting benefits from public assistance, unemployment compensation, social security, SSI, or the like may be totally without income for one to three weeks before the new income begins. If these households are destitute, as defined in paragraph (e)(3)(i) of this section, the new income will be anticipated, but it will not be used to deny or reduce benefits for the period of the month prior to the anticipated receipt of the new income.

(i) To determine if a household is to receive the special eligibility and benefit determination, the State agency shall use the following procedures:

(A) The month is divided into four quarters and the quarters arranged into two accounting periods to identify that portion of the month in which the household is without income. The quarters of the month are 1st–7th; 8th–15th; 16th–22nd; 23rd to the end of the month. The first accounting period shall contain the one, two or three quarters prior to the quarter in which the new income is received. The second accounting period shall contain the quarter in which the new income is first received and all subsequent quarters in the month. For example, if the new income is not anticipated until the 20th (which falls in the third quarter), each accounting period will contain two quarters. If the income is not anticipated until the 25th (which is in the fourth quarter), the first accounting period will contain three quarters, and the second accounting period will contain the one quarter remaining in the month.

(B) A household will be considered destitute and eligible for the special procedures if its only income in the month is from a new source and that income will be received after the quarter in which the application is filed. Income shall be considered from a new source if it was not received from that source in the preceding 30 days. However, if the income is normally received less often than monthly, the normal interval between payments shall be subsituted for the preceding 30 days to determine if the income is from a new source.

(C) If otherwise eligible, households determined to be destitute shall have their applications processed on an expedited basis and their benefits calculated in accordance with paragraph (e)(3)(ii) of this section.

(ii) Destitute household shall have their benefits calculated as follows:

(A) The Thrifty Food Plan shall be divided between accounting periods based on the number of quarters in each period. If income is anticipated

for the second quarter, one-fourth of the Thrifty Food Plan will be assigned to the first accounting period and the remaining three quarters to the second period. If income is anticipated in the third quarter, one-half of the Thrifty Food Plan will be assigned to each accounting period. If income is not anticipated until the final quarter, three-quarters of the Thrifty Food Plan will be assigned to the first accounting period and one fourth to the second.

(B) The household's net monthly income shall be calculated in accordance with prargraph (e)(1) of this section as for any other household. The household's net monthly income shall be multiplied by 30 percent and the result rounded as in paragraph (e)(1)(ii) of this paragraph.

(C) If 30 percent of the household's net monthly income is less than or equal to the portion of the Thrifty Food Plan assigned to the second accounting period in paragraph (e)(3)(ii)(A) of this section, the household's benefits shall be calculated for the whole month as for any other household. Because their monthly income is so low, the normal procedures will result in the same allotment as the special benefit calculation.

(D) If 30 percent of the household's net monthly income exceeds the portion of the Thrifty Food Plan assigned to the second accounting period, the household shall receive only the amount of the Thrifty Food Plan assigned to the first accounting period. Even if the household's net monthly income exceeds the monthly income eligibility standard, destitute households shall receive the portion of the Thrifty Food Plan assigned to the first accounting period, since the household has no income in this period.

(iii) The above procedures shall apply not only for initial applications, but for any month during the certification period or at recertification if the only income anticipated for that month is from a new source. To be eligible for the special procedures during the certification period or at recertification, the only income in the month must be from a new source as defined in paragraph (e)(3)(i)(B) of this section, and must be anticipated after the quarter in which the household's ATP or coupon allotment is normally received.

(iv) A household eligible for any portion of the month under these special procedures shall be considered eligible for the whole month for reporting and notice purposes.

(4) *Thrifty Food Plan.* (i) *Level of the thrifty Food Plan.* The Thrifty Food Plan shall be uniform by household size throughout the 48 contiguous States and the District of Columbia. The Thrifty Food Plans for Alaska and Hawaii shall be the Thrifty Food Plan for the 48 States adjusted by the price of food in Alaska and Hawaii. The Thrifty Food Plans for Guam, Puerto Rico, and the Virgin Islands shall be adjusted by the cost of food in those areas provided that the costs of these plans shall not exceed the cost of the Thrifty Food Plan for the 50 States. The Thrifty Food Plan in each area will be provided in the appendix of this subchapter.

(ii) *Semiannual adjustment.* The Thrifty Food Plan shall be adjusted semiannually to reflect changes in the price of food. The semiannual adjustments shall be rounded to the nearest whole dollar. The semiannual adjustments shall occur on July 1 based on the change in the price of the Thrifty Food Plan over a six-month period ending the preceding March 31; and on January 1 based on the change in a six-month period ending the preceding September 30.

(f) *Certification periods.* The State agency shall establish definite periods of time within which households shall be eligible to receive benefits. At the expiration of each certification period, entitlement to food stamp benefits ends. Further eligibility shall be established only upon a recertification based upon a newly completed application, an interview, and such verification as required by § 273.2(f). Under no circumstances shall benefits be continued beyond the end of a certification period without a new determination of eligibility.

(1) Certification periods shall conform as much as possible to calendar months. The month of application shall be the first month in the certification period of initial applicants; for example, if a household submits an application in January and the application is not processed until February, a six-month certification period would include January through June. Upon recertification, the certification period will begin with the month following the last month of the previous certification period.

(2) Households in which all members are included in a PA or GA grant and which are eligible for joint application procedures, as described in § 273.2(k), shall be assigned certification periods which coincide with the period of the review for the assistance grant. In no event shall such certification periods exceed one year. Recertifications shall be scheduled to enable households to be recertified when their eligibility for PA/GA is reviewed. State agencies which accomplish PA/GA reviews in a timely fashion may routinely assign definite certification periods to expire the month after the PA/GA review. State agencies which, due to staffing problems or other difficulties, are unable to accurately predict the month of each PA/GA review may assign undetermined certification periods which do not exceed one year in length. However, a recertification shall be accomplished simultaneously with the PA/GA review. All State agencies shall advise PA/GA households of the length of the certification period as required by paragraph (g)(1)(i) of this section, and of the expiration of the certification period as required by § 273.14(b).

(3) Other households shall be assigned the longest certification periods possible based on the predictability of the household's circumstances. Households shall be certified for three months, except as follows:

(i) Households eligible for a certification period of three months or less shall, at the time of certification, have their certification periods increased by one month, if the certification process is completed after the 15th day of the month of application and the household's circumstances warrant the longer certification period. For example, if a household which is eligible for a three-month certification period makes application in June and is not certified until late June or early July, the certification period would include June through September.

(ii) Households containing one or more persons subject to a lockout or on strike from their place of employment shall not be certified for periods of more than one month, if the household is certified before the 15th day of the month of application; otherwise, the maximum certification period shall be for two months unless the State agency wishes to assign a longer certification period and the household signs a waiver of notice of adverse action, as specified in § 273.13(b)(9).

(iii) Households may be certified for one or two months as appropriate when the household cannot reasonably predict what its circumstances will be in the near future, or when there is a substantial likelihood of frequent and significant changes in income or household status; for example, day laborers and migrant workers during the work season when income is uncertain and subject to extreme fluctuations due to the availability of employment or due to bad weather and other circumstances.

(iv) Households may be certified for up to six months if there is little likelihood of changes in income and household status; for example, households with a stable income record and for which major changes in income, deductions or composition are not anticipated.

(v) Households consisting entirely of unemployable or elderly persons with very stable income may be certified for up to 12 months provided other household circumstances are expected to remain stable; for example, social security recipients, SSI recipients and persons who receive pensions or disability payments.

(vi) Households whose primary source of income is from self-employment (including self-employed farmers) or from regular farm employment with the same employer may be certified for up to 12 months, provided income can be readily predicted and household circumstances are not likely to change. Annual certification periods may be assigned to farm workers who are provided their annual salaries on a scheduled monthly basis which does not change as the amount of work changes.

(g) *Certification notices to households.* (1) *Initial applications.* State agencies shall provide applicants with one of the following written notices as soon as a determination is made, but no later than 30 days after the date of the initial application:

(i) *Notice of eligibility.* (A) If an application is approved, the State agency shall provide the household with written notice of the amount of the allotment and the beginning and ending dates of the certification period. The household shall also be advised of variations in the benefit level based on changes anticipated at the time of certification. If the initial allotment contains benefits for both the month of application and the current month's benefits, the notice shall explain that the initial allotment includes more than one month's benefits, and shall indicate the allotment amount for the remainder of the certification period. The notice shall also advise the household of its right to a fair hearing and of the name and telephone number of the person to contact for additional information. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the services. The State agency may also include in the notice a reminder of the household's obligation to report changes in circumstances and of the need to reapply for continued participation at the end of the certification period. Other information which would be useful to the household may also be included.

(B) State agencies that do not assign definite certification periods to PA or GA households, as provided in paragraph (f)(2) of this section, will not be required to provde those households with an exact expiration date for the certification period. Instead, the notice shall state that the certification period will expire the month after the next review for the assistance grant or in one year, whichever comes first.

(C) In cases where a household's application is approved on an expedited basis without verification, as provided in § 273.2(i)(4)(iv), and the application indicates the household is eligible in subsequent months, the notice shall explain that if the household provides verification within 30 days of the date the application was filed, the household will not have to reapply at the end of its certification period and will not receive an interruption of benefits.

(D) For households provided a notice of expiration at the time of certification, as required in § 273.14(b), the notice of eligibility may be combined with the notice of expiration or separate notices may be sent.

(ii) *Notice of denial.* If the application is denied, the State agency shall provide the household with written notice explaining the basis for the denial, the household's right to request a fair hearing, and the name and telephone number of the person to contact for additional information. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service. In cases where the denial was caused by the household's failure to take action to complete the application process, as provided in § 273.2(h)(1), the notice of denial shall also explain: the action that the household must take to reactivate the application; that the case will be reopened without a new application if action is taken within 30 days of the date the notice of denial was mailed; and that the household must submit a new application if, at the end of the 30-day period, the household has not taken the needed action and wishes to participate in the program.

(iii) *Notice of pending status.* If the application is to be held pending because some action by the State is necessary to complete the application process, as specified in § 273.2(h)(2), the State agency shall provide the household with a written notice which informs the household that its application has not been completed and is being processed. If some action by the household is also needed to complete the application process, the notice shall also explain what action the household must take and that its application will be denied if the household fails to take the required action within 60 days of the date the application was filed.

(2) *Applications for recertification.* The State agency shall provide households that have filed an application by the 15th of the last month of their certification period with either a notice of eligibility or a notice of denial by the end of the current certification period. The State agency shall provide households that have received a notice of expiration at the time of certification and have timely reapplied with either a notice of eligibility or a notice of denial not later than 30 days after the date the household had an opportunity to obtain its last allotment.

(3) *Identification (ID) cards.* (i) The State agency shall issue a serially numbered ID card to each certified household as proof of program eligibility. The ID card shall be issued in the name of the household member to whom the ATP is issued. That household member and any authorized representatives shall sign the ID card prior to using it.

(A) The State agency shall limit issuance of ID cards to the time of initial certification with replacements made only in instances of loss, mutilation, destruction, or changes in persons authorized to obtain or use coupons.

(B) The State agency shall place an expiration date only on those ID's issued to households that have been certified for delivered meals for a temporary period.

(ii) ID cards delivered to households by mail shall not be mailed in the same envelope with an ATP or coupons.

(iii) If the household does not name an authorized representative, the State agency shall indicate on the ID card that no designation was made.

(iv) Specially marked ID cards shall be issued as follows:

(A) Any household eligible for and interested in using delivered meal services shall receive an ID card marked with the letter "M".

(B) Any household residing in a remote section of Alaska which has been determined by FNS to be an area in which food coupons may be used to purchase hunting and fishing equipment shall receive an ID card marked with the letters "HF".

(v) Upon household consent, the State agency may use photo ID's to facilitate identification of program participants, except that the State agency shall not deny benefits because household members are unable or refuse to be photographed.

§ 273.11 Certifying households with special income circumstances.

(a) *Self-employment income.* The procedures for handling income received from boarders by a household that does not own and operate a commercial boarding house are described in paragraph (b) of this section. For all other households receiving self-employment income, including those households that own and operate a commercial boarding house, the State agency shall calculate the self-employment income as follows:

(1) *Annualizing self-employment income.* (i) Self-employment income which represents a household's annual support shall be annualized over a 12-month period, even if the income is received in only a short period of time. For example, self-employment income received by farmers shall be averaged over a 12-month period, if the income represents the farmer's annual support. This self-employment income

shall be annualized even if the household receives income from other sources in addition to self-employment.

(ii) Self-employment income which is received on a monthly basis but which represents a household's annual support shall normally be averaged over a 12-month period. If however, the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business, the State agency shall calculate the self-employment income based on anticipated earnings.

(iii) Self-employment income which represents only part of a household's annual support shall be averaged over the period of time the income is intended to cover. For example, self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year shall have their self-employment income averaged over the summer months rather than a 12-month period.

(iv) If a household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise shall be averaged over the period of time the business has been in operation, and the monthly amount projected for the coming year. However, if the business has been in operation for such a short time that there is insufficient data to make a reasonable projection, the household may be certified for less than a year until the business has been in operation long enough to base a longer projection.

(2) *Determining monthly income from self-employment.* (i) For the period of time over which self-employment income is determined, the State agency shall add all gross self-employment income (including capital gains), exclude the cost of producing the self-employment income, and divide the self-employment income by the number of months over which the income will be averaged.

(ii) For those households whose self-employment income is not averaged but is instead calculated on an anticipated basis, the State agency shall add any capital gains the household anticipates it will receive in the next 12 months, starting with the date the application is filed, and divide this amount by 12. This amount shall be used in successive certification periods during the next 12 months, except that a new average monthly amount shall be calculated over this 12 month period if the anticipated amount of capital gains changes. The State agency shall then add the anticipated monthly amount of capital gains to the anticipated monthly self-employment income, and subtract the cost of producing the self-employment income. Except for depreciation, the cost of producing the self-employment income shall be calculated by anticipating the monthly allowable costs of producing the self-employment income. Like capital gains, depreciation will be anticipated for the next 12 months and a monthly average excluded as a cost of doing business.

(iii) The monthly net self-employment income shall be added to any other earned income received by the household. The total monthly earned income less the 20 percent earned income deduction shall then be added to all other monthly income received by the household. The standard deduction, dependent care and shelter costs shall be computed as for any other household and subtracted to determine the adjusted monthly net income of the household.

(3) *Capital gains.* The proceeds from the sale of capital goods or equipment shall be calculated in the same manner as a capital gain for Federal income tax purposes. Even if only 50 percent of the proceeds from the sale of capital goods or equipment is taxed for Federal income tax purposes, the State agency shall count the full amount of the capital gain as income for food stamp purposes.

(4) *Allowable costs of producing self-employment income.* (i) Allowable costs of producing self-employment income include, but are not limited to, the identifiable costs of labor, stock, raw material, seed and fertilizer, interest paid to purchase income producing property, insurance premiums, and taxes paid on income producing property.

(ii) Depreciation shall be allowed as a cost of producing self-employment income for equipment, machinery or other capital investments necessary to the self-employment enterprise.

(A) *Use of Federal tax forms.* If the self-employment income from the last year is annualized, depreciation as indicated on the household's most recent Federal tax form shall be used as a cost of doing business. If the self-employment income is anticipated, the Federal tax form shall be used as a basis to anticipate the coming year's depreciation. When depreciation is anticipated, adjustments are required if the use of the asset as depreciated on the tax form will likely differ from the use anticipated. For example, the depreciation amount would be increased or decreased, as appropriate, for newly acquired assets or assets which will be retired or sold during the coming year.

(B) *Calculating depreciation.* If the tax form is not available, annual allowable depreciation shall be calculated by dividing the asset's cost by its useful life in years. The cost of the asset is its purchase price or the cost of materials if the asset was built by the household. The cost of the asset shall be reduced by any portion of the cost which is otherwise excludable as a cost of doing business. For example, a tool which was fully deducted as a cost of doing business possesses no remaining cost to be depreciated. The useful life of an asset is the "asset guideline period" from the IRS Asset Depreciation Range (ADR) Tables. Assets which annually produce income consistent with fair market value or which are essential for the self-employment of a household member may be depreciated over the entire year if owned for the entire year, even if not used for portions of the year. The "asset guideline period" starts from the month in which the asset is acquired. Once an asset has been in use in the household's enterprise, or held by the household, for the full "asset guideline period," no further depreciation shall be allowed even if the asset continues to be used.

(C) *Insufficient information.* If neither the tax form nor sufficient information about the asset's cost and use is available from the household, no depreciation shall be allowed.

(iii) The following items shall not be excluded as a cost of producing self-employment income:

(A) Payments on the principal of the purchase price of income producing real estate and capital assets, equipment, machinery and other durable goods;

(B) Net losses from previous periods; and

(C) Federal, State, and local income taxes, money set aside for retirement purposes, and other work related personal expenses (such as transportation to and from work), as these expenses are accounted for by the 20 percent earned income deduction specified in § 273.9(d)(2).

(5) *Assigning certification periods.* (i) Households that receive their annual support from self-employment and have no other source of income may be certified for up to 12 months. For those households that receive other sources of income or whose self-employment income is intended to cover a period of time that is less than a year, the State agency shall assign a certification period appropriate for the household's circumstances.

(ii) For those self-employed households that receive their annual income in a short period of time, the initial certification period shall be assigned to bring the household into the annual cycle. For example, the State agency may provide for a recertification at the time the household normally receives all or a majority of its annual income or the State agency may prefer to have the annual cycle coincide with the filing of the household's income tax.

(b) *Boarders.* (1) *Household with boarders.* Persons paying a reasonable

amount for room and board as specified in § 273.1(b) shall be excluded from the household when determining the household's eligibility and benefit level. The income of households owning and operating a commercial boarding house shall be handled as described in paragraph (a) of this section. For all other households, payments from the boarder shall be treated as self-employment income and the household's eligibility determined as follows:

(i) *Income from the boarder.* The income from boarders shall include all direct payments to the household for room and meals, including contributions to the household for part of the household's shelter expenses. Shelter expenses paid directly by boarders to someone outside of the household shall not be counted as income to the household.

(ii) *Cost of doing business.* After determining the income received from the boarders, the State agency shall exclude that portion of the boarder payment which is a cost of doing business. The cost of doing business shall be equal to:

(A) The cost of the Thrifty Food Plan for a household size that is equal to the number of boarders, unless the amount paid for meals is less than this amount;

(B) The amount paid for meals, if this amount is less than the cost of the Thrifty Food Plan for a household size that is equal to the number of boarders; or

(C) The actual documented cost of providing room and meals. If actual costs are used, only separate and identifiable costs of providing room and meals to boarders shall be excluded.

(iii) *Deductible expenses.* The net income from self-employment shall be included with other earned income and the 20 percent earned income deduction taken. Shelter costs the household actually incurs, even if the boarder contributes to the household for part of the household's shelter expenses, shall be computed to determine if the household will receive a shelter deduction. However, the shelter costs shall not include any shelter expenses directly paid by the boarder to a third party, such as the landlord or utility company.

(2) *Boarders as households.* Boarders may be eligible as a food stamp household in their own right, as long as they are not residents of a commercial boarding house. When determining the eligibility and benefit level of a boarder, the State agency shall determine the boarder's shelter expenses by including any identifiable shelter expenses paid by the boarder. If a single payment is made for both room and board, the amount of the payment which is more than the Thrifty Food Plan for the number of persons in the boarder's household shall be considered a shelter expense. The boarder receives no exclusion or deduction for the amount paid for board itself.

(c) *Treatment of income and resources of disqualified members.* Individual household members may be disqualified for fraud or for failure to meet the student work registration requirements during the school year. During the period of time a household member is disqualified, the eligibility and benefit level of any remaining household members shall be determined as follows:

(1) *Resources.* The resources of the disqualified member shall continue to count in their entirety to the remaining household members;

(2) *Income.* A pro rata share of the income of the disqualified member shall be counted as income to the remaining members. This pro rata share is calculated by first subtracting the allowable exclusions from the disqualified member's income and dividing the income evenly among the household members, including the disqualified member. All but the disqualified member's share is counted as income to the remaining household members.

(3) *Deductible expenses.* The 20 percent earned income deduction shall apply to the prorated income attributed to the household as it was earned by the disqualified member. That portion of the household's allowable shelter and dependent care expenses which are either paid by or billed to the disqualified member shall be divided evenly among the household members, including the disqualified member. All but the disqualified member's share is counted as a deductible shelter expense for the remaining household members.

(4) *Eligibility and benefit level.* The disqualified member shall not be included when determining the household's size for purposes of assigning a benefit level to the household or for purposes of comparing the household's net monthly income with the income eligibility standards.

(5) *Reduction or termination of benefits within the certification period.* Whenever an individual is disqualified within the household's certification period, the state agency shall determine the eligibility or ineligibility of the remaining household members based, as much as possible, on information in the case file and shall take the following action:

(i) *Student disqualification.* If a household's benefits are reduced or terminated within the certification period because one of its members has been disqualified for failure to meet the student work registration requirement, the State agency shall issue a notice of adverse action which informs the household that one of its members has been disqualified, the reason for the disqualification, and the eligibility and benefit level of the remaining members.

(ii) *Fraud disqualification.* If a household's benefits are reduced or terminated within the certification period because one of its member has been disqualified for fraud, the State agency shall notify the remaining members of their eligibility and benefit level at the same time the disqualified member is notified of its disqualification. The household is not entitled to a notice of adverse action but may request a fair hearing to contest the reduction or termination of benefits.

(d) *Treatment of income and resources of other nonhousehold members.* For those nonhousehold members that have not been disqualified, such as ineligible aliens or SSI recipients in cash-out States, the income and resources of the nonhousehold member shall not be considered available to the household. If the household shares deductible expenses with the nonhousehold member, only the amount actually paid or contributed by the household shall be deducted as a household expense. If the payments or contributions cannot be differentiated, the expenses shall be prorated evenly among persons actually paying or contributing to the expense and only the household's pro rata share deducted.

(e) *Residents of drug/alcoholic treatment and rehabilitation programs.* (1) Narcotics addicts or alcoholics who regularly participate in FNS authorized drug or alcoholic treatment and rehabilitation programs on a resident basis may voluntarily elect to participate in the Food Stamp Program. The State agency shall certify residents of addict/alcoholic treatment centers by using the same provisions that apply to all other applicant households except that certification must be accomplished through an authorized representative as described in § 273.1(f)(iv). The guidelines for issuing FNS authorizations to these treatment centers are set forth in § 278.1(e).

(2) Each treatment and rehabilitation center shall provide the State agency on a monthly basis with a certified list of currently participating residents. In addition, the State agency shall conduct periodic random on-site visits to the center to assure the accuracy of the listings and that the State agency's records are consistent and up-to-date.

(3) The following provisions apply to residents of treatment centers:

(i) When expedited processing standards as described in § 273.2(i) are necessary, eligibility for the initial application shall be processed on an expedited basis, and the State agency shall complete verification and documentation requirements prior to issuance of a second coupon allotment;

(ii) When normal processing standards apply, the State agency shall complete the verification and documentation requirements prior to making an eligibility determination for the initial application;

(iii) The State agency shall process changes in household circumstances and recertifications by using the same standards that apply to all other food stamp households; and

(iv) Resident households shall be afforded the same rights to notices of adverse action, to fair hearings, and to entitlement to lost benefits as are all other food stamp households.

(4) The treatment center shall provide resident addicts or alcoholics with their ID card and one half of their monthly coupon allotment when the household leaves the treatment and rehabilitation program prior to the sixteenth day of the allotment month. Once the household leaves the treatment center, the center is no longer allowed to act as that household's authorized representative. The household shall be provided a change report form and advised by the center to return the form within 10 days to the appropriate office of the State agency.

(5) The treatment center shall notify the State agency, as provided in § 273.12(a), of changes in the household's income or other household circumstances and of when the addict or alcoholic leaves the treatment center. The treatment center shall return any ATPs or coupons received on behalf of households which are no longer residents of the center.

(6) The organization or institution shall be responsible for any misrepresentation or fraud which it knowingly commits in the certification of center residents. As an authorized representative, the organization or institution must be knowledgeable about household circumstances and should carefully review those circumstances with residents prior to applying on their behalf. The organization or institution shall be strictly liable for all losses or misuse of food coupons held on behalf of resident households and for all overissuances which occur while the households are residents of the treatment center.

(7) The organization or institution may be penalized or disqualified, as described in § 278.6, if it is determined administratively or judicially that coupons were misappropriated or used for purchases that did not contribute to a certified household's meals. State agency penalties and/or disqualifications shall not be imposed without prior approval from FNS. The State agency shall promptly notify FNS when it has reason to believe that an organization or institution is misusing coupons in its possession.

§ 273.12 Reporting changes.

(a) *Household responsibility to report.* (1) Certified households are required to report the following changes in circumstances within 10 days of the date the change becomes known to the household:

(i) All changes in income, except changes in the public assistance grant;

(ii) All changes in household composition, such as the addition or loss of a household member;

(iii) Changes in residence and the resulting change in shelter costs; and

(iv) The acquisition of a licensed vehicle not fully excludable under § 273.8(e).

(2) Changes shall be considered to be reported by the household on the date the report is received by the State agency, or if mailed, the date of the household's report is postmarked.

(3) State agencies shall not impose any reporting requirements on households except as provided in paragraph (a)(1) of this section.

(b) *Report form.* (1) The State agency shall provide households with a form for reporting the changes required in paragraph (a) of this section and shall pay the postage for the household to mail in the request. All State agencies shall use the reporting form designed by FNS, unless FNS approves a deviation. Deviations shall be granted under the same conditions deviations are granted for the application form, as specified in § 273.2(b). The reporting form shall, at a minimum, include the following:

(i) The amount of gross income used to certify the household which has been itemized by household member, and the source and the frequency of the income;

(ii) The civil and criminal penalties for violations of the Act in understandable terms and in prominent and boldface lettering; and

(iii) A reminder to the household of its right to claim actual utility costs if its costs exceed the standard.

(2) The submission of a change report shall not be construed to be a waiver of the household's right to a notice of adverse action. The State agency may provide for a waiver of that right on the report form for the household to sign. This waiver shall warn the household that, upon signing, it waives its right to a notice of adverse action and continuation of benefits if adversely affected by the reported change.

(3) Changes reported over the telephone or in person by the household shall be acted on in the same manner as those reported on the change report form.

(4) A change report form shall be provided to newly certified households at the time of certification and a new form shall be sent to the household whenever a change is reported.

(c) *State agency action on changes.* The State agency is required to take prompt action on all changes to determine if the change affects the household's eligibility or allotment. If the change was reported by the household, the date a change was reported on a change report form shall be computed from the postmark of the change report form, plus two days for mailing time, or whenever the change was actually received by the State agency, whichever is earlier. Even if there is no change in the allotment, the State agency shall document the change in the case file, return another change report form to the household, and notify the household of the effect of the change, if any, on its benefits. Restoration of lost benefits shall be provided to any household if the State agency fails to take action on a change which increases benefits within the time limits specified in paragraph (c)(1) and (2) of this section.

(1) *Increase in benefits.* (i) *Normal processing of changes.* For changes which result in an increase in benefits and which are not handled on an expedited basis, the State agency shall make the change effective for the first allotment issued 10 days after the date the change was reported to the State agency.

(ii) *Expedited action on certain changes.* (A) If a household reports a change in its circumstances which reduces its gross monthly income by $50 or more and reduces its net monthly income to zero, the State agency shall make the change effective within two working days of the date the change was reported.

(B) If the household reports a change which results in an increase in benefits due to either the addition of a new household member that is not a certified member of another household, or due to a reduction in total gross monthly income counted for food stamp purposes of $50 or more, and the change is reported by the 20th of the month, the State agency shall make the change effective no later than 10 days after the change was reported. If the new household member is already a certified member of another household in the month the change is reported, the State agency shall make the change effective no later than the next allotment which will be issued after the change is reported.

(C) For those changes which must be made effective in the same month the household reported the change, the State agency shall make the change effective by either adjusting the household's allotment or, if the household has already participated, by issuing a supplementary allotment. In areas where ATP cards are used and have already been issued when the household reports the change, the State agency shall, if the household has not yet participated, either replace the household's ATP with an adjusted

card or issue a supplementary ATP. If the household has already participated, the State agency shall issue a supplementary ATP.

(2) *Decreases in benefits.* If the household's benefit level decreases or the household becomes ineligible as a result of the change, the State agency shall issue a notice of adverse action within 10 days of the date the change was reported. The decrease in the benefit level shall be made effective with the first allotment to be issued after the 10 day notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested.

(d) *Failure to report.* If the State agency discovers that the household failed to report a change required by paragraph (a) of this section and, as a result, received benefits to which it was not entitled, the State agency shall file a claim against the household in accordance with § 273.18. Individuals shall not be terminated for failing to report a change, unless the individual is disqualified in accordance with the fraud disqualification procedures specified in § 273.16.

(e) *Mass changes.* Certain changes are initiated by the State or Federal government which may affect the entire caseload or significant portions of the caseload. These changes include annual adjustments to the net income eligibility standards and the shelter/dependent care deduction; semiannual adjustments to the Thrifty Food Plan and standard deduction; annual and seasonal adjustments to the State's utility standard; periodic cost-of-living adjustments to social security, SSI and other Federal benefits; periodic adjustments to AFDC or GA payments; and other changes in the eligibility criteria based on legislative or regulatory actions.

(1) *Federal adjustments to eligibility standards, allotments, and deductions, State adjustments to utility standards.* (i) These adjustments shall go into effect for all households at a specific point in time. Semiannual adjustments to the Thrifty Food Plan and the standard deduction shall be effective for all issuances in January and July. Annual adjustments to the shelter/dependent care deduction and the eligibility standards shall be effective for all July issuances.

State agencies may wish to consider timing the annual adjustments to their utility standard to coincide with the Federal shelter deduction adjustment.

(ii) Although a notice of adverse action is not required, State agencies may send an individual notice to households of these changes. State agencies shall publicize these mass changes through the news media; posters in certification, issuance offices or other sites frequented by certified households; or general notices mailed to households. Households whose certification periods overlap a seasonal variation in the utility standard shall be advised at the time of initial certification when the adjustment will occur and what the variation in the benefit level will be.

(2) *Mass changes in public assistance.* (i) When the State agency makes an overall adjustment to public assistance payments, corresponding adjustments to the household's food stamp benefits shall be handled as a mass change. When the State agency has at least 30 days advance knowledge of the amount of the public assistance adjustment, the State agency shall recompute food stamp benefits to be effective in the same month as the public assistance change. If the State agency does not have sufficient notice, the food stamp change shall be effective not later than the month following the month in which the public assistance change was made.

(ii) A notice of adverse action is not required when a household's food stamp benefits change as a result of a mass change in the public assistance grant. However, State agencies shall send individual notices to households to inform them of the change. If a household requests a fair hearing, benefits shall be continued at the former level only if the issue being appealed is the computation of benefits and not the fact that benefits are reduced because of the mass change.

(iii) State agencies which also administer a general assistance program shall handle mass adjustments to GA payments in the same manner as public assistance adjustments. However, in States which do not administer both programs, mass changes in GA payments will be handled according to procedures in paragraph (e)(3) of this section.

(3) *Mass changes in Federal benefits.* Households are responsible for reporting changes in federal benefits such as social security and SSI payments. States which have the capability, and elect to, may treat adjustments as a mass change in accordance with the procedures in paragraph (e)(2) of this section. If not handled as a mass change, individual advance notice of adverse action shall be required according to § 273.13.

(4) *Mass changes resulting from implementation of the Food Stamp Act of 1977.* State agencies shall send individual notices of adverse action to each household that receives a reduction or termination in benefits during its certification period due to the new eligibility requirements prescribed in these regulations. The notice of adverse action shall explain to the household that the change is the result of changes in Federal law and that, although the household has the right to request a fair hearing, benefits will be continued pending the fair hearing, only if the household believes its eligibility and benefit level were computed incorrectly, or that the new law is being misapplied or misinterpreted.

(f) *PA households.* (1) PA households have the same reporting requirements as any other food stamp household, and shall use the food stamp change report form, unless a similar form used in the PA program is approved by FNS for this purpose. PA households which report a change in circumstances to the PA worker shall be considered to have reported the change for food stamp purposes.

(2) Whenever a change results in the reduction or termination of a household's PA grant within its food stamp certification period, and the State agency has sufficient information to determine how the change affects the household's food stamp eligibility and benefit level, the State agency shall take the following action:

(i) If a change in household circumstances requires both a reduction or termination in the PA payment and a reduction or termination in food stamp benefits, the State agency shall issue a single notice of adverse action for both the PA and food stamp actions. If the household requests a fair hearing within the period provided by the notice of adverse action, the household's food stamp benefits shall be continued on the basis authorized immediately prior to sending the notice. However, the household must reapply for food stamp benefits if the food stamp certification period expires before the fair hearing process is completed. If the household does not appeal, the change shall be made effective in accordance with the procedures specified in paragraph (c) of this section.

(ii) If the household's food stamp benefits will be increased as a result of the reduction or termination of the PA grant, the State agency shall issue the PA notice of adverse action, but shall not take any action to increase the household's food stamp benefits until the household decides whether it will appeal the adverse action. If the household decides to appeal and its PA grant is continued, the household's food stamp benefits shall continue at the previous basis. If the household does not appeal, the State agency shall make the change effective in accordance with the procedures specified in paragraph (c) of this section, except that the time limits for the State agency to act on changes which increase a household's benefits shall be calculated from the date the PA notice of adverse action period expires.

(3) Whenever a change results in the termination of a household's PA grant within its food stamp certification period, and the State agency does not

have sufficient information to determine how the change affects the household's food stamp eligibility and benefit level (such as when an absent parent returns to a household, rendering the household categorically ineligible for public assistance, and the State agency does not have any information on the income of the new household member), the State agency shall not automatically terminate the household's benefits but shall instead take the following action:

(i) Where a PA notice of adverse action has been sent, the State agency shall wait until the household's notice of adverse action period expires or until the household requests a fair hearing, whichever occurs first. If the household requests a fair hearing and its PA benefits are continued pending the appeal, the household's food stamp benefits shall be continued at the same basis.

(ii) If a PA notice of adverse action is not required, or the household decides not to request a fair hearing and continuation of its PA grant, the State agency shall send the household a notice of expiration which informs the household that its certification period will expire at the end of the month following the month the notice of expiration is sent and that it must reapply if it wishes to continue to paticipate. The notice of expiration shall also explain to the household that its certification period is expiring becuase of changes in its circumstances which may affect its food stamp eligibility and benefit level.

(4) A notification of change shall be provided the household whenever its benefits are altered as a result of changes in its PA grant or whenever the household's certification period is shortened to reflect changes in the household's circumstances. If the certification period is shortened, the household's certification period shall not end any earlier than the month following the month in which the State agency determines that the certification period should be shortened, thus allowing adequate time for the State agency to send a notice of expiration and for the household to timely reapply. If the PA grant is terminated but the household is still eligible for food stamp benefits, members of the household shall be advised of food stamp work registration, if applicable, as their WIN registration exemption no longer applies.

§ 273.13 Notice of adverse action.

(a) *Use of notice.* Prior to any action to reduce or terminate a household's program benefits within the certification period, the State agency shall, except as provided in paragraph (b) of this section, provide the household timely and adequate advance notice before the adverse action is taken.

(1) The notice of adverse action shall be considered timely if it: (i) Conforms to that period of time defined by the State agency as an adequate notice period for its public assistance caseload, except that the period shall not be shorter than the period provided by paragraph (a)(1)(ii) of this section; or (ii) is received by the household 10 days before the date of the adverse action. If the notice is mailed, the State agency shall add to the adverse notice period an additional two days from the postmarked date is to compensate for mail delivery time. Also, if the adverse notice period ends on a weekend or holiday, the notice period shall be extended to the next work day.

(2) All State agencies shall use a notice of adverse action form designed by FNS. FNS may approve a request from a State agency for a deviation from that form because of the requirements of a computer system or other exigencies for which the State agency can submit adequate justification. The notice of adverse action shall be considered adequate if it explains in easily understandable language: the proposed action; the reason for the proposed action; the household's right to request a fair hearing; the name and telephone number of the person to contact for additional information; the availability of continued benefits; and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service.

(b) *Exemptions from notice.* Individual notices of adverse action are not required when: (1) The State initiates a mass change as described in § 273.12(e).

(2) The State agency receives a written statement from the household or the authorized representative which either states that food stamp benefits are no longer desired or which acknowledges that information the household has provided will result in a reduction or termination of benefits and waives the right to notice of adverse action.

(3) The State agency receives notification of the death of all members of a household.

(4) The State agency receives notification that the household has moved from the project area.

(5) The household has been receiving an increased allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of when the increased allotment would terminate.

(6) The household's allotment varies from month to month within the certification period to take into account changes which were anticipated at the time of certification and the household was so notified at the time of certification.

(7) The household jointly applied for PA/GA and food stamp benefits and has been receiving food stamp benefits pending the approval of the PA/GA grant and was notified at the time of certification that food stamp benefits would be reduced upon approval of the PA/GA grant.

