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PAGES
34427-34751

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highlights

SUNSHINE ACT MEETINGS 34573

RESEARCH GRANTS

HEW/PHS sets requirements for health services research, evaluation, and demonstration projects; effective 8-4-78 34471
HEW/PHS proposes to eliminate project policy conflicts; comments by 9-18-78 34507

SKIN PROTECTANTS

HEW/FDA proposes to establish conditions for safety, effectiveness, and labeling of over-the-counter drug products; comments by 11-2-78; reply comments by 12-4-78 (Part II of this issue) 34628

RURAL HOUSING LOANS AND GRANTS

USDA/FmHA proposes to define eligibility standards; comments by 9-5-78 34489

SOCIAL SECURITY BENEFITS

HEW/SSA states policies to reduce benefits payable to a worker's spouse who is eligible for government pension; comments by 9-18-78 34455

FUEL ECONOMY ADVERTISING

FTC proposes interim guide amendments for new automobiles; comments by 9-5-78 34496

VETERANS HOSPITAL BENEFITS

VA amends rules on compensation for disability or death; comments by 9-5-78 34505

WEATHERIZATION ASSISTANCE

DOE proposes to amend program regulations for low-income persons; comments by 10-3-78; hearing 9-6-78 34493

SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES

HEW/HDSO proposes regulations requiring private providers to disclose names of persons with ownership or control interest; comments by 10-3-78 (Part V of this issue) 34717

MEDICARE AND MEDICAID PROGRAMS

HEW/HCFA proposes regulations on disclosure of information, access to provider records, and requirements and conditions for participation; comments by 10-3-78 (Part V of this issue) 34710

MATERNAL AND CHILD HEALTH, AND CRIPPLED CHILDREN'S SERVICES

HEW/PHS proposes disclosure of ownership and related information to appropriate state agencies; comments by 10-3-78 (Part V of this issue) 34719

CONTINUED INSIDE

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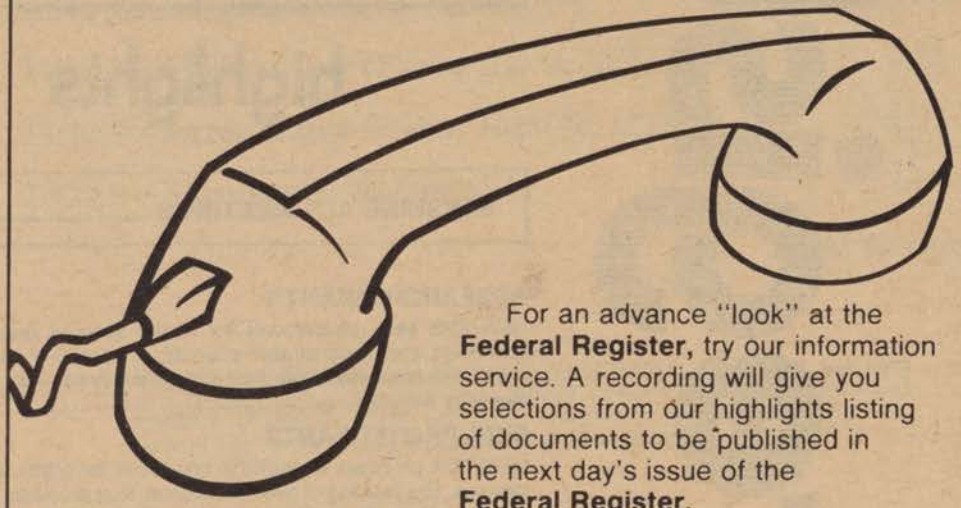

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Finding Aids	523-5227
Public Briefings: "How To Use the Federal Register."	523-3517
Code of Federal Regulations (CFR)	523-3419 523-3517
Finding Aids	523-5227

PRESIDENTIAL PAPERS:

Executive Orders and Proclamations.	523-5233
Weekly Compilation of Presidential Documents.	523-5235
Public Papers of the Presidents	523-5235
Index	523-5235

PUBLIC LAWS:

Public Law dates and numbers	523-5266 523-5282
Slip Laws	523-5266 523-5282
U.S. Statutes at Large	523-5266 523-5282
Index	523-5266 523-5282
U.S. Government Manual	523-5230
Automation	523-3408
Special Projects	523-4534

HIGHLIGHTS—Continued

WHOLE HUMAN BLOOD AND BLOOD PRODUCTS
HEW/FDA permits use of anticoagulant citrate phosphate dextrose adenine solution (CPDA-1) and prescribes labeling standards; effective 8-4-78 ... **34457**

CUSTOMHOUSE BROKERS
Treasury/Customs clarifies regulations concerning record-keeping; effective 8-4-78 ... **34454**

PROTECTION OF THE ENVIRONMENT
EPA proposes rules on administrative assessment of civil penalties or the revocation or suspension of permits under various statutes; comments by 10-3-78 (Part VII of this issue) . **34738**

TOXIC SUBSTANCES CONTROL ACT
EPA sets interim rules of practice to be followed by parties litigating administratively assessed civil penalties; effective 8-4-78; comments by 10-3-78 (Part VII of this issue) ... **34730**

COMPREHENSIVE EMPLOYMENT AND TRAINING ACT
Labor/Secy grants certain sponsors and eligible applicants an extension of time to comply with retirement program provisions **34462**

CONTRACT HEALTH SERVICES
HEW/Secy establishes delivery areas, and uniform eligibility to Indians and other beneficiaries; effective 8-4-78 (Part III of this issue) ... **34650**

COMMUNITY DEVELOPMENT BLOCK GRANTS
HUD/CPD amends program for Indian Tribes and Alaska Natives for Fiscal Year 1978 to forego the Housing Assistance Plan (HAP) requirement in project applications; effective 8-4-78 (Part VIII of this issue) ... **34751**

BUSINESS AND INDUSTRIAL LOAN PROGRAM
USDA/FmHA extends comment period on citizenship requirements to 8-30-78 ... **34490**

COMMUTED TRAVELTIME ALLOWANCES
USDA/APHIS amends administrative instructions; effective 8-4-78 ... **34429**

1978-79 PRICE SUPPORT PROGRAM FOR MILK
USDA/CCC extends comment period to 8-18-78 ... **34488**

FEDERAL HIGHWAY AID PROGRAMS
DOT/FHA revises regulations under the Clean Air Act Amendments of 1977; effective 8-11-78 ... **34460**

PRIVACY ACT
DOD/Army publishes additional systems of records; effective 9-3-78; comments by 9-3-78 ... **34520**
OMB publishes supplemental guidelines for matching programs (Part VI of this issue) ... **34724**

NEW MEXICAN RIDGE-NOSED RATTLESNAKE
Interior/FWS determines threatened specie; effective 8-21-78 **34476**

HUMAN FOOD INGREDIENTS
HEW/FDA proposes to affirm the use of brown alga with specific limitations; comments by 10-3-78 ... **34500**

CATTLE
USDA/APHIS reyises tuberculosis regulations; effective 10-3-78 ... **34430**

ANIMAL DRUGS

HEW/FDA approves use of tylosin and sulfamethazine premix in feed for preventing certain swine diseases; effective 8-4-78 **34457**

CERTAIN MAN-MADE FIBER SWEATERS FROM THE PHILIPPINES

CITA increases the import restraint level; effective 8-7-78..... **34519**

STAINLESS STEEL ROUND WIRE FROM JAPAN

ITC investigates injury to U.S. industry; hearing 8-17-78 ..... **34546**

CANNED APRICOTS AND SWEET CHERRIES

USDA/FSQS provides study drafts of U.S. grade standards; comments by 12-31-78..... **34490**

MEETINGS—

DOD/Secy: Wage Committee, various dates in October **34522**
FCC: Radio Technical Commission for Marine Services (RTCM), VHF Automated Radiotelephone Systems, 8-22-78..... **34539**
HEW/FDA: Consumer Ad Hoc, New York District, 8-16-78 **34543**
Health Care Services, 9-13-78..... **34543**
Interior/BLM: Riverside District Grazing Advisory Board, 8-31-78..... **34545**
NFAH/NEA: Architecture, Planning, and Design Advisory Panels, 8-21 through 8-25-78..... **34563**
Media Arts Advisory Panel, 8-28 through 8-30-78..... **34563**
Special Projects Advisory Panel, 8-25 and 8-26-78 ..... **34563**
NRC: Risk Assessment Review Group, 8-29 through 8-31-78..... **34567**
State Workshops, Decommissioning Policy, various dates in September **34564**
Review of Antitrust Laws and Procedures National Commission, 8-15-78 ..... **34563**
Treasury/IRS: Art Advisory Panel; 9-26 and 9-27-78 ..... **34569**

HEARINGS—

CAB: Enforcement Proceeding, Northwest Airlines, Inc., 9-18-78..... **34514**
Chicago-Midway Expanded Service Proceeding, 9-26-78 **34513**
Justice/LEAA: National Minority Advisory Council on Criminal Justice, 8-21 and 8-22-78 ..... **34547**
Labor/MSHA: Training and Retraining of Miners, 8-14, 8-16, and 8-18-78 ..... **34504**
NRC: Dairyland Power Cooperative, 8-17-78 ..... **34564**

SEPARATE PARTS OF THIS ISSUE

Part II, HEW/FDA..... **34628**
Part III, HEW/Secy **34650**
Part IV, Labor/ESA **34658**
Part V, HEW/HCFA, HDSO, and PHS **34710, 34717, 34719**
Part VI, OMB **34724**
Part VII, EPA **34730**
Part VIII, HUD/CPD..... **34751**

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

Interior/BLM—Colorado; partial revocation of Powersite Reserve No. 121 ..... 29294; 7-7-78
Range management and technical services; grazing administration and trespass 29058; 7-5-78
Wyoming; partial revocation of reclamation withdrawal 29294; 7-7-78

List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

[Last Listing: August 3, 1978]

contents

AGRICULTURAL MARKETING SERVICE

Rules

Lemons grown in Ariz. and Calif 34430

Proposed Rules

Grapefruit grown in Florida 34483

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

Proposed Rules

Wheat; marketing quotas and acreage allotments; extension of time 34483

AGRICULTURE DEPARTMENT

See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Farmers Home Administration; Federal Grain Inspection Service; Food Safety and Quality Service; Forest Service.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

Rules

Livestock and poultry quarantine:
Tuberculosis 34430
Overtime services relating to imports and exports:
Plants, commuted traveltime allowances 34429

Proposed Rules

Animal and poultry import restrictions:
Horses, republication 34490

ANTITRUST LAWS AND PROCEDURES, NATIONAL COMMISSION FOR REVIEW

Notices

Meetings 34563

ARMY DEPARTMENT

Notices

Privacy Act; systems of records 34520

ARTS AND HUMANITIES, NATIONAL FOUNDATION

Notices

Meetings:
Architecture, Planning, and Design Advisory Panels 34563
Media Arts Advisory Panel 34563
Special Projects Advisory Panel 34563

BLIND AND OTHER SEVERELY HANDICAPPED, COMMITTEE FOR PURCHASE FROM

Notices

Procurement list, 1978; additions and deletions (2 documents) 34519, 34520

CIVIL AERONAUTICS BOARD

Rules

Tariffs of air carriers and foreign air carriers; construction, publication, etc.:
Hazardous materials; CAB filing requirements removed ... 34442

Notices

Hearings, etc.:
Chicago-Midway expanded service proceeding 34513
National Airlines, Inc 34514
Northwest Airlines, Inc. enforcement proceeding 34514

CIVIL SERVICE COMMISSION

Rules

Excepted service:
Arts and Humanities, National Foundation 34427
Commerce Department et al .. 34427
Energy Department; correction 34428
Federal Deposit Insurance Corporation 34427
Health, Education, and Welfare Department 34427
Excepted service, career and career-conditional, and temporary and term employment:
Delegation of noncompetitive examining authorities to agencies 34428

COMMERCE DEPARTMENT

See National Bureau of Standards; National Oceanic and Atmospheric Administration; National Technical Information Service.

COMMODITY CREDIT CORPORATION

Proposed Rules

Loan and purchase programs:
Milk 34488

CUSTOMS SERVICE

Rules

Customhouse brokers:
Recordkeeping; clarification ... 34454

DEFENSE DEPARTMENT

See also Army Department.

Notices

Meetings:
Wage Committee 34522

DRUG ENFORCEMENT ADMINISTRATION

Proposed Rules

Schedules of controlled substances:
Medigesic Plus 34503

Notices

Registration applications, etc; controlled substances:
U.S. Pharmacopeial Convention, Inc 34547
Wintrop Lab 34547

ECONOMIC REGULATORY ADMINISTRATION

Rules

Oil; administrative procedures and sanctions:
Interpretations 34433

Notices

Power rates and charges:
System rates, Southwestern Power Administration ..... 3452?
Hearings, etc:
Maine Public Service Co 34523

EMPLOYMENT AND TRAINING ADMINISTRATION

Notices

Employment transfer and business competition determinations; financial assistance applications 34548
Unemployment compensation, emergency:
Federal supplemental or extended benefits; "on" and "off" indicators; various States (4 documents) 34548–34550

EMPLOYMENT STANDARDS ADMINISTRATION

Notices

Minimum wages for Federal and federally assisted construction; general wage determination decisions, modifications, and supersedeas decisions (Ala., Conn., Fla., Ill., La., Md., Minn., Miss., Mont., N.Y., Tenn., Tex., Va., Wash.) 34658

ENERGY DEPARTMENT

See also Economic Regulatory Administration; Energy Information Administration; Federal Energy Regulatory Commission.

Proposed Rules

Weatherization assistance for low-income persons 34493

Notices

Interpretation requests filed with General Counsel's Office 34535

CONTENTS

ENERGY INFORMATION ADMINISTRATION

Notices

Data collection reports; discontinuance 34524

ENVIRONMENTAL PROTECTION AGENCY

Rules

Air quality implementation plans; approval and promulgation; various States, etc.:
Arizona 34470
California (4 documents) 34463–34468

Pesticide programs:
Registration guidelines; Agriculture Secretary notification 34471

Toxic substances:
Civil penalties and revocation or suspension of permits; practice rules 34730

Proposed Rules

Air quality implementation plans; enforcement by State and Federal governments after statutory deadlines:
Kentucky 34506

Toxic substances:
Civil penalties and revocation or suspension of permits; practice rules 34738

Notices

Pesticide applicator certification and interim certification; State plans:
Louisiana 34536

FARMERS HOME ADMINISTRATION

Rules

Insurance:
Real property insurance; reporting requirements removed 34430

Proposed Rules

Guaranteed loan programs:
Business and industrial loans; citizenship requirements; extension of time 34490

Rural housing loans and grants:
Eligibility standards; repayment ability determination.. 34489

FEDERAL COMMUNICATIONS COMMISSION

Proposed Rules

FM broadcast stations; table of assignments:
Oklahoma and Texas 34509

Notices

FM and television translator applications ready and available for processing 34536

Meetings:
Marine Services Radio Technical Commission 34539

Hearings, etc.:
Beep Communication Systems, Inc., et al 34537
RCA Global Communications, Inc 34537
Southeastern Bible College, Inc., et al 34539

FEDERAL ENERGY REGULATORY COMMISSION

Rules

Natural gas companies:
Statements and reports (schedules); Form 40; extension of filing time 34454

Notices

Land withdrawals:
Wyoming; vacated; correction 34535

Hearings, etc.:
Columbia Gas Transmission Corp 34524
Montaup Electric Co 34533
Natural Gas Pipeline Co. of America 34531
Oklahoma Gas & Electric Co.. 34525
Tennessee Gas Pipeline Co., et al. (2 documents) 34526, 34527
Texas Gas Transmission Corp. (2 documents) 34527, 34529
Transcontinental Gas Pipe Line Corp 34531

FEDERAL GRAIN INSPECTION SERVICE

Notices

Grain standards; inspection points:
Texas; name change 34513

FEDERAL HIGHWAY ADMINISTRATION

Rules

Engineering and traffic operations:
Preconstruction procedures; Federal-aid programs approval and authorization 34460

FEDERAL MARITIME COMMISSION

Notices

Oil pollution; certificates of financial responsibility (3 documents) 34540–34542

FEDERAL RESERVE SYSTEM

Rules

Delegation of authority; action in absence of quorum 34481
Public observation of meetings.. 34481

FEDERAL TRADE COMMISSION

Rules

Premerger notification; corrections (2 documents) 34443

Proposed Rules

Fuel economy guide; advertising for new automobiles; inquiry . 34496
Funeral industry practices; report publication; extension of time 34500

Notices

Dairy industry premerger notification; filing requirements; correction 34543

FISH AND WILDLIFE SERVICE

Rules

Endangered and threatened species; fish, wildlife, and plants:
Rattlesnake, New Mexican ridge-nosed 34476

Hunting:
DeSoto National Wildlife Refuge, Iowa and Nebr. (2 documents) 34480

FOOD AND DRUG ADMINISTRATION

Rules

Animal drugs, feeds, and related products:
O-Ethyl *O*-[4-(methylthio) phenyl] *S*-propyl phosphorodithioate; correction 34457
Tylosin and sulfamethazine.... 34457

Biological products:
Blood and blood products; standards; anticoagulent citrate phosphate dextrose adenine solution 34457

Human drugs:
Tetracycline antibiotic drugs; correction 34456

Proposed Rules

GRAS or prior-sanctioned ingredients:
Algae, brown and red 34500

Human drugs:
Over-the-counter drugs; skin protectant drug products; monograph establishment ... 34628

Notices

Health care services, meetings... 34543

Meetings:
New York District Consumer Ad Hoc 34543

FOOD SAFETY AND QUALITY SERVICE

Proposed Rules

Fruits and vegetables (processed), inspection and certification:
Apricots (canned) and sweet cherries (canned); grade standards; advance notice 34490

FOREST SERVICE

Notices

Environmental statements; availability, etc.:
Santa Fe National Forest, Land Management Plan, N. Mex 34513

GENERAL SERVICES ADMINISTRATION

Notices

Stockpile Disposal Policies, Advisory Panel; establishment.. 34543

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See also Food and Drug Administration; Health Care Financing Administration; Human Development Services Office; Public Health Service; Social Security Administration.

Rules

Indian health; contract health services, eligibility and requirements 34650

HEALTH CARE FINANCING ADMINISTRATION

Proposed Rules

Medicare and medicaid programs:
Disclosure of information and access to provider records 34710

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Rules

Community development block grants:
Indian tribes and Alaska natives; applications, housing assistance plan 34751

HUMAN DEVELOPMENT SERVICES OFFICE

Proposed Rules

Social services programs for individuals and families:
Disclosure of ownership interests, etc 34719

INTERIOR DEPARTMENT

See Fish and Wildlife Service; Land Management Bureau; National Park Service; Reclamation Bureau.

INTERNAL REVENUE SERVICE

Notices

Meetings:
Art Advisory Panel 34569

INTERNATIONAL TRADE COMMISSION

Notices

Import investigations:
Round wire, stainless steel, from Japan 34546

INTERSTATE COMMERCE COMMISSION

Rules

Railroad car service orders:
Boxcars, substitution 34476

Notices

Fourth section applications for relief (2 documents) 34570
Hearing assignments 34569
Motor carriers:
Lease and interchange of vehicles (2 documents) 34572
Property broker special licensing; applications 34571
Transfer proceedings (2 documents) 34570, 34571

JUSTICE DEPARTMENT

See Drug Enforcement Administration; Law Enforcement Assistance Administration.

LABOR DEPARTMENT

See also Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration.

Rules

Comprehensive Employment and Training Act:
Retirement programs; prime sponsors and eligible applicants, extension of time for compliance 34462

Notices

Adjustment assistance:
Altschul, Julius, Inc 34562
Ameron, Inc 34551
A'Paree, Inc 34551
B & B Coat 34552
City Clothing Co., Inc 34552
Dee Jay 34552
Delaware & Hudson Railway Co 34553
Eckhart, Alvin J., Co 34551
El Greco Leather Products Co., Inc 34553
Fairfoot Shoe Co 34554
Imaginetics International, Inc 34554
Jessop Steel Corp 34555
Lorraine Handbags, Inc 34557
Lurie Sportswear, Inc 34558
Manhattan Fashions, Inc 34558
Molofsky, J., Sons, Inc 34555
Mt. Hope Mining Co 34559
Paulina Sportswear 34559
Penn-Dixie Steel Corp 34559
Randy Coat 34560
Red Bank Clothing Manufacturing Co., Inc 34560
Schoeneman, J., Co. (4 documents) 34556, 34557
Shaw, M. T., Inc 34558
Snob Fashions, Inc 34561
U.S. Stamping Co 34561
Vapor Lite Laboratories 34561
Wheeling-Pittsburgh Steel Corp 34561

LAND MANAGEMENT BUREAU

Notices

Applications, etc.:
New Mexico (4 documents) 34544
Meetings:
Riverside District Grazing Advisory Board 34545
Recreation management restrictions:
Fort Meade Recreation Area, Sturgis, S. Dak 34545
Survey plat filings:
California (2 documents) 34543
Withdrawal and reservation of lands:
Utah 34545

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

Notices

Needs assessment:
National Minority Advisory Council on Criminal Justice; hearing 34547

MANAGEMENT AND BUDGET OFFICE

Notices

Clearance of reports; lists of requests (2 documents) 34568
Privacy Act; guidance for matching programs 34724

MINE SAFETY AND HEALTH ADMINISTRATION

Proposed Rules

Health and safety training of miners; hearing and correction 34504

Notices

Petitions for mandatory safety standard modification:
Solar Fuel Co 34550
Stauffer Chemical Co. of Wyoming 34550

NATIONAL BUREAU OF STANDARDS

Notices

Voluntary product standards:
TFE-fluorocarbon resin flexible hose, commercial standard CS 247-62; withdrawn 34518
Thermal conductance factors for performed above-deck roof insulation, simplified practice recommendation R-257-55; withdrawn 34518

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Proposed Rules

Fishery conservation and management:
Foreign fishing, total allowable level; trawl fishery of Calif., Oreg., and Wash. region 34510

NATIONAL PARK SERVICE

Notices

Environmental statements; availability, etc.:
Pine Creek State and National Scenic River, Pa 34546

NATIONAL TECHNICAL INFORMATION SERVICE

Notices

Inventions, Government-owned; availability for licensing 34518

NUCLEAR REGULATORY COMMISSION

Notices

Meetings:
- Risk Assessment Review Group 34567

Nuclear facilities, decommissioning policy; State workshops 34564

Rulemaking petitions:
- Non Destructive Testing Management Association 34564

Standard review plan; issuance and availability 34566

Applications, etc.:
- Dairyland Power Cooperative 34564
- Florida Power Corp. et al 34565
- Houston Lighting & Power Co 34565
- Niagara Mohawk Power Corp. et al 34566
- San Diego Gas & Electric Co. et al 34567

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Rules

State plans for enforcement of standards:
- Wyoming; correction 34463

PUBLIC HEALTH SERVICE

Rules

Grants:
- Health services research; evaluation and demonstration projects 34471

Proposed Rules

Grants:
- Maternal and child health and crippled children's services; disclosure of ownership, etc. 34717
- Research projects; applicability, etc 34507

RECLAMATION BUREAU

Notices

Environmental statements; availability, etc.:
- Bonneville Unit, Central Utah Project, Utah 34546

SOCIAL SECURITY ADMINISTRATION

Rules

Old-age, survivors, and disability insurance:
- Worker's spouse eligible for Government pension, benefits payable to; reduction 34455

TEXTILE AGREEMENTS IMPLEMENTATION COMMITTEE

Notices

Cotton textiles:
- Philippines 34519

TRANSPORTATION DEPARTMENT

See Federal Highway Administration.

TREASURY DEPARTMENT

See Customs Service; Internal Revenue Service.

VETERANS ADMINISTRATION

Proposed Rules

Adjudication; pensions, compensation, dependency, etc.:
- Ratings for special purposes; disability or death resulting from VA hospitalization or medical or surgical care 34505

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

5 CFR

213 (6 documents) 34427, 34428
315 34428
316 34429

7 CFR

354 34429
910 34430
1806 34430

PROPOSED RULES:

728 34483
913 34483
1430 34488
1822 34489
1980 34490
2852 34490

9 CFR

77 34430

PROPOSED RULES:

92 34490

10 CFR

205 34433

PROPOSED RULES:

440 34493

12 CFR

261b 34481
265 34481

14 CFR

221 34442

16 CFR

801 34443
802 34443
803 (2 documents) 34443

16 CFR—Continued

PROPOSED RULES:

259 34496
453 34500

18 CFR

260 34454

19 CFR

111 34454

20 CFR

404 34455

21 CFR

436 34456
446 34456
558 34457
561 34457
610 34457
640 34457

PROPOSED RULES:

182 34500
184 34500
347 34628
1308 34503

23 CFR

630 34460

24 CFR

571 34751

29 CFR

98 34462
1952 34463

30 CFR

PROPOSED RULES:

48 34504

38 CFR

PROPOSED RULES:

3 34505

40 CFR

22 34730
52 (5 documents) 34463-34470
162 34471

PROPOSED RULES:

22 34738
65 34506

42 CFR

36 34650
67 34471

PROPOSED RULES:

51a 34717
52 34507

45 CFR

PROPOSED RULES:

228 34719
405 34710
450 34710
455 34710

47 CFR

PROPOSED RULES:

73 34509

49 CFR

1033 34476

50 CFR

17 34476
32 (2 documents) 34480

PROPOSED RULES:

611 34510

CUMULATIVE LIST OF CFR PARTS AFFECTED DURING AUGUST

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during August.

1 CFR

Ch. 1 33675

5 CFR

213 ..... 33675, 34427, 34428
315 34428
316 34429

PROPOSED RULES:

713 33732

7 CFR

354 34429
792 33676
908 34103
910 34430
919 34103
930 34104
945 33676
1036 33897
1427 34104
1806 34430

PROPOSED RULES:

728 34483
913 34483
927 33732
989 33923
1430 34488
1822 ..... 33923, 34489
1980 34490
2852 34490

8 CFR

204 33677

9 CFR

51 33677
77 34430
318 33678

PROPOSED RULES:

92 ..... 33926, 34490

10 CFR

205 ..... 33687, 34433
211 33688
212 ..... 33689, 33694

PROPOSED RULES:

440 34493

12 CFR

220 33899
226 34111
261b 34481
265 34481
701 33899

PROPOSED RULES:

701 33929

14 CFR

71 34114
202 34115
205 34116
212 34116
213 34116
214 34117

14 CFR—Continued

216 34117
221 ..... 34117, 34442
312 34119
375 34119
384 34119
385 34120
1204 34122
1245 34122

PROPOSED RULES:

71 34157
75 34158
241 33733
242 33733
249 33733
291 33733

15 CFR

379 33699
399 33699

16 CFR

13 ..... 33900, 34124
801 34443
802 34443
803 34443
1500 33701

PROPOSED RULES:

13 33931
259 34496
453 34500

17 CFR

Ch. II 33904
229 34407
239 34412
240 ..... 33906, 34413
249 34413

PROPOSED RULES:

229 34415
240 33935

18 CFR

260 34454
803 34127

19 CFR

111 34454

PROPOSED RULES:

200 34159
201 34159

20 CFR

404 ..... 33705, 34455

21 CFR

436 34456
446 34456
558 34457
561 34457
573 ..... 33707, 33708
610 34457
640 34457

PROPOSED RULES:

182 34500

21 CFR—Continued

PROPOSED RULES—Continued

184 34500
347 34628
1308 34503

23 CFR

630 34460

24 CFR

203 33906
204 33906
570 34056
571 34751
600 34057
880 33880
881 33880
883 33880

PROPOSED RULES:

570 34424

26 CFR

1 34128

PROPOSED RULES:

1 ..... 33936, 33937
301 33937

28 CFR

PROPOSED RULES:

Ch. V 34062

29 CFR

89 33708
98 34462
1952 34463

30 CFR

PROPOSED RULES:

48 34504

31 CFR

PROPOSED RULES:

10 34161

32 CFR

706 33709
811a 33907
952 33908
953 33912

PROPOSED RULES:

552 33749

33 CFR

PROPOSED RULES:

126 34362
209 34162

38 CFR

PROPOSED RULES:

3 34505

40 CFR

22 34730
52 ..... 33913-33918, 34129-34131, 34463-34470

40 CFR—Continued

60 34340
162 34471
209 34132
228 33711
761 33918

PROPOSED RULES:

22 34738
60 34349
62 33749
65 ..... 33750-33754, 34506
180 34163
413 33940

41 CFR

Ch. 3 33712
Ch. 101 ..... 33713, 33892
101-17 34139
101-36 34140

PROPOSED RULES:

3-1 ..... 33761, 33940
3-4 33940
3-7 33940

42 CFR

36 34650
37 33713
67 34471

PROPOSED RULES:

37 33762
51a 34717

42 CFR—Continued

PROPOSED RULES—Continued

52 34507
122 33764
123 33764
405 33763

43 CFR

4 34376
29 33721

45 CFR

74 34076
126 34424
144 34146
168 34334
175 34146
176 34146
177 34338

PROPOSED RULES:

228 34719
232 34164
301 34164
302 34164
303 34164
304 34164
405 34710
450 34710
455 34710
1609 33764

46 CFR

502 33721

47 CFR

2 33722
97 33722

PROPOSED RULES:

1 34167
63 33942
73 ..... 33765, 33772, 34170, 34509

49 CFR

25 33725
1033 ..... 34147-34150, 34476
1056 33921

PROPOSED RULES:

Ch. X 33774
27 34171
1040 33945
1047 34172
1082 34172
1121 33775
1201 34172

50 CFR

17 34476
21 34150
26 34151
32 ..... 33921, 33922, 34151-34156, 34480

PROPOSED RULES:

251 33946
611 ..... 33776, 34510

FEDERAL REGISTER PAGES AND DATES—AUGUST

Pages	*Date*
33675-33897	Aug. 1
33899-34102	2
34103-34426	3
34427-34751	4

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

National Endowment for the Arts

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The positions of Director and Assistant Director of Opera/Musical Theatre in the National Endowment for the Arts are excepted under schedule A because it is impracticable to examine for them.

EFFECTIVE DATE: July 24, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael D. Sherwin, 202-632-4533.

Accordingly, 5 CFR 213.3182(a) (6) and (7) are added as set out below:

§ 213.3182 National Foundation on the Arts and Humanities.

(a) *National Endowment for the Arts.* * * *

(6) Until September 30, 1980, one position of Director, Opera/Musical Theatre.

(7) Until September 30, 1980, one position of Assistant Director, Opera/Musical Theatre.

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

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Director to the Commissioners.

[FR Doc. 78-21692 Filed 8-3-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Federal Deposit Insurance Corporation

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under schedule C one position of special assistant to the Director, Office of the Director (appointive), Executive Offices because the position is confidential in nature.

EFFECTIVE DATE: July 7, 1978.

FOR FURTHER INFORMATION:

On position authority contact: Sallie E. West, Civil Service Commission, 202-632-3782.

On position content contact: Alfred Squerrini, Federal Deposit Insurance Corporation, 202-389-4306.

Accordingly, 5 CFR 213.3333(g) is amended as set out below:

§ 213.3333 Federal Deposit Insurance Corporation.

* * * * * *

(g) Two special assistants to the Director (appointive).

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

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

[FR Doc. 78-21691 Filed 8-3-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under schedule C certain positions in the Department of Health, Education, and Welfare because they are confidential in nature.

EFFECTIVE DATE: July 24, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Sherwin, 202-632-4533.

Accordingly, 5 CFR 213.3316(a) (21) and (22) are added as set out below:

§ 213.3316 Department of Health, Education, and Welfare.

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

(21) One special assistant to the Assistant Secretary for Planning and Evaluation.

(22) One legislative officer, Human Development Services.

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

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

[FR Doc. 78-21690 Filed 8-3-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of Commerce, International Communications Agency, International Trade Commission

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under schedule C certain positions at the Department of Commerce, International Communication Agency, and the International Trade Commission because they are confidential in nature.

EFFECTIVE DATE: July 24, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Sherwin, 202-632-4533.

Accordingly, 5 CFR 213.3314(a)(22) and 213.3328(e) are added and 213.3339 (e) and (f) are amended as set out below:

§ 213.3314 Department of Commerce.

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

(22) One private secretary to the Deputy Under Secretary for Regional Affairs.

* * * * * *

§ 213.3328 International Communications Agency.

* * * * * *

(e) One special assistant to the Associate Director for Educational and Cultural Affairs.

* * * * * *

§ 213.3339 U.S. International Trade Commission.

* * * * *

(e) One professional assistant (legal), one confidential assistant, one staff assistant, and one secretary (typing) to a commissioner.

(f) One staff assistant (legal), two staff assistants, one confidential assistant, and one secretary to a commissioner.

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

[FR Doc. 78-21689 Filed 8-3-78; 8:45 am]

[1505-01]

PART 213—EXCEPTED SERVICE

Department of Energy; Federal Home Loan Bank Board

Correction

In FR Docs. 78-20546 and 78-20547, appearing at page 32115 in the issue for Tuesday, July 25, 1978, the EFFECTIVE DATE should read "July 25, 1978".

[6325-01]

DELEGATION OF NONCOMPETITIVE EXAMINING AUTHORITIES TO AGENCIES

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: For more efficient administration, the requirement for prior Civil Service Commission approval of: (1) Use of term appointments, (2) conversion of persons whose positions are brought into the competitive service, (3) approval of qualifications for appointments under schedule B authorities and, (4) appointment of former Peace Corps, VISTA, and ACTION community volunteers has been eliminated. Agencies may now approve these actions. Obsolete references to the Postal Field Service has been deleted.

EFFECTIVE DATE: March 22, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Sherwin, 202-632-4533.

Accordingly, 5 CFR 213.3201, 315.201(c), 315.603 (a) and (b), 315.605(a), 315.701 (b), (c), (d), and (f), 316.301, and 316.302(c) are amended as set out below:

PART 213—EXCEPTED SERVICE

§ 213.3201 Positions other than those of a confidential or policy determining character for which it is not practicable to hold a competitive examination.

The positions enumerated in §§ 213.3202 to 213.3299 are positions other than those of a confidential or policy determining character for which it is not practicable to hold a competitive examination and which are excepted from the competitive service and constitute schedule B. Appointments to these positions are subject to the basic qualification standards established by the Civil Service Commission for the occupation and grade level.

* * * * *

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

§ 315.201 Service requirement for career tenure.

* * * * *

(c) *Exceptions from service requirement.* The service requirement for career tenure does not apply to:

(1) An appointment to a position required by law to be filled on a permanent basis, or a conversion under this part while the employee is serving in such a position:

* * * * *

§ 315.603 Appointment based on formed incumbency of a position brought into the competitive service.

(a) *Agency authority.*—(1) *Employee in military service.* An agency may appoint a former incumbent of a permanent excepted position who was serving under an appointment not limited to 1 year or less, or of a position in public or private enterprise when the position was brought into the competitive service on a continuing basis and who left his position after June 30, 1950, to perform active military service when:

* * * * *

(2) *Employee separated.* An agency may appoint a former incumbent of a permanent excepted position under an appointment not limited to 1 year or less or of a position in public or private enterprise when the position was brought into the competitive service on a continuing basis, and who was separated thereafter, when:

(i) He is recommended for appointment within the time limits set forth in § 315.701(c); and

* * * * *

(b) *Review of disapproved recommendations.* Agencies shall establish procedures for reviewing disapprovals of recommendations for appointment under this section when such review is requested within 6 months after the date of disapproval.

* * * * *

§ 315.605 Appointment of former ACTION volunteers.

(a) *Agency authority.* An agency in the executive branch may appoint noncompetitively, for other than temporary employment, a person whom the Director of ACTION certifies as having served satisfactorily as a volunteer or volunteer leader under the Peace Corps Act (22 U.S.C. 2051 et seq.), or as a VISTA volunteer under the Economic Opportunity Act of 1964 (42 U.S.C. 2991 et seq.) or the Domestic Volunteer Service Act of 1973 (Pub. L. 93-113), or as a full-time community volunteer (including criminal justice volunteer, volunteer in justice, and VET REACH volunteer) under part C of title I of Pub. L. 93-113. To be qualifying under this section VISTA and community volunteer service must total at least 1 year. In addition, a community volunteer must have served prior to October 1, 1976.

§ 315.701 Incumbents of positions brought into the competitive service.

* * * * *

(b) *Eligibility for conversion.* Within the time limits set forth in paragraph (c) of this section, the employment of an employee covered by paragraph (a) of this section may be converted to career or career-conditional employment.

(c) *Time limits.* Conversion may be initiated under paragraph (b) of this section only within 6 months after the position is brought into the competitive service, except that:

* * * * *

(2) When an employee is absent on an assignment to an organization or agency from which reemployment rights are provided under part 352 of this chapter or by statute, the conversion shall be initiated within 6 months after the employee's return from such assignment, when reemployment occurs within the time limits prescribed in the applicable statute or regulation;

(3) When an emplolyee is absent on approved leave without pay, the conversion shall be initiated within 6

months of the employee's return to duty, when such return occurs within time limits authorized by the agency; and

(4) When an employee who is serving on military duty or who is separated and rehired during the 6-month period after the position is brought into the competitive service is eligible for conversion under the provisions of § 315.603, the conversion shall be initiated within the time limits prescribed by that section.

(d) *Tenure on approval of conversion.* Upon conversion under paragraph (b) of this section, the employee becomes:

* * * * *

(f) *Review of disapproved conversions.* Agencies shall establish procedures for reviewing disapprovals of conversions under this section when such review is requested within 6 months after the date of the disapproval.

* * * * *

PART 316—TEMPORARY AND TERM EMPLOYMENT

§ 316.301 Purpose and duration.

An agency may make a term appointment for a period of more than 1 year, in accordance with conditions published in the Federal Personnel Manual, when the needs of the service so require and the employment need is for a limited period of 4 years or less.

§ 316.302 Selection of term employment.

* * * * *

(c) An agency may give a term appointment without regard to the existence of an appropriate register to:

* * * * *

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

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

[FR Doc. 78-21688 Filed 8-3-78; 8:45 am]

[3410-34]

Title 7—Agriculture

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

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Commuted Traveltime Allowances

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends administrative instructions prescribing commuted traveltime. These amendments establish commuted traveltime periods as nearly as may be practicable to cover the time necessarily spent in reporting to and returning from the place at which an employee of the plant protection and quarantine programs performs overtime or holiday duty when such travel is performed solely on account of such overtime or holiday duty. Such establishment depends upon facts within the knowledge of the Animal and Plant Health Inspection Service.

EFFECTIVE DATE: August 4, 1978.

FOR FURTHER INFORMATION CONTACT:

E. E. Crooks, Regulatory Support Staff, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs, U.S. Department of Agriculture, Hyattsville, Md. 20782, 301-436-8249.

Therefore, pursuant to the authority conferred upon the Deputy Administrator, plant protection and quarantine programs, by 7 CFR 354.1 of the regulations concerning overtime services relating to imports and exports, the administrative instructions appearing at 7 CFR 354.2, as amended, March 24, 1978 (43 FR 12301), prescribing the commuted traveltime that shall be included in each period of overtime or holiday duty are further amended by adding (in appropriate alphabetical sequence) or deleting the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

Commuted Traveltime Allowances

[In Hours]

Location covered	Served from	Metropolitan area: Within	Metropolitan area: Outside
Delete:			
* * * * *			
Ohio:			
Toledo	Detroit, Mich		3
Pennsylvania:			
Greater Pittsburgh International Airport.	Hollidaysburg		6
Harrisburg	Allentown		4
* * * * *			
Add:			
* * * * *			
California:			
March AFB	Riverside		1
Norton AFB	do		1
Idaho:			
Mountain Home AFB	Caldwell		3
Do	Twin Falls		4
Missouri:			
Kansas City	Boone, Iowa		6
Do	Jefferson City.		6
Rosecrans AFB	Kansas City		3
Whiteman AFB	do		4
Ohio:			
Toledo	Detroit, Mich		4
Pennsylvania:			
Harrisburg	Allentown		5
* * * * *			

(64 Stat. 561; (7 U.S.C. 2260))

It is to the benefit of the public that this instruction be made effective at the earliest practicable date. Accordingly, it is found upon good cause, under the administrative procedure provisions of 5 U.S.C. 553, that notice and other public procedure with respect to the foregoing amendment are unnecessary and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 2d day of August 1978.

NOTE.—The Animal and Plant Health Inspection Service, plant protection and quarantine programs has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821, as amended, and OMB Circular A-107.

JOSEPH F. SPEARS,
Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc. 78-21873 Filed 8-2-78; 4:16 pm]

[3410-02]

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

[Lemon Reg. 157]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation established the quantity of fresh California-Arizona lemons that may be shipped to market during the period August 6-12, 1978. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: August 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, and upon other information, it is found that the limitation of handling of lemons, as hereafter provided, will tend to effectuate the declared policy of the act.

The committee met on August 1, 1978, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons continues good.

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.

§ 910.457 Lemon regulation 157.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period August 6, 1978, through August 12, 1978, is established at 300,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

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

Dated: August 2, 1978.

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

[FR Doc. 78-21870 Filed 8-3-78; 8:45 am]

[3410-07]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—GENERAL REGULATIONS

[FmHA Instruction 426.1]

PART 1806—INSURANCE

Subpart A—Real property Insurance

DELETION

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to remove the requirement that its employees file certain reports concerning losses resulting from damage to or destruction of uninsured real property securing FmHA loans. The intended effect of this action is to remove a reporting requirement which serves no purpose. This action is taken as a result of a determination that the information gathered is not being used and as part of a continuing effort to eliminate unneeded paperwork.

EFFECTIVE DATE: August 4, 1978.

FOR FURTHER INFORMATION CONTACT:

James E. Bryan, Jr., Chief, Reports Management Branch, telephone No. 202-447-2211.

SUPPLEMENTARY INFORMATION: Section 1806.6 of subpart A, part 1806, chapter XVIII, title 7, is amended to delete paragraph (d) in its entirety. This deletion removes certain reporting requirements. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts will be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to publication of such rules. This deletion is not published for proposed rulemaking because no substantive changes have been made which affect the public and because changes that are made are administrative in nature, therefore, public participation is unnecessary.

§ 1806.6 [Amended]

Accordingly, all of paragraph (d) of section 1806.6 of subpart A, part 1806 is hereby deleted.

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

Dated: July 26, 1978.

JAMES E. THORNTON,
Associate Administrator, Farmers Home Administration.

[FR Doc. 78-21693 Filed 8-3-78; 8:45 am]

[3410-34]

Title 9—Animals and Animal Products

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

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

PART 77—TUBERCULOSIS IN CATTLE

Revision of Tuberculosis Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document revises regulations which apply to tuberculosis in cattle to bring these regulations into conformity with the current guidelines of the Uniform Methods and Rules—Bovine Tuberculosis Eradication, and includes changes made necessary by the issuance of revised regulations under which indemnity may be paid for cattle destroyed because of tuberculosis. This action is required to expedite the eradication of bovine tuberculosis from the United States. The intended effect of this action is to eliminate the last foci of infection from the country at the earliest possible time and to prevent

spread of the disease until it can be eradicated.

EFFECTIVE DATE: October 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Ralph W. Bennett, Chief Staff Veterinarian, Tuberculosis Eradication, Cattle Diseases Staff, Animal and Plant Health Inspection Service, Veterinary Services, U.S. Department of Agriculture, room 802, Federal Building, Hyattsville, Md. 20782, 301-436-8715.

SUPPLEMENTARY INFORMATION: On Friday, August 26, 1977, there was published in the FEDERAL REGISTER (42 FR 43088-43091) a proposed revision of the regulations (9 CFR, part 77) which apply to tuberculosis in cattle. The purpose of this revision was to bring these regulations into conformity with the current guidelines of the Uniform Methods and Rules—Bovine Tuberculosis Eradication, and to include changes made necessary by the issuance of revised regulations under which indemnity may be paid for cattle destroyed because of tuberculosis.

Four comments were received in response to the proposed revision as follows:

One State official expressed complete agreement with the proposed revision.

One State official suggested that the identification requirement for exposed cattle in part 50—cattle destroyed because of tuberculosis and the identification requirement for exposed cattle in part 77—tuberculosis in cattle be made uniform. This suggestion was accepted as reasonable and the letter "E" identification requirement for exposed cattle as proposed in § 77.9(b)(1) has been changed from the letter "E" to the letter "S" for uniformity.

One comment suggested that all cattle moving interstate be required to be tested negative for tuberculosis within 30 days prior to movement. This suggestion was rejected as impracticable since it would place an unwarranted burden on movers of cattle interstate. The regulations are adequate to prevent the undue risk of spread of tuberculosis without this additional restriction.

One comment suggested that requirements for movement of suspect cattle in § 77.9(c) are too restrictive and that the Uniform Methods and Rules—Bovine Tuberculosis Eradication be published in toto in the regulations. Neither of these suggestions were accepted since the rigid control of suspect cattle as proposed is considered necessary to prevent the spread of bovine tuberculosis, and the Uniform Methods and Rules—Bovine Tuberculosis Eradication are incorporated by reference as a part of the revised regulations and can be obtained upon request.

Maryland, Montana, New Jersey, and North Carolina have been added to the list of accredited-free States in § 77.4(b) since those States have achieved accredited-free status under the uniform methods and rules since the proposed revision was published on August 26, 1977.

Other than the changes indicated above, the regulations as proposed are incorporated in this final rule except for minor editorial changes and other necessary changes for conformity with citations of the Uniform Methods and Rules—Bovine Tuberculosis Eradication.

Accordingly, Part 77, Title 9, Code of Federal Regulations is revised to read:

Subpart A—General Provisions

Sec.
77.1 Definitions.
77.2 General restrictions.
77.3 Designation of States or areas.
77.4 Accredited-free States.
77.5 Modified accredited areas.
77.6 Nonmodified accredited areas.

Subpart B—Interstate Movement of Cattle Not Known To Be Affected With or Exposed to Tuberculosis

77.7 Movement from accredited-free States and modified accredited areas.
77.8 Movement from nonmodified accredited areas.

Subpart C—Interstate Movement of Cattle Affected With or Exposed to Tuberculosis

77.9 Movement from accredited-free States, modified accredited areas, and nonmodified accredited areas.
77.10 Other movements.

AUTHORITY: Secs. 3-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; 41 Stat. 699, sec. 1, 65 Stat. 693, as amended; secs. 3 and 11, 76 Stat. 130, 132 (21 U.S.C. 111, 114, 114a, 115-117, 120, 121, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141.

Subpart A—General Provisions

§ 77.1 Definitions.

As used in this part, the following terms shall have the meanings set forth in this section except as otherwise specified.

(a) *Animal.* All species of animals except man, birds, or reptiles.

(b) *Cattle.* Domestic bovine animals of all ages.

(c) *Tuberculosis.* The contagious, infectious, and communicable disease of cattle caused by *Mycobacterium bovis.*

(d) *Uniform Methods and Rules—Bovine Tuberculosis Eradication.* Uniform methods and rules for the establishment and maintenance of tuberculosis-free accredited herds of cattle, modified accredited areas, and areas accredited-free of bovine tuberculosis in the domestic bovine, as adopted by the United States Animal Health Association on October 19, 1977, and approved by Veterinary Services effective December 22, 1977. The provisions of the Uniform Methods and Rules—Bovine Tuberculosis Eradication are hereby incorporated by reference [1] [2] and are the minimum standards for achieving and maintaining herd and area status.

(e) *Official tuberculin test.* Any intradermal test for tuberculosis conducted in accordance with the Uniform Methods and Rules—Bovine Tuberculosis Eradication.

(f) *Negative cattle.* Cattle classified negative to an official tuberculin test in accordance with the guidelines established in part II, G., 3., b., of the Uniform Methods and Rules—Bovine Tuberculosis Eradication.

(g) *Suspect cattle.* Cattle responding to an official tuberculin test and classified suspect in accordance with the guidelines established in part II, G., 2., of the Uniform Methods and Rules—Bovine Tuberculosis Eradication.

(h) *Reactor cattle.* Cattle responding to an official tuberculin test and classified reactor in accordance with the guidelines established in part II, G., 1., of the Uniform Methods and Rules—Bovine Tuberculosis Eradication.

(i) *Herd.* Any group of cattle maintained on common ground for any purpose, or two or more groups of cattle under common ownership or supervision, which are geographically separated, but among which there is an interchange or movement of cattle without regard to health status.

(j) *Affected herd.* A herd of cattle in which tuberculosis has been disclosed in any such cattle by an official tuberculin test or by postmortem examination.

(k) *Cattle not known to be affected.* All cattle except those originating from tuberculosis affected herds or from herds containing tuberculosis suspect cattle.

(l) *Exposed cattle.* Cattle, except reactor cattle, which are part of an affected herd.

(m) *Department.* The U.S. Department of Agriculture (USDA).

(n) *Veterinary Services.* The Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture.

(o) *Deputy Administrator.* The Deputy Administrator, Veterinary Ser-

[1] Copies of the Uniform Methods and Rules—Bovine Tuberculosis Eradication are available upon request from Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, Md. 20782, and were filed as part of this original document.

[2] NOTE.—Incorporation by reference provisions approved by the Director, Office of the Federal Register on April 13, 1978. A copy of this current version is on file in the Federal Register library.

vices, or any other Veterinary Services official to whom authority has heretofore been delegated or may hereafter be delegated to act in his stead.

(p) *State.* Any State, territory, the District of Columbia, or Puerto Rico.

(q) *Interstate.* From one State into or through any other State.

(r) *Moved.* Shipped, transported, or otherwise moved, or delivered or received for movement.

(s) *Person.* Any individual, corporation, company, association, firm, partnership, society, or joint stock company, or other legal entity.

(t) *Veterinary Services representative.* A veterinarian or other person employed by Veterinary Services who is authorized to perform the function involved.

(u) *State representative.* A veterinarian or other person employed in livestock sanitary work of a State or political subdivision thereof and who is authorized by such State or political subdivision thereof to perform the function involved under a memorandum of understanding with the Department.

(v) *Accredited veterinarian.* An accredited veterinarian as defined in part 160 of this chapter.

(w) *Modified accredited area.* A State or portion thereof which complies with all of the procedures in part X of the Uniform Methods and Rules—Bovine Tuberculosis Eradication.

(x) *Nonmodified accredited area.* A State or any portion thereof which has not received accredited-free State or modified accredited area status.

(y) *Accredited-free State.* A State which complies with all of the procedures of part XI of the Uniform Methods and Rules—Bovine Tuberculosis Eradication.

(z) *Accredited herd.* A cattle herd which meets the requirements of part IX of the Uniform Methods and Rules—Bovine Tuberculosis Eradication.

(aa) *Certificate.* An official document issued by a Veterinary Services representative, a State representative, or an accredited veterinarian at the point of origin of a shipment of cattle to be moved under this part, which shows the identification tag, tattoo, or registration number or similar identification of each animal to be moved, the number, breed, sex, and approximate age of the animals covered by the document, the purpose for which the animals are to be moved, the date and place of issuance, the points of origin and destination, the consignor, and the consignee, and which states that the animal or animals identified on the certificate meet the requirements of this part.

(bb) *Permit.* An official document issued for movement of animals under this part by a Veterinary Services representative, State representative, or an accredited veterinarian at the point of origin of a shipment of cattle to be moved directly to slaughter, which shows the tuberculosis status of each animal (reactor, suspect, or exposed), the ear tag number of each animal and the name of the owner of such animal, the establishment to which the animals are to be moved, the purpose for which the animals are to be moved and that they are eligible for such movement under the applicable provisions of §§ 77.9 and 77.10.

(cc) *Transportation document.* Any document accompanying the interstate movement, such as an owner's statement, manifest, switch order, or vehicle record, on which is stated: (1) The point from which the animals are moved interstate; (2) the destination of the animals; (3) the number of animals covered by the document; and (4) the name and address of the owner or shipper.

(dd) *Official seal.* A seal issued by a State or Veterinary Services representative.

§ 77.2 General restrictions.

Cattle may not be moved interstate except in compliance with the regulations in this part.

§ 77.3 Designation of States or areas.

The Deputy Administrator may amend the regulations in this part to designate States or portions thereof as modified accredited areas, accredited-free States, or nonmodified accredited areas, respectively, when he determines that these States or portions thereof come within the appropriate definitions in §§ 77.1 (w), (x), or (y), and to delete any State or portion thereof from any such list at any time when he determines that they no longer come within the appropriate definition.

§ 77.4 Accredited-free States.

(a) Accredited-free State status shall have a duration of 1 year. In order to qualify for reaccreditation, such States shall annually, between October 1 and November 30, submit a report to Veterinary Services certifying that the State is in compliance with all the requirements of Part XI of the Uniform Methods and Rules—Bovine Tuberculosis Eradication regarding accredited-free States.

(b) The following States are hereby designated accredited-free States: Colorado, Connecticut, Maine, Maryland, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Rhode Island, Utah, and Wyoming.

§ 77.5 Modified accredited areas.

(a) Modified accredited area status shall have a duration of 1 year. In order to qualify for reaccreditation, such States shall annually, between October 1 and November 30, submit a report to Veterinary Services certifying that the State is in compliance with all the requirements of Part X of the Uniform Methods and Rules—Bovine Tuberculosis Eradication regarding modified accredited areas.

(b) The following States or portions thereof are hereby designated as modified accredited areas: All States or portions thereof except those otherwise designated in § 77.4 or § 77.6.

§ 77.6 Nonmodified accredited areas.

The following States or portions thereof are hereby designated as nonmodified accredited areas:

Subpart B—Interstate Movement of Cattle Not Known To Be Affected With or Exposed To Tuberculosis

§ 77.7 Movement from accredited-free States and modified accredited areas.[3]

Cattle not known to be affected with or exposed to tuberculosis, originating in an accredited-free State or a modified accredited area, may be moved interstate without restriction.

§ 77.8 Movement from nonmodified accredited areas.

Cattle not known to be affected with or exposed to tuberculosis, originating in a nonmodified accredited area, shall only be moved interstate if:

(a) Such cattle are accompanied by a certificate stating that such cattle have been classified negative to an official tuberculin test, which was conducted within 30 days prior to the date of movement. All cattle not individually identified by a registration name and number shall be individually identified by a Veterinary Services approved metal eartag or tattoo; or

(b) Such cattle are from an accredited herd and they are accompanied by a certificate showing the cattle to be from such a herd; or

(c) Such cattle are moved interstate directly to slaughter to an establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or to a State inspected slaughtering establishment which has inspection by a State inspector at the time of slaughter.

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[3] The regulations of the State of destination should be consulted before shipments are made from accredited-free State and modified accredited areas.

Subpart C—Interstate Movement of Cattle Affected With or Exposed to Tuberculosis

§ 77.9 Movement from accredited-free States, modified accredited areas, and nonmodified accredited areas.

(a) *Reactor cattle.* Cattle which have been classified as reactor cattle may be moved interstate only if they are moved directly to slaughter at an establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or to a State-inspected slaughtering establishment which has inspection by a State inspector at the time of slaughter, and only upon compliance with the following conditions:

(1) The reactor cattle shall be individually identified by branding the letter "T" not less than 2 nor more than 3 inches high on the left jaw and by a Veterinary Services approved metal eartag bearing a serial number and the inscription "U.S. Reactor" or a similar State reactor tag bearing such number and similar description attached to the left ear of each animal; and

(2) The reactor cattle shall be accompanied by a permit; and

(3) The reactor cattle shall not be moved interstate in a means of conveyance containing any animals susceptible to tuberculosis unless all of the animals are being moved directly to slaughter; and

(4) Any person who moves reactor cattle interstate under this paragraph shall plainly write or stamp upon the face of the transportation document the words "Tuberculin Reactor" and the following statement: "This conveyance shall be cleaned and disinfected in accordance with § 77.9(a)(5) of the regulations."; and

(5) Each means of conveyance in which reactor cattle have been transported interstate under this paragraph shall be cleaned and disinfected by the carrier, in accordance with the provisions of §§ 71.6, 71.7, and 71.10 of this subchapter, under the supervision of a Veterinary Services representative or State representative or an accredited veterinarian or other person designated by the Deputy Administrator. If, at the point where the cattle are unloaded, such supervision or proper cleaning and disinfecting facilities are not available, and permission is obtained from a Veterinary Services representative or State representative, the empty means of conveyance may be moved to a location where such supervision and facilities are available for cleaning and disinfecting. Permission shall be granted if such movement does not present a risk of the dissemination of tuberculosis.

(b) *Exposed cattle.* Cattle which have been classified as exposed cattle shall be moved interstate only if they are moved directly to slaughter to an establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or to a State inspected slaughtering establishment which has inspection by a State inspector at the time of slaughter and only in compliance with the following conditions:

(1) Such exposed cattle must be individually identified by branding the letter "S" not less than 2 nor more than 3 inches high on the left jaw and by tagging with a Veterinary Services approved metal eartag bearing a serial number attached to either ear of each animal, except that in lieu of branding, the cattle may be accompanied to slaughter by a Veterinary Services representative or State representative, or may be moved in vehicles closed with official seals. When such cattle are moved in vehicles closed with official seals, said seals shall only be removed by a State or Federal employee specifically designated by the Deputy Administrator; and

(2) Such exposed cattle shall be moved in accordance with the requirements pertaining to reactor cattle contained in paragraphs (a)(2), (a)(3), and (a)(5) of this section.

(c) *Suspect cattle.* Suspect cattle which have not been retested and found negative from herds in which no reactor cattle have been disclosed on an official tuberculin test, and negative cattle from such herds, shall only be moved interstate if they are moved directly to slaughter to an establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or to a State inspected slaughtering establishment which has inspection by a State inspector at the time of slaughter.

§ 77.10 Other movements.

The Deputy Administrator may, with the concurrence of the livestock sanitary officials of the State of destination, upon request in specific cases, permit the movement of cattle not otherwise provided for in this part which have not been classified as reactor cattle and are not otherwise known to be affected with tuberculosis, under such conditions as he may prescribe in each specific case to prevent the spread of tuberculosis. The Deputy Administrator shall promptly notify the appropriate livestock sanitary officials of the State of destination of any such action. The revision of the regulations imposes certain restrictions necessary to prevent the interstate spread of tuberculosis in cattle. It does not appear that further public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the admninistrative procedure provisions in 5 U.S.C. 553, it is found upon such good cause that further notice and other public participation with respect to the revision are impracticable and unnecessary.

Done at Washington, D.C., this 31st day of July 1978.

NOTE.—The Animal and Plant Health Inspection Service 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.

J. K. ATWELL
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 78-21835 Filed 8-3-78; 8:45 am]

[3128-01]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION [1]

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1978 Interpretations of the General Counsel

AGENCY: Department of Energy.

ACTION: Notice of interpretations.

SUMMARY: Attached are the Interpretations and responses to Petitions for Reconsideration issued by the Office of the General Counsel of the Department of Energy under 10 CFR Part 205, Subpart F, during the periods July 1, 1978, through July 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Diane Stubbs, Office of the General Counsel, Department of Energy, 12th and Pennsylvania Avenue NW., Room 1121, Washington, D.C. 20461, 202-566-9070.

SUPPLEMENTARY INFORMATION: Interpretations issued pursuant to 10 CFR Part 205, Subpart F, are published in the FEDERAL REGISTER in accordance with the editorial and classification criteria set forth in 42 FR 7923, February 8, 1977, as modified in 42 FR 46270, September 15, 1977.

These Interpretations depend for their authority on the accuracy of the factual statement used as a basis for the Interpretation (10 CFR 205.84(a)(2)) and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom Interpreta-

[1] EDITORIAL NOTE: Chapter II will be renamed at a future date to reflect that it contains regulations administered by the Economic Regulatory Administration of the Department of Energy.

tions are addressed and other persons upon whom Interpretations are served are entitled to rely on them (§ 205.85(c)). An Interpretation is modified by a subsequent amendment to the regulation(s) or ruling(s) interpreted thereby to the extent that the Interpretation is inconsistent with the amended regulation(s) or ruling(s) (§ 205.85(e)). The Interpretations published below are not subject to appeal.

The responses to Petitions for Reconsideration published herein have been issued in accordance with the provisions set forth in 10 CFR 205.85(f). As DOE has indicated on prior occasions, "it should be emphasized that the reconsideration procedure is not the equivalent of an administrative appeal, but merely provides a mechanism to insure that no inadvertent errors are made which affect the validity of the interpretation."

Issued in Washington, D.C., July 31, 1978.

EZRA C. LEVINE,
Acting Assistant General Counsel for Interpretations and Rulings, Office of General Counsel.

APPENDIX A.—*Interpretations*

No.	To	Date	Category
1978-43	True Oil Purchasing Co	July 10	Price.
1978-44	Continental Oil Co	July 11	Do.
1978-45	The Permian Corp	July 18	Allocation.
1978-46	Warren Stevenson	do	Do.
1978-47	Good Hope Refineries, Inc	July 21	Do.

INTERPRETATION 1978-43

To: True Oil Purchasing Company
Date: July 10, 1978
Rules Interpreted: 10 CFR 212.31 and 212.74(b)
Code: GCW—PI—Posted Price

FACTS

True Oil Purchasing Company (TOPCO) is engaged in the purchase and sale of domestic crude oil, and as such, is subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subpart L. TOPCO is a "reseller" as that term is defined in 10 CFR 212.31.

TOPCO is a major purchaser of the crude oil produced in the Williston Basin of Montana and North Dakota and the Powder River Basin of Wyoming. The Williston Basin is a large geologic composite of formations consisting of several thousand square miles and encompassing a large segment of the State of North Dakota, a portion of Canada, and a half dozen counties in eastern Montana. Production from the Williston Basin has been principally developed from the Mississippian Formation, usually located about 6 to 10 thousand feet below the earth's surface, and has been predominately sour crude oil. On August 19, 1975, Amoco issued "Price Supplement #7 to Crude Oil Price Bulletin No. A-20, December 1, 1974," pursuant to which Amoco posted prices for all "North Dakota" crude oil (sweet and sour), as well as "Wyoming Sweet" crude oil. This posted price was in effect on September 30, 1975. Since 1975 increasing volumes of production have been developed from the Red River Formation in the Williston Basin in North Dakota. The Red River Formation is a deeper formation than the Mississippian Formation, at a depth generally about 13,000 feet below the earth's surface. The production from the Red River Formation in North Dakota has yielded sweet crude oil, but at substantially higher drilling costs. Prior to the imposition of upper tier ceiling price controls in February 1976,[1] TOPCO paid the "Wyoming Sweet" price for crude oil for any sweet crude oil from the Williston Basin.

ISSUE

Does the price posted for "Wyoming Sweet" crude oil in Amoco "Price Supplement #7 to Crude Oil Price Bulletin No. A-20, December 1, 1974," apply to sweet crude oil produced in North Dakota for purposes of establishing an upper tier ceiling price as set forth in 10 CFR 212.74?

INTERPRETATION

It has been determined that the correct upper tier ceiling price for Williston Basin crude oil produced in North Dakota is the highest posted price on September 30, 1975, for North Dakota crude oil. Therefore, it is inappropriate to use the highest posted price for Wyoming sweet crude oil for computing the upper tier ceiling price under § 212.74.

The upper tier ceiling price rule for sales of domestic crude oil, set forth in 10 CFR 212.74(b), was promulgated on February 1, 1976, 41 FR 4931 (February 3, 1976), and currently provides:

"The upper tier ceiling price for a particular grade of domestic crude oil in a particular field is (1) the highest posted price on September 30, 1975, for transactions in that grade of crude oil in that field in September 1975, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; less (2) $1.32 per barrel [as adjusted pursuant to § 212.77]."

The concept of "posted price" was initially adopted by the Cost of Living Council pursuant to the Economic Stabilization Act of 1970, as amended, Pub. L. No. 91-379 (August 15, 1970),[2] on November 30, 1973, and has remained substantially unaltered since that time. It is a term used among buyers and sellers of domestic crude oil to represent the prices a purchaser is willing to pay for a specific grade of crude oil produced from a particular field. The definition of "posted price" is currently set forth at 10 CFR 212.31, which provides:

" 'Posted price' means a written statement of crude oil prices circulated publicly among sellers and buyers of crude oil in a particular field in accordance with historic practices, and generally known by sellers and buyers within the field."

Amoco "Price Supplement #7 to Crude Oil Price Bulletin No. A-20, December 1, 1974," constitutes a posted price for the purpose of § 212.31. That price bulletin has separate postings for all crude oil (both sweet and sour, according to Amoco) produced in North Dakota and for sweet crude oil produced in Wyoming. Moreover, in Ruling 1977-1, 42 FR 3628 (January 19, 1977), the Department of Energy stated that "while some price bulletins refer specifically to named fields in which the particular price prevails, other types of bulletins specify a price for a particular grade of crude oil, which is produced over a large geographical area—perhaps even over an area of one or more States." Therefore, it is apparent that the price listed in Price Supplement #7 for *all* North Dakota crude oil pertains to all North Dakota production from the Williston Basin, and the price listed for all Wyoming sweet crude oil can be used only for sweet crude oil produced in the state of Wyoming.

However, TOPCO also asserts that the new sweet crude oil production in North Dakota is not comparable to all other crude oil production in the state on September 30, 1975. Thus, TOPCO argues that producers of the North Dakota sweet crude oil may refer to other crude oil producing areas that produced similar sweet crude oil on September 30, 1975, for establishing their upper tier ceiling price. According to TOPCO, the Amoco posted price for Wyoming sweet crude oil would be the appropriate posting. This argument is not persuasive. The upper tier ceiling price for a particular grade of crude oil is established by reference to the posted price in a particular field or producing area on September 30, 1975. Under the facts presented, a posted price existed for all North Dakota crude oil on September 30, 1975. Therefore, the price for Wyoming sweet crude oil cannot be used for any crude oil produced in the North Dakota Williston Basin.

In an interpretation proceeding the Department of Energy is limited to explaining the meaning of specific regulatory provisions. Part 205, Subpart D, provides the procedures for applying for an exception from a regulation based on an assertion of serious hardship or gross inequity. If the use of North Dakota posted prices for sweet crude oil produced from the North Dakota Red River Formation of the Williston Basin results in such a hardship, TOPCO may submit an application for exception to the DOE. TOPCO should be aware of the general proposition that where application of the regulatory requirements to the facts presented in the particular case would clearly frustrate the underlying objectives of the regulation, the vehicle for seeking a waiver

[1] *See* 41 FR 4931 (February 3, 1976).

[2] 12 U.S.C. 1904 note (1976) (expired April 30, 1974).

of the regulatory requirements is the exception process.

INTERPRETATION 1978-44

To: Continental Oil Company
Date: July 11, 1978
Rule interpreted: 10 CFR 212.31
Code: GWC—PI—Class of purchaser; customary price differential

FACTS

The Continental Oil Company (CONOCO) is a refiner subject to the refiner price rule of 10 CFR Part 212, Subpart E. CONOCO is therefore required to establish maximum allowable prices for sales of motor gasoline with regard to its various classes of purchaser of that gasoline.

CONOCO markets motor gasoline through branded dealers. Beginning in 1967, CONOCO introduced a marketing program to sell four grades of motor gasoline at the retail level (the four-grade program). Under this program, CONOCO supplies dealers with two grades of motor gasoline, Conotane and Premium, which are blended by special blending pumps to produce the four retail grades, Conotane, Regular, Super, and Premium. CONOCO installed the special blending pumps for participating dealers (four-grade dealers) between 1967 and 1969. The pumps have a "double hose" apparatus, whereby the lower grade gasoline (Conotane) passes through an outer hose and the higher grade gasoline (Premium) passes through an inner hose, according to a preset formula. The two grades are mixed as they enter the tank of the customer's automobile.

The grades of gasoline sold by four-grade dealers are blended as follows:

Type	Mix	Brand name
Sub-regular	Conotane (no blend)	Conotane.
Regular	⅞ Conotane and ⅛ premium	Regular.
Sub-premium	¼ Conotane and ¾ premium	Super.
Premium	Premium (no blend)	Premium.

Based on test results from its original marketing areas for the four-grade program, CONOCO determined that an added incentive would be required to boost sales of Super gasoline. Due to the mixture (¼ Conotane and ¾ Premiun) and the retail prices for the different grades, dealers were experiencing a lower margin on sales of Super than on sales of Regular, despite the fact that Super sold for a price higher than that of Regular. In order to correct this disparity, CONOCO instituted a "blending allowance" for its four-grade dealers. The blending allowance is 0.8 cents per gallon of Super gasoline sold. In order to receive this allowance, dealers submit claims based upon pump readings, and the allowances then appear as a credit on CONOCO's invoices to those dealers. CONOCO has continually provided the blending allowance credit to dealers participating in the four-grade program.

CONOCO's four-grade program, including the blending allowance, was in effect for participating dealers on May 15, 1973. CONOCO also continued its existing two-grade gasoline marketing program for those dealers that did not participate in the four-grade program (two-grade dealers).

The advent of unleaded gasoline, among other things, has caused sales of the blended gasolines, Regular and Super, to decline during the past 5 years. In addition, the life expectancy of the special blending pumps installed between 1967 and 1969 is 8 years, thus necessitating their replacement if CONOCO were to continue the four-grade program. Because of these factors, CONOCO has decided to phase out the four-grade program, replacing the special blending pumps with less expensive, standard gasoline pumps. CONOCO's four-grade dealers would then revert to the status of two-grade dealers.

ISSUES

1. Is the blending allowance a "customary price differential" which causes four-grade dealers to be a separate class of purchaser from two-grade dealers?

2. If so, is CONOCO required to make any adjustment to its base period prices for two-grade dealers as a result of the discontinuation of the four-grade gasoline program and its blending allowance?

INTERPRETATION

For the reasons stated below, the blending allowance given to four-grade dealers is a customary price differential which causes those dealers to be a separate class of purchaser from CONOCO's two-grade dealers. However, discontinuation of the four-grade program means that CONOCO may now shift those dealers to CONOCO's two-grade dealer class of purchaser, and no adjustment of base prices need be made with respect to that class of purchaser.

Refiners "may not charge to any class of purchaser a price for a covered product in excess of the maximum allowable price . . . ." 10 CFR 212.83(a). A "class of purchaser" is defined in § 212.31 as "purchasers to whom a person has charged a comparable price for comparable property or service pursuant to customary price differentials between those purchasers and other purchasers." A "customary price differential" is also defined in § 212.31 as "a price distinction based on a discount, allowance, add-on, premium, and an extra based on a difference in volume, grade, quality, or location or type of purchaser, or a term or condition of sale or delivery."

The initial question, then, is whether the blending allowance, or credit, which CONOCO gives to its four-grade dealers is such a customary price differential. CONOCO argues that it is not a price differential, because the price CONOCO charges for the Conotane and Premium gasoline sold to four-grade dealers is the same as that charged to two-grade dealers, and the blending allowance is based upon the relative volumes of those gasolines sold by its four-grade dealers as Super gasoline. Thus, CONOCO concludes, the blending allowance is not based upon the products sold by CONOCO, but upon the blended product sold by the dealers. This reasoning overlooks the fact that CONOCO instituted the credit to induce dealer sales of its Super blend, and that the credit effectively lowers the price the dealer pays for the Conotane and Premium gasolines which are blended to produce Super gasoline.

The Federal Energy Administration (FEA), a predecessor agency of the Department of Energy (DOE), has recognized that a credit adjustment to sales of gasoline effectively lowers the price charged for that gasoline. In *Litchfield Oil Company, Inc.*, 5 FEA ¶80,533 (January 25, 1977), Litchfield sold motor gasoline on May 15, 1973, at an invoiced price of $.309 per gallon. On May 22, 1973, Litchfield provided the purchaser with a credit adjustment of $.009 per gallon. The FEA determined that the credit was a part of the price paid for the gasoline on May 15, 1973, and that the purchaser was in a separate class of purchaser from Litchfield's other motor gasoline customers, based upon the credit and certain contractual provisions regarding location and volume of purchases. 5 FEA at 80,661, 80,663.

Further, in Ruling 1975-2, 40 FR 10655 (March 7, 1975), in which the FEA discussed at length the class of purchaser concept, the FEA pointed out that the "principal function of the [class of purchaser] doctrine is to maintain the price differentials that existed on May 15, 1973 between groups of purchasers which were not similarly situated then and are not now similarly situated." *Id.* at 10656. One basis for establishing separate classes of purchaser is "the types of customers . . . [the seller] had on May 15, 1973, for purposes of making price distinctions." *Id.* at 10657. Under the circumstances presented here, the four-grade dealers are a different type of purchaser from the two-grade dealers, because they participate in the special four-grade blending program. As a result of this program, the four-grade dealers effectively receive a discount—which is clearly a price distinction—based on the blending of the two grades of gasolines sold by CONOCO to those dealers, a price distinction that is not available to two-grade dealers. Because the credit given by CONOCO to its four-grade dealers must be regarded as a part of the price those dealers pay for the gasoline purchased from CONOCO, and because it has been continually offered to four-grade dealers, the credit is a "customary price differential" as defined in § 212.31, and gives rise to a separate class of purchaser.

CONOCO's decision to terminate the four-grade program and revert to two-grade (plus unleaded) gasoline sales only is not adversely affected by the determination that the blending allowance is a customary price differntial given to four-grade dealers. The reasons for the termination of the four-grade program are related to the changing demands of motorists for gasoline and the capital expense of replacing the special blending pumps, and do not indicate a change of normal business practices designed to circumvent the provisions of the Mandatory Petroleum Price Regulations. *See* 10 CFR 210.62. Accordingly, when CONOCO ends the four-grade program for

its dealers, it may then place the dealers into its two-grade dealer class of purchaser.* CONOCO would then sell gasoline to the former four-grade dealers at the prices in effect for the two-grade dealer class of purchaser. As a result, there is no need for CONOCO to adjust the prices for this class of purchaser to reflect the blending allowance, as that allowance was never applicable to the two-grade dealer class of purchaser.

INTERPRETATION 1978-45

To: The Permian Corporation
Date: July 18, 1978
Rule Interpreted: 10 CFR 211.63
Code: GCW—AI—Supplier/Purchaser Relationship (December 1 Rule)

FACTS

The Permian Corporation (Permian) is primarily engaged in the business of purchasing, transporting, and reselling domestic crude oil. Permian's crude oil purchasing and reselling activities are subject to the crude oil supplier/purchaser rule, 10 CFR 211.63.

On February 27, 1976, Permian entered into an agreement with * * * to purchase crude oil produced by * * * from properties that had no crude oil production or sales prior to January 1, 1976. The first sale of crude oil under this agreement gave rise to a supplier/purchaser relationship between Permian and * * *. The agreement, however, contained a clause specifically providing that "any termination [of the supplier/purchaser relationship] by either party from the date of the first delivery would be considered to be by mutual consent" pursuant to the then-existing mutual termination provision of 10 CFR 211.63(a). Permian agreed to this provision, but only to the extent that it fully complied with the terms and provisions of the Mandatory Petroleum Allocation and Price Regulations.

In its request for interpretation, Permian seeks guidance from the Department of Energy (DOE) as to whether a crude oil producer may require, in advance of the establishment of a supplier/purchaser relationship, that the purchaser of the crude oil agree to deem any future termination of the relationship to be by mutual consent. The DOE notified * * * of Permian's request, and invited comment from * * *. In those comments, as will be discussed in greater detail below, * * * urged the DOE to conclude that the agreement in question does not violate the provisions of § 211.63.

ISSUE

May * * * require Permian, as a condition precedent to the sale of crude oil, to agree that any future termination of their supplier/purchaser relationship be deemed to be by mutual consent?

INTERPRETATION

For the reasons discussed below, * * * may condition the sale of crude oil to Permian upon an agreement by Permian that any future termination of their supplier/purchaser relationship be deemed to be by mutual consent. Prior to discussing the reasons for this determination, however, it would be useful to review briefly the origin and development of the crude oil supplier/purchaser rule.

The rule was initially adopted by the Federal Energy Office, a predecessor agency to the DOE, in January 1974. 39 FR 1924 (January 15, 1974).[1] It was promulgated to further certain objectives of the emergency Petroleum Allocation Act of 1973, as amended (the EPAA), Pub. L. No. 93-159 (November 27, 1973),[2] including:

* * * * *

"(D) [P]reservation of * * * competition in the producing, refining, distribution, marketing, and petro-chemical sectors of such [petroleum] industry, and [preservation of] the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded independent marketers;

(E) the allocation of suitable types, grades, and quality of crude oil to refineries in the United States * * *; [and]

(F) equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry. * * *"[3]

* * * * *

The rule as adopted generally provided that all contracts and agreements for purchases, sales, and exchanges of domestic crude oil in effect on December 1, 1973, were to remain in effect for the duration of the allocation program. The rule also provided, however, that any such contract or agreement could be terminated by the "mutual consent of both parties." 39 FR 1924 (January 15, 1974).

On February 23, 1976, the date of the agreement between Permian and * * *, § 211.63(a)(1) similarly provided that all such supplier/purchaser relationships in effect on January 1, 1976, were to remain in effect for the duration of the Mandatory Petroleum Allocation Program.[4] Section 211.63(b) provided that after the first sale, purchase, or exchange of crude oil derived from properties which had not produced or sold crude oil prior to January 1, 1976, a supplier/purchaser relationship would be established as if it had been in effect on January 1, 1976. The rule still permitted termination of the supplier/purchaser relationship by "the mutual consent of both parties"; in addition, termination could also be accomplished pursuant to certain unilateral termination provisions found in § 211.63(d).[5]

On June 11, 1976, however, the Federal Energy Administration (FEA), also a predecessor agency of the DOE, amended §§ 211.63 (a) and (b), deleting the provision in § 211.63(a)(1) that permitted the termination of a supplier/purchaser relationship by the mutual consent of both parties, and expanding the unilateral termination provisions of § 211.63(d). 41 FR 24338 (June 16, 1976).[6] The amendments did not alter the application of the supplier/purchaser rule to the instant case, nor did they change any of the fundamental objectives of the rule.

Consequently, the primary thrust of the supplier/purchaser rule continued to be the protection of small and independent refiners from unexpected disruptions in their refinery operations by assuring them an adequate crude oil supply. *See Basin, Inc.* v. *Federal Energy Administration*, 552 F.2d 931 (TECA 1977).

Under the terms of the contract entered into by Permian for the purchase of new crude oil from * * *, both firms have consented in advance to termination of the supplier/purchaser relationship at the option of either party. This advance waiver of the § 211.63 rights by both purchasers and suppliers of crude oil is not inconsistent with the goals and objectives of the supplier/purchaser rule. Moreover, it is well established that parties may knowingly waive legal protections, unless such a waiver conflicts with public policy.[7] Both * * * and Permian are highly skilled and knowledgeable dealers who knowingly and willingly entered into the February 27, 1976, agreement. Thus, Permian was on that date accorded proper notice that its crude oil supply could be unilaterally terminated by * * * and should therefore have taken the appropriate safeguards necessary to protect itself in the event that termination occurred. Since Permian freely agreed to the advance waiver provision, it cannot persuasively argue that a future unilateral termination of its crude supply would unexpectedly disrupt its reseller operations.

The FEA and DOE have previously sanctioned a voluntary waiver of the rights accorded to suppliers and purchasers by § 211.63. In *State of Alaska*, Interpretation 1977-7, 42 FR 31143 (June 30, 1977), the FEA permitted the State of Alaska to enter into a purchase contract with certain producers of crude oil providing in effect for a waiver of the § 211.63 termination rights in advance of any sale. In that interpretation, the FEA reiterated that such a provision was not at variance with the primary objectives of § 211.63:

"[T]he primary reason that the rule has been maintained to date is to assure that small and independent refiners continue to receive an adequate crude supply. The principal supply relationships upon which small and independent refiners are dependent are those which have been "frozen" since December 1, 1973, and it is these relationships to which the crude oil supplier/purchaser rule is primarily directed."

Subsequently, the DOE permitted the State of Alaska to enter into an agreement with Alaska Petrochemical Company (Alpetco) for the sale of certain volumes of the State's crude oil. In Alaska Petrochemical Company, Interpretation 1978-1, 43 FR 5797 (January 25, 1978), the DOE approved the sales contract which included a provision for the advance waiver of the benefits otherwise provided to Alpetco and all subsequent purchasers of the crude oil by the supplier/purchaser rule. These two interpretations demonstrate that the waiver provision is consistent with the enunciated objectives of the supplier/purchaser rule when all parties in the crude oil supply chain, including subsequent resellers and refiners, have also consented to the provision.[8]

Based on the foregoing, the contract entered into by Permian prior to the purchase of new crude oil from * * * is not at variance with the primary objectives of § 211.63, nor does it violate the enunciated policies of the EPAA. Furthermore, the advance waiver provision suggested by * * * would not adversely affect small and independent refiners downstream as long as Permian provides them with adequate notice. Thus, the waiver provision is not inconsistent with the aforementioned objectives of the EPAA and the supplier/purchaser rule. Moreover, a waiver of the termination provisions of § 211.63 provides additional flexibility to a portion of the domestic crude oil market while permitting sales of crude oil to be

*When a supplier or a purchaser changes the conditions or terms which had placed the purchaser into a particular class of purchaser, then the purchaser may be shifted to the class of purchaser which corresponds to the changed conditions or terms of purchaser. *Bill's Service*, 3 FEA ¶80,548 (January 15, 1976); *Greenbelt Consumer Services, Inc.*, 1 FEA ¶20,211 (December 17, 1974); *cf.* Ruling 1975-2, 40 FR 10655 (March 7, 1975).

made to a larger number of companies. It would, therefore, not serve the policy behind the supplier/purchaser rule to maintain that parties fully knowledgeable of the terms of § 211.63 and the rights arising thereunder may not prior to the first sale of new crude oil waive those rights. Accordingly, the advanced waiver contract consummated by Permian and * * * prior to the sale of new crude oil to Permian is valid and binding upon the parties.

FOOTNOTES

[1]The crude oil supplier/purchaser rule was originally numbered 10 CFR 211.64, but was redesignated as 10 CFR 211.63 on May 10, 1974. 39 FR 17287 (May 14, 1974).

[2]15 U.S.C. 751 *et seq.* (1976).

[3]EPAA §§ 4(b)(1)(D)-(F). In a 1976 preamble to certain proposed amendments to the supplier/purchaser rule, the Federal Energy Administration reviewed the purposes underlying adoption of the original rule, noting (among other things) that the rule: (1) maintained the national crude oil distribution system, which had been seriously threatened by the Arab oil embargo, as it existed on December 1, 1973; (2) established a supply floor upon which supply estimates could be furnished to implement a crude oil buy-sell program, and (3) preserved small and independent refiners' access to price-controlled domestic crude oil. *See* 41 FR 2830 (January 20, 1976).

[4]On February 12, 1976, § 211.63 was amended to substitute January 1, 1976, for December 1, 1973, as the relevant date for determining supplier/purchaser relationships. 41 FR 7386 (February 18, 1976).

[5]Section 211.63(d) then required a producer or reseller which desired to terminate a supplier/purchaser relationship to provide advance written notice to the firm whose relationship was proposed to be terminated. Any firm receiving such a notice was required to supply a copy of the notice to refiners whose crude oil deliveries would be reduced as a result of the termination of the supplier/purchaser relationship, and the refiners' consent to the substitution of a new supplier was required. 40 FR 54422 (November 24, 1975).

[6]Sections 211.63 (a) and (b) have remained unchanged since June 11, 1976, and provide in relevant part:

"(a) *Scope.* This section provides for the allocation of crude oil produced in the United States other than crude oil which is the subject of * * * (4) the first sale of any domestic crude oil produced and sold from a property from which domestic crude oil was not produced and sold prior to January 1, 1976.

(b) *General Rule.* (1) All supplier/purchaser relationships in effect under contracts for sales, purchases and exchanges of domestic crude oil on January 1, 1976 shall remain in effect for the duration of this program; *provided, however,* that any such supplier/purchaser relationship to which this section is applicable may be terminated as provided in paragraph (d) of this section.

(2) Once any first sale, purchase or exchange of domestic crude oil is made which is exempt from this rule pursuant to paragraph (a)(4) of this section * * * a supplier/purchaser relationship between the seller and purchaser shall be established thereafter under this section as though it had been in effect on January 1, 1976."

[7]See *State of Alaska,* Interpretation 1977-7, 42 FR 31143 (June 30, 1977), for a discussion of cases regarding the waiver of rights conferred by regulations.

[8]See also Husky Oil Co. of Delaware, Interpretation 1977-15, 42 FR 31150 (May 28, 1977), where the FEA voided a sales agreement between a reseller and a producer of crude oil which provided for a unilateral termination of their supplier/purchaser relationship. The FEA concluded in the interpretation that termination of the relationship without the consent of the next marketer in the chain or the downstream refiner frustrated the principal purpose underlying the supplier/purchaser rule.

INTERPRETATION 1978-46

To: Warren Stevenson
Date: July 18, 1978
Rules Interpreted: 10 CFR 211.9; 211.51
Code: GCW—AI—Supplier/Wholesale Purchaser-Reseller Relationship

FACTS

From April 19, 1971, to the present, Warren Stevenson ("Stevenson") of Buffalo, Wyoming, has served as a consignee agent and distributor of petroleum products allocated under the Mandatory Petroleum Allocation Regulations for Texaco, Inc. ("Texaco"), and has served several retail motor gasoline stations in the vicinity of Buffalo, Wyoming. Under the terms of the Consignment Agreement ("Agreement"), Texaco delivered its petroleum products, including motor gasoline and lubricating oils and greases, to Stevenson on consignment to Stevenson's place of business. After delivery of the products, although title remained with Texaco, Stevenson was responsible for storage and delivery to purchasers, with his own equipment, at prices and on terms fixed by Texaco.

The Agreement also provides that Stevenson, as a consignee, is free to sell to any purchasers he selects for cash or properly authorized credit. Stevenson may also extend credit to customers on his own account without authorization from Texaco, but in such cases becomes responsible to Texaco for the amount of the sale.

The Agreement further requires Stevenson to keep records of all sales, deliveries, inventory, and receipts, which are subject to audit by Texaco. At his own expense, Stevenson provides, maintains, and insures trucks and all other necessary equipment for the delivery of the petroleum products, paying all taxes and other fees imposed on these vehicles. At this time, Stevenson owns two tank trucks, a tractor loader, and other office machines and equipment needed to carry on his business. Stevenson is a sole proprietor and operates his business at his own expense. Members of his family work on a non-salaried basis. Stevenson also employs drivers on a part-time basis.

Stevenson has stated, at least with regard to one retail station which he supplied in 1972, that Texaco has commenced direct deliveries, thereby reducing the amount of commissions which Stevenson ultimately receives. Texaco disputes Stevenson's claim with regard to certain factual aspects involving Texaco's direct supply of motor gasoline to retail stations in Wyoming. For the reasons set forth below in the interpretation, it is unnecessary to rely on the facts which are in dispute between Stevenson and Texaco with respect to the issue of Texaco's direct deliveries.

ISSUE

Is Stevenson a wholesale purchaser-reseller as that term is defined in 10 CFR 211.51?

INTERPRETATION

It has been concluded that Stevenson, a consignee agent of Texaco, operating pursuant to the Consignment Agreement mentioned above, is a wholesale purchaser-reseller as defined in 10 CFR 211.51.

Wholesale purchaser-reseller is defined in 10 CFR 211.51 as:

"any firm which purchases, receives through transfer, or otherwise obtains (*as by consignment*) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form." (Emphasis added.)

The use of the term "as by consignment" in the definition of wholesale purchaser-reseller was interpreted in Ruling 1975-8, 40 FR 30037 (July 17, 1975). In that Ruling, it was determined that firms which obtain and resell or other wise transfer allocated products are not automatically excluded from the definition of wholesale purchaser-reseller solely on the ground that they fail to take legal title to the allocated product. Those consignees which have a substantial degree of operational independence in the conduct of their business of transfer and sale of a supplier's products (rather than merely providing a distribution service between a supplier and the supplier's customers or functioning like an employee of the supplier) fully qualify as wholesale purchaser-resellers and are subject to the same benefits and obligations of the allocation program which apply to jobbers, who normally take title to allocated products obtained for resale.

According to the Ruling, a consignee that qualifies as a wholesale purchaser-reseller will generally have most (but not necessarily all, for the purposes of 10 CFR 211.51) of the following characteristics: (a) appropriate facilities and equipment for the conduct of the business of selling and distributing its supplier's product; (b) responsibility, independent of its supplier, for its internal financial management and physical and administrative operations; (c) responsibility to its supplier and others for expenses and liabilities arising from and connected with the business of transfer and sale of its supplier's products; and (d) independent control over the disposition of the allocated product, including the right to enter into and terminate relationships with customers rather than being restricted to distributing product solely to customers designated by the supplier. However, the Ruling further found that it was not essential for the consignee to have all four of these characteristics to quality as a wholesale purchaser-reseller.

Stevenson contends that he is a wholesale purchaser-reseller on the basis that his business operates in a manner consistent with all four of the guidelines set forth in Ruling 1975-8. According to Stevenson, his proprietorship has the capability of supplying product to customers and the necessary equipment, such as a tractor loader and two tank trucks, to make deliveries to his customers, sought and developed by him independently of Texaco's control. In addition, he is financially responsible for his own business dealings and has the right to enter

into and to end relationships with customers.

Although the Agreement specifies the status of its distributors as that of "consignee-agent," this nomenclature is not determinative of Stevenson's status. It is only necessary that the consignee meet most of the four qualifications contained in Ruling 1975-8 to satisfy DOE that the "consignee" is in fact a wholesale purchaser-reseller as defined in 10 CFR 211.51. Stevenson has appropriate facilities and equipment for the business, is responsible for the internal financial management and physical and administrative operations of his business, independent of Texaco, is responsible for certain of the expenses and liabilities arising from and connected with the business of transfer and sale of the products, and has independent control to enter and terminate supply relationships.

An additional element which is significant in this instance is the fact that Texaco's consignee agreement with Stevenson is substantially identical to the agreement analyzed in *National Association of Consignees, Inc.*, Interpretation 1975-19, 42 FR 23736 (May 10, 1977). That interpretation concluded that consignees operating under Texaco agreement S-82 1-65 were wholesale purchaser-resellers for purposes of § 211.51. The relevant language in *National* states:

"According to the terms of the Consignment Agreement submitted by you, Texaco distributors retain a substantial measure of functional autonomy in distributing and selling Texaco products. Although distributors must account fully to Texaco for all products and sales revenues received, and such products must be sold at a price authorized by Texaco, they are fully responsible for conduct of the business and are expected to exercise independent judgment and discretion in its operation. While Texaco permits the distributor an association with its product/name, it bears no expenses under this agreement, for facilities, equipment, labor, organizational or employee benefits and implicitly recognizes the distributorship as an independent business.

Thus, any firm which is in the business of selling and distributing allocated products under the terms of the Consignment Agreement submitted by you, operates as a functional entity that is sufficiently independent of its supplier so as to qualify as a wholesale purchaser-reseller, as defined in 10 CFR 211.51."

Based on the standards set forth in Ruling 1975-8 and the information presented by Stevenson, it has been determined that Stevenson is a wholesale purchaser-reseller in accordance with 10 CFR 211.51 of the Mandatory Petroleum Allocation Regulations.

Finally, in light of the contested factual assertions relating to Texaco's direct supply of a number of retail motor gasoline outlets, several observations regarding the general application of the Mandatory Petroleum Allocation Regulations may be of assistance.

Stevenson's request for interpretation raises questions involving Texaco's direct supply of certain wholesale purchaser-resellers who may have been supplied during the base period by Stevenson. It has long been a fundamental principle that purchasers need not buy allocated product from the base period suppliers. See *Swann Oil Inc.*, Interpretation 1974-19, 42 FR 25657 (May 18, 1977), which states as follows:

"Although the regulations provide for an entitlement, they do not obligate a utility to purchase its monthly allocation. In essence, the regulations insure that a purchaser will have supplies if it is willing to purchase them."

Therefore, retail gasoline stations having a supplier/purchaser relationship with Stevenson may elect to purchase motor gasoline from Stevenson, Texaco, or any other supplier (subject, of course, to the provisions of 10 CFR 211.10(g)(7) concerning surplus product). Section 211.10(g)(7) provides:

"(7) *Purchaser's rights.* Notwithstanding the provisions of § 211.12 any wholesale purchaser or end-user may purchase allocated product from any supplier which certifies that it has surplus product to distribute and that it has complied with the provisions of this paragraph."

Obviously, therefore, a new "supplier/purchaser" relationship is not established by a retail station's decision to purchase motor gasoline from a supplier other than its base period supplier. As pointed out in *John Hattenhauer*, Interpretation 1977-20, 42 FR 39963 (August 8, 1977), Texaco's decision to supply certain retail outlets which are not its base period purchasers does not unilaterally shift the § 211.9 supply obligation to Texaco for these outlets, "or reduce the amount of your [Stevenson's] base period volume by an amount which represents the base period volume of the outlets involved."

With regard to the issue of commissions paid by a supplier to its consignee, the Mandatory Petroleum Price Regulations do not govern. In *Rotary Gasoline Dealers*, Interpretation 1975-48, 42 FR 23751 (May 10, 1977), issued November 24, 1975, it was held that:

"Since FEA price regulations pertain to prices charged in sales of petroleum products, the absence of petroleum product ownership by agents and the retention of ownership and control of pricing of the product by suppliers mean that FEA price regulations apply directly to prices charged by suppliers in sales of petroleum products, even where such sales are made through commission agents. FEA price regulations do not control the commissions that may be paid to agents for distributing those products."

Consequently, Stevenson is a wholesale purchaser-reseller as defined in 10 CFR 211.51 and is therefore entitled to receive its adjusted base period allocation of product from Texaco.

INTERPRETATION 1978-47

To: Good Hope Refineries, Inc.
Date: July 21, 1978
Rules Interpreted: 10 CFR 211.51, 211.182
Code: GCW—AI—Definitions of Motor Gasoline and Naphtha

FACTS

Good Hope Refineries, Inc. (Good Hope), a wholly owned subsidiary of Good Hope Industries, Inc., purchased a product referred to as "alkylate" from Atlantic Richfield Company (Arco) beginning in 1973. The alkylate was used by Good Hope as a component in the blending of motor gasoline. In March 1975, Arco terminated its supply of the product to Good Hope precipitating a dispute between the two parties regarding the classification of alkylate under the Mandatory Petroleum Allocation Regulations. Good Hope contended that alkylate should be considered a "naphtha" as defined in 10 CFR 211.182, while Arco asserted that the product qualified under the definition of "motor gasoline" set forth in 10 CFR 211.51.

ISSUE

For purposes of the Mandatory Petroleum Allocation Regulations, is alkylate classified as a naphtha, motor gasoline, or some other refined petroleum product?

INTERPRETATION

For the reasons set forth below, it has been determined that alkylate meets the criteria set forth in the definition of "motor gasoline" as that term is defined in 10 CFR 211.51. Before discussing the chemical properties and refinery uses of alkylate, however, it would be beneficial to review the pertinent Mandatory Petroleum Allocation Regulations, particularly Subparts A, F, and J of Part 211.

Section 4(a) of the Emergency Petroleum Allocation Act of 1973 (the EPAA), as amended, Pub. L. No. 93-159 (November 27, 1973)[1] directed the President to promulgate mandatory allocation regulations applicable "to all crude oil, residual fuel oil, and refined petroleum products produced in or imported into the United States." The term "refined petroleum product" was defined in Section 3(5) of the Act as "gasoline, kerosene, distillates (including Number 2 fuel oil), LPG, refined lubricating oils or diesel fuel." In implementing the statutory mandate of Section 4(a) of the EPAA, the Mandatory Petroleum Allocation Regulations, set forth at 10 CFR Part 211, were adopted on January 14, 1974, 39 FR 1924 (January 15, 1974), and encompassed the mandatory allocation of "crude oil, residual fuel oil and refined petroleum products produced in or imported into the United States" (§ 211.1).

Although currently excluded from the allocation scheme set forth at § 211.1(a),[2] Subpart J of Part 211 pertains to the allocation of "certain naphthas and gas oils produced in or imported into the United States." 10 CFR 211.181(a).[3] The definition of naphtha was adopted on July 2, 1974, 39 FR 25224 (July 9, 1974), and set forth in § 211.182; it provides:

" 'Naphthas' mean petroleum fractions made up predominantly of hydrocarbons whose boiling points fall within the temperature range of 85° to 430° F. This definition does not include specific hydrocarbon constituents such as hexane or special naphthas (solvents)."

That provision was redesignated § 211.181 and revised to its present form on July 2, 1974, 39 FR 25224 (July 9, 1974). Essentially, Subpart J directs the allocation of these naphthas through the maintenance of certain supplier/purchaser relationships in effect during the "base period." The definition of "base period" relevant to naphthas originated in 39 FR 25224 (July 9, 1974) and has remained substantively unaltered since that time. As set forth in § 211.182, the definition provides that the base period is "each calendar quarter of 1973 which corresponds to the current calendar quarter."

Subpart F of the Mandatory Petroleum Allocation Regulations provides for the mandatory allocation of "all motor gasoline produced in or imported into the United States." 10 CFR 211.101(a).[4] The definition of motor gasoline appears in § 211.51, which provides:

" 'Motor gasoline' means a mixture of volatile hydrocarbons, suitable for operation of an internal combustion engine,

whose major components are hydrocarbons with boiling points ranging from 140° to 390° F and whose source is distillation of petroleum and cracking, polymerization, and other chemical reactions by which the naturally occurring petroleum hydrocarbons are converted to those that have superior fuel properties."

For motor gasoline, the applicable base period is "the month of 1972 corresponding to the current month." 10 CFR 211.102.[5] Thus, pursuant to § 211.105 suppliers of motor gasoline must maintain their supplier/purchaser relationships in effect during 1972, utilizing the allocation levels provided in § 211.103.

Based on its conclusion that alkylate is a naphtha, Good Hope asserts that Arco has an obligation to continue supplying the product since a supplier/purchaser relationship existed during the first quarter of 1973 (a base period for naphtha). Arco, however, contends that there is no continuing supply obligation because alkylate is a motor gasoline and was not supplied to Good Hope during the 1972 base period for motor gasoline.

A chemical analysis of alkylate provided by Good Hope and supported by data derived from recognized texts on petroleum refining reveals that the substance is a mixture of high-octane branched-chain hydrocarbons in the gasoline range which are produced by the union of an olefin (ethylene, propylene, butylene, or amylene) with isobutane in a refinery process known as alkylation.[6] The process combines C_3 and C_4 olefins with isobutane in the presence of catalysts, usually either hydroflouric acid (HF) or sulfuric acid. The resulting alkylate is frequently used as a blending component for gasoline in order to raise octane quality. As stated in Good Hope's submission, alkylate has a Reid vapor pressure of less than seven pounds per square inch. In addition, the branched-chain hydrocarbons have boiling points ranging from 140° to 390° F. According to one authority in the field, the "alkylation of isobutane with olefins is theoretically preferable to polymerization as a means of utilizing cracking still gases because it consumes only one molecule of valuable olefin, rather than two, to produce a molecule of *gasoline*." (Emphasis added.)[7] However, "the cost of alkylate is about 1⅓ times that of poly gasoline." [8] In addition, another text defines alkylation as a "process of combining light hydrocarbon molecules to form high octane gasoline." [9] Thus, according to these sources, the process of alkylation produces a gasoline molecule, but at a cost which is excessive for current market standards.

In order for a product to qualify as a motor gasoline under § 211.51, it must consist of volatile hydrocarbons which (1) are "suitable for operation in an internal combustion engine," (2) have "boiling points ranging from 140° to 390° F," and (3) have been derived from the "distillation of petroleum and cracking, polymerization, and other chemical reactions" by which petroleum hydrocarbons are converted to those with superior fuel properties. Although alkylate may not be saleable as a fuel for internal combustion engines due to its excessive cost of production, it is certainly "suitable for operation" in those engines. As stated in Good Hope's submission, the ideal Reid vapor pressure for motor gasolines is between nine and twelve pounds per cubic inch, but this does not reflect the total spectrum of volatile hydrocarbons which can operate an internal combustion engine. Thus, the fact that alkylate is not presently marketable as a fuel for internal combustion engines, does not exclude it from being "suitable" for such purposes. In addition, as previously mentioned, alkylate is within the boiling point range (140° to 390° F) set forth in the motor gasoline definition. Good Hope's observation that alkylate's boiling point range is well within the parameters of a naphtha (85° to 430° F) is not dispositive of the issue since the motor gasoline range provides a more specific temperature range which fits within that of a naphtha. Thus, it is more precise to state that alkylate's boiling point range falls within that of a motor gasoline, as opposed to the broader category of naphthas. Finally, it should be noted that alkylate meets the third requirement for a motor gasoline since it is the product of a process which qualifies as a chemical reaction "by which the naturally occurring petroeum hydrocarbons are converted to those that have superior fuel properties." In this case, alkylate is utilized as a gasoline blending component due to its superior octane properties.

Based on the foregoing, alkylate is a motor gasoline as that term is defined in § 211.51. The fact that the boiling point range of the hydrocarbons in alkylate fits within the broad spectrum provided in the definition of naphtha does not qualify the product as a naphtha. Since the definition of motor gasoline is the more specific definition and alkylate otherwise meets all of the criteria for motor gasoline, it is clear that alkylate is a motor gasoline for purposes of the Mandatory Petroleum Allocation Regulations. Accordingly, since there were no sales of alkylate by Arco to Good Hope during the 1972 base period for motor gasoline, Arco has no obligation under § 211.105 to continue supplying the product to Good Hope.

FOOTNOTES

[1] 15 U.S.C. 751 *et seq.* (1976).

[2] Effective September 1, 1976, subsection (b)(8), which is the current subsection (b)(7), was added to § 211.1. 41 FR 30096 (July 22, 1976). Section (b)(7) provides:

"Notwithstanding the provisions of Subpart J of this part, naphthas and gas oils are excluded from this part except with respect to the use of naphtha for synthetic natural gas plant feedstock pursuant to §§ 211.183 and 211.29."

[3] The provision of Subpart J entitled "Scope" was initially set forth at § 211.182, 39 FR 1924 (January 15, 1974), and provided in relevant part:

"This subpart applies to the mandatory allocation of petrochemical feedstocks produced in or imported into the United States except propane and butane."

[4] Adopted January 5, 1974, 39 FR 1924 (January 15, 1974).

[5] Effective June 1, 1974, 39 FR 15960 (May 6, 1974).

[6] W. Bland & R. Davidson, *Petroleum Processing Handbook* 3-53 (1967).

[7] W. Nelson, *Petroleum Refining Engineering* 735 (1969).

[8] *Id.*

[9] H. Williams & C. Myers, *Oil and Gas Terms* 14 (1971).

APPENDIX B.—*Responses to petitions for reconsideration*

Petitioner	Interpretation	Date of response
Transcontinental Gas Pipeline Corp. (Transco).	Transco, 1978-18, 43 FR 19872 (May 9, 1978)	July 21.
Pennzoil Producing Co. and Pennzoil Oil & Gas, Inc.	Pennzoil Offshore Gas Operators, Inc., 1978-17, 43 FR 19826 (May 9, 1978).	July 24.
Pennzoil Producing Co. and POGO Producing Co.	Gravcap, Inc., 1978-21, 43 FR 19830 (May 9, 1978).	July 28.

Petition for Reconsideration of *Transco*, 1978-18

Petitioner: Transcontinental Gas Pipeline Corp. (Transco)
Date: July 21, 1978.

This letter is in response to the Petition for Reconsideration which you submitted to the Office of General Counsel of the Department of Energy (DOE) on behalf of Transcontinental Gas Pipeline Corporation (Transco) seeking reconsideration of Interpretation 1978-18, 43 FR 19827 (May 9 1978). Transco bases its petition for reconsideration upon the DOE's failure specifically to address issues raised in *Coastal States Gas Corporation*, 4 FEA ¶80,559 (October 26, 1976) and *Petro U.S., Inc.*, Interpretation 1974-20, 42 FR 25658 (May 18, 1977).

The General Counsel may reconsider an Interpretation under the limited circumstances set forth in 10 CFR 205.85(f)(3), which provides that:

The General Counsel may deny any petition for reconsideration if the petitioner does not establish that—

(i) the petition was filed by a person aggrieved by an interpretation;

(ii) the interpretation was erroneous in fact or in law; or

(iii) the interpretation was arbitrary or capricious.

In its petition for reconsideration, Transco has failed to raise any argument or present any information which meets this standard.

In Interpretation 1978-18, it was determined that Transco could not consider a property which it had purchased in 1975 from Sohio Petroleum Company (Sohio) and Gulf Oil Corporation (Gulf), and which had previously produced condensate, as a new property for purposes of establishing a base production control level (BPCL) pursuant to 10 CFR Part 212, Subpart D. In reaching this conclusion, it was acknowledged that Transco's purchase of a property which had previously been owned by another firm did not constitute the acquisition of a legal entity and thus the provisions of § 212.111(c)(2) that specifically require an established BPCL to be used by the acquiring firm were not applicable to this case.

Nevertheless, under precedents established in earlier Rulings and Interpretations, it was further determined that a mere change in ownership of a property does not permit a new BPCL to be established. Thus, a new property was not created when Transco purchased the property from Sohio and Gulf, and Transco "must determine justification for 'new' crude oil based on the BPCL as determined by previous production levels from that property."

The interpretation also rejected Transco's assertion that the condensate produced from the property as a by-product of the use of the property as a natural gas storage facility should be classified as reclaimed or salvaged crude oil, and should therefore be accorded upper tier ceiling price treatment. The interpretation concluded that Transco had misinterpreted the cases which dealt with salvaged crude oil—*Petro U.S., Inc.*, Interpretation 1974-20, 42 FR 25658 (May 18, 1977) and *Liquid Waste Disposal Co.*, Interpretation 1974-11, 42 FR 25653 (May 18, 1977), *vacated sub nom. Tesoro Petroleum Corp.*, 2 FEA ¶80,514 (January 22, 1975)—in its assumption that all such production was entitled to the upper tier ceiling price as a production incentive. Rather, pursuant to those determinations, all reclaimed crude oil, as in the case of crude oil produced from a property, must establish a BPCL based upon either 1972 production levels or 1975 old crude oil production levels.

The *Coastal States* decision relied on by Transco in this request for reconsideration was not specifically referred to in Interpretation 1978-18 because the holding in that case is not apposite to the determination reached in the Interpretation. *Coastal States* merely held, in the context of an exception decision on a refinery acquisition, that § 212.111(c), the "acquisition rule," is not applicable if less than a legal entity is acquired by a firm. It does not therefore address, either expressly or implicitly, the issue of the acquisition of a producing property, discussed in the *Transco* interpretation, which is recognized to be outside the scope of § 212.111(c).

I have determined, therefore, that Transco has not made the showing required by § 205.85(f)(3), bacause it has failed to demonstrate that Interpretation 1978-18 was erroneous in fact or in law, or was arbitrary or capricious. Accordingly, the Transco petition for reconsideration of Interpretation 1978-18 is denied. This denial of your petition for reconsideration is a final order of the Department of Energy of which you may seek judicial review.

Sincerely,

LYNN R. COLEMAN,
General Counsel.

Petition for Reconsideration of *Pennzoil Offshore Gas Operators, Inc.*, 1978-17

Petitioner: Pennzoil Producing Co. and Pennzoil Oil & Gas, Inc.
Date: July 24, 1978

This is in response to your request for reconsideration of *Pennzoil Offshore Gas Operators, Inc.*, Interpretation 1978-17, 43 FR 19826 (May 9, 1978) (the Interpretation). That request for reconsideration, filed on behalf of Pennzoil Oil and Gas, Inc., and POGO Producing Company (POGO), was received on May 24, 1978. By letter dated June 20, 1978, you supplemented that request. You were also advised that a member of my staff contacted an attorney at Shell Oil Company (Shell) on June 12, 1978, regarding that request. In evaluating the request for reconsideration, the materials submitted by the parties prior to the issuance of the Interpretation have also been reviewed. For the reasons discussed below, I have concluded that the request for reconsideration must be denied.

Interpretations issued by the Office of General Counsel of the Department of Energy (DOE) may be reconsidered in certain limited circumstances. In these cases, the burden is upon the petitioner to demonstrate that the interpretation was erroneous in fact or in law, or that the result reached in the interpretation was arbitrary or capricious. 10 CFR 205.85(f)(3) provides that:

The General Counsel may deny any petition for reconsideration if the petitioner does not establish that—

(i) the petition was filed by a person aggrieved by an interpretation;

(ii) the interpretation was erroneous in fact or in law; or

(iii) the interpretation was arbitrary or capricious . . . .

In proposing the reconsideration procedure for interpretations, the DOE explained the purpose of the procedure as follows:

Any petition for reconsideration of such an interpretation will be reviewed by the General Counsel and will only be considered if it is determined that a prima facie showing has been made that the interpretation was erroneous or was issued in an arbitrary or capricious manner. It should be emphasized that the reconsideration procedure is not the equivalent of an administrative appeal, but merely provides a mechanism to insure that no inadvertent errors are made which affect the validity of the interpretation. 43 FR 3568, 3569 (January 26, 1978).

Briefly stated, the facts involved here are as follows: POGO produces "new" crude oil from an offshore platform. Until February 1976, POGO sold crude oil at a price which included delivery via the Bonito pipeline to Ship Shoal Block 28. Prior to February 1976, POGO received the posted price plus a "contract" bonus. Relevant price bulletins on September 30, 1975, especially Shell's price bulletin dated September 29, 1975, stated prices in terms of crude oil delivered into facilities designated by the buyer.

POGO argues that the Interpretation is erroneous as a matter of fact in two respects. First, POGO maintains that Shell's price bulletin dated September 29, 1975, does not incorporate by reference the transportation charge provisions of Shell's Crude Oil Price Bulletin No. 56. Furthermore, the Enforcement Manual of the Economic Regulatory Administration (ERA) recognizes that posted prices are typically wellhead prices. Second, POGO maintains that it is possible to determine that the contract "bonus" provisions included transportation charges. According to POGO, the Interpretation fails to consider that the "bonus" consisted of two components. The Interpretation discussed the "new" oil component of the bonus, but did not refer to the second component. This second component of the bonus, which constituted $0.70 per barrel of crude oil on September 30, 1975, was large enough, POGO asserts, to incorporate a reasonable transportation fee such as the $0.162 per barrel charge subsequently calculated by the Department of Interior for royalty crude oil.

As to Shell's bulletin dated September 29, 1975, a member of my staff has determined from a representative of Shell that Shell intended its letter of September 29, 1975, to be a supplement to the referenced Crude Oil Price Bulletin No. 56, thereby incorporating its transportation charge provisions. You were informed of and confirmed Shell's representation. Since no contrary information has been presented, I find no error in fact as to Shell's bulletin dated September 29, 1975. Furthermore, POGO has provided no applicable posted price which was a wellhead price. The Enforcement Manual of the ERA merely provides general guidance which is not relevant when the individual facts can be ascertained. Accordingly, I find no error in fact as to whether posted prices applicable to POGO were delivered prices.

As to the second component of the contract "bonus," no information has been presented that this second component was intended to defray transportation charges. The information presented merely shows that transportation charges may have been defrayed by the "bonus." Since as to this second component of the contract "bonus," "it is impossible to state with any certainty whether the producer's delivery costs were defrayed by the 'base' price or by the 'bonus' price" (43 FR at 19827), I find no error in fact in the Interpretation.

POGO also contends that the Interpretation contains errors of law. According to POGO, the Interpretation conflicts with the preamble to 10 CFR 212.74. This preamble, quoted in the Interpretation, states in pertinent part:

[P]roducers are required to provide all services associated with production and sale of the crude oil which were provided on September 30, 1975 to *a purchaser paying the referenced September 30, 1975 posted prices.* 41 FR 4931 (February 3, 1976) (emphasis added).

POGO's purchaser was paying the posted price plus the contract "bonus," not just the referenced September 30, 1975, posted price. Therefore, POGO maintains that it need not continue to provide such services, *i.e.* transportation, without any remuneration above the ceiling price for crude oil. POGO does agree with the conclusion that where a producer was selling crude oil and providing certain services at a *total sum* equal to the posted price on the base date, the producer must continue to provide such services if the ceiling price is charged.

A summary of the Interpretation's legal reasoning will assist in an analysis of POGO's contentions. The Interpretation held that the upper tier celing price rule, § 212.74(b), requires producers to provide all services associated with production and sale of the crude oil which were provided to a purchaser paying the referenced September 30, 1975, posted prices. 41 FR at 4931. Because the referenced posted prices were delivered prices, POGO must provide delivery if it charges the ceiling price. Posted prices do not include "bonuses." Ruling 1977-1, 42 FR 3628 (January 19, 1977). Because it is impossible to say that POGO's "bonus" was designed to defray transportation charges, such "bonus" provides no basis for now charging transportation costs. As to royalty crude oil, POGO may charge a fee for transporting crude oil owned by another, but such activities are not regulated by the crude oil price regulations. Therefore, such practices are not relevant to activities which are so regulated.

Thus, the Interpretation applied relevant precedent to establish what services must be

provided to purchasers paying the posted price and concluded that transportation was such a service. In a similar fashion, the Interpretation applied relevant precedent to identify the posted price for POGO's crude oil. Preliminarily, it should be noted that I find, as stated in the Interpretation, that the treatment of royalty crude oil is not relevant to this issue. The basic flaw in POGO's assertions is the theory that these two determinations, *i.e.* services provided and the "posted price," are linked in some fashion. These two determinations are independent. A producer may be required to provide transportation services as it did on September 30, 1975, even if on September 30, 1975, the producer received prices in excess of posted prices on that date.

In one case, the Federal Energy Administration (FEA), a predecessor agency of the DOE, issued a Remedial Order to a firm for calculating ceiling prices by reference to a private contract, rather than the lower "posted price" as defined in § 212.31 *and* failing to deduct transportation charges included in the "posted price," but which the firm had not previously provided. When the firm appealed, the FEA remanded the Order, because, *inter alia*, no evidence was presented that the firm provided the transportation services on September 30, 1975. *Jack W. Grigsby*, 5 FEA ¶80,567, at 80,836-37 (March 8, 1977). No error in law was suggested by that Decision, which would support the view that a producer receiving a private contract price higher than the posted price need not provide the same services as on September 30, 1975. Since the reference postings include delivery into a designated facility, then POGO must include delivery into its designated facility, *i.e.* Ship Shoal Block 28. *Cf. Grigsby* v. *FEA*, Fed. Energy Guidelines (CCH) ¶26,082, at 2679-3 (W.D. La. 1977), *aff'd sub nom. Grigsby* v. *DOE*, —— F. 2d ——, Fed. Energy Guidelines (CCH) ¶26,103, at 26,938 (TECA 1978), *rehearing granted on other grounds* (May 22, 1978). Accordingly, the interpretation is not erroneous as a matter of law.

Finally, I have determined that the Interpretation is not the result of arbitrary or capricious agency action. The administrative record shows that POGO's contentions were given careful and thorough consideration by comparing them with the purposes and requirements of the Mandatory Petroleum Price Regulations and pertinent prior pronouncements of the DOE and its predecessor agencies. Because POGO has failed to demonstrate that the Interpretation is erroneous in fact or in law, and because the Interpretation is not arbitrary or capricious, the request for reconsideration is hereby denied. This denial of POGO's request for reconsideration is a final order of the Department of Energy from which the petitioner may seek judicial review.

Sincerely,

LYNN R. COLEMAN,
General Counsel.

Petition for Reconsideration of *Gravcap, Inc.*, 1978-21

Petitioner: Pennzoil Producing Co. and POGO Producing Co.
Date: July 28, 1978

DEAR MR. MATHIS: This is in response to your request for reconsideration of *Gravcap, Inc.*, Interpretation 1978-21, 43 FR 19830 (May 9, 1978) (the Interpretation). That request for reconsideration, filed by Pennzoil Producing Company and Pennzoil Oil and Gas, Inc. (Pennzoil), was supplemented by information supplied during a conference held on June 12, 1978, and a letter dated June 20, 1978. For the reasons discussed below, I have concluded that the request for reconsideration must be denied.

Interpretations issued by the Office of General Counsel of the Department of Energy (DOE) may be reconsidered in certain limited circumstances. In these cases, the burden is upon the petitioner to demonstrate that the interpretation was erroneous in fact or in law, or that the result reached in the interpretation was arbitrary or capricious. 10 CFR 205.85(f)(3) provides that:

The General Counsel may deny any petition for reconsideration if the petitioner does not establish that—

(i) the petition was filed by a person aggrieved by an interpretation;

(ii) the interpretation was erroneous in fact or in law; or

(iii) the interpretation was arbitrary or capricious. The denial of a petition shall be a final order of which the petitioner may seek judicial review.

In proposing the reconsideration procedure for interpretations, the DOE explained the purpose of the procedure as follows:

Any petition for reconsideration of such an interpretation will be reviewed by the General Counsel and will only be considered if it is determined that a prima facie showing has been made that the interpretation was erroneous or was issued in an arbitrary or capricious manner. It should be emphasized that the reconsideration procedure is not the equivalent of an administrative appeal, but merely provide a mechanism to insure that no inadvertent errors are made which affect the validity of the interpretation. 43 FR 3568, 3569 (January 26, 1978).

Briefly stated, the facts involved here are as follows: Pennzoil ships high sulfur crude oil through the Ship Shoal Pipeline, where it is commingled with lower sulfur crude oils. Gravcap, Inc. (Gravcap), acts as a clearinghouse to assess "penalties" against the producers of high sulfur oils, such as Pennzoil, and pays premiums to the producers of low sulfur crude oils to compensate them for the commingling of the oils.[1] In October 1975, Gravcap increased the sulfur differential penalty it assesses against Pennzoil, an act which Pennzoil contends conflicts with the Mandatory Petroleum Price Regulations.

The information supplied by Pennzoil in its request for reconsideration, and at the June 12, 1978, conference, supplements and renders more complete that brought to the DOE's attention during the course of the Interpretation proceeding, but does not contradict that information in any way. Accordingly, I have determined that there is no error of fact in the interpretation.

Pennzoil argues that the interpretation is erroneous as a matter of law, in that it sanctions violations of the crude oil producer price rules. Pennzoil maintains that the effect of the increased sulfur penalty adjustments made by Gravcap is to allow the producers of low sulfur crude oils to receive a price for their oils in excess of the ceiling price, while reducing Pennzoil's revenues below the ceiling price. The lower and upper tier ceiling price rules, however, are couched in terms of what price a producer may *charge to a purchaser.*[2] *See* 10 CFR 212.73; 212.74. Here, the purchasers of crude oil shipped through the Ship Shoal Pipeline are not charged prices greater than the ceiling prices; rather, the producers adjust their revenues from lawfully priced sales, based upon the differing sulfur contents of the crude oils which are commingled.

In this regard, it must be remembered that Pennzoil entered into the sulfur differential agreement with Gravcap on November 30, 1972, prior to the Mandatory Petroleum Price Regulations. Use of the Gravcap system provided Pennzoil with access to an existing pipeline through which it could ship crude oil to shore. The necessary commingling of Pennzoil's high sulfur crude oil with low sulfur crude oils already being shipped through the Ship Shoal Pipeline, however, gave rise to a valid desire on Gravcap's part to equalize the relative values of the commingled crude oils through a sulfur differential adjustment mechanism. The agreement setting out this adjustment mechanism also clearly authorized Gravcap to change the sulfur differential penalties from time to time. It is apparent that Pennzoil knowingly accepted these terms in order to gain access to the Ship Shoal Pipeline. Further, Pennzoil acknowledges that the premium which low sulfur crude oil can command in the world market has increased markedly since 1972, and is now greater than the current sulfur differential penalty which Gravcap assesses against Pennzoil. Under these circumstances, the sulfur differential agreement does not violate the Mandatory Petroleum Price Regulations. Accordingly, the Interpretation is not erroneous as a matter of law.

Finally, I have determined that the Interpretation is not the result of arbitrary or capricious agency action. The administrative record shows that Pennzoil's contentions were given careful and thorough consideration, and the effects of the Gravcap sulfur adjustment system were weighed carefully against the purposes and requirements of the Mandatory Petroleum Price Regulations. Because Pennzoil has failed to demonstrate that the Interpretation is erroneous in fact or in law, and because the Interpretation is not arbitrary or capricious, the request for reconsideration is hereby denied. This denial of Pennzoil's request for reconsideration is a final order of the Department of Energy of which the petitioner may seek judicial review.

Sincerely,

LYNN R. COLEMAN,
General Counsel

[FR Doc. 78-21642 Filed 8-3-78; 8:45 am]

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[1] There is no evidence that the low sulfur crude oil producers involved herein are also owners of Gravcap.

[2] It would be an obvious violation of the ceiling price regulations applicable to the sale of crude oil if a party in privity with a crude oil purchaser remitted something of value to a crude oil producer so that the producer received a price in excess of the ceiling price.

[6320-01]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-1062; Amdt. No. 45 to Part 221]

PART 221—CONSTRUCTION, PUBLICATION, FILING AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Amendment to Delete the Requirement to File Department of Transportation Regulations Governing Hazardous Materials

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This Board-initiated amendment to the tariff-filing regulations eliminates the need to file voluminous restatements of the Department of Transportation's rules for the carriage of hazardous materials aboard aircraft in CAB tariffs. It does not change the rules applicable to hazardous cargo since the DOT rules still apply. The only rules that will remain in CAB tariffs are those that are more restrictive than DOT's. This amendment alleviates confusion and unnecessary work.

DATES: Effective: September 5, 1978. Adopted: July 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Steven Rothenberg, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5423.

SUPPLEMENTARY INFORMATION: On April 15, 1976, the Department of Transportation (DOT) issued a massive reorganization and recodification of its hazardous materials regulations (49 CFR Part 170-189).[1] The revisions included the revocation of part 103 of the Federal Aviation regulations (14 CFR Part 103) and consolidation of its provisions into the hazardous materials regulations, effective July 1, 1976. The remaining revisions became effective January 1, 1977.

Finding that the new DOT regulations were confusing because their format differs somewhat from that required for publication of the rules in the carriers' CAB tariffs, the Board staff granted an indefinite waiver of the requirement that carriers file DOT rules in their tariff. That action allowed carriers to publish only carrier-imposed conditions in their tariffs. In EDR-352, the Board proposed to amend its regulations to provide permanent relief from the requirement that carriers file the DOT rules in their tariffs.

Seven comments have been received on the proposed rule. The only comment expressing total opposition to it was submitted by the Sperry Univac Division of Sperry Rand. It argues that the current requirement should be retained because: (1) Tariffs containing all applicable conditions are necessary as a work tool in carrier operations departments and industrial shipping rooms, which often don't have access to other publications containing relevant rules, (2) filing the complete set of hazardous materials regulations in the carrier's CAB tariff provides a definitive interpretation of the carrier's responsibilities in the case of a conflict or ambiguity in other applicable regulations, and (3) other filings may not fully provide for air transportation and thus elimination of the requirement might leave a gap in the regulation of the air transportation of hazardous materials.

In its comment, Japan Air Lines said it does not oppose the deletion of the filing requirement, but asked that carriers not be precluded from filing DOT's regulations in their tariffs. JAL argues that it is important, especially in international air transportation, for shippers to have all relevant regulations in one place, and that compliance with safety standards is enhanced if all applicable safety standards are included in one comprehensive publication. JAL concludes that a carrier's CAB tariff is the logical repository for that information.

At the other end of the spectrum, The Ford Motor Company and The Nuclear Energy Business Group of General Electric submitted comments not only endorsing the proposed rule but suggesting that the Board go further and prohibit carriers from filing tariffs containing provisions more restrictive than DOT's regulations. In its comment, Ford argues that the Board is not authorized to regulate safety in air commerce and that by allowing the filing of more restrictive tariffs the Board: (a) Creates interpretation problems, (b) causes shipments to be refused which comply with DOT's regulations, (c) adds confusion and costs by creating a double standard, and (d) allows air carriers to circumvent DOT's jurisdiction.

The comments made by Trans World Airlines, the Firestone Tire & Rubber Co., and the Air Transport Association expressed support for the proposed rule without urging the Board to go any further. TWA supports the proposal because it would reduce the burden on carriers in filing tariffs and increase the uniformity in tariff language by reducing the chance of inadvertent inconsistencies. Firestone commented that the proposed rule would simplify compliance with safety standards because it is easier for a shipper to review only the more restrictive conditions imposed by a carrier than sift through an entire reprint of DOT's regulations to find any additional conditions imposed by the carriers. The Air Transport Association's comment was signed by 16 carriers and pointed out that carriers have been operating under an indefinite waiver of the regulations in question for some time without any major problems arising. The ATA also noted that the proposed rule would not change the relative responsibilities of DOT and the Board.

After reviewing the comments, we have decided to adopt the rule with minor editorial changes. While it might be convenient for carriers and shippers to have all applicable rules in one place, we believe more problems are caused by using tariffs as a repository for that information than are alleviated by doing so. The provisions of the DOT hazardous materials regulations are legally binding on shippers and carriers alike regardless of their incorporation in tariffs, and all shippers and carriers are obliged to maintain familiarity with these regulations. Thus, eliminating the need to file a restatement of these rules avoids unnecessary work for carriers and shippers. As ATA has pointed out, the carriers have been granted an indefinite waiver of the filing requirement and no major problems have arisen. We therefore feel justified in our conclusion that this rule will aid, rather than interfere with, interpretation of carriers' obligations. If we later find that our action causes unanticipated problems, we can always reimpose the filing requirement.

We reject as premature and possibly prejudgmental the suggestion by the Ford Motor Co. and the Nuclear Energy Business Group of General Electric that the Board prohibit carriers from filing tariffs containing provisions more restrictive than the DOT regulations. This issue is currently being litigated in docket 31044, "Hazardous Articles and Rules Investigation", and should not be decided in the context of this narrow rulemaking.

Accordingly, the Board amends part 221 of its economic regulations (14 CFR Part 221) as follows:

1. Amend § 221.38 be deleting and reserving paragraph (a)(5) as follows:

§ 221.38 Rules and regulations.

(a) *Contents.* Except as otherwise provided in this part, the rules and

[1] 41 FR 15972.

regulations of each tariff shall contain:

* * * * *

(5) [Reserved]

* * * * *

2. Revise § 221.102 to read as follows:

§ 221.102 Rules tariff.

Carriers may publish all the rules and regulations as required by § 221.38, in separate governing tariffs. conforming to §§ 221.100 and 221.101, instead of being included in the rate tariffs or fare tariffs.

3. Revise § 221.104 to read as follows:

§ 221.104 Explosives and other dangerous or restricted articles.

Carriers may publish rules and regulations governing the transportation of explosives and other dangerous or restricted articles in separate governing tariffs, conforming to §§ 221.100 and 221.101, instead of being included in the fares or rates tariffs or in the governing rules tariff authorized by § 221.102. This separate governing tariff shall contain no other rules or governing provisions.

(Secs. 204(a), 403(a), Federal Aviation Act of 1958, as amended; 72 Stat. 743, 758, as amended (49 U.S.C. 1324 and 1373).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-21778 Filed 8-3-78; 8:45 am]

[6750-01]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER H—RULES, REGULATIONS, STATEMENTS, AND INTERPRETATIONS UNDER THE HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976

PART 801—COVERAGE RULES

PART 802—EXEMPTION RULES

PART 803—TRANSMITTAL RULES

Premerger Notification; Reporting and Waiting Period Requirements; Correction

AGENCY: Federal Trade Commission.

ACTION: Final rule correction.

SUMMARY: The Commission's rules on premerger notification, reporting, and waiting period requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 were published in the FEDERAL REGISTER of July 31, 1978, at page 33450. The appendix to the rules, the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions, appearing on page 33552 was incomplete. The appendix is reprinted below in full. Because of the incomplete publication of the rules and form, the effective date as it appears on page 33450 is incorrect and is changed to read "September 5, 1978."

EFFECTIVE DATE: September 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Malcolm R. Pfunder, 202-523-3894.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-20466 appearing in part II at page 33450 of the FEDERAL REGISTER of July 31, 1978, the appendix to the rules, the Antitrust Improvements Act notification and report form for certain mergers and acquisitions, appearing on page 33552 is corrected and reprinted below in full. Portions of the preamble to the form and items 1(a); 1(b); 1(c); 1(d); 2(a); 2(b); 2(c); 2(d); 2(f); 3; 5(a); a portion of 5(b); 5(d); 7; 9; and a portion of the insurance appendix were deleted.

Because of the incomplete publication of the rules and form, the effective date as it appears on page 33450 is incorrect. It is corrected to read September 5, 1978.

Dated: August 1, 1978.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-21761 Filed 8-3-78; 8:45 am]

[1505-01]

PART 803—TRANSMITTAL RULES

PREMERGER NOTIFICATION; REPORTING AND WAITING PERIOD REQUIREMENTS

Correction

In FR Doc. 78-20466 appearing at page 33450 of the issue for Monday, July 31, 1978, several pages in the appendix beginning on page 33552 were inadvertently omitted. Therefore, the entire appendix is being reprinted for the convenience of the reader.

Int. Form C4 (7/78)

Approved by O...
3-180229 (R0514)
Expires 5-31-81

PART 803 -- APPENDIX
ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT FORM
FOR CERTAIN MERGERS AND ACQUISITIONS

THIS FORM IS REQUIRED BY LAW and must be filed separately by each person which, by reason of a merger, consolidation or acquisition, is subject to § 7A of the Clayton Act, 15 U.S.C. § 18A, as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1390, and rules promulgated thereunder (hereinafter referred to as "the rules" or by section number). The statute and rules are set forth in the Federal Register at page the rules may also be found at 16 CFR Parts 801-03. Failure to file this Notification and Report Form, and to observe the required waiting period before consummating the acquisition, in accordance with the applicable provisions of 15 U.S.C. § 18A and the rules, subjects any "person," as defined in the rules, or any individuals responsible for noncompliance, to liability for a penalty of not more than $10,000 for each day during which such person is in violation of 15 U.S.C. § 18A.

All information and documentary material filed in or with this form is confidential. It is exempt from disclosure under the Freedom of Information Act, and may be made public only in an administrative or judicial proceeding, or disclosed to Congress or to a duly authorized committee or subcommittee of Congress.

Complete and return two notarized copies (with one set of documentary attachments) of this Notification and Report Form to Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, and three notarized copies (with one set of documentary attachments) to Director of Operations, Antitrust Division, Room 3214, Department of Justice, Washington, D.C. 20530. The central office for information and assistance with respect to matters in connection with this Notification and Report Form is Room 303, Federal Trade Commission, Washington, D.C. 20580, phone (202) 523-3894.

AFFIDAVIT

Be sure that the affidavit required by § 803.5 is attached to this page.

CASH TENDER OFFERS

If this acquisition is a cash tender offer, check: ☐

Notification and Report Form (Part 803 -- Appendix) Continued

DEFINITIONS

The definitions and other provisions governing this Form are set forth in the rules, 16 CFR Parts 801-03.

NAME AND DATE

The name of a person is the name of the ultimate parent entity included within the person.

Enter the name of the person filing notification (or on whose behalf it is being filed pursuant to § 803.4) and the date on which this Notification and Report Form is being completed:

(a) Name_____ Date_____

In addition, enter the above name and date at the top of each page of this Form, at the top of any additional sheets attached to complete the response to any item, and at the top of the first or cover page of each documentary attachment.

If this Form is being filed on behalf of the ultimate parent entity by another entity included within the same person authorized by it to file notification on its behalf pursuant to § 803.2(a), give the name of the entity preparing and filing this Form.

(b) Name_____

If this Form is being filed pursuant to § 803.4 on behalf of a foreign person, give the name of the person which is filing on behalf of the foreign person named on line (a) of this page. (Note that for purposes of the balance of this Form, the "person filing notification" remains the foreign person named on line (a) of this page. See § 803.4(d).)

(c) Name_____

INSTRUCTIONS

Each answer should identify the item to which it is addressed. Attach separate additional sheets as necessary in answering each item; each additional sheet should identify the item to which it is addressed. Voluntary submissions pursuant to § 803.1(b) should be so identified. If unable to answer any item fully, give such information as is available and explain why the answer is incomplete, as provided by § 803.3. If books and records which provide accurate answers are not available, enter best estimates and indicate the sources or bases of such estimates. Estimated data should be followed by the notation, "est." All financial information should be rounded to the nearest thousand dollars.

All references to "year" refer to calendar year. If the data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period which most nearly corresponds to the calendar year specified. References to "most recent year" mean the most recent calendar or fiscal year for which the requested information is available.

This Notification and Report Form requests information regarding dollar revenues and lines of commerce at three levels. All persons must submit certain data at the 4-digit (SIC code) industry level. To the extent that dollar revenues are derived from manufacturing operations (SIC major groups 20-39), data must also be submitted at the 5-digit product class and 7-digit product levels (SIC-based codes). In reporting by "4-digit (SIC code) industry" you should refer to the 1972 edition of the Standard Industrial Classification Manual published by the Executive Office of the President, Office of Management and Budget. In reporting information by "5-digit (SIC-based code) product class," and by "7-digit (SIC-based code) product," you should refer to one or both of the following reference publications published by the U.S. Bureau of the Census: (a) Numerical List of Manufactured Products, 1972 Census of Manufactures (MC72-1.2) (New 1972 SIC basis); (b) Volume II, "Industry Statistics," 1972 Census of Manufactures. In reporting information by "5-digit (SIC-based code) product class" you may also refer to the code appearing in the "Product Class Reference List" shown in the Instruction Manual for the Annual Survey of Manufactures. In reporting information by "7-digit (SIC-based code) product" you may also refer to the applicable "Product Reference Lists" appearing in the Instruction Manual of the various Current Industrial Reports surveys (monthly, quarterly, or annual) conducted by the U.S. Bureau of the Census. For product codes ending in 00, submit information by product as listed in Appendix A to the Numerical List of Manufactured Products cited above.

In responding to items 5, 7, 8 and 9 and the Insurance Appendix --

-- supply information only with respect to operations conducted within the United States, including its commonwealths, territories, possessions and the District of Columbia. See §§ 801.1(k), 803.2(c)(1);

-- information need not be supplied with respect to assets or voting securities currently being acquired, the acquisition of which is exempt under the statute or rules. See § 803.2(c)(2).

In responding to items 5-9 and the Insurance Appendix, limited or separate responses may be required of a person filing notification. See § 803.2(b).

Notification and Report Form (Part 803 -- Appendix) Continued

Name_____ Date_____

1(a) Check whether the acquisition is (check all boxes that apply to the person filing notification):

an acquisition of assets ☐

an acquisition of voting securities ☐

a merger or consolidation (see § 801.2(d)) ☐

an acquisition subject to § 801.30 ☐ specify type _____

a secondary acquisition (see § 801.4) ☐

formation of a joint venture or other corporation (see § 801.40) ☐

other (specify)_____ ☐

1(b) Check whether the person filing notification is:

acquiring person ☐

acquired person ☐

both an acquiring and an acquired person (see § 801.2) ☐

1(c) Name of pre-acquisition ultimate parent entity of person filing notification:_____
Address of headquarters office:_____

1(d) Check whether entity in item 1(c) is a:

corporation ☐ partnership ☐ other (specify)_____ ☐

Name_____ Date_____

2(a) Description of acquisition. List the name and mailing address of each acquiring and acquired person, whether or not required to file notification, and briefly describe the voting securities or assets to be acquired by, and/or the consideration to be received by, each. If voting securities are to be acquired from a holder other than the issuer (or an entity included within the same person as the issuer), separately identify (if known) such holder and the issuer of the voting securities. Acquiring persons in tender offers should describe the terms of the tender offer.

2(b) State the scheduled consummation date of the acquisition.

2(c) Describe the manner in which the acquisition is to be carried out. The description should include the expected dates of any major events required in order to consummate the acquisition, such as stockholders' meetings, filing of requests for approval, other public filings, terminations of tender offers, etc.

2(d)(i) Description of assets to be acquired. Describe all general classes of assets (other than cash and securities) to be acquired by each party to the acquisition, with approximate dollar value thereof, including, if the acquisition is the formation of a joint venture or other corporation (see § 801.40), assets to be acquired by the joint venture or other corporation. Examples of general classes of assets other than cash and securities are land, merchandise inventory, manufacturing inventory, manufacturing plants (specify location and products produced), retail stores, etc. For each general class of assets, indicate the page and/or paragraph number of the contract or other document submitted with this Form in which the assets are more particularly described.

2(d)(ii) Description of assets held by acquiring person. If the person filing notification is an acquiring person, and if assets of the acquired person (see § 801.13) are presently held by the person filing notification, furnish a description of each general class of assets in the manner requested by item 2(d)(i), and the dollar value at the time they were acquired.

Notification and Report Form (Part 803 -- Appendix) Continued

Name_____ Date_____

If Corporation: State of incorporation_____

Date of incorporation_____

If partnership or other: Jurisdiction under which formed_____

Date of formation_____

1(e) Check whether data furnished by: calendar year [ ] fiscal year [ ]

If fiscal year, specify period: from_____(month/day) to_____(month/day).

1(f) If the person filing notification is an acquiring person, and if the entity making the the acquisition is not the pre-acquisition ultimate parent entity listed in item 1(c) above, provide the information requested below with respect to the entity making the acquisition.

If the person filing notification is an acquired person, and if the entity whose assets or voting securities are being acquired is not the pre-acquisition ultimate parent entity listed in item 1(c) above, provide the information requested below with respect to the entity whose assets or voting securities are being acquired.

(i) Name and mailing address of its headquarters office;

(ii) If a corporation, the date and state of incorporation;

(iii) The percentage of its voting securities held by the entity named in item 1(c) above. (If control is effected by means other than the direct holding of the entity's voting securities, describe the intermediaries or the contract through which control is effected; see § 801.1(b).)

Name_____ Date_____

2(e) Description of voting securities to be acquired. Furnish the following information separately for each issuer whose voting securities (other than convertible voting securities) will be acquired in the acquisition:

(i) List each class of voting security (including convertible voting securities) which will be outstanding after the acquisition has been completed; 1/ also list each class of non-voting security which will be acquired in the acquisition;

(ii) Total number of each class of security listed under (i) above which will be outstanding after the acquisition has been completed;

(iii) Total number of each class of security listed under (i) above which will be acquired in this acquisition; 2/

(iv) Identity of each person acquiring any securities of any class listed under (i) above; 2/

(v) Dollar value of securities of each class listed under (i) above to be acquired in this acquisition (see § 801.10); 2/

(vi) Total number of each class of security listed under (i) above which will be held by acquiring person(s) after the acquisition has been completed; 2/ and

(vii) Percentage of each class of security listed under (vi) above which will be held by acquiring person(s) after the acquisition has been completed (see § 801.12(b)). 2/

1/ If there is more than one class of voting security, include a description of the voting rights of each class.

2/ If there is more than one acquiring person for any class of security, show data separately for each acquiring person.

Notification and Report Form (Part 803 -- Appendix) Continued

Name_____ Date_____

2(f)(i) Contract, agreement in principle or letter of intent. Furnish copies of final or most recent versions of all documents which constitute the agreement among the acquiring person(s) and the person(s) whose voting securities or assets are to be acquired.

2(f)(ii) Index to ancillary documents. Furnish an index containing a brief description sufficient to identify each ancillary document or class of documents related to this agreement, such as those relating to personnel matters (union contracts, employment agreements, etc.); third-party financing agreements; leases, subleases and other documents relating to the transfer of realty, etc.

Holdings of acquiring persons.

State: (a) the percentage of the assets;

(b) the percentage of the voting securities; and

(c) the aggregate total dollar amount of voting securities and assets

of the acquired person to be held by each acquiring person, as a result of the acquisition. (See §§ 801.12, 801.13 and 801.14.)

Name_____ Date_____

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4 Documents prepared by person filing notification. Furnish one copy of each of the following documents of the person filing notification. For each entity included within the person filing notification which has prepared its own such documents different from those furnished by the person filing notification, furnish in addition one copy of each document from each such other entity. Furnish copies of:

(a) all of the following filed with the United States Securities and Exchange Commission within three years prior to the date of filing of this notification (or to be contemporaneously filed in connection with this acquisition): the most recent proxy statement, most recent Form 10-K, all registration statements and all Forms 10-Q and 8-K filed since the end of the period reflected by the most recent Form 10-K, and, if the acquisition is a tender offer, Schedule 14D-1; alternatively, if the person filing notification does not have copies of responsive documents readily available, identification of such documents and citation to date and place of filing will constitute compliance;

(b) the most recent annual reports and most recent annual audit reports and, if different, the most recent regularly prepared balance sheet of the person filing notification and of each unconsolidated United States issuer included within such person;

(c) all studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, and indicate (if not contained in the document itself) the date of preparation and the name and title of the individual who prepared each such document.

Notification and Report Form (Part 803 -- Appendix) Continued

Name_____ Date_____

* * * * *

NOTE: LIMITED OR SEPARATE RESPONSES TO ITEMS 5-9 AND THE APPENDIX MAY BE REQUIRED OF THE PERSON FILING NOTIFICATION. SEE § 803.2(b), (c).

* * * * *

5(a) Dollar revenues by industry. Provide the following information on the aggregate operations of the person filing notification for 1972 for each 4-digit (SIC code) industry in which the person engaged. Insurance carriers (2-digit SIC major group 63) should supply the information requested only with respect to industries not within 2-digit SIC major group 63. Credit agencies other than banks; security and commodity brokers, dealers, exchanges, and services; and holding and other investment offices (2-digit SIC major groups 61, 62, and 67) and real estate companies (2-digit SIC major group 65) should identify or explain the dollar revenues reported (e.g. dollar sales, receipts, etc.). Provide aggregate 4-digit (SIC code) industry data for the entire operations of the person. All persons filing notification should include the total dollar revenues for 1972 derived by all entities which are included within the person filing notification at the time this Notification and Report Form is prepared (not as of 1972).

4-DIGIT (SIC CODE) INDUSTRY		1972 TOTAL DOLLAR REVENUES
INDUSTRY CODE	DESCRIPTION	

Name_____ Date_____

5(b)(i) Dollar revenues by manufactured product. Provide the following information on the aggregate operations of the person filing notification for 1972 for each 7-digit (SIC-based code) product of the person within 2-digit SIC major groups 20-39 (manufacturing industries). Do not provide 7-digit data for product codes ending in 00. These are summary codes. Revenues derived in such categories should be provided by product as listed in Appendix A to the Numerical List of Manufactured Products. See Instructions to Notification and Report Form. All persons filing notification should include the total dollar revenues for 1972 derived by all entities which are included within the person filing notification at the time this Notification and Report Form is prepared (not as of 1972).

7-DIGIT (SIC-BASED CODE) PRODUCT		1972 TOTAL DOLLAR REVENUES
PRODUCT CODE	DESCRIPTION	

5(b)(ii) Within 2-digit SIC major groups 20-39 (manufacturing industries), identify each product of the person filing notification added or deleted subsequent to 1972, indicate the year of deletion or addition, and give total dollar revenues for the most recent year for each product that has been added. Products may be identified either by 7-digit SIC-based code or in the manner ordinarily used by the person filing notification. Do not include products added since 1972 by reason of mergers or acquisitions occurring since 1972. However, if an entity acquired since 1972 by the person filing notification (and now included within that person) itself added any products since 1972, those products and the dollar revenues derived therefrom should be listed here. Dollar revenues derived in 1972 by entities acquired since that time should be included in response to item 5(b)(i). Products deleted by reason of dispositions of assets or voting securities since 1972 should be included in response to this item, 5(b)(ii).

Notification and Report Form (Part 803 -- Appendix) Continued

Name_____ Date_____

5(b)(iii) Dollar revenues by manufactured product class. Provide the following information on the aggregate operations of the person filing notification for the most recent year for each 5-digit (SIC-based Code) product class of the person within SIC major groups 20-39 (manufacturing industries). If such data have not been compiled for the most recent year, estimates of dollar revenues by 5-digit product class may be provided if a statement describing the method of estimation is furnished. All persons filing notification should include the total dollar revenues for the most recent year derived by all entities which are included within the person filing notification at the time this Notification and Report Form is prepared.

5-DIGIT (SIC-BASED CODE) PRODUCT CLASS TOTAL DOLLAR REVENUES (SPECIFY YEAR:_____

PRODUCT CLASS CODE DESCRIPTION

Name_____ Date_____

5(c) Dollar revenues by non-manufacturing industry. Provide the following information on the aggregate operations of the person filing notification for the most recent year for each 4-digit (SIC code) industry in SIC major groups other than 20-39 in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 4-digit industry may be provided if a statement describing the method of estimation is furnished. Industries for which the dollar revenues totaled less than one million dollars in the most recent year may be omitted. All persons filing notification should include the total dollar revenues for the most recent year derived by all entities which are included within the person filing notification at the time this Notification and Report Form is prepared.

Insurance carriers (2-digit SIC major group 63) should supply the information requested only with respect to industries not within SIC major group 63, and, if voting securities of an insurance carrier are being acquired directly or indirectly should complete the Insurance Appendix to this Form. Credit agencies other than banks; security and commodity brokers, dealers, exchanges, and services; and holding and other investment offices (2-digit SIC major group 61, 62, and 67) and real estate companies (2-digit SIC major group 65) should identify or explain the dollar revenues reported (e.g. dollar sales, receipts, etc.).

4-DIGIT (SIC CODE) INDUSTRY TOTAL DOLLAR REVENUES (SPECIFY YEAR: _____)

INDUSTRY CODE DESCRIPTION

Notification and Report Form (Part 803 -- Appendix) Continued

Name_____ Date_____

5(d) Supply the following information only if the acquisition is the formation of a joint venture or other corporation. (See § 801.40.)

(i) List the name and mailing address of the joint venture or other corporation.

(ii) (A) List the contributions that each person forming the joint venture or other corporation has agreed to make, specifying when each contribution is to be made and the value of the contribution as agreed by the contributors.

(B) Describe any contracts or agreements whereby the joint venture or other corporation will obtain assets or capital from sources other than the persons forming it.

(C) Specify whether and in what amount the persons forming the joint venture or other corporation have agreed to guarantee its credit or obligations.

(D) Describe fully the consideration which each person forming the joint venture or other corporation will receive in exchange for its contribution(s).

(iii) Describe generally the business in which the joint venture or other corporation will engage, including location of headquarters and principal plants, warehouses, retail establishments or other places of business; its principal types of products or activities; and the geographic areas in which it will do business.

(iv) Identify each 4-digit (SIC code) industry in which the joint venture or other corporation will derive dollar revenues. If the joint venture or other corporation will be engaged in manufacturing, also specify each 5-digit (SIC-based) product class in which it will derive dollar revenues.

Name_____ Date_____

6 This item need not be completed by a person filing notification only as an acquired person if only assets are to be acquired.

(a) Entities within person filing notification. List the name and headquarters mailing address of each entity included within the person filing notification. Entities with total assets of less than $1 million may be omitted.

(b) Shareholders of person filing notification. For each entity included within the person filing notification the voting securities of which are held (see § 801.1(c)) by one or more other persons, list the issuer and class of voting securities, the name and headquarters mailing address of each other person which holds five percent or more of the outstanding voting securities of the class, and the number and percentage held by that person. Holders need not be listed for entities with total assets of less than $10 million.

(c) Holdings of person filing notification. If the person filing notification holds voting securities of any issuer not included within the person filing notification, list the issuer and class, the number and percentage held, and (optionally) the entity within the person filing notification which holds the securities. Holdings of less than five percent of the outstanding voting securities of any issuer, and holdings of issuers with total assets of less than $10 million, may be omitted.

Notification and Report Form (Part 803 -- Appendix) Continued

Name_____ _____ Date_____

7 If, to the knowledge or belief of the person filing notification, the person filing notification derived dollar revenues in the most recent year from operations in any 4-digit (SIC code) industries in which any other person which is a party to the acquisition also derived dollar revenues in the most recent year (or in which a joint venture or other corporation will derive dollar revenues), for each such 4-digit (SIC code) industry:

(a) supply the 4-digit code and description for the industry;

(b) list the name of each person which is a party to the acquisition which also derived dollar revenues in the 4-digit industry;

(c) (i) for each 4-digit industry within SIC major groups 20-39 (manufacturing industries) listed in item 7(a) above, list the states (or, if desired, portions thereof) in which, to the knowledge or belief of the person filing notification, the manufactured products are sold in substantially the same form, whether by the person filing notification or by others to whom such products have been sold or resold;

(ii) for each 4-digit industry within SIC major groups 01-17 and 40-49 (agriculture, forestry and fishing; mining; construction; transportation, communications, electric, gas and sanitary services) listed in item 7(a) above, list the states (or, if desired, portions thereof) in which the person filing notification conducts such operations;

(iii) for each 4-digit industry within SIC major groups 50-51 (wholesale trade) listed in item 7(a) above, list the states (or, if desired, portions thereof) in which the customers of the person filing notification are located;

(iv) for each 4-digit industry within SIC major groups 52-62 and 64-89 (retail trade; finance, insurance other than insurance carriers, and real estate; and services) listed in item 7(a) above, provide the address, arranged by state, county and city or town, of each establishment from which dollar revenues were derived in the most recent year by the person filing notification; and

(v) for each 4-digit industry within SIC major group 63 (insurance) listed in item 7(a) above, list the state(s) in which the person filing notification is licensed to write insurance.

Name_____ Date_____

8 Did the acquired person and an acquiring person maintain a vendor-vendee relationship during the most recent year with respect to any manufactured product (or, if the acquisition is the formation of a joint venture or other corporation (see § 801.40), will the joint venture or other corporation supply to any of the persons forming it any manufactured product which such person purchased from another such person during the most recent year) which the vendee either resells or consumes in or incorporates into the manufacture of any product? If so, persons filing notification which are vendees of such product(s) should list each product purchased, identify each vendor which is a party to the acquisition from which the product was purchased, and state the dollar amount of the product purchased from that vendor during the most recent year.

Manufactured products are those within 2-digit SIC major groups 20-39. Any product purchased from the vendor in an aggregate annual amount not exceeding $1 million, or the manufacture, consumption or use of which is not attributable to the assets to be acquired, or to the issuer whose voting securities are to be acquired (including entities controlled by the issuer), may be omitted.

Notification and Report Form (Part 803 -- Appendix) Continued

Name_____ Date_____

9 If the person filing notification is an acquiring person, determine each 4-digit (SIC code) industry in which the acquiring person derived dollar revenues of $1 million or more in the most recent year, and in which, to the knowledge or belief of the person filing notification --

-- if the acquisition is of voting securities, the acquired issuer derived dollar revenues of $1 million or more in the most recent year (or in which, in the case of the formation of a joint venture or other corporation, the joint venture or other corporation reasonably can be expected to derive dollar revenues of $1 million or more); or

-- if the acquisition is of assets, dollar revenues of $1 million or more in the most recent year were attributable to the assets to be acquired.

If no 4-digit (SIC Code) industries satisfy these tests, no response to item 9 is required. If one or more 4-digit (SIC Code) industries satisfy these tests, then list all acquisitions made by the person filing notification in the ten years prior to the date of filing of this notification, of voting securities of United States issuers which derived dollar revenues in any such industry, or of assets located in the United States to which dollar revenues in any such industry were attributable. List only acquisitions of more than 50 percent of the voting securities or assets of entities which had annual net sales or total assets greater than $10 million in the year prior to the acquisition. For each such acquisition, supply:

(a) the name of the entity acquired;

(b) the headquarters address of the entity prior to the acquisition;

(c) whether securities or assets were acquired;

(d) the consummation date of the acquisition;

(e) the annual net sales of the acquired entity for the year prior to the acquisition;

(f) the total assets of the acquired entity in the year prior to the acquisition; and

(g) the 4-digit (SIC code) industries (by number and description) identified above in which the acquired entity derived dollar revenues.

Name_____ Date_____

10. Print or type the name and title, address, and telephone number of the individual to contact regarding this Notification and Report Form. See § 803.20(b)(2)(ii).

_____
(Name and Title)

_____
(Business Address)

_____
(Business Telephone Number)

CERTIFICATION (see § 803.6)

This Notification and Report Form, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

_____
(TYPE OR PRINT NAME AND TITLE)

_____ _____
(Signature) (Date)

Subscribed and sworn to before me at the City of_____, State of _____

this_____day of_____, 19__, _____
(Notary Public)

My Commission Expires_____

Notification and Report Form (Part 803 -- Appendix) Continued

APPENDIX TO NOTIFICATION AND REPORT FORM: INSURANCE

Insurance carriers (2-digit SIC major group 63) are required to complete this Appendix if voting securities of an insurance carrier are being acquired directly or indirectly.

1. Life Insurance

A. Provide for the most recent year the amount of premium receipts (calculated on an accrual basis) for each of the following lines:
   1. Life Insurance:
      a. Ordinary life insurance;
      b. Group life insurance (including Federal Employees' Group Life Insurance and Servicemen's Group Life Insurance, but excluding credit life insurance);
      c. Industrial life insurance;
      d. Credit life insurance;
   2. Annuity Considerations:
      a. Individual annuity considerations;
      b. Group annuity considerations;
   3. Health Insurance:
      a. Individual health insurance;
      b. Group health insurance.

B. Provide for the most recent year the amount of new life insurance business issued in the United States (exclusive of revivals, increases, dividend additions and reinsurance ceded) for each of the following lines:
   1. Ordinary life insurance;
   2. Group life insurance (including Federal Employees' Group Life Insurance and Servicemen's Group Life Insurance, but excluding credit life insurance);
   3. Industrial life insurance;
   4. Credit life insurance.

2. Property Liability Insurance

A. Provide for the most recent year the amount of direct premiums written in the United States for each line of insurance specified in Part 2 of the Underwriting and Investment Exhibit of your carrier's annual convention statement.

B. Provide for the most recent year the amount of net premiums written in the United States for each line of insurance specified in Part 2 of the Underwriting and Investment Exhibit of your carrier's annual convention statement.

3. Title Insurance

A. Provide for the most recent year the amount of net direct title insurance premiums written in the United States.

B. Provide for the most recent year the amount of direct title insurance premiums earned in the United States.

[6740-02]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION

SUBCHAPTER G—APPROVED FORMS, NATURAL GAS ACT

[Order No. 526-D; Docket No. RM74-16]

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

Order to Extend 1977 Filing Date of Required Schedules

JULY 31, 1978.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order to extend 1977 filing date of required schedules.

SUMMARY: Order No. 526-D of the Federal Regulatory Commission amends order No. 526-C (Docket No. RM74-16) with regard to the filing date of form 40 schedules for report year 1977, deferring that date from September 1, 1978 to December 1, 1978. In the near future, the Energy Information Administration's proposed form EIA-23 may go into effect. The filing extension is to enable the Commission to take appropriate action to prevent duplicate reporting should form EIA-23 be adopted.

DATES: Form No. 40 submittals for calendar year ending December 31, 1977 must be filed by December 1, 1978.

FOR FURTHER INFORMATION CONTACT: John Conway, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, 202-275-4788.

On February 17, 1978, this Commission issued its order No. 526-C (Docket No. RM74-16) which, among other things, extended the filing date for form No. 40 schedules for report year 1977 from April 1, 1978, to September 1, 1978. this order amends order No. 526-C to further extend the filing date for 1977 from September 1, 1978, to December 1, 1978.[1]

Currently, the Energy Information Administration of the Department of Energy is taking steps to promulgate a new form, proposed form EIA-23. Upon approval by the Office of Management and Budget, this new form will become operative. Should this approval be forthcoming in the near future, as is now expected, an unnecessary burden may be placed upon those who are required to report under the provisions of the Commission's order No. 526-C; they may be required to report what is essentially the same information on two different forms. This potential for the duplication of effort on the part of all concerned should be avoided. To this end the Commission is today ordering that the filing date for form No. 40's required schedules for report year 1977 be extended from September 1, 1978 to December 1, 1978. This extension will enable the Commission, if circumstances warrant, to take appropriate action to prevent duplicate reporting should proposed form EIA-23 go into effect.

The Commission finds: (1) On its own motion, and for the reasons stated above, that the filing date for 1977 reporting of form No. 40 should be modified as set forth herein.

(2) The modification so made, to extend the filing date for report year 1977, is to insure ease of compliance with the Commission's order No. 526-C while at the same time minimizing the potential for duplicative reporting.

(3) That for the reasons given above, and in that this order relieves a restriction previously imposed to the extent of extending a filing date, good cause exists to dispense with notice and public procedures; and this order may therefore be made effective immediately.

(4) An amendment to § 260.13(d), of part 260 of the Commission's regulations is necessary and appropriate for the administration of the Natural Gas Act.

The Commission orders: (A) Section 260.13(d), part 260, subchapter G of chapter I, title 18 of the Code of Federal Regulations is amended to read as follows:

260.13 Form No. 40, natural gas companies annual report of proved domestic reserves.

* * * * *

(d) Paragraphs (b) and (c) apply to calendar year 1976 and subsequent years, except that Schedule C is not required for 1976. The FPC form No. 40 shall be filed by March 1, 1978 for the calendar year ending December 31, 1976, by December 1, 1978 for the calendar year ending December 31, 1977, and thereafter shall be filed by April 1 of the year following the year to which the form applies.

(B) The effective date of this order shall be the date of issuance.

(C) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21701 Filed 8-3-78; 8:45 am]

[1] This proceeding was commenced before the FPC. By the joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the FERC.

[4810-22]

Title 19—Customs Duties

CHAPTER I—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 78-257]

PART 111—CUSTOMHOUSE BROKERS

Recent Amendment to Section 111.22 of the Customs Regulations Concerning the Keeping of Records by Customhouse Brokers; Clarified

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

ACTION: General notice.

SUMMARY: This document clarifies the application of a recent amendment to the Customs regulations, relating to recordkeeping by customhouse brokers to brokers who have been granted a waiver from maintaining Customs Form 3079.

EFFECTIVE DATE: August 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Marcus Sircus, Regulatory Audit Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-2812.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 22, 1978, Treasury Decision 78-138 amended section 111.22 of the Customs regulations (19 CFR 111.22), concerning recordkeeping by customhouse brokers (43 FR 21877). Section 111.22(a), as amended (19 CFR 111.22(a)), requires that each customhouse broker keep a current record of all Customs transactions unless granted an exemption under § 111.22(b) (19 CFR 111.22(b)). Section 111.22(b), as amended, grants an exemption if the information required to be maintained by § 111.22(a) is disclosed in other records regularly kept by the broker in a systematic, convenient form readily available for Customs inspection.

Prior to the amendment, § 111.22(a) required a customhouse broker to

maintain a record of all Customs transactions on Customs Form 3079. The broker could be exempted by the district director from the requirement of using Customs Form 3079 if the district director determined that the information required to be set forth on Customs Form 3079 was disclosed in other books and records regularly maintained by the broker and was maintained in a systematic, convenient, and readily available form. The amendments to § 111.22 abolished Customs Form 3079 and instead required that information regarding the broker's Customs transactions be maintained in a prescribed format (as set forth in paragraph (d) of amended § 111.22), unless the broker was exempted from doing so. The Customs Service has been asked to clarify the current effect, with respect to the amended recordkeeping requirements, of an exemption from the use of Customs Form 3079 which was granted under § 111.22(b) before the amendments to § 111.22.

CLARIFICATION

Brokers who were granted a waiver from maintaining Customs Form 3079 prior to the amendments to § 111.22 by T.D. 78-138 are exempt from the requirement that records of their Customs transactions be maintained in the format described in § 111.22(d). This exemption is subject to withdrawal whenever an audit of the broker's books and records reveals that the required information is no longer being maintained in a systematic, convenient, and readily available form.

DRAFTING INFORMATION

The principal author of this document was Suellen M. Ferguson, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development.

G. R. DICKERSON,
Acting Commissioner of Customs.

Approved: July 24, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[FR Doc. 78-21666 Filed 8-3-78; 8:45 am]

[4110-07]

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Reg. No. 4]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950-)

Subpart E—Deductions; Reductions; Nonpayments; Increases Spouse's Benefits—Reduction for Government Pension

INTERIM REGULATIONS

AGENCY: Social Security Administration, HEW.

ACTION: Interim regulations.

SUMMARY: This regulation states the policies that the Social Security Administration will follow to reduce the social security benefits payable to a worker's spouse who is eligible for a government pension. This reduction is required by the Social Security Amendments of 1977. The purpose of the reduction provision is to preclude windfall payments of social security benefits in the situation where an individual receives a full social security benefit based on his spouse's work, plus a government pension based on his own work, regardless of dependency on his spouse. An exception is provided for certain already-retired and soon-to-retire individuals.

DATES: Comments must be received on or before September 18, 1978.

ADDRESSES: Send your comments to: Social Security Administration, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203.

Copies of all comments received in response to this notice 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:

Jack Schanberger, Legal Assistant, Office of Policy and Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-6785.

SUPPLEMENTARY INFORMATION: In March 1977, the Supreme Court in the decision in "Califano v. Goldfarb" ruled on the eligibility of men for dependent spouse's social security benefits. In order to treat men equally, the decision eliminated the requirement that a man must prove dependency on his retired, disabled, or deceased wife. As a result, many men became eligible for social security benefits even though they were not dependent on their spouses and even though they are receiving pensions from Federal, State, and local governments. This sudden eligibility created unanticipated and unwarranted costs for the Social Security Trust Funds. Congress therefore enacted this reduction (or offset) provision which applies, on a prospective basis, to all spouse's benefits.

Congress, however, realized that this reduction provision could cause a hardship to many persons, already drawing government pensions or expecting to receive government pensions in the near future, who had made retirement plans based on receiving full spouse's benefits under social security. Thus, there is an exception for people now receiving a government pension and those who will be eligible within 5 years beginning December 1977. But this exception applies only if the person meets the social security eligibility requirements that were in effect in January 1977 since these were the only people with such expectations, and Congress considered that these people could not fairly be expected to change their retirement plans to take account of a reduction provision that will apply in the future.

These amendments and additions to the regulations are being published with interim effectiveness because the statutory changes became effective upon enactment of the Social Security Amendments of 1977 on December 20, 1977. Thus, the notice of proposed rulemaking is being dispensed with because a delay in implementation would be impractical. (5 U.S.C. 553(b)(B).)

The interim regulations are to be issued under the authority of sections 205 and 1102 of the Social Security Act, 53 Stat. 1368 and 49 Stat. 647; 42 U.S.C. 405 and 1302.

(Catalog of Federal Domestic Assistance Program Nos. 13.803 Social Security Retirement Insurance; 13.805 Social Security—Survivors Insurance.)

NOTE.—The Social Security Administration has decided that this document does not need an Economic Impact Statement under Executive Order 11821 and 11949 and OMB Circular A-107.

Dated: April 7, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: July 22, 1978.

HALE CHAMPION,
Acting Secretary of Health, Education, and Welfare.

Part 404 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.402 is amended by adding paragraph (b)(3), and by adding new paragraphs (d)(2) and (d)(3) and renumbering the present paragraphs (d)(2) through (d)(6) as (d)(4) through (d)(8).

§ 404.402 Interrelationship of deductions, reductions, adjustments, and nonpayment of benefits.

* * * * *

(b) * * *

(3) Reduction of the benefit of a spouse who is receiving a Government pension (see § 404.408a) is made after the withholding of payments as listed in paragraph (d)(1) of this section and after reduction because of receipt of workmen's compensation (paragraph (b)(2) of this section).

* * * * *

(d) * * *

(2) Current reductions under § 404.408;

(3) Current reductions under § 404.408a;

* * * * *

2. Section 404.408a is added as follows:

§ 404.408a Reduction where spouse is receiving a Government pension.

(a) *When reduction is required.* The monthly social security benefits to which you are entitled as a wife, husband, widow, widower, mother, or father will be reduced (to zero, if necessary) by the amount of any monthly pension you are receiving from a Federal, State, or local government agency for which you were employed in work not covered by social security on the last day of such employment. If the pension is not paid monthly or is paid in a lump-sum, we (the Social Security Administration) will allocate it proportionately as if it were paid monthly.

(b) *Exceptions.* The reduction does not apply to:

(1) A person who is receiving or will be eligible to receive a Government pension for months through November 1982 and who meets the requirements for social security benefits that were applied in January 1977, even though benefits are not claimed until a later month. You are considered eligible for a Government pension for any month in which you meet all the requirements for payment except that you are working or have not applied;

(2) A person who is receiving a Government pension based on employment for an interstate instrumentality.

(c) *Amount and priority of reduction.* Your benefit as a spouse will be reduced, if necessary, for age and for simultaneous entitlement to other social security benefits before it is reduced because you are receiving a Government pension. In addition this reduction follows the order of priority, as stated in § 404.402(b).

(d) *When effective.* This reduction was put into the Social Security Act by the Social Security Amendments of 1977. It only applies to applications for benefits filed in or after December 1977 and only to benefits for December 1977 and later.

[FR Doc. 78-21069 Filed 8-3-78; 8:45 am]

[1505-01]

Title 21—Food and Drugs

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

SUBCHAPTER D—DRUGS FOR HUMAN USE

[Docket No. 76N-0167]

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

Updating and Technical Revisions

Correction

In FR Doc. 78-6770 appearing on page 11151 in the issue of Friday, March 17, 1978, ".0" was inadvertently omitted throughout the document and should have been included as follows:

1. On page 11154 in § 436.320(a)(4), the 2nd line should read, "10.0 millimeters" and the 7th line, should read, "2.0", and in the 2nd column, § 436.320(d), the 1st sentence should read, "10.0 milliliters"; also, in the 2nd sentence, "10 milliliters" should read, "10.0 milliliters".

2. Also on page 11154 in § 446.10(a)(iii), the last line should be "2.0 percent"; in § 446.10(b)(6), in the 2nd line, "2 milliliters" should be "2.0 milliliters".

3. In § 446.10a (a)(1)(vi), the last line should be "than 2.0 percent.".

4. On page 11155, the 1st column, § 446.10a (b)(9), in the 1st line, "1 milligram" should be "1.0 milligram", and in the 2nd line "2 milliliters" should be "2.0 milliliters".

5. In § 446.15(a)(v) and § 446.16(a)(v) the 1st line, the last word should read, "anhydrous".

6. On page 11156, § 446.60(b)(1), the 3rd line, the word, "follow" should read, "follows:".

7. In § 446.65a (a)(1), the 9th line, the last word is "*Streptomyces*".

8. In § 446.65a (a)(1)(vii), the last line should read, "7.0.".

9. On page 11157, § 446.65a (b)(3), the 3rd line, § 446.65a (b)(3), the 3rd and 5th lines should read "5.0 milligrams" and "2.0 milliliters" respectively; and in § 446.65a (b)(4), in the 2nd column, the 1st line should read, "2.0 milliliters" instead of "2 milliliters'; in § 446.65a (b)(5) in the 3rd line, the "2" at the end of the sentence should read "2.0".

In § 446.66(a), the 2nd column, the 2nd line, the word, "tha-cene-carboxamide" should read, "thacenecarboxamide".

10. In § 446.66(a)(iv), the last line should read, "is not less than 6.0 and not more than 8.0".

11. In the 3rd column, § 446.67(a)(1), the 5th line should read, "6β, 12aα)]-4-(dimethylamino)-1,4,4a,5".

12. In § 446.67(a)(1)(iv), the last line should read, "is not less than 2.0 and not more than 3.0.".

13. In § 446.67(a)(1)(v), the 3rd line should read, "[nan-]ometers relative to that of the oxyte-[tracycline]".

14. On page 11158, in § 446.67a (a)(vii) the last line should read, "is not less than 2.0 and not more than 3.0".

15. On page 11159, the 1st column, § 446.75a (b)(1), the 9th line, the last word should read, "reference".

16. In § 446.80(a)(1) (iv) and (vi), the last line should read, "is not less than 3.0 and not more than 7.0.", and "content is not more than 2.0 percent.", respectively.

17. On page 11160, § 446.81a (b)(3), in the 3rd column, "[so-]lution containing 5.0 milligrams of te-[tracycline].".

18. In § 446.81a (8), the 7th and 10th lines should read, "thoroughly. Transfer a 10.0 milliliter" and "[approximate-]ly 75 milliliters of distilled water and 5.0 [milliliters]", respectively.

19. On page 11161, in § 446.82(a)(1)(iv), the last line should read, "is not less than 2.0 and not more than 4.0.".

20. In § 446.82(a)(1)(vi) the last line should read, "content is not more than 2.0 percent.".

21. In the 2nd column, § 446.82(a)(3)(i), the 1st line should read, "pH, absorptivity, 4-epianhydrotetra-[cycline]".

22. On page 11162, in the 1st column, § 446.110(b)(1), the 10th line should read, "[min-]utes. Remove an aliquot of the stock so-[lution]".

23. In § 446.110b **[Revoked]**, the 1st line, the last word is "*chlortetracycline*".

24. On page 11163 the 3rd column, § 446.165a (a), the last line should read, "§ 446.65(a)(1)".

25. On page 11165, in the 1st column (the partial paragraph at the top of the page), the last line of § 446.180c (a)(1) should read, "prescribed by § 446.80(a)(1).".

26. In the same column, § 446.180c (a)(3)(i)(*a*), the 2nd line should read, "the batch for potency, safety, moisture,".

27. In the 2nd column, § 446.180d (a)(3)(i)(*a*), the 2nd line should read, "the batch for potency, safety, moisture,".

28. In § 446.180d (a)(3)(i)(*b*) should read, "(*b*) The batch for potency, loss on drying, pH, and 4-epianhydrotetracycline content.".

29. On page 11166 in the 3rd column, §§ 446.220(b)(1) and 446.260(b)(1) "futher" should read "further".

30. On page 11168 in § 446.276a (b)(1), the 8th line, and in § 446.281(b)(1), the 9th line should read, "[repre-]sented as a single-dose container; or, if . . .".

31. On page 11169 in the middle column, the last paragraph numbered "61", the 7th line should read, "[*suspen-]sion; tetracycline ointment (tetracy-[cline cream).]*".

32. On page 11170 in the 1st column, in § 446.367e (a)(3)(i)(*a*), the 3rd line should read, "[po-]tency, safety, loss on drying, pH, ab-[sorptivity]".

[4110-03]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The regulations are amended to reflect approval of a new animal drug application (NADA) filed by Moorman Manufacturing Co. providing for the use of a tylosin and sulfamethazine premix for the manufacture of a complete swine feed. The feed is used as an aid in preventing certain swine diseases.

EFFECTIVE DATE: August 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Moorman Manufacturing Co., 100 North 30th Street, Quincy, Ill. 62301, filed an NADA (111-069V) providing for the safe and effective use of a premix containing 2 grams each of tylosin (as tylosin phosphate) and sulfamethazine per pound of premix for the subsequent manufacture of a complete swine feed for maintaining weight gains and feed efficiency in the presence of atrophic rhinitis; lowering incidence and severity of *Bordetella bronchiseptica* rhinitis; prevention of swine dysentery (vibrionic); control of swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*); and for reducing incidence of cervical lymphadenitis (jowl abscesses) caused by Group E Streptococci. Approval of this application relies upon safety and effectiveness data contained in Elanco Products Co.'s approved NADA's 12-491V and 41-275V, which are incorporated herein by reference. This approval does not constitute reaffirmation of the referenced NADA's nor does it constitute reaffirmation of the drug's safety and effectiveness.

In accordance with the freedom of information regulations and § 514.11(e)(2)(ii) of the animal drug regulations (21 U.S.C. 514.11(e)(2)(ii)), a summary of the safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA-305), Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), § 558.630 is amended by adding a new paragraph (b)(7) to read as follows:

§ 558.630 Tylosin and sulfamethazine.

* * * * *

(b) * * *

(7) To 021930: 2 grams per pound each, paragraph (f)(2)(i) of this section.

* * * * *

Effective date: The regulation is effective August 4, 1978.

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

Dated: July 26, 1978.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc. 78-21465 Filed 8-3-78; 8:45 am]

[1505-01]

[FAP 8H5182/R37; FRL 931-5]

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

O-Ethyl *O*-[4-(methylthio)phenyl] *S*-propyl phosphorodithioate

Correction

In FR Doc. 78-20567, appearing at page 32129 in the issue for Tuesday, July 25, 1978, on page 32130, in the middle column, the section heading now designated "§ 193.233" should be corrected to read "§ 561.233".

[4110-03]

SUBCHAPTER F—BIOLOGICS

[Docket No. 77N-0352]

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

Anticoagulant Citrate Phosphate Dextrose Adenine Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the whole blood (human) regulations to permit the use of the anticoagulant citrate phosphate dextrose adenine solution (CPDA-1) in whole blood (human) and certain products derived from whole blood (human), and to prescribe labeling for blood products that contain CPDA-1. When CPDA-1 is used as the anticoagulant, the storage period for whole blood (human) and red blood cells (human) may be extended from 21 to 35 days. In addition, the agency is amending other regulations concerning blood and blood products to facilitate the use of CPDA-1.

EFFECTIVE DATE: August 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael L. Hooton, Bureau of Biologics (HFB-620), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, Md. 20014, 301-443-1306.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs

is amending §§ 640.4(d) and 640.7(a) (21 CFR 640.4(d), 640.7(a)) to permit use of CPDA-1 in whole blood (human) and certain products derived therefrom, and to prescribe labeling for products containing CPDA-1. Consistent with this approved use of CPDA-1, the Commissioner is also amending the following related sections:

1. Section 610.53 (21 CFR 610.53), to permit a dating period of 35 days for whole blood (human) and red blood cells (human) collected and stored in CPDA-1 and to clarify the dating periods of single donor plasma (human) products.

2. Section 640.2 (21 CFR 640.2), to provide that the periodic check on sterile technique may be conducted between the 32d and 38th day after collection of blood in CPDA-1.

3. Section 640.4, to provide that when CPDA-1 is the anticoagulant, pilot samples for compatibility testing shall contain blood mixed with CPDA-1.

4. Section 640.16 (21 CFR 640.16), to provide that red blood cells (human) may be prepared within 35 days after whole blood is collected in CPDA-1.

5. Sections 640.22 and 640.32 (21 CFR 640.22, 640.32), to preclude use of whole blood (human) collected and stored in CPDA-1 as a source of platelet concentrate (human) and single donor plasma (human) platelet rich, respectively.

6. Section 640.34 (21 CFR 640.34), to extend by 14 days the time within which single donor plasma (human) and single donor plasma (human) liquid shall be separated from the red blood cells when CPDA-1 is the anticoagulant and to remove the restriction concerning the issuance of plasma for transfusion if there are more than 25 milligrams (mg) hemoglobin per 100 milliliters (ml) of plasma as determined by visual inspection.

Citrate phosphate dextrose (CPD) solution and anticoagulant citrate dextrose (ACD) solution are two anticoagulants authorized for use under § 640.4 for whole blood (human). The dating period prescribed under § 610.53 for whole blood (human) containing CPD or ACD and red blood cells (human) derived from whole blood (human) containing CPD or ACD is 21 days. Data demonstrate that whole blood (human) and red blood cells (human) stored in citrate anticoagulant supplemented with adenine for 35 days are as safe, pure, potent, and effective as if these blood products had been stored in citrate anticoagulant without adenine for 21 days. In addition, except for platelet concentrate (human) for which data are lacking on the hemostatic effect, the data demonstrate that there are no differences in the yield, stability, safety, potency, and effectiveness of blood components and derivatives prepared from blood collected in anticoagulant supplemented with adenine and blood collected in anticoagulant without adenine.

Accordingly, in the FEDERAL REGISTER of January 20, 1978 (43 FR 2890), the Commissioner proposed to (1) authorize use of anticoagulant citrate phosphate dextrose adenine solution (CPDA) as an additional anticoagulant for whole blood (human), (2) provide a dating period of 35 days for whole blood (human) and red blood cells (human) collected and stored in CPDA, (3) prescribed labeling for the blood products containing CPDA, and (4) preclude use of whole blood (human) collected and stored in CPDA as a source of platelet concentrate (human).

Interested persons were given until March 21, 1978 to submit written comments. Twenty-one letters were received. Five letters expressed approval of the amendments as proposed. The comments contained in the remaining letters and the Commissioner's responses follow:

1. Four comments on the proposed amendment of § 610.53(a) recommended that the storage period for red blood cells (human) not be extended to 35 days. The comments stated that the published data adequately support a 35-day storage period for whole blood (human) but only marginally support the proposed 35-day storage period for red blood cells (human). One comment stated that CPDA should be used mainly to improve red blood cell quality (survival) rather than to extend the dating period to 35 days.

The Commissioner agrees that some published data (reference 46 of the proposal) demonstrate that the red blood cell post-transfusion survival of whole blood (human) stored in CPDA for 35 days is better than that of red blood cells (human) stored in CPDA for the same period. However, these data were considered at a public workshop on adenine sponsored by the Bureau of Biologics in conjunction with meeting of the expert Panel on Review of Blood and Blood Derivatives (ref. 36 of the proposal). Following extensive discussion by the Panel members and public participants, the Panel concluded that the whole blood and red blood cells containing CPDA as the anticoagulant are safe and effective after 35 days storage. The Panel recommended that the Bureau of Biologics approve the use of CPDA as an anticoagulant and extend the dating period to 35 days for both products.

In addition, after publication of the proposal, data were submitted to the Bureau of Biologics on 15 units of red blood cells (human) having hematocrits of 75.7±3.4 percent (standard deviation) which were collected in CPDA and stored for 35 days. The average posttransfusion red blood cell survival of the 15 units was 77.6±7.0 percent (standard deviation) with 2 of the 15 units having red blood cell survivals of less than 70 percent. These additional data support the proposed 35-day storage period. The Commissioner concludes that whole blood (human) and red blood cells (human) stored in CPDA for 35 days are as safe, potent, and effective as the same products stored in citrate anticoagulant without adenine for 21 days, and that the quality of the red blood cells during the extended storage period is improved, an effect which becomes increasingly significant after about 10 days of storage. Accordingly, the comments are rejected and blood banks may use CPDA to improve red blood cell quality, to extend shelf life, or to accomplish both objectives.

2. One comment suggested that § 640.2(b) be amended to provide that the periodic check on sterile technique may be conducted between the 32d and 38th day after collection when CPDA is the anticoagulant. Another comment suggested that § 640.16(a) be amended to provide that red blood cells (human) may be prepared within 35 days after whole blood is collected in CPDA. One additional comment suggested amending § 610.53(a) to provide a dating period of 40 days for single donor plasma (human), liquid and § 640.34 (a) and (c) to require that single donor plasma (human) be separated from the red blood cells within 40 days after phlebotomy when CPDA is used as the anticoagulant.

Because CPDA extends the dating period for an additional 14 days, the Commissioner agrees that conforming amendments consistent with the extended dating period are necessary. Therefore, the comments are accepted and the periodic check on sterile technique, the separation of red blood cells (human) from whole blood, the separation of single donor plasma (human) from whole blood, and the dating period for single donor plasma (human), liquid under §§ 640.2(b), 640.16(a), 640.34 (a) and (c), and 610.53(a), respectively, are amended by adding a phrase which extends the time period 14 days when CPDA is used as the anticoagulant. In addition, the Commissioner is clarifying § 610.53(a) to identify the dating period of all single donor plasma products as the period from the date or time of collection of source blood.

3. One comment on the proposed amendment of § 640.4 requested that the regulations specify a range of concentration for dextrose and adenine.

The Commissioner advises that approval of CPDA is based on data supporting the specific formula identified

in the regulations. He is aware that the literature describes several other formulas for CPDA and encourages further development of data to establish optimal concentrations of dextrose and adenine, as well as of other additives. If and when additional data are submitted to support other formulations, the Commissioner will consider proposing their addition to the list of approved anticoagulants. Accordingly, the comment is rejected at this time.

4. One comment on the proposed amendment of § 640.4 suggested that CPDA-1, rather than CPDA, should be used as the abbreviation for the specific anticoagulant citrate phosphate dextrose adenine solution formula identified in the proposal. The comment stated that the literature already describes several variations of the proposed formula and that CPDA is not specific enough to identify the formula proposed.

The Commissioner agrees that "CPDA-1" is more specific than "CPDA" and will better identify the currently approved formula in the event that others are subsequently approved. Therefore, the comment is accepted and "CPDA-1" replaces "CPDA" in the appropriate sections.

5. One comment suggested that to insure the retention of red blood cell antigen reactivity for compatibility testing, § 640.4 should be amended to require that segments of the donor tubing contain anticoagulant.

The Commissioner agrees that anticoagulant is necessary to preserve red blood cell antigen reactivity for compatibility testing if the blood is to be stored for as long as 35 days. Accordingly, the comment is accepted and § 640.4 is amended by adding paragraph (g)(5) requiring that when CPDA-1 is used, pilot samples for compatibility testing shall contain blood mixed with CPDA-1.

In addition, data are currently available suggesting that samples of blood stored in citrate anticoagulant provide better preservation of red blood cell antigen reactivity for compatibility testing than do clotted samples of blood. For this reason, the Commissioner believes that all pilot samples for compatibility testing should be required to be collected and stored in citrate anticoagulant. The Commissioner intends to publish a notice of proposed rulemaking to provide all interested persons with an opportunity to comment on such a requirement.

6. Eight comments on the proposed amendment of § 640.22 recommended that the use of CPDA-1 in blood collected for the preparation of platelet concentrate (human) be approved as soon as data are available.

The Commissioner agrees, and when satisfactory data are received he will propose to provide for the manufacture of platelet concentrate (human) prepared from whole blood (human) collected in CPDA-1.

7. Consistent with the amendment of the regulations to preclude use of blood collected in CPDA-1 for preparation of platelet concentrate (human), the Commissioner is amending § 640.32(a) to provide that whole blood collected in CPDA-1 not be used for preparation of single donor plasma (human), platelet rich.

8. Four comments asked if single donor plasma (human), fresh frozen and antihemphilic factor (human) (AHF) may be prepared from blood collected in CPDA-1.

Blood collected in CPDA-1 may be used to prepare single donor plasma (human), fresh frozen and AHF. However, during a plasmapheresis procedure, there is no need for CPDA-1 in blood collection because the red blood cells are returned to the donor. Accordingly, single donor plasma products collected by plasmapheresis and source plasma (human) which may be used to prepare AHF must not contain CPDA-1.

9. One comment noted that § 640.34(g)(1)(iii) requires that the final single donor plasma product not be issued for transfusion if there are more than 25 mg hemoglobin per 100 ml of plasma as determined by visual inspection. The comment included data from studies that demonstrate that single donor plasma obtained from blood stored for 35 days in CPDA-1 may have plasma hemoglobin values greater than 25 mg hemoglobin per 100 ml of plasma. However, the data demonstrate that the greater hemoglobin levels have no clinical significance. The comment suggested that the restriction concerning 25 mg hemoglobin per 100 ml of plasma therefore be deleted from the regulations.

On the basis of data submitted and other relevant material, the Commissioner concludes that there is no adverse clinical significance from use of single donor plasma (human) products containing more than 25 mg hemoglobin per 100 ml of plasma in any of the approved anticoagulants, if the final product is inspected immediately after separation of the plasma as required in § 640.34 (g)(1)(i) and (g)(1)(ii). Therefore, the comment is accepted and § 640.34 is amended by deleting paragraph (g)(1)(iii).

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner (21 CFR 5.1), parts 610 and 640 of Subchapter F of Title 21 of the Code of Federal Regulations are amended as follows:

1. In part 610 by amending § 610.53 by revising the entries for red blood cells (human); single donor plasma (human); single donor plasma (human), fresh frozen; single donor plasma (human), liquid; single donor plasma (human), platelet rich; and whole blood (human), to read as follows:

§ 610.53 Dating periods for specific products.

• • • • •	
Red blood cells (human).	(a) Twenty-one days from date of collection of source blood, provided labeling recommends storage between 1° and 6° C and the hermetic seal is not broken during processing. Sec.610.51 does not apply. (b) Thirty-five days from date of collection of source blood, when collected and stored with anticoagulant CPDA-1 solution, provided labeling recommends storage between 1° and 6° C and the hermetic seal is not broken during processing. Sec. 610.51 does not apply. (c) Twenty-four hours after plasma removal, provided labeling recommends storage between 1° and 6° C if the hermetic seal is broken during processing. Sec. 610.51 does not apply. (d) Frozen: Three years from date of collection of source blood, provided labeling recommends storage at −65° C or colder. Sec. 610.51 does not apply. (e) Twenty-four hours after removal from storage at −65° C or colder, provided labeling recommends storage between 1° and 6° C. Sec. 610.51 does not apply.
• • • • •	
Single donor plasma (human).	Five years from date of collection of source blood (−18° C or colder). Sec. 610.51 does not apply.
Single donor plasma (human), fresh frozen.	One year from date of collection of source blood (−18° C or colder). Sec. 610.51 does not apply.
Single donor plasma (human), liquid.	Twenty-six days from date of collection of source blood. (Forty days from the date of collection of source blood only when CPDA-1 solution is used as the anticoagulant) (1° and 6° C). Sec. 610.51 does not apply.
Single donor plasma (human), Platelet Rich.	Seventy-two hours from time of collection of source blood (20° to 24° C or between 1° and 6° C). Sec. 610.51 does not apply.
• • • • •	
Whole blood (human) collected in.	(a) ACD solution—21 days, provided labeling recommends storage between 1° and 6° C. Sec. 610.51 does not apply. (b) Heparin solution—48 hours, provided labeling recommends storage between 1° and 6° C. Sec. 610.51 does not apply.

(c) CPD solution—21 days, provided labeling recommends storage between 1° and 6° C. Sec. 610.51 does not apply.
(d) CPDA-1 solution—35 days, provided labeling recommends storage between 1° and 6° C. Sec. 610.51 does not apply.

* * * * *

2. In part 640:

a. In § 640.2 by amending paragraph (b) by revising the first sentence and item (3) of the fourth sentence, to read as follows:

§ 640.2 General requirements.

* * * * *

(b) *Periodic check on sterile technique.* Where blood is collected in an open system, that is, where the blood container is entered, at least one container of such blood that upon visual examination appears normal shall be tested each month between the 18th and 24th day after collection (between the 32d and 38th day after collection when CPDA-1 solution is used as the anticoagulant), as a continuing check on technique of blood collection, as follows: The test shall be performed with a total sample of no less than 10 milliliters of blood and a total volume of fluid thioglycollate medium 10 times the volume of the sample of blood. * * * (3) two different containers of blood, each 18 to 24 days old (32 to 38 days old when CPDA-1 solution is used as the anticoagulant) and each tested separately. * * *

* * * * *

b. In § 640.4 by adding new paragraphs (d)(4) and (g)(5) to read as follows:

§ 640.4 Collection of blood.

* * * * *

(d) * * *

(4) *Anticoagulant citrate phosphate dextrose adenine solution (CPDA-1).*

Tri-sodium citrate ($Na_3C_6H_5O_7 \cdot 2H_2O$), 26.3 gm.
Citric acid ($C_6H_8O_7 \cdot H_2O$), 3.27 gm.
Dextrose ($C_6H_{12}O_6 \cdot H_2O$), 31.9 gm.
Monobasic sodium phosphate ($NaH_2PO_4 \cdot H_2O$), 2.22 gm.
Adenine ($C_5H_5N_5$), 0.275 gm.
Water for injection (U.S.P.) to make 1,000 ml.
Volume per 100 ml blood, 14 ml.

* * * * *

(g) * * *

(5) When CPDA-1 is used, pilot samples for compatibility testing shall contain blood mixed with CPDA-1.

* * * * *

c. In § 640.7 by adding new paragraph (b)(1)(iv) to read as follows:

§ 640.7 Labeling.

* * * * *

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

(iv) Either "CPDA-1" or "anticoagulant citrate phosphate dextrose adenine solution (CPDA-1)."

* * * * *

d. In § 640.16 by revising paragraph (a) to read as follows:

§ 640.16 Processing.

(a) *Separation.* Within 21 days from date of blood collection (within 35 days from date of blood collection when CPDA-1 solution is used as the anticoagulant), red blood cells (human) may be prepared either by centrifugation done in a manner that will not tend to increase the temperature of the blood or by normal undisturbed sedimentation. A portion of the plasma sufficient to insure optimal cell preservation shall be left with the red cells except when a cryoprotective substance is added for prolonged storage.

* * * * *

e. In § 640.22 by revising paragraph (a) to read as follows:

§ 640.22 Collection of source material.

(a) Whole blood used as the source of platelet concentrate (human) shall be collected as prescribed in § 640.4, except that paragraphs (d) (2) and (4) and paragraph (h) shall not apply.

* * * * *

f. In § 640.32 by amending paragraph (a) by inserting a new sentence immediately after the first sentence, to read as follows:

§ 640.32 Collection of source material.

(a) * * * In addition, blood containing CPDA-1 shall not be used to prepare single donor plasma (human) platelet rich. * * *

* * * * *

g. In § 640.34 by revising paragraphs (a), (c), and (g)(1) to read as follows:

§ 640.34 Processing.

(a) *Single donor plasma (human).* Single donor plasma (human) shall be separated from the red blood cells within 26 days after phlebotomy (within 40 days after phlebotomy when CPDA-1 solution is used as the anticoagulant), and shall be stored at −18° C or colder within 6 hours after transfer to the final container, unless the product is to be stored as single donor plasma (human), liquid.

* * * * *

(c) *Single donor plasma (human), liquid.* Single donor plasma (human), liquid shall be separated from the red blood cells within 26 days after phlebotomy (within 40 days after phlebotomy when CPDA-1 solution is used as the anticoagulant) and shall be stored at a temperature of 1° to 6° C within 4 hours after filling the final container.

* * * * *

(g) *The final product.* (1) The final product shall be inspected immediately after separation of the plasma and shall not be issued for transfusion if there is (i) any abnormality in color or physical appearance, or (ii) any indication of contamination.

* * * * *

Effective date. These amendments become effective August 4, 1978.

(Sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262).)

Dated: July 27, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-21380 Filed 8-3-78; 8:45 am]

[4910-22]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

PART 630—PRECONSTRUCTION PROCEDURES

Federal-Aid Programs Approval and Authorization; Revision

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: This document revises the existing regulation pursuant to the Clean Air Act Amendments of 1977 and to the recommendations of the regulations reduction task force of the Federal Highway Administration (FHWA). This revision addresses the priority and conformity requirements of the Clean Air Act Amendments of 1977. Furthermore, it reduces the written procedures governing programing and project authorizations, thereby providing each State highway agency (SHA) increased flexibility in fulfilling 23 U.S.C. 105. Much of the previous

guidance has been eliminated from the regulation, thus allowing each SHA and division office to determine jointly the format and informational content of the annual program(s).

EFFECTIVE DATE: August 11, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Vincent Ciletti, Office of Engineering, 202-426-0450 or S. James Wiese, Attorney, Office of the Chief Counsel, 202-426-0754, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

NOTE.—The Federal Highway Administration has determined that this document does not contain a major proposal according to the criteria established by the Department of Transportation pursuant to Executive Order 12044.

This revision is issued under the authority of 23 U.S.C. 105, 106, 118, 134, and 315; 49 CFR 1.48(b).

Issued on: July 28, 1978.

HARRY A. LINDBERG,
Associate Administrator for Engineering and Traffic Operations.

In consideration of the foregoing, the Federal Highway Administration is revising Chapter I of Title 23, Code of Federal Regulations, Part 630, Subpart A, to read as follows:

Subpart A—Federal-Aid Programs Approval and Project Authorization

Sec.
630.102 Purpose.
630.104 Definitions.
630.106 Policy.
630.108 Program submissions.
630.110 General requirements.
630.112 Approval of programs.
630.114 Authorization to proceed.

AUTHORITY: 23 U.S.C. 105, 106, 118, 134, and 315; 49 CFR 1.48(b).

Subpart A—Federal-Aid Programs Approval and Project Authorization

§ 630.102 Purpose.

The purpose of this regulation is to prescribe policies and procedures for preparation, submission and approval of programs for utilization of highway funds and to describe project authorization procedures.

§ 630.104 Definitions.

Terms used in this regulation are as defined in 23 U.S.C. 101(a).

§ 630.106 Policy.

(a) Annually, any State highway agency (SHA) desiring to avail itself of Federal-aid funds shall develop and submit a program(s) of projects which reflect projects proposed for utilization of available apportioned and certain allocated Federal-aid funds during any 12 consecutive month program period.

(b) A program(s) of projects is needed to assure:

(1) An appropriate planning effort by the SHA,

(2) That each SHA considers national goals, objectives, and emphasis areas as set forth in legislation, or as promulgated by the Federal Highway Administrator in developing its Federal-aid program(s).

§ 630.108 Program submissions.

(a) The program(s) shall be submitted for approval to the FHWA Administrator in a form and at times mutually agreeable with the SHA.

(b) The program(s) shall include those projects for which the SHA expects to request authorization during the program period. A project may encompass one or more phases of work, including preliminary engineering (PE), right-of-way (ROW), and physical construction.

(c) The program(s) shall identify the classes of funds involved, and the relationship of the total funds to the amounts expected to be available during the program period.

(d) The SHA shall furnish the FHWA Administrator all information requested to support program approval action.

(e) Projects involving special procedures or special funds authorizations, shall be supported and programed as required by the implementing directives issued to cover such funds.

(f) The Federal-aid program for high-hazard location, elimination of roadside obstacles, special bridge replacement, and elimination of hazards of railway-highway crossing projects may consist of a line item for each category describing the planned level of effort (fund utilization). Selection of projects for authorization shall result from a priority process established pursuant to the appropriate statutory requirements.

§ 630.110 General requirements.

(a) In preparing the program(s), appropriate consideration shall be given to the statutory system requirement.

(b) Projects for utilizing secondary system funds shall be selected cooperatively by the SHA and the appropriate local officials except where all public roads and highways are under the control and supervision of the SHA. An acceptable evidence of cooperation is:

(1) A procedure contained in an accepted State certification (23 CFR 640), approved secondary road plan (23 CFR 642) or action plan (23 CFR 795), or

(2) A statement from the SHA accompanying the program submission, certifying selection by local officials and the SHA in cooperation with each other.

(c) Projects in urbanized areas shall:

(1) Be based on a planning process pursuant to 23 U.S.C. 134 (23 CFR 450, subpart A), and

(2) Be drawn from the annual element/transportation improvement program (AE/TIP) in accordance with 23 CFR 450, subpart C. Primary and interstate safety projects are exempt from the AE/TIP requirement, if included in the highway safety program.

(d) Projects for utilizing urban system funds shall be selected by appropriate local officials with the concurrence of the SHA.

(1) In urbanized areas, inclusion of urban system projects in the AE/TIP meets the requirements for selection by local officials.

(2) In other than urbanized areas, selection by local officials may be evidenced by:

(i) A procedure contained in an accepted Stated certification, approved secondary road plan, or action plan, or

(ii) A statement from the SHA accompanying the program submission certifying the selection by local officials.

(e) Work of a minor miscellaneous nature, at a number of separate locations, may be grouped by type of work and class of funds and included as a single statewide or areawide project or line item in the appropriate program(s).

(f) In accordance with 23 CFR 420, subpart C, the SHA shall provide the appropriate A-95 clearinghouse(s) an opportunity to review and comment on proposed projects at the earliest feasible time.

(g) Projects shall be in conformity with State air quality implementation plans (23 CFR 770, subpart B, "Air Quality Guidelines") revised pursuant to part D of title I of the Clean Air Act.

§ 630.112 Approval of programs.

(a) The FHWA Administrator will notify the SHA in writing of the action taken on the program submission, indicating approval in whole or in part and any qualifications or conditions determined necessary.

(b) Program approval will indicate Federal agreement with the SHA's list of proposed projects. It does not constitute an obligation of funds, nor establish a date of eligibility for Federal funding.

(c) The FHWA Administrator will notify the appropriate A-95 clearinghouse(s) of program or project actions in accordance with 23 CFR 420, Subpart C.

(d) Approved programs may be modified during the program period as necessary to reflect additional funds, new areas of emphasis, changes in length or termini, or changes in project priorities. No modification is required to reflect changes in class of funding except where local project selection is required.

(e) Highway projects will be approved by the FHWA Administrator. Nonhighway public mass transit projects as defined in 23 CFR 810.4(b)(6) are approved by the Urban Mass Transportation Administrator in accordance with 23 CFR 810 (FHPM 6-3-4). If a nonhighway public mass transit project proposed for urban system funding included in an AE/TIP is omitted from the program, action on the urban system funded program for that urbanized area will be taken jointly in accordance with 23 CFR 450.320(a)(1)(iii) by both Administrators.

(f) At the end of the program period, projects for which initial authorizations have not been issued will retain program status until the next program is approved. Projects not receiving initial authorizations that are not included in the next year's program(s) lose their program status. These projects may be reprogramed later.

§ 630.114 Authorization to proceed.

(a) The FHWA issuance of an authorization to proceed with the work on any phase of a highway project, including those under certification acceptance and secondary road plan, shall be in response to a request from the SHA. Authorization can be given only after applicable prerequisite requirements of Federal laws, and implementing regulations and directives have been satisfied, e.g., A-95 clearinghouse review.

(b) Authorizations to proceed subsequent to program approval for nonhighway public mass transit projects are issued by the Urban Mass Transportation Administrator in accordance with 23 CFR 810 (FHPM 6-3-4).

(c) The initial authorization to proceed with a phase of work shall be based on an approved item providing for that phase of work in a current program.

(d) Projects in urbanized areas can be authorized only after the responsible public officials or jurisdictions in which the project is located have been consulted and their views considered with respect to the corridor, the location and the design of the project.

(e) Authorization to proceed with a project may be given for a complete phase or phases of work, or a portion of a phase of work. Additional authorizations within the same phase(s) of work do not require further programing, if such authorizations are within the scope of the programed project and provide for a timely completion of the project.

(f) Federal funds shall not participate in costs incurred prior to the date of authorization to proceed.

(g) Authorization to proceed with work shall be deemed a contractual obligation of the Federal Government under 23 U.S.C. 106 and shall require the appropriate funds be available for the full Federal share of the cost of work authorized except as follows:

(1) Advance construction projects.

(2) Bond issue projects.

(3) The preliminary studies portion of the PE and ROW phases(s) (including hardship acquisition and protective buying) through the location stage (as defined in 23 CFR 795), when an SHA requests authorization without obligation of funds. The written notice to an SHA approving its request will contain the following statement: "Authorization to proceed shall not constitute any commitment of Federal funds, nor shall it be construed as creating in any manner any obligation on the part of the Federal Government to provide Federal funds for the undertaking." When a project has received an authorization as permitted above, subsequent authorizations beyond the location stage shall not be given until appropriate available funds have been obligated to cover the previous authorization.

(4) Where a State lacks either Federal funds or obligational authority, the approval to underfinance work may be given, but only with the understanding that the dollar amount of Federal-aid participation is limited to the amount committed at the time of fund obligation or the legal pro rata, whichever is less.

(5) In special cases where the Federal Highway Administrator determines it to be in the best interest of the Federal-aid highway program.

[FR Doc. 78-21702 Filed 8-3-78; 8:45 am]

[4510-30]

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR

PART 98—ADMINISTRATIVE PROVISIONS FOR PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Amendment to Regulations on Retirement Programs

AGENCY: Department of Labor.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to grant certain prime sponsors and eligible applicants a further extension of the time in which they must comply with the CETA retirement regulation. This change is appropriate because, in order to comply with the regulation, some State laws must be changed in States in which the legislatures do not meet this year.

DATES: August 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert Anderson, Administrator, Office of Comprehensive Employment Development, Room 5010, 601 D Street, NW., Washington, D.C. 20013, telephone 202-376-6254.

SUPPLEMENTARY INFORMATION: Section 98.25(d) of the CETA regulations regarding "Retirement Programs" provides that the effective date of that section was October 1, 1977. The preamble to the CETA regulations published May 13, 1977 (42 FR 24522), regarding retirement programs set forth the policy allowing the Regional Administrator, with the approval of the Regional Solicitor, to grant a prime sponsor or eligible applicant which is in a State whose law prohibits the implementation of procedures required by § 98.25, an extension of not more than one calendar year or up to the end of the next regular session of the State legislature, whichever occures earlier. Such extensions were granted only upon a showing by a legally supported opinion of the State attorney general that the State legislature must change or modify State law so that the prime sponsor may comply with § 98.25 and that the procedures of § 98.25 may not be legally implemented by executive order.

This regulation change grants to prime sponsors and eligible applicants, which have been granted extensions, and which are in States whose legislatures do not meet during the extension period, a further extension until the end of the next regular legislative session.

In addition, this document codifies the extension procedures and conditions which were set forth in the preamble to the retirement regulation at 42 FR 24522, May 13, 1977. Since this regulation relaxes a prior restriction, the Department finds that it is in the public interest to publish the regulation in final form. This finding constitutes a waiver of the Department's regulation at 29 CFR 2.7.

Accordingly title 29, part 98, § 98.25(d) of the Code of Federal Regulations is amended as follows:

§ 98.25 Retirement programs.

* * * * *

(d)(1) Effective October 1, 1977, costs for retirement programs will be

allowed only under an approved plan that meets the requirements of paragraph (a) of this section.

(2) The Regional Administrator, with the approval of the Regional Solicitor, may allow a prime sponsor or eligible applicant which is in a State whose law prohibits the implementation of procedures required by this section, an extension of not more than one calendar year from October 1, 1977, or up to the end of the next regular session of the State legislature, whichever occures later. Such an extension may be granted only upon a showing by a legally supported opinion of the State attorney general that the State legislature must change or modify a particular State law or laws so that the prime sponsor or eligible applicant may comply with this section in its use of CETA funds and that the procedures of this section may not be legally implemented by order of the Governor or by other executive authority. An extension may only be given on a statewide basis and will be applicable to all prime sponsors and eligible applicants within the State, which are covered by the affected State laws.

Signed at Washington, D.C., this 27th day of July 1978.

RAY MARSHALL,
Secretary of Labor.

[FR Doc. 78-21311 Filed 8-3-78; 8:45 am]

[4510-26]

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

Approval of Wyoming Plan Supplement: Correction

AGENCY: Occupational Safety and Health Administration.

ACTION: Final rule; correction.

SUMMARY: The document amending § 1952.344 of Title 29, Code of Federal Regulations, which was published in the FEDERAL REGISTER on Tuesday, June 13, 1978, at 43 FR 25424, is corrected by changing the paragraph designation from § 1952.344(d) to § 1952.344(e).

FOR FURTHER INFORMATION CONTACT:

Charles Boyd, Project Officer, Office of State Programs, Occupational Safety and Health Administration, Department of Labor, Room 149, 2100 M Street NW., Washington, D.C. 20210, 202-653-5377.

Signed at Washington, D.C. this 2d day of August, 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-21872 Filed 8-3-78; 8:45 am]

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 926-3]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Lake County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the Lake County Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: September 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, Attn: Wayne A. Blackard, 415-556-7882.

SUPPLEMENTARY INFORMATION: On May 31, 1977 [42 FR 27616] EPA published a notice of proposed rulemaking for revisions to the Lake County APCD's rules and regulations submitted on February 10, 1977 by the California Air Resources Board for inclusion in the California SIP.

A listing of the rules submitted was included in the May 31, 1977 notice of proposed rulemaking. The rules listed were revised to correct deficiencies, add clarity, and make needed additions. All of the rule revisions were evaluated for their consistency with the Clean Air Act, 40 CFR Part 51 and EPA policy.

The notice of proposed rulemaking provided for a 30-day comment period. No comments were received.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51 the Administrator is required to approve or disapprove regulations submitted as SIP revisions. It is the purpose of this notice to approve the rules listed in the notice of proposed rulemaking, and to incorporate them into the California SIP, with the exception of those rules noted below.

Regulations concerning new source review (sections 206, 235, and 237) and malfunction (sections 500, 510, and 511) are not being acted on in this FEDERAL REGISTER notice, but will be acted on in separate FEDERAL REGISTER notices.

Section 224, *Equivalent Method*, and table V, *Table of Standards, Applicable Statewide*, authorize the air pollution control officer and the State Air Resources Board to approve alternative ambient pollutant measurement methods. These regulations are disapproved because they are inconsistent with 40 CFR 51.17a(a) and Part 53 of 40 CFR which require that EPA approve alternate measurement techniques.

No action is being taken on paragraph (F) of section 402, *Exceptions*, at this time. This rule will be acted on in a separate FEDERAL REGISTER action.

Section 412, *Sulfur Recovery Units*, replaces section 3(F) *Sulfur*, of part V, *Prohibitions and Standards*, submitted on October 23, 1974 and previously approved under 40 CFR 52.223. Section 412 sets a more stringent SO_2 emission limitation for sulfur recovery units than was contained in the previously approved rule. The previously approved rule contains SO_2 emission limitations which are applicable to sources other than sulfur recovery units (such as fuel burning sources). Section 412, *Sulfur Recovery Units*, is approved, since it strengthens the SO_2 requirements for sulfur recovery units. Section 3(F), *Sulfur*, of part V, *Prohibitions and Standards*, is retained as part of the SIP, applicable to sources other than sulfur recovery units. The deletion of section 3(F) applicable to these sources is disapproved, since it weakens the control requirements for these sources without an adequate control strategy analysis indicating that such weakening will not interfere with the attainment and maintenance of the national ambient air quality standards (NAAQS).

Paragraph (B) of section 412, *Sulfur Recovery Units*, sets an emission limitation for hydrogen sulfide from sulfur recovery units. Paragraph (b) of section 412 is neither approved nor disapproved as part of the SIP, since it does not relate directly to the attainment or maintenance of any NAAQS, and is therefore not appropriate for inclusion in the SIP.

Article III, *Geothermal Operations* (sections 421 and 422), also sets hydro-

gen sulfide emission limitations. Article III is neither approved nor disapproved, since it does not relate directly to the attainment or maintenance of any NAAQS and is, therefore, not appropriate for inclusion in the SIP.

Section 435 of chapter II, *Prohibitions and Standards,* contains a new exemption from the open burning limitations, which allows burning for the disposal of Russian thistle. Section 435 is disapproved since it weakens the control requirements for open burning without an adequate control strategy demonstration indicating that such weakening will not interefere with the atttainment and maintenance of the NAAQS.

Section 436 of chapter II, *Prohibitions and Standards,* authorizes the air pollution control officer to allow burning in mechanized burners on "no-burn" days. Section 436 is disapproved, since an adequate control strategy demonstration has not been submitted indicating that such weakening will not interfere with the attainment and maintenance of the NAAQS.

Section 440, *New Source Performance Standards,* and section 450, *National Emission Standards for Hazardous Air Pollutants,* implement sections 111 and 112 of the Clean Air Act, respectively, and are not appropriate for inclusion in a State implementation plan under section 110 of the Act. Therefore, sections 440 and 450 are neither approved nor disapproved by EPA as part of the SIP.

Section 1003 of chapter VIII, *Agricultural Burning,* authorizes the district to permit agricultural burning on "no-burn" days, if denial of such permission would threaten "imminent and substantial economic loss." Economic factors are an impermissible basis upon which to condition the granting of variances from emission limitations. Such a provision gives the district unlimited discretion, which has the potential for interfering with the attainment and maintenance of the NAAQS. Therefore, section 1003 is disapproved.

Section 1200, *Forest Management Burning,* has been revised by adding paragraph (A) which allows forest management burning on "no-burn" days from January 1 to May 31. Paragraph (A) of section 1200 is disapproved, since a control strategy demonstration has not been submitted indicating that such a weakening of the control requirements will not interfere with the attainment and maintenance of the NAAQS.

The revisions submitted on February 10, 1977 also included the deletion, without replacement, of certain regulations which are currently part of the applicable plan. It is the purpose of this notice to approve the deletions with the exception of those rule deletions discussed below.

Part II, *Authorization and Disclosure,* submitted on October 23, 1974 and previously approved under 40 CFR 52.223, provides for the public availability of emission data as required under 40 CFR 51.10(e). The deletion of this regulation is disapproved, since its deletion would weaken the SIP.

Section 49(a), *Public Records,* and section 49(b), *Record,* of part III, *Definitions,* submitted on October 23, 1974 and previously approved under 40 CFR 52.223, contain definitions applicable to part II, *Authorization and Disclosure.* The deletion of these sections is disapproved, since the definitions are necessary for the interpretation of part II, *Authorization and Disclosure,* which is also retained as discussed above.

Section 50, *Process Weight Per Hour,* of part III, *Definitions,* submitted on October 23, 1974 and previously approved under 40 CFR 52.223, is retained as part of the applicable plan, since it is necessary for the interpretation and enforcement of the emission limitations for particulate matter.

Section (1)(B) of part V, *Prohibitions,* submitted on October 23, 1974 and previously approved under 40 CFR 52.223, sets an opacity limitation of Ringlemann No. 1 for new sources. The deletion of section (1)(B) of part V is disapproved, since it weakens the control requirements without an adequate control strategy demonstration indicating that such weakening will not interfere with the attainment and maintenance of the NAAQS.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

Authority: Sections 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a).)

Dated: July 27, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(37)(iv) (B) and (C) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(37) * * *
(iv) * * *

(B) New or amended sections 100, 200 to 205.1, 207 to 234, 236, 238 to 260, 300, 301, 400, 401, 402 (A to E, and G), 410, 411, 412 (A and C), 430 to 439, 520, 530 to 533, 800, 900 to 902, 1000 to 1003, 1100, 1200, 1300, 1400, 1500, 1600, 1601, 1610, 1611, 1612, 1620, 1700, 1701, 1710 to 1714, 1720 to 1725, 1730, 1731 to 1736, and tables I, II, III, IV, and V.

(C) Previously approved and now deleted (without replacement) part II; sections 9, 15, 18, 28, 42, 43, 49a, 49b, 50, 52, and 54 of part III; sections 1 to 4 of part IV; section (1)(B) of part V; and parts IV and VI of appendix B.

* * * * *

2. Section 52.224 is amended by adding paragraph (c) as follows:

§ 52.224 Source surveillance.

* * * * *

(c) The deletion of the following rules or portions of rules is disapproved, since these regulations are necessary to fulfill the requirements of 40 CFR 51.10(e).

(1) Northcoast intrastate region:

(i) Lake County APCD.

(A) Section 49a, *Public Records,* and Section 49b, *Record,* of Part III, *Definitions;* and Part II, *Authorization and Disclosure,* submitted on October 23, 1974 and previously approved under 40 CFR 52.223, are retained.

* * * * *

3. Section 52.231 is amended by adding paragraph (b) as follows:

§ 52.231 Regulations: sulfur oxides.

* * * * *

(b) The deletion of the following rules or portions of rules is disapproved, since an adequate control strategy demonstration has not been submitted indicating that the deletions of the control requirements contained in those rules would not interfere with the attainment or maintenance of the National Ambient Air Quality Standard for Sulfur Oxides.

(1) Northcoast intrastate region:

(i) Lake County APCD.

(A) Section 3(F), *Sulfur* of Part V, *Prohibitions and Standards,* submitted on October 23, 1974 and previously approved under 40 CFR 52.223, is retained as applicable to sources other than sulfur recovery units.

* * * * *

4. Section 52.236 is amended by adding paragraph (d) as follows:

§ 52.236 Rules and regulations.

* * * * *

(d) The following rules or portions of rules are disapproved, since they contain provisions which are inconsistent with 40 CFR 51.17a(a) and Part 53 of 40 CFR.

(1) Northcoast intrastate region:
(i) Lake County APCD.
(A) Section 224, *Equivalent Method*, and table V, *Table of Standards, Applicable Statewide*, submitted on February 10, 1977, are disapproved.

* * * * *

5. Section 52.273 is amended by adding paragraph (b)(3)(v) as follows:

§ 52.273 Open burning.

* * * * *

(b) * * *
(3) * * *
(v) Lake County APCD.
(A) Sections 435 and 436 of Chapter II, *Prohibitions and Standards*, Section 1003 of Chapter VIII, *Agricultural Burning*, and Paragraph (A) of Section 1200, *Forest Management Burning*, submitted on February 10, 1977, are disapproved.

* * * * *

6. Section 52.275 is amended by adding paragraph (a)(2)(i) as follows:

§ 52.275 Particulate matter control.

(a) * * *
(2) * * *
(i) Lake County APCD.
(A) Section 50 of part III and section (1)(B) of part V, submitted on October 23, 1974, and previously approved under § 52.223, are retained.

* * * * *

[FR Doc. 78-21654 Filed 8-3-78; 8:45 am]

[6560-01]

[FRL 927-2]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: San Luis Obispo County Air Pollution Control District (APCD)

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the San Luis Obispo County portion of the California State implementation plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: September 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Acting Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, Attention: Wayne A. Blackard, 415-556-7288

SUPPLEMENTARY INFORMATION: On June 22, 1977, in 42 FR 31609, EPA published a notice of proposed rulemaking for revisions to the San Luis Obispo County Air Pollution Control District's rules and regulations submitted on November 10, 1976, and February 10, 1977, by the California Air Resources Board (ARB) for inclusion in the California SIP.

A rule concerning malfunction has been submitted, and has been disapproved in a January 24, 1978, FEDERAL REGISTER notice (43 FR 3275).

The following rules are not being acted upon because they have been superseded by SIP revisions submitted by the ARB on November 4, 1977: Rules 104, 105(A)(1), 407, and 501. The corresponding rules will be addressed in another FEDERAL REGISTER notice. In addition, rule 502 has been supplemented by the November 4, 1977, submittal. Rule 502 will be acted on in another FEDERAL REGISTER notice.

Rule 402, *Nuisance*, has been submitted but is not appropriate for inclusion in the SIP because it is not specifically directed at the attainment and maintenance of the National Ambient Air Quality Standards. Therefore, EPA is taking no action on this rule.

Rule 404(B)(1)(b), *Sulfur Compounds Emission Standards, Limitations and Prohibitions*, has been submitted but is also not appropriate for inclusion in the SIP because it is directed at the control of a noncriteria pollutant (i.e., hydrogen sulfide), and is thus not specifically directed at the attainment and maintenance of the National Ambient Air Quality Standards. Therefore EPA is taking no action on this rule.

The changes contained in the above submittals that are acted on by this notice, include the following: Numbering system changes are made to several rules; clarifying changes are made to a rule requiring compliance with APCD rules and regulations; a rule is added which specifies that the most stringent applicable State or Federal rules shall apply to an emission source; procedural changes, additions, and minor wording changes are made to the definitions rule; a rule is added which defines standard conditions; a rule is added which prohibits the APCD from specifying emission controls for a source if emission standards are met; procedural and minor wording changes are made to a rule specifying penalties for violation of APCD rules; a rule is added which specifies those county officers authorized to arrest and issue notices; changes are made to the rule providing for public availability of emission data; wording changes are made to a rule controlling the shade and opacity of visible emissions; various changes are made to a rule controlling the concentration and mass rate of particulate emissions; the sulfur compounds emission limitation requirements are reworded and modified; modifications are made to the emission limits and exemption provisions of a rule controlling nitrogen oxides emissions; a rule is added which limits the degree of unsaturation of gasoline; organizational changes are made to the rules dealing with procedures (including variance procedures) before the hearing board; and several rules concerning conditions of compliance, prohibitions, equipment testing and cleaning, control of toxic materials, liability of the APCD, and abatement orders are deleted by the APCD.

A list of the rules initially considered for this notice was published as part of the notice of proposed rulemaking and can be found in 42 FR 31609 (June 22, 1977). The proposed rulemaking provided 30 days for public comments. No comments were received.

Rule 112, *Public Availability of Information*, provides for public availability of emission data, but does not provide for correlation of emission data with applicable emission limitations as required by 40 CFR 51.10(e). This rule is approved. However, the portion of the substitute regulation which provides for correlation of emission data in 40 CFR 52.224, is retained.

The following rules have been deleted by the APCD; and their deletion from the SIP is being approved since they are obsolete or are not required by section 110 of the Clean Air Act for inclusion in the SIP: rules 101(1)(b), 101(2), 101(3), and 101(4), *Effective Date;* rule 110, *Prohibitions;* rules 116(1) and 116(3), *Additional Prohibitions;* and rules 119(1) and 119(4), *General Provisions.*

Regulation VIII, which includes rules 801 through 817, contains procedures by which variances from emission limits may be obtained. This regulation and these rules are being approved as a procedure for the granting of variances. Each variance, however, must satisfy the requirements of section 110 of the Clean Air Act and 40 CFR Part 51 in order to be approved by EPA as a revision to the SIP.

It is the purpose of this notice to approve all of the revisions contained in the November 10, 1976 and February 10, 1977 submittals for San Luis

Obispo County and to incorporate them into the California SIP, with the exception of those rules not being acted upon, and those rules or rescission actions which are being disapproved as discussed below.

Rules 401(B)(4) and 401(B)(6), *Visible Emissions,* are disapproved because the term "agricultural operations" is not defined, which could render certain visible emission limitations unenforceable. In addition, the term "other equipment in agricultural operations" found in 401(B)(6) is not defined and could render certain visible emission limitations unenforceable.

Rule 403, *Particulate Matter Emission Standards,* contains changes to emission limitations that in total may be less stringent than those contained in the presently approved rule 113, *Particulate Matter.* Since no analysis has been presented to show that these changes will not interfere with the attainment and maintenance of National Ambient Air Quality Standards, rule 403 should be disapproved, and rule 113 should be retained.

Rules 404(A) through 404(B)(1)(a), 404(B)(1)(c), 404(B)(2) through 404(B)(4), 404(C) and 404(D), *Sulfur Compounds Emission Standards, Limitations and Prohibitions,* contain changes to emission limitations that in total may be less stringent than those contained in the presently approved rule 114(1), *Gaseous Contaminants, Sulfur Dioxide.* Since no analysis has been presented to show that the changes will not interfere with the attainment and maintenance of National Ambient Air Quality Standards, these rules are disapproved, and rule 114(1) is retained.

Rule 405(A)(1), *Nitrogen Oxides Emission Standards Limitations and Prohibitions,* contains changes to emission limitations that in total may be less stringent than those contained in the presently approved rule 114(4), *Gaseous Contaminants, Oxides of Nitrogen.* Since no analysis has been presented to show that these changes will not interfere with the attainment and maintenance of National Ambient Air Quality Standards, rule 405(A)(1) should be disapproved, and rule 114(4) should be retained.

In this notice, 40 CFR 52.231 (under which the disapproval of rules 404(A) through 404(B)(1)(a), 404(B)(1)(c), 404(B)(2) through 404(B)(4), 404(C), and 404(D) is made) is amended with regard to format. Prior to this notice, the format of section 52.231 was such that the section applied only to the San Joaquin Valley intrastate region. The format of the section is now amended so that the section can be applied to various air quality control regions in California, including the San Luis Obispo County APCD in the south central coast intrastate region.

Paragraph (a)(6)(i) of 40 CFR 52.273 is reserved in anticipation of future action on open burning rules in San Luis Obispo County.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisified.

Under section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations as State implementation plan revisions.

AUTHORITY: Sections 110 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601(a)).

Dated: July 27, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c)(35)(xii) is amended and paragraph (c)(37)(iii) is added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(35) * * *

(xii) San Luis Obispo County APCD.

(A) New or amended rules 101 *Title,* 102, 103, 105(A)(2) through 105(A)(46), 106, 108, 109, 110 *Enforcement,* 111, 401, 403, 405, 408, 409, 410, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817.

* * * * *

(C) Rules previously approved and now deleted (without replacement) 101(1)(b), 101(2), 101(3), and 101(4) *Effective Date,* 110 *Prohibitions,* 116(1), 116(3), 119(1) and 119(4).

* * * * *

(37) * * *

(iii) San Luis Obispo County APCD.

(A) Rule 112, and rules 404(A) through 404(B)(1)(a), 404(B)(1)(c), 404(B)(2), 404(B)(3), 404(B)(4), 404(c), 404(D), and 404(E).

* * * * *

2. Section 52.224, paragraph (a)(2)(v) is added as follows:

§ 52.224 General requirements.

(a) * * *

(2) * * *

(v) South central coast intrastate:

(A) San Luis Obispo County APCD.

* * * * *

3. Section 52.231 is amended as follows:

§ 52.231 Regulations: Sulfur oxides.

(a) The following regulations are disapproved since neither they nor the plan provide for the degree of control needed for the attainment and/or maintenance of the National Standards for sulfur oxides:

(1) San Joaquin Valley intrastate region:

(i) San Joaquin County APCD.

(A) Rule 407.3, *Scavenger Plants,* submitted on October 23, 1974 is disapproved; and rule 407, *Sulfur Compounds,* submitted on June 30, 1972, and previously approved in 40 CFR 52.223, is retained and will continue to remain in effect for sulfur scavenger plants.

(ii) Tulare County APCD.

(A) Rule 407.3, *Scavenger Plants,* submitted on October 23, 1974, is disapproved; and rule 407, *Sulfur Compounds,* submitted on June 30, 1972, and previously approved in 40 CFR 52.223, is retained and will continue to remain in effect for sulfur scavenger plants and other sulfur compound emitting sources.

(B) Rule 407.3, *Scavenger Plants,* submitted on November 10, 1976, is disapproved; and rule 407, *Sulfur Compounds,* submitted on June 30, 1972, and previously approved in 40 CFR 52.223 is retained and will continue to remain in effect for sulfur scavenger plants and other sulfur compound emitting sources.

(iii) Kern County APCD.

(A) Rule 407.3, *Scavenger Plants,* submitted on July 19, 1974, is disapproved; and rule 407, *Sulfur Compounds,* submitted on June 30, 1972, and previously approved in 40 CFR 52.223, is retained and will continue to remain in effect for sulfur scavenger plants and other sulfur compound emitting sources.

(iv) Madera County APCD.

(A) Rule 407.3, *Scavenger Plants,* submitted on January 10, 1975, is disapproved; and rule 407, *Sulfur Compounds,* submitted on June 30, 1972, and previously approved in 40 CFR 52.223, is retained and will continue to remain in effect for sulfur scavenger plants and other sulfur compound emitting sources.

(2) South central coast intrastate region:

(i) San Luis Obispo County APCD.

(A) Rules 404(A) through 404(B)(1)(a), 404(B)(1)(c), 404(B)(2), 404(B)(3), 404(B)(4), 404(C), and 404(D), *Sulfur Compounds Emission Standards, Limitations and Prohibitions,* submitted on February 10, 1977, are disapproved and rule 114(1), *Gaseous Contaminants Sulfur Dioxide* submitted on February 21, 1972 and

previously approved in 40 CFR 52.223, is retained.

(ii) Santa Barbara County APCD.

(A) Rules 32 (a) and (d), *Sulfur Content of Fuels—Southern Area*, submitted on April 10, 1975.

(3) Sacramento Valley intrastate region:

(i) Plumas County APCD.

(A) Rule 210(a), *Sulfur Compounds*, and rule 216-56(a), *Specific Contaminants*, submitted on January 10, 1975, are disapproved; and rule 56, *Sulfur Oxide Emissions*, previously approved in the February 21, 1972, submittal is retained and shall remain in effect for Federal enforcement purposes.

* * * * *

4. Section 52.236, paragraph (b) is amended as follows:

§ 52.236 Rules and regulations.

(a) * * *

(b) The following Air Pollution Control District (APCD) rules are disapproved because they contain the term "agricultural operations" and/or the term "other equipment in agricultural operations," both of which are either undefined or inadequately defined, thus rendering certain emission control rules unenforceable:

(1) South central coast intrastate region:

(i) San Luis Obispo County APCD.

(A) Rules 401(B)(4) and 401(B)(6), *Visible Emissions*, submitted on November 10, 1976.

* * * * *

5. Section 52.273, pararaph (a)(6)(i) is added as follows:

§ 52.273 Open burning.

(a) * * *

(6) South central coast intrastate:

(i) (Reserved)

* * * * *

6. Section 52.275 is amended as follows:

§ 52.275 Particulate matter control.

(a) The following rules or portions of rules are retained because they control emissions of particulate matter, and because there is no demonstration that their deletion would not interfere with the attainment and maintenance of the national standards for particulate matter:

(1) South central coast intrastate AQCR:

(i) San Luis Obispo County APCD.

(A) Rule 113 *Particulate Matter*, submitted on February 21, 1972 and approved as part of the SIP in 40 CFR 52.223 is retained.

(b) * * *

(4) South central coast intrastate AQCR:

(i) San Luis Obispo County APCD.

(A) Rule 403, *Particulate Matter Emission Standards* submitted on November 10, 1976 is disapproved.

* * * * *

7. section 52.278 is added as follows:

§ 52.278 Oxides of nitrogen control.

(a) The following regulations are disapproved because they relax the control of nitrogen oxides emissions without an accompanying analysis demonstrating that this relaxation will not interfere with the attainment and maintenance of the National Ambient Air Quality Standards.

(1) South central coast intrastate AQCR.

(i) San Luis Obispo County APCD.

(A) Rule 405(A)(1), *Nitrogen Oxides Emission Standards Limitations and Prohibitions* submitted on November 10, 1976, is disapproved; and rule 114(4), *Gaseous Contaminants Oxides of Nitrogen* submitted on February 21, 1972 and previously approved in 40 CFR 52.223, is retained.

* * * * *

[FR Doc. 78-21655 Filed 8-3-78; 8:45 am]

[6560-01]

[FRL 939-5]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Kings County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the Kings County Air Pollution Control District (APCD) portion of the California State implementation plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: September 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, Attn: Wayne Blackard, 415-556-7882.

SUPPLEMENTARY INFORMATION: On February 14, 1978 (43 FR 6265) EPA published a notice of proposed rulemaking for revisions to the Kings County APCD's rules and regulations submitted on October 13, 1977, and November 4, 1977, by the California Air Resources Board for inclusion in the California SIP.

A listing of the rules submitted was included in the February 14, 1978, Notice of Proposed Rulemaking. The rule revisions include changes to correct deficiencies, add clarity, and to make needed additions. All of the rule revisions were evaluated as to their consistency with the Clean Air Act, 40 CFR Part 51 and EPA policy.

The notice of proposed rulemaking provided for a 30-day comment period. No comments were received during the comment period.

It is the purpose of this notice to approve the rules listed in the notice of proposed rulemaking, and to incorporate them into the California SIP, with the exception of those rules discussed below.

Paragraph (e) of Rule 402, *Exceptions*, and Rule 503, *Filing Petitions*, will not be acted on at this time, but will be acted on in separate FEDERAL REGISTER notices.

Rule 103.1, *Inspection of Public Records*, provides for the public availability of emission data. The rule does not, however, require the correlation of emission data with applicable emission limitations as required by 40 CFR 51.10(e). Rule 103.1 is approved since it partially satisfies the requirements of § 51.10(e). However, since the correlation requirement is not met, paragraph (b)(4) of the federally promulgated regulation, 40 CFR 52.224 *General Requirements*, is retained as applicable to the Kings County APCD.

Rule 108.1, *Stack Monitoring*, contains requirements for continuous monitors on specific sources. Rule 108.1 should be approved since it partially satisfies the requirements of 40 CFR 51.19(e). The rule does not, however, meet all of the requirements of 40 CFR 51.19(e) and appendix P of part 51.

Rule 111, *Shutdown, Startup and Breakdown*, provides for an exemption from emission limitation violations during periods of equipment malfunction, startup, or shutdown. Since rule 111 would render emission limitations potentially unenforceable and has the potential for interfering with the attainment and maintenance of the national ambient air quality standards (NAAQS), it is disapproved.

Rule 407.1, *Disposal of Solid and Liquid Wastes*, contains revisions which have the potential for both increasing and decreasing emissions. Since an analysis of the impact of

these revisions on the attainment and maintenance of the NAAQS has not been submitted, rule 407.1 is disapproved. Rule 407.1, *Disposal of Solid and Liquid Wastes,* submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (38 FR 19812), is retained as part of the SIP.

Rule 412.1, *Transfer of Gasoline Into Stationary Storage Containers,* is not being acted on at this time, but will be acted on in a separate FEDERAL REGISTER notice.

Rule 416.1, *Cotton Gin Waste Burning,* allows the burning of cotton gin wastes, which is presently prohibited under rule 416, *Open Burning.* Rule 416.1 is disapproved since a control strategy analysis has not been submitted, indicating that the allowance for cotton gin waste burning will not interfere with the attainment and maintenance of the NAAQS.

Rule 417.1, *Agricultural Burning,* contains revisions which would allow the burning of paper pesticide containers along with other agricultural wastes, and which would exempt forest management burning from the regulations. Rule 417.1 is disapproved since an analysis of the impact of these revisions on the attainment and maintenance of the NAAQS has not been submitted. Rule 417.1 is also unapproveable due to the provision which allows the air polution control officer to allow burning on "No-Burn Days" when the denial of such permission would threaten imminent and substantial economic loss. The granting of such a variance must also be based on a demonstration of consistency with section 110 of the Clean Air Act and upon compliance with the NAAQS.

Rule 422, *New Source Performance Standards,* and Rule 423, *Emission Standards for Hazardous Air Pollutants,* implement sections 111 and 112 of the Clean Air Act and are, therefore, not appropriate for inclusion in the SIP. Rules 422 and 423 are neither approved nor disapproved as part of the SIP. They will, however, be reviewed to determine whether to delegate authority to implement and enforce the new source performance standards and national emission standards for hazardous air pollutants regulations in the APCD under the appropriate provisions of sections 111 and 112. Announcement of such delegations would appear in a separate FEDERAL REGISTER notice.

Rule 504, *Contents of Petitions,* and Rule 511, *Notice of Hearing,* contain clerical errors which could potentially render the regulations unenforceable. Therefore, no action will be taken on these rules until correction of these errors is received from the State.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

AUTHORITY: Sections 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)).

Dated: July 27, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40, of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(41) and (c)(42)(iii) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(41) Revised regulations for the following APCD's submitted on October 13, 1977, by the Governor's designee.

(i) Kings County APCD.

(A) New or amended rules 412 and 412.2.

* * * * *

(42) * * *

(iii) Kings County APCD.

(A) New or amended rules 102, 103, 103.1, 104, 105, 108, 108.1, 110, 111, 112, 113, 401, 402(a) to 402(d), 402(f), 402(g), 404, 404.1, 405, 405.1, 405.2, 405.3, 406, 407.1, 409, 410, 416.1, 417, 417.1, 418, 421, and 501.

(B) Previously approved and now deleted, rule 405.1.

* * * * *

2. Section 52.224 is amended by adding paragraph (a)(2)(i)(B) as follows:

§ 52.224 General requirements.

(a) * * *

(2) * * *

(i) * * *

(B) Kings County APCD.

* * * * *

3. Section 52.226 is amended by adding paragraph (b)(1)(ii) as follows:

§ 52.226 Control strategy and regulations: Particulate matter, San Joaquin Valley Intrastate Region.

* * * * *

(b) * * *

(1) * * *

(ii) Rule 407.1, *Disposal of Solid and Liquid Wastes,* submitted on November 4, 1977, is disapproved; and Rule 407.1, *Disposal of Solid and Liquid Wastes,* submitted on June 30, 1972, and previously approved under 40 CFR 52.223 is retained.

* * * * *

4. Section 52.234 is amended by adding paragraph (e)(2)(ii) as follows:

§ 52.234 Source surveillance.

* * * * *

(e) * * *

(2) San Joaquin Valley Intrastate Region:

(ii) Kings County APCD.

* * * * *

5. Section 52.271 is amended by adding paragraph (a)(4)(iv)(B) as follows:

§ 52.271 Malfunction regulations.

* * * * *

(a) * * *

(4) * * *

(iv) * * *

(B) Rule 111, *Shutdown, Startup and Breakdown,* submitted on November 4, 1977, is disapproved.

* * * * *

6. Section 52.273 is amended by adding paragraph (b)(2)(ii) as follows:

§ 52.273 Open burning.

* * * * *

(b) * * *

(2) * * *

(ii) Kings County APCD.

(A) Rule 416.1, *Cotton Gin Waste Burning* and Rule 417.1, *Agricultural Burning* submitted on November 4, 1977, are disapproved.

* * * * *

[FR Doc. 78-21657 Filed 8-3-78; 8:45 am]

[6560-01]

[FRL 939-4]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Sacramento County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the Sacramento County Air Pollution Control District (APCD) portion of the California State imple-

mentation plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: This notice is effective as of September 5, 1978, except for the approval of rules 21, 23, and 24 for which the effective date is July 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Acting Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, Attn.: Wayne Blackard, 415-556-7882.

SUPPLEMENTARY INFORMATION: On February 14, 1978 (43 FR 6267), EPA published a notice of proposed rulemaking for revisions to the Sacramento County APCD's rules and regulations submitted on November 4, 1977, by the California Air Resources Board for inclusion in the California SIP.

A listing of the revised rules was included in the February 14, 1978, notice of proposed rulemaking. The rules listed had been revised to correct deficiencies, add clarity, and to make needed additions. All rule revisions have been evaluated as to their consistency with the Clean Air Act, 40 CFR, Part 51, and EPA policy.

The notice of proposed rulemaking provided for a 30-day comment period. Comments were received from the Sacramento County APCD.

The district indicated that the proposed revision to rule 13, *Gasoline Transfer into Stationary Storage Tanks*, which exempted tanks installed prior to July 1, 1975, with offset fill pipes from the requirements for a submerged fill pipe, would only affect two storage tanks in the district. The impact of this revision was estimated by the district to be an increase of 273 lbs/year of volatile organic compound emissions. The district also estimated the cost of meeting the requirements of the currently approved SIP at $400 per tank. The district argued that requiring controls on these two tanks was not cost effective and therefore the revision to rule 13 should be approved.

It is EPA's position that even though the emissions from these sources are relatively small, control of these sources is necessary, since the district cannot presently provide for the attainment and maintenance of the national ambient air quality standard (NAAQS) for oxidants.

The district also commented on the appropriateness of paragraph (a) of rule 96, *Emergency Permits*, which empowers the district to allow agricultural burning on designated "no-burn" days when the denial of permission would threaten "imminent and substantial economic loss." The district argued that disapproval of rule 96a could inflict a serious hardship on the district's agricultural industry. The Clean Air Act requires provisons for control measures necessary to insure the attainment and maintenance of the NAAQS. In order for EPA to approve rule 96a, it must be demonstrated that the effect of allowing burning on "no-burn" days would not interfere with the attainment and maintenance of the NAAQS. Since the district has not submitted an appropriate air quality analysis, rule 96(a) must be disapproved.

Lastly, the district supplied information on their revision to Rule 97, *Agricultural Waterway Delivery and Drainage Systems*. The revision to rule 97 extends the dates between which the burning of levee's comprising the water delivery systems could take place. The district has indicated that since the total annual acreage of levee burned is relatively constant, the extension of dates would have the effect of reducing the amount of burning on any given day. Since the revision would not increase the total amount of burning and has the potential for reducing the quantity of burning on individual days, rule 97 should be approved.

It is the purpose of this notice to approve those rules listed in the notice of proposed rulemaking, and to incorporate them into the California SIP, with the exception of those rules discussed below.

Rule 70, *Permit Fees*, will not be acted on at this time, but will be acted on in a separate FEDERAL REGISTER notice.

Rule 7, *Ringlemann Chart*, sets visible emission limitations for emission sources. Paragraph (b)(3) of rule 7 provides an exemption from the visible emissions limits for "agricultural operations." Although "agricultural operations" is included in definitions applicable to Regulation VII, *Agricultural Burning*, "agricultural operations" as used in rule 7 is not defined. The lack of an applicable definition could render rule 7 unenforceable with respect to some sources which are intended to be governed by the visible emission limits. Therefore, no action on paragraph (b)(3) of rule 7 will be taken until a definition of "agricultural operations" applicable to rule 7 is submitted. Paragraph (b)(3) of rule 7 would be approvable if the definition of "agricultural operations" contained in regulation VII were made applicable to rule 7.

Paragraph (b)(5) of Rule 7, *Ringlemann Chart*, provides an exemption from the visible emission limitations for the use of "other equipment in agricultural operations." The lack of a definition of "other equipment" renders rule 7 potentially unenforceable and, therefore, paragraph (b)(5) is disapproved.

Rule 8, *Nuisance*, is not appropriate for inclusion in the SIP because it is not specifically directed at the attainment and maintenance of the NAAQS. Therefore, EPA is taking no action on this rule.

Rule 13, *Gasoline Transfer into Storage Containers*, has been revised to exempt storage tanks in existence prior to July 1, 1975, with offset fill pipes. This revision is a relaxation in the control requirements contained in the previously approved rule 13, which required those tanks to be equipped with a submerged fill pipe by July 1, 1976. Rule 13 is disapproved because no analysis has been submitted to show that this exemption would not interfere with the attainment or maintenance of the NAAQS.

Rule 21, *Dust and Condensed Fumes*, Rule 23, *Particulate Matter*, and Rule 24, *Specific Contaminants*, contain delays in their respective compliance schedules to allow for the implementation of more stringent control requirements. The final compliance date specified in each rule is July 1, 1978. Approval of these rules, effective anytime prior to July 1, 1978, would eliminate all control requirements until July 1, 1978. Therefore, rules 21, 23, and 24 are approved effective July 1, 1978.

Rule 96(a), *Emergency Permits*, authorizes the air pollution control officer (APCO) to permit agricultural burning, which would otherwise be prohibited, if the denial of such permission would threaten "imminent and substantial economic loss." Economic factors are an impermissible basis upon which to condition the granting of variances from emission limitations. Such a provision gives the APCO unlimited discretion, which has the potential for interfering with the attainment and maintenance of the NAAQS. Therefore, rule 96(a) is disapproved.

It is also the purpose of this notice to correct a clerical error contained in § 52.273(a)(1)(i)(A). The correction is the addition of the submittal date of rule 96(a) disapproved on October 4, 1977 (42 FR 53962).

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110, 301(a) of the Clean Air Act as amended (42 U.S.C. 7410 and 7601(a).)

Dated: July 27, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c)(42)(ii) is added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(42) Revised regulations for the following APCD's submitted on November 4, 1977, by the Governor's designee.

(i) * * *

(ii) Sacramento County APCD.

(A) Rules 3, 7(a) to 7(b)(2), 7b(4) to 7(d), 9, 11, 12, 13, 14, 15, 21, 22a, 23, 24, 25, 26, 94, 95, 96, 97, and 98.

* * * * *

2. Section 52.236 is amended by adding paragraph (b)(2)(iv) as follows:

§ 52.236 Rules and regulations.

* * * * *

(b) * * *

(2) Sacramento Valley intrastate region:

(iv) Sacramento County APCD.

(A) Rule 7(b)(5) submitted on November 4, 1977, is disapproved.

* * * * *

3. Section 52.269 is amended by adding paragraph (b)(2) as follows:

§ 52.269 Control strategy and regulations: Photochemical oxidants (hydrocarbons) and carbon monoxide.

* * * * *

(b) * * *

(2) Sacramento Valley intrastate region:

(i) Sacramento County APCD.

(A) Rule 13 submitted on November 4, 1977, is disapproved.

* * * * *

4. Section 52.273 is amended by revising paragraph (a)(1)(i)(A) and adding paragraph (a)(1)(i)(B) as follows:

§ 52.273 Open burning.

(a) * * *

(1) * * *

(i) * * *

(A) Rule 96(a), submitted on November 10, 1976, is disapproved.

(b) Rule 96(a), submitted on November 4, 1977, is disapproved.

* * * * *

[FR Doc. 78-21667 Filed 8-3-78; 8:45 am]

[6560-01]

[FRL 928-2]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Arizona Plan Revision: Vehicle Emissions Inspection/Maintenance Regulations

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve revisions to the Arizona State implementation plan (SIP) regarding the motor vehicle emissions inspection/maintenance (I/M) program.

EFFECTIVE DATE: September 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, U.S. Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, Calif. 94105, Attn: Erik R. Hauge, 415-556-7595.

SUPPLEMENTARY INFORMATION: On June 16, 1977, EPA published a notice of proposed rulemaking (42 FR 30648) for revisions to the Arizona SIP, including I/M regulations which were submitted by the Governor's representative on January 23, 1976. The I/M regulations are part of an emissions program which requires all vehicles registered in Pima and Maricopa Counties to pass a carbon monoxide and hydrocarbon test as a condition for registration and reregistration.

A 30-day public comment period was provided in the notice of proposed rulemaking. No comments were received regarding the I/M regulations. No final action (approval or disapproval) was taken on the original I/M regulations, since EPA had received revised I/M regulations submitted by the Governor's representative on February 11, 1977.

On September 6, 1977, EPA published a notice of proposed rulemaking (42 FR 44561) for the revised I/M regulations. A 30-day public comment period was provided in the notice of proposed rulemaking, but no comments were received.

Subsequently, EPA prepared a report evaluating the I/M regulations in comparison to the requirements of the Clean Air Act, as amended, and 40 CFR Part 51. EPA proposed in the report to approve all of the I/M regulations except Section R9-3-10-23, Certificate of Exemption, Subsection A, which provided for an exemption from emissions inspection if the vehicle will not be available for inspection within the State. In response to the proposed disapproval, the State of Arizona's Department of Health Services explained in a letter dated February 14, 1978, that the purpose of the rule is to allow members of the Armed Forces, college students and persons on extended employment outside of Maricopa and Pima Counties to register their vehicle in the county of their legal residence without returning to Arizona for an emissions inspection. With this clarification, it is now EPA's intent to approve the I/M regulations in their entirety in this final rulemaking notice since the requirements of 40 CFR 51.14 and appendix N have been met. Consequently, 40 CFR 52.132 is rescinded.

Certification has been received from the Arizona Department of Health Services that the public hearing requirements of 40 CFR 51.4 have been satisfied with regard to the adoption of the I/M regulations.

AUTHORITY: Sections 110 and 301(a) of the Clean Air Act, as amended, 42 U.S.C. § 7410 and § 7601(a).

Dated: July 27, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart D of part 52 of chapter I, title 40 of the Code of Federal Regulations, is amended as follows:

Subpart D—Arizona

1. Section 52.120, paragraph (c) is amended by changing subparagraph (20) and adding subparagraph (24) as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(20) Arizona Air Pollution Control Regulations R9-3-505 (Gasoline Volatility Testing); R9-3-506 (Gasoline Volatility Standards); R9-3-1001 (Policy and Legal Authority); R9-3-1020 (State Stations Acting as Fleet Inspection Stations); and R9-3-1021 (Inspections Conducted by Fleet Inspection Stations for State Stations); submitted on January 23, 1976.

* * * * *

(24) Arizona Air Pollution Control Regulations R9-3-1002 (Definitions); R9-3-1003 (Vehicles To Be Inspected

by the Mandatory Vehicular Emissions Inspection Program); R9-3-1004 (State Inspection Requirements); R9-3-1005 (Time of Inspections); R9-3-1006 (Mandatory Vehicular Emissions Inspection); R9-3-1007 (Evidence of Meeting State Inspection Requirements); R9-3-1008 (Procedure for Issuing Certificates of Waiver); R9-3-1010 (Low Emissions Tune Up); R9-3-1011 (Inspection Report); R9-3-1012 (Inspection Procedure and Fee); R9-3-1013 (Reinspections); R9-3-1016 (Licensing of Inspectors); R9-3-1017 (Inspection of Governmental Vehicles); R9-3-1018 (Certificate of Inspection); R9-3-1019 (Fleet Station Procedures and Permits); R9-3-1022 (Procedure for Waiving Inspections Due to Technical Difficulties); R9-3-1023 (Certificate of Exemption); R9-3-1025 (Inspection of State Stations); R9-3-1026 (Inspection of Fleet Stations); R9-3-1027 (Registration of Repair Industry Analyzers); R9-3-1029 (Vehicle Emission Control Devices); and R9-3-1030 (Visible Emissions; Diesel-Powered Locomotives); submitted on February 11, 1977.