(8) A household member is disqualified for fraud, in accordance with § 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member. The notice requirements for individuals or households affected by fraud disqualifications are explained in § 273.16.

(9) The household contains a member subject to a lockout or strike and, for purposes of receiving a longer certification period than is otherwise allowed for such households, signs a waiver of its right to notice of adverse action to enable the State agency to reduce or terminate benefits when the lockout or strike is settled and the household has begun receiving income from employment again.

§ 273.14 Recertification.

(a) *Action on applications for recertification.* The State agency shall complete the application process and approve or deny timely applications for recertification prior to the end of the household's current certification period and shall provide eligible households with an opportunity to participate by the household's normal issuance cycle in the month following receipt of a timely application. The State agency shall not continue benefits to the household beyond the end of the certification period unless the household has been recertified.

(b) *Notice of expiration.* The State agency shall provide each household, including PA households, with a notice of the expiration of its certification just prior to or at the start of the last month of the household's certification period.

(1) Households shall receive the notice of expiration not earlier than 15 days prior to, nor later than the first day of, the household's last month of certification. If it is impossible for the State agency to provide the notice of expiration by the first day of the last month of the household's certification period because the household is certified for one month or because the household was initially certified for two months during the month following the month of application, the notice of expiration shall be provided at the time of certification. The State agency shall not require the household to submit an application or

appear for an interview before the last month of its current certification period.

(2) The notice of expiration shall contain the date the current certification period ends; the date by which the household must file an application to receive uninterrupted benefits; the household's right to request an application and have the State accept an application as long as it is signed and contains a legible name and address; the address of the office where the application must be filed; the consequences of failure to comply with the notice of expiration; the household's right to file the application by mail or through an authorized representative; and the household's right to a fair hearing if the State agency refuses to accept as good cause the household's reasons for failure to comply with the notice of expiration. The State agency is encouraged to include an application form with the notice of expiration and/or an appointment for an interview. Regardless of when the interview date is assigned, the household has timely applied if the application is received by the 15th of the last month of certification.

(3) Households provided a notice of expiration at the time of certification, in accordance with paragraph (b)(1) of this section, shall have 15 days from the date the notice is received to file a timely application for recertification. All other households which submit an identifiable application by the 15th of the last month of the certification period shall be considered to have made timely application for recertification. To aid the State agency in determining if adequate time has been permitted, the State agency shall use the postmark on the notice of expiration, plus two days for mailing time. In cases of dispute, the household may demonstrate that the notice of expiration was not, in fact, received in a timely manner.

(c) *State action on timely reapplications.* Households that have timely reapplied and have been determined eligible shall not experience an interruption in benefits. State agencies shall take action on timely reapplications within the following time standards, even if, to meet these standards, the State agency must provide an opportunity to participate outside of the normal issuance system:

(1) Households that were provided a notice of expiration at the time of certification and have timely reapplied shall be notified of their eligibility or ineligibility and provided an opportunity to participate, if eligible, not later than 30 days after the date the household had an opportunity to obtain its last allotment.

(2) For those households that have filed an application by the 15th of the last month of their certification period, the State agency shall approve or deny the application and notify the household of its determination by the end of the current certification period. In addition, for households determined eligible, the State agency shall provide an opportunity to participate by the household's normal issuance cycle in the month following receipt of the timely reapplication. Households which have timely reapplied, but due to State agency error are not determined eligible in sufficient time to provide for issuance in the household's normal issuance cycle for the following month, shall receive an immediate opportunity to participate upon being determined eligible, even if the State agency must provide an opportunity to participate outside of the normal issuance system.

(d) *State agency failure to act.* State agency failure to provide eligible households which filed a timely application for recertification with an opportunity to participate in accordance with the above provisions shall be considered an administrative error. These households shall be entitled to restoration of lost benefits if, as a result of such error, the household was unable to participate for the month following the expiration of the certification period.

(e) *Failure to submit a timely reapplication.* A household which fails to submit a timely application for recertification without good cause shall lose its right to uninterrupted benefits. Households which refuse to cooperate in providing required information shall be denied. Any application not submitted in a timely manner shall be treated as an application for initial certification, except that previously verified income or expenses which change by $25 or less shall not be verified if the application is received within 30 days after the certification period expires.

(f) *Good cause for failure to timely reapply.* If the State determines that the household's failure to make timely application, or to otherwise complete the certification process in a timely manner, was for good cause, the household shall be entitled to restoration of lost benefits, if as a result of its failure, the household was unable to participate in the month following the expiration of its certification period. The determination of good cause shall be made on a case-by-case basis, and shall include, but not be limited to, failure to receive timely notice of expiration or personal illness.

§ 273.15 Fair hearings.

(a) *Availability of hearings.* Each State agency shall provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the household in the Program.

(b) *Hearing system.* Each State agency shall provide for either a fair hearing at the State level or for a hearing at the local level which permits either the household or the local agency to further appeal a local decision to a State level fair hearing. State agencies may adopt local level hearings in some project areas and maintain only State level hearings in other project areas.

(c) *Timely action on hearings.* (1) *State level hearings.* Within 60 days of receipt of a request for a fair hearing, the State agency shall conduct the hearing, arrive at a decision, and reflect that decision on the coupon allotment.

(2) *Local level hearings.* Within 45 days of receipt of a request for a fair hearing, the State agency shall conduct the hearing, arrive at a decision, and reflect that decision on the coupon allotment.

(3) *Appeals of local level decisions.* Within 45 days of receipt of any request for a State level review of a decision or for a new State level hearing, the State agency shall conduct the review or the new hearing, arrive at a decision, and reflect that decision on the coupon allotment.

(4) *Expedited hearings.* Expedited fair hearing procedures shall be conducted as required by paragraph (d) of this section.

(5) *Household requests for postponement.* The household may request and is entitled to receive a postponement of the scheduled hearing. The postponement shall not exceed 30 days and the time limit for action on the decision may be extended for as many days as the hearing is postponed. For example, if a State level hearing is postponed by the household for 10 days, the final action will be required within 70 days from the date of the request for a hearing.

(d) *Expedited hearings.* Households which indicate that they wish to present their case to a higher authority after being denied benefits under the expedited certification procedures set forth in § 273.2(i) shall be given special expedited handling as follows:

(1) An agency conference shall be scheduled within two working days, upon household consent. The conference may be attended by the eligibility worker who denied the benefits and shall be attended by the agency director, or the eligibility supervisor responsible for the agency action, or both. Agency conferences may lead to an informal resolution of the dispute. However, unless the household makes a written withdrawal of its request for a hearing, the agency conference shall in no way replace the fair hearing process.

(2) If the request for a hearing is pursued after or instead of the agency conference, State agencies shall dis-

pense with the local level hearing and shall schedule a State level hearing as soon as reasonably possible.

(3) The State level hearing official's decision shall be issued within 15 working days of receipt of the request for a hearing.

(4) If the State agency action is not upheld, the State agency shall provide the household an opportunity to participate in the program within two working days of the receipt of the hearing official's decision.

(e) *Consolidated hearings.* State agencies may respond to a series of individual requests for hearings by conducting a single group hearing. State agencies may consolidate cases where related issues of State and/or Federal law, regulation or policy are being raised. In all group hearings, the policies governing individual hearings must be followed. Each individual household shall be permitted to present its own case or have the case presented by a representative.

(f) *Notification of right to request hearing.* At the time of application, each household shall be informed in writing of its right to a hearing, of the method by which a hearing may be requested, and that its case may be presented by a household member or a representative, such as a legal counsel, a relative, a friend or other spokesperson. If there is an individual or organization available that provides free legal representation, the household shall also be informed of the availability of that service. Hearing procedures shall be published by the State agency and made available to any interested party.

(g) *Time period for requesting hearing.* A household shall be allowed to request a hearing on any action by the State agency or loss of benefits which occurred in the prior 12 months. The 12 month period includes the month in which the hearing is requested.

(h) *Request for hearing.* A request for a hearing is defined as any clear expression, oral or written, by the household or its representative that it wishes to present its case to a higher authority. The freedom to make such a request must not be limited or interfered with in any way.

(i) *State agency responsibilities on hearing requests.* (1) Upon request, the State agency shall make available without charge the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing. Upon request, the State agency shall also help the household with its hearing request and with preparation of its case. Households shall be advised of any legal services available that can provide representation at the hearing.

(2) The State agency shall process each request for a hearing under uniform rules of procedure. The uniform rules of procedures shall be available for public inspection and copying. At a minimum, the uniform rules of procedure shall include all filing limits for requests and appeals, advance notification requirements, expedited and other hearing timeliness standards, rules of conduct at the hearing, and the rights and responsibilities of persons requesting a hearing.

(j) *Denial or dismissal of request for hearing.* The State agency shall not deny or dismiss a request for a hearing unless:

(1) The request is not received within the time period specified in paragraph (g) of this section;

(2) The request is withdrawn in writing by the household or its representative; or

(3) The household or its representative fails, without good cause, to appear at the scheduled hearing.

(k) *Continuation of benefits.* (1) If a household requests a fair hearing and continuation of benefits within the period provided by the notice of adverse action, as set forth in § 273.13, and its certification period has not expired, the household's participation in the Program shall be continued on the basis authorized immediately prior to the notice of adverse action. The period provided by the notice of adverse action as described in § 273.13(a)(1)(i) begins with the postmark or the date of receipt of the notice, whichever is earlier. If a hearing request is not made within the period provided by the notice of adverse action, benefits shall be reduced or terminated as provided in the notice. However, if the household establishes that its failure to make the request within the advance notice period was for good cause, the State agency shall reinstate the benefits to the prior basis. When benefits are reduced or terminated due to a mass change, participation on the prior basis shall be reinstated only if the issue being contested is that food stamp eligibility or benefits were improperly computed or that Federal law or policy is being misapplied or misinterpreted by the State agency.

(2) Once continued or reinstated, benefits shall not be reduced or terminated prior to the receipt of the official hearing decision unless:

(i) The certification period expires. The household may reapply and may be determined eligible for a new certification period with a benefit amount as determined by the State agency;

(ii) The hearing official makes a preliminary determination, in writing and at the hearing, that the sole issue is one of Federal law, regulation or policy and that the household's claim that the State agency improperly computed the benefits or misinterpreted or misapplied such law, regulation or policy is invalid;

(iii) A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending and the household fails to request a hearing after the subsequent notice of adverse action; or

(iv) A mass change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending.

(3) The State agency shall promptly inform the household in writing if benefits are reduced or terminated pending the hearing decision.

(l) *Notification of time and place of hearing.* The time, date, and place of the hearing shall be convenient to the household. Advance written notice shall be provided to all parties involved to permit adequate preparation of the case. The notice shall:

(1) Advise the household or its representative of the name, address, and phone number of the person to notify in the event it is not possible for the household to attend the scheduled hearing.

(2) Specify that the State agency will dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause.

(3) Include the State agency hearing procedures and any other information that would provide the household with an understanding of the proceedings and that would contribute to the effective presentation of the household's case.

(4) Explain that the household or representative may examine the case file prior to the hearing.

(m) *Hearing official.* Hearings shall be conducted by an impartial official(s) who does not have any personal stake or involvement in the case and who was not directly involved in the initial determination of the action which is being contested. State level hearings shall be conducted by state level personnel and shall not be conducted by local level personnel.

(1) *Designation of hearing official.* The hearing official shall be:

(i) An employee of the State agency;

(ii) An individual under contract with the State agency;

(iii) An employee of another public agency designated by the State agency to conduct hearings;

(iv) A member or official of a statutory board or other legal entity designated by the State agency to conduct hearings; or

(v) An executive officer of the State agency, a panel of officials of the State agency or a person or persons expressly appointed to conduct State level hearings or to review State and/or local level hearing decisions.

(2) *Power and duties.* The hearing official shall:

(i) Administer oaths or affirmations if required by the State;

(ii) Ensure that all relevant issues are considered;

(iii) Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;

(iv) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing;

(v) Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the State agency;

(vi) Render a hearing decision in the name of the State agency, in accordance with paragraph (p) of this section, which will resolve the dispute.

(n) *Attendance at hearing.* The hearing shall be attended by a representative of the State agency which initiated the action being contested and by the household and/or its representative. The hearing may also be attended by friends or relatives of the household and the public, upon household consent.

(o) *Conduct of hearing.* The household may not be familiar with the rules of order and it may be necessary to make particular efforts to arrive at the facts of the case in a way that makes the household feel most at ease. The household or its representative must be given adequate opportunity to:

(1) Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing. The contents of the case file including the application form and documents of verification used by the State agency to establish the household's ineligibility or eligibility and allotment shall be made available, provided that confidential information is protected from release. The State agency shall provide free copies of the relevant portions of the case file if requested by the household or its representative. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.

(2) Present the case or have it presented by a legal counsel or other person.

(3) Bring witnesses.

(4) Advance arguments without undue interference.

(5) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

(6) Submit evidence to establish all pertinent facts and circumstances in the case.

(p) *Hearing decisions.* (1) Decisions of the hearing official shall comply with Federal law, regulations or policy and shall be factually based on the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding shall constitute the exclusive record for a final decision by the hearing official. This record shall be retained in accordance with § 272.2(f). This record shall also be available, for copying and inspection, to the household or its representative at any reasonable time.

(2) A decision by the hearing official shall be binding on the State agency and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent FNS regulations or policy. The decision shall become a part of the record.

(3) The household and the local agency shall each be notified in writing of: the decision; the reasons for the decision in accordance with paragraph (p)(2) of this section; and the available appeal rights. The notice shall advise that an appeal request will not affect the hearing official's decision, but that an appeal may result in a reversal of the decision which could ultimately result in either a claim against the household for an overissuance or in the restoration to the household of any lost benefits. The following are the available appeal rights:

(i) After a State level hearing decision which upholds the State agency action, the household shall be notified of the right to pursue judicial review of the claim.

(ii) After a local level hearing decision which upholds the state agency action, the household shall be advised of the right to appeal to the State agency for a review of the decision based on the hearing record, and of the right to request a completely new State agency level hearing, and of the difference between the two appeal procedures to enable the household to make the proper choice if it wishes to appeal.

(iii) After a local level hearing which is decided in favor of the household, the local agency shall be advised of the right to appeal to the State agency for a review of the decision based on the hearing record, and of the right to request a completely new State agency level hearing.

(4) If the household or the State agency wishes to appeal a local level hearing decision, the appeal request must be filed within 15 days of receipt of the hearing decision notice. The notice is considered received two days after the postmark date. Within 45 days of receipt of any request for a State level review of the decision or for a new State level hearing, the State agency must conduct the review or the hearing, arrive at a decision and reflect the decision on the coupon allotment. Unless a new hearing is specifically requested by the household or the local agency, the State agency hearing official will review the local level hearing record to determine if the local decision was supported by substantial evidence. State agency review procedures shall provide for notifying the local agency and the household, by Certified Mail-Return Receipt Requested, that each may file a summary of arguments which shall become a part of the record if timely received. Both parties shall be advised that failure to file a summary will not be considered in deciding the case and that the summary must be postmarked within 10 days of receipt of the notice.

(5) All State agency hearing records and decisions shall be available for public inspection and copying, subject to the disclosure safeguards provided in § 272.2(c).

(q) *Implementation of local level hearing decision.* (1) In the event the local hearing decision upholds the State agency action, any benefits to the household which were continued pending the hearing shall be discontinued beginning with the next scheduled issuance, regardless of whether or not an appeal is filed. Collection action for any claims against the household for overissuances shall be postponed until the 15 day appeal request period has elapsed, or if an appeal is requested, until the State agency upholds the decision of the local hearing official.

(2) In the event the local hearing official decides in favor of the household, benefits to the household shall be reinstated, as required by the decision, within the time limits specified in paragraph (c) of this section, regardless of whether or not a appeal is filed. Action to issue lost benefits to the household shall be postponed until it is determined that the local agency will not appeal the decision, or until the State agency upholds the decision of the local hearing official.

(r) *Implementation of final State agency decisions.* The State agency is responsible for ensuring that all final hearing decisions are reflected in the household's coupon allotment within the time limits specified in paragraph (c) of this section.

(1) When the hearing official determines that a household has been improperly denied program benefits or has been issued a lesser allotment than was due, lost benefits shall be provided to the household in accordance with § 273.17.

(2) When the hearing official upholds the State agency's action, a claim against the household for any overissuances shall be prepared in accordance with § 273.18.

(s) *Review of appeals of local level decisions.* State agencies which adopt a local level hearing system shall establish a procedure for monitoring local level hearing decisions. The number of local level decisions overturned upon appeal to a State level hearing shall be examined. If the number of reversed decisions is excessive, the State agency shall take corrective action.

(t) *FNS review of decisons contrary to federal law or regulations.* [Reserved]

§ 273.16 Fraud disqualification.

(a) *Fraud disqualification penalties.* Individuals found to have committed fraud at an administrative fraud hearing shall be ineligible to participate in the Program for three months. Individuals found guilty of criminal or civil fraud by a court of appropriate jurisdiction shall be ineligible for not less than six months and not more than twenty-four months as determined by the court. State agencies shall disqualify only the individual and not the entire household.

(b) *Definition of fraud.* Fraud includes any action by an individual to knowingly, willfully and with deceitful intent:

(1) Make a false statement to the State agency, either orally or in writing, to obtain benefits to which the household is not entitled;

(2) Conceal information to obtain benefits to which the household is not entitled;

(3) Alter coupons or authorization cards;

(4) Use coupons to buy ineligible items such as alcohol or tobacco;

(5) Use improperly obtained coupons or authorization cards;

(6) Give or sell coupons or authorization cards to someone not authorized to accept them and who does not use them entirely for the benefit of the household; or

(7) Commit, or conspire to commit, any other fraudulent act to get food stamp benefits in a manner not authorized by Federal law or regulation.

(c) *Notification to applicant households.* The State agency shall inform the household in writing of the disqualification penalties for committing fraud each time it applies for program benefits. The penalties shall be written in clear, prominent, and boldface lettering on the application form.

(d) *Administrative disqualification.* An administrative fraud hearing shall be initiated by the State agency whenever the State agency has documented evidence to substantiate that a currently participating household member has committed fraud as defined in paragraph (b) of this section and the State agency believes the household member should be disqualified. Fraud hearings shall not be conducted if the amount the State agency suspects has been fraudulently obtained is less than $35. The burden of proving fraud is on the State agency. If the household member is not eligible or is not certified when the suspected fraud is discovered, the State agency shall initiate the hearing when the household member becomes eligible and is participating. Even though other legal action is planned against the household member, the hearing may still be conducted.

(1) *Consolidation of administrative fraud hearing with fair hearing.* The State agency may combine a fair hearing and an administrative fraud hearing into a single hearing if the factual issues arise out of the same, or related, circumstances and the household receives prior notice.

(2) *Fraud hearing procedures.* (i) State agencies may adopt a system of providing administrative fraud hearings only at the State level or it may adopt a system of providing a local hearing in some or all of its project areas with a right to appeal to a State level hearing. The system adopted need not be the same as the system adopted for providing fair hearings requested by households.

(ii) The provisions of § 273.15 (m), (o), and (p)(1) are also applicable for fraud hearings.

(iii) Within 60 days of the date the household member is notified in writing that the hearing has been scheduled, or within 60 days of the date the household appeals its case to a State level hearing, the State agency shall conduct the hearing, arrive at a decision and initiate administrative action which will make the decision effective. The household member or representative is entitled to a postponement of up to 30 days. If the hearing is postponed, the 60 day time limit shall be extended for as many days as the hearing is postponed.

(3) *Advance notice of hearing.* (i) The State agency shall provide written notice to the household member suspected of fraud at least 30 days in advance of the hearing. The notice shall be mailed Certified Mail—Return Receipt Requested and shall contain, at a minimum:

(A) The date, time, and place of the hearing;

(B) The charge against the household member;

(C) A summary of the evidence, and how and where it can be examined;

(D) A warning that the decision will be based solely on information provided by the food stamp office if the household member fails to appear at the hearing;

(E) A warning that a determination of fraud will result in a three month disqualification;

(F) A Listing of the household member's rights as contained in § 273.15(o); and

(G) A statement that the hearing does not preclude the State or Federal Government from prosecuting the household member for fraud in a civil or criminal court action, or from collecting the overissuance.

(ii) A copy of the State's published hearing procedures shall be attached to the advance notice.

(iii) The following advance notice is a model format and shall be used unless FNS approves a deviation. Deviations shall be granted under the same conditions deviations from the application form are granted in § 273.2(b).

FOOD STAMP PROGRAM

ADVANCE NOTICE OF FRAUD HEARING

Date _____

Case No. _____

To: (Name of Household Member)
(address)
(City, State Zip Code)

We have reason to believe you may have committed FRAUD because: _____
(Sumarize evidence) _____

A HEARING has been scheduled to examine the facts of your case. The hearing will be held at:

Time _____
Date _____
Place _____

If the hearing finds that you have committed fraud, you will not get food stamps for THREE MONTHS. Therefore, it is important that you be at the hearing. If you are not there, a decision will be based on information provided by the food stamp office. Please call the food stamp office if you cannot be at the hearing for a good reason, and we will try to get the date changed. A copy of the steps involved in a hearing is enclosed. Even though this hearing is scheduled, this does not prevent the State or Federal Government from prosecuting you for fraud in a court or from asking that you pay back in cash the value of any coupons your household was not eligible to receive. If you have any questions or you need the name and phone number of someone who can give you free legal advice (if available), please call the Food Stamp Office at _____.

_____
Signature of State agency representative

YOU HAVE THE RIGHT TO—

1. Look at the evidence that will be used at the hearing, both before and during the hearing. Please call the Food Stamp Office if you wish to look at the evidence before the hearing.
2. Present your own case or have someone present your case for you, such as a lawyer, a friend, relative, or a community worker.
3. Bring your own witnesses.
4. Argue your case freely.
5. Question any statements or evidence made against you.
6. Bring any evidence you may have that would support your case.

(4) *Scheduling of hearing.* Reasonable efforts shall be made to schedule the hearing at a time and place convenient to the household member suspected of fraud. If the household member or its representative cannot be located or fails to appear at the

hearing without good cause, the hearing shall be conducted without the household member represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if fraud was commited based on clear and convincing evidence. If the household member is found to have committed fraud but a hearing official later determines that the household member or representative failed to appear with good cause, the previous decision shall no longer remain valid and the State agency shall conduct a de novo hearing. The household member has 10 days from receipt of the fraud notice to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

(5) *Participation while awaiting a hearing.* Since the State agency cannot disqualify a household member for fraud until the hearing official finds that the individual has committed fraud, the State agency shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household. For example, the household's benefits shall be terminated if the certification period has expired and the household after receiving its notice of expiration, fails to reapply. The State agency shall also reduce or terminate the household's benefits if the State agency has facts to substantiate that the household is ineligible or eligible for fewer benefits (even if these facts led to the suspicion of fraud and the resulting fraud hearing) and the household fails to contest. For example, the State agency may have facts to substantiate that a household failed to report a change in its circumstances even though the State agency has not yet demonstrated that the failure to report was caused by fraud.

(6) *Criteria for determining fraud.* The hearing authority shall base the determination of fraud on clear and convincing evidence which demonstrates that the household member knowingly, willfully and with deceitful intent committed fraud, as defined in paragraph (b) of this section.

(7) *Decision format.* The hearing official's decision shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent regulation or policy, and respond to reasoned arguments made by the household member or representative.

(8) *Appeal rights of the household member.* If the hearing official rules that the household member has committed fraud, the household member may appeal the decision, as follows:

(i) *Appeal after local hearing.* (A) A household member found to have committed fraud by a local hearing authority has 15 days after the member receives the local hearing decision notice to appeal the decision to a State level hearing. State agencies shall mail the notice by Certified Mail—Return Receipt Requested. If a State level hearing is not requested within the 15-day period, the household member shall be disqualified for three months beginning with the first calendar month after the 15-day period has expired. If, however, the household member requests a State level hearing within the 15-day period, the household member shall not be disqualified unless the State level hearing also finds the household member has committed fraud.

(B) If a State level hearing is requested, a de novo hearing shall be conducted in every case and a decision rendered within 60 days of the request. In a de novo hearing the prior decision is not taken into consideration.

(ii) *Appeal after State level hearing.* After a household member has been found to have committed fraud by a State level hearing official, the household member shall be disqualified for three months beginning with the first calendar month which follows the date the household member has received the State level hearing notice. No further administrative appeal procedure exists after an adverse State level hearing. The determination of fraud made by a fraud hearing official cannot be reversed by a subsequent fair hearing decision. The household member is, however, free to appeal the case to a court. The period of disqualification may be subject to stay or injunction in a court of appropriate jurisdiction.

(9) *Notification of hearing decision.* (i) If the hearing finds that the household member did not commit fraud, the State agency shall provide a written notice which informs the household member of the decision.

(ii) If the administrative fraud hearing finds that the household member committed fraud, the State agency shall mail a written notice to the household member prior to disqualification. The notice shall inform the household member of the decision, the reason for the decision and notify the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11. For State level decisions, the notice shall inform the household member of the date disqualification will take effect. For local level decisions, the notice shall inform the household member of the deadline for requesting a State level hearing, the date disqualification will take effect unless a State level hearing is requested and that benefits will be continued pending a State level hearing if the household is otherwise eligible. A list of the household member's rights as contained in § 273.15(o) and the State level hearing procedures shall be enclosed with the local fraud hearing decision notice.

(iii) The following are model forms for notifying individuals that they have been found to have committed fraud at an administrative fraud hearing:

NOTICE OF LOCAL FRAUD HEARING DECISION

TO: (Name of Household Member)
(Address)
(City, State Zip Code)

DATE:
CASE NO.:

The hearing conducted on _____ found that you committed fraud.
(date of hearing)

You have two choices;

1. If you are satisfied with the decision and do not want a new hearing, you will not get food stamps for _____.
(1st month)

_____. _____. See the box below to find out
(2nd month) (3rd month)

if the rest of your household can get food stamps while you are ineligible.

2. If you are NOT satisfied with the decision, you can ask for a new hearing at a higher level by calling the Food Stamp Office or by signing your name below and returning this form to the Food Stamp Office. If you ask for a new hearing within 15 days after you receive this notice, you will continue to get your food stamps until the new hearing if you are eligible. (Be sure to include weekends and holidays when counting the 15 days).

☐ Yes, I want a new hearing. _____
(Sign your name here)

A list of your rights and the steps involved in a hearing is enclosed.

This hearing decision does not prevent the State or Federal Government from prosecuting you for fraud in a court or from asking that you pay back in cash the value of any extra coupons your household was not eligible to receive. If you have any questions, please call the Food Stamp Office at _____.

_____
Signature of State agency representative

NOTICE TO REMAINING HOUSEHOLD MEMBERS

We've reviewed your case to see if you can get food stamps while (name of disqualified member) is not allowed to participate. Here's what we've found:

☐ You will receive _____ in food stamps during (1st - 3rd month).

☐ You will receive _____ in food stamps during _____. After that, you will need to reapply in order to get food stamps since your certification period will be over.

☐ Although your certification period is over, you may be eligible. To see if your are eligible, please call, write, or visit the food stamp office and ask to file an application.

☐ You are no longer eligible.

If you are not satisfied with the decision, you may ask for a fair hearing.

NOTICE OF STATE FRAUD HEARING DECISION

TO: (Name of Household Member)
(Address)
(City, State Zip Code)

DATE:
CASE NO. :

You have been found GUILTY OF FRAUD at the hearing conducted on _____. Therefore, you will not get food stamps during _____, _____, _____. If your are not satisfied with this decision you can appeal this decision to the courts. See the box below to find out if the rest of your household can get food stamps while you are ineligible.
(date of hearing) (1st month) (2nd month) (3rd month)

This hearing decision does not prevent the State or Federal government from prosecuting you for fraud in a court or from asking that you pay back in cash the value of any extra coupons your household was not eligible to receive.

If you have any questions, please call the Food Stamp Office at _____.

_____
Signature of State agency representative

NOTICE TO REMAINING HOUSEHOLD MEMBERS

We've reviewed your case to see if you can get food stamps while (name of disqualified member) is not allowed to participate. Here's what we've found:

☐ You will receive _____ amount of food stamp during (1st - 3rd month).

☐ You will receive _____ amount of food stamps during _____. After that, you will need to reapply in order to get food stamps since your certification period will be over.

☐ Although your certification period is over, you may be eligible. To see if you are eligible please call, write, or visit the food stamp office and ask to file an application.

☐ You are no longer eligible for food stamps.

If you are not satisfied with the decision, you may ask for a fair hearing.

(e) *Court imposed disqualifications.* (1) A court or appropriate jurisdiction, with either the State, a political subdivision of the State, or the United States as prosecutor or plaintiff, may order an individual disqualified from participation in the Program for not less than six months and not more than twenty-four months if the court finds that individual guilty of civil or criminal fraud. Court ordered disqualifications may be imposed separate and apart from any action taken by the State agency to disqualify the individual through an administrative fraud hearing.

(2) State agencies are encouraged to prosecute food stamp fraud under State or local fraud statutes whenever possible. The State agency shall confer with its legal representative to determine the types of cases which will be accepted for possible prosecution. State agencies shall also encourage State and local prosecutors to recommend to the courts that a disqualification penalty as provided in section 6(b) of the Food Stamp Act be imposed in addition to any other civil or criminal fraud penalties.

(3) State agencies shall disqualify an individual found guilty of fraud by the courts only if the court orders disqualification and only for the length of time specified by the court. If disqualification is ordered but a date for initiating the disqualification period is not specified, the State agency shall initiate the disqualification period with the first calendar month following the date the disqualification was ordered. A court ordered disqualification may run concurrently with the three month period of disqualification imposed as a result of an administrative fraud hearing. The State agency shall not initiate or continue a court imposed or administratively imposed fraud disqualification period contrary to a court order.

(f) *Overturned fraud disqualifications.* In cases where the determination of fraud is overturned or reversed by a court of appropriate jurisdiction, the State agency shall reinstate the individual in the Program if the household is eligible. The State agency shall restore any benefits that were lost as a result of the disqualification in accordance with the procedures specified in § 273.17(e).

§ 273.17 Restoration of lost benefits.

(a) *Entitlement.* (1) Whenever a household receives fewer benefits than it is entitled to receive, and the loss was not caused by the household, the State agency shall restore to the household those benefits which were lost, except that benefits shall not be restored if lost more than 12 months prior to:

(i) The month the State agency was notified by the household or by another person or agency in writing or orally of the possible loss to that specific household;

(ii) The month the State agency discovers in the normal course of business that a loss to a specific household has occurred; or

(iii) The date the household requested a fair hearing to contest the adverse action which resulted in the loss.

(2) Benefits shall be restored even if the household is currently ineligible.

(b) *Errors discovered by the State agency.* If the State agency determines that a loss of benefits has occurred, and the loss was not caused by the household, the State agency shall automatically take action to restore any benefits that were lost. No action by the household is necessary. However, benefits shall not be restored if the benefits were lost more than 12 months prior to the month the loss was discovered by the State agency in the normal course of business, or were lost more than 12 months prior to the month the State agency was notified in writing or orally of a possible loss to a specific household. The State agency shall notify the household of its entitlement, the amount of benefits to be restored, any offsetting that was done, the method of restoration, and the right to appeal through the fair hearing process if the household disagrees with any aspect of the proposed lost benefit restoration.

(c) *Disputed benefits.* (1) If the State agency determines that a household is entitled to restoration of lost benefits, but the household does not agree with the amount to be restored as calculated by the State agency or any other action taken by the State agency to restore lost benefits, the household may request a fair hearing within 12 months of the month the household is notified of its entitlement to restoration of lost benefits. If a fair hearing is requested prior to or during the time lost benefits are being restored, the household shall receive the lost benefits as determined by the State agency pending the results of the fair hearing. If the fair hearing decision is favorable to the household, the State agency shall restore the lost benefits in accordance with that decision.

(2) If a household believes it is entitled to restoration of lost benefits but the State agency, after reviewing the casefile, does not agree, the household has 12 months from the date of the State agency determination to request a fair hearing. The State agency shall restore lost benefits to the household only if the fair hearing decision is favorable to the household. Benefits lost more than 12 months prior to the date the State agency was initially informed of the household's possible entitlement to lost benefits shall not be restored.

(d) *Computing the amount to be restored.* After correcting the loss for future months and excluding those months for which benefits may have been lost prior to the 12 month time limits described in paragraph (b) and (c) of this section, the State agency shall calculate the amount to be restored as follows: (1) If the loss resulted in an incorrect allotment, but the household was determnined to be eligible, the loss of benefits shall be calculated only for those months the household participated. If the loss was caused by an incorrect delay, denial, or termination of benefits, the months affected by the loss shall be calculated as follows:

(i) If an eligible household's application was erroneously denied, or the State agency delayed benefits to an eligible household more than 60 days after the initial application was filed, the month the loss initially occurred shall begin with the month of application. If benefits are delayed less than 60 days from the date the application was filed, the State agency shall provide benefits retroactive to the month of application rather than in the form of lost benefits. If an eligible household that timely reapplied was not provided an opportunity to participate in the month following the expiration of its certification period, the month loss initially occurred shall be the first month following the receipt of the household's last allotment.

(ii) If a household's benefits were erroneously terminated, the month the loss initially occurred shall begin with the first month benefits were not received as a result of the erroneous action.

(iii) After computing the date the loss initially occurred, the loss shall be calculated for each month subsequent to that date until either the first month the error is corrected, the first month the household is found ineligible, or the first month the household reapplied.

(2) For each month affected by the loss, the State agency shall determine if the household was actually eligible. In cases where there is no information in the household's case file to document that the household was actually eligible, it is the household's responsibility to provide the necessary information to determine eligibility for these months. For each month the household cannot provide the necessary information to demonstrate its eligibility, the household shall be considered ineligible.

(3) For the months the household was eligible, the State agency shall calculate the allotment the household should have received. If the household received a smaller allotment than it was eligible to receive, the difference between the actual and correct allotments equals the amount to be restored.

(4) If a claim against a household is unpaid or held in suspense as provided

in § 273.18, the amount to be restored shall be offset against the amount due on the claim before the balance, if any, is restored to the household. In cases where the initial allotment is received within 60 days of the date the application is filed and is paid retroactive to the month of application, the retroactive payment shall not be reduced to offset claims.

(e) *Lost benefits to individuals disqualified for fraud.* Individuals disqualified for fraud are entitled to restoration of any benefits lost during the months they were disqualified only if the decision which resulted in disqualification is subsequently overturned or reversed. For example, an individual would not be entitled to restoration of lost benefits for the three-month period it was disqualified based solely on the fact that a criminal conviction could not be obtained, unless the individual successfully challenged the three-month disqualification in a separate court action. For each month the individual was disqualified, the amount to be restored, if any, shall be determined by comparing the allotment the household received with the allotment the household would have received had the disqualified member been allowed to participate. If the household received a smaller allotment than it should have received, the difference equals the amount to be restored. Benefits shall be restored regardless of the length of time that has elapsed since the household was disqualified.

(f) *Method of restoration.* Regardless of whether a household is currently eligible or ineligible, the State agency shall restore lost benefits to a household by issuing an allotment equal to the amount of benefits that were lost, provided that the amount restored in any one month does not exceed 100 percent of the maximum allotment for the household's size. The amount restored shall be issued in addition to the allotment currently eligible households are entitled to receive. The State agency shall honor reasonable requests by households to restore lost benefits in amounts of less than 100 percent of the Thrifty Food Plan per month if, for example, the household fears the excess coupons may be lost or stolen.

(g) *Transferring households.* A household that moves from the project area or State where the administrative error occurred shall not lose its entitlement to restoration of lost benefits. To continue receiving its restoration of lost benefits the household must present to its new project area Form FNS-286, Certification of Transfer of Household Benefits. The form must be prepared by the former project area and contain the necessary lost benefits information. Households due lost benefits, but which have neglected to obtain a Form FNS-286 prior to the move, shall be informed by the new project area how to obtain the necessary forms and shall assist the household in doing so, if necessary.

(h) *Changes in household composition.* Whenever lost benefits are due a household and the household's membership has changed, the State agency shall restore the lost benefits to the household containing the individual who was head of the household at the time the error occurred. If the head of the household is no longer living or cannot be located, the State agency shall restore the lost benefits to the household containing a majority of the individuals who were household members at the time the loss occurred.

(i) *Losses of benefits that occurred prior to elimination of the purchase requirement.* Households assigned a purchase requirement that was too high shall be entitled to restoration of lost benefits if the household received fewer bonus stamps as a result. The amount to be restored is equal to the difference between the bonus stamps the household received and the correct amount the household should have received. State agencies shall restore the lost benefits in accordance with the procedures outlined in this section.

(j) *Accounting procedures.* Each State agency shall be responsible for maintaining an accounting system for documenting a household's entitlement to restoration of loss benefits and for recording the balance of lost benefits that must be restored to the household. Each State agency shall develop a form that, at a minimum, documents how the amount to be restored was calculated and the reason lost benefits must be restored. The accounting system shall be designed to readily identify those situations where a claim against a household can be used to offset the amount to be restored.