§ 52.132 [Rescinded]

2. Section 52.132 is rescinded.

[FR Doc. 78-21669 Filed 8-3-78; 8:45 am]

[6560-01]

SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 939-2; OPP-250010]

PART 162—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Subpart A—Registration, Reregistration, and Classification Procedures

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Notification to Secretary of Agriculture of final regulation.

SUMMARY: Notice is given as required by section 25(a)(2)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, that the Administrator, EPA, has forwarded to the Secretary of the U.S. Department of Agriculture a copy of EPA's final regulation which would revoke present 40 CFR 162.8(d)(2). (That provision contains an Agency interpretation of the reporting requirements imposed on pesticide registrants by FIFRA section 6(a)(2); the Agency has concluded that the interpretation it sets forth is inadequate.) The Agency also forwarded to the Department of Agriculture a related document, consisting of a proposed FEDERAL REGISTER document which would set forth the Agency's current interpretation of the statute's reporting requirement.

FOR FURTHER INFORMATION CONTACT:

Ed Gray, Office of General Counsel (A-132), EPA, 401 M Street SW., Washington, D.C. 20460, telephone 202-755-0846.

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(B) of FIFRA states that the Administrator shall provide the Secretary of Agriculture a copy of any final regulation at least 30 days prior to signing it for publication in the FEDERAL REGISTER. If the Secretary comments in writing regarding the final regulation within 15 days after receiving it, the Administrator shall publish in the FEDERAL REGISTER (with the final regulation) the comments of the Secretary, if requested, and the response thereto of the Administrator. If the Secretary does not comment in writing within 15 days after receiving the final regulation, the Administrator may sign such regulation for publication in the FEDERAL REGISTER any time after such 15-day period.

Pursuant to FIFRA section 25(a)(3), a copy of this final regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. The final regulation has also been submitted to the FIFRA Scientific Advisory Panel, as required by section 25(d).

STATUTORY AUTHORITY: Section 25 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (Pub. L. 92-516, 86 Stat. 973, Pub. L. 94-140, 89 Stat. 751; 7 U.S.C. 136 *et seq.*).

Dated: July 31, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-21698 Filed 8-3-78; 8:45 am]

[4110-85]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 67—NATIONAL CENTER FOR HEALTH SERVICES RESEARCH GRANTS

Grants for Health Services Research, Evaluation and Demonstration Projects

AGENCY: Public Health Service, HEW.

ACTION: Final rules.

SUMMARY: These regulations set forth the requirements for grants for health services research, evaluation, and demonstration projects

EFFECTIVE DATE: August 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Donald Goldstone, Office of the Director, National Center for Health Services Research, Office of the Assistant Secretary for Health, Room 8-50 Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, 301-436-7425.

SUPPLEMENTARY INFORMATION: On June 9, 1977, a notice of proposed rulemaking was published in the FEDERAL REGISTER (42 FR 29518-29523) proposing to amend part 67 of title 42, Code of Federal Regulations to add a new subpart implementing the Secretary's authority under section 305 of the Public Health Service Act to award grants to public or nonprofit private entities and individuals to support health services research, evaluation, or demonstration projects. Comments from the public were invited and four such comments were received. Two of the comments were supportive of the regulations and made no suggestions for revisions. One comment, while supportive of the peer review mechanism set forth in § 67.14(a)(1) of the regulations, suggested that this provision should be revised to include a requirement that the peer review group be selected in a manner that assures it is geographically representative. The basis for this suggestion was that the merits of a grant proposal are often inseparably connected with the geographic area from which it eminates. This comment has not been accepted, however, since the primary task of the peer review panel is to assess the scientific merit of a project and the individual characteristics of the reviewers, outside of their professional expertise, is not important for this effort. It is the responsibility of the Department to determine the relative priority of a project. While the peer review group is asked under § 67.14(a)(3)(iii) of the regulations to give its view of the importance of the problem that is to be addressed by the proposed project and its potential impact, this view is treated as one among many and is not determinative when the Department is ranking applications for funding purposes.

The last comment from the public, while generally supportive of the regulations, indicated that the regulation should show some concern in awarding grants to projects concerning the elderly and the poor. While the Department is certainly concerned over the

issues of providing health care to the elderly and the poor, in light of the need to respond to changing Departmental, legislative and public concerns it would be inappropriate to include any specific priorities in the regulations.

Finally, further Department consideration of the proposed regulations has resulted in a number of changes which are by and large minor and technical in nature. It should be noted, however, that § 67.14(b) relating to applications for grant projects with estimated direct costs over the project period of $35,000 or less has been amended to provide that review of such an application by, in addition to the staff of the National Center for Health Services Research, at least two outside experts will not be done in all instances. Experience has shown that it is not always appropriate or effective to carry out an extensive review of such small grants. The final regulations have been changed to require the use of outside experts in those instances where it is important to assess the scientific merit of a proposal.

In consideration of the foregoing, the Assistant Secretary for Health of the Department of Health, Education, and Welfare with the approval of the Secretary of Health, Education, and Welfare hereby amends part 67, title 42, Code of Federal Regulations to add a new subpart A as set forth below.

NOTE.—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: May 2, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: July 22, 1978.

HALE CHAMPION,
Acting Secretary.

Subpart A—Grants for Health Services, Evaluation, and Demonstration Projects

Sec.

67.10 Purpose and scope.
67.11 Definitions.
67.12 Eligibility.
67.13 Application.
67.14 Evaluation of applications.
67.15 Disposition of applications.
67.16 Grant award.
67.17 Project requirements.
67.18 Grant payments.
67.19 Use of project funds.
67.20 Termination.
67.21 Nondiscrimination.
67.22 Human subjects and animal welfare.
67.23 Publications and copyrights.
67.24 Confidentiality.
67.25 Control of data.
67.26 Grantee accountability.
67.27 Applicability of 45 CFR Part 74.
67.28 Additional conditions.

AUTHORITY: Sec. 215, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 305, 88 Stat. 363 (42 U.S.C. 242c).

Subpart A—Grants for Health Services Research, Evaluation, and Demonstration Projects

§ 67.10 Purpose and scope.

The regulations of this subpart are applicable to the award through the National Center for Health Services Research of grants under section 305(b) of the Public Health Service Act (42 U.S.C. 242c(b)) to support identified health services research, evaluation, or demonstration projects to investigate:

(a) The accessibility, acceptability, planning, organization, distribution, technology, utilization, quality, and financing of health services and systems;

(b) The supply and distribution, education and training, quality, utilization, organization, and cost of health manpower; and

(c) The design, construction, utilization, organization, and cost of facilities and equipment.

§ 67.11 Definitions.

As used in this subpart:

(a) "Act" means the Public Health Service Act.

(b) "Budget period" means the interval of time (usually 12 months) into which the project has been divided for budgetary and reporting purposes and for which the Government has made a financial commitment to fund a particular project.

(c) "Direct costs" means the costs that can be identified specifically with a particular cost objective, such as compensation of employees for the time and effort devoted specifically to the approved project, and the costs of materials acquired, consumed or expended specifically for the purpose of the approved project.

(d) "Grantee" means the public or nonprofit entity or individual that receives a grant under section 305(b) and this subpart for a health services research, evaluation or demonstration project and assumes legal and financial responsibility for the funds awarded and for the performance of the grant supported activity.

(e) "National Center for Health Services Research" means that unit of the Department of Health, Education, and Welfare established by section 305(a) of the Act.

(f) "Nonprofit" as applied to a private entity, means that no part of the net earnings of such entity inures or may lawfully inure to the benefit of any shareholder or individual.

(g) "Project period" means the total period of time for which support for a project has been approved as specified in the grant award document. Such approval does not commit or obligate the Federal Government to any additional, supplemental or continuation support beyond the current budget period.

(h) "Principal investigator" means a single individual, designated in the grant application and approved by the Secretary, who is responsible for the scientific and technical direction of the project.

(i) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(j) "Peer review group" means a panel of experts who are neither officers nor employees, other than by reason of their appointment, of the United States qualified by training and experience in particular scientific and technical fields to give expert advice, in accordance with the provisions of this subpart, on the scientific and technical merit of grant applications.

§ 67.12 Eligibility.

(a) *Eligible applicants.* Any public or private nonprofit entity and any individual is eligible to apply for a grant under this subpart.

(b) *Eligible projects.* Grants pursuant to section 305(b) of the act and this subpart may be made to eligible applicants for the purpose of assisting in meeting the costs of health services research, evaluation, or demonstration projects as described in § 67.10; *Provided,* That no grant may be made under this subpart for any health services research, evaluation, or demonstration project for which a grant under another provision of the act (other than section 304) may be made.

§ 67.13 Application.

(a) An application for a grant under this subpart shall be submitted at such time and in such form and manner as the Secretary may prescribe, and shall be executed by an individual authorized to act for the applicant and to assume for the applicant the obligations imposed by the act, the regulations of this subpart and any additional terms or conditions of any grant awarded.

(b) In addition to such other information as the Secretary may require, an application under this subpart must contain the following:

(1) A description of the problem in the area of health services that the project will address;

(2) A description of the hypotheses that will be tested or the specific objectives that will be served by the project as they relate to the general problem area;

(3) A description of the manner in which the project will be organized and managed;

(4) A specification of the data that will be collected or used in the project;

(5) A description of the analytic procedures that will be employed in the project;

(6) The names and qualifications of the principal investigator and principal members of the staff that will be assigned to the project and their roles;

(7) A description of the facilities and resources that will be available to the applicant, if any; and

(8) A complete and detailed budget and justification for the amount of grant funds being requested.

§ 67.14 Evaluation of applications.

(a) *Projects with direct costs over the project period in excess of $35,000.* (1) All applications for grant support under this subpart for a project with estimated direct costs over the project period in excess of $35,000 will be submitted by the Secretary for review to a peer review group whose members will be selected based upon their training and experience in relevant scientific and technical fields taking into account among other factors:

(i) The level of formal education (e.g., M.A., Ph. D., M.D.) completed by the individual;

(ii) The extent to which the individual has engaged in relevant research, the capacities (e.g., principal investigators, assistant) in which the individual has done so, and the quality of such research;

(iii) The extent of the professional recognition received by the individual as reflected by awards and other honors received from scientific and professional organizations outside the Department of Health, Education, and Welfare; and

(iv) The need of the peer review group to include within its membership experts from various areas of specialization within relevant scientific and technical fields.

(2) In carrying out a review under this paragraph the peer review group will take into account where appropriate:

(i) the significance and originality from a scientific or technical standpoint of the goals of the project;

(ii) The adequacy of the methodology proposed to carry out the project;

(iii) The availability of data or the proposed plan to collect data required in the analyses;

(iv) The adequacy and appropriateness of the plan for organizing and carrying out the project;

(v) The qualifications of the principal investigator and proposed staff;

(vi) The reasonableness of the proposed budget in relation to the proposed project;

(vii) The adequacy of the facilities and resources available to the grantee; and

(viii) Where an application involves activities which could have an adverse effect upon humans, animals, or the environment, the adequacy of the proposed means for protecting against or minimizing such effects.

(3) The peer review group to which an application has been submitted pursuant to this paragraph shall make a written report to the Secretary on each application so submitted which shall contain the following parts:

(i) The first part shall consist of a factual summary of the proposed project, including a description of its purpose, scientific approach, location, total budget and manpower requirements.

(ii) The second part shall address the scientific and technical merit of the proposed project and shall consist of a critique of the proposed project with regard to the factors described in § 67.14(a)(2). This portion of the report shall include a set of recommendations to the Secretary with respect to the disposition of the application based upon its scientific and technical merit. The peer review panel may recommend that the Secretary approve, disapprove or defer a decision on the application in order to obtain further information. Where the peer review panel recommends deferral, it shall specify the additional information it deems necessary for an adequate review of the application. Where the peer review panel recommends approval, it shall also provide its recommendation regarding the appropriate project period and level of support for the proposed project.

(iii) The third part of the report shall describe the peer review panel's review of the importance of the problem that is to be addressed by the proposed project and its potential impact.

(b) *Project with direct costs over the project period of $35,000 or less.* (1) Applications for grant support under this subpart for a project with estimated direct costs over the project period of $35,000 or less (hereinafter sometimes referred to as "small grants") will be submitted by the Secretary for review to members of the staff of the National Center for Health Services Research and where desirable to assess the scientific merit of an application to at least two outside experts who are neither officers nor employees of the United States selected by the Director of the National Center for Health Services Research on the basis of their training and experience in particular scientific and technical fields, their knowledge of health services research and the application of research findings, and their special knowledge of the problem being addressed in the specific proposal.

(2) In carrying out a review under this paragraph, the reviewers will, take into account where appropriate:

(i) The significance and originality from a scientific or technical standpoint of the goals of the project;

(ii) The adequacy of the methodology proposed to carry out the project;

(iii) The availability of data or the proposed plan to collect data required in the analyses;

(iv) The adequacy and appropriateness of the plan for organizing and carrying out the project;

(v) The qualifications of the principal investigator and proposed staff;

(vi) The reasonableness of the proposed budget in relation to the project;

(vii) The adequacy of the facilities and resources available to the grantee; and

(viii) Where an application involves activities which could have an adverse effect upon humans, animals, or the environment, the adequacy of the proposed means for protecting against or minimizing such effects.

(3) Each reviewer to which an application has been submitted pursuant to this paragraph shall make a written report to the Secretary on each application so submitted. Each report shall summarize the reviewer's findings and provide recommendations with regard to approval, disapproval, or deferral of the application in order to obtain additional information.

§ 67.15 Disposition of applications.

On the basis of the Secretary's evaluation of the application as provided in § 67.16, the Secretary shall either (a) approve, (b) defer for a later decision, or (c) disapprove any application for grant assistance under this subpart: Disapproval of an application shall not preclude its reconsideration if the application is resubmitted in the same or a revised version at a later date.

§ 67.16 Grant award.

(a) *General.* (1) Within the limits of funds available for such purpose and subject to the limitation of section 308(c) of the act, the Secretary may award grants to those applicants whose approved projects will in his judgment best promote the purposes of section 305(b) of the act and the regulations of this subpart, taking into consideration:

(i) Recommendations made pursuant to § 67.14.

(ii) The appropriateness of the budget.

(iii) The extent to which the research proposal and the fiscal plan provide assurance that effective use will be made of grant funds.

(iv) The business management capability of the applicant.

(v) The competence and skill of the staff, especially the senior personnel, in light of the scope of the project.

(vi) The probable usefulness of the project results for dealing with national health care problems, policies, and programs.

(vii) The relative priority of the proposed project in light of the established priorities of the National Center for Health Services Research.

(2) In making any grant award the Secretary may add additional conditions to or require specific modifications in the project as proposed in the application including a different level of grant support from that requested in the application. In such cases the Secretary will obtain either the written agreement of the applicant to proceed on such basis prior to making any grant award or such condition or modification will appear on the Notice of Grant Award.

(3) All grant awards shall be in writing. The Notice of Grant Award shall set forth the amount of funds awarded for the conduct of the approved project during the first budget period and the amount of annual support recommended for the remainder of the project period.

(4) The project for any grant under this subpart shall be specified in the Notice of Grant Award and shall begin no later than 9 months following the date of such award. In no case will a project be approved for a project period exceeding 5 years. Where the Secretary determines on the basis of a request by the grantee prior to the completion of the currently active grant that additional time is needed to permit the use of funds previously awarded but not expended, the approved project may be extended for a period of time not to exceed 12 months except that in no case may the project period exceed 5 years and 6 months. No additional support may be awarded for any portion of a project period in excess of 5 years.

(5) Neither the approval of any application nor the awarding of any grant shall commit or obligate the Federal Government in any way to make any additional, supplemental, continuation or other awards with respect to the project or any part of the project. For continuation support, grantees must make separate application annually and at such times and in such form as the Secretary may prescribe.

(b) *Determination of grant amount.* (1) The amount of any grant shall be determined by the Secretary on the basis of his estimate of the sum necessary for all or a designated portion of the direct costs of the project plus an additional amount for the indirect costs, if any, which will be calculated by the Secretary either:

(i) On the basis of the estimate of the actual indirect costs reasonable related to the project; or

(ii) on the basis of a percentage of all or a designated portion of the estimated direct costs of the project when there are reasonable assurances that the use of such percentage will not exceed the approximate actual indirect costs. Such award may include an estimated provisional amount for indirect costs or for designated direct costs such as fringe benefit rates subject to upward (within the limits of available funds) as well as downward adjustments to actual costs when the amount properly expended by the grantee for provisional items has been determined by the Secretary.

(2) For particular categories of small grants, such as dissertation research support, the Secretary may establish a limit on direct costs that is less than $35,000 for the project period. Such limit will be announced in advance of the deadline for receipt of applications for such grants.

(c) *Supplemental awards.* The Secretary may make supplemental awards during the course of any budget period of an approved project where the Secretary finds on the basis of the applicant's written request and such progress and accounting reports as the Secretary may require that the amount of the award initially approved was less than the amount necessary to carry out the approved project activities for that period, or that a supplemental award to fund incremental activities not initially approved for the period would substantially further the objectives of the project. The Secretary may also make a supplemental award where in his judgment such an award is necessary for the preparation of data in suitable form for transmittal in accordance with § 67.25. In cases where the award of any supplemental grant for a project exceeding $35,000 in direct costs would result in supplemental awards (excluding any supplemental award for preparation of data in suitable form for transmittal in accordance with § 67.25) during the project period in the aggregate exceeding twenty percent (20 percent) of the approved direct costs of the project, the Secretary will obtain the views of the peer review group which first evaluated the initial application prior to making any such award. The peer review group shall submit a written report to the Secretary which describes the current status of the project, the basis for the request and the potential consequences of any request where the recommendation is to disapprove. In the case of small grants, the Secretary will not approve any supplemental grant award during the project period (excluding any supplemental award for preparation of data in suitable form for transmittal in accordance with § 67.25) which will in the aggregate exceed ten percent (10 percent) of the direct costs of the project.

(d) *Noncompeting continuation awards.* Where a grantee has filed an application for continuation support and within the limits of funds available for this purpose, the Secretary may make a grant award for an additional budget period of any previously approved project where the Secretary finds on the basis of such progress and accounting reports as may be required and after considering any recommendations made pursuant to this paragraph, that the project activities during the current budget period justify continued support of the project for an additional budget period. Each project with a project period in excess of 2 years and with direct costs over the project period in excess of $35,000 will be reviewed during the second budget period and during each subsequent budget period (except for the last budget period of the project period) by at least two members of the same peer group which reviewed the proposal in accordance with § 67.14. Such group shall review the application for continuation support and make recommendations to the Secretary concerning the disposition of such application based upon its evaluation of:

(1) The progress of the project in meeting project objectives,

(2) The appropriateness of the management of the project and allocation of resources within the project,

(3) The adequacy and appropriateness of the plan for the carrying out of the project during the budget period in light of the accomplishments during previous budget periods, and

(4) The reasonableness of the proposed budget for the subsequent budget period where the Secretary determines to continue support, the amount of grant award shall be determined in accordance with paragraph (b) of this section. Where the Secretary determines not to continue a project for an additional budget period, the grantee will be notified in writing before the end of the current budget period.

§ 67.17 Project requirements.

A project supported under this subpart must be conducted in accordance with the following requirements:

(a) The project shall be carried out in accordance with the approved application.

(b) The principal investigator shall be responsible for the conduct of the project unless replaced by another individual found by the Secretary to be qualified to carry out such responsibil-

ities. Where the principal investigator becomes unable to function in such capacity, the Secretary shall be notified as soon as possible.

§ 67.18 Grant payments.

The Secretary will from time to time make payments to the grantee of all or a portion of any grant award, either by way of reimbursement for expenses incurred in the budget period, or in advance for expenses to be incurred, to the extent he determines such payments are necessary to promote prompt initiation and advancement of the approved project. The amounts otherwise payable to any grantee shall be reduced by:

(a) Amounts equal to the fair market value of any equipment or supplies furnished to such grantee at their request by the Secretary for the purpose of conducting the approved project; and

(b) Amounts equal to the pay, allowances, traveling expenses, and related personnel expenses attributable to the performance of services by an officer or employee of the government in connection with such approved project, if such officer or employee was assigned or detailed by the Secretary at the request of the grantee to perform such services.

§ 67.19 Use of project funds.

(a) Any funds granted pursuant to this subpart shall be expended by the grantee solely for carrying out the approved project in accordance with the Act, the regulations of this subpart, the terms and conditions of the award, and the applicable cost principles, prescribed in Subpart Q of 45 CFR Part 74.

(b) The grantee may not in whole or in part delegate or transfer this responsibility for the use of such funds to any other person, or other legal entity, without the specific prior written approval of the Secretary.

(c) Prior approval by the Secretary is required whenever there is to be a significant change in the scope or nature of the approved project.

§ 67.20 Termination.

The termination of any grant under this subpart will be governed by the relevant provisions of Subpart M of 45 CFR Part 74 and the terms and conditions of the grant award. Where a grantee unilaterally terminates a portion of a grant, the Secretary may terminate such grant in whole where he determines that the remaining portion of the grant will not accomplish the purposes for which the grant was made.

§ 67.21 Nondiscrimination.

Recipients of grants under this subpart are advised that in addition to complying with the terms and conditions of these regulations, the following laws and regulations are applicable:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and its implementing regulation, 45 CFR Part 80 (prohibiting discrimination in Federally assisted programs on the ground of race, color, or national origin).

(b) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 974) and its implementing regulation, 45 CFR Part 84 (prohibiting discrimination in Federally assisted programs on the basis of handicap).

(c) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) and its implementing regulation, 45 CFR Part 86 (prohibiting discrimination on the basis of sex in Federally assisted education programs).

(d) Executive Order 11246, 30 FR 12319 (September 24, 1965), as amended, and with the applicable rules, regulations, and procedures prescribed pursuant thereto.

§ 67.22 Human subjects and animal welfare.

(a) No award may be made under this subpart unless the applicant has complied with 45 CFR Part 46 and other applicable requirements pertaining to the protection of human subjects.

(b) No award may be made under this subpart unless the applicant has complied with Chapter 1-43 of the Department of Health, Education, and Welfare Grants Administration Manual and any other requirements concerning animal welfare.

§ 67.23 Publications and copyright.

(a) *Copyright.* Except as may otherwise be provided under the terms and conditions of the award, the grantee is free to copyright any book or other copyrightable materials developed under the grant, subject to a royalty-free, nonexclusive and irrevocable license of the Department to reproduce, publish, alter, or otherwise use, and to authorize others to use the work for Government purposes. In any case in which a copyright has been obtained, the Secretary shall be so notified.

(b) *Publications.* Any reports, papers, statistics, or other materials developed from work supported in whole or in part by an award made under this subpart shall be submitted to the Secretary. The Secretary may make such materials available and disseminate the material on as broad a basis as practicable and in such form as to make such materials understandable.

§ 67.24 Confidentiality.

No information obtained by a grantee in the course of its health services research, evaluation, or demonstration activities may be used for any purpose other than the purpose for which it was supplied (which shall include the disclosure of such information to the Secretary for carrying out his responsibilities under the Health Services Research, Health Statistics, and Medical Libraries Act of 1974, Pub. L. 93-353), unless authorized under regulations of the Secretary. Further, such information may not be published or released in other than statistical form if the person who supplied the information or who is described in it is identifiable unless such person has signed a written consent on such forms and in such manner as the Secretary may prescribe.

§ 67.25 Control of data.

Except as otherwise provided on the terms and conditions of the award and subject to the confidentiality requirements of § 67.24, all data collected or assembled for the purposes of carrying out health services research, demonstration, or evaluation projects supported under this subpart shall be made available to the Secretary upon request.

§ 67.26 Grantee accountability.

(a) *Accounting for grant award payments.* All payments made by the Secretary shall be recorded by the grantee in accounting records separate from the records of all other funds, including funds derived from other grant awards. With respect to each approved project the grantee shall account for the sum total of all amounts paid by presenting or otherwise making available evidence satisfactory to the Secretary of expenditures for direct and indirect costs meeting the requirements of this subpart: *Provided, however,* That when the amount awarded for indirect costs was based on a predetermined fixed-percentage of estimated direct costs, the amount allowed for indirect costs shall be computed on the basis of such predetermined fixed-percentage rates applied to the total or a selected element of the reimbursable direct costs incurred.

(b) *Accounting for royalties.* Royalties received by grantees from copyrights on publications or other works developed under the grant, or from patents or inventions conceived or first actually reduced to practice in the course of or under grant shall be accounted for as follows:

(1) Royalties received during the period of grant support as a result of copyrights or patents shall be retained by the grantee and in accordance with the terms and conditions of the grant, be disposed of under either, or a combination of the following options:

(i) Used by the grantee for any purposes that further the objectives of

the legislation under which the grant was made.

(ii) Deducted from the total project costs for the purpose of determining the net costs on which the Federal share of costs will be based.

(2) Royalties received after the completion or termination of grant support shall be disposed of as follows:

(i) Patent royalties shall be governed by agreements between the Assistant Secretary for Health, Department of Health, Education, and Welfare, and the grantee pursuant to the Department's patent regulations (45 CFR Parts 6 and 8).

(ii) Copyright royalties may be retained by the grantee, unless the terms and conditions of the grant or a specific agreement negotiated between the Secretary and the grantee provide otherwise, except State or local government grantees which receive royalties in excess of $200 a year shall return the Federal share of the excess amount (computed by applying the percentage of Federal participation in the cost of the grant supported project to the excess amount) to the Federal Government, unless specific agreement provides otherwise.

(c) *Grant closeout.*—(1) *Date of final accounting.* In addition to such other special and periodic accounting as the Secretary may require, a grantee shall render with respect to each approved project a full account, as provided herein, as of the termination of grant support which shall be at the end of the project period or the date of any termination of grant support pursuant to the applicable provisions of subpart M of 45 CFR part 74 and the terms and conditions of the grant award.

(2) *Final settlement.* There shall be payable to the United States as final settlement with respect to each approved project the total sum of (i) any amount not accounted for pursuant to paragraph (a) of this section and (ii) any other amounts due pursuant to the applicable provisions of 45 CFR part 74 and the terms and conditions of the grant award. Such total sum shall constitute a debt owed by the grantee to the United States and shall be recovered from the granteee or its successors or assignees by set-off or other action as provided by law.

§ 67.27 Applicability of 45 CFR part 74.

The provision of 45 CFR part 74, establishing uniform administrative requirements and cost principles, shall apply to all grants under subpart to States and local governments as those terms are defined in subpart A of that part 74. The relevant provisions of the following subparts of part 74 shall also apply to grants to other grantee organizations under this subpart:

(45 CFR part 74.)

Subpart:
- A—General.
- B—Cash Depositories.
- C—Bonding and Insurance.
- D—Retention and Custodial Requirements for Records.
- F—Grant-Related Income.
- G—Matching and Cost Sharing.
- K—Grant Payment Requirements.
- L—Budget Revision Procedures.
- M—Grant Closeout, Suspension, and Termination.
- O—Property.
- Q—Cost Principles.

§ 67.28 Additional conditions.

The Secretary may, with respect to any grant awarded under this subpart, impose additional conditions prior to or at the time of any award when in his judgment such conditions are necessary to assure or protect advancement of the approved project or the conservation of grant funds.

[FR Doc. 78-21098 Filed 8-3-78; 8:45 am]

[7035-01]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Third Rev. Ser. Or. No. 1296, Amdt. 1]

PART 1033—CAR SERVICE

Substitution of Refrigerator Cars for Boxcars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (Amendment No. 1 to Third Revised Service Order No. 1296).

SUMMARY: Third Revised Service Order No. 1296 authorized the Atchison, Topeka & Santa Fe (ATSF) to substitute two refrigerator cars for each boxcar ordered for transporting shipments of cotton from stations on its line to any station on the lines of the Atlanta & West Point Rail Road Co., ATSF, Chicago, Rock Island & Pacific Railroad (RI), Georgia Railroad Co., The Kansas City Southern Railway Co., Louisville & Nashville Railroad Co., Missouri Pacific Railroad Co., St. Louis-San Francisco Railway Co., Seaboard Coast Line Railroad Co., Southern Railway Co., or Western Railway of Alabama because of an acute shortage on the lines of the ATSF. The order is published in full in FEDERAL REGISTER volume No. 43, dated July 7, 1978, at page 29124. Amendment No. 1 extends the order for 3 months.

DATES: Effective 11:59 p.m., July 31, 1978. Expires 11:59 p.m., October 31, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington D.C. 20423, telephone 202-275-7840, telex 89-2742.

Decided July 31, 1978.

Upon further consideration of Third Revised Service Order No. 1296 (43 FR 29124), and good cause appearing therefore:

It is ordered, § 1033.1296 third Revised Service Order No. 1296 (Substitution of refrigerator cars for boxcars) is hereby amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., October 31, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date: This amendment shall become effective at 11:59 p.m., July 31, 1978.

(49 U.S.C. 1(10-17).)

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

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member John R. Michael not participating.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21777 Filed 8-3-78; 8:45 am]

[4310-55]

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Listing of the New Mexican Ridge-Nosed Rattlesnake as a Threatened Species With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the New Mexican ridge-nosed rattlesnake (*Crotalus willardi obscurus*) to be a threatened species. This action is being taken primarily because of the threats of overcollection on populations of this species and provides Federal protection for the species and its habitat. The New Mexican ridge-nosed rattlesnake is known only from the Animas Mountains in New Mexico and Chihuahua, Mexico.

DATES: This rule becomes effective on August 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 26, 1977, the Service published a proposed rulemaking in the FEDERAL REGISTER (42 FR 27007-27009) advising that sufficient evidence was on file to support a determination that the New Mexican ridge-nosed rattlesnake is an endangered species pursuant to the endangered Species Act of 1973, 16 U.S.C. 1531 et seq. That proposal summarized the factors thought to be contributing to the likelihood that this snake could become extinct within the foreseeable future, specified the prohibitions which would be applicable if such a determination were made, and solicited comments, suggestions, objections, and factual information from any interested person. Section 4(b)(1)(A) of the Act requires that the Governor of each State or Territory, within which a resident species of wildlife is known to occur, be notified and be provided 90 days to comment before any such species is determined to be a threatened species or an endangered species. A letter was sent to Governor Apodaca of the State of New Mexico on June 3, 1977, notifying him of the proposed rulemaking for the New Mexican ridge-nosed rattlesnake. Letters were sent to interested parties on June 10, 1977, notifying them of the proposal and soliciting their comments and suggestions.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the FEDERAL REGISTER prior to adding any species to the list of endangered and threatened wildlife and plants.

In the May 26, 1977, FEDERAL REGISTER proposed rulemaking (42 FR 27007-27009) and associated June 1, 1977, Regional Press Release, all interested parties were invited to submit factual reports or information which might contribute to the formulation of a final rulemaking.

All public comments received during the period May 26, 1977, to February 9, 1978, were considered.

Comments were received from 11 individuals and representatives of various organizations, and official comments were received from Mr. William S. Huey, Director of the New Mexico Department of Game and Fish. Of those who responded, 10 individuals supported the proposed rulemaking in all or part, one opposed the rulemaking, while the State appeared to have mixed feelings concerning the status of the species.

William Degenhardt (University of New Mexico) commented on his past experience with this rattlesnake which included work done for the Service on a contract to study this species. Dr. Degenhardt felt that endangered status is necessary because of population decline associated with collecting. He commented on access to the rattlesnake habitat and notes that reptile dealers regularly offer State protected species for sale. He also states that critical habitat should be increased instead of decreased. In summary, he recommends: (1) *Crotalus willardi obscurus* be given endangered status; (2) the area protection against trespass be continued at least as it is now with an attempt to procure the total Animas range as a refuge of about the same size as was previously contained within Coronado National Forest (±87 sections); and (3) continued study and monitoring of the population.

Herbert S. Harris (Natural History Society of Maryland) supplied comments on both the proposal and the proposed environmental impact assessment. Dr. Harris believes the species is still endangered although it may occur in additional canyons. Although this species is primarily found in pine-oak woodland, it is not absolutely restricted to this vegetation type. Dr. Harris also feels that the State's comments on the abundance of this species were misleading. Finally, he agrees with Mr. Huey of the State that critical habitat should be restricted to areas between 6,200 and 8,532 feet in Indian, Bear, and Spring Creek Canyons.

The following individuals supported the proposed listing but added no new data to the proposal: John R. Hill, Jr. (Army Corps of Engineers), Michael A. Williamson (Rio Grande Zoological Park), Letitia C. Peirce (New Mexico Herpetological Society), F. Wayne King (New York Zoological Society), George L. Turcott (Bureau of Land Management), William A. Butler (Environmental Defense Fund), and Steven Baigel (Albuquerque, New Mexico). Some of these individuals did restate the reasons for listing as the basis for their support and comments.

Michael Solan (Acting State Director, Bureau of Land Management, New Mexico) briefly cited additional locality information from the New Mexico Department of Game and Fish and states that the informal management agreement between the Fish and Wildlife Service and the owner of the areas where the rattlesnake lives has resulted in stabilizing the population. Mr. Solan believes that a threatened status would adequately protect this species.

Mr. William Huey responded for the State of New Mexico. Mr. Huey noted that the State protects the species as endangered and reviewed the penalties for violation of State law as well as the reasons the State had for protecting the species. Mr. Huey also noted that the State had recently conducted a survey of the Animas Mountains and provided a copy of the report on its findings. New Mexico biologists did not have any trouble locating the New Mexican ridge-nosed rattlesnake. In addition, he noted additional locality records and mentioned that Pine Canyon may have a population. This species is now known from Indian, Bear, and Spring Canyons.

Mr. Huey noted that this rattlesnake is not necessarily restricted to pine-oak vegetation and that its range is probably over several hundred acres in various vegetation types. Threats to the species are real enough, including fire although the fires are seldom large. No grazing, lumbering, clearing, or recreational activity presently occurs in the range of the species, according to Mr. Huey. The Victorio Land and Cattle Co.'s efforts on behalf of the species were noted; he doubted any further protection could be afforded. Mr. Huey also commented extensively on the adequacy of existing regulatory mechanisms.

Mr. Huey recommended a threatened status instead of endangered and modification of the proposed critical habitat to include only areas between 6,200 feet and 8,532 feet in the three canyons of known occurrence. Finally, Mr. Huey recommended contacting landowners prior to proposing critical habitat on their lands to avoid misgivings which might arise.

Arthur A. Smith responded for Peter G. Wray (The Victorio Co. Phoenix, Ariz.). Mr. Smith pointed out the Victorio Co.'s past and present programs and interest in the conservation of the New Mexican ridge-nosed rattlesnake. Such programs include strict control of access to the rattlesnake canyons and limiting its own development and structural improvements within the habitat. While overcollection has been a problem in the past, extreme habitat

destruction has not occurred to the extent that it would be detrimental to the snake. Mr. Smith briefly reviewed the State's collecting laws and the application of section 7 of the Endangered Species Act of 1973 to operations on the ranch. Mr. Smith states that the Victorio Co. cannot support a listing as endangered; he recommends rewriting the proposal to be more accurate, in his opinion, in listing the factors affecting the species. He recommends critical habitat be considered not only on specimen sightings but also on the status of land ownership. Finally, Mr. Smith called for a more factual delineation of factors affecting the species and the development of a plan of protection for the rattlesnake.

Conclusion

There is a legitimate question as to whether this species in endangered, in light of current private and State protective measures. Because the plight of this unique rattlesnake has been recognized by the State and the landowners have made a vigorous attempt to discourage collectors and associated habitat destruction, the Service now feels that this species is no longer in danger of becoming extinct so as to be endangered as defined by the Act. However, the high price commanded by the New Mexican ridge-nosed rattlesnake still makes it a very desirable animal, and attempts to secure specimens can probably be expected in spite of strict control. As such, the status of this snake probably is more in tune with the definition of threatened under the Act—a species likely to become endangered in the foreseeable future. Therefore, the Service determines that this species should be listed as threatened. Also, as a result of information received from region 2 of the Service, the State of New Mexico, and the Victorio Co., the following changes should be made in those criteria leading to this determination:

1. The present or threatened destruction, modification, or curtailment of its habitat or range.—In this section of the proposal, reference was made to the rattlesnake's occurrence in two canyons in the Animas Mountains. It is now known to be present in three canyons. Also, there was a reference to increased usage of the Animas Mountains for recreational activity as if this increased use was already occurring. The word "potential" should be inserted to correct this impression. Therefore, the criteria for section (1) should read in full: The range of the New Mexican ridge-nosed rattlesnake is primarily restricted to three canyons in the Animas Mountains of New Mexico and may involve habitat of approximately one square mile or less. A small population also exists in the Sierra de San Luis, Chihuahua, Mexico. The Playas Valley is experiencing development in the form of a copper ore reduction plant and associated "company town." Evidence indicates that the plant itself will not adversely affect the rattlesnake; however, the potential of increased usage of the Animas Mountains for recreational purposes could severly reduce available habitat and thus be detrimental to the populations of the New Mexican ridge-nosed rattlesnake.

2. Overutilization for commerial, sporting, scientific, or educational purposes.—While the reasons presented in this section of the proposal are still the main reasons for the plight of this species, the State of New Mexico pointed out that there is little to indicate that dynamiting has been significant to habitat destruction in the Animas Mountains. Therefore, the reference to this practice should be deleted. As such, the discussion of section (2) should read: This is probably the chief danger to the New Mexican ridge-nosed rattlesnake both in the United States and Mexico. Although relatively abundant when first discovered in 1961, the attractiveness of this species, coupled with its limited geographic range, has made it a very desirable animal for scientific and commercial purposes. Dealers in live herpetological specimens have priced this species as high as $175 or more for an 18-inch specimen. The value of this animal has led to severe habitat destruction in the process of collecting. Evidence indicates that the New Mexican ridge-nosed rattlesnake is now rare.

4. The inadequacy of existing regulatory mechanisms.—Changes in this criterion are the major reasons the Director has determined that this species should be threatened and not endangered. Both the State of New Mexico and the Victorio Co. have outlined their combined protection measures for the New Mexican ridge-nosed rattlesnake. Therefore, section (4) should now read "not applicable".

Finally, criteria under sections (3) and (5) merit no change from the proposal and remain unchanged.

Therefore, after a thorough review and consideration of all the information available, the Director has determined that the New Mexican ridge-nosed rattlesnake is likely to become endangered throughout all or a significant portion of its range and is determined to be a threatened species under provisions of the Act.

Critical Habitat

Section 7 of the Act, entitled "Interagency Cooperation," states:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried our by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

A definition of the term "critical habitat" was published jointly by the Fish and Wildlife Service and the National Marine Fisheries Service in the Federal Register of January 4, 1978 (43 FR 870-876) and is reprinted below:

> "Critical habitat" means any air, land, or water area (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of a listed species) and constituent elements thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. The constituent elements of critical habitat include, but are not limited to: Physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.

As specified in the regulations for Interagency Cooperation as published in the January 4, 1978, Federal Register (43 FR 870), the Director will consider the physiological, behavioral, ecological, and evolutionary requirements for survival and recovery of listed species in determining what areas or parts of habitat are critical. These requirements include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing of offspring; and generally;

(5) Habitats that are protected from disturbances or are representative of the geographical distribution of listed species.

With respect to the New Mexican ridge-nosed rattlesnake, the areas determined as critical habitat satisfy all known criteria for the evolutionary, ecological, behavioral, and physiological requirements of the species. Dens are available which provide winter and summer retreats. Vegetation provides cover, and lizards and rodents are abundant in the area and provide an adequate source of food items. The

three canyons determined to be critical habitat include the entire range in the United States where this subspecies is known to occur. Loss of this habitat or its constituent elements would appreciably increase the likelihood of the survival or recovery of the New Mexican ridge-nosed rattlesnake.

The Director has considered all comments and data submitted in response to the proposed determination of critical habitat for the New Mexican ridge-nosed rattlesnake (42 FR 27007-27009).

Based on this review, the critical habitat for the New Mexican ridge-nosed rattlesnake (*Crotalus willardi obscurus*) is determined to include the following area (exclusive of those existing man-made structures or settlements which are not necessary to the normal needs or survival of the species):

(1) New Mexico. Hidalgo County. An area between 6,200 feet and 8,532 feet in Bear, Indian, and Spring Canyons, Animas Mountains.

This is a revised critical habitat from the proposed critical habitat of "Elevations above 6,200 feet in the Animas Mountains, Hidalgo County, N. Mex." and is based on updated information the Service received from the New Mexico Department of Game and Fish.

There may be many kinds of actions which can be carried out within the critical habitat of a species which would not be expected to adversely affect that species.

This point has not been well understood by some persons. There has been widespread and erroneous belief that a critical habitat designation is something akin to establishment of a wilderness area or wildlife refuge, and automatically closes an area to most human uses. Actually, a critical habitat designation applies only to Federal agencies, and essentially is an official notification to these agencies that their responsibilities pursuant to section 7 of the Act are applicable in a certain area.

A critical habitat designation must be based solely on biological factors. There may be questions of whether and how much habitat is critical, in accordance with the above interpretation, or how to best legally delineate this habitat, but any resultant designation must correspond with the best available biological data. It would not be in accordance with the law to involve other motives; for example, to enlarge a critical habitat delineation so as to cover additional habitat under section 7 provisions, or to reduce a delineation so that actions in the omitted area would not be subject to evaluation.

There may indeed be legitimate questions of whether, and to what extent, certain kinds of actions would adversely affect listed species. These questions, however, are not relevant to the biological basis of critical habitat delineations. Such questions should, and can more conveniently, be dealt with after critical habitat has been designated.

Effect of the Rulemaking

Section 7 of the Act provides:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of the Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification or habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

Provisions for Interagency Cooperation were published on January 4, 1978, in the Federal Register (43 FR 870-876) to assist Federal agencies in complying with section 7.

Endangered species regulations already published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all threatened species. The regulations referred to above, which pertain to threatened species, are found at Section 17.31 of Title 50 and are summarized below.

These prohibitions make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce this species. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations published in 50 CFR Part 17, provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened species under certain circumstances. Such permits involving threatened species are available for scientific purposes, educational purposes, to enhance the propagation or survival of the species or for special purposes not inconsistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Effect Internationally

In addition to the protection provided by the Act, the Service will review the New Mexican ridge-nosed rattlesnake to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendix(ices) to that Convention or whether it should be considered under other, appropriate international agreements.

National Environmental Policy Act

An environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. It addresses this action as it involves the New Mexican ridge-nosed rattlesnake. The assessment is the basis for a decision that this determination is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rule is Dr. C. Kenneth Dodd, Jr., Office of Endangered Species, 202-343-7814.

Regulations Promulgation

Accordingly, § 17.11 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. By adding the New Mexican ridge-nosed rattlesnake to the list, alphabetically, under "Reptiles" as indicated below:

§ 17.11 Endangered and threatened wildlife.

Species			Range				
Common name	Scientific name	Population	Known distribution	Portion endangered	Status	When listed	Special rules
Reptiles:							
Rattlesnake, New Mexican ridge-nosed.	*Crotalus willardi obscurus*	NA	U.S.A. (New Mexico).	Mexico); Entire	T		

2. The Service amends § 17.95(c) by adding Critical Habitat of the New Mexican ridge-nosed rattlesnake after that of the Mona boa as follows:

§ 17.95 [Amended].

* * * * *

(c) Reptiles.

* * * * *

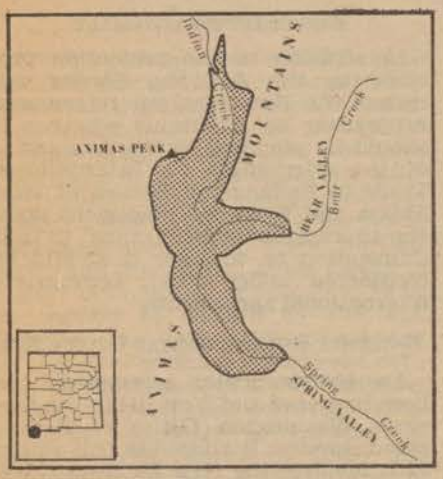
NEW MEXICAN RIDGE-NOSED RATTLESNAKE

(*Crotalus willardi obscurus*)

New Mexico. Hidalgo County. Elevations between 6,200 feet and 8,532 feet in Bear, Indian, and Spring Canyons, Animas Mountains.

NEW MEXICAN RIDGE-NOSED RATTLESNAKE

Hidalgo County, NEW MEXICO



NOTE.—The Service has determined that this document does not contain a major action requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: July 12, 1978.

LYNN A. GREENWALT,
Director, Fish and Wildlife Service.

[FR Doc. 78-19895 Filed 7-18-78; 8:45 am]

[4310-55]

PART 32—HUNTING

Opening of DeSoto National Wildlife Refuge, Iowa, to Archery Deer Hunting

AGENCY: U.S. Fish and Wildlife Service, Department of Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to archery deer hunting of the DeSoto 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: October 7, 1978, through December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

George Gage, Refuge Manager, DeSoto National Wildlife Refuge, R.R. 1, Box 114, Missouri Valley, Iowa 51555, telephone AC 712-642-4121.

SUPPLEMENTARY INFORMATION:

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Archery hunting of deer on the DeSoto National Wildlife Refuge, Iowa, is permitted only on the area designated by signs as being open to hunting. This area comprising 660 acres is delineated on maps available at the refuge headquarters and from the Area Manager, U.S. Fish and Wildlife Service, Suite 106, Rockcreek Office Building, 2701 Rockcreek Parkway, North Kansas City, Mo. 64116. Hunting will be in accordance with all State regulations governing the hunting of deer with bow and arrow and shall be permitted only during the regular Iowa archery deer season, October 7 through December 7, 1978.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuges generally which are set forth in Title 50, Code of Federal Regulations, Part 32. 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: July 17, 1978.

GEORGE E. GAGE,
Refuge Manager.

[FR Doc. 78-21636 Filed 8-3-78; 8:45 am]

[4310-55]

PART 32—HUNTING

Opening of DeSoto National Wildlife Refuge, Nebraska, to Archery Deer Hunting

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to archery deer hunting of the DeSoto 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: September 16, 1978, through November 10, 1978, and November 20, 1978, through December 31, 1978.

FOR FURTHER INFORMATION CONTACT:

George Gage, Refuge Manager, DeSoto National Wildlife Refuge, R.R. 1, Box 114, Missouri Valley, Iowa 51555, telephone 712-642-4121.

SUPPLEMENTARY INFORMATION:

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Archery hunting of deer on the DeSoto National Wildlife Refuge, Nebraska, is permitted only on the area designated by signs as being open to hunting. This area comprising 1,000 acres is delineated on maps available at the refuge headquarters and from the Area Manager, U.S. Fish and Wildlife Service, Suite 106, Rockcreek Office Building, 2701 Rockcreek Parkway, North Kansas City, Mo. 64116. Hunting will be in accordance with all State regulations governing the hunting of deer with bow and arrow and shall be permitted only during the regular Nebraska archery deer season, September 16 through November 10, 1978, and November 20 through December 31, 1978.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuges generally which are set forth in Title 50, Code of Federal Regulations, Part 32. 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: July 17, 1978.

GEORGE E. GAGE,
Refuge Manager.

[FR Doc. 78-21637 Filed 8-3-78; 8:45 am]

[6210-01]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Docket No. R-0174]

PART 261b—RULES REGARDING PUBLIC OBSERVATION OF MEETINGS

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: In order to expedite and facilitate performance of certain of its functions, the Board of Governors has delegated to any three Board members designated by the Chairman authority to act on certain matters in the absence of a quorum of the Board where delay would be inconsistent with the public interest. This amendment prescribes for the treatment of certain meetings of the three member group under the Government in the Sunshine Act.

EFFECTIVE DATE: August 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert E. Mannion, Associate General Counsel, 202-452-3274, or Julius L. Loeser, Senior Attorney, 202-452-3236, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: On March 7, 1977, the Board adopted final rules (42 FR 13297) to provide for the procedures under which the open meeting requirements of subsections (b) through (f) of the Government in the Sunshine Act (5 U.S.C. § 552b) would be implemented.

The objective of the Act is to provide the public with the fullest practicable information regarding the decisionmaking processes of defined agencies while at the same time protecting the rights of individuals and the ability of the Government to carry out its responsibilities. Under the Act and the Board's regulations, members of the Board may not, after March 12, 1977, jointly conduct or dispose of official agencies business other than in accordance with the procedures specified. Generally, such procedures require that every portion of every Board meeting be open to public observation, except when a meeting or a portion of a meeting is closed because it relates to a matter exempt from such public observation under subsection (c) of the Act.

The Board, in adopting the regulations, determined that it qualified for the use of expedited procedure for closing of meetings under subsection (d)(4) of the Act because a majority of its meetings could properly be closed pursuant to paragraph (4), (8), (9A), or (10) of subsection (c) of the Act or any combination thereof. Accordingly, the regulations provide for the closing of meetings under expedited procedures as well as for the closing of meetings under regular procedures.

The Board has today amended its rules regarding delegation of authority to establish an action committee (the "Committee") consisting of any three members of the Board designated by the Chairman from time to time. The Committee is authorized to act on behalf of the Board to approve or disapprove or take other appropriate action on a variety of matters, including applications requiring Board approval under sections 3 and 4 of the Bank Holding Company Act, under sections 25 and 25(a) of the Federal Reserve Act, and under the Bank Merger Act, where timely action is required and a quorum of the full Board is not available.

The Board has determined that the Committee would qualify for the use of expedited procedures for closing of its meetings under subsection (d)(4) of the Act to the same extent as the Board because a majority of the Committee's meetings would be properly closed pursuant to paragraph (4), (8), (9A), or (10) of subsection (c) of the Act or any combination thereof.

As a result of this finding the Board amends Part 261b, Rules Regarding Public Observation of Meetings, as follows:

§ 261b.2 [Amended]

Section 261b.2 (Definitions) is amended by adding a new subsection (h), as follows:

(h) "Committee" means the Action Committee established pursuant to 12 CFR § 265.1a(c).

§ 261b.7 [Amended]

Section 261b.7 (Meetings closed to public observation under expedited procedures) is amended by inserting "and the Committee" after "Board."

The provisions of 5 U.S.C. 553 relating to notice and public participation and deferred effective date are not followed in connection with the adotion of this amendment because the change involved herein is procedural in nature and does not constitute a substantive rule subject to the requirements of such section. The amendment is effective immediate.

Board of Governors of the Federal Reserve System, August 2, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-21931 Filed 8-3-78; 10:51 am]

[6210-01]

[Docket No. R-0174]

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

Action in Absence of Quorum

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: In order to expedite and facilitate performance of certain of its functions, the Board of Governors had delegated to any three Board members designated by the Chairman authority to act on certain matters in the absence of a quorum of the Board where delay would be inconsistent with the public interest.

EFFECTIVE DATE: August 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert E. Mannion, Associate General Counsel, 202-452-3274, or Julius L. Loeser, Senior Attorney, 202-452-3236, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: From time to time, the Board is required to act upon various matters where a delay in Board action would not be consistent with the public interest. In order to provide for those times that a quorum of the Board may not be available in person to act upon such a matter, the Board has delegated, by the instant amendment, authority in this regard to any three Board members designated by the Chairman. The delegation provides that the action of the three Board members must be by unanimous vote. The delegation contains a "sunset" provision, which provides for its expiration on June 30, 1980.

The provisions of 5 U.S.C. 553 relating to notice and public participation and deferred effective date are not followed in connection with the adoption of this amendment because the change involved herein in procedural in nature and does not constitute a substantive rule subject to the requirements of such section. The amendment is effective immediately.

In order to accomplish this delegation, 12 CFR Part 265 is amended by adding new § 265.1a(c) to read as follows:

§ 265.1a Specific functions delegated to Board members.

* * * * *

(c) *Any three Board members designated from time to time by the Chairman* (the "Action Committee") are authorized, upon certification by the Secretary of the Board of an absence of a quorum of the Board present in person, to act by unanimous vote on any matter that the Chairman of the Board has certified must be acted upon promptly in order to avoid delay that would be inconsistent with the public interest, other than (i) those relating to rulemaking, (ii) those pertaining principally to monetary and credit policies, and (iii) those for which a statute expressly requires the affirmative vote of more than three members of the Board. This delegation of authority shall terminate June 30, 1980.

Board of Governors of the Federal Reserve System, August 2, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-21930 Filed 8-3-78; 10:51 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.

[3410-05]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Part 728]

1979 WHEAT PROGRAM

Proposed Determinations Regarding National Program Acreage, Voluntary Reductions, Set-Aside, Diversion Payments, Limitations on Planted Acreage and Special Grazing and Hay Program

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Extension of time for comments.

SUMMARY: On Tuesday, June 27, 1978, a notice was published in the FEDERAL REGISTER (43 FR 27844) soliciting data, views, and recommendations relating to the above items. It was stated that comments must be received by July 27, 1978, in order to be assured of consideration.

Interested parties have requested additional time for the submission of comments. The time for sumission of comments is hereby extended to August 4, 1978.

DATE: Submit comments by August 4, 1978.

ADDRESS: Send comments to the Acting Director, Production Adjustment Division, ASCS, USDA, Room 3630, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Mr. Bruce R. Weber, 202-447-7987.

Singed at Washington, D.C., on July 31, 1978.

RAY FITZGERALD,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 78-21544 Filed 7-31-78; 3:56 am]

[3410-02]

Agricultural Marketing Service

[7 CFR Part 913]

HANDLING OF GRAPEFRUIT GROWN IN THE INTERIOR DISTRICT IN FLORIDA

Recommended Decision and Opportunity to File Written Exceptions on Proposed Further Amendment of the Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends certain changes in the marketing agreement and order regulating the handling of grapefruit grown in the interior district in Florida, based on proposals of the interior grapefruit marketing committee considered at a public hearing on April 20, 1978. The principal changes would: (1) Make provision for selecting an administrative committee separate from Order 905 (7 CFR Part 905), and provide for a public member on such committee; (2) change the definition of the standard unit of measure; and (3) provide for including offshore export shipments in the computation of handlers' prorate bases.

DATE: Comments are due on or before August 30, 1978.

ADDRESS: Send two copies of written exceptions to this decision to the hearing clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250, where they will be available for public inspection during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the filing with the hearing clerk of this recommended decision with respect to proposed further amendment of the marketing agreement and order (7 CFR Part 913), regulating the handling of grapefruit grown in Florida (hereinafter, in the text of the findings and conclusions, collectively referred to as the "order").

The above notice of filing of the decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601, et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Preliminary statement. The proposed amendment of the marketing agreement, as amended, and order, as amended, was formulated on the record of a public hearing held at Lakeland, Fla., on April 20, 1978. Notice of the hearing was published in the April 5, 1978, issue of the FEDERAL REGISTER (43 FR 14319). The proposals contained in the notice of hearing were submitted by the interior grapefruit marketing committee.

Material issues. The material issues of record are as follows;

(1) Change the definition of the standard unit of measure from the 1⅗ bushel box to the ⅘ bushel carton.

(2) Add a definition of "producer".

(3) Make provision for selecting an administrative committee separate from Order 905 (7 CFR Part 905) and provide for a public member on such committee.

(4) Eliminate "supply on track" as a factor to be considered by the committee in recommending a volume regulation.

(5) Provide authority for including "offshore export shipments" in the calculation of prorate bases of handlers, for assessing such shipments if so included, and redefine the term "handle" to facilitate such inclusion.

(6) Make conforming changes.

(1) The order currently contains a definition of "standard packed box" which is a unit of measure equivalent to one and three-fifths (1⅗) United States bushels of grapefruit whether in bulk or in any container. The order should be amended to change this definition to "carton or standard packed carton" which is a unit of measure equivalent to four-fifths (⅘) of a United States bushel whether in bulk or in any container.

At the time the order was initially issued in 1965, the standard shipping container was the 1⅗ bushel standard packed box and statistical data on shipments were available in terms of this container. Consequently, this unit of measure was included in the order to provide a base for statistical reports, assessments, and similar purposes. In recent years the industry has shifted from shipping grapefruit in the 1⅗ bushel box to shipping in ⅘

bushel cartons and the statistical information which is relied upon under the order is compiled by the inspection agency of the State of Florida and made available to the committee in terms of ⅘ bushel cartons. Moreover, under that State's citrus laws the 1⅗ bushel box has been eliminated as an approved container and the ⅘ bushel carton adopted in its place. "Standard packed box" no longer provides a convenient unit of measure for order purposes. Therefore, the definition thereof should be replaced in the order by a definition of "carton or standard packed carton" as hereinafter set forth.

(2) The order should be amended, as hereinafter specified, to include a definition of the term "producer". As hereinafter discussed, the order should include provision for selection of an administrative committee and inclusion of this definition is desirable to specify the qualifications of those who are eligible to serve in the grower member positions on the committee and to vote for nominees for such positions. An appropriate definition would be as follows: "Producer is synonymous with grower and means any person engaged in the production of grapefruit for market in the interior district and who has a proprietary interest in the grapefruit so produced."

The producer is the person who has the original right to sell or dispose of the grapefruit which he grows for market and hence is engaged in a proprietary capacity. Such a person normally is the grove owner or a person who has leased a grove and is operating it as a grower. In sharecropping or percentage lease situations, if the grove owner receives a percentage of the crop and has a right to dispose of that percentage or to have another person to sell it for him, he would be a producer of that portion. If the grove owner receives a cash payment for the rent or use of grapefruit acreage, and has no right to disposition of the crop, he would not be considered as a producer under the definition. The definition includes both cooperative producers who are members of and market their grapefruit through a cooperative marketing association, and independent producers who are not members of a cooperative marketing association.

(3) The order currently specifies that the members and alternates of the interior grapefruit marketing committee, which serves as the administrative agency under the order, shall be those members and alternates of the committee selected under order No. 905 (7 CFR pt. 905) whose residence and principal places of business are in the interior district. The order should be amended to specifically provide for the selection of the interior grapefruit marketing committee under the order. Such committee should be comprised of at least six but not more than seven grower members and six handler members, with an alternate for each. Grower members should be growers who are not shippers. Shipper members should be shippers or employees of shippers. In addition, the order should provide that the committee may be increased by a nonindustry member and alternate, nominated by the committee and selected by the Secretary.

The term of office of members and alternates should be for 1 year beginning on August 1. To provide for continuity, members and alternates should serve after selection until their successors have been selected and qualifies. The consecutive terms of members should be limited to three terms, but alternates should not be so limited. The record indicates that these are the same provisions applying under order 905 and persons who are subject to that order have found such provisions appropriate and satisfactory; hence, desire that such provisions be made applicable to members and alternates under the order.

Likewise, the provisions hereinafter set forth with respect to nomination of growers for grower members and alternates and shipper members and alternates are similar to those in order No. 905. These require that the committee shall give public notice of a meeting to be held not later than July 10 of each year in each grower district. The committee, with the approval of the Secretary, should be required to establish rules to govern the balloting at such meetings in order that a uniform procedure will be followed. The provision should require that the chairman and secretary of each such meeting shall transmit to the Secretary their certification as to the number of votes cast, the names of the persons nominated, and such other information as the Secretary may request, and further that all nominations be submitted to the Secretary on or before the 20th of July. Moreover, the provision should require each nominee for a grower position to be a grower in the district from which he is nominated, allow each producer to cast one vote for each position to be filled from each of the districts in which he is a producer, and specify that at least two of the nominees for member and their alternates shall be affiliated with a bona fide cooperative marketing organization, and that at least two member nominees and their alternates not be so affiliated.

The order should require the committee to give public notice of a meeting of bona fide cooperative marketing organizations which are handlers, and a meeting for other handlers who are not so affilitated to be held not later than July 10 of each year for the purpose of making nominations for shipper members and their alternates. Such meeting should be held not later than July 10 of each year. The chairman of each meeting should be required to publicly announce at the meeting the names of the persons nominated and the chairman and secretary of such meeting should likewise be required to transmit to the Secretary their certification as to the number of votes cast, the weight by volume of those shipments voted, and such other information as the Secretary may request. All such nominations should be submitted to the Secretary on or before July 20. At least two shipper members and their alternates should be nominated by cooperative marketing organizations which are handlers, and at least the same number of members and alternates should be made by handler organizations which are not cooperatives. In voting for nominees each handler or his authorized representative should be entitled to cast one vote which is weighted by the volume of fruit shipped by such handler during the then current fiscal period.

For purposes of allocating grower representation on the committee geographically, the interior district should be subdivided, as hereinafter specified, to establish four grower districts. The record indicates that provision also should be included, as hereinafter specified, for the committee, with the approval of the Secretary, to redefine the grower districts or reapportion or otherwise change the grower membership of grower districts, but the number of producer members should be not less than six nor more than seven. In considering such redistricting or reapportionment, any change should be based so far as practicable upon the respective averages for the immediately preceding five fiscal periods of (1) the volume of grapefruit shipped from each grower district, (2) the number of acres of grapefruit in each district, and (3) the volume of grapefruit produced in each district.

It was advanced and supported that the committee should be required to consider redistricting and reapportionment during the 1980–81 fiscal period and only in each fifth fiscal period thereafter, and further that any ensuing redistricting or reapportionment should be announced on or before March 1 of the then current fiscal period. It is concluded that the order should be amended to so provide, as hereinafter set forth.

It was advanced that it would be undesirable to change to a new committee after the new season begins, and if this proposed amendment is made effective during the 1978–79 season (be-

ginning August 1 of 1978), the committee for that season should be the members and alternates of the citrus administrative committee under order No. 905 (7 CFR pt. 905) who are representing the interior district and who are serving on the effective date of the amendment, and that such members and alternates should continue to serve until successors have been selected and have qualified. This would appear to be appropriate and it is concluded that the order should so provide, as hereinafter set forth.

Allocation of successor grower members, who should be selected as hereinafter specified in the order, should be one member and one alternate member each to represent grower districts 2 and 3, two members and two alternates to represent grower district 1, and three members and three alternates to represent grower district 4, or such other number of members and alternate members as may be prescribed pursuant to § 913.14. At least two such members and their alternates should be persons affiliated with bona fide cooperative marketing organizations and at least two such members and their alternates should not be so affiliated. The record shows that such a provision is desirable to assure that the different points of view of growers affiliated with cooperative marketing organizations and those not so affiliated will be represented. It was indicated that if both are so represented, the remaining members could be either affiliation.

With respect to successor shipper members, no districts are involved and selection should be as hereinafter specified. The record shows that it is desirable that both the viewpoints of shippers who are cooperative marketing organizations and of those who are not should be represented on the committee, and the order should be amended to so provide. Hence, in making his selection, the Secretary should select, from the nominations submitted or from other qualified persons, at least two members and alternates to represent cooperatives and at least two members and alternates to represent handlers who are not cooperatives. Since handler votes are weighted by volume handled, allocation of the remaining shipper members likely would be to the class of handler—cooperative or independent—which handled the larger volume, and it was indicated that this would be acceptable.

The order should provide also, as hereinafter set forth, that in the event nominations for a member or alternate member are not made pursuant to the provisions of § 913.17, that the Secretary may select such member or alternate member without regard to nominations. This will enable the Secretary to select persons to positions on the committee even though they may not be nominated as prescribed. It was indicated, for example, that this provision is desirable in that some nominees may find it impracticable to serve and decline the nomination or become ineligible after they have been nominated. As to eligibility, it was indicated that shippers and growers may change their affiliation from cooperative to independent or vice versa between the time they are nominated and the time they are selected and this would in effect invalidate the nomination.

Each person selected to a position on the committee should be required to file a written acceptance with the Secretary within 10 days after being notified of such selection, and the order should be amended to so provide. This acceptance provision, including the 10-day specification, is necessary so the Secretary will know that members and alternates accept their selection and responsibility to serve on the committee. In the event of a person's failure to accept, action may be taken to otherwise fill that position so a full complement of members and alternates will be available to see that the functions of the order are carried out. The order currently provides that the altenate for a member is to act in the place of such member in his absence or in the event of his removal, resignation, disqualification, or death and until a successor for his unexpired term has been selected. The record indicates that the order should be amended to provide that in the event a member or alternate vacancy occurs due to the death, removal, resignation, or disqualification that the Secretary may select a successor for the unexpired term of such person without regard to nominations. This would enable the Secretary to fill the position without delay should it be desirable to do so. While nominations would not be required, the Secretary should look to the industry for recommendations as to persons to be considered in making the selection.

A question was raised concerning the provision which allows proxy voting in the election of nominees to fill shipper positions and it was pointed out that this is a procedure which has been followed under companion orders and has worked out well. The nomination meetings may be held when it is inconvenient for some shippers to attend as some close their packing house early, or become involved in handling other commodities out of the area, or are absent on vacation. No testimony was offered in opposition to the provision, and, in the circumstances, it appears reasonable. Hence, it is concluded that the order should provide for such voting in the shipper nominations.

(4) The order specifies that the committee, in arriving at a recommendation for volume regulation, shall consider a number of factors among which is the supply of grapefruit on track, and enroute to the principal markets. The order should be amended, as hereinafter set forth, to eliminate this as a factor which is required to be considered in making its recommendation. Rail shipments have declined markedly in the past several years. In the 1976-77 season only 12,029 cartons of a total exceeding 10.3 million cartons of grapefruit shipped from the interior district were shipped by rail. Hence, this factor is no longer significant.

(5) The order currently provides that in the computation of handlers' prorate bases such computation shall be based upon shipments between the regulation area and points outside thereof in the United States, Canada, or Mexico. The order should be amended, as hereinafter set forth, to add authority for the committee, with the approval of the Secretary, to include in the computation of handlers' prorate bases all grapefruit shipped to destinations outside the regulation area. This, in effect, would enable the issuance of an adminstrative rule under the order to include "offshore export shipments" in such computations. It was indicated, however, that it is not desirable to provide that such shipments be subject to volume limitations as it is desirable to encourage the export of grapefruit and regulation of volume could hamper expansion of the export markets.

Expansion of such markets would be advantageous to the industry as a whole. There are indications that failure to include all grapefruit handled in prorate base computation could discourage offshore exports as the export volume of a handler may diminish his volume to regulated markets and, hence, the volume that is included in his prorate base computation. Reference was made to a similar situation under a companion marketing order which regulates the handling of Florida Indian River grapefruit. That order was amended in 1972 to include exports of handlers in their prorate base computations and this has been beneficial. The authority to include offshore export shipments in the calculation of handlers' prorate bases should be permissive at this time, and not automatic as a provision of the order. Actual implementation should be contingent upon (1) a further determination by the committee that it is desirable and appropriate to include all grapefruit first handled during the representative period in such computation and (2) the issuance of a rule based upon a recommendation by the committee which has the approval of

the Secretary. The term "handle" should be redefined, as hereinafter set forth, to describe the shipments which would be included if the prorate base computations includes all grapefruit shipped to destinations outside the regulation area.

It was advanced and supported that the order should be amended to provide that when and if the authority is implemented to include all grapefruit handled in the calculation of prorate bases, then all such grapefruit should be subject to assessment. It was averred without opposition that this would be desirable and reflective of the benefits received by handlers. Such provision appears to be reasonable in the circumstances and it is concluded that the order should be so amended.

(6) The amendment heretofore recommended will make necessary certain conforming changes in sections not specifically discussed in connection therewith. All such changes should be incorporated in the order as hereinafter set forth. Also, it was noted in the hearing that there is an apparent printing error in the section which contains the legal description of the interior district. That error should be corrected as hereinafter set forth.

Rulings on briefs of interested persons. At the conclusion of the hearing the administrative law judge fixed June 1, 1978, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs, based upon the evidence received at the hearing. No brief was filed.

General findings. Upon the basis of the record, it is found that:

(1) The findings hereinafter set forth are supplementary and in addition to the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of grapefruit grown in the interior district in Florida in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(5) There are no differences in the production and marketing of grapefruit grown in the interior district in Florida which make necessary different terms and provisions applicable to different parts of such area; and

(6) All handling of grapefruit grown in the interior district, as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Recommended amendment of the marketing agreement and order. The following amendment of the marketing agreement and order, as amended, is recommended as the detailed means by which foregoing conclusions may be carried out:

1. Section 913.6 is revised to read:

§ 913.6 Handle or ship.

"Handle" or "ship" means to sell or transport grapefruit, or in any other way to place grapefruit in the current of commerce between the regulation area and any point outside thereof.

2. Section 913.7 is revised to read:

§ 913.7 Carton or standard packed carton.

"Carton or standard packed carton" means a unit of measure equivalent to four-fifths (4/5) of a U.S. bushel of grapefruit, whether in bulk or in any container.

3. Sections 913.8 through 913.11 are redesignated as §§ 913.9 through 913.12 and new § 913.8 is inserted reading as follows:

§ 913.8 Producer.

"Producer" is synonymous with "grower" and means any person who is engaged in the production for market of grapefruit in the Interior District and who has a proprietary interest in the grapefruit so produced.

§§ 913.9 through 913.12 [Redesignated from §§ 913.8 through 913.11]

4. Section 913.20 is redesignated as § 913.15 and the following two new sections are inserted:

§ 913.13 Grower districts.

(a) "Grower district 1" shall include the counties of Hillsborough, Pinellas, Pasco, Hernando, Citrus, Sumter, and Lake.

(b) "Grower district 2" shall include the counties of Osceola, Orange, Seminole, Alachua, Putnam, St. Johns, Flagler, Marion, Levy, Duval, Nassau, Baker, Union, Bradford, Columbia, Clay, Gilchrist, and Suwannee, and county commissioner's districts 1, 2, and 3 of Volusia County, and that part of the counties of Indian River and Brevard which is included in the interior district.

(c) "Grower district 3" shall include the counties of Manatee, Sarasota, Hardee, Highlands, Okeechobee, Glades, De Soto, Charlotte, Lee, Hendry, Collier, Monroe, Dade, Broward, and the parts of the counties of Palm Beach and Martin which are included in the interior district.

(d) "Grower district 4" shall include the county of Polk.

§ 913.14 Redistricting.

(a) The committee may, with the approval of the Secretary, redefine the grower districts into which the interior district is divided or reapportion or otherwise change the grower membership of grower districts, or both: *Provided*, That the membership shall consist of at least six but not more than seven grower members, and any such change shall be based, so far as practicable, upon the respective averages for the immediately preceding five fiscal periods of (1) the volume of grapefruit shipped from each grower district; (2) the total number of acres of grapefruit in each such district; and (3) the volume of grapefruit produced in each such district.

(b) The committee shall consider such redistricting and reapportionment during the 1980–81 fiscal period, and only in each fifth fiscal period thereafter, and each such redistricting or reapportionment shall be announced on or before March 1 of the then current fiscal period.

5. Redesignated § 913.15 is revised to read as follows:

§ 913.15 Establishment and membership.

(a) There is hereby established an Interior Grapefruit Marketing Committee consisting of at least 6 but not more than 7 grower members, and 6 shipper members. Grower members shall be persons who are not shippers or employees of shippers. Shipper members shall be shippers or employees of shippers. The committee may be increased by one non-industry member nominated by the committee and selected by the Secretary. The committee, with the approval of the Secretary, shall prescribe qualifications, term of office, and the procedure for nominating the non-industry member.

(b) Each member shall have an alternate who shall have the same quali-

fications as the member for whom he or she is an alternate.

6. Insert the following new sections:

§ 913.16 Term of office.

The term of office of members and alternate members shall begin on the first day of August and continue for 1 year and until their successors are selected and have qualified. The consecutive terms of members shall be limited to three terms. The consecutive terms of office of alternate members shall not be so limited. Members, their alternates, and their respective successors shall be nominated and selected by the Secretary as provided in § 913.17.

§ 913.17 Nominations.

(a) *Grower members.* (1) The committee shall give public notice of a meeting of producers in each grower district to be held not later than July 10 of each year, for the purpose of making nominations for grower members and alternate grower members. The committee, with the approval of the Secretary, shall prescribe uniform rules to govern such meetings and the balloting thereat. The chairman of each meeting shall publicly announce at such meeting the names of the persons nominated, and the chairman and secretary of each such meeting shall trasmit to the Secretary their certification as to the number of votes so cast, the names of the persons nominated, and such other information as the Secretary may request. All nominations shall be submitted to the Secretary on or before the 20th day of July.

(2) Each nominee shall be a producer in the grower district from which he is nominated. In voting for nominees, each producer shall be entitled to cast one vote for each nominee in each of the districts in which he or she is a producer. At least two of the nominees for member and their alternates shall be affiliated with a bona fide cooperative marketing organization, and at least two member nominees and their alternates shall not be so affiliated.

(b) *Shipper members.* (1) The committee shall give public notice of a meeting for bona fide cooperative marketing organizations which are handlers, and a meeting for other handlers who are not so affiliated, to be held not later than July 10 of each year, for the purpose of making nominations for shipper members and their alternates. The committee, with the approval of the Secretary, shall prescribe uniform rules to govern each such meeting and balloting thereat. The chairman of each such meeting shall publicly announce at the meeting the names of the persons nominated and the chairman and secretary of each such meeting shall transmit to the Secretary their certification as to the number of votes cast, the weight by volume of those shipments voted, and such other information as the Secretary may request. All nominations shall be submitted to the Secretary on or before the 20th day of July.

(2) Nominations of at least two members and their alternates shall be made by bona fide cooperative marketing organizations which are handlers. Nominations of at least two members and their alternates shall be made by handlers who are not so affiliated. In voting for nominees, each handler or his or her authorized representative shall be entitled to cast one vote, which shall be weighted by the volume of fruit shipped by such handler during the then current fiscal period.

§ 913.18 Selection.

(a) The initial members of the committee and their respective alternates shall be the members and alternates of the Citrus Administrative Committee under order No. 905 (7 CFR Part 905) who are representing the interior district and who are serving on the effective date of this amendment. Each member and alternate shall serve until a successor has been selected and qualified.

(b) *Successor grower members.* From the nominations made pursuant to § 913.17(a) or from other qualified persons, the Secretary shall select one member and one alternate member each to represent grower districts 2 and 3, two members and two alternates to represent grower district 1, three members and three alternates to represent grower district 4, or such other number of members and alternate members from each district as may be prescribed pursuant to § 913.14. At least two such members and their alternates shall be affiliated with bona fide cooperative marketing organizations, and at least two such members and their alternates shall not be so affiliated.

(c) *Successor shipper members.* From the nominations made pursuant to § 913.17(b) or from other qualified persons, the Secretary shall select members and alternates of the committee. At least two members and their alternates shall represent bona fide cooperative marketing organizations which are handlers, and at least two members and their alternates shall represent handlers who are not so affiliated.

§ 913.19 Failure to nominate.

In the event nominations for a member or alternate member of the committee are not made pursuant to the provisions of § 913.17, the Secretary may select such member or alternate member without regard to nominations.

§ 913.20 Acceptance of membership.

Any person selected by the Secretary as a member or alternate member of the committee shall qualify by filing a written acceptance with the Secretary within 10 days after being notified of such selection.

§ 913.20 [Redesignated as § 913.15]

7. Section 913.21 is revised to read:

§ 913.21 Inability of members to serve.

(a) An alternate for a member of the committee shall act in the place and stead of such member (1) in his or her absence, or (2) in the event of his or her removal, resignation, disqualification, or death, and until a successor for his or her unexpired term has been selected.

(b) In the event of the death, removal, resignation, or disqualification of any person selected by the Secretary as a member or an alternate member of the committee, a successor for the unexpired term of such person shall be selected by the Secretary. Such selection may be made without regard to the provisions of this part as to nominations.

8. Section 913.31 is revised to read:

§ 913.31 Assessments.

(a) Each handler who first handles fruit shall pay to the committee, upon demand, such handler's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by such committee for its maintenance and functioning during each fiscal period. Each such handler's share of such expenses shall be that proportion thereof which the total quantity of fruit shipped to destinations outside the regulation area but within the 48 contiguous States of the United States (including the District of Columbia), Canada, or Mexico by such handler as the first handler thereof during the applicable fiscal period is of the total quantity of fruit so shipped by all handlers during the same fiscal period: *Provided*, That if the computation of the prorate bases of handlers includes all fruit handled as specified pursuant to § 913.43(e), each handler's pro rata share shall be the proportion his or her total shipments bear to the total shipments of all handlers. The Secretary shall fix the rate of assessment per standard packed carton of fruit to be paid by each such handler. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) At any time during or after the fiscal period, the Secretary may increase the rate of assessment so that the sum of money collected pursuant to the provisions of this section shall be adequate to cover the said expenses. Such increase shall be applicable to all fruit shipped to the applicable destinations during the given fiscal period. In order to provide funds to carry out the functions of the committee, handlers may make advance payment of assessments.

9. Sections 913.41 and 913.42 are revised to read:

§ 913.41 Recommendation for volume regulation.

(a) The committee may, during any week, recommend to the Secretary the total quantity of grapefruit which it deems advisable to be handled to destinations outside the regulation area but within the 48 contiguous States of the United States (including the District of Columbia), Canada, or Mexico during the next succeeding week: *Provided,* That volume regulations shall not be recommended after such regulations have been effective for an aggregate of 14 weeks during any fiscal period.

(b) In making its recommendations, the committee shall give due consideration to the following factors:

(1) Market prices for grapefruit;

(2) Supply, maturity, and conditions of grapefruit in the production area;

(3) Market prices and supplies of citrus fruits from competitive producing areas, and supplies of other competitive fruits;

(4) Trend and level in consumer income; and

(5) Other relevant factors.

(c) At any time during a week for which the Secretary, pursuant to § 913.42, has fixed the quantity of grapefruit which may be so handled, the committee may recommend to the Secretary that such quantity be increased for such week. Each such recommendation, together with the committee's reason for such recommendation, shall be submitted promptly to the Secretary.

§ 913.42 Issuance of volume regulation.

Whenever the Secretary finds, from information submitted by the committee, or from other available information, that to limit the quantity of grapefruit which may be handled to destinations outside the regulation area but within the 48 contiguous States of the United States (including the District of Columbia), Canada, or Mexico during a specified week will tend to effectuate the declared policy of the act, he shall fix such quantity: *Provided,* That such regulations during each fiscal period shall not in the aggregate limit the volume of grapefruit shipments for more than 14 weeks. The quantity so fixed for any week may be increased by the Secretary at any time during such week. Such regulations may, as authorized by the act, be made effective irrespective of whether the season average price of grapefruit is in excess of the parity price of grapefruit specified therefor in the act. The Secretary may upon the recommendation of the committee, or upon other available information, terminate or suspend any regulation at any time.

10. Section 913.43 is revised to read:

§ 913.43 Prorate bases.

(a) Each person who desires to handle grapefruit shall submit to the committee, at such time and in such manner as may be designated by the committee, and upon forms made available by it, a written application for a prorate base and for allotments as provided in this section and § 913.44.

(b) Such application shall be substantiated in such manner and shall be supported by such information as the committee may require.

(c) The committee shall determine the accuracy of the information submitted pursuant to this section. Whenever the committee finds that there is an error, omission, or inaccuracy in any such information, it shall correct the same and shall give the person who submitted the information a reasonable opportunity to discuss with the committee the factors considered in making the correction.

(d) Each week during the marketing season when volume regulation is likely to be recommended for the following week, the committee shall compute a prorate base for each handler who has made application in accordance with the provisions of this section. The prorate base for each such handler shall be computed by adding together the handler's shipments of grapefruit to destinations outside the regulation area in the 48 contiguous States of the United States (including the District of Columbia), Canada, or Mexico in the current season and his shipments to such destinations in the immediately preceding seasons, if any, within the representative period, in which he shipped grapefruit and dividing such total by a divisor computed by adding together the number of weeks elapsed in the current season and 51 weeks for each of such immediately preceding seasons within the representative period in which the handler so shipped grapefruit. For purposes of this section "representative period" means the three preceding seasons together with the current season; the term "season" means the 51 week period beginning with the first full week in August of any year; and the term "current season" means the period beginning with the first full week in August of the current fiscal period through the fourth full week preceding the week of regulation: *Provided,* That when official shipping records are available to the committee the term "current season" shall extend through the third full week preceding the week of regulation.

(e) If the committee determines that it is desirable and appropriate to include in the computation of prorate bases of handlers all grapefruit handled during the representative period by each handler applicant, it may, upon the approval of the Secretary, include all such fruit in such computation.

§ 913.12 [Redsignated from § 913.11 and Amended]

11. Section 913.11 *Interior district or district* (herein redesignated as § 913.12 *Interior district or district*) contains two erroneous references to "Township 18"; such references are corrected to read "Township 15".

§ 913.45 [Amended]

12. In § 913.45 *Overshipment* the references to "500 boxes" and "1,000 boxes", respectively, are changed to "1,000 cartons" and "2,000 cartons", respectively.

Signed at Washington, D.C., on August 1, 1978.

WILLIAM T. MANLEY,
Deputy Administrator,
Marketing Program Operations.

[FR Doc. 78-21775 Filed 8-3-78; 8:45 am]

[3410-05]

Commodity Credit Corporation

[7 CFR Part 1430]

PRICE SUPPORT PROGRAM FOR MILK

Terms and Conditions of 1978-79 Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Amendment to proposed rule.

SUMMARY: A notice of proposed rulemaking was published in the FEDERAL REGISTER on June 9, 1978, giving notice that the Secretary of Agriculture was considering the level of price support for milk for the 1978-79 marketing year and other matters pertaining to the milk price support program. This notice extends the period for public comment from August 8 to August 18.

DATE: Comments must be received on or before August 18, 1978, to be sure of consideration.

ADDRESS: Director, Procurement and Sales Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, 5741 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Indulis Kancitis (ASCS), 202-447-3385.

SUPPLEMENTARY INFORMATION: On June 9, 1978 (43 F.R. 25137), a notice was published in the FEDERAL REGISTER in which it was announced that the Secretary of Agriculture was considering the level of price support for milk for the 1978-79 marketing year, the prices and terms of purchase by CCC of butter, cheese, and nonfat dry milk, and other matters pertaining to the milk support program. The notice also specified that consideration would be given to data, views, and recommendations with regard to the determinations which are submitted in writing, and that, to be assured of consideration, all submissions must be received by August 8, 1978. CCC has received requests to extend the period for public comment. Accordingly, the final date on which comments must be received in order to be assured of consideration is being extended 10 days to August 18, 1978.

AMENDMENT TO PROPOSED RULE

The proposed rule published in the FEDERAL REGISTER on June 9, 1978 (43 FR 25137), giving notice that the Secretary of Agriculture was considering the level of price support for milk for the 1978-79 marketing year, the prices and terms of purchase by CCC of butter, cheese, and nonfat dry milk, and other matters pertaining to the milk support program, and that, in order to be assured of consideration, all data, views, and recommendations with regard to these determinations must be received by the Director not later than August 8, 1978, is hereby amended to change the August 8, 1978, date to August 18, 1978.

(Sec. 201 (c) and (d) of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended (7 U.S.C. 1446); and sec. 4 and 5 of the Commodity Credit Corporation Act, as amended, 62 Stat. 1070, as amended (15 U.S.C. 714b and 714c).)

Signed at Washington, D.C., on July 28, 1978.

RAY FITZGERALD,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 78-21662 Filed 8-3-78; 8:45 am]

[3410-07]

Farmers Home Administration

[7 CFR Part 1822]

[FmHA Instruction 444.1]

RURAL HOUSING LOANS AND GRANTS

Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its section 502 Rural Housing Loan regulations to more clearly define eligibility standards for Section 502 Rural Housing Loans. It is the policy of FmHA to make loans to applicants with low incomes, and FmHA personnel will work closely with applicants so as to better understand all sources of income and cash substitutes. The purpose of this amendment is to provide more guidance to FmHA personnel in determining eligibility.

DATES: Comments must be received on or before September 5, 1978.

ADDRESS: Submit written comments to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6316, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT:

Jerry B. Ireton, 202-447-4295.

SUPPLEMENTARY INFORMATION: The Farmers Home Administration (FmHA) proposes to amend § 1822.11(b) of subpart A of part 1822, chapter XVIII, title 7 in the Code of Federal Regulations. An advanced notice of proposed rulemaking was published at page 14322 of the FEDERAL REGISTER for April 5, 1978. Interested persons were given the opportunity to submit not later than May 5, 1978, comments, and suggestions or objections regarding the proposed revision. Several comments were received and given due consideration. Many of the comments were incorporated into this proposed rule or will be incorporated into part 1910, subpart A. Additional comments resulting from this publication will be considered in the development of the final rule. The Farmers Home Administration will determine the eligibility of applicants based on these criteria and other provisions of section 502 of title V of the Housing Act of 1949.

Accordingly § 1822.11(b) as proposed reads as follows:

§ 1822.11 Processing applications and county committee certification.

* * * * *

(b) *Determining eligibility of RH applicants.* The county committee will be used to determine eligibility of RH applicants who are also applying for a farmer program loan, or who are already indebted for a farmer program loan. The county supervisor will determine eligibility for all other RH applicants.

(1) County supervisors will work closely with applicants so as to better understand all sources of income and cash substitutes. An important factor in favor of determining eligibility would be that the applicant has been paying a comparable or greater amount for housing cost than would be required if the loan were made. Determination of repayment ability will be based on the following:

(i) The short budget on Form FmHA 410-4 will be used to determine obvious eligibility. Ineligibility can also be determined from this form in cases where projected income is clearly not sufficient to pay annual payment on debts including the requested loan, living expenses, real estate taxes, property insurance, utilities, and maintenance.

(ii) Form FmHA 431-3 "Family Budget" will be completed by the applicant and county supervisor if eligibility cannot be determined from the short budget. In preparing Form FmHA 431-3 the following will be considered.

(A) Noncash items (e.g., food stamps, scholarships, free clothing, or transportation which help reduce the applicant's budgeted expenses) will be properly documented and considered.

(B) Income from all sources not used to determine annual adjusted income, such as earnings from employment of minors or full-time students, foster care payments, and similar income items, will be considered to the extent it is used to offset budgeted expenses even though such income might not be included in "annual income."

(2) Each applicant for an RH loan will be considered on the basis of merit. Eligibility will be based on the circumstances surrounding the case, and under no condition will arbitary guidelines or "rules of thumb" be used in determining eligibility.

(3) If the county supervisor determines that the applicant does not have sufficient income to repay the requested loan other alternatives will be suggested, when practical, such as reducing the amount of loan needed by making a larger downpayment, building the dwelling by the self-help or borrower method of construction, reducing amenities in the dwelling, selecting a different house or site.

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

Dated: July 31, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 78-21776 Filed 8-3-78; 8:45 am]

[3410-07]

[7 CFR Part 1980]

[FmHA Instruction 1980-E]

GUARANTEED LOAN PROGRAMS

Business and Industrial Loan Program; Extension of Comment Period

AGENCY: Farmers Home Administration, USDA.

ACTION: Extension of comment period.

SUMMARY: The Farmers Home Administration published at page 28510 of the FEDERAL REGISTER for Friday, June 30, 1978, a proposal to amend its regulations regarding its citizenship requirements. Numerous comments have been received thus far and a strong grassroots interest is being expressed. For this reason it has been determined to extend the comment period for another 30 days.

DATE: Comments must be received on or before August 30, 1978.

ADDRESS: Submit written comments to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S Department of Agriculture, Room 6316, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for inspection at the address given above.

FOR FURTHER INFORMATION CONTACT:

Darryl H. Evans, Loan Specialist, telephone 202-447-4150.

(7 U.S.C. 1989; order of Secretary of Agriculture, 7 CFR 2.23; order of Assistant Secretary of Agriculture for Rural Development, 7 CFR 2.70.)

Dated: July 31, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 78-21668 Filed 8-3-78; 8:45 am]

[3410-37]

Food Safety and Quality Service

[7 CFR Part 2852]

STUDY DRAFTS—U.S. STANDARDS FOR GRADES OF CANNED APRICOTS AND U.S. STANDARDS FOR GRADES OF CANNED SWEET CHERRIES [1]

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Fruit and Vegetable Quality Division of the Food Safety and Quality Service, U.S. Department of Agriculture, has study drafts available for review and comment in its consideration of the proposed revisions of the U.S. standards for grades of canned apricots and the U.S. standards for grades of canned sweet cherries.

DATE: Comments must be received on or before December 31, 1978.

ADDRESS: Send requests for study drafts and comments to: Howard W. Schutz, Standardization Section, Processed Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-6247.

FOR FURTHER INFORMATION CONTACT:

Same as under address.

SUPPLEMENTARY INFORMATION: The preliminary proposed revisions for grades of canned apricots and grades of canned sweet cherries were developed following public requests for revision of the U.S. standards for grades of canned clingstone peaches.

The U.S. standards for canned clingstone peaches, effective June 1, 1978, are based on statistical procedures. Standards for the other major canned fruits are based on non-statistical procedures. Since many users of the canned clingstone peach standards process other major canned fruits, it was suggested that all U.S. standards for the major canned fruits be brought under the same format to avoid a proliferation of grading procedures.

The standards would be implemented on a voluntary basis and a charge would be made for the Department's services. When canned apricots and canned sweet cherries are officially graded, the regulations governing inspection and certification (7 CFR 2852.1-2852.83) would be in effect. This advance notice of proposed rulemaking is issued under the authority of the Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

Done at Washington, D.C., on August 1, 1978.

NOTE.—The Food Safety and Quality Service 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.

ROBERT ANGELOTTI,
Adminstrator, Food Safety
and Quality Service.

[FR Doc. 78-21767 Filed 8-3-78; 8:45 am]

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.

[1505-01]

Animal and Plant Health Inspection Service

[9 CFR Part 92]

IMPORTATION OF ANIMALS

Notice of Proposed Rulemaking

NOTE: This document originally appeared in the FEDERAL REGISTER for Wednesday, August 2, 1978. It is reprinted in this issue to meet requirements for publication on an assigned day of the week. (See CFR notice 41 FR 32914, August 6, 1976.)

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: This document proposes to amend the regulations to permit the entry of horses, except horses from or that have transited countries where African horsesickness exists, into the United States at any part designated by the U.S. Customs Service as an international port or airport when a quarantine facility has been provided by the importer or his agent and has been approved in advance by the Deputy Administrator. This action is taken in response to requests made by importers who prefer to have their horses entered into the United States as close to their final destination as possible in order to minimize stress and interruption in training schedules. This action would provide procedures whereby horses may be entered into the United States at additional international ports and airports where no facilities or quarantine services are currently provided.

DATE: Comments on or before August 19, 1978.

ADDRESS: Written comments to Deputy Administrator, USDA, APHIS, VS, Room 821, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782.

FOR FURTHER INFORMATION CONTACT:

Dr. David E. Herrick, USDA, APHIS, VS, Room 815, Federal Building, Hyattsville, Md. 20782, 301-436-8170.

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

The first event under which these proposed requirements would be used is scheduled for early September 1978. In order that public notice can be given and comments received can be considered and acted upon in time to give importers the time to make shipping arrangements, this rulemaking proceeding should be expedited. Accordingly, the Department is limiting public comment on these proposed regulations to 15 days.

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that, pursuant to section 2 of the Act of February 2, 1903, as amended; and sections 2, 3, 4, and 11 of the Act of July 2, 1962 (21 U.S.C. 111, 134a, 134b, 134c, and 134f), the Animal and Plant Health Inspection Service is considering amending Part 92, Title 9, Code of Federal Regulations.

Horses offered for entry into the United States are required to enter at ports designated in 9 CFR, Part 92.3, and are held at such ports while various tests are completed to determine whether the horses are free from communicable diseases. Although owners or trainers are permitted to enter the premises of the quarantive facility to exercise their horses during the period of detention, certain importers maintain that detaining a horse at the port of entry and again moving the animal to its final destination following its release at the port results in loss of condition and places such an animal at a disadvantage when participating in contests or exhibitions. Other importers claim that the procedure is in convenient, costly, and time consuming and subjects the animal to unnecessary stress. Presently, the Deputy Administrator may, upon request, in specific cases, waive the requirement that animals enter the United States at ports designated in § 92.3 when he finds that such action will not endanger the health of livestock or poultry of the United States. However, these waivers can be granted only if they are used in situations and under circumstances presenting problems that could not have been reasonably anticipated in advance. The waivers cannot be granted so as to create general exceptions from the regulations, and any rules of general applicability that are developed in the exercise of such authority must be promulgated in the FEDERAL REGISTER. Therefore, in order to accommodate the continuing requests made by persons and associations who prefer to have their horses entered into the United States at locations as close to their final destinations as possible, the Department is proposing to revise the regulations to permit horses, except horses from or that have transited countries where African horsesickness is declared to exist, to be entered into the United States at any port designated by the U.S. Customs Service as an international port or airport.

In § 92.3, paragraph (a) would be amended to include paragraph (e) and a new proposed paragraph (f) within the exceptions to the requirement that all animals enter through ports listed in paragraph (a). The addition of proposed paragraph (f) to the list of exceptions would be necessary because proposed paragraph (f) would create an additional exception to the requirement that all animals enter through the stations designated in paragraph (a). The failure to include paragraph (e) in the list of exceptions in paragraph (a) was an oversight. This proposal would correct this oversight.

In § 92.3 present paragraph (f) would be redesignated paragraph (g) and a new paragraph (f) would be added to this section. Paragraph (f) would authorize the use of any port, designated as an international port or airport by the U.S. Customs Service, as an additional port of entry for horses, except horses from or which have transited any country in which African horsesickness is declared to exist. The Department has found that horses from, or that have transited countries affected by African horsesickness, must be quarantined at the Department-operated quarantine station serving the port of New York. African horsesickness is a potentially devastating disease of horses that can be disseminated by insect vectors and for which the Department now requires a minimum quarantine period of 60 days. These factors make it impractical to quarantine such horses elsewhere. The Department does not have funds to construct facilities at these additional ports for horses. Therefore, this proposal would require that importers provide the quarantine facilities at additional ports for horses. The requests for approval and plans for the proposed facility would be submitted to the Deputy Administrator, Veterinary Services at least 15 days before the proposed date of entry of the horses into the quarantine facility. Fifteen days would be necessary to give the Deputy Administrator sufficient time to review and approve or deny such plans. This time would also be required to give a Department Veterinary Medical Officer the opportunity to inspect the facility to see that it complies with standards for such facilities proposed in new § 11(d)(3). Approval of any facility would be refused and approval of any quarantine facility would be withdrawn by the Deputy Administrator, Veterinary Services, upon his determination that any requirement of § 92.11 is not being met. Before such action is taken, the operator of the facility would be informed of the reasons for the proposed action by the Deputy Administrator and afforded an opportunity to present his views thereon. If there is a conflict as to any material fact, a hearing would be held to resolve such conflict.

The Department does not have funds to operate or maintain such facilities. Therefore, this proposal would require that importers bear all of the maintenance and operation costs of such facilities. However, fees would not be charged to the importer for veterinary inspection except for times outside the inspecting veterinary officer's scheduled tour of duty. At those times, the importer would be liable to reimburse Veterinary Services for such overtime services in accordance with 9 CFR Part 97.

To qualify as an approved quarantine facility at an additional port for horses, the facility would be required to be maintained in accordance with the minimum standards proposed in § 92.11(d)(3). These minimum standards would be promulgated to prevent the spread of disease and to insure that the horses are housed in a facility which provides them with adequate food, water, and shelter.

The facility would be under the supervision of a Veterinary Service's veterinarian to assure that the required security measures are carried out and to meet the Department's legal obligation to provide veterinary inspection during quarantine for those animals it is responsible for under provisions of the animal quarantine laws. If disease if found, it would be necessary for a veterinary inspector to be present to properly dispose of infected or exposed animals to prevent disease spread.

Inspection and quarantine services would be arranged by the importer or his agent with Veterinary Services' import animal staff, no less than 7 days before the proposed date of entry of horses into the quarantine facility. Seven days would be necessary to give the Veterinary Services' import animal staff sufficient time to arrange for personnel and equipment for such quarantine and inspection services.

Physical requirements for the facility would include the location of the facility in a place isolated from susceptible animals to reduce the risk of introducing disease, should the animals

in quarantine be found to be infected. The facility would be required to be constructed so as to give protection to the horses in quarantine from adverse environmental conditions such as noise and inclement weather, and so it can be cleaned, washed and disinfected in order to reduce the risk of the facility being a source of infection. Since many equine diseases are transmitted by insect vector, it would be necessary to provide double screening on all windows, doors, and other openings of the facility to prevent the introduction of insects which could become disease vectors, should the horses in quarantine be infected. An adequate supply of water would be necessary, not only for cleaning purposes, but to assure that the horses being held would have sufficient water to meet their own physical requirements.

The importer would be required to provide for disposing of all waste, including animal carcasses, not only to prevent the possible dissemination of disease, but to comply with applicable environmental quality requirements of State, Federal, or local agencies. It would also be necessary that the horses be housed in a facility which provides adequate food, water and shelter.

Access to the facility would be limited to persons working at such facility or to persons granted access to such facility by the supervising Veterinary Services veterinarian. All persons working at the facility would be required to refraim from contact with other horses during the period they are attending any horse quarantined in such a facility. These restrictions would be necessary because it is possible to transmit certain diseases from infected horses to susceptible horses by persons who may have had their clothing or their person contaminated with disease agents.

This proposal would authorize horses offered for importation for exhibition or show purposes to be taken outside the facility in the custody of the importer for specified time periods for exercise or training when their removal from the quarantine facility would not constitute an undue risk of introducing disease. The time periods of exercise or training would be specified in each case by the Veterinary Services veterinarian and would be conducted in a manner to assure that the quarantined animals will have no contact with susceptible animals outside the facility.

Accordingly, Part 92, Title 9, Code of Federal Regulations would be amended in the following respects:

1. In § 92.3, paragraph (a) up to the colon would be amended to read:

§ 92.3 Ports designated for the importation of animals.

(a) *Ocean ports.* The following ports are hereby designated as quarantine stations and all animals shall be entered through said stations, except as provided in paragraphs (b), (c), (d), (e), and (f) of this section and paragraph (d) of § 92.11, or § 92.24: * * *

* * * * *

2. In § 92.3, paragraph (f) would be redesignated paragraph (g) and a new paragraph (f) would be added to read:

§ 92.3 Ports designated for the importation of animals.

* * * * *

(f) *Additional ports for horses.* In addition to other ports designated for the importation of animals in this section, horses from any part of the world, except horses from or which have transited any country in which African horsesickness is declared to exist,[6] may be entered into the United States at any port designated as an international port or airport by the U.S. Customs Service provided that applicable provisios of §§ 92.8(a), 92.11(d), 92.17, and 92.2(i)(2)(iv) are met.

3. In § 92.11(d), the subparagraph following the title would be designated subparagraph (1), and new subparagraphs (2) and (3) would be added to read:

§ 92.11 Quarantine requirements.

* * * * *

(d) *Horses.* (1) * * *

(2) *Special provisions.* Horses presented for entry into the United States at any additional port for horses as provided in § 92.3(f) of this part shall be quarantined in facilities provided by the importer and approved by the Deputy Administrator, Veterinary Services. Requests for approval and plans for proposed facilities shall be submitted no less than 15 days before the proposed date of entry of horses into the quarantine facility to the Deputy Administrator, Veterinary Services. Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, Md. 20782. Before the facility is approved, an inspection of the facility shall be made by a Veterinary Medical Officer of Veterinary Services, to determine whether it complies with the standards set forth in paragraph (d)(3) of this section. Approval of any facility may be refused and approval of any approved quarantine facility may be withdrawn at any time by the Deputy Administrator, Veterinary Services, upon his determination that any requirement of this section is not being met. Before such action is taken, the operator of the facility shall be informed of the reasons for the proposed action by the Deputy Administrator and afforded an opportunity to present his views thereon. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. The cost of the facility and all maintenance and operation costs of such facility shall be borne by the importer.

(3) *Standards and handling procedures for approved quarantine facilities at additional ports for horses.* To qualify for designation as an approved quarantine facility at an additional port for horses, the facility shall be maintained and operated in accordance with the following standards:

(i) *Supervision of the facility.* The facility shall be under the supervision of a Veterinary Services veterinarian. Inspection and quarantine services shall be arranged by the importer or his agent with the Veterinary Services' Import Animal Staff, 6505 Belcrest Road, Hyattsville, Md. 20782, no less than 7 days before the proposed date of entry of the horses into the quarantine facility.

(ii) *Physical requirements for facility.*—(A) *Location.* The facility shall be sufficiently isolated to prevent quarantined horses from having direct or indirect contact with other animals.

(B) *Construction.* (1) The facility shall be so constructed that it provides protection against adverse environmental conditions and can be cleaned washed and disinfected in a manner satisfactory to the supervising Veterinary Services veterinarian to prevent the dissemination of disease. (2) Doors, windows and other openings of the facility shall be provided with double screens to prevent insects from entering the facility.

(3) The facility shall have adequate means to feed and water the horses while in quarantine.

(iii) *Sanitation and security.* (A) The importer shall arrange for a supply of water adequate to meet all watering and cleaning needs.

(B) The importer shall arrange for the disposal of animal carcases, manure, bedding, waste, and other related materials in a manner approved by the supervising Veterinary Services veterinarian to prevent the dissemination of disease.

(C) The facility shall be maintained and operated in accordance with any additional requirements the Deputy Administrator, Veterinary Services, deems appropriate to prevent the dissemination of any communicable disease.

(D) The facility shall comply with all applicable local, State and Federal requirements for environmental quality.

(iv) *Operational procedures.*—(A) *Personnel.* (1) Access to the facility shall be granted only to persons working at the facility or to persons specifically granted such access by the supervising Veterinary Services veterinarian. (2) The importer shall provide attendants for the care and feeding of horses while in the quarantine facility. (3) Persons working in the quarantine facility shall not come in contact with any horses outside the quarantine facility during the quarantine period for any horses in such quarantine facility.

(b) *Handling of horses in quarantine.* (1) Horses offered for importation into the United States for exhibition or show purposes which are quarantined in an approved quarantine facility at an additional port for horses shall be handled in accordance with the provisions of § 92.11(d)(1) while in quarantine: *Except,* That, such horses may be temporarily released from the quarantine facility in the custody of the importer or his agent for periods of time specified by the supervising Veterinary Services veterinarian for exercise or training. Such horses shall be returned to the quarantine facility at the end of such specified time periods and while temporarily outside the quarantine facility shall be kept separate and apart from all other animals.

(2) Horses quarantined in an approved facility at an additional port for horses may not participate in any scheduled exhibition or event while temporarily released from the quarantine facility for exercise or training as provided in subdivision (iv)(B)(1) of this subparagraph.

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

Done at Washington, D.C., this 27th day of July 1978.

NOTE.—The Animal and Plant Health Inspection Service 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.

R. P. JONES,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 78-21427 Filed 8-1-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

[10 CFR Part 440]

WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

Proposed Amendment of Regulations

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy proposes to amend its regulations for its program of weatherization assistance for low-income persons. The proposed amendments are based upon experience gained during the first year of program implementation and would allow greater flexibility in administering the program at the State and local levels.

DATES: Comments must be received by October 3, 1978, 4:30 p.m., e.d.t.; requests to speak at the hearing by August 29, 1978, 4:30 p.m., e.d.t.; written statements of speakers by September 5, 1978.

A public hearing will be held on September 6, 1978, 9:30 a.m., e.d.t., Room 2105, 2000 M Street NW., Washington, D.C.

ADDRESSES: Send comments and requests to speak to the Public Hearing Management Office, Department of Energy, Box TU, Room 2313, 2000 M Street NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Mary M. Bell, Director, Weatherization Assistance Program, Department of Energy, Room 6447, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-3091.

Paul R. Jordon (Public Affairs), Department of Energy, Room 3112, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9833.

Laurence J. Hyman (Office of General Counsel), Department of Energy, Room 7150, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9750.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Proposed Amendments.
III. Opportunity for Public Comment.
IV. Environmental and Significance Review.

I. BACKGROUND

The Department of Energy (DOE) proposes to amend Part 440, Chapter II of Title 10, Code of Federal Regulations, to introduce greater flexibility into the administration of its program for weatherization assistance for low-income persons. Several of the proposed changes would permit payment with program funds of certain previously ineligible costs. The proposed amendments are based upon experience gained in the first year of program implementation.

The regulations currently in effect were promulgated by the Federal Energy Administration (FEA) on May 25, 1977 (42 FR 27899, June 1, 1977) pursuant to Part A of Title IV of the Energy Conservation and Production Act (the Act), Pub. L. 94-385, 42 U.S.C. 6861 et seq. On October 1, 1977, the DOE assumed the responsibility of FEA under the Act for the weatherization assistance program, pursuant to the DOE Organization Act, Pub. L. 95-91, 42 U.S.C. 7101 et seq.

The amendments proposed today have been developed with the help of persons and organizations involved with the program's administration at the State and local level, and of several Federal agencies. The DOE is particularly grateful for the substantial interest and assistance of the National Organization of State Economic Opportunity Offices, the Community Services Administration (CSA), the Community Action Agencies (CAA's) and the Department of Labor (DOL). The DOE also received much useful assistance from several of the other persons and organizations that were contacted in the course of developing today's proposal including the Secretaries of Health, Education, and Welfare and of Housing and Urban Development, the Director of ACTION, the Office of Management and Budget, and the National Governors Conference. Copies of comments regarding the development of today's proposal are available for inspection at the DOE Public Reading Room, Freedom of Information Office, Room 2107, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

The lack of sufficient labor to perform weatherization work is one problem which occurred with some frequency in the first year of the program but which the DOE is unable to address comprehensively in today's proposal. Under the Act, use of volunteers and training participants and public service employment workers, pursuant to the Comprehensive Employment and Training Act of 1973 (CETA), is required to the maximum extent practicable. The program is also limited in its ability to fund labor by the further requirement of the Act that, to the maximum extent practicable, financial assistance provided under the program be used for the purchase of weatherization materials.

According, the DOE is taking actions in areas largely other than modification of the regulations in order to minimize the labor problem. For example, the DOE has entered into a Memorandum of Understanding with the DOL and the CSA with the purpose of securing adequate CETA labor for program subgrantees. Among its other efforts directed at program labor, the DOE may consider whether improvement in the program planning and procedures of grantees and subgrantees themselves could be improved to secure adequate CETA labor, especially in those instances in which program participants also play a role in the overall CETA budgeting for their regions.

II. Proposed Amendments

A. Allowable Expenditures for Specific Materials

Many questions were raised during the first year's experience with the weatherization program with respect to the allowability of expenditures for a variety of specific weatherization materials. One area of special concern involved materials to make repairs which were incidential to the weatherization work but which were nevertheless necessary for the weatherization work to be properly performed and to realize the most energy savings reasonably possible. Accordingly, it is proposed to amend the definition of "weatherization materials" in § 440.3 specifically to include "repair materials" and to add a definition of repair materials to § 440.3. Repair materials would mean "items necessary for the effective performance or preservation of other weatherization materials * * *." The definition of repair materials includes a non-exclusive list of items, such as lumber used to frame or repair windows and doors which could not otherwise be caulked or weatherstripped.

Proposed § 440.16(a)(4) limits to $100 per dwelling unit the allowable cost of repair materials and any repairs to heating sources. No costs for repairs to heating sources have previously been allowed, but the DOE now believes that there should be some flexibility to pay for such repairs with program funds.

Questions were also frequently raised during the first year as to the allowability of expenditures for items to improve attic ventilation, such as louvers and attic fans, and materials used to border the bottom of a dwelling unit to prevent infiltration. The DOE believes that program funds could be used for such items in appropriate circumstances. Although the general terms of the present definition of "weatherization materials," § 440.3, could be read to cover such items, the DOE proposes to amend the definition of "weatherization materials" specifically to include "items to improve attic ventilation" and "skirting." Skirting, in a proposed new definition in § 440.3, means "material used to border the bottom of a dwelling unit to prevent infiltration."

It is further proposed to amend § 440.16 to clarify any possible confusion about the minimum portion of grant funds that must be used for the purchase of weatherization materials. Section 440.16 would be amended to clarify both that grant funds are to be used to the maximum extent practicable for the actual purchase of weatherization materials and that all allowable program expenditures other than administrative expenses may not total less than 90 percent of grant funds.

B. Other Allowable Expenditures

Current § 440.16(a) places a variety of restrictions on costs which are for other than the purchase of weatherization materials, although these costs are usually related to materials, such as the cost of the storage of weatherization materials. As discussed in the notice of proposed rulemaking (42 FR 17470, April 1, 1977), these restrictions reflected FEA's desire to give maximum effect to the direction of the Act that financial assistance be used for the purchase of weatherization materials to the maximum extent practicable. However, a variety of problems have been encountered by subgrantees due to the difficulty or impossibility of treating certain necessary or reasonable program costs as allowable expenditures.

Several of these problems, proving particularly intractable under the current regulations, have led the DOE to propose greater flexibility in treating certain costs as allowable expenditures from other than funds for administrative expenses. These problems include the inability to pay the storage costs of weatherization materials; the burdensome arrangements to justify delivery costs of weatherization materials; a $7,500 per-State limit on all costs of transportation to and from work sites, including the cost of all maintenance, operation, and insurance of transportation vehicles; proscription on vehicle purchase or lease and restrictions on allowable amounts for tools and equipment. The current regulations also limit the costs of onsite supervision and liability insurance to administrative expenses, which the Act limits to no more than 10 percent of any grant.

In meeting these problems, the DOE proposes to amend § 440.16(a)(1) clearly to allow expenditures not only for the purchase of weatherization materials but also for their delivery and storage. The prohibition remains on purchasing mechanical equipment valued in excess of fifty dollars with program funds by virtue of language retained in the definition of weatherization materials in § 440.3.

Further, in § 440.16(a)(2), a variety of costs are proposed now to be allowable expenditures under and umbrella restriction of 30 percent of a grant exclusive of administrative expenses. Up to the 30 percent limit could be expensed for the costs of: (1) the transportation of weatherization materials, tools, equipment and work crews to a storage site and to the site of weatherization work; (2) the maintenance, operation insurance of vehicles used to transport weatherization materials; (3) the purchase or annual lease of tools, equipment and vehicles; and (4) the employment of onsite supervisory personnel. The employment of onsite supervisory personnel also remains covered as an allowable administrative expense under § 440.16(b).

While the proposed amendments do not categorically bar the purchase of vehicles, the DOE expects that purchase of vehicles will seldom be needed for effective program administration. The proposed amendments require advance DOE approval in every instance of vehicle purchases with program funds, and, of course, vehicle purchases will additionally be governed by any other applicable provisions of law.

The cost of liability insurance is proposed, in § 440.16(a)(3), to be included as an allowable expenditure from general grant funds, and not to be limited to administrative expenses. Liability insurance would also continue to be covered as an administrative expense even without its being specifically provided for in § 440.16(b).

C. Training and Technical Assistance

Several grantees and subgrantees have found a need for training or technical assistance covering weatherization activities, but were unable to pay for such services themselves from the funds available to them. The DOE believes training and technical assistance is an important element in ensuring expertise necessary to conduct an effective program. Since the Act contains authority to provide training and technical assistance, the DOE proposes to amend § 440.20 to permit a set-aside of funds for training and technical assistance to grantees and subgrantees, not to exceed 10 percent of the funds appropriated for the program in any fiscal year.

In addition to these changes, the DOE proposes to make certain technical amendments to the regulations. Recognizing the transition in authority from FEA to DOE, the definitions of "Administrator," "FEA," and "Regional Administrator" would be deleted and their references replaced by added definitions of "Secretary," "DOE," and "Regional Representative," respectively. The last sentence of § 440.30(h) would be amended to provide that in certain instances the Secretary will be deemed to have approved regional action, for purposes of reaching a final agency determination. Finally, the DOE is proposing to correct minor errors in language.

Although the amendments would expand the discretion with which weatherization assistance funds can be expended, the purpose is to provide flexibility so an effective weatherization program can be implemented without greatly expanding the average cost per dwelling unit. The DOE will still encourage grantees and subgran-

tees to provide adequate weatherization to as many eligible recipients as possible with available funds in order to maximize the weatherization benefits to the low-in come population.

The DOE considers it very advantageous to have the program operating under the amended regulations no later than this fall, since this is a period during which a significant proportion of the program's second year weatherization work can be best performed. Moreover, as noted earlier, the proposed amendments have already been subject to the review and comment of persons and organizations involved with the program's administration at the State and local levels. In light of both the usefulness of quickly implementing the proposed changes and the advance notice to those to be most directly affected by the changes, the DOE considers it appropriate to make the final rules effective upon publication in the FEDERAL REGISTER or only very shortly thereafter. The DOE specifically solicits comments on the advisability of this expedited effective date.

III. OPPORTUNITY FOR PUBLIC COMMENT

1. WRITTEN COMMENT PROCEDURES

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposals set forth in this notice to the Department of Energy, Box TU, 2000 M Street NW., Room 2313, Washington, D.C. 20461.

Comments should be identified on the outside of the envelope and on documents with the designation "Weatherization Assistance for Low-Income Persons Regulations." Fifteen copies should be submitted. All comments received by October 3, 1978, before 4:30 p.m., e.d.t., and all other relevant information, will be considered by the DOE before final action is taken regarding the proposed regulations.

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

2. PUBLIC HEARING

The DOE has determined to have one national public hearing on this proposal. It will be held at 9:30 a.m., e.d.t., on September 6, 1978, in Room 2105, 2000 M Street NW., Washington, D.C., and continued, if necessary, at 9:30 a.m., e.d.t., on September 7, 1978.

Any person who has an interest in this proceeding or who is a representative of a group of persons that has an interest in this proceeding may make a written request for an opportunity to make an oral presentation. Such a request should be directed to the DOE at the address given at the beginning of this preamble, and must be received before 4:30 p.m., e.d.t., on August 29, 1978. A request may be hand-delivered between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Requests should be marked as for written comments, with the additional notation "Request To Speak."

The person making the request should briefly describe the interest concerned, if appropriate, state why she or he is a proper representative of a group of persons that has such an interest, and give a concise summary of the proposed oral presentation and a phone number where she or he may be contacted through September 1, 1978. Each person selected to be heard will be notified by the DOE before 4:30 p.m., local time, September 1, 1978. Each person selected to be heard must submit 50 copies of her or his statement to the address given for written comments before 4:30 p.m., e.d.t., September 5, 1978. In the event any person wishing to testify cannot provide 50 copies, alternative arrangements can be made with Hearings Management in advance of the hearing by so indicating in the letter requesting an oral presentation or by calling Hearings Management at 202-254-5201.

3. CONDUCT OF HEARING

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

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

Any interested person may submit questions to be asked by those conducting the hearing of any person making a statement. Questions should be sent to the address given for written comments before 4:30 p.m., e.d.t., September 1, 1978. The DOE will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any person making an oral statement wishing to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

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

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the DOE and made available for inspection at the DOE Public Reading Room, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

IV. ENVIRONMENTAL AND SIGNIFICANCE REVIEW

Pursuant to section 7(c)(2) of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), a copy of this notice was submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments.

Pursuant to the National Environmental Policy Act of 1969, an assessment of the environmental impacts of the program was conducted at the time of the development of the original regulations. The DOE has determined that the proposed amendments do not materially affect the environmental impacts of the program and, accordingly, that the earlier assessment still pertains.

The DOE recently published proposals (43 FR 18634, May 1, 1978) for implementing Executive Order 12044, Improving Government Regulations. Until such time as a final rule is issued, the DOE is following these proposals in order to determine whether or not a proposed regulation is "significant" within the meaning of the Executive Order.

In compliance with these proposals, the DOE has considered the effects of these amendments and has determined that they are significant for purposes of Executive Order 12044, requiring a 60-day period for public comment, since State and local governments will be affected by final rules approximating today's proposed amendments. As proposed, the amendments would introduce greater flexibility into the administration of the program and would allow certain pre-

viously ineligible costs without changing the overall design of the program. Consequently, the DOE has determined that this regulation will have no major economic impacts requiring a regulatory analysis.

(Energy Conservation and Production Act, Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-295. Department of Energy Organization Act, Pub. L. 95-91, Executive Order 12009; Executive Order 12044.)

In consideration of foregoing, it is proposed to amend part 440 of chapter II of title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., August 1, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.

§ 440.3 [Amended]

1. Section 440.3 is amended by deleting the definitions of "Administrator", "FEA" and "Regional Administrator" and by adding, in the appropriate alphabetical order, definitions of "DOE", "Regional Representative", "Repair materials", "Secretary" and "Skirting" as follows:

* * * * *

"DOE" means the Department of Energy.

* * * * *

"Regional Representative" means a Regional Representative of the Department of Energy.

* * * * *

"Repair materials" means items necessary for the effective performance or preservation of other weatherization materials. Repair materials include, but are not limited to, lumber used to frame or repair windows and doors which could not otherwise be caulked or weatherstripped; windows and doors to replace those which cannot be repaired, including necessary hardward such as doorknobs and latches; roofing materials used as a patch to repair leaks which would damage insulation installed under this program; materials used as a patch to reduce infiltration through the building envelope; and protective materials, such as paint, to seal materials installed under this program.

* * * * *

"Secretary" means the Secretary of the Department of Energy.

* * * * *

"Skirting" means material used to border the bottom of a dwelling unit to prevent infiltration.

* * * * *

2. Section 440.3 is further amended by revising the definition of "Weatherization materials" to read as follows:

* * * * *

"Weatherization materials" means items intended primarily to improve the heating or cooling efficiency of a dwelling unit and repair materials. Weatherization materials include, but are not limited to, ceiling, wall, floor, and duct insulation; vapor barriers; storm windows and doors; items to improve attic ventilation; skirting; and caulking and weatherstripping. Weatherization materials do not include mechanical equipment valued in excess of $50 per dwelling unit.

3. Part 440, Weatherization Assistance for Low-Income Persons, is amended by changing all references to the terms "Administrator", "FEA" and "Regional Administrator" to "Secretary", "DOE" and "Regional Representative", respectively.

§ 440.10 [Amended]

4. Section 440.10, paragraph (b), is amended by inserting the words "from available funds" between the words "State" and "as follows" in the initial clause.

§ 440.16 [Amended]

5. Section 440.16, paragraph (a), is revised to read as follows:

(a) To the maximum extent practicable, the grant funds provided to a grantee under this part shall be used for the purchase of weatherization materials. Allowable expenditures under this part include only the following—

(1) The cost of purchase, delivery, and storage of weatherization materials;

(2) An amount, not to exceed 30 percent of the grant funds to be used for allowable expenditures exclusive of administrative expenses, for—

(i) Transportation of weatherization materials, tools, equipment, and work crews to a storage site and to the site of weatherization work;

(ii) Maintenance, operation, and insurance of vehicles used to transport weatherization materials;

(iii) Purchase or annual lease of tools, equipment, and vehicles, except that any purchase of vehicles shall be referred to the DOE for prior approval in every instance; and

(iv) The cost of employment of on-site supervisory personnel;

(3) The cost of liability insurance for weatherization projects for personal injury and for property damage;

(4) The cost, not to exceed $100 per dwelling unit, of—

(i) Repair materials; and

(ii) Repairs to heating sources;

(5) Taxes related to other allowable expenditures; and

(6) Allowable administrative expenses under paragraph (b) of this section.

6. Section 440.16, paragraph (b), is amended by deleting the third sentence.

§ 440.20 [Amended]

7. Section 440.20 is amended by revising the section heading to read "Oversight, Training and Technical Assistance" and by adding a new paragraph (e) to read as follows:

* * * * *

(e) The Secretary may reserve from the funds appropriated for any fiscal year an amount, not to exceed 10 percent, to provide, directly or indirectly, training and technical assistance to any grantee or subgrantee.

§ 440.30 [Amended]

8. Section 440.30(h) is amended by revising the last sentence to read as follows:

* * * * *

If no action has been taken by the Secretary after the expiration of the 21-working-day period, the Secretary shall be deemed to have approved the determination of the Regional Representative.

[FR Doc. 78-21815 Filed 8-2-78; 11:34 am]

[6750-01]

FEDERAL TRADE COMMISSION

[16 CFR Part 259]

GUIDE CONCERNING FUEL ECONOMY ADVERTISING FOR NEW AUTOMOBILES

Proposed Interim Guide Amendments

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed interim guide amendment; invitation for comment.

SUMMARY: The Federal Trade Commission herein proposes three alternative amendments to its current Fuel Economy Guide on an interim basis. The existing guide requires disclosure of the Environmental Protection Agency's city and highway mileage estimates, and certain other information whenever fuel economy representations are made. The FTC is considering three alternative approaches to ensure that advertising is consistent with the new EPA label requirements, published May 17, 1978 (43 FR 21414). These proposed alternatives include

the following: (1) A prohibition of disclosure of fuel economy estimates other than the EPA "estimated mpg," although some limited use of highway data would be permitted; (2) a requirement that the EPA "estimated mpg" be accorded substantially greater prominence than any other mileage estimates disclosed; and (3) a requirement that disclosure of the highway or combined estimates be accompanied by a set of disclaimers. This notice also describes the procedures to be followed when submitting written comments.

DATE: Written comments should be received on or before September 5, 1978.

ADDRESSES: Written comments should be submitted in quintuplicate to Linda Colvard Dorian, Assistant Director, Division of Energy and Product Information, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580. Comments will be available for examination during normal business hours (9 a.m. to 5 p.m., Monday through Friday) in room 130, Public Reference Room, Federal Trade Commission, Pennsylvania Avenue and Sixth Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Linda Colvard Dorian, Assistant Director (202-724-1524), or Ann D. Nachbar, Attorney (202-724-1799), Division of Energy and Product Information, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency recently promulgated an interim rule requiring that fuel economy labels bear only the city estimate (called the "estimated mpg" number) instead of the city, combined and highway estimates, as EPA had required since passage of the Act. The present Federal Trade Commission guidelines for fuel economy advertising, which require disclosure of the highway estimates and disclaimers other than those now required by EPA, differ substantially from the new EPA labeling rule. The Commission is considering how to revise its guidelines to insure that advertisements are consistent with the labels and to provide consumers with the most easily compared, non-misleading fuel economy information available.

The guide was first issued in 1975, in the wake of the energy crisis, to regulate unfair and deceptive mileage advertising claims based on non-uniform and unrepresentative tests. By selecting the EPA city and highway dynamometer cycles as the standard tests, the Commission attempted to provide consumers with uniform and non-deceptive fuel economy information.

Since promulgation of the guide, the FTC has received numerous consumer complaints concerning the accuracy of the numbers. Recent studies by the Environmental Protection Agency and the Department of Energy have cast doubt on reliability of the highway estimates for comparison and prediction purposes. In contrast, the city estimates appear to be more achievable in ordinary driving, and consequently less often a source of consumer disappointment and frustration. While still attempting to refine its highway test procedures, EPA has determined for labeling purposes that disclosure solely of the numbers previously designated as "city estimates" would best serve the consumer's need for reliable mileage information.

Because of this shift by the EPA and the widespread public dissatisfaction with the highway estimates, the Commission has undertaken a review of whether and how the advertising guidelines should be adjusted to serve the policies of conserving energy and fostering informed consumer purchasing decisions. Because EPA plans to review and perhaps revise its newly issued labeling rule, the Federal Trade Commission intends to reconsider any guide amendments after the EPA issues its final labeling regulation.

In proposing this interim guide, the Commission reiterates its belief that fuel economy information serves the public interest when it is neither deceptive nor unfair. The Commission accordingly maintains that fuel economy advertising claims for new automobiles should include certain disclosures and qualifications in order not to violate section 5 of the FTC Act.

1. Disclosure and Qualification of the EPA Estimated MPG

By mandating the disclosure of the "estimated mpg" figure, the guide would reconcile advertising with the new EPA labels. The qualification of the estimated mpg numbers have been adopted from the EPA label in order to preserve maximum consistency between labels and advertising.

2. The Highway and Combined Estimates

The strong interest in uniformity between labels and advertising and the concern that disclosure of highway estimates may have tended to deceive consumers in the past have led the Commission to propose provisions which would restrict disclosure of mileage estimates other than the EPA "estimated mpg." By offering these three proposals for comment, the Commission is repealing its present requirement that the highway mileage estimate be disclosed.

3. Reliance on Non-EPA Tests

When the guide was issued in 1975, there was substantial constroversy concerning which of several tests should become the industry standard. Advertising claims were then based on a variety of tests. Congress had not yet mandated the use of EPA test results on labels. Therefore, the 1975 guide permitted use of non-EPA test results. However, the Commission now believes that the publication of nonuniform information is likely to confuse or mislead consumers, and accordingly proposes that such information not be disseminated in advertisements.

4. Advertising Highway Mileage Performance

The Commission understands that there are special engineering features, such as overdrive transmissions, which enable vehicles to obtain superior fuel economy at speeds exceeding 40 or 50 mph. This fuel economy advantage would not be reflected in the "estimated mpg" figures. Hence, some use of the highway cycle may be desirable in advertising even if the guide were to prohibit disclosure of the EPA highway estimates. In order to accommodate the promotion of this special equipment and thereby encourage the purchase of more fuel-efficient vehicles, the Commission has included in its proposal banning disclosure of the highway estimates a provision permitting advertisers to present the mpg or percentage fuel economy improvement afforded by such features, according to the EPA highway cycle.

Section A. Proposed Interim Guide

In consideration of the foregoing, the Commission proposes to amend its "Guide Concerning Fuel Economy Advertising for New Automobiles," pursuant to its authority under 38 Stat. 717, as amended. This would amend title 16, chapter 1, by altering part 259 of Subchapter B—Guides and Trade Practice Rules.

PART 259—GUIDE CONCERNING FUEL ECONOMY ADVERTISING FOR NEW AUTOMOBILES

Sec.
259.1 Definitions.
259.2 Advertising disclosures.

Authority: 38 Stat. 717, as amended (15 U.S.C. 41-58).

ALTERNATIVE A

§ 259.1 Definitions.

For the purposes of this part the following definitions shall apply:

(a) *"New automobile."* Any passenger vehicle or light duty truck, as those terms are defined in 40 CFR Part 600, (1977), as amended, the equitable or legal title to which has never

been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser. The term "manufacturer" shall mean any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who acts for and is under control of such manufacturer, assembler, or importer in connection with the distribution of new automobiles. The term "dealer" shall mean any person resident or located in the United States or any territory thereof or in the District of Columbia engaged in the sale or distribution of new automobiles to the ultimate purchaser. The term "ultimate purchaser" means, for purposes of this part, the first person, other than a dealer purchasing in his or her capacity as a dealer, who in good faith purchases such new automobile for purposes other than resale, including a person who leases such vehicle for his or her personal use.

(b) *"Mileage guide."* The most recent publication of EPA and/or DOE which lists for the relevant model year, the estimated mpg figures of new automobiles.

(c) *"Estimated mpg."* The gasoline consumption or mileage of new automobiles as determined in accordance with the test procedure employed and published by the U.S. Environmental Protection Agency as described in 40 CFR Part 86 (1977), and subsequent revisions; and expressed in miles-per-gallon, to the nearest whole mile-per-gallon as measured, reported, published or accepted by the U.S. Environmental Protection Agency.

§ 259.2 Advertising disclosures.

(a) No manufacturer or dealer shall make any express or implied representation in advertising concerning the fuel economy of any new automobile unless such representation is accompanied by the following clear and conspicuous disclosures:

(1) The "estimated mpg" figure of such automobile, with the U.S. Environmental Protection Agency identified as the source of such figures.

(2) That the "estimated mpg" figure is to be used for comparison purposes and that the actual fuel economy to be obtained by the consumer may be less, and will depend upon the individual's driving habits, driving conditions, and the car's condition and optional equipment.[1]

(b) When a fuel economy representation is made for any new automobile which is available in more than one engine size, either in terms of numbers of cylinders or engine displacement, transmission type or fuel system, such cubic inch displacement, number of cylinders, transmission type, or type of fuel system shall be clearly and conspicuously disclosed.

(c) All fuel economy performance representations for new automobiles must be substantiated by EPA test results.

(d) Except as provided in section 259.2(e), no manufacturer or dealer shall cite any fuel economy number other than the "estimated mpg" in any advertisement for a new automobile.[2]

(e) If a model is equipped with a feature which, according to fuel economy tests conducted according to 40 CFR Part 600 (1977), enables that model to obtain better fuel economy on the highway than one or more models not so equipped, a manufacturer or dealer may represent in advertising the marginal increase in fuel economy attributable to that feature, provided that:

(1) All such representations are substantiated by the test results;

(2) No total numerical mpg estimate is cited in the advertisement other than the estimated mpg; and

(3) All such advertisements include the prominent disclosure of the "estimated mpg" and the disclosures required under § 259.2(a)(2).[3]

ALTERNATIVE B

§ 259.1 Definitions.

For the purposes of this part the following definitions shall apply:

(a) *"New automobile."* Any passenger vehicle or light duty truck, as those terms are defined in 40 CFR Part 600 (1977), as amended, the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser. The term "manufacturer" shall mean any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who acts for and is under the control of such manufacturer, assembler, or importer in connection with the distribution of new automobiles. The term "dealer" shall mean any person resident or located in the United States or any territory thereof or in the District of Columbia engaged in the sale or distribution of new automobiles to the ultimate purchaser. The term "ultimate purchaser" means, for purposes of this part, the first person, other than a dealer purchasing in his or her capacity as a dealer, who in good faith purchases such new automobile for purposes other than resale, including a person who leases such vehicle for his or her personal use.

(b) *"Mileage Guide."* The most recent publication of EPA and/or DOE which lists for the relevant model year, the estimated mpg figures of new automobiles.

(c) *"Estimated mpg."* The gasoline consumption or mileage of new automobiles as determined in accordance with the test procedure employed and published by the U.S. Environmental Protection Agency as described in 40 CFR Part 86 (1977), and subsequent revisions; and expressed in miles-per-gallon, to the nearest whole mile-per-gallon as measured, reported, published or accepted by the U.S. Environmental Protection Agency.

(d) *"Estimated highway fuel economy."* The gasoline consumption or mileage of new automobiles as determined in accordance with the highway test procedure employed and published by the U.S. Environmental Protection Agency as described in 40 CFR Part 600 (1977) and subsequent revisions; and expressed in miles-per-gallon, to the nearest whole mile-per-gallon measured or accepted by the U.S. Environmental Protection Agency.

(e) *"Estimated combined fuel economy."* The harmonic average of the "estimated mpg fuel economy," weighted 0.55 and 0.45 respectively.

§ 259.2 Advertising disclosures.

(a) No manufacturer or dealer shall make any express or implied representation in advertising concerning the fuel economy of any new automobile unless such representation is accompanied by the following clear and conspicuous disclosures:

(1) The "estimated mpg" figure of such automobile, with the U.S. Environmental Protection Agency identified as the source of such figures.

(2) That the "estimated mpg" figure is to be used for comparison purposes and that the actual fuel economy to be

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[1] The Commission will regard the following disclosures as complying with § 259.2(a)(2):

For television and radio only: *"Remember:* Use this number for comparisons. The actual mileage *you* get may be less."

For print (other than billboards) media only: *"Remember:* Use this *estimate* for *comparisons.* The actual mileage *you* get may be poorer, depending on the type of driving you do, your driving habits, your car's condition, and optional equipment."

For billboards: "Use For Comparisons. Get *Free* EPA Mileage Guide for details."

[2] Under this provision, the Commission would find unacceptable representations such as: "Model X gets 25 mpg on the highway" or "Model X gets 10 mpg more on the highway than Model Z."

[3] Section 259.2(e) would permit advertisers to represent an automobile equipped with such a special feature as yielding X percent better mileage or Y mpg more on the highway than would be achieved by that *same* car not equipped with that feature, so long as that claim is substantiated by EPA test results. Ads may not cite any total mpg estimate other than the "estimated mpg."

An example of an acceptable claim is: "This car's highway mileage is 15 percent better with overdrive than without. Estimated mpg is 19. Your actual mileage may be less. Use this number for comparisons."

obtained by the consumer may be less, and will depend upon the individual's driving habits, driving conditions, and the car's condition and optional equipment.[4]

(b) When a fuel economy representation is made for any new automobile which is available in more than one engine size, either in terms of numbers of cylinders or engine displacement, transmission type of fuel system, such cubic inch displacement, number of cylinders, transmission type, or type of fuel system shall be clearly and conspicuously disclosed.

(c) All fuel economy performance representations for new automobiles must be substantiated by EPA test results.

(d) No manufacturer or dealer shall cite, in any advertisement for a new automobile, the estimated combined or highway fuel economy figure unless the advertisement also states the "estimated mpg" of the advertised vehicle, and gives that figure substantially more prominence than all other fuel economy figures disclosed.

ALTERNATIVE C

§ 259.1 Definitions.

For the purposes of this part the following definitions shall apply:

(a) *"New automobile."* Any passenger vehicle or light duty truck, as those terms are defined in 40 CFR Part 600 (1977), as amended, the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser. The term "manufacturer" shall mean any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who acts for and is under the control of such manufacturer, assembler, or importer in connection with the distribution of new automobiles. The term "dealer" shall mean any person resident or located in the United States or any territory thereof or in the District of Columbia engaged in the sale or distribution of new automobiles to the ultimate purchaser. The term "ultimate purchaser" means, for purposes of this part, the first person, other than a dealer purchasing in his or her capacity as a dealer, who in good faith purchases such new automobile for purposes other than resale, including a person who leases such vehicle for his or her personal use.

(b) *"Mileage guide."* The most recent publication of EPA and/or DOE which lists for the relevant model year, the estimated mpg figures of new automobiles.

(c) *"Estimated mpg."* The gasoline consumption or mileage of new automobiles as determined in accordance with the test procedure employed and published by the U.S. Environmental Protection Agency as described in 40 CFR Part 86 (1977), and subsequent revisions; and expressed in miles-per-gallon, to the nearest whole mile-per-gallon as measured, reported, published, or accepted by the U.S. Environmental Protection Agency.

(d) *"Estimated highway fuel economy."* The gasoline consumption or mileage of new automobiles as determined in accordance with the highway test procedure employed and published by the U.S. Environmental Protection Agency as described in 40 CFR Part 600 (1977) and subsequent revisions; and expressed in miles-per-gallon, to the nearest whole mile-per-gallon measured or accepted by the U.S. Environmental Protection Agency.

(e) *"Estimated combined fuel economy."* The harmonic average of the "estimated mpg fuel economy," weighted 0.55 and 0.45 respectively.

§ 259.2 Advertising disclosures.

(a) No manufacturer or dealer shall make any express or implied representation in advertising concerning the fuel economy of any new automobile unless such representation is accompanied by the following clear and conspicuous disclosures:

(1) The "estimated mpg" figure of such automobile, with the U.S. Environmental Protection Agency identified as the source of such figures.

(2) That the "estimated mpg" figure is to be used for comparison purposes and that the actual fuel economy to be obtained by the consumer may be less, and will depend upon the individual's driving habits, driving conditions, and the car's condition and optional equipment.[5]

(b) When a fuel economy representation is made for any new automobile which is available in more than one engine size, either in terms of numbers of cylinders or engine displacement, transmission type or fuel system, such cubic inch displacement, number of cylinders, transmission type, or type of fuel system shall be clearly and conspicuously disclosed.

(c) All fuel economy performance representations for new automobiles must be substantiated by EPA test results.

(d)(1) No manufacturer or dealer shall cite, in any advertisement for a new automobile, the estimated combined or highway fuel economy figures unless:

(i) The advertisement states the "estimated mpg" of the advertised vehicle, and gives that figure substantially more prominence than all other fuel economy figures disclosed;

(ii) The fuel economy figures are clearly and conspicuously accompanied by the following disclosures:

(A) That the "estimated mpg" is the best number for comparing the fuel economy of new automobiles;

(B) That these numbers are only estimates; and

(C) That the actual fuel economy to be obtained by consumers may be less depending on the individual's driving habits, weather and road conditions, and the car's condition and optional equipment;

(iii) The estimated highway fuel economy, if cited, is accompanied by the clear and conspicuous disclosures:

(A) That the estimated highway figure may approximate mileage obtainable on a nonstop trip, under dry, warm weather conditions, on flat roads, at an average speed of 48 mph, in a well-tuned vehicle; and

(B) That the estimated highway fuel economy does *not* represent *freeway* mileage;

(iv) The "estimated combined fuel economy," if cited, is accompanied by the following clear and conspicuous disclosures:

(A) That it is a weighted average of two *laboratory test* results, weighted 55 percent city test result, 45 percent highway test result; and

(B) That the driver will obtain different overall fuel economy unless he or she does 55 percent city driving and 45 percent driving on the open road, at an average speed of 48 mph, under dry, warm weather conditions.

(2) If a manufacturer or dealer discloses in any advertisement for a new automobile, the "estimated city fuel economy" and identifies it by that or a substantially similar name, that advertisement must also clearly and conspicuously disclose that the estimated city figure may approximate mileage obtainable on a trip with frequent stops, under dry, warm weather condi-

[4] The Commission will regard the following disclosures as complying with § 259.2(a)(2):

For television and radio only: *"Remember:* Use this number for *comparisons.* The actual mileage *you* will get may be less."

For print (other than billboards) media only: *"Remember:* Use this *estimate* for *comparisons.* The actual mileage *you* get may be poorer, depending on the type of driving you do, your driving habits, your car's condition, and optional equipment."

For billboards: "Use For Comparisons. Get *Free* EPA Mileage guide for details."

[5] The Commission will regard the following disclosures as complying with § 259.2(a)(2):

For television and radio only: *"Remember:* Use this number for *comparisons.* The actual mileage *you* will get may be less."

For print (other than billboards) media only: *"Remember:* Use this *estimate* for *comparisons.* The actual mileage *you* get may be poorer, depending on the type of driving you do, your driving habits, your car's condition, and optional equipment."

For billboards: "Use For Comparisons. Get *Free* EPA Mileage Guide for details."

tions, at an average speed of 19.5 mph, in a well-tuned vehicle.

SECTION B. INVITATION TO COMMENT

All interested persons are hereby notified that they may submit to Linda Colvard Dorian, Assistant Director, Division of Energy and Product Information, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, data, views, or arguments on any issue of fact or law which may have some bearing upon the proposed guide. Such written comments will be accepted until 30 days after publication of this notice. To assure prompt consideration, comments should be identified as "Mileage Guide Amendment Comment" and furnished where at all possible in five copies.

Comments are invited with respect to any aspect of this proposed interim guide. Whenever possible, comments should be directed at and should refer to specific sections of the proposals or to related issues. The Commission would particularly appreciate receiving (1) copies of any quantitative studies on how consumers understand and use fuel economy information in advertising, and (2) comments concerning whether it is possible to draft disclaimers for the highway and combined estimates (in lieu of prohibiting the disclosure) that would be less burdensome than those set forth in alternative C, but which would adequately inform and protect the public.

By direction of the Commission.

Issued: August 4, 1978.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-21697 Filed 8-3-78; 8:45 am]

[6750-01]

[16 CFR Part 453]

FUNERAL INDUSTRY PRACTICES PROPOSED TRADE REGULATION RULE

Extension of Time to File Post Record Comments

AGENCY: Federal Trade Commission.

ACTION: Extension of time to file post record comments.

SUMMARY: On August 18, 1977, notice of publication of the presiding officer's report on the proposed trade regulation rule on funeral industry practices was published in the FEDERAL REGISTER, 42 FR 41651. On June 21, 1978, notice of publication of the staff report on the proposed rule was published in the FEDERAL REGISTER, 43 FR 26588. The date on which comments on both reports would be accepted was August 21, 1978. This notice extends the comment period to September 20, 1978.

DATE: Comments on both the presiding officer's and staff report must be filed no later than September 20, 1978.

ADDRESSES: Requests for copies of the report should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580. Comments should be sent to: Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Scott Klurfeld, room 279, Federal Trade Commission, address above, 202-523-3427.

SUPPLEMENTARY INFORMATION: Pursuant to rule 1.13(h) of the Commission's rules of practice, 16 CFR § 1.13(h), interested persons are afforded 60 days to comment on the staff and presiding officer reports filed in rulemaking proceedings. In this proceeding, that comment period is scheduled to end on August 21, 1978. The Commission has received several requests for extensions of up to 60 days in which to file post record comments based on the length of the record and, in one instance, the illness of a key participant in the proceeding.

The Commission has determined that a limited extension of 30 days is in the public interest. Accordingly, all post record comments pursuant to rule 1.13(h) must be filed no later than September 20, 1978. The Commission anticipates that no further extension of time will be necessary.

By direction of the Commission dated July 28, 1978.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-21766 Filed 8-3-78; 8:45 am]

[4110-03]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 77N-0037]

[21 CFR Parts 182 and 184]

CERTAIN BROWN AND RED ALGAE AND THEIR EXTRACTIVES

Proposed Affirmation of GRAS Status of a Brown Alga, with Specific Limitations as a Direct Human Food Ingredient

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This proposal would affirm the generally recognized as safe (GRAS) status of a brown alga (*Macrocystis pyrifera*) as a direct human food ingredient. The safety of certain red and brown algae and their extractives has been evaluated under the comprehensive safety review being conducted by the agency. The proposal would list the brown alga *Macrocystis pyrifera* as a direct food substance affirmed as GRAS, with specific limitations. The proposal would remove red algae, certain brown algae, and the extractives from red and brown algae (including alginic acid) from the list of direct food substances that are considered GRAS.

DATE: Comments by October 3, 1978.

ADDRESS: Written comments (preferably four copies) to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration is conducting a comprehensive safety review of human food ingredients classified as GRAS or subject to a prior sanction. The Commissioner of Food and Drugs has issued several notices and proposed regulations, published in the FEDERAL REGISTER of July 26, 1973 (38 FR 20040), initiating this review. Under this review, the safety of certain red and brown algae (dulse and kelp) and their extractives, has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35), the Commissioner proposes to affirm the GRAS status of the brown alga *Macrocystis pyrifera*, with specific limitations. The Commissioner also proposes to remove from the GRAS list red algae, brown algae other than *Macrocystis pyrifera*, and the extractives of red and brown algae because there is no information that these ingredients are used in food and because food grade specifications for them are lacking.

Red algae (*Porphyra* sp. and *Rhodymenia palmata* (L.) Grev.), also referred to as dulse, and brown algae (*Laminaria* sp. and *Nereocystis* sp.), also referred to as kelp, are types of seaweeds. Although chemical structures have not been fully characterized, the substances extracted from these algae are hydrocolloids. The hydrocolloids from red algae consist mostly of polymers of galactose. Many of these polymers are distinctive sulfated polysaccharides that are indicative of the particular species from which they are isolated. Hydrocolloids from brown algae are mainly salts of

mannuronic and guluronic acids. Alginic acid is the water-insoluble free acid form of this polymer in which mannuronic and guluronic acid residues in the pyranose form are joined by β-(1→ 4) linkages. The material is extracted from certain brown algae (including *Macrocystis pyrifera*) by dilute alkali and subsequently acidified. The red algae (dulse), brown algae (kelp), and the substances extracted therefrom are listed in §§ 182.30 and 182.40 (21 CFR 182.30 and 182.40) as GRAS for use in food in conjunction with spices and other natural seasonings and flavorings under regulations published in the FEDERAL REGISTER of June 10, 1961 (26 FR 5224), and subsequently recodified. Kelp is listed in § 172.365 (21 CFR 172.365) for use as a source of iodine in foods for special dietary use under regulations published in the FEDERAL REGISTER of September 19, 1964 (29 FR 13103) and subsequently recodified. By a previous FDA opinion alginic acid was considered GRAS for use as a dietary supplement.

A representative cross-section of food manufacturers was surveyed to determine the specific foods in which red and brown algae (dulse and kelp) and their extractives were used and the levels of usage. Also, surveys of consumer consumption were implemented to gather information to use with manufacturing information so that an estimate of consumer exposure to these substances could be made. No information was obtained from either survey. Since then however, one food manufacturer reported that dried ground kelp (*Macrocystis pyrifera*) is used as a component of spice and seasoning products. No similar information has been received for red algae, other brown algae, or the extractives from red and brown algae, including alginic acid.

Red and brown algae (dulse and kelp) have been the subject of a search of the scientific literature from 1920 to the present. The criteria used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) any reported carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection and (13) processing. A total of 193 abstracts on red and brown algae was reviewed, and 14 particularly pertinent reports from the literature survey have been summarized in a scientific literature review.

The scientific literature review shows, among other studies, the following information as summarized in the report of the Select Committee on GRAS Substances (hereinafter referred to as the select committee), selected by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology:

Apart from related substances already evaluated in other reports of the select committee, most of the relevant work on algae has been carried out with *Laminaria* sp. and substances derived from them.

Laminine monocitrate, [(5-amino-5-carboxypentyltrimethyl ammonium) monocitrate], isolated from *L. augustata* (Kjellman), has been studied in some detail. Ozawa *et al.* reported the intravenous LD_{50} for mice to be 394 mg per kg and the subcutaneous LD_{50} to be about 3 g per kg. They also reported that intraperitoneal injections of 500 mg per kg produced no characteristic change in mice other than weak tremor of the hind legs and hypomobility; 200 mg per kg by the same route exerted no effect. These investigators studied the pharmacologic effects of laminine monocitrate and concluded that it had antihistaminic properties and exerted a musculotropic relaxing effect on excised smooth muscles of mice and guinea pigs. In addition, they found that laminine monocitrate depressed toad cardiac function *in situ* and *in vitro* in concentrations above 10^{-4} Molar. The effects seemed to be dissociated from the action of the citrate moiety. Transitory hypotensive effects on blood pressure were observed in rabbits at doses of 10 to 30 mg per kg administered intravenously.

Laminarin sulfate is recognized as an antilipemic heparinoid that does not exhibit anticoagulant effects. Rabbits fed cholesterol and administered subcutaneous injections of 7.5 mg of laminarin sulfate per kg of body weight daily, exhibited fewer atherosclerotic lesions than rabbits fed cholesterol diets alone. Ellis reported that 0.4 mg per ml or more of laminarin sulfate was fatal to young developing frog larvae before they reached the phase of incipient metamorphosis. With sublethal doses, metamorphosis and skeletal development were normal. Sodium heparin and sodium dextran sulfate at the same dosage level caused similar effects. Laminarin sulfate, injected at a dose of 50 mg per kg per day, was reported to induce hepatosplenomegaly and hyperphagocytosis in rats.

Fomina *et al.* have reported that a chemically unidentified laminarin has some antibiotic activity against *Staphylococcus aureus* and *S. albus* when injected intraperitoneally in mice. Preobrazhenskaya and Kuznetsova reported laminarin had antibiotic activity in mice infected with *Escherichia coli* but Fomina *et al.* observed no activity against *E. coli*. However, dosage regimens were not specified in either study.

Solarino found that laminarin did not alter the onset or growth of 3,4-benzpyrene sarcomas in rats but accelerated the onset and growth of a transplantable reticulosarcoma in rats. Intreperitoneal or intravenous administration showed no antitumor activity in mice with either Ehrlich ascites tumor or Sarcoma-180.

McCandless studied the effects of several polysaccharides on connective tissue growth in the abdominal wall of the guinea pig. Subcutaneous administration of laminarin from *L. longicruris* did not stimulate collagen production or fibroblast proliferation. In contrast, agar, agarose, carrageenan, and furcelleran did stimulate connective tissue growth.

There has been considerable interest in the use of algae and dried algal meals as animal feeds and supplements for animal feed. Lunde reviewed a number of feeding experiments on rats, poultry, hogs, and horses in which algal meal prepared from *Ascophyllum* sp. and *Laminaria* sp. were fed at various levels. He concluded that the addition of 5 to 10 percent algal meal to the diet did not alter its feed value. Much larger amounts were recommended with caution, because of the iodine and mineral salt content of the algae. Black, in a review of the literature concerning the use of brown algae as feed for pigs, sheep, cows, horses, and poultry, had reported that when the diet contained 10 to 20 percent *Ascophyllum* or *Laminaria* meal, ruminants were more capable of utilizing the meal than other animals. When 20 percent of this type of algal meal was added to the feed of hens, the mineral metabolism was upset, although 10 to 15 percent was acceptable.

MacIntyre has studied the effects of dried ground seaweed meal made from *Fucus* sp., *Vasiculosus* sp., and *A. nodosum*. Hens were given rations containing 10 to 50 percent seaweed meal for periods of 4 to 8 days. The seaweed was poorly digested by the hens even at the 10 percent level. In another study, pullets were fed rations containing 10 to 20 percent of *L. cloustoni*, *A. nodosum* or *L. saccharina* for periods of 14 to 16 days. The high chloride content of all three algae caused greatly increased water consumption and excessive excretion of water and chloride. While this did not appear to affect the general health of the birds, there was weight loss and reduced egg production. This was attributed to the lower feed value of the meal. Similar results were obtained when *L. cloustoni* and *A. nodosum* were fed at levels of 10 and 15 percent for 100 days.

Tsujimuro *et al.* fed rats a flavin-deficient diet which was supplemented with powdered *L. japonica* at levels of 1 g per day. The animals on the flavin-deficient diet without supplement showed poor growth and roughing of the fur; some animals died. However, the flavin-treated and algae-fed groups both showed normal growth and smooth fur. Further, the *L. japonica* group grew more rapidly than the flavin group, indicating that *L. japonica* contained nutritional factors in addition to flavin.

Carrazzoni *et al.* fed female sheep on rations containing 100 to 300 g of dried ground unwashed *M. pyrifera* per day for a period of 60 days and observed no toxic effects. No variations were found in the blood concentrations of calcium, magnesium, phosphorus, urea, total protein, red blood cell count, or hemoglobin values. No digestive disturbances occurred. Conception, gestation, and parturition of all animals were normal. No significant differences were observed in the quality of wool derived from the sheep. The authors concluded that the use of this form of algae in the feed was completely harmless to the health of the animals.

No effect upon the milk yield was reported to occur in cows fed 10 percent of meals consisting of *A. nodosum* and *L. cloustoni*. A further study was carried out by Berry and Turk on 74 heifers fed kelp meal at 4 percent of the feed mixture. The animals were maintained on this feed through completion of their first gestation period and 52 of the animals were followed through completion of their second gestation period. No significant adverse effects on weight gain, calving,

lactation, or milk yield resulted from feeding the kelp meal.

Studies have been carried out on the effects of *L. japonica* and *Porphyridia* sp. on thyroidal uptake of iodine in man. The authors indicate that these two algae are ingested by many people in Japan as everyday foodstuffs. In 10 normal subjects ingesting 7 to 16 g of *L. japonica* (0.31 percent iodine) for 1 to 14 days, a marked decrease occurred in the 24 hour thyroidal uptake of ^{131}iodine. Preingestion values returned within 2 weeks after termination of the intake of algae. When 1.2 to 3.2 g of baked *Porphyridia* (0.03 percent iodine) were consumed per day for 2 to 14 days, no effect was observed on thyroid uptake. When 10 g of *L. japonica* was ingested per day by four patients with exophthalmic goiter, the thyroidal uptake of ^{131}iodine was markedly suppressed. This response returned to preingestion values within 2 weeks. These results are consistent with and can be explained on the basis of the iodine content of the algae ingested.

In the Far East, seaweeds have been an accepted food for humans for centuries, constituting up to 25 percent of the diet.

Jones *et al.* have shown recently that mercury is present in several species of algae in an estuary in Scotland and have reported that other investigators have observed significant quantities of mercury in algae in other parts of the world.[1]

Aside from the study of Solarino on the effects of parenteral administration of laminarin on certain tumors, the select committee is not aware of data in the literature which pertain to the carcinogenic, mutagenic, or teratogenic effects of algae, kelp, or dulse. Also, the select committee has no information on the wholesomeness of agaroid, fucoidin, funorin, or iridophycin.

All of the available safety information on algae has been carefully evaluated by qualified scientists of the select committee. It is the opinion of the select committee that:

The term, "algae", is too ill-defined to be a meaningful term in the context of the GRAS lost. The uncertainty with respect to the source and the nature of these materials makes it imprecise to attempt to evaluate the health aspects of the use of substances that simply bear the designation brown algae, red algae, or algae. This is particularly pertinent because of the variation in the chemical constituency of the several species of algae that have been reported to be used in food. In addition, the fact that there are no data available on the usage or consumption of algae, kelp, and dulse, raises a question as to whether or not any of these materials are now being used in foods in the United States.

The select committee believes that the extent of actual use of algae, kelp, and dulse in food should be ascertained. If they are found to be used to any considerable extent, it would be advisable to identify them more definitely for regulatory purposes. Further, in view of the probable absorption of metals by algae from polluted waters, permissible levels of mercury and other heavy metals should be specified for the materials so identified.

However, within this context, and in the light of available biological data, an interim conclusion can be drawn. The biological information available with respect to algae, dulse, and kelp and certain substances derived from them, is limited to studies on laminine monocitrate and laminarin sulfate, and to feeding trials involving fodder containing dehydrated algal meals and dried seaweed prepared from several species of brown and red algae. These investigations, involving several animal species have revealed no evidence of adverse effects from the feeding of the algal species tested or their derived products at levels that are orders of magnitude above those presumed to be used in foods in this country as ingredients of spices, seasonings, and flavorings.

The select committee concludes that there is no evidence in the available information on the brown algae (*Laminaria* sp. and *Nereocystis* sp.), also referred to as kelp, and the red algae (*Porphyra* sp. and *Rhodymenia palmata* (L.) Grev.), also referred to as dulse, and the materials derived from these species, that demonstrates or suggests reasonable grounds to suspect, a hazard to the public when they are used at levels that now seem to be current or that might reasonably be expected in the future if their use is confined to ingredients of species, seasonings, and flavorings. Based on his own evaluation of all available information on red algae (dulse) and brown algae (kelp) and their extractives, the Commissioner concurs with this conclusion.

This conclusion seems appropriate because:

1. Algae or their derivatives have been fed to several animal species without adverse effects at levels that are orders of magnitude greater than those that may be used as components of spices, seasonings, and flavorings;

2. Algae are known to be in the market as food and thereby provide an opportunity for human ingestion to greatly exceed that which could result from their use in spices, seasonings, and flavorings; and

3. There are no known human health problems attributable to algae ingestion as food.

Despite the limited use in spices, seasonings, and flavorings and the lack of adverse effects from algae consumption, the Commissioner shares the select committee's concern regarding the need for food grade specifications and for information on food use and heavy metal content of these ingredients.

Inquiries to food manufacturers revealed that only the brown alga (*Macrocystis pyrifera*) or kelp is used in food, and then only as a component of spice and seasoning products. Although the select committee did not mention this species of algae in its conclusion, their report did include a study in which the ingredient was administered to laboratory animals without harmful effects. Additionally, information is available to FDA that although *Laminaria* (a genus specifically addressed by the select committee) and *Macrocystis pyrifera* differ in extenal morphology, feeding studies conducted with *Laminaria* are applicable to *Macrocystis pyrifera*. Additional information was obtained which shows that *Macrocystis pyrifera* is harvested off the west coast of the United States, and ash, protein, alginic acid, mannitol, and minor complex polysaccarides account for most of the dried material. Variations in the composition of this alga are limited by food grade specifications. It is believed that the information cited, including the authorized use of this alga in food as a source of iodine (21 CFR 172.365), forms an adequate scientific basis for concluding that the reported limited use of this material would not present a public health hazard. The Commissioner therefore concludes that the brown alga (*Macrocystis pyrifera*) may be affirmed as GRAS as a flavor enhancer or a flavoring adjuvant (as defined in 21 CFR 170.3(o) (11) and (12)) for use in spices, seasonings, and flavorings (21 CFR 170.3(n)(26)) only.

Other inquiries to food manufacturers failed to produce food use information on red algae, brown algae other than *Macrocystis pyrifera*, or the extractives of red and brown algae. Additionally, no food grade specifications exist for red algae or the extractives of red and brown algae addressed in this proposal, with the exception of alginic acid. In previous GRAS proposals, it was emphasized that use information (foods to which the ingredients are added, the intended technical effect, and the levels of addition) and food grade specifications are very important in assessing the safety of food ingredients. Since this information is not available, affirming these ingredients as GRAS would not be appropriate. Therefore, the Commissioner concludes that these algae and their extractives (including alginic acid) should be removed from GRAS status. But, future consideration can be obtained in several ways: (1) The Commissioner will consider their status if use information and food grade specifications are submitted as comments on this proposal during the comment period; and (2) alternatively, consideration can be obtained through petition procedures as outlined in §§ 170.35 or 171.1 (21 CFR 170.35 or 171.1).

The proposed removal of extractives of red and brown algae from GRAS status does not affect the GRAS or food additives status of agaragar, carrageenan, or alginate salts. The GRAS status of these ingredients, has, or will be, addressed on other proposals.

Additionally, the Commissioner shares the concern of the select committee, that harmful concentrations of

[1] Jones, A. M., Y. Jones, and W. D. P. Stewart, "Mercury in Marine Organisms of the Tay Region," *Nature*, 238: 164-165, 1972.

certain heavy metals may be accumulated in commercial algae, particularly if the algae are harvested from coastal waters that are contaminated with significant levels of heavy metals. Heavy metals, such as mercury, have been found in aquatic animal life at levels exceeding those which are considered safe for human ingestion. The current Food Chemicals Codex limitation of "heavy metals as lead" lacks the element specificity that modern analytical methods can provide. Therefore, during this comment period the Commissioner will investigate the background levels of individual heavy metals (arsenic, cadmium, lead, mercury, selenium, and zinc) in samples of algae. If this investigation indicates that specific heavy metal specifications should be adopted for the continued safe use of the ingredients, such specifications will be adopted as part of the final regulation., All available data and information on heavy metal content of algae are solicited as comments on this proposal.

Copies of the scientific literature review on algae and the report of the select committee are available for review at the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22161, as follows:

Title	Order No.	Price code	Price*
Algae (scientific literature review)	PB-223-846/AS	A03	$4.50
Certain Red and Brown Algae (select committee report).	PB-285-505/AS	A02	4.00

*Price subject to change.

This proposed action does not affect the current use of red algae (dulse) and brown algae (kelp) for pet food or animal feed. Also, this proposed action does not affect the use of kelp as a source of iodine in foods for special dietary use under § 172.365.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that parts 182 and 184 be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. Part 182 is amended:

§ 182.30 [Revoked]

(a) By revoking § 182.30 Natural substances used in conjunction with spices and other natural seasonings and flavorings.

§ 182.40 [Amended]

(b) In § 182.40 Natural extractives (solvent-free) used in conjunction with spices, seasonings, and flavorings by deleting the entries for "Algae, brown," "Algae, red," "Dulse" and "Kelp (see algae, brown)."

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. By adding new § 184.1120 to read as follows:

§ 184.1120 Brown alga (Macrocystis pyrifera).

(a) Brown alga *Macrocystis pyrifera* is a seaweed harvested off the west coast of the United States. The material is dried and ground for use in food.

(b) The ingredient meets the specifications for kelp as specified in the second supplement to the Food Chemicals Codex, 2d ed. (1975).[2]

(c) The ingredient is used only as a flavor enhancer and a flavor adjuvant as defined in §§ 170.3(o) (11) and (12) of this chapter.

(d) The ingredient is used in conjunction with spices, seasonings, and flavorings as defined in § 170.3(n)(26) of this chapter at levels not to exceed good manufacturing practice, and in accordance with § 184.1(b)(2).

The Commissioner hereby gives notice that he is unaware of any prior sanction of the use of these ingredients in foods under conditions different from those proposed herein. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The regulation proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the act, and the failure of any person to come forward with proof of such an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on such sanction at any later time. This notice also constitutes a proposal to establish a regulation under part 181 (21 CFR part 181), incorporating the same provisions, in the event that such a regulation is determined to be appropriate as a result of submission of proof of such an applicable prior sanction in response to this proposal.

Interested persons may, on or before October 3, 1978, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this proposal will not have a major economic impact as defined by Executive Order 11821 (amended by Executive Order 11949) and OMB Circular A-107.

Dated: July 26, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner, Regulatory Affairs.

NOTE.—Incorporation by reference approved by the Director of the Office of the Federal Register on July 10, 1973. Referenced material is on file in the Federal Register library.

[FR Doc. 78-21379 Filed 8-3-78; 8:45 am]

[2]Copies may be obtained from: National Academy of Sciences, 2101 Constitution Avenue NW., Washington, D.C. 20037.

[4410-09]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[21 CFR Part 1308]

SCHEDULES OF CONTROLLED SUBSTANCES

Proposed Denial of Expected Prescription Drug Status

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This is a notice of proposed rulemaking issued by the Administrator of the Drug Enforcement Administration (DEA) to deny the application for an exception from certain provisions of the Controlled Substances Act applied for by Medics Pharmacetical Corp. for the product, Medigesic Plus. The effect of the present proposal would be to preserve the schedule III classification as applied to

Medigesic Plus and other products of identical formulation.

DATE: Comments should be received on or before September 5, 1978.

ADDRESS: Send comments in quintuplicate to: Administrator, Drug Enforcement Administration, U.S. Department of Justice, 1405 I Street NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT:

Howard McClain, Jr., Chief, Regulatory Control Division, Drug Enforcement Administration, telephone 202-633-1366.

SUPPLEMENTARY INFORMATION: On April 17, 1978, Medics Pharmaceutical Corp., a drug manufacturer, corresponded with the Drug Enforcement Administration and requested that its product, Medigesic Plus, be exempted from certain provisions of schedule III of the Controlled Substances Act and be listed as an excepted prescription drug instead of a schedule III product. Medigesic Plus is a formulation containing 50 mg of butalbital in combination with aspirin (225 mg), acetaminophen (160 mg) and caffeine (30 mg).

The Drug Enforcement Administration by letter dated April 26, 1978, advised Medics Pharmaceutical Corp. that Medigesic Plus did not qualify for listing as an excepted compound because the ratio of acetaminophen to butalbital in the Medigesic Plus formulation is 48 mg to 15 mg and the ratio of aspirin to butalbital is 67.5 mg to 15 mg, and according to standards used by DEA, the ratio of acetaminophen to butalbital must be at least 70 mg to 15 mg, respectively, or the ratio of aspirin to butalbital must be at least 188 mg to 15 mg, respectively. DEA further advised Medics that it was willing to consider a request for excepted status upon receipt of a formal application and data showing that the criteria used in denying the April 17, 1978, request were in error.

In response to this letter, Medics Pharmaceutical Corp. provided, in a letter dated May 10, 1978, additional data and information as required for filing by section 1308.31(a) of Title 21, Code of Federal Regulations (CFR). In its letter, Medics questioned, among other things, the reason why DEA required the ratio of acetaminophen to butalbital to be a least 70 mg to 15 mg, respectively, and further, why DEA did not accept a ratio of 48 mg to 15 mg for such substances. Further, Medics asserted in its letter that DEA had granted excepted status to two competitive products each also containing 50 mg butalbital.

The Drug Enforcement Administration responded to this letter and advised that a decision on granting or denying the application would be forthcoming upon a full evaluation by DEA of the data, information, and the merits of the application which Medics Pharmaceutical Corp. had submitted.

The Drug Enforcement Administration, and its predecessor agency, the Bureau of Narcotics and Dangerous Drugs, has, since 1968, used and currently uses criteria originally established in 1967 by the Bureau of Drug Abuse Control (BDAC) of the Food and Drug Administration (FDA) for the excepting of stimulant and depressant compounds. From 1967 until now, approximately 5,300 applications for exception from control have been considered. Of these applications, approximately 4,400 products have been granted excepted status and approximately 900 denied that status. The exception criteria, originally and still used in considering whether to except formulations containing butalbital in combination with acetaminophen, provide that the ratio of the former to the latter must be 15 mg to 70 mg, respectively.

The butalbital-to-acetaminophen ratio was included in the original exception criteria adopted by BDAC, based upon the recommendation of a panel of physicians of the Public Health Service and FDA medical officers, and has been specifically employed in considering at least 22 applications for exception. In fact, the Medigesic Plus formulation which is the subject of this notice was previously considered for exception under the trade-name Paradol by the BDAC in 1967. That application, also submitted by Medics Pharmaceutical Corp., was denied on March 10 of that year for the reason that it did not meet the established ratios of 70 mg acetaminophen or 188 mg aspirin to 15 mg butalbital for qualification as an excepted compound. Both of the competitive products mentioned by Medics Pharmaceutical Corp. were excepted because they contain butalbital and acetaminophen in the established ratios of 15 mg to at least 70 mg respectively.

To date, DEA knows of no new data, scientific studies, nor expert recommendations which state or indicate that the 70 mg acetaminophen to 15 mg butalbital ratio, as originally established, should be amended or cast aside in favor of the 48 mg acetaminophen to 15 mg butalbital ratio suggested by Medics Pharmaceutical Corp. and applied for by it for exception from certain provisions of the act associated with schedule III. Specifically, no such data, studies, or significant information to support the amending of the above-referred-to criteria were provided by the corporation to DEA in its May 10, 1978, letter or in any other fashion.

Should DEA receive data, such as animal self-administration and physical dependence studies, which would justify amending the established acetaminophen-to-butalbital ratio in favor of the ratio of those substances which the corporation suggests, DEA at that time will initiate rulemaking proceedings to propose such an amendment.

Therefore, lacking such data, the Administrator of the Drug Enforcement Administration, upon consideration of the above-referred application, the established criteria used by DEA in considering the instant application for exception, and in accordance with section 202(d) of the act (21 U.S.C. 812(d)), and 21 CFR 1308.31, hereby: (1) Publishes notice of the application submitted by Medics Pharmaceutical Corp., (2) advises that the position of the Administrator is to deny the instant application, and (3) provides, by this notice, an opportunity to Medics Pharmaceutical Corp., or any other interested person, to submit comments, objections, or requests for a hearing on the denial of the instant application. Should a hearing be requested, it shall be limited to the issue whether the criteria used by DEA in considering the instant application are arbitrary, unreasonable, or capricious, and whether in lieu thereof the ratio of 48 mg acetaminophen to 15 mg of butalbital as suggested by Medics Pharmaceutical Corp. should be adopted when applications for the excepted prescription drug status of the Controlled Substances Act are evaluated by DEA.

All interested persons are invited to submit their comments in writing regarding this proposal. These comments should state with particularity the issues concerning which the person desires to be heard.

Dated: July 28, 1978.

PETER B. BENSINGER,
Administrator, Drug Enforcement Administration.

[FR Doc. 78-21773 Filed 8-3-78; 8:45 am]

[4510-43]

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[30 CFR Part 48]

TRAINING AND RETRAINING OF MINERS

Public Hearing and Correction

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Notice of public hearing and correction to proposed rule.

SUMMARY: Public hearings on the proposed regulations for training and retraining of miners will be held in Charleston, St. Louis, and Phoenix

under the provisions of the Federal Mine Safety and Health Act of 1977. The public hearings will cover all issues raised concerning the proposed training and retraining of miners regulations (43 FR 30990, July 18, 1978).

Subpart A—Training and Retraining of Underground Miners of part 48 is corrected by deleting the exemption of underground construction workers from the requirements of the training regulations. The effect of this correction is that miners performing underground construction work will have to be trained under subpart A of part 48. Slope and shaft sinkers remain exempt from the requirements of subpart A of part 48.

DATES: Requests to make oral statements for the record at the hearings should be submitted by August 11, 1978. Public hearings will be held on August 14, 1978, in Charleston, W. Va.; August 16, 1978, in St. Louis, Mo.; and August 18, 1978, in Phoenix, Ariz.

ADDRESSES: The three public hearings scheduled will be held at the following locations on the dates indicated. Each of the hearings is scheduled from 9 a.m. to 5:30 p.m. if necessary. August 14, 1978, Charleston Civic Center, Little Theater, Reynolds Street, Charleston, W. Va. 25301; August 16, 1978, Hilton Bel Air Hotel, Mayan Room, 333 Washington Avenue, St. Louis, Mo. 63102; August 18, 1978, Phoenix Civic Plaza, Rooms S-9 and S-10, 225 East Adams Street, Phoenix, Ariz. 85004.

FOR FURTHER INFORMATION CONTACT:

Frank A. White, Office of Standards, Regulations and Variances, 4015 Wilson Boulevard, Arlington, Va. 22203, 703-235-1910.

CORRECTION: The following correction to the proposed regulation is made. In FR Doc. 78-19852 appearing at page 30990 in the FEDERAL REGISTER of July 18, 1978, the last sentence of paragraph (a) of § 48.2 appearing on page 30993 is corrected in the 11th and 12th lines of that paragraph by deleting the words "underground construction, including", immediately following the words, "this definition excludes persons performing", and immediately before the words, "the sinking of slopes and shafts".

Dated: July 27, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-21306 Filed 8-3-78; 8:45 am]

[8320-01]

VETERANS ADMINISTRATION

[38 CFR Part 3]

VETERANS BENEFITS

Ratings for Special Purposes

AGENCY: Veterans Administration.

ACTION: Proposed rulemaking.

SUMMARY: The Veterans Administration is amending its regulations concerning payment of compensation on the basis of disability or death resulting from Veterans Administration hospitalization or medical or surgical care. The need for this change results from a recent opinion of the General Counsel on the Veterans Administration. The effect of this action is to provide, in certain instances, for payment of compensation for disability or death resulting from Veterans Administration hospitalization or medical or surgical care without regard to whether there was fault or negligence of the part of the Veterans Administration.

DATES: Comments must be received on or before September 5, 1978. We propose to make these changes effective date of final approval.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. Comments will be available for inspection at the address shown above during normal business hours until September 15, 1978.

FOR FURTHER INFORMATION CONTACT:

T. H. Spindle, Jr., 202-389-3005.

SUPPLEMENTAL INFORMATION: Disability compensation is a monthly payment to a veteran for a service-connected disability. Dependency and indemnity compensation is a monthly payment to a spouse, child, or eligible parent because the veteran's death was due to a service-connected disability.

Under 38 U.S.C. 351, these benefits may also be payable where disability or death results from Veterans Administration hospitalization or medical or surgical care. The regulation implementing 38 U.S.C. 351 is 38 CFR 3.358. Paragraph (c)(3) of § 3.358 reads as follows:

(3) Compensation is not payable for either the usual or the unusual after results of approved medical care properly administered, in the absence of a showing that the disability proximately resulted through carelessness, accident, negligence, lack of proper skill, error in judgment, or similar instances of indicated fault on the part of the VA.

The concluding part of paragraph (c)(3), "or simlar instances of indicated fault on the part of the VA" purports to associate the word "accident" with other essentially synonymous words ("negligence," "carelessness," etc.) implying the necessity of the presence of some degree of fault where a person is accidentally injured due to hospitalization or medical or surgical treatment.

Based on a careful study of the legislative history of 38 U.S.C. 351, the General Counsel of the Veterans Administration has decided that Congress intended to authorize benefits for disability or death deriving from an accident or, in the alternative, from some form of negligence or fault on the part of the Veterans Administration. We are, therefore, amending paragraph (c)(3) to make clear that disability compensation or dependency and indemnity compensation may be payable for disability or death due to an accident without regard to whether the accident resulted from negligence or fault on the part of the Veterans Administration.

For the purposes of § 3.358, the word "accident" means an unforeseen or untoward event. It does not include the expected or contemplated risks of hospitalization or medical or surgical care. Consequently a death or disability resulting from hospitalization or medical or surgical care which, although unusual, is expected or foreseeable as a normal hazard of such hospitalization or medical or surgical care is not compensable under § 3.358 unless the death or disability results from negligence or fault on the part of the Veterans Administration.

ADDITIONAL COMMENT INFORMATION

Interested persons are invited to submit written comments, suggestions, or objections regarding this document to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays), until September 15, 1978. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to a VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and above room number.

Approved: July 28, 1978.

By direction of the Administrator:

RUFUS H. WILSON,
Deputy Administrator.

In § 3.358, paragraph (c)(3) is revised to read as follows:

§ 3.358 Determinations for disability or death from hospitalization, medical or surgical treatment, examinations or vocational rehabilitation training (§ 3.800).

* * * * *

(c) *Cause.* In determining whether such additional disability resulted from a disease or an injury or an aggravation of an existing disease or injury suffered as a result of training, hospitalization, medical or surgical treatment, or examination, the following considerations will govern:

* * * * *

(3) Compensation is not payable for either the contemplated or foreseeable after results of approved medical or surgical care properly administered, no matter how remote, in the absence of a showing that additional disability or death proximately resulted through carelessness, negligence, lack of proper skill, error in judgment, or similar instances of indicated fault on the part of the Veterans Administration. However, compensation is payable in the event of the occurrence of an "accident" (an unforeseen, untoward event), causing additional disability or death proximately resulting from Veterans Administration hospitalization or medical or surgical care.

* * * * *

[FR Doc. 78-21703 Filed 8-3-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 65]

[Docket No. DCO-78-9; FRC 938-8]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of an Adminstrative Order Issued by the Commonwealth of Kentucky, Department for Natural Resources and Environmental Protection to United States Department of Energy

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Commonwealth of Kentucky to the Paducah Gaseous Diffusion Plant of the U.S. Department of Energy. The order requires the facility to bring air emissions from its indirect heat exchangers, reverberatory and sweat furnaces, and induction smelter in Paducah, Ky., into compliance with certain regulations contained in the federally approved Kentucky State implementation plan (SIP) by July 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before September 5, 1978.

ADDRESS: Comments should be submitted to Director, Enforcement Division, EPA, Region IV, 345 Courtland Street NE., Atlanta, Ga. 30308. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Richard S. DuBose, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Ga. 30308, telephone 404-881-4298.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy operates a gaseous diffusion plant at Paducah, Ky.

The order under consideration addresses emissions from the indirect heat exchangers, the reverberatory and sweat furnaces, and an induction smelter at the facility. The indirect heat exchangers are subject to Kentucky Air Pollution Control Regulation 401 KAR 3:060, Section 3(3) and Section 3(4), while the reverberatory and sweat furnaces and the induction smelter are subject to Regulation 401 KAR 3:060, Section 4(3). The order also cites the facility as being in violation of Kentucky Air Pollution Control Regulation 401 KAR 3:020, Section 4(8). These regulations limit the emissions of particulate matter, sulfur dioxide, and gaseous fluorides, and are part of the federally approved Kentucky State implementation plan. The order requires final compliance with the regulations by July 1, 1979, through the implementation of schedules for the construction or installation of control equipment or through the submission of sufficient documentation to evidence that certain emission points are operating in compliance with the applicable regulation.

Regarding particulate matter emissions from the indirect heat exchangers, the implementation of the following schedule is required by the order:

(1) Award contract for installation of required control equipment, February 1, 1978.

(2) Commence on-site construction or installation of required control equipment, April 1, 1978.

(3) Complete construction or instalation of ESP No. 1, October 1, 1978.

(4) Complete construction or installation of ESP No. 2, December 1, 1978.

(5) Submit results of an acceptable source test which demonstrates compliance with applicable regulations, March 1, 1979.

The source is required to submit monthly coal analysis data in order to monitor emissions prior to the demonstration of final compliance. Also, an interim visible emission limit will be established for each boiler by collecting visible emissions data, within 60 days of the effective date of the order, while the boilers are operating under specified conditions.

Regarding sulfur dioxide emissions from the indirect heat exchangers, the facility is required to submit sufficient documentation, within 30 days after issuance of the order, to evidence that said sulfur dioxide emissions are in compliance with the applicable regulation.

Regarding particulate matter emissions from the reverberatory and sweat furnaces, the order requires this facility to conduct particulate emission tests on both furnaces not later than March 15, 1978, in order to establish the actual compliance status. The required tests were conducted on February 22, 1978, at the sweat furnace and on March 8, 1978, at the reverberatory furnace. The test results confirmed that both furnaces are operating in compliance with the applicable regulation; therefore, the compliance schedule in the order which covers these furnaces is no longer applicable.

Regarding particulate matter emissions from the induction smelter, the facility is required to demonstrate by September 1, 1978, that the emissions from the smelter are in compliance with the applicable regulation or discontinue the operation of the induction smelter until such time as compliance can be demonstrated.

The source has consented to the terms of the order and has agreed to meet the order's increments during the period of this informal rulemaking.

Because this order has been issued to a major source of particulate matter and sulfur dioxide emissions and permits a delay in compliance with the applicable regulations, it

must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection. EPA considers the above referenced order to satisfy the requirements of the applicable regulations.

If the order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the Act against the source for violations of the regulations covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Kentucky SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

The provisions of 40 CFR Part 65 will be promulgated by EPA soon, and will contain the procedure for EPA's issuance, approval, and disapproval of orders under section 113(d) of the Act. In addition, part 65 will contain sections summarizing orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 14876 (April 2, 1975), will be withdrawn, and replaced by a notice promulgating these new regulations.

(42 U.S.C. 7413, 7601.)

Dated: June 14, 1978.

JOHN C. WHITE,
Regional Administrator,
Region IV.

[FR Doc. 78-21653 Filed 8-3-78; 8:45 am]

[4110-85]

DEPARTMENT, OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 52]

GRANTS FOR RESEARCH PROJECTS

Proposed Rulemaking

AGENCY: Public Health Service, Department of Health, Education, and Welfare.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document would amend regulations applicable to grants made for research projects under sections 301, 303, 394, and 1205, Public Health Service Act. The amendments will also eliminate conflicts with DHEW policies and will extend applicability to projects supported under section 501 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970.

DATES: Comments must be received by September 18, 1978, in order to assure that the Secretary will be able to consider such comments in preparing the final regulations.

ADDRESS: Send comments on the proposed rules in duplicate to the Director, Office of Administrative Management, 5600 Fishers Lane, Parklawn Building, Room 17-25, Rockville, Md. 20857, telephone: 301-443-3921.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary, proposes to add miscellaneous amendments to part 52 of title 42, Code of Federal Regulations. Following is a summary of principal changes:

1. A statement is included to indicate that these regulations do not apply for the support of research training under the National Research Service Awards program. Regulations covering this program are published at 42 CFR part 66.

2. In accordance with the Federal budgeting and appropriation process, congressional intent, and Department policy, most projects founded by grants which will require more than 1 year to complete must be funded on an annual basis. The PHS policy PHS: 1-85, "The Project Period System of Obligating Funds for Discretionary Projects Grants," was published on December 29, 1976. The definition of "project period" in the current regulations is in conflict with stated PHS policy. Therefore, a subsection is included to revise the definition of "project period," by removing the 7 year maximum project period, and permit extension of original project periods with or without additional grant funds and making certain other conforming changes.

3. Other miscellaneous definitions for "Act," "Department," and "nonprofit" are being added for clarification.

4. The present regulations cover section 301 of the Clean Air Act and section 204 of the Solid Waste Disposal Act. Both of these programs are administered now by other Federal agencies; and regulations covering section 304 of the Public Health Service Act are published at 42 CFR part 67. Provisions making the regulations applicable to research projects supported under section 501 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 and under section 410 of the Drug Abuse Office and Treatment Act of 1972 have been added to section 52.10.

5. The subsections covering patents and inventions and publications and copyrights have been changed to conform to 45 CFR part 74, "Administration of Grants."

6. New provisions to assure compliance with applicable laws and requirements concerning human welfare, animal welfare, and nondiscrimination have been included as part of these program regulations.

NOTE.—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107. It is, therefore, proposed to revise part 52 as set forth below:

Dated: October 17, 1977.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: July 22, 1978.

HALE CHAMPION,
Acting Secretary.

1. Revise the Table of Contents to read as follows:

PART 52—GRANTS FOR RESEARCH PROJECTS

Subpart A—Applicability and Definitions

Sec.
52.1 Applicability.
52.2 Definitions.

Subpart B—Eligibility, Award, and Termination

52.10 Nature and purpose of research project grant.
52.11 Eligibility for grant.
52.12 Application for grant; invitation to apply.
52.13 Evaluation and dispostion of applications.
52.14 Grant awards.
52.15 [Reserved]

Subpart C—Grant Conditions—Obligations of Grantee

52.20 Use of funds; changes.
52.21 Principal investigators.
52.22 Patents and inventions.
52.23 Publications and copyright.
52.24 Human subjects; animal welfare.
52.25 Nondiscrimination.
52.26 Other conditions.

Subpart D—Expenditures by Grantee

52.30 Allocation of costs.
52.31 Direct costs in general.
52.32 Indirect costs.
52.33 Particular direct costs.

Subpart E—Grantee Accountability

52.40 Date of final accounting.
52.41 Accounting for grant award payments.
52.42 Postaward disputes.
52.43-52.44 [Reserved]
52.45 Final settlement.

Subpart F—Applicability of 45 CFR Part 74—HEW Administrative Requirements and Cost Principles

52.50 Grants to State and local governments.
52.51 Grants to other organizations and individuals.

2. Revise the issuing authority to read as follows:

AUTHORITY: Sec. 215, 58 Stat. 690, as amended, 63 Stat. 835 (42 U.S.C. 216); sec. 301, 58 Stat. 691, as amended, 60 Stat. 423, 62 Stat. 467, 601, 1017, 70 Stat. 490, 74 Stat. 1053, 85 Stat. 785, 86 Stat. 687, 88 Stat. 346, 360 (42 U.S.C. 241); sec. 303, 70 Stat. 929, as amended, 84 Stat. 1241, 88 Stat., 132, 346 (42 U.S.C. 242a); sec. 394, 79 Stat. 1062, as amended, 84 Stat. 63, 64, 66, 67, 87 Stat. 92, 88 Stat. 372 (42 U.S.C. 280b-5); sec. 501, 90 Stat. 1038 (42 U.S.C. 4585); sec. 1205, 87 Stat. 597 (42 U.S.C. 300d-4)

3. Revise § 52.1 of Subpart A to read as follows:

§ 52.1 Applicability.

The regulations of this part apply to grants for the support of health-related research projects set forth in § 52.10. They do not apply to general research support grants, demonstration grants, or other grants authorized by law, such as grants for the construction of research facilities (see part 57 of this chapter), for the construction of hospital or other medical facilities (see part 53 of this chapter), or the award of fellowships (see part 61 of this chapter), traineeships (see part 63 of this chapter), training grants (see part 64 of this chapter), or to the support of research training under the National Research Service Awards program (see part 66 of this chapter.)

4. Revise § 52.2 of subpart A by amending paragraph (b) and adding new paragraphs (d), (e), and (f) as follows:

§ 52.2 Definitions.

* * * * *

(b) "Project period" means the period of time which the Secretary finds is reasonably required to initiate and conduct a research project within the scope of § 52.10, including the initial period of support determined under § 52.13 and any extention of such period (with or without the award of additional funds) as authorized by § 52.20(c). The project period may include the time required for initial staffing and acquisition of facilities and for the preparation and publication of the results of the project.

* * * * *

(d) "Act" means the public Health Service Act (42 U.S.C. 201 et seq.).

(e) "Department" means the Department of Health, Education, and Welfare.

(f) "Nonprofit," as applied to a private organization, means that no part of the net earnings of such organization inures or may lawfully inure to the benefit of any private shareholder or individual.

5. Revise § 52.10 to read as follows:

§ 52.10 Nature and purpose of research project grant.

A research project grant is the award by the Secretary of funds to an institution, organization, or other person, hereinafter called the "grantee," to assist in meeting the costs of conducting for the benefit of the public health an identified activity or program, hereinafter termed the "project," that is intended and designed to establish, discover, develop, elucidate, or confirm information or the underlying mechanisms relating to:

(a) The cause, diagnosis, treatment, control, or prevention of the physical or mental diseases, injuries, or impairments of man as authorized by sections 301, 303, and related provisions of the act (42 U.S.C. 241, 242a);

(b) Medical library science and related activities and for the development and/or dissemination of new knowledge, techniques, systems, and equipment for processing, storing, retrieving, and distributing information pertaining to sciences related to health, as authorized by section 394 of the act (42 U.S.C. 380b-5);

(c) Emergency medical techniques, methods, devices, and delivery as authorized by section 1205 of the act (42 U.S.C. 300d-4); and

(d) The behavioral and biomedical etiology, treatment, mental and physical health consequences, and social and economic consequences, of alcohol abuse and alcoholism as authorized by section 501 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended by Pub. L. 94-371 (42 U.S.C. 4585).

(e) The improvement of drug maintenance techniques or programs as authorized by section 410 of the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C.1177).

6. Amend § 52.11 by redesignating paragraph (b), as paragraph (c) and inserting immediately after paragraph (a), the following new paragraph (b):

§ 52.11 Eligibility for grant.

* * * * *

(b) *Proof of nonprofit status.* In accordance with section 1-00-30 of the Department Grants Administration Manual,[1] each private institution which does not already have on file with the Department evidence of nonprofit status, must submit with its application acceptable proof of such status.

* * * * *

7. Revise the heading of § 52.12 and add at the end thereof the following new sentence:

§ 52.12 Application for grant; invitation to apply.

* * * This section shall constitute a continuing invitation for grant applications in conformity with this subpart.

8. Amend paragraph (b) of § 52.13 to read as follows:

§ 52.13 Evaluation and disposition of applications.

* * * * *

(b) *Disposition.* On the basis of the Secretary's evaluation of an application pursuant to paragraph (a) of this section and subject to such approvals, recommendations or consultations by the appropriate National Advisory Council or other body as may be required by law, the Secretary shall (1) approve, (2) defer because of either lack of funds or a need for further evaluation, or (3) disapprove support of the proposed project in whole or in part. With respect to approved projects, the Secretary shall determine the project period (subject ot extension as provided in § 52.20(c)) during which the project may be supported. Any deferral or disapproval of an application shall not preclude its reconsideration or a reapplication.

§ 52.14 [Amended]

9. Amend the first sentence of paragraphs (d), (e), and (f) of § 52.14 by substituting the words "the Secretary" for the word "he."

10. Amend § 52.20(c) to read as follows:

§ 52.20 Use of funds; changes.

* * * * *

(c) *Changes in project period.* The project period determined pursuant to § 52.13(b) may be extended by the Secretary, with or without additional grant support, for such an additional period as the Secretary determines may be required to complete, or fulfill the purposes of, the approved project.

11. Amend § 52.22 to read as follows:

[1]The Department of Health, Education, and Welfare Grants Administration Manual is available for public inspection and copying at the Department's and Regional Offices' information centers listed in 45 CFR 5.31 and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

§ 52.22 Patents and inventions.

Attention is called to the applicability of 45 CFR 74.139 governing inventions conceived or first reduced to practice in the course of the grant.

12. Amend § 52.23 to read as follows:

§ 52.23 Publications and copyright.

(a) *State and local governments.* Where the grantee is a State or local government as those terms are defined in subpart A of 45 CFR part 74, the Department copyright requirement set forth in 45 CFR 74.140 shall apply with respect to any book or other copyrightable materials developed or resulting from an activity supported by a grant under this part.

(b) *Grantees other than State and local governments.* Except as may otherwise be provided under the terms and conditions of the award, where the grantee is not a State or local government as those terms are defined in subpart A of 45 CFR part 74, the grantee may copyright without prior approval any publications, films, or similar materials developed or resulting from an activity supported by a grant under this part, subject to a royalty-free, non-exclusive, and irrevocable license or right in the government to reproduce, translate, publish, use, disseminate and dispose of such materials, and to authorize others to do so.

13. Amend § 52.24 (presently reserved) to read as follows:

§ 52.24 Human subjects; animal welfare.

The regulation at 45 CFR part 46 and the provisions in the Department Grants Administration Manual (chapter 1-43) are applicable to applications for grants under this part.

14. Revise § 52.25 to read as follows:

§ 52.25 Nondiscrimination.

Recipients of grants under this part are advised that in addition to complying with the terms and conditions of these regulations, the following laws and regulations are applicable:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 *et seq.*) and its implementing regulation, 45 CFR part 80 (prohibiting discrimination in federally assisted programs on the ground of race, color or national origin);

(b) Where the recipient is an educational institution, title IX of the Educational Amendments of 1972 (20 U.S.C. 1681 *et seq.*) and its implementing regulation, 45 CFR part 86 (prohibiting discrimination on the basis of sex in federally assisted education programs);

(c) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and its implementing regulation, 45 CFR part 84 (prohibiting discrimination in federally assisted programs on the basis of handicap).

§ 52.33 [Amended]

15. Amend § 52.33 by deleting the term "Surgeon General" in second sentence of paragraph (c) and inserting "Secretary" in lieu thereof, and by deleting from paragraph (d) the third sentence beginning with the words "Whenever grant funds are used * * *"

16. Amend § 52.42 (presently reserved) to read as follows:

§ 52.42 Postaward disputes.

Attention is called to the fact that in the event of certain postaward disputes (such as adverse determinations relating to termination or validity of grants, or allowability of expenditures) between the grantee and the awarding component of the Public Health Service, the grantee may be entitled to appeal such adverse determination under procedures established in subpart D of part 50 of this chapter.

17. Amend § 52.51 to read as follows:

§ 52.51 Grants to other organizations and individuals.

The relevant provisions of the following subparts of 45 CFR part 74 shall apply to all grants under this part to individuals and to organizations other than State and local governments as those terms are defined in subpart A of 45 CFR part 74:

45 CFR PART 74

Subpart
A—General.
B—Cash depositories.
C—Bonding and insurance.
D—Retention and custodial requirements for records.
F—Grant-related income.
G—Matching and cost sharing.
K—Grant payment requirements.
L—Budget revision procedures.
M—Grant closeout, suspension and termination.
O—Property.
Q—Cost principles.

§ 52.52 [Deleted]

18. Delete § 52.52.

[FR Doc. 78-21142 Filed 8-3-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[BC Docket No. 78-225; RM-3077]

FM BROADCAST STATION IN ELK CITY, OKLA. AND CHILDRESS, TEX.

Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the substitution of a class C FM channel for a class A channel at Elk City, Okla., and the substitution of one class A for another at Childress, Tex. Petitioner, Beckham Broadcasting Co., states the proposed class C station in Elk City could provide for service to a larger area and population.

DATES: Comments must be received on or before September 22, 1978, and reply comments must be received on or before October 12, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: July 24, 1978.
Released: July 28, 1978.

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations. (Elk City, Okla. and Childress, Tex.). BC Docket No. 78-225, RM-3077.

By the Chief, Broadcast Bureau:

1. The Commission herein considers a petition for rulemaking,[1] filed by Beckham Broadcasting Co. ("petitioner"), licensee of full-time AM station KADS, Elk City, Okla., which seeks the substituion of class C FM channel 243 for channel 232A (unoccupied and unapplied for) at Elk City. Since the proposed assignment otherwise would be short-spaced to channel 244A (unoccupied) at Childress, Tex., channel 240A would be substituted at Childress. The proposed substitution of channels could be made in conformity with the minimum distance separation requirements. No responses to the proposal were received.

2. Elk City (pop. 7,323), in Beckham County (pop. 15,754),[2] is located approximately 180 kilometers (112 miles) west of Oklahoma City, Okla. It is served by full-time class IV AM station KADS, licensed to petitioner.

[1] Public notice of the petition was given on Mar. 29, 1978, report No. 1111.

[2] Population figures are taken from the 1970 U.S. Census.

3. Childress (pop. 5,408), seat of Childress County (pop. 6,605), is located approximately 360 kilometers (222 miles) northwest of Dallas and 170 kilometers (108 miles) southeast of Amarillo, Tex. Childress is served by daytime-only AM station KCTX. FM channel 244A (unoccupied) is assigned to Childress.

4. Petitioner asserts that a class C FM station could reach a much larger audience than a class A FM station, something which is especially important during periods when it is necessary to provide severe weather information to the residents in the outlying areas. It states that its AM station is limited to a low power operation during the presunrise and nighttime hours when the need for weather information is the greatest. Petitioner points out that Elk City, what it describes as the gas capital of the world, continues to grow in population. We are told that, because of the oil development in the area, it is estimated by the State census poll that Elk City's population has grown from 7,323 in 1970 to 8,500 in 1975, and the City Chamber Office has estimated that the county population increased fivefold since 1970.

5. *Preclusion studies:* A preclusion study indicates that nine communities [3] of over 2,000 population would be precluded of assignments as a result of the Elk City proposal. None of these communities has an FM assignment or an AM station. Petitioner should indicate in comments whether alternate channels are available for assignment to these communities.

6. Petitioner has submitted combined *Roanoke Rapids* [4] and *Anamosa* [5] showings for first and second FM and first and second nightime aural service. However, separate figures for first and second FM and first and second aural service need to be submitted, based on a class C FM station operating with reasonable facilities (or greater in the event the station is already authorized greater facilities) and stations on all unoccupied assignments in the area operating with reasonable facilities values. Additionally, assumed maximum facilities for the currently assigned channel 232A at Elk City should be included in making these calculations.

7. Since the proposed class C channel for Elk City could provide service to unserved and underserved areas and populations, and a substitute class A channel is available at Childress, Tex., we believe that consideration of the proposal described above is warranted.

8. In view of the above, the Commission proposes to amend the FM table of assignments (section 73.202(b) of the Commission's rules) with regard to the cities listed below:

City	Channel No. Present	Proposed
Elk City, Okla	232A	243
Childress, Tex	244A	240A

9. The Commission's authority to institute rulemaking proceedings; showings required; cut-off procedures; and filing requirements are contained in the attached Appendix and are incorporated herein.

Note.—A showing of continuing interest is required by paragraph 2 of the appendix before a channel will be assigned.

10. Interested parties may file comments on or before September 22, 1978, and reply comments on or before October 12, 1978.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and section 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM table of assignments, section 73.202(b) of the Commission's rules and regulations, as set forth in the notice of proposed rulemaking to which this appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the notice of proposed rulemaking to which this appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also state its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (see § 1.420(d) of Commission rules.)

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this notice, they will be considered as comments in the proceeding, and public notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in sections 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the notice of proposed rulemaking to which this appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of section 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc.78-21622 Filed 8-3-78; 8:45 am]

[3510-22]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 611]

AMENDMENT TO PRELIMINARY FISHERY MANAGEMENT PLAN

The Trawl Fishery of the Washington, Oregon, and California Region: Proposed Regulations Changing Total Allowable Level of Foreign Fishing

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Notice of proposed rulemaking and preliminary fishery management plan amendment, changing total allowable level of foreign fishing (TALFF), and request for comments.

SUMMARY: This notice proposes an amendment to the preliminary management plan entitled Trawl Fishery of the Washington, Oregon, California Region as amended (42 FR 8578), which was published on February 10, 1977. The plan provides conservation and management measures for foreign trawl fisheries in the Washington, Oregon, California region. This proposed amendment decreases estimates of U.S. capacity, and increases the total allowable level of foreign fishing in 1978. The proposed implementing regulations would amend 50 CFR part 611 by raising the total allowable levels of foreign fishing for Pacific hake and incidentally caught species.

EFFECTIVE DATE: Comments will be received until August 7, 1978.

[3] *Texas:* Canadian (pop. 2,292), Electra (3,895); *Oklahoma:* Sayre (2,712), Mangum (4,066), Hollis (3,150), Waltus (2,611), Marlow (3,495); *Kansas:* Hugoton (2,739), Elkhart (2,089).

[4] *Roanoke Rapids-Goldsboro, N.C.*, 9 FCC 2d 672 (1967).

[5] *Anamosa-Iowa City, Iowa*, 46 FCC 2d 520 (1974).

ADDRESS: Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Washington, D.C. 20235. Please mark "Pacific Hake" on outside of the envelope.

FOR FURTHER INFORMATION CONTACT:

Donald R. Johnson, Regional Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Wash. 98109, telephone 206-442-7575.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On February 10, 1977, a preliminary fishery management plan (PMP) prepared by the Secretary of Commerce was published in the FEDERAL REGISTER (42 FR 8578). The PMP established conservation and management measures for the foreign trawl fisheries of the Washington, Oregon, California region under authority of section 201(g) of the Fishery Conservation and Management Act, 16 U.S.C. 1801 (FCMA). The PMP was subsequently amended on November 30, 1977 (42 FR 60945). Implementing regulations for 1978 were published on November 28, 1977 (42 FR 60682). This proposed amendment would implement a reassessment of U.S. capacity and the predicted U.S. catch of Pacific hake. since the optimum yield (OY) remains constant, this reassessment of U.S. capacity, which is 31,000 metric tons less than the original assessment, means that 31,000 additional metric tons can be added to the total allowable level of foreign fishing (TALFF).

IMPACT: The proposed amendment and regulations are not expected to have an adverse impact on the hake resource or on domestic fishermen. The OY remains unchanged.

The high initial estimate of U.S. capacity was due to proposed joint venture processing operations which have now been postponed. Foreign fleets are expected to reach their current hake allocations in the near future. This was unanticipated when the foreign fishing season opened in June. This midseason reasssessment of U.S. harvesting capacity was discussed in a supplemental environmental impact statement made available for public comment in November 1977 (42 FR 60945). No comments on this matter were received. Also, the proposed reallocation was discussed publicly at the Pacific Fishery Management Council meetings in June and July. There were no comments made which were adverse to the proposal, and it was unanimously approved by the council on July 14, 1978.

AUTHORITY: 16 U.S.C. 1801 et seq.

THE CHANGES TO THE PMP: Change expected U.S. catch from 41,000 metric tons to 10,000 m.t. and TALFF from 89,000 m.t. to 120,000 m.t. in section 2.2.2—table 6 (p. 53); section 2.3.2.1 (p. 52); section 11.0 (p. 82); section 12.2 (p. 84).

Change section 2.3.2.2 Rockfishes from 710 m.t. to 960 m.t.

Change section 12.2 to indicate the following changes in incidental catches:

Species	Incidental catches only, totals not to exceed—
Pacific Ocean perch and other rockfishes.	0.008×allocation of hake=960 m.t.
Flounders	0.001×allocation of hake=120 m.t.
Sablefish	0.001×allocation of hake=120 m.t.
Others	0.005×allocation of hake=600 m.t.

Signed this 28th day of July 1978 at Washington, D.C.

WINFORD N. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

50 CFR 611.20 is amended by revising table 1 of paragraph (c) as follows:

§ 611.20 Total allowable level of foreign fishing.

* * * * *

(c) The following table lists the TALFF's by species and ocean areas for 1978:

TABLE I

Species code	Species	Ocean area	Initial TALFF (metric tons)	U.S. capacity review date
212	Butterfish	Northwest Atlantic	4,000	June 15
105	Hake, red	do	27,400	Do.
104	Hake, silver	do	45,400	Do.
309	Herring, river	do	500	Do.
204	Mackeral, Atlantic	do	1,200	Do.
499	Other Finfish, Atlantic	do	[1]46,800	Do.
502	Squid, long-finned	do	19,000	Do.
504	Squid, short-finned	do	23,500	Do.
002 and 003	Flounders, including yellowfin sole.	Northeast Pacific (California, Oregon, and Washington).	[1]120	July 31
009	Hake, Pacific	do	120,000	Do.
010	Mackeral, jack	do	4,000	Do.
011 and 012	Rockfishes including Pacific ocean perch.	do	[1]960	Do.
007	Sablefish	do	[1]120	Do.
099	Other species	do	[1]600	Do.
006	Cod, Pacific	Gulf of Alaska	[2]16,980	Mar. 31 June 30 Aug. 31 Oct. 31
002 and 003	Flounders, including yellowfin sole.	do	[2]17,600	Do.
008	Mackeral, Atka	do	24,800	Do.
011	Perch, Pacific ocean	do	[2]18,900	Do.
005	Pollock	do	[2]117,340	Do.
012	Rockfishes, other than Pacific ocean perch..	do	[2]4,080	Do.
007	Sablefish	do	[1][2]8,000	Do.
001	Squid	do	[2]1,600	Do.
099	Other species	do	[2]12,960	Do.
006	Cod, Pacific	Aleutians and Bering Sea	[4]56,500	Do.
003	Flounders, other than yellowfin sole.	do	139,000	Do.
014	Herring, Pacific	do	8,670	Do.
008	Mackeral, Atka	do	24,800	Do.
011	Perch, Pacific ocean	do	21,500	Do.
005	Pollock	do	950,000	Do.
007	Sablefish	Aleutians	1,500	Do.
007	Sablefish	Bering Sea	[2]2,400	Do.
006	Snails (meats)	do	3,000	Do.
002	Sole, yellowfin	Aleutians and Bering Sea	106,000	Do.
001	Squid	do	10,000	Do.
017 and 018	Tanner Crab	do	Reserved	Do.
099	Other species	do	93,600	Do.
080, 081, and 099	Armorhead, alfousins, and other groundfish.	Western Pacific	[5]2,000	July 31

[1] Incidental catch only.

[2] Comprised of: (1) 4,800 metric tons for directed longline and trap fishery; and (2) 3,200 metric tons for incidental catch in trawl fishery.

[3] Does not include an additional amount held in reserve equivalent to 20 percent of the optimum yield.

[4] Does not include 1,500 metric tons held in reserve.

[5] The TALF for armorhead, alfousins, and other groundfish resources is subject to additional restrictions on total effort by foreign fishing vessels. No more than 50 vessel days of trawling and 50 vessel days of bottom longlining will be allowed in this fishery.

[FR Doc. 78-21439 Filed 8-3-78; 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.

[3410-02]

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

GRAIN STANDARDS

Name Change for Lubbock Grain Exchange, Inc., Lubbock, Tex.

Notice is hereby given that the Lubbock Grain Exchange, Inc., which is designated under section 7(f) of the U.S. Grain Standards Act (7 U.S.C. 79(f)) to operate as an official agency at Lubbock, Tex., has changed its name to Lubbock Grain Inspection & Weighing, Inc. The change in name does not involve a change in management or ownership.

As a point of clarification, it should be noted that the U.S. Grain Standards Act (7 U.S.C. 71 et seq.) (act), has been amended by Pub. L. 94-582, effective November 20, 1976, and by Pub. L. 95-113, effective October 1, 1977, to extensively modify the official inspection system. The amended act provides that the Administrator of the Federal Grain Inspection Service (FGIS), after conducting investigations and other studies, will designate official agencies at the various interior points.

In implementing these provisions, FGIS is currently in the process of reviewing the designations of all agencies presently designated to provide official inspection services. The amended act further provides that existing agencies may continue to operate until the Administrator either grants or denies such designation to them or sets a period of time for their termination, not to exceed November 20, 1978.

Therefore, the official agency designation of the Lubbock Grain Inspection & Weighing, Inc., will continue until the Administrator of FGIS either grants or denies designation to the Lubbock Grain Inspection & Weighing, Inc., under the amended act.

(Sec. 4, Pub. L. 94-582, 90 Stat. 2868 (7 U.S.C. 75a); sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note).)

Effective date: This notice shall become effective August 4, 1978.

Done in Washington, D.C., on August 1, 1978.

L. E. BARTELT,
Administrator.

[FR Doc. 78-21716 Filed 8-3-78; 8:45 am]

[3410-11]

Forest Service

INTENT TO PREPARE AN ENVIRONMENTAL STATEMENT

Public Meetings

The Santa Fe National Forest, located in Los Alamos, Mora, Rio Arriba, Sandoval, San Miguel, and Santa Fe counties, N. Mex., will initiate the development of a land management plan July 17, 1978, and develop a draft environmental statement by June 30, 1979.

This plan will update and integrate all existing Forest resource plans in accordance with proposed regulations developed for implementing Forest planning under the National Forest Management Act of 1976.

The public is being provided the opportunity to participate in addressing and resolving Santa Fe National Forest public issues, management concerns, and opportunities, as well as formulating alternatives for future management direction.

Times, dates, and locations of scheduled public meetings for identifying Forest issues, concerns, and opportunities follow:

Place, Time, and Date

Pecos School, 7:30-10 p.m., August 11, 1978.
Village of Jemez (American Legion Hall), 7-10 p.m., August 17, 1978.
Santa Fe (Sweeney Convention Center), 7-10 p.m., August 18, 1978.
Las Vegas Ranger Station, 2-5 p.m., August 19, 1978.
Espanola (Lucero Center), 7-10 p.m., August 25, 1978.
Los Alamos (Fuller Lodge), 2-10 p.m., August 26, 1978.
Gallina (high school), 7-10 p.m., August 31, 1978.
Cuba (high school), 7-10 p.m., September 1, 1978.
Albuquerque (Old Town Sheraton Inn), 7-10 p.m., September 8, 1978.

The Forest will utilize an interdisciplinary team approach and other public entities will have the opportunity to participate. Team composition will include individuals representing many disciplines including biological, physical, economical, and social in simultaneous problem solving.

All interested publics who attend any of the public meetings or express interest in the planning effort, either by written comments or oral statements will be kept informed throughout the process.

Comments, concerns, and information pertaining to this developing planning effort may be obtained from or submitted in writing to the responsible Forest official: Christobal B. Zamora, Forest Supervisor, Santa Fe National Forest, P.O. Box 1689, Santa Fe, N. Mex. 87501, phone 505-988-6549.

Dated: July 25, 1978.

GARY E. CARGILL,
Acting Regional Forester,
Region 3.

[FR Doc. 78-21628 Filed 8-3-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Docket 33019]

CHICAGO-MIDWAY EXPANDED SERVICE PROCEEDING

Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on September 26, 1978, at 10 a.m. (local time), in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C., before Administrative Law Judge Ronnie A. Yoder.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to Order 78-7-41 which is in the docket on file in the Docket Section of the Civil Aeronautics Board. In order to facilitate the conduct of the conference, parties and applicants for intervention are instructed to submit with respect to each phase of the hearing specified in Order 78-7-41 (one copy to each party and six copies to the judge): (1) Proposed statements of issues; (2) proposed stipulations; (3) proposed requests for information and for evidence; (4) statements of position; and (5) proposed procedural dates. The Bureau of Pricing and Domestic Aviation will circulate its material on or before August 28, 1978, and

the other parties on or before September 11, 1978. The submissions of the other parties shall be limited to points on which they differ with the Bureau, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., July 31, 1978.

RONNIE A. YODER,
Administrative Law Judge.

[FR Doc. 78-21639 Filed 8-3-78; 8:45 am]

[6320-01]

[Docket 32965]

NORTHWEST AIRLINES, INC., ENFORCEMENT PROCEEDING

Hearing

The hearing herein will be held at 10 a.m. on September 18, 1978, in Room 1003, Hearing Room B, Universal Building North, 1875 Connecticut Avenue NW., Washington, D.C.

Dated at Washington, D.C., the 31st of July 1978.

RUDOLF SOBERNHEIM,
Administrative Law Judge.

[FR Doc. 78-21638 Filed 8-3-78; 8:45 am]

[6320-01]

[Order 78-7-131, Dockets 32287, 32288]

NATIONAL AIRLINES, INC.

Order to Show Cause and Denying Temporary Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 25th day of July 1978.

On march 22, 1978, National Airlines applied for an amendment of its certificate for Route 39 to delete Panama City, Fla. Simultaneously, it filed an application seeking a temporary suspension of service at Panama City, effective June 13, 1978, until 90 days after final decision on its deletion request.

In support National alleges that: it has made a conscientious effort to develop Panama City traffic, but its service is unprofitable [1] and there is no appearance of a near term increase in either traffic or revenue; Southern Airways provides extensive service between Panama City and the city's major destinations; traffic is insufficient to support two certificated carriers; and the public will not be disadvantaged significantly by National's suspension.

The Tallahassee parties [2] objected to the deletion application and the Bay County Chamber of Commerce (Panama City) answered both applications. These civic parties urge the Board to consolidate National's applications with others [3] in an investigation of the air service needs across northern Florida to Mobile and New Orleans before allowing National to abandon Tallahassee and Panama City or granting improved regional authority to any carrier.

We have decided: (1) To issue an order to show cause which proposes to make National authority at Panama City permissive and to improve Southern's authority in certain Panama City markets [4], and (2) to deny National's suspension request.

We have tentatively concluded, on the basis of the tentative findings below, that the public convenience and necessity require the amendment of National's certificate to make its Panama City authority permissive and the amendment of Southern's certificate to authorize Panama City-Mobile/Washington/New York nonstop service.

National will be able to exist Panama City at will, but, by our making its authority permissive instead of deleting it, the carrier will also be able to resume service should its assessment of the markets change, without the costly delay otherwise required to obtain our approval. As we noted in the *Improved Service to Wichita Case,* Order 78-3-78, we view the possible preemptive effect of such dormant authority as small, and counterbalanced by its use as a competitive spur.

National's original authority at Panama City has not been expanded significantly.[5] It is confined to east-west and south service. Operations to the north must be via Jacksonville (the route junction point for Routes 31 and 39). To the west, National is restricted from providing nonstop service west of Houston. Consequently, the Panama City markets which National has served nonstop are relatively small, with short-stage lengths. Pensacola 92 miles west of Panama City, accounted for 620 O&D passengers during fiscal year 1977. Jacksonville and Tallahassee, 239 and 81 miles east of Panama City, had 3,400 and 470 O&D passengers, respectively. True O&D traffic in the Tampa market, National's largest Panama City market, amounted to less than 12 one-way passengers daily. See Appendices A and C. It appears that even strong traffic growth would not support service by a trunk carrier.[6] National wishes to concentrate on larger markets requiring larger aircraft, than can be profitably operated in these markets. The carrier should be free to do so.

The best service is likely to be offered by a carrier whose cost structure provides it with strong incentives to specialize in such markets. Southern, a local service carrier, already has nonstop authority in several Panama City markets, including Atlanta, Miami, Orlando, New Orleans, and Jacksonville. Its best Panama City-Washington/New York authority is two-stop, and its best Panama City-Mobile authority is one-stop. We propose to amend Southern's certificate for Route 98 to permit nonstop flights in all three markets. The availability of strong backup traffic, including existing Mobile-New Orleans and Florida-north traffic, as well as the use of DC-9 aircraft, suitable for the small markets involved, leads us to believe that Southern has the incentives to provide responsive service. Moreover, the proposed grant of authority is consistent with the Board's policy of removing restrictions which serve no useful purpose and which are otherwise wasteful and undesirable.[7] Southern's route realignment application, in fact, requests nonstop authority in these markets.[8] Conferring increased authority on Southern will permit the carrier to provide service in response to demand.[9] Accordingly, we tentatively

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[1] For the year 1977, National experienced a loss of $1,100,455 on a fully allocated basis. See Appendix C for National's service pattern.

[2] The city of Tallahassee and the Tallahassee Chamber of Commerce.

[3] Docket 31437 (National's request for deletion at Tallahassee), Docket 31680 (Southern's request for a new segment—Atlanta, Pensacola, Tallahassee, Gainesville, Tampa/St. Petersburg/Clearwater, Orlando, Melbourne, West Palm Beach, and Miami), Docket 31917 (Coastal Airlines' request for a certificate—Jacksonville, Gainesville, Panama City, Pensacola, Mobile, and New Orleans), and Docket 32060 (Southern's application for a route realignment).

[4] We also tentatively find that National and Southern are fit, willing, and able within the meaning of section 401 of the act. Since the proposed certificate amendments will induce, at most, only a minor transfer of operations, our actions will not result in a major Federal action significantly affecting the quality of the environment within the meaning of the National Environmental Policy Act of 1969 or a major regulatory action under the Energy Policy and Conservation Act of 1975.

[5] The relevant portion of National's original Route 39, acquired under the act's grandfather clause in 1939, extended from Jacksonville through Tallahassee, Panama City, Pensacola and Mobile to New Orleans. In the *Florida Trunkline Case,* 11 CAB 943, Panama City was added as an intermediate point on National's Tampa-Pensacola segment. However, by Order 73-2-90, Southern was awarded authority (1) between memphis and Jacksonville with Panama City and Tallahassee as intermediate points, and (2) Memphis and Miami via Panama City, Tallahassee and Orlando.

[6] Our determination is reinforced by the fact that National averaged 18 passengers enplanements per scheduled departure performed in 1977 on its 136-seat aircraft.

[7] Order 78-4-109.

[8] Docket 32060.

[9] Our proposal does not cover every market which could have been served by National. To consider other National on-line markets, such as Tampa and Houston, at

Footnotes continued on next page

find that the public convenience and necessity require the amendment of Southern's certificate for Route 98 to permit nonstop Panama City-Mobile/Washington/New York services on a subsidy-ineligible basis.[10]

We have also decided to deny National's suspension request. Until final resolution of the deletion issue, we wish to maintain National's authority, albeit on a permissive basis. We agree with the various civic parties that the air service needs of northern Florida should be reexamined. In Order 78-7-128, issued simultaneously, we have consolidated the applications of Coastal and Southern in Dockets 31917 and 31680 (see n. 3, *supra*) and instituted a proceeding to investigate the needs of Tallahassee, Panama City and various Florida Panhandle and Gulf Coast points.

Interested persons will be given 30 days following adoption of this order to show cause why our tentative findings and conclusions should not be made final. We expect such persons to support their objections, if any, with detailed answers, specifically setting forth the tentative findings and conclusions to which objection is taken. Such objections should be supported by legal precedent or detailed economic analysis. If an evidentiary hearing is requested, the objector should state in detail why a hearing is considered necessary and what relevent and material facts he would expect to establish through a hearing that cannot be established in written pleadings. General, vague, or unsupported objections will not be entertained.

Accordingly, *it is ordered*, That: 1. All interested persons are directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated here and amending the certificates of public convenience and necessity of:

(a) National Airlines, Inc. for Route 39 to make its authority at Panama City permissive; and

(b) Southern Airways, Inc. for Route 98 to:

(i) delete the following from paragraph 4 (a): "or Panama City, Fla.,"

(ii) add a new paragraph as follows: "Notwithstanding the linear route description in this certificate, the holder may schedule and operate nonstop flights between Panama City, Fla., on the hand, and Mobile, Ala., Washington, D.C., or New York, N.Y.-Newark, N.J., on the other;"

2. Any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth in this order shall, within 30 days of the date of adoption of this order, file with the Board and serve on all persons listed in paragraph 6 a statement of objections together with a summary of testimony, statistical data and other evidence expected to be relied on to support the stated objections. Answers to such objections shall be filed no more than 1 days later;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters and issues raised before further action is taken by the Board; [11]

4. In the event no objections are filed to any part of this order, all further procedural steps relating to such part or parts will be deemed to have been waived, and the case will be submitted to the Board for further action;

5. The application of Natinonal Airlines in Docket 32288 for authority to suspend temporarily be denied; and

6. Copies of this order shall be served on all persons specified in the service list of Dockets 32287 and 32288, and Coastal Airlines, Inc.;

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[12]

PHYLLIS T. KAYLOR,
Secretary.

Footnotes continued from last page

which Southern possesses no authority, might invite applications from carriers interested only in new long-haul opportunities and not in the Panama City markets. See the *Service to Richmond Case*, Order 72-12-112, p. 3, n. 4. The proposed amendments are solely in the nature of restrictions removals.

[10] Except for Panama City-Jacksonville nonstop operations, Southern's Panama City services are ineligible for subsidy. We propose to include the new authority in Category II.

[11] All motions and/or petitions for reconsideration shall be filed within the period allowed for filing objections and no further motions, requests or petitions for reconsideration of this order will be entertained.

[12] All Members concurred.

Appendix A

Panama City's Top Ten O&D Markets

Market	Traffic 1/ Year Ended 6/30/77	National's Authority	Mileage	National's Service 2/	Other Service 2/	On-line National Traffic	Southern's Authority
Atlanta	16,730	1-stop 4/	247	-	8 nonstops	10	nonstop
Tampa	8,200	nonstop	251	-	-	9,140	-
Miami	7,560	nonstop	449	-	2 1-stops 2 2-stops	4,560	nonstop
New York/Newark	7,510	1-stop	978	-	-	1,280	2-stop
Orlando	6,480	1-stop	288	-	2 nonstops 2 1-stops	1,210	nonstop
Washington, D.C.	6,350	1-stop	767	-	-	890	2-stop
New Orleans	4,300	nonstop	267	2 1-stops	-	10,330	nonstop
Chicago	3,500	-	812	-	-	-	1-stop
Jacksonville	3,400	nonstop	239	-	-	3,960	nonstop
Houston	3,120	nonstop	577	1 2-stop	-	4,060	-

1/ Table 8 true O&D.
2/ One-way flights five or more days per week.
3/ Table 10 traffic.
4/ One-stop via San Francisco.

Appendix B

Historical Departures and Enplanements at Panama City

	National			Southern		
Year/Quarter	Departures	Enplanements	Enplanements/ Departures	Departures	Enplanements	Enplanements/ Departures
1973/I	444	5,557	12.5	617	8,745	14.2
/II	449	7,028	15.7	634	12,401	19.6
/III	458	7,478	16.3	638	13,410	12.0
/IV	454	6,158	13.6	636	10,439	16.4
CY 1973	1,805	26,221	14.5	2,525	44,995	17.8
1974/I	441	6,291	14.3	599	11,110	18.5
/II	453	7,567	16.7	631	14,960	23.7
/III	69*	1,215	17.6	641	17,705	27.6
/IV	269*	3,291	12.2	612	11,709	19.1
CY 1974	1,232	18,364	14.9	2,483	55,484	22.3
1975/I	439	5,386	12.3	678	10,162	15.0
/II	454	6,192	13.6	730	13,544	18.6
/III	306*	4,674	15.3	633	14,778	23.3
/IV	- *	-	-	618	14,107	23.8
CY 1975	1,199	16,252	13.6	2,659	52,591	19.8
1976/I	317*	4,116	13.0	606	11,636	19.2
/II	362	6,546	18.1	635	14,732	23.2
/III	360	6,924	19.2	634	14,276	22.5
/IV	356	6,363	17.9	522	11,698	22.4
CY 1976	1,395	23,949	17.2	2,397	52,342	21.8
1977/I	358	6,170	17.2	507	11,451	22.6
/II	359	7,191	20.0	514	14,374	28.0
/III	307	5,867	19.1	739	15,860	21.5
/IV	184	2,573	14.0	792	14,774	18.7
CY 1977	1,208	21,801	18.0	2,552	56,459	22.1

* Strike quarters
Departures are scheduled departures performed.

Appendix C

National's Panama City Schedules
July 1, 1978

Flight 27	Points	Flight 26
Daily Except Sat. and Sun.		Daily Except Sat. and Sun.
	San Francisco	X
	Las Vegas	X
	Houston	X
X	New Orleans	X
X	Pensacola	X
X	Panama City	X

Southern's Panama City Schedules
July 1, 1978

Flight No. Frequency	220 Daily	232 Daily	532 Daily	POINTS	225 Daily	233 Daily	527 Daily
			X	Atlanta			X
	X	X		Miami	X	X	
	X	X		Orlando	X	X	
		X		Tallahassee	X		
	X	X	X	Panama City	X	X	X
	X	X	X	Atlanta	X	X	X

[FR Doc. 78-21757 Filed 8-3-78; 8:45 am]

[3510-13]

U.S. DEPARTMENT OF COMMERCE

National Bureau of Standards

COMMERCIAL STANDARD

Action on Proposed Withdrawal

In accordance with § 10.12 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR part 10), notice is hereby given of the withdrawal of Commercial Standard CS 247-62, "TFE-Fluorocarbon (Polytetrafluoroethylene) Resin Flexible Hose (Wire Braid Reinforced)." It has been determined that this standard is technically inadequate, no longer used by the industry, and no longer in the public interest to maintain.

This action is taken in furtherance of the Department's announced intentions as set forth in the public notice appearing in the FEDERAL REGISTER of May 18, 1978 (43 FR 21496), to withdraw this standard.

The effective date for the withdrawal of this standard will be on October 3, 1978. This withdrawal action terminates the authority to refer to this standard as a voluntary standard developed under the Department of Commerce procedures.

Dated: July 31, 1978.

ERNEST AMBLER,
Director.

[FR Doc. 78-21683 Filed 8-3-78; 8:45 am]

[3510-13]

SIMPLIFIED PRACTICE RECOMMENDATION

Action on Proposed Withdrawal

In accordance with § 10.12 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10), notice is hereby given of the withdrawal of Simplified Practice Recommendation R-257-55, "Thermal Conductance Factors for Preformed Above-Deck Roof Insulation."

It has been determined that this standard is technically inadequate and that revision would serve no useful purpose because the subject matter of R-257-55 is adequately covered by the American Society for Testing and Materials standard ASTM C-855-77, "Thermal Resistance Factors for Preformed Above-Deck Roof Insulation."

This action is taken in furtherance of the Department's announced intentions as set forth in the public notice appearing in the FEDERAL REGISTER of May 18, 1978 (43 FR 21497), to withdraw this standard.

The effective date for the withdrawal of this standard will be on October 3, 1978. This withdrawal action terminates the authority to refer to this standard as a voluntary standard developed under the Department of Commerce procedures.

Dated: July 31, 1978.

ERNEST AMBLER,
Director.

[FR Doc. 78-21682 Filed 8-3-78; 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 AIR FORCE, AF/JACP, 1900 Half Street SW., Washington, D.C. 20324.

Patent application 880,750: Sliding Air Seal for Electronic Assemblies; filed February 23, 1978.

U.S. DEPARTMENT OF AGRICULTURE, Research Agreements and Patents Branch, General Services Division, Federal Building, Agricultural Research Service, Hyattsville, Md. 20782.

Patent application 839,711: Preparation of Protein Concentrates from Whey and Seed Products; filed October 5, 1977.

Patent 4,035,349: Inhibiting the Formation of Lysinoalanine; filed June 9, 1975; patented July 12, 1977; not available NTIS.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Md. 20014.

Patent 4,078,052: Large Unilamellar Vesicles (LUV) and Method of Preparing Same; filed June 30, 1976; patented March 7, 1978; not available NTIS.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets NW., Washington, D.C. 20590.

Patent application 848,851: Process for Reducing Molten Furnace Slags by Carbon Injection; filed November 7, 1977.

Patent application 853,700: Cartridge for Grouting an Anchor Element in a Hole of a Support Structure; filed November 21, 1977.

Patent application 860,249: Recovery of Metals from Sea Nodules; filed December 13, 1977.

Patent application 870,161: Separation of Plastics by Flotation; filed January 17, 1978.

Patent application 874,953: Trigger Device for Explosion Barrier; filed February 3, 1978.

Patent 4,053,305: Recovery of Copper and Silver from Sulfide Concentrates; filed October 15, 1976; patented October 11, 1977; not available NTIS.

Patent 4,062,744: Extraction of Copper from Sulfide Ores; Filed July 16, 1976; patented Dec. 13, 1977; not available NTIS.

Patent 4,066,992: Seismic Mine Monitoring System; filed October 9, 1975; patented January 3, 1978; not available NTIS.

Patent 4,072,015: Borehole Aerostatic Ground Support System; filed December 30, 1976; patented February 7, 1978; not available NTIS.

Patent 4,072,587: Separate Recovery of Silver and Gold from Cyanide Solutions; filed April 21, 1977; patented February 7, 1978; not available NTIS.

Patent 4,072,798: Bioelectric Neutralization of Acid Waters; filed July 26, 1977; patented February 7, 1978; not available NTIS.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va, 22217.

Patent application 888,125: Substituted-6,7,8,9-Tetrahydro-Pyrido-and 2H-Pyrano (2,3-b) (1,8) Naphthyridines, Stable, Efficient Laser Dyes; filed March 20, 1978.

Patent 4,029,859: Thermal Sensor and Current Generator; filed October 14, 1975; patented June 14, 1977; not available NTIS.

Patent 4,033,267: Flueric Cartridge Initiator, Filed October 1, 1976; patented July 5, 1977; not available NTIS.

Patent 4,040,880: Perchlorate Sensitizing Agent; filed June 28, 1973; patented August 9, 1977; not available NTIS.

Patent 4,043,526: Autopilot Hardover Failure Protection System; filed February 23, 1976; patented August 23, 1977; not available NTIS.

Patent 4,047,121: RF Signal Generator; filed October 16, 1975; patented September 6, 1977; not available NTIS.

Patent 4,050,968: Explosive Composition Containing a Hydroxyalkyl Acrylate Copolymer Binder; filed April 29, 1970; patented September 27, 1977; not available NTIS.

Patent 4,051,339: Variable Time Missile Safety Timer; filed December 28, 1964; patented September 27, 1977; not available NTIS.

Patent 4,054,871: Electromagnetic Intrusion Sensor; Filed September 9, 1974; patented October 18, 1977; not available NTIS.

Patent 4,057,803: Adaptive Direction of Arrival Antennae System; filed April 8, 1976; patented November 8, 1977; not available NTIS.

Patent 4,061,658: 2,5-Dipicrylfurans; filed March 23, 1977; patented December 6, 1977; not available NTIS.

Patent 4,062,058: Next Address Subprocessor; filed February 13, 1976; patented December 6, 1977; not available NTIS.

[FR Doc. 78-21629 Filed 8-3-78; 8:45 am]

[3510-25]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN MAN-MADE FIBER SWEATERS FROM THE PHILIPPINES

Increasing the Import Level

AUGUST 1, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing the import restraint level established for certain man-made fiber sweaters in Category 645-646 (nontraditional) from the Philippines during the agreement period which began on January 1, 1978, and extends through December 31, 1978.

SUMMARY: Paragraph 6 of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 15, 1975, as amended, between the Governments of the United States and the Republic of the Philippines provides that within the applicable group limits, categories having specific ceilings may be exceeded in any agreement year by 7 percent. At the request of the Govenment of the Republic of the Philippines, under the terms of the bilateral agreement, the level of restraint for Category 645-646 is being increased by 4,228 dozen to a level of 64,622 dozen for the 12-month period which began on January 1, 1978.

EFFECTIVE DATE: August 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Donald R. Foote, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-5423.

SUPPLEMENTARY INFORMATION: On December 29, 1977, a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the FEDERAL REGISTER (42 FR 64921) which established the levels of restraint applicable to certain specified categories of cotton and man-made fiber textile products, produced or manufactured in the Philippines and exported to the United States during the 12-month period which began on January 1, 1978, and extends through December 31, 1978. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the level of restraint established for man-made fiber textile products in Category 645-646 produced or manufactured in the Philippines and exported to the United States during the 12-month period which began on January 1, 1978.

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

U.S. DEPARTMENT OF COMMERCE,
Washington, D.C., August 1, 1978.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: On December 23, 1977, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption and withdrawal from warehouse for consumption during the 12-month period beginning on January 1, 1978, and extending through December 31, 1978, of cotton and man-made fiber textile products in certain specified categories, produced or manufactured in the Republic of the Philippines and exported to the United States, in excess of designated levels of restraint. The Chairman advised you that the levels of restraint are subject to adjustment.[1]

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 paragraph 6 of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of October 15, 1975, as amended, between the Governments of the United States and the Republic of the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on August 7, 1978, to amend the level of restraint established for man-made fiber textile products in Category 645/646 in the directive of December 23, 1977, to 64,622 dozen.[2]

The action taken with respect to the Government of the Republic of the Philippines and with respect to imports of man-made fiber textile products from the Philippines has 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.

IMPLEMENTATION OF TEXTILE AGREEMENTS.

[FR Doc. 78-21787 Filed 8-3-78; 8:45 am]

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of October 15, 1975, as amended, between the Governments of the United States and the Republic of the Philippines which provide, in part, that: (1) Within the aggregate and applicable group limits, specific levels of restraint may be exceeded by specified percentages; (2) these levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) consultation levels may be increased within the aggregate and applicable group limits upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The level of restraint has not been adjusted to account for any imports after December 31, 1977.

[6820-33]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1978

Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to procurement list 1978 a commodity to be produced by and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 4, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher 703-557-1145.

SUPPLEMENTARY INFORMATION: On May 12, 1978 and March 17, 1978, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (43 FR 20533 and 43 FR 11248) of proposed additions to procurement list 1978, November 14, 1977 (42 FR 59015).

After consideration of the relevant matter presented, the Committee has determined that the commodity and the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodity and service are hereby added to procurement list 1978:

CLASS 8405

Strap, Chin (SH), 8405-00-152-3952.

SIC 7349

Janitorial/Custodial (SH), Department of Energy, Morgantown Energy Research Center, Morgantown, W. Va.

E. R. ALLEY, Jr.,
Acting Executive Director.

[FR Doc. 78-21704 Filed 8-3-78; 8:45 am]

[6820-33]

PROCUREMENT LIST 1978

Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to procurement list 1978 a commodity to be produced by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 6, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher 703-557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the commodity listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity to procurement list 1978, November 14, 1977 (42 FR 59015):

CLASS 8440

Neckerchief (polyester, black), 8440-LL-L07-7000

E. R. ALLEY, Jr.,
Acting Executive Director.

[FR Doc. 78-21705 Filed 8-3-78; 8:45 am]

[3710-08]

DEPARTMENT OF DEFENSE

Department of the Army

PRIVACY ACT OF 1974

New Systems of Records

AGENCY: Department of the Army.

ACTION: Notice of new systems of records.

SUMMARY: The Department of the Army proposes to add four new systems of records to its inventory subject to the Privacy Act of 1974.

DATES: These systems shall be effective as proposed without further notice in 30 calendar days from the date of this publication (September 3, 1978) unless comments are received on or before September 3, 1978, which would result in a contrary determination and require republication for further comments.

ADDRESS: Any comments, including written data, views or arguments concerning these systems should be addressed to the system manager identified in the particular record system concerned.

FOR FURTHER INFORMATION CONTACT:

Mr. Guy B. Oldaker, Administrative Management Directorate, The Adjutant General Center, Department of the Army, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20314, telephone 202-693-0973.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices as prescribed by the Privacy Act of 1974, 5 U.S.C. 522a, Pub. L. 93-579, have been published in the FEDERAL REGISTER as follows:

FR Doc. 77-28255 (42 FR 50396) September 28, 1977.
FR Doc. 77-32975 (42 FR 59099) November 15, 1977.
FR Doc. 78-1855 (43 FR 3151) January 23, 1978.
FR Doc. 78-9239 (43 FR 14713) April 7, 1978.
FR Doc. 78-9713 (43 FR 15353) April 12, 1978.
FR Doc. 78-17146 (43 FR 26606) June 21, 1978.
FR Doc. 78-17737 (43 FR 27882) June 27, 1978.
FR Doc. 78-18880 (43 FR 29600) July 10, 1978.
FR Doc. 78-19614 (43 FR 30594) July 17, 1978.

The Department of the Army has submitted a new system report for these systems on June 26, 1978, on these systems of records under the provisions of 5 U.S.C. 552a (o) of the Privacy Act.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

JULY 31, 1978.

AAFES0307.01

System name:

307.01 Carpooling Program.

System location:

Headquarters Army and Air Force Exchange Service (HQ AAFES), Administrative Services Division, Headquarters Personnel Branch (AD-P), Dallas, Tex. 75222.

Categories of individuals covered by the system:

All Headquarters AAFES personnel who voluntarily participate in carpool program.

Categories of records in the system:

Name, duty address and phone number, hours of duty, residence address and phone number, and any other information necessary for carpool arrangements which may include map coordinates of home or nearby reference points, working hours, etc.

Authority for maintenance of the system:

10 U.S.C. 3012 and 8012 which identify the powers and duties delegated by the Secretary of the Army and the Secretary of the Air Force, respectively, each of whom is responsible for and has the authority necessary to conduct all affairs of his respective department, including functions necessary or appropriate for administration.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal use: To assist Headquarters AAFES personnel who desire to form carpools.

External use: To the city of Dallas, Tex. for inclusion in its ridesharing program.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the sytem:

Storage:

Paper records in file folders.

Retrievability:

Alphabetically by employee name.

Safeguards:

Information is retained in file cabinets. Work and storage area is within a controlled building, access to which is limited to assigned personnel.

Retention and disposal:

Retained until such time as individual's employment with HQ AAFES is terminated, after which record is destroyed.

System manager(s) and address:

Director, Administrative Services Division, HQ AAFES, Dallas, Tex. 75222.

Notification procedure:

Information may be obtained from: HQ AAFES (AD-P), Dallas, Tex. 75222, telephone: 214-330-3871.

Record access procedures:

Requests from individuals should be addressed to: HQ AAFES, Attention: AD-P, Dallas, Tex. 75222.

Written requests for information should contain the full name of the individual, social security number, and duty phone number.

Personal visits may be made to the Administrative Services Division, HQ AAFES. Individual should be able to provide acceptable identification such as a valid driver's license.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by individuals concerned are contained in Army Regulation 340.21.

Record source categories:

Provided by individual interested in carpool program.

Systems exempted from certain provisions of the act:

None.

AAFES406.12a

System name:

406.12a Skills Bank file (Employee Skills Survey).

System location:

Headquarters Army and Air Force Exchange Service (HQ AAFES), Dallas, Tex.; Headquarters AAFES-Europe; Headquarters AAFES-Pacific; Headquarters AAFES-Alaska; all regional offices; base and post exchange offices within the Army and the Air Force.

Categories of individuals covered by the system:

All AAFES regular full time (RFT) and regular part-time (RPT) hourly pay plan (HPP) employees and intermittent (regularly scheduled) employees.

Categories of records in the system:

Name, social security number (SSN), current job title, grade, duty phone, job location, date of skills survey (AAFES Form 1200-61), education/training courses completed, skills/experience acquired, skills used in daily work, and those identified as needed.

Authority for maintenance of the system:

10 U.S.C. 3012 and 8012 which identify the powers and duties delegated by the Secretary of the Army and the Secretary of the Air Force, respectively, each of whom is responsbile for and has the authority necessary to conduct all affairs of his respective department, including functions necessary or appropriate for the training operations and administration.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To aid servicing personnel office in identifying and referring qualified employees for vacant positions. A skills bank for Headquarters AAFES employees is established/maintained from employee skills survey, AAFES form 1200-61. The completed forms are filed alphabetically by employee name.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Alphabetically by employee name.

Safeguards:

Files are maintained in locked file cabinets.

Retention and disposal:

Retained until such time as employee retires, resigns, or is otherwise separated, at which time record is destroyed. Upon employee's transfer to another AAFES location, file is forwarded to gaining personnel office.

System manager(s) and address:

Director, Administrative Services Division, Headquarters, AAFES, Dallas, Tex. 75222.

Notification procedure:

Information may be obtained from: Headquarters, AAFES (AAFES-AD-P), Dallas, Tex. 75222, telephone 214-330-3871.

Record access procedures:

Requests from individuals should be addressed to: Headquarters AAFES, Attention: AAFES-AD-P, Dallas, Tex. 75222.

Written requests for information should contain the full name of the individual, SSN, duty phone and job location.

Personal visits may be made to the Administrative Services Division. Individuals should provide acceptable identificaiton such as a valid driver's license.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by individuals concerned are contained in Army Regulation 340-21.

Record source categories:

Employee Skills Survey (AAFES Form 1200-61), submitted by eligible RFT and RPT HPP employees and intermittent (regularly scheduled) employees.

Systems exempted from certain provisions of the act:

None.

AAFES406.12b

System name:

406.12b Employee Career Development Plan File.

System loction:

Headquarters Army and Air Force Exchange Service (HQ AAFES), Dallas, Tex; Headquarters AAFES-Europe; Headquarters AAFES-Pacific; Headquarters AAFES-Alaska; all regional offices; base and post exchange offices within the Army and the Air Force.

Categories of individuals covered by the system:

All AAFES regular full time (RFT) and regular part-time RPT) hourly pay plan (HPP) employees and intermittent (regularly scheduled) employees.

Categories of records in the system:

Name, social security number (SSN), current job title, grade, duty phone, job location, career goals as identified on AAFES form 1200-62 and progress in achieving goals, career appraisals, and employee/supervisor comments.

Authority for maintenance of the system:

10 U.S.C. 3012 and 8012 which identify the powers and duties delegated by the Secretary of the Army and the Secretary of the Air Force, respectively, each of whom is responsible for and has the authority necessary to conduct all affairs of his respective department, including functions necessary or appropriate for the training operations and administration.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To provide Headquarters AAFES Personnel Branch (AD-P) a central reference of identifiable employees who have devised a career development plan, or who have attained eligibility for referral consideration to vacant HPP positions. File also provides a source of information from which referral rosters of HPP employees for junior/middle management positions may be compiled.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file holders.

Retrievability:

Alphabetically by employee name.

Safeguards:

Files are maintained in locked file cabinets.

Retention and disposal:

Retained until such time as employee retires, resigns, or is otherwise separated, at which time record is destroyed. Upon employee's transfer to another AAFES location, file is forwarded to gaining personnel office.

System manager(s) and address:

Director, Administrative Services Division, Headquarters, AAFES, Dallas, Tex. 75222.

Notification procedure:

Information may be obtained from: Headquarters, AAFES (AAFES-AD-P), Dallas, Tex. 75222, telephone 214-330-3871.

Record access procedures:

Requests from individuals should be addressed to: Headquarters AAFES, Attention: AAFES-AD-P, Dallas, Tex. 75222.

Written requests for information should contain the full name of the individual, SSN, duty phone and job location.

Personal visits may be made to the Administrative Services Division. Individuals should provide acceptable identification such as a valid driver's license.

Contesting record procedures:

The agency's rules for access to records and for contesting contents and appealing initial determinations by individuals concerned are contained in Army Regulation 340-21.

Record source categories:

Employee Career Development Plan (AAFES form 1200-62), submitted by interested/eligible RPT and RFT HPP employees and intermittent (regularly scheduled) employees.

Systems exempted from certain provisions of the act:

None.

AAFES1203.03

System name:

1203.03 Appointment of Contracting Officers.

System location:

Procurement Management Office, Headquarters Army and Air Force Exchange Service (AAFES); Headquarters AAFES-Europe; Headquarters AAFES-Pacific; Headquarters AAFES-Alaska; all regional offices within the Continental United States.

Categories of individuals covered by the system:

All civilian employees and/or military personnel assigned to AAFES who are appointed as contracting officers.

Categories of records in the system:

Name, social security number (SSN), job title and grade; qualifications, training and experience; request for appointment as contracting officer; copy of certificate of appointment, and other correspondence and documents relating to the individual's qualifications to act as a contracting officer.

Authority for maintenance of the system:

10 U.S.C. 3012 and 8012 which identify the powers and duties delegated by the Secretary of the Army and the Secretary of the Air Force, respectively, each of whom is responsible for and has the authority necessary to conduct all affairs of his respective department, including functions necessary or appropriate for the training operations and administration.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by AAFES contracting officer appointing authority to ascertain an individual's qualifications to be appointed as contracting officer, to determine if limitations on procurement authority are appropriate; and to complete the certificate of appointment.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

Retrievability:

Alphabetically by employee name.

Safeguards:

Information is retained in filing cabinets. Both the working and storage areas are within a controlled building, the entrance to which is limited to personnel assigned to AAFES.

Retention and disposal:

Records in this system are retained only so long as individual's appointment as contracting officer is valid. Upon termination of this appointment, records are destroyed.

System manager(s) and address:

Director, Procurement Management Office, Headquarters AAFES, Dallas, Tex. 75222.

Notification procedure:

Information may be obtained from: Headquarters AAFES, Attention: Procurement Management Office, Dallas, Tex. 75222, telephone 214-330-3761.

Record access procedures:

Requests from individuals should be addressed to Headquarters AAFES, Attention: Procurement Management Office, Dallas, Tex. 75222.

Written requests for information should contain the full name of the individual and activity to which assigned.

Personal visits may be made to HQ AAFES, or to an AAFES regional office, as appropriate. Individual should provide acceptable identification such as a valid driver's license, military identification card, or social security number.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determiniations by individuals concerned are contained in Army Regulation 340-21.

Record source categories:

The individual concerned, personnel records, former employers, educational institutions.

Systems exempted from certain provisions of the act:

None.

[3810-70]

Office of the Secretary of Defense

DEPARTMENT OF DEFENSE WAGE COMMITTEE

Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, effective January 5, 1973, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, October 3, 1978; Tuesday, October 10, 1978; Tuesday, October 17, 1978; Tuesday, October 24, 1978; and Tuesday, October 31, 1978, at 9:45 a.m. in Room 1E801, the Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) concerning all matters involved in the development and authorization of wage schedules for Federal prevailing rate employees pursuant to Pub. L. 92-392. At this

meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, the Federal Advisory Committee Act, meetings may be closed to the public when they are "concerned with matters listed in section 552b of Title 5, United States Code." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552 b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the Chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by contacting the Chairman, Department of Defense Wage Committee, Room 3D281, the Pentagon, Washington, D.C.

Dated: August 1, 1978.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 78-21712 Filed 8-3-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA docket No. PP-29-1]

MAINE PUBLIC SERVICE CO.

Filing

On July 3, 1978, the Maine Public Service Co. ("the Company") filed an application to amend its permit authorizing the construction and operation of electric transmission facilities at the international border between the United States and Canada, near Presque Isle, Maine. The Company's permit was issued in 1957 by the Federal Power Commission (docket No. E-6752), and was amended by the Commission in 1968. The Company now seeks to amend article 2(a) of the permit so as to uprate one transmission line from 69,000 volts to 138,000 volts.

The Company states that uprating of the line is required to accommodate increased amounts of power being transmitted or wheeled by the New Brunswick Commission for the Company from the Company's unit entitlements in generating plants in southern Maine and other New England States. The work involved in uprating the transmission line includes structure changeout where required to comply with ground clearance requirements of the 1977 edition of the National Electrical Safety Code and the addition of insulators necessary to increase the operating voltage of the line.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Division of Power Supply and Reliability, Economic Regulatory Administration, 1111 20th Street NW., Room 4070, Washington, D.C. 20461, in accordance with §§ 1.8 and 1.10 of the rules of practice and procedure (18 CFR 1.8, 1.10).

All such petitions and protests should be filed on or before August 18, 1978. Protests will be considered by the Administrator 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 Economic Regulatory Administration and are available for public inspection and copying at the ERA docket room, room B-120, 2000 M Street NW., Washington, D.C., and at the Office of Power Supply and Reliability, Room 4070, 1111 20th Street NW., Washington, D.C.

Dated: July 31, 1978.

JERRY L. PFEFFER,
Acting Assistant Administrator for Utility Systems, Economic Regulatory Administration.

[FR Doc. 78-21700 Filed 8-3-78; 8:45 am]

[3128-01]

Economic Regulatory Administration

[ERA Docket No. SWPA 78-2]

SOUTHWESTERN POWER ADMINISTRATION

Order Extending Confirmation and Approval of Existing System Rates and Charges

Notice is hereby given that the Assistant Administrator for Utility Systems, Economic Regulatory Administration, has issued the order published below, extending through December 1, 1978, confirmation and approval of the Southwestern Power Administration's system rates including certain contract rates. The rates were originally confirmed and approved by the Federal Power Commission on November 30, 1971 and February 20, 1973 (FPC Docket No. E-7172). On June 5, 1978, ERA conditionally extended the existing rates through December 1, 1978.

Pursuant to section 301(b) of the Department of Energy Organization Act (the DOE Act), 42 U.S.C. 7101 *et seq.*, the function to confirm and approve rates in accordanced with section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for power marketed by the Southwestern Power Administration (SWPA) was transferred to and vested in the Secretary of Energy. By delegation order No. 0204-4, effective October 1, 1977, 42 FR 60725-27 (November 29, 1977), the Secretary of Energy delegated confirmation and approval authority to the Administrator of the Economic Regulatory Administration (ERA or the Administrator). The Administrator has further delegated this authority to the Assistant Administrator for Utility Systems, Economic Regulatory Administration.

BACKGROUND

On June 2, 1977, the Federal Power Commission (FPC) issued an order denying a request filed by the Department of the Interior (Interior) for an extension of confirmation and approval of SWPA's existing system rates including certain existing contract rates through May 31, 1978 (FPC docket No. E-7172).[1] On September 22, 1977, the FPC granted a request for reconsideration filed by Interior and extended confirmation and approval of SWPA's existing rates through May 31, 1978. The September 22d order granted Interior's request on the ground that SWPA had submitted a timely schedule for the filing of new rates, but the order noted that the FPC would not grant any further extensions beyond May 31, 1978. Pursuant to the DOE Act and the authorities cited above, responsibility to confirm and approve SWPA's rates and charges vested in ERA effective October 1, 1977.