§ 273.18 Claims against households.

(a) *Establishing claims against households.* Each State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive. Instances which may result in a claim include, but are not limited to, the following:

(1) The household failed to provide the State agency with correct or complete information.

(2) The household failed to report to the State agency changes in its household circumstances.

(3) The household altered its ATP.

(4) The household transacted both the original and its replacement ATP.

(5) The State agency assigned an incorrect allotment.

(6) The State agency failed to take prompt action on a change reported by the household.

(7) The State agency incorrectly computed the household's income, deductions, or both.

(8) The State agency incorrectly issued duplicate ATPs to a household which were subsequently transacted.

(9) The household was found to be ineligible or eligible for fewer benefits than it received pending a fair hearing appeal.

(b) *Nonfraud claims.* Nonfraud claims are those claims established against households for overissuances which were not caused by fraud, such as, but not limited to, overissuances caused by administrative error on the part of the State agency or a misunderstanding or inadvertent error on the part of the household.

(1) *Criteria for establishing a nonfraud claim.* If less than 12 months have elapsed between the month a nonfraud overissuance occurred and the month the State agency discovered a specific case involving an overissuance, the State agency shall take action to establish a claim against the household that received the overissuance. A claim shall not be established against households that have transacted expired ATPs unless the households have altered their ATPs. In addition, a nonfraud claim shall not be established against a household otherwise eligible for the benefits it received if the State agency failed to ensure that the household: (i) signed the application form, (ii) completed a current work registration form, (iii) was certified in the correct project area, or (iv) did not receive food stamp benefits after its certification period had expired.

(2) *Calculating the amount of the nonfraud claim.* (i) After excluding those months that are more than 12 months prior to the date the overissuance was discovered, the State agency shall determine the correct amount of food stamp benefits the household should have received for those months the household participated while the overissuance was in effect. In cases involving reported changes, the State agency shall determine the month the overissuance initially occurred as follows:

(A) If, due to a misunderstanding or inadvertent error on the part of the household, the household failed to report a change in its household circumstances within 10 days of the date the change became known to the household, the first month affected by the household's failure to report shall be the month the change occurred.

(B) If the household timely reported a change, but the State agency did not timely act on the change, the first month affected by the State's failure to act shall be the first month the State agency should have made the change effective. Therefore, if a notice of adverse action was required but was

not sent, the State agency shall assume that the maximum advance notice period as provided in § 273.13(a)(1) would have expired without the household requesting a fair hearing.

(ii) If the household received a larger allotment than it was entitled to receive, the State agency shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received.

(iii) After calculating the amount of the nonfraud claim, the State agency shall offset the amount of the claim against any amounts which have not yet been restored to the household in accordance with § 273.17. The State agency shall then initiate collection action for the remaining balance, if any.

(3) *Collecting nonfraud claims.* (i) State agencies shall initiate collection action on all nonfraud claims unless the claim is collected through offset or one of the following conditions apply:

(A) The total amount of the nonfraud claim is less than $35.

(B) The State agency has documentation which shows that the household cannot be located.

(ii) State agencies shall initiate collection action by sending the household a written demand letter which informs the household of the amount owed, the reason for the claim, the period of time the claim covers, any offsetting that was done to reduce the claim, how the household may pay the claim, and the household's right to a fair hearing if the household disagrees with the State agency's determination. In addition, the demand letter for nonfraud claims must include a statement which specifies that payment of the claim is voluntary and that refusal to pay the claim will not affect the household's eligibility. If the household agrees to pay the claim, payments shall be accepted and submitted to FNS in accordance with the procedures outlined in paragraphs (e) and (f) of this section. If the household does not respond to the first demand letter, additional demand letters shall be sent at 30-day intervals until the household has responded by paying or agreeing to pay the claim, or until the criteria for suspending or terminating collection action, as specified in paragraph (b)(4) of this section, have been met.

(4) *Criteria for suspending collection of a nonfraud claim.* Where the claim cannot be presently collected, but there is a likelihood that the claim can be collected in the future, the State agency shall suspend collection of the claim. The claim shall be held in suspense until the claim is collected or until the claim has been held in suspense for three years, whichever occurs first. If a possibility exists that the household will be entitled to restoration of lost benefits at a later date which could be used to offset the amount of the claim, the State agency shall suspend rather than terminate collection of the claim. State agencies shall also suspend rather than terminate collection action if the household's financial circumstances are expected to change for the better.

(5) *Terminating collection of a nonfraud claim.* The State agency shall terminate collection action if at least one demand letter has been sent to the household and one of the following criteria is met:

(i) The household is financially unable to pay the claim;

(ii) There is little likelihood that the household will pay the claim;

(iii) The household cannot be located;

(iv) The cost of further collection action is likely to exceed the amount that can be recovered; or

(v) The claim has been held in suspense for three years.

(c) *Fraud claim.* A claim shall be handled as a fraud claim only if an administrative fraud hearing or a court of appropriate jurisdiction has found a household member guilty of fraud as defined in § 273.16(b) or the State agency's fraud investigators have determined and documented that fraud, as defined in § 273.16(b), exists. Prior to the determination of fraud, the claim against the household shall be handled as a nonfraud claim.

(1) *Establishing a fraud claim.* For each month that a household member fraudulently participated, the State agency shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive. The amount of the fraud claim shall be calculated back to the month the fraudulent act occurred, regardless of the length of time that elapsed until the determination of fraud was made. If the household member is determined to have committed fraud by knowingly, willfully and with deceitful intent failing to report a change in its household circumstances, the first month benefits were overissued shall be the month the change occurred. Once the amount of the fraud claim is established, the State agency shall offset the claim against any amount of lost benefits that have not yet been restored to the household in accordance with § 273.17.

(2) *Collecting fraud claims.* (i) If the household is found to have committed fraud at either an administrative fraud hearing, a court of appropriate jurisdiction or by the State's investigative unit, the State agency shall initiate collection action unless the amount of the claim is less than $35, the State agency has documentation which shows the household cannot be located, or the legal representatives prosecuting a member of the household for fraud advise in writing that collection action will prejudice the case. In cases where the household was found guilty of fraud by a court, the matter of restitution shall be brought before the court by the State agency. Collection action must be taken, however, for the full amount of the loss even if the court's decision does not address restitution, the amount of restitution ordered is less than the amount of the loss, or prosecution results in imprisonment. The expiration of the State's statute of limitations does not relieve the State agency from making the required collection efforts.

(ii) Collection action shall be taken by sending the household a written demand letter which informs the household of the amount owed, the reason for the claim, the period of time the claim covers, any offsetting that was done to reduce the claim, how the household may pay the claim, and the household's right to a fair hearing if the household disagrees with the State agency's determination. In addition to the written demand letter, a personal contact shall be made, if possible. In those cases where the claim is being handled as a fraud claim based solely on a determination of fraud by the State's fraud investigators, the State agency shall not coerce a household into paying a claim by threatening to initiate an administrative fraud hearing or by threatening to prosecute. The State agency shall not disqualify a household solely because the household has refused to pay the fraud claim.

(iii) If the household agrees to pay the claim after the first demand letter, the State agency shall follow the procedures for collecting and submitting payments as prescribed in § 273.18 (e) and (f). If the household does not respond to the first demand letter, additional demand letters shall be sent at 30-day intervals until the household agrees to pay the claim, or the criteria for suspending or terminating collection action as specified in paragraph (c)(3) of this section have been met.

(3) *Criteria for suspending collection action.* If the household is financially unable to pay the claim but there is a likelihood that the claim can be collected in the future, the State agency shall suspend collection of the claim until either the claim can be collected or until the claim has been held in susense for three years, whichever occurs first. Therefore, if a possibility exists that the household will be entitled to restoration of lost benefits at a later date which could be used to offset the amount of the claim, the State agency shall suspend collection rather than terminate the fraud claim. State agencies shall also suspend col-

lection action if the household's circumstances are expected to change for the better.

(4) *Criteria for terminating collection of fraud claims.* If the State agency has sent at least one demand letter for fraud claims of less than $100, two demand letters for fraud claims of between $100 and $400, and three demand letters for fraud claims of more than $400, the State agency may terminate further collection action provided one of the following criteria is met:

(i) The household is financially unable to pay the claim;

(ii) There is little likelihood that the State agency can collect or enforce collection of any significant sum from the household;

(iii) The household cannot be located;

(iv) The cost of further collection action is likely to exceed the amount that can be recovered; or

(v) The claim has been held in suspense for three years.

(d) *Changes in household composition.* If a household's membership has changed since the overissuance occurred, the State agency shall initiate collection action against the head of the household. If the head of the household is no longer living or cannot be located, the State agency shall initiate collection action against the household containing a majority of the individuals who were household members at the time the error occurred.

(e) *Methods of collecting payments.* State agencies shall collect fraud or nonfraud claims in one of the following ways:

(1) *Lump Sum.* State agencies shall collect payments from households in one lump sum if the household is financially able to pay the claim in one lump sum.

(2) *Installments.* If the household has insufficient liquid resources or is otherwise financially unable to pay the claim in one lump sum, payments shall be accepted by the State agency in regular installments. If the full amount of the claim cannot be liquidated in three years without creating a financial hardship on the household, the State agency shall compromise the claim by reducing it to an amount that will allow the household to pay the claim in three years. Before any household signs an agreement to make installment payments the State agency must inform the household in writing that its food stamp benefits cannot be denied if the sole reason for the denial is the fact that it has either refused to sign a payment schedule or fails to make the agreed payments. State agencies may, however, initiate civil court action to obtain payment of the claim.

(f) *Submission of payments.* (1) No later than the 15th of each calendar month, each State agency shall submit to FNS a single check, draft or warrant which consolidates all of the payments collected at the State or local level during the previous calendar month. State agencies shall not allow more than 45 days to elapse between the date a household makes a payment on a claim and the date the payment is submitted to FNS. Each State agency shall also submit a monthly report to FNS which details the State's activities relating to claims against households. This report is also due on the 15th of each calendar month and shall be submitted even if the State agency has not collected any payments. The following form is the proposed monthly report each State agency will be required to submit to FNS.

(2) In cases where FNS has billed a State agency for negligence, any amounts collected from households in payment of overissuances which were caused by the State's negligence will be credited by FNS. When submitting these payments, the State agency shall include a note in the remarks section of the monthly reporting form specified in paragraph (e)(1) of this section which shows the amount that should be credited against the State's bill.

(g) *Claims discharged through bankruptcy.* State agencies shall act on behalf of, and as, FNS in any bankruptcy proceeding against bankrupt households owing food stamp claims. State agencies shall possess any rights, priorities, interests, liens or privileges, and shall participate in any distributions of assets, to the same extent as FNS. Acting as FNS, State agencies shall have the power and authority to file objections to discharge, proofs of claims, exceptions to discharge, petitions for revocation of discharge, and any other documents, motions or objections which FNS might have filed. Any amounts collected under this authority shall be transmitted to FNS as provided in paragraph (f) of this section.

FORM FNS-209 (DRAFT)

U.S. DEPARTMENT OF AGRICULTURE
FOOD AND NUTRITION SERVICE

FORM APPROVED OMB NO. (Proposed) 350

STATUS OF CLAIMS AGAINST HOUSEHOLDS

INSTRUCTIONS: *Each State agency shall prepare an original and 2 copies by the 15th of each month. Submit the original and 1 copy to Finance and Program Accounting Division, Food and Nutrition Service, USDA, Washington, D.C. 20250. The report shall cover the State's activities relating to claims during the previous calendar month. The State's consolidated check draft or warrant shall be attached to the original of the report if payments were collected during the previous calendar month. Retain remaining copy for your record.*

STATE	AMOUNT SENT TO FNS	MONTH
	$	

	AMOUNTS		NUMBER OF CLAIMS	
	FRAUD	NONFRAUD	FRAUD	NONFRAUD
1. BALANCE FOR ACTIVE CLAIMS AT BEGINNING OF MONTH	$	$		
2. BALANCE FOR SUSPENDED CLAIMS AT BEGINNING OF MONTH				
3. NEW CLAIMS ESTABLISHED DURING MONTH				
SUBTOTAL *(1 + 2 + 3)*	$	$		
4. AMOUNT COLLECTED BY CHECK, CASH OR MONEY ORDER DURING MONTH	$	$		
5. AMOUNT COLLECTED BY OFFSETTING LOST BENEFITS TO BE RESTORED				
6. AMOUNT FOR WHICH COLLECTION ACTION WILL NOT BE PURSUED				
SUBTOTAL *(4 + 5 + 6)*	$	$		
7. TOTAL NUMBER OF CLAIMS CLOSED DURING MONTH				
8. BALANCE FOR ACTIVE CLAIMS AT END OF MONTH	$	$		
9. BALANCE FOR SUSPENDED CLAIMS AT END OF MONTH				
SUBTOTAL *(8 + 9)*	$	$		

REMARKS

I certify that the above information is true and correct

DATE	TITLE

No further monies or other benefits may be paid out under this program unless this report is completed and filed as required by existing regulation (7 C.F.R. 273).

(h) *Accounting procedures.* Each State agency shall be responsible for maintaining an accounting system for monitoring claims against households. At a minimum, the accounting system shall be designed to readily accomplish the following:

(1) Document the circumstances which resulted in a claim, the procedures used to calculate the claim, the methods used to collect the claim and, if applicable, the circumstances which resulted in suspension or termination of collection action.

(2) Identify those situations in which an amount not yet restored to a household can be used to offset a claim owed by the household.

(3) Identify those households that have failed to make installment payment on their claims.

(4) Document how much money was collected in payment of a claim and how much was submitted to FNS.

§ 273.19 Sixty day continuation of certification.

(a) *Eligibility criteria.* The State agency shall provide for continuation of the certification of any household for 60 days after the date the household moves from one project area to another within the State or between States if the household:

(1) Membership does not change;

(2) Continues to meet the definition of a household as provided in § 273.1(a);

(3) Was not certified under disaster eligibility standards as provided in Part 280 or was not certified under expedited procedures in § 273.2(i) unless the verification that was initially postponed was subsequently completed; and

(4) Does not contain as SSI member when moving into the cash-out States of California or Massachusetts.

(b) *Former project area.* The project area from which the household is moving shall prepare the Form FNS-286, Certification of Transfer of Household Benefits. If the household has received its coupon allotment for the month in which the move takes place, the project area shall authorize the extension of certification for the two months subsequent to the move. The Form FNS-286 is given to the household for delivery to the new project area office.

(c) *New project area.* (1) The project area to which the household moves shall accept the Form FNS-286 and issue the allotment authorized by the form to households which report compliance with the criteria in paragraph (a) (1), (2), and (4) of this section. At the time the household provides the form to the new project area, the household shall report any changes in circumstances. The new project area will act on changes according to § 273.12, except in no event would the changes reported affect the initial issuance under the Form FNS-286. However the second issuance in the new project area, if any, shall reflect changes reported.

(2) If the household has participated in the former project area in the month of the move, and presents the Form FNS-286 to the new project area that same month, it shall be accepted and acted on in time for the next month's issuance. The first issuance shall be based on the income reflected on the Form FNS-286.

(3) If the household has not participated in the former project area in the month of the move and presents the transfer form to the new project area that same month, the household will be provided an opportunity to participate in that month. The first issuance shall be based on the income reflected on the transfer form.

(4) If the household's income has decreased to zero net monthly income upon its arrival in the new project area, an exception shall be made to the use of the transfer form and recorded income figures. The household shall be provided with expedited service and the appropriate change shall be reflected in the allotment for the first issuance.

(d) *Subsequent actions.* (1) Households participating on the basis of a Form FNS-286 shall be intitled to all procedural rights of any other food stamp household, including notice of adverse action on reported changes, and notice of expiration prior to the expiration of the second month of issuance authorized by the Form FNS-286.

(2) Households may elect to be certified in the new project area at any time during their participation under the Form FNS-286.

(3) Households which move during the two months covered by the Form FNS-286 shall be issued:

(i) A Form FNS-286 for the balance of the period covered by original form, and which reflects the changes reported at the time the form was accepted in the new project area;

(ii) A new Form FNS-286 for an additional two months if the household was recertified in the new project area and otherwise qualifies for a transfer of certification as outlined in paragraph (a) of this section.

(e) *Project areas that encompass more than one political subdivision.* Provision must be made to provide unbroken service to eligible households that move from one political subdivision to another in States where the State has been designated as a project area or where project areas encompass more than one political subdivision. This may be accomplished by transferring records or providing the household with Form FNS-286.

(f) *Control of forms.* The State agency shall provide for the secure storage of Form FNS-286, and shall maintain controls to prevent or detect unauthorized issuance, acquisition, acceptance, use, transfer, or alternation of this form.

4. Part 274 remains in force and effect but is redesignated as Part 280. The new Part 274 reads as follows:

PART 274—ISSUANCE AND USE OF FOOD COUPONS

Sec.

274.1. State agency issuance responsibilities.
274.2 Issuance systems.
274.3 Issuance of coupons through the mail.
274.4 Distribution of coupons.
274.5 Responsibilities of coupon issuers and bulk storage points.
274.6 Reconciliation.
274.7 Issuance record retention and security.
274.8 State agency reporting and destruction of unusable coupons.
274.9 Close-out of a coupon issuer.
274.10 Use or redemption of coupons by eligible households.
274.11 Return of coupons.

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027).

§ 274.1 State agency issuance responsibilities.

(a) *Basic issuance requirements.* Each State agency is responsible for the timely and accurate issuance of coupons to eligible households in accordance with these regulations. Each State agency shall establish an issuance and accountability system which will ensure that (1) only certified households receive benefits; (2) coupons are accepted, stored, and protected after delivery to receiving points within the State; (3) program benefits are timely distributed in the correct amounts; and (4) coupon issuance and reconciliation activities are properly conducted and accurately reported to FNS.

(b) *Contracting or delegating issuance responsibilities.* The State agency may assign to other parties such as banks, savings and loan associations, the postal service, community action agencies and migrant service agencies with adequate security, the responsibility for issuance and storage of coupons.

(1) Any assignment of issuance functions shall clearly delineate the responsibilities of both parties. The State agency remains responsible, regardless of any agreements to the contrary, for ensuring that assigned duties are carried out in accordance with these regulations. In addition, the State agency is strictly liable to FNS for all losses of coupons, even if those losses are the result of the performance of issuance, security or accountability duties by another party.

(2) All issuance contracts shall follow procurement standards set

forth in Part 277. The State agency shall contract only with responsible contractors who possess the ability to perform successfully under the terms and conditions of the proposed procurement. In making its selection, the State agency shall consider contractor integrity, the record of past performance, financial, and technical resources, and the availability of other necessary resources. State agencies may permit subcontracting of assigned issuance responsibilities. However, the primary contractor shall remain responsible and liable to the State agency for ensuring that the terms of the contract are carried out.

(3) The State agency shall not assign the issuance of coupons to any retail grocery store authorized to redeem coupons from participant households. This restriction may be waived if the State agency can demonstrate, to the satisfaction of FNS, that such an arrangement would be in the best interests of the program.

(4) FNS does not encourage assignment of issuance activities to any entity in the same interrelated corporate structure with an authorized retail food store. However, such entities may be coupon issuers if they are fiscally autonomous, physically separate and employ a different trade name from the retail food store. FNS does not encourage the assignment of issuance activities to firms located within the confines of retail food stores. However, the State agency may contract with a bank or credit union located in such facilities provided that it is financially independent of the retail grocer and is chartered under Federal or State law.

(5) The State agency may contract with the U.S. Postal Service for the issuance of food coupons. The Department and the Postal Service have signed a Memorandum of Understanding which shall govern contracts for coupon issuance between State agencies and the Postal Service, and have developed a model contract. State agencies and the Postal Service may agree to modifications to the model contract so long as the modifications do not conflict with these regulations.

(c) *State monitoring of coupon issuers.* (1) The State agency's accountability system shall include procedures for monitoring the day-to-day operation of all coupon issuers to assure compliance with these regulations, to identify and correct deficiencies and to report violations of the Act or regulations to FNS.

(2) The State agency shall conduct an onsite review of each coupon issuer and bulk storage point at least once a year. This review requirement may be fulfilled in part or in total by the Performance Reporting Review System, Part 275. The State agency shall base each review on the specific activities performed by each coupon issuer or bulk storage point. A physical inventory of coupons shall be taken at each location and that count compared with perpetual inventory records and the monthly reports of the coupon issuer or bulk storage point. This review may be conducted at the offices of subissuers or at each issuance office when a coupon issuer or bulk storage point operates more than one office. The State agency may delegate this review responsibility to another unit of the State government or contract with an outside firm with expertise in auditing and accounting. Except in unusual circumstances, the Postal Inspection Service will conduct onsite reviews of post office issuance operations.

§ 274.2 Issuance systems.

The State agency shall arrange for the issuance of coupons to eligible households.

(a) *System classifications.* State agencies may issue food coupons through (1) a Household Issuance Record (HIR) card system in which the authorizing document is maintained at the issuance office, (2) an Authorization to Participate (ATP) system in which an authorizing document is distributed on a monthly basis to the household and surrendered to the coupon issuer when coupons are obtained, or (3) a direct coupon mail-out system. In addition, the State agency may develop an automated issuance system, such as one using online issuance terminals, which cannot be readily categorized as either an HIR card or ATP system. Such alternative or modified systems shall meet the accountability requirements established in these regulations.

(b) *Advance planning documentation.* Prior to implementation of new systems or changes to current systems, the State agency shall submit all procedures in writing for approval by FNS. Plans for upgrading or establishing automated data processing (ADP) systems, including the acquisition, design, development, or installation of ADP equipment, shall be submitted in writing to the FNS Regional Office for prior approval if State and Federal combined costs are $10,000 or more in any calendar quarter. Such plans shall be detailed in an Advance Planning Document, prepared in accordance with the requirements of Part 277.

(c) *Certification documentation.* The State agency shall use either a notice of change or an HIR card to document and transmit information on household eligibility or participation from the certification unit to the data management unit of the State agency.

(d) *HIR master file.* (1) The State agency shall establish an HIR master file which is a composite of the issuance records of all certified food stamp households. The State agency shall establish the HIR master file in a manner compatible with the system used for maintaining case records and divide the HIR master file into active and inactive HIR's. The HIR master file shall contain all the information needed to identify certified households, issue ATPs, record the participation activity for each household and supply all information necessary to fulfill the reporting requirements of FNS.

(2) The HIR master file shall be kept current and accurate. HIR's will be updated, suspended, or terminated based upon notices of change and controls for expired certification periods and nonparticipation.

(3) Before establishing an HIR for a participant household, the State agency shall check the HIR master file to ensure that the household is not currently participating, disqualified or suspended. If the ATP is issued under the expedited service requirements of § 273.2(i), the State agency shall complete as much of the HIR master file check as possible prior to issuance of the ATP. Any uncompleted checks shall be completed after issuance of the ATP and appropriate corrective action shall be taken.

(4) In an ATP issuance system, the State agency shall review the HIR master file monthly for households that have failed to participate in the Program for two consecutive months. For all such households, the State agency shall suspend the printing of ATPs until the household indicates a desire to participate. The State agency shall notify the household of the suspension and advise the household to contact the State agency to continue participation. The State agency shall arrange for the resumption of issuance if the household wishes to continue participation. A suspended household shall not be terminated prior to the expiration of the certification period if otherwise eligible.

(e) *ATP issuance.* (1) ATPs issued by the State agency shall contain at a minimum:

(i) Serial number;

(ii) Case name, address and food stamp case number;

(iii) Coupon allotment of the household;

(iv) Expiration date;

(v) Project area for which that ATP is issued;

(vi) Space for the signature of the household member or the authorized representative; and

(vii) Spaces for household designation of an emergency authorized representative.

(2) The State agency may stagger the issuance of ATPs to certified households through the 15th day of the month provided that each house-

hold's cycle shall be established so that it receives its ATP at the same time every month and it has an opportunity to obtain its coupons prior to the end of the month.

(3) The State agency shall clearly mark each ATP with an expiration date. The ATP shall be valid for the entire month of issuance unless an ATP has been issued after the 25th day of the month. If the State agency issues an ATP, on the 26th day of the month or later, it shall not expire until the end of the following month.

(4) The State agency shall void all ATPs mutilated or otherwise rejected during the preparation process. The voided ATPs shall either be filed for audit purposes or destroyed, provided destruction is witnessed by at least two persons and the State agency maintains a list of all destroyed ATP's.

(5) The State agency shall mail the ATP to the household in a first-class, nonforwarding envelope.

(6) The State agency shall exercise the following security and controls for ATPs returned as undeliverable by the Postal Service;

(i) Record the ATP serial number, household name, and case number in a control log.

(ii) Keep the returned ATPs in secure storage with access limited to authorized personnel while attempts are made to locate the household.

(iii) Record the final disposition of the ATP in the control log.

(iv) Destroy returned ATPs not reissued prior to their expiration date. Destruction shall be witnessed by at least two persons and noted on the original listing of returned ATPs.

(7) Prior to coupon issuance, the cashier shall ask the person requesting food stamps for identification as the certified participant, authorized representative or emergency representative. This person shall present to the cashier both the Food Stamp ID card and ATP. The cashier shall examine the ATP for authenticity, alteration and date of expiration. If the ATP is valid the person requesting food stamps shall sign the ATP in the presence of the cashier. The cashier shall compare the signature on the ATP with the signature on the ID card. In cases where an emergency representative obtains the coupons, the signature and identification check shall be governed by local agency policy. If the person requesting coupons has already signed the ATP, the person shall be required to sign a separate piece of paper for signature comparison. If the signatures agree, coupons shall be issued in accordance with paragraph (h) of this section.

(8) The State agency shall clearly differentiate between initial, supplemental, and replacement ATP issuances in its accountability system.

(9) The coupon issuer shall reconcile its issuance on a daily basis.

(10) The State agency shall provide for the issuance of coupon replacements due to improper manufacture, mutilation, or loss.

(f) *HIR card issuance system.* In an HIR card issuance system, the State agency shall divide the issuance responsibilities among a receptionist, cashier and supervisor.

(1) The receptionist shall maintain a separate daily tally sheet in duplicate for each cashier in the issuance unit to record the individual daily issuance transactions.

(2) The issuance supervisor shall prepare daily, or as appropriate, a cashier's daily report for each cashier to account for coupons issued.

(3) The receptionist shall check the ID card of the person wishing to obtain coupons against the HIR card from the HIR master file. An emergency representative must present a signed written statement from the head of the household or spouse authorizing the issuance of food stamps for the certified household. If satisfied with the identification, the receptionist shall select the daily tally sheet of the cashier from whom the household will receive the allotment, enter information about the transaction, and initial the HIR card before it goes to the cashier.

(4) Upon receipt of the HIR card from the receptionist, the cashier shall enter the amount of coupons issued and intiial the HIR card. The cashier shall also obtain the participant's signature on the HIR card and compare the signature with that on the ID card. If the signatures agree, the cashier shall issue coupons in accordance with paragraph (h) of this section.

(5) The coupon issuer shall reconcile daily its issuances using the daily tally sheet and the cashier's daily report.

(6) The State agency may stagger the issuance of coupons to certified households through the 15th of the month.

(7) The State agency shall provide a household certified for program participation after the 25th of the month the opportunity to obtain its allotment in the following month.

(8) The State agency shall provide for the issuance of coupon replacements due to improper manufacture, mutilation, or loss.

(g) *Expedited service.* (1) The State agency shall manually prepare and issue ATPs at the local level if necessary to provide an opportunity to participate to households certified on an expedited basis in accordance with § 273.2(i), to comply with the processing standards for initial and recertifications and for action on reported changes, and to replace lost or stolen ATPs or allotments. To minimize the possibility of misuse of manually-prepared ATPs, the State agency shall:

(i) Divide responsibility for the issuance of the ATP between at least two persons to prevent a single individual from having complete control over both the documents which authorize the issuance of ATPs and the ATPs themselves.

(ii) Record, immediately, on the HIR master file, the serial number and other issuance information from the ATP.

(2) For initial certifications, the State agency shall prevent duplicate or unauthorized participation by checking its records prior to issuing the manual ATP to assure the household is not currently certified for that month or is not disqualified from participation.

(3) The State agency shall issue an emergency replacement ATP only if the original ATP is reported lost or stolen in the period for which it was intended.

(i) Prior to authorizing the issuance of a replacement ATP, the State agency shall determine if:

(A) The household is currently certified.

(B) Sufficient time has elapsed for delivery to have been completed. Sufficient time shall not exceed five days from the miling date.

(C) The lost or stolen ATP was valid for the current month.

(ii) The participant must sign an affidavit stating that the original ATP will be returned to the State agency if recovered by the household. The affidavit shall be filed in the case file.

(iii) After two consecutive reported mail losses by a household, the State agency shall consider other means to deliver ATP's to the household.

(iv) On a monthly basis, the State agency shall provide a list of all ATPs reported as lost or stolen from the mail to the appropriate Postal Inspection service. The State agency should assist the Postal Inspection Service during the investigation and shall, upon request, supply the service with a facsimile of the original and replacement ATP's and a copy of the nonreceipt affidavit. The State agency shall advise the service if the original ATP is transacted.

(h) *Issuance of coupons to households.* The State agency shall issue coupon books in accordance with a table for coupon book issuance provided by FNS. The table provides participants with an efficient and economical distribution of the available coupons and coupon book types and assists FNS in maintaining proper inventory levels. The State agency may deviate from the table if the specified coupon books are unavailable. Exceptions from the table are authorized for blind and visually handicapped participants who request that all coupons be of one denomination. The State agency shall issue the coupon books in

consecutive serial number order whenever possible, starting with the lowest serial number in each coupon book denomination. A household member whose name appears on the ID card shall sign the coupon books.

§ 274.3 Issuance of coupons through the mail.

(a) *Types of mail issuance systems.* The State agency may issue some or all of the coupon allotments through the mail. State agencies shall determine whether to use a regular mail issuance system or a direct coupon mailing system. A regular mail issuance system is one which uses an authorization document as an intermediate step in mail issuance. A direct coupon mailing system is one which does not use an authorization document. The system, controls and forms designed by the State agency to operate a regular or direct coupon mail issuance system must be approved by FNS.

(b) *Mail issuance controls and records.* (1) The State agency shall establish and maintain a mail issuance log to record requests for mail issuance and the date and amount of coupons issued.

(2) All operations involving the maintenance of coupon inventory records, assembly of coupon allotments, envelope stuffing, and preparation of envelopes for mailing shall, if at all possible, be performed by at least two persons. If these functions are performed by one person, a second party review shall be made to verify coupon inventory, the reconciliation of the mail issuance log, and the number of mailings prepared. Offices using prestuffing methods must provide for dual accountability during the stuffing and addressing operations and maintain a perpetual coupon inventory control and mail issuance logs.

(3) The State agency shall establish controls which prevent a participant from obtaining coupons through both the mail and over-the-counter issuance systems.

(4) The State agency shall inform appropriate postal officials of the schedule for mailing coupons, the approximate volume and value of the mailings, and the type of envelopes to be used.

(5) At least first-class mail shall be used in mailing coupon allotments. The coupons shall be mailed in sturdy nonforwarding envelopes or other nonforwarding mailing packages.

(6) To minimize mail theft exposure, direct mail issuances shall be staggered through the 10th day of the month, and may be staggered through the 15th day provided that each household will likely receive its coupons on the same date every month. The State agencies shall ensure that coupons are not mailed to concentrations of households with the same zip code on the same day. FNS may provide waivers to State agencies that present adequate documentation to indicate that thefts from the mail will not represent a significant problem.

(7) State agencies which rely exclusively on mail issuance shall ensure that participants receive allotments on a timely basis and can receive timely replacement issuances either from the mailing center or local facilities. The State agency shall also ensure that it has an alternative issuance system to provide expedited service in accordance with § 273.2(i) and § 274.2(g).

(c) *Coupons lost in the mail.* (1) When a household reports the nondelivery of coupons issued through the mail, the State agency shall:

(i) Determine if the coupons were actually mailed;

(ii) Determine that sufficient time has elapsed for the coupons to have been received by the participant, but not more than five days;

(iii) Review the mail issuance log for the return of undelivered coupons;

(iv) Report all losses to the postal authorities. States shall also report to the postal authorities all patterns of losses in particular project areas or neighborhoods;

(v) Prepare and have the participant sign an affidavit;

(vi) Issue replacement coupons to the household within five days after the report of nondelivery has been received;

(vii) Record the report of nondelivery and the date of replacement on the mail issuance log; and

(viii) Take other action warranted by the reported nondelivery.

(2) After two consecutive reports of nondelivery concerning the same household, the State agency shall employ other issuance methods. These include:

(i) Using special delivery, certified or registered mail;

(ii) Arranging for the household to pick up its coupon allotment at the local post office; or

(iii) Moving the households from the mail issuance system to a regular over-the-counter system.

(3) If there is an increase in the loss of coupons issued through the mail, either in a particular area or throughout the mail issuance caseload, the State agency shall take corrective action to reduce the financial loss rate and improve service to participants.

(4) The State agency shall use certified mail issuance for its regular or direct mail program when the value of coupon replacements for an area exceeds the cost of using certified mail unless the State agency demonstrates to FNS that other corrective action is satisfactory. The State agency may also use certified mail where neighborhoods or individual households are experiencing loss problems.

(5) Coupons are "in the mail" when deposited with the Postal Service. FNS will assume financial liability for all coupons lost in the mail if the coupons were issued in accordance with FNS policies and procedures, unless FNS notifies the State agency that the loss rate has become unacceptable to FNS and that all further mailings shall be at the risk of the State agency. A State agency which refuses to establish certified mail when required to do so by FNS shall be held strictly liable for future mail issuance losses in the project areas concerned.

(d) *Mail issuance reporting on the Food Coupon Accountability Report.* (1) All mail issuance activity, including coupon mail issuance replacements, shall be reported on the Form FNS-250, Food Coupon Accountability Report.

(2) The coupon issuer shall attach copies of all replacement affidavits to Form FNS-250.

(3) Original allotments subsequently recovered by the issuance office during the current month shall be returned to inventory and noted on the mail issuance log. The replacement issuance shall not be reported on the Form FNS-250. The coupon issuer shall notify the post office of the return of coupon allotments previously reported as lost in the mail.

§ 274.4 Distribution of coupons.

(a) *Coupon inventory management.* The State agency shall establish a coupon inventory management system which ensures that coupons are requisitioned and inventories are maintained in accordance with the requirements of these regulations.

(1) The State agency shall monitor the coupon inventories of the coupon issuers and bulk storage points to ensure inventories are at proper levels and are not in excess of the reasonable needs of coupon issuers. The State agency shall consider, among other things, in detemining the reasonable inventory needs, the ease and feasibility of resupplying such inventories from storage supplies within the State as well as from the manufacturer. The inventory levels at coupon issuers and bulk storage points should not exceed a six-month supply, taking into account coupons on hand and on order.

(2) The State agency shall establish an accounting system for monitoring the inventory activities of coupon issuers. The State agency shall review the Form FNS-250, from coupon issuers, and the Form FNS-250-1, Food Coupon Book Reports, from bulk storage points, to determine the propriety and reasonableness of the inventories. Forms FNS-261, Advices of Shipment, Form FNS-300, Advices of Transfer, or an approved State agency form, and reports of returned mail issued coupons, reports of replacements of mail

issued coupons, reports of improperly manufactured or mutilated coupons, reports of shortage or overage of food coupon books and physical inventory controls shall be used by the State agency to assure the accuracy of monthlky reports and their compliance with required inventory levels and the accuracy and reasonableness of coupon orders.

(b) *Coupon controls.* The State agency shall establish control and security procedures to safeguard coupons, similar to those used to protect currency. The State agency and all persons or organizations acting on its behalf, shall take the necessary precautions to: (1) safeguard coupons from theft, embezzlement, loss, damage, or destruction; (2) avoid unauthorized transfer, negotiation or use of coupons; and (3) avoid issuance and transfer of altered or counterfeit coupons. The exact nature of security arrangements will depend on State agency evaluation of local coupon issuance and storage facilities. These arrangements must permit the timely issuance of coupons while affording a reasonable degree of coupon security.

(c) *State coupon requisitioning.* The State agency shall arrange for the ordering of coupons and the prompt verification and written acceptance of the contents of each coupon shipment. The State agency shall furnish FNS with appropriate delivery hours and the names of the persons authorized to sign delivery acknowledgements.

(d) *FNS review of requisitions.* FNS will assess the reasonableness and propriety of food stamp requisitions submitted by State agencies based on prior inventory changes and will notify the State agency of any adjustments made to requisitions.

(e) *FNS shipment of coupons.* FNS will ship coupons, printed in such denominations as it may determine necessary, directly to State agency designated receiving points. FNS will promptly advise the State agency in writing when coupons are shipped to receiving points using Form FNS-261. Coupons shall be considered delivered to the State agency when FNS or its carrier has a signed receipt.