On April 13, 1978, SWPA issued a notice announcing new tentative system rates and invited interested persons to submit written comments and/or participate in public informa-

[1] By order issued November 30, 1971, the FPC confirmed and approved the subject system rates for a period ending not later than May 31, 1974. By order issued February 20, 1973, the FPC confirmed and approved the rates contained in the rate schedule accompanying contract No. 14-02-001-864 for a period ending not later than May 31, 1974. Confirmation and approval of these rates was extended on four separate occasions by the FPC in response to requests by Interior.

tion and comment forums, 43 FR 16545 (April 19, 1978). As subsequently amended at 43 FR 25865 (June 15, 1978), the notice scheduled public information forums for May 18 and June 22, 1978, a public comment forum for July 20, 1978, and provided that the public comment period would close August 15, 1978.

On May 19, 1978, the Assistant Secretary for Resource Applications (Assistant Secretary) requested the Administrator of ERA to extend confirmation and approval of the existing SWPA system rates including certain existing contract rates through December 1, 1978, or until such earlier date that new rates were confirmed and approved. In his request, the Assistant Secretary stated that this extension was necessary in order to provide interested persons with an opportunity to comment upon SWPA's new tentative rates as provided in SWPA's April 13, 1978, notice.

The rates which the Assistant Secretary requested be extended are contained in the following rate schedules:

Rate Schedule F-1 (Firm Power)
Rate Schedule P-2 (Revised) (Peaking Power)
Rate Schedule EE (Excess Energy)
Rate Schedule IC (Interruptible Capacity)
Contract No. 14-02-001-864 (with Tex-La Electric Cooperative, Inc.)

DISCUSSION

On June 5, 1978, ERA issued a notice conditionally extending confirmation and approval of SWPA's existing system rates through December 1, 1978, and afforded interested persons the opportunity to file written comments on the proposal and request a public hearing, 43 FR 25179 (June 9, 1978). No written comments were received in response to the notice and no requests for a public hearing were filed.

In view of the fact that SWPA has established a schedule for the filing of new tentative system rates and since additional time is needed in order to afford interested persons a reasonable opportunity to comment on the new rates, and for the Assistant Secretary to review such public comments, ERA concludes that it is necessary and appropriate to take final action with respect to the Assistant Secretary's May 19, 1978, request and extend the FPC's confirmation and approval of SWPA's existing system rates through December 1, 1978.

ORDER

Pursuant to the authorities set forth above, the Assistant Administrator for Utility Systems, Economic Regulatory Administration, orders:

1. The confirmation and approval of SWPA's existing system rates including the rates contained in the rate schedule accompanying contract No. 14-02-001-864, as set forth in the Federal Power Commission's initial orders issued November 30, 1971 and February 20, 1973, and most recently extended by FPC order issued September 22, 1977, is hereby extended through December 1, 1978, or until such earlier date as new system rates are confirmed and approved; and

2. The Assistant Secretary for Resource Applications shall cause a copy of this order to be distributed to all appropriate parties on the service list.

Issued in Washington, D.C., this 31st day of July, 1978.

JERRY L. PFEFFER,
Acting Assistant Administrator for Utility Systems, Economic Regulatory Administration, Department of Energy.

[FR Doc. 78-21696 Filed 8-3-78; 8:45 am]

[3128-01]

ENERGY INFORMATION ADMINISTRATION

Discontinuance of Data Collection Reports

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of Discontinuance of Data Collection Forms.

SUMMARY: The Energy Information Administration (EIA) of the U.S. Department of Energy (DOE) hereby gives notice of the discontinuance of several data collection forms. These forms have been discontinued as a result of systems consolidations, the cessation of an emergency situation which had necessitated some of the forms, and because it has been determined that the data requested on the forms are no longer required in order for DOE to fulfill its legislated mandates.

EFFECTIVE: Immediately.

FOR FURTHER INFORMATION CONTACT:

Dr. Irene C. Montie, (Survey and Statistical Design Division) EIA, Room 327, Old Post Office Building, Washington, D.C. 20461, 202-566-7743.

SUPPLEMENTARY INFORMATION: In keeping with its objective of a 5 percent reduction in the reporting burden imposed on members of the respondent public, DOE has eliminated the reporting forms listed in this notice. The DOE goal to reduce reporting burden has been established as a result of the President's Respondent Reporting Burden Reduction Program, initiatives of the Federal Paperwork Commission and the DOE Regulatory Reform Task Force.

The Office of Management and Budget (OMB), which is responsible for the clearance of DOE forms, has been notified concerning the discontinuance of those reporting documents which are being discontinued prior to their expiration dates. Respondents are no longer required to submit the following forms:

FORMS DISCONTINUED PRIOR TO EXPIRATION DATE

form no. and title

BOM-6-1321-M Sales to trade and own use of petroleum products—District V
BOM-6-1326-A Value at wells of crude oil purchased
EIA-1 General industries and blast furnaces—Weekly coal monitoring report
EIA-4 Weekly coal monitoring report—Coke plants
FEA-G101-A-2 [1] Alternative fuel demand due to natural gas curtailment
FEA-U503-S-0 Project conserve questionnaire
FPC-82 Retail rate level change
MA-400 Survey of manufacturers alternative energy capabilities

Forms Allowed to Expire

EIA-10 Telephone survey for emergency monitoring of natural gas curtailments and alternate fuels needs
EIA-20 Weekly telephone survey for coal burning electric utilities
EIA-21 Telephone update for natural gas curtailments and alternate fuels needs
EIA-46 Weekly telephone survey of prime suppliers
EIA-47 Emergency weekly distillate fuel oil monitoring telephone survey
EIA-48 Emergency weekly propane monitoring telephone survey
FEA-100A Producers and wholesale purchaser-reseller monthly report
FEA-103B Storage operators monthly report
FPC-69 [1] Alternative fuel demand due to natural gas curtailments

Issued in Washington, D.C. on July 31, 1978.

LINCOLN E. MOSES,
Administrator, Energy Information Administration.

[FR Doc. 78-21679 Filed 8-3-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket No. CP77-57]

COLUMBIA GAS TRANSMISSION CORP.

Amendment to Application

JULY 28, 1978.

Take notice that on July 19, 1978, Columbia Gas Transmission Corp. (Applicant), 1700 MacCorkle Avenue SE., Charleston, W. Va. 25314, filed in Docket No. CP77-57 pursuant to section 7(c) of the Natural Gas Act, an amendment to its application filed November 12, 1976, in said docket so as to establish a different point of receipt of natural gas, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

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[1] Superseded by EIA-50.

Applicant states that by its application of November 12, 1976, it requests authorization to transport natural gas for the account of Fruehauf Corp. (Fruehauf) which gas would be received into Applicant's system in its lines 0-880 in Guernsey County, Ohio, and 0-1460 in Tuscarawas County, Ohio, for use in Fruehauf's Decatur, Ga., plant.

Applicant further states that Fruehauf has requested that the point of receipt on line 0-880 be eliminated and in lieu thereof, a point of receipt be established on line FO-1618 in Guernsey County, Ohio.

Applicant asserts that its transportation charge for all volumes delivered by Fruehauf into line FO-1618 is 23.06 cents, and that it would retain for company-use and unaccounted-for gas 4 percent of the total volumes received.

It is stated that Applicant's capacity available to perform this transportation service utilizing line FO-1618 would not affect Applicant's ability to transport volumes utilizing line FO-1618 in other related Fruehauf transportation arrangements.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before August 21, 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules. All persons who have heretofore filed need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21669 Filed 8-3-78; 8:45 am]

[6740-02]

[Docket Nos. ER78-433 and ER78-68]

OKLAHOMA GAS & ELECTRIC CO.

Order Accepting for Filing and Suspending Rate Schedule, Granting Interventions Consolidating Proceedings, and Establishing Procedures

JULY 28, 1978.

On June 15, 1978, Oklahoma Gas & Electric Co. (OG&E) submitted for filing in this docket cost support data required by Commission order issued November 30, 1977, in *Public Service Co. of Oklahoma*, Docket Nos. ER77-422, ER78-20, and ER78-49 (Order). OG&E was directed to file the requested cost support in Docket No. ER78-68 within 60 days of the issuance of the Order.[1] In the instant submittal, OG&E in supplying the data, is also proposing to increase the rates under investigation in ER78-68 by $412,000 (13.62 percent) for the 12-month period succeeding the proposed effective date of July 30, 1978.[2]

On June 3, 1977, Public Service Co. of Oklahoma (PSCO) submitted for filing on behalf of itself and OG&E, notices of cancellation of a joint interconnection agreement with SWPA in Docket No. ER77-422. A group of municipal customers intervened, stating that no new contractual arrangements had been finalized and if the terminations became effective, they would be without electrical service. On June 30, 1977, the Commission issued an order suspending the notices of cancellation for 5 months until December 1, 1977, and ordered an expedited investigation to determine the lawfulness of the proposed terminations.

On November 10, 1977, proposed settlement agreements for both SWPA-PSCO and SWPA-OG&E were certified to the Commission. All parties agreed that the settlement agreements should be suspended for 1 day, subject to refund, and that the intervening municipalities would allow the OG&E and PSCO a reasonable time in which to supply the cost support for the rates contained in the agreements. The Commission's order accepted the settlement agreements for filing, suspended them for 1 day, effective December 1, 1977, subject to refund.[3]

OG&E's submittal proposes to increase the transmission service energy charge from $.00200/kWh to $.00229/kWh, increase the transmission charge from $.76 kw/month to $.97 kw/month, and increase the thermal energy charge from $.01324/kWh/month to $.01508/kWh/month.

On July 3, 1978,[4] the municipalities of Clarksville, Pairs Goltry, Lexington, Purcell, Spiro, and Yale, Okla. (Municipalities) filed a petition for leave to intervene, motion to suspend and motion to consolidate. On that date, the Secretary of Energy (Secretary) filed its notice of Intervention.[5]

The Municipalities state that they are wholesale firm power customers of SWPA but are isolated from SWPA-owned transmission lines. In order to receive SWPA power, they state that it is necessary that OG&E provide wheeling services. The cost of these services are a component of the rates SWPA charges the Municipalities. The posit that any increase in this cost component will affect the rates which the Municipalities pay for their power. The Municipalities request that the proposed increase be suspended for 5 months, that they be allowed to intervene in the proceeding, and that the instant submittal be consolidated with Docket No. ER78-68.

The Secretary states that the Department of Energy, through SWPA, markets power at federally owned generating facilities to seven cities and to Vance Air Force Base, all located within OG&E's service area. The Secretary indicates that OG&E provides transmission service for SWPA to allow it to serve its customers. The Secretary maintains that since the rate which SWPA pays OG&E is the primary issue in these proceedings, the Department of Energy has a substantial interest in the outcome of the proceeding.

Commission review of the filings and pleadings in Docket No. ER78-433 indicates that the proposed rate schedule filed by OG&E has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful. The Commission shall therefore suspend the proposed rate schedule and establish hearing procedures. Consideration of all relevant factors indicates that the proposed rates should be suspended for 5 months, to become effective December 30, 1978, subject to refund. Due to common issues of law and fact, good cause exists to consolidate Docket No. ER78-433 with Docket No. ER78-68 for the purpose of a hearing and decision thereon.

The Commission finds: (1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Federal Power Act that the Commission enter upon a hearing concerning the lawfulness of the proposed increased rates and charges tendered by OG&E, and that the proposed increased rates and charges be accepted for filing, suspended, and the use thereof deferred, all as hereinafter ordered.

(2) Participation by Municipalities and the Secretary may be in the public interest.

(3) Good cause exists to consolidate Docket No. ER78-433 with Docket No.

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[1] OG&E was granted an extension of time, until June 15, 1978, to file the cost support.

[2] For the 12- month period ending June 30, 1979, revenues under the present rates are projected at $3,024,000.

[3] The Commission designated Docket Nos. ER78-67 and ER78-68 as the dockets in which PSCO and OG&E respectively were to file appropriate cost support for the settlement rates.

[4] Notice of the filing was issued on June 22, 1978, with responses due by July 3, 1978.

[5] On July 10, 1978, the Secretary filed a motion requesting a 5-month suspension of the proposed rates. The motion will be treated as an amendment to its notice of Intervention.

ER78-68 for the purpose of a hearing and decision thereon.

The Commission orders: (A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act (18 CFR, Chapter I), a hearing shall be held concerning the justness and reasonableness of the rates proposed by OG&E in this proceeding.

(B) Pending such hearing and decision thereon, the proposed increased rates and charges filed by OG&E are hereby accepted for filing, suspended and the use thereof deferred until December 30, 1978, when they shall become effective, subject to refund.

(C) Municipalities and the Secretary are hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission: *Provided, however,* That participation of such intervenors shall be limited to the matters specifically set forth in the petitions to intervene; and *Provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved by any orders entered in this proceeding.

(D) Docket Nos. ER78-433 and ER78-68 are hereby consolidated for the purpose of a hearing and decision thereon.

(E) The Federal Energy Regulatory Commission Staff shall serve top sheets in this proceeding on or before November 20, 1978.

(F) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose shall preside at a prehearing conference in this proceeding to be held on November 30, 1978, at 10 a.m., in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Said Judge is authorized to establish procedural dates and to rule upon all motions (except petitions to intervene, motions to consolidate and sever, and motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

(G) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission. Chairman Curtis voted present.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21670 Filed 8-3-78; 8:45 am]

[6740-02]

[Docket No. CP78-422]

TENNESSEE GAS PIPELINE CO., A DIVISION OF TENNECO INC. AND TRANSCONTINENTAL GAS PIPE LINE CORP.

Joint Pipeline Application

JULY 28, 1978.

Take notice that on July 13, 1978, Tennessee Gas Pipeline Co., a division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Tex. 77001, and Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, Tex. 77001 filed an application in Docket No. CP78-422 pursuant to section 7(c) of the Natural Gas Act, as amended, for temporary and permanent certificates of public convenience and necessity authorizing the transportation of natural gas, as more fully set forth in said application which is available for public inspection.

Tennessee and Transco have entered into a Transportation Agreement dated June 2, 1978 (Agreement) which provides for the rendition of transportation services which will enable Tennessee and Transco to attach to their respective systems gas supplies located offshore Texas and Louisiana. Pursuant to the Agreement, Transco will transport for Tennessee, through Transco's existing pipeline system, gas produced in the High Island Block A-330 Field, Offshore Texas (HI A-330), which gas Tennessee will purchase from Mesa Petroleum Co. Transco will receive for Tennessee, on a firm basis, up to 25,000 Mcf per day of such gas at the existing interconnection between U-T Offshore System and Transco's system (U-TOS Receipt Point) in Cameron Parish, La., and will redeliver equivalent quantities of such gas to Tennessee at the existing interconnections between the systems of Tennessee and Transco near Louise, Wharton County, Tex., (Louise Delivery Point), and/or as the parties may mutually agree, near Kinder in Allen Parish, La. (Kinder Delivery Point), near Crowley in Acadia Parish, La. (Crowley Delivery Point) and/or near Starks, in Calasieu Parish, La. (Starks Delivery Point).

The Agreement further provides that Tennessee will transport for Transco, through Tennessee's existing pipeline system, natural gas produced from the South Marsh Island Block 243 Field, Offshore Louisiana (SMI 243,), which gas Transco will purchase from General American Oil Co. of Texas. Tennessee will receive for Transco, also on a firm basis, up to 12,500 Mcf per day of such gas in SMI 243 (SMI Receipt Point) and will redeliver equivalent quantities of such gas to Transco at the Crowley Delivery Point.

The transportation services proposed herein do not provide for a transportation charge inasmuch as such services are considered comparable. As further set forth in the Agreement, Transco will retain, for its compressor fuel and line loss makeup allowance associated with the transportation service to be rendered for Tennessee, quantities of gas equal to six-tenths percent (0.6%) of the quantities to be received by Transco for delivery to Tennessee at the Louise or Starks Delivery Points, and quantities of gas equal to one and two-tenths percent (1.2%) of the quantities to be received by Transco for delivery to Tennessee at the Crowley or Kinder Delivery Points. Similarly, Tennessee will retain, for its compressor fuel and line loss makeup allowance associated with the transportation service to be rendered for Transco, quantities of gas equal to one and two-tenths percent (1.2%) of the quantities to be received by Tennessee for delivery to Transco.

Any person desiring to be heard or to make any protest with reference to said application, on or before August 21, 1978, should 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 person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intevene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to

appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21671 Filed 8-3-78; 8:45 am]

[6740-02]

[Docket No. CP78-423]

TENNESSEE GAS PIPELINE CO., A DIVISION OF TENNECO INC. AND MICHIGAN WISCONSIN PIPE LINE CO.

Joint Pipeline Application

JULY 28, 1978.

Take notice that on July 14, 1978, Tennessee Gas Pipeline Co., a division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Tex. 77001, and Michigan Wisconsin Pipe Line Co. (Michigan Wisconsin), One Woodward Avenue, Detroit, Mich. 48226, filed a joint abbreviated application for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act authorizing the construction and operation of facilities in the Vermilion area, offshore Louisiana to attach gas reserves and the transportation and exchange of gas, all as set forth in the application on file with the Commission and open to public inspection.

Applicants propose to jointly construct and own, and Tennessee proposes to operate, 9.3 miles of 20-inch gathering line and related facilities extending from a production platform in Vermilion Block 241 to an interconnection with Tennessee's and Columbia Gulf Transmission Co.'s jointly-owned Blue Water project. In addition, Tennessee proposes to construct, own and operate 4.6 miles of 12¾-inch gathering line extending from a production platform in Vermilion Block 261 to an interconnection with the proposed 20-inch gathering line in Vermilion Block 241 described above. Also, Michigan Wisconsin proposes to construct, own and operate 0.8 miles of 10-inch gathering line extending from a production platform in Vermilion Block 242 to an interconnection with the above-described 20-inch gathering line in Vermilion Block 241.

Applicants estimate that the total project cost will be borne $7,492,000 by Tennessee and $2,904,000 by Michigan Wisconsin.

Applicants state that the proposed facilities will enable them to attach badly needed gas supplies available to them in the Vermilion area. Tennessee indicates that it has acquired a commitment of 50 percent of Tenneco Oil Co.'s interests in gas reserves in Vermilion Blocks 241 and 261 and that it is pursuing negotiations for a commitment of Tenneco Oil's remaining 50 percent interest as well as a commitment of the reserves owned by Samedan Oil Corp. and by Kerr-McGee Corp.

Michigan Wisconsin indicates that it is currently finalizing a gas sales contract with Continental Oil Co. under which Continental will agree to sell to Michigan Wisconsin all of the gas attributable to its 33⅓ percent interest in the Vermilion Block 242 reserves. In addition, it is indicated that pursuant to an Advance Payment Agreement, Atlantic Richfield Co. has agreed to sell to Michigan Wisconsin all of the gas from its 33⅓ percent interest in those same gas reserves.

Tennessee estimates that 64,007 MMcf of reserves are expected to be committed or available to it from Vermilion Blocks 241 and 261, from which Tennessee expects to realize a deliverability of some 87.5 MMcf per day commencing with the 1978-79 winter. Michigan Wisconsin estimates total reserves in Vermilion Block 242 of 79,914 MMcf, with a deliverability of 35 MMcf per day, of which 66⅔ percent are committed to Michigan Wisconsin.

Applicants further request authorization in their application to transport and exchange gas. Specifically, Tennessee proposes to transport up to 40,000 Mcf per day of gas for Michigan Wisconsin from the Vermilion area through the Blue Water project to Tennessee's Muskrat line near Egan in Acadia Parish, La. At Egan, Tennessee will redeliver such volumes by exchanging with Michigan Wisconsin equivalent volumes of gas to be delivered to Michigan Wisconsin on the outlet side of Placid Oil Co.'s Patterson plant in St. Mary Parish, La., and at Superior Oil Co.'s Lowry plant in Cameron Parish, La.

Any person desiring to be heard or to make any protest with reference to said application, on or before August 21, 1978, should 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 person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21672 Filed 8-3-78; 8:45 am]

[6740-02]

[Docket No. CP77-617]

TEXAS GAS TRANSMISSION CORP.

Findings and Order After Statutory Hearing Issuing Certificate of Public Convenience and Necessity

JULY 28, 1978.

On September 13, 1977,[1] Texas Gas Transmission Corp. (Texas Gas),[2] filed with the FPC in Docket No. CP77-617 an application pursuant to section 7(c) of the Natural Gas Act and § 2.79 of the Commission's general policy and Interpretations for a certificate of public convenience and necessity authorizing the interstate transportation of up to 400 Mcf of natural gas per day on an interruptible basis for Alumax Extrusions, Inc. (Alumax), an existing industrial customer of Mississippi Valley Gas Co. (Mississippi Valley), one of Texas Gas' resale customers, for a period of 2 years from

[1] On Oct. 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 of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on Oct. 1, 1977.

The "savings provisions" of section 705(b) of the DOE Act provided 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.

The FERC takes action in this proceeding in accordance with the above mentioned authorities.

[2] Texas Gas, a Delaware corporation having its principal place of business in Owensboro, Ky., a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by order issued Mar. 30, 1949, in Docket No. g-859 (8 FPC 190).

the date of initial delivery, all as more fully set forth in the application, as supplemented, in this proceeding.

By order of December 12, 1977, the Commission issued a temporary certificate for the transportation of up to 400 Mcf per day by Texas Gas for Alumax for a period ending July 31, 1978. The order indicated that if the Commission should decide to permit the policy in § 2.79 to continue, Texas Gas would be allowed to request an extension of the authorization for the transportation service consistent with the standards and conditions in any new order on industrial transportation. The policy in § 2.79 was continued by Order No. 2 on February 1, 1978, and on March 2, 1978, Texas Gas filed an amendment to its application to request authorization for the transportation of up to 400 Mcf of natural gas per day for Alumax for a period of 2 years from January 4, 1978, the date of initial delivery.

The gas is currently being transported from an existing point of receipt at the tailgate of the Kerr-McGee gasoline plant on Texas Gas' Lisbon-Guthrie 20-inch line in Lincoln Parish, La., to Mississippi Valley for redelivery to Alumax's plant in Hernando, Miss. No additional facilities are required to carry out this transportation.

Pursuant to a service agreement dated September 6, 1977, Texas Gas will transport gas for Alumax under rate schedule T-1. The T-1 rate is currently 16.47 cents per Mcf for transportation in zone 1. Texas Gas will retain 1.58 percent of the transportation volumes for compressor fuel and line loss. The transportation rate is in effect subject to refund in Docket No. RP77-139 and the treatment of transportation revenues is an issue in that docket.

Texas Gas and Mississsippi each states that it has sufficient capacity to transport the gas for Alumax.

Alumax entered into a gas purchase contract on July 7, 1977, for a period of 2 years with Harvey Broyles, L. R. Brammer, Jr., Perry G. Holloway, Dr. W. H. Broyles, and Louisiana Land & Exploration Co. (Broyles, et al.). By the terms of said contract, Alumax agrees to purchase up to 400 Mcf per day from production in the Tremont Field in Lincoln Parish, La., which gas is delivered to Texas Gas at the tailgate of the Kerr-McGee gasoline plant. The price to be paid by Alumax during the first year of the 2-year term is $1.80 per Mcf and during the second year is $2, measured at a pressure base of 15.025 psia. The thermal content of the gas is projected to average 1,008 Btu per cubic foot. Applying the Btu adjustment in the contract and adjusting the price to a pressure base of 14.73 psia, the prices are $1.78 per Mcf for the first year and $1.98 for the second. FERC form No. 45 data on intrastate sales for the first quarter of 1978 indicate a range of prices from $1.65 to $2.14 per Mcf at 14.73 psia for new contracts in Louisiana. Thus the price of the gas for both years falls within the range of intrastate prices in that area.

The gas purchase contract further provides that Alumax must take or pay for a daily minimum quantity of 260 Mcf per day if tendered by Broyles, et al. On an annual basis, the take-or-pay quantitiy plus the volume projected to be available to Alumax under its contract with Mississippi Valley will be approximately equal to Alumax's annual requirements. Additionally, the purchase contract provides for a 6-month makeup period beyond the term of the contract to take any gas volumes paid for but not taken.

Excess production from the subject wells is currently being sold to Louisiana Gas Purchase Co. (Louisiana Gas), an intrastate pipeline company which has an interconnection at the Kerr-McGee plant. Broyles, et al., will not supply the price for such sale but indicate that it is higher than the first year $1.80 price to Alumax. Alumax indicates that information on ownership and particulars of adjoining acreage is not available to it. In a statement dated July 7, 1977, Broyles, et al., indicate that gas from the subject wells will not be sold in any manner which would result in the sellers' becoming subject to Federal regulation.

Alumax has retained Stone Energy Corp. (Stone) as its agent and consultant with respect to the purchase of the subject gas. Stone will charge a fee composed of (1) reimbursement of all of pocket expenses limited to $1,500 prior to submission of a certificate application; (2) $60 per hour for each hour spent performing services by Stone's management and $10 per hour for routine administrative services, limited to $2,500 prior to submission of a certificate application; and (3) the following purchase commission for all field gas purchased by buyer through the assistance of Stone:

BIANNUAL INCREMENTAL VOLUMES

Mcf	Cents[1]
First 250,000	10
Next 250,000	8
Next 250,000	6
Next 250,000	4
Over 1,000,000	3

[1] Incremental fees per Mcf.

Based on the take-or-pay quantity, 260 Mcf per day, Alumax will be required to purchase approximately 134,000 Mcf during the remaining term of the gas purchase contract. This result in a payment to Stone of $17,400 including the maximum payment for out of pocket, managerial, and administrative costs. The Commission has noted in Order No. 2 issued February 1, 1978, that it is not opposed to brokering activities and does not wish to discourage the use of these important services. The Commission feels that the fee to be charged by Stone will not have an upward pressure effect on the future price of gas produced in the same area.

In an affidavit dated August 1, 1977, Alumax states that it manufactures various aluminum extrusions at its plant located in Hernando, Miss. Alumax has requirements, it continues, for 625 Mcf of gas per day for use in a direct fired, heat extrusion and annealing furnace, aging ovens and drying ovens, which require precise temperature control and flame characteristics, and for use in nonconvertible space heaters used in the winter months for plant protection purposes. These uses have no technically feasible alternate fuel, it is asserted.

The Alumax affidavit contains a statement that Mississippi Valley has advised Alumax to plan for 50-percent curtailment for the winter periods of the 2-year term of the proposed transportation agreement, and 33 percent during the summer periods. Alumax indicates that last winter the plant was shut down for 2 weeks due to the unavailability of propane.

Since the transportation service proposed involves the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, said service is subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

After due notice by publication in the Federal Register on March 15, 1978 (43 FR 10726), no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on July 26, 1978, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, affidavits, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds: (1) Applicant is able and willing properly to do the acts and perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(2) The transportation of natural gas by Texas Gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission orders: (A) A certificate of public convenience and necessity is issued authorizing Texas Gas to

transport up to 400 Mcf of natural gas per day in interstate commerce for 2 years upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Texas Gas' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of section 157.20 and in Part 154 of such regulations.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned further as follows:

(1) The transportation service shall be on an interruptible basis for volumes up to 400 Mcf per day for two years from the date of initial delivery under the order of December 12, 1977.

(2) The volumes of gas transported shall be utilized only for Priority 2 uses and Priority 3 uses which would be Priority 2 uses but for an interruptible contract as defined in section 2.78 of the Commission's General Policy and Interpretations (18 CFR 2.78). In no event shall the total volumes delivered to Alumax exceed its contract demand with its supplier.

(3) Alumax shall reduce the volumes it would receive under the curtailment plan of its existing natural gas supplier for Priority 2 or Priority 3 use as defined above to the extent that the volumes of gas transported under the transportation certificate exceed the volumes of curtailment experienced by Alumax in the eligible Priority 2 or 3 category.

(4) Texas Gas shall submit a monthly report consisting of an original and four copies to the Commission indicating the name of the producer, the volumes received and transported, the volumes delivered, and the name of the distributor. Such reports shall be filed under oath within 20 days after the end of each month included in the term of the transportation certificate. The pipeline shall file a report for any month during which gas was not transported.

(5) Alumax shall provide Texas Gas with a monthly report which shall be transmitted to the Commission as an attachment to the report required by (4) above. Such report shall contain the amount of natural gas consumed at the plant during the month covered by the report, the end use of such consumption according to the end-use of such consumption according to the end use priorities contained in 18 CFR 2.78, the amount of natural gas consumed from other sources and the end-use of the gas from such other sources.

(6) Texas Gas' transportation rate authorized herein, based upon rates which are presently in effect subject to refund, is conditioned upon any change in rates authorized in Docket Nos. RP77-139.

(D) If Alumax is unable to receive gas supplies for which it has paid under the take-or-pay provision in the underlying sales contract, Texas Gas shall file a request for a 6-month extension of the certificate authorization. The request shall include a statement of the undelivered volumes and the time necessary to complete delivery thereof. Upon receipt of a letter from the Secretary of the Commission acknowledging the filing, the requested extension shall be deemed approved.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21673 Filed 8-3-78; 8:45 am]

[6740-02]

[Docket No. CP77-628]

TEXAS GAS TRANSMISSION CORP.

Findings and Order After Statutory Hearing Issuing Certificate of Public Convenience and Necessity

JULY 28, 1978.

On September 22, 1977,[1] Texas Gas Transmission Corp. (Texas Gas),[2] filed with the FPC in Docket No. CP77-628 an application pursuant to section 7(c) of the Natural Gas Act and section 2.79 of the Commission's General Policy and Interpretations for a certificate of public convenience and necessity authorizing the interstate transportation of up to 340 Mcf of natural gas per day on an interruptible basis for Quaker Oats Co. (Quaker Oats), an existing industrial customer of Jackson Utility Division, city of Jackson, Tenn. (Jackson), one of Texas Gas' resale customers, for a period of 2 years from the date of initial delivery, all as more fully set forth in the application, as supplemented, in this proceeding.

By order of December 12, 1977, the Commission issued a temporary certificate for the transportation of up to 340 Mcf per day by Texas Gas for Quaker Oats for a period ending July 31, 1978. The order indicated that if the Commission should decide to permit the policy in section 2.79 to continue, Texas Gas would be allowed to request an extension of the authorization for the transportation service consistent with the standards and conditions in any new order on industrial transportation. The policy in section 2.79 was continued by Order No. 2 on February 1, 1978, and on March 2, 1978, Texas Gas filed an amendment to its application to request authorization for the transportation of up to 340 Mcf of natural gas per day for Quaker Oats for a period of 2 years from January 4, 1978, the date of initial delivery.

The gas is currently being transported from an existing point of receipt at the tailgate of the Kerr-McGee Gasoline Plant on Texas Gas' Lisbon-Guthrie 20-inch line in Lincoln Parish, La., to Jackson. No additional facilities are required to carry out this transportation.

Pursuant to a service agreement dated September 12, 1977, Texas Gas will transport gas for Quaker Oats under Rate Schedule T-1. The T-1 rate is currently 16.47 cents per Mcf for transportation in Zone 1. Texas Gas will retain 1.58 percent of the transportation volumes for compressor fuel and line loss. The transportation rate is in effect subject to refund in Docket No. RP77-139 and the treatment of transportation revenues is an issue in that docket.

Texas Gas and Jackson each states that it has sufficient capacity to transport the gas for Quaker Oats. Quaker Oats entered into a gas purchase contract on July 6, 1977, for a period of 2 years with Harvey Broyles, L. R. Brammer, Jr., Perry G. Holloway, Dr. W. H. Broyles, and Louisiana Land and Exploration Co. (Broyles, et al.). By the terms of said contract, Quaker Oats agrees to purchase a daily contract quantity of 270 Mcf from production in the Tremont Field in Lincoln Parish, La., which gas is delivered to Texas Gas at the tailgate of the Kerr-McGee Gasoline Plant. The price to be paid by Quaker Oats during the first year of the 2-year term is $1.80 per Mcf and during the second year is $2, measured at a pressure base of 15.025 psia. The thermal content of the gas is projected to average 1,008 Btu per cubic foot. Applying the Btu adjustment in the contract and adjusting the price to a pressure base of 14.73 psia, the prices are $1.78 per Mcf for the first year and $1.98 for the second. FERC Form No. 45 data on intrastate sales for the first quarter of 1978 indicate a range of prices from $1.65 to $2.14 per Mcf at 14.73 psia for new contracts in Louisiana. Thus the price of the gas for both years falls within the range of intrastate prices in that area.

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[1] 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 (FPC) ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC).

The "savings provisions" of section 705(b) of the DOE Act provided 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. The functions which are the subject of this proceeding were specifically transferred to the FERC by section 402(a)(1) of the DOE Act.

[2] Texas Gas, a Delaware corporation having its principal place of business in Owensboro, Ky., is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by order issued March 30, 1949, in Docket No. G-859 (8 FPC 190).

The gas purchase contract further provides that Quaker Oats must take or pay for a daily minimum quantity of 65 percent of the daily contract quantity. Additionally, the purchase contract provides for a 6-month make-up period beyond the term of the contract to take any gas volumes paid for but not taken.

Excess production from the subject wells is currently being sold to Louisiana Gas Purchase Co. (Louisiana Gas), an intrastate pipeline company which has an interconnection at the Kerr-McGee Plant. Broyles, et al., will not supply the price for such sale but indicate that it is higher than the first year $1.80 price to Quaker Oats. Quaker Oats indicates that information on ownership and particulars of adjoining acreage is not available to it. Broyles, et al., indicate that gas from the subject wells will not be sold in any manner which would result in the sellers' becoming subject to Federal regulation. Quaker Oats has retained Stone Energy Corp. (Stone) as its agent and consultant with respect to the purchase of the subject gas. Stone will charge a fee composed of (1) reimbursement of all out of pocket expenses and (2) the following purchase commission for all field gas purchased by buyer through the assistance of Stone:

Biannual incremental volumes in thousand cubic feet

First 200,000	[1]10
Next 200,000	[1]9
Next 200,000	[1]8
Next 200,000	[1]7
Next 200,000	[1]6
Over 1,000,000	[1]5

[1]Incremental fees in cents per thousand cubic feet.

Based on the average deliveries of 270 Mcf per day, Quaker Oats will be required to purchase approximately 98,550 Mcf during the remaining term of the gas purchase contract. This will result in a payment to Stone of $19,700. The Commission has noted in Order No. 2 issued February 1, 1978, that it is not opposed to brokering activities and does not wish to discourage the use of these important services. The Commission feels that the fee to be charged by Stone will not have an upward pressure effect on the future price of gas produced in the same area.

Quaker Oats operates a frozen food plant in Jackson, Tenn. The plant produces waffles and french toast for the frozen food industry. Natural gas is used in 24 waffle and 4 french toast ovens which consist of a continuous griddle which passes over a series of custom-built direct fired gas burners. The products are then flash frozen and stored in freezer warehouses until delivery. Quaker Oats states that fuel oil is not feasible due to contamination of the food products and the fact that the ovens were specifically designed for the use of natural gas or propane. Although propane can be used, Quaker Oats has a storage capacity of only 15 days which cannot be depended upon during extended periods of curtailment in the winter season. In addition, Quaker Oats requires natural gas for make-up air units and space heaters which are scattered throughout the plant as part of a fuel distribution system. Replacement would require entirely new burning and connecting equipment. Total peak day usage for the process and heating equipment is 340 Mcf with average daily use of approximately 250 Mcf.

Since the transportation service proposed involves the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, said service is subject to the requirements of Subsections (c) and (e) of section 7 of the Natural Gas Act.

After due notice by publication in the FEDERAL REGISTER on March 20, 1978 (43 FR 11601), no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 26, 1978, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, affidavits, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record.

The Commission finds: (1) Applicant is able and willing properly to do the acts and perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(2) The transportation of natural gas by Texas Gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission orders: (A) A certificate of public convenience and necessity is issued authorizing Texas Gas to transport up to 340 Mcf of natural gas per day in interstate commerce for 2 years upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Texas Gas' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of section 157.20 and in Part 154 of such Regulations.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned further as follows:

(1) The transportation service shall be on an interruptible basis for volumes up to 340 Mcf per day for 2 years from the date of initial delivery under the order December 12, 1977.

(2) The volumes of gas transported shall be utilized only for Priority 2 uses and Priority 3 uses which would be Priority 2 uses but for an interruptible contract as defined in section 2.78 of the Commission's General Policy and Interpretations (18 CFR 2.78). In no event shall the total volumes delivered to Quaker Oats exceed its contract demand with its supplier.

(3) Quaker Oats shall reduce the volumes it would receive under the curtailment plan of its existing natural gas supplier for Priority 2 or Priority 3 use as defined above to the extent that the volumes of gas transported under the transportation certificate exceed the volumes of curtailment experienced by Quaker Oats in the eligible Priority 2 or 3 category.

(4) Texas Gas shall submit a monthly report consisting of an original and four copies to the Commission indicating the name of the producer, the volumes received and transported, the volumes delivered, and the name of the distributor. Such reports shall be filed under oath within 20 days after the end of each month included in the term of the transportation certificate. The pipeline shall file a report for any month during which gas was not transported.

(5) Quaker Oats shall provide Texas Gas with a monthly report which shall be transmitted to the Commission as an attachment to the report required by (4) above. Such report shall contain the amount of natural gas consumed at the plant during the month covered by the report, the end use of such consumption according to the end-use priorities contained in 18 CFR 2.78, the amount of natural gas consumed from other sources and the end use of the gas from such other sources.

(6) Texas Gas' transportation rate authorized herein, based upon rates which are presently in effect subject to refund, is conditioned upon any change in rates authorized in Docket Nos. RP77-139.

(D) If Quaker Oats is unable to receive gas supplies for whch it has paid under the take-or-pay provision in the underlying sales contract, Texas Gas shall file a request for a 6-month extension of the certificate authorization. The request shall include a statement of the undelivered volumes and the time necessary to complete delivery thereof. Upon receipt of a letter from the Secretary of the Commission acknowledging the filing, the requested extension shall be deemed approved.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21674 Filed 8-3-78; 8:45 am]

[6740-02]

[Docket No. CP-78-431]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Pipeline Application

JULY 28, 1978.

Take notice that on July 18, 1978, Transcontinental Gas Pipe Line Corp. (Applicant), P.O. Box 1396, Houston, Tex. 77001, filed in Docket No. CP78-431, an application pursuant to section 7 of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulation Commission (Commission) for a certificate of public convenience and necessity authorizing Applicant to provide a transportation service for Natural Gas Pipeline Co. of America (Natural) for up to 10,000 Mcf (14.73 psia) of natural gas per day from Block 106, South Marsh Island Area (SMI), South Addition, offshore Louisiana, to points of delivery onshore in Louisiana and Texas, all as more fully set forth in the application which is on filed with the Commission and open to public inspection.

Applicant states that Natural has contracted with Shell Oil Co. (Shell) to purchase all the natural gas reserves in Block 115, SMI, which Shell intends to produce from a production platform located in adjacent Block 106, SMI. Applicant further states that it was granted authority in Docket No. CP77-453, on September 28, 1977, to construct and operate an extension of its Southeast Louisiana Gathering System from Block 66, SMI to Block 106, SMI, and beyond to Blocks 130 and 132, SMI and Block 331, Vermilion Area, South Addition, and that the design of the facilities authorized in Docket No. CP77-453, which are close to being ready for service, included capacity for the transportation which Applicant proposes to render for Natural from Block 106, SMI, as well as for other transportation services.

Pursuant to a transportation agreement dated June 22, 1978, Applicant proposes, for a primary term of ten (10) years, to transport up to 10,000 Mcf of natural gas on a firm basis for Natural from a point of receipt in Block 106, SMI to a point in Block 66, SMI, and to transport up to the same daily quantity on a best efforts basis downstream from Block 66, SMI through its Southeast Louisiana Gathering System and Applicant's other facilities to the following points of delivery on shore in Louisiana and Texas, where Applicant will deliver quantities equivalent to those received in Block 106 (less fuel use and line loss make-up) to Natural:

(a) At the point of interconnection between Natural's system and the terminus of the U-T Offshore System in Cameron Parish, La.;

(b) At the outlet side of Mobil Oil Corporation's La Gloria Plant in Jim Wells County, Tex.; and

(c) At the point of interconnection between South Texas Natural Gas Gathering Company's system and the systems of Natural and Transco in Jim Wells County, Tex., or any other mutually agreeable point.

Applicant states that the estimated initial demand charge for the proposed firm transportation service for Natural will be $69,900 monthly, and is based on preliminary estimates of the cost of completing the facilities authorized in Docket No. CP77-453 and a daily contract demand of 10,000 Mcf for Natural. Applicant further states that the first year's demand charge will be adjusted prior to initial service to reflect actual costs of the facilities and that at the beginning of the second and third years of service, the demand charge will be redetermined to reflect the estimated aggregate volumes of gas to be handled through the facilities in those years, and the adjusted demand charge established at the beginning of the third year of service shall remain in effect thereafter, subject to Applicant's right to file changes in its rates and charges, from time to time, for the service rendered.

Applicant further states that its initial rate for the best efforts transportation service from Block 66, SMI to the onshore delivery points is 15.25 cents per Mcf received at Block 106, SMI, less retained volumes. In the event that additional facilities are required on Applicant's Southeast Louisiana Gathering System to transport Applicant's gas and gas for other pipelines (including Natural) downstream from Block 66, SMI, Natural has the following options: Natural can terminate the best efforts transportation service to the onshore delivery points, or reduce the volumes tendered at Block 106 , SMI, so as to eliminate the need for the additional facilities downstream of Block 66, SMI, or convert the transportation service from Block 66, SMI to the onshore delivery points to a firm basis. According to Applicant, if Natural exercises the latter option, then Applicant, either separately or jointly with Natural, will construct the required facilities and the rate for the transportation service from Block 66, SMI to the onshore delivery points will be adjusted to reflect the costs incurred solely by Applicant to expand its facilities or the costs incurred jointly for the incremental facilities, whichever is the case.

Applicant also states that Shell has pending an application in Docket No. CI78-626 for a certificate to sell to Natural the natural gas production in Block 115, SMI which will be transported by the service proposed in this application.

Any person desiring to be heard or to make any protest with reference to said application, on or before August 21, 1978, should 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 person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if not petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21675 Filed 8-3-78; 8:45 am]

[6740-02]

[Docket No. RP78-78]

NATURAL GAS PIPELINE CO. OF AMERICA

Order Accepting for Filing and Suspending Proposed Rate Increase Subject to Conditions, Rejecting Certain Tariff Sheets, Granting Interventions, and Establishing Procedures

JULY 28, 1978.

On June 30, 1978, Natural Gas Pipeline Co. of America (Natural) tendered for filing proposed changes to its FERC Gas Tariff,[1] which would in-

[1] See Appendix A. In support of the rates proposed in this proceeding, Natural filed Revised Tariff Sheet Nos. 5, 816, and 1067, a statement of the reasons for the proposal, and Statement A. All other statements and schedules were filed July 7, 1978. Natural requested waiver of the Commission's regulations to permit acceptance of its filing.

Footnotes continued on next page

crease its jurisdictional revenues by $53 million based on costs and sales volumes for the 12 months ended February 28, 1978, as adjusted for known and measurable changes through November 30, 1978. Natural requests that the proposed changes be permitted to become effective August 1, 1978, except for certain changes which Natural requests not to become effective before January 1, 1979.[1] Included in Natural's filing is a request for waiver of the Commission's regulations to permit acceptance of proposed tariff sheets [2] to incorporate a net transportation adjustment provision in its existing PGA provision, or substitution and acceptance of alternative sheets [3] if waiver is denied. For the reasons stated below, the Commission shall reject those sheets incorporating a net transportation cost adjustment provision. The Commission shall accept Natural's remaining proposed tariff sheets for filing, including those tariff sheets requested to become effective January 1, 1979, suspend them as provided below, and set the matter for hearing.

Background

Public notice of Natural's filing was issued on July 11, 1978, providing for the filing of protests or petitions to intervene on or before July 20, 1978. Timely petitions to intervene were filed by those parties listed in Appendix B to this order. The Commission finds that all listed petitioners have demonstrated an interest in this proceeding which warrants their participation. The petitions to intervene shall therefore be granted.

Natural states that the principal reasons for its proposed rate increase are (1) a proposed increase in the overall rate of return to 10.80 percent, which would permit a rate of return to equity of 15.50 percent, (2) a change in depreciation rate to 5.25 percent for production, gathering, storage and onshore transmission property, and 11.4 percent for all offshore property except for Natural's Stingray Line which will remain at 5 percent, (3) significant additional charges and increased costs for the transportation of gas by others from offshore and onshore gas supply sources, and (4) the additional Federal and State income taxes on fully depreciated tax property still being depreciated for book purposes. By letter dated July 11, 1978, Natural requests that if the Commission decides to suspend the filing, the period for suspension not exceed 4 months or be later than December 1, 1978. The effect of granting Natural's request for a 4 month suspension would be to give them the original effective date after a 5 month suspension they would have received if their original filing in Docket No. RP78-71 had not been rejected,[4] but had been accepted (and suspended) subject to elimination of costs associated with the proposed Louisiana First Use Tax.

Discussion

Based upon a review of Natural's filing herein, the Commission finds that the proposed 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 Natural's proposed rate increase for filing, suspend its use for 4 months or until December 1, 1978, except for the sheets to become effective January 1, 1979, which shall be suspended until January 1, 1979, when the rates shall be permitted to become effective, subject to refund, and shall set the matter for hearing, as hereinafter conditioned. Our action in suspending the majority of Natural's filing for only 4 months in no way reflects diminished concern about submission of rate filings containing speculative costs such as costs based upon legislative proposals not enacted into law at the time of the filing. We hereby put all parties on notice that in the future this Commission intends to reject filings which contain speculative costs not in compliance with § 154.63(e)(2)(i) of the regulations or which are otherwise not consistent with this Commission's filing requirements. In rejecting these filings, the Commission does not intend to grant requests for shortened suspension periods, such as is being done in the instant order, or to grant requests for waiver of the notice requirements, in acting upon the resubmitted revised filings made to correct the deficiencies which caused rejection of the originally submitted filing. This Commission fully intends to strictly construe the filing requirements set forth in its regulations.

Review of Natural's filing indicates that Natural has included therein costs associated with certain facilities which have not been certified and placed in service at this time.[5] Based upon the anticipation that all such facilities will be certificated and placed in service by November 30, 1978, Natural requests waiver of § 154.63(e)(2)(ii) of the regulations to permit the costs associated with the uncertificated facilities and service to be reflected in this filing. Such waiver shall be granted on the condition that Natural shall file substitute tariff sheets reflecting revised rates and supporting materials reflecting the elimination of all costs associated with facilities not placed in service by November 30, 1978, the effective date of the rates suspended by this order. These substitute tariff sheets shall also reflect Natural's actual outstanding balance of advance payments on November 30, 1978, along with supporting materials for the adjustment, provided that inclusion of a higher advance payments balance shall not be permitted to increase the level of the original suspended rates. This waiver of § 154.63(e)(2)(ii) is granted upon condition that Natural shall not be permitted to make offsetting adjustments to the suspended rates prior to hearing except for those adjustments made pursuant to Commission approved tracking provisions, adjustments required by this order, and those required by other Commission orders.

Natural's filing also included proposed tariff sheets Nos. 116 through 121-B, which incorporate a permanent, automatic net transportation cost adjustment in its existing purchased gas cost adjustment (PGA) provision. The effect of this adjustment is to permit the tracking of certain of Natural's net transportation costs. Sections 154.38(d) (3), (4), and (5) of the Commission's regulations provide that no permanent automatic rate adjustment provision shall be permitted for natural gas companies except for purchased gas and research and development expenditures. This Commission has permitted other forms of tracking provisions (e.g. for advance payments) only when they are part of an approved rate settlement wherein the Commission has reviewed all of the pipeline's costs and revenues and has determined that the tracking provision is proper for the period the settlement remains in effect, i.e., until the next section 4 rate increase becomes effective, subject to refund.[6] Under Natural's proposal, the Commission would not be able to review Natural's transportation costs along with other costs associated with jurisdictional service. Moreover, we do not find at this time that permitting the inclusion of a permanent net transportation cost tracking provision in a pipeline's tariff is necessary to insure the recovery of transportation costs. Inasmuch as Natural has not shown good cause for waiver of the Commission's regulations, we shall reject proposed tariff sheet Nos. 116 through

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Footnotes continued from last page

Good cause exists to grant the requested waiver.

[2] Sheet Nos. 116 through 121-B.

[3] Sheet Nos. 119 and 120-A.

[4] See: *Natural Gas Pipeline Co. of America*, letter order issued June 30, 1978.

[5] These facilities are currently the subject of Docket Nos. CP78-18, CP78-71, CP78-73, CP78-96, CP78-236, CP78-260, and CP78-289.

[6] We note that Natural's proposal in this proceeding is similar to a temporary transportation tracking provision included in the proposed settlement in Natural's last general rate case, Docket No. RP77-98.

121-B, and accept substitute alternative sheet Nos. 119 and 120-A for filing. However, Natural may present evidence in this proceeding on the propriety of the adjustment provision for possible prospective approval thereof.

Finally, Natural requests waiver of § 154.22 of the Commission's regulation to permit certain of its proposed tariff sheets [7] to become effective January 1, 1978, more than 60 days after the date of filing. Natural has shown good cause from waiver of our notice requirements which do not permit rate schedules to be filed more than 60 days prior to the proposed effective date thereof.

The Commission orders: (A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, and 15 thereof, and the Commission's regulations, a public hearing shall be held concerning the lawfulness of the increased rates proposed by Natural.

(B) Pending hearing and decision, and subject to the conditions of this order, Natural's proposed rate increase is accepted for filing, as conditioned below, and suspended for 4 months, or until December 1, 1978, when it shall be perfiled by Natural in accordance with the provisions of the Natural Gas Act: *Provided, however,* That those sheets proposed to become effective January 1, 1979, shall be suspended for 5 months until January 1, 1979.

(C) The provisions of § 154.63(e)(2)(ii) of the regulations are waived to permit Natural's filing to reflect the inclusion of costs associated with presently uncertificated facilities, on the condition that Natural shall file revised tariff sheets on or before January 1, 1979, reflecting the elimination of all costs included in the proposed rates associated with facilities not placed in service by November 30, 1978. Natural shall also submit supplemental cost and revenue data reflecting the elimination of such costs from its cost of service. This waiver of § 154.63(e)(2)(ii) is granted upon condition that Natural shall not be permitted to make offsetting adjustments to the suspended rates prior to hearing except for those adjustments made pursuant to Commission approved tracking provisions, adjustments required by this order, and those required by other Commission orders.

(D) The tariff sheets accepted for filing pursuant to this order shall also be revised to reflect Natural's outstanding balance of advance payments as of November 30, 1978, provided that the inclusion of a higher overall advance payments balance shall not be permitted to increase the level of the original suspended rates. Natural shall also file supplemental data to support any such revision.

(E) Proposed tariff sheets Nos. 116 through 121-B are rejected, without prejudice, as discussed in the body of this order. Alternative tariff sheet Nos. 119 and 120-A will be substituted in lieu thereof and accepted for filing pursuant to the provisions of this order.

(F) The provisions of §§ 154.22 and 154.63 of the regulations are waived to permit acceptance of the tariff sheets tendered for filing to become effective January 1, 1979, and the late-filed supporting schedules, respectively.

(G) The Commission staff shall prepare and serve top sheets on all parties on or before November 1, 1978.

(H) 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 practice and procedure.

(I) The petitioners to intervene noted in Appendix B are permitted to intervene in this proceeding subject to the Commission's rules and regulations, *Provided, however,* That the participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in the petitions to intervene; and *Provided, further,* That the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order entered in this proceeding.

(J) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

APPENDIX A—NATURAL GAS PIPELINE CO. OF AMERICA

LIST OF TARIFF SHEETS

Sheets to be effective August 1, 1978

Third Revised Volume No. 1:
Thirty-fifth Revised Sheet No. 5.
Tenth Revised Sheet No. 5A.
First Revised Sheet No. 5B.
Fifth Revised Sheet No. 116.
Second Revised Sheet No. 117.
Third Revised Sheet No. 118.
Ninth Revised Sheet No. 119.
Third Revised Sheet No. 120.
Seventh Revised Sheet No. 120-A.
Second Revised Sheet No. 120-B.
Third Revised Sheet No. 121.
First Revised Sheet No. 121-A.
Original Sheet No. 121-B.
Second Revised Volume No. 2:
Eleventh Revised Sheet No. 220.
Sixth Revised Sheet No. 270.
Third Revised Sheet No. 407.
Third Revised Sheet No. 433.
Second Revised Sheet No. 744.
Second Revised Sheet No. 816.
Second Revised Sheet No. 1000.
First Revised Sheet No. 1067.
First Revised Sheet No. 1097.

Sheets with effective date of January 1, 1979

Second Revised Volume No. 2:
Second Revised Sheet No. 653.
Second Revised Sheet No. 668.
Second Revised Sheet No. 695.

Alternate sheets in the event the Commission does not accept Sheet Nos. 116 through 121-B above for filing.

Third Revised Volume No. 1:
Ninth Revised Sheet No. 119.
Seventh Revised Sheet No. 120-A.

APPENDIX B—NATURAL GAS PIPELINE CO. OF AMERICA

[Docket No. RP78-78]

PETITIONERS FOR INTERVENTION

Northern Illinois Gas Co.
Iowa Power & Light Co.
Central Illinois Public Service Co.
Iowa Southern Utilities Co.
Columbia Gas Transmission Corp.
Colorado Interstate Gas Co.
Central Illinois Light Co.
Associated Natural Gas Co.

[FR Doc. 78-21676 Filed 8-3-78; 8:45 am]

[7] See Appendix A.

[6740-02]

[Docket No. ER78-463]

MONTAUP ELECTRIC CO.

Order Accepting for Filing and Suspending Rate Schedule, Waiving Regulations, Granting Interventions, and Establishing Procedures

JULY 28, 1978.

On June 28, 1978, Montaup Electric Co. (Montaup) submitted for filing a proposed rate increase of $3,720,697 (3.43%) for the period ending June 30, 1979. Montaup, a generating and transmission company, states that it is responsible for the bulk power supply requirements of the three retail subsidiaries of Eastern Utilities Associates (EUA), a public utility holding company. The subsidiaries are Brockton Edison Co. (Brockton) and Fall River Electric Co. (Fall River) in Massachusetts and Blackstone Valley Electric Co. (Blackstone) in Rhode Island. Montaup states that Brockton and Fall River own all of its securities.

Montaup's submittal provides a new M-4 rate [1] for firm power service at 115 kv, applicable to the three retail subsidiaries of EUA and four nonaffiliated customers.[2] The proposed increase will result in an 11 percent rate

[1] See Attachment A for designations.

[2] Newport Electric Corp., Pascoag Fire District, town of Middleboro, and Narragansett Electric Co.

of return. In addition to the M-4 rate increase, Blackstone and Brockton have submitted for filing revisions to their 115-kv transmission facilities rental agreements with Montaup, which provide for increased rates of return, based on their capital structures for the year ending December 31, 1977. An agreement for the rental of certain Montaup 115-kv transmission facilities by Fall River has also been submitted. It is identical in form to the Blackstone and Brockton agreements. The Montaup rental agreements utilize a 10.51 percent rate of return.

Montaup requests waiver of § 35.13(b)(4) of the Commission's Regulations as it relates to the Brockton agreement. It states that since the rental charge is based directly on the cost of the rental facilities as provided in the rental agreement, total-company and allocated cost data are not pertinent to the derivation of the charges.

On July 13, 1978, the Municipal Gas and Electric Department of the town of Middleboro, Mass. (Middleboro), filed its Protest, Petition To Intervene, and Request for Suspension.[3] On July 14, 1978, Julius C. Michaelson, the Attorney for the State of Rhode Island (Attorney General), the Rhode Island Division of Public Utilities and Carriers (Division), and the Rhode Island Consumers' Council (Consumers Council) filed their Petition for Leave To Intervene, To Reject, and for Suspension of Tariff Schedules. On July 17, 1978, the Narragansett Electric Co. (Narragansett) and the Newport Electric Corp. (Newport) filed untimely petitions to intervene.

Middleboro argues that almost the entire increase is based on an unjustified increase in Montaup's rate of return, an addition to plant scheduled for November 1978, and the use of unapproved and unjustified depreciation rates. It also questions Montaup's use of the one-eighth or 45-day rule in calculating its working cash requirements. Middleboro states that since Montaup did not provide a lead-lag study to justify its working cash allowance, the Commission should disallow the requested amount. Middleboro requests that the Commission permit it to intervene, suspend the proposed rate increase for 5 months, and order a hearing to determine the lawfulness of the proposed rates.

The Attorney General of Rhode Island states that pursuant to State statutory authority, he is the legal adviser of all State boards, divisions, departments, and commissions. He indicates that under common law, he is the representative of the public, empowered to bring actions to redress grievances suffered by the public as a whole. The petition states that under State law, the Division has the exclusive power and authority to supervise, regulate, and make orders governing the conduct of companies offering energy to the public in intrastate commerce and to protect the public against unlawful rates. The petition also states that the Consumers' Council was established pursuant to State law to appear before Federal, State, and local Commissions on matters affecting consumers.

The Attorney General, Division, and Consumers' Council state that Montaup makes substantial sales to two Rhode Island distribution companies, Blackstone and Newport and certain other sales to Narragansett and the Pascoag Fire District at Burrillville, R.I. They argue that as a result, Montaup's proposed increase will adversely affect the class of consumers who are ultimately served within the State of Rhode Island. They request that they be permitted to intervene and that the Commission suspend the proposed increase for 5 months or the completion of the investigation and hearing to be ordered herein.

Narragansett and Newport state that since any decision by the Commission concerning the lawfulness of Montaup's proposed increase will affect the amount they will have to pay for service, they have a substantial interest in the outcome of the proceeding. They request that the Commission permit them to intervene in the proceeding.

Though Narragansett's and Newport's petitions to intervene were not filed within the time period prescribed by the notice issued in this docket, the Commission will accept them. Since a procedural schedule has not been established herein, no party will be prejudiced by the parties participating in this proceeding.

The Commission finds good cause to grant waiver of § 35.13(b)(4) of its Regulations as they relate to the Brockton rental agreement. The information required to be filed pursuant to that regulation is not necessary to determine the lawfulness of the agreement.

Commission review of Montaup's filing and the pleading in this docket indicates that the proposed rate schedules have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. The Commission shall therefore suspend the proposed rate schedules for 4 months, until November 29, 1978, when they will become effective subject to refund, and establish hearing procedures.

The Commission finds: (1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Federal Power Act that the Commission enter upon a hearing concerning the lawfulness of Montaup's proposed rate increase, and that the proposed rates be accepted for filing, suspended, and the use thereof deferred, all as hereinafter ordered.

(2) Participation by Middleboro, the Attorney General, the Division, the Consumers' Council, Narragansett, and Newport may be in the public interest.

(3) Good cause exists to waive the cost support requirements of § 35.13(b)(4) of the Commission's regulations as they relate to the Brockton rental agreement.

The Commission orders: (A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act, and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Federal Power Act (18 CFR Ch. I), a hearing shall be held concerning the justness and reasonableness of the rates proposed by Montaup in this proceeding.

(B) Pending such hearing and decision thereon, the proposed rates and charges filed by Montaup are hereby accepted for filing, suspended, and the use thereof deferred 4 months, until November 29, 1978, when they shall become effective subject to refund.

(C) The staff shall prepare and serve top sheets on all parties for settlement purposes on or before October 26, 1978.

(D) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose; (see Delegation of Authority, 18 CFR 33.5(d)), shall convene a conference in this proceeding to be held 10 days after the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Said judge is authorized to establish all procedural dates and to rule on all motions (except petitions to intervene, motions to consolidate and sever, and motions to dismiss) as provided for in the Commission's rules of practice and procedure.

(E) Middleboro, the Attorney General, the Division, the Consumers' Council, Narragansett, and Newport are hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That participation of such intervenors shall be limited to the matters specifically set forth in the petitions to intervene; and *Provided further,* That the admission of such intervenors shall not be construed as recognition by the Commis-

[3] Notice of the filing was issued on July 6, 1978, with comments due on or before July 14, 1978.

sion that they might be aggrieved by any orders entered in this proceeding.

(F) The cost support requirements of § 35.13(b)(4) as it relates to the Brockton rental agreement are hereby waived.

(G) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission. Commissioner Holden voted present.

KENNETH F. PLUMB,
Secretary.

ATTACHMENT A

MONTAUP ELECTRIC CO.

[Docket No. ER78-463]

Dated: (1)-(4) Undated; (5) June 21, 1978; (6) June 26, 1978.
Filed: June 28, 1978.
Other party: (1) Tariff; (2) Newport Electric Corp.; (3) Pascoag Fire District; (4) Town of Middleboro; (5) Fall River Electric Light Co.; (6) Fall River Electric Light Co., Brockton Edison Co., and Blackstone Valley Electric Co.

Designations	Description
1. Sixth Revised Sheet No. 4 and 8th Revised Sheet No. 6 under FPC Electric Tariff, Original Volumn No. 1 (supersedes 5th Revised Sheet No. 4 and 7th Revised Sheet No. 6).	Rate M-4 and fuel clause.
2. Supplement No. 12 to Rate Schedule FPC No. 33 (supersedes Supplement No. 11).	Amendatory agreement.
3. Supplement No. 13 to Rate Schedule FPC No. 34 (supersedes Supplement No. 12).	Amendatory agreement and Exhibit A.
4. Supplement No. 14 to Rate Schedule FPC No. 36 (supersedes Supplement No. 13).	Amendatory agreement.
5. Rate Schedule FERC No. 58.	Transmission rental agreement.
6. Supplement No. 11 to Rate Schedule FPC No. 1 (supersedes Supplement No. 10).	Amendment to Sept. 11, 1923, Montaup contract.

BLACKSTONE VALLEY ELECTRIC CO.

Dated: Undated.
Filed: June 28, 1978.
Other Party: Montaup Electric Co.

Designation and Description

Supplement No. 4 to Rate Schedule FPC No. 21 (supersedes Supplement No. 3)—Cost of capital (exhibit D).

BROCKTON EDISON CO.

Dated: Undated.
Filed: June 28, 1978.
Other Party: Montaup Electric Co.

Designation and Description

Supplement No. 4 to Rate Schedule FPC No. 15 (supersedes Supplement No. 3)—Cost of capital (exhibit D)

[FR Doc. 78-21677 Filed 8-3-78; 8:45 am]

[1505-01]

Federal Energy Regulatory Commission

LANDS WITHDRAWN IN PROJECT NOS. 1203 AND 1241—WYOMING

Order Vacating Land Withdrawals Under Section 24 of the Federal Power Act

Correction

In FR Doc. 78-8912 appearing at page 14354 in the issue for Wednesday, April 5, 1978; on page 14355, first column, third line of the land description should read: "Sec. 6, lot 7, E½SW¼, S½SE¼".

[3128-01]

Office of the Secretary

REQUESTS FOR INTERPRETATION FILED WITH THE OFFICE OF GENERAL COUNSEL

Month of July 1978

Notice is hereby given that during the month of July 1978, the Requests for Interpretation listed in the Appendix to this notice were filed pursuant to 10 CFR Part 205, Subpart F with the Office of General Counsel, Department of Energy (DOE). Notice of subsequently received requests will be published at the end of each calendar month. Copies of the Requests for Interpretation and listed herein are on file in DOE's public reading room, Information Access Office, Room 2107, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

Interested parties may submit written comments on the listed interpretation requests on or before September 5, 1978. Comments should be identified on the outside envelope and on documents submitted with the file number of the interpretation request and all comments should be filed with the Office of General Counsel, Department of Energy, Room 5134, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, Attention: Diane Stubbs. Aggrieved parties, as defined in 10 CFR 205.2, will continue to receive actual notice of pending interpretation requests in accordance with the current practice of the Office of General Counsel.

FOR FURTHER INFORMATION, CONTACT:

Diane Stubbs, Office of General Counsel, 12th and Pennsylvania Avenue NW., Room 5138, Washington, D.C. 20461, 202-566-9070.

Dated: July 31, 1978.

EZRA C. LEVINE,
Acting Assistant General Counsel for Interpretations and Rulings Office of General Counsel.

APPENDIX.—*List of requests for interpretation received by the Office of General Counsel*

[Month of July 1978]

Date received	Name and location of requestor	File No.
July 7	M. T. Stallter, Turpin, Smith, Dyer & Saxe, First National Bank Bldg., Midland, Tex. 79701. Issue: Can new production from a property which had previously qualified as a stripper well property and ceased production be sold at exempt prices pursuant to 10 CFR 212.54..	A-335.
July 17	Gulf Oil Co., and Yellow Cab Co. of Philadelphia..... Hoyt H. Harmon, Jr., Gulf Oil Corp., No. 1 Presidential Blvd., Bala Cynwyd, Pa. 19004. Jeffrey B. Albert, Yellow Cab Co. of Philadelphia, Fox, Rothschild, O'Brien & Frankel, 1401 Walnut St., Philadelphia, Pa. 19102. Issue: May a supplier/purchaser relationship be terminated by a supplier of motor gasoline when the wholesale purchaser-consumer fails to pay in a single instance for product already supplied. 10 CFR 210.62.	A-337.
July 25	National Cooperative Refinery Association, Robert G. Hull, P.O. Box 1167, McPherson, Kans. 67460. Issue: Whether the costs incurred by a refiner in a "capital lease" program can be treated as nonproduct costs pursuant to 10 CFR 212.83.	A-339
Do	Kerr-McGee Corp., John D. Raunborg, Kerr-McGee Center, Oklahoma City, Okla. 73125. Issue: When residual fuel oil is produced, exchanged, and distributed by more than 1 refiner, which refiner must account for its sale into the east coast market pursuant to 10 CFR 211.67(d)(4).	A-340.
Do	Puerto Rico Sun Oil Co., Anthony S. Harrington, Hogan & Hartson, 815 Connecticut Ave. NW., Washington, D.C. 20006. Issue: If a company having a long-term license for the importation of foreign crude oil into a refinery located in Puerto Rico is required to pay into a Puerto Rican trust fund a specified amount per barrel of certain products refined from the imported crude oil, is it also required to make similar payments for products refined in Puerto Rico from domestic crude oil. (10 CFR pt. 213.).	A-341.

[FR Doc. 78-21678 Filed 8-3-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 939-3; OPP-42038B]

LOUISIANA STATE PLAN

State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides, Approval Status

Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136 et seq.) and the implementing regulations of 40 CFR Part 171, require each State desiring to certify applicators to submit a plan for such purpose, subject to approval by the Environmental Protection Agency (EPA). On March 14, 1977, the Louisiana State Plan was approved contingent upon the promulgation of regulations by the Louisiana Department of Agriculture necessary for the implementation of the Louisiana State Plan. Notice of contingent approval was published in the FEDERAL REGISTER on March 28, 1977 (42 FR 16467). Subsequently, on February 20, 1978 regulations necessary to implement the Louisiana legislation were promulgated. Having reviewed these regulations and finding that all requisite legal authorities required by FIFRA and 40 CFR Part 171 are now enacted and promulgated, the Regional Administrator, EPA, Region VI, gives notice that the Louisiana State Plan is now a fully approved State Plan.

Dated: June 26, 1978.

ED GRISHAM,
Acting Regional Administrator,
EPA, Region VI.

[FR Doc. 78-21643 Filed 8-3-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

FM AND TV TRANSLATOR APPLICATIONS READY AND AVAILABLE FOR PROCESSING PURSUANT TO SECTION 1.572(c) AND 1.573(d) OF THE COMMISSION'S RULES

By the Chief, Broadcast Facilities Division.

Adopted: July 24, 1978.

Released: July 28, 1978.

Notice is hereby given pursuant to §§ 1.572(c) and 1.573(d) of the Commission's rules, that on September 19, 1978, the TV and FM translator applications listed in the attached appendix will be considered as ready and available for processing. Pursuant to section 1.227(b)(1) and section 1.519(b) of the Commission's rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on September 18, 1978, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and submitted for filing at the offices of the Commission in Washington, D.C., by the close of business on September 18, 1978. The attention of prospective applicants is directed to the fact that some contemplated proposals may not be eligible for consideration with an application appearing in the attached appendix by reason of conflicts between the listed applications and applications appearing in previous notices published pursuant to section 1.573(d) of the Commission's rules.

The attention of any party in interests desiring to file pleadings concerning any pending TV and FM translator application, pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, is directed to section 1.580(i) of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

FM TRANSLATOR APPLICATIONS

BPFT-533 (new), Sonora, Tex., Richard L. Whitworth and Thomas H. Earnest, trading as Crockett County Broadcasters. Req: Channel 280, 103.9 MHz, 10 watts. Primary: KRCT-FM, Ozona, Tex.

BPFT-534 (new), Eldorado, Tex., Richard L. Whitworth and Thomas H. Earnest, trading as Crockett County Broadcasters. Req: Channel 272, 102.3 MHz, 10 watts. Primary: KRCT-FM, Ozona, Tex.

BPFT-535 (new), Big Lake, Tex., Richard L. Whitworth and Thomas H. Earnest, trading as Crockett County Broadcasters. Req: Channel 272, 102.3 MHz, 10 watts. Primary: KRCT-FM, Ozona, Tex.

BPFT-536 (new), Iraan, Tex., Richard L. Whitworth and Thomas H. Earnest, trading as Crockett County Broadcasters. Req: Channel 288, 105.5 MHz, 10 watts. Primary: KRCT-FM, Ozona, Tex.

BPFT-537 (new), Seneca, Kans., Apollo Broadcasting Corp. Req: Channel 221, 92.1 MHz, 10 watts. Primary: KNDY-FM, Marysville, Kans.

BPFT-538 (new), Kadoka, S. Dak., James E. Taylor. Req: Channel 237, 95.3 MHz, 1 watt. Primary: KGGG-FM, Rapid City, S. Dak.

BPFT-539 (new), Philip, S. Dak., James E. Taylor. Req: Channel 237, 95.3 MHz, 1 watt. Primary: KGGG-FM, Rapid City, S. Dak.

BPFT-540 (new), Manchester Village and Manchester Depot, Vt., Vermont Radio, Inc. Req: Channel 276, 103.1 MHz, 1 watt. Primary: WRUT-FM, Ruthland, Vt.

BPFT-541 (new), Glendo, Wyo., John T. Roberts III, d.b.a. Wycomco. Req: Channel 280, 103.9 MHz, 10 watts. Primary: KERM-FM, Torrington, Wyo.

BPFT-542 (new), Weaverville, Douglas City, and Junction City, Calif., Weaverville Translator Co., Inc. Req: Channel 224, 92.7 MHz, 10 watts. Primary: KHEX-FM, Yuba City, Calif.

BPFT-543 (new), Arco Base Camp Prudhoe Bay, Alaska, Northern Television, Inc. Req: Channel 261, 100.1 MHz, 100 watts. Primary: KBYR-FM, Anchorage, Alaska.

BPFT-544 (new), Ho Nolulu, Hawaii, Mauna Kea Broadcasting Co. Req: Channel 244, 96.7 MHz, 10 watts. Primary: KKAI-FM, Kailua, Hawaii.

BPFT-545 (new), Key West, Fla., Miami Christian College, Inc. Req: Channel 219, 91.7 MHz, 1 watt. Primary: WMCU-FM, Miami, Fla.

UHF TV TRANSLATOR APPLICATIONS

BPTT-3603 (new), Wenatchee and East Wenatchee, Wash., King Broadcasting Co. Req: Channel 45, 656-662 MHz, 100 watts. Primary: KREM-TV, Spokane, Wash.

BPTT-3604 (K70BA), Lewiston, Idaho, Orchards Community Television Association, Inc. Req: Add KLEW-TV, Channel 3, Lewiston, Idaho. As coprimary TV station.

BPTT-3605 (new), Marvine Creek rural area, Colorado, Rio Blanco County TV Assocation. Req: Channel 59, 740-746 MHz, 20 watts. Primary: KOA-TV, Denver, Colo.

BPTT-3606 (new), Santa Clara and Gunlock, Utah, Washington County Television Department. Req: Channel 57, 728-734 MHz, 100 watts. Primary: KVVU-TV, Henderson, Nev.

BPTT-3607 (new), Little America and Granger, Wyo., Western Broadcasting, Inc. Req: Channel 69, 800-806 MHz, 100 watts. Primary: KTUX-TV, Rock Springs, Wyo.

BPTT-3608 (new), Capulin and Des Moines, N. Mex., Sierra Grange TV Cooperative, Inc. Req: Channel 62, 758-764 MHz, 100 watts. Primary: KOAT-TV, Albuquerque, N. Mex.

BPTT-3612 (K70AS), Salmon and Carmen, Idaho, Salmon television Translator District. Req: Change frequency to Channel 69, 800-806 MHz., increase output power to 100 watts.

BPTT-3613 (K74BQ), Grand Marais, Minn., RJR Communications, Inc. Req: Change frequency to Channel 65, 776-782 MHz.

BPTT-3614 (K82AQ), Grand Portage, Minn., RJR Communications, Inc. Req: Change frequency to Channel 59, 740-746 MHz.

BMPTT-1002 (K53AB), Inyokern and Armitage Field, Calif., Indian Wells Valley TV Booster, Inc. Req: Change primary TV station to KTBN-TV, Channel 40, Fontana, Calif.

BMPTT-1005 (W69AG), Berkshire and Newark Valley, N.Y., Board of Cooperative Educational Services of Broome-Delaware-Tioga Counties. Req: Change frequency to Channel 65, 776-782 MHz.

BPTTV-6109 (new), Afton, Auburn, Smott, Grover, and Fairview, Wyo., Star Valley TV System. Req: Channel 13, 210-216 MHz, 10 watts. Primary: KIFI-TV, Idaho Falls, Idaho.

BPTTV-6111 (new), Wasta, S. Dak., State Board of Directors for Educational Television. Req: Channel 13, 210-216 MHz, 1 watt. Primary: KBHE-TV, Rapid City, S. Dak.

BPTTV-6113 (new), Coaldale, Colo., Coaldale TV Club. Req: Channel 3, 60-66 MHz, 1 watt. Primary: KBTV-TV, Denver, Colo.

BPTTV-6114 (new), Pinevalley, Utah, Washington County Television Department. Req: Channel 11, 198-204 MHz, 10 watts. Primary: KTVX-TV, Salt Lake City, Utah.

BPTTV-6115 (K02AW), Virgin, Utah, Washington County Television Department. Req: Change primary TV station to KUTV-TV, Channel 2, Salt Lake City, Utah, increase output power to 10 watts.

BPTTV-6116 (K08BO), Virgin, Utah, Washington County Television Department. Req: Change primary TV station to KSL-TV, Channel 5, Salt Lake City, Utah, and increase output power to 10 watts.

BPTTV-6117 (new), Saratoga and rural area, Wyoming, Jeffrey City Community TV Association. Req: Channel 9, 186-192 MHz, 5 watts. Primary: KRMA-TV, Denver, Colo.

BPTTV-6118 (new), Drewsey, Oreg., Drewsey Community TV. Req: Channel 13, 210-216 MHz, 1 watt. Primary: KJVJ-TV, Nampa, Idaho.

[FR Doc. 78-21623 Filed 8-3-78; 8:45 am]

[6712-01]

[CC Docket No. 78-200; File No. 5103-C2-P-72 et al.]

BEEP COMMUNICATION SYSTEMS, INC., ET AL.

Erratum

In re applications of: Beep Communication Systems, Inc., CC Docket No. 78-200, File No. 5103-C2-P-72, for a construction permit to establish additional two-way facilities on frequency 152.18 MHz for station KEK287 in the domestic public land mobile radio service at New York, N.Y.; Interelectronics Corp., CC Docket No. 78-201, File No. 3279-C2-P-72, for a construction permit to establish new two-way facilities on frequency 152.18 MHz in the domestic public land mobile radio service at Congers, N.Y.; Phone Depots, Inc., d.b.a. Mibilfone Radio System, CC Docket No. 78-202, File No. 5104-C2-P-72, for a construction permit to establish additional two-way facilities on frequency 152.18 MHz for station KEA 254 in the domestic public land mobile radio service at New York, N.Y.; and Messages by Radio, Inc., CC Docket No. 78-203, File No. 3786-C2-P-72, for a construction permit to establish additional two-way facilities on frequency 152.18 MHz for station KEA200 in the domestic public land mobile radio service at Spring Valley, N.Y., at 43 FR 30121.

By the Chief, Common Carrier Bureau.

Released: July 28, 1978.

In the memorandum opinion and order adopted on June 28, 1978, and released on July 7, 1978, in the above-captioned proceeding, correct the caption to read Phone Depots, Inc., d.b.a. Mobilfone Radio System instead of Phone Systems, Inc., d.b.a. Mobile Radio System.

LARRY F. DARBY,
Acting Chief,
Common Carrier Bureau.

[FR Doc. 78-21625 Filed 8-3-78; 8:45 am]

[6712-01]

[RM-2960; FCC 78-514]

RCA GLOBAL COMMUNICATIONS, INC.

Memorandum Opinion and Order

By the Commission.

Adopted: July 13, 1978.

Released: July 31, 1978.

In the matter of hinterland handling by the Western Union Telegraph Co. of international message telegram traffic in denying petition for rulemaking.

1. The Commission has before it a petition filed by RCA Global Communications, Inc. (RCA or RCA Globcom), on August 19, 1977, requesting us to grant one or more of the following forms of relief: (a) That we "revisit" our decision in *International Record Carriers,* 40 FCC 2d 1082 (1973); (b) that we permit other domestic carriers besides the Western Union Telegraph Co. to participate in the pickup and delivery of international message telegrams; (c) that we investigate the current revenue divisions between RCA and Western Union for the handling of international message telegrams, and that we prescribe what those divisions should be. Oppositions and comments were filed by various parties.

BACKGROUND

2. Under the provisions of § 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222, and various Commission rulings thereunder, the international record carriers (IRC's) are only permitted to pick up and deliver incoming or outgoing international message telegrams in certain "gateway" cities within the continental United States. If a telegram is sent from abroad to an area within the continental United States which lies outside the cities authorized as gateways for a particular IRC,[1] Western Union delivers the telegram to the hinterland recipient unless the sender or recipient requests a specific alternate means of delivery to the hinterland. If Western Union performs the hinterland haul portion of an incoming or outgoing international telegram, the sender pays a single international message telegraph charge and the IRC and Western Union divide the tolls in accordance with a predetermined agreement. If the sender or recipient elects not to utilize Western Union's services, he must bear the transmission cost between the gateway city and the hinterland point in addition to the regular charges applicable to international message telegraph service.

3. In *All America Cables and Radio, Inc.,* 15 FCC 2d 293 (1950), we held that it was permissible for hinterland customers to gain access to the IRC's directly by means of various domestic communications networks so long as the use of such media was at the option and expense of the customer. In our *International Record Carriers* decision, 40 FCC 2d 1082 (1973), we held that if the IRC's were to absorb the charges for the use of the domestic networks it would represent a material departure from the situation found reasonable in *All America Cables and Radio, Inc.* Such departures from present practice, we found, represent a singificant alteration of the carrier relationships underlying the gateway provision, and raised issues, including impact on the domestic telegraph carrier, which could not be resolved in a simple review of the tariff filings then before us. Rather, we found that the appropriate forum for considering such proposals was an application under section 222(a)(5), 47 U.S.C. 222(a)(5), which we found must incorporate the public interest showing as required by section 214, 47 U.S.C. 214. See, 40 FCC 2d 1082 (1973) at 1087.

RCA'S PETITION

4. RCA's captioned petition requests that we afford it relief in one or more of the following ways: (a) That we "revisit" our "free direct access" decision, *International Record Carriers,* 40 FCC 2d 1082 (1973), and permit hinterland senders and recipients of international message telegrams to access (or be accessed by) RCA Globcom at no additional cost to such senders or recipients in excess of the prevailing tariff

[1] This area outside of the gateways is also known as the "hinterland."

rate for international telegram service; (b) alter our policies to allow other domestic carriers in addition to the Western Union Telegraph Co. to participate with the IRC's in the hinterland pickup and delivery of international message telegrams; (c) begin an investigation to determine whether the current revenue divisions between RCA Globcom and Western Union for the handling of international message telegrams should be changed and prescribe different divisions for such charges pursuant to section 222(e)(3) of the Communications Act, 47 U.S.C. 222(e)(3). At the same time that RCA filed its petition, it also filed under transmittal No. 4260 increased rates for international message telegram service offered under its Tariff FCC 60, schedules to take effect on January 1, 1978. RCA stated that if we failed to act favorably and in a timely manner on its request for alternative forms of relief, that we permit RCA's proposed increases for its international message telegram service to become effective.

5. On September 19, 1977, public notice of proposed rulemaking (RM-2960) was issued in the matter of hinterland handling by the Western Union Telegraph Co. of international message telegram traffic after ITT World Communications, Inc. (ITT), requested clarification of the time in which to file responsive pleadings to RCA's petition. ITT suggested that RCA's petition be treated as a petition for rulemaking. Western Union supported ITT's request for clarification but disagreed with the position that the petition be considered a petition for rulemaking. In a letter from the Chief, Common Carrier Bureau, dated September 14, 1977, the Bureau indicated that RCA's petition would be treated as a petition for rulemaking.

6. On December 9, 1977, RCA applied for special permission to withdraw its proposed increases in rates in view of the affirmative action taken to date by the Commission on its petition. On December 12, 1977, Special Permission No. 8696 was granted to enable RCA Globcom to cancel its proposed revision of overseas message telegram rates.

7. Western Union, Graphnet Systems, Inc. (Graphnet), ITT World Communications, Inc. (ITT), and Mobile Marine Radio, Inc. (Mobile Marine), filed responses to RCA's petition. Graphnet and Western Union each filed a reply to the responses. RCA filed two replies to the responses.

8. In its response to RCA's petition, Western Union agreed that the Commission should begin an investigation of the rates and divisions for international message telegram service. Western Union also stated that it had no objection to reconsideration of our free direct access decision but that such a reconsideration should take place within the context of dockets Nos. 19660 and 20778.[2] Western Union further stated that RCA's request that this Commission license domestic carrier alternatives to Western Union who would perform the hinterland haul portion of international message telegrams should be acted upon only after the submission of specific proposals by such alternative carriers.

9. Graphnet stated that it was interested primarily in RCA's request that this Commission allow other carriers to perform the domestic haul portion of international message telegrams and that this issue should be resolved in the context of a specific application for authority to offer such service. Graphnet also noted that it had filed such an application pursuant to section 214 of the Communications Act, 47 U.S.C. 214.

10. ITT stated that this Commission should act expeditiously on Graphnet's section 214 application and that if the Commission declined to grant Graphnet's section 214 application, that the Commission begin a formal proceeding to determine whether our alleged policy of protecting Western Union from competition is in the public interest. Finally, ITT requested that this Commission act expeditiously and favorably upon petitions by RCA and ITT for interconnection with Western Union at the new gateways of Miami and New Orleans.

11. Mobile Marine stated that it was only concerned with RCA's request that we reconsider our free direct access decision insofar as such policy would pertain to international maritime traffic. Mobile Marine alleged that implementation of free direct access would further impair the rendition of radiotelegraph service to the user public.

12. In its reply comments, Graphnet stated that all of the other parties to this proceeding agreed that a section 214 application was the appropriate means of addressing RCA's request that other carriers besides Western Union be allowed to perform the domestic haul portion of international message telegrams. In its reply comments, RCA noted that Western Union had agreed with RCA's proposal that this Commission begin an investigation to determine appropriate divisions of revenues between itself and RCA for international telegram traffic, but disagreed with Western Union's proposal to broaden this proposed investigation to inquire into all rates for all services of the IRC's. RCA also disagreed with Western Union's belief that the issue of free direct access should be considered within the context of docket No. 19660. RCA further disagreed with Western Union's contention that this Commission cannot consider the question of free direct access until proceedings in Docket Nos. 20778 and 21005[3] have been completed. Finally, RCA disputes Western Union's contention that RCA has demonstrated no need for domestic carrier alternatives to Western Union. RCA also filed a reply to the comments filed by ITT, Graphnet, and Mobile Marine. In this reply, RCA expressed disagreement with the decision of the Chief, Common Carrier Bureau, to treat its petition as a petition for rulemaking. RCA also noted, however, that aside from Mobile Marine's comments (which RCA characterized as misplaced), both ITT and Graphnet essentially supported RCA's position. RCA stated that it did not believe that the issue of free direct access was under consideration in docket No. 19660 so that Graphnet's statement that free direct access was already being considered elsewhere was not entirely accurate. RCA concluded by stating that it sought reevaluation of the free direct access issue in its broadest context.

13. Western Union filed a reply to comments by ITT and Graphnet. In its reply, Western Union characterized RCA's petition as ambiguous and contended that Graphnet's section 214 application could not be decided without review of the free direct access decision since Graphnet's application, according to Western Union, would not require the customer to pay for the usage charges associated with hinterland service.

Discussion

14. We note first that the Chief, Common Carrier Bureau, indicated that RCA's petition would be treated as a petition for rulemaking. See letter from Chief, Common Carrier Bureau, dated September 14, 1977. In its reply to comments filed by ITT, Graphnet, and Mobile Marine, however, RCA refused to concede that the substance of its August 19 petition is a proper subject in its entirety for general rulemaking. We agree with RCA, and overrule the determination of the Chief, Common Carrier Bureau, that RCA's petition is a petition for rulemaking. It

[2] Docket No. 19660 addresses the issue of new gateways for the IRC's. Docket No. 20778 is a preliminary audit and study of operations of international carriers and their communications services between the United States and overseas foreign points.

[3] In docket No. 21005, *Customer Use of Telex*, 62 F.C.C. 2d 414 (1976), the Commission is considering a proposed policy of requiring the limited interconnection of the IRC international telex networks, the full interconnection of the international networks with Western Union's domestic telex and TWX networks and the reformation of the IRC unified telex rate structure with the goal of giving U.S. telex customers maximum availability and flexibility in the use of telex services.

appears that RCA's petition requests several distinct and alternative kinds of relief, each of which we will examine below.[4]

15. In the portion of its petition discussing the free direct access issue, RCA states that its petition may properly be viewed as "an application under section 222(a)(5) for authorization to file tariff revisions offering free direct access." RCA has also requested us to reevaluate the concept of free direct access "in the broadest possible context." We will thus treat this portion of RCA's petition as an application under section 222(a)(5). We will also, in accordance with RCA's request, examine the concept of free direct access in the broadest possible terms, including all services offered or which may be offered by the IRC's either alone or in conjunction with other entities. Our free direct access decision, 40 F.C.C. 2d 1082 (1973), did not specifically limit itself to message telegram service and did not make a determination as to the merits or legality of the concept of free direct access; such a determination could be made only after consideration of all issues involved upon application by a proper party. Since RCA has filed such an application and has also requested a broad inquiry into the topic of free direct access, the time is ripe for us to consider the merits of that issue.

16. We note that in our free direct access decision, however, 40 F.C.C. 2d at 1087-88, we stated that any applications filed should be incorporated into docket No. 19660 since one of the matters included in that docket is a series of applications for the authorization of additional gateways for the IRC's. The matter of additional gateways in docket No. 19660 is still pending and raises public interest considerations similar to those which would be raised in a consideration of the merits of free direct access. Thus, we believe that it would be most efficient to consider the matter of additional gateways and free direct access together. We are aware that docket No. 19660 has been delayed and will make every effort to expedite consideration of the matter.

17. We believe that RCA's request that we authorize other carriers besides Western Union to perform the hinterland haul portion of international message telegram service is a request to institute a rulemaking. See 5 U.S.C. 551 (4) and (5). The Commission in a recent action has instituted an inquiry which will, it is anticipated, encompass the issues raised by RCA's request.[5]

18. We believe that RCA's request that we investigate and prescribe, pursuant to 47 U.S.C. 222(e)(3), the current divisions of revenue between Western Union and RCA for international message telegram traffic is a complaint; RCA characterized it as such in its reply to the comments of ITT, Graphnet, and Mobile Marine. We will not act, at this time, on RCA's complaint since RCA has not provided us with enough factual information as to why the current toll divisions between Western Union and itself are unreasonable. It merely alleges that "any carrier serving a captive market is inherently capable of exacting concessions from those who are reliant upon it because they have no alternative to them" and that RCA suffered losses of approximately $4 million on the provision of international message telegram traffic in 1976. RCA also states that if it continues to offer this service under current rates and toll divisions with Western Union, earnings projections for the years ahead demonstrate that it would incur continued, substantial losses, yet it has not seen fit to submit these projections. Without more specific factual support to these allegations, we do not believe that an investigation is warranted at this time.

19. The parties' comments on the free direct access issue that resulted from RCA's petition will be considered in more detail in docket No. 19660. We will also issue a further notice of inquiry and proposed rulemaking in that proceeding to afford the parties an opportunity to file further comments.

20. Accordingly, RCA's petition is hereby granted to the extent consistent herewith, but is denied in all other respects.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-21624 Filed 8-3-78; 8:45 am]

[4] Such petitions create uncertainties as to the proper time limits for responses and replies. We will look with disfavor upon such petitions in the future.

[5] *In the Matter of Graphnet Systems, Inc.*, File No. W-P-C 1430, adopted March 8, 1978. Regulatory policies concerning the provision of domestic public land message services by entities other than the Western Union Telegraph Co. as well as proposed amendments to parts 63 and 64 of the Commission's rules and regulations are being considered.

[6712-01]

RADIO TECHNICAL COMMISSION FOR MARINE SERVICES

Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 71
"VHF Automated Radiotelephone Systems"

Notice of 11th Meeting.

Tuesday, August 22, 1978—10 a.m. (full day meeting).

Conference Room 847, 1919 M Street NW., Washington, D.C.

AGENDA

1. Call to Order.
2. Administrative matters.
3. Presentations and discussions.

John J. Renner, Chairman SC-71,
Advanced Technology Systems, Inc.,
3426 North Washington Boulevard,
Arlington, Va. 22201,
Phone: 703-525-2664.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: 202-632-6490).

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-21625 Filed 8-3-78; 8:45 am]

[6712-01]

SOUTHEASTERN BIBLE COLLEGE, INC., ET AL.

[BC Docket No. 78-61; File No. BPED-2,269 et al.]

Memorandum Opinion and Order

Adopted: July 18, 1978.

Released: July 31, 1978.

In reapplication of: Southeastern Bible College, Inc., Birmingham, Ala., Req: 91.9 MHz, Channel 220, 1.35 kW (H&V), 450 feet (H&V), BC Docket No. 78-61 File No. BPED-2,269 and Glen Iris Baptist School, a Division of Glen Iris Baptist Church, Birmingham, Ala., Req: 91.9 MHz, Channel 220 .6 kW (H&V), 680 feet (H&V), BC Docket No. 78-62 File No. BPED-2,289 for construction permits designating applications for consolidated hearing on stated issues.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it for consideration the above-captioned mutually exclusive applications of Southeastern Bible College, Inc. (hereinafter "Southeastern") and Glen Iris Baptist School, a Division of Glen Iris Baptist Church, (hereinafter "Glen Iris") for a construction permit for a new noncommercial education FM station at Birmingham, Ala.

2. Glen Iris submitted a copy of its 1943 articles of incorporation which have not been properly certified as required by FCC form 340, paragraph 3(a). Furthermore, the articles do not specifically authorize the applicant to construct and operate a broadcast station as required by section II, paragraph 4. On January 7, 1976 the Glen Iris Baptist Church adopted a new constitution and bylaws which appear to supersede the 1943 articles of incorporation. Glen Iris submitted an opinion from legal counsel that the constitution and bylaws contain information usually encompassed in a formal articles of incorporation, and that, under the constitution and bylaws, a broadcast station could be legally operated in Alabama by Glen Iris Baptist School. However, the constitution and bylaws are not properly certified. Consequently, an issue must be specified to determined whether Glen Iris is properly incorporated under Alabama law.

3. By letter dated August 30, 1977, the Commission suggested that the applicants attempt to resolve the mutual exclusivity of their applications. Subsequently, the applicants advised that efforts to resolve the conflict had failed. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. In the event that this issue is resolved in the affirmative, an issue will also be specifed to determine the nature of such an arrangement. It should be noted that our action specifying a "share-time issue" is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement between themselves.

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, It is order, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine, in light of the lack of certifications, whether Glen Iris is properly incorporated under Alabama law.

2. To determine the extent to which each of the proposed operations will be integrated into the overall cultural and educational operation and objectives of the respective applicants as well as the manner in which such objectives meet the needs of the community to be served; or whether other factors in the record demonstrate that one applicant will provide a superior educational FM broadcast service.

3. To determine whether a share-time arrangement between the applicants would result in the most effective use of channel 220 (91.9 MHz) and thus better serve the public interest, convenience and necessity.

4. If issue 3 is decided in the affirmative, to determine the terms of a share-time agreement.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

6. It is further order, That to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

7. It is further order, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and section 1.594 of the Commission's rules, give notice of a hearing (either individually or, if feasible and consistent with the rules, jointly) within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by section 1.594(g) of the rules.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-21627 Filed 8-3-78; 8:45 am]

[6730-01]

FEDERAL MARITIME COMMISSION

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Certificates Revoked

Notice of voluntary revocation is hereby given with respect to Certificates of Financial Responsibility (Oil Pollution) which had been issued by the Federal Maritime Commission, covering the below indicated vessels, pursuant to part 542 of title 46 CFR and section 311(p)(1) of the Federal Water Pollution Control Act, as amended.

Certificated No.	*Owner/operator and vessels*
01150	Chevron Transport Corp.: *Asa. v. Call.*
01230	Skibs A/S Oil Tank: *Belmar.*
01268	Tonnevolds Rederi A/S: *Thara.*
01318	Aug. Bolten, Wm. Miller's Nach Folger: *Dorothea Bolten.*
01334	American President Lines, Ltd.: *Hong Kong Mail.*
02570	Scheepvaartmaatschappij Katwijk: *Katwijk.*
01596	Epico Shipping Corp.: *Epico.*
01905	Ben Line Steamers Ltd.: *Benalbanach.*
01920	Deutsche Dampfschifffahrts-Gesellschaft Hansa: *Uhenfels.*
01988	Brostroms Rederi AB: *Axel Brostrom.*
02043	Suomen Tankilaiva Oy-Finska Tankfartygs AB: *Winha.*
02314	A/S Athene (Jorgen Bang): *Atalante.*
02367	Canadian Pacific (Bermuda) Ltd.: *H. R. MacMillan.*
02404	Omonia Com. Nav. S.A.: *Omonia.*
02418	Sidermar S.p.A.: *Ursa Major, Gemini, Pleiades, Acciaiere, Laminatore, Fucinatore, Aspra, Hydrus, Vela, Orsa Minore, Centauro, Auriga, Corona Australe, Aquarius, Nai Marcus, Galassia, Perseus, Sagittarius, Delphinus, Corona Boreale.*
02551	Ellerman Lines Ltd.: *City of Glasgow.*
02826	Refineria Panama S.A.: *Oilbar No. 3, Oilbar No. 4, Seatown.*
02911	Sig. Bergesen D. Y. & Co.: *Inayama.*
02958	Kawasaki Kisen K.K.: *Denmark Maru, Guatemala Maru, Holland Maru.*
03185	Shipping Co. Pearl Inc.: *Atlantic Pearl.*
03271	Sea Land Service, Inc.: *San Francisco, Raphael Semmes, San Juan.*
03422	Daiwa Kaiun Kabushiki Kaisha: *Tacoma Maru.*
03501	Osaka Shosen Mitsui Senpaku K.K.: *Yachiyosan Maru.*
03503	Shofuku Kisen K.K.: *Shimane Maru.*
03662	Ocean Clippers, Inc. New York: *Overseas Traveler.*
03840	Sunexport Holdings Corp.: *Adm. Wm. M. Callaghan.*
03841	American Export Lines, Inc.: *Export Defender, Export Freedom, Export Diplomat, Export Democracy, Export Agent, Export Aide, Export Adventurer Export Ambassador, Export Banner, Export Challenger, Export Bay, Export Builder, Export Buyer, Export Leader, Export Patriot, Lightning, Staghound, Red Jacket, Definance, Great Republic, Young America, Export Courier, Export Commerce, Export Champion.*
03918	Mobil Shipping & Transportation Co.: *Mobil Arrow.*
04289	Dixie Carriers Inc.: *Offshore 2403.*
04359	Reederei Nord Klaus E. Oldendorff: *Papenburg.*
04393	World Wide Transport, Inc.: *Conoco Espana.*
04404	Lars Rej Johansen: *Reefer Jo.*
06259	Simfonia Compania Naviera S.A.: *Simfonia.*
06287	Gates Equipment Corp.: *210, 196, 165, Mary, Dumpscow No. 26, Dumpscow No. 25, Dredge No. 24, Commerce, 270, 255, 250, 137, 101.*
06534	Union Steam Ship Co. (U.K.) Ltd.: *Union South Pacific.*
06813	Globus-Reederei GMBH., Hamburg: *S.A. Krugerland.*
06996	Akita Senpaku K.K.: *Shinryu Maru.*
07078	Kommanditgesellschaft Turmalin Schiffahrtsgesellschaft M.B.H. & Co.: *Turmalin.*
07255	Teh Tung Steamship Co., Ltd.: *Concord.*
07404	Hanseatic Shipmanagement Ltd.: *Luehesand.*
07572	Ming Corp.: *American Ming.*
08823	Conoco Shipping Co.: *Conoco Independence.*
09006	Stena Line AB: *Nopal Sky.*
09074	Zuito Shipping Co., Ltd.: *Kikuko-Maru.*
09086	Jutland Shipping Corp.: *Souli.*
09205	Trusa Shipping Co., S.A.: *Santa Martina.*
09373	Chatmar Investments Inc., S.A.: *Punta Atalaya.*
09810	Partrederiet Bech XII: *Anna Marie Bech.*
10030	Samyang Shipping Co. Ltd.: *Ocean Dragon.*
10153	Johan Reksten Rederi A/S: *Jorek Trader.*
10207	Seaspan Oversea Ltd.: *Alberni Carrier.*
10293	South Marine Corp.: *Agp. No. 9, Agp. No. 70, Agp. No. 74, Baltimore.*

Certificated No.	Owner/operator and vessels
10339	Samudera Shipping (Liberia) Inc.: *Salunaka.*
10426	Garden Gemini Shipping Ltd.: *Garden Gemini.*
10645	Beeline (Shipping) Ltd.: *Penelope of York.*
10844	Mascot Shipping Co., S.A.: *Eastern Beauty.*
11614	Chung Gai Ship Management Co., Ltd.: *Rose Acacia, Rose Daphne.*
11714	Global Transport Organisation: *Gemnar 103, Gemnar 102.*
11815	Ark Shipping Ltd.: *Newark.*
12255	Em. Z Svitzers Salvage Co. Ltd.: *Svitzer.*
12271	Shyang Mou Ocean Enterprise Co., Ltd.: *No. 12 Shyang Mou.*
12641	Seiju Suisan Kabushiki Kaisha: *Seiju Maru No. 20.*
12838	Kaisei Kaiun Tsusho K.K.: *Ryushomaru No. 5.*
12868	C.V.G. Ferrominera Orinoco C.A.: *Icoa.*
13079	James Bay Exploration Co., Inc.: *James Bay.*
13101	Pacific Sunshine S.A.: *Canopy.*
13105	Olive & Allan Smith: *Mac Dam.*
13129	Sari Shipping PTE Ltd.: *Goldensari I.*
13157	Triscatin Shipping S.A.: *Oriental Forest.*
13257	Sovereign Oil Transports Ltd.: *Pentelikon.*
13329	K/S A/S Utgard & Co.: *Siragard.*
13344	Unique Trading K.K.: *Mie Maru No. 7.*
13441	Hidalgo Atlantico Navegacion S.A.: *Jocasta.*
13468	Thoresen International A/S: *Torasund.*
13536	Dampskibsselskabet AF 1960 Aktieselskab: *Helene Maersk.*
13561	Cherry Point S.A.: *Santa Lucia II.*
13644	Guardian Transport Corp.: *Ocean Transporter.*
13864	Ronastar Shipping Corp.: *Ronastar.*
13927	Sea Orient Compania Naviera S.A.: *Agrebele.*

By The Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-21760 Filed 8-3-78; 8:45 am]

[6730-01]

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Notice of Certificates Issued

Notice is hereby given that the following vessel owners and/or operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by section 311(p)(1) of the Federal Water Pollution Control Act, and have been issued Federal Maritime Commission Certificates of Financial Responsibility (Oil Pollution) pursuant to part 542 of title 46 CFR.

Certificate No.	Owner/Operator and Vessels
01011	Aktieselskabet Det Ostasiatiske Kompagni: *Samoa.*
01087	Dampskibsselskabet Torm A/S: *Torm Helvig.*
01104	Hyundai International Inc.: *Halla Partner.*
01123	Getty Marine Corp.: *Houston Getty.*
01172	H. Clarkson & Co. Ltd.: *Starbay.*
01233	Buries Markes Ltd.: *La Cordillera.*
01330	Shell Tankers (U.K.) Ltd.: *Entalina.*
01334	American President Lines, Ltd.: *President Adams* and *President Cleveland.*
01427	Pacific Steam Navigation Co.: *Oroya.*
01466	Common Brothers (Management) Ltd.: *Ximena, Florida Silverbow,* and *Vanessa.*
01526	Monrovia Tramp Shipping Co.: *Pearl Merchant.*
01611	Helge R. Myhre: *Heros.*
01641	Bank Line Ltd.: *Crestbank.*
01758	Chotin Transportation, Inc.: *Chotin 1413* and *Chotin 1415.*
01798	Stag Line, Ltd.: *Begonia.*
01805	Suisse Atlantique Societe d'Armement Maritime S.A.: *Paysandu* and *Vanil.*
01890	A/S Billabong: *Astoria.*
01910	Deutsche Dampfschifffahrtsgeseilschaft Hansa: *Wilhaditurm.*
01935	Partnership Between Steamship Co., Svendborg Ltd., and Steamship Co. of 1912 Ltd.: *Nelly Maersk.*
01988	Brostroms Rederi Ab: *Malmland.*
02041	Dalmor Przedsiebiorstwo Polowow Dalekomorskich I Uslug Rybackich: *Sagitta.*
02127	Societe d'Armement et de Navigation, Charles Schiaffino Cie: *Catherine Schiaffino.*
02163	J. Lauritzen A/S: *Asian Reefer.*
02194	Compagnie Generale Maritime: *Utrillo* and *Hornsund.*
02197	Matson Navigation Co.: *Maui.*
02198	Peninsular & Oriental Steam Navigation Co.: *Strathewe.*
02209	Flota Mercante Grancolombiana S.A.: *Rio Cauga* and *Ciudad de Pasto.*
02418	Sidermar S.P.A.: *Delphinus.*
02441	Quebec & Ontario Transportation Co., Ltd.: *Blanche Hindman, George Hindman, Martha Hindman, Helen Evans,* and *Parker Evans.*
02449	A/S Ivarans Rederi: *Salvador.*
02603	Empresa Hondurena de Vapores, S.A.: *Rio Cuyamel* and *Almirante.*
02750	H & S Transportation Co., Inc.: *Sally Barton.*
02877	Nippon Yusen Kabushiki Kaisha: *Jinmei Maru.*
02912	R & W Marine, Inc.: *Crescent City.*
02295	Great Eastern Shipping Co. Ltd.: *Veer Varuna.*
02917	Scherkate Sahami Keschtirani Melli Arya: *Arya Keyhan* and *Arya Jahan.*
02930	Compania Sud-Americana de Vapores: *Tolten.*
02956	Ashland Oil Inc.: *IC-2* and *NMS-41.*
02976	Arthur-Smith Corp.: *TCB 309, TCB 306, TCB 301, TCB 303, AS-108, AS-106,* and *AS-100.*
02982	Shipping Corp. of India Ltd.: *State of Manipur* and *Vishva Mohini.*
03077	Bulk Food Carriers, Inc.: *Christina F, Philip F, Antone F, Cindy F,* and *Susan F.*
03271	Sea Land Service, Inc.: *Sea Land Pacer* and *Sea Land Pioneer.*
03315	Afran Transport Co.: *Globe Galaxy.*
03420	Dainichi Kaiun Kabushiki Kaisha: *Hachiyo Maru.*
03433	Hiroumi Kisen Kabushiki Kaisha: *Japan Acacia.*
03484	Sanko Kisen K.K.: *Suiko Maru.*
03508	Taiyo Gyogyo K.K.: *Taiyo Maru No. 65.*
03703	Long Beach Tugboat Co.: *Skilak.*
03715	Santa Fe Pomeroy, Inc.: *Choctaw I, SF 1100, SF 1101,* and *SF 1300.*
03727	Continental Oil Co.: *Barge 7003.*
03733	Great Lakes Dredge Dock Co.: *Dredge Louisiana.*
03735	Penrod Drilling Co.: *Penrod 52* and *Penrod 63.*
03736	Bethlehem Steel Corp.: *Lewis Wilson Foy.*
03740	Lake Charles Dredging & Towing Co. Inc.: *SB 5* and *690.*
03748	Boyer Towing Inc.: *Kootznahoo.*
03918	Mobil Shipping & Transportation Co.: *Mobil Swift.*
04050	A/S Uglands Rederi: *Vida.*
04135	Avomeri Oy: *Starmark.*
04164	Modern Transportation Co.: *Cynthia.*
04173	Foss Launch & Tug Co.: *DTB 9* and *DTB 10.*
04210	Anderson Petroleum Transportation Co., Inc.: *APT 241* and *APT 240.*
04228	Compagnie Maritime Belge (Lloyd Royal) S.A.: *Monarch.*
04358	Nedlloyd Bulk B.V.: *Maasuijk, Amstelwal, Amsteldreef, Amsteldiep, Amselburcht, Amstelbrink, Maasbree, Amstelhof, Amstelpark, Amstelveen, Amstelmeer, Maastracht, Amstelmolen, Amstelveld,* and *Mare Bonum.*
04386	Maritime Co. of the Philippines: *Corregidor* and *Mindanao*
04393	World Wide Transport, Inc.: *Venture Italia.*
04413	Leif Hoegh & Co. A/S: *Seaspeed Dana, Seaspeed Dima, Seaspeed Arabia, Seaspeed Asia,* and *Hoegh Skean.*
04420	Navigazione Alta Italia S.P.A.: *Nai Superba.*
04226	National Marine Service, Inc.: *GWG-103.*
04601	American Tuna Boat Association: *City of Lisbon* and *Mary Elizabeth.*
05008	Star Kist Foods, Inc.: *Royal Pacific.*
05048	F Laeisz: *Protektor.*
05281	Higman Towing Co.: *HTCO 43, HTCO 45, S-2011, S-2012, S-2013, S-2014, S-2018, S-2017, S-2019, S-2022, S-2511, S-2512, CIT 2015,* and *CIT 2016.*
05445	Eastern Seaboard Petroleum Co., Inc.: *Eastpet No. 6, Eastpet No. 5, Eastpet No. 4, Eastpet No. 3, Eastpet No. 2,* and *Eastpet No. 1.*
05437	Dow Chemical Co.: *Comgas Mariner.*
05470	Charter Transport Line Inc.: *Witislander I, Witislander II,* and *Wittransport II.*
05577	Far Eastern Shipping Co.: *Felix Dzerjinsky.*
05607	Hannah Inland Waterways Corp.: *Hannah 3102.*
05676	International Barge Inc.: *SS-303.*
05704	Murmansk Shipping Co.: *Dmitriy Pozharskiy.*
05736	Flota Cubana de Pesca: *Rio Zaza.*
05760	Dale Transports Ltd.: *Brookdale, Erindale, Ferndale, Leadale, Nordale,* and *Silverdale.*
05792	Korea Wonyang Fisheries Co., Ltd.: *Beag Du San No. 9.*
05845	Shinto Kaiun K.K.: *Tozan Maru.*
06130	Northern Shipping Co.: *Pioner Yakutii.*
06195	Camerona Navigation Corp. Ltd.: *Panamax Uranus.*
06248	Commercial Corp. Sovrybflot: *Boris Gorinsky, Gektor, Suvalkiia,* and *RTMS 7517 Kommunar.*
06384	Mercury Shipping Co. Ltd.: *Bayville.*
06575	Chiba-Ken: *Chiba Maru.*
06671	Kitanihon-Oi Kaiun Kabushiki Kaishiya: *Oh Jin* and *Kyo Jin.*
06877	Societe Francaise de Transports Maritimes: *Messidor, Fructidor, Pierre Poulain, Alsace,* and *Obernai.*
06906	Directia Navigatiei Maritime Navrom: *Livezeni* and *Vidraru.*
06963	Societe Francaise de Transports Maritimes A.T.A. Walon: *Le Mans.*
07366	Compagnie Maritime Des Chargeurs Reunis: *Chevalier Valbelle, Cap Lardier, Orque, Narval,* and *Tarpon.*
07598	Vroon Shipping (Liberia) Ltd.: *Galloway Express.*
07623	Dillingham Tug & Barge Corp.: *Foss-243.*
07743	Yangming Marine Transport Corp.: *Ming Spring.*
08064	Santa Fe-Pomeroy Marine Services Co.: *SF 2500, SF 2501,* and *SF 2200.*
08131	Empresa Navegacion Caribe: *5 de Septiembre.*
08248	Argea Industrie Siciliane Lavorazione Olii Minerali S.P.A.: *Paraggi.*
08295	Franicons Compania Naviera S.A.: *Good Transporter* and *Good Lady.*
08436	Standard Chartering Corp., Panama: *Cape Ray* and *Hamburger Senator.*
08530	Prompt Shipping Corp., Ltd.: *Bismarck Career, Mindanao Career,* and *Sunda Career.*
08584	Mogul Line Ltd.: *Lok Manya.*
08617	Fairmont Enterprises Ltd.: *Valor, Fancy River, Gentle River, Honey River,* and *Grace River.*
08671	EXCOMM Ltd.: *EXCOMM Merchant* and *EXCOMM Mariner.*
08746	N.V. Bocimar: *Eeklo.*

Certificate No.	Owner/Operator and Vessels
08823	Conoco Shipping Co.: *Venture Canada, Venture Texas, Venture Oklahoma,* and *Venture America.*
08840	Bangladesh Shipping Corp.: *Banglar Mita.*
08996	Iphigenia Shipping & Trading Corp.: *Petrola 36.*
08999	Sause Bros. Ocean Towing Co. Inc.: *J. Whitney.*
09056	Thome & Co. Pte. Ltd.: *Timur Star.*
09063	Sun Overseas Transport Ltd.: *Mediterranean Sun.*
09296	Queenland Maritime Corp.: *Prominent I.*
09354	Gulf Elevator & Transfer Co. Inc.: *UCBL 340.*
09489	Oy Hango Ship-Owners Ab: *Montana.*
09527	Partrederiet Avalon: *Pep Avalon.*
09545	Maytide Line Co. Ltd.: *Morning Star.*
09559	Auxiliar de Transportes Maritimos S.A.: *Corta Atalaya* and *Cerro Colorado.*
09710	Continental Mariner Investment Co. Ltd.: *Bi Jin.*
09721	Carnival Cruise Lines Inc.: *Festivale.*
0763	Atlas Maritime Co. S.A.: *Yanbu.*
09789	Transportes Maritimos Unidos S.A.: *Mini One.*
10176	Navipac S.A.: *Moises.*
10299	Productos Alimenticios Del Mar S.A.: *Gavilan.*
10300	Partrederiet Bech XIII: *Esther Silvana.*
10422	Garza Naviera S.A.: *Yamato Reefer.*
10567	Stephenson Clarke Shipping Ltd.: *Wilmington.*
10771	Alexandria Shipping & Navigation Co.: *El Malek Faisal* and *El Malek Khaled.*
10931	Hansung Shipping Co., Ltd.: *Big Glory.*
11082	Interocean Management Corp.: *Brooks Range.*
11277	Caribe Tugboat Corp.: *Cedar* and *Juneau.*
11451	Mo. Ark Barge Line, Inc.: *Patricia Ann.*
11468	Rokko Shipping Co. S.A.: *Salix.*
11563	Kaukomarkkinat Oy: *Kelo* and *Kara.*
11614	Chung Gai Ship Management Co., Ltd.: *Jupitar Diamond.*
11667	Ingram Transportation Co.: *Particia I. Hart.*
11680	Murton Shipping Corp.: *Fidelity.*
11828	Kosmos Bulkschiffahrt GMBH: *Russelsheim.*
11837	A/S Havfugl: *Havjo.*
11987	Carigulf Ltd.: *Carigulf Express.*
12105	Transocean Liners (PTY) Ltd.: *Woermann Ubangi* and *Tagama.*

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-21758 Filed 8-3-78; 8:45 am]

[6730-01]

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Notice of Certificates Issued

Notice is hereby given that the following vessel owners and/or operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by section 311(p)(1) of the Federal Water Pollution Control Act, and have been issued Federal Maritime Commission Certificates of Financial Responsibility (Oil Pollution) pursuant to Part 542 of Title 46 CFR.

Certificates No.	Owner/Operator and Vessels
12115	Nippon Kyodo Hogei K.K.: *Seki Maru No. 18.*
12116	K.K. Kiyofuji Kaiun: *Hohyoh Maru.*
12144	Adirondck Shipping Corp.: *Star Canopus.*
12217	Canadian National Railways Co.: *Georges Alexandre Lebel.*
12521	Compania Naviera Giant S.A.: *Giant.*
12525	Gulf-Intercoastal Marine Services, Inc.: *GIM 103, GIM 104,* and *GIM 200.*
12538	Polaris Marine Kabushiki Kaisha: *Toba.*
12584	Hongkong Shipping Agencies Ltd.: *Quintina.*
12642	Kabushiki Kaisha Fukushima Gyogyo: *Seiju Maru No. 20.*
12780	Hachiryu Gyogyo Kabushiki Kaisha: *Toshi Maru No. 15.*
12805	Compagnie Generale d'Armements Maritimes: *Glinka.*
12953	Progress Marine, Inc.: *PMI ST-95.*
13010	Han Sung Enterprise Co. Ltd.: *Han Sung No. 33.*
13029	Edmund A. Gann: *Bold Fleet* and *Bold Phoenician.*
13198	Sekihyo Line Ltd.: *Blue Matsuyama.*
13250	Xerefon Shipping Co. S.A.: *Good Spirit.*
13255	Em. Z. Svitzers Salvage Co., Ltd.: *Svitzer Garm.*
13017	Dong Ho Shipping Co., Ltd.: *Silver Castle.*
13279	Shipping Corp. of New Zealand Ltd.: *Lorena.*
13300	Alaska Marine Shipping: *Aleut Provider.*
13327	Les Chargeurs Unis, Inc.: *Roland Desgagnes.*
13368	Sanko Kisen (Cayman) Ltd.: *Western Ethics* and *Western Energy.*
13387	Loreiei Shipping Corp.: *Alexa I.*
13392	Timur Carriers (Private) Ltd. : *TFL Freedom.*
13445	Partrederiet Vee-Ship: *Ventura.*
13461	Hesperus Maritime Ltd.: *Gambit Success.*
13477	Partrederiet Wilmona: *Wilmona.*
13516	Neptune Gamma (PTE) Ltd.: *Nepture Sardonyx.*
13521	Schulte & Bruns Schiffahrtsgesellschaft Weser KG, Bremen: *Andalusia* and *Aquitania.*
13574	Radford Shipping Co.: *World Aretus.*
13581	Marca Line: *Santa Rosalia.*
13706	Asimi Maritime Co. Ltd.: *St. Demetrius.*
13713	Coastal Barge & Towing Co.: *STC-140.*
13715	Kafrzayat Shipping Enterprises Ltd.: *Saronic Sea.*
13719	Star International Shipping Inc.: *Patricia Star.*
13764	Eurofiot S.A.: *Termancia.*
13748	Apex Towing Co.: *Apex 3512, Apex 3002, Apex 3401, Apex 3506, Apex 3508, Apex 3405, Apex 3504, Apex 3510, Apex 3603, Apex 3503, Apex 3507, Apex 3511, Apex 3509, Apex 3409, Apex 1702, Apex 2100, Apex 1902, Apex 1904, Apex 2002, Apex 2101, Apex 1602, Apex 1402, Apex 1806, Apex 1802, Apex 1703, Apex 1301, Apex 1501, Apex 1503, Apex 1701, Apex 1305, Apex 1303, Apex 1103, Apex 1101, H. R. Zimmerman, Richard E. Girouard, W. P. Jackson, Kathy N, Gloria G, Carol G,* and *Girard Lewis.*
13768	Dionikos Shipping Co. Ltd.: *Frigo King* and *Frigo Queen.*
13795	Somatra Lines, Ltd.: *Arem I.*
13797	Galleon Shipping Corp.: *Galleon Ruby.*
13799	Cooperativa de Pescadores Del Pacifico, R.L.: *Coopeatum 1.*
13800	Union Boiler Co.: *Col. Davenport.*
13812	Tourmalin Shipping Corp.: *Tourmalin Bay.*
13817	Star, Ltd.: *The Lady Scotia.*
13825	General Intermodal Logistics Corp.: *SMT 413, SMT 415, SMT 414,* and *SMT 416.*
13843	Secola Shipping Ltd.: *Secola.*
13844	Compania Argentina de Transportes Maritimos S.A.: *Mardulce II, Marvaliente, Marbella, Atlas, Marlinda,* and *Marbonita.*
13845	Guanacaste S.A.: *Eliuba* and *El Quetzal.*
13846	Red Sea Maritime Services Inc.: *Tenacia* and *Iniciativa.*
13847	Onaway Transportation Co.: *Olympic Sun II.*
13848	Telsamar Compania Naviera S.A.: *Rosana.*
13849	Green Blessing Line, S.A.: *Green Blessing.*
13850	Tsukasa Hatakeyama: *Hoyo Maru No. 67.*
13851	Shiohama Kisen K.K.: *Jhogin Maru* and *Tenjin Maru.*
13852	Shikoku Dockyard Co., Ltd.: *Leonila.*
13853	Senyo Senpaku K.K.: *Kinyo Maru.*
13854	Co-Op Marine Co., Ltd.: *Co-Op Marine.*
13855	Forward Gloria Navigation S.A.: *Cherry Island.*
13856	Fuji Marine Co. Ltd.: *Kyokuko Maru* and *Cereza.*
13858	Summit III, Inc.: *LNG Capricorn.*
13862	Aftadelfos Compania Naviera S.A.: *Aftadelfos.*
13863	Apostolos Maritima Armador S.A.: *Apostolos A.*
13864	Ronastar Shipping Corp.: *Ronastar.*
13865	Leonardo Shipping Corp.: *Leonardo.*
13866	Jaczon Zeetransporten II B.V.: *Klipper II.*
13867	Omega Reefer Services: *Luehesand.*
13868	St. Valentine Maritime Co. Ltd.: *Wilhelm Schulte.*
13869	St. Martin Shipping Co. Ltd.: *Helen Schulte.*
13870	Golar Martins S.A. Buenos Aires: *Laura, Gaucho Cruz, Gaucho Laguna,* and *Santos Vega.*
13871	Wind Tankers Ltd. A/S: *Wind Eagle, Wind Escort,* and *Wind Enterprise.*
13872	Stolt Tenacity, Inc.: *Stolt Tenacity.*
13874	River & Gulf Transportation Co.: *Steel Explorer, Stell Rover, RGT 900, Steel Ranger, Steel Trader, Steel Express, Steel Clipper, Steel Pioneer, RGT 923, RGT 924, RGT 925, Steel Patroit, RGT 904, RGT 911, RGT 912, RGT 913, RGT 914, RGT 915, RGT 916, RGT 905, RGT 910, RGT 906, RGT 907, RGT 908, RGT 909, RGT 1016, RGT 1006, RGT 1002, RGT 1008, RGT 1004, RGT 1012, RGT 1014, RGT 1010, RGT 1013, RGT 1009, RGT 1005, RGT 1001, RGT 928, RGT 927, RGT 926, RGT 902, RGT 901, RGT 1007, RGT 1003, RGT 903, RGT 1015, RGT 1011, RGT 922, RGT 921, RGT 920, RGT 919, RGT 918,* and *RGT 917.*
13875	Chemical Carrier, Inc.: *Maya Farber.*
13876	Circolo Shipping Inc.: *Vassilakis.*
13879	City Maritime Inc.: *Marilia.*
13882	Agis Maritime Corp.: *Eugenie C* and *Christina C.*
13884	Koho Suisan Kabushiki Kaisha: *Koho Maru No. 18.*
13886	Trade Ocean, Inc.: *Trade Nomad.*
13888	S.I.B.A. S.A.B.: *El Gaucho, El Podrero, El Cinco,* and *Estancia.*
13889	Carl Moses: *Western Pioneer.*
13890	Compania International de Exportacion e Importacion S.A.: *Cieisa Once.*
13891	Northern Navigation Co., Inc.: *Van Fort.*
13892	Mentor Shipping Co, S.A.: *Yannis M.*
13893	Fintias Compania Naviera S.A.: *Hattan.*
13894	Deborah Shipping Corp.: *Deborah D.*
13895	Seliba S.A.: *Seliba.*
13896	Marathounda Shipping Corp.: *Capetan Manolis Hazimanolis.*
13897	Dioskouroi Compania Naviera S.A.: *Kastor.*
13898	Bella Coola Shipping Co. Ltd.: *Besseggen* and *Rondeggen.*
13899	Fucsiamar S.A.: *Lugano.*
13900	Neptune Victory Shipping Corp.: *Hunter, Car Castle,* and *Contessa.*
13902	St. Mark Shipping Co. Ltd.: *Angelica Schulte.*
13903	St. Thomas Shipping Co. Ltd.: *Christiane Schulte.*
13906	Montblanc Shipping Co. S.A.: *Kalmia.*
13907	Martrato Naviera S.A.: *Aldea.*
13908	Liberty Maritime Corp.: *Elbhoff.*
13909	Yukio Ashizaki: *Heiun Maru No. 55.*
13910	Spanta Shipping Co. S.A.: *Patricia U.*
13911	Greek-Holland Shipping Co. Ltd.: *Ifestos.*
13912	Titina Tanker Ltd.: *Olive Oyl.*
13915	Perforadora Mexico, S.A.: *Reforma* and *Revolucion.*
13916	Kommandiittiyhtio Jussi Ketola & Co.: *Finnbuilder.*
13918	Seisan Maruebisu Kaiun Kabushiki Kaisha: *Daien Maru No. 18* and *Ito Maru No. 18.*
13919	East Ocean Marine & Corp., Panama: *Hakko Reefer.*

Certificates No.	Owner/Operator and Vessels
13920	Owens-Corning Fiberglas Corp., Trumbull Asphalt Division: *GTC-10, GTC-11, JPW-109, JPW-119,* and *UMI-1650.*
13921	Zenith Navigation Ltd.: *Domina.*
13923	Yerotsakos Shipping Co. Ltd.: *Irenes Symphony.*

By The Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-21759 Filed 8-3-78; 8:45 am]

[1505-01]

FEDERAL TRADE COMMISSION

MERGERS AND ACQUISITIONS IN THE DAIRY INDUSTRY

Notification and Special Reports

Correction

In FR Doc. 78017939 appearing at page 28046 in the issue for Wednesday, June 28, 1978, in the first column of page 28047, the first line of the paragraph in small type now reading "*Provided,* that corporations that filed * * *" should have read "*Provided,* that corporations that file * * *".

[6820-29]

GENERAL SERVICES ADMINISTRATION

ADVISORY PANEL ON STOCKPILE DISPOSAL POLICIES

Establishment

Establishment of advisory panel. This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) and advises of the establishment of an advisory panel for review of the policies of the Office of Stockpile Disposal, General Services Administration. The Administrator of General Services has determined that this advisory panel is in the public interest.

Designation. Advisory panel on stockpile disposal policies.

Purpose. To review existing procedures and make recommendations as appropriate to the Administrator of General Services with respect to the methods by which the Office of Stockpile Disposal, GSA, markets excess materials. The objective is to utilize the experience and expertise of various segments of the community in conducting the review.

General information. Pursuant to Office of Management and Budget Circular A-63, the committee management secretariat has authorized a period of less than 15 days between publication of this notice and the filing of the panel charter.

Dated: August 3, 1978.

JAY SOLOMON,
Administrator.

[FR Doc. 78-21929 Filed 8-3-78; 10:40 am]

[4110-03]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

CONSUMER PARTICIPATION

Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces a forthcoming New York district consumer ad hoc meeting.

DATE: The meeting will be held from 10 a.m. to 1 p.m., Wednesday, August 16, 1978.

ADDRESS: Federal Building, 26 Federal Plaza, Room 305C, New York, N.Y. 10007.

FOR FURTHER INFORMATION CONTACT:

George J. Gerstenberg (HFR-2100), District Director, Food and Drug Administration, 850 Third Avenue, Brooklyn, N.Y. 11232, 212-965-5301.

SUPPLEMENTARY INFORMATION: The meeting agenda is as follows:

1. The use of the term "natural" in foods, drugs, and cosmetics.
2. Generic food labeling—No frills.
3. Food labeling:
   a. Ingredient labeling.
   b. Nutrition labeling and other dietary information.
   c. Open date labeling.
   d. Total food labeling.
   e. Safe and suitable ingredients.
   f. Imitation and substitute foods.
   g. Food fortification.

Dated: July 26, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner, Regulatory Affairs.

[FR Doc. 78-21359 Filed 8-3-78; 8:45 am]

[4110-03]

HEALTH CARE SERVICES

Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces a forthcoming regional Ad Hoc Professional Meeting to be chaired by the Commissioner of the Food and Drug Administration.

DATE: The meeting will be held 7:30 p.m., Wednesday, September 13, 1978.

ADDRESS: The meeting will be held at the St. Louis Medical Society Auditorium, 3839 Lindell Boulevard, St. Louis, Mo. 63108.

FOR FURTHER INFORMATION CONTACT:

Alan S. Kaplan, Office of Professional Programs (HFG-15), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-5470.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to exchange information, among health professionals and the Regional and District Staff offices, relative to FDA's established procedures for eliciting health professional input into the agency's decisionmaking process, to identify common problems within the sphere of FDA's responsibility that have an effect on the practitioner and/or the delivery of health services, to seek solutions to those problems, and to conduct other activities of mutual interest and benefit.

Dated: July 28, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-21649 Filed 8-3-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Group 320 and 632]

CALIFORNIA

Filing of Plat of Survey; Filing Date Suspended

JULY 25, 1978.

In FR Doc. 78-8466, appearing on page 63 of the issue for March 31, 1978, prescribed that a plat of survey for T. 28½ S., R. 40 E., Mount Diablo Meridian, California, would be officially filed in the California State Office, Bureau of Land Management, Sacramento, effective at 10 a.m. on May 5, 1978.

The official filing date is herewith suspended.

HERMAN J. LYTTGE,
Chief, Branch of Records and Data Management.

[FR Doc. 78-21630 Filed 8-3-78; 8:45 am]

[4310-84]

[Group 320 and 623]

CALIFORNIA

Filing of Plat of Survey

JULY 26, 1978.

1. A plat of survey of the following described land, accepted January 16, 1978, will be officially filed in the California State Office, Sacramento, Calif., effective at 10 a.m. on September 12, 1978:

MOUNT DIABLO MERIDIAN, CALIF.

T. 28½ S., R. 40 E.,
Sec. 31 to 36, inclusive.

The surveyed area described totals 867.40 acres.

The plat represents a survey of the east and west boundaries and subdivisional lines of the above listed township, a dependent resurvey of the south boundary of T. 28 S., R. 40 E., and a portion of the south boundary of T. 28 S., R. 39 E., Mount Diablo Meridian, Calif.

2. Effective January 16, 1978, the date of acceptance of the said plat of survey, title to section 36 vested in the State of California as school grant land.

3. The public lands listed above are open to the operation of the public land laws, subject to any valid existing rights, and the requirements of applicable law, rules and regulations.

The public lands are also subject to the provisions of any existing withdrawals, including Power Site Classification No. 241, dated November 11, 1929, and Power Project No. 1396, dated July 14, 1938, described as follows:

All lands lying within 20 feet of each side of the constructed power transmission line in Lots 3 and 4, section 32, T. 28½ S., R. 40 E., MDM, California.

4. The area surveyed is geographically located in the California Desert Conservation Area. The elevation ranges from 3,200 to 4,300 feet above sea level. The surface is sandy and rocky with the vegetation being mainly creosote brush.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, Room E-2841, 2800 Cottage Way, Sacramento, Calif. 95825.

HERMAN J. LYTTGE,
Chief, Branch of Records and Data Management.

[FR Doc. 78-21631 Filed 8-3-78; 8:45 am]

[4310-84]

[NM 33820, 33822, 33832, 33834, 33982]

NEW MEXICO

Applications

JULY 26, 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 the act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for seven 4½-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 21 S., R. 22 E.,
Sec. 25, E½SE¼, SW¼SE¼;
Sec. 26, W½NE¼, SE¼NW¼ and NE¼SW¼.
T. 18 S., R. 25 E.,
Sec. 8, SW¼SE¼.
T. 20 S., R. 27 E.,
Sec. 2, lots 3 and 4;
Sec. 3, lot 1, S½NE¼ and SE¼NW¼.
T. 9 S., R. 30 E.,
Sec. 31, N½NE¼ and SW¼NE¼.
T. 20 S., R. 37 E.,
Sec. 27, NW¼NE¼.

These pipelines will convey natural gas across 2.879 miles of public lands in Chaves, Eddy and Lea Counties, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-21632 Filed 8-3-78; 8:45 am]

[4310-84]

[NM 33883, 33884 and 33885]

NEW MEXICO

Applications

JULY 26, 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 the act of November 16, 1973 (87 Stat. 576) El Paso Natural Gas Co. has applied for three 4½-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 27 N., R. 6 W.,
Sec. 17, E½SE¼;
Sec. 23, E½SE¼.
T. 27 N., R. 7 W.,
Sec. 5, E½SW¼.

These pipelines will convey natural gas across 0.621 of a mile of public lands in Rio Arriba County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-21633 Filed 8-3-78; 8:45 am]

[4310-84]

[NM 33882]

NEW MEXICO

Applications

JULY 26, 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 the Act of November 16, 1973 (87 Stat. 576) Phillips Petroleum Co. has applied for three 4½-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 18 S., R. 26 E.,
Sec. 36, N½NW¼ and SW¼NW¼.

These pipeline will convey natural gas across 0.573 of a mile of public lands in Eddy County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-21634 Filed 8-3-78; 8:45 am]

[4310-84]

[NM 33879]

NEW MEXICO

Notice of Application

JULY 26, 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 the act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 27 N., R. 7 W.,
Sec. 6, SW¼SW¼.

This pipeline will convey natural gas across 0.035 of a mile of public lands in Rio Arriba County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-21635 Filed 8-3-78; 8:45 am]

[4310-84]

RIVERSIDE DISTRICT GRAZING ADVISORY BOARD

Meeting

Notice is hereby given that, pursuant to Pub. L. 94-579, title IV, section 403, the Bureau of Land Management, U.S. Department of the Interior, Riverside, Calif., District Grazing Advisory Board will meet August 31, 1978. Agenda items are organization and discussion of the role and function of the Board, discussion of the final grazing administration and trespass regulations, district multiple use planning activities for the McCain Valley Resource Conservation Area and the California Desert Conservation Area desert plan, and the district range improvement program for fiscal year 1979.

The meeting will be held at the Riverside District Office, 1695 Spruce Street, Riverside, Calif. 92507, from 10 a.m. to 4:30 p.m. The meeting is open to the public.

Dated: July 28, 1978.

GERALD E. HILLIER,
District Manager.

[FR Doc. 78-21695 Filed 8-3-78; 8:45 am]

[4310-84]

[U-29248]

UTAH

Proposed Withdrawal and Reservation of Lands

The Bureau of Land Management, Department of the Interior, has filed withdrawal application, U-29248, for the following described public lands from settlement, sale, location, or entry under all the general land laws, including the mining laws subject to valid existing rights:

SALT LAKE MERIDIAN

T. 41 S., R. 14 W.,
Sec. 14, W½NW¼, NW¼SW¼;
Sec. 15, Lots 1-6, inclusive, W½E½, W½ (all);
Sec. 22, W½NE¼, NW¼, N½SW¼, NW¼SE¼.

The area described aggregates approximately 1,125.60 acres in Washington County, Utah.

The applicant desires the land for the Red Cliffs Recreation Site.

On or before September 15, 1978, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the undersigned. Notice of the public hearing will be published in the FEDERAL REGISTER giving the time and place of such hearing. The public hearing will be scheduled and conducted in accordance with BLM manual, section 2351.16B.

The Department of the Interior's regulations provide that the authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources with the view of assuring that the area sought is the minimum essential to meet the applicant's needs, providing for the maximum concurrent utilization of the lands for purposes other than the applicant's, and reaching agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior, who will determine whether or not the lands will be withdrawn and reserved as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. The Secretary's determination shall, in a proper case, be subject to the provisions of section 204(c) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2752.

For a period of 2 years from the date of publication of this notice in the FEDERAL REGISTER, the lands will be segregated from entry as specified above unless the application is rejected or the withdrawal is approved prior to that date. If the withdrawal is approved by the Secretary, the segregation will remain in effect for a period of 20 years from the date of such approval.

All communications in connection with this proposed withdrawal should be addressed to the undersigned, Bureau of Land Management, Department of the Interior, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Dated: July 26, 1978.

PAUL L. HOWARD,
State Director.

[FR Doc. 78-21694 Filed 8-3-78; 8:45 am]

[4310-84]

SOUTH DAKOTA; FORT MEADE AREA

Recreation Management Restrictions

Under the authority of Section 202(c)(5) of the Sikes Act (88 Stat. 1369, 1371); and as a result of a public involvement meeting, held November 22, 1977, in Sturgis, S. Dak., the following interim management regulations for the Fort Meade recreation area, Sturgis, S. Dak., are hereby promulgated pending completion of the Fort Meade recreation management plan, pursuant to section 202(a)(1) of the Sikes Act, *supra*, and other authorities. These regulations are of a temporary nature and are the result of a need which surfaced at the above mentioned public involvement meeting. Upon completion of the recreation management plan, these regulations will be superseded, modified, or amended by permanent recreation regulations in conformity with the recreation management plan.

The following restrictions will become effective August 15, 1978:

1. All vehicles are restricted to designated roads and trails.

2. The use or discharge of all firearms is restricted on the south end of the Fort Meade area (all land south of Highway No. 34). The use or discharge of all firearms is restricted on the north end (all land north of Highway No. 34), except in specially designated areas or during the designated hunting seasons.

3. The possession or use of all fireworks is prohibited.

4. Camping is restricted only to designated campgrounds.

5. Open fires are prohibited. Fires are allowed only in campgrounds or other designated fire pits.

These regulations apply to the public lands in sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26 T. 5 N., R. 5 E., BHM; and sections 25, 26, 27, 34, 35, 36 T. 6 N., R. 5 E., BHM.

The purpose of these restrictions is to minimize hazards to visitors and surrounding residences, minimize the possibility of wild fire, stop soil erosion, vegetation loss, wildlife habitat loss, and damage to historic and cultural resources.

The public lands within the designated area will remain open to other resource and recreation uses. Administrative access by ORV is allowed for BLM and BLM contractors, licensees, permittees, and all other Federal, State, and county employees when on official duty. Permits for ORV use in the area may be authorized by the district manager for other special purposes.

The roads and trails designated for ORV use will be marked by signs. A map of the area affected by this designation is available from the South Dakota area office, 310 Roundup Street, Belle Fourche, S. Dak. 57717. Pursuant to section 204(a)(2) of the Sikes Act, *supra*, any person who knowingly violates or fails to comply with any regulations prescribed under section 202(c)(5) of the Act shall be fined not more than $500 or imprisoned not more than 6 months, or both.

Dated: July 27, 1978.

GEORGE S. NEUBERG,
District Manager.

[FR Doc. 78-21707 Filed 8-3-78; 8:45 am]

[4310-09]

Bureau of Reclamation

[INT-FES-78-17]

BONNEVILLE UNIT, CENTRAL UTAH PROJECT, UTAH

Availability of Supplement to the Final Environmental Statement for the Recreation Master Plan, Strawberry Reservoir Enlargement

Pursuant to section 102(2)(C) of the National Environmental Policy Act, the Department of the Interior has prepared a supplement to the final environmental statement on the Bonneville Unit, Central Utah Project, for a proposed action to establish a management plan for creation of a recreation management boundary line, construction of recreation facilities, and adoption of administrative and management procedures on an existing impoundment in north-central Utah. The supplement will be distributed for information to agencies and entities receiving the Bonneville Unit, Central Utah Project, final environmental statement.

Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Room 7622, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, telephone 202-343-4991.

Division of Engineering Support, Technical Services and Publications Branch, E. & R. Center, Denver Federal Center, Denver, Colo. 80225, telephone 303-234-3006.

Office of the Regional Director, Bureau of Reclamation, Federal Building, P.O. Box 11568, Salt Lake City, Utah 84147, telephone 801-524-5404.

Central Utah Projects Office, Bureau of Reclamation, 160 North 200 West Provo, Utah 84601, 801-584-0320.

Single copies of the supplement may be obtained on request to the Commissioner of Reclamation or the Regional Director. Please refer to the statement number above.

Dated: August 1, 1978.

LARRY E. MEIROTTO,
Deputy Assistant Secretary of the Interior.

[FR Doc. 78-21664 Filed 8-3-78; 8:45 am]

[4310-70]

National Park Service

[INT FES 78-16]

PINE CREEK STATE AND NATIONAL SCENIC RIVER

Availability of Final Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for the proposed Pine Creek State and National Scenic River in Pennsylvania. The statement considers the probable impact of establishing Pine Creek and selected tributaries as a component of the National Wild and Scenic River System. the Notice of Availability inviting comments on the draft statement (DES 77-31) was published in the FEDERAL REGISTER on September 9, 1977.

Copies of the statement are available for inspection at the following locations:

Office of Communications, Department of the Interior, Room 7200, Washington, D.C. 20240, telephone, 202-343-4662.

Regional Director, Mid-Atlantic Region, National Park Service, 143 South Third Street, Philadelphia, Pa. 19106, telephone, 215-597-9655.

Mr. Leonard Harrison, State Parks Office, R.D. 6, Wellsboro, Pa. 16901, telephone, 717-724-3061.

District Forestry Office, 423 East Central Avenue, South Williamsport, Pa. 17701, telephone, 717-326-3576.

Tioga County Planning Commission, Courthouse Annex, Wellsboro, Pa. 16901, telephone, 717-724-1906.

District Forestry Office, 66 Main Street, Wellsboro, Pa. 16901, telephone, 717-724-2868.

State Parks Office, Little Pine State Park, Waterville, Pa. 17776, telephone, 717-847-3200.

Lycoming County Planning Commission, County Courthouse, Williamsport, Pa. 17701, telephone, 717-323-9811 X317.

Single copies are available to the public and may be obtained by writing to the Regional Director, Mid-Atlantic Region, National Park Service, 143 South Third Street, Philadelphia, Pa., 19106. Please refer to the statement number shown in the title.

Dated: August 1, 1978.

LARRY E. MEIEROTTO,
Deputy Assistant Secretary of the Interior.

[FR Doc. 78-21665 Filed 8-3-78; 8:45 am]

[7020-02]

INTERNATIONAL TRADE COMMISSION

[AA1921-Inq.-17]

STAINLESS STEEL ROUND WIRE FROM JAPAN

Inquiry and Hearing

The United States International Trade Commission (Commission) received advice from the Department of the Treasury (Treasury) on July 26, 1978, that, during the course of its preliminary investigation with respect to stainless steel round wire from Japan in accordance with section 201(c) of the Antidumping Act of 1921, as amended (19 U.S.C. 160(c)), Treasury had concluded from the information available to it that there is substantial doubt that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of this merchandise into the United States. Therefore, the Commission on August 1, 1978, instituted inquiry AA1921-Inq.-17, under section 201(c)(2) of that act, to determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

The Treasury advised the Commission as follows:

DEAR MR. CHAIRMAN: In accordance with section 201(c) of the Antidumping Act of 1921, as amended, an antidumping investigation is being initiated with respect to stainless steel round wire from Japan. Pursuant to section 201(c)(2) of the Act, you are hereby advised that the information developed during our preliminary investigation has led us to the conclusion that there is substantial doubt that an industry in the United States is being, or is likely to be, injured by reason of the importation of this merchandise into the United States.

During a period of rising domestic consumption from 1975 through 1977, imports, and particularly those from Japan, increased as a share of consumption. At the same time capacity utilization rates, profit and employment levels in the domestic industry declined significantly. However, information on domestic prices and costs and on LTFV margins, with reference to this merchandise, indicates that elimination of LTFV margins would not substantially eliminate the margin by which petitioners are

being undersold by the imported merchandise from Japan. Nor apparently would such price revisions result in prices for the merchandise imported from Japan equal to or exceeding the cost of production of the domestic industry for such merchandise. Moreover, domestic sales of coarse wire have nearly doubled between 1975 and 1977 and sales of fine wire are no lower in 1977 than in 1975.

Accordingly, from the available information, the Department has concluded that there is substantial doubt that an industry in the United States is being, or is likely to be, injured by reason of the alleged sales at less than fair value from Japan.

Based upon the data submitted by petitioners, there are margins of sales at less than fair value of as much as 65 percent relative to this merchandise from Japan.

For purposes of this investigation, as recommended by your Office of Nomenclature, "stainless steel round wire" means "stainless steel wire, as defined and provided for in item 609.45, tariff schedules of the United States."

Some of the enclosed data is regarded by Treasury to be of a confidential nature. It is therefore requested that the Commission consider all the enclosed information to be for the official use of the ITC only, not to be disclosed to others without prior clearance from the Treasury Department.

Sincerely yours,

HENRY C. STOCKWELL, Jr.,
Acting General Counsel.

Hearing. A public hearing in connection with the inquiry will be held on Thursday, August 17, 1978, beginning at 10 a.m., e.d.t., in the Commission's Hearing Room, United States International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436. All persons shall have the right to appear in person or by counsel, to present information, and to be heard. Requests to appear at the public hearing should be received in writing in the office of the Secretary of the Commission not later than noon Monday, August 14, 1978.

Written statements. Interested parties may submit statements in writing in lieu of, and in addition to, appearance at the public hearing. A signed original and 19 true copies of such statements should be submitted. To be assured of their being given due consideration by the Commission, such statements should be received no later than Thursday, August 17, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

Issued: August 1, 1978.

[FR Doc. 78-21771 Filed 8-3-78; 8:45 am]

[4410-09]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

IMPORTATION OF CONTROLLED SUBSTANCES

Application

Pursuant to section 1008 of the Controlled Substance Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an oportunity for a hearing.

Therefore in accordance with section 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 19, 1978, U.S. Pharmacopeial Convention, Inc., 12601 Twinbrook Parkway, Rockville, Md. 20852, made application to the Drug Enforcement Administration to be registered as an importer of the basic class of controlled substances listed below, which, if imported, will be supplied exclusively for authorized research or as chemical analysis standards:

Drug:	Schedule
Tetrahydrocannabinols (7374)	I
4-methyl-2, 5-dimethoxy amphetamine (7395)	I
3,4-methylenedioxy amphetamine (7400)	I
Psilocybin (7437)	I
Psilocyn (7438)	I

As to the basic class of controlled substances listed above for which application for registration has been made, any other applicant therefor, and any existing bulk manufacturer registered therefor, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Administrator, Drug Enforcement Administration, U.S. Department of Justice, 1405 I Street NW., Washington, D.C. 20537. Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than September 8, 1978.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in schedule I or II are and will continue to be required to demonstrate to the Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 28, 1978.

PETER B. BENSINGER,
Administrator, Drug Enforcement Administration.

[FR Doc. 78-21710 Filed 8-3-78; 8:45 am]

[4410-09]

MANUFACTURE OF CONTROLLED SUBSTANCES

Application

Pursuant to 21 U.S.C. 823(a)(1), and § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on May 1, 1978, Winthrop Laboratory, Division of Sterling Drug, Inc., 33 Riverside Avenue, Rensselaer, N.Y. 12144, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the schedule II controlled substance meperidine (9230).

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Administrator, Drug Enforcement Administration, U.S. Department of Justice, 1405 I Street NW., Washington, D.C. 20537. Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than September 8, 1978.

Dated: July 28, 1978.

PETER B. BENSINGER,
Administrator, Drug Enforcement Administration.

[FR Doc. 78-21711 Filed 8-3-78; 8:45 am]

[4410-18]

Law Enforcement Assistance Administration

NATIONAL MINORITY ADVISORY COUNCIL ON CRIMINAL JUSTICE

Hearing

This is to provide notice of a hearing of the National Minority Advisory Council on Criminal Justice (NMACCJ).

The National Minority Advisory Council will hold a hearing on August

21 and 22, 1978. The hearing will be held at the Sheraton Century Center Hotel, 1 North Broadway Avenue, Oklahoma City, Okla. The hearing is scheduled to run from 12 noon until 6 p.m. on the 21st and from 9 a.m. until 3 p.m. on the 22d. The two sessions will be public hearings with discussions centering on the methodology to be utilized in accomplishing the national needs assessment of minorities and their relationship with the criminal justice system, with particular emphasis on Native Americans.

Anyone wishing to provide the Council with information or to provide testimony should contact Mr. Frank de la Fe, Project Monitor, 633 Indiana Avenue NW., Washington, D.C. 20531, telephone 202-376-3868.

FRANK DE LA FE,
Project Monitor.

[FR Doc. 78-21774 Filed 8-3-78; 8:45 am]

[4510-30]

DEPARTMENT OF LABOR

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

Notice of Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate, or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within 2 weeks of publication of this notice to: Deputy Assistant Secretary for Employment and Training, 601 D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 31st day of July 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

APPLICATIONS RECEIVED DURING THE WEEK ENDING JULY 28, 1978

Name of Applicant, Location of Enterprise, and Principal Product or Activity

Cafe Adjuntas, Adjuntas, P.R., roasting and grinding coffee.
Mason Contractor, Inc., Nazareth, Pa., masonry construction.
H&H Coal Co., Preston County, W. Va., coal mine.
Randolph Mineral Exploration Co., Marie, W. Va., coal mine.
Angelo A. Georgetti, Newell, W. Va., barge repairman.
Guyandotte Foodland, C&E Corp., Rita, W. Va., supermarket.
M. Industries, Inc., Coward, S.C., home components.
King Bradwall, Morristown, Tenn., motel.
Zorn Brothers, Inc., Florala, Ala., manufacture and application of fertilizer.
Owensby Corp. Linden, Ala., shopping center.
Lloyd Verley Cole, Jr., Nashville, Ga., automotive repairs and tire sales.
Camp Lightweight, Fort Gaines, Ga., aggregate mining.
Swallow Wire Co., Inc., Portage County, Ohio, manufacture fabricated wire products.
Lyle H., and Jeanette S. Ranson, Washington C. H., Ohio, cut and assemble corrugated sheets.
Helsel Metallurgical, Inc., Campbellsburg, Ind., production of powder metallurgy parts.
Martex Operating Co., Inc., Harrison County, Tex., drilling contractor.
Edinburg Cooperative Gin, Edinburg, Tex., corn and grain marketing.
Collett Enterprises, Inc., Eagle County, Colo., sales of gasoline and related products.
Ted G. King, Casa Grande, Ariz., motel.

[FR Doc. 78-21562 Filed 8-3-78; 8:45 am]

[4510-30]

FEDERAL-STATE EXTENDED BENEFITS

Notice of Ending of Extended Benefit Period in the State of Illinois

This notice announces the ending of the Extended Benefit Period in the State of Illinois effective on July 29, 1978.

BACKGROUND

The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of Pub. L. 91-373; 84 Stat. 695, 708; 26 U.S.C. 3304 note) created a program of extended unemployment benefits (referred to as Extended Benefits) as a permanent part of the Federal-State unemployment compensation program for unemployed individuals who have exhausted their rights to regular unemployment benefits under State and Federal unemployment compensation laws. This act is implemented by regulations of the Department of Labor at Part 615 of Title 20 of the Code of Federal Regulations, 20 CFR Part 615 (43 FR 13818, March 31, 1978), and in the unemployment compensation laws of the several States.

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered on when unemployment in the State or in all States collectively reaches the high levels set in the act. During an Extended Benefit Period the maximum amount of Extended Benefits which is payable to eligible individuals is up to 13 weeks, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks. An Extended Benefit Period commenced in the State of Illinois on April 30, 1978.

The act and the Illinois unemployment compensation law also provide that an Extended Benefit Period in a State will trigger off when unemployment in the State is no longer at the high levels set in the act. A benefit period actually terminates at the end of the third week after the week for which there is an "off" indicator. The

Extended Benefit Period in Illinois has now triggered off.

DETERMINATION OF "OFF" INDICATOR

The head of employment security agency of the State of Illinois has determined, in accordance with the State law and 20 CFR 615.12(e), that the average rate of insured unemployment in the State for the period consisting of the week ending on July 8, 1978, and the immediately preceding 12 weeks, has decreased so that for that week there was an "off" indicator in that State. Therefore, the Extended Benefit Period in that State terminates with the week ending on July 29, 1978.

INFORMATION FOR CLAIMANTS

Persons who wish information about their rights to Extended Benefits in the State of Illinois should contact the nearest local office of the Illinois Department of Labor in their locality.

Signed at Washington, D.C., on July 31, 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

[FR Doc. 78-21762 Filed 8-3-78; 8:45 am]

[4510-30]

FEDERAL-STATE EXTENDED BENEFITS

Notice of Ending of Extended Benefit Period in the State of Idaho

This notice announces the ending of the Extended Benefit Period in the State of Idaho effective on July 29, 1978.

BACKGROUND

The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of Pub. L. 91-373; 84 Stat. 695, 708; 26 U.S.C. 3304 note) created a program of extended unemployment benefits (referred to as Extended Benefits) as a permanent part of the Federal-State Unemployment Compensation program, for unemployed individuals who have exhausted their rights to regular unemployment benefits under State and Federal unemployment compensation laws. This act is implemented by regulations of the Department of Labor at part 615 of title 20 of the Code of Federal Regulations, 20 CFR part 615 (43 FR 13818, March 31, 1978), and in the unemployment compensation laws of the several States.

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered on when unemployment in the State or in all States collectively reaches the high levels set in the act. During an Extended Benefit Period the maximum amount of Extended Benefits which is payable to eligible individuals is up to 13 weeks, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks. An Extended Benefit Period commenced in the State of Idaho on April 30, 1978.

The act and the Idaho unemployment compensation law also provide that an Extended Benefit Period in a State will trigger off when unemployment in the State is no longer at the high levels set in the act. A benefit period actually terminates at the end of the third week after the week for which there is an "off" indicator. The Extended Benefit Period in Idaho has now triggered off.

DETERMINATION OF "OFF" INDICATOR

The head of employment security agency of the State of Idaho has determined, in accordance with the State law and 20 CFR 615.12(e), that the average rate of insured unemployment in the State for the period consisting of the week ending on July 8, 1978, and the immediately preceding 12 weeks, has decreased so that for that week there was an "off" indicator in that State. Therefore, the Extended Benefit Period in that State terminates with the week ending on July 29, 1978.

INFORMATION FOR CLAIMANTS

Persons who wish information about their rights to Extended Benefits in the State of Idaho should contact the nearest State Employment Office of the Idaho Department of Employment in their locality.

Signed at Washington, D.C., on July 31, 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

[FR Doc. 78-21763 Filed 8-3-78; 8:45 am]

[4510-30]

FEDERAL-STATE EXTENDED BENEFITS

Notice of Ending of Extended Benefit Period in the State of California

This notice announces the ending of the Extended Benefit Period in the State of California effective on July 29, 1978.84

BACKGROUND

The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of Pub. L. 91-373; 84 Stat. 695, 708; 26 U.S.C. 3304 note) created a program of extended unemployment benefits (referred to as Extended Benefits) as a permanent part of the Federal-State Unemployment Compensation Program, for unemployed individuals who have exhausted their rights to regular unemployment benefits under State and Federal unemployment compensation laws. This act is implemented by regulations of the Department of Labor at part 615 of title 20 of the Code of Federal Regulations, 20 CFR part 615 (43 FR 13818, March 31, 1978), and in the unemployment compensation laws of the several States.

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered on when unemployment in the State or in all States collectively reaches the high levels set in the act. During an Extended Benefit Period the maximum amount of Extended Benefits which is payable to eligible individuals is up to 13 weeks, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks. An Extended Benefit Period commenced in the State of California on April 30, 1978.

The act and the California unemployment compensation law also provide that an Extended Benefit Period in a State will trigger off when unemployment in the State is no longer at the high levels set in the act. A benefit period actually terminates at the end of the third week after the week for which there is an "off" indicator. The Extended Benefit Period in California has now triggered off.

DETERMINATION OF "OFF" INDICATOR

The head of employment security agency of the State of California has determined, in accordance with the State law and 20 CFR 615.12(e), that the average rate of insured unemployment in the State for the period consisting of the week ending on July 8, 1978, and the immediately preceding 12 weeks, has decreased so that for that week there was an "off" indicator in that State. Therefore, the Extended Benefit Period in that State terminates with the week ending on July 29, 1978.

INFORMATION FOR CLAIMANTS

Persons who wish information about their rights to Extended Benefits in the State of California should contact the nearest Unemployment Insurance Office local office of the California Employment Development Department in their locality.

Signed at Washington, D.C., on July 31, 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

[FR Doc. 78-21764 Filed 8-3-78; 8:45 am]

[4510-30]

FEDERAL-STATE EXTENDED BENEFITS

Notice of Ending of Extended Benefit Period in the State of Massachusetts

This notice announces the ending of the Extended Benefit Period in the State of Massachusetts effective on July 29, 1978.

BACKGROUND

The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of Pub. L. 91-373; 84 Stat. 695, 708; 26 U.S.C. 3304 note) created a program of extended unemployment benefits (referred to as Extended Benefits) as a permanent part of the Federal-State unemployment compensation program for unemployed individuals who have exhausted their rights to regular unemployment benefits under State and Federal unemployment compensation laws. This act is implemented by regulations of the Department of Labor at Part 615 of Title 20 of the Code of Federal Regulations, 20 CFR Part 615 (43 FR 13818, March 31, 1978), and in the unemployment compensation laws of the several States.

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered on when unemployment in the State or in all States collectively reaches the high levels set in the act. During an Extended Benefit Period the maximum amount of Extended Benefits which is payable to eligible individuals is up to 13 weeks, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks. An Extended Benefit Period commenced in the State of Massachusetts on April 30, 1978.

The act and the Massachusetts unemployment compensation law also provide that an Extended Benefit Period in a State will trigger off when unemployment in the State is no longer at the high levels set in the act. A benefit period actually terminates at the end of the third week after the week for which there is an "off" indicator. The Extended Benefit Period in Massachusetts has now triggered off.

DETERMINATION OF "OFF" INDICATOR

The head of employment security agency of the State of Massachusetts has determined, in accordance with the State law and 20 CFR 615.12(e), that the average rate of insured unemployment in the State for the period consisting of the week ending on July 8, 1978, and the immediately preceding 12 weeks, has decreased so that for that week there was an "off" indicator in that State. Therefore, the Extended Benefit Period in that State terminates with the week ending on July 29, 1978.

INFORMATION FOR CLAIMANTS

Persons who wish information about their rights to Extended Benefits in the State of Massachusetts should contact the nearest State Employment Office of the Massachusetts Division of Employment Security in their locality.

Signed at Washington, D.C., on July 31, 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

[FR Doc. 78-21765 Filed 8-3-78; 8:45 am]

[4510-43]

MINE SAFETY AND HEALTH ADMINISTRATION

[Docket No. M-78-78-C]

SOLAR FUEL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that Solar Fuel Co., P.O. Box 488, Somerest, Pa. 15501, has filed a petition to modify the application of 30 CFR 75.1100-2(e)(2) (fire protection), to its Solar No. 5, Solar No. 9, and Solar No. 10 Mines, located in Somerset County, Pa., in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of Petitioner's statement is as follows:

(1) Because of generally wet or damp conditions in the above mines, it is nearly impossible to maintain rock dust in a dry, usable condition for fire protection purposes.

(2) Petitioner requests that where such conditions exist, two multipurpose dry chemical-type fire extinguishers of the capacity specified in § 75.1100-1(e), or one with twice that capacity, be permitted as a substitute.

(3) This alternative method will provide equal or better protection than that afforded by the above standard.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before September 5, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: July 27, 1978.

ROBERT B. LAGATHER,
Assistant Secretary Mine Safety and Health.

[FR Doc. 78-21752 Filed 8-3-78; 8:45 am]

[4510-43]

[Docket No. M-78-34-M]

STAUFFER CHEMICAL CO. OF WYOMING

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that Stauffer Chemical Co. of Wyoming, P.O. Box 513, Green River, Wyo. 82935, has filed a petition to modify the application of 30 CFR 57.21-46 (ventilation), to its Big Island Mine, located in Sweetwater County, Wyo., in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of Petitioner's statement is as follows:

(1) A single entry decline, approximately 8-feet high, 16-feet wide and 800-feet long, is proposed to be driven to the bottom of the existing production shaft.

(2) Adequate ventilation will be provided by using a permissible auxiliary fan capable of supplying 20,000 c.f.m. of fresh air to the working face. Exhaust air will be coursed directly to the returns.

(3) Adequate roof support will be provided by using 54- by ⅝-inch roof bolts with 6- by 6-inch plates spaced on 48 inch centers.

(4) The decline is needed to improve working conditions while cleaning the bottom of the production shaft and will assure no less protection than the above standard.

(5) The proposed entry will provide the following advantages: Two means of access to the shaft bottom, an enlarged working area, improved ventilation, a means to provide adequate dust control, an enlarged sump, safer working conditions, mechanized cleanout.

(6) The period for which the variance is requested is from January 1, 1979 to December 31, 1979.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before September 5, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: July 27, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-21753 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3478]

ALVIN J. ECKHART CO., EPHRATA, 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-3478: 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 30, 1978 response to a worker petition received on March 7, 1978 filed on behalf of former workers engaged in cutting and finishing of lumber at the Alivin J. Eckhart Co., Ephrata, Pa.

The Notice of Investigation was published in the FEDERAL REGISTER on April 25, 1978 (43 FR 17550). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Alivin J. Eckhart 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. 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.

Imports of woodposts and pilings declined absolutely from 1976 to 1977. The quantity of imports to domestic production is negligible.

CONCLUSION

After careful review, I determine that all workers at the Alvin J. Eckhart Co., Ephrata, 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 28th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21726 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-2963]

AMERON INC., AMERON STEEL & WIRE DIVISION, IMPERIAL PLANT, IMPERIAL, CALIF.

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-2963: 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 26, 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 all steel products at the Imperial, Calif. plant of the Ameron Steel & Wire Division of Ameron, Inc. The investigation revealed that the plant only made carbon steel wire.

The Notice of Investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7070). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Ameron Steel & Wire Division, 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 subdivision have contributed importantly to the separations or threat thereof, and to the absolute decline in sales or production.

The U.S. Department of Labor conducted a survey of some of the customers that purchased carbon steel wire from the Imperial, Calif. plant of the Ameron Steel & Wire Division in 1975, 1976, and 1977. Most of the customers that responded to the survey reported that they did not purchase imported carbon steel wire in 1976 or 1977.

CONCLUSION

After careful review, I determine that all workers at the Imperial, Calif. plant of the Ameron Steel & Wire Division of Ameron, Inc., 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 28th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21727 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-2893]

A'PAREE, INC., CAMDEN, N.J.

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-2893: 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 11, 1978, in response to a worker petition received on December 29, 1977, which was filed by the International Ladies Garmet Workers Union on behalf of workers and former workers producing ladies' dresses at the Camden, N.J. plant of A'Paree, Inc.

The notice of investigation was published in the FEDERAL REGISTER on January 27, 1978 (42 FR 3776). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of A'Paree, 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 subdivision 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 the impact of imports in the domestic market for women's and misses' dresses has been small and did not

change appreciably from 1975 to 1976 or from 1976 to 1977. U.S. imports of women's and misses dresses, a category which includes the ladies' formal wear which is produced by A'Paree, increased only 2.2 percent from 645 thousand dozen in 1975 to 659 thousand dozen in 1976, while the ratio of imports to domestic production remained unchanged at 4.5 percent. Imports decreased from 659 thousand dozen in 1976 to 587 thousand dozen in 1977, a decline of 10.9 percent.

A survey of A'Paree's customers by the Department reflected the relatively minor influence of imports of women's dresses in the market served by A'Paree. Many customers responding to the survey indicated that during the period 1976 to 1977 they either purchased no imported formal wear or that purchases of imports had decreased. The consensus among the respondents was that there was little import influence in the market for women's formal wear.

CONCLUSION

After careful review I determine that all workers of the Camden, N.J. plant of A'Paree, Inc., 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 28th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21728 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3583]

B & B COAT, PATERSON, N.J.

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-3583: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on May 8, 1978 in response to a worker petition received on April 28, 1978 filed on behalf of workers and former workers producing ladies' winter coats.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of B & B Coat 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 sales or production, or both, of such firm or subdivision have decreased absolutely.

Sales increased in value in 1977 compared to 1976 and also increased in the first 5 months of 1978 compared to the same period in 1977. B & B produces on order, therefore, sales and production are equal.

CONCLUSION

After careful review, I determine that all workers of B & B Coat, Paterson, N.J. 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 31st day of July 1978.

GLORIA S. PRATT
Director, Office of Foreign Economic Policy.

[FR Doc. 78-21729 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3486]

CITY CLOTHING, INC., NEWBURGH, N.Y.

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-3586: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on April 11, 1978 in response to a worker petition received on March 31, 1978 whick was filed by the International Ladies Garment Workers Union on behalf of workers and former workers producing rainwear at City Clothing Co., Inc., Newburgh, N.Y.

The notice of investigation was published in the FEDERAL REGISTER on May 2, 1978 (43 FR 18790). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of City Clothing Co., Inc., its customers, the U.S. Department of Commerce, the National Cotton Council of America, 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 women's, misses' and children's raincoats increased in 1975 to 191 thousand dozens, increased in 1976 to 261 thousand dozens, and decreased in 1977 to 242 thousand dozens.

The ratio of imports to domestic production increased from 36.8 percent in 1975 to 50.4 percent in 1976.

Raincoats are like or directly competitive with all-weather coats. U.S. imports of women's, misses' and children's coats and jackets, including all-weather coats, increased to 1,517 thousand dozens in 1975, increased to 2,252 thousand dozens in 1976 and increased to 2,723 thousand dozens in 1977.

The ratio of imports to domestic production increased from 38.9 percent in 1975 to 57.5 percent in 1976.

The manufacturer which had contracted all of the production of City Clothing Co., Inc. cited imports as the reason for decreasing orders with the subject firm. A review of customers of the manufacturer shows that customers have steadily increased their purchases of imported women's coats and raincoats.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with raincoats produced by City Clothing Co., Inc., Newburgh, N.Y. 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 City Clothing Co., Inc., Newburgh, N.Y. who became totally or partially separated from employment on or after March 22, 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 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21730 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3586]

DEE JAY, PATERSON, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Depart-

ment of Labor herein presents the results of TA-W-3586: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on May 8, 1978 in response to a worker petition received on April 28, 1978 filed on behalf of workers and former workers producing ladies wool coats and raincoats.

The Notice of Investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Dee Jay, Paterson, N.J. 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 sales or production, or both, of such firm or subdivision have decreased absolutely.

Sales increased in value in 1977 compared to 1976 and in the first quarter of 1978 compared to the same period in 1977. Dee Jay produces on order and therefore sales and production are equal.

CONCLUSION

After careful review, I determine that all workers at Dee Jay, Paterson, N.J., 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 28th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21746 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-2816]

DELAWARE & HUDSON RAILWAY CO., SARATOGA SUBDIVISION, ALBANY, N.Y.

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-2816: 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 transporting raw materials and finished products in the Saratoga subdivision of the Delaware & Hudson Railway Co. in Albany, N.Y.

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 the Delaware & Hudson Railway 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 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 the "workers firm."

The Department's investigation revealed that the Delaware & Hudson Railway Co., Albany, N.Y., was incorporated in 1968 and is a wholly owned subsidiary of Dereco, a Delaware company. Dereco is owned by Norfolk & Western Railway.

The workers who filed the petition are employed in the Saratoga subdivision of the Delaware & Hudson Railway. The Delaware & Hudson Railway transports raw materials and finished products for a variety of customers. Workers in the Saratoga subdivision are engaged in transportation services, and do not produce an article within the meaning of section 222(3) of the act.

Delaware & Hudson Railway Co. and its customers have no controlling interest in each other. The workers on whose behalf this petition was filed were hired and are paid by and subject to the control of Delaware & Hudson Railway personnel only. All employment benefits are provided and maintained by the Delaware & Hudson Railway. Thus, the Delaware & Hudson Railway Co. must be considered the "workers firm."

CONCLUSION

After careful review, I determine that all workers at the Delaware & Hudson Railway Co., Saratoga subdivision, Albany, N.Y., 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 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21731 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3707]

EL GRECO LEATHER PRODUCTS CO., INC., BROOKLYN, N.Y.

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-3707: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on May 15, 1978 in response to a worker petition received on May 5, 1978 which was filed by the United Shoe Workers of America on behalf of workers and former workers producing women's shoes at El Greco Leather Products Co., Inc., Brooklyn, N.Y.

The Notice of the Investigation was published in the FEDERAL REGISTER on June 27, 1978 (43 FR 27923). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of El Greco Leather Products Co., Inc., 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 revealed that all of the requirements have been met.

U.S. imports of women's nonrubber footwear increased absolutely in 1976 from 1975 and increased relative to domestic production in 1977 compared to 1976.

Production of women's shoes by El Greco Leather Products Co., Inc., declined by value in each quarter from the third quarter of 1976 through the fourth quarter of 1977 compared to the respective quarter of the previous year.

Employment of production workers at El Greco Leather Products Co., Inc., declined in 1977 compared to 1976 and declined in the first quarter of 1978 compared to the first quarter of 1977.

El Greco Leather Products Co. began importing women's shoes in November 1976. In 1977, imports accounted for over 50 percent of sales by value and accounted for over 40 percent of

sales by value in the first quarter of 1978.

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 shoes produced by the El Greco Leather Products Co., Inc., Brooklyn, N.Y., contributed importantly to the decline in production and to the total or partial separation of workers at that company. In accordance with the provisions of the act, I make the following certification:

All workers of El Greco Leather Products Co., Inc., Brooklyn, N.Y., who became totally or partially separated from employment on or after May 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 28th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21732 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3437]

FAIRFOOT SHOE CO., 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-3437: 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 28, 1978 in response to a worker petition received on March 13, 1978 which was filed on behalf of workers and former workers producing stitched shoe uppers at Fairfoot Shoe Co., Johnstown, Pa.

The notice of investigation was published in the FEDERAL REGISTER on April 11, 1978 (43 FR 15205). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Fairfoot Shoe 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. The investigation revealed that all of the requirements have been met.

Imports of women's and misses' nonrubber footwear increased from 190.7 million pairs in 1975 to 195.5 million pairs in 1976, declining to 181.8 million pairs in 1977. Imports increased relative to domestic production from 114 percent in 1976 to 119 percent in 1977.

In its report to the President on February 8, 1977, the U.S. International Trade Commission found that certain footwear articles 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 considered factors other than imports that have been alleged as more important causes of injury to the domestic footwear industry, such as the recent recession, inability to keep pace with technological and style changes, and decreased productivity. However, the commission concluded that, although such factors may have contributed in part, imports have been the most important cause of injury.

Workers at Fairfoot Shoe Co.'s Johnstown, Pa. plant stitched shoe uppers that were supplied to the company's Martinsburg, Pa. plant. Workers of the Martinsburg plant was certified under a previous Department determination (TA-W-1997).

Customers were contacted in a previous Department survey applicable to the Martinsburg plant. Customers responding to the survey reduced purchases from Fairfoot while increasing purchases of imported footwear.

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 and misses' footwear produced at Fairfoot Shoe Co., Johnstown, Pa. 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 of Fairfoot Shoe Co., Johnstown, Pa. who become totally or partially separated from employment on or after March 10, 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 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21733 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3336]

IMAGINETICS INTERNATIONAL, INC., WATERBURY, CONN.

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-3336: 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 9, 1978 in response to a worker petition received on February 24, 1978 which was filed on behalf of former workers producing a voice-controlled, electro-mechnical toy van at the Waterbury, Conn. plant of Imaginetics International, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on March 24, 1978 (43 FR 12401). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Imaginetics International, Inc. 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 threat thereof, and to the absolute decline in sales or production.

The Waterbury, Conn. plant of Imaginetics, International, Inc. produced prototype units of a voice-controlled, electro-mechanical toy van. Production at the plant began in September 1976. The plant was closed by Imaginetics in December 1977. Production at the Connecticut plant consisted solely of the manufacture of prototype or sample units of the toy van. No retail sales of the voice-controlled, electromechanical toy van occured from September 1976, the opening date of the Connecticut plant, through December 1977, when the plant was closed.

During January 1978 a manufacturing firm located in Hong Kong began production of the voice-controlled, electro-mechanical toy van for Imaginetics. The production facility is operating as an independent firm which is licensed to produce the toy van for Imaginetics. Production by the Hong Kong firm from January through May

1978 consisted of the manufacture of prototype units of the toy van. No retail sales of the electro-mechanical toy van had been made by Imaginetics International, Inc. through May 1978.

During the period of production at the Connecticut plant, Imaginetics did not sell the toy van in the retail market. All units which were produced at the Connecticut facility were prototype or sample models of the toy van.

CONCLUSIONS

After careful review, I determine that workers at the Waterbury, Conn. plant of Imaginetics International, Inc. 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 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-21734 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3232]

JESSOP STEEL CORP., WASHINGTON, PA.

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-3232: 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 23, 1978, in response to a worker petition received on February 7, 1978, which was filed by the United Steelworkers of America on behalf of all workers producing stainless steels, tool steels, and cast-shape stainless items at the Washington, Pa., plant of Jessop Steel Co., Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on March 14, 1978 (43 FR 10650). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Jessop 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. With respect to workers engaged in employment related to the production of tool steel, without regard to whether any 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.

Sales of tool steel at the Washington, Pa., plant of Jessop Steel Corp. increased in quantity in 1977 compared to 1976. Production in quantity approximates sales.

With respect to all workers engaged in employment related to the production of stainless steel sheet and plate, without regard to whether any 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 threat thereof, and to the absolute decline in sales of production.

Imports of stainless steel sheet and plate decreased both absolutely and relatively in 1977 compared to 1976. Stainless sheet imports decreased from 68.9 thousand short tons in 1976 to 63.2 thousand short tons in 1977. The ratio of imports to domestic consumption declined from 16.3 percent in 1976 to 12.7 percent in 1977. Imports of stainless steel plate declined from 18.6 thousand short tons in 1976 to 7.6 in 1977. The ratio of imports to domestic consumption decreased from 23.8 percent in 1976 to 8.9 percent in 1977.

With respect to workers engaged in employment related to the production of stainless steel bars, all of the group eligibility requirements of section 222 of the act have been met.

U.S. imports of stainless steel bars increased absolutely from 23.1 thousand short tons in 1976 to 25.2 thousand short tons in 1977.

A survey of some bar customers of the Washington, Pa., plant of Jessop Steel indicated that several of those responding purchase imported stainless steel bars. Some had increased their purchases of imports in 1977 and had decreased their bar purchases from Jessop 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 the stainless steel bars produced at the Washington, Pa., plant of Jessop Steel Corp. contributed importantly to the decrease in sales and production and to the separations of workers of that firm. In accordance with the provisions of the act, I make the following certification:

All workers of Jessop Steel Corp., Washington, Pa., engaged in employment related to the production of stainless steel bars who became totally or partially separated from employment on or after March 25, 1978, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Furthermore, I determine that all workers engaged in employment related to the production of stainless steel sheet and plate and tool steel are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C., this 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-21735 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3308]

J. MOLOFSKY SONS, INC., BALTIMORE, MD.

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-3308: 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 7, 1978, in response to a worker petition received on February 21, 1978, which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of all workers producing men's tailored clothing at J. Molofsky Sons, Inc., Baltimore, Md. The investigation revealed that only men's pants are produced at the plant.

The notice of investigation was published in the FEDERAL REGISTER on March 17, 1978 (43 FR 11277). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of J. Molofsky Sons, Inc., its customers, the U.S. Department of Commerce, the International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. 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 threat thereof, and to the absolute decline in sales or production.

The Department conducted a survey of some of the manufacturers for which J. Molofsky Sons did contract

work. None of the responding manufacturers contracted work to foreign sources. The survey showed that Molofsky's former largest customer had opened its own pants factory and would no longer utilize the services of a contract shop such as J. Molofsky Sons, Inc.

CONCLUSION

After careful review I determine that all workers at J. Molofsky Sons, Inc., Baltimore, Md., 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 27th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21736 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3309]

J. SCHOENEMAN CO., OWINGS MILLS, MD.

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-3309: 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 7, 1978, in response to a worker petition received on February 21, 1978, which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of all workers warehousing and shipping men's tailored clothing at the Owings Mill, Md. plant of the J. Schoeneman Co.

The Notice of Investigation was published in the FEDERAL REGISTER on March 17, 1978 (43 FR 11277). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the J. Schoeneman 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 contributed importantly to the separation, or threat thereof, and to the decline in sales or production.

The U.S. Department of Labor conducted a survey of some of the customers of the J. Schoeneman Co. that purchased men's suits, sport coats, and separate trousers during 1976, 1977, and 1978.

Customers that reduced purchases of men's suits and sport coats from Schoeneman and increased import purchases represented an insignificant percentage of the subject firm's sales in 1977. Customers who reported increased purchases of imported men's trousers also increased purchases from Schoeneman.

CONCLUSION

After careful review, I determine that all workers of the Owings Mill, Md. plant of the J. Schoeneman 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 27th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21737 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3310]

J. SCHOENEMAN CO., WILMINGTON, DEL.

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-3310: 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 7, 1978, in response to a worker petition received on February 21, 1978, which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of all workers producing men's tailored clothing at the Wilmington, Del., plant of the J. Schoeneman Co.

The Notice of Investigation was published in the FEDERAL REGISTER on March 17, 1978 (43 FR 11277). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the J. Schoeneman 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 contributed importantly to the separations, or threat thereof, and to the decline in sales or production.

The U.S. Department of Labor conducted a survey of some of the customers of the J. Schoeneman Co. that purchased men's suits, sport coats, and separate trousers during 1976, 1977, and 1978.

Customers that reduced purchases of men's suits and sport coats from Schoeneman and increased import purchases represented an insignificant percentage of the subject firm's sales in 1977. Customers who reported increased purchases of imported men's trousers also increased purchases from Schoeneman.

CONCLUSION

After careful review, I determine that all workers of the Wilmington, Del., plant of J. Schoeneman 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 27th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21738 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3311]

J. SCHOENEMAN CO., WINCHESTER, 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-3311: 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 7, 1978, in response to a worker petition received on February 21, 1978, which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of all workers producing men's tailored clothing at the Winchester, Va. plant of the J. Schoeneman Co.

The Notice of Investigation was published in the FEDERAL REGISTER on March 17, 1978 (43 FR 11277). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the J. Schoeneman 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 contributed importantly to the separations, or threat thereof, and to the decline in sales or production.

The U.S. Department of Labor conducted a survey of some of the customers of the J. Schoeneman Co. that purchased men's suits, sport coats, and separate trousers during 1976, 1977, and 1978.

Customers that reduced purchases of men's suits and sport coats from Schoeneman and increased import purchases represented an insignificant percentage of the subject firm's sales in 1977. Customers who reported increased purchases of imported men's trousers also increased purchases from Schoeneman.

CONCLUSION

After careful review, I determine that all workers at the Winchester, Va. plant of the J. Schoeneman 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 27th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-21739 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3312]

J. SCHOENEMAN CO., CHAMBERSBURG, 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-3312: 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 7, 1978, in response to a worker petition received on February 21, 1978, which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of all workers producing men's tailored clothing at the Chambersburg, Pa. plant of the J. Schoeneman Co.

The Notice of Investigation was published in the FEDERAL REGISTER on March 17, 1978 (43 FR 11277). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the J. Schoeneman 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 contributed importantly to the separations, or threat thereof, and to the decline in sales or production.

The U.S. Department of Labor conducted a survey of some of the customers of the J. Schoeneman Co. that purchased men's suits, sport coats, and separate trousers during 1976, 1977, and 1978.

Customers that reduced purchases of men's suits and sport coats from Schoeneman and increased import purchases represented an insignificant percentage of the subject firm's sales in 1977. Customers who reported increased purchases of imported men's trousers also increased purchases from Schoeneman.

CONCLUSION

After careful review, I determine that all workers of the Chambersburg, Pa. plant of J. Schoeneman 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 27th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-21740 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W—2905]

LORRAINE HANDBAGS, INC., BOSTON, MASS.

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-2905: 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 11, 1978, in response to a worker petition received on December 22, 1977, which was filed on behalf of workers and former workers producing ladies' leather handbags at Lorraine Handbags, Inc., Boston, Mass.

The Notice of Investigation was published in the FEDERAL REGISTER on January 27, 1978 (43 FR 3776). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Lorraine Handbags, Inc., its customers, the National Handbag Association, the U.S. International Trade Commission, the U.S. Department of Commerce, 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 revealed that all of the requirements have been met.

Imports of ladies' handbags increased yearly from 54.4 million units in 1974 to 92.8 million units in 1977 and rose from 22.1 million units in the first quarter of 1977 to 34 million units in the first quarter of 1978. The ratio of imports to domestic handbag production increased annually from 66.7 percent in 1974 to 116.6 percent in 1977.

Customers of Lorraine Handbags who were surveyed indicated that they purchased imported ladies' handbags either directly from foreign sources or indirectly through domestic suppliers. Most of the customers surveyed increased purchases of imported ladies' handbags from 1976 to 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' leather handbags produced at Lorraine Handbags, Inc., Boston, Mass., contributed importantly to the decline in sales or production and to the total or partial separations of workers at such plant. In accordance with the

provisions of the act, I make the following certification:

All workers of Lorraine Handbags, Inc., Boston, Mass. who became totally or partially separated from employment on or after December 14, 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 28th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21741 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3540]

LURIE SPORTSWEAR, INC., STOUGHTON, MASS. AND BOSTON, MASS.

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-3540: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on April 25, 1978, in response to a worker petition received on April 12, 1978, which was filed on behalf of workers and former workers producing ladies' blazers at the Stoughton, Mass. plant of Lurie Sportswear, Inc. The investigation was expanded to include the Boston, Mass. plant.

The notice of investigation was published in the FEDERAL REGISTER on May 5, 1978 (43 FR 19478). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Lurie Sportswear, Inc., its customers, the U.S. Department of Commerce, 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.

Lurie Sportswear produces ladies' blazers on a contractual basis primarily for two manufacturers. Sales by both manufacturers increased in 1977 from 1976. Neither manufacturer contracted with foreign firms. The manufacturer who reduced orders with Lurie Sportswear in 1977 increased orders to other domestic contractors.

CONCLUSION

After careful review, I determine that workers of the Stoughton and Boston, Mass. plants of Lurie Sportswear, Inc., are denied eligibility to apply for adjustment assistanoe under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 28th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21742 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3665]

MANHATTAN FASHIONS, INC., UNION CITY, N.J.

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-3665: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978 in response to a worker petition received on April 28, 1978 filed on behalf of workers and former workers producing ladies' coats and raincoats at Manhattan Fashions, Inc., Union City, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Manhattan Fashions, Inc. 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 sales of production or both, of such firm or subdivision have decreased absolutely.

Sales at Manhattan Fashions, Inc. increased in value from 1976 to 1977 and increased in the first quarter of 1978 compared to the same period in 1977. Manhattan Fashions produces on order; therefore, sales and production are equal.

CONCLUSION

After careful review, I determine that all workers at Manhattan Fashions, Inc., Union City, N.J. 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 31st day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21743 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3338]

M. T. SHAW, INC. COLDWATER, MICH.

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-3338: 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 9, 1978 in response to a worker petition received on February 27, 1978 which was filed by the Boot and shoe Worker's Union on behalf of workers and former workers producing men's shoes, dress and casual, of M. T. Shaw, Inc., Coldwater, Mich.

The notice of Investigation was published in the FEDERAL REGISTER on March 24, 1978 (43 FR 12401). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of M. T. Shaw, Inc., its customers, the U.S. International Trade Commission, U.S. Department of Commerce, American Footwear Industries Association, 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 requirements have been met.

U.S. Imports of men's dress and caual footwear increase both absolutely and relatively from 1975 to 1976. U.S. imports of men's dress and casual footwear decreased absolutely but increased relatively form 1976 to 1977. The ratio of imports to domestic production increased in 1976 compared to 1975 and increased to 71.7 percent in 1977 form 70.4 percent in 1976.

Several of the customers of M. T. Shaw, Inc. that were surveyed indicated that they had increased purchases of imported men's leather footwear and decreased purchases from M. T. Shaw, Inc.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases in imports of articles like or directly competitive with men's leather footwear produced at the plant of M. T. Shaw, Inc., Coldwater, Mich., contributed importantly to the decrease and sales or production and to the total or partial separations of workers at that firm. In accordance with the provisions of the act, I make the following certification:

All workers at M. T. Shaw, Inc., Coldwater, Mich., who became totally or partially separated from employment on or after February 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 27th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21744 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3384]

MT. HOPE MINING CO., WHARTON, N.J.

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-3384: 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 21, 1978 in response to a worker petition received on March 9, 1978 which was filed by the United Steelworkers of America on behalf of all workers mining and concentrating iron ore at the Mt. Hope Mining Co., Wharton, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on March 28, 1978 (43 FR 12967). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Mt. Hope Mining 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 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 Mt. Hope Mining Co. was only producing iron ore for a short period of time in 1977 and 1978. During this period Mt. Hope sold their iron ore to only two domestic firms. The Department surveyed these firms to determine to what extent imports of iron ore supplied their needs. Neither of these firms switched from purchases of Mt. Hope's iron ore to imported ore.

CONCLUSION

After careful review I determine that all workers at the Mt. Hope Mining Co., Wharton, N.J., are denied eligibility to apply for trade adjustment assistance under title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 28th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 78-21745 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-2971]

PAULINA SPORTSWEAR, LOS ANGELES, CALIF.

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-2971: 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 26, 1978, in response to a worker petition received on December 28, 1977, which was filed on behalf of workers and former workers producing women's coats at Paulina Sportswear, Los Angeles, Calif.

The Notice of Investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7070). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Paulina Sportswear, its customers, the National Cotton Council of America, the U.S. International Trade Commission, the U.S. Department of Commerce, 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 revealed that all of the requirements have been met.

Imports of women's misses and children's coats and jackets made of textile materials increased from 2,252 thousand dozen units in 1976 to 2,723 thousand units in 1977. The ratio of imports to domestic production decreased from 57.5 percent in 1976 to 54.9 percent in 1977.

From 1975 until the company closed in May 1977, Paulina Sportswear produced women's outer coats on a contract basis primarily for a women's clothing manufacturer in the Los Angeles area. Sales of coats by that manufacturer decreased yearly from 1975 through 1977. A survey of the manufacturer's retail customers revealed that a customer reduced purchases of women's coats from the manufacturer and increased purchases of imported coats.

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 outer coats produced at Paulina Sportswear, Los Angeles, Calif, contributed importantly to the decline in sales or production and to the total or partial separations of workers at such plant. In accordance with the provisions of the act, I make the following certification:

All workers of Paulina Sportswear, Los Angeles, California who became totally or partially separated from employment on or after December 23, 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 28th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 78-21747 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-2860]

PENN-DIXIE STEEL CORP., BLUE ISLAND FINE AND SPECIALTY WIRE DIVISION, BLUE ISLAND, ILL.

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-2860: 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 worker petitions received on December 19, 1978, which were filed by the Penn-Dixie Steel Corp. and the United Steelworkers of America on behalf of all workers producing wire and wire products at the Blue Island Fine and Specialty Wire Division of Penn-Dixie Steel Corp., Blue Island, Ill. The Penn-Dixie Steel Corp. later withdrew its petition on February 8, 1978.

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 officals of Penn-Dixie 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 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 company sales and production of wire and wire products produced at Blue Island increased from 1976 to 1977. The average number of production workers also increased from 1976 to 1977.

The Department conducted a survey of some of the customers of the Blue Island Fine and Specialty Wire Division. Most customers responding to the survey indicated that they increased purchases from the Blue Island plant from 1976 to 1977.

CONCLUSION

After careful review I determine that all workers at the Blue Island Fine and Specialty Wire Division of Penn-Dixie Steel Corp., Blue Island, Ill., are denied eligibility to apply for trade adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 27th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21748 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3626]

RANDY COAT, HOBOKEN, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Ajustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3626: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, filed on behalf of workers and former workers producing ladies coats.

The Notice of Investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Randy Coat, Hoboken, N.J. 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 a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated.

Employment increased in 1977 compared to 1976 and in the first 5 months of 1978 compared to the same period in 1977.

CONCLUSION

After careful review, I determine that all workers at Randy Coat, Hoboken, N.J., 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 28th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21749 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3287]

RED BANK CLOTHING MANUFACTURING CO., INC., RED BANK, N.J.

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-3287: 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 1, 1978, in response to a worker petition received on February 22, 1978, which was filed on behalf of workers formerly producing men's coats at Red Bank Clothing Manufacturing Co., Inc., Red Bank, N.J.

The notice of investigation was published in the FEDERAL REGISTER on March 14, 1978 (43 FR 10649). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Red Bank Clothing Manufacturing 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 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 threat thereof, and to the absolute decline in sales or production.

The sole manufacturer who contracted with Red Bank Clothing reported, in a Department survey, that contract work had declined with Red Bank and had increased with other domestic sources from 1975 to 1976 and from 1976 to 1977. This manufacturer did not import finished men's coats, nor did it utilize foreign contractors. In addition, the manufacturer's sales to retailers increased during this time period.

CONCLUSION

After careful review I determine that all workers of Red Bank Clothing Manufacturing Co., Inc., Red Bank, N.J. are denied eligibility to apply for trade adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 27th day of July 1978.

JAMES F. TAYLOR,
T3Director, Office of Management,

Administration and Planning.

[FR Doc. 78-21750 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-3653]

SNOB FASHIONS, INC., JERSEY CITY, N.J.

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-3653: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, filed on behalf of workers and former workers producing ladies coats and raincoats.

The Notice of Investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Snob Fashions, Jersey City, N.J. 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 sales or production, or both, of such firm or subdivision have decreased absolutely.

Sales increased in value from 1976 to 1977 and also increased in the first 5 months of 1978 compared to the first 5 months of 1977. Snob Fashions produces on order; therefore, sales and production are equal.

CONCLUSION

After careful review, I determine that all workers at Snob Fashions, Jersey City, N.J., 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 28th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21751 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-2440]

U.S. STAMPING CO., MOUNDSVILLE, W. VA.

Revised Certification of 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, on December 2, 1977 the Department of Labor issued a certification of eligibility to apply for adjustment assistance applicable to workers and former workers producing porcelain enameled cookware at U.S. Stamping Co., Moundsville, W. Va. The Notice of Certification was published in the FEDERAL REGISTER on December 13, 1977 (42 FR 62560).

Subsequent to the publication on the original determination, the Office of Trade Adjustment Assistance received a petition on behalf of workers and former workers of Lisk Savory Corp., Buffalo, N.Y. (TA-W-3778). Notice of the Investigation was published in the FEDERAL REGISTER on June 9, 1978 (43 FR 25197). Further investigation revealed that workers at Lisk Savory Corp. were engaged in employment related to the production of porcelain enameled cookware at U.S. Stamping Co., and should have been included in the original certification as eligible to apply for adjustment assistance.

The subject workers were omitted from the original certification because the company maintained separate records and ledgers for workers of Lisk Savory Corp.

CONCLUSION

Based on additional evidence, a review of the entire record, and in accordance with the provisions of the act, I have determined that the following certification is hereby made as follows:

All workers of U.S. Stamping Co., Moundsville, W. Va., including all workers of Lisk Savory Corp., Buffalo, N.Y., who became totally or partially separated from employment on or after October 27, 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 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Adminstration, and Planning.

[FR Doc. 78-21754 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-2929]

VAPOR LITE LABORATORIES, WOBURN, MASS.

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-2929: 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 12, 1978, in response to a worker petition received on December 30, 1977, which was filed on behalf of former workers producing glass bushings, bulbs, and beads for magnatron tubes at Vapor Lite Laboratories, Woburn, Mass.

The Notice of Investigation was published in the FEDERAL REGISTER on February 3, 1978 (43 FR 4695). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Vapor Lite Laboratories, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, Industry analysts, and Department files.

CONCLUSION

After careful review, I determine that workers of Vapor Lite Laboratories, Woburn, 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 31st day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-21755 Filed 8-3-78; 8:45 am]

[4510-28]

[TA-W-2686]

WHEELING-PITTSBURGH STEEL CORP., BEECHBOTTOM, W. VA.

Negative Determination Regarding Application for Reconsideration

By letter postmarked July 11, 1978, the President of the United Steelworkers of America, Local Union No. 2256, requested administrative reconsideration of the Department of Labor's

Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers of Wheeling-Pittsburgh Steel Corp.'s plant at Beechbottom, W. Va. The determination was published in the FEDERAL REGISTER on July 11, 1978 (43 FR 29861).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears, on the basis of facts not previously considered, that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

In his application, the president of the local union stated that the Beechbottom plant has lost half of its employees and that he understood that the plant lost money for the years 1975, 1976, and 1977. Under the circumstances, he could not understand how sales and production could have increased as was found in the Department's investigation.

The Department's investigation found that both sales and production at the plant rose from 1975 to 1976 and again from 1976 to 1977. Despite the fact that the average number of workers at the Beechbottom plant declined by 3 percent in 1976 and by 6 percent in 1977, the Trade Act test of a decline in sales or production was not found to be met. Any possible sales, production, and employment declines in 1974 or 1975 would not be relevant to an adjustment assistance determination based on a petition filed in November 1977, since under the provisions of the Trade Act of 1974, worker separations occurring more than 1 year prior to the date of the petition cannot be covered by a certification.

CONCLUSION

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 28th day of July, 1978.

JAMES F. TAYLOR,
Director, Office of Management, Adminstration and Planning.

[FR Doc. 78-21756 Filed 8-3-78; 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 August 14, 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 August 14, 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 26th day of July, 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
Julius Altschul, Inc. (United Shoe Workers of America).	Brooklyn, N.Y	July 21, 1978	July 19, 1978	TA-W-3,996	Children's and ladies' shoes.
Chicago Pneumatic Tool Co. (I.A.M.A.W.).	Utica, N.Y	July 20, 1978	July 17, 1978	TA-W-3,997	Pneumatic and rotary tools.
Copper Range Co., White Pine Copper Div. (USWA).	White Pine, Mich	July 24, 1978	July 20, 1978	TA-W-3,998	Mining, crushing, concentrating, smelting and refining of copper.
Janice M., Inc. (Co.)	Gloucester, Mass	July 21, 1978	July 18, 1978	TA-W-3,999	Catching and selling of fin fish.
Ogden Alloys, Inc., Barth Division (USWA).	Newark, N.J	July 24, 1978	July 1, 1978	TA-W-4,000	Refining, smeltering of copper alloy parts and then selling it to foundries to make plumbing fixtures.
Paceco (International Brotherhood of Boilermakers, Iron Ship Builders Blacksmith, Forgers and Helpers).	Alameda, Calif	do	July 20, 1978	TA-W-4,001	Various kinds of fabricated metal including portainers and trantainers known as cranes.

[FR Doc. 78-21708 Filed 8-3-78; 8:45 am]

[4410-01]

NATIONAL COMMISSION FOR THE REVIEW OF ANTITRUST LAWS AND PROCEDURES

Meeting

Notice is hereby given that the National Commission for the Review of Antitrust Laws and Procedures (hereinafter "Commission") in accordance with executive Order 12022 and section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) will hold a public meeting on Tuesday, August 15, 1978, starting at 10 a.m. in Room 318 of the Russell Senate Office Building, First and C Streets NE., Washington, D.C.

The purpose of the meeting is to develop a work plan that will establish overall priorities, identify specific issues for primary consideration, provide for the completion of ongoing research projects, and address the need for and subject matter of future public hearings.

Dated: August 1, 1978.

TIMOTHY G. SMITH,
Staff Director.

[FR Doc. 78-21706 Filed 8-3-78; 8:45 am]

[7537-01]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

ARCHITECTURE, PLANNING, AND DESIGN ADVISORY PANELS

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Architecture, Planning, and Design Advisory Panels to the National Council on the Arts will be held August 21, 1978, from 9 a.m. to 5:30 p.m.; August 22, 1978, from 9 a.m. to 5:30 p.m.; August 23, 1978, from 9 a.m. to 5:30 p.m.; August 24, 1978, from 9 a.m. to 5:30 p.m.; and August 25, 1978, from 9 a.m. to 5:30 p.m., in the 11th Floor Conference Rooms of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of March 17, 1977, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552 of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

AUGUST 1, 1978.

[FR Doc. 78-21651 Filed 8-3-78; 8:45 am]

[7537-01]

MEDIA ARTS ADVISORY PANEL

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Services to the Field) to the National Council on the Arts will be held August 28, 1978, from 9 a.m. to 5:30 p.m.; August 29, 1978, from 9 a.m. to 5:30 p.m.; and August 30, 1978, from 9 a.m. to 5:30 p.m., in Room 1426 of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of March 17, 1977, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552 of title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

AUGUST 1, 1978.

[FR Doc. 78-21650 Filed 8-3-78; 8:45 am]

[7537-01]

SPECIAL PROJECTS ADVISORY PANEL

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Special Projects Advisory Panel (Folk Arts) to the National Council on the Arts will be held on August 25, 1978, from 9 a.m. to 5 p.m.; and August 26, 1978, from 9:30 a.m. to 5:30 p.m., in Room 1422 of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on August 26, 1978, from 9:30 a.m. to 1 p.m. Topics for discussion will be guidelines and policy.

The remaining sessions of this meeting on August 25, 1978, from 9 a.m. to 5 p.m.; and August 26, 1978, from 1 p.m. to 5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6), and (9)(b) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

JOHN H. CLARK,
Director, Office of Council and Panel Operations National Endowment for the Arts.

AUGUST 1, 1978.

[FR Doc. 78-21652 Filed 8-3-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[Docket No. PRM-34-2]

NON DESTRUCTIVE TESTING MANAGEMENT ASSOCIATION

Filing of Petition for Rulemaking

Notice is hereby given that Mr. Walter P. Peeples, Jr., President, Non Destructive Testing Management Association, has filed with the Nuclear Regulatory Commission a petition for rulemaking to amend the Commission's regulations.

By letter dated June 24, 1977, Mr. Peeples proposed a system for the registration of industrial radiographers. This proposal has been under review by the NRC staff since that time. On June 28, 1978, Mr. Peeples requested that his letter be considered a petition for rulemaking pursuant to § 2.802 of 10 CFR Part 2 of the Commission's

regulations, and it has been so accepted by the Commission.

The petitioner requests the Commission to amend its regulations to provide for registration, licensing, and control of individual radiographers. Attached to the petition is an outline of a suggested program for NRC registration of industrial radiographers. The petitioner states that registration and licensing of individual radiographers would reduce overexposure and prevent needless exposure.

The purpose of the petition is set forth in section 1.0 of the attachment to the petition, as follows:

1.0 PURPOSE

To reduce the incidence of overexposure, to prevent needless exposure, to curtail noncompliance, and advance the overall safety of the radiographic industry.

1.1 DISCUSSION

It is the consensus opinion in the industrial radiographic industry that the Commission is overlooking a major contributing cause of incidents in the industry. The reference is to those cases where the radiographer is acting independently and negligently on his own despite being provided proper training, testing, and adequate safety equipment. It is proposed that only through the registration, licensing, and control of the individual radiographer can the industry overexposure record be improved. the NDTMA is convinced that until the radiographer is motivated by a sense of individual responsibility for his own acts and their results, will the industry be a safer one. It is recommended that the registration program would serve several purposes. First, it would provide the radiographer with a sense of pride in his knowledge that he has been registered by a government body. Secondly, an awareness that he is directly responsible for his safety performance. Third, that he is accountable for his conduct to the extent his registration could be limited, suspended, or revoked and future employment in the industry affected. Fourth, it would provide continuity of safety training and testing in an industry where employment is very mobile. It is not the intent, nor would this proposal in any way reduce the responsibility of the licensee.

A copy of the petition for rulemaking is available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of the petition may be obtained by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

All persons who desire to submit written comments or suggestions concerning the petition for rulemaking should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch by October 3, 1978.

Dated at Washington, D.C., this 31st day of July 1978.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-21507 Filed 8-3-78; 8:45 am]

[7590-01]

REVIEW OF NRC DECOMMISSIONING POLICY

State Workshops

The Nuclear Regulatory Commission (NRC) is now considering development of a more explicit overall policy for nuclear facility decommissioning and amending its regulations in 10 CFR Parts 30, 40, 50, and 70 to include more specific guidance on decommissioning criteria for production and utilization facility licensees and byproduct, source, and special nuclear material licensees. An advance notice of proposed rulemaking was published in the FEDERAL REGISTER on March 13, 1978 (FR 43 10370-10371, FR Doc. 78-6461). The NRC staff set forth in detail its proposed plan for the development of an overall NRC policy on decommissioning of nuclear facilities in NUREG-0436, "Plan for Reevaluation of NRC Policy on Decommissioning of Nuclear Facilities," March 1978.

To obtain the views of the States on its policy, NRC is holding three regional workshops to discuss the specifics of the NRC plan (NUREG-0436) as well as its first two decommissioning reports (NUREG-0278),"Technology, Safety, and Costs of Decommissioning a Reference Nuclear Fuel Reprocessing Plant" and NUREG/ CR-0130 "Technology, Safety, and Costs of Decommissioning a Reference Pressurized Water Reactor." The Governors, legislative leadership and public utility chairmen of each State have been invited to send representatives to participate in any one of the three workshops. Information developed at the workshops will be considered in the reevaluation of NRC's decommissioning policy. The results of additional studies now underway, involving other types of nuclear activities, will be discussed at workshops planned for 1979.

The workshop locations and dates are as follows:

September 18-20, Holiday Inn Midtown, 1305-11 Walnut Street, Philadelphia, Pa. 19107.

September 25-27, Sheraton-Biltmore Hotel, 817 West Peachtree Street NE., Atlanta, Ga. 30383.

September 28-30, Sheraton Old Town, 800 Rio Grande Boulevard NW., Alburquerque, N. Mex. 87104

These workshops are being held to obtain the views of, and to provide the opportunity for discussion among, State officials; however, all sessions will be open to public attendance and observation on a space available basis. Reports will be filed in the NRC Public Document Room.

Persons who wish further information about these workshops or who wish to observe should write Ms. Shirley Ingebritsen, Workshop Coordinator, SCS Engineers, 11800 Sunrise Valley Drive, Reston, Va. 22091, or call 703-620-3677, giving name, address, and phone number.

Dated at Bethesda, Md., this 28th day of July 1978.

For the Nuclear Regulatory Commission.

HAROLD E. COLLINS,
Acting Director,
Office of State Programs.

[FR Doc.78-21506 Filed 8-3-78; 8:45 am]

[7590-01]

[Docket No. 50-409]

DAIRYLAND POWER COOPERATIVE; (LACROSSE BOILING WATER REACTOR)

Hearing; Amendment to Provisional Operating License; (Spent-Fuel Pool)

On May 25, 1978, the Nuclear Regulatory Commission published a notice in the FEDERAL REGISTER, 43 FR 22462, that the Commission is considering the issuance of an amendment to the provisional operating license No. DPR-45 issued to Dairyland Power Cooperative for operation of the La-Crosse Boiling Water Reactor (LACBWR). The amendment would change the provisional license to allow more spent nuclear fuel to be stored at LACBWR by modifying the storage racks in the spent-fuel storage pool. The proposed modifications would increase the storage capacity from 134 to 448 fuel assemblies by replacing the existing storage racks with racks capable of holding more assemblies. This would be in accordance with the licensee's application dated April 20, 1978.

The notice of hearing provided that any person whose interest may be affected by this proceeding and who wishes to participate as a party to the proceeding must file a petition for leave to intervene and request a hearing on or before June 26, 1978.

Pursuant to the notice a timely petition for leave to intervene and request for a hearing pursuant to 10 CFR

2.714 was filed by George R. Nygaard, Mark Burmaster, and Anne K. Morse on behalf of Coulee Region Energy Coalition.

An Atomic Safety and Licensing Board was designated to rule upon petitions for leave to intervene and requests for hearing. By memorandum dated July 14, 1978, the Board granted the petition for leave to intervene filed by the Coulee Region Energy Coalition, and ordered an evidentiary hearing in this proceeding.

Therefore please take notice, That an evidentiary hearing in this proceeding will be conducted to determine whether the proposed modification of the spent-fuel storage pool will comply with the provisions of the Atomic Energy Act as amended, the National Environmental Policy Act and the applicable Commission Regulations. An Atomic Safety and Licensing Board, consisting of the same members which served on the Board designated to rule upon petitions, has been designated to preside over the evidentiary hearing. The members are George A. Anderson, Lester Kornblith, Jr. and Ivan W. Smith, who will serve as chairman.

An evidentiary hearing will be held in LaCrosse, Wis., at a time and place to be announced in a future notice of hearing. To provide for a discussion of prehearing procedures, the Board has scheduled a prehearing conference pursuant to the provisions of 10 CFR 2.751a to be held at: Hall of Presidents, Cartwright Center, University of Wisconsin at LaCrosse, LaCrosse, Wis. 54601, commencing at 9 a.m., August 17, 1978.

The public is invited to attend. Because of the press of other business at the prehearing conference, the Board may not be able to accept statements from the public at this conference. However, any member of the public who wishes to make an oral or written limited appearance statement with respect to the proposed spent-fuel pool modification, and who has not been admitted as an intervenor to the proceeding, will be given an opportunity to do so at one or more sessions of the evidentiary hearing. The details of this opportunity and any limitations will be set forth in the future notice setting the time and place of the hearing.

Any person who wishes to make an oral or written statement in this proceeding, but who has not filed a petition for leave to intervene, as noted above, may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715 of the Commission's Rules of Practice. 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. Written limited appearance statements may also be mailed to this address. A person permitted to make a limited appearance does not become a party, but may state his or her position and raise questions which he or she would like to have answered to the extent that the questions are within the scope of the hearing as specified above.

The documents pertaining to this proceeding are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and the LaCrosse Public Library, 800 Main Street, LaCrosse, Wis. 54601.

It is so ordered.

For the Atomic Safety and Licensing Board.

Dated at Bethesda, Md., this 31st day of July, 1978.

IVAN W. SMITH,
Chairman.

[FR Doc. 78-21647 Filed 8-3-78; 8:45 am]

[7590-01]

[Docket No. 50-302]

FLORIDA POWER CORP. ET AL.

Issuance of Amendment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 15 to Facility Operating License No. DPR-72, issued to the Florida Power Corp., city of Alachua, city of Bushnell, city of Gainesville, city of Kissimmee, city of Leesburg, city of New Smyrna Beach and Utilities Commission, city of New Smyrna Beach, city of Ocala, Orlando Utilities Commission and city of Orlando, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., and the city of Tallahassee (the licensees) which revised the license and its appended Technical Specifications for operation of the Crystal River Unit No. 3 Nuclear Generating Plant (the facility) located in Citrus County, Fla. The amendment is effective as of the date of issuance.

This amendment: (1) Authorizes Florida Power Corp. (FPC) to receive and possess at the facility four spent fuel assemblies from Oconee Nuclear Station, Unit No. 1, which FPC is expected to request Commission authorization to use as fuel in the facility's reactor during the remainder of Cycle 1 operation; and (2) revises the Technical Specifications to reflect a change in the reactor vessel surveillance capsule installation and removal schedule.

The applications for the amendment comply 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 prepared an environmental impact appraisal for Item 1, above, of this amendment and has concluded that an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact attributable to the action other than that which has already been predicted and described in the Commission's Final Environmental Statement for the facility dated May 1973.

The Commission has determined that the issuance of Item 2, above, of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an 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 applications for amendment dated May 30, 1978 (Proposed Change No. 28) and June 28, 1978; (2) Amendment No. 15 to License No. DPR-72; and (3) the Commission's related Safety Evaluation/Environmental Impact Appraisal. 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 Crystal River Public Library, Crystal River, Fla. 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 24th day of July 1978.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch 4, Division of Operating Reactors.

[FR Doc. 78-21664 Filed 8-3-78; 8:45 am]

[7590-01]

[Docket Nos. 50-466 and 50-467]

HOUSTON LIGHTING & POWER CO.; ALLENS CREEK NUCLEAR GENERATING STATION, UNITS 1 AND 2

Reconstitution of Board

Samuel W. Jensch, Esq., was Chairman of the Atomic Safety and Licensing Board for the above proceeding. Mr. Jensch is unable to continue his service on this Board.

Accordingly, Sheldon J. Wolfe, Esq., whose address is Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, is appointed Chairman of this Board. Reconstitution of the Board in this manner is in accordance with § 2.721 of the Commission's Rules of Practice, as amended.

JAMES R. YORE,
Chairman, Atomic Safety and Licensing Board Panel.

Dated at Bethesda, Md., this 31st day of July, 1978.

[FR Doc. 78-21646 Filed 8-3-78; 8:45 am]

[7590-01]

[NUREG-75/087]

REVISION TO THE STANDARD REVIEW PLAN

Issuance and Availability

As a continuation of the updating program for the standard review plan (SRP) previously announced (FEDERAL REGISTER notice dated Dec. 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published revision No. 1 to §§ 3.3.1 (wind loadings) and 3.3.2 (tornado loadings) of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the standard review plan for the review of safety analysis reports for nuclear power plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for revision No. 1 to §§ 3.3.1 or 3.3.2 is $4. Foreign price information is available from NTIS. A copy of the standard review plan including all revisions published to date is available for public inspection at the NRC's public document room at 1717 H Street NW., Washington, D.C. 20555 (5 U.S.C. 552(a)).

Dated at Bethesda, Md., this 27th day of July 1978.

For the U.S. Nuclear Regulatory Commission.

ROGER J. MATTSON,
Director, Division of Systems Safety, Office of Nuclear Reactor Regulation.

[FR Doc. 78-21645 Filed 8-3-78; 8:45 am]

[7590-01]

[Docket No. 50-410A]

NIAGARA MOWHAWK POWER CORP., LONG ISLAND LIGHTING CO., NEW YORK STATE ELECTRIC & GAS CORP., ROCHESTER GAS & ELECTRIC CORP., CENTRAL HUDSON GAS & ELECTRIC CORP.

Receipt of Attorney General's Advice and Time for Filing of Petitions To Intervene on Antitrust Matters

The Commission has received, pursuant to section 105c of the Atomic Energy Act of 1954, as amended, the following additional advice from the Attorney General of the United States, dated July 26, 1978, with respect to a construction permit application for Nine Mile Point Nuclear Station, Unit No. 2:

You have requested our advice pursuant to section 105 of the Atomic Energy Act, as amended, in regard to the revised application by Niagara Mowhawk Power Corp., Long Island Lighting Co., New York State Electric & Gas Corp., Rochester Gas & Electric Corp., and Central Hudson Gas & Electric Corp. to construct the Nine Mile Point Nuclear Station, Unit No. 2.

In 1972 the Department of Justice reviewed the original application for the Nine Mile Point Nuclear Station, Unit No. 2, submitted by Niagara Mowhawk Power Corp. (Niagara Mowhawk). On December 19, 1972, we informed your predecessor Commission that the activities proposed under that application would not create or maintain a situation inconsistent with the antitrust laws. On September 22, 1975, Niagara Mowhawk entered into a basic agreement with Long Island Lighting Co. (LILCO), New York State Electric & Gas Corp. (New York State), Rochester Gas & Electric Corp. (RG&E), and Central Hudson Gas & Electric Corp. (Central Hudson), to build, own and operate the Nine Mile Point Nuclear Station, Unit No. 2, on a joint basis. Each participant's share of the expenses and energy output is as follows:

	Percent
Niagara Mowhawk	41
LILCO	18
New York State	18
R.G. & E	14
Central Hudson	9

Nine Mile Point Nuclear Station, Unit No. 2, is proposed to be built on a site on the southeast shore of Lake Ontario, in Oswego County, N.Y. This location is presently the site of Niagara Mowhawk's existing nuclear generating facility, Nine Mile Point Nuclear Station, Unit No. 1. The latest cost estimates (not including allowances for funds used during construction) for the completion of the facility are as follows:

Total nuclear production plant costs	$1,018,335,000
Transmission, distribution and general plant costs	7,559,000
Nuclear fuel inventory costs for first core	71,474,000
Total estimated costs	1,097,368,000

This facility will be capable of generating 1,100 MW of power and is scheduled to be in service in November 1982.

Each of the new applicants has been the subject of prior antitrust advice letters written by the Department. On April 22, 1976, we rendered antitrust advice on an application by Central Hudson to participate in the Sterling Power Project, Nuclear Unit No. 1. On January 7, 1975, we rendered antitrust advice on an application by LILCO to construct the Jamesport Nuclear Power Station, Units 1 and 2. R.G. & E. was the subject of antitrust advice letters of December 27, 1974, and April 22, 1976, on an application to construct the Sterling Power Project, Nuclear Unit No. 1. Most recently, on January 26, 1978, we rendered antitrust advice concerning New York State with respect to its applications to participate in the Jamesport Nuclear Power Station, Units 1 and 2. We also rendered antitrust advice on December 27, 1974, on New York State's application to construct the Somerset Nuclear Station, Units 1 and 2.

In each of the above-referenced antitrust advice letters we advised of our conclusion that the activities under the licenses applied for would not create or maintain a situation inconsistent with the antitrust laws.

Since the last antitrust advice letters were written for each of the new applicants only LILCO has had a change in its operations which merit notation.

In April 1978, the Greenport New York Municipal Electric System, which until that time had been isolated, interconnected with LILCO. The Greenport system has a peak of about 3 MW. In addition, Greenport, as well as Freeport and Rockville Centre, the only two other comparatively small municipal utilities in LILCO's service area, have obtained commitments from the Power Authority of the State of New York (PASNY) to supply their bulk power needs. LILCO, as well as other investor-owned utilities in the State of New York, have agreed to transmit that power from the PASNY transmission system to the three municipal systems.

After examination of the current applications and review of the relevant data, we have concluded that no intervening circumstances have appeared to warrant a reversal of the advice given with respect to each of the new applicants in the above-cited antitrust letters.

We express no opinion, however, concerning the legality under the antitrust laws of the manner in which, or any arrangements pursuant to which, the plants will be operated, should they differ from or extend beyond those matters specifically disclosed in the application.

Accordingly, from the information available to us at the present time we conclude that no antitrust hearing by the Nuclear Regulatory Commission will be required with respect to this application.

Any person whose interest may be affected by this proceeding may, pursuant to § 2.714 of the Commission's

"Rules of Practice," 10 CFR part 2, file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. Petitions for leave to intervene and requests for hearing shall be filed by September 3, 1978, either (1) by delivery to the NRC Docketing and Service Section at 1717 H Street NW., Washington, D.C., or (2) by mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Section.

For the Nuclear Regulatory Commission.

ARGIL TOALSTON,
Acting Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation.

[FR Doc. 78-21781 Filed 8-3-78; 8:45 am]

[7590-01]

RISK ASSESSMENT REVIEW GROUP

Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of an open meeting of the Risk Assessment Review Group of the U.S. Nuclear Regulatory Commission (NRC), to be held at 8:30 a.m., August 29 through 31, 1978, in Room 1167 of the Matomic Building, 1717 H Street NW., Washington, D.C. The purposes of this meeting are to continue the review of the final report of the Reactor Safety Study (WASH-1400) and the peer comments thereon and to discuss subjects that might be included in the report of the Review Group.

The Risk Assessment Review Group is an independent group established by the NRC (42 FR 34955) for the purpose of providing advice and information to the Commission regarding the final report of the Reactor Safety Study, WASH-1400 (NUREG-75/014), and the peer comments on the Study, advice and recommendations on developments in the field of risk assessment methodology and courses of action which might be taken on future development and use of risk assessment methodology. This advice and information will assist the Commission in establishing policy regarding the use of risk assessment in the regulatory process. It will also clarify the achievements and limitations of the Reactor Safety Study. The Review Group will submit a report to the Commission on or before September 30, 1978.

With respect to public participation in the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda may do so by providing 10 readily reproducible copies to the Review Group at the beginning of the meeting. Comments should be limited to areas within the Group's purview. Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than August 22, 1978, to Dr. John H. Austin, Office of Policy Evaluation, NRC, Washington, D.C. 20555, will normally be received in time to be considered at this meeting. Of course, comments not received in time for this meeting will be circulated to the members of the Review Group for consideration at a future meeting. Comments should pertain to the field of risk assessment methodology or should be based on the final report of the Reactor Safety Study, copies of which are available for public inspection at:

1. The NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.
2. The NRC's five Regional Offices of Inspection and Enforcement:

REGION I

631 Park Avenue, King of Prussia, Pa. 19406

REGION II

Suite 1217, 230 Peachtree Street, Atlanta, Ga. 30303

REGION III

799 Roosevelt Road, Glen Ellyn, Ill. 60137

REGION IV

Suite 1000, 611 Ryan Plaza Drive, Arlington, Tex. 76012

REGION V

Suite 202, 1990 North California Boulevard, Walnut Creek, Calif. 94596.

Copies of the Final Report may be obtained from: U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, Probabilistic Analysis Staff, Attention: Melea S. Fogle (telephone: 301-492-8377), 7735 Old Georgetown Road, Bethesda, Md. 20014.

(b) Persons desiring to make an oral statement at the meeting should make a request to do so prior to the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The time allotted for such statements will be at the discretion of the Chairman. The Review Group will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on August 28, 1978, to the Office of Policy Evaluation (telephone 202-634-3209, Attention: John Austin) between 8:15 a.m. and 5 p.m. e.d.t.

(d) Questions may be asked only by members of the Review Group.

(e) Statements of views or expressions of opinion made by members of the Review Group at open meetings are not intended to represent final determinations or beliefs.

(f) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(g) A copy of the minutes of the meeting will be available for inspection on or after September 30, 1978, at the NRC Public Document Room, 1717 H Street NW., Washington, D.C. Copies may be obtained upon payment of appropriate charges.

Dated at Washington, D.C., this 1st day of August, 1978.

[FR Doc. 78-21782 Filed 8-3-78; 8:45 am]

[7590-01]

[Docket Nos. 50-582A, 50-583A]

SAN DIEGO GAS & ELECTRIC CO., CALIFORNIA DEPARTMENT OF WATER RESOURCES, CITY OF ANAHEIM ET AL., CITIES OF LOS ANGELES AND BURBANK, CALIF.

Receipt of Attorney General's Advice and Time for Filing of Petitions to Intervene on Antitrust Matters

The Commission has received, pursuant to section 105c of the Atomic Energy Act of 1954, as amended, the following additional advice from the Attorney General of the United States, dated July 26, 1978, with respect to a construction permit application for Sundesert Nuclear Plant, Units 1 and 2:

You have requested our further advice pursuant to section 105c of the Atomic Energy Act of 1954, as amended, in regard to the above-captioned application. The Department previously rendered advice respecting this application on May 12, 1976, and September 2, 1977. We understand that the cities of Los Angeles and Burbank, Calif., propose to participate with the cities of San Diego, Anaheim, Glendale, Pasadena, and Riverside, Calif., in the Sundesert Nuclear Plant, Units 1 and 2. Our review of the information submitted for the proposed additional participants, as well as other relevant information, has disclosed no basis upon which to change our previous conclusion that no antitrust hearing will be required regarding this nuclear facility.

Any person whose interest may be affected by this proceeding may, pursuant to § 2.714 of the Commission's "Rules of Practice," 10 CFR Part 2, file a petition for leave to intervene

and request a hearing on the antitrust aspects of the application. Petitions for leave to intervene and requests for hearing shall be filed by September 3, 1978, either: (1) By delivery to the NRC Docketing and Service Section at 1717 H Street NW., Washington, D.C., or (2) by mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention, Docketing and Service Section.

For the Nuclear Regulatory Commission.

ARGIL TOALSTON,
Acting Chief, Antitrust and Indemnity Group Office of Nuclear Reactor Regulation.

[FR Doc. 78-21783 Filed 8-3-78; 8:45 am]

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on August 1, 1978 (144 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

FEPA Contract Proposal, EEOC 344, annually, 70 State and local fair employment practices agencies, Laverne V. Collins, 395-3214.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

NASA Tech Briefs-Subscription Notice, annually, 40,000 R. & D. firms, Caywood, D. P., 395-3433.

DEPARTMENT OF ENERGY

Solar Collector Manufacturing Survey, EIA-63, single time, 900 manufacturers/importers of solar collectors, Clearance Office, 395-3772.

U.S. CIVIL SERVICE COMMISSION

Relevant Labor Market Studies, single time, 561 license agents, Caywood, D. P., 395-3443.

REVISIONS

DEPARTMENT OF AGRICULTURE

Economics, Statistics, and Cooperatives Service, cost of production survey, annually, 7,800 selected crop producers, 900 responses, 900 hours, Office of Federal Statistical Policy and Standard, 673-7956.

EXTENSIONS

VETERANS' ADMINISTRATION

Traffic Survey Questionnaire 08-9872 on occasion, employees, visitors and others entering VA grounds, 3,000 responses, 150 hours, Office of Federal Statistical Policy and Standard, 673-7956.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service, Claim for Reimbursement—Child Care Food Program, FNS-82 monthly inst. administered by FNS, 28,800 responses, 21,600 hours, Ellett, C. A., 395-6132.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Neighborhood Voluntary Association Consumer Protection, certification page for settlement statement, HUD-1, on occasion, mortgage lenders, 4,200,000 responses, 4,200,000 hours, Caywood, D. P., 395-3443.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration, Notice of Proposed Construction or Alteration, FAA 7460-1 on occasion, private enterprises, 28,000 responses, 28,000 hours, Strasser, A., 395-6132.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-21796 Filed 8-3-78; 8:45 am]

[3110-01]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on July 31, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division of office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Equal Employment Opportunity Employer Information Report EEO-1, SF-100, annually, 200,000 firms with 100 plus and government contractors with 50 plus employees, Laverne V. Collins, 395-3214.

ENVIRONMENTAL PROTECTION AGENCY

Grantee Information Form, with Cover Letter and Industrial User Survey with Cover Letter, (attachment II), single time, 450 EPA's grantees and industrial users of POTW's, Ellett, C. A., 395-6132.

U.S. CIVIL SERVICE COMMISSION

Air Traffic Controller Recruitment Survey, CSC-1350, single time, 10,000 air traffic controller applicants, Strasser, A., 395-6132.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration Opinion Questionnaire, single time, 150 persons involved in rail planning, Strasser, A., 395-6132.

REVISIONS

ENVIRONMENTAL PROTECTION AGENCY

Application for Federal Assistance Part IV Narrative Statement (State Pesticide Enforcement and Applicator Certification and Training Program Grants), EPA 5700-33, on occasion, State agencies, 550 responses, 5,500 hours, Ellett, C. A., 395-6132.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Production and Mortgage Credit Lender's Application for Commitment on One-to-Four Family Insured Home Improvement Loan, FHA-2004-1, on occasion, 500 lending institutions, 500 responses, 500 hours, Caywood, D. P., 395-3443.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service Regulations—Special Milk Program for Children, 7 CFR 215, on occasion, 36,124 State agencies, school food authorizations child care institutes, 36,124 responses, 55,124 hours, Ellett, C. A., 395-6132.

DEPARTMENT OF DEFENSE

Department and Other Industrial Facility Survey—Mobilization Production Planning Program, DOD 1519-2, on occasion, The Defense Production Act of 1950, 10,000 responses, 10,000 hours, Office of

Federal Statistical Policy and Standard, 673-7956.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Production and Mortgage Credit:
Personal Financial and Credit Statement, FHA 2417, on occasion, 8,000 construction of rental cooperative project for low income families, 8,000 responses, 64,000 hours, Caywood, D. P., 395-3443.
Contractor's Prevailing Wage Certification/Contractor's Requisition, FHA 2403-A and 2448, monthly, building contractors, 10,000 responses, 40,000 hours, Strasser, A., 395-6132.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration, Motor Carrier Accident Report—Property, MCS-50T, on occasion, motor carrier of property, 75,300 responses, 37,650 hours, Strasser, A., 395-6132.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-21797 Filed 8-3-78; 8:45 am]

[4830-01]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

ART ADVISORY PANEL

Closed Meeting

JULY 24, 1978.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: A closed meeting of the Art Advisory Panel will be held in Washington, D.C.

DATE: The meeting will be held September 26 and 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Tom Hartnett, T:C:E:A, 1111 Constitution Avenue NW., Room 5240, Washington, D.C. 20224, telephone 202-566-4427, (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (supp. V 1975), *as amended by* Government in the Sunshine Act, Pub. L. 94-409, section 5(c), 90 Stat. 1247 (1976) that a closed meeting of the Art Advisory Panel will be held on September 26 and 27, 1978, beginning at 10 a.m. in Room 3411, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. 20224.

The agenda will consist of the review and evaluation of the acceptability of market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that these meetings are concerned with matters listed in section 552b(c) (3), (4), (6), and (7) of title 5 of the United States Code, and that the meetings will not be open to the public.

JEROME KURTZ,
Commissioner.

[FR Doc. 78-21770 Filed 8-3-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 692]

Assignment of Hearings

AUGUST, 1, 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.

MC 135874 (Sub-99F), Ltl Perishables, Inc.; MC 134477 (Sub-214F), Schanno Transportation, Inc.; MC 134755 (Sub-131F), Charter Express, Inc., is assigned for hearing September 6, 1978, at Chicago, IL, and will be held at Room 3855A, 230 South Dearborn Street.

MC 143103 (Sub-2), Cherokee Lines, Inc., is assigned for hearing September 11, 1978 at Chicago, IL, and will be held at Room 280, 219 South Dearborn Street, E. M. Dirksen Building.

MC 123407 (Sub-418), Sawyer Transport, Inc., is assigned for hearing September 8, 1978 at Chicago, IL, and will be held at Room 3855A, 230 South Dearborn Street.

MC 113267 (Sub-355), Central & Southern Truck Lines, Inc., is assigned for hearing September 15, 1978 at Chicago, IL, and will be held at Room 280, E. M. Dirksen Building, 219 South Dearborn Street.

MC 111812 (Sub-550), Midwest Coast Transport, Inc., is assigned for hearing September 13, 1978 at Chicago, IL, and will be held at Room 280, 219 South Dearborn Street, E. M. Dirksen Building.

MC 61592 (Sub-408), Jenkins Truck Line, Inc.; MC 61592 (Sub-417F), Jenkins Truck Line, Inc.; MC 117574 (Sub-291) Daily Express, Inc., is assigned for hearing September 6, 1978, at Little Rock, AR, and will be held at Room 2503, Federal Office Building, 700 West Capitol.

MC-C 9859, John Sephton Produce Co., Inc., Revocation of Certificates; MC-F 12793, B. J. McAdams, Inc., Control and Merger, John Sephton Produce Co., Inc.; MC-F 13350, Bob McAdams, B. J. McAdams, Inc., Wiley A. Sanders, Wiley A. Sanders, Inc., E. W. McKean, Jr., Clairborne W. Patty, Jr., Investigation of Control, John Sephton Produce Co., Inc., is assigned for hearing September 7, 1978, at Little Rock, AR, and will be held at Room 2503, Federal Office Building, 700 West Capitol.

MC 4405 (Sub-561), Dealers Transit, Inc.; MC 4405 (Sub-567), Dealers Transit, Inc., is assigned for hearing September 11, 1978, at Dallas, TX, and will be held at Room 5A15-17, Federal Office Building, 1100 Commerce Street.

MC 123048 (Sub-390F), Diamond Transportation System, Inc., is assigned for hearing September 6, 1978, at Little Rock, AR, and will be held at Room 2503, Federal Office Building, 700 West Capitol.

MC 117883 (Sub-222), Subler Transfer, Inc., is assigned for hearing October 11, 1978, at Detroit, MI, and will be held at Detroit Plaza Hotel Renaissance Center.

44914 (Sub-3), Willamette Valley Transfer Co., is assigned for hearing September 11, 1978, at Portland, OR, and will be held at Mohawk Building, Room 320, 222 S. W. Morrison.

MC 115841 (Sub-608F), Colonial Refrigerated Transportation, Inc., is assigned for hearing September 19, 1978, at Kansas City, MO, and will be held at Room 609, Federal Office Building, 911 Walnut Street.

MC 10169 (Sub-4), Hatcher Trucking Co., Inc., is assigned for hearing September 25, 1978, at Raleigh, NC, and will be held at Room 505, Federal Building, 310 New Bern Avenue.

MC 120181 (Sub-8), Main Line Hauling Co., Inc., is assigned for hearing September 12, 1978, at Jefferson City, MO, and will be held at House Lounge, 3d floor, Capitol Building.

MC 118535 (Sub-110), Tiona Truck Line, Inc., is assigned for hearing September 13, 1978, at Kansas City, MO, and will be held at Room 609, Federal Office Building, 911 Walnut Street.

MC 118142 (Sub-165), M. Bruenger & Co., Inc., is assigned for hearing September 12, 1978, at Kansas City, MO, and will be held at Room 609, Federal Office Building, 911 Walnut Street.

MC 143799, Specialty Transport, Inc., is assigned for hearing September 12, 1978, at Philadelphia, PA, and will be held at New U.S. Courthouse, 600 Market Street.

MC 128273 (Sub-287F), Midwestern Distribution, Inc., is assigned for hearing September 11, 1978, at Philadelphia, PA, and will be held at New U.S. Courthouse, 600 Market Street.

MC 135797 (Sub-93), J. B. Hunt Transport, Inc., is assigned for hearing September 18, 1978, at Kansas City, MO, and will be held at Room 609, Federal Office Building, 911 Walnut Street.

MC 52460 (Sub-199), Ellex Transportation, Inc.; MC 112822 (Sub-436), Bray Lines, Inc.; MC 114632 (Sub-119), Apple Lines, Inc.; MC 117119 (Sub-654), Willis Shaw Frozen Express, Inc., MC 117815 (Sub-266), Pulley Freight Lines, Inc.; MC 117954 (Sub-25), H. L. Herrin, Jr., d.b.a. H. L. Herrin Trucking Co.; MC 118142 (Sub-155), M. Bruenger & Co., Inc.; MC 119741 (Sub-83), Green Field Transport Co., Inc.; MC 120181 (Sub-7), Main Line Hauling Co., Inc.; MC 134286 (Sub-29), Illini Ex-

press, Inc.; MC 134477 (Sub-189), Schanno Transportation, Inc.; MC 134755 (Sub-113), Charter Express, Inc.; MC 139495 (Sub-267), National Carriers, Inc.; MC 143701, William Oberste, Inc.; MC 143702, All Freight Systems, Inc.; MC 144004, John Treff, Jr., d.b.a. Treff Trucking; MC 140033 (Sub-31), Cox Refrigerated Express, Inc., is assigned for hearing September 20, 1978, at Kansas City, MO, and will be held at Room 609, Federal Office Building, 911 Walnut Street.

MC 113678 (Sub-723F), Curtis, Inc., now being assigned October 19, 1978 (1 day), at Chicago, IL, in a hearing room to be later designated.

MC 128273 (Sub-289F), Midwestern Distribution, Inc., now assigned October 11, 1978 (1 day), at Chicago, IL, in a hearing room to be later designated.

MC 138026 (Sub-16F), Logistics Express, Inc., now being assigned October 12, 1978 (2 days), at Chicago, IL, in a hearing room to be later designated.

MC 60014 (Sub-68), Aero Trucking, Inc., now being assigned continued hearing September 6, 1978, at the Offices of the Interstate Commerce Commission, Washington, DC.

MC 143993 (Sub-2), Black Hills Trucking, Inc., now being assigned for Prehearing Conference on October 11, 1978 (1 day), at Denver, CO, in a hearing room to be later designated.

MC 108380 (Sub-94), Johnston's Fuel Liners, Inc., now being assigned October 12, 1978 (2 days), at Denver, CO, in a hearing room to be later designated.

MC 138253 (Sub-8), Monfort Transportation Co., now being assigned October 16, 1978 (1 day), at Denver, CO, in a hearing room to be later designated.

MC 138459 (Sub-61F), Donco Carriers, Inc., now being assigned October 17, 1978 (1 day), at Denver, CO, in a hearing room to be later designated.

MC 107678 (Sub-66), Hill & Hill Truck Line, Inc., now being assigned October 18, 1978 (3 days), at Denver, CO, in a hearing room to be later designated.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21720 Filed 8-3-78; 8:45 am]

[7035-01]

FOURTH SECTION APPLICATION FOR RELIEF

AUGUST 1, 1978.

This application for long- and short-haul relief has been filed with the ICC.

Protests are due at the ICC within 15 days from the date of publication of this notice.

FSA No. 43588, Southwestern Freight Bureau, Agent's No. B-759, rates on rice mill feed, from Cleveland, MS, to stations in southwestern territory in supplement 108 to its tariff 326-C, ICC 5155, to become effective September 5, 1978. Grounds for relief—market competition; short-line distance formula and grouping.

H.G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21721 Filed 8-3-78; 8:45 am]

[7035-01]

FOURTH SECTION APPLICATIONS FOR RELIEF

AUGUST 1, 1978.

These applications for long-and-short-haul relief have been filed with the ICC.

Protests are due at the ICC within 15 days from the date of publication of this notice.

FSA No. 43589, Western Trunk Line Committee, agent's No. A-2754, rates on soda ash, from WY points to Chamblee, GA in supplement 219 to its tariff 134-R, ICC A-4949, to become effective August 31, 1978. Grounds for relief—rate relationship.

FSA No. 43590, Southwestern Freight Bureau, agent's No. B-764, rates on corn, wheat, grain sorghums, and soybeans, from Hardtner, Hazelton, Kiowa, and Stubbs, KS, to Brownsville, El Paso, and Laredo, TX, in supplement 63 to its tariff 182-K, ICC 5278, to become effective August 29, 1978. Grounds for relief—rate relationship.

FSA No. 43591, Southwestern Freight Bureau, agent's No. B-763, rates on carbolic acid (phenol), from stations in TX, to Nitro, WV in supplement 344 to its tariff 355-C, ICC 5062, to become effective August 29, 1978. Grounds for relief—market competition.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21722 Filed 8-3-78; 8:45 am]

[7035-01]

[Notice No. 93]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before September 5, 1978. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the act or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

REPUBLICATION

MC-FC-77565, filed March 2, 1978. Transferee: ALBERT SALEM, Salem Produce, 1811 Lonna Drive, NW. Roanoke, VA 24019. Transferor: Joseph D. Leonard, Joseph D. Leonard Trucking Co., 4485 Shaw Avenue, Titusville, FL. Representative: Albert Salem, 1811 Lonna Drive, NW., Roanoke, VA 24019. Authority sought for purchase by transferee of a portion of the operating rights of transferor, as set forth in Certificate MC-134156, issued August 18, 1970, as follows: *Used clothing and rags*, from New York, NY to El Paso, Laredo, and McAllen, TX. The above described request for authority was published in the FEDERAL REGISTER on March 20, 1978. Subsequently, this application was amended and approved by the Motor Carrier Board on July 31, 1978. The amended application included the authority described above and added all the authority contained in Certificate MC-134156 (Sub-1), issued October 22, 1971, as follows: *Used clothing*, from Garden City Park (Nassua County), NY to El Paso, TX. Insofar as the transfer of the authority in Certificate MC-134156 (Sub-1) is concerned, any interested party may file a petition for reconsideration within 20 days from the service of the order. Send petitions for reconsideration to: The Secretary, Interstate Commerce Commission, Washington DC 20423.

MC-FC-77655, filed May 4, 1978. Transferee: DUNCAN & SONS, INC., P.O. Box 775, Lewis, CO 81327. Transferor: Clarence L. Werner d.b.a., Werner Enterprises, P.O. Box 37308, Omaha, NE 68137. Representative: Bruce A. Bullock, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Authority sought for purchase by Duncan & Sons, Inc., of certain operating rights of Clarence L. Werner,

d.b.a., Werner Enterprises. Operating rights sought to be purchased by Transferee of Transferor as set out in the following Certificate: MC 138328 (Sub-21) *Motorcycles, motorcycle trailers, motorcycle parts and accessories, and motorcyclist's accessories,* from points in CA, to Fremont, Omaha and Bellevue, NE, and Council Bluffs, IA. Transferee holds no Commission authority and does not seek section 210aa(b) authority.

MC-FC-77699, filed June 9, 1978. Transferee: ELMER L. EDDEN, d.b.a. 55 Transfer, 800 North 10th Avenue, Walla Walla, WA 99362. Transferor: G.F. Elkinton, d.b.a. 55 Transfer, 1622 East Alder Street, Walla Walla, WA 99632. Representative: Charles Snyder, Attorney at Law 301 Baker Building, P.O. Box 494, Walla Walla, WA 99362. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate MC 110664, issued July 20, 1950, as follows: *General commodities* (with the usual exceptions), over irregular routes, from Walla Walla, WA to points in Umatilla County, OR; *damaged, defective, traded in, or exchanged shipments* of the above-described commodities, over irregular routes, from points in Umatilla County, OR to Walla Walla, WA. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under section 210a(b).

MC-FC-77700, filed June 8, 1978. Transferee: MONTANA TRANSPORT CO., P.O. Box 860, Billings, MT 59103. Transferor: Allen P. Felton, d.b.a., Brewer Trucking, Missoula, MT 59801. Representative: G. Todd Baugh, Esq., Midland Bank Building, Billings, MT 59101. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate MC 127690, issued September 6, 1967, as follows: *Lumber and lumber products,* from the plant site of Jones Lumber Co., at or near Livingston, MT to points in IA, MN, ND, NE, SD, and WY. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under section 210a(b).

MC-FC-77723, filed June 22, 1978. Transferee: JOHNSON'S MOVING & DELIVERY, INC., 180 Boston Post Road, East Lyme, CT 06333. Transferor: Frederick A. Johnson, Sr., Johnson's Moving & Delivery, 180 Boston Post Road, East Lyme, CT 06333. Representative: Albert G. Johnson, 180 Boston Post Road, East Lyme, CT 06333. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate MC 129890, issued February 17, 1969, as follows: *Cosmetics and toilet preparations, and equipment, and supplies* used in the distribution of cosmetics and toilet preparations (except commodities in buld), between points in that part of CT on, south, and east of a line beginning at the CT-RI State line and extending along U.S. Hwy 6 to junction CT Hwy 66, then along CT Hwy 66 to junction CT Hwy 9, then along CT Hwy 9 to junction CT Hwy 17, then along CT Hwy 17 to junction CT Hwy 79, and then along CT Hwy 79 to Madison, CT. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

MC-FC-77726, filed June 23, 1978. Transferee: JJL DISTRIBUTION SYSTEMS, INC., 3341 Beltagh Avenue, Wantagh, NY 11793. Transferor: Hyman's N.Y. & L.I. Express Inc., 148-23 94th Avenue, Jamaica, NY 11435. Representative: Arthur J. Piken, Esq., Piken & Piken, Suite 1515, 1 Lefrak City Plaza, Flushing, NY 11368. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate MC 66143, issued January 3, 1941, as follows: *General commodities,* with exceptions, between New York, NY and points in Bergen and Hudson Counties, NJ and Nassau and Suffolk Counties, NY. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

H. G. Homme, Jr.
Acting Secretary.

[FR Doc. 78-21719 Filed 8-3-78; 8:45 am]

[7035-01]

[Notice No. 94]

MOTOR CARRIER TRANSFER PROCEEDINGS

Application filed for temporary authority undersection 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1123:

MC-FC 77747. By application filed July 27, 1978, READY TRUCKING, INC., 4722 Lake Mirror Place, Forest Park, GA 30050, seeks temporary authority to transfer a portion of the operating rights of Bass Transportation Co., Inc., P.O. Box 391, Flemington, NJ 08822, under section 210a(b). The transfer to Ready Trucking, Inc., of the operating rights of Bass Transportation Co., Inc., is presently pending.

MC-FC 77770. By application filed July 19, 1978, WILLIAMSON DELIVERY SERVICES, INC., P.O. Box 22032 AMF, Tampa, FL 33622, seeks temporary authority to transfer the operating rights of Income Benefits, Inc., d.b.a. Duval Transportation, 5753 South Tampa Avenue, Orlando, FL 32809, under section 210a(b). The transfer to Williamson Delivery Services, Inc., of the operating rights of Income Benefits, Inc., d.b.a. Duval Transportation, is presently pending.

MC-FC 77777. By application filed July 20, 1978, NORTHEAST DELIVERY, INC., P.O. Box 127, Taylor, PA 18517, seeks temporary authority to transfer the operating rights of Trans-Ways Co., Route No. 3, Box 36, Moscow, PA 18444, under section 210a(b). The transfer to Northeast Delivery, Inc., of the operating rights of Trans-Ways Co., is presently pending.

MC-FC 77780. By application filed July 25, 1978, E. W. Hundley, and individual, 4501½ West Marginal Way SW., Seattle, WA 98106, seeks temporary authority to transfer the operating rights of Alaska Coast Transport, Inc., c/o G. S. Douglas, 417 Norton Building, Seattle, WA 98104, under section 210a(b). The transfer to E. W. Hundley, an individual, of the operating rights of Alaska Coast Transport, Inc., c/o G. S. Douglas, is presently pending.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-21718 Filed 8-3-78; 8:45 am]

[7035-01]

[Notice No. 20]

SPECIAL PROPERTY BROKERS

August 1, 1978.

The following applicants seek to participate in the property broker special licensing procedure under 49 CFR 1045A authorizing operations as a broker at any location, in arranging for the transportation by motor vehicle, in interstate or foreign commerce, of property (except household goods), between all points in the United States including AK and HI. Any interested person shall file an original and one (1) copy of a verified statement in opposition limited in scope to matters regarding applicant's fitness on or before September 5, 1978. Statements must be mailed to: Broker Entry Staff, Room 2379, Interstate Commerce Commission, Washington, DC 20423. Opposing parties shall serve one (1) copy of the statement in opposition concurrently upon applicant's representative, or applicant if no representative is named.

If an applicant is not otherwise informed by the Commission, it may commence operation 45 days after this notice.

B-78-38, filed April 6, 1978. Applicant: PACIFIC VAN & STORAGE CO., INC., 1415 Torrance Boulevard, Torrance, CA 90501. Representative:

Robert J. Gallagher, 1000 Connecticut Avenue, NW., Suite 1200, Washington, DC 20036.

B-78-70, filed May 19, 1978. Applicant: CAN-AM FREIGHT SERVICES, division of FRONTIER INTERMODAL SYSTEMS, INC., Humber Tower, Suite 701, 6700 Finch Avenue West, Rexdale, ON, Canada.

B-78-78, filed May 26, 1978. Applicant: BEHRING INTERNATIONAL, INC., 1314 Texas Avenue, Houston, TX 77002. Representative: William C. Callaway, Jr., 888 17th St. NW., Washington, DC 20006.

B-78-81, AMERICAN UNION TRANSPORT FORWARDING, INC., 15 East 26th Street, New York, NY 10010. Representative: Dolores M. Vila, 15 East 26th Street, New York, NY 10010.

By the Commission.

H. G. HOMME, Jr.
Acting Secretary.

[FR Doc. 78-21723 Filed 8-3-78; 8:45 am]

[7035-01]

[Ex Parte No. MC-43]

LEASE AND INTERCHANGE OF VEHICLES BY MOTOR CARRIERS

Decided June 29, 1978

AUGUST 1, 1978.

Berger Transfer and Storage, Inc. (MC-35358) and Allied Van Lines, Inc. (MC-15735) have filed a petition for waiver of paragraph (a)(4) of § 1057.4 of the Lease and Interchange of Vehicles Regulations (49 CFR Part 1057).

Findings:

1. Petitioner Berger is an agent for petitioner Allied.

2. Petitioner Berger generally is authorized to transport furniture, fixtures, and furnishings and that petitioner Allied is authorized to transport household goods.

3. Petitioners' request to commingle their traffic in the same vehicle at the same time constitutes a request for relief not properly classified as a request for waiver of § 1057.4(a)(4).

4. The requested relief should be sought by filing an application under Section 5(1) of the Interstate Commerce Act.

It is ordered: 1. The petition filed by Allied Van Lines, Inc., and Berger Transfer and Storage, Inc., is dismissed.

By the Commission, Motor Carrier Leasing Board, Board Members Joel E. Burns, Robert S. Turkington, and W. F. Sibbald, Jr.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 78-21724 Filed 8-3-78; 8:45 am]

[7035-01]

[Ex Parte No. MC-43]

LEASE AND INTERCHANGE OF VEHICLES BY MOTOR CARRIERS

Decided July 17, 1978

JULY 31, 1978.

Onondaga Beverage Transport, Inc. (MC-129563), lessor, has filed an Application for Approval of Contract Carrier Rental Contract No. 1021, with Seneca Beverage Corp. of Elmira Heights, NY, lessee, under paragraph (b) of § 1057.6 of the Lease and Interchange of Vehicles Regulations (49 CFR 1057).

Findings:

1. The rental agreement appended to the application reserves to lessor the right to disqualify drivers selected by the lessee contrary to the requirement that private carrier-lessees assume exclusive right to direct and control the operations.

2. The agreement requires the lessor to make maintenance inspections, major repairs, to maintain the vehicles in accordance with the Motor Vehicles Safety Regulations of the Department of Transportation, and to furnish tires, tubes, motor oils, lubricants and other operating parts necessary for the operation of the vehicles, and fuel at a fixed additional cost.

3. The lessor, by the terms of the agreement, is required to pay all taxes.

4. The arrangements discussed in paragraphs 2. and 3. above indicate that the lessee would not assume in significant measure the burdens of transportation requisite to private carriage.

It is ordered: 1. Applicant's request for approval of the contract carrier rental application No. 1021 is denied.

By the Commission, Motor Carrier Leasing Board, Board Members Joel E. Burns, Robert S. Turkington, and W. F. Sibbald, Jr.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 78-21725 Filed 8-3-78; 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).

CONTENTS

	Items
Federal Deposit Insurance Corporation	1
Federal Election Commission	2
Federal Energy Regulatory Commission	3-6
Federal Home Loan Bank Board	7
Federal Maritime Commission	8
Interstate Commerce Commission	9
Mississippi River Commission	10
Securities and Exchange Commission	11
U.S. Metric Board	12

[6714-01]

1

CHANGE IN SUBJECT MATTER OF AGENCY MEETING

FEDERAL DEPOSIT INSURANCE CORPORATION.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at its open meeting held at 10:30 a.m. on August 2, 1978, the Federal Deposit Insurance Corporations' Board of Directors unanimously voted, on motion of Chairman George A. LeMaistre, seconded by Director William M. Isaac (appointive), concurred in by Mr. C. F. Muckenfuss III, acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), to withdraw the following two items from consideration:

Memorandum and resolution proposing the delegation to the General Counsel and the Director of the Division of Liquidation, or their designees, of authority to initiate litigation to which the Corporation will be a party either in its corporate capacity or as receiver of a closed bank.