(f) *Shipment of coupons by the State agency.* (1) Once coupons have been accepted by receiving points within the State, any further movement of the coupons between coupon issuers and bulk storage points within the State is at the risk of the State agency. To minimize the risk of loss, coupons are usually shipped by armored car, armored vehicle, armored tractor/trailer, air, or the Postal Service. Movement of coupons by any of these methods of transportation is normally appropriate because stringent security is applied and the risk of loss is usually borne by the carrier.

(2) In every instance when coupons are transported the person(s) transporting coupons shall:

(i) Acknowledge their receipt, in writing;

(ii) Accord the coupons much protection as is reasonable;

(iii) Advise issuance supervisors of the routes to be taken, the shipment departure time and the estimated arrival time.

(g) *Specimen coupons.* FNS will provide non-negotiable specimen coupons to State agencies and firms upon written request for the purpose of educating and training employees on program operations.

(1) The State agency or firm shall store specimen coupons in secure storage with access limited to authorized personnel. The State agency or firm shall keep a perpetual record of specimen coupon inventory.

(2) Specimen coupons that are mutilated, improperly manufactured, or otherwise unusable, shall be destroyed by the State agency or firm. Such destruction shall be witnessed by two persons and noted on the perpetual inventory record maintained for specimen coupons.

§ 274.5 Responsibilities of coupon issuers and bulk storage points.

(a) *Receipt of coupons.* Coupon issuers and bulk storage points shall promptly verify and acknowledge, in writing, the contents of each coupon shipment delivered to them and shall be responsible for the custody, care, control, and storage of coupons.

(b) *Inventory levels.* Coupon issuers and bulk storage points shall maintain a proper level of coupon inventory not in excess of reasonable needs, taking into consideration the ease and feasibility of resupplying such coupon inventories. Such inventory levels should not exceed the six-month supply provided for in § 274.4(a).

(c) *Monthly reporting.* Coupon issuers and bulk storage points shall report monthly to FNS, through the State agency, using Form FNS-250 of Form FNS-250-1. The State agency shall prescribe a report due date, taking into consideration the time needed to perform the functions required in § 274.8. These reports shall be signed by the coupon issuer or appropriate corporate official, certifying that the information is true and correct to the best of that person's knowledge and belief. Reports shall be submitted to FNS by the State agency by the 45th day following the end of the report month.

(d) *Supporting documentation.* Coupon issuers and bulk storage points shall submit to the State agency supporting documentation which will allow verification of the monthly report. At a minimum, such documentation shall include documents supporting coupon shipments, transfers, and issuances. In those states using an ATP issuance system, coupon issuers shall submit transacted ATP's batched according to each day's activity, in accordance with the schedule prescribed by the State agency but, in any case, not less often than monthly.

(e) *Improperly manufactured or mutilated coupons.* Coupon issuers and bulk storage points shall cancel improperly manufactured or mutilated coupons or coupon books by writing or stamping "canceled" across the face of the coupon(s) and coupon book(s) and shall forward them with the appropriate documentation to the State agency.

§ 274.6 Reconciliation.

(a) *Verification of ATP issuance.* (1) In ATP issuance systems the State agency shall verify the number of ATP's received from the coupon issuers and the total value of authorized coupon issuances.

(2) ATP batches not reconciled shall be maintained intact by the State agency until the discrepancy is resolved with the coupon issuer.

(3) Following receipt and verification of the final batch of ATP's for the month, the State agency shall determine the total value of authorized issuances for each coupon issuer. Any expired or out-of-State ATP's shall be handled as coupon issuer errors and shall not be included in authorized issuance figures.

(b) *Reconciliation of ATP's with the HIR master file.* The State agency shall post and reconcile all transacted ATP's against the HIR master file. This posting and reconciliation shall, at a minimum, include for each ATP a comparison of the total coupon allotment. The State agency shall merge the records of the manually prepared initial, supplemental, and replacement ATP issuances with the HIR master file prior to posting and reconciling the transacted ATP's. Because ATP's issued after the 25th of the month may be redeemed in the following month and because supplemental ATP's may be issued during the month, the State agency shall establish a mechanism for the redemption of two valid ATP's in one month, and for the reconciliation and posting to the correct month of issuance. However, ATP's issued to replace ATP's reported lost or stolen shall be separately identifiable, as the transaction of both the original and replacement ATP represents a duplicate issuance which must be reported on a reconciliation report required in § 274.8(a).

(c) *Identification of unreconciled ATP's.* The State agency shall identify all transacted ATP's that are not reconciled with the HIR master file as expired, duplicated, altered, stolen, counterfeit, or out-of-State. This identification shall be used to establish the liabilities of the State agency and FNS

on a reconciliation report and for determination of corrective or claims action.

(d) *HIR reconciliation to the case files.* In an HIR issuance system, the State agency shall conduct a semiannual comparison of the active and inactive HIR cards against the case files. At a minimum, 20 percent of all active and inactive HIR cards shall be selected at random for the comparison. If the State agency discovers an HIR card during the review for which a case file cannot be located, the State agency shall conduct a total review of the active case files. The State agency shall immediately document and report any discrepancies discovered during the semiannual review to FNS.

§ 274.7 Issuance record retention and security.

(a) *Availability of issuance records.* The State agency shall maintain issuance records for a period of three years, following the end of the fiscal year of origin. This period may be extended at the written request of FNS.

(1) Issuance records shall include, at a minimun: notices of change, HIR cards, inventory records, transacted ATP's or similar authorizing documents, Forms FNS-250, Forms FNS-250-1 and substantiating documents, cashier's daily reports, receptionist's daily tally sheets, and the HIR master file.

(2) In lieu of the records themselves, microfilm, microfiche, or computer tapes may be maintained, as long as they are easily retrievable for audit review purposes.

(b) *Control of issuance documents.* The State agency shall control all issuance documents which establish household eligibility while the documents are transferred and processed within the State agency. The State agency shall use numbers, batching, inventory control logs or similar controls from the point of initial receipt through the issuance and reconciliation process. The State agency shall also ensure the security and control of ATP's in transit from the manufacturer to the State agency.

(c) *Accountable documents.* HIR cards, ATP's, ID cards, and Forms FNS-286 shall be considered accountable documents. The State agency shall provide the following minimum security and control procedures for these documents:

(1) Preprinted serial numbers;

(2) Secure storage;

(3) Access limited to authorized personnel;

(4) Bulk inventory control records;

(5) Subsequent control records maintained through the point of issuance or use; and

(6) Periodic review and validation of inventory controls and records by parties not otherwise involved in maintaining control records.

(d) *Notice of change security.* For notices of change which initiate, update, suspend, or terminate the HIR, the State agency shall at a minimum, provide secure storage and limit access to authorized personnel.

§ 274.8 State agency reporting and destruction of unusable coupons.

(a) *State agency reporting.* (1) The State agency shall report to FNS when a project area, reconciliation point, or coupon shipment receiving point is created, changed or terminated at least 30 days prior to the effective date of the action. A reconciliation point is that point in the State agency where transacted ATP's are reconciled with the HIR master file. Although initial notification may be made by telephone, the State agency shall confirm the information in writing as soon as possible.

(2) The State agency shall review Form FNS-250, and Form FNS-250-1, received monthly from coupon issuers and bulk storage points for accuracy, completeness, and reasonableness. The State agency shall attest to the accuracy of these reports and submit them to FNS so that they will be received in FNS by the 45th day following the end of the report month.

(3) The State agency shall submit to FNS a Form FNS-259, Food Stamp Mail Issuance Report, for each project area using a mail issuance system. The State agency shall verify the issuance and replacement figures by a comparison with the issuance and replacement figures on the appropriate coupon issuer's Form FNS-250. This report shall be submitted to FNS so that it will be received in FNS by the 45th day following the end of each quarter.

(4) FNS shall review each Form FNS-250 and FNS-250-1, submitted through the State agency for completeness, accuracy, and reasonableness and shall reconcile inventory with shipping records. FNS will review State agency verification of coupon issuer and bulk storage point monthly reports. FNS may supplement this review by unannounced spot checks of inventory levels and coupon security arrangements at selected coupon issuers and bulk storage points.

(5) Any State agency having an ATP issuance system shall report monthly to FNS on the reconciliation of the transacted ATP's against the HIR master file on a Food Stamp Reconciliation Report. This report shall be prepared at the level of the State agency where the actual reconciliation of the transacted ATP's to the HIR master file takes place. This report shall be submitted to FNS so that it will be received in FNS by the 45th day following the end of the report month.

(6) The State agency shall submit to FNS Form FNS-256, Monthly Report of Participation and Coupon Issuance, for each project area. The State agency shall compile figures after the end of the issuance month based on HIR card data or transacted ATP's. These figures shall be detailed by project area and include all issuances supported by issuance documents including expired, altered, stolen, counterfeit and duplicate issuances. This report shall be submitted to FNS so that it will be received in FNS by the 35th day following the report month.

(b) *Destruction of unusable coupons.* (1) After verification of the reports received from the coupon issuers and bulk storage points, the State agency shall destroy improperly manufactured or mutilated coupons or coupon books received from coupon issuers and bulk storage points, and unusable coupons or coupon books returned by households, provided that:

(i) It has been determined that the value of coupons does not exceed $200 per coupon issuer or bulk storage point for any month; and

(ii) The State agency has determined that the coupons were in fact improperly manufactured or mutilated.

(2) The State agency shall destroy the coupons and coupon books by burning, shredding, tearing or cutting so they are not negotiable. Two State agency officials shall witness and certify the destruction and forward the Form FNS-136, Certificate of Destruction of Food Coupons, with the Form FNS-250 or Form FNS-250-1.

(3) If the value of the coupons to be destroyed exceeds $200 per coupon issuer, the State agency shall request FNS approval prior to any destruction of the coupons.

(4) If either the coupon issuer, the bulk storage point or the State agency cannot determine whether coupons or coupon books were in fact improperly manufactured or establish the value of the coupons involved, the State agency shall promptly forward a written statement of findings and the canceled coupon(s) or coupon book(s) to FNS for a determination.

§ 274.9 Close-out of a coupon issuer.

(a) *Definition of responsibilities.* Whenever the services of a coupon issuer or bulk storage point are terminated, the State agency shall perform the responsibilities described below. If a coupon issuer or bulk storage point has more than one functioning unit and one of these facilities is terminated, the coupon issuer or bulk storage point shall fulfill the responsibilities described in paragraphs (b) and (c) of this section. The coupon issuer or bulk storage point shall notify the State agency of the pending termination of any of its services prior to the actual termination. The State agency shall promptly notify FNS.

(b) *Close-out accountability.* The State agency shall perform a close-out

audit of a coupon issuer or bulk storage point within 30 days of termination of the issuance or storage point. The State agency shall report the findings of the audit to FNS immediately upon its completion. If the audit determines that the final FNS-250 or 250-1 is incorrect, the State agency shall promptly provide a corrected report to FNS.

(c) *Transfer of coupon inventory.* (1) Prior to the transfer of coupon inventory to another coupon issuer or bulk storage point, the State agency shall perform an actual physical count of coupons on hand.

(2) The State agency shall transfer the inventory to another coupon issuer or bulk storage point preferable within the same project area. The transfer of coupons shall be properly reported and documented by both the point being terminated and the point receiving the inventory.

(d) *Maintenance of participant service.* (1) At least 30 days before actual termination of a coupon issuer, the State agency shall notify project area participants of the impending closure. Notification shall include identification of alternative issuance locations and available public transportation.

(2) If closure of the issuer will affect a substantial portion of the caseload or a specific geographic area, the State agency shall take whatever action is necessary to maintain participant service.

(3) If a coupon issuer of bulk storage point is to be closed for noncompliance with contractual requirements and alternative issuance facilities or systems are not readily available, the State agency may continue to use the coupon issuer or bulk storage point for a limited time. In these situations, the State agency shall perform weekly onsite reconciliations of coupon issuance. The State agency shall continue to actively seek other issuance or storage alternatives and shall, in no case, use the coupon issuer or bulk storage point for more than 30 days from the date the decision is made to terminate its operations.

§ 274.10 Use or redemption of coupons by eligible households.

(a) *Eligible food.* A household member should sign each coupon book issued to the household. The coupons may be used only by the household, or other persons the household selects, to purchase eligible food for the household, which includes, for certain households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with coupons. Uncanceled and unendorsed coupons of 1-dollar denomination, returned as change by authorized retail food stores, may be presented as payment for eligible food. All other detached coupons may be accepted only if accompanied by the coupon book which bears the same serial number as the detached coupons. It is the right of the household or the authorized representative to detach the coupons from the book.

(b) *Meals-on-wheels.* Eligible household members 60 years of age or over or members who are housebound, physically handicapped or otherwise disabled to the extent that they are unable to adequately prepare all their meals, and their spouses, may use coupons to purchase meals prepared for and delivered to them by a nonprofit meal delivery service authorized by FNS.

(c) *Communal dining.* Eligible household members 60 years of age or over and their spouses, or those receiving SSI and their spouses, may use coupons issued to them to purchase meals prepared especially for them at communal dining facilities authorized by FNS for that purpose.

(d) *Addict/alcoholics.* Members of eligible households who are narcotics addicts or alcoholics and who regularly participate in a drug or alcoholic treatment and rehabilitation program may use coupons to purchase food prepared for them during the course of such program by a private nonprofit organization or institution authorized by FNS.

(e) *Alaskan hunting/fishing equipment.* Eligible households residing in areas of Alaska determined by FNS as areas where access to retail food stores is difficult and who rely substantially on hunting and fishing for subsistence may use all or any part of the coupons issued to them to purchase hunting and fishing equipment such as nets, hooks, rods, harpoons and knives, but excluding firearms, ammunition and other explosives.

(f) *Use of ID cards.* Upon request, the household or the authorized representative shall present the household's ID card to the retail food store or meal service when exchanging food coupons for eligible food.

(g) *Prior payment prohibition.* Coupons shall not be used to pay for any eligible food purchased prior to the time at which the coupons are presented to authorized retail food stores or meal services. Neither shall coupons be used to pay for any eligible food in advance of the receipt of food, except when prior payment is for food purchased from a nonprofit cooperative food purchasing venture.

(h) *Cash change.* When change in an amount less than 1 dollar is required in a coupon transaction, the household shall receive the change in cash not to exceed 99 cents.

§ 274.11 Return of coupons.

(a) *Refund of purchase requirement.* In the event of voluntary termination of participation in the program by a household or death of the head of the household, properly issued coupons may be returned to FNS for a refund on the same ratio of cash to coupons as was applied by the State agency in the issuance of the coupons to the household.

(b) *Filing refund request.* A request for a refund shall be submitted to the State agency. The request for such a refund shall be made in accordance with the following requirements: (1) It shall be in ink or typed, (2) it shall contain the claimant's address, (3) it shall be dated and signed, and (4) the unused coupons shall be attached.

(c) *FNS payments.* State agencies shall forward claims to FNS for payment. The claimant's request for a refund, a completed Form FNS-287, Request for Reimbursement or Notification of Return of Unused Food Coupons for Refund, and the unused coupons shall be forwarded to FNS by the State agency.

(d) *Limit on refunds.* Six months after elimination of the purchase requirement, no refunds shall be paid for coupons returned to FNS. Coupons will be accepted by FNS for accounting and disposition only. Households should be reminded that even if they are not currently eligible, properly issued coupons may be redeemed by them at any time in authorized retail stores.

(e) *Old series coupon exchange.* Households which still have old series coupons shall be entitled to a dollar for dollar exchange of old series coupons for new series coupons. When only a 50-cent coupon is offered for exchange or the coupons offered include an odd number of 50-cent coupons, a new series one dollar coupon will be given for the odd 50-cent coupon. Households in possession of old series coupons shall submit the coupons and a request for exchange to the State agency. State agencies may make direct exchange to claimants or request FNS to make the exchange.

5. Part 275 remains in force and effect but is redesignated as a new Part 277. The new Part 275 is reserved except that § 275.10 of former Part 275 remains in force. A new part 276 is added and reserved. As noted previously, former paragraphs 271.1(t) and 271.7(a)-(d) remain in force and effect and are redesignated in the new Part 276. A new Part 277 is added and contains the redesignated Part 275. Former paragraphs 271.1(h), 271.2, 271.5-275.9, 275.11-275.16, and Appendix A of former Part 275 remain in force and effect in the new Part 277. The titles of the new Parts 275, 276, and 278 read as follows:

PART 275—PROGRAM MONITORING SYSTEM

(Reserved. Section 275.10 of the current regulations remains in force.)

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

(Reserved. Sections 271.1(t) and 271.7(a)–(d) of the current regulations remain in force and effect.)

PART 277—PAYMENT OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

(Reserved. Sections 271.1(h), 271.2, 275.1–275.9, 275.11–275.16, and Appendix A of Part 275 in the current regulations remain in force and effect.)

6. A new Part 278 contains the redesignated Part 272 and is revised to read as follows:

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND BANKS

Sec.

278.1 Approval of retail food stores and wholesale food concerns.
278.2 Participation of retail food stores.
278.3 Participation of wholesale food concerns.
278.4 Procedures for redeeming coupons.
278.5 Participation of banks.
278.6 Disqualification of retail food stores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications.
278.7 Determination and disposition of claims—retail food stores and wholesale food concerns.
278.8 Administrative review—retail food stores and wholesale food concerns.

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027).

§ 278.1 Approval of retail food stores and wholesale food concerns.

(a) *Application.* Any firm desiring to participate in the program shall file an application as prescribed by FNS. FNS shall deny or approve authorization, or request more information, within 30 days of receipt of the application.

(b) *Determination of authorization.* An applicant shall provide sufficient data on the nature and scope of the firm's business for FNS to determine whether the applicant's participation will further the purposes of the program. In making this determination FNS shall consider all of the following:

(1) *The nature and extent of the food business conducted by the applicant.* (i) Retail food stores which sell primarily food for home preparation and consumption and in which one or more staple food items, as defined in § 271.2, make up more than 50 percent of food sales shall normally be considered to have food business of a nature and extent which will further the purposes of the program. These stores shall include: full-line grocery stores; stores which sell meat, poultry, or fish; stands which sell agricultural commodities; farmers markets; milk routes; bread routes; day-old bread stores; bakeries and pastry shops which sell bread; and nonprofit cooperative food-purchasing ventures which meet any applicable local requirements for retail firms and name a manager to deal with FNS, even though they accept coupons before delivering the food orders brought with the coupons.

(ii) Firms whose primary business is not the sale of food for home preparation and consumption, but who have recognized grocery departments in which staple food make up more than 50 percent of foods sales, shall normally be considered to have food business of a nature and extent which will qualify the store for participation in the program. In determining whether a store's staple food business is sufficient for the store to qualify for participation in the program, FNS shall also consider:

(A) The volume of staple food business the store does;

(B) The amount of sales of staple foods compared to other business conducted by the firm; and

(C) The availability of other authorized food stores in the area.

(iii) Wholesale food concerns whose primary business is the sale of eligible food at wholesale, and in which one or more staple food items, as defined in § 271.2, make up more than 50 percent of food sales, shall normally be considered to have food business of a nature and extent which will further the purposes of the program.

(2) *The volume of coupon business which FNS may reasonably expect the firm to do.* FNS may consider such factors as the location of a store in evaluating the ability of an applicant firm to attract food stamp business.

(3) *The business integrity and reputation of the applicant.* FNS may consider:

(i) Criminal conviction records reflecting on the honesty or integrity of officers or managers of the applicant firm;

(ii) Official records of removal from other Federal, State, or local programs;

(iii) Judicial determinations in civil litigation adversely reflecting on the integrity of officers or managers of the applicant firm;

(iv) Evidence of an attempt to circumvent a period of disqualification from the Food Stamp Program for violations of the Food Stamp Act and the provisions of this part;

(v) Evidence of prior fraudulent behavior of officers, managers of employees of the applicant firm; and

(vi) Any other evidence reflecting on the business integrity and reputation of the applicant.

(4) *Other factors.* Any other factors which FNS considers pertinent to the application under consideration.

(c) *Wholesalers.* A wholesale food concern may be authorized if it meets the requirements of paragraphs (a) and (b) of this section. In addition, a wholesale food concern may be authorized only if an authorized retail food store depends on that concern as a coupon redemption outlet. In addition, no firm may be authorized to accept and redeem coupons both as a retail food store and a wholesale food concern at the same time, nor may a firm be authorized as a wholesale food concern if its owner or owners also own a firm which is authorized as a retail food store.

(d) *Meal Services.* A meal delivery service or communal dining facility desiring to prepare and serve meals to households eligible under § 271.3(a) (2) and (3), in addition to meeting the requirements of paragraphs (a) and (b) of this section, must establish that:

(1) It is recognized as a tax exempt organization by the Internal Revenue Service; or

(2) It is a private establishment operating under a contract with a State or local agency to prepare and serve (or deliver) meals to elderly persons (and, in the case of meal delivery services, to elderly persons, or handicapped persons, or both) and their spouses, at concessional prices.

(e) *Treatment programs.* Drug addict or alcoholic treatment and rehabilitation programs wishing to prepare and serve meals to households eligible under § 271.3(a) (2) must, in addition to meeting requirements of paragraphs (a), (b), and (d)(1) of this section, be certified by the State agency or agencies designated by the Governor as responsible for the State's programs for alcoholics and drug addicts under Public Law 91-616, "Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970" And Public Law 92-555, "Drug Abuse Office and Treatment Act of 1972," as providing treatment that can lead to the rehabilitation of drug addicts or alcoholics. In addition, the certification must show that the treatment program meets the standards required of treatment programs under the supervision of the State agency or agencies designated by the Governor as responsible for the State's programs for alcoholics and drug addicts. Approval to participate is automatically canceled at any time that a program loses its certification from the State agency or agencies.

(f) *Authorization card.* Upon approval, FNS shall issue a nontransferable authorization card to the firm. The authorization card shall be retained by the firm until superseded, surrendered, or revoked as provided in this part.

(g) *Denying authorization.* FNS shall deny the application of any firm if it determines that:

(1) The firm does not qualify for participation in the program as speci-

fied in paragraphs (b), (c), (d), and (e) of this section; or

(2) The firm has failed to pay in full any civil money penalty under § 278.6 or any fiscal claim assessed against the firm under § 278.7 FNS shall issue a notice to the firm by certified mail or personal service of any authorization denial and shall advise the firm that it may request review of that determination.

(h) *Withdrawing authorization.* FNS shall withdraw the authorization of any firm authorized to participate in the Program if it determines that the firm's continued participation will not further the purposes of the Program. FNS shall issue a notice to the firm by certified mail or personal service to inform the firm of the determination and of the review procedure. FNS shall remove the firm from the Program if the firm does not request review within the period specified in § 279.5.

(i) *Updating information.* FNS may require, from time to time, but not more than once each Federal fiscal year, a firm to update any or all of the information on the original application form. Failure to provide this information may result in the withdrawal of the firm's approval to participate in the Program.

(j) *Applications containing false information.* The filing of any application containing false or misleading information may result in the denial or withdrawal of approval to participate in the Program and may subject the firm and persons responsible to civil or criminal action.

(k) *Administrative review.* Any withdrawal or denial of authorization to participate in the program shall be subject to administrative review under § 278.8.

(l) *Safeguarding privacy.* The contents of applications or other information furnished by firms, including information on their gross sales and food sales volumes and their redemptions of coupons, may not be used or disclosed to anyone except for purposes directly connected with the administration and enforcement of the Food Stamp Act and these regulations.

§ 278.2 Participation of retail food stores.

(a) *Official Food List.* Authorized retail food stores shall post in the store the "Official Food List" issued by FNS.

(b) *Use of coupons.* Coupons shall be accepted by an authorized retail food store only in exchange for eligible food. Coupons may not be accepted in exchange for cash, except when cash is returned as change in a transaction in which coupons were accepted in payment for eligible food, under paragraph (e) of this section. Coupons may not be accepted in payment of interest on loans, or for any other nonfood use.

(c) *Equal treatment for coupon customers.* Coupons shall be accepted for eligible foods at the same prices and on the same terms and conditions applicable to cash purchases of the same foods at the same store. However, nothing in this part may be construed as authorizing FNS to specify the prices at which retail food stores may sell food. No retail food store may single out coupon users for special treatment in any way.

(d) *Accepting coupons.* No authorized retail food store may accept coupons marked "paid," "canceled," or "specimen," coupons bearing the name of any bank, or coupons of other than the 1-dollar denomination which have been detached from the coupon books prior to the time of purchase or delivery of eligible food unless the detached coupons are accompanied by the coupon books which bear the same serial numbers that appear on the detached coupons. It is the right of the household member or the authorized representative to detach the coupons from the book.

(e) *Making change.* An authorized retail food store shall use, for the purpose of making change, uncanceled and unmarked 1-dollar coupons which were previously accepted for eligible foods. If change in an amount of less than 1 dollar is required, the eligible household shall receive the change in cash. At no time may cash change in excess of 99 cents be returned in a coupon transaction. An authorized retailed may not engage in a series of coupon transactions of less than $1 the purpose of which is to provide the same food stamp customer an amount of cash change greater than the maximum 99 cents cash change allowed in one transaction.

(f) *Accepting coupons before delivery.* Food retailers may not accept coupons before delivering the food, retain custody of any unspent coupons, or in any way prevent an eligible household from using coupons in making purchases from other authorized firms. However, a nonprofit cooperative food purchasing venture may accept coupons from a member of the cooperative at the time the member places a food order. The food ordered must be made available to the member within 10 days from the day the cooperative receives the member's coupons.

(g) *Paying credit accounts.* Coupons may not be accepted by an authorized retail food store in payment for any eligible food sold to a household on credit.

(h) *Redeeming coupons.* Authorized retail food stores may exchange coupons in accordance with this part for face value, upon presentation through the banking system or through a wholesale food concern authorized to accept coupons from that retailer. Authorized drug addict and alcoholic treatment and rehabilitation programs may present coupons for redemption only through authorized retail stores or wholesale food concerns. Authorized drug addict and alcoholic treatment and rehabilitation programs may not present coupons directly to a bank for redemption.

(i) *Identifying coupon users.* Coupons may not knowingly be accepted from persons who have no right to possession of coupons for use as prescribed in this part. If a food retailer has any cause to believe that a person presenting coupons has no right to use the coupons, the food retailer should request the person to show the ID card of the household to establish the right of that person to use the coupons.

(j) *Checking meal delivery service recipients.* A nonprofit meal delivery service shall require the recipient of a delivered meal to show the marked ID card establishing the recipient's right to use coupons for that service the first time that the recipient offers coupons in payment for the service, and shall request the marked ID card at any time the nonprofit meal delivery service has cause to question the continued eligibility of the recipient to use coupons for delivered meals.

(k) *Checking hunting and fishing equipment users.* Authorized Alaskan retailers shall require coupon customers wanting to purchase hunting and fishing equipment with coupons to show their ID cards to determine that they live in an area designated by FNS as one in which persons are dependent upon hunting and fishing for subsistence.

§ 278.3 Participation of wholesale food concerns.

(a) *Accepting coupons.* A wholesale food concern may redeem endorsed coupons from an authorized retail food store or authorized drug addict or alcoholic treatment program, if the coupons are accompanied by a properly filled-out signed redemption certificate, and are not marked "paid," "canceled," or "specimen."

(b) *Accepting legally obtained coupons.* No authorized wholesale food concern may accept coupons if the wholesaler knows or has reasonable cause to believe that the coupons were not legally obtained for eligible food.

(c) *Redeeming coupons.* An authorized wholesale food concern may redeem coupons, properly accepted from retailers, through the banking system, upon presentatioin of the coupons with:

(1) The authorized retail food store's properly filled-out and signed redemption certificate for the coupons; and

(2) The authorized wholesale food concern's properly filled-out and signed redemption certificate.

(d) *Handling retailer redemption certificates.* No authorized wholesale

food concern may alter, prepare, or complete an authorized retail food store's redemption certificate.

§ 278.4 Procedure for redeeming coupons.

(a) *Coupons accepted without authorization.* Coupons accepted by a retail food store or a wholesale food concern before the receipt by the firm of an authorization card from FNS may not be presented for redemption unless the FNS Officer In Charge has approved the redemption under § 278.7(b). Burned or mutilated coupons shall be presented for redemption to the FNS Officer In Charge as provided in § 278.7(c).

(b) *Endorsing coupons.* Each authorized retail food store or authorized wholesale food concern shall mark its authorization number or name on each coupon before it presents the coupons for redemption.

(c) *Using redemption certificates.* Authorized firms will be provided by FNS with redemption certificates which the firms, except for drug addict and alcholic treatment and rehabilitation programs, shall use in presenting coupons to commercial banks for credit or for cash. Authorized retail food stores, including meal services, may also use the certificates in presenting coupons to authorized wholesale food concerns for redemption.

§ 278.5 Participation of banks.

(a) *Accepting coupons.* Banks may redeem coupons only from authorized retail food stores, meal services, and wholesale food concerns in accordance with this part and the instructions of the Federal Reserve Banks. Coupons submitted to banks for credit or for cash must be properly endorsed in accordance with § 278.4 and shall be accompanied by a properly filled-out and signed redemption certificate. Banks may require persons presenting coupons for redemption to show their authorization cards. Redemption certificates accepted by receiving banks shall be forwarded at least once a week to:

Minneapolis ADP Field Center, Food and Nutrition Service, USDA, 3930 West 65th Street, Minneapolis, Minn. 55435.

Coupons redeemed must be canceled by or for the first bank receiving the coupons by indelibly marking "paid" or "canceled" together with the name of the bank, or its routing symbol transit number, on each coupon. A portion of a coupon consisting of less than three-fifths of a whole coupon may not be redeemed by banks. Banks which are members of the Federal Reserve System, nonmember clearing banks, and nonmember banks which have arranged with a Federal Reserve Bank to deposit coupons for credit to the account of a member bank on the books of the Federal Reserve Bank may forward canceled coupons directly to the Federal Reserve Banks. Other banks may forward canceled coupons through ordinary collection channels.

(b) *Role of Federal Reserve Banks.* Federal Reserve Banks, acting as fiscal agents of the United States, will receive canceled coupons for collection as cash items from armed forces installations, member banks of the Federal Reserve System, nonmember clearing banks, and nonmember banks which have arranged with a Federal Reserve Bank to deposit coupons for credit to the account of a member bank on the books of the Federal Reserve Bank, and will charge those items to the general account of the Treasurer of the United States.

(c) *FNS liability for loss in transit.* (1) FNS shall be liable for losses of shipments of canceled coupons while the transit to Federal Reserve or correspondent banks, except that:

(i) Coupons are not in transit while in the custody of the transmitting bank, the Federal Reserve, the correspondent bank, or their employees.

(ii) The bank must be unable to recover the loss from the carrier, and when there is a partial loss, there must be evidence that the package was tampered with or damaged in transit. The Federal Reserve and correspondent bank shall record the condition of packages which on receipt appear to have been tampered with or damaged in transit.

(iii) The Federal Reserve or correspondent bank must provide a statement that the shipment or part of the shipment was not received. In the event of a partial loss, this statement shall specify the condition of the package upon receipt and state whether it appeared to have been tampered with or damaged in transit.

(2) The commercial bank shall give a prompt written report of loss or damage to the post office, or other carrier.

(3) Commercial banks shall submit the following documents to FNS in support of any claim for payment for coupons lost in transit:

(i) A copy of the notification of loss to the post office or other carrier;

(ii) An affidavit detailing the facts and the bank's procedures for making the shipment, the expected recovery from the carrier, and for partial losses, the condition of the package upon receipt and the basis for asserting whether it appeared to have been tampered with or damaged in transit;

(iii) A statement from the Federal Reserve or correspondent bank that the shipment or part of the shipment was not received. In the event of a partial loss, this statement shall state the basis for asserting whether the loss resulted from the package being tampered with or damaged in transit;

(iv) A copy of the cash letter which transmitted the shipment.

(4) FNS will obtain copies of the redemption certificates corresponding to claims.

(d) *FNS use of coupons to detect violations.* Regardless of any other provision in these regulations, coupons may be issued to, purchased by, or redeemed by persons authorized by FNS to use those coupons in examining and inspecting program operations, and for other purposes determined by FNS to be required for proper administration of the Program. Coupons which have been so issued and used, as well as any coupons which have been issued under paragraph (f) of this section, or which FNS believes may have been issued, transferred, negotiated, used, or received in violation of this subchapter or of any applicable statute, shall at the request of FNS and on issuance of a receipt for them by that person, be turned over to FNS by the bank receiving the coupons, or by any other person to whom the request is addressed, together with any certificate(s) of redemption accompanying the coupons. Any coupons so requested shall not after the request be eligible for redemption through Federal Reserve Banks or other collection channels.

However, FNS may redeem the coupons from any bank or person by payment of the face amount of the coupons upon determination by FNS that this direct redemption of coupons is warranted. FNS shall determine the proper disposition of any coupons held by FNS on completion of the examination or inspection in which the coupons were used. Claims or demands for unredeemed coupons surrended to FNS may be mailed to the local FNS Field Office for the project area involved.

(e) *Selling coupons to stores for internal checks.* FNS may sell coupons at face value to any authorized retail food store which wishes to use coupons to conduct internal checks of coupon transactions. The retail food store must submit a written request to FNS which shall include a certification that the store recognizes that its use of coupons will not affect FNS action to enforce program regulations and that the requested coupons will be used only for internal checks of the store's employees and only to uncover sales of items other than eligible foods. The request shall also include the name of the city or county in which the stores to be checked through the use of the requested coupons are located and the name and address of any outside agency with which the retail food store has or will have a contract to conduct checks of the store's employees using coupons. The request shall be directed to the Federal Operations Division, FNS, U.S. Department of Agriculture, Washington, D.C. 20250, and shall be

accompanied by a check or money order made payable to the Food and Nutrition Service to cover the face value cost of the coupons requested. Coupons bought by retail food stores for use in internal checks may be later redeemed for full value in accordance with § 278.4, and in redeeming those coupons, retail food stores are authorized to make the certification required for redemption.

(f) *Continued participation of households under investigation.* Upon the written request of Federal, State, or local government agencies which have authority to investigate, and are investigating, suspected violations of Federal or State statutes concerning the enforcement of the Food Stamp Act or the regulations, the State agency may allow ineligible households to continue program participation. The State agency may allow the households to continue participation in the program until the earlier of (1) expiration of the period of 90 days after the request is received or any longer period which FNS, upon request of the State agency, may approve in a particular case, or (2) receipt of notification from the investigative agency that participation may be terminated or that the investigation has been completed. Regardless of any other provision of these regulations, FNS may not hold the State agency liable for the value of any coupons issued to households under this paragraph.

§ 278.6 Disqualification of retail food stores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications.

(a) *Authority to disqualify or subject to a civil money penalty.* FNS may disqualify any authorized retail food store or authorized wholesale food concern from further participation in the program for a reasonable period of time, not to exceed 3 years, as FNS may determine, if the firm fails to comply with the Food Stamp Act or this part. Any firm which has been disqualified and which wishes to be reinstated at the end of the period of disqualification or at any later time shall file a new application so that FNS may determine whether reinstatement is appropriate. The application may be filed starting 10 days before the end of the period of disqualification. FNS may, in lieu of a disqualification, subject the firm to a civil money penalty of up to $5,000 for each violation if FNS determines that a disqualification would cause hardship to participating households.

(b) *Charge letter.* Any firm considered for disqualification or imposition of a civil money penalty under paragraph (a) of this section shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final adminitrative determination. The FNS Regional Office shall send the firm a letter of charges before the determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification or imposition of a civil money penalty. The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter. The firm's response shall set forth a statement of evidence, information, or explanation concerning the specified violations or acts. The firm shall make its response, if any, to the Officer In Charge of the FNS Field Office which has responsibility for the project area in which the firm is located.

(c) *Review of evidence.* The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS Regional Office, which shall then issue the determination.

(d) *Basis for determination.* The FNS Regional Office making a disqualification or penalty determination shall consider: (1) the nature and scope of the violations committed by personnel of the firm, (2) any prior action taken by FNS to warn the firm about the possibility that violations are occurring, and (3) any other evidence that shows the firm's intent to violate the regualtions.

(e) *Penalties.* FNS shall take action as follows against any firm determined to have violated the Act or regulations. The FNS Regional Office shall:

(1) Disqualify the firm for 3 years if:

(i) The firm has engaged in fraudulent schemes to illegally acquire or redeem large amounts of coupons; or

(ii) Personnel of the firm have committed flagrant violations of this part, such as buying large amounts of coupons or trafficking in ATP cards, which have resulted in major diversions of food stamp funds from their intended purpose.

(2) Disqualify the firm for 1 year if:

(i) Personnel of the firm have bought coupons at a discount,

(ii) Personnel of the firm have sold expensive or conspicuous nonfood items, cartons of cigarettes, or alcoholic beverages in exchange for coupons, or

(iii) The firm's redemptions for a specified period of time have exceeded its food sales for the same period of time.

(3) Disqualify the firm for 6 months if: (i) Personnel of the firm have committed violations such as the sale of common nonfood items in the amounts which are normally found in a shopping basket, and

(ii) The evidence shows that the violations are encouraged by the firm.