Memorandum proposing the procurement of new computer equipment.

The Board further determined, by the same unanimous vote, that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: August 2, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[S-1593-78 Filed 8-2-78; 4:02 pm]

[6715-01]

2

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Wednesday, August 9, 1978 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Audits, Compliance, and Personnel.

* * * * *

DATE AND TIME: Thursday, August 10, 1978 at 10 a.m.

STATUS: Portions of this meeting will be open to the public and portions will be closed.

Portions open to the public:

Setting dates for future meetings.
Correction and approval of minutes.
Advisory opinion 1978-48.
Report on random audits.
Report on earmarked contributions.
Appropriations and budget.
Budget execution report.
Pending legislation.
Pending litigation.
Liaison with other Federal agencies.
Classification actions.
Routine administrative matters.
Resolution of particulars question.

Portions closed to the public (executive session):

Any matters not concluded on August 9, 1978.

PERSON TO CONTACT FOR INFORMATION:

Mr. David Fiske, Press Officer, 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-1589-78 Filed 8-2-78; 3:46 pm]

[6740-02]

3

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: PUBLISHED JULY 31, 1978, 43 FR 33372.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., August 2, 1978.

CHANGE IN THE MEETING: The following items have been added:

Item No., Docket No., and Company

CAG-27. RP78-42, Transcontinental Gas Pipe Line, Corp.
CI-6. CI78-767, CI77-702, CI78-499, CI78-501, Pennzoil Louisiana and Texas Offshore, Inc.

KENNETH F. PLUMB,
Secretary.

[S-1584-78 Filed 8-2-78; 9:03 am]

[6740-02]

4

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published July 31, 1978, 43 FR 33372.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., August 2, 1978.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

CP-5. CP78-437, Transcontinental Gas Pipe Line Corp.

KENNETH F. PLUMB,
Secretary.

[S-1586-78 Filed 8-2-78; 9:52 am]

[6740-02]

5

AUGUST 2, 1978.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 3:30 p.m., August 2, 1978.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pending civil litigation.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, 202-275-4166.

[S-1587-78 Filed 8-2-78; 11:07 am]

6

AUGUST 2, 1978.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., August 9, 1978.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

NOTE.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, 202-275-4166.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda, however, all public documents may be examined in the Office of Public Information.

POWER AGENDA—156TH MEETING, AUGUST 9, 1978, REGULAR MEETING

CAP-1. Docket No. ER78-320, Public Service Co. of Indiana.
CAP-2. Docket No. ER78-270, Arizona Public Service Co.
CAP-3. Docket No. ER78-487, Central Maine Power Co.
CAP-4. Docket No. ER78-477, Wisconsin Power & Light Co.
CAP-5. Docket No. ER77-607, New England Power Pool.
CAP-6. Docket No. ER78-246, The Washington Water Power Co.
CAP-7. Docket No. ER76-887, Dayton Power & Light Co.
CAP-8. Project No. 2113, Wisconsin Valley Improvement Co.
CAP-9. Project No. 2323, New England Power Co.

I. ELECTRIC RATE MATTERS

ER-1. Docket No. ER78-402, Black Hills Power & Light Co.
ER-2. Docket No. ER78-478, Florida Power & Light Co.
ER-3. Docket No. ER78-484, Monongahela Power Co.
ER—4. Docket No. ER77-331, Central Power & Light Co.
ER-5. Docket No. ER78-194. The Cleveland Electric Illuminating Co.
ER-6. Docket No. ES78-44, Lawrence Hydroelectric Associates.

II. LICENSED PROJECT MATTERS

P-1. Docket No. ——, The Metropolitan Sanitary District of Greater Chicago, Ill.
P-2. Project No. 2305, Sabine River Authority, State of Louisiana, and Sabine River Authority of Texas.
P-3. Docket No. E-6730, Reeves Brothers, Inc.

MISCELLANEOUS AGENDA—156TH MEETING, AUGUST 9, 1978, REGULAR MEETING

M-1. ERA's Proposed Rule—allocation regulations revision for propane and other natural gas liquids.
M-2. Docket No. R-406, Purchased gas adjustment provisions in natural gas pipeline companies' FPC Gas Tariff.

[S-1592-78 Filed 8-2-78; 4:02 pm]

GAS AGENDA—156TH MEETING, AUGUST 9, 1978, REGULAR MEETING

CAG-1. Docket No. CP77-448, NGP-LNG, Inc., Docket No. CP77-449, Natural Gas Pipeline Co. of America.
CAG-2. Docket No. RP73-8 (PGA No. 78-8), North Penn Gas Co.
CAG-3. Docket No. CP74-98, El Paso Natural Gas Co.
CAG-4. Docket No. RI78-23, Adair Oil Co.
CAG-5. Docket No. RI78-34, Equitable Petroleum Corp.
CAG-6. Docket No. RI77-39, Colorado Oil & Gas Corp.
CAG-7. Docket Nos. CI77-843, CI78-10, Florida Gas Exploration Co., Docket No. CI77-776, Transco Exploration Co.
CAG-8. Docket No. CI78-463, et al., Tenneco Oil Co.
CAG-9. Docket No. CI77-339, Tenneco Oil Co.
CAG-10. Docket No. CI78-740, Gulf Oil Corp.
CAG-11. Docket No. CI78-201, et al., Louisiana Land Offshore Exploration Co., Inc., et al.
CAG-12. Docket No. CI78-450, Continental Oil Co., et al.
CAG-13. Docket No. CI78-149, Sun Oil Co.
CAG-14. Docket No. CI78-527, Continental Oil Co., et al.
CAG-15. Docket No. CS74-84, et al., Priest Oil & Gas Corp.
CAG-16. Docket No. CP77-481, El Paso Natural Gas Co.
CAG-17. Docket No. CP78-15, Northwest Pipeline Corp.
CAG-18. Docket No. CP78-251, Columbia Gulf Transmission Co.
CAG-19. Docket No. CP76-362, Texas Eastern Transmission Corp., Docket No. CP77-568, Texas Eastern Transmission Corp., Docket No. CP78-236, Transcontinental Gas Pipe Line Corp., Natural Gas Pipeline Co. of America, Texas Eastern Transmission Corp.
CAG-20. Docket No. CP78-205, United Gas Pipe Line Co.
CAG-21. Docket No. CP78-359, Mountain Fuel Supply Co.
CAG-22. Docket No. CP78-318, Mississippi River Transmission Corp.
CAG-23. Docket No. CP77-24, Arkansas Louisiana Gas Co., United Gas Pipe Line Co.
CAG-24. Docket No. CP78-382, Columbia Gulf Transmission Co.
CAG-25. Docket No. CP78-136, Transcontinental Gas Pipe Line Corp.
CAG-26. Docket No. CP78-190, Michigan Wisconsin Pipe Line Co., Docket No. CP78-223, El Paso Natural Gas Co.
CAG-27. Docket No. G-4282, et al., Gulf Oil Corp., et al.

I. PIPELINE RATE MATTERS

RP-1. Docket Nos. RP74-89 and RP73-35 (AP76-1), Trunkline Gas Co.

II. PRODUCER MATTERS

CI-1. Docket Nos. CI78-390 and CI78-395, Cabot Corp.
CI-2. Docket No. CI77-598, Mobil Oil Corp.
CI-3. Docket No. CI77-412, et al., Phillips Petroleum Co. et al.
CI-4. Docket No. CI74-78, Freeport Oil Co.

III. PIPELINE CERTIFICATE MATTERS

CP-1. Docket No. CP76-254, Michigan Consolidated Gas Co.
CP-2. Docket No. CP77-38, Tennessee Gas Pipeline Co., a Division of Tenneco Inc. and National Fuel Gas Supply Corp.
CP-3. Docket No. CP77-624, Montana-Dakota Utilities Co.
CP-4. Docket No. CP77-378, Northwest Pipeline Corp.
CP-5. Docket No. CP76-85, et al., Algonquin Gas Transmission Co.

KENNETH F. PLUMB,
Secretary

[S-1592-78 Filed 8-2-78; 4:02 pm]

[6720-01]

7

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., August 9, 1978.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Franklin O. Bolling, 202-377-6677

MATTERS TO BE CONSIDERED:

Concurrent Consideration of: (1) Branch Office Application—First Federal Savings & Loan Association of Chilton County, Clanton, Ala.; and, (2) Mobile Facility Application—Tuscaloosa Federal Savings & Loan Association, Tuscaloosa, Ala.
Consideration of Regulations Regarding Bonds for Directors, Officers, Employees, and Agents of FSLIC-Insured Institutions.
Application for Bank Membership—Suffield Savings Bank, Suffield, Conn.
Branch Office Application—California Federal Savings & Loan Association, Los Angeles, Calif.
Branch Office application—La Jolla Federal Savings & Loan Association, La Jolla Calif.
Limited Facility Application—Standard Federal Savings & Loan Association of Cincinnati, Cincinnati, Ohio.
Extension of Time to Open a Branch Office—First Federal Savings & Loan Association of Puerto Rico, Santurce, Puerto Rico.
Application for Bank Membership—Rutland Savings Bank, Rutland, Vt.
Application for Bank Membership—State Bank for Savings, Hartford, Conn.
Preliminary Application for Conversion into a Federal Mutual Association—Raleigh Savings & Loan Association, Raleigh, N.C.
Preliminary Application for Conversion into Federal Mutual Association—First Savings & Loan Association of Burlington County, Cinnaminson, N.J.
Preliminary Application for Conversion into a Federal Mutual Association—Community Savings & Loan Association, Hendersonville, N.C.
Voluntary Termination of Insurance of Accounts and Withdrawal from Bank Membership—Sanford Savings & Loan Association, Sanford, N.C.
Concurrent Consideration of: (1) Limited Facility Application—Coral Gables Federal Savings & Loan Association, Coral Gables, Florida; and, (2) Branch Office

Application—Home Federal Savings & Loan Association of Palm Beach, Palm Beach, Fla.

[S-1590-78 Filed 8-2-78; 3:46 pm]

[6730-01]

8

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 10 a.m., August 9, 1978.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Monthly report of actions taken pursuant to authority delegated to the Managing Director.
2. Matson Navigation Co., 2½ percent general rate increase in the U.S. West Coast/Hawaii trade.
3. Agreement No. 2846 DR-6: Modification of the West Coast of Italy, Sicilian and Adriatic Ports/North Atlantic Conference's (the WINAC) form of exclusive patronage contract to apply to rates subject to independent action.
4. Agreement No. 9522-34: Modification of the Med-Gulf Conference Agreement providing for the exclusion of the Puerto Rico section from the operation of the right of independent action.
5. Agreement No. 9848-8: Modification of a cargo revenue pooling, sailing and equal access agreement in the United States-Brazil trade to provide that certain cargo be excluded from the pool.
6. Special Docket No. 521: *Texas Fibers, Inc.* v. *Lykes Bros. Steamship Co., Inc.*—Consideration of the record.
7. Special Docket No. 557: *New Jersey Zinc Company* v. *Orient Overseas Container Line*—Review of Initial Decision.
8. Special Docket No. 573: *Campbell Soup* v. *Pacific Westbound Conference*—Consideration of the record.
9. Special Docket No. 582: *Dome East Corporation* v. *Sea-Land Service, Inc.*—Review of Initial Decision.
10. Docket No. 75-45: *Madeplac S.A. Industria de Madeiras* v. *L. Figueiredo Navegacao, S.A. A/K/A Frota Amazonica, S.A.*—Consideration of Complainant's Petition for Reconsideration.
11. Docket No. 76-24: *United Nations* v. *Flota Mercante Grancolombiana, S.A.*—Consideration of the record.
12. Docket No. 77-13: *First International Development Corporation* v. *Ships Overseas Service, Inc.*—Consideration of the record.
13. Docket No. 78-4: *Kuehne & Nagel, Inc.* v. *Vaasa Line (Hanseatic-Vaasa Line)*—Review of Order of Dismissal.
14. Docket No. 78-16: Union Carbide Corporation v. *Japan Line, Ltd.*—Review of Initial Decision.
15. Docket No. 78-12: Rules of Practice and Procedure—Simplification of Rules Governing Special Docket Applications.
16. Revised Commission Order 87—Disposition by the Commission of matters in formal proceedings.

CONTACT PERSON FOR MORE INFORMATION:

Francis C. Hurney, Secretary, 202-523-5725.

S-1588-78 Filed 8-2-78; 11:59 am]

[7035-01]

9

INTERSTATE COMMERCE COMMISSION.

TIME AND DATE: 2 p.m., Monday, August 7, 1978.

PLACE: Room 4225, Interstate Commerce Commission Building, 12th Street and Constitution Avenue, NW., Washington, D.C.

STATUS: Open special conference.

MATTER TO BE CONSIDERED: Fiscal year 1980 budget.

CONTACT PERSON FOR MORE INFORMATION:

Douglas Baldwin, Director, Office of Communications, 202-275-7252.

The Commission's professional staff will be available to brief news media representatives on conference issues at the conclusion of the meeting.

[S-1583-78 Filed 8-2-78; 9:03 am]

[3710-GX]

10

MISSISSIPPI RIVER COMMISSION.

TIME AND DATE: Beginning 8:30 a.m., August 17, 1978, and adjourning 4 p.m., August 17, 1978.

PLACE: 1400 Walnut Street, Vicksburg, Miss.

STATUS: Open to the public for observation but not for participation.

MATTERS TO BE CONSIDERED:

(1) Report by the President on general condition of the MRST project;
(2) Status report on Mississippi River and Tributaries General Investigation Program;
(3) Bushley Beyou, Louisiana, Project Report;

CONTACT PERSON FOR MORE INFORMATION:

Mr. Rodger O. Harris, 601-636-1311, extension 205.

[S-1591-78 Filed 8-2-78; 3:46 pm]

[8010-01]

11

SECURITIES AND EXCHANGE COMMISSION.

STATUS: Closed meeting.

DATE AND TIME: Tuesday, August 1, 1978, 8:30 a.m.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

The following item will be considered by the Commission at a closed meeting scheduled for Tuesday, August 1, 1978, at 8:30 a.m.: Consideration of amicus participation.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the item to be considered at the closed meeting may be 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, Pollack, and Karmel determined that Commission business required consideration of the matter and that no earlier notice thereof was possible.

AUGUST 1, 1978.

[S-1585-78 Filed 8-2-78; 9:03 am]

[6820-94]

12

U.S. METRIC BOARD.

TIME AND DATE: 1 p.m. Wednesday, August 16, 1978; 9 a.m., Thursday, August 17, 1978; and 10 a.m., Friday, August 18, 1978.

PLACE: Airlie House, Airlie, Va. 22186 (near Warrenton, Va.) for the meetings on Wednesday and Thursday; Department of Transportation Building (also known as the Nassif Building), 400 7th Street SW., Room 2230, Washington, D.C. 20590, for the meeting on Friday.

STATUS: The Wednesday and Thursday portions of the meeting will be closed to the public; the Friday portion will be open to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public—August 18.

(1) Review minutes of May 10 and June 15 and 16.
(2) Approval of agenda.
(3) Presentation by American National Metric Council.
(4) Resolution on Interagency Committee on Metric Policy.
(5) Resolution on interpretation of SI.
(6) Review of Government in the Sunshine Act Regulations.
(7) Report of Committees: Procedures, Planning, Budget and Policy.

Portions closed to the public—August 16 and 17.

(1) Personnel matters.
(2) Budget review.

CONTACT PERSON FOR MORE INFORMATION:

Alban Landry, 703-235-1934.

DR. LOUIS F. POLK,
Chairman,
United States Metric Board.

AUGUST 1, 1978.

[S-1582-78 Filed 8-2-78; 9:03 am] 890

federal register

FRIDAY, AUGUST 4, 1978
PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

SKIN PROTECTANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Conditions for Safety, Effectiveness and Labeling; Proposed Rulemaking

[4110-03]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 347]

[Docket No. 78N-0021]

SKIN PROTECTANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Establishment of a Monograph; Notice of Proposed Rulemaking

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish conditions for the safety, effectiveness, and labeling of over-the-counter (OTC) skin protectant drug products (drugs used as aids in the temporary relief of minor skin irritations). The proposed rule, based on the recommendations of the Advisory Review Panel on Over-the-Counter (OTC) Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products, is part of the Food and Drug Administration's ongoing review of OTC drug products.

DATES: Comments by November 2, 1978, and reply comments by December 4, 1978.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

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: Pursuant to part 330 (21 CFR part 330), the Commissioner of Food and Drugs received on December 14, 1977, a report of the Advisory Review Panel on Over-the-Counter (OTC) Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products. In accordance with § 330.10(a)(6) (21 CFR 330.10(a)(6)), the Commissioner is issuing (1) a proposed regulation containing the monograph recommended by the Panel, which establishes conditions under which OTC skin protectant drugs are generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the monograph on the basis of a determination by the Panel that they would result in the drugs not being generally recognized as safe and effective or would result in misbranding; (3) a statement of the conditions excluded from the monograph on the basis of a determination by the Panel that the available data are insufficient to classify such conditions under either (1) or (2) above; and (4) the conclusions and recommendations of the Panel to the Commissioner. The minutes of the Panel meetings are on public display in the office of the Hearing Clerk (HFA-305), Food and Drug Administration (address given above).

The purpose of issuing the unaltered conclusions and recommendations of the Panel is to stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations. The Commissioner has not yet fully evaluated the report; the Panel's findings are being issued as a formal proposal to obtain full public comment before the Agency reaches any decision on the Panel's recommendations. The report has been prepared independently of the Food and Drug Administration (FDA). It represents the best scientific judgment of the Panel members but does not necessarily reflect the agency position on any particular matter contained in it. After careful review of all comments submitted in response to this proposal, the Commissioner will issue a tentative final regulation in the FEDERAL REGISTER to establish a monograph for OTC skin protectant drug products.

In accordance with § 330.10(a)(2) (21 CFR 330.10(a)(2)), all data and information concerning OTC skin protectant drug products submitted for consideration by the Advisory Review Panel have been handled as confidential by the Panel and FDA. All such data and information will be put on public display at the office of the Hearing Clerk, Food and Drug Administration, on or before September 5, 1978, except to the extent that the person submitting it demonstrates that it still falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)). Requests for confidentiality should be submitted to William E. Gilbertson, Bureau of Drugs (HFD-510) (address given above).

Based upon the conclusions and recommendations of the Panel, the Commissioner proposes the following:

1. That the conditions included in the monograph, under which the drug products would be generally recognized as safe and effective and not misbranded (category I), be effective 30 days after the date of publication of the final monograph in the FEDERAL REGISTER.

2. That the conditions excluded from the monograph because they would cause the drug to be not generally recognized as safe and effective or to be misbranded (category II), be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph in the FEDERAL REGISTER, regardless of whether further testing is undertaken to justify their future use.

3. That the conditions excluded from the monograph because the available data are insufficient (category III) to classify such conditions either as category I or category II be permitted to remain on the market, or to be introduced into the market after the date of publication of the final monograph in the FEDERAL REGISTER: *Provided*, That FDA receives notification of testing in accordance with § 330.10(a)(13) (21 CFR 330.10(a)(13)). The Panel recommended that a period of 2 years be permitted for the completion of studies to support the movement of category III conditions to category I. The Commissioner will review that recommendation as well as all comments on this document, and will determine what time period to permit for category III testing after that review is completed.

In the FEDERAL REGISTER of January 5, 1972 (37 FR 85), the Commissioner announced a proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels. In the FEDERAL REGISTER of May 11, 1972 (37 FR 9464), the Commissioner published the final regulations providing for the OTC drug review under § 330.10 which were made effective immediately. Pursuant to these regulations, the Commissioner issued in the FEDERAL REGISTER of December 12, 1972 (37 FR 26456) a request for data and information on all active ingredients utilized in topical analgesic, including antirheumatic, otic, burn, sunburn treatment, and prevention drug products.

The Commissioner appointed the following Panel to review the data and information submitted and to prepare a report pursuant to § 330.10(a)(1) on the safety, effectiveness, and labeling of those products:

Thomas G. Kantor, M.D., Chairman; John Adriani, M.D.; Col. William A. Akers, M.D.; Maxine Bennett, M.D.; Minerva S. Buerk, M.D.; Walter L. Dickison, Ph. D.; and Jerry Mark Shuck, M.D.

The Panel was charged to review submitted data and information for OTC topical analgesic ingredients, including antirheumatic, otic, burn, and sunburn prevention and treatment active ingredients. For purposes of this review, the Panel grouped the active ingredients and labeling into four major pharmacologic groups, i.e., external analgesics, skin protectants, topical otics, and sunscreens.

The Panel presents its conclusions and recommendations for skin protectant active ingredients in this docu-

ment. The Panel's conclusions for topical otic active ingredients were published in the FEDERAL REGISTER of December 16, 1977 (42 FR 63556). The Panel's conclusions and recommendations for external analgesic and sunscreen active ingredients will be presented in a later issue of the FEDERAL REGISTER.

The Panel was first convened on March 6, 1973, in an organizational meeting. Working meetings were held on May 8 and 9, July 12 and 13, September 27 and 28, November 3 and 4, November 26 and 27, 1973; January 30 and 31, March 6 and 7, April 10 and 11, May 8 and 9, June 10 and 11, July 17 and 18, September 24 and 25, October 22 and 23, November 26 and 27, 1974; January 21 and 22, March 13 and 14, April 17 and 18, May 21 and 22, July 15 and 16, September 30 and October 1, November 12 and 13, 1975; March 4 and 5, May 19 and 20, June 22 and 23, September 27 and 28, November 18 and 19, 1976; February 23 and 24, May 25 and 26, August 22, 23, and 24, October 25, and December 13, 14, and 15, 1977.

Six nonvoting liaison representatives served on the Panel. Mrs. Jacqueline Pendleton (at the initial meeting), Mrs. Valerie Howard (from May 8, 1973 to September 28, 1973), Lynn Berry (from November 3, 1973 to April 27, 1976), Kathleen A. Blackburn (from July 6, 1976 to August 24, 1977), and Emily Londos (from October 25, 1977), each nominated by an ad hoc group of consumer organizations, served as the consumer liaison, and Joseph L. Kanig, Ph. D., nominated by the Proprietary Association, and Ben Marr Lanman, M.D., nominated by the Cosmetic, Toiletry, and Fragrance Association, served as the industry liaisons.

The following FDA employees served: C. Carnot Evans, M.D., served as Executive Secretary. Lee Geismar, served as Panel Administrator. Lee Quon, R. Ph., served as Drug Information Analyst until July 1973, followed by Thomas H. Gingrich, R. Ph., until July 1975, followed by Timothy T. Clark, R. Ph., until July 1976, followed by Victor H. Lindmark, Pharm. D.

The following individuals were given an opportunity to appear before the Panel to express their views either at their own or the Panel's request on the issues before the Panel:

Joseph P. Armellino, M.D.; Charles Bluestone, M.D.; Stuart Ericksen, Ph. D.; Alexander A. Fisher, M.D.; Thomas Fitzpatrick, M.D., Ph. D.; J.M. Glassman, M.D.; Peter Hebborn, Ph. D.; George E. Heinze; Kenneth R. Johannes; Albert M. Kligman, M.D.; Howard Maiback, M.D.; Edward Marlowe, Ph. D.; Kenneth L. Milstead, Ph. D.; John Parrish, M.D.; Madhue Pathak, M.D.; Robert Sayre, Ph. D.; Joseph P. Soyka, M.D.; Garrett Swenson, Esq.; Stephen M. Truitt, Esq.; and Frederick Urbach, M.D.

No person who so requested was denied an opportunity to appear before the Panel.

The Panel has thoroughly reviewed the literature and data submissions, has listened to additional testimony from interested persons, and has considered all pertinent data and information submitted through December 14, 1977, in arriving at its conclusions and recommendations for OTC skin protectants drug products.

In accordance with the OTC drug review regulations (21 CFR 330.10), the Panel's findings with respect to skin protectant drug products are set out in three categories:

Category I. Conditions under which OTC skin protectant drug products are generally recognized as safe and effective and are not misbranded.

Category II. Conditions under which OTC skin protectant drug products are not generally recognized as safe and effective or are misbranded.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

I. SUBMISSION OF DATA AND INFORMATION

Pursuant to the notice published in the FEDERAL REGISTER of December 12, 1972 (37 FR 26456) requesting the submission of data and information on OTC skin protectants drugs, the following firms made submissions related to the indicated products:

A. SUBMISSIONS BY FIRMS

Firms and Marketed Products

Beecham Products (formerly Calgon Consumer Products Co., Inc.) Rahway, N.J. 07065—S.T. 37.

Bowman Pharmaceuticals, Inc., Canton, Ohio 44702—Almophen Ointment, Calamine Compound Paste, Caloxal Lotion, Petrozin Ointment.

Calhoun's Laboratory, Baxley, Ga. 31513—Burn-O-Jel.

Carbisulphoil Co., Dallas, Tex. 75204—Foille Liquid, Foille Ointment, Foille Spray.

Cheesebrough-Pond's, Inc., Trumbull, Conn. 06611—Vaseline Pure Petroleum Jelly, Vaseline White Petroleum Jelly, Vaseline Ultra White Petroleum Jelly, Vaseline Sterile Ultra White Petroleum Jelly.

Church & Dwight Co., Inc., Syracuse, N.Y. 13201—Arm & Hammer Baking Soda.

Otis Clapp and Sons, Inc., Cambridge, Mass. 02139—Obtundia Calamine Cream.

Gebauer Chemical Co., Cleveland, Ohio 44104—Gebauer's Tannic Spray.

Medical Supply Co., Rockford, Ill. 61101—MSCo Burn Compound, MSCo Burn Spray, Telephone Ointment.

Norwich Pharmacal Co., Norwich, N.Y. 13815—Unguentine Aerosol with Benzocaine, Unguentine Ointment, Unguentine Plus, Unguentine Spray.

Noxell Corp., Baltimore, Md. 21203—Noxzema Skin Cream.

Pfizer Pharmaceuticals, New York, N.Y. 10017—Un-Burn.

Plough, Inc., Memphis, Tenn. 38101—Coppertone Lipkote Lip Balm, Mexsana Medicated Powder.

Resinol Chemical Co., Baltimore, Md. 21201—Resinol Medicated Cream, Resinol Medicated Ointment.

The R. Schattner Co., Washington, D.C. 20016—Chloraderm, Oraderm Lip Lotion.

E. R. Squibb & Sons, Inc., New Brunswick, N.J. 08903—Zinc Oxide Ointment.

Whitehall Laboratories, Inc., New York, N.Y. 10017—Digene Chafing Ointment, Sperti Healing Ointment.

B. LABELED INGREDIENTS CONTAINED IN MARKETED PRODUCTS SUBMITTED TO THE PANEL

Alcohol, allantoin, aluminum hydrate, aluminum hydroxide, anhydro parahydroxymercuri metacresol, benzalkonium chloride, benzethonium chloride, benzocaine, benzoic acid, benzyl alcohol, bicarbonate of soda, bismuth subcarbonate, bismuth subnitrate, boric acid, calamine, calamine lotion, camphor, carbolic acid, chlorbutanol [sic], chlorobutanol, chloroxylenol, citric acid, clove oil, cornstarch, dimethylpolysiloxane, ethyl alcohol, eucalyptol, eucalyptus oil, eugenol, glycerin, gum tragacanth, hexylresorcinol, homosalate, 8-hydroxyquinoline, ichthammol, kaolin, lanolin, lidocaine hydrochloride, lime water, live yeast cell derivative, menthol, methylcellulose, methyl parben [sic], oil of cade, oil eucalyptus, oil thyme, oleostearin, oxyquinoline base, parachlorometaxylenol, petroleum jelly, petrolatum, phenol, polysorbate 20, prepared calamine, propylene glycol, propyl parben [sic], red petrolatum, resorcin, resorcinol, shark liver oil, sodium borate, sodium citrate, sodium phenolate, sulfur, tannic acid, thyme oil, water, zinc acetate, zinc carbonate, and zinc oxide.

In addition to the submitted ingredients, the Panel reviewed cocoa butter.

C. CLASSIFICATION OF INGREDIENTS

1. Active Ingredients

Allantoin, aluminum hydroxide gel (alumunim hydrate, aluminum hydroxide), bismuth subnitrate, boric acid, calamine (calamine lotion, prepared calamine), cocoa butter, corn starch (cornstarch), dimethicone (dimethyl polysiloxane), glycerin, kaolin, live yeast cell derivative, petrolatum (petroleum jelly, white petrolatum), shark liver oil, sodium bicarbonate (bicarbonate of soda), sulfur, tannic acid, zinc acetate, zinc carbonate, and zinc oxide.

2. Inactive Ingredients

Alcohol, benzyl alcohol, bismuth subcarbonate, citric acid, clove oil, ethyl alcohol, gum tragacanth, lanolin, lime water, methylcellulose, oleostearin, polysorbate 20, propylene glycol, propyl paraben, sodium borate, sodium citrate, and water.

3. Ingredients Deferred to Other OTC Advisory Review Panels or Other Experts

Anhydro parahydroxymercuri metacresol, benzalkonium chloride, benzethonium chloride, chloroxylenol, 8-hydroxyquinoline, ichthammol, methyl paraben, oxyquinoline base, and parachloro- metaxylenol.

4. Ingredients Considered by This Panel in Separate Pharmacologic Groups

(a) Sunscreens

Homosalate, and red petrolatum.

(b) External analgesics

Benzocaine, camphor, chlorobutanol (chlorbutanol), eucalyptol, eucalyptus oil, eugenol, hexyresorcinol, menthol, oil of cade, phenol (carbolic acid), resorcinol (resorcin), sodium phenoxide (sodium phenolate), and thyme oil.

D. REFERENCED OTC VOLUME SUBMISSIONS

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call for data notice published in the FEDERAL REGISTER of December 12, 1972 (37 FR 26456). The volumes will be put on public display on or before September 5, 1978, in the office of the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

II. GENERAL STATEMENTS AND RECOMMENDATIONS

A. GENERAL DISCUSSION

1. *Introduction.* For centuries, the topical application of medicaments to minor burns, abraded skin, irritated areas, and minor wounds has frequently produced salutary temporary results. The Panel has designated these agents as skin protectants. Skin protectants include various types of compounds, which are chemically inert and are used to cover and thus to protect skin surfaces against drying and other irritation. These agents are also pharmaceutic necessities and are familiar components of drug and cosmetic vehicles. Applied to irritated skin, skin protectants act as mechanical barriers that physically alter the superficial wound environment by excluding air, removing wetness, preventing drying, and protecting from continuous intertriginous contact.

The Panel recognizes that the action of these agents is almost entirely physical or mechanical, but also recognizes that in many cases, the use of these products confers a therapeutic benefit to persons who have superficial wounds by making the wound area more comfortable. In addition to the purely mechanical protection against friction and rubbing, protectants also decrease the irritation that is caused by drying of the stratum corneum (Refs. *1*, *2*, and *3*). Rehydrating the stratum corneum relieves the symptoms of irritation, and permits the normal healing processes to continue. Skin protectants provide symptomatic relief only and do not stop the underlying disease processes.

Wounds for which skin protectants are appropriate include those with superficial loss of skin layers (epidermal surface) such as scrapes, abrasions, and minor scratches. Irritation or epidermal loss due to physical effects of sun, wind, and rubbing are often relieved of their mninor discomforts by application of skin protectants. In addition, the fluids from weeping rashes or toxic dermatoses (poison ivy, poison sumac, intertriginous moisture, prickly heat, insect bites, and eczema) are absorbed or adsorbed by many of these drugs. Often itching is ameliorated. Burns are specifically discussed below.

Wounds must be seen by a physician if any evidence of infection, such as increasing pain, redness, swelling, fever, pustules, red streaks leading from the wound, or swollen regional lymph nodes is noted. Also, if no benefit is provided, lesions worsen, exudation increases, or the problem persists for more than 7 days, a physician should be consulted.

Skin protectants such as the adsorbent powders and oleaginous ointments are inert, are not absorbed, and are nontoxic. For these reasons, these agents can be applied liberally, as often as necessary. Exceptions will be dealt with in the discussions of the individual ingredients, below.

For most of the skin protectant ingredients, the Panel is not aware of any well-controlled clinical studies that have been conducted. However, the Panel recommends that the requirement for such studies be waived, on the grounds that clinical studies are not necessary to support the use of mechanical barriers such as these to protect the skin from further injury. Protectants have been widely used and are included in all standard drug compendia. Their usefulness in providing a mechanical barrier is recognized in standard drug reference texts (Refs. *4*, *5*, and *6*). There are data that support the role of protectants in preventing water loss from the stratum corneum (Refs. *1*, *2*, and *3*). The Panel concludes that these data are sufficient to validate the effectiveness of the skin protectant ingredients.

The Panel has classified various agents as skin protectants. The following definitions have been adopted by the Panel to clarify terminology.

Skin protectant. A skin protectant is any agent that isolates the exposed skin or mucous membrane surface from harmful or annoying stimuli. In common practice only those substances which protect by mechanical or other physical means are considered to be skin protectants. Generally, substances in this category are inert, insoluble, finely subdivided, and adsorb some moisture. The different types of skin protectants and their mode of action are defined below:

a. *Absorbent.* An absorbent is an skin protectant having the power to absorb, suck up, incorporate, and take into itself gases, liquids, or rays of light. Absorption differs from adsorption in that the former involves a penetration of one substance into another so that a molecular intermingling results.

b. *Adsorbent.* An adsorbent is a skin protectant which attracts and holds to its surface a gas, liquid, or substance in solution or fine suspension. Adsorption is a surface interface phenomenon. Adsorbent agents may attach atoms or molecules to their surfaces by means of unsatisfied valence bonds, e.g., finely divided carbon, clay, magnesia, zinc oxide, activated charcoal.

c. *Astringent.* An astringent is a topically applied protein precipitant which has a low cell penetrability. Its action is essentially limited to the cell surface and the interstitial spaces. The permeability of the cell membrane is reduced but the cells remain viable.

d. *Demulcent.* A demulcent is a protective agent employed primarily to alleviate irritation, particularly of mucous membranes or abraded tissue. It is frequently applied to intact skin.

e. *Emollient.* An emollient is a bland, fatty, or oleaginous substance which may be applied locally, particularly to the skin, or to mucous membranes or abraded areas. The skin is rendered softer and more pliable.

f. *Lubricant.* A lubricant is any substance that lessens friction.

g. *Wound-healing aid.* A wound-healing aid is a protective agent that augments or promotes the healing of wounds.

REFERENCES

(1) Berube, G. R., M. Messinger, and M. Berdick, "Measurement in Vivo of Transepidermal Moisture Loss," *Journal of the Society of Cosmetic Chemists*, 22:361-368, 1971.

(2) Berube, G. R., and M. Berdick, "Transepidermal Moisture Loss. II. The Significance of the Use Thickness of Topical Substances," *Journal of the Society of Cosmetic Chemists*, 25:497-506, 1974.

(3) Blank, I. H., "Factors which Influence the Water Content of the Stratum Corneum," *Journal of Investigative Dermatology*, 18:433-440, 1952.

(4) "The Pharmacopeia of the United States of America," 18th ed., The United States Pharmacopeial Convention, Inc., Bethesda, Md., 1970.

(5) Sollmann, T., "A Manual of Pharmacology and Its Applicatioans to Therapeutics and Toxicology," 8th ed., W. B. Saunders Co., Philadelphia, pp. 121-136, 1957.

(6) Goodman, L. S., and A. Gilman, "The Pharmacological Basis of Therapeutics," 5th ed., Macmillan Co., New York, pp. 946-949, 1975.

2. *Burns.* Included among active ingredients that this Panel evaluated were those for use on burns. Such agents tend to fall within the classification of skin protectants. The exclusion of air and the prevention of drying provide comfort to persons with superficial burns. When OTC

products are applied to superficial burn wounds occupying less than 1 percent of the body surface, relief of pain can be dramatic. No skin protectants, however, have been proven to promote healing, reduce blister formation, or have any special beneficial effects other than providing comfort. Skin protectant active ingredients with wound-healing aid claims are discussed below. Because ingredients for preventing infection are the consideration of another OTC Advisory Review Panel, they have not been considered in that role by this Panel.

The Panel reviewed the definition of burn wounds and has accepted the traditional classification of first degree, second degree, third degree, and fourth degree. A first degree burn wound displays erythema, and if any loss of tissue occurs, it is superficial, usually a late "flaking" of the outermost epithelial layers. Such wounds heal spontaneously with no scarring.

A second degree or partial-thickness burn wound has varying destruction of the layers of the epidermis and dermis but allows residual epithelium and/or skin appendages (hair follicles, sebaceous glands, sweat glands) to eventually grow and coalesce to resurface the wound. Such wounds are often characterized by blistering. A partial-thickness burn wound does not require grafting.

The Panel recommends that OTC products should be applied only to first and minor second degree burns.

A third degree or full-thickness burn wound is one that destroys all layers of epithelium, including the skin appendages. The wounds are generally charred and anesthetic, and usually require skin grafting. A fourth degree burn is one that involves the underlying fat, fascia, muscle, and even bone. The deeper burns (third and fourth degree) should be treated by a physician.

The first aid of minor burns should include immediate removal of the offending agent and cooling of the affected surface. Since tissue damage during a burn is related both to the temperature of the offending agent and the duration of contact, the more rapidly the tissue temperature itself returns to normal, the less damage will be inflicted. After the contact has ceased, the tissue temperature may remain above the critical level at which tissue injury occurs for several minutes. Tissue temperature reduction is the desired result of cool water therapy. The sooner the tissue is cooled, the better. This is best done by immersion of the burned area into cold tap water, or by the application of cool compresses to areas that are difficult to immerse. Running water will increase the pain. Iced water or iced compresses are too cold. They create pain and possibly further injury. If pain is relieved by such cold therapy in the early period, the wounds generally will require little topical treatment. Beyond 30 minutes after injury, the cold treatment is of little value in preventing destruction. After washing such a wound, the application of a protective covering will relieve pain.

No topical agent has as yet been conclusively demonstrated to increase the rate of healing of minor burns, abrasions, and wounds as discussed below. Agents are available, however, that will protect the wound, provide an optimum environment for healing, and control infection. Agents for control of infection are being considered by another OTC Advisory Review Panel. Skin protectants classified as category I are generally appropriate for minor, superficial burn wounds. Butter, lard, goose grease, and nonsterile oleaginous substances cannot be recommended despite the fact that such agents will make the wound feel better. A physician should be consulted for more extensive burns.

It is not appropriate to apply OTC drugs to extensive burns because the agents will have to be removed prior to examination by a physician. This will result in unnecessary pain. Topical medicaments that help relieve pain, other than by physically altering the wound environment, will be discussed in a separate document.

3. *Wound healing.* Claims have been made that some OTC active ingredients submitted to the Panel aid in wound healing (i.e., allantoin, live yeast cell derivative, and zinc acetate) when the drugs are placed directly upon the wound. Such wounds might be superficial burns, minor cuts, scratches, scrapes, and abrasions.

No controlled studies of aids in wound healing conclusively prove that minor wounds under OTC consideration heal in an accelerated fashion. The Panel concludes that an agent that is capable of aiding wound healing in well-controlled experimental wounds will probably have some effect on the healing process. The degree of this effect remains to be demonstrated in clinical trials. Therefore, skin protectant active ingredients for OTC use with labeling claims as a wound-healing aid are classified as category III.

The process of wound healing can be divided into three general phases:

a. Substrate phase (0 to 5 days)—Cellular infiltration and inflammation occurs;

b. Cellular phase (5 to 15 days)—A fibroblastic phase follows, characterized by proliferation of collagen fibers to form a matrix support for the wounds; and

c. Remodeling phase (1 to 36 months)—A maturation phase results in which the collagen matrix is mechanically strengthened by the formation of collagen cross-linkages (Refs. *2* and *3*).

Epithelization is required to resurface open wounds to complete their healing. Cuts, abrasions, and burns close by the growth of epithelial cells from the margins of the wound, and also from residual epidermal remnants (hair follicles, sebaceous glands) that remain scattered within the affected area. Wound contraction reduces the surface defect by dynamically "shrinking" the wound in size. The fibroblastic phase is concurrent with both wound epithelization and wound contracture. Considerable overlap of the restorative events happens especially during the first 15 days after injury.

Agents affecting wound healing can act at one or more of these phases and in a complex manner. Corticosteroids, as anti-inflammatory agents, can act primarily in the first two phases and can retard some wound healing (as in surgical wounds), but can promote it in other cases such as ulcerative proctitis and related disorders (Ref. *4*). Vitamin A, which promotes collagen production, can counteract the retardant effect of steroids in some cases (Refs. *2* and *5*).

Collagen production and cross-linkages have been experimentally quantified by measurements of collagen production and wound tensile strength (Refs. *2*, *5*, and *6*). Most agents promoting experimental wound healing, such as oxygen, oral ascorbic acid, and oral vitamin A appear to act primarily to promote collagen synthesis (Ref. *3*).

REFERENCES

(1) Summary Minutes of the 30th Meeting of the Panel on Review of Topical Analgesic, Antirheumatic, Otic, Burn, Sunburn Treatment and Prevention Drug Products, August 22-24, 1977.

(2) Van Winkle, W., "The Tensile Strength of Wounds and Factors that Influence It," *Surgery, Gynecology and Obstetrics*, 129:819, 1969.

(3) Brooks, M. P., "Wound Healing: A Review," *Journal of the Mississippi State Medical Association*, 9:385-390, 1973.

(4) Spiro, H. N., "Clinical Gastroenterology," Collier-Macmillan, Ltd., London, p. 597, 1970.

(5) Ehrlich, H. P., T. Tarver and K. Hunt, "Effects of Vitamin A in Glucocorticosteroid on Inflammation in Collagen Synthesis," *Annals of Surgery*, 177:222-228, 1973.

(6) Forrester, J. C., "Mechanical, Biochemical and Architectural Features of Surgical Repair," *Advances in Medical and Biological Physics*, 14:1-39, 1972.

4. *Combinations of skin protectants.* The Panel has reviewed the submitted data and finds that there need be no limit to the number of skin protectants that may be combined. The Panel believes it reasonable to require that each ingredient make a contribution to the designated product in order to be deemed an active ingredient.

The Panel concludes that two or more skin protectant active ingredients may be combined provided that:

a. Each is present in sufficient quantity to act additively or by summation to produce the claimed therapeutic effect when the ingredients are within the effective concentration range specified for each ingredient in the monograph.

b. The ingredients do not interact with each other and one or more do not reduce the effectiveness of the other or others, by precipitation, change in acidity or alkalinity, or in some other manner that reduces the claimed therapeutic effect.

c. The petition of the active ingredients between the skin and the vehicle in which they are incorporated is not impeded and the therapeutic effectiveness of each remains as claimed or is not decreased.

5. *Combinations of skin protectants and other nonskin protectant active ingredients.* The Panel is cognizant of the fact that by their very nature skin protectants are also suitable vehicles for use in delivering active ingredients classified in other categories such as topical analgesics and sunscreens. In such a situation, the skin protectant may serve a different purpose and will be expected to meet the criteria established for such other purpose. Accordingly, the Panel concludes that skin protectants must either meet the criteria established in this document or those for external analgesics or sunscreens.

III. Skin Protectants

A. General Comments

The Panel is aware that by their nature, skin protectants are ideally suited to be the vehicle for applying ingredients classified in other categories (topical analgesics, sunscreens) to the skin. However, in this discussion, the Panel will address only the skin protectant use of these ingredients.

As stated earlier in this document, the Panel has concluded that there need be no limit on combining skin protectant ingredients, as long as the general aspects of good pharmaceutical practice are observed and products retain their integrity under conditions of general use.

The Panel has carefully considered the anatomy and physiology of the skin and concludes that generally there need be no limitation on the use of skin protectants by any age group, including infants under 6 months, except as specifically limited in the individual ingredient monographs.

A detailed discussion of skin anatomy, physiology, penetration, percutaneous absorption and photosensitization is contained in a separate document regarding topical sunscreens which is to be published separately. The same discussion is pertinent with regard to skin protectants.

The Panel has considered the use of skin protectants for three distinct purposes, namely for skin conditions of dryness, wetness, or to provide lubricity. In this regard the following table was established:

Dryness	Wetness	Lubricity
A. Ingredients		
Allantoin	Aluminum hydroxide gel	Starch
Cocoa butter	Calamine	Cocoa butter
Dimethicone	Corn starch	Dimethicone
Glycerin	Dimethicone	Petrolatum
Petrolatum	Kaolin	Shark liver oil
Shark liver oil	Zinc acetate	Zinc oxide
	Zinc oxide	
B. Claims		
Chapping	Poison ivy	Intertrigo
Peeling	Poison oak	Chafing
Scaling	Contact dermatitis	Galling
Cracked lips		Rubbing
Windburn		Friction
First degree burns		
Scrapes		
Abrasions		

On further evaluation, the Panel decided that to associate these skin conditions with specific ingredients is not helpful in view of the overlapping functions of some of the ingredients. In addition, since the Panel has placed no limitation on which ingredients may be combined, most combination products will be suitable for use in more than one of these skin conditions.

The Panel recognized that OTC drug products generally have not been recommended for use in children under 2 years of age. However, the Panel concluded that this 2 year lower age limit should be waived for the majority of skin protectants with the exception of zinc acetate, shark liver oil, and live yeast cell derivative. For the labeling of drug products containing these three ingredients, the Panel recommended the following: "There is no recommended dosage for children under 2 years of age except under the advice and supervision of a physician."

In addition, the Panel considered a 6 month lower age limit sufficient for glycerin and aluminum hydroxide gel. For these two skin protectant ingredients, the Panel recommended the following labeling: "There is no recommended dosage for children under 6 months of age except under the advice and supervision of a physician."

The Panel made these recommendations on the basis of safety considerations.

B. Categorization of Data

1. *Category I conditions under which skin protectant ingredients are generally recognized as safe and effective and are not misbranded.* The Panel recommends that the category I conditions be effective 30 days after the date of publication of the final monograph in the Federal Register.

Category I Active Ingredients

The panel has classified the following skin protectant active ingredients as generally recognized as safe and effective and not misbranded:

Allantoin, aluminum hydroxide gel, calamine, cocoa butter, corn starch, dimethicone, glycerine, kaolin, petrolatum preparations—petrolatum, and white petrolatum, shark liver oil, sodium bicarbonate, zinc acetate, zinc carbonate, and zinc oxide.

a. *Allantoin.* The Panel concludes that allantoin is safe and effective for OTC use as a skin protectant as specified in the dosage section discussed below. The Panel has also evaluated allantoin as a protectant for use as a wound-healing aid. (See part III. par. B.3.a. below—Allantoin.)

Allantoin (5-ureidohydantoin) in the racemic form appears as monoclinic plates or prisma. Allantoin forms many salts, including the sulfonamide and aluminum hydroxy derivatives (Refs. *1* and *2*).

Allantoin is a product of purine metabolism. It is prepared synthetically by the oxidation of uric acid with alkaline potassium permanganate, or by heating urea with dichloroacetic acid (Ref. *3*).

(1) *Safety.* Clinical and marketing experience have confirmed that allantoin is safe in the OTC dosage range used as a skin protectant.

A search of the literature has not produced any reports of adverse reactions to the topical use of allantoin (Refs. *4* and *5*).

The Schwartz patch test on 200 individuals has shown allantoin to be nontoxic, nonirritating, and nonallergenic. The Draize technique, in rabbits, has shown allantoin to be nonirritating even when applied to the conjunctival sac of the eye and the repeated insult test on 12 individuals has not shown allantoin to be a primary skin irritant or primary sensitizer (Ref. *6*).

In animal sensitization studies, two aluminium salts of allantoin were tested without occlusion on guinea pigs. A 25-percent alcloxa (aluminum chlorhydroxy allantoinate) suspension and a 25-percent aldioxa (aluminum dihydroxy allantoinate) suspension were used. Also, two antiperspirant creams were formulated with 0.25-percent alcloxa and 0.75-percent aldioxa. Each of the 4 test formulations was rubbed into a 4-inch square, dorsal area of 3 guinea pigs (total of 12 guinea pigs) for 1 minute on alternating days for 8 days. The vehicle without the allantoin salt was applied in the same manner as a control. After the fourth treatment, the animals received no further applications for 1 week. A fifth sensitizing dose was then applied. During the experimental period, the animals were observed for any changes in the appearance of the skin. Their weight and general health exhibited no change. There were no immediate or delayed reactions noted after the fifth sensitizing dose. The concentrations used are 30 to 100 times those in commercial prepara-

tions and would indicate that allantoin is safe in OTC topical drug products (Ref. 7).

Acute oral toxicity tests were performed on male Webster, Swiss albino mice. Aqueous suspensions of aldioxa were administered in dosages of 5 to 23 grams per kilogram (g/kg) over a 2-week observation period. There was no evidence of toxicity under the conditions of the test. Food and water intake appeared normal over the duration of the study (Ref. 7).

(2) *Effectiveness.* Due to its wide use and clinical acceptance and on the basis of published reports in the literature, the Panel concludes that allantoin is effective for use as an OTC skin protectant.

Allantoin has been used as a protectant. Because allantoin forms complexes with a variety of sensitizing agents rendering them nonsensitizing, it is especially useful for individuals sensitive to topical products, including sulfonamides (Refs. *1, 2,* and *5*). Allantoin has been claimed to be an effective protectant as the aluminum hydroxide salt (Ref. *5*). When combined with aminobenzoic acid (PABA), fewer sensitivity reactions are noted than with PABA alone (Ref. *8*). Allantoin is known to possess a keratolytic (skin softening) action (Ref. *9*). Flesch (Ref. *10*) demonstrated the keratolytic action by incubating psoriatic scales in solutions of 0.2-percent allantoin and 0.2-percent aluminum chlorhydroxy allantoinate. The allantoin preparations dispersed the scales into solution.

The allantoin layer extracts sulfhydril compounds from the keratin of the horny (most superficial) part of the skin. Since this is the major barrier to water, the application of allantoin will allow transpiration of water vapor as well as moisture absorption (Ref. *6*).

Although allantoin does not possess germicidal or antiseptic properties, it does act as a debrider and cleansing agent (Ref. *11*).

Most published studies are not well-controlled with the exception of an investigation in the use of allantoin for treatment of diaper rash (Ref. *12*). In this three part study, glyoxyl diureide (allantoin) was incorporated into an ethanolamine stearate base at a concentration of 0.2 percent along with silicones (Dow Corning 200 or 555) at a 3-percent concentration and hexachlorophene at 0.25 percent. In the first part of the study, 726 newborn infants were divided into 2 groups. The test group, consisting of 429 subjects, was treated daily with the preparation. The control group consisted of 297 subjects. Both groups received routine hospital care and were examined daily. The results are summarized in the table below:

	Number of cases studied	Number of cases free from eruption	Skin reactions noted	Percentage of reactors
Test products	429	408	21	4.8
Controls	297	265	32	14.1

In the second part of the study, 110 infants ranging from 1 to 18 months of age were followed for a period of 6 months. Mothers in this group were warned not to make any changes in the general care of the infant, to avoid the use of all medicaments other than the prescribed emulsion, and to cleanse the diaper area with lukewarm water after urination or defecation. They were to report, immediately, any evidence of a dermatitis or other untoward reaction. Their results are summarized below:

Number of cases	Appearance of diaper area on initial examination	Results	Remarks
83	Clear	Clear	
5	Clear	Mild erythema	1 lost to study; 4 stopped emulsion until cleared, then reused it and remained clear.
22	Erythema, intertrigo, mild papulovesicular eruption.	20 cleared completely; 1 cleared partially, 1 unchanged.	No complications.

The third part of the study included subjects who presented dermatoses common to infants. The emulsion was applied to the involved areas three times daily. No other medication was used. Rubber and plastic panties were avoided. The results are summarized below:

Diagnosis	Number of patients	Clear	Partially clear	Unchanged
Intertrigo	16	16		
Diaper area erythema	17	15	2	
Atopic eczema	2	1		1
Contact dermatitis	2	1	1	
Bedsores	1	1		
Total	38	34	3	1

The investigators concluded that the medication was efficacious and relatively free from side reactions.

(3) *Dosage.* Adult, children, and infants topical dosage is the application of a 0.5 to 2.0 percent preparation to the affected area as needed.

(4) *Labeling.* The Panel recommends the category I labeling for skin protectant active ingredients. (See part III, paragraph B.1. below—Category I labeling.)

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(4) Mecca, S. B., "The Function and Applicability of the Allantoins," *Proceedings of the Scientific Section—The Toilet Goods Association,* 39:7-15, 1963.

(5) Mecca, S. B., "Allantoin: A Review of its History and Therapeutic Properties," *Philadelphia Medicine,* 41:1109-1113, 1946.

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b. *Aluminum hydroxide gel.* The Panel concludes that aluminum hydroxide as a gel is safe and effective for OTC use as a skin protectant as specified in the dosage section discussed below.

Aluminum hydroxide gel is effective as a skin protectant due to its adsorbent and astringent properties. Aluminum hydroxide gel is also known as aluminum hydroxide and aluminum hydrate. It is a white amorphous powder that is practically insoluble in water and forms a gel when in prolonged contact with water. The hydrated oxide and aluminum hydroxide make a suspension, the equivalent of 3.6 to 4.4 percent weight in weight (w/w) of aluminum oxide. Different methods of preparation produce gels with different physical properties (Refs. *1* and *2*).

(1) *Safety.* Clinical and marketing experience has confirmed that aluminum hydroxide gel is safe in the currently marketed dosage range as a skin protectant.

Aluminum hydroxide gel is practically insoluble in water and is physiologically inert. Evaluation of local or systemic reactions to the topical application of aluminum hydroxide gel is important. Friedman, in his report on treatment of skin erosion in patients with bowel fistulas, states that no patient exhibited adverse skin reactions, nor had any dermatitis been reported in workers preparing or applying the aluminum hydroxide gel (Ref. *3*). Further study was made to investigate aluminum salt penetration into human skin when applied topically (Ref. *4*). the results show very little aluminum reaches the dermal area through excised skin. In patients with normal skin, penetration even into the stratum corneum in minimal. Local irritation appears to be absent in regard to topical application of aluminum salts. Based on the penetration information, systemic toxicity is not expected. The material has been marketed for almost a century with positive consumer acceptance (Ref. *5*). As an antacid, aluminum hydroxide gel has been found to be safe for oral use by the FDA Advisory Review Panel on OTC Antacid Products (see the FEDERAL REGISTER of April 5, 1973) (38 FR 8717)). An animal study conducted by Eyerle and Breuhaus supports this conclusion. The experimental animal received 2 ounces (oz) (56.7 grams (g)) of aluminum hydroxide daily for 6 days over a 3-month period. Observation during treatment and after autopsy showed no changes in health or internal structure (Ref. *6*).

(2) *Effectiveness.* There are controlled studies documenting the effectiveness of aluminum hydroxide gel as a skin protectant. Aluminum ion, a trivalent cation, can bind strongly with many proteins and, therefore, can act as an antibacterial agent (Ref. *7*). Aluminum does not adsorb most amino acids, ascorbic acid, glucose, or fats (Ref. *8*).

Aluminum hydroxide gel is reported to afford relief in a variety of skin conditions, including miliaria rubra (prickly heat), certain fungal disorders, such as tinea cruris (jock itch), tinea (ringworm) and other epidermophytoses, weeping eczematous lesions, and impetigo (Refs. *1*, *2*, and *3*).

In a study on treatment of gangrene with aluminum hydroxide gel, Newman, as cited by Spiesman, concludes that the hastening of appearance of the line of demarcation was due to the protective power of the substance and its ability to neutralize acids and other toxins (Ref. *9*).

Howard (Ref. *2*) employed colloidal aluminum hydroxide gel topically for a variety of skin diseases in the tropics. Patients received almost immediate relief of the distressing symptoms of miliaria rubra on first application. He concluded that aluminum hydroxide gel was the most useful of a number of drugs tested in the treatment of skin problems of afflicted military personnel in tropical climates.

Friedman and associates (Ref. *10*) treated 134 patients suffering from pruritis ani with a thick paste of aluminum hydroxide gel which had been prepared by evaporation from a commercial gel. In the moist type of pruritis ani, 93 of 98 patients experienced prompt sustained relief of itching, irritation, and discomfort. Results in the dry type of pruritis ani were poor.

In a study of application of aluminum hydroxide to wound areas of 23 colostomy patients, Friedman reports the successful arrest of pain and spread of infection. The aluminum hydroxide can inactivate the trypsin and prevent damage to the external area, and will also adsorb bacterial toxins arresting the spread of infection over surface skin (Ref. *3*).

In the Panel's opinion, aluminum hydroxide gel is useful as both an astringent and a protectant. Based on the various studies presented, and the numerous types of skin conditions treated, the Panel concludes that aluminum hydroxide gel is both safe and effective for OTC use.

(3) *Dosage.* Adult and children 6 months of age and older topical dosage is the application of a 0.15 to 5.0 percent preparation to the affected area as needed. There is no recommended dosage for children under 6 months of age except under the advice and supervision of a physician.

(4) *Labeling.* The Panel recommends the category I labeling for skin protectant active ingredients. (See part III. paragraph B.1.—category I Labeling.) In addition, the Panel, based upon the discussion above, recommends the following specific labeling: *Warning.* "Do not use on children under 6 months of age without consulting a physician.

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(9) Spiesman, M. G., "Colloidal Kaolin and Aluminum Hydroxide Gel (Kalum) in Management of Lower Bowel Conditions," *Review of Gastroenterology*, 10:191-200, 1943.
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c. *Calamine.* The Panel concludes that calamine is safe and effective for OTC use as a skin protectant as specified in the dosage section discussed below.

Calamine is effective as a skin protectan due to its absorbent properties. Calamine, also known as prepared calamine, is a mixture containing not less than 98 percent zinc oxide and 0.5 percent ferrous oxide. Zinc oxide has been evaluated to be safe and effective as a skin protectant. (See part III. paragraph B.1.n. below—Zinc oxide.) Due to the ferrous oxide, calamine has a pink color. It is an odorless, fine powder that is insoluble in water and nearly completely soluble in mineral acids (Refs. *1, 2,* and *3*).

(1) *Safety.* Clinical and marketing experience has confirmed that calamine is safe in the OTC dosage range used as a skin protectant.

The toxicity of this substance is the same as that of zinc oxide. (See part III. paragraph B.1.n.(1) below—Safety.) The ferrous oxide acts as a coloring agent and has no pharmacologic effect (Ref. *4*).

(2) *Effectiveness.* Due to its wide use and clinical acceptance the Panel concludes that calamine is effective for use as an OTC skin protectant.

Calamine is an effective skin protectant because of its close chemical identity with zinc oxide (Refs. *1, 2,* and *3*). (See part III. paragraph B.1.n.(2) below—Effectiveness.)

(3) *Dosage.* Adult, children, and infants topical dosage is the application of a 1 to 25 percent preparation to the affected area as needed.

(4) *Labeling.* The Panel recommends the category I labeling for skin protectant active ingredients. (See part III. paragraph B.1. below—category I labeling.)

REFERENCES

(1) "The Merck Index," 8th ed., Merck and Co., Inc., Rahway, N.J., p. 189, 1968.
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(4) Gleason, M. N. et al., "Clinical Toxicology of Commercial Products: Acute Poisoning," 3d ed., Williams and Wilkins, Baltimore, Md., p. 29, 1969.

d. *Cocoa butter.* The Panel concludes that cocoa butter is safe and effective for OTC use as a skin protectant as specified in the dosage section discussed below.

Cocoa butter is effective as a skin protectant due to its emollient properties. Cocoa butter is the fat obtained from the roasted seed of Theobroma cacao. It is a mixture of stearin, palmitin, olein, laurin, linolein, and traces of other glycerides. It is a yellowish-white solid with a faint, agreeable odor and a bland chocolate-like taste. It is a brittle solid below 25° C. Cocoa butter possesses the remarkable property of maintaining its firmness within a few degrees of body temperature. It readily melts at body temperature without passing through an appreciable softening stage (Refs. *1* and *2*).

Cocoa butter is recognized as an emollient by Goodman and Gilman (Ref. *3*) when applied externally to the skin and mucous membrances. They also recognize its wide acceptance as a suppository and an ointment base. "The United States Pharmacopeia" (Ref. *4*) recognizes cocoa butter as a pharmaceutical aid, specifically as a suppository base. "Merck Index" (Ref. *5*) states that cocoa butter is used as a lubricant in massage and as a base for suppositories and ointments.

(1) *Safety.* Clinical and marketing experience has confirmed that cocoa butter is safe in the dosage range used as a skin protectant.

No reports regarding the safety of cocoa butter have been specifically identified. However, the Panel recognizes that its safety has been established by its wide and continuous use in pharmaceutical products and cosmetics (Refs. *1, 2,* and *6*).

(2) *Effectiveness.* Due to its wide use and clinical acceptance the Panel concludes that cocoa butter is effective for use as an OTC skin protectant.

Due to its bland nonirritating properties, cocoa butter is used as a skin protectant on abraded or irritated tissue, especially in the anorectal area. Cocoa butter provides a physical barrier against against further contact by possible irritants (Ref. *3*). These properties, combined with the fact that it is a vehicle for other drugs, accounts for its acceptability in suppositories and emollient preparations (Ref. *7*).

(3) *Dosage.* Adult, children, and infants topical dosage is the application of a 80 to 100 percent preparation to the affected area as needed.

(4) *Labeling.* The Panel recommends the category I labeling for skin protectant active ingredients. (See part III. paragraph B.1. below—Category I labeling.)

REFERENCES

(1) "The Dispensatory of the United States of America," 27th ed., edited by Osol, A., and R. Pratt, J. B. Lippincott Co., Philadelphia, p. 1179, 1972.
(2) "Remington's Pharmaceutical Sciences," 14th ed., Mack Publishing Co., Easton, Pa., p. 1376, 1970.
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(4) "The United States Pharmacopeia," 19th ed., United States Pharmacopeial Convention, Rockville, Md., pp. 555-556, 1975.
(5) "The Merck Index," 8th ed., Merck and Co., Inc., Rahway, N.J., p. 1033, 1968.
(6) Griffenhagen, G., "A History and Evolution of the Suppository Mold," *American Journal of Pharmacy*, 125:135-142, 1953.
(7) Mezey, G., "Der Einfluss Lipophiler Emulgatoren auf die Arzneiabgabe aus mit Kakaobutter Hergestellten Suppositorien," *Pharmazie*, 26:166-169, 1971.

e. *Corn starch.* The Panel concludes that corn starch is safe and effective for OTC use as a skin protectant as specified in the dosage section discussed below.

Corn starch is effective as a skin protectant due to its absorbent properties. Corn starch is described as granules from the mature grain of Zea mays. Corn starch is recognized by the "United States Pharmacopoeia" (Ref. *1*). Corn starch consists of irregular, angular white masses of fine powder. It is insoluble in cold water and alcohol (Refs. *1* and *2*).

(1) *Safety.* Clinical and marketing experience has confirmed that corn starch is safe in the OTC dosage range used as a skin protectant.

A Draize eye irritation study was conducted with 100 milligrams (mg) of a powdered preparation containing 71 percent corn starch on nine white rabbits. At the end of the 24-hour observation period, all animals exhibited chemosis and discharge. All evidence of irritation resolved in 48 hours. The same preparation was tested for dermal sensitivity under open patch conditions in rabbits. The powder showed no evidence of dermal irritation when applied to either normal or

abraded skin. This test was repeated in 50 randomly selected human subjects. Corn starch exhibited no evidence of being allergenic, photoallergenic, a sensitizer, or a primary irritant. There was an absence of reactions throughout the study (Ref. *3*).

Corn starch administered orally to rats required daily doses as large as one-tenth of the animal body weight for 2 to 7 weeks before eliciting any adverse effects such as inhibition of growth (Ref. *4*). Intraperitoneal and intramuscular injection of surgical powders containing corn starch were found to exert a weak and temporary irritation in rabbits in contrast to the strong protracted effect of talc (Ref. *5*).

Corn starch is of known nutritive value and is included in the diet in sizable amounts. Although in its raw state it is digested slowly, its metabolism is well understood. Its safety is supported by the use of corn starch orally for years as a tablet disintegrant in pharmacy and its recognition for this purpose by the official compendia (Refs. *1* and *2*).

While the practice of eating large quantities of corn starch present in certain laundry starch products has been common among sizable numbers of people in this country for many years, very few incidents of untoward effects have been reported that are directly attributable to the corn starch. The primary problem recognized in these cases has been deficiency of essential nutrients in the diet of these individuals who have consumed laundry starch instead of more nourishing foods (Ref. *6*). Starch gastrolith has been reported in one individual who consumed three to four boxes of starch daily for 1 year (Ref. *7*).

The only other adverse effects reported to be caused by corn starch have been foreign body granulomas inside the peritoneum resulting from surgical glove powder consisting primarily of corn starch and magnesium oxide being transferred to surgical sites (Refs. *8* and *9*). Although several cases of such granulomas have been reported, the incidence of starch granulomas is uncommon (Ref. *9*).

Corn starch is an organic substance which has been shown to support bacterial growth in the presence of moisture (Ref. *10*). Corn starch is sometimes used in combination with other absorbent powders. When used on open and/or discharging wounds, an antiseptic agent may help discourage bacterial growth (Ref. *11*).

There are no reported incidents of adverse effects to the topical application of corn starch (Ref. *3*).

(2) *Effectiveness.* Due to its wide use and clinical acceptance the Panel concludes that cornstarch is effective for use as an OTC skin protectant.

Powdered cornstarch is widely recommended in the medical literature as a common and important ingredient in protective dusting powders. It is bland to the skin and affords protection to the skin by absorbing moisture, perspiration, and noxious secretions, and by lubricating particularly those surfaces that are in continuous apposition. It also allows for enhanced evaporation of moisture from the skin by increasing the surface area available for this process (Ref. *2*). In addition, it soothes and allays dermal irritation and itching. Gases, toxins, and microorganisms are absorbed and suspended by cornstarch. Many authorities consider cornstarch superior to talc since it is virtually free of chemical contaminants and it does not tend to produce granulomatous reactions in wounds as readily as talc (Ref. *5*). Finally, cornstarch is many times as absorbent as talc. On exposing cornstarch and talc to moisture saturated air, it was found that cornstarch absorbed more than 25 times more moisture than did the talc (Ref. *3*). Absorption by cornstarch probably surpasses that of any powder described in the official compendia (Ref. *3*). Because cornstarch is so absorptive of water, a sticky mass may form when it is used alone. Therefore, another finely dispersed dessicant is usually incorporated in a formulation for use as an absorbent.

(3) *Dosage.* Adult, children, and infants topical dosage is the application of a 10 to 85 percent preparation to the affected area as needed.

(4) *Labeling.* The Panel recommends the Category I labeling for skin protectant active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

REFERENCES

(1) "The United States Pharmacopeia," 19th ed., United States Pharmacopeial Convention, Rockville, Md., p. 575, 1975.

(2) "The Dispensatory of the United States of America," 27th ed., edited by Osol, A. and R. Pratt, J. B. Lippincott Co., Philadelphia, p. 1091, 1972.

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(11) Lesser, M. A., "Medicated Dusting Powders," *Drug and Cosmetic Industry*, 62:183, 1948.

f. *Dimethicone.* The Panel concludes that dimethicone is safe and effective for OTC use as a skin protectant as specified in the dosage section discussed below.

Dimethicone is effective as a skin protectant due to its demulcent properties. Dimethicone, also known as dimethycone and dimethyl polysiloxane, is a complex silicone compound with an approximate molecular weight of 14,000 to 21,000. It is a light gray translucent liquid of greasy consistency which is immiscible with water and alcohol, but miscible with ether and most hydrocarbon solvents (Refs. *1* and *2*). Dimethicone is one of many silicone compounds with the general formula $O\text{-}Si(R_1R_2)\text{-}O\text{-}Si(R_1R_2)\text{-}O\text{-}etc.$ By manipulating the R_1 and R_2 groups and the degree of cross-linking, silicone compounds of different properties may be produced. In dimethicone, the R_1 and R_2 groups are methyl radicals. The water-repellant properties of silicones have many applications in medicine, commerce, and industry (Ref. *3*).

(1) *Safety.* Clinical and marketing experience has confirmed that dimethicone is safe in the OTC dosage range used as a skin protectant.

Dimethicone is remarkably free of irritancy or adverse reactions to the skin (Refs. *4*, *5*, and *6*). This is also supported by marketing data. Toxicity has not been documented (Ref. *5*).

The Advisory Review Panel on OTC Antacid Products (see the FEDERAL REGISTER of June 4, 1974) (39 FR 19877) found the use of simethicone (4.0 to 4.5 percent silica aerogel in dimethicone (Ref. *7*)) safe for internal use at a dosage of 500 mg daily. Topically, dimethicone is relatively inert (Ref. *3*).

The occlusive nature of dimethicone is detrimental to inflamed, traumatized, abraded, and excoriated skin, and to lesions that require free drainage. Dimethicone is not sensitizing but does cause a temporary irritation to the eyes (Refs. *3* and *8*).

(2) *Effectiveness.* Due to its wide use and clinical acceptance and on the basis of published reports in the literature, the Panel concludes that dimethicone is effective for use as an OTC skin protectant.

Dimethicone is used as a protective agent. It almost completely seals the wound and prevents further drying of lesions such as windburn, cracked and chapped skin, and chapped lips (Refs. *4* and *6*). However, cuts, infected lesions, and puncture wounds may

become macerated and further inflamed under the seal.

Dimethicone possesses skin adherent and water-repellant properties. It is found in such dosage forms as an ointment (30 percent), cream (30 percent), and a spray (33.33 percent) (Ref. *3*). It is useful as a prophylactic against exposure to water soluble substances to which the patient may be sensitive or which may aggravate a preexisting eczema. It may prevent the ammonia, produced by bacterial decomposition of urine, from coming into contact with the skin resulting in dermatitis (Ref. *9*).

The substantivity of dimethicone is excellent. When dimethicone is incorporated into a nonwashable base, several surgical washings are required for its removal (Ref. 7).

Dimethicone is used internally as a protectant for the gastro-intestinal mucosa. Birtley et al. conducted a study in which 10 male Wistar rats were deprived of food but not water for 18 hours before gastric intubation of 0.25 to 2.0 milliliters (ml) dimethicone. Ten minutes later, 1 ml of a suspension of aspirin (45 milligrams/milliliter (mg/ml)) in 1 percent carboxymethylcellulose (CMC) in water was gastricly intubated. Two control groups of 10 rats each received either 1 ml of a 1 percent weight in volume (w/v) CMC with aspirin suspension or dimethicone alone. All animals were sacrificed 2 hours after administration of the test substance. Dimethicone caused a reduction in the amount of aspirin-induced gastric irritation compared with the unprotected group receiving aspirin alone (Ref. *10*). The control group receiving dimethicone alone produced no evidence of mucosal irritation.

Kahan et al. incorporated a 3 percent silicone compound (Dow-Corning 200 or 555) into an ethanolamine stearate base that also included 0.2 percent allantoin and 0.25 percent hexachlorophene. In the first part of his three-phase study, 726 infants were divided into two groups. The test group of 429 infants was treated daily with the preparation. The control group of 297 infants received products normally employed in routine newborn nursing care. Both groups received routine hospital care. The control group presented more dermatoses than did the test group. Indicating that the silicone preparation afforded some degree of protection. In the second part of the study, 110 infants ranging from 1 to 18 months of age were followed for a period of 6 months. Mothers in this group were warned not to make any changes in the general care of the infant, to avoid the use of all other medications except the prescribed emulsion, and to cleanse the area with lukewarm water after urination of defecation. They were to report immediately any evidence of dermatitis or other untoward reaction. Over the 6-month period, there were 22 cases of erythema, intertrigo, and mild papulovesicular eruption. Twenty cases cleared completely and one case cleared partially. The results of this part of the study, again, indicate that the silicone preparation afforded protection. In the third part of the study, subjects presented dermatoses common to infants. The emulsion was applied to the involved area three times daily and no other medication was used. The results are summarized below:

Diagnosis	Number of patients (with dermatoses)	Dermatoses cleared	Dermatoses partially cleared	Unchanged
Intertrigo	16	16	.....	.....
Diaper erythema	17	15	2	.....
Atopic eczema	2	1	.....	1
Contact dermatitis	2	1	1	.....
Bedsores	1	1	.....	.....
Total	38	34	3	1

The investigators concluded that the preparation afforded topical protection and was relatively free of side reactions (Ref. *9*).

(3) *Dosage.* Adult, children, and infants topical dosage is the application of a 1 to 30 percent preparation to the affected area as needed.

(4) *Labeling.* The panel recommends the Category I—Labeling for skin protectant active ingredients. (See part III, paragraph B.1. below—Category I—Labeling.) In addition the panel, based on the discussion above, recommends the following specific labeling: *Warning.* "Not to be applied over puncture wounds, infections, or lacerations."

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g. *Glycerin.* The panel concludes that glycerin is safe and effective for OTC use as a skin protectant as specified in the dosage section discussed below.

Glycerin is effective as a skin protectant due to its absorbent, demulcent, and emollient properties. Chemically, glycerin, also known as glycerine and glycerol (propane 1,2,3-triol), is the simplest of the trihydric alcohols. The chemical formula is CH_2OH-CHOH-CH_2OH. It is a clear, colorless, syrupy liquid with a sweet taste and characteristic odor. Glycerin has a molecular weight of 92.10 and is hygroscopic, taking up and retaining water. Glycerin is miscible with water and alcohol, but insoluble in chloroform, ether, and fixed and volatile oils. Solutions of glycerin are neither acidic nor alkaline (Refs.*1* and *2*).

(1) *Safety.* Clinical and marketing experience has confirmed that glycerin is safe in the dosage range used as a skin protectant.

Glycerin has been in use for over 100 years. When taken internally, glycerin is almost completely innocuous. Humans have taken 100 g daily for 50 days with no ill effects (Ref. *3*). Osmotic effects such as hypovolemia and diarrhea occur following massive oral doses. The topical effects of glycerin have been investigated utilizing a variety of techniques. In one such study, the tails of rats were soaked in undiluted glycerin 4 hours daily for 4 days,

1 hour daily for 6 days, and 2 hours daily for 6 days. Under none of these regimens were any changes produced in the skin. In another study, undiluted glycerin was applied to the conjunctiva of rabbits, cats, and dogs. There were no visible changes. Undiluted glycerin was also applied to the buccal mucosa of rats, rabbits, and dogs with no discernable pathology either topically or systemically.

Studies of the skin irritant properties of natural and synthetic glycerin applied dorsally (30 percent of the body surface) to rabbits gave no indication of irritation or other dermatitis. It was concluded that glycerin is not absorbed percutaneously in amounts sufficient to produce a pharmacologic effect (Refs. *4* and *5*).

However, in another study, undiluted glycerin and a 50 percent aqueous solution were repeatedly and extensively applied to the skin of rabbits. This produced a mild irritation but did not produce other significant toxicity (Refs. *6* and *7*).

It has been reported that undiluted glycerin absorbs water and is somewhat dehydrating and irritative to mucous membranes and particularly to inflamed or sunburned skin (Refs. *6* and *8*). When used in undiluted form, water can be extracted from wounds where the vapor barrier (keratin layer) has been altered. This drying effect can cause discomfort in open wounds (Refs. *2* and *9*). However, in aqueous concentrations of 20 to 45 percent, glycerin is relatively nonirritating and safe as a skin protectant.

(2) *Effectiveness.* Due to its wide use and clinical acceptance and on the basis of published reports in the literature, the Panel concludes that glycerin is effective for use as an OTC skin protectant.

Glycerin is a valuable product in the pharmacy because of its solvent properties, sweet taste, and nonfermentability. It is a widely employed vehicle for internally and externally used medicinal substances. Glycerin keeps substances moist by holding water and is valuable as a protectant in many skin conditions (Refs. *1* and *2*).

The dehydrating and osmotic properties of glycerin have been used in preparations for local application to various dermatoses (Refs. *1, 9, 10,* and *11*). This dehydration action is at its maximum when glycerin is used in the undiluted form. In one study, a keratinous mass (a callous) was soaked in a solution of glycerin for 48 hours with no decrease in brittleness. At that time, 0.1 ml of water was added and still there was no decrease in brittleness. Water alone reduced brittleness by 25 percent in 1 hour (Refs. *12*). The application of glycerin has not been shown to effect the ability of keratin to absorb water (Refs. *13*). The Panel believes that undiluted glycerin is not effective as a skin protectant but that a solution of 20 to 45 percent glycerin in water will lose water to the epidermis and act to soften the skin (Refs. *1, 9, 10, 14, 15,* and *16*).

Glycerin is discussed in a separate document as an ingredient for otic use (see the FEDERAL REGISTER of December 16, 1977 (42 FR 63556)).

(3) *Dosage.* Adult and children 6 months of age and older topical dosage is the application of a 20 to 45 percent preparation to the affected area as needed. There is no recommended dosage for children under 6 months of age except under the advice and supervision of a physician.

(4) *Labeling.* The Panel recommends the Category I labeling for skin protectant active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

In addition, the Panel based upon the discussion above recommends the following specific labeling: *Warning.* "Do not use on children under 6 months of age without consulting a physician."

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h. *Kaolin.* The Panel concludes that kaolin is safe and effective for OTC use as a skin protectant as specified in the dosage section discussed below.

Kaolin is effective as a skin protectant due to its absorbent properties. Kaolin is a native hydrated aluminum silicate, powdered and freed from gritty particles by elutriation. Kaolin is also known as China clay, white bole, argilla, and porcelain clay. Its absorbing and water-binding qualities vary widely (Ref. *1*). It is a white or yellowish-white, earthy mass or white powder (Ref. *2*).

(1) *Safety.* Clinical and marketing experience has confirmed that kaolin is safe in the OTC dosage range used as a skin protectant.

Kaolin produced no adverse effects on oral administration to rats in doses less than 50 g/kg. Death was produced, however, by kaolin suspension in rats due to bowel obstruction at doses of 149 g/kg (Ref. *3*). Dogs fed 60 g kaolin suspension daily by stomach tube 5 days weekly for 3 months showed no evidence of adverse effects (Ref. *4*). Injected into the gastric mucosa of rabbits, kaolin will produce a silicosis-like granuloma, but not when administered by mouth (Ref. *5*).

Reported adverse effects of kaolin are at least as rare as those for starch. Kaolin has been used for hundreds of years in both external and internal preparations (Ref. *1*). Currently, one oral kaolin preparation (kaolin and pectin) is recognized as an official preparation by the "National Formulary" (Ref. *6*). Kaolin is classified by recognized standard clinical toxicology references as practically nontoxic with the probable lethal human dose suggested as greater than 15 g/kg (Ref. *7*). It has been prescribed orally for intestinal disorders at doses of 100 g several times daily with no ill effects. Cholera patients have been fed 600 g kaolin over a 12-hour period without ill effects (Ref. *7*). Epidemiologic studies performed over a 5-year period have demonstrated that the general health of kaolin workers does not differ significantly from that of the general population (Ref. *8*). One report of granuloma due to excessive ingestion of kaolin for gastrointestinal disorders has been reported (Ref. *5*). There is a report of rare intestinal obstruction due to ingested kaolin (Ref. *9*). There have been no reports of adverse effects to the topical application of kaolin (Ref. *10*).

(2) *Effectiveness.* Due to its wide use and clinical acceptance, the Panel con-

cludes that kaolin is effective for use as an OTC skin protectant.

Kaolin is considered an effective skin protectant that helps to absorb excessive moisture and perspiration (Refs. *11* and *12*). While it is recognized as an effective water absorbent, it is also an excellent adsorbent of dissolved or suspended substances such as gases, toxins, and bacteria (Refs. *4* and *13*). It has been recommended as a desiccant dusting powder for use in weeping eczemas, discharging ulcers, and similar conditions (Ref. *1*).

Kaolin and a kaolin mixture with pectin are recognized as adsorbents by the "National Formulary" (Ref. *14*). Goodman and Gilman (Ref. *9*) state that kaolin is used for the treatment of diarrhea and dysentery, and is also used in the treatment of chronic ulcerative colitis to adsorb toxins and bacteria in the colon. The "Merck Index" defines the medical use of kaolin as a gastrointestinal adsorbent and a topical adsorbent. In veterinary medicine, it is also used as a poultice (Ref. *2*).

(3) *Dosage.* Adult, children and infants topical dosage is the application of a 4.0 to 20 percent preparation to the affected area as needed.

(4) *Labeling.* The Panel recommends the Category I labeling for skin protectant active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

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i. *Petrolatum preparations (petrolatum, white petrolatum).* The Panel concludes that petrolatum and white petrolatum are safe and effective for OTC use as a skin protectant as specified in the dosage section discussed below.

Petrolatum is effective as a skin protectant due to its emollient and lubricant properties. Protrolatum is also known as amber petrolatum, base petrolatum, pure petrolatum jelly, and pure ultra white petrolatum jelly. Petrolatum is an unctuous yellow to light amber mass. It is a purified mixture of semisolid hydrocarbons obtained from petroleum and may contain a suitable stabilizer (Ref. *1*). White petrolatum is the same semisolid hydrocarbon, but it has been wholly or nearly decolorized (Ref. *2*). Both products (petrolatum and white petrolatum) are essentially the same except for color. For purposes of this report, they will be considered together as petrolatum (Refs. *1* and *2*).

Petrolatum melts between 38° and 60° C and has a specific gravity of 0.815 to 0.880 at 60° C. It is insoluble in water, slightly soluble in alcohol, freely soluble in benzene and chloroform, and soluble in ether and in most fixed and volatile oils. Petrolatum is an oleaginous ointment base and topical protectant. It is also described in the "United States Pharmacopeia" (Ref. *2*) under petrolatum gauze, hydrophilic ointment, white ointment, and hydrophilic petrolatum. The "National Formulary" and "Merck Index" list petrolatum as an ointment base (Refs. *1* and *3*). The "Merck Index" (Ref. *3*) also recognizes the use of petrolatum as a protective dressing. Petrolatum has been identified as one of the important emollient hydrocarbons by Goodman and Gilman (Ref. *4*).

(1) *Safety.* Clinical and marketing experience has confirmed that petrolatum is safe in the OTC dosage range used as a skin protectant.

Studies on animals show no adverse effect on healing of burns. Superficial burns and abrasions on humans also healed with no complications. Petrolatum is not absorbed through intact or injured skin and is neither sensitizing nor irritating (Ref. *5*). Extensive burns, however, are at risk for infection under a sealed, greasy cover. Cuts, infected lesions, and puncture wounds also may become macerated and further inflamed under the seal.

Large amounts are essentially nontoxic when ingested in liquid laxative preparations (Ref. *5*).

(2) *Effectiveness.* Due to their wide use and clinical acceptance, the Panel concludes that petrolatum preparations are effective for use as OTC skin protectants.

Petrolatum (usually white petrolatum) has been utilized in burn wound management as a dressing of lightly impregnated fine mesh gauze. Most data are compiled from patients admitted to hospitals for care of major thermal injury. The dressings were used until the dead burned tissue separated. Skin grafting followed (Ref. *5*). Such uses are not appropriate for OTC consideration. For superficial burns of minimal extent, petrolatum and petrolatum gauze exclude air, prevent evaporation, and reduce pain.

The use of petrolatum as an emollient has been well accepted for dry skin conditions, especially with flaking skin such as sunburn, and chapping. Evaporation and drying are curtailed. In addition, the substance is a soothing topical lubricant. As a skin protectant, this substance can be applied to prevent irritating materials from contacting the normal skin, such as in preventing diaper rash (Ref. *5*).

(3) *Dosage.* Adult, children, and infants topical dosage is the application of a 30- to 100-percent preparation to the affected area as needed.

(4) *Labeling.* The Panel recommends the Category I labeling for skin protectant active ingredients. (See part III, paragraph B.1. below—Category I Labeling.) In addition, the Panel, based on the discussion above, recommends the following specific labeling: *Warning.* "Not to be applied over puncture wounds, infections, or lacerations."

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(5) OTC Volume 060109.

j. *Shark liver oil.* The Panel concludes that shark liver oil is safe and effective for OTC use as a skin protectant as specified in the dosage section discussed below.

Shark liver oil is effective as a skin protectant due to its emollient properties. Shark liver oil is an amber to brown oily liquid and is extracted from the livers of the shark, principally from the lemon shark, *Hypoprion brevirostris*, although many other spe-

cies of shark may be the source. The oil is a source of vitamins A and D. Shark liver oil is reported to have a potency not less than 16,500 U.S.P. units of vitamin A and not less than 40 U.S.P. units vitamin D per g (Ref. *1*).

(1) *Safety.* Clinical and marketing experience has confirmed that shark liver oil is safe in the OTC dosage range used as a skin protectant.

Although shark liver oil is not officially recognized in U.S. compendia, several formulations are recognized in foreign compendia, e.g., dilute shark liver oil, shark liver oil emulsion, shark liver oil emulsion for infants, and shark liver oil with vitamin D (Ref. *2*). Shark liver oil is used in preference to cod liver oil orally as a source of vitamin A when large amounts of vitamin D are not required (Ref. *2*).

(2) *Effectiveness.* Due to its wide use and clinical acceptance, the Panel concludes that shark liver oil is effective for use as an OTC skin protectant.

Shark liver oil provides temporary relief of skin irritations by its soothing and protective effect. The effect continues as long as this oleaginous substance remains in contact with the affected areas (Refs. *3*, *4*, and *5*).

(3) *Dosage.* Adult and children 2 years of age and older topical dosage is the application of a 3-percent preparation to the affected area as needed. There is no recommended dosage for children under 2 years of age except under the advice and supervision of a physician.

(4) *Labeling.* The Panel recommends the Category I labeling for skin protectant active ingredients. (See part III, paragraph B.1. below—Category I Labeling.)

In addition, the Panel, based upon the discussion above recommends the following specific labeling: (1) *Warning.* "Do not use on children under 2 years of age without consulting a physician."

REFERENCES

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k. *Sodium bicarbonate.* The Panel concludes that sodium bicarbonate is safe and effective for OTC use as a skin protectant as specified in the dosage section discussed below.

Sodium bicarbonate is effective as a skin protectant due to its absorbent properties. Sodium bicarbonate is also known as bicarbonate of soda or baking soda. Sodium bicarbonate is a white crystalline powder with a chemical formula of $NaHCO_3$. It is soluble in 10 parts of water at 25° C and insoluble in alcohol. The powder is odorless with a saline and slightly alkaline taste. It forms alkaline solutions. In dry air, the powder is stable but slowly decomposes in moist air releasing carbon dioxide and water, leaving a residue of sodium carbonate (Ref. *1*).

(1) *Safety.* Clinical and marketing experience has confirmed that sodium bicarbonate is safe in the dosage range used as a skin protectant.

Sodium bicarbonate is relatively nontoxic and no adverse reactions have been noted on topical application. The Panel emphasizes that this agent is not to be used for neutralization of acid burns over large surfaces of the body. The exothermic neutralization reaction can cause deepening of the burn and can allow excessive absorption of sodium from the altered body surface in such extensive burns (Ref. *2*). The treatment of choice for acid burns is copious flooding of the affected area with cold water as discussed elsewhere in this document. (See part II, paragraph A.2. above—Burns.) Sodium bicarbonate is nontoxic when taken internally.

(2) *Effectiveness.* Due to its wide use and clinical acceptance, the Panel concludes that sodium bicarbonate is effective for use as an OTC skin protectant. Application of topical sodium bicarbonate has a long history of market acceptability and is popular as folk remedy for insect stings and minor burns.

Sodium bicarbonate soothes irritated skin (Ref. *3*), relieves pain of minor acid burns, and when used in a bath or as a dusting powder, reduces the odor of sweat. Prompt application of moistened bicarbonate as a paste has helped relieve itching from nonpoisonous insect stings and bites.

Sodium bicarbonate has been used in tepid baths for relief of pruritis due to sunburn. In addition, such baths have been recommended for hives (urticaria), the treatment of exfoliative dermatitis, and eczema (Refs. *3* and *4*). Beckman (Ref. *5*) recommended local applications of sodium bicarbonate solutions for mild itching. As a topical protectant, sodium bicarbonate is effective in the symptomatic relief of minor irritations, insect bites, and stings.

Bicarbonates and other mild alkalis combine with the tissue elements to form alkaline albuminates or with cutaneous fats to form soaps. In this way, the epithelium is softened. They were used in a variety of skin diseases to facilitate the penetration of antiseptic remedies into the skin (Refs. *3* and *6*).

Sodium bicarbonate when used locally on the skin in the form of a moist paste or a solution is an effective antipruritic (Refs. *7* and *8*).

(3) *Dosage.* Adult, children and infants topical dosage is the application of a 1- to 100-percent preparation to the affected area as needed.

(4) *Labeling.* The Panel recommends the Category I labeling for skin protectant active ingredients. (See part III, paragraph B.1. below—Category I Labeling.) In addition, the Panel, based on the discussion above recommends the following specific labeling: *Warning.* "Do not apply to extensive acid burns. Flood acid burns with cold tap water and consult a physician."

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1 *Zinc acetate.* The Panel concludes that zinc acetate is safe and effective for OTC use as a skin protectant as specified in the dosage section discussed below. The Panel has also evaluated zinc acetate as a skin protectant for use as a wound-healing aid below. (See part III. paragraph B.3.c. below—Zinc acetate.)

Zinc acetate is effective as a skin protectant due to its astringent properties. Zinc acetate is a salt of a weak acid and is crystalline with a sharp metallic taste. If effloresces slowly to form a basic salt. Zinc acetate is freely soluble in water and soluble in alcohol (Refs. *1* and *2*).

(1) *Safety.* Clinical and marketing experience has confirmed that zinc acetate is safe in the OTC dosage range used as a skin protectant.

There is no evidence of toxicity upon topical application of zinc acetate to either the skin or mucous membranes (Ref. *3*). A long marketing experience has produced no untoward reactions (Ref. *3*).

(2) *Effectiveness.* Due to its wide use and clinical acceptance, the Panel concludes that zinc acetate is effective for use as an OTC skin protectant.

Zinc compounds which ionize have protective, astringent, and mild antiseptic properties (Refs. *1*, *3*, and *4*). The zinc ion precipitates protein and is sometimes used in deodorants because of this astringent property (Ref. *2*). Zinc acetate, zinc sulfate, and zinc chloride have been used in the treatment of skin infections and with certain fatty acids as fungicidal and fungistatic agents (Refs. *3* and *4*).

(3) *Dosage.* Adult and children over 2 years of age topical dosage is the application of a 0.1 to 2.0 percent preparation to the affected area as needed. There is no recommended dosage for children under 2 years of age except under the advice and supervision of a physician.

(4) *Labeling.* The Panel recommends the Category I labeling for skin protectant active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

In addition, the Panel, based upon the discussion above, recommends the following specific labeling: *Warning.* "Do not use on children under 2 years of age without consulting a physician."

REFERENCES

(1) "The Extra Pharmacopeia," 25th Ed., Edited by Todd, R. G., The Pharmaceutical Press, London, p. 1489, 1967.

(2) Wilson, C. O. and O. Gisvold, "Textbook of Organic and Medicinal Chemistry," 3d Ed., J.B. Lippincott Co., Philadelphia, p. 553, 1966.

(3) OTC Volume 060042.

(4) OTC Volume 060043.

m. *Zinc carbonate.* The Panel concludes that zinc carbonate is safe and effective for OTC use as a skin protectant as specified in the dosage section discussed below.

Zinc carbonate is an effective skin protectant due to its absorbent properties. Zinc carbonate, $ZnCO_3$, is an inert white powder which is insoluble in water (ref. *1*).

(1) *Safety.* Clinical and marketing experience has confirmed that zinc carbonate is safe in the OTC dosage range used as a skin protectant.

When applied topically as a paste or in an ointment, there have been no reports of toxicity (refs. *2* and *3*).

(2) *Effectiveness.* Due to its wide use and clinical acceptance, the Panel concludes that zinc carbonate is effective for use as an OTC skin protectant. Its use has been similar to zinc oxide as a protectant which is discussed below. (See part III. B.1.n. below—Zinc oxide.)

The Panel has been unable to document the effectiveness of zinc carbonate and attribute its effectiveness to the properties of zinc salts in general—most notably, zinc oxide, chloride, calamine, zinc stearate, zinc gelatin, etc. Zinc salts are recognized in the official compendia and standard reference texts as effective topical protectants, astringents, and demulcents (refs. *4*, *5*, and *6*).

The Panel, on the basis of wide clinical use and acceptance, concludes that zinc carbonate is safe and effective as a skin protectant.

(3) *Dosage.* Adult, children and infants topical dosage is the application of a 0.2 to 2.0 percent preparation to the affected area as needed.

(4) *Labeling.* The Panel recommends the Catagory I labeling for skin protectant active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

REFERENCES

(1) "The Merck Index," 8th Ed., Merck and Co., Inc., Rahway, New Jersey, p. 1128, 1968.

(2) OTC Volume 060042.

(3) OTC Volume 060043.

(4) Goodman, L. S. and A. Gilman, "The Pharmacological Basis of Therapeutics," 5th Ed., The Macmillan Co., New York, p. 948, 1975.

(5) "Remington's Pharmaceutical Sciences," 14th Ed., Mack Publishing Co., Easton, Pa; p. 768, 1970.

(6) "The United States Pharmacopeia," 19th Ed., The United States Pharmacopeial Convention, Rockville, MD; 1975.

n. *Zinc oxide.* The Panel concludes that zinc oxide is safe and effective for OTC use as a skin protectant as specified in the dosage section discussed below.

Zinc oxide is effective as a skin protectant due to its absorbent and lubricant properties. Zinc oxide is also known as flowers of zinc and zinc white. Zinc oxide (ZnO) is a fine, odorless, amorphous white or yellowish white powder. It is practically insoluble in water or alcohol and is relatively inert chemically. Zinc oxide reacts slowly with fatty acids to form insoluble soaps. It is mildly astringent and has skin protectant properties (Ref. *1*).

(1) *Safety.* Clinical and marketing experience has confirmed that zinc oxide is safe in the OTC dosage range used as a skin protectant.

The toxicity of zinc oxide powder to animals was found to be extremely low. In one study, a daily diet consisting of 0.5 percent zinc oxide fed to rats elicited no toxic symptoms attributable to zinc even in the third generation (Ref. *2*). In another study, cats fed a daily diet containing 250 to 300 mg zinc oxide daily for 12 to 16 weeks showed excessive fibrosis of the pancreas and an increased zinc content of the liver and pancreas (Ref. *3*). A further study demonstrated that after oral daily doses of 175 to 1,000 mg zinc oxide in cats and dogs for 3 to 53 weeks, histological examinations were negative except for some fibrous change in the pancreas of cats fed 188 to 267 mg/kg (Ref. *4*).

Generally, zinc compounds are relatively nontoxic with approximately 10 to 15 mg ingested daily in the average diet. Zinc is too poorly absorbed to cause acute systemic intoxication, although the ingestion of large quantities may cause emesis and purgation (Ref. *5*). No estimates of the acute oral toxicity of zinc oxide were located in the literature, and it is assumed that no human fatalities have resulted from ingestion of zinc oxide (Ref. *5*). Studies of workers exposed to zinc oxide powder and dust over many years showed no evidence of acute or chronic illness due to zinc (Ref. *5*). The only siginificant reported toxicity directly attributable to zinc oxide is associated with the freshly formed oxide. Influenza-like symptoms have been reported among workers who inhaled the freshly formed fumes of zinc oxide. However, the disease has an acute onset, a duration of 12 to 24 hours, and rarely causes permanent damage (Refs. *6* and *7*). In addition to its wide use as a topical drug in baby ointments and numerous other dermatologic medications over the years, zinc oxide has been prescribed orally as a antispasmodic in cholera, epilepsy, and whooping cough. It has also been used for its protective action in diarrhea. A dose of 120 to 300 mg has been suggested when zinc oxide is administered orally (Ref. *8*). The probable human lethal dose of zinc oxide has been estimated at 0.5 to 5 g/kg (Ref. *9*). Zinc oxide is not irritating to the skin and is therefore recommended for use in cosmetic face powders. No reports of topical toxicity were found in the literature (Ref. *9*).

(2) *Effectiveness.* Due to its wide use and clinical acceptance, the Panel concludes that zinc oxide is effective for use as an OTC skin protectant.

Zinc oxide is either the sole active ingredient or one of the principal ingredients of a variety of formulations sold OTC and by physicians' prescriptions for the treatment of many cutaneous conditions (Refs. *1* and *8*). Formerly, it was perhaps the most frequently used agent in topical dermatotherapy (Ref. *10*). While having a low range of sensitization, zinc oxide has a cooling, slightly astringent, antiseptic, antibacterial, and protective action (Ref. *10*). It has been found particularly effective in the treatment of diaper rash and prickly heat and is also used in such skin diseases and infections as eczema, impetigo, ringworm, ulcers, pruritus, and psoriasis (Refs. *1*, *8*, and *10*). Zinc oxide is widely recognized as a skin protectant (Ref. *9*).

(3) *Dosage.* Adult, children and infants topical dosage is the application

of a 1 to 25 percent preparation to the affected area as needed.

(4) *Labeling.* The Panel recommends the Category I labeling for skin protectant active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

REFERENCES

(1) "Remington's Pharmaceutical Sciences," 14th Ed., Mack Publishing Co., Easton, Pa., p. 771, 1970.

(2) Heller, V. G. and A. D. Burke, "Toxicity of Zinc," *Journal of Biological Chemistry*, 74:85-93, 1927.

(3) Scott D. A. and A. M. Fisher, "Studies on the Pancreas and Liver of Zinc Fed Cats," *American Journal of Physiology*, 121:253-260, 1938.

(4) Drinker, K. R., P. K. Thompson and M. Marsh, "An Investigation of the Effect of Long-Continued Ingestion of Zinc Oxide by Cats and Dogs, Together with Observations Upon the Excretion and Storage of Zinc," *American Journal of Physiology*, 80:31-64, 1927.

(5) Batchelor, R. P., J. W. Fehnel, R. M. Thompson and K. R. Drinker, "A Clinical and Laboratory Investigation of the Effect of Metallic Zinc, of Zinc Oxide and of Zinc Sulphide Upon the Health of Workmen," *Journal of Industrial Hygiene*, 8:322-363, 1926.

(6) Sollman, T., "A Manual of Pharmacology," 8th Ed., W. B. Saunders, Philadelphia, pp. 1302-1305, 1957.

(7) Sayres, R. R., "Metal Fume Fever and Its Prevention," *Public Health Reports*, 53:1081-1086, 1938.

(8) "The Dispensatory of the United States of America," 27th Ed., Edited by Osol, A. and R. Pratt, J. B. Lippincott Co., Philadelphia, pp. 1255-1256, 1972.

(9) OTC Volume 060137.

(10) Appel, B., L. M. Ohmart and R. F. Sterner, "Zinc Oxide," *Archives of Dermatology*, 73:318-324, 1956.

CATEGORY I LABELING

The Panel recommends the following Category I labeling for skin protectant active ingredients to be generally recognized as safe and effective and not misbranded, as well as the specific labeling discussed in the individual ingredient statements:

a. *Indications.* The indications should be limited to one or more of the following phrases:

(1) "Aids in the temporary relief of minor skin irritations."

(2) "For the temporary protection of minor skin irritations."

(3) "Soothes minor skin irritations."

(4) "Gives comfort to minor skin irritations."

(5) For skin protectant active ingredients for symptoms of dryness: "For symptoms of chapping, peeling or scaling '(optional, any or all of the following)' due to minor burns, sunburn, windburn, scrapes, abrasions, or cracked lips."

(6) For skin protectant active ingredients for symptoms of wetness: "For symptoms of oozing or weeping '(optional, and or all of the following)' due to contact dermatitis, poison oak or poison ivy."

(7) For skin protectant active ingredients for symptoms of friction:

(i) "For symptoms of" (optional, one or more of the following) "intertrigo, chafing, galling, rubbing or friction."

(ii) "For the temporary protection and lubrication of minor skin irritations."

b. *Warnings.* (1) "For external use only."

(2) "Avoid contact with the eyes."

(3) "Discontinue use if symptoms persist for more than 7 days and consult a physician."

c. *Directions for use.* "Apply liberally as often as necessary."

2. *Category II conditions under which skin protecant active ingredients are not generally recognized as safe and effective or are misbranded.* The Panel recommends that the category II conditions be eliminated from OTC skin protectant drug products effective 6 months after the date of publication of the final monograph in the FEDERAL REGISTER.

CATEGORY II ACTIVE INGREDIENTS

The Panel has classified the following skin protectant active ingredients not generally recognized as safe and effective or as misbranded:

Bismuth subnitrate.
Boric acid.
Sulfur.
Tannic acid.

a. *Bismuth subnitrate.* The Panel concludes that bismuth subnitrate is not safe and there are no data to show that it is effective for OTC use as a skin protectant.

Bismuth subnitrate is also known as basic bismuth nitrate, bismuth oxynitrate, bismuthyl nitrate, white bismuth, Spanish white. It is a white, slightly hydroscopic powder which is practically insoluble in organic solvents and water, but slowly hydrolyzes, liberating nitric acid. It is odorless and tasteless, and has been promoted as an antiseptic and protectant.

(1) *Safety.* Bismuth subnitrate powder has been used in human therapy as an astringent and skin protectant. Because of toxicity, its use has fallen into disrepute (Ref. *1*). Fatalities in infants have have reported due to oral ingestion of bismuth subnitrate. In the intestinal tract, bacteria convert the nitrate to nitrite which is then absorbed systemically, leading to the formation of methemoglobinemia. Although adults are also affected, infants are more susceptible (Ref. *2*). Toxicity due to the bismuth ion has been demonstrated in animals. Symptoms include nephritis, hepatotoxicity, and circulatory collapse. symptoms of human toxicity to bismuth include anorexia, weakness, rheumatic pain, and fever (Ref. *3*). Pastes containing bismuth subnitrate were once injected into fistulae and abscess cavities which has led to bismuth poisoning. Symptoms ranged from mild darkening of gums, tongue, and pharynx to ulcerative stomatitis, nephritis, and vomiting, occasionally leading to death (Ref. *4*). In addition, when used in surgical procedures, the drug has caused toxicity (Ref. *5*).

(2) *Effective.* There are no data to support bismuth subnitrate as effective for skin application. Only its astringent properties would be useful in a topical product (Ref. *6*) and the data available do not consistently support this claim. The Panel concludes that bismuth subnitrate as a dusting powder and in an anhydrous ointment base for application to intact skin is not effective.

(3) *Evaluation.* Because bismuth subnitrate is unsafe and has no proved effectiveness as a skin protectant, the Panel concludes that the benefit to risk ratio is unfavorable to allow it to continue as an OTC skin protectant.

REFERENCES

(1) Swinyard, E. A., and S. C. Harvey, "Topical Drugs," in "Remington's Pharmaceutical Sciences," 14th ed., Mack Publishing Co., Easton, Pa., p. 771, 1970.

(2) "Remington's Pharmaceutical Sciences," 15th ed., Mack Publishing Co., Easton, Pa., p. 733, 1975.

(3) "Drill's Pharmacology in Medicine," 2d ed., edited by DiPalma, J. R., McGraw-Hill, New York, p. 781, 1958.

(4) "The Dispensatory of the United States of America," 27th ed., edited by Osol, A., and R. Pratt, J. B. Lippincott Co., Philadephia, p. 197, 1972.

(5) "The Dispensatory of the United States of America," 27th ed., edited by Osol, A., and R. Pratt, J. B. Lippincott Co., Philadephia, pp. 43-44, 1972.

(6) "The Extra Pharmacopeia," 26th ed., edited by Todd, R. G., the Pharmaceutical Press, London, p. 321, 1972.

b. *Boric acid.* The Panel concludes that boric acid is not safe and there are no data to show that it is effective for OTC use as a skin protectant.

Boric acid also known as boracic acid, or orthoboric acid, is a colorless, odorless material which is in the form of scales, crystals, or white powder. When dry, it is 99.5 percent boric acid (Refs. *1* and *2*). One g dissolves in 18 ml water or alcohol and in 4 ml glycerin.

(1) *Safety.* In experimental animals, a 10-percent boric acid ointment was absorbed through abraded skin under continual treatment, resulting in deposition of considerable boron in the brain, liver, body fat, and kidneys (Ref. *3*). Studies of the same material applied to third-degree burns also showed considerable uptake in all the tissues.

Boric acid has been shown to be absorbed in toxic quantities from ointment applied to abraded and burned

skin. A fatal dose of boric acid of less than 20 g in adults and less than 5 g in infants has been recorded. "As little as one-third the median lethal dose or treatment of a burn involving only 4 percent of the surface area of the body with 10 percent ointment U.S.P. will produce pathologic changes in central nervous system" (Ref. *3*).

Cope found that a 10-percent boric acid ointment used to treat burn patients of the Coconut Grove fire resulted in excretion of 2 g boric acid daily (Ref. *4*). A saturated solution of boric acid used as an irrigant to a granulating burn resulted in excretion of as much as 2.5 g boric acid daily (Ref. *4*). Such excretion suggests blood levels via absorption that are near the toxic level.

The absorption studies of borated talc powder applied to the diaper area and other areas of infants and children for a year failed to show significant concentrations of boron in the urine. It was later found that boric acid absorption was decreased in the presence of talc since calcium metaborate, an insoluble salt, was formed. Fatal cases of poisonings in infants showed a range of 52 to 296 mg percent of boric acid in the blood. The fatal range is 100 to 200 mg percent of boric acid blood levels (Ref. *5*). Boric acid has also been shown to be absorbed from weak solutions through normal skin (Ref. *5*).

Lord Lister used boric acid as an antiseptic solution in 1895. The material enjoyed great popularity in the form of powder, lotions, ointments, and pastes. Solutions for irrigation of bladder, rectum, and serous cavities had also been used. Within a few years after the use of boric acid became established in medicine, reports of poisonings began to appear in the literature. Many of the intoxications were from the application of boric acid containing medicaments to burns or wounds in solution, powder, ointment, or compresses. Most resulted from deliberate medication rather than from accidental ingestion (Ref. *5*).

Goldbloom et al. (Ref. *5*) described four deaths in infants and reviewed the world literature showing 109 cases of boric acid poisoning, 27 of which included quantitative analyses. There were 34.9 percent infants in the overall group, with a mortality of 70.2 percent.

(2) *Effectiveness.* The Panel concludes that boric acid has no specific therapeutic value for skin application. Boric acid has very weak local anti-infective activity. Its only officially recognized use, as noted in the "National Formulary," is as a buffer. It is for this reason that use of the substance occurs in ophthalmic preparations. The substance can also be used as a dusting powder, but only if combined with specific inert materials, such as talc. In this combination insoluble calcium metaborate is formed, and percutaneous absorption is reduced (Ref. *6*). There are no data to support the effectiveness of boric acid as a protectant.

The nontherapeutic value of boric acid, in addition to the fact that boric acid is absorbed through the skin, a situation particularly hazardous to children, is validated by the fact that many hospital pharmacies have already removed the material from their shelves. Its use is obsolete.

(3) *Evaluation.* Boric acid is not safe because of the risk of poisoning. In addition, there are no data to demonstrate its effectiveness as a skin protectant. The Panel concludes that the benefit to risk ratio is unfavorable to allow boric acid to continue as an OTC skin protectant.

REFERENCES

(1) "The Dispensatory of the United States of America," 27th ed., edited by Osol, A., and R. Pratt, J. B. Lippincott Co., Philadelphia, p. 199, 1972.

(2) "Remington's Pharmaceutical Sciences," 13th ed., Mack Publishing Co., Easton, Pa., pp. 1230-1231, 1965.

(3) Fisher, R. S. et al., "Boron Absorption from Borated Talc," *Journal of the American Medical Association*, 157:503-505, 1955.

(4) Pfeiffer, C. C., L. F. Hallman, and I. Gersh, "Boric Acid Ointment: A Study of Possible Intoxication in the Treatment of Burns," *Journal of the American Medical Association*, 128:266-274, 1945.

(5) Goldbloom, R. B., and A. Goldbloom, "Boric Acid Poisoning: A Report of Four Cases and a Review of 109 Cases form the World Literature," *Journal of Pediatrics*, 43:631-643, 1953.

(6) "Remington's Pharmaceutical Sciences," 15th ed., Mack Publishing Co., Easton, Pa., p. 1250, 1975.

c. *Sulfur.* The panel concludes that sulfur is not safe and not effective for OTC use as a skin protectant.

Sulfur is a nonmetallic element existing in several allotropic forms (Ref. 1). The three types of sulfur that are recognized pharmaceutically are precipitated sulfur, sublimed sulfur, and washed sulfur. A fourth type, colloidal sulfur, has been claimed to be more active than other types because of its very small particle size (Ref. 2). Sulfur is both keratoplastic (stimulates keratin formation) and keratolytic (dissolves keratin) when applied topically (Ref. 3). In low concentration, sulfur is reduced to a sulfide. The SH groups of cell proteins are oxidized to S-S groups, a transformation important in the formation of keratin and accounting for its keratoplastic action. The keratolyic effect of high concentrations results from reduction of the S-S bridges of the keratin molecule, leading to the disintegration of epidermis.

(1) *Safety.* Sulfur when applied to the skin in the usual topical preparations has been considered nontoxic. More recent information seems to point toward a toxic hazard involving the topical use of sulfur. Prolonged application over a period of weeks can produce a primary irritant dermatitis because of sulfur's keratolytic and keratoplastic effects (Ref. 3). Irritation to eyes and respiratory tract have also been shown to occur when sulfur preparations are used topically (Ref. 4).

The keratoplastic characteristic suggests a healing property of this substance. The true mechanism is one of injury. First the sulfur will break down the epidermis, then it will help stimulate repair. At higher concentration, above 2 percent, the keratolytic process surpasses the keratoplastic action and only epithelial injury is expressed. It is important to realize that these two properties do not operate independently, even at low concentrations. Therefore, use on previously damaged skin areas, as burns, lesions, and open surface wounds, may interfere with the healing process (Ref. 5).

Once sulfur is absorbed into the systemic circulation, a significant portion will be converted to hydrogen sulfide. The ingestion of 10 to 23 g or high percutaneous absorption may lead to hydrogen sulfide poisoning. These symptoms include hydrogen sulfide odor of the breath, vomiting, difficulty in swallowing, fever, headache, excitement or depression, and possible prostration. The higher level of the dose range can cause abdominal pain, diarrhea, and possible kidney injury (Ref. 6).

The information reviewed supports the conclusion that sulfur is unsafe for use as a skin protectant.

(2) *Effectiveness.* The claim that sulfur is effective in the local treatment of burns, sunburns, wounds, abrasions, and other surface injuries cannot be substantiated. The Panel concludes that there is no therapeutic rationale for the use of sulfur in the burn wound. Its keratolytic and keratoplastic activity are contraindications in the treatment of burns or in any other lesion which heals by epithelialization (Ref. 7). As noted under the safety section, these two properties cannot be separated even at low concentrations (Ref. 5). Such inappropriate treatment could result in destruction of freshly healing surface epithelium.

Sulfur has been used therapeutically for a variety of other indications, such as a fungicide and bactericide and for seborrheic dermatitis.

(3) *Evaluation.* The panel has found no evidence that sulfur is effective in the management of burns, abrasions, or other surface injuries. The keratolytic activity of sulfur contraindicates the drug for such healing wounds, since the drug may further destroy

young epitheliae cells. The benefit to risk ratio of sulfur as a skin protectant for minor skin injury is unacceptable.

REFERENCES

(1) "The Merck Index," 8th ed., Merck and Co., Inc., Rahway, N.J. p. 1005, 1968.

(2) "The Dispensatory of the United States of America," 25th ed., edited by Osol, A. and G. Farrar, J. B. Lippincott Co., Philadelphia, p. 1368, 1955.

(3) Beckman, H., "Pharmacology—The Nature, Action and Use of Drugs," 2d ed., W. B. Saunders, Philadelphia, p. 693, 1961.

(4) Gleason, M. N. et al., "Clinical Toxicology of Commercial Products," 2d ed., Williams and Wilkins, Baltimore, Md., p. 113, 1963.

(5) Lorenc, E. and R. K. Winkelman, "Evaluation of Dermatologic Therapy," *Archives of Dermatology*, 83:103, 1961.

(6) Von Oeltingen, W. F., "Poisoning: A Guide to Clinical Diagnosis and Treatment," W. B. Saunders, Philadelphia, p. 314, 1963.

(7) Goodman, L. S. and A. Gilman, "The Pharmacologic Basis of Therapeutics," 4th ed., The Macmillan Co., New York, p. 1058, 1970.

d. *Tannic acid.* The panel concludes that tannic acid is not safe and not effective for OTC use as a skin protectant.

Tannic acid, also known as tannin and gallotannic acid, is obtained from nutgalls gathered from the young twigs of *Quercus infectoria* (Oaks). It is an amorphous, fluffy or dense, yellowish white to light brown powder. It is acidic in water, essentially odorless, with a strong astringent taste. The drug precipitates protein and also forms insoluble complexes with many heavy metal ions, alkaloids and glycosides. It has little action on intact skin. However, when applied to abraded tissue, it precipitates a protein-tannate film that serves as a mechanical cover (Refs. *1*, *2*, and *3*).

(1) *Safety.* In 1942, Wells et al. (Ref. *4*) reported that tannic acid poisoning from the treatment of severe burns following the use of sprays, jellies, or solutions resulted in toxic hepatitis within 36 hours. Death from central necrosis of the liver occurred from 80 to 130 hours later. The following year, Barnes (Ref. *5*) showed that tannic acid or sodium tannate when injected was fatal to mice and guinea pigs in a dose of 40 mg/kg. Guinea pigs with 25 percent body burns treated with the 20 percent solution had a higher mortality rate as opposed to those untreated. Depression of liver function has been shown when tannic acid was injected in relatively low doses. Several authors concluded that repeated topical applications of burn preparations containing 10 percent tannic acid to large body areas cause hepatic damage (Refs. *4*, *5*, and *6*). Tannic acid is deposited in the muscle, lungs, and kidney, in addition to the liver.

(2) *Effectiveness.* The desired effect of tannic acid originally was to produce a protein precipiate which would act as a protective coating. The local effect of the coalgulum was supposed to be benefical (Ref. *2*). The benefit of the protein coalgulum in the use of tannic acid may be its exclusion of air and relief of pain. However, the great disadvantage of this type of treatment is the formation of an outer crust under which bacterial growth may flourish.

Tannic acid has been used in the form of a powder, glycerite, ointment, gargle, spray, lozenge, and suppository. In radiology, it is used as a cleansing enema (Ref. *3*). In the past, tannic acid has been used as an astringent and protective coating over mucous membranes. From 1925 to 1942, tannic acid was used as a 2.5 to 5.0 percent aqueous solution for treating burns (Ref. *7*). However, the panel recognizes that "* * * there are few legitimate medical uses for this drug" (Ref. *1*).

(3) *Evaluation.* The panel concludes that the documented hepatotoxicity and the obsolete indications for the use of tannic acid make this drug not safe or effective for burn therapy, and not suitable as an OTC skin protectant.

REFERENCES

(1) Goodman, L. S. and A. Gilman, "The Pharmacological Basis of Therapeutics," 4th ed., The Macmillan Co., New York, p. 992, 1970.

(2) "The Dispensatory of the United States of America," 27th ed., Edited by Osol, A. and R. Pratt, J. B. Lippincott Co., Philadelphia, p. 1140, 1972.

(3) Krezanoski, J. Z., "Tannic Acid: Chemistry, Analysis and Toxicology," *Radiology*, 87:655-657, 1966.

(4) Wells, D. B., H. D. Humphrey and J. J. Coll, "Relation of Tannic Acid to Liver Necrosis Occuring in Burns," *New England Journal of Medicine*, 226:629-636, 1942.

(5) Barnes, J. M. and R. J. Rossiter, "Toxicity of Tannic Acid," *Lancet*, 2:218-222, 1943.

(6) McClure, R. D., C. R. Lan and H. Romence, "Tannic Acid and Treatment of Burns: An Obsequy," *Annals of Surgery*, 120:387-398, 1944.

(7) Davidson, E. G., "Tannic Acid in the Treatment of Burns," *Surgery, Gynecology and Obstetrics*, 41:202-221, 1925.

CATEGORY II LABELING.

The Panel has examined the submitted labeling claims for OTC products containing skin protectant ingredients and has placed certain claims into Category II. The following Category II labeling statements are unsupported by scientific data or by sound theoretical reasoning or are misleading: "cures * * *" any irritation, and "prevents formation of blisters".

3. *Category III conditions for which the available data are insufficient to permit final classification at this time.* The Panel recommends that a period of 2 years be permitted for the completion of studies to support the movement of Category III conditions to Category I.

CATEGORY III ACTIVE INGREDIENTS.

Allantoin, Live yeast cell derivative, and Zinc acetate.

a. *Allantoin.* The Panel concludes that allantoin is safe, but there are insufficient data available to permit final classification of its effectiveness as a skin protectant for OTC use as a wound-healing aid. Allantoin has been described and evaluated to be safe and effective as a skin protectant for OTC use other than as a wound-healing aid. (See part III. paragraph B.1.a. above—Allantoin.)

(1) *Safety.* The safety of allantoin has been discussed elsewhere in this document. (See part III. paragraph B.1.a.(1) above—Safety.)

(2) *Effectiveness.* There is insufficient evidence to establish the effectiveness of allantoin as a wound-healing aid. However, it has been suggested that allantoin has properties that aid in wound healing. The Panel concludes that such studies are anecdotal, poorly designed, and inconclusive.

Allantoin has been used topically in granulating wounds and resistant ulcers to stimulate the growth of healthy tissue (Ref. *1*). The rationale for this use began in World War I when it was noted that wounds infested with maggots healed with unexpected promptness (Refs. *1* and *2*). In 1935, evidence was presented that showed that the beneficial effects of maggots were due to the allantoin in their excretions (Ref. *1*). Thus, allantoin was widely employed by surgeons to accelerate cell proliferation of sluggish wounds, especially osteomyelitis.

Terms such as cell proliferant, epithelization stimulant, and chemical debrider have been used to describe the wound-healing claims made for allantoin in such texts as the "British Pharmaceutical Codex," "United States Dispensatory," "Remington's Pharmacuetical Sciences," "Martindale's Extra Pharmacopeia," and "Merck Index" (Refs. *3* through *7*). In a survey article, Mecca published a summary of the available literature to 1960 on the wound-healing capabilities of allantoin (Ref. *8*). The Panel has reviewed this article and others. Nearly all allude to this property but none offer any evidence or are able to describe this property with any degree of acceptable detail (Refs. *9* through *13*).

It has been suggested that allantoin, by virtue of its debriding properties, will cleanse away necrotic tissue, hastening the granulation phase of wound healing (Ref. *12*). It has yet to be demonstrated that allantoin stimulates epithelization or creates an environment favorable to epithelization.

As previously noted, evidence must be produced by scientific study in man demonstrating that allantoin stimulates the wound-healing process. Until such time, allantoin will be classified as Category III for such claims.

(3) *Proposed dosage.* Adult, children and infants topical dosage is the application of a 0.5 to 2.0 percent preparation to the affected area as needed.

(4) *Labeling.* The Panel recommends the Categroy III labeling for skin protectant active ingredients as wound-healing aids. (See part III. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstate effectiveness as a wound-healing aid will be required in accordance with the guidelines set forth below for testing skin protectant ingredients as wound-healing aids. (See part III. paragraph C. below—Data Required for Evaluation.)

REFERENCES

(1) "The Dispensatory of the United States of America," 27th ed., Edited by Osol, A. and R. Pratt, J. B. Lippincott Co., Philadelphia, p. 197, 1972.

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(9) Anonymous, "Today's Drugs—Allantoin," *British Medical Journal*, 4:535, 1967.

(10) Flesch, P., "New Approaches to the Study of Human Horny Layers," *Proceedings of the Scientific Section—The Toilet Goods Association*, 29:27-31, 1958.

(11) Mecca, S. B., "The Function and Applicability of the Allantoins," *Proceedings of the Scientific Section—The Toilet Goods Association*, 39:7-15, 1963.

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(13) Mecca, S. B., "Allantoin and the Newer Allantoinates," *Proceedings of the Scientific Section—The Toilet Goods Association*, 31:31-36, 1959.

b. *Live yeast cell derivative.* The Panel concludes that live yeast cell derivative (LYCD) is safe but there are insufficient data available to permit final classification of its effectiveness as a skin protectant for OTC use as a wound-healing aid.

Live yeast cell derivative is also known as skin respiratory factor (SRF). It is an alcoholic extract of live baker's yeast, *Saccharomyces cerevisiae*, obtained by refluxing cakes of live yeast with ethanol. The filtered, straw-yellow solution is concentrated by evaporation, removing the alcohol and most of the water. A final filtration step yields a clear brown viscous aqueous solution with a soluble nonvolatile content of 45 to 55 percent. A unit of activity is calculated as the amount of LYCD which is required to increase the oxygen uptake of 1 mg of dry weight rat abdominal skin by 1 percent at the end of a 1-hour testing period in a Warburg apparatus. This is reported for each lot of LYCD as million units per pound (lb) or units per g. The Warburg assay potency for each lot of LYCD before formulation must fall between 8,000 and 12,000 units per g (Ref. *1*).