(4) Disqualify the firm for 90 days if management personnel of the firm have committed violations such as described in paragraph (3)(i) of this subsection, and there is no indication that FNS has specifically warned the firm about the possibility that violations are occurring and of the possible consequences of violating the regulations.

(5) Disqualify the firm for 60 days if the evidence shows that violations such as those described in paragraph (e)(3) (i) of this section occurred, but that the violations resulted from carelessness or poor supervision by the firm's management.

(6) Disqualify the firm for 30 days if the evidence shows that: (i) Violations such as those described in paragraph (e)(3) (i) of this section occurred as a result of carelessness or poor supervision by the firm's management, but FNS has not specifically warned the firm about the possibility that violations are occurring and of the possible consequences of violating the regulations, or

(ii) The violations are limited in nature and scope, and FNS has made a specific attempt to warn the firm that violations may be occurring and of the possible consequences of violating the regulations.

(7) Send the firm a warning letter if violations occurred, but the evidence of violations is too limited to warrant a disqualification.

(f) *Previous penalties.* The FNS Regional Office may assign a penalty that is more severe than the penalty normally warranted by the evidence of violations if the firm has been previously disqualified or has been previously assigned a civil money penalty.

(g) *Criteria for civil money penalty.* FNS may impose a civil money penalty only when the firm subject to a disqualification is selling a substantial variety of staple food items, and there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices.

(h) *Amount of civil money penalty.* FNS shall determine the amount of the civil money penalty as follows:

(1) Determine the firm's average monthly redemptions of coupons for the most recent 12-month period;

(2) Multiply the average monthly redemption figure by 5 percent to represent the loss of profits that would result from the loss of coupon business and related cash business;

(3) Multiply the product arrived at in subparagraph (2) by the number of months for which the firm would have been disqualified under paragraph (e) of this section. The civil money penalty may not exceed $5,000 times the number of violations.

(i) *Notifying the firm of civil money penalty.* FNS shall inform the firm in writing that it has 15 days in which to pay the fine or notify tne Regional

Office in writing of its intent to pay in installments specified by the FNS Regional Office. In any event, the fine must by paid in full by the end of the period for which the firm would have been disqualified. FNS shall disqualify the firm for:

(1) The period determined to be appropriate under paragraph (e) of this section if the firm refuses to pay the fine; or

(2) A period corresponding to the unpaid part of the fine, if the firm does not pay the fine in full by the end of the period determined.

(j) *Review of determination.* The determination of the FNS Regional Office shall be final and not subject to further administrative or judicial review unless a written request for review is filed within the period stated in § 279.5.

(k) *Delivery of notice.* The delivery by certified mail or personal service of any notice required of FNS by this part will constitute notice to the addressee of its contents.

§ 278.7 Determination and disposition of claims—retail food stores and wholesale food concerns.

(a) *Claims against violators.* FNS may establish a claim against an authorized firm which has accepted coupons in violation of the Food Stamp Act or of this part. If a firm fails to pay the claim, FNS may collect the claim by offset against the amounts due the firm on redemption of other coupons, or deny an application for reauthorization by a firm which has been disqualified and has failed to pay a claim.

(b) *Coupons accepted without authorization.* (1) The FNS Officer In Charge may approve the redemption under § 278.4 of coupons accepted by firms before the receipt of an authorization card from FNS if the following conditions exist:

(i) The coupons were received in accordance with the requirements of this part governing acceptance of coupons except the requirement that the firm be authorized before acceptance;

(ii) The coupons were accepted by the firm in good faith, and without intent to circumvent this part; and

(iii) The firm receives authorization to participate in the program.

(2) Firms seeking approval to redeem coupons accepted without authorization shall present a written application for approval to the local FNS Field Office. This application shall be accompanied by a written statement signed by the firm of all the facts about the acceptance of the coupons. The statement shall also include a certification that the coupons were accepted in good faith, and without any intent to circumvent this part.

(c) *Burned or mutilated coupons.* FNS may redeem burned or mutilated coupons only to the extent that the Bureau of Engraving and Printing of the United States Treasury Department can determine the value of the coupons. The firm presenting burned or mutilated coupons for redemption shall submit the coupons to the local FNS Field Office with a properly filled-out redemption certificate. In the section of the redemption certificate for entering the amount of coupons to be redeemed, an estimate of the value of the burned or mutilated coupons submitted for redemption shall be entered if the exact value of the coupons is unknown. The phrase "Deputy Administrator for Fiscal Management, FNS, USDA," should be entered in the section of the redemption certificate for entering the name and address of the bank or wholesaler.

(d) *Old series coupons.* FNS shall redeem the old series food coupons issued in 50-cents, 2-dollar, and 5-dollar denominations when they are presented for redemption. Firms presenting the coupons for redemption shall submit the coupons to the local FNS Field Office with a properly completed redemption certificate and a written statement, signed by a representative of the firm, detailing the circumstances of the acceptance of the coupons.

(e) *Denials of claims.* If a claim under the provisions of this section is denied in whole or in part, notification of this action shall be sent to the firm by certified mail or personal service. If the firm is aggrieved by this action, it may seek administrative review as provided in § 278.8.

(f) *Lost or stolen coupons.* FNS may not be held liable for claims from retail food stores, meal services, or wholesale food concerns for lost or stolen coupons.

§ 278.8 Administrative review—retail food stores and wholesale food concerns.

(a) *Requesting review.* A food retailer or food wholesaler aggrieved by administrative action under §§ 278.1, 278.6, or 278.7 may, within the period stated in § 279.5, file a written request for review of the administrative action with the Food Stamp Review Officer. On receipt of the request for review, the questioned administrative action shall be stayed pending disposition of the request for review by the Food Stamp Review Officer.

(b) *Addressing the request.* The request for review shall be filed with the Director, Administrative Review Staff, FNS, U.S. Department of Agriculture, Washington, D.C. 20250.

(c) *Review procedure.* The procedure for food stamp reviews is published in Part 279 and is available upon request from the Director, Administrative Review Staff.

7. A new Part 279 contains the redesignated Part 273, and is revised to read as follows:

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

Subpart A—Administrative Review—General

Sec.
279.1 Scope and purpose.
279.2 Food stamp review officer.
279.3 Authority and jurisdiction.
279.4 Rules of procedure.

Subpart B—Rules of Procedure

279.5 Manner of filing requests for review.
279.6 Contents of requests for review.
297.7 Action upon receipt of a request for review.
279.8 Determination of the food stamp review officer.
279.9 Legal advice and extensions of time.

Subpart C—Judicial Review

279.10 Judicial review.

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2001-2027).

Subpart A—Administrative Review—General

§ 279.1 Scope and purpose.

Subpart A sets forth the procedure for the designation of the Food Stamp Review Officers and the authority and jurisdiction of those officers. Subpart B states the rules of procedure to be followed in the filing and disposition of the requests for review provided for in § 278.8. Subpart C concerns the rights of food retailers and food wholesalers to judicial review of the final determinations of the Food Stamp Review Officer.

§ 279.2 Food stamp review officer.

(a) *Designation of Review Officers.* The Administrator, FNS, shall designate one or more person to act as Food Stamp Review Officers.

(b) *Assigning cases to Review Officers.* The officers shall serve for periods which the Administrator, FNS, shall determine. Changes in designations and additional designations may be made from time to time at the discretion of the Administrator, FNS. When more than one Food Stamp Review Officer has been designated, requests for review will be assigned for handling to individual Food Stamp Review Officers by a person designated by the Administrator, FNS. The names of the Food Stamp Review Officers shall be on file in the Office of the Administrator, FNS.

§ 279.3 Authority and jurisdiction.

(a) *Jurisdiction.* A Food Stamp Review Officer shall act for the Department on requests for review filed by firms aggrieved by any of the following actions:

(1) Denial of an application to participate in the program under § 278.1

(2) Disqualification from participation in the program or imposition of a civil money penalty under § 278.6; or

(3) Denial of all or any part of any claim under § 278.7.

(b) *Authority.* The determination of the Food Stamp Review Officer shall be the final administrative determination of the Department, subject, however, to judicial review under section 14 of the Food Stamp Act and Subpart C of this part.

§ 279.4 Rules of procedures.

Rules of procedures for the orderly filing and disposition of requests for review of firms submitted in accordance with § 279.5 are issued in Subpart B of this part. The Administrator, FNS, may later issue amendments to any rules of procedure which are appropriate.

Subpart B—Rules of Procedure

§ 279.5 Manner of filing requests for review.

(a) *Addressing requests for review.* Requests for review submitted by firms shall be mailed to or filed with "Director, Administrative Review Staff, FNS, U.S. Department of Agriculture, Washington, D.C. 20250."

(b) *Content of requests.* Requests for review shall be in writing and shall state the name and business address of the firm involved, and the name, address and position with the firm of the person who signed the request. The request shall be signed by the owner of the firm, and officer or partner of the firm, or by counsel, and need not be under oath.

(c) *Time limit for requesting review.* A request for review shall be filed with the Director, Administrative Review Staff, within ten days of the date of delivery of the notice of the action for which review is requested. For purposes of determining whether a request was timely:

(1) The filing date shall be the postmark date of the request, or equivalent if the written request is filed by a means other than mail;

(2) In computing the ten day period, the day of delivery of the notice of the action for which review is requested may not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. In that case, the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. As used in this paragraph, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day deignated as a holiday by the President or the Congress of the United States.

§ 279.6 Content of request for review.

(a) *Identifying the request.* Requests for review shall clearly identify the administrative action from which the review is requested. This identification shall include the date of the letter or other written communication notifying the firm of the administrative action, the name and title of the person who signed the letter or other communication, and whether the action under appeal concerns a denial of an application or a withdrawal of authorization to participate, a disqualification from further participation, or a denial of all or any part of a claim.

(b) *Supporting the request.* The request shall include information in support of the request showing the grounds on which review is being sought, or shall state that supporting information will be filed in writing at a later date. In the latter case the Food Stamp Review Officer shall notify the firm of the date by which the information must be filed. The firm requesting review may ask for an opportunity to appear before the Food Stamp Review Officer in person. However, any information submitted in person shall, if directed by the Food Stamp Review Officer, be put in writing by the firm and filed with the Food Stamp Review Officer within a period which the Review Officer shall specify.

§ 279.7 Action upon receipt of a request for review.

(a) *Holding action.* Upon receipt of a request for review of a disqualification action or of a withdrawal of authorization to participate, the Food Stamp Review Officer shall notify the appropriate FNS Regional Office, in writing, of the action under review and shall direct that the administrative action shall be held in abeyance until the Food Stamp Review Officer has made a determination. Upon receipt of a request for review of a denial of application to participate in the program, or of a denial of a claim, the Food Stamp Review Officer shall notify the appropriate FNS Regional Office, in writing, of the action under review and shall direct that the firm shall not be approved for participation or paid any part of the disputed claim until the Food Stamp Review Officer has made a determination. In any case, notice to the appropriate FNS Regional Office shall be accompanied by a copy of the request filed by the firm.

(b) *Filing supporting information.* If the request filed by the firm includes a request for an opportunity to file written information in support of its position at a later date, the Food Stamp Review Officer shall promptly notify the firm of the date by which the information shall be filed. If the firm fails to file any information in support of its position by the designated date, the information submitted with the original request shall be considered to be the only information submitted by the firm. In that case, if no information in support of the firm's position was submitted with the original request, the action of the appropriate FNS Regional Office shall be final.

(c) *Failure to meet with Review Officer.* If the firm filing the request for review asks to appear before the Food Stamp Review Officer in person, the Review Officer shall promptly notify the firm of the date, time and place set for the appearance. If the firm fails to appear before the Food Stamp Review Officer as specified, any written information timely submitted in accordance with this section shall be considered to be the only information submitted by the firm.

(d) *Basis for Regional Office determination.* The Food Stamp Review Officer shall require the appropriate FNS Regional Office to promptly submit, in writing, all information which was the basis for the administrative action for which the review has been requested.

§ 279.8 Determination of the food stamp review officer.

(a) *Basis for Review Officer determination.* The Food Stamp Review Officer shall make a determination based upon:

(1) the information submitted by the FNS Regional Office;

(2) Information submitted by the firm in support of its position; and

(3) Any additional information, in writing, obtained by the Review Officer from any other person having relevant information.

(b) *Review of denial of application or withdrawal of approval.* In the case of a request for review of a denial of an application or withdrawal of approval to participate in the program, the determination of the Food Stamp Review Officer shall sustain the action under review or shall direct that the firm be approved for participation.

(c) *Review of disqualification or civil money penalty.* In the case of a request for review of action disqualifying a firm from participation in the program or assessing a civil money penalty against the firm, the determination of the Food Stamp Review Officer shall sustain the action under review or specify a shorter period of disqualification or a reduced civil money penalty, direct that an official warning letter be issued to the firm in lieu of any period of disqualification, or direct that no administrative action be taken. The Food Stamp Review Officer may change a disqualification of a firm selling a substantial variety of staple foods to a civil money penalty if the Review Officer receives information that the disqualification would cause a hardship to participating households because there are no other firms in the area selling as large a va-

riety of staple food items at comparable prices, and this information was not available to the Regional Office when the Region Office made its determination to disqualify the firm. In such a case, the Food Stamp Review Officer shall provide the information to the Regional Office, which shall report to the Food Stamp Review Officer whether the new information warrants a civil money penalty in lieu of disqualification. If the Food Stamp Review Officer determines that a civil money penalty in lieu of a disqualification is warranted, the Review Officer shall determine the amount of the penalty in accordance with § 278.6.

(d) *Review of denial of claim.* In the case of a request for review of a denial of all or part of a claim of a firm, the determination of the Food Stamp Review Officer shall sustain the action under review or shall specify the amount of the claim to be paid by FNS.

(e) *Notice of Review Officer determination.* The Food Stamp Review Officer shall notify the firm of the determination by certified mail. The notification shall be sent to the representative of the firm who filed the request for review.

(f) *Notifying the Regional Office.* The Food Stamp Review Officer shall send a copy of the notification to the firm to the appropriate FNS Regional Office, which shall take any action which may be necessary to comply with the determination of the Review Officer.

(g) *Effective date.* The determination of the Food Stamp Review Officer shall take effect 15 days after the date of delivery of the determination to the firm.

§ 279.9 Legal advice and extensions of time.

(a) *Advice from Office of the General Counsel.* If any request for review involves any doubtful questions of law, the Food Stamp Review Officer shall obtain the advice of the Department's Office of the General Counsel.

(b) *Extensions of time.* Upon timely written request to the Food Stamp Review Officer by the firm requesting the review, the Food Stamp Review Officer may grant extensions of time if, in the Review Officer's discretion, additional time is required for the firm to fully present information in support of its positions. However, no extensions may be made in the time allowed for the filing of a request for review.

Subpart C—Judicial Review

§ 279.10 Judicial review.

(a) *Filing for judicial review.* A firm aggrieved by the determination of the Food Stamp Review Officer may obtain judicial review of the determination by filing a complaint against the United States in the U.S. District Court for the district in which the owner resides or its engaged in business, or in any court of record of the State having competent jurisdiction. The complaint must be filed within 30 days after the date of delivery or service upon the firm of the notice of determination of the Food Stamp Review Officer in accordance with § 279.8(e); otherwise the determination shall be final.

(b) *Summons and complaints.* Service of the summons and complaint in any such action shall be made in accordance with the Rules of Civil Procedure for the U.S. District Courts. The copy of the summons and complaint required by the Rules to be served on the officer or agency whose order is being attacked shall be sent by registered or certificated mail to the person in charge of the applicant Regional Office of FNS listed in § 271.6.

(c) *Trial de novo.* The suit in the U.S. District Court or in the State court, as the case may be, shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action. If the court determines that the administrative action is invalid, it shall enter a judgment or order which it determines is in accordance with the law and the evidence.

(d) *Stay of action.* Pending the judicial review, or any appeal from the judicial review, the administrative action under review shall remain in force, unless the firm makes application to the court and, after a hearing on the action showing irreparable injury, the court temporarily stays the administrative action under review pending disposition of the de novo trial or an appeal from the trial.

8. A new Part 280 is added, redesignated from Part 274, and reserved. Former Part 274 remains in force and effect. The title of the new Part 280 reads as follows:

PART 280—EMERGENCY FOOD ASSISTANCE FOR VICTIMS OF DISASTERS

(Reserved. Part 274 of the current regulations remains in force and effect.)

9. A new Part 281 is added and reserved. The title of the new Part 281 reads as follows:

PART 281—DESIGNATION OF INDIAN TRIBES AS STATE AGENCIES

(Reserved)

10. A new Part 282 is added and reads as follows:

PART 282—DEMONSTRATION, RESEARCH, AND EVALUATION PROJECTS

Sec.
282.1 Legislative authority.
282.2 Project initiation.
282.3 Eligibility.
282.4 Approval of proposals.
282.5 Pre-operational rulemaking procedures for demonstration projects.
282.6 Federal financial participation.

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027).

§ 282.1 Legislative authority.

(a) *Demonstration projects.* Demonstration projects are those authorized by section 17(b)(1) of the Act which states in part:

> The Secretary is authorized to conduct on a trial basis, in one or more areas of the United States, pilot or experimental projects [hereafter called demonstration projects] designed to test program changes that might increase the efficiency of the Food Stamp Program and improve the delivery of food stamp benefits to eligible households.

The Secretary is further authorized to waive all or part of the requirements of the Act and implementing regulations to the degree necessary to conduct such projects, except that no project may be undertaken which would lower or further restrict the established income and resource standards or benefit levels.

(b) *Research projects.* Research projects are those authorized by section 17(a) of the Act which states:

> The Secretary may, by way of making contracts with or grants to public or private organizations or agencies, undertake research that will help improve the administration and effectiveness of the Food Stamp Program in delivering nutrition related benefits.

(c) *Evaluation projects.* Evaluation projects are those authorized by section 17(c) of the Act which states in part:

> The Secretary shall develop and implement measures for evaluating, on an annual or more frequent basis, the effectiveness of the Food Stamp Program in achieving its stated objectives.

§ 282.2 Project initiation.

The Secretary shall determine those areas of program operations which require demonstration, research or evaluation efforts. The Secretary shall, as appropriate, seek proposals for specific types of demonstration, research, and evaluation projects through either publication of a Notice of Intent in the FEDERAL REGISTER or in accordance with procedures prescribed in the Federal Procurement Regulations (41 CFR, Ch. 1).

§ 282.3 Eligibility.

States or public or other nonprofit agencies or organizations or individuals are eligible for grants. States or public or private agencies or organizations or individuals are eligible for contracts.

§ 282.4 Approval of proposals.

(a) *Federal procedures.* (1) Proposals for demonstration, research or evaluation projects shall be reviewed by a panel consisting of appropriate FNS and Departmental representatives.

(2) Representatives from other Departments and agencies may be invited to participate in proposal review where proposed projects could affect their programs.

(3) Proposals shall be ranked based on the criteria established in paragraph (b) of this section.

(b) *Approval criteria.* (1) Proposals shall be reviewed for responsiveness to the specific requirements contained in the Notice of Intent or Request for Proposal.

(2) In addition, proposals will be evaluated according to the following general criteria:

(i) The conceptual development and clarity of measurable objectives.

(ii) Probable effectiveness of the proposal to achieve the project objectives based on:

(A) A complete description of the purpose; hypotheses; demonstration, research or evaluation design; and plans for implementation;

(B) The adequacy of the work plan, indicating tasks, scheduling and methodology; and

(C) A technical evaluation plan consistent with the objectives stated.

(iii) The capability of the applicant to conduct the project based on:

(A) A description of the qualifications of staff;

(B) Availability of necessary facilities, staff, and other resources;

(C) Administrative and supervisory capacity; and

(D) Knowledge of or previous experience in conducting demonstration, research or evaluation projects.

(iv) The projected cost of the project.

(v) For demonstration projects, potential benefits in relation to projected costs and potential nationwide application.

(vi) The relationship of the proposal to other similar demonstration, research or evaluation efforts.

§ 282.5 Pre-operational rulemaking procedures for demonstration projects.

Prior to the initiation of a demonstration project FNS shall publish proposed regulations in the FEDERAL REGISTER, if the project will likely have significant impact on the public. The regulations shall set forth the specific operational procedures for the demonstration project and the provisions of the Act and regulations which shall be waived. All public comments shall be considered and final regulations published prior to actual project operation.

§ 282.6 Federal financial participation.

(a) *Level of funding.* (1) *Grant awards.* FNS shall pay all costs up to the level established in the grant award. When a demonstration project involves an area of on-going State agency administrative responsibility, as established in § 271.4(a), FNS may pay up to 100 percent only of those administrative costs which exceed those usual and customary to program operations.

(2) *Contracts.* FNS shall pay all costs as established in the terms and conditions of the contract.

(b) *Limitations.* Federal financial participation shall be available to demonstration, research and evaluation projects only for:

(1) Those activities and projects awarded by FNS. Funds shall not be transferred from one project to another;

(2) Those costs specified in the grant or contract up to the amount approved in the grant or contract; and

(3) Costs incurred during the project, as established in the grant or contract. Time extensions of the project may be granted where sufficient justification has been submitted to and approved by FNS.

NOTE.—The Food and Nutrition Service has determined that this document contains a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107 and certifies that an Economic Impact Statement has been prepared.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps.)

Dated: April 27, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 78-11810 Filed 5-1-78; 8:45 am]

Federal Register

TUESDAY, MAY 2, 1978
PART III



DEPARTMENT OF THE TREASURY

Fiscal Service

■

TREASURY TAX AND LOAN ACCOUNTS

[4810-40]

Title 31—Money and Finance: Treasury

CHAPTER II—FISCAL SERVICE; DEPARTMENT OF TREASURY

TREASURY TAX AND LOAN ACCOUNTS

Final Rule and Interim Rule

AGENCY: Fiscal Service, Department of the Treasury.

ACTION: Final rule and interim rule.

SUMMARY: The Treasury Department is amending its regulations to implement the investment provisions of Pub. L. 95-147 of October 28, 1977. The intent of that law is to permit the Treasury to earn interest by the investment of its operating cash balances and, at the same time, pay fees for certain services which have not heretofore been compensable. The law and these regulations also make certain savings and loan associations and credit unions eligible to participate in the Treasury tax and loan account system. Previously, only incorporated banks and trust companies were eligible. The interim regulations contain the standards for review of State-sponsored insurance arrangements. Such review will be made in order to determine if particular insurance arrangements are adequate to justify reduction of the amounts of collateral security required of a depositary to secure the balance in its Treasury tax and loan account.

EFFECTIVE DATES: The provisions of both the final and interim rules are effective July 6, 1978, provided the Congress has appropriated funds to cover the payment of fees for services rendered as provided in these regulations. If the Congress does not appropriate funds for fee payments by June 16, 1978, a notice will be published in the FEDERAL REGISTER postponing the effective date.

FOR FURTHER INFORMATION CONTACT:

Mr. John Kilcoyne, Assistant Fiscal Assistant Secretary (Banking), Office of the Fiscal Assistant Secretary, Department of the Treasury, Washington, D.C. 20220, 202-566-2849. Additionally, financial institutions having questions as to operating procedures may direct such questions to the Federal Reserve Bank or Branch serving the geographical area in which the institution is located.

SUPPLEMENTARY INFORMATION: Notice of proposed rulemaking was published in the FEDERAL REGISTER on December 9, 1977 (42 FR 62308), (a) to revise regulations: 31 CFR part 203, Special Depositaries of Public Money, and 31 CFR part 214, Depositaries for Federal Taxes; and (b) to amend: 31 CFR part 317, Regulations Governing Agencies for Issue of U.S. Savings Bonds of Series E and U.S. Savings Notes, and 31 CFR part 321, Payments by Banks and Other Financial Institutions of U.S. Savings Bonds and U.S. Savings Notes (Freedom Shares).

A public hearing was held on January 12, 1978, during which testimony was given by trade associations representing banks and savings and loan associations and by individual financial institutions. In addition, 106 written responses were received during the comment period which ended on January 19, 1978. The Treasury wishes to express its appreciation to all who provided their views.

Many of the comments received are similar in nature and have been grouped into categories by subject matter. The Department's responses to the substantive public comments received appear below. Numerous minor changes have been made in the regulations some of which are editorial in nature while others are in response to public comment and will not be discussed herein.

COMMENTS RECEIVED AND TREASURY RESPONSES

I. 31 CFR PARTS 203 AND 214

INTEREST RATE

(a) *Rate of interest.* Section 203.14 of the proposed rules stated that the rate of interest to be used in connection with the Note Option and the Remittance Option would be a "* * * weighted average rate of repurchase agreements with a one-day maturity in U.S. Government securities, which are transacted in a national money market by a sample of money center banks and non-bank primary dealers in Government securities."

Many respondents took issue with the proposed rate of interest for a wide variety of reasons. The most significant negative factors cited were: (1) the high degree of instability in the spread between the proposed rate and the Federal funds rate, (2) a general uncertainty about the pattern of fluctuations in the proposed rate over time under all money market conditions, and (3) the general unfamiliarity of the banking and thrift industry with the proposed rate.

Upon reconsideration, the Treasury is of the view that a rate of interest which is equivalent to the Federal funds rate, less a fixed spread of 25 basis points (1/4 of 1 percent), would be a more appropriate rate. A rate of interest based upon this formula satisfies the prerequisites the Treasury had established from its own perspective for an earning rate on its investments in obligations of depositaries while at the same time introducing the elements of stability and relative certainty for depositaries.

Accordingly, the proposed § 203.14, now § 203.13, has been amended.

NOTE.—Several of the sections of the proposed 31 CFR part 203 have been renumbered due to the deletion of the Maximum Balances provisions appearing as proposed § 203.4.

(b) *Use of a retroactive rate.* Several financial institutions recommended that the rate of interest applicable to note balances during a given period of time be based upon a market rate which prevailed during a prior specified period. The intent of such recommendation was that the rate to be applied would be known in advance.

The adoption of this suggestion would sever the relationship for depositaries between the cost of Treasury funds held and the earning value of such funds. At times when money market rates move sharply up or down, while at the same time the amount of note balances moves in the opposite direction, depositaries could sustain substantial losses or gains thereby injecting a highly speculative element which the Treasury and, no doubt, most depositaries could consider to be undesirable. The Treasury is, therefore, retaining the concept under which the rate of interest on the notes is based upon market rates during the same period.

COLLATERAL

Many comments were received on specific, and general, issues involving the pledge of collateral for Treasury tax and loan account balances an for note balances. These comments have been categorized as follows:

(a) *Availability of collateral.* Several respondents, particularly large money center banks, expressed concern about their capacity to pledge collateral in amounts sufficient to cover balances in their note accounts during periods when Treasury operating cash is at peak levels. At this time the Treasury is not able to quantify the scarcity of collateral and is, therefore, developing additional data to determine the extent of the problem. At the same time, the Treasury is considering what action it can take to expand categories of eligible collateral. Treasury considerations involve an analysis of what assets financial institutions hold in significant amounts that would meet the basic requirements Treasury feels good collateral should have. If it is decided eligible collateral should be broadened, an amendment to part 203 will be issued.

(b) *Need for collateral.* Two respondents suggested that the requirements for collateral security be eliminated, and another suggested that collateral

requirements be established at less than 100 percent of a depositary's liability to the Treasury.

Pub. L. 95-147 provides that investments by the Treasury in obligations or depositaries maintaining Treasury tax and loan accounts shall be secured by a pledge of collateral acceptable to the Treasury as security for tax and loan accounts. While the statute allows wide discretion to the Secretary as to the particular type of collateral that may be required, the Department is of the opinion that there is substantial doubt whether, under the present law, the Secretary has the authority to eliminate altogether the requirement that collateral security be pledged. Furthermore, even if there were no such doubt, the Department is of the opinion that a number of other considerations make it unwise to eliminate or reduce the collateral requirements for Treasury tax and loan accounts.

(c) *Conventional mortgages as eligible collateral.* The suggestion was made to include conventional residential mortgages among the categories of collateral eligible to secure tax and loan funds.

The Treasury has carefully considered this suggestion and has concluded that conventional residential mortgages do not, at this time, meet the standards of liquidity that are required of eligible collateral. The secondary market for conventional residential mortgages is not sufficiently developed to provide the degree of liquidity required.

(d) *Custodians of collateral.* Comments were received indicating that § 203.16(c) of the proposed regulations is not clear as to what custodian arrangements will be permitted or that custodian arrangements will be uniform among all the Federal Reserve Districts.

The acceptable type of custodian arrangement involves the designation of a custodian by the Federal Reserve Bank of the District in which the depositary pledging the collateral is located, and the issue by that custodian to the Federal Reserve Bank of a receipt indicating that it holds, subject to the order of the Federal Reserve Bank, collateral pledged by the depositary. Federal Reserve Banks will be expected to exercise judgment in the approval of custodians and in establishing limits on the amounts of collateral a given custodian may hold. Additionally, for those categories of collateral requiring detailed analysis of attached documents or resolution of legal questions, Federal Reserve Banks may require that the pledge of such collateral be made directly with the Federal Reserve Bank. Other than for securities involving these judgments, custodian arrangements will be in effect in all Federal Reserve Districts under similar conditions.

(e) *Federal Home Loan Banks as custodians of collateral.* Representatives of the savings and loan industry suggested that regional Federal Home Loan Banks be permitted to act as custodians of the collateral to be pledged by savings and loan associations.

The Treasury favors such an arrangement, and the Federal Reserve Banks may designate Federal Home Loan Banks as custodians subject to, of course, the development of mutually acceptable custodian arrangements.

(f) *Uniformity among Federal Reserve Banks in accepting eligible collateral.* One financial institution asked if all Federal Reserve Banks will accept any of the classes of collateral that are eligible for pledging.

The ability of Federal Reserve Banks to accept the various classes of eligible collateral may be limited by such considerations as vault capacity. Because of such limitations, the use of third-party custodian receipts may be fostered wherever appropriate. Also, the Treasury will expect Federal Reserve Banks to work with depositaries in their Districts to reduce the pledge of those types of collateral requiring large amounts of vault space and substantial servicing costs when depositaries have adequate eligible collateral in their portfolios of types with lesser space and servicing requirements.

(g) *IRS views concerning interest paid deductions under section 265(2) of the Internal Revenue Code for carrying tax exempt municipals pledged to collateralize borrowed funds (i.e., TT&L Note Balance).* A number of respondents indicated that historically, the Internal Revenue Service has attempted to deny interest-paid deductions under section 265(2) of the Internal Revenue Code whenever there appeared to be some relationship between the funds borrowed and the carrying of tax exempt obligations. The respondents requested the Treasury (Fiscal Service) to seek a ruling of the Internal Revenue Service to ensure that the election of the note option is not inhibited by a Section 265(2) tax problem. The Fiscal Service has made such a request of the Internal Revenue Service. The Internal Revenue Service has concluded that section 265(2) of the Internal Revenue Code would not apply to disallow interest deductions in connection with the investment by the Treasury in obligation of Treasury tax and loan depositaries notwithstanding the fact that the note accounts are collateralized by tax exempt securities. The Internal Revenue Service is proposing to amend Rev. Proc. 70-20 in a manner consistent with the foregoing.

(h) *Operations of the TT&L System upon implementation.* If at the beginning of the new program there is still a concern about the over-all adequacy of collateral, the Treasury may use moderation in reducing its balances at Federal Reserve Banks and increasing its investments in obligations of depositaries.

MAXIMUM BALANCES

(a) *Maximum note balances.* Several suggestions were made to the effect that depositaries should be permitted to set a maximum limitation on their note balances so that any additions to the notes in excess of that limitation would be withdrawn immediately by the Federal Reserve Bank upon receipt of advices of credit creating the excess.

The Treasury favors the adoption of this suggestion and the Federal Reserve Banks have been asked to alter their administrative procedurs to provide for the establishment of such maximum balances. The Federal Reserve System has advised that all Reserve Banks will not be able to complete such changes before the effective date of the investment program inasmuch as this capability is a recent change which was introduced during the proposed rulemaking period. As each Reserve Bank completes its changes, it will notify depositaries in its District and give each depositary an opportunity to set a maximim balance. It is expected that all Reserve Banks will have completed the necessary changes within 6 months after the date of publication of the final regulations.

(b) *Imposition of maximum balances by Federal Reserve Banks.* Several respondents questioned the proposed § 203.4, which provides that each Reserve Bank may establish a maximum balance for the tax and loan or note account of any depositary in its District. The questions were based upon lack of specifics as to the circumstances under which such maximum would be established and the concern that the application of the section woud not be uniform among the Federal Reserve Districts.

The wording of § 203.4 as proposed was similar to the wording of § 203.3 of existing regulations which have been in effect since 1967. Prior to 1967, the regulations limited a depositary's maximum balance to a specified percentage of its capital or deposits. Section 203.3 has not been invoked since 1967 and we agree the comparable section of the proposed regulations, § 203.4, should be deleted. Collateral pledged by the depositary limits the funds that a depositary may hold and, as indicated above, depositaries will be permitted to establish self-imposed ceilings on the amount of Treasury funds held. Section 203.4 has, therefore, been eliminated from the final rules.

DIRECT INVESTMENTS

Several comments were made that the regulations should specifically

state which Note Option depositaries would receive funds directly from the Treasury as described in § 203.10(b)(2).

The number of depositaries which will receive direct investments will necessarily be limited by the capacity of Federal Reserve Banks to communicate daily by telephone with each of such depositaries in order to: (1) inform the depositary of the amounts being directly invested with the depositary, and (2) to call funds from the depositary to replenish Treasury balances at Federal Reserve Banks.

Initially, the direct investments will be made only with those Class "C" depositaries willing to participate. Eventually, however, the Treasury may expand the number of participating depositaries to include 100 or so other Note Option depositaries having the largest capacity to receive direct investments. Capacity is defined as the amount of collateral the depositary is willing and able to pledge, less its note balance as generated by credits to its tax and loan account. The establishment of precise procedures for making direct investments is being deferred until the adequacy of collateral has been more clearly determined.

CALLS AND CALL PROCEDURES

(a) *Make calls on a regular basis and provide advance notice.* Several respondents objected to the proposed § 203.10(c) which states "* * * the amount of the note will be payable on demand without previous notice." Suggestions were made to the effect that the withdrawal of funds be made on a regularized basis and that calls be announced a specified number of days in advance of the date of withdrawal. Treasury expects that the timing and amount of the calls against note balances will evidence a regular pattern, reflecting the intramonthly and monthly seasonal patterns to which the Treasury's cash flows are subject. Thus, larger percentages of note balances will be called earlier in the month than later; and, therefore, note balances will tend to increase in the latter half of most months. It is believed that depositaries will, within a relatively short period, recognize a regular pattern of call actions.

As to whether advance notice of calls can be provided, it is expected that calls against class "A" and class "B" depositaries will normally be made for definite amounts for payment on a definite day in the future. However, the Treasury cannot guarantee that circumstances will not arise which will require calls for immediate payment of note balances from class "A" and class "B" depositaries in order to adequately fund Treasury balances at Federal Reserve Banks. To the extent feasible, advance notice will be given of the periods during which the regular pattern of calls might be varied.

(b) *Announce calls earlier in the day.* Several respondents suggested that the calls on class "C" depositaries should be announced earlier in the day. It is very unlikely that the procedures involved in determining the Treasury's daily cash needs, the time required for consultation with the Federal Reserve's Open Market Committee staff, and the process of communicating the call to class "C" depositaries, can be accelerated enough to allow an earlier announcement of a call action.

(c) *Wednesday calls.* Several respondents suggested that the Wednesday calls on class "C" depositaries be made not later than 10 a.m. The problems involved are the same as those mentioned in (b) above. Treasury recognizes the particular problems faced by member banks on Wednesdays due to reserve settlement requirements and, to the extent feasible, will, in consultation with the Federal Reserve Open Market Committee staff, indicate in advance the probable calls payable on Wednesdays.

(d) *Effecting withdrawals through reserve accounts.* Some respondents questioned the provisions of the rules which require that withdrawals are to be effected through the reserve account of the depositary or the reserve account of a member bank correspondent. Some suggested such alternatives as the wiring of Federal funds upon receipt of a call notice.

For many years, banks which were not members of the Federal Reserve System have been required to arrange for the payment of calls on the payment dates specified in the calls by a charge to the reserve account of a member bank correspondent so as not to put the Treasury in the position of waiting for the funds to be made available for its use. The Treasury must have the capability of withdrawing and using its operating cash when it is needed. Alternatives which require communications from the depositary in order to effect the withdrawal or place the depositary in the position of controlling the time of release of the funds are not acceptable.

(e) *Effecting calls for the withdrawal of funds from savings and loan associations through their accounts with Federal Home Loan Banks.* Several respondents suggested that withdrawal of funds from savings and loan associations be made through their accounts maintained with their respective Federal Home Loan Banks. If the savings and loan associations and the Federal Home Loan Banks can establish a procedure whereby the Treasury would have as immediate access to funds called as would be the case if charges were made to a member bank's account at a Federal Reserve Bank, then the Treasury would be agreeable to such a procedure.

NOTE OPTION

Certain characteristics of the Note Option elicited questions or responses as follows:

(a) *Characterization of the Note Option as a "purchase" of funds from the Treasury (§ 203.2(g) and § 203.10(a) and (b)(2)).* Section 203.2(g) of the proposed rules defined the Note Option to mean the "* * * choice available to depositaries under which a tax and loan depositary credits deposits to its Treasury Tax and loan account, *purchases funds* from the Treasury in the amount of such deposits to be evidenced by open-ended interest-bearing notes." [Emphasis added.] Two trade associations and a number of banking institutions requested that the word "purchases" be replaced by the word "retain" or "retains."

The Treasury is persuaded that the use of the term "purchases" may not have universal application. Accordingly, proposed § 203.2(g) has been modified to describe additions to a depositary's note account as additions to Treasury's investments in obligations of the depositary. A conforming change has been made to proposed § 203.10(a) and § 203.10(b)(2) (now § 203.9(a) and § 203.9(c)(2)).

(b) *Elimination of Tax and Loan Accounts.* One respondent suggested that in lieu of requiring funds to be placed in the tax and loan account for one day, depositaries be required to purchase funds from the Treasury on the day the tax and loan deposits are credited so that the "note" is created on that day. The purpose of the suggestion was to alleviate a potential problem under State law for some State-chartered thrift institutions in being able to function the tax and loan account. Another element of the suggestion was that no interest would be due on the note for the day of the deposit.

The Treasury feels that the adoption of the suggestion would not accurately describe the Treasury/depositary relationship, particularly for Remittance Option depositaries, and that it would not, therefore, be reasonable to adopt the suggestion.

DELIVERY REQUIREMENTS

(a) *Delivery requirements for Remittance Option—Class 2 Depositaries (§ 203.11(b)(2)(i)).* One respondent suggested that the wording of proposed § 203.11(b)(2)(i), which permitted a Remittance Option—Class 2 depositary to "* * * forward its advices of credit to the Federal Reserve Bank of the district via the most expeditious means available" created too strict a standard. The respondent stated that the section implies, for example, that if light aircraft were available, other means such as the U.S. mail would not be acceptable. The Treasury considers the use of the U.S. Postal Service to be an acceptable means of delivery for

Remittance Option—Class 2 depositaries. Accordingly, § 203.10(b)(2)(i) of the final rule reads, in part, as follows: "* * * via an available expeditious means, which includes the U.S. Postal Service."

(b) *Delivery requirements for Note Option banks.* The Treasury inadvertently omitted a subsection entitled "Delivery" from § 203.10 of the proposed rules. Such subsection is included as § 203.9(b). The subsequent subsections are relettered accordingly.

(c) *Delivery requirements for Remittance Option—Class 1 depositaries.* Many respondents took issue with the delivery requirements for Class 1 depositaries stated at § 203.11(b)(1)(i) of the proposed rule. The rule requires a Remittance Option—Class 1 depositary to "* * * establish procedures to ensure the delivery of its advices of credit at the Federal Reserve Bank of the District prior to the Federal Reserve Bank's cut-off time for processing such credits the next business day after the date of credit. * * *" Some, citing their own experience with the U.S. Postal Service, stated that timely delivery at the Federal Reserve Bank would not be possible if they were to use the mail service. Many of the respondents suggested as a solution that timeliness be based upon the postmark of the remittance under the theory that if a postmark were timely, no penalty would be assessed.

The Treasury had given a great deal of thought to the delivery requirements of the Remittance Option—Class 1 depositaries before issuing the proposed rules. It was concluded that in order for the system to function properly, and in order to maintain equity within the system, it was necessary to limit the interest-free time to one business day. Otherwise, depositaries electing the Note Option would be required to pay interest as of the first business day after receipt of a deposit while a Remittance Option—Class 1 depositary could benefit from two, three or more interest-free days merely by using the mails. If the use of postmarks were permitted, the Note Option would not be selected in numbers to make the tax and loan system work.

There are certain options that may be available to depositaries to reasonably assure next day delivery of advices of credit to the Federal Reserve Bank of the District. These include the following:

(a) At any depositary location where the Federal Reserve Bank delivers checks by courier, depositaries can, at their discretion, arrange with such couriers to deliver advices of credit on their return trips to the Federal Reserve Bank.

(b) Federal Reserve Banks of the Districts may, at their discretion, permit Regional Check Processing Centers (RCPC's) within the Districts to serve as pick-up or trans-shipping points for the tax and loan system.

(c) All Federal Reserve Banks will permit Federal Reserve Branches not now serving as points of pick-up for tax and loan account advices of credit to do so under the investment program from Remittance Option—Class 1 depositaries.

(d) Any depositary may utilize the services of a correspondent in a Federal Reserve Bank or Branch city to prepare advices of credit and deliver such advices to the reserve bank or branch on its behalf. This would involve supplying the correspondent with blank originals of its advices of credit forms and communicating the amount to be entered by phone or wire.

FEES

Numerous comments were received concerning the fee of 50 cents for each Federal tax deposit form forwarded by the depositary and processed by the Internal Revenue Service Center covering the administration of the Treasury tax and loan account as well as the handling of Federal tax deposits. The comments are summarized as follows:

(a) It is unreasonable to base 1978 fees on a survey using 1972–1973 data which have not been adjusted for inflation.

(b) No indication has been given of the method used to determine the initial fee structure for compensable services.

(c) The final regulations should state the criteria for the establishment of fees and when such fees are to be reviewed to ensure they remain current.

Other comments received indicated that the proposed payments are adequate.

The schedule of fee payments is based on the findings presented in a Report of a Study of Tax and Loan Accounts, dated June 1974. The conclusions of that Report are based upon a survey of approximately 600 commercial banks specifically selected as representative of all depositaries in the Treasury tax and loan system. The fees as determined in that study are being adopted initially because they represent the product of the best and most comprehensive study on the subject available at this time. The methodology, rationale, and findings of the study are presented in detail in that Report. The findings of the study were publicly disclosed in that a copy of the Report was distributed during July 1974 to each of the tax and loan depositaries at the time.

The Treasury recognizes the deficiencies of that Report and is proceeding to restudy the Federal tax deposit per item fee as follows:

(a) Treasury staff will complete the review now underway of procedures involved in processing Federal tax deposits in financial institutions and establishing one or more models for efficient handling. The number of model systems will depend on the need to provide different systems for different categories of institutions. For example, it might be necessary to have significantly different procedures for an institution doing business at one location as compared to an institution with branches or offices spread over a wide geographical area.

The model systems will be reviewed with trade associations of the several classes of financial institutions functioning as depositaries in order to (a) determine if there are any reasons why the proposed systems are not workable, and (b) receive any suggestions for improvement.

(b) Once the model systems have been detailed, the Treasury will commission an independent study to determine the cost involved in operating the systems. The goal of the study will be to determine the unit cost for processing Federal tax deposits and to establish fees based upon costs and reasonable profit. If clear, simple guidelines for applying different fees for different institutions can be established, a multiple fee schedule may be created. If not, a unitary fee will be established based upon average costs.

(c) The fee schedule established as a result of the study will be reviewed from time to time for appropriate adjustment, taking into consideration changes in the depositaries' costs and any changes in regulations effecting the procedures followed by depositaries in processing Federal tax deposits.

COMPENSATION FOR OTHER SERVICES PROVIDED BY FINANCIAL INSTITUTIONS

Several comments were made that the schedule of fees does not cover other types of services that financial institutions provide for the Government. Specific services mentioned include the reporting of interest and dividends to the Internal Revenue Service on Form 1099, the cashing of Government checks, and the custody and sale of food stamps. The Treasury's analyses and conclusions regarding each of these services, and others not mentioned in the comments received, but performed by commercial banks are discussed in detail in the "Report on a Study of Treasury Tax and Loan Accounts" dated June 1974.

POSITIONS OF BANKING REGULATORS

(a) *Comptroller of the Currency.* Several of the respondents inquired as to whether the note balances retained by national banks under the Note Option will be included in computing the limitation on bank indebtedness under 12 U.S.C. 82. The Comptroller of the Currency has indicated that the notes will not be subject to the aggregate indebtedness limitation of 12 U.S.C. 82.

(b) *Federal Reserve Board.* Numerous respondents questioned whether the note balances will be subject to reserve requirements. As indicated in the preamble to the proposed rules, at the present time, regulations of the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation define "deposits" as including promissory notes and other obligations of banks not specifically exempted. The Treasury has been advised that the Board of Governors of the Federal Reserve System has taken formal action to exempt notes issued by banks to the Treasury from the definition of deposits. There appears today, or will appear in the next few days, in the FEDERAL REGISTER notice of the Federal Reserve Board's final rulemaking effecting this change. The action of the Board of Governors of the Federal Reserve System exempts notes issued by member banks to the Treasury from the provisions of Regulations D and Q.

(c) *Federal Deposit Insurance Corporation.* The Board of Directors of the Federal Deposit Insurance Corporation has amended FDIC's interest rate regulations (12 CFR Part 329) so as to exempt from rate restrictions generally, an insured nonmember bank's liability on its promissory notes that evidence a short-term purchase of funds from the U.S. Treasury. The FDIC's amendments to its interest rate regulations were published on page 9789 of the FEDERAL REGISTER of March 10, 1978 (43 FR 9789).

REQUIREMENTS FOR DESIGNATION

Several of the respondents commenting on behalf of thrift institutions took issue with the wording of the proposed § 203.3(b)(1)(ii) which required a financial institution to have under its charter and regulations issued by its chartering authority either general or specific authority permitting the maintenance of the tax and loan account as a demand account in order to be eligible for designation.

The Department's paramount concern is its ability to draw on its operating cash accounts as needed to meet disbursing needs. The Treasury considers it essential for funds on deposit in tax and loan accounts or invested in note accounts to be subject to withdrawals which are payable immediately (i.e., on demand) without previous notice. Thus Treasury's basic concern is to be assured that all financial institutions, including the thrift institutions, possess the *authority* to function these accounts under the condition stated above.

Another respondent indicated that the use of the word "demand account" is imprecise in that several quite different legal meanings have been attached to that term. In view of the comments received, § 203.3(b)(1)(ii) is amended to require only "general or specific authority permitting the maintenance of the tax and loan account as an account the balance in which is payable on demand without previous notice of intended withdrawal."

Several of the respondents indicated that currently certain State-chartered thrift institutions may not be authorized under State law to maintain tax and loan accounts. Some of the same respondents further stated that in their opinion the Federal law (Pub. L. 95-147) superseded State law and carried with it the extension of any authority necessary for both Federally and State-chartered institutions to be tax and loan depositaries. Neither Pub. L. 95-147 nor its legislative history specifically address the matter of Federal preemption. The question is one which the courts will ultimately have to resolve. Treasury takes no final position on the issue at this time, however, the final rule is premised on no Federal preemption.

INSURANCE PROVISIONS

One respondent representing the credit union industry requested that the regulations expressively describe the standards of review for account insurance to be undertaken by the Secretary of the Treasury. Accordingly, the Secretary's regulations concerning the adequacy of insurance arrangements are issued at 31 CFR Part 226.

Such regulations are published here as interim rules in order to avoid delay in implementing the revised Treasury tax and loan program.

The Department is of the view that, because the interim regulations set standards for programs of insurance which cover depositaries' tax and loan accounts, and thereby affect the amounts of collateral which such depositaries are required to pledge to secure public funds in such accounts, they involve a matter relating to "public property" within the meaning of 5 U.S.C. 553(a)(2). In addition, it is believed that the interim regulations involve a matter relating to "contracts," as that term is used in 5 U.S.C. 553(a)(2). Each Treasury Tax and Loan Depositary enters into a depositary contract as stated at § 203.6 and § 214.4.

Consequently, it has been determined that the regulations are not subject to the rulemaking requirements, including notice of proposed rulemaking, which are contained in 5 U.S.C. 553. Nevertheless, in accordance with 5 U.S.C. 553, interested persons may submit written comments, suggestions, data or arguments to Mr. John Kilcoyne, Assistant Fiscal Assistant Secretary (Banking), Office of the Fiscal Assistant Secretary, Department of the Treasury, Washington, D.C. 20220, 202-566-2849. Material thus submitted will be evaluated and acted upon in the same manner as if these interim regulations were a proposal. However, the interim regulations shall become effective as specified in the "EFFECTIVE DATE" section of this preamble and shall remain in effect until such time as changes are made.

THE ABSORPTION OF FLOAT BY DEPOSITARIES

Several of the respondents commented upon § 214.6(a)(1) by which depositaries are required to accept from a taxpayer "* * * a check or draft drawn on and to the order of the depositary * * *." That section further states that "* * * A depositary may at its discretion accept a check drawn on another financial institution, but it does so purely on a voluntary basis and absorbs for its own account any float involved." The substance of such comments was to request the Treasury to make allowances for uncollected funds in the accounts after the first business day after deposit.

As a matter of policy, the Treasury does not recognize uncollected funds in the tax and loan system. That policy and the provisions of 31 CFR Part 214 implementing that policy are not new to the regulations in question, but have been in effect for more than 25 years. The Treasury has concluded that the policy of not making allowances for uncollected funds in the tax and loan account system should remain in effect.

EXTEND THE INTEREST-FREE PERIOD TO MORE THAN ONE BUSINESS DAY

Several respondents suggested for a variety of reasons that interest and late fees not be imposed until the second or third business day after deposit. The Treasury has concluded that any extension of the interest-free period beyond the one business day already provided would not be in the best interest of the Federal government or the tax and loan system.

TIMING OF CHANGES IN OPTIONS

The wording of § 203.13 of the proposed rules and paragraph No. 4 of the Synopsis of the Manual of Instructions and Procedures for Treasury Tax and Loan Depositaries is not explicit as to when a requested change in options will become effective. Accordingly, the wording of that section of the Procedural Instructions concerned with changes in options has been revised to include the following:

A depositary may change from one option to another after due notice to the Federal Reserve Bank of the District. A change in option will become effective as of the first day of the next reporting cycle following receipt of such notice provided that notice is received by the Federal Reserve Bank of the District not later than the 20th of any month.

A number of respondents expressed the desire for changes in options to be permitted on a daily or a weekly basis. For reasons of an operational and an administrative nature, all changes in options will be effected only as of the first day of a reporting cycle.

TERMINATION OF CONTRACT NOTICE

Proposed § 203.17(b) and § 214.5(b) stated that a depositary may terminate its contract by submitting a notice, in writing, to the Federal Reserve Bank of the District 30 days before the date of the intended termination. Proposed § 203.17(a) and § 214.5(a) stated that the Secretary of the Treasury may terminate the contract of a Treasury tax and loan depositary at any time upon notice to that effect to that depositary. Upon reconsideration, the Treasury is of the view that the 30-day advance notice stated in § 203.17(b) and § 214.5(b) should be deleted. Accordingly, § 203.16(b) and § 214.5(b) do not require a 30-day advance notice by the depositary.

MANUAL OF INSTRUCTIONS AND PROCEDURES FOR TREASURY TAX AND LOAN DEPOSITARIES

Several respondents expressed the desire to review the Manual before it is published in final form.

In view of the relatively short time period remaining before the effective date of the investment program, the Treasury is issuing at this time through the Federal Reserve Banks a final version of the "Procedural Instructions for Treasury Tax and Loan Depositaries" (previously referred to as "Manual of Instructions and Procedures for Treasury Tax and Loan Depositaries"), with the understanding that the depositaries are free to comment on the provisions of that Procedural Instruction at any time.

SUGGESTION TO ESTABLISH AN ARRANGEMENT WHEREBY THE TAX DEPOSITS OF A REMITTANCE OPTION DEPOSITARY ARE ADDED DIRECTLY TO THE NOTE ACCOUNT OF A CORRESPONDENT DEPOSITARY

One respondent suggested that in view of the potentially large number of depositaries that would be electing the Remittance Option, the Treasury should give consideration to a tri-party arrangement involving (a) the Federal Reserve Bank, (b) a Note Option depositary bank serving as a correspondent for the Remittance Option depositary, and (c) the remittance Option depositary. Under the suggested arrangement, the Note Option depositary bank serving as correspondent for the Remittance Option depositary would, in effect, add to its note amounts which otherwise would be withdrawn from the Remittance Option correspondents. In other words, the Federal Reserve Bank, instead of withdrawing funds representing tax deposits received by a Remittance Option depositary would add those amounts to the note of the correspondent bank.

The treasury believes the suggestion has merit and may be beneficial in several respects. In particular, it offers an alternative to depositaries wishing to participate as Remittance Option—Class 1 depositaries and precluded from doing so because of the prescribed delivery requirements. The Treasury is actively studying the suggestion. Adoption of the suggestion would also give the Treasury better control of increases in the Federal Reserve Bank balance which is one of the objectives of the new system.

If it is decided to adopt the suggestion, the decision will be reflected in the FEDERAL REGISTER. Sufficient lead time will be required to permit programming changes by the Federal Reserve Banks.

SEASONAL BORROWING BY MEMBER BANKS OF THE FEDERAL RESERVE SYSTEM

One respondent representing the banking industry suggested that Federal Reserve Regulation 'A' should indicate that country banks borrowing seasonally at the discount window may simultaneously "sell" Note Option funds in the Federal funds market. This issue has been referred to the Federal Reserve Board and is under consideration by that Agency.

REGULATIONS COVERING FEES FOR ISSUING AND REDEEMING SAVINGS BONDS

II. 31 CFR PARTS 317 AND 321

DISCUSSION OF MAJOR COMMENTS

GENERAL STATEMENT

Financial institutions and others act as agents for the issue and payment of savings bonds under the provisions of application-agreements they execute and certificates of qualification issued by the Federal Reserve Banks, acting as fiscal agents of the United States, and subject to the applicable regulations governing such agents. The compensation to be paid to agents applies solely to the specific issuing and paying functions they perform under the terms of their agreements and the regulations. The regulations that govern issuing agents are set out in Department of the Treasury Circular, Public Debt Series No. 4-67 (31 CFR Part 317). The regulations that govern paying agents are set out in Department of the Treasury Circular No. 750 (31 CFR Part 321). The fee schedules will be incorporated into each of these circulars.

SAVINGS BOND REMITTANCE PROCEDURES

31 CFR, Part 203 contemplates that the interest and penalty provisions of the investment program will apply both to tax and loan deposits representing tax receipts and tax and loan deposits representing savings bond sales proceeds. However, as an interim measure, to facilitate implementation of the investment program, remittances of savings bond sales proceeds by credit to tax and loan accounts will initially be functioned as follows:

Note Option depositaries. The amount of credits covering savings bond sales proceeds will be added to notes as of the dates of processing of the credit advices by the Federal Reserve Banks.

Remittance Option—Class 1 depositaries. Penalty provisions will not be applied to savings bond sales proceeds remittances.

Remittance Option—Class 2 depositaries. For purposes of computing the analysis credit, the amount of credits covering savings bond sales proceeds will be added to the balances in the depositaries' tax and loan accounts as of the dates of processing by the Federal Reserve Banks.

About three months after implementation of the investment program, the Treasury will prescribe definitive procedures under which credit advices for savings bond sales proceeds will be handled on the same basis as credit advices for tax deposits. Before the definitive procedures are put into effect, a notice of their effective date will be published in the FEDERAL REGISTER and depositaries will be notified through the Federal Reserve Bank of the District.

ADEQUACY OF FEE SCHEDULE

A number of the organizations commented that the proposed fees for issuing and redeeming savings bonds were generally too low. Others specifically referred to the redemption fee and the over-the-counter issue fee as being too low. Reasons usually given for questioning the fee schedule were that (1) it was based on outdated data and did not consider the impact of inflation on salary and other processing costs, and (2) the compensable activities were to narrowly defined and did not consider costs of counseling time, postage, record-keeping, accounting and liability for stock.

The fees for over-the-counter issues and for redemptions were based essentially on a research study conducted in 1974. The fees for payroll issues were based essentially on the alternative costs of such issues by Federal agencies and Federal Reserve Banks.

The issue fees relate strictly to costs associated with obtaining and controlling bond stock and inscribing and delivering bonds to purchasers, exclusive of postage which is paid by the Treasury.

Counseling services relating to savings bonds, like counseling on other financial matters, have traditionally been provided to customers by financial institutions without compensation. These services are viewed essentially as customer services. Their value to the Savings Bond Program is clear-

ly recognized and appreciated. However, services outside the issuing and paying agency regulations are not compensable; in addition, there is no practical way of measuring the services provided by individual institutions as the basis for establishing a standard fee.

In response to the comments mentioned above, a review of the fee schedule will be undertaken. It is necessary, however, to initiate the fee program on the basis of the proposed schedule to avoid further substantial delays in implementation. Funds for the payment of fees must be obtained through the appropriation process, and a funding request based on the original schedule has been submitted to and is under consideration by the Congress.

COMPENSATION FOR REISSUE TRANSACTIONS

Several respondents commented that agents should be compensated for handling reissue cases, which must be forwarded to the Federal Reserve Bank for processing.

Servicing applications for reissue is not one of the functions covered by the issuing and paying agent agreements referred to above. Historically, the Treasury has viewed such services as being within the scope of customer services provided by the institution. This is the principal reason no provision has been made to pay a fee for such services. A further reason is the difficulty in administering such a fee, inasmuch as Treasury would have no means of determining how much assistance, if any, had been provided by a financial institution on a reissue case.

COMPENSATION FOR EXCHANGE TRANSACTIONS

It was also suggested that agents should be compensated for handling exchanges of Series E for Series H bonds. In these transactins, all of the Series H bonds are issued by Federal Reserve Banks or the Treasury. However, the regulations governing such exchanges provide that paying agents may elect to redeem the Series E bonds and send the exchange application (Form PD 3253) to a Federal Reserve Bank for issue of the Series H bonds. If the transaction is handled in this manner, the agent receives a fee for each Series E bond that is redeemed. If the agent does not redeem the bonds, the entire transaction is forwarded to a Federal Reserve Bank and no fee is paid.

It is recognized that in a limited number of cases agents are not authorized to redeem Series E bonds submitted for exchange because of evidentiary requirements. A review will be made to determine whether it is feasible to amend the regulations to provide procedures under which agents might qualify for fees in handling these cases.

MISCELLANEOUS PROVISIONS FOR FEE CHARGES

Other proposals concerning fees included establishing regional fee schedules; basing fees on the percentage of dollar amounts handled in addition to per item fees; reexamining the fee difference between manual and computerized handling of payroll issues to provide more incentive to automate; and, compensating agents for the verification of the issuance of bonds later reported missing.

Regional fee schedules would create difficult administrative problems.

There appears to be no justification for basing a fee on dollar amounts, as well as item charges. Paying agents incur no risk of liability for erroneous payments if they follow the Treasury's identification guidelines (Form PD 3900).

The spread between the fees for bonds inscribed by computers and by other means recognized a cost differential between the two processing methods. This appeared to be equitable, although it might conceivable operate as a disincentive to the further automation of payroll issues. Decisions to automate are typically made on the basis of equipment availability, operational priorities and considerations of space, personnel and productivity. It is estimated that about half of the payroll issues by financial institutions are computer-inscribed. The number of issues that would be automated if the 10 cent fee per bond was raised is a matter of conjecture, as many of the payroll accounts are too small to justify automation, or the agent may not have access to a computer. In the subsequent review of the fee schedule, however, this matter will be further considered.

The verification by issuing agents of their issuance of bonds reported lost or stolen is limited to bonds not received by owners. Claims cases involving loss or theft after receipt are not referred to the issuing agents for verification. The number of non-receipt cases is about 10,000 a year. About half of all bonds are issued by financial institutions, so the number of referrals to an individual agent should be minimal. No fee for this service appears to be warranted, but the Treasury will review its procedures to determine whether the cases requiring referral to agents can be further reduced.

REVIEW OF FEE SCHEDULE

As mentioned, various respondents expressed the opinion that the Treasury study made in 1974, on which the fee schedule is largely based, has been outdated by inflation and that the study should be updated or a new study conducted.

Various proposals were made concerning the method to be used in conducting such a study. It was suggested that a new study consider the fully allocated costs of each functional and procedural element of issuing, redeeming and otherwise handling bonds; that the regulations provide for a periodic review of the fee schedule and the scope of compensable services; and that the regulations express the standards for establishing fees and the criteria for evaluating readjustments.

The Treasury recognizes the desirability of reexamining the adequacy of the fee schedule and will initiate such a review promptly. The review will include a reexamination of some of the proposals discussed elsewhere in this response. Provisions for the regular review of the schedule should be a part of any plan that is developed. It should be recognized, however, that any review will deal primarily with over-the-counter issues and redemptions. Fees for payroll issues will be governed largely by the alternative costs of such issues by Federal agencies and Federal Reserve Banks.

There is no assurance that savings bond fees can (or should) be based purely on costs. It may be necessary or advisable to establish fees for issuing and redeeming bonds that financial institutions would be free to accept or reject. In their comments on the schedule, agents reported costs as high as $2.66 for issuing bonds and $1.50 for redeeming bonds. The issue of a bond purchased for $18.75 does not justify fees of these amounts. Moreover, the question of recompense must be considered in the context of the effect on the Savings Bond Program as a whole.

The Treasury cannot implement changes in the fee schedule without first seeking Congressional approval through the regular appropriation process.

Any changes, including an explanation of their basis, will be published as revisions of the regulations.

CREDITS AND CHARGES TO TAX AND LOAN ACCOUNTS

Two respondents questioned the statement in the regulations that funds would be deposited into the tax and loan accounts in accordance with the instructions of the Federal Reserve Bank of the District. Both felt that instructions should be uniform throughout the country. Another respondent felt that if funds collected from the issuance of savings bonds are to be placed in interest-bearing tax and loan accounts, funds used to redeem bonds should be disbursed from those accounts.

The rules for depositing savings bond sale proceeds in tax and loan accounts are uniform. Instructions to issuing and paying agents are customarily issued by the qualifying Federal

Reserve Banks, and the practice includes such activities as crediting sales proceeds. Except for minor local variations, the instructions issued by each Reserve Bank are standard.

The disbursement of tax and loan funds by depositaries in payment of savings bonds and notes would not be feasible because of the control and accounting problems such a procedure would create.

CHARGES TO CUSTOMERS

Questions were also raised about the collection of fees from customers.

No fee may be imposed by agents on bondowners for the redemption of bonds or on purchasers for the issue of bonds over-the-counter or through bond-a-month plans.

In the case of payroll issues by financial institutions for customers which operate payroll savings plans, the Department recognizes that the parties have often entered into compensatory arrangements, particularly when the bond issuance function is an interrelated part of a package of varied financial services, or when the issuing agent must perform preparatory work prior to inscribing the bonds.

The regulations prohibit the acceptance of dual compensation for obtaining and controlling bond stock and inscribing and delivering bonds. However, the regulations do not prohibit financial institutions from electing to continue compensatory arrangements with customers, in lieu of accepting a fee from the Treasury for bond issuance functions; nor do they prohibit such institutions from obtaining supplemental compensation for services not immediately concerned with inscribing and delivering bonds, such as converting data from hard copy to magnetic tape for bond inscription purposes.

PAYMENT OF FEES

One respondent indicated that the regulations did not address the way in which fees will be paid and stated that the reserve account should be used for fee payment, as well as penalty charges.

Given the diversity of issuing and paying agents, fees will be paid by checks issued quarterly by the Division of Disbursement, Bureau of Government Financial Operations, on the basis of data prepared by the Bureau of the Public Debt. Each agent eligible for a fee has been furnished with a pamphlet that explains, among other things, the calculation and payment of fees.

* * * * * *

In consideration of all of the foregoing, 31 CFR Chapter II is amended as follows:

PART 203—TREASURY TAX AND LOAN DEPOSITARIES

1. 31 CFR Part 203 (Department Circular No. 92) is revised to read as follows:

Subpart A—General Information

Sec.
203.1 Scope of regulations.
203.2 Definitions.
203.3 Designation of financial institutions as Treasury tax and loan depositaries.
203.4 Sources of deposit.
203.5 Directives regarding credits (deposits) to Treasury tax and loan accounts.
203.6 Parties to the Contract.
203.7 Obligations of the depositary.

Subpart B—Options

203.8 General requirement.
203.9 Note Option.
203.10 Remittance Option.
203.11 Election of option by previously authorized depositaries.
203.12 Change of options.

Subpart C—Interest and Compensation

203.13 Rate of interest.
203.14 Compensation for services rendered.

Subpart D—Collateral Security

203.15 Collateral security requirements.

Subpart E—Miscellaneous Provisions

203.16 Termination of contract.
203.17 Implementing instructions.
203.18 Effective date.

AUTHORITY: Sec. 8, Act of Sept. 24, 1917, Chapter 56, 40 Stat. 291, as amended (31 U.S.C. 771); Sec. 6302(c), Internal Revenue Code of 1954; and Secs. 1, 2, and 3, Pub. L. 95-147, 91 Stat. 1227 (31 U.S.C. 1038); unless otherwise noted.

Subpart A—General Information

§ 203.1 Scope of regulations.

The regulations in this part govern the designation of Treasury tax and loan depositaries and their contract with the Treasury Department to maintain and administer separate accounts to be known as Treasury tax and loan accounts in which funds representing payments for certain United States obligations and payments of Federal taxes are credited.

§ 203.2 Definitions.

As used in this part:

(a) "Advices of credit" means those Treasury forms, which are supplied to tax and loan depositaries to be used in supporting credits to Treasury tax and loan accounts.

(b) "Business day" means any day on which the Federal Reserve Bank of the district is open to the public.

(c) "Election of Option form" means a document, preprinted and supplied by the Federal Reserve Bank of each district, on which a tax and loan depositary indicates the option under which it will administer its Treasury tax and loan account after the effective date of this Part.

(d) "Federal funds rate" means the weekly Federal funds rate as published in the Federal Reserve Bulletin in Table A-27 entitled "Interest Rates, Money and Capital Markets".

(e) "Federal Reserve Bank of the district" means the Federal Reserve Bank which services the geographical area in which the tax and loan depositary is located. Tax and loan depositaries located in Puerto Rico, the Virgin Islands, and the Panama Canal Zone are included in the Second Federal Reserve District.

(f) "Federal tax deposit form" means a preinscribed form supplied to a taxpayer by the Treasury Department to accompany deposits of Federal taxes.

(g) "Federal taxes" means those Federal taxes specified by the Secretary of the Treasury or the Secretary's delegate as eligible for payment through the procedure prescribed in this part and Part 214.

(h) "Note Option" means that choice available to a tax and loan depositary under which funds debited to its Treasury tax and loan account are added by the Treasury to its investments in obligations of the depositary. The amount of such investments will be evidenced by an open-ended interest-bearing note maintained at the Federal Reserve Bank of the district.

(i) "Recognized Insurance Coverage" means the insurance provided by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Share Insurance Fund, and the insurance provided by insurance organizations specifically qualified by the Secretary of the Treasury pursuant to 31 CFR Part 226.

(j) "Remittance Option" means that choice available to a tax and loan depositary under which funds equivalent to the amount of deposits credited by the depositary to its Treasury tax and loan account will be withdrawn by the Federal Reserve Bank immediately upon receipt by the Federal Reserve Bank of the advices of credit supporting such deposits.

(k) "Reporting cycle" means the time period established for reporting and computation purposes. A reporting cycle begins on the first Thursday of each month and ends on the Wednesday preceding the first Thursday of the following month.

(l) "Reserve account" means that account every member of the Federal Reserve System maintains at the Federal Reserve Bank of its district for reserve purposes pursuant to 12 CFR Part 204.

(m) "Special depositary" means a depositary that had been designated under the provisions of 31 CFR Part 203 prior to the effective date of this revision. A depositary thereafter desig-

nated under this Part shall be known as a Treasury tax and loan depositary.

§ 203.3 Designation of financial institutions as Treasury tax loan depositaries.

(a) *Previously authorized depositaries.* Every special depositary which, at the close of business on July 5, 1978, was authorized to maintain a Treasury tax and loan account is hereby redesignated as a Treasury tax and loan depositary. The agreements under which they were heretofore authorized as Special Depositaries of Public Money are continued in effect without further action, but subject to the provisions of the current Part 203.

(b) *New designations*—(1) *Requirements.*—(i) *Eligible institutions.* The following classes of financial institutions are eligible to be designated as Treasury tax and loan depositaries:

(A) Every incorporated bank and trust company in the United States, Puerto Rico, the Virgin Islands, the Panama Canal Zone, and every United States branch of a foreign banking corporation authorized by the State in which it is located to transact commercial banking business.

(B) Every institution insured by the Federal Savings and Loan Insurance Corporation.

(C) Every credit union insured by the Administrator of the National Credit Union Administration.

(D) Savings and loan, building and loan, homestead associations, and credit unions, created under the laws of any State, the deposits or accounts of which are insured by a State or agency thereof, or by a corporation chartered by a State for the sole purpose of insuring deposits or accounts of such financial institutions.

(ii) *Other requirements.* In order to meet Treasury requirements for designation, each financial institution is required to possess under its charter and regulations issued by its chartering authority either general or specific authority permitting the maintenance of the tax and loan account as an account, the balance in which is payable on demand without previous notice of intended withdrawal. Each financial institution is required to also possess the authority to pledge collateral to secure Treasury tax and loan funds.

(2) *Application procedures.* Any eligible financial institution seeking designation as a Treasury tax and loan depositary and, thereby, the authority to maintain a Treasury tax and loan account shall file with the Federal Reserve Bank of the district an "Offer to Contract and Application" accompanied by a resolution of its board directors authorizing the "Offer to Contract and Application" (both on forms prescribed and available on request from the Federal Reserve Bank).

(3) *Designation.* Each financial institution satisfying the eligibility requirements and the application procedures will receive from the Federal Reserve Bank of the district notification of its specific designation as a Treasury tax and loan depositary. A financial institution is not authorized to maintain a Treasury tax and loan account until it has been designated as a Treasury tax and loan depositary by the Federal Reserve Bank of the district.

§ 203.4 Sources of deposit.

A tax and loan depositary shall credit to its Treasury tax and loan account payments of such Federal taxes as the Secretary of the Treasury may from time to time by regulation authorize to be paid through Treasury tax and loan accounts, and may credit to its Treasury tax and loan account funds representing:

(a) Payments for United States Savings Bonds issued by the tax and loan depositary, in its issuing agent capacity;

(b) Payments for United States Savings Bonds subscribed for through the tax and loan depositary on behalf of its customers, but which may be issued only by Federal Reserve Banks and the United States Treasury Department.

§ 203.5 Directives regarding credits (deposits) to Treasury tax and loan accounts.

(a) Payments for United States Savings Bonds shall be credited in accordance with instructions prescribed by the Federal Reserve Bank of the district.

(b) Federal tax payments shall be credited in accordance with Part 214 of this Chapter and any instructions issued pursuant to that Part.

§ 203.6 Parties to the contract.

A financial institution which is designated as a Treasury tax and loan depositary enters into a depositary contract with the Department of the Treasury. The parties to this contract are the Treasury, acting through the Federal Reserve Banks as Fiscal Agents of the United States, and each financial institution designated under § 203.3. The terms of the contract include all of the provisions of this part.

§ 203.7 Obligations of the depositary.

A Treasury tax and loan depositary shall:

(a) Administer a Treasury tax and loan account in accordance with this Part and any amendments or supplements thereto, and instructions issued pursuant thereto, including the Procedural Instructions for Treasury Tax and Loan Depositaries;

(b) Comply with the requirements of section 202 of Executive Order 11246, entitled "Equal Employment Opportunity" (30 FR 12319) as amended by Executive Order 11375, entitled "Equal Employment Opportunity Clause," which is incorporated herein by reference, and the regulations issued thereunder at 41 CFR Chapter 60, as amended. The Secretary of the Treasury may terminate the contract with a tax and loan depositary for failure to comply with the terms of the contract set forth in this subsection, relating to equal employment opportunity, after following the procedures specified by the U.S. Department of Labor at 41 CFR Part 60-30, as amended.

(c) Comply with the requirements of section 503 of the Rehabilitation Act of 1973, 29 U.S.C. 793, and the regulations issued thereunder at 20 CFR Part 741, which are incorporated herein by reference, requiring Government contractors to take affirmative action to employ qualified handicapped individuals, and

(d) Comply with requirements of section 503 of the Veterans Employment and Readjustment Act of 1972, 38 U.S.C. 2012, Executive Order 11701, and the regulations issued thereunder at 41 CFR Subpart 1-12.11, which are incorporated herein by reference, for the promotion of employment of disabled and Vietnam era veterans.

Subpart B—Options

§ 203.8 General requirement.

A Treasury tax and loan depositary shall administer its Treasury tax and loan account under either the Note Option or the Remittance Option.

§ 203.9 Note Option.

(a) *Additions.* The Treasury will invest funds in obligations of depositaries selecting the Note Option. Such obligations shall be in the form of open-ended notes and additions and reductions will be reflected on the books of the Federal Reserve Bank of the district. A depositary electing the Note Option shall, as of the first business day after crediting deposits to its tax and loan account, debit its tax and loan account in the amount of such deposits and simultaneously credit the note thereby reflecting an increase in like amount in Treasury's investment in obligations of the depositary.