The Panel received three submissions from the same manufacturer for marketed products with the same ingredients with healing claim(s). The product contains LYCD and 3 percent shark liver oil. The 3 percent shark liver oil is claimed to contain 855 U.S.P. units of vitamin A per g of the product and 2.25 U.S.P. units of vitamin D per g of the product. The manufacturer declared LYCD to be the major active ingredient in the products and the shark liver oil as an emollient ointment base in which the products are formulated.

The LYCD supplies 2,000 units SRF per oz of ointment and is claimed as "an effective agent in accelerating the healing of wounds." The effective range of LYCD is stated to be 2,000 to 3,000 units. The LYCD is made from baker's yeast and is claimed to increase the oxygen utilization of dermal tissue, to increase collagen formation, and to increase the rate of healing of controlled wounds.

The Panel has evaluated the claims made for LYCD as a wound-healing aid below.

(1) *Safety.* The Panel concludes that LYCD is safe. LYCD is made from baker's yeast which is generally recognized as safe. Baker's yeast and brewer's yeast are very similar, and both are known under the same technical name, *Saccharomyces cerevisiae* (Ref. *1*). The official "National Formulary XIII" dosage of brewer's yeast as a vitamin supplement is 10 g orally four times daily (Ref. *2*). This dose has been used for many years. No toxic reactions are recorded for this foodstuff.

(2) *Effectiveness.* There are no adequately well-controlled clinical studies to establish the effectiveness of LYCD as a wound-healing aid. Animal and in vitro studies were submitted to support a positive influence of LYCD on wound healing. However, an in vivo clinical study in human subjects, submitted by the manufacturer, was inadequately controlled and inconclusive (Ref. *3*).

The laboratory data obtained from animal and in vitro studies show that LYCD has the characteristics expected of a wound-healing aid, i.e., increased oxygen uptake, hydroxyproline formation which is associated with collagen biosynthesis, tissue growth, and epithelization (Ref. *4*). However, corroboration of these effects by LYCD on wound healing in human subjects is not available.

(i) *Laboratory data from animal and in vitro studies.* The most sophisticated studies to show that LYCD has characteristics expected of a wound-healing aid have been performed by Goodson et al. (Ref. *4*). The in vitro oxygen utilization by cultured human fibroblasts was studied by a method adapted from polymorphonuclear leukocyte methods (Ref. *5*). Oxygen consumption in cultured fibroblasts was increased by 137 percent with the addition of LYCD (p is less than 0.01). The addition of potassium cyanide to LYCD decreased oxygen uptake by one-half, suggesting a relation to the cytochrome system. The oxygen uptake by polymorphonuclear leukocytes was similarly increasee by LYCD in vitro.

The effect of LYCD on in vitro incorporation of proline into hydroxyproline was studied by the method of Uitto (Ref. *6*). Since all the radioactivity in the study was added as proline, the radioactivity of hydroxyproline is a direct measure of the oxidation of proline to hydroxyproline and thus the incorporation into collagen. The results showed an average increase of labeled ^{14}C proline uptake of 70 percent into LYCD-incubated human skin samples obtained at excisional surgery on three patients.

In another study, the in vivo effect of LYCD on the formation of new tissues was studied by implanting four sterile stainless steel wound cylinders under the skin of the back of each of four Sprague-Dawley white rats (Ref. *4*). The skin incisions were closed. On the 10th day after implantation, injections of 100 microliters (μl) of 1 percent LYCD were made into two of the four rats at the site of new tissue growth for 14 days. In another group of similarily implanted rats, 50 μl of 1 percent LYCD was injected. Saline was injected into the control rats. The hydroxyproline content of the tissue adherent to the interior of the cylinders was determined at the end of the 14 days. There was a significant increase in the mean net weight of the new tissue from the rats injected with LYCD (p is less than 0.05) and a 28.9-percent increase in hydroxyproline content (p is less than 0.07).

In a study in rabbits, a marketed formulation containing LYCD in a shark liver oil ointment base was compared with petrolatum (Ref. *4*). Their effect on the epithelization of ear punch defects made on the inside of the ears of five New Zealand white rabbits was studied. The two test substances were applied to equal numbers of both left and right ears. Photographs of the wounds were taken on days 0, 5, 10, 15, and 30. Wound surfaces were measured. There was no epithelization in test or control ears on day 5. There was a 17.67-precent increase in the epithelization of the test ears on day 10 (p is less than 0.05), a 23.33-percent increase on day 15 (p is less than 0.005), and a 25.8-percent increase on day 30 (p is less than 0.005).

The laboratory data discussed above was interpreted as indicating that LYCD contains a substance or substances capable of stimulating wound oxygen consumption, epithelization, and collagen synthesis. However, in the in vivo rabbit ear-wound study, the test material, a marketed product, also contains shark liver oil. The investigators (Ref. *4*) point out that the product contains vitamin A in the form of shark liver oil and that the studies did not eliminate shark liver oil as a factor in the increased epithelization of the rabbit ear wounds. They further state: "We are not aware of published data showing that vitamin A can stimulate epithelization to the degree seen in these studies." They cite a study done by the manufacturer in which the product containing LYCD and shark liver oil was compared with the product containing shark liver oil without LYCD (Ref. *7*). The investigators evaluated the study as indicating that LYCD "is responsible for the increased oxygen utilization in skin treated with the whole formula".

The Panel has duly noted that the manufacturer's data show that LYCD alone is responsible for the increased oxygen uptake by skin treated with the whole product (LYCD and shark liver oil). It also notes that the results were, by necessity, obtained from in vitro testing, i.e., Warburg assays, and that while the association between increased oxygen utilization and epithelization is implied, clinical confirmation is needed. The Panel, therefore, concludes that corroboration of the effect of LYCD on wound healing without the presence of shark liver oil is needed in human subjects for the evaluation of LYCD as a wound-healing aid.

(ii) *Human study.* Only one human study is available for evaluation (Ref. *3*). The effect of LYCD on donor wound sites in patients with burn wounds was studied. Patients undergoing skin grafting were selected. A small number of patients (18) were entered in the study. An ointment containing shark liver oil and LYCD was applied to one-half of the donor site and the ointment without LYCD and shark liver oil was applied to the other side of the wound. The observations and recordings were made by nurses. Color, discharge, redness, epithelization, and odor were noted on days 1, 3, 6, 9, 12, and 18. In addition, photographs were obtained of the wound on those days. The wound healing time and the observations were recorded by the nurses. The conclusions drawn from the study were that both the LYCD ointment and the base ointment control tended to reduce wound healing time as compared to control donor sites, but only the ointment containing LYCD was statistically significant.

The Panel concludes that the study is insufficient to demonstrate a clinically significant effect. The study can only be considered as suggesting a potential wound-healing effect. A total of 18 patients were studied. Nine patients received the LYCD-containing ointment and another 9 patients received the base ointment. The number of control patients receiving no treatment was not given. The patients in both groups were listed in the nurses subjective index as doing "better" than the patients receiving no treatment. The number of patients are too small and the data too subjective to arrive at a conclusive interpretation. The investigators make no final conclusion on the basis of this study and only state that "based on these findings we now plan to extend our series to include an additional 15 to 20 patients."

Until an adequate well-controlled human study is done, an evaluation of LYCD as an effective wound-healing aid cannot be made. Since the wound-healing claim is made for LYCD only, the influence of shark liver oil in any preparations should be controlled.

(3) *Proposed dosage.* Adult and children 2 years of age and older topical dosage is the application of a preparation containing LYCD providing 67 units (LYCD) per g to the affected area as needed. There is no recommended dosage for children under 2 years of age except under the advice and supervision of a physician.

(4) *Labeling.* The Panel recommends the Category III labeling for skin protectant active ingredients as wound-healing aids. (See part III, paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness as a wound-healing aid will be required in accordance with the guidelines set forth below for testing protectant ingredients as wound-healing aids. (See part III, paragraph C. below—Data Required for Evaluation.)

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(6) Uitto, J., "A Method for Studying Collagen Biosynthesis in Human Skin Biopsies in vitro," Biochemica et Biophysica Acta, 201: 438-445, 1970.

(7) Summary Minutes of the OTC Panel on Hemorrhoidal Drugs, May 1, 1975. Draft of unpublished paper in OTC Volume 060150.

c. *Zinc acetate.* The Panel concludes that zinc acetate is safe, but there are insufficient data available to permit final classification of its effectiveness as a skin protectant for OTC use as a wound-healing aid. Zinc acetate has been described and evaluated to be safe and effective as a skin protectant for OTC use other than as a wound-healing aid. (See part III, paragraph B.1.1. above—Zinc acetate.)

(1) *Safety.* The safety of zinc acetate has been discussed elsewhere in this document. (See part III, paragraph B.1.1.(1) above—Safety.)

(2) *Effectiveness.* Zinc acetate was discussed for its effectiveness as a Category I skin protectant for topical application to minor skin irritations above. (See part III, paragraph B.1.1.(2) above—Effectiveness.) Considerable controversy has occurred in the literature regarding its effectiveness in promoting, enhancing, or speeding wound healing. It has been shown that zinc is excreted in the urine in high levels after surgical trauma. In addition, there are increased concentrations of zinc at the wound margin throughout most of the healing (Ref. *1*). Zinc salts have been given orally to surgical patients in an effort to enhance healing which has been shown by some investigators to be accelerated (Ref. *1*). The controlled studies showing increased wound healing have been with the oral route of administration. The data are inconclusive regarding topical absorption of zinc compounds for the benefits of wound healing. In addition, there are no other data that topical application of zinc salts to wounds will increase the healing of these wounds. The safety of topical applications of zinc salts to skin or mucous membranes is not questioned. The Panel concludes, however, that the information is insufficient to permit a definite statement that topical applications of zinc salts

do increase wound healing where applied.

(3) *Proposed dosage.* Adults and children 2 years of age and older topical dosage is the application of a 0.1- to 2.0-percent preparation to the affected area as needed. There is no recommended dosage for children under 2 years of age except under the advice and supervision of a physician.

(4) *Labeling.* The Panel recommends the Category III labeling for skin protectant active ingredients as wound-healing aids. (See part III, paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness as a wound-healing aid will be required in accordance with the guidelines set forth below for testing protectant ingredients as wound-healing aids. (See part III, paragraph C. below—Data Required for Evaluation.)

REFERENCES

(1) "The Extra Pharmacopeia," 25th ed., edited by Todd, R. G., The Pharmaceutical Press, London, p. 1489, 1967.

CATEGORY III LABELING

The Panel examined the submitted labeling for currently marketed OTC skin protectant products. This labeling includes claims such as "healing ointment," "aids healing of cold sores and fever blisters," etc. The marketed products were found to contain the skin protectant active ingredients discussed above. As noted earlier, the Panel has found no controlled studies which have conclusively documented that such ingredients aid in wound healing. Therefore, based upon this determination and the Panel's recommendations regarding acceptable labeling indications for skin protectants, the Panel classifies the following as a Category III labeling indication: "Aids healing of minor skin abrasions, scrapes, cuts and burns." If adequate data are not obtained within 2 years to support this claim, it should be reclassified as Category II.

C. DATA REQUIRED FOR EVALUATION

The Panel considers the protocols recommended in this document for the studies required to bring a Category III ingredient into Category I to be in agreement with the present state of the art and does not intend to preclude the use of any advances or improved methodology in the future.

1. *General comments.* It is difficult to demonstrate that the ingredients discussed above aid in the healing of minor skin abrasions, scrapes, cuts, and burns, or in any way have a salutary effect upon wound healing. Therefore, the ingredients reviewed by the Panel have been classified Category III because such data are not available. Because of the difficulties, protocols and study designs should be developed in consultation with FDA.

2. *Treatment of subjects for study.* The subjects selected for study should have wounds that are appropriate for developing and testing a Category III ingredient for efficacy in the healing of minor skin abrasions, scrapes, cuts, and burns, as would be indicated for OTC use.

The Panel has made suggestions below that are suitable as starting points in the development of a study design for testing the efficacy of ingredients as wound-healing aids.

3. *Methods of study.* The Panel concludes that in vitro experiments and animal data indicate that these ingredients may be effective as wound-healing aids. However, these topical agents must be further tested in human clinical trials. Admittedly, clinical studies of wound healing are difficult to control, gross measurements are imprecise, and wounds are not standard (i.e., abscess cavities, graft donor sites, punch biopsy defects). However, prior to attaining Category I for the claim for wound-healing aid, well-controlled human studies will be required to show no adverse effects on wound healing and no untoward local or systemic reactions to the drugs from topical application. Studies of this type should give positive data regarding wound healing.

The Panel suggests the following points for incorporation into the development of a study method:

a. At least 20 test subjects and 20 control subjects should be entered in a study.

b. The test ingredient should be applied to the wound daily for at least 14 days.

c. Urinary hydroxyproline excretion should be determined pretreatment and on selected subsequent days of treatment.

d. The wound area should be photographed pretreatment and on days 5, 7, and 14 of treatment.

e. Planimetry measurements of the wound area should be made pretreatment and on days 5, 7, and 14 of treatment.

f. The clinical charateristics of the wound such as color, discharge, redness, epithelization, etc., should be noted at appropriate intervals.

4. *Interpretation of data.* The Panel requires investigators to develop methods for human experimentation and to design studies which are well-controlled and safe. Data produced from these studies should be biologically and statistically significant and reproducible. Since the Panel is unable to recommend the precise protocols for such investigations at this time, 2 years will be allowed to develop the methodology for wound-healing studies in human subjects.

Evidence of drug effectiveness is required from a minimum of 3 positive studies based on the results of 3 different investigators or laboratories.

All data submitted to FDA must present both favorable and unfavorable results.

REFERENCES

(1) Uitto, J., "A Method for Studying Collagen Biosynthesis in Human Skin Biopsies in vitro," *Biochemica et Biophysica Acta*, 201:438–445, 1970.

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(3) Constable, J. D., "Comparative Effects of Betadine Ointment (Povidone-Iodide) and Other Topical Agents on Epidermal Regeneration in Rabbits," in "Recent Antisepsis Techniques in the Management of the Burn Wound," Purdue-Frederick Co., Norwalk, Conn., 1974.

The Food and Drug Administration has determined that this document does not contain an agency action covered by 21 CFR 25.1(b) and consideration by the agency of the need for preparing an environmental impact statement is not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371)) and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes that subchapter D of chapter I of title 21 of the Code of Federal Regulations be amended by adding new part 347, to read as follows:

PART 347—SKIN PROTECTANT PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.
347.1 Scope.
347.3 Definition.

Subpart B—Active Ingredients

347.10 Skin protectant active ingredients.
347.20 Permitted combinations of active ingredients.

Subpart C—[Reserved]

Subpart D—Labeling

347.50 Labeling of skin protectant products.

AUTHORITY: Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371) (5 U.S.C. 553, 554, 702, 703, 704).

Subpart A—General Provisions

§ 347.1 Scope.

An over-the-counter skin protectant product in a form suitable for topical administration is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this part 347 and each of the general conditions established in § 330.1 of this chapter.

§ 347.3 Definition.

As used in this part, "skin protectant" is an agent which isolates the exposed skin or mucous membrane surface from harmful or annoying stimuli.

Subpart B—Active Ingredients

§ 347.10 Skin protectant active ingredients.

The active ingredients of the product consist of the following within the dosage limits established for each ingredient:

Allantoin, 0.5 to 2.0 percent.
Aluminum hydroxide gel, 0.15 to 5.0 percent.
Calamine, 1 to 25 percent.
Cocoa butter, 80 to 100 percent.
Corn starch, 10 to 85 percent.
Dimethicone, 1 to 30 percent.
Glycerin, 20 to 45 percent.
Kaolin, 4.0 to 20 percent.
Petrolatum preparations (petrolatum, white petrolatum), 30 to 100 percent.
Shark liver oil, 3 percent.
Sodium bicarbonate, 1 to 100 percent.
Zinc acetate, 0.1 to 2.0 percent.
Zinc carbonate, 0.2 to 2.0 percent.
Zinc oxide, 1 to 25 percent.

§ 347.20 Permitted combinations of active ingredients.

The active ingredients of the combination product consist of any two or more of the ingredients identified in § 347.10 at the dosage limit established for each ingredient.

Subpart C—[Reserved]

Subpart D—Labeling

§ 347.50 Labeling of skin protectant products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "skin protectant."

(b) *Indications.* The labeling contains a statement under the heading "Indication(s)" limited to one or more of the following phrases:

(1) "Aids in the temporary relief of minor skin irritations."

(2) "For the temporary protection of minor skin irritations."

(3) "Soothes minor skin irritations."

(4) "Gives comfort to minor skin irritations."

(5) For skin protectant active ingredients for symptoms of dryness: "For symptoms of chapping, peeling or scaling" (optional, any or all of the following) "due to minor burns, sunburn, windburn, scrapes, abrasions, or cracked lips."

(6) For skin protectant active ingredients for symptoms of wetness: "For symptoms of oozing or weeping" (optional, any or all of the following) "due to contact dermatitis, poison oak, or poison ivy."

(7) For skin protectant active ingredients for symptoms of friction:

(i) "For symptoms of" (optional, any or all of the following) "intertrigo, chafing, galling, rubbing, or friction."

(ii) "For the temporary protection and lubrication of minor skin irritations."

(c) The labeling of the product contains the following warnings under the heading "Warnings":

(1) "For external use only."

(2) "Avoid contact with the eyes."

(3) "Discontinue use if symptoms persist for more than 7 days and consult a physician."

(4) For products containing aluminum hydroxide gel: "Do not use on children under 6 months of age without consulting a physician."

(5) For products containing dimethicone: "Not to be applied over puncture wounds, infections, or lacerations."

(6) For products containing glycerin: "Do not use on children under 6 months of age without consulting a physician."

(7) For products containing petrolatum preparations (petrolatum, white petrolatum): "Not to be applied over puncture wounds, infections, or lacerations."

(8) For products containing shark liver oil: "Do not use on children under 2 years of age without consulting a physician."

(9) For products containing sodium bicarbonate: "Do not apply to extensive acid burns. Flood acid burns with cold tap water and consult a physician."

(10) For products containing zinc acetate: "Do not use on children under 2 years of age without consulting a physician."

(d) *Directions.* The labeling of the product contains the following statement under the heading "Directions": "Apply liberally as often as necessary."

Interested persons are invited to submit their comments in writing (preferably in quadruplicate and identified with the hearing clerk docket number found in brackets in the heading of this document) regarding this proposal on or before November 2, 1978. Such comments should be addressed to the Office of the Hearing Clerk, Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and may be accompanied by a memorandum or brief in support thereof. Additional comments replying to any comments so filed may also be submitted on or before December 4, 1978. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday throuugh Friday.

NOTE.—The Food and Drug Administration has determined that this document will not have a major economic impact as defined by Executive Order 11821 (amended by Exective Order 11949) and OMB Circular A-107. A Copy of the economic impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Dated: July 18, 1978.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc. 78-21164 Filed 8-3-78; 8:45 am]

FRIDAY, AUGUST 4, 1978
PART III

federal register

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

■

INDIAN HEALTH

Contract Health Services

[4110-84]

Title 42—Public Health

CHAPTER 1—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 36—INDIAN HEALTH

Subpart C—Contract Health Services

AGENCY: Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: This rule establishes contract health service delivery areas, and uniform eligibility, notice and related requirements for the provision of contract health services to eligible Indians and other beneficiaries within those areas. The purpose is to clarify eligibility and responsibility in the administration of this program.

EFFECTIVE DATE: August 4, 1978.

FOR FURTHER INFORMATION CONTACT:

James Mitchell, Contract Health Services Branch, Indian Health Service, Room 5A-27, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4700.

SUPPLEMENTARY INFORMATION: On October 22, 1976, a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (41 FR 46792 et seq.) proposing to revise subpart C of 42 CFR Part 36 to establish contract health service delivery areas, and eligibility and related requirements for the provision of contract health services within those areas. Interested persons were given until December 21, 1976, to submit written comments, suggestions, or objections.

A. CHANGES MADE FROM THE PROPOSED RULES

After full and careful consideration of all comments received, certain provisions of the proposed rules have been revised as noted below:

1. For ease of use the definitions have been placed in alphabetical order.

2. The definition of "alternate resources" formerly § 36.21(i) has been renumbered as § 36.21(a).

3. The term "personal resources" has been deleted from the definition of "alternate resources." Numerous commentors suggested deletion on the basis that: Historically the Indian Health Service (hereinafter, IHS) as a matter of practice, has not applied a means test for services; has not excluded persons from receipt of contract health services because they had "personal resources"; and "personal resources" was not defined. IHS does not, nor does it intend to apply a means test as a condition for receipt of services. Personal resources have, historically, been utilized to assist or supplement the cost of medical care services when funds available to IHS were insufficient to cover the total cost of services provided and the Indian or his tribe had such resources to voluntarily use. This practice may continue in the future when agreed to by the parties involved, but it is felt that inclusion of "personal resources" in the definition of "alternate resources" is not warranted, and has been eliminated. The elimination of this term should also ease the fears of those commentors who consider the term as jeopardizing the unique relationship of the Indian with the Federal Government.

3. A definition of "appropriate ordering official" has been substituted for the definition of "authorizing official" and designated as § 36.21(b). This change was made to accommodate changes made in section 36.24 (discussed later).

4. The definition of "contract health services," renumbered as § 36.21(e), has been changed to clarify that the term applies to services provided by facilities other than those of IHS.

5. As a result of several comments pointing out that § 36.24 would be impossible to administer without a definition of "emergency," such a definition has been added as § 36.21(f). When possible, the decision as to the state of emergency will be made by appropriate IHS medical authority. Otherwise, the decision will be made by the appropriate non-IHS medical authority attending the patient.

6. The definition of reservation renumbered as § 36.21(i), has been changed to that used by the Bureau of Indian Affairs in its regulations governing financial assistance and social services programs (25 CFR 201(v)) for purposes of increased consistency and because it is considered more precise.

7. For purposes of clarification, a definition of the work "Service" to mean the Indian Health Service has been added as § 36.21(h).

8. As a result of the decision to designate the State of Oklahoma as a contract health service delivery area (discussed later), a definition of "traditional Indian country," formerly numbered as § 3621(e), is no longer needed and it has been deleted.

9. Due to changes made in § 36.23(a) to reference § 36.12 of 42 CFR (discussed later), the definition of "Indian," formerly designated as § 36.21(f), has been deleted since it is no longer needed.

10. The State of Nevada has been designated a contract health service delivery area in § 36.22(a). This designation is based on a number of comments and tribal resolutions which pointed out that the county option approach would result in an unintended exclusion of an estimated 30 percent to 40 percent of Nevada Indians from IHS contract health services. This result was a factor of both the small size and scattered location of the reservations and colonies in Nevada and the particular social structure of the Nevada Indian population.

11. The entire State of Oklahoma has been designated a contract health service delivery area in § 36.22(a). This is a change from the NPRM which included only traditional Indian country in Oklahoma which, in effect, meant the entire State except for the cities of Tulsa and Oklahoma City. This change is due to the high incidence of utilization of and dependence on IHS facilities by eligible Indian residents of Tulsa and Oklahoma City. Under the NPRM, if eligible residents of the two cities presented themselves to an IHS facility, they would be eligible for care but if the IHS facility for any reason could not provide the needed direct care, the individuals would not be eligible for contract health services. This makes neither administrative nor programmatic sense due to the reliance the affected population places on IHS for health care services.

12. A number of counties in the State of Michigan have been designated a contract health service delivery area in § 36.22(a). This designation was made as a result of a number of comments from tribal representatives which pointed out that the Saulte Ste. Marie Tribe of Chippewa Indians have traditionally occupied a seven-county area where they currently receive contract health services but have tribal land in only one county. The county option proposal would result in an estimated 50 percent of the service population being declared ineligible for contract health services. This would be counter to the intent of the regulation and current service patterns as well as the intent of Congress which provided funding for a seven-county program.

13. An area consisting of 14 counties in the State of Wisconsin and 1 county in the State of Minnesota has been designated a contract health service delivery area in § 36.22(a). This designation was made as a result of a resolution by the Wisconsin Winnebago Business Committee which pointed out that there is no defined reservation area, as such, for Wisconsin Winnebago Indians and that tribal land is scattered over a 15-county area traditionally occupied by the Wisconsin Winnebago people who currently reside on or near those lands.

14. Section 36.22(b), providing for redesignation of contract health service delivery areas, has several revisions. It

has been revised to clarify that only areas or communities "within the United States" may be redesignated as a part of a contract health service delivery area. This clarification was prompted by a number of comments pointing out that there was no specific prohibition to including non-U.S. territory.

Also, as a result of a number of comments, the words "or other Indian" have been deleted from § 36.22(b) to require consultation only with tribal governing bodies with respect to area redesignation. In addition, the words "people native to the reservation" and "members of the tribe" have been deleted from § 36.22(b) (1) and (2) respectively to bring this section into conformity with § 36.23(a) as revised. As revised, § 36.22(b) (1) and (2) requires consideration of the number of Indians (not just those native to the reservation) in the proposed area and the social and economic affiliation of those Indians with the reservation tribe. The current language permits the initiation of redesignation procedures by a tribal resolution as one commentor suggested. Detailed procedures are inappropriate because of the divergent situations that might call for a redesignation.

15. Section 36.22(c) has been revised to simply provide that redesignations will be made in accordance with the Administrative Procedure Act (5 U.S.C. 553) rather than spelling out a requirement for an NPRM and a public comment period. These are generally provided for in the Administrative Procedure Act but the revised language would allow for the utilization of any exceptions permitted under that act if it were appropriate.

16. Section 36.23(a) has been revised to replace the phrase "any Indians, and the non-Indian wife and dependent members of the household of any such persons" by referring to persons described in § 36.12 of 42 CFR, which describes persons eligible for services at IHS facilities. This change, along with deletion of a definition of "Indian" for purposes of contract health services, will achieve consistency between §§ 36.23(a) and 36.12 and simplify the regulations governing IHS services. The change indicates that § 36.23(a) imposes eligibility requirements for contract health services in addition to, rather than independent of, § 36.12.

The change in § 36.23(a) to refer to persons described in § 36.12 is made recognizing that the Department plans to issue a separate notice of proposed rulemaking to amend § 36.12 with respect to the non-Indian husband of an eligible Indian and the non-Indian dependent members of an eligible Indian's household. Section 36.12, as did proposed § 36.23(a), includes the non-Indian wife, but not the non-Indian husband, of an eligible Indian. Several comments were received objecting to exclusion of non-Indian husbands in proposed § 36.23(a) on the ground that their exclusion constituted discrimination based upon sex. Non-Indian dependent members of an eligible Indian's household are presently served by the IHS, although § 36.12, adopted in 1956, has not been updated to include them. These issues will be dealt with in the notice of proposed rulemaking to amend § 36.12.

17. Section 36.23(a) has also been amended to make persons described in § 36.12 eligible for contract health services when they reside within a contract health service delivery area but do not reside on a reservation and are either members of or maintain close economic and social ties with the tribe or tribes located on the reservation or for which the nearby reservation was established.

A number of commentors pointed out that the proposed rule would exclude many Indians residing near a reservation within a contract health service delivery area who were not native to the area and members of the local tribe, but who had been receiving services from IHS and were members of the local Indian community. Several comments suggested that contract health services should be provided to Indians regardless of where they reside. Other comments spoke in favor of the original membership requirement. The above revision reflects the resources available to IHS, the recognition of the part the tribe plays in the relationship between the Federal Government and the Indian community, and a viable position between those who recommended retention of the tribal membership requirement and those who wanted neither tribal membership nor geographical criteria.

18. The term "on or near a reservation" has been deleted from § 36.23(b). It was redundant and confusing since a student or transient who was eligible for services "at the place of their permanent residence" would have had to reside "on or near a reservation."

19. Section 36.23(b)(2)(ii) has been renumbered as § 36.23(c) and revised so that the language dealing with the period of eligibility when an individual leaves the contract health service delivery area more closely conforms to equivalent language in § 36.23(b)(1) dealing with a similar period covering students who no longer meet the special conditions of eligibility for students. The words "* * * or until alternate health care resources are available and accessible, whichever occurs earlier" are deleted because this is provided for by action of § 36.23(f) which was formerly § 36.23(c)(ii).

20. As a result of a number of comments, a new section, § 36.23(d), has been added which provides for the continued eligibility of Indian children after they are placed in foster care outside a contract health service delivery area when conditions involving previous eligibility and an order by a court of competent jurisdiction have been met. As was pointed out in the comments, this potential loss of eligibility placed undue and unnecessary burdens on Indian foster children and overly restricted the viable choices available to social service agencies and the courts in dealing with very difficult situations.

21. Section 36.23(c)(i) has been renumbered as § 36.23(e) and revised to omit the words "and access to other arrangements for obtaining the necessary care." This change is intended to make clear that priorities for contract health services will be determined on the basis of relative medical need. The accessibility of alternate resources is not solely a matter for consideration in establishing priorities when there are insufficient resources but rather is a factor of general applicability.

Former § 36.23(c)(ii) has been renumbered as § 36.23(f) and titled "alternate resources."

22. Renumbered § 36.23(f) has also been revised by adding to the end the words "* * * or would be available and accessible upon application of the individual to the alternate resource." This was done to clarify that failure to apply for alternate resources that are accessible and available does not mean that the resources are not accessible or available.

23. Former § 36.23(d), Evidence of tribal membership, has been deleted as no longer necessary in light of the change in § 36.23(a) referring to persons described in § 36.12.

24. Section 36.24, Authorization for contract health services, prompted a large number of comments and suggestions, some of which indicated a lack of clarity on the part of the proposed rule. This section has been extensively revised. As revised, the section provides that no payment will be made for medical care and services delivered by non-Service providers or in non-Service facilities unless a purchase order has been issued by the appropriate IHS ordering official after that official has been notified as spelled out in this section. This revision required the addition of a definition of "appropriate ordering official", designated as § 36.21(b) (see item 4 above). These changes address the expressed concern that nonmedical personnel might authorize medical treatment. A definition of "emergency" was added as § 36.21(f) to aid in the administration of this section (see item 5 above).

The notification requirements have been clarified and include a provision allowing, for good cause, a waiver of prior notice in nonemergency cases. In response to a comment, the notification requirements were revised to provide that an individual or an agency acting on behalf of the Indian may give the necessary notice.

A suggestion that all requirements for prior authorization are unreasonable and can result in burdensome requirements was not accepted due to the need to manage IHS resources and assure that only eligible individuals receive care under the IHS program. It was suggested that instead of prior authorization and notice IHS should issue Indians I.D. cards to indicate to providers the individual's eligibility, and a written description of the benefit package of health care services covered. This suggestion was not adopted because, in the absence of a congressional appropriation to fund such a benefit package, I.D. cards would have no purpose.

Many suggestions for greater detail were rejected as dealing primarily with interpretative and administrative matters and, therefore, more appropriate for inclusion in later manual issuances. For example, it was suggested that a standard form be developed so that individuals will know what must be disclosed to become eligible for contract health services. Guidelines will have to be developed which inform both IHS staff and applicants what information is appropriate to establish eligibility.

25. Comments on § 36.25, Reconsideration and Appeals, were made that 10 days was insufficient time to prepare and submit a request for reconsideration. The section has been changed to allow 30 days for submitting a request for reconsideration.

The procedures were revised to provide that in cases where the applicant submits additional supporting information not previously submitted, the applicant may obtain a reconsideration by the Service Unit Director who had made the original denial. Otherwise, the applicant may appeal directly to the Area or Program Director. This procedure was adopted to allow the Service Unit Director to make a determination based on all available information. It seems inappropriate to appeal to a higher echelon when the original denial was based on what might turn out to be incomplete information.

26. Section 36.25(c) was added to the regulation. It provides for a final appeal to the Director of the Indian Health Service. The decision of the Director will constitute the final administrative action by IHS. This additional level of appeal was added to provide a common point for appeals which should help assure greater uniformity in determining eligibility. It also adds an additional measure of protection to an applicant's potential right to service.

Several comments were received that suggested that the final appeals should be made to the tribe and that any other approach is an infringement on the ability of the tribes to govern themselves. This suggestion was not adopted because, in our view, current law would not permit such an approach. Another comment was received which suggested that the appeals process would be enhanced if there was a provision for appeal to another agency. This suggestion was not accepted because the addition of the Director of the Indian Health Service as the last level of administrative appeal of a denial of contract health services is considered adequate administrative protection of an applicant's rights.

B. Discussion of General Comments

A number of comments were received that dealt with relevant issues but of a general nature. A discussion of these follows:

(1) A number of commentors stated that they were opposed to the entire concept of the "on or near policy." The reasons were varied but included the charges that the proposed regulations: violate the Snyder Act which provides for services for Indians throughout the United States; illegally limit eligibility of Indians by establishing contract health service delivery areas; violate the intent of Congress as expressed in the Indian Health Care Improvement Act (Pub. L. 94-437); are an illegal attempt to limit the Federal obligation to provide health services to Indians; and, by restricting participation of otherwise eligible Indian persons solely on the basis of residence, are thereby discriminatory and contrary to the original intent of the Federal Government.

There is no question as to the fact that IHS has authorizing legislation (Snyder Act, etc.) to provide contract health services to "Indians throughout the United States." However, in appropriating funds, Congress has provided funds for services to federally recognized Indians who live on or near Federal Indian reservations with certain exceptions, such as where funds have been specifically earmarked for urban Indian projects or particular tribal groups.

(2) Several respondents opposed the definition of contract health service delivery areas since county jurisdictional boundaries do not necessarily have any historical significance or meaning to Indians or their reservations. Section 36.22(b) permits tribal and other governing bodies of affected reservations to request appropriate redesignation of their contract health service delivery area. This provision is consistent with Indian self-determination and was favorably commented on by several tribal representatives.

(3) Several respondents requested implementation of the proposed regulations be postponed for various periods, ranging from a few months to indefinitely. Requests were made to provide Indian people more time to respond to the proposed regulations.

The proposed regulations, which were under development for more than two years, have received extensive public exposure and discussion through at least five national meetings and numerous communications between interested parties specifically to discuss developing regulations. Additionally, 60 days were allowed for comment after publication of the NPRM. Therefore, it is not deemed necessary to postpone publication of final rules.

(4) Objections were raised to the Indian Health Service program being a residual resource on the basis that such a position is illegal; is contrary to intent of the Snyder Act; and that it discriminates against the poor who are forced to use state and other available services. It was recommended that IHS should be the primary source of health services for Indians.

The position that resources of the Indian Health Service are residual to other health care delivery systems or health care payment mechanisms available and accessible to the Indian is neither illegal nor does it violate IHS authority. This position does not adversely discriminate agaist the poor since it maximizes the resources available for health care for all eligible Indians.

The Indian has a dual relationship to Federal, State and local governments stemming from his rights as a citizen and his rights as a member of a federally recognized Indian tribe. Indians and other native Americans are entitled under the Fifth and Fourteenth Amendments to the Constitution of the United States and under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000-d et seq.) to equal access to State, local and federally assisted programs available to other eligible members of the general population. Services available from the Indian Health Service cannot be considered as an alternative resource which could preclude the eligibility of Indians or other Native Americans for services under other programs or benefits or under contracts with health care providers or insurance carriers.

The required use of alternate resources does not jeopardize the Indians' unique relationship with the Federal Government, but merely maxi-

mizes the health care services that can be provided with limited resources. Though an Indian may be eligible for an alternate resource, if it is not available and accessible to him, this otherwise eligible Indian will not be denied contract health services.

(5) Questions were raised regarding methods of carrying out IHS's responsibilities under the regulations (e.g., who is the local authorizing official; how will local policy be publicized?).

These and similar questions and issues concerning administrative procedures and program implementation are appropriate for Headquarters, Area and Service Unit issuances and policy statements. Policy will be posted and published locally and other wise disseminated to assure the highest possible awareness among potentially eligible Indians.

(6) The National Indian Health Board (NIHB) took issue with the statement in the NPRM that the NIHB was unsuccessful in obtaining consensus among tribal groups. The NIHB considered this as reflecting a lack of understanding as to the NIHB's function (see 41 FR 46793, October 22, 1976). The statement in the proposed regulations may have been misleading. The NIHB commented that it is only a dissemination point for information for Board members and therefore it did not comment on the proposed regulations. It further stated that it was successful in its mission to disseminate information on the proposed regulations to its members.

(7) Some respondents reported that the proposed definition of "reservation" would guarantee IHS services to Indians located in places where IHS has not been funded by Congress to provide services. Section 36.22(a)(4) establishes contract health service delivery areas only with respect to reservations "within the funded scope of the Indian health program." This is applicable even under the revised definition of "reservation" contained in the final rule.

(8) Several legal aid groups took issue with limitation of services to members of federally recognized tribes, since the Snyder Act, as IHS's authorizing legislation, does not specifically contain this limitation. These commenters maintain that any Federal, State, or otherwise recognized group that is culturally identified as Indian comes within the Snyder Act authority for services from the IHS. It was not the purpose of the Snyder Act to extend benefits to Indians not federally recognized, but rather to authorize appropriations for Bureau of Indian Affairs' programs serving federally recognized Indians.

(9) A number of comments were made that the probability of an affected Indian person having access to the FEDERAL REGISTER is small and therefore the FEDERAL REGISTER is an extremely poor vehicle through which to reach Indians with a proposed regulation. It was suggested that these proposed regulations be published once a week for 3 consecutive weeks in a newspaper of general circulation within the affected localities. This suggestion was not adopted in light of the great effort which had been made to inform and to receive comments from the Indian community. Copies of the notice of proposed rulemaking were widely distributed to tribal governments and other interested groups for the purpose of explaining the proposed rules and seeking their input. Additionally, articles on these proposed regulations appeared in virtually every Indian newspaper in the country. Sufficient opportunity to respond to the NPRM has been provided to the Indian community.

C. DISCUSSION OF MISCELLANEOUS RECOMMENDATIONS

The Secretary does not agree that the proposed rules would be improved as suggested by some commenters and has rejected the following suggestions.

1. A question was raised as to the meaning of "close economic and social ties" in reference to the tribal membership requirement appearing in § 36.23(a)(2) of the NPRM. It was suggested that this regulation contain additional material explaining these terms. As was discussed above, the strict tribal membership requirement has been eliminated. There is still, however, a valid question as to the meaning of this phrase since it remains as element in the eligibility criteria. The phrase is from the Supreme Court language in *Morton* v. *Ruiz*, 94 S.Ct. 1055, 415 U.S. 199 (1974). However, the Court did not define these terms for us. It is acknowledged that IHS will have to provide guidance to enable the appropriate IHS official to determine when the "close economic and social ties" criteria has been met but this is more appropriately left to administrative guidelines.

2. It was suggested that the terms "residing" and "resides" be defined. In general usage, a person "resides" where he or she lives and makes his or her home. In practice, these concepts can be very involved. Determinations will be made on generally applicable legal principles with the described appeals process as a protector of their proper application. Inclusion of definitions would, in our opinion, neither clarify nor simplify the application of this criteria.

(3) Several commenters suggested that a U.S. citizenship requirement should be added to the eligibility criteria for contract health services. This suggestion was rejected because the requirements that an applicant for contract health services be of Indian descent and maintain close economic and social ties with the nearby tribe are considered sufficient criteria to assure that the available resources will be used for the health of the Indian communities within the funded scope of the program.

(4) It was pointed out that the proposed regulations did not address the problem of which contract health service delivery area or service unit will be responsible for or will be charged for the cost of contract health services. We do not consider this an appropriate topic for regulations since it is an administrative function.

(5) It was recommended that the State of Arizona be declared as "Traditional Indian Territory." The basis for this recommendation seems to have been the concern that many Indians currently eligible would not be eligible because they are not members of the nearby tribe even though virtually the entire State of Arizona is included in one contract health service delivery area or another. The change in the criteria dropping the strict tribal membership requirement should mitigate this problem. In addition, changes in the boundaries of contract health service delivery areas are possible under the regulations and this will permit any needed adjustments. The entire State was not designated a contract health service delivery area because this would have been a major departure from the situation proposed in the NPRM and there was not sufficient indication of tribal wishes.

(6) It was suggested that present service unit boundaries be utilized for designation of "near." The county option combined with the flexibility for redesignation was finally proposed and is being adopted as a result of a great deal of consideration of other possibilities.

(7) One commenter recommended that enrolled tribal members should be considered within the scope of the local service unit contract health service program if they return to their native community to receive health care. The funded scope of this program covers federally recognized Indians who reside on or near reservations. If a tribal member did not reestablish residency on or near a reservation, the tribal member would be beyond the funded scope of the program.

(8) It was recommended that household members should be considered eligible rather than restrict eligibility to dependents. This issue will be dealt with under proposed revision to § 36.12, as explained above.

(9) It was recommended that provision be made to continue coverage when people must move in order to be near specialized care. Coverage would

be maintained as long as the person's "residency" did not change, if they were in transient status, or for 180 days if they fall under § 36.23(b)(ii).

(10) The recommendation that the 180-day grace period for obtaining alternate resources be reduced to 90 days was not adopted. The 180-day period is considered more appropriate to assure proper health service coverage.

(11) The suggestions that separate definitions for "students" and "transients" be included was not accepted because they are considered adequately described in § 36.23(b) (1) and (2). The suggestion will be kept in mind if experience indicates a need that cannot be met by administrative guidelines.

(12) It was recommended that urban Indian groups near reservations be included in the eligible population. Urban Indians could be included if they reside in a contract health service delivery area and meet all other eligibility criteria. Urban Indians are not eligible as a class as this would go beyond the funded scope.

D. COMMENTS BEYOND SCOPE

Several comments were received that went beyond the scope of the notice. They include suggestions:

1. That IHS seek funding to provide health care coverage, possibly through a type of health insurance, to Indians throughout the United States.

2. That a pro rata share of funds from other programs (e.g., medicare and medicaid) equivalent to that spent on Indian clientele be withdrawn from those programs and committed to IHS.

3. That supplemental funds be obtained from Congress to provide health care to eligible students and that these funds not affect the present IHS contract medical care budget.

4. That students be notified that when they make application for higher education financial assistance, they need to obtain any student health care plan available at the particular education institution.

5. That tribes issue identification cards so IHS and its contract health providers could recognize eligible members.

6. That IHS retain administrative procedures currently in effect in the Portland area Indian Health Service.

NOTE.—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an inflationary impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: April 12, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: July 22, 1978.

HALE CHAMPION,
Acting Secretary.

Part 36 of title 42 is amended by revising subpart C as follows:

Subpart C—Contract Health Services

Sec.
36.21 Definitions.
36.22 Establishment of contract health service delivery areas.
36.23 Persons to whom contract health services will be provided.
36.24 Authorization for contract health services.
36.25 Reconsideration and appeals.

Subpart C—Contract Health Services

§ 36.21 Definitions.

As used in this subpart:

(a) "Alternate resources" means resources other than those of the Indian Health Service contract health services program, available and accessible to the individual, such as health care providers and institutions (including facilities operated by the Indian Health Service), health care payment sources, or other health care programs for the provision of health services (e.g., medicare or medicaid) for which the individual may be eligible.

(b) "Appropriate ordering official" means, unless otherwise specified by contract with the health care facility or provider, the ordering official for the contract health service delivery area in which the individual requesting contract health services or on whose behalf the services are requested, resides.

(c) "Area Director" means the Director of an Indian Health Service area designated for purposes of administration of Indian Health Service programs.

(d) "Contract health service delivery area" means the geographic area within which contract health services will be made available by the IHS to members of an identified Indian community who reside in the area, subject to the provisions of this subpart.

(e) "Contract health services" means health services provided at the expense of the Indian Health Service from public or private medical or hospital facilities other than those of the Service.

(f) "Emergency" means any medical condition for which immediate medical attention is necessary to prevent the death or serious impairment of the health of an individual.

(g) "Indian tribe" means any Indian tribe, band, nation, group, Pueblo, or community, including any Alaska Native village or Native group, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(h) "Program Director" means the Director of an Indian Health Service "program area" designated for the purposes of administration of Indian Health Service programs.

(i) "Reservation" means any federally recognized Indian tribe's reservation, Pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), and Indian allotments.

(j) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(k) "Service" means the Indian Health Service.

(l) "Service Unit Director" means the Director of an Indian Health Service "Service unit area" designated for purposes of administration of Indian Health Service programs.

§ 36.22 Establishment of contract health service delivery areas.

(a) In accord with the congressional intention that funds appropriated for the general support of the health program of the Indian Health Service be used to provide health services for Indians who live on or near Indian reservations, contract health service delivery areas are established as set out below:

(1) The State of Alaska;

(2) The State of Nevada;

(3) The State of Oklahoma;

(4) Chippewa, Mackinac, Luce, Alger, Schoolcraft, Delta, and Marquette Counties in the State of Michigan;

(5) Clark, Eau Claire, Jackson, La-Crosse, Monroe, Vernon, Crawford, Shawano, Marathon, Wood, Juneau, Adams, Columbia, and Sauk Counties in the State of Wisconsin and Houston County in the State of Minnesota.

(6) With respect to all other reservations within the funded scope of the Indian health program, the contract health services delivery area shall consist of a county which includes all or part of a reservation, and any county or counties which have a common boundary with the reservation.

(b) The Secretary may, from time to time, redesignate areas or communities within the United States as appropriate for inclusion or exclusion from a contract health service delivery area after consultation with the tribal governing body or bodies of those reservations included within the contract health service delivery area. The Secretary will take the following criteria into consideration:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the tribal governing body has determined that Indians residing in the area near the reservation

are socially and economically affiliated with the tribe;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of contract health services.

(c) Any redesignation under paragraph (b) of this section shall be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553).

§ 36.23 Persons to whom contract health services will be provided.

(a) *In general.* To the extent that resources permit, and subject to the provisions of this subpart, contract health services will be made available as medically indicated, when necessary health services by an Indian Health Service facility are not reasonably accessible or available. Persons described in and in accordance with section 36.12 of this part if those persons:

(1) Reside within the United States and on a reservation located within a contract health service delivery area; or

(2) Do not reside on a reservation but reside within a contract health service delivery area, and: (i) Are members of the tribe or tribes located on that reservation or of the tribe or tribes for which the reservation was established, or (ii) maintain close economic and social ties with that tribe or tribes.

(b) *Students and transients.* Subject to the provisions of this subpart, contract health services will be made available to students and transients who would be eligible for contract health services at the place of their permanent residence within a contract health service delivery area, but are temporarily absent from their residence, as follows:

(1) Students—during their full-time attendance at programs of vocational, technical, or academic education, including normal school breaks, such as vacations, semester or other scheduled breaks occurring during their attendance, and for a period not to exceed 180 days after the completion of the course of study.

(2)(i) Transients (persons who are in travel or are temporarily employed, such as seasonal or migratory workers), during their absence.

(c) *Other persons outside the contract health service delivery area.* Persons who leave the contract health service delivery area in which they are eligible for contract health services and are neither students or transients will be eligible for contract health services for a period not to exceed 180 days from such departure.

(d) *Foster children.* Indian children who are placed in foster care outside a contract health service delivery area by order of a court of competent jurisdiction and who were eligible for contract health services at the time of the court order shall continue to be eligible for contract health services while in foster care.

(e) *Priorities for contract health services.* When funds are insufficient to provide the volume of contract health services indicated as needed by the population residing in a contract health service delivery area, priorities for service shall be determined on the basis of relative medical need.

(f) *Alternate resources.* Contract health services will not be authorized by the Indian Health Service when, and to the extent that, alternate resources for the provision of necessary medical services are available and accessible to the individual requesting the services or would be available and accessible upon application of the individual to the alternate resource.

§ 36.24 Authorization for contract health services.

(a) No payment will be made for medical care and services obtained from non-Service providers or in non-Service facilities unless the applicable requirements of paragraphs (b) and (c) below have been met and a purchase order for the care and services has been issued by the appropriate ordering official to the medical care provider.

(b) In nonemergency cases, a sick or disabled Indian, or an individual or agency acting on behalf of the Indian, or the medical care provider shall, prior to the provision of medical care and services, notify the appropriate ordering official of the need for services and supply information that the ordering official deems necessary to determine the relative medical need for the services and the individual's eligibility. The requirement for notice prior to providing medical care and services under this paragraph may be waived by the ordering official if:

(1) Such notice and information is provided within 72 hours after the beginning of treatment or admission to a health care facility; and

(2) The ordering official determines that giving of notice prior to obtaining the medical care and services was impracticable or that other good cause exists for the failure to provide prior notice.

(c) In emergency cases, a sick or disabled Indian, or an individual or agency acting on behalf of the Indian, or the medical care provider shall, within 72 hours after the beginning of treatment for the condition or after admission to a health care facility notify the appropriate ordering official of the fact of the admission or treatment, together with information necessary to determine the relative medical need for the services and the eligibility of the Indian for the services. The 72-hour period may be extended if the ordering official determines that notification within the prescribed period was impracticable or that other good cause exists for the failure to comply.

§ 36.25 Reconsideration and appeals.

(a) Any person to whom contract health services are denied shall be notified of the denial in writing together with a statement of the reason for the denial. The notice shall advise the applicant for contract health services that within 30 days from the receipt of the notice the applicant:

(i) May obtain a reconsideration by the appropriate Service unit director of the original denial if the applicant submits additional supporting information not previously submitted or, (ii) if no additional information is submitted, may appeal the original denial by the Service unit director to the appropriate area or program director. A request for reconsideration or appeal shall be in writing and shall set forth the grounds supporting the request or appeal.

(b) If the original decision is affirmed on reconsideration, the applicant shall be so notified in writing and advised that an appeal may be taken to the area or program director within 30 days of receipt of the notice of the reconsidered decision. The appeal shall be in writing and shall set forth the grounds supporting the appeal.

(c) If the original or reconsidered decision is affirmed on appeal by the area or program director, the applicant shall be so notified in writing and advised that a further appeal may be taken to the Director, Indian Health Service, within 30 days of receipt of the notice. The appeal shall be in writing and shall set forth the grounds supporting the appeal. The decision of the Director, Indian Health Service, shall constitute final administrative action.

[FR Doc. 78-21331 Filed 8-3-78; 8:45 am]

FRIDAY, AUGUST 4, 1978
PART IV

federal register

DEPARTMENT OF LABOR

Employment Standards Administration

■

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

[4510-27]

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Alabama:	
AL78-1057	July 21, 1978.
Connecticut:	
CT78-3055	Date of publication.
Florida:	
FL78-1062	July 14, 1978.
Louisiana:	
LA78-4052	May 12, 1978.
LA78-4072	July 14, 1978.
Maryland:	
MD78-3046	May 19, 1978.
Tennessee:	
TN78-1058	July 7, 1978.
Texas:	
TX78-4028; TX78-4032; TX78-4033; TX78-4037; TX78-4043	Apr. 14, 1978.
Washington:	
WA78-5103	June 16, 1978.

SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being superseded and their dates of publication in the FEDERAL REGISTER are listed with each State. Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Florida:	
FL75-1082 (FL78-1064)	Sept. 5, 1975.
Illinois:	
IL78-2045 (IL78-2064)	Mar. 24, 1978.
Minnesota:	
MN77-2034 (MN78-2068)	Mar. 4, 1977.
Mississippi:	
MS75-1076 (MS78-1063)	Aug. 22, 1975
Montana:	
MT78-5022 (MT78-5119)	Apr. 21, 1978
MT78-5027 (MT78-5121)	Apr. 28, 1978.
New York:	
NY78-3021 (NY78-3060)	Apr. 14, 1978.
Texas:	
TX77-4193 (TX78-4075)	Aug. 19, 1977.
Virginia:	
AQ-2021 (VA78-3059)	Oct. 5, 1973.
AQ-2031 (VA78-3057); AQ-2032 (VA78-3058)	Nov. 30, 1973.

CANCELLATION OF GENERAL WAGE DETERMINATION DECISIONS

None.

Signed at Washington, D.C., this 28th day of July 1978.

XAVIER M. VELA,
Administrator,
Wage and Hour Division.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #AL78-1057 - Mod. #1. (43 FR 31549 - July 21, 1978) Madison County, Alabama					
OMIT: "Supersedes Decision No. AL78-1038 dated April 7, 1978 in 43 FR 14839					
ADD: "Supersedes Decision No. AL78-1030 dated April 7, 1978 in 43 FR 14839					
DECISION #CT78-3055 - MOD. #1 (43 FR) Fairfield, Litchfield, and Windham Counties, Connecticut					
ADD:					
Line Construction:					
Fairfield Co.: Rem. of Co.; Litchfield Co.; & Windham Co.					
Cross County Transmission Lines and Railroads					
Linemen, Cable Splicer & Dynamite Man	$ 9.48	.70	3%+.50	p	
Heavy Equipment Operator	8.52	.70	3%+.50	p	
Equipment Operator, Tractor Trailer Driver, Field Mechanic	7.96	.70	3%+.50	p	
Material Man	7.87	.70	3%+.50	p	
Groundman Truck Driver	7.03	.70	3%+.50	p	
Groundman, Experienced	6.20	.70	3%+.50	p	
Groundman, Inexperienced	5.41	.70	3%+.50	p	

DECISION #FL78-1062 - Mod. #2 (43 FR 30456 - July 14, 1978) Pinellas County, Florida	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers	$9.20				
Electricians	8.20	5%	7% + 3%		1%
Plumbers	10.73	.60	1.00		.08
DECISION #LA78-4052 - Mod. #6 (43 FR 20659 - May 12, 1978) Statewide Louisiana					
Change:					
Asbestos workers - Zone 1	$11.47	.525	.90		.04
Carpenters (Building Construction):					
Zone 8 - Carpenters & soft floor layers	9.55	.40	.35		.04
Millwrights	10.30	.40	.35		.04
Piledrivermen	9.90	.40	.35		.04
Electricians:					
Zone 3 - Electricians	13.05	.35	3%+.40		1/10%
Cable splicers	13.30	.35	3%+.40		1/10%
Line construction:					
Zone 3 - Linemen; Equipment op.	13.05	.35	3%+.40		1/10%
Cable splicers	13.30	.35	3%+.40		1/10%
Groundmen	11.05	.35	3%+.40		1/10%
DECISION #LA78-4072 - Mod. #1 (43 FR 30456 - July 14, 1978) Bossier, Caddo & Calcasieu Parishes, Louisiana					
Change:					
Asbestos workers - Calcasieu Par.	11.47	.525	.90		.04
Carpenters:					
Bossier & Caddo Parishes:					
Carpenters	9.55	.40	.35		.04
Millwrights	10.30	.40	.35		.04
Piledrivermen	9.80	.40	.35		.04
Electricians - Calcasieu Par.:					
Other work - Electricians	13.05	.35	3%+.40		1/10%
Cable splicers	13.30	.35	3%+.40		1/10%
Soft floor layers - Bossier & Caddo Parishes	9.55	.40	.35		.04

MODIFICATIONS P. 3

DECISION #MD78-3046 - Mod. #1
(42 FR - 21813 - May 19, 1978)
Baltimore City, Maryland

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Electricians	$10.90	.80	3%+.90		4%

DECISION NO. TN78-1058 - Mod. #2
(43 FR 29464 - July 7, 1978)
Hamilton, Marion, Polk, and Rhea Counties, Tennessee

CHANGE:

POWER EQUIPMENT OPERATORS:

GROUP A	$ 9.10	.35	.35		.10
GROUP B	8.30	.35	.35		.10
GROUP C	7.70	.35	.35		.10
GROUP D	7.40	.35	.35		.10

MODIFICATIONS P. 4

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX78-4028 - Mod. #6 (43 FR 16112 - April 14, 1978) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Counties, Texas					
Change:					
Plumbers & pipefitters-Zone 1	$ 9.96	.45	.65	.60	
Zone 2	10.21	.45	.65	.60	
Zone 3	10.46	.45	.65	.60	
Sheet metal workers	10.54	.50	.55		.11
DECISION #TX78-4032 - Mod. #3 (43 FR 16119 - April 14, 1978) Bowie County, Texas					
Change:					
Electricians	10.20	.60	3%+.35		1/4%
DECISION #TX78-4033 - Mod. #4 (43 FR 16120 - April 14, 1978) Brazos County, Texas					
Change:					
Ironworkers	10.96	.55	1.15		.10
Sheet metal workers	11.23	.325	.695	.42	.06
Soft floor layers	10.53	.50	.45		.14
DECISION #TX78-4037 - Mod. #5 (43 FR 16127 - April 14, 1978) Galveston & Harris Cos., Texas					
Change:					
Ironworkers	10.96	.55	1.15		.10
Sheet metal workers	11.23	.325	.695	.42	.06
Soft floor layers	10.53	.50	.45		.14
DECISION #TX78-4043 - Mod. #6 (43 FR 16134 - April 14, 1978) Travis County, Texas					
Change:					
Soft floor layers	10.53	.50	.45		.14

MODIFICATIONS P. 5

DECISION NO. WA78-5103 - Mod.#1 (43 FR 26271 - June 16, 1978) Clallam, King, Kitsap, Snohomish, and Thurston Counties, Washington	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Bricklayers:					
King County	$12.41	.80	1.15		.11
Plumbers:					
Kitsap, Pierce, Snohomish, and Thurston, Counties	8.30	.70	.30	.37	.11
Soft Floor Layers:					
King and Snohomish Counties	11.14	.63	1.00		.05

SUPERSEDES DECISION

STATE: Florida
DECISION NO.: FL78-1064
Supersedeas Decision No. FL75-1082 dated September 5, 1975 in 40 FR 41360.
DESCRIPTION OF WORK: Highway Construction (does not include building structures in rest area projects; bridges over navigable waters; tunnels; and railroad construction).

Counties: *See below
DATE: Date of Publication

*Counties: Brevard, Hillsborough, Indian River, Manatee, Martin, Orange, Osceola, Pinellas, Polk,, St. Lucie, Sarasota, Seminole, & Volusia.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	4.00				
Carpenters	5.00				
Concrete finisher	5.00				
Form setters	3.79				
Ironworkers:					
Reinforcing	5.32				
Laborers:					
Unskilled	3.00				
Asphalt rakers	4.27				
Grade man	3.25				
Laborers, concrete	3.25				
Luteman	4.00				
Pipelayers	4.33				
Painters, structural steel	9.75				
Piledriver, leadman	5.25				
Truck drivers	3.26				
Traffic signal mechanic	4.59				
POWER EQUIPMENT OPERATORS:					
Asphalt distributors	3.99				
Asphalt mixers	3.95				
Asphalt paving machine	4.36				
Asphalt screed	3.25				
Backhoe	5.00				
Boom auger	3.90				
Bulldozer	4.30				
Cranes	5.34				
Earth moving machine operator	4.10				
Gradall	4.75				
Grader machine operator	5.25				
Guard rail erector	3.97				
Loaders	4.09				
Mechanics	4.37				
Motor graders	5.03				
Oilers	3.75				
Pan operator	4.00				
Roller	3.84				
Scrapers	4.67				
Screwman	4.00				
Tractor	3.50				

STATE: Illinois SUPERSEDEAS DECISION COUNTIES: See Below
DECISION NO.: IL78-2064 DATE: Date of Publication
Supersedes Decision NO. IL78-2045, dated March 24, 1978 in 43 FR 12555
DESCRIPTION OF WORK: Heavy and Highway Construction

ILL -IIII-4

COUNTIES: FULTON, Hancock, Henderson, Knox, McDounough, Mercer, Peoria, Stark, Tazwell & Warren	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
CARPENTERS & PILEDRIVERMEN:					
Western 2/3 of Hancock County:					
Carpenters	10.05	.60	.85		.04
Piledrivermen	10.73	.60	.85		.04
McDonough County& the Eastern 1/3 of Hancock County:					
Carpenters	12.01	.40	.50		.05
Piledrivermen	12.51	.40	.50		.05
Knox, Henderson & Warren Cos:					
Carpenters	12.01	.40	.50		.05
Piledrivermen	12.51	.40	.50		.05
Mercer County:					
Carpenters	13.00	.60	.90		.04
Piledrivermen	10.71	.45	.70		.04
Stark Co; Peoria Co., excluding area south of Rt. #116, West of US Rt. #34, & East Peoria in Tazewell County:					
Carpenters	12.01	.40	.50		.05
Piledrivermen	12.51	.40	.50		.05
Fulton County, & Peoria County South of Rt. #116 & west of US #24; Remainder of Tazewell Co:					
Carpenters	12.01	.40	.50		.05
Piledrivermen	12.51	.40	.50		.05
CEMENT MASONS:					
Fulton, Peoria & Tazewell Cos.	11.50	.70	.80		.05
Hancock & McDonough Counties	12.35				
Mercer Co., Northern ½ of Henderson County	10.17	.50	.60		
Southern ½ of Henderson County	11.15				
Knox & Warren Counties	11.80	.50	.25		
Stark County	11.99		.20		
ELECTRICIANS:					
Peoria & Tazewell Cos; Twps. of essex Valley & W. Jersey in Stark Co., Remainder of Fulton County	12.32	.50	3%+.75		1%
Remainder of Stark County	11.80	.50	3%+.30		.25%

DECISION NO. IL78-2064

ELECTRICIANS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Knox, Warren & Henderson Cos., Twps. of Ohio Grove, Suez & N. Henderson in Mercer Co; Twps. of Blandinsville, Prarie City, Emmet, Tennessee, Scottland, Scoita, Bushnell, Macomb, Colchester, New Salem, Walnut Gove, Hire Mount & Chalmers in McDonough Co., Twps. of Union, Lee, Cass, Ellisville, Deerfield, Young, Hickory & Harris in Fulton County	12.06	.50	3%+.75		.25%
Hancock Co., & Twps. of Lamoine, Bethel, Industry & Eldorado in McDonough County	11.15	.50	3%+.75		1%
Remainder of Mercer County	11.69	.55	7.5%		.03
IRONWORKERS:					
Fulton Co., Vic of Astoria, Marbleton & Summum	11.75	.55	.90		.08
Knox Co., within Galesburg & all area north of city	12.07	.65	.375		.11
Peoria, Stark & Tazewell Cos; Remainder of Fulton, Knox Cos.	11.975	.65	.925		
Hancock, Henderson, McDonough, Mercer & Warren Cos; all area W. & SW of Galesburg in Knox County	10.75	.55	.65		
LABORERS:					
Hancock, Henderson, Knox, Stark McDonough & warren Counties:					
Unskilled	10.03	.40	.42		.035
Semi-skilled	10.23	.40	.42		.035
Skilled	10.43	.40	.42		.035
LINEMEN:					
Peoria, Tazewell, Stark, Fulton Hancock, Henderson, Knox, McDonough & Warren Cos.:					
Linemen	12.39	.45	3%		.5%
Groundman Equip. Opr. Class 1	11.56	.45	3%		.5%
Groundman Truck Driver:					
W/Winch	8.65	.45	3%		.5%
WO/Winch	8.24	.45	3%		.5%
Groundman Class "A"	7.86	.45	3%		.5%

DECISION NO. IL78-2064

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Peoria, Stark, Tazwell & Fulton Counties:					
Brush	11.30	.55	.30		.03
Bridge Work, Spray & Structural Steel	11.95	.55	.30		.03
Warren & Mercer Counties:					
Brush & Roller	10.27	.55	.85		.18
Structural Steel & Spray	10.77	.55	.85		.18
Bridges	11.52	.55	.85		.18
Knox & Henderson Counties:					
Brush	9.50	.55	.15		
Structural Steel	9.75	.55	.15		
McDonough 7 Hancock Counties:					
Brush	10.75				
Spray-Bridge & Structural Steel	11.25				

DECISION NO. IL78-2064

ILL-5-LAB-2-3

LABORERS:

FULTON COUNTY & THE REMAINDER OF TAZEWELL COUNTY

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
UNSKILLED LABORERS	10.55	.60	.60		.035
SEMI-SKILLED LABORERS	10.75	.60	.60		.035
SKILLED LABORERS	10.45	.60	.60		.035

CLASSIFICATIONS

UNSKILLED LABORERS-Carpenters Tender, Tool Cribmen, Cleaning & Oiling Machinery & Tools, Fireman or Salamander Tenders, Flagmen, Gravel Box Men, Form Handlers, Material Handlers, Fencing Laborers, Cleaning Lumber, Pit Men, Material Checkers, Dispatchers, Landscapers, Unloading Explosives, Laying of Sod, Planting of Trees, Removal of Trees, Piledriver Helpers, Asphalt Plant Helpers, Wrecking Laborers, Fireproofing Laborers, Surveyors & Instrument Men Helpers, Janitors, Unloading & Carrying of Rebars, Caisson Top Man Helper, Mason Tenders, Scaffold Workers, Laborers w/dewatering systems, Plaster Tenders & Tunnel Laborers (Free Air).

SEMI SKILLED-Handling of Materials treated w/oil & creosote, Asphalt and/or Foreign Material harmful to skin & clothing handled by any mode or method, Track Laborers, Cement Handlers, Signaling & Spotting of Rigs & Equipment, Chloride Handlers, Wet Concrete Workers, Tunnel Helpers in Free Air, Batch Dumpers, Kettle & Tar Men, Tank Cleaner, Plastic Installer, Motorized Buggies or Motorized Units used for Wet Concrete or Building Materials, Sewer Workers (excluding Pipe Layer & Helper), Vibrator Operators, Mortar Mixer Opr., Cement Silicia, Clay, Fly Ash, Lime & Plaster Handlers (Bulk or Bag), Cofferdam Workers, Work on Concrete Paving, Placing, cutting & Tying of Reinforcing, Deck Hand, Dredge Hand & Shore Laborers, Bank Men or Floating Plant, Asphalt Workers & Layers with Machine, Grade Checker, Dumpmen & Spotter where Grade is to be established, Power Tools,Chain Saw Operator, Jackhammer & Drill Operators, Air Tamping Hammerman, Caisson Top Man, Gunnite Pot Man, batterboard Setter, Digging bell Holes, Driving or stakes & Setting Stinglines for all Machinery.

SKILLED - Caisson or Tunnel Miners & Muckers, Gunnite Nozzlemen, Welders, Cutters, Burners, & Torchmen, Tile or Pipelayers & Helpers, Steel Form Setters-Street & Highway, Concrete Saw Operator, Screenman on Asphalt pavers, Front-End Man on Chip Spreader, Laborers Tending Masons with hot Material or/where Foreign Matter or Materials are used, Multiple Concrete duct-Leadman, Lutemen,Curb Asphalt Machine Operator, Ready Mix Scaleman, Permanent Portable or Temporary Plant, Laborers handling Master-Plate or similar Materials, Laser Beam Opr., Concrete Burning Machine Opr., Coring Mach. Opr., Underpinning & Shoring of Buildings, Dynamite Shooter, Cirbbing & Jackman in Trench & Hydaulic Jackman.

DECISION NO. IL78-2064 ILL-20-LAB-2-3

LABORERS: PEORIA COUNTY & CITY OF EAST PEORIA IN TAZEWELL COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROAD, DRIVEWAYS & ALLEY CONST.					
Bricklayer tender, Carponter tender, Cement Mason Tender, Flagman, Concrete Form Dismantler, Piledriver Tender, Surveyor Helper, Tool Cribmen, Water carrier, Expansion joint assemblers, all other excavating work & labor, curing all concrete by hand method, drive stakes, stringlines for all machinery, waterproofing w/cold stuff, Landscape work	10.66	.50	.60		.035
Stripping Concrete forms with composite crew of carpenters and laborers	10.81	.50	.60		.035
All Power operated tools, Asphalt kettlemen & carriers, Cement men & Sack shakers, Chipping hammermen, Jackhammer & drill operator (open), Powdetman Helper, Power form Tampers, Power concrete saw, Rigmen, Signalling & spotting rigs & equipment, waterproofing w/hot stuff	10.875	.50	.60		.035
Power Wheelbarrows or Buggies	10.935	.50	.60		.035
Gunnite Pump Man, Puddlers, Vibrator Man, Wire Fabric Placer, Sandblasting Pump man, Strick off, Unloading, handling & carrying of any creosoted material concrete burning bars	10.91	.50	.60		.035
Asphalt raker, bricksetters, Cutting torch, Setting lines to level forms, Form setters, Gunnite nozzleman, Sandblasting Nozzleman, Powderman, Rip-rapping, Cutting otrchman (elec. & acetylene)	10.785	.50	.60		.035

DECISION NO. IL78-2064 ILL-20-LAB-2-3

LABORERS: (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TUNNEL & SUBWAYS (FREE AIR):					
Top Laborer	10.66	.50	.60		.035
Bell Men (Top & Bottom), all Laborers in Tunnel	10.785	.50	.60		.035
Drill & PowderMen, Gunnite Operator (Tunnel), Operator Cement Placement	11.035	.50	.60		.035
Muckers	11.035	.50	.60		.035
Tunnel Miners	11.135	.50	.60		.035
COFFERDAMS & CAISSON (FREE AIR):					
Caisson & Cofferdam Top Men	10.785	.50	.60		.035
Caisson & Cofferdam Miners & Muckers	11.135	.50	.60		.035
OPEN SEWER OR TRENCHES:					
Top Man & all other excavating	10.66	.50	.60		.035
Bottom man who does immediate grading, Batter Board Men, Laser Beam Equipment	10.785	.50	.60		.035
Tile Layer & Caulker	11.035	.50	.60		.035
Cribbing, Jackman & Hydraulic Jackman in Rrench	11.135	.50	.60		.035
LEVEE & HEAVY GRADING:					
All other Laborers	10.60	.50	.60		.035
Spotters, Dump Man & Cut Man	11.785	.50	.60		.035
PIPELINE:					
All other Laborers, Rollers, Scalers & Spotters	10.66	.50	.60		.035
Signal Men or Tigs, Rig Men, Kettlemen & Carriers, Men handling hotstuff, Men who do immediate grading for laying of pipe or digging bell holes	10.785	.50	.60		.035

DECISION NO. IL78-2064

ILL-81-LAB-1-2-3

LABORERS: ROCK ISLAND & MERCER COUNTIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
UNSKILLED	9.72	.40	1.00		.035
SEMI-SKILLED	9.97	.40	1.00		.035
SKILLED	10.22	.40	1.00		.035

LABORERS - ROCK ISLAND & MERCER COUNTIES

UNSKILLED - Common Laborer; carpenter Tender; Rod & Chain Man; Flagman; Gravel Box Men; Dumpmen & Spotters; Form Handlers; Material; Fencing Laborers; Cleaning Lumber; Material Checkers; Dispatchers; Landscapers; Unloading Explosvies; Laying of Sod; Planting of Trees; Removal of Trees; Asphalt Plant Laborers; Wrecking Laborers; Writers of Scale Tickets, Scaleman (permanent-Portable or Temporary Plant); Deck Hand.

SEMI-SKILLED - Laying & Jointing of Telephone Conduit; Carco & Jackahmmer Operator; MechanicalTamper and Air Spade; Wagon & Hand Drill; Vibrator Operator; Operator on Power Tools used under the jurisdiction of Laborers; Cement Jumper; Puddler; Form Setter Helpers; Power & Hand Saw (when clearing timber); Center Strip; Reinforcing in Concrete: Wire Mesh; Concrete Saw; Mortar Mixer; Prime Mover or any mechanical devise taking the place of concrete buggy or wheelbarrow; Sand Point Setter; Asphalt Kettleman; Mastic Asphalt Mixerman or other preparation used on joints; Sheeting Hammer drivers (2-Men) Back up MaN or Joint Man with Pipelayer; Laborer in ditch or tunnel on sewer and water main & telephone conduit Gas Distribution Men; Pipe Setter on Laterals, Drain Tiles, Culvert Piep, & Storm Sewer Connection to catch Basins, Manholes or Main Line; Handling of Materials treated with oil, creosote,asphalt and/or any foreign material harmful to skin or clothing; Chloride Handlers, the Unloading & Laborers w/Steel workers and Re-Bars; Tunnel Helpers in Free Air; Batch Dumpers; Tank Cleaners; Cofferdam Workers; Bankmen on Floating Plant.

SKILLED - String on Wireline (1-man); Head form Setter; Dynamite Man; Asphalt Raker; Tunnel Miner; Pipelayer on Sewer & Water Main; Gunnite Nozzle Man; Welders; Cutters; Burners & Torchman; Screedman on Asphalt Pavers; Lutemen; Curb Asphalt Machine Operator; Laser Beam Operator; Concrete Burning Machine Operator; coring Machine Operator; Head Grade Man.

DECISION NO. IL78-2064

ILL-15-PEO-1-2-3

POWER EQUIPMENT OPERATORS: MERCER COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	11.80	.65	.70		.08
CLASS 2	11.80	.65	.70		.08
CLASS 3	10.40	.65	.70		.08
CLASS 4	10.40	.65	.70		.08
CLASS 5	12.65	.65	.70		.08

CLASS 1 - Crane, shovel, clamshell, dragline, backhoe, derrick, tower crane, cableway, concrete spreader (servicing two pavers), asphalt spreader, asphalt mixer plant engineer, dipper operator, dipper dredge craneman, dual purpose truck (boom or winch), leverman or engineman (Hydraulic dredge), mechanic, paving mixer with tower attached (two operators required), pile driver, boom tractor, stationary, portablE or floating mixing plant, trenching machine cleaning and priming machine, endloader (one half cubic yard or over, on basement excavation work), backfiller (throw bucket), locomotive engineer, Qualified welder, tow or push boat concrete paver, seamen Trav-L-Plant or similar machines, CMI autograder or similar machine, slip form paver, caisson augering machine, mucking, asphalt heater-planer unit hydraulic cranes, Mine hoists

CLASS 2 -Athey, Barber-Green, euclid or hasis loader, asphalt pug mill fireman and drier, concrete pump, concrete spreader (servicing one paver) bulldozer, endloader (other than mentioned above),forklift, elevating grader, group equipment greaser, letrouneapull and similar machine, DW-10, straddle carrier, hyster winch and similar machines, motor patrol, power blade push cat, tractor pulling elevating grader or power blade, tractor operating scoop or scraper, tractor with power attachment, roller on asphalt or blacktop, single drum hoist, Jeager mix and place machine pipe benging machine, welding machines (3 or 4), fuller kenyon cement pump or similar machines, automatic cement and gravel batch plants (one stop set-up), Seaman pulvi-mixer or similar machines, propelled sheep foot roller or compactor (used in conjunction with a grading spread), asphalt spreader screed operator apsco spreader or similar machine, slusher, forklift (over 6,000 lb. cap. or working at heights above 28 ft.) Conveyors.

DECISON NO. IL78-2064

POWER EQUIPMENT OPERATORS: (CONT'D)

CLASS 3 - Asphalt booster,fireman and pump operator at asphalt plant, compressor (500 cu. ft. and over), concrete finishing machine, form grader with roller on earth, mixers (3 bag to 16E), power opereted bull float, tractor without power attachment, Dope pot (agitating motor), Dope chop machine distributor (back end), Flexplaine or similar machines, portable machine fireman, Hydrohammer, power winch on paving work, self-propelled roller or compactor, (other than provided for above), pump operator crusher operator, trench machine (40 H. P. and under), power sub grader (on forms), or similar machines, Forklift (6000 or less cap.) Gypsum pump, conveyor over 20 H. P.

CLASS 4 - Air Compressor (275 c.f.m. or over) driver on truck crane or similar machines, light plant, mixers (1 or 2 bags), power batching machine (cement auger or conveyor), boiler (engineer or fireman, water pumps, welding machines, mechanical broom, automatic cement and gravel batch plant (two or three stop set-up), small backhoe or endloaders self-propelled curing machine

CLASS 5 - Oiler, mechanic's helper, water pump (pumping water to paver), mechanical heater (other than steam boiler) belt machine, small putboard motor boat

DECISION NO. IL78-2064 ILL-20-PEO-2-3

POWER EQUIPMENT OPERATORS: REMAINDER OF COUNTIES

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	12.22	.45	.80		.05
GROUP 2	12.02	.45	.80		.05
GROUP 3	11.17	.45	.80		.05
GROUP 4	10.96	.45	.80		.05
GROUP 5	9.46	.45	.80		.05

POWER EQUIPMENT OPERATORS:

GROUP 1 - Crane, hydro crane, shovels, crane type backfiller, tower cranes-mpbile and crawler and stationary derricks and hoist (3-drum); Dragline, Dragline, Drott Yumbo and similar types considered as cranes, backhoe, derrick boats, pile driver and skid rigs, clam shells, locomotive cranes, road pavers - single drum, dual drum and tri batcher, motor patrols and power blades - Dumore, elevating similar types, mechanics central concrete mixing plant operator, blacktop plant operators and plant engineers, grad-all, caisson rigs - require oiler, skimmerscoopkerhing scooper, dredges (all types) hop-toe-crane type (require oiler), Escalated rate on crane and derricks booms, $.01 per hour, per ft., over 80' including jib all cherry pickers, (over 15 tons require oiler), work boat, Ross carrier, helicopter, dozen and tournadozer

GROUP 2 - Asphalt heater and planter combination (used to plant streets), trench machines, pump crete - belt crete -sqeeze crete - screw type pumps and gysum, bulker and pump, dinkeys, tournapulls-all, and similar types, multiple unit earth movers, $.25 per hour for each scoop over one scoops (all sizes), pushcats, endloaders (all types), side booms, P-H one-pass soil cement machines and similar types, wheel tractors (industrial or farm-type with dozer hoe - end loader or other attachments, backfillers, asphalt surfacing machines euclid loader, fork lifts, formless finishings, jeep w/ditching machine or other attachments, tuneluger, rock crusher, automatic cement and gravel batching mobile drills (soil testing) and similar types, pugmill with pump, flaherty speader or similar types (require oiler), heavy equipment greaser (top greaser on spread), power launches, boring machine C.M.I. and similar types (require oiler), all (1) and (2) drum hoists, dewatering system, straw blower, hydro-seeder, boring machine, hydro-boom, starting engineer on pipeline, P.W.D. and similar types

DECISION NO. IL78-2064

POWER EQUIPMENT OPERATORS: (CONT'D)

GROUP 3 - Apsco spreader or similar types, tractors (track-type) without power units pulling rollers, rollers on asphalt - breck or macadam, concrete breakers, concrete spreaders, center stripper, cement finishing machines, vibro tampers (all similar types) self-propelled, mechanical bull floats, mixers over three bag to 27E, winch and boom trucks, tractor pulling power blade or elevating grader, Porter Rex rail, Clary screed, mule pulling rollers, pugmill without pump, Barber Greene or similar loaders, track-type tractors with power unit attached (minimum fireman, screed man on laydown machine, and spray machine on paving

GROUP 4 - Power subgrader, oil distributor, straight tractor, tract-air (without attachments), curb machines, paver ditch machines, truck crane oiler, and truck type hopetoe oilers

GROUP 5 - Herman Nelson Heater, Dravo, Warner, Silent glo and similar types, one engineer will operate 1-5 and after 5, two operators will be required, self-propelled concrete saws, assistant heavy equipment greaser crawler crane andskid oilers, rollers 5 ton and under on earth and gravel form graders, pump (1) or (2), light plant (1) or (2), generator (1) or (2), conveyor (1) or (2), welding machine (1) or (2) mixer bags and under, and bulk cement plant

DECISION NO. IL78-2064 ILL-82-TD-1-2-3

TRUCK DRIVERS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	10.125	.60	a28.00		
GROUP II	10.525	.60	a28.00		
GROUP III	10.725	.60	a28.00		

GROUP I - Drivers on 22 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greaser & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site, Fork lifts up to 6,000 lbs., capacity

GROUP II - 2 or 3 axle trucks hauling more than 9 tons, but handling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 ob. capacityl winch trucks; 4-axle combination units; tickets writers

GROUP III - 2,3 or 4 axle trucks hauling 16 tons or more, drivers on oil distributors, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatchers

FOOTNOTES:

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: Minnesota
DECISION NUMBER: MN78-2068
COUNTIES: See Below
DATE: Date of Publication
Supersedes Decision No. MN77-2034, dated March 4, 1977 in 42 FR 12617
DESCRIPTION OF WORK: Heavy and Highway Construction

COUNTIES: Beltrami, Clearwater, Kittson, Lake-of-the-Woods, Mahnomen, Polk, Marshall, Norman, Red Lake, Pennington and Roseau

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	$7.99				
Laborers	5.81				
POWER EQUIPMENT OPERATORS:					
Asphalt Distributor Spreader	7.04	.31	.20		
Asphalt Plant	7.39	.31	.20		
Backhoe Operator	9.10	.55	.50		
Bulldozer Operator	8.08				
Concrete Paving Machine	8.05	.31	.20		
Cranes, Derricks, Draglines	9.32	.55	.50		
Crusher & Screening Plant	7.66	.31	.20		
Form Graders/Motor Patrol	8.34				
Front End Loaders	8.07				
Mechanics	8.07				
Oilers-Greasers	6.14				
Packers	7.79				
Rollers:					
Base	7.04	.31	.20		
Finisher	8.57	.55	.50		
Scraper Operator	8.12				
Shovels	7.53				
Tractor	7.34				
Turnapull Operator	8.87				
TRUCK DRIVERS:					
Bituminous Distributor Drivers	7.39	.31	.20		
Dump Trucks	6.88				
8 cu. yd. up to & incl. 12 cu yd	7.39	.31	.20		
5 Axle-Flowboy/Trailers Drivers	7.26	.31	.20		
Semi-Drivers	7.62	.31	.20		
Single Axle or 2 Axle Drivers	7.42	.31	.20		
16 cu. yd. & over Drivers	7.62	.31	.20		
Tandem, 4 Axle Drivers & Tri-Axle	7.39	.31	.20		

SUPERSEDEAS DECISION

STATE: Mississippi
COUNTIES: Covington, Forrest, Greene, Jefferson Davis, Jones, Lamar, Marion, Perry and Wayne
DECISION NO.: MS78-1063
DATE: Date of Publication
Supersedes Decision No. MS75-1076 dated August 22, 1975 in 40 FR 36935
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$ 7.50				
Carpenters	5.18				
Cement Masons	7.00				
Electricians	4.21				
Ironworkers, reinforcing	4.13				
Laborers	3.05				
Painters, brush	5.00				
Plumbers & Pipefitters	6.50				
Roofers	5.00				
Soft Floor Layers	4.00				
Tile Setters	4.63				
POWER EQUIPMENT OPERATORS:					
Backhoe	3.75				
Tractor (wheel type)	3.10				

SUPERSEDEAS DECISION

STATE: Montana
DECISION NUMBER: MT78-5119
COUNTIES: Statewide
DATE : Date of Publication
Supersedes Decision No. MT78-5022 dated April 21, 1978, in 43 FR 17207
DESCRIPTION OF WORK: Building Construction (does not include single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.75	.44	$1.20		
BOILERMAKERS	12.30	.85	1.00		.02
BRICKLAYERS:					
Beaverhead, Deer Lodge, Granite, Jefferson (except Northern Tip of County), Madison, Powell and Silver Bow Counties	11.50		.55		.05
Gallatin and Park Counties	11.95		.55		.05
Big Horn, Carbon, Carter, Custer, Dawson, Fallon, McCone, Powder River, Prairie, Richland, Rosebud, Sweet Grass, Stillwater, Treasure, Wibaux Yellowstone Counties	11.45		.45		
Broadwater, Lewis and Clark and Meagher Counties	10.70	.60	.30		.05
Cascade, Chouteau, Glacier, Pondera and Teton Counties	11.15	.70	.55		.05
Blaine, Daniels, Hill, Liberty, Phillips, Roosevelt, Sheridan, Toole and Valley Counties	11.35	.55	.55		.05
Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties	10.65	.60	.55		.05
CARPENTERS:					
Cascade, Chouteau, Fergus, Glacier, Judith-Basin, Liberty, Meagher, Pondera, Teton and Toole Counties					
Carpenters	10.00	.55	.75		.02
Piledrivermen; Saw Filers; Sawmen	10.25	.55	.75		.02
Millwrights	10.50	.55	.75		.02
Blaine and Hill Counties					
Carpenters	9.68	.55	.75		.02
Millwrights	10.18	.55	.75		.02
Piledrivers	9.93	.55	.75		.02

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS: (Cont'd)					
Broadwater, Lewis and Clark and Jefferson Counties					
Carpenters	$ 9.79	.55	.75		.02
Piledrivermen	9.94	.55	.75		.02
Millwrights	10.04	.55	.75		.02
Deer Lodge, Granite (all area lying south of a line running due east from the N.W. corner of Granite County to the N.E. corner of Granite County) and Powell (area lying south of the N.E. corner of Granite County) Counties					
Carpenters	10.07	.55	.75		.02
Piledrivers	10.32	.55	.75		.02
Millwrights	10.32	.55	.75		.02
Granite (area lying north of a line running due east from the N.W. corner of Granite County to the N.E. corner of Granite County) Lake (southern area, south of and including the Town of Ravalli), Mineral (area southeast of Southeast City limits of the Town of Superior) Missoula, Powell (area lying north of the N.E. corner of Granite County), Ravalli and Sander (Southeastern portion) Counties					
Carpenters	9.88	.55	.75		.02
Millwrights; Piledriver	10.18	.55	.75		.02
Carter, Custer, Daniels, Dawson, Fallon, McCone, Phillips, Powder River, Prairie, Richland, Roosevelt, Sheridan, Valley & Wibaux Cos.					
Carpenters	8.29	.55	.75		.02
Piledrivermen	8.54	.55	.75		.02
Millwrights	8.79	.55	.75		.02

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS: (Cont'd)					
Flathead, Lincoln, Lake (Northern area including Town of Ravalli from a point where Hwy. #10A and Hwy. #93 intersect), Mineral (Northern area including the Town of Superior), Sanders (except S.E. corner portion) Counties					
Carpenters	$ 9.78	.55	.75		.02
Sawmen; Filers, Piledrivers; carpenters working burned, charred, creosoted or similar treated material	9.98	.55	.75		.02
Millwrights and Machine Erectors	10.13	.55	.75		.02
Big Horn, Carbon, Garfield, Golden Valley, Musselshell, Petroleum, Rosebud, Stillwater, Treasure, Wheatland and Yellowstone Counties					
Carpenters	9.58	.70	.75		.02
Floor Sander; Sawmen	9.73	.70	.75		.02
Piledrivermen	9.73	.70	.75		.02
Millwrights	10.33	.70	.75		.02
Beaverhead and Silver Bow Cos.					
Carpenters	9.40	.70	1.00	.75	.02
Millwrights and Piledrivermen	9.65	.70	1.00	.75	.02
Gallatin, Madison, Park and Sweetgrass Counties					
Carpenters	9.67	.55	.75		.02
Millwrights and Piledrivermen	9.92	.55	.75		.02
CEMENT MASONS:					
Flathead, Glacier, Lake (North of the City of Ronan), Lincoln and Sanders (North of the City of Plains) Counties	6.95	.37			

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS: (Cont'd)					
Granite (Northern half), Lake (Southern area, including the City of Pablo), Mineral, Missoula, Powell (Northern area including the City of Helmsville), Ravalli and Sanders (South portion including the City of Paradise) Counties	$ 9.50	.75	.35		
Beaverhead, Deer Lodge, Granite (Southern half), Jefferson (Southern area including Town of Wickes), Madison, Powell (South portion including the Town of Deer Lodge) and Silver Bow Counties	8.95	.50	.50	1.00	
Blaine, Cascade, Chouteau, Hill, Liberty, Pondera, Teton and Toole Counties	8.35	.44			
ELECTRICIANS:					
Beaverhead, Deer Lodge, Granite, Jefferson, Madison, Silver Bow and Powell Counties	11.60	.80	3%+.35		1/2%
Gallatin County	10.35	.40	3%		1/2%
Broadwater, Lewis and Clark and Meagher Counties					
Electricians	11.05	.60	3%+.50		1/2%
Blaine, Hill, Liberty and Phillips Counties					
Electricians	10.35		3%+.50		1/2%
Cascade, Chouteau, Glacier, Judith-Basin, Pondera, Teton and Toole Counties					
Electricians	11.60	.60	3%+.75		1/2%
Cable Splicers	11.85	.60	3%+.75		1/2%
Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties					
Electricians	10.30	.53	3%+.25		1/2%
Cable Splicers	10.80	.53	3%+.25		1/2%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
ELECTRICIANS: (Cont'd)					
Big Horn, Carbon, Golden Valley, Musselshell, Powder River, Rosebud, Stillwater, Treasure and Yellowstone Counties					
Electricians	$11.82	.45	3%+.50		1/2%
Cable Splicers	12.27	.45	3%+.50		1/2%
Fergus, Petroleum and Wheatland Counties					
(Electrical contracts less than $30,000)	8.65	.40	3%+.25		1/2%
(Electrical contracts $30,000 or more)	10.25	.40	3%+.25		1/2%
Park and Sweet Grass Counties	10.45	.45	3%+.50		1/2%
Daniels, McCone, Richland, Roosevelt, Sheridan, and Valley Counties					
Electricians	9.70	.60	3%+.75		1/2%
Cable Splicers	9.95	.60	3%+.75		1/2%
Custer and Garfield Counties	9.40		3%		1/2%
ELEVATOR CONSTRUCTORS	10.84	.745	.56		.025
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.745	.56		.025
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
IRONWORKERS:					
Beaverhead, Broadwater, Deer Lodge, Gallatin, Granite, Jefferson , Lewis and Clark, (Southern half inlcuding Wolf Creek), Madison, Park, Powell, Ravalli and Silver Bow Cos.	10.66	.65	1.15		.05
Flathead, Glacier, Lake, Lincoln, Mineral, Missoula and Sanders Counties	12.60	.93	1.45		.10
Remaining Counties (including Northern half of Lewis and Clark County)	10.66	.65	1.15		.05
MARBLE MASONS:					
Flathead, Lake, Lincoln, Mineral Missoula, Ravalli and Sanders Counties	9.50	.40	.25		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
MARBLE MASONS: (Cont'd)					
Big Horn, Carbon, Carter, Custer, Dawson, Fallon, McCone, Powder River, Prairie, Richland, Rosebud, Stillwater, Sweet Grass, Treasure, Wibaux and Yellowstone Counties	$11.20		.35		.02
Gallatin and Park Counties	10.05				
Broadwater, Lewis and Clark, Meagher and Jefferson (Northern area) Counties	10.70	.60	.30		.05
Cascade, Chouteau, Glacier, Pondera and Teton Counties	11.15	.70	.55		.05
Blaine, Daniels, Hill, Liberty, Phillips, Roosevelt, Sheridan, Toole and Valley Counties	10.50	.55	.55		.05
PAINTERS:					
Beaverhead, Jefferson (Southern area, south of the City of Boulder), Madison (west of a line running north-south through the west limits of Harrison and Silver Bow Cos.					
Painter, brush	7.60	.15	.10		
Power taping machine	7.87	.25	.10		
Paint mitts and work over 30 feet	8.12	.25	.10		
Application of cold tar; Spray work; Pressure Roller; Sand blasting and steam cleaning; Stacks and steeples	10.40	.25	.10		
Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Golden Valley, Musselshell, Powder River, Prairie, Rosebud, Stillwater, Sweet Grass, Treasure, Wibaux Yellowstone Counties					
Brush or Roller	9.26	.56	.20		
Steel (brush or roller)	9.51	.56	.20		
Spray (not steel)	10.24	.56	.20		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Cascade, Chouteau (south of a line running East and West through the Southern limits of Big Sandy), Daniels, Fergus, Glacier (excluding Glacier National Park), Garfield, Judith-Basin, Lewis and Clark, (Northern portion from a line running East and West through the northern limits of Craig), McCone, Phillips, Pondera, Petroleum, Richland, Roosevelt, Sheridan, Teton, Toole, Valley and Wheatland (Northern area from a line running East and West thru the southern limits of Harlowtown) Counties					
Roller up to 9 inches	$ 9.27	.56	.40		1/2%
Paperhanger, Brush on steel	9.77	.56	.40		1/2%
Water and Sandblasting, Application of cold tar products, Epoxies Polyurethanes and acid resistant paints, Spraying and airless spray	11.52	.56	.40		1/2%
Roller over 9" long	12.87	.56	.40		1/2%
Taper	9.67	.56	.40		1/2%
Machine Taper	10.92	.56	.40		1/2%
Deer Lodge County and the Southern part of Granite County from a line east-west through the Southern limits of Phillipsburg					
Painters	8.02				
Perfataper	8.27				
Paint mitts	.8.52				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Application of cold tar products, epoxies, polyurethanes and acid resistant paints; Water sandblasting and steam cleaning; Stacks and steeples; Brushing of steel; Spraying and airless spraying; Work over 30 feet	$10.80				
Broadwater, Gallatin, Jefferson (Northern area from a line running east and west five miles south of the Southern City limits of Boulder), Lewis and Clark (Southern portion from a line running east and west thru the Southern limits of Craig), Meagher, Park, Powell (Southern area from a line running east and west through the Southern City limits of Helmsville)					
Parkling lot striping and related work	8.69	.25	.20		.03
Paper Hanger	9.19	.25	.20		.03
Perfataper:					
Hand	9.19	.25	.20		.03
Spray	9.69	.25	.20		.03
Machine	9.94	.25	.20		.03
Blaine, Hill, Liberty and Chouteau (North of the Southern limits of the City of Big Sandy) Counties	8.40				
Plathead, Granite (Northern area north limits of Phillipsburg), Lake (Southern area including City of Ronan), Lincoln, Mineral, Missoula, Powell (Northern area through south limits of Helmsville), Ravalli and Sanders Cos.	9.35	.44	.40		.04

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS:					
Granite, Lake (Southern area, including the City of Pablo), Mineral, Missoula, Powell (Northern area including the City of Helmsville), Ravalli and Sanders (south portion, including the City of Paradise), Counties	$ 9.50	.75	.35		
Beaverhead, Deer Lodge, Jefferson (Southern area, including the Town of Wickes), Madison, Powell (South of a line running E-W north of the Town of Deer Lodge) and Silver Bow Counties	8.95	.50	.25	1.00	
PLUMBERS:					
Flathead, Lake, Lincoln, Mineral, Missoula and Sanders Counties	11.68	.65	.70		.10
Blaine, Cascade, Chouteau, Fergus, Glacier, Hill, Judith-Basin, Liberty, McCone, Meagher, Phillips, Pondera, Roosevelt, Teton, Toole and Valley Cos.	12.60	.75	1.10		.14
Beaverhead, Broadwater, Deer Lodge, Gallatin, Granite, Jefferson, Lewis and Clark, Madison, Park, Powell, Silver Bow and Sweet Grass Counties	11.70	.60	.75		.10
Big Horn, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Garfield, Golden Valley, Musselshell, Petroleum, Powder River, Prairie, Richland, Rosebud, Sheridan, Stillwater, Treasure, Wheatland, Wibaux and Yellowstone Counties	11.25	.40	.80		.10

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Golden Valley, Musselshell, Powder River, Prairie, Richland, Rosebud, Stillwater, Treasure, Wibaux and Yellowstone Counties	$ 8.79		.25		
Blaine, Cascade, Chouteau, Daniels, Fergus, Garfield, Glacier, Hill, Judith-Basin, Liberty, McCone, Petroleum, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole and Valley Counties	9.20				
Deer Lodge, Powell and Silver Bow Counties	8.85	.60	.60	.75	
Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties	8.49	.60			.01
Broadwater, Gallatin, Meagher, Park, Sweet Grass, Lewis and Clark, Beaverhead, Jefferson, Madison and Wheatland Counties	9.25	.55			
SHEET METAL WORKERS:					
Broadwater, Jefferson (including North half of the City of Boulder), Lewis and Clark and Meagher Counties	10.31	.77	.25		.10
Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties	10.23	.82	.25		.10
Big Horn, Carbon, Carter, Duster, Daniels, Dawson, Fallon, Fergus, Gallatin, Garfield, Golden Valley, McCone, Musselshell, Petroleum, Phillips, Powder River, Park, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, Treasure and Yellowstone Counties	9.945	.46	3%+.725		.12

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS: (Cont'd)					
Blaine, Cascade, Chouteau, Glacier, Hill, Judith-Basin, Liberty, Pondera, Teton and Toole Counties	$ 11.43	.66	.25		.08
Beaverhead, Deer Lodge, Granite, Jefferson (S½), Madison, Powell, and Silver Bow Cos.	10.04	.37	.44	1.00	.02
SPRINKLER FITTERS	11.25	.65	.95		.08
TERRAZZO WORKERS & TILE SETTERS:					
Broadwater, Lewis and Clark, Meagher and Jefferson (Northern area north of Boulder Hill) Counties	9.75	.30			
Big Horn, Carbon, Carter, Custer, Dawson, Fallon, McCone, Powder River, Prairie, Richland, Rosebud, Sweet Grass, Stillwater, Treasure, Wibaux and Yellowstone Counties	11.20		.35		.02
Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties	9.50	.40	.25		
Gallatin and Park Counties	10.05				
Cascade, Chouteau, Glacier, Pondera and Teton Counties	9.00	.70	.55		.05

FOOTNOTE:
a. Employer contributes 8% of basic hourly rate for 5 years' service and 6% basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

LABORERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Beaverhead, Deer Lodge, Madison, Powell, Silver Bow and that portion of Jefferson County within the territorial limits of District No. 2					
Group 1	$8.21	.60	.50		.05
Group 2	8.96	.60	.50		.05
Group 3	8.12	.60	.50		.05
Group 4	8.46	.60	.50		.05
Group 5	8.06	.60	.50		.05
Group 6	8.18	.60	.50		.05
Group 7	8.26	.60	.50		.05
Group 8	8.56	.60	.50		.05
Group 9	8.08	.60	.50		.05
Broadwater, Lewis & Clark Meagher, North half of Jefferson County including the City of Boulder that portion of Powell County lying east of a north-south line at west edge of the Town of Elliston					
Group 1	8.64	.60	.50		.05
Group 2	8.39	.60	.50		.05
Group 3	8.55	.60	.50		.05
Group 4	8.89	.60	.50		.05
Group 5	8.49	.60	.50		.05
Group 6	8.61	.60	.50		.05
Group 7	8.68	.60	.50		.05
Group 8	8.99	.60	.50		.05
Broadwater (that portion lying south of an east-west line north of the City of Tosten), Gallatin, Madison (taht portion lying east of the Gravely Mountain Range), Park and Wheatland County					
Group 1	8.38	.60	.50		.05
Group 2	8.13	.60	.50		.05
Group 3	8.29	.60	.50		.05
Group 4	8.63	.60	.50		.05
Group 5	8.23	.60	.50		.05
Group 6	8.35	.60	.50		.05
Group 7	8.42	.60	.50		.05
Group 8	8.73	.60	.50		.05

LABORERS

Beaverhead, Deer Lodge, Madison, Powell, Silver Bow and that portion of Jefferson County within the Territorial limits of District No. 2

Group 1: Asphalt raker; Concrete laborers (wet or dry); Bucket men and signalmen; Drills, air-tract, self-propelled; Cat or truck mounted air operated drills; Drills, air-tract, self-propelled mustang type and similar; Grade setter; High scaler; High pressure machine nozzleman; Power saw (falling); Sandblaster

Group 2: Axeman; Carpenter tender; Caisson worker (free air); Chuck tender and nipper (above ground); Cosmolene applying and removing; Dumpman (spotter); Fence erector and installer (includes the installation and erection of fences, guard rails, median rails, reference post, right-of-way markers and guide post); Flagman; Form stripper; Form setter; General laborer; Crusher and batch plant Heater tender - not covered by joint board decision such as the radiant type of butane fire, without blowers or fans; Landscape laborer; Riprap helpers; Sandblaster tail hoseman; Pot tender; Scaleman; Sod cutter, hand operated (general laborers); Stake jumper for equipment; Tool checker, toolhouseman

Group 3: Burning bar; Curb machine; Dumpman (grademan); Pipelayer (all types); Laser equipment; Powderman helper; Spike driver, single or dual or hand; Switchmen

Group 4: Cement Mason tender and hod carriers; Powderman

Group 5: Cement handlers; Concrete or asphalt saws; Hand faller; Nozzleman - air water; Gunite and placo machine; Pipe wrapper; Post hole digger (power auger); Riprapper

Group 6: Choker setter; Jackhammer; Pavement breaker; Wagon driller; Concrete vibrator; Mechanical tamper; Vibrating roller, hand steered and other power tools; Power saw (bucking); Power driven wheelbarrow; Rigger; Grout, concrete pumps and nozzleman

Group 7: Concrete vibrator (3" and over); Drills, air-tract with dual masts

Group 8: Core drill operator, welder, air arc, cutting torch

Group 9: Tar pot operator

LABORERS (Cont'd)

Broadwater, Lewis & Clark, Meagher, North half of Jefferson County including the City of Boulder that portion of Powell County lying east of a North-south line at west edge of the Town of Elliston

Group 1: Asphalt raker; Drillers; Air-tract, self-propelled; Cat or truck mounted air operated drills; Drills, air-tract, self-propelled mustang type and similar; Grade setter; High scaler; High pressure machine; Nozzleman; power saw (falling); Sandblaster

Group 2: Axeman; Carpenter tender; Car and truck loaders; Scissorman; Caisson workers (free air); Chuck tender and nipper (above ground); Concrete laborers (wet or dry); Bucketmen and signalmen; Cosmolene (applying and removing; Dumpman (spotter); Fence erector and installer (includes the installation and erection of fences, guard rails, median rails, reference post, right-of-way markers and guide post); Flagman; Form stripper; Form setter; General laborer, crusher and batch plant laborers; Heater tender - not covered by joint board decision - such as the radiant type of butane fire, without blowers or fans; Landscape laborer; Riprap helper; Sandblaster tail hoseman; Pot tender; Scaleman; Sod cutter, hand operated (general laborers); Stake jumper for equipment; Tool checker, toolhouseman

Group 3: Burning bar; Curb machine; Dumpman (grademan); Pipelayer (all types); Laser equipment; Powderman helper; Spike driver, signle or dual or hand; Switchmen

Group 4: Cement mason tender and hod carriers; Powderman

Group 5: Cement handlers; Concrete or asphalt saws, hand faller; Nozzleman - air water; Gunite and placo machine; Pipe wrapper; Post hole digger (power auger); Riprapper

Group 6: Choker setter; Jackhammer; Pavement breaker; Wagon driller; Concrete vibrator; Mechanical tamper; Vibrating roller, hand steered and other power tools; Power saw (bucking); Power driven wheelbarrow; Rigger; Tar pot operator; Grout, concrete and nozzleman

Group 7: Concrete vibartor (3" and over), drills, air track with dual masts

Group 8: Core drill operator; Welder, air arc, cutting torch

LABORERS (Cont'd)

Broadwater (that portion lying south of an east-west line north of the City of Tosten), Gallatin, Madison (that portion lying east of the Gravely Mountain Range), Park and Wheatland County

Group 1: Asphalt raker; Drills, air-tract, self-propelled; Car or truck mounted air operated drills; Drills, air-tract, self-propelled mustang type and similar; Grade setter; High scaler; High pressure machine Nozzleman; Power saw (falling); Sandblaster

Group 2: Axeman; Carpenter tender; Car and truck loader; Scissorman; Caisson workers (free air); Chuck tender and nipper (above ground); Cosmolene applying and removing; Dumpman (spotter); Fence erector and installer (includes the installation and erection of fences, guard rails, median rails, reference post, right-of-way markers and guide post); Flagman; Form stripper; Form setter; General laborer; Crusher and batch plant laborers; Heater tender - not covered by joint board decision - such as the radiant type of butane fire, without blowers or fans; Landscape laborer; Riprap helper; Sandblaster tail hoseman; Pot tender; Scaleman; Sod cutter, hand operated; Stake jumper for equipment; Tool checker, toolhouseman

Group 3: Burning bar; Curb machine; Dumpman (grademan); Pipelayer (all types); Laser equipment; Powderman helper; Spike driver, single or dual or hand; Switchmen

Group 4: Cement mason tender and hod carriers; Powderman

Group 5: Cement handlers; Concrete or asphalt saws, hand faller; Nozzleman - air water; Mixer operator, gunite and placo machine; Pipe wrapper; Post hole digger (power auger); Riprapper

Group 6: Choker setter; Jackhammer; Pavement breaker; Wagon driller; Concrete vibrator; Mechanical tamper; Vibrating roller, hand steered and other power tools; Power saw (bucking); Power driven wheelbarrow; Rigger; Tar pot operator; Grout; Concrete pump and nozzleman

Group 7: Concrete vibrator (3" and over), drill, air tract with dual masts

Group 8: Core drill operator; Welder, air arc, cutting torch

LABORERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Flathead, Glacier National Park, Lincoln and that area of Lake and Sanders Counties lying 5 miles north of the 5th Parallel					
Group 1	$8.62	.60	.50		.05
Group 2	8.79	.60	.50		.05
Group 3	8.96	.60	.50		.05
Carter, Custer, Dawson, Fallon, Powder River, Prairie and Wibaux Counties					
Group 1	7.55	.55	.45		.05
Group 2	7.77	.55	.45		.05
Group 3	7.80	.55	.45		.05
Big Horn, Carbon, Golden Valley, Musselshell, Rosebud, Stillwater, Treasure and Yellowstone Counties					
Group 1	7.70	.55	.45		.05
Group 2	7.92	.55	.45		.05
Group 3	7.95	.55	.45		.05
Granite, Lake (Southern area), Mineral, Missoula, Ravalli and Sanders (Southern area) Counties					
Group 1	8.565	.60	.50		.05
Group 2	8.815	.60	.50		.05
Group 3	8.965	.60	.50		.05

LABORERS (Cont'd)

Flathead, Glacier National Park, Lincoln, and that portion of Lake and Sanders Counties lying 5 miles north of the 5th Parallel

Group 1: General laborers; Scaleman; Form strippers; Car and truck loaders

Group 2: Concrete handlers, conveying and handling concrete; Nozzlemen (air or water); Sand blast tail hose man; Powderman helper; Power driven Wheelbarrow; Rodder and spreader; Form setters (paving); Bucketman; Small air tool operators, including blow pipes and small power tool operators; Chuck tenders; Asphalt rakers; Dumpman; Rip rapping; Pipe wrapper; Pot tender; Concrete pumper hoseman; Jackhammer; Pavement breaker; Vibrator; Mechanical tamper and other air tools; Cement handlers (sack or bulk); Burning bar

Group 3: Pipe layers (non-metallic); Metal culvert pipe layers; Mason and plaster tenders; Cement finisher tender; Small concrete mixer operator; Shoring and lagging open ditches; Powderman; Drills, air-trac, wagon drill, cat or truck mounted air operated drills, Sand blaster (wet or dry); Gunite Nozzleman; Barco tamper

Carter, Custer, Dawson, Fallon, Powder River, Prairie and Wibaux Counties

Group 1: General laborers

Group 2: Jackhammer operator; Mechanical tampers; Pipelayers (all types); Pavement breakers; Pneumatic and electric tools operator; Pipewrappers

Group 3: Mason and plasterer's tenders

Big Horn, Carbon, Golden Valley, Musselshell, Rosebud, Stillwater, Treasure and Yellowstone Counties

Group 1: General laborers; Concrete laborers; Chuck tenders and nippers

Group 2: Cement handler (sack or bulk); Jackhammer operator; Mortarman; Pipelayer (all types); Pipewrapper; Primerhouseman

Group 3: Mason and Plasterer's tenders

Granite, Lake (southern area), Mineral, Missoula, Ravalli and Sanders (southern area) Counties

Group 1: Laborers

Group 2: All power tools; Creosote workers; Jackhammer; Marble and tile setters' tenders; Pipelayers; Pipewrappers; Pot tenders; Small concrete Mixers; Vibrators

Group 3: Cement masons and plasterer's tenders; Mason tenders; Pumperete, gunnite and plaster pump

LABORERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Cascade, Chouteau, Fergus, Glacier, Judith-Basin, Pondera, Teton and Toole Counties					
Group 1	$ 8.85	.60	.50		.05
Group 2	8.60	.60	.50		.05
Group 3	8.76	.60	.50		.05
Group 4	9.10	.60	.50		.05
Group 5	8.70	.60	.50		.05
Group 6	8.82	.60	.50		.05
Group 7	8.89	.60	.50		.05
Group 8	9.20				.05
Blaine, Daniels, Garfield, Hill, Liberty, McCone, Petroleum, Phillips, Richland, Roosevelt, Sheridan and Valley Cos.					
Group 1	8.60	.60	.50		.03
Group 2	8.70	.60	.50		.03
Group 3	8.85	.60	.50		.03
Group 4	9.00	.60	.50		.03
Group 5	9.10	.60	.50		.03
Group 6	9.35	.60	.50		.03

Cascade, Chouteau, Fergus, Glacier (excluding Glacier National Park, Judith-Basin, Pondera, Teton and Toole Counties

Group 1: General and building laborers' and Scale Men; Concrete Laborers (wet or dry breaking of concrete requiring sledge hammer); Dumpman (spotter) and Flagman; Fence Erectors and Installers, including the installation and erection of fences, guardrials, median rails, reference posts, guide posts and right-of-way markers; Vibrators, under 1½" in diameter; Small Air Tools such as Chippers, Clay Spades, etc.; Stake Setters; Stake Jumper, Rodder and Spreader; Form Stripper; Caisson Workers (free air); Vibrator 1½" to 2½" in diameter

Group 2: Concrete or Asphalt Saws; Creosote material handler; Curb Machine form setter (slab steel forms); Diamond drills up through 3 inches in diameter; Jackhammer, pavement breaker, Wagon driller, cat or truck mounted air operated drills, and other air tools; Diesel Tamper, Wacker, Jay, Turtle, Pogo Sticks, etc., Mechanical tampers; Nozzlemen, air and water, gunite and Placo, Machine (grout); Pipe layer (all types); Power saw (bucking and falling); Power driven wheelbarrow; Chuck Tenders, Muckers and Nippers, Primeman

Group 3: Sand Blaster

LABORERS (Cont'd)
Cascade, Chouteau, Fergus, Glacier (excluding Glacier National Park, Judith-Basin, Pondera, Teton and Toole Counties

Group 4: Vibrators, 2½" to 4" in diameter; Brick tenders; Dumpman (grade); Small Concrete Mixers

Group 5: Diamond drills up through 6 inches in diameter; Hod Carriers and plaster tenders (1-one mixerman per crew); Asphalt raker and tamper; High scaler; Powderman helper; Concrete nozzleman; Miners; Barco Tamper; Air-trac

Group 6: Diamond drill, over 6 inches in diameter; Self-propelled drills, with the exception of size differential, such as Mustang drills or twin stack drills; Core drill operator; Laser equipment and tools, excluding transit; Powderman

Group 7: Concrete Vibrator, 4" and over

Blaine, Daniels, Garfield, Hill, Liberty, McCone, Petroleum, Phillips, Richland, Roosevelt, Sheridan and Valley Counties

Group 1: General and building laborers' and scale men; Form stripper and Carpenter tender; Car and truck loaders; Concrete laborers (wet or dry breaking of concrete requiring sledge hammer); Dumpmen (spotter and flagman); Small power tools; Chippers, Clay Spaders, Pogo stick, etc.; Fence erectors and installers, installation and erection of fences, guard rails, median rails, reference posts, guide posts, and right-of-way markers

Group 2: Dumpman (grade)

Group 3: Power driven concrete buggies or power driven wheelbarrows; Pipe layers (non-metallic); Sandblaster, Concrete nozzleman, Place operator, Jackhammer, Pavement breaker, Vibrator (2½ inches and over) Barco Tamper, Vibrator Turtle; Small concrete mixers, concrete saw; Nozzleman (air and water); Sandblaster, tailhoseman, pot tender, tar pot tender; Gunite nozzleman; Caisson workers (free air); Tunnels and shafts (free air); Bull gang, pot tender; Chuck tender, muckers and nippers, Primerhouseman

Group 4: Brick tenders handling bricks and blocks only)

Group 5: Hod carriers and plaster tenders (men carrying motor either by hod, pail or barrow); High scaler; Wagon driller, cat or truck mounted air operated drills; Asphalt rakers and tampers, Gunite, Form Setter (slab steel forms); Stake setter, Stake jumper, Rodder and spreader, Grademan; Concrete nozzleman; Miners

Group 6: Powdermen; Laser Tools and Equipment

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
A-Frame Truck Crane, Winch Truck and similar	$ 10.60	.55	.55	.45	.07
Air Compressor, single	10.29	.55	.55	.45	.07
Air Compressor, two or more	10.46	.55	.55	.45	.07
Air Doctor	10.76	.55	.55	.45	.07
Asphalt Paving Machine	10.76	.55	.55	.45	.07
Asphalt Paving Machine Screed	10.76	.55	.55	.45	.07
Automatic Finegrader, Gurries and other similar types	10.89	.55	.55	.45	.07
Belt Finish Machine	10.46	.55	.55	.45	.07
Bit Grinder	10.76	.55	.55	.45	.07
Bituminous Mixer Paving, Travel Plant	10.76	.55	.55	.45	.07
Boring Machine (small), Jeep, Pickup or Farm Tractor mounted	10.35	.55	.55	.45	.07
Boring Machine (large)	10.76	.55	.55	.45	.07
Broom, Self-propelled	10.43	.55	.55	.45	.07
Cableway Highline	11.27	.55	.55	.45	.07
Cement Silo	10.55	.55	.55	.45	.07
Central Mixing Plants, Concrete dam and stationary	11.01	.55	.55	.45	.07
Chain Bucket Loader	10.48	.55	.55	.45	.07
Chip or Gravel Spreader, Self-propelled	10.48	.55	.55	.45	.07
Concrete Batch Plant, one and two mixers	10.76	.55	.55	.45	.07
Concrete Batch plant, three and four mixers	10.96	.55	.55	.45	.07
Concrete Batch Plant, five mixers and over	11.16	.55	.55	.45	.07
Concrete Batch Plant Oiler, up to and including two mixers	10.28	.55	.55	.45	.07
Concrete Batch Plant Oiler, three mixers and over	10.59	.55	.55	.45	.07
Concrete Bucket Dispatcher	10.76	.55	.55	.45	.07
Concrete Curing Machine	10.76	.55	.55	.45	.07
Concrete Finish Machine Paving	10.76	.55	.55	.45	.07
Concrete Float-Spreader	10.76	.55	.55	.45	.07
Concrete Mixer, three bags and under	10.35	.55	.55	.45	.07

POWER EQUIPMENT OPERATORS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Concrete Mixer, four bags and under	$ 10.52	.55	.55	.45	.07
Concrete Power Saw, self-propelled	10.76	.55	.55	.45	.07
Concrete Travel Batcher	10.76	.55	.55	.45	.07
Concrete Conveyor under 40 ft.	10.34	.55	.55	.45	.07
Concrete Conveyor over 40 ft.	11.09	.55	.55	.45	.07
Concrete Pump	11.09	.55	.55	.45	.07
Conveyor Loader Operator, up to and including 42' belt	10.34	.55	.55	.45	.07
Conveyor Loader Operator over 42" belt	10.46	.55	.55	.45	.07
Crane, to and including 80' boom	10.92	.55	.55	.45	.07
Crane, 81' to 130' boom	11.07	.55	.55	.45	.07
Crane, 131' to 150' boom	11.12	.55	.55	.45	.07
Crane, 151' boom and over	11.17	.55	.55	.45	.07
Crane Oiler	10.33	.55	.55	.45	.07
Crane with jibs an additional $.15 per hour					
Crusher	10.76	.55	.55	.45	.07
Crusher Oiler and Helper	10.25	.55	.55	.45	.07
Crusher Conveyor, when required	10.22	.55	.55	.45	.07
Distributor	10.76	.55	.55	.45	.07
DW 10, 15, or 20 Tractor pulling Roller	10.48	.55	.55	.45	.07
Electric Overhead Cranes	10.94	.55	.55	.45	.07
Elevating Grader	10.76	.55	.55	.45	.07
Farm type Tractor, up to and including 50 HP engine	10.22	.55	.55	.45	.07
Farm type Tractor, over 50 HP engine	10.30	.55	.55	.45	.07
Field Equipment Serviceman	10.68	.55	.55	.45	.07
Field Equipment Serviceman Helper	10.25	.55	.55	.45	.07
Fireman	10.35	.55	.55	.45	.07
Forklift, on construction job site	10.57	.55	.55	.45	.07
Form Grader	10.53	.55	.55	.45	.07
Gradall	10.76	.55	.55	.45	.07
Grade Setter	10.22	.55	.55	.45	.07

POWER EQUIPMENT OPERATORS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Heavy Duty Drill, all types	$ 10.76	.55	.55	.45	.07
Heavy Duty Driller Helper	10.35	.55	.55	.45	.07
Herman-Nelson Heaters and similar type	10.30	.55	.55	.45	.07
Hoist, two or more drums	10.76	.55	.55	.45	.07
Helicopter Hoist	11.26	.55	.55	.45	.07
Hot Plant	10.76	.55	.55	.45	.07
Hot Plant Fireman, when in operation	10.76	.55	.55	.45	.07
Hot plant Oiler, 100 ton per hour or over	10.25	.55	.55	.45	.07
Hydra lift and similar types	10.66	.55	.55	.45	.07
Indsutrial Locomotive all classes	10.76	.55	.55	.45	.07
Mechanic and/or Welder on job	10.86	.55	.55	.45	.07
Mechanic and/or Welder Helper on job	10.25	.55	.55	.45	.07
Mechanic, Shop (Dec. 1 to April 1)	10.46	.55	.55	.45	.07
Mechanic Helper, Shop (Dec. 1 to April 1)	9.92	.55	.55	.45	.07
Mixermobile	10.84	.55	.55	.45	.07
Motor Patrol	10.89	.55	.55	.45	.07
Mountain Logger or similar type	10.76	.55	.55	.45	.07
Mucking Machine	10.76	.55	.55	.45	.07
Oiler-Driver, Rubber Tired Cranes	10.33	.55	.55	.45	.07
Oilers, other than shovels and cranes	10.25	.55	.55	.45	.07
Oiler, hoist house, dams	10.66	.55	.55	.45	.07
Pavement Breaker, Emsco and similar	10.76	.55	.55	.45	.07
Paving and Mixing Machine	10.89	.55	.55	.45	.07
Power Auger, Large Truck or Tractor mounted and Punch	10.76	.55	.55	.45	.07
Power Mixer, single or double drum	10.76	.55	.55	.45	.07
Power Saw, multiple cut, self-propelled	10.76	.55	.55	.45	.07
Pumpcrete or Grout Machine	10.76	.55	.55	.45	.07
Pumpman	10.29	.55	.55	.45	.07
Push Tractor	10.76	.55	.55	.45	.07

POWER EQUIPMENT OPERATORS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Quad Cat	$ 11.06	.55	.55	.45	.07
Quad Loader and similar type	11.34	.55	.55	.45	.07
Radiator Repairman	10.57	.55	.55	.45	.07
Raygo Gaint	11.34	.55	.55	.45	.07
Refrigeration Plant	10.76	.55	.55	.45	.07
Retort	10.35	.55	.55	.45	.07
Roller, on blade or hot mix oil paving	10.76	.55	.55	.45	.07
Roller, on other blade or hot Mix paving	10.46	.55	.55	.45	.07
Roller, 25 ton or over	10.76	.55	.55	.45	.07
Rose and similar type carriers, on construction site	10.76	.55	.55	.45	.07
Rubber-tried Dozer	10.76	.55	.55	.45	.07
Rubber-tired Front End Loader, 1 yard and under	10.47	.55	.55	.45	.07
Rubber-tired Front End Loader, 1 yard to and including 3 yds.	10.76	.55	.55	.45	.07
Rubber-tired Front End Loader, over 3 yards to and including 5 yards	10.88	.55	.55	.45	.07
Rubber-tired Front End Loader, over 5 yards to and including 10 yards	10.98	.55	.55	.45	.07
Rubber-tired Front End Loader, over 10 yards to and including 15 yards	11.08	.55	.55	.45	.07
Rubber-tired Front End Loader, over 15 yards	11.18	.55	.55	.45	.07
Scraper, DW 15, 20, 21 and similar type if power unit is not used	10.76	.55	.55	.45	.07
Scraper, single or twin engine pulling belly dump trailer	11.14	.55	.55	.45	.07
Scraper, single engine	10.89	.55	.55	.45	.07
Scraper, twin engine	10.99	.55	.55	.45	.07
Scraper, tandem engine or 3 engine	11.25	.55	.55	.45	.07
Self-propelled Sheepfoot and similar type	10.76	.55	.55	.45	.07

POWER EQUIPMENT OPERATORS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Shovels, including all attachments, under 1 cu. yd.	$ 10.76	.55	.55	.45	.07
Shovels, including all attachments, 1 cu. yd. to and including 3 cu. yds.	10.94	.55	.55	.45	.07
Shovels, including all attachments, over 3 cu. yds. to and including 5 cu. yds.	11.21	.55	.55	.45	.07
Shovels, including all attachments, over 5 cu. yds.	11.34	.55	.55	.45	.07
Shovel Oiler, 3 yards and under	10.25	.55	.55	.45	.07
Shovel Oiler, over 3 cu. yds.	10.66	.55	.55	.45	.07
Slip Form Paver	10.89	.55	.55	.45	.07
Stiff Leg Derrick and Guy Derrick	11.21	.55	.55	.45	.07
Track-type Front End Loaders, up to and including 5 cu. yds.	10.76	.55	.55	.45	.07
Track-type Front End Loaders, over 5 cu. yds. to and including 10 cu. yds.	10.99	.55	.55	.45	.07
Track-type Front End Loaders, over 10 cu. yds. to and including 15 cu. yds.	11.09	.55	.55	.45	.07
Track-type Front End Loaders, over 15 cu. yds.	11.19	.55	.55	.45	.07
Track-type Tractor w/wo attachments	10.76	.55	.55	.45	.07
Track-type Tractor, on Euclid Loader	10.94	.55	.55	.45	.07
Trenching Machine	10.76	.55	.55	.45	.07
Turnhead Conveyor, or Head Tower on Batch Plant	10.76	.55	.55	.45	.07
Wagner Roller and similar type	10.76	.55	.55	.45	.07
Whirley Crane	11.29	.55	.55	.45	.07
Whirley Crane Oiler