(b) *Delivery.* A depositary administering its tax and loan account under the Note Option shall forward at the close of business each day its advices of credit for that day to the Federal Reserve Bank of the district via the most expeditious means reasonably available including the U.S. Postal Service in instances where more positive delivery systems, in terms of date of delivery, are not being utilized by the depositary for other documents (e.g., checks) being remitted to the Federal Reserve Bank or Branch city.

(c) *Other Additions.* (1) A tax and loan depositary may be given the

option of adding directly to its note the amounts of payments made by, or through, it for allotments on tenders and subscriptions for United States securities issued under the Second Liberty Bond Act, 40 Stat. 268, as amended when such method of payment is provided for under the terms of the Treasury's offering circulars. The amounts of payments shall be added to the amount of the note on the dates of settlement.

(2) In addition, other funds from the Treasury's operating cash may be offered from time to time to certain Note Option depositaries. Each such Note Option depositary shall have the opportunity to decide whether it wishes to receive from the Treasury such additional investments in its notes.

(d) *Withdrawals.* The amount of the note shall be payable on demand without previous notice. Calls for payments on the note will be by direction of the Secretary of the Treasury through the Federal Reserve Banks. A depositary shall arrange for the payment of calls on the payment dates specified in the calls by a charge to the reserve account of a depositary or the reserve account of a member bank correspondent.

(e) *Interest.* A note shall bear interest at the rate specified in § 203.13. Such interest is payable monthly by a charge to the reserve account of the depositary or through the reserve account of a member bank correspondent. Specific details about the computation of the amount of interest due, the means of payment, payment dates, Federal Reserve Bank responsibilities, and other related details are described in the Procedural Instructions for Treasury Tax and Loan Depositaries.

(f) *Maximum Balance.* As of the date specified by each Federal Reserve Bank, each depositary selecting the Note Option may establish a maximum balance for its note account by providing notice to that effect in writing to the Federal Reserve Bank of the district. That portion of any advice of credit when posted at the Federal Reserve Bank which would cause the note balance to exceed the amount specified by the depositary will be automatically withdrawn by the Federal Reserve Bank.

§ 203.10 Remittance Option.

(a) *Withdrawals.* For a depositary selecting the Remittance Option, funds equivalent to the amount of deposits credited by a depositary to its Treasury tax and loan account will be withdrawn by the Federal Reserve Bank upon receipt by the Federal Reserve Bank of the advices of credit supporting such deposits. A depositary shall arrange for the payment of withdrawals by an immediate charge to its reserve account or the reserve account of a member bank correspondent.

(b) *Remittance Option Classes.* Depositaries electing this option will be subdivided into Remittance Option Class 1 or Class 2 depending upon the volume of deposits credited to their tax and loan accounts during the previous calendar year, as specified in the Procedural Instructions for Treasury Tax and Loan Depositaries. Each depositary shall be subject to the provisions applicable to the class into which it is placed.

(1) *Remittance Option—Class 1 requirements.*—(i) *Delivery.* A Remittance Option—Class 1 depositary shall establish and maintain procedures to ensure timely delivery of its advices of credit at the Federal Reserve Bank of the district prior to the Federal Reserve Bank's cutoff time for processing such credits the next business day after the date of credit. If a depositary, whose volume of credits is higher than the amount specified in the Procedural Instructions for Treasury Tax and Loan Depositaries, does not arrange to forward its advices of credit so that they regularly arrive at the Federal Reserve Bank prior to the designated cutoff hour, it should elect the Note Option.

(ii) *Late fee.* If an advice of credit does not arrive at the Federal Reserve Bank before the designated cutoff hour for receipt of such advices, a late fee in the form of interest at the rate specified at § 203.13 will be assessed for each day's delay in receipt of such advice. Such late fee assessments will be effected on a monthly basis through a depositary's reserve account or the reserve account of a member bank correspondent. Specific details and procedures are included in the Procedural Instructions for Treasury Tax and Loan Depositaries.

(2) *Remittance Option—Class 2 requirements.*—(i) *Delivery.* A depositary administering its tax and loan account under the Remittance Option—Class 2 shall forward its advices of credit to the Federal Reserve Bank of the district via an available expeditious means, which includes the U.S. Postal Service.

(ii) *Analysis credit.* All tax and loan balances which are in excess of a current day's credits will be subject to an analysis credit, as explained in § 203.14 and the Procedural Instructions for Treasury Tax and Loan Depositaries.

(iii) *Excessive flow.* A depositary may continue as a Class 2 depositary if the rate of flow of deposits it accepts does not exceed the limitation prescribed therefor in the Procedural Instructions for Treasury Tax and Loan Depositaries. If a depositary's flow exceeds that limitation, it shall administer its tax and loan account as a Remittance Option—Class 1, or a Note Option depositary. Specific details and procedures concerning the excessive flow of deposits are described in the Procedural Instructions for Treasury Tax and Loan Depositaries.

§ 203.11 Election of option by previously authorized depositaries.

(a) *General.* A depositary which, as of the close of business on July 5, 1978, was authorized to maintain a tax and loan account and which wishes to administer a tax and loan account under the Note Option or the Remittance Option shall file with the Federal Reserve Bank of the district an Election of Option form signed by an official authorized to act on behalf of the depositary. The depositary will receive from the Federal Reserve Bank notice as to the effective date of that election. Until July 6, 1978, each authorized depositary shall continue to administer its tax and loan account under its authorization prior to that date.

(b) *Depositaries not filing an Election of Option form, yet accepting tax deposits.* A depositary authorized prior to July 6, 1978, to administer a Treasury tax and loan account, but which has not filed an Election of Option form by that date, or having filed that form, has not received from the Federal Reserve Bank prior to that date notice as to the effective date of that election shall on and after July 6, 1978, if it continues to credit deposits to the Treasury tax and loan account by entering such credits, be presumed to have assented to all terms and provisions of this part and to be administering the tax and loan account under the Remittance Option.

(c) *Inactive depositaries.* The authority of a depositary, authorized prior to July 6, 1978, to administer a Treasury tax and loan account, which depositary has not filed an Election of Option form and whose tax and loan account has had no credits for six months after July 6, 1978, will be revoked automatically. Thereafter, to accept deposits for credit to a Treasury tax and loan account, the financial institution shall seek new designation in accordance with § 203.3.

§ 203.12 Change of options.

A depositary is subject to the provisions of the option it has selected until such time as it provides notice to the Federal Reserve Bank requesting a change in option and receives formal notification from the Federal Reserve Bank of the effective date of the change of option. Specific details regarding changes in option are included in the Procedural Instructions for Treasury Tax and Loan Depositaries.

Subpart C—Interest and Compensation

§ 203.13 Rate of interest.

The rate of interest to be used in connection with the Note Option and

the Remittance Option will be equal to the Federal funds rate less twenty-five basis points (i.e., ¼ of 1 percent). Details about the computation are included in the Procedural Instructions for Treasury Tax and Loan Depositaries.

§ 203.14 Compensation for services rendered.

(a) *General.* Depositaries will not be separately compensated for servicing the tax and loan account, but the bookkeeping costs of maintaining that account are considered in establishing the per-item fee for each Federal tax deposit, as prescribed at § 214.6(b) of this chapter.

(b) *Remittance Option—Class 2 depositaries.* Fees payable to Remittance Option—Class 2 depositaries for Federal tax deposits will be reduced by an analysis credit representing the value of the balances in tax and loan accounts in excess of a current day's credits. Specific details regarding the determination of the amount of compensation due are discussed in the Procedural Instructions for Treasury Tax and Loan Depositaries.

Subpart D—Collateral Security

§ 203.15 Collateral security requirements.

(a) *Note Option.* Prior to crediting deposits to its Treasury tax and loan account, a Note Option depositary shall pledge collateral security in accordance with the requirements and valuations of paragraph (d) of this section, to cover 100 percent of the amount of the note balance and the closing balance in its Treasury tax and loan account which exceeds recognized insurance coverage.

(b) *Remittance Option.* Prior to crediting deposits to its Treasury tax and loan account, a Remittance Option depositary shall pledge collateral security in accordance with the requirements and valuations of paragraph (d) of this section in an amount which is sufficient to cover the maximum balance in the tax and loan account at the close of business each day, less recognized insurance coverage.

(c) *Deposit of securities.* Collateral security required under paragraphs (a) and (b) of this section shall be deposited with the Federal Reserve Bank of the district, or with a custodian or custodians within the United States designated by the Federal Reserve Bank, under terms and conditions prescribed by the Federal Reserve Bank.

(d) *Acceptable securities.* Unless otherwise specified by the Secretary of the Treasury, collateral security pledged under this section may be transferable securities of any of the following classes:

(1) Obligations issued or fully insured or guaranteed by the United States or any U.S. Government agency, and obligations of Government-sponsored corporations which under specific statute may be accepted as security for public funds: At face value.

(2) Obligations issued or fully guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank or the Asian Development Bank: At face value.

(3) Obligations partially insured or guaranteed by any U.S. Government agency: At a value equal to the amount of the insurance or guaranty.

(4) Notes representing loans to students in colleges or vocational schools which are insured either by Federal insurance or by a State agency or private nonprofit institution or organization administering a student loan insurance program in accordance with a formal agreement with the Commissioner of Education under the provisions of the Higher Education Act of 1965 or the National Vocational Student Loan Insurance Act of 1965: At face value.

(5) Obligations issued by States of the United States: At 90 percent of face value.

(6) Obligations of Puerto Rico: At 90 percent of face value.

(7) Obligations of counties, cities, and other governmental authorities and instrumentalities which are not in default as to payments on principal or interest: At 80 percent of face value.

(8) Obligations of domestic corporations which may be purchased by banks as investment securities under the limitations established by Federal bank regulatory agencies: At 80 percent of face value.

(9) Commercial and agricultural paper and bankers' acceptances approved by the Federal Reserve Bank of the district and having a maturity at the time of pledge of not to exceed one year: At 90 percent of face value.

(e) *Assignment of securities.* A tax and loan depositary that pledges securities which are not negotiable without its endorsement or assignment may, in lieu of placing its unqualified endorsement on each security, furnish and appropriate resolution and irrevocable power of attorney authorizing the Federal Reserve Bank to assign the securities. The resolution and power of attorney shall conform to such terms and conditions as the Federal Reserve Bank shall prescribe.

Subpart E—Miscellaneous Provisions

§ 203.16 Termination of contract.

(a) *Termination by the Treasury.* The Secretary of the Treasury may terminate the contract of a Treasury tax and loan depositary at any time upon notice to that effect to that depositary effective at a prospective date set forth in the notice.

(b) *Termination by the tax and loan depositary.* A tax and loan depositary may terminate its depositary contract by submitting notice to that effect in writing to the Federal Reserve Bank of the district effective at a prospective date set forth in the notice.

§ 203.17 Implementing instructions.

Each Federal Reserve Bank is authorized to issue implementing instructions consistent with this part, which instructions shall be binding upon tax and loan depositaries located in its district.

§ 203.18 Effective date.

This revision of this part is effective on July 6, 1978.

2. 31 CFR Part 214 (Department Circular No. 1079) is revised to read as follows:

PART 214—DEPOSITARIES FOR FEDERAL TAXES

Sec.
214.1 Scope of regulations.
214.2 Definitions.
214.3 Designation.
214.4 Depositary Contract.
214.5 Termination of contract.
214.6 Deposits of Federal taxes with depositaries.
214.7 Deposits of Federal taxes with Federal Reserve Banks.
214.8 Additional instructions.
214.9 Effective date.

AUTHORITY: Sec. 10, 56 Stat. 356, as amended (12 U.S.C. 265); sec. 15, 38 Stat. 265 (12 U.S.C. 391); sec. 8, 40 Stat. 291, as amended (31 U.S.C. 771); sec. 6302(c), Internal Revenue Code of 1954, as amended; secs. 1, 2 and 3, Pub. L. 95-147, 91 Stat. 1227 (31 U.S.C. 1038).

§ 214.1 Scope of regulations.

The regulations in this revision of this part govern the designation of financial institutions as depositaries for Federal taxes and the handling of deposits of Federal taxes by such depositaries and by Federal Reserve Banks.

§ 214.2 Definitions.

As used in this part:

(a) "Depositary" means a depositary for Federal taxes.

(b) "Federal Reserve Bank of the district" means the Federal Reserve Bank serving the geographical area in which the financial institution is located. For this purpose, depositaries located in Puerto Rico, the Virgin Islands and the Panama Canal Zone are included in the Second Federal Reserve District.

(c) "Federal tax deposit form" means a preinscribed form supplied to a taxpayer by the Treasury Department to accompany deposits of Federal taxes made under the procedure prescribed by this part.

(d) "Federal taxes" means those Federal taxes specified by the Secre-

tary of the Treasury or the Secretary's delegate as eligible for payment through the procedure prescribed by this part.

(e) "Immediate credit item" means a check or other payment instrument for which immediate credit is given in accordance with the check collection schedule of the receiving Federal Reserve Bank or Branch of the district.

(f) "Qualified depositary for Federal taxes" means a previously designated depositary for Federal taxes that, at the close of business July 5, 1978, was qualified by the Federal Reserve Bank of the district under the provisions of the former Part 214 of this chapter.

§ 214.3 Designation.

(a) *Previously designated depositaries.* (1) The designation of each qualified depositary for Federal taxes which, at the close of business on July 5, 1978, was authorized to maintain a Treasury tax and loan account under the provisions of the former Part 203 of this chapter is hereby extended. The agreements under which they were heretofore authorized as Special Depositaries of Public Money are continued in effect without further action, but subject to the provisions of the current Part 203 of this chapter.

(b) *New designations.*—(1) *Eligibility.* Each financial institution designated as a Treasury tax and loan depositary under the provisions of Part 203 of this chapter is eligible for designation as a depositary for Federal taxes.

(2) *Application for designation.* Any eligible financial institution seeking designation as a depositary for Federal taxes shall file with the Federal Reserve Bank of the district an "Offer to Contract and Application" accompanied by a resolution of its Board of Directors authorizing the "Offer to Contract and Application," both on forms preinscribed by and available on request from the Federal Reserve Bank. Any financial institution not already designated as a Treasury tax and loan depositary may make simultaneous application with the Federal Reserve Bank for such designation as provided in § 203.3 of this part.

(3) *Designations.* Each financial institution satisfying the eligibility requirements and the application procedures will receive from the Federal Reserve Bank of the district notification of its specific designation as a depositary for Federal taxes.

§ 214.4 Depositary Contract.

The designation of a depositary under this part creates a contract between the depositary and the Treasury Department, acting through the Federal Reserve Bank as Fiscal Agent of the United States. The terms of this contract include:

(a) All of the provisions of this part except § 214.7.

(b) Any instructions issued pursuant to this part by the Treasury or by Federal Reserve Banks as Fiscal Agents of the United States.

(c) The provisions prescribed in section 202 of Executive Order 11246, entitled "Equal Employment Opportunity" (30 FR 12319) as amended by Executive Order 11375, entitled "Equal Employment Opportunity Clause."

(d) The requirements of section 503 of the Rehabilitation Act of 1973, 29 U.S.C. 793, and the regulations issued thereunder at 20 CFR Part 741, which are incorporated herein by reference, requiring Government contractors to take affirmative action to employ qualified handicapped individuals, except that depositaries which under this Part receive on an annual basis fee payments of less than $2,500 are exempt from compliance with these regulations.

(e) The requirements of section 503 of the Veterans Employment and Readjustment Act of 1972, 38 U.S.C. 2012, Executive Order 11701, and the regulations issued thereunder at 41 CFR Subpart 1-12.11, which are incorporated herein by reference, for the promotion of employment of disabled and Vietnam era veterans, except that depositaries which under this part receive on an annual basis fee payments of less than $10,000 are exempt from compliance with these regulations.

§ 214.5 Termination of contract.

(a) *By Treasury.* The Secretary of the Treasury may terminate the contract with any depositary at any time upon notice to that effect to be effective at a prospective date set forth in the notice.

(b) *By depositary.* A depositary may terminate its depositary contract by submitting a notice to that effect, in writing, to the Federal Reserve Bank of the district effective at a prospective date set forth in the notice.

§ 214.6 Deposits of Federal taxes with depositaries.

(a) *Deposits with depositaries.* A depositary shall, through any of its offices that accept deposits:

(1) Accept from a taxpayer cash, a postal money order drawn to the order of the depositary, or a check or draft drawn on and to the order of the depositary, covering an amount to be deposited as Federal taxes when accompanied by a Federal tax deposit form on which the amount of the deposit has been properly entered in the space provided. A depositary may at its discretion accept a check drawn on another financial institution, but it does so purely on a voluntary basis and absorbs for its own account any float involved.

(2) When requested to do so by a taxpayer who makes a deposit of Federal taxes in cash over the counter, issue a counter receipt.

(3) Regardless of the form of payment, in every instance place in the space provided on the face of each Federal tax deposit form a stamp impression reflecting the date on which the tax deposit was received by the depositary, by reference to which the timeliness of the tax payment will be determined, and the name and location of the depositary.

(4) Credit on the date of receipt all deposits of Federal taxes to the treasury tax and loan account and administer that account pursuant to the provisions of Part 203 of this Chapter.

(5) Forward each day to the Internal Revenue Service Center servicing the geographical area in which the depositary is located, the Federal tax deposit forms for all tax deposits received that day. Each submission of deposit information shall be on the prescribed Treasury form and in the aggregate amount of the Federal tax deposit forms.

(6) Establish, prior to transmittal to the Internal Revenue Service Center, an adequate record of all deposits of Federal taxes so that it will be able to identify deposits in the event tax deposit forms are lost in shipment between it and the Internal Revenue Service Center. For this purpose, a record shall be made of each deposit showing as a minimum the date of deposit, the taxpayer's identifying number, and the amount of the deposit. The depositary's copies of transmittal letters may be used to provide the necessary information if individual deposits are listed separately showing date, taxpayer's identifying number, and amount.

(7) Not accept compensation from taxpayers for accepting deposits of Federal taxes and handling them as required by this section.

(b) *Compensation for services.* The Treasury will compensate depositaries for Federal taxes at a uniform fee of 50 cents for each Federal tax deposit form forwarded by the depositary and processed by the Internal Revenue Service Center. This fee covers the bookkeeping costs of maintaining the Treasury tax and loan account as well as the handling of Federal tax deposits. Fees payable may be reduced by the analysis credits described in § 203.14 of this chapter.

§ 214.7 Deposits of Federal taxes with Federal Reserve Banks.

A Federal Reserve Bank shall, through any of its offices:

(a) Accept a tax deposit directly from a taxpayer when such tax deposit is:

(1) Mailed or delivered by a taxpayer located within that Bank's territorial boundaries; and

(2) In the form of cash, a check drawn to the order of that Bank and considered to be an immediate credit

item by that Bank, a postal money order drawn to the order of that Bank, or Treasury bills, as authorized in Part 309 of this Chapter, covering an amount to be deposited as Federal taxes; and,

(3) Accompanied by a Federal tax deposit form on which the amount of the tax deposit has been properly entered in the space provided.

(b) When requested to do so by a taxpayer who makes a deposit of Federal taxes in cash over the counter, issue a counter receipt.

(c) When a deposit of Federal taxes is made in accordance with the requirements of paragraph (a) of this section, a Bank shall place in the space provided on the face of each Federal tax deposit form accepted directly from a taxpayer, a stamp impression reflecting the name of the Bank and the date on which the tax deposit was received by the Bank so that the timeliness of the Federal tax payment can be determined. However, if such a deposit is mailed to a Bank, it shall be subject to the "Timely mailing treated as timely filing and paying" clause of section 7502 of the Internal Revenue Code (26 U.S.C. 7502).

(d) When a deposit of Federal taxes is not in accordance with the requirements governing form of payment set forth in paragraph (a) of this section, a Bank shall place in the space provided on the face of each Federal tax deposit form a stamp impression reflecting th name of the Bank and the date on which the proceeds of the accompanying payment instrument are collected by the Bank. This date shall be used for the purpose of determining the timeliness of the Federal tax payment.

§ 214.8 Additional instructions.

Federal Reserve Banks are authorized to issue instructions consistent with these regulations for carrying out the requirements of this part.

§ 214.9 Effective date.

The provisions of this part, as revised, become effective as of July 6, 1978.

PART 317—REGULATIONS GOVERNING AGENCIES FOR ISSUE OF U.S. SAVINGS BONDS OF SERIES E AND U.S. SAVINGS NOTES

3. 31 CFR Part 317 (Department Circular, Public Debt Series No. 4-67) is amended by revising § 317.5 to read as follows:

§ 317.5 Issuance of bonds.

(a) *General.* Issuing agents shall comply with all regulations and instructions issued by the Department of the Treasury or the Federal Reserve Banks concerning the sale, inscription, dating, validation and issue of the bonds, and disposition of the issue records. No issuing agent shall have authority to sell bonds other than as provided in the offering circulars and the governing regulations.[1]

(b) *Fees.* Issuing agents, other than Federal agencies which for the purpose of this section include Government corporations and independent establishments, will be paid for each savings bond issued during a calendar quarter as follows:

70 cents for each bond issued on sale by a financial institution on the basis of an application received over-the-counter or by mail, or under a bond-a-month plan:

30 cents for each bond issued on sale by a financial institution under a payroll plan, if the bond is inscribed by any means other than a computer;

10 cents for each bond issued on sale by a financial institution under a payroll plan, if the bond is inscribed by computer;

10 cents for each bond issued on sale by a non-financial institution; and

5 cents for each bond reissued to effect distribution to a participant in a pension, retirement, savings, vacation or similar plan.

(c) *Basis for payment of fees.* A fee will be paid for each Series E savings bond issue included in transmittals of registration stubs or magnetic tape to the Bureau of the Public Debt for the account of an eligible agent during each calendar quarter, based on the transfer dates assigned to the transmittals by a Federal Reserve Bank.

(d) *No charge to customers.* Financial institutions accepting fees from the Treasury for issuing savings bonds shall not make any charge to customers for the same service.

(e) The provisions of this section, as amended, are effective as of July 6, 1978.

PART 321—PAYMENTS BY BANKS AND OTHER FINANCIAL INSTITUTIONS OF UNITED STATES SAVINGS BONDS AND UNITED STATES SAVINGS NOTES (FREEDOM SHARES)

4. 31 CFR Part 321 (Department Circular No. 750, Second Revision) is amended by revising § 321.5 to read as follows:

* * * * *

Subpart B—Authority To Act

§ 321.5 Paying agent fees and charges.

(a) *Scale or rate and procedures.* Each paying agent shall receive reimbursement at the rate of 30 cents for each bond or note paid hereunder which is received by a Federal Reserve Bank and forwarded for the agent's account to the Department of the Treasury during each calendar quarter.

(b) *No charge to owners.* Paying agents shall not make any charge whatever to owners of savings bonds and savings notes in connection with payments hereunder.

(c) The provisions of this section, as amended, are effective as of July 6, 1978.

5. 31 CFR Chapter II is revised to add a new Part 226 to read as follows:

INTERIM RULE

PART 226—RECOGNITION OF INSURANCE COVERING TREASURY TAX AND LOAN DEPOSITARIES

Sec.
226.1 Scope.
226.2 General.
226.3 Application—termination.
226.4 Adequacy of security—how computed.
226.5 Examinations.
226.6 Financial reports.
226.7 Effective date.

AUTHORITY: Secs. 2 and 3, Pub. L. 95-147. 91 Stat. 1227 (31 U.S.C. 1038).

§ 226.1 Scope.

The regulations in this part apply to insurance covering public money of the United States held by banks, savings banks, savings and loan associations, building and loan associations, homestead associations, or credit unions designated as Treasury tax and loan depositaries under 31 CFR Part 203. Approval of the adequacy of the insurance coverage provided to Treasury tax and loan funds shall be governed by the regulations contained herein, which will be supplemented by guidelines issued by the Treasury and updated from time to time to meet changing conditions in the industry.

§ 226.2 General.

(a) Deposit or account insurance provided by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Share Insurance Fund, is hereby recognized. Deposits or accounts which are insured by a State or agency thereof, or by a corporation chartered by a State for the sole purpose of insuring deposits or accounts of financial institutions eligible to be Treasury tax and loan depositaries (hereinafter referred to as Insurance Arrangement), shall be approved as provided herein. Such approval constitutes recognition for the purpose of reducing the amount of collateral required of a tax and loan de-

[1] Department of the Treasury Circulars No. 530, current revision (31 CFR Part 315), and No. 653, current revision (31 CFR Part 316).

positary by the amount of recognized insurance coverage pursuant to 31 CFR 203.15.

(b) Generally, these regulations and their associated guidelines require that an organization providing insurance maintain a corpus of sufficient value and liquidity, and/or that it have sufficient State borrowing authority, in relation to its liabilities and total insured savings (or deposits) to provide adequate security to the Government's deposits and that adequate monitoring of the financial condition of the insured institutions is conducted.

§ 226.3 Application—termination.

(a) Every Insurance Organization applying for recognition as a qualified insurer of financial institutions designated as Treasury tax and loan depositaries shall address a written request to the Assistant Comptroller for Auditing, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226, who will notify the applicant of the data which is necessary to make application. If the Secretary of the Treasury is satisfied that (1) one or more institutions insured by the applicant otherwise meet the Secretary's requirements for designation as a Treasury tax and loan depositary or Federal tax depositary, (2) the insurance provided by the applicant covers public money of the United States, and (3) the insurance coverage provided affords adequate security to the Government's deposits, the Secretary shall recognize the applicant as a qualified insurer of financial institutions designated as Treasury tax and loan depositaries.

(b) If and when the Secretary of the Treasury determines that a qualified insurance organization's financial condition is such that it no longer provides adequate security or that it is not complying with the regulations of this part, the Secretary will notify the Insurance Organization of the facts or conduct which cause him to make such determination, and in those cases where the safety of the Government's funds allows, provide the Insurance Organization with an opportunity to correct the deficiency. When any deficiency has not been corrected to his satisfaction or, where the safety of Government funds makes immediate revocation imperative, the Secretary will revoke the recognition previously granted.

§ 226.4 Adequacy of security—how computed.

(a) In qualifying Insurance Organizations, the Treasury will use a ratio (equity (net worth) of the insurance organization divided by insured accounts or deposits) to determine if the security is adequate. The ratio will be computed as determined by the Treasury, and is required to equal 0.0045 or greater for an Insurance Organization to be recognized (i.e., net worth is required to equal 0.45 of 1 percent of insured accounts or deposits).

(b) If, in the judgment of the Secretary of the Treasury, any of the Insurance Organization's assets which cannot be liquidated promptly or are subject to restriction, encumbrance, or discredit, all or part of the value of such assets may be deducted from equity in making the computation. The Secretary of the Treasury may value the assets and liabilities in his discretion.

(c) An Insurance Organization's unqualified borrowing authority from its sponsoring State will be added to its equity in making the computation because such authority is equivalent to additional capitalization. An Insurance Organization's commercial borrowing authority and its reinsurance will be disregarded in making the computation, because these are not adequate substitutes for undercapitalization.

§ 226.5 Examinations.

(a) Examinations by State regulatory authorities or audits by CPA firms of Insurance Organizations shall be performed in accordance with, and at intervals prescribed by, State regulatory procedures. Copies of the reports shall be submitted to the Treasury.

(b) Examinations by State regulatory authorities or audits by CPA firms of insured financial institutions shall be performed in accordance with, and at intervals prescribed by, State regulatory procedures. In addition, an adequate monitoring system shall be employed to detect those institutions with financial problems.

§ 226.6 Financial reports.

Financial reports of Insurance Organizations shall be submitted to the Treasury at the same intervals they are submitted to State regulatory authorities. However, they need not be submitted more frequently than quarterly but, as a minimum, shall be submitted annually. The Treasury may prescribe the format of such reports.

§ 226.7 Effective date.

The provisions of this part become effective as of July 6, 1978.

* * * * *

The foregoing revisions and/or amendments are effective as of July 6, 1978.

Dated: April 27, 1978.

PAUL H. TAYLOR,
Acting Fiscal Assistant Secretary.

[FR Doc. 78-11814 Filed 5-1-78; 8:45 am]

federal register

TUESDAY, MAY 2, 1978
PART IV



DEPARTMENT OF STATE

■

EMPLOYEE RESPONSIBILITIES AND CONDUCT

Revised Regulations

[4710-13]

Title 22—Foreign Relations

CHAPTER I—DEPARTMENT OF STATE

SUBCHAPTER B—PERSONNEL

[Dept. Reg. 108.754]

PART 10—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Revised Regulations

AGENCY: Department of State.

ACTION: Final Rule.

SUMMARY: These regulations revise existing standards of conduct and responsibilities for certain employees of the Department of State, the Agency for International Development (AID), and the International Communication Agency (ICA). The revisions are necessary to conform to a change in legislation establishing new dollar ceilings for honorariums. The revisions also are responsive to certain problems of administration, including a reduction in the information required from employees, by providing that employees need not disclose certain types of financial interests. It is the intent of the revisions to provide conformity with the law and more flexibility in administering the regulations.

EFFECTIVE DATE: May 2, 1978.

FOR FURTHER INFORMATION CONTACT:

For State: Knute E. Malmborg, Assistant Legal Adviser, 202-632-2350; For AID: Pauline G. Johnson, Office of the General Counsel, 202-632-8277; For ICA: C. Normand Poirier, Deputy General Counsel, 202-724-9168.

SUPPLEMENTARY INFORMATION: The following summary highlights the major revisions to Part 10 of Title 22, Code of Federal Regulations.

1. A new § 10.735-217, Requesting Exceptions From Certain Statutory Prohibitions, is added to Subpart B.

2. A new § 10.735.411, Disqualification Procedures, is added to Subpart D.

3. Section 10.735-102(f) is revised to include "in-law relations" in the definition of "Member of an employee's family."

4. Section 10.735-202(d) is revised to provide stricter guidelines for acceptance of gifts, entertainment, and favors by AID employees.

5. In § 10.735.205, paragraphs (c) and (d) are added to provide that certain financial interests are exempted from the prohibitions in 18 U.S.C. 208 (a) and (b)(1) as being too remote or inconsequential to affect the integrity of the services of an employee.

6. Section 10.735-206(c) is revised to conform to the requirements of sec. 413(c), Pub. L. 95-105 (91 Stat. 856; 22 U.S.C. 2693) for employment of Foreign Service spouses.

7. Section 10-735-209 is revised to include as a just financial obligation one imposed by law such as Federal, State, or local taxes.

8. Section 10.735-213(b) is revised to include present or former employees, their spouses and/or members of their families among those for whom an employee may make a personal recommendation in connection with employment.

9. Section 10.735-216(a) is revised to add a prohibition against officers or employees accepting any honorarium in excess of $2,000 or honoraria aggregating more than $25,000 in any calendar year, as required by Pub. L. 94-283, (90 Stat. 494; 2 U.S.C. 441i).

10. A new § 10.735-217 is added to provide a procedure for requesting exceptions from certain statutory prohibitions.

11. Section 10.735-401 is updated to include an amended list of employees required to submit statements of employment and financial interests.

12. Section 10.735-405(e) is revised to provide that an employee need not disclose financial interests described in § 10.735-205(c) which are too remote or too inconsequential to affect the integrity of employees' services.

13. Section 10.735-410 is revised to provide that except for those financial interests excepted from the conflict of interest prohibitions, employees must disqualify themselves from participating in any matter in which they have a financial interest.

14. A new 10.735-411 is added to provide procedures for employees to follow to disqualify themselves from participating in any matter in which they have a financial interest.

Compliance with 5 U.S.C. 553 (80 Stat. 383) as to notice of proposed rulemaking and delayed effective date is unnecessary because the revisions to 22 CFR 10 are beneficial to personnel of the Department of State, the Agency for International Development, and the International Communication Agency, and involve functions of agency management and personnel which are exempt from 5 U.S.C. 553.

This revision to 22 CFR Part 10 was approved by the Civil Service Commission on February 14, 1978.

Dated: March 31, 1978.

BEN H. READ,
Deputy Under Secretary for Management, Department of State.

Dated: April 5, 1978.

KENNETH E. DAWSEY,
Director, Office of Personnel and Training, Agency for International Development.

Dated: April 6, 1978.

ANGIE GARCIA,
Director of Personnel Services, International Communication Agency.

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AUTHORITY: EO 11222 of May 8, 1965, as amended; 5 CFR 735.104.

Subpart A—General Provisions

§ 10.735-101 Purpose.

The maintenance of the highest standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. To accord with these concepts the regulations in this part prescribe standards of conduct and responsibilities for employees and special Government employees and require statements reporting employment and financial interests.

NOTE.—These regulations are codified in State 3 FAM 620, AID Handbook 24, and ICA MOA V-A 550.

§ 10.735-102 Definitions.

(a) "Agency" means the Department of State (State), the Agency for International Development (AID), and the International Communication Agency (ICA).

(b) "Employee" means an officer or employee at home or abroad, of an agency named in paragraph (a) of this section, but does not include a special Government employee or a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, or Public Health Service.

(c) "Executive order" means Executive Order 11222 of May 8, 1965, as amended.

(d) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(e) "Special Government employee" means an officer or employee of an agency who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

(f) "Member of an employee's family" means a spouse, minor child, or other member of an employee's immediate household. For the purpose of these regulations "member of an employee's immediate or in-law household" means those blood relations who are residents of the employee's household.

(g) "Counselor" means the agency's Counselor on Ethical Conduct and Conflicts of Interest.

§ 10.735-103 Interpretation and advisory service.

(a) Counseling services on employee responsibilities and conduct are available in each agency. These services are to be coordinated by a Counselor appointed by the agency head. The Counselors are for State: the Legal Adviser; for AID: The Deputy General Counsel; and for ICA: the General Counsel. The Counselor serves as the agency's designee to the Civil Service Commission on matters covered by the regulations in this part and is responsible for coordination of the agency's counseling services under paragraph (b) of this section and for assuring that counseling and interpretations on questions of conflicts of interest and other matters covered by these sections are available to deputy counselors designated under paragraph (b) of this section.

(b) Each agency head may designate deputy counselors for the agency's employees and special Government employees. Deputy Counselors designated under this section must be qualified and in a position to give authoritative advice and guidance to each employee and special Government employee who seeks advice and guidance on questions of conflicts of interest and on other matters covered by the regulations in this part. A Washington employee or special Government employee should address any inquiries concerning the regulations in this part to the Counselor. At missions abroad the chief of each agency's establishment designates an officer, preferably the legal officer where one is available, to provide counseling services under the guidance of the Counselor; a single officer may serve all agencies. An employee or special Government employee serving abroad should submit inquiries to the officer designated.

(c) Each agency shall periodically notify its employees and special Government employees of the availability of counseling services and how and when these services are available. A new employee or special Government employee shall be notified at the time of entrance on duty.

§ 10.735-104 Applicability to detailed employees.

All the regulations of Subparts A, B, and D of this part are applicable to an employee of another U.S. Government agency who may be serving on detail or assignment, formally or informally, on a reimbursable or nonreimbursable basis through a Participating Agency Service Agreement or otherwise, with an agency named in § 10.735-102(a). However, disciplinary action shall be taken against such an employee only by the employing agency.

§ 10.735-105 Disciplinary action.

A violation of the regulations in this part by an employee or special Government employee may be cause for appropriate disciplinary action, including separation for cause, which may be in addition to any penalty prescribed by law.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 10.735-201 General.

(a) *Proscribed actions.* An employee shall avoid any action, whether or not specifically prohibited by the regulations in this part, which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing independence or impartiality;

(5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

(b) *Applicability to members of families of employees.* A U.S. citizen employee shall take care that certain responsibilities placed on the employee are also observed by members of the employee's family. These are the restrictions in regard to: Acceptance of gifts (§§ 10.735-202 and 10.735-203); economic and financial activities abroad (§ 10.735-206); teaching, lecturing, and writing (§ 10.735-204(c)); participation in activities of private organizations (§ 10.735-211(c)); and political activities abroad (§ 10.735-211(g)).

§ 10.735-202 Gifts, entertainment, and favors.

(a) *Acceptance prohibited.* Except as provided in paragraphs (b), (c), and (d) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the employee's agency;

(2) Conducts operations or activities that are regulated by the employee's agency;

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty; or

(4) Appears to be offering the gift with the hope or expectation of obtaining advantage or preferment in dealing with the U.S. Government for any purpose.

(b) *Acceptance permitted.* The provisions of paragraph (a) of this section do not apply to:

(1) Gifts, gratuities, favors, entertainments, loans, or any other thing of monetary value received on account of close family or personal relationships when the circumstances make it clear that it is that relationship rather than the business of the persons concerned which is the motivating factor;

(2) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans;

(3) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value;

(4) Acceptance of rates and discounts offered to employees as a class.

(c) *Acceptance permitted for State and ICA employees.* For State and ICA employees the provisions of paragraph (a) of this section do not apply to: Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance.

(d) *Acceptance permitted for AID employees.* For AID employees the provisions of paragraph (a) of this section do not apply in the following situations:

(1) Acceptance of food, refreshments, or entertainment of nominal value on infrequent occasions offered in the ordinary course of luncheons, dinners, or other meetings and gatherings hosted by foreign governments or agencies and officials thereof, embassies, and international organizations, where the primary purpose of the function is representational or social, rather than the transaction of business. Where the primary purpose of the function is the transaction of business, acceptance is not permitted, except if there is justification and reporting in accordance with paragraph (d)(4) of this section.

(2) Participation in widely attended lunches, dinners, and similar gatherings sponsored by industrial, technical, and professional associations for the discussion of matters of mutual interest to Government and industry.

(3) Acceptance of food, refreshments, or entertainment in the unusual situation where the employee, by virtue of the location of the person, firm, corporation, or other entity, or the regulations governing its dining facilities, finds it inconvenient or impracticable not to accept the offer. Each case of acceptance shall be reported in accordance with the requirement of paragraph (d)(4) of this section. In no other case shall employees accept food, refreshments, or entertainment from private corporations, entities, firms, or individual contractors at occasions which are other than widely attended functions whose purposes are unrelated to Agency business.

(4) In exceptional circumstances where acceptance of food, refreshments, or entertainment is not authorized by paragraphs (d) (1), (2), and (3) of this section, but where, in the judgment of the individual concerned, the Government's interest would be served by such acceptance directly or indirectly from any foreign government, agency, or official thereof or a private person, firm, corporation, or other entity which is engaged or is endeavoring to engage in business transactions of any sort with AID, an employee may accept the offer: *Provided*, That a report of the circumstances, together with the employee's statement as to how the Government's interests were served, will be made within 48 hours to the employee's supervisor, or, if the employee is serving abroad, or on temporary duty abroad, to the Mission Director.

(e) *Gifts to superiors.* An employee shall for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than the employee (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(f) *Neither this section nor §10.735-204* precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on the employee's behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967.

§10.735-203 Gifts from foreign governments.

An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342, and the regulations promulgated thereunder pursuant to E.O. 11320, 31 FR 15789. These regulations are set forth in Part 3 of this title (as added, 32 FR 6569, Apr. 28, 1967), and in 3 FAM 621.

§10.735-204 Outside employment and other activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(2) Outside employment which tends to impair the employee's mental or physical capacity to perform Government duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for the employee's services to the Government (18 U.S.C. 209).

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, this part, or the agency regulations. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the Foreign Service, that is dependent on information obtained as a result of Government employment, except when that information has been made available to the general public or will be made available on request or when the agency head gives written authorization for use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the Executive order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the employee's agency, or which draws substantially on official data or ideas which have not become part of the body of public information. Employees are referred to the detailed rules of their agency with respect to clearance and acceptance of compensation (3 FAM 628; for AID see Handbook 18).

(d) [Reserved]

(e) An employee shall not render any services, whether or not compensated, to any foreign government, state, province, or semigovernmental agency, or municipality of any foreign government, or to any international organization of states. However, this shall not prevent the rendering of such services by employees acting on behalf of the United States. Nor shall this provision prevent the rendering of services to an international organization of states when otherwise consistent with law and when authorized by the appropriate officer. The appropriate officer for State is the Director General and Director of Personnel; for AID the Assistant Administrator for Program and Management Services; and for ICA the Director of Personnel Services.

(f) [Reserved.]

(g) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law.

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

§ 10.735–205 Financial interests.

(a) An employee shall not: (1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially with the employee's Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law or the regulations in this part.

(c) Pursuant to the provision of 18 U.S.C. 208(b) the following described financial interests of an employee are hereby exempted from the requirements of 18 U.S.C. 208(a) and 208(b)(1) as being too remote or too inconsequential to affect the integrity of the services of an employee. The exemption applies to the financial interests held directly by an employee, by the employee's spouse or minor child whether individually or jointly with the employee, or by an employee and any partner or partners as joint assets of the partnership:

(1) Investments in State and local government bonds; and stocks, bonds, or policies in a mutual fund, investment company, bank or insurance company, provided that in the case of a mutual fund, investment company, or bank, the fair value of such stock or bond holding does not exceed one percent of the value of the reported assets of the mutual fund, investment company, or bank. In the case of a mutual fund or investment company, this exemption applies only where the assets of the fund or company are diversified; it does not apply where the fund or company specializes in a particular industry or commodity.

(2) Interest in an investment club or other group organized for the purpose of investing in equity or debt securities: *Provided*, That the fair value of the interest involved does not exceed $10,000 and that the interest does not exceed one-fourth of the total assets of the investment club or group. Where an employee covered by this exemption is a member of a group organized for the purpose of investing in equity or debt securities, the interest of the employee in any enterprise in which the group holds securities shall be based upon the employee's equity share of the holdings of the group in that enterprise.

(3) If an employee, or the employee's spouse or minor child has a present beneficial interest or a vested remainder interest under a trust, the ownership of stocks, bonds, or other corporate securities under the trust will be exempt to the same extent as provided in paragraphs (c)(1) and (2) of this section for the direct ownership of such securities. The ownership of bonds other than corporate bonds, or of shares in a mutual fund or regulated investment company, under the trust will be equally exempt and to the same extent as under paragraphs (c)(1) and (2) of this section.

(4) If an employee is an officer, director, trustee, or employee of an educational institution, or if the employee is negotiating for, or has an arrangement concerning prospective employment with such an institution, a direct financial interest which the institution has in any matter will not itself be exempt, but any financial interest that the institution may have in the matter through its holdings of securities issued by business entities will be exempt: *Provided*, The employee is not serving as a member of the investment committee of the institution or is not otherwise advising it on its investment portfolio.

(5) An employee may continue to participate in a bona fide pension, retirement, group life, health or accident insurance plan, or other employee welfare or benefit plan that is maintained by a business or nonprofit organization by which the employee was formerly employed. Such financial interest in that organization will be exempt, except to the extent that the welfare or benefit plan is a profit-sharing or stock-bonus plan and the employee's financial interest thereunder exceeds $10,000. This exemption extends also to any financial interests that the organization may have in other business activities.

(d) Nothing in this part shall be deemed to prohibit an employee from acting, with or without compensation, as agent or attorney for the employee's parents, spouse, child, or any person for whom, or for any estate for which, the employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which the employee has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of the employee's official responsibility, as defined in 18 U.S.C. 202(b): *Provided*, The head of the employee's division approves in writing.

§ 10.735–206 Economic and financial activities of employees abroad.

(a) *Prohibitions in any foreign country.* A U.S. citizen employee abroad is specifically prohibited from engaging in the activities listed below in any foreign country.

(1) Speculation in currency exchange.

(2) Transactions at exchange rates differing from local legally available rates, unless such transactions are duly authorized in advance by the agency.

(3) Sales to unauthorized persons (whether at cost or for profit) of currency acquired at preferential rates through diplomatic or other restricted arrangements.

(4) Transactions which entail the use, without official sanction, of the diplomatic pouch.

(5) Transfers of funds on behalf of blocked nationals, or otherwise in violation of U.S. foreign funds and assets control.

(6) Independent and unsanctioned private transactions which involve an employee as an individual in violation of applicable control regulations of foreign governments.

(7) Acting as a intermediary in the transfer of private funds from persons in one country to persons in another country, including the United States.

(8) Permitting use of one's official title in any private business transactions or in advertisements for business purposes.

(b) *Prohibitions in country of assignment.* (1) A U.S. citizen employee shall not transact or be interested in any business or engage for profit in any profession or undertake other gainful employment in any country or countries to which the employee is assigned or detailed in the employee's

own name or through the agency of any other person; exceptions may be made with respect to chiefs of mission only in writing by the Deputy Under Secretary for Management and for all other State employees by the appropriate chief of mission; for AID employees by the assistant administrator of the regional bureau or head of the nonregional organization, as appropriate; and for ICA employees by the Director of Personnel Services, or their designees (see 22 U.S.C. 805).

(2) A U.S. citizen employee shall not invest in real estate or mortgages on properties located in the employee's country of assignment. The purchase of a house and land for personal occupancy is not considered a violation of this subparagraph.

(3) A U.S. citizen employee shall not invest money in bonds, shares or stocks of commercial concerns headquartered in the country of assignment or conducting a substantial portion of their business in such country. Such investments, if made prior to knowledge of assignment or detail to such country or countries, may be retained during such assignment or detail when approved in writing by the appropriate official named in subparagraph (1) of this paragraph. If retention is authorized, such stocks, shares, or bonds may not be sold while the employee is assigned or detailed to the country or countries, unless the agency approved the sale in writing.

(4) A U.S. citizen employee shall not sell or dispose of personal property, including automobiles, at prices producing profits to the employee which result primarily from import privileges derived from the employee's official status as an employee of the U.S. Government. Employees of State and ICA are referred to Foreign Affairs Manual Circular 378; for AID see Handbook 23, Attachment 1B.

(c) *Acceptance of employment by members of family abroad.* Family members of Foreign Service personnel may accept gainful employment in a foreign country unless such employment (1) would violate any law of such country or of the U.S.; or (2) could damage the interests of the U.S., as certified in writing to the family member by the Chief of the U.S. Diplomatic Mission in such country. A copy of such certification will be sent to the Family Liaison Office (M/FLO), Department of State. Family members accepting employment abroad should bear in mind that they may not enjoy immunity from judicial process and would be subject to the payment to taxes derived from their nondiplomatic employment.

(d) *Business activities of non-U.S. citizen employees.* A non-U.S citizen employee abroad may engage in outside business activities with the prior approval of the head of the overseas establishment on the basis of the standards expressed in § 10.735-204(a).

§ 10.735-207 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to the employee.

§ 10.735-208 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in § 10.735-204(c) directly or indirectly use, or allow the use of, official information obtained through or in connection with Government employment which has not been made available to the general public.

§ 10.735-209 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgement by a court or one imposed by law such as Federal, State, or local taxes, and "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as the employer. In the event of dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt.

§ 10.735-210 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 3 of Executive Order 10927 and similar agency-approved activities.

§ 10.735-211 Activities relating to private organizations and politics.

(a) *Definition.* For the purpose of this section, the term "private organization" denotes any group of persons or associations organized for any purpose whatever, except an organization established by the Government of the United States, or officially participated in by State, AID, or ICA.

(b) *Participation in activities of employee organizations.* An employee may join or refrain from joining employee organizations or associations without interference, coercion, restraint, or fear of discrimination or reprisal.

(c) *Participation in activities of private organizations.* In participating in the program and activities of any private organization, an employee shall make clear that the employee's agency has no official connection with such organization and does not necessarily sponsor or sanction the viewpoints which it may express.

(d) *Legal restrictions on membership in certain organizations.* An employee shall not have membership in any organization that advocates the overthrow of our constitutional form of Government in the United States, knowing that such organization so advocates (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) *Private organizations concerned with foreign policy or other matters of concern to agencies.* (1) Limitation on participation. When a private organization is concerned primarily with foreign policy or international relations or other matters of concern to an employee's agency, an employee shall limit connection therewith as follows: Unless specifically permitted to do so, the employee may not serve as advisor, officer, director, teacher, sponsor, committee chairman, or in any other official capacity or permit the employee's name to be used on a letterhead, in a publication, in an announcement or news story, or at a public meeting, regardless of whether the employee's official title or connection is mentioned. The provisions of this section are not intented to prohibit the normal and active participation of an employee in professional organizations such as the American Political Science Association, the American Economic Association, the American Foreign Service Association, and similar organizations, since such participation is in the interest of both the employee and the Government. Employees are expected, however, to exercise discretion in such activities and are held personally accountable for any improper use of their relationship with State, AID, and ICA.

(2) Request for special permission. Special permission to assume or continue a connection prohibited by subparagraph (1) of this paragraph may be granted in cases where the public interest will not be adversely affected. To request such permission, or to determine whether the provisions are applicable to a particular case, the employee shall address a memorandum setting forth all of the circumstances to the appropriate officer. The appropriate officer is for State, the Director General and Director of Personnel; for AID, the Senior Personnel Officer

under whose jurisdiction the employee serves; and for ICA, the Director of Personnel Services.

(3) Application to senior officers. Because of the prominence resulting from their official positions, chiefs of mission and other senior officers should recognize the particular bearing of the provisions of subparagraph (1) of this paragraph upon their activities. They should restrict association with any organizations involving foreign nations and the United States to simple membership and should not accept even honorary office in such organizations except with the specific prior approval as provided in subparagraph (2) of this paragraph.

(f) *Private organizations not concerned with foreign policy.* When the purpose and program of the organization do not fall primarily within the field of foreign policy or international relations, the employee's activity is limited only to the following extent:

(1) The employee's official title or connection may be used to identify the employee, as in a civic association election, but may not be used on a letterhead, in a publication, or otherwise so as to employ the prestige of the U.S. Government to enhance that of the organization or to imply official sponsorship.

(2) When the employee is a representative of an association consisting of State, AID, or ICA employees, or of a group of such employees, the employee's connection with the agency may be freely used so long as there is no implication of official sponsorship beyond that which may have been officially approved.

(g) *Political activities abroad.* A U.S. citizen employee shall not engage in any form of political activity in any foreign country.

(h) *Activities relating to U.S. politics.* The law (5 U.S.C. 7324, formerly the Hatch Act) provides in summary that it is unlawful for any Federal employee of the executive branch to use the employee's official authority or influence for the purpose of interfering with an election or affecting the result thereof, or to take any active part in political management or in political campaigns. These restrictions do not in any way affect the right of a Federal employee (1) to vote as the employee chooses; (2) to express personal political opinions, except as part of a campaign; (3) to make or refrain from making contributions to political organizations, provided contributions are not made in a Federal building or to another Federal officer or employee (see 18 U.S.C. 602, 603, 607, and 608); (4) to participate in local, nonpartisan activities.

§ 10.735–212 Wearing of uniforms.

(a) An employee of the Foreign Service may not wear any uniform except as may be authorized by law or as a military commander may require civilians to wear in a theater of military operations (22 U.S.C. 803). When an employee is authorized by law or required by a military commander of the United States to wear a uniform, care shall be taken that the uniform is worn only at authorized times and for authorized purposes.

(b) Conventional attire worn by chauffeurs, elevator operators, and other miscellaneous employees are not considered uniforms within the meaning of this section except that, for ICA, MOA VII 917.2b prohibits the purchase from Agency funds of uniforms or any item of personal wearing apparel other than special protective clothing.

§ 10.735–213 Recommendations for employment.

(a) *Making recommendations in official capacity.* In general, an employee shall not, in the employee's official capacity, make any recommendations in connection with the employment of persons unless the position concerned are with the Government of the United States and the recommendations are made in response to an inquiry from a Government official authorized to employ persons or to investigate applicants for employment. A principal officer in answer to a letter of inquiry from outside the U.S. Government concerning a former employee assigned to the post, may state the length of time the person was employed at the post and the fact that the former employee performed duties in a satisfactory manner, if such is the case. Also, an AID Mission Director may provide names of persons or firms from which a cooperating government may select an employee or firm to be used in some phase of the AID program.

(b) *Making personal recommendations.* An employee may make a personal recommendation in connection with the employment of any person, including present or former employees, their spouses and/or members of their families, except for employment in a position of trust or profit under the government of the country to which the employee is accredited or assigned (22 U.S.C. 806(b)): *Provided,* That the employee does not divulge any information concerning the person derived from official sources. When a letter of introduction or recommendation is written by an employee, precautionary measures should be taken to prevent its being construed as official correspondence and used by an unscrupulous individual to impress American or foreign officials. Accordingly, official stationery should not be used for this purpose. The letter may, however, show the recommending employee's status as an employee of the U.S. Government. Every personal letter of recommendation shall contain a statement clearly indicating that the letter constitutes a personal recommendation and is not to be construed as an official recommendation by the Government of the United States.

§ 10.735–214 Transmitting communications and gifts.

(a) *Correspondence.* In corresponding with anyone other than the proper official of the United States with regard to the public affairs of a foreign government, an employee shall use discretion and judgment to ensure that neither the United States nor the employee will be embarrassed or placed in a compromising position (22 U.S.C. 806(a)).

(b) *Communications.* An employee shall not act as an agent for the transmission of communications from private persons or organizations in foreign countries to the President or to Federal, State, or municipal officials in the United States. A chief of mission may, however, accept communications of this nature and forward them to the Department of State for such further action as may be appropriate, whenever the chief of mission determines it to be clearly in the public interest to do so.

(c) *Gifts.* An employee shall not act as an agent for the transmission of gifts from persons or organizations in foreign countries to the President or to Federal, State, or municipal officials of the United States. However, principal officers may, according to regulations prescribed by the President, accept, and forward to the Office of Protocol of the Department of State, gifts made to the United States or to any political subdivision thereof by the Government to which they are accredited or from which they hold exequaturs. Employees shall not, without the approval of the Secretary of State, transmit gifts from persons or organizations in the United States to heads or other officials of foreign states.

§ 10.735–215 General conduct prejudicial to the Government.

(a) An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

(b) An employee abroad is also obligated to obey the laws of the country in which the employee is present.

(c) An employee shall observe the requirements of courtesy, consideration, and promptness in dealing with or serving the public.

§ 10.735–216 Miscellaneous statutory provisions.

Each employee shall become acquainted with each statute that re-

lates to the employee's ethical and other conduct as an agency employee of and of the Government.

(a) The attention of employees is directed to the following statutory provisions:

(1) House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service."

(2) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(3) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(4) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).[1]

(5) The prohibitions against (i) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (ii) the disclosure of confidential information (18 U.S.C. 1905).

(6) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(7) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(8) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(9) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(10) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(11) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(12) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(13) The prohibition against (i) embezzlement of Government money or property (18 U.S.C. 641); (ii) failing to account for public money (18 U.S.C. 643); and (iii) embezzlement of the money or property of another person in the possession of an employee by reason of the employee's employment (18 U.S.C. 654).

(14) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(15) The prohibition against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(16) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(17) The prohibition against discrimination because of politics, race, religion, or color (22 U.S.C. 807).

(18) The prohibition against officers or employees accepting any honorarium in excess of $2,000 or honoraria aggregating more than $25,000 in any calendar year (sec. 112, Pub. L. 94-283, 90 Stat. 494 (2 U.S.C. 441i)).

(b) The attention of consular officers is directed to the following statutory provisions:

(1) The provisions relating to the duty to account for fees received (22 U.S.C. secs. 9, 812, 1194), liability for exaction of excessive fees (22 U.S.C. secs. 1182, 1189), and liability for failure to collect proper fees (222 U.S.C. 1190).

(2) The provisions relating to liability for failure to give bond and for embezzlement (22 U.S.C. 1179), liability for embezzlement of fees or effects of American citizens (22 U.S.C. 1198), and liability for falsely certifying as to the ownership of property (22 U.S.C. 1200).

(3) The prohibition against profiting from dealings with discharged seamen (22 U.S.C. 1187).

(4) The provision relating to liability for failure to collect the wages of discharged seamen (46 U.S.C. 683).

§ 10.735-217 Requesting exceptions from certain statutory prohibitions.

(a) Any employee desiring a written advance determination that the prohibitions of 18 U.S.C. 208(a) do not apply will prepare a written request addressed to an appropriate agency official. For purposes of this section, the appropriate agency official is: The Deputy Under Secretary for Management for State, the Administrator for AID, and the Director for ICA. The request will describe the particular matter giving rise to the conflict of interest, the nature and extent of the employee's anticipated participation in the particular matter, and the exact nature and amount of the financial interest related to the particular matter.

(b) The employee will forward the request to the appropriate agency official through the immediate supervisor and the assistant agency head in charge of the organizational agency component to which the employee is assigned, or will be assigned in the case of a new employee. The assistant agency head will forward the written request to the appropriate agency official through the agency's Counselor. The Counselor shall attach a written opinion to the request, prepare a recommended written determination in final form for signature by the appropriate agency official, and shall forward all documents to that official.

(c) The determination of the appropriate agency official will be sent to the employee by the Counselor. If the appropriate agency official grants the requested exception, the original written advance determination will be sent to the employee. A duplicate original shall be retained among the appropriate agency records under the control of the Counselor.

Subpart C—Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 10.735-301 Conflicts of interest.

Special Government employees are subject to the conflicts of interest statutes (18 U.S.C. 202). An explanation of these conflicts of interest statutes their effects upon special Government employees and guidelines for obtaining and utilizing the services of special Government employees are in Appendix C of Chapter 735 of the Federal Personnel Manual. A special Government employee shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with Government duties and responsibilities.

§ 10.735-302 Use of Government employment.

A special Government employee shall not use Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for the employee or another person, particularly one with whom the employee has family, business, or financial ties.

§ 10.735-303 Use of inside information.

(a) A special Government employee shall not use inside information obtained as a result of Government employment for private gain for the employee or another person either by direct action on the employee's part or by counsel, recommendation, or suggestion to another person, particularly one with whom the employee has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(b) A special Government employee may engage in teaching, lecturing, or writing that is not prohibited by law, Executive Order 11222 or the restrictions in this part; however, a special Government employee shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available, or when the head of the agency gives written authoritzation for the use of nonpublic information on the basis that the use is in the public interest. A special Government

[1] The Courts have stricken from the Code any prohibition against assertion of the right to strike on the basis that such an assertion is a protected right under the First Amendment to the Constitution.

employee who wishes to request the agency head to authorize the use of nonpublic information should submit such request through the Counselor. The request should contain complete information concerning the nonpublic information which the employee wishes to disclose and should contain in addition an indication of the intended use of such information and how disclosure of it would be in the public interest.

§ 10.735-304 Coercion.

A special Government employee shall not use Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to the employee or another person, particularly one with whom the employee has family, business, or financial ties.

§ 10.735-305 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, a special Government employee, while so employed or in connection with Government employment, shall not receive or solicit from a person having business with the employee's agency anything of value as a gift, gratuity, loan, entertainment, or favor for the employee or another person, particularly one with whom the employee has family, business or financial ties.

(b) The exceptions to the prohibition against the acceptance of gifts which have been granted to employees in § 10.735-202 (b), (c), and (d) are also applicable to special Government employees.

(c) A special Government employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342, and the regulations promulgated thereunder pursuant to E.O. 11320; 31 FR 15789. These regulations are set forth in Part 3 of this title (as added, 32 FR 6569, April 28, 1967), and in 3 FAM 621.

(d) A special Government employee shall avoid any action, whether or not specifically prohibited by these sections on special Government employees, which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing independence or impartiality;

(5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

§ 10.735-306 Miscellaneous statutory provisions.

Each special Government employee shall become acquainted with each statute that relates to the employee's ethical and other conduct as a special Government employee of an agency and of the Government. The attention of special Government employees is directed to the statutes listed in § 10.735-216.

Subpart D—Statements of Employment and Financial Interests

§ 10.735-401 Employees required to submit statements.

The following employees of State, AID, and ICA shall submit statements of employment and financial interests:

(a) All special Government employees including experts or consultants serving on a full-time or intermittent basis, except when waived under § 10.735-402(c).

(b) Employees paid at a level of the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code, except as provided in § 10.735-402(b).

(c) Except as provided in § 10.735-402, employees classified at GS-13, FSO-4, FSR-5, FSS-2, AD-13, FC-5, or above, who are in positions hereby identified either as positions the basic duties of which impose upon the incumbent the responsibility for a Government decision or taking a Government action in regard to:

(1) Contracting or procurement;

(2) Administering or monitoring grants or subsidies;

(3) Regulating or auditing private or other non-Federal enterprise;

(4) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise, or as positions which have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflict of interest situation and carry out the purpose of law, Executive order, and the agency's regulations:

STATE

Director General; of the Foreign Service and the Director of Personnel; Director of the Policy Planning Staff; Inspector General; Director, FSI; Special Assistant to Secretary; Deputy Secretary, Under Secretaries, or Deputy Under Secretary; Deputy Assistant Secretary and others at this level or above; Assistant Legal Adviser for Management; Director, Office of Operations; Office Director; Country Director; Division Chief in Bureau of Economic and Business Affairs, in the Office of Operations, (O/OPR), or in the Office of Foreign Buildings; Executive Director; Deputy Chief of Mission; Principal Officer; Economic Counselor; Commercial Counselor; Administrative Counselor; Civil Air Attache; Petroleum Officer; Minerals Officer; Contracting Specialist; Procurement Specialist; Despatch Agent; Traffic Manager; and Traffic Management Specialist.

ICA

Deputy Director, Associate Directors, Directors and Deputy Directors of Offices or Services, Executive or Special Assistants to the Director; Chief Inspector; Associate Chief Inspector; Commissioner General, Deputy Commissioner General, Staff Director (Advisory Commission), Director of Engineering and Technical Operations; Director of Audio-Visual Procurement and Production; Country Public Affairs Officer, Deputy Country Public Affairs Officer, Public Affairs Counselor, Deputy Public Affairs Counselor, Director or Manager of Regional Service Center, Radio Relay Station, Radio Program Center or Radio Relay Station Construction Site, Administrative Officer or Executive Officer at a post abroad, Administrative Officer, Executive Officer and Business Manager (occupational codes 301, 340, 341, and 1101, or FAS code 200); Contracting Specialist and Procurement Specialist (occupational code 1102, or FAS code 210 and 211); Auditor and Accountant (occupational code 510, or FAS code 207); General Counsel, Deputy General Counsel, or Attorney (occupational code 905, or FAS code 512).

AID

(1) AID/W: Deputy Assistant Administrators, Associate Assistant Administrators, Deputy Associate Assistant Administrators; Heads and Deputy Heads of Offices, Staffs, and Divisions; Desk Officers and Deputy Desk Officers.

(2) Overseas: Mission Directors, Deputy Directors, Assistant Directors, AID Representatives, Aid Affairs Officers, Chairman, Development Assistance Committee; U.S. Representative to Development Assistance Committee; Development Coordination Officer.

(3) Any person serving as chief of an operational branch responsible for housing, loans, guarantees, or other commercial type transactions with the public.

(4) In addition, employees in AID/W or overseas whose positions fall within the following series or position titles (occupational code given in parenthesis): Economist Series (0110); International Cooperation Series (0136); Auditor General (0301.21); Supervisory Housing Development Officer (0301.31); Chief, Housing and Urban Development (0301.35); Contract Compliance Specialist (0301.48); Director for Regional Activities (0340.08); Development Officer (0340.09); Regional Development Officer (0340.10); Executive Officer (0341.01); Deputy Executive Officer (0341.02); Regional Executive Officer (0341.03); Administrative Officer (0341.05); Executive Officer—Administrative Support (0341.15); Executive Officer, Operations (0341.16); Executive Officer, Real Property (0341.18); Executive Officer, Personnel (0341.19); General Services Officer (0342.01); Assistant General Services Officer (0342.03); Assistant General Services Officer, Property and Supply (0342.20); Assistant General Services Officer, Procurement (0342.23); Assistant General Services Officer, Housing (0342.25); Program Officer (0345.01); Deputy Program Officer (0345.02); Food and Agriculture Officer (0401.01); Deputy Food and Agriculture Officer (0401.02); Budget and Accounting Series (0504); Financial Management Series (0505); Accounting Series (0510); Budget Administration Series (0560); General Attor-

ney Series (0905); General Business and Industry Series (1101); Contract and Procurement Series (1102); Property Disposal Series (1104); Purchasing Series (1105); Trade Specialist Series (1140); Private Resources Development Series (1150); Financial Analysis Series (1160); General Investigating Series (1810); Criminal Investigating Series (1811); Import Specialist Series (1889); General Supply Series (2001); Supply Program Management Series (2003).

§ 10.735–402 Employees not required to submit statements.

(a) Employees in positions that meet the criteria in paragraph (c) of § 10.735–401 may be excluded from the reporting requirement when the agency head or designee determines that:

(1) The duties of the position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote;

(2) The duties of the position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over incumbent or the inconsequential effect on the integrity of the Government.

(b) a statement of employment and financial interests is not required by the regulations in this part from an agency head, or a full-time member of a committee, board, or commission appointed by the President. These employees are subject to separate reporting requirements under section 401 of Exective Order 11222.

(c) Special Government employees not required to submit statements. An agency head may waive the requirement of this section for the submission of a statement of employment and financial interest in the case of a special Government employee who is not a consultant or an expert when the agency finds that the duties of the position held by that special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by Chapter 304 of the Federal Personnel Manual, but do not include a physician, dentist, or allied medical specialist whose services are procured to provide care and service to patients.

§ 10.735–403 Employee's complaint on filing requirement.

Each employee shall have the opportunity for review through agency grievance procedure of the employee's complaint that the employee's position has been improperly included within § 10.735–401 as one requiring the submission of a statement of employment and financial interests. Employees are reminded that they may obtain counseling pursuant to § 10.735–103 prior to filing a complaint.

§ 10.735–404 Time and place of submission, and forms.

(a) An employee or special Government employee shall submit a statement to the Counselor (in the case of a State employee, through the employee's Bureau) no later than:

(1) Ninety days after the effective date of this part if the employee has entered on duty on or before that effective date; or

(2) At least 10 days prior to entrance on duty, if the employee enters on duty after that effective date; except that an employee or special Government employee who enters on duty within 90 days of the effective date of this part may submit such statement within 90 days after entrance on duty.

(b) Only the original of the statement or supplement thereto required by this part shall be submitted. The individual submitting a statement should retain a copy for the individual's own records.

§ 10.735–405 Information required.

(a) *Employees.* Employees' statement of employment and financial interests required by the regulations in this part shall be submitted on the form, "Confidential Statement of Employment and Financial Interests (for use by Government Employees)", Form OF–106, and shall contain all the information therein required.

(b) *Special Government employees.* All special Government employees shall submit statements of employment and financial interest on the form, "Confidential Statement of Employment and Financial Interests (for use by Special Government Employees)", Form OF–107 for State and ICA, Form AID 4–450 for AID, and shall contain all the information therein required.

(c) *Interests of employee's relatives.* The interest of a member of an employee's family is considered to be an interest of the employee. The term "member of an employee's family" is defined in § 10.735–102(f).

(d) *Information not known by employees.* If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in the employee's behalf.

(e) *Interests not required to be reported.* An employee need not disclose those financial interests described in § 10.735–205(c) as being too remote or too inconsequential to affect the integrity of employees' services.

(f) *Information not required.* The regulations in this part do not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants or money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 10.735–406 Submission of position description.

Each Statement of Employment and Financial Interests or annual supplement thereto must be accompanied by a full description of the employee's principal governmental duties. The description should be particularly detailed in regard to those duties which might possibly be an element in a conflict of interest. If the statement indicates that the employee has no outside employment or financial interests, the employee need not submit a description of duties. For a special Government employee, the employing office shall submit the description.

§ 10.735–407 Supplementary statements.

(a) Employees, as defined in paragraphs (b) and (c) of § 10.735–401, shall report changes in, or additions to, the information contained in their statements of employment and financial interests in supplementary statements as of June 30 each year. If no changes or additions occur, a negative report is required.

(b) All special Government employees, as defined in paragraph (a) of § 10.735–401, shall submit a current statement at the time their appointments are extended. A supplementary report indicating any changes in, or additions to the information already submitted will be accepted in lieu of a full submission. If there are no changes or additions, a negative report is required. For AID, no action to extend an appointment will be taken unless such supplementary report is submitted not later than 10 days prior to the expiration of said appointment.

(c) Notwithstanding the filing of reports required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of title 18, United States Code, or subpart B of this part.

(d) An employee is also to keep current the employee's description of

principal duties as to changes or additions which might possibly be an element in a conflict of interest. The employing office shall submit descriptions of changes in the principal duties of a special Government employee as they occur.

§ 10.735.408 Review of statements and determination as to conflicts of interest.

(a) On the basis of the Statement of Employment and Financial Interests submitted by each employee or special Government employee, or on the basis of information received from other sources, the Counselor shall determine, in the light of the duties which that employee or special Government employee is or will be performing, whether any conflicts of interest, real or apparent, are indicated. The Counselor shall make this determination based on the applicable statutes, the Executive order, and the applicable regulations of the Civil Service Commission, and of the agency.

(b) Where the Counselor's determination in a particular case is that a conflict of interest, real or apparent, is indicated, the Counselor shall initiate informal discussions with the employee or special Government employee concerned. These discussions shall have as their objectives:

(1) Providing the individual with a full opportunity to explain the conflict or appearance of conflict; and

(2) Arriving at an agreement (acceptable to the Counselor, the individual and the individual's immediate superior) whereby the conflict of interest may be removed or avoided. Such an agreement may include, but is not limited to: (i) Changes in assigned duties; (ii) divestiture of the financial or employment interest creating the conflict or apparent conflict; or (iii) disqualification for a particular assignment.

(c) Where an acceptable agreement cannot be obtained pursuant to paragraph (b) of this section, the Counselor shall present findings and recommendations to the officer designated by the agency head, who shall decide which remedy is most appropriate to remove or correct that conflict or apparent conflict. Remedial action under this paragraph may include disciplinary action, including separation for cause, or any of the actions enumerated in subparagraph (2) of paragraph (b) of this section and shall be effective in accordance with applicable laws, Executive orders, and regulations.

(d) Written summaries of all agreements and decisions arrived at pursuant to paragraph (b) or (c) of this section shall be placed in the Counselor's files. Copies shall also be made available to the employee or special Government employee concerned.

§ 10.735-409 Confidentiality of employees' statements.

An agency shall hold each statement of employment and financial interests, and each supplementary statement, in confidence. To insure this confidentiality only the Counselor and Deputy Counselors are authorized to review and retain the statements. The Counselor and Deputy Counselors are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. An agency may not disclose information from a statement except as the Civil Service Commission or the agency head may determine for good cause shown.

§ 10.735-410 Effect of employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required for employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit the employee or any other person to participate in a matter in which the employee or the other person's participation is prohibited by law, order, or regulation. Save with respect to those financial interests excepted from the conflict of interest prohibitions of 18 U.S.C. 208(a) pursuant to a written advance determination under § 10.735-217 or exempted by the provisions of § 10.735-205(c), an employee must disqualify himself or herself from participating in any matter in which the employee has a financial interest.

§ 10.735-411 Disqualification procedures.

(a) Where an employee is prohibited from participating in a matter because of a conflicting financial interest that is not exempt under § 10.735-205(c) or has not been specifically excepted by the appropriate agency official pursuant to § 10.735-217 in advance of the employee's participation in the particular matter, the employee shall conduct himself or herself in accordance with the following provisions:

(1) The employee shall promptly disclose the financial interest in such matter to the employee's immediate superior. The superior will thereupon relieve the employee of duty and responsibility in the matter.

(2) In foreign posts, it may be impossible or highly impracticable for an employee, who has a disqualifying financial interest, to assign the matter for official action to anyone other than a subordinate. In this event, the employee must instruct the subordinate to report fully and directly to the immediate superior to whom the employee himself or herself would normally report. The employee must concurrently direct such subordinate to take such action as may be appropriate in the matter, and without thereafter revealing to the disqualified employee in any way any aspect of the particular matter.

(b) Nothing herein precludes the employee from disposing of such disqualifying financial interest, thereby wholly eliminating the conflict of interest. In some circumstances, where the employee may not obtain an exception under § 10.735-217, or may not disqualify himself or herself and refer or assign the matter to another employee, the performance of duty may even require divestiture.

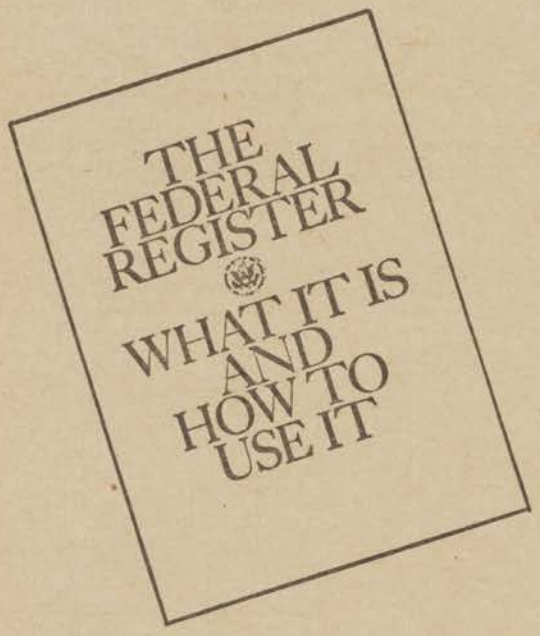
(c) Where a supervisor has reason to believe that a subordinate employee may have a conflicting financial interest, the supervisor should discuss the matter with the employee. If the supervisor finds that a conflict of interest does exist, the supervisor must relieve the subordinate employee of duty and responsibility in the particular matter.

(d) The obligation to avoid conflicts of interest is upon each employee. It is a continuing obligation calling for alert vigilance.

(e) Notwithstanding any other provision of this part to the contrary, if a employee's holdings rise in value above the amount exempted by § 10.735-205(c), then the statutory and regulation prohibitions apply in a conflict of interest situation.

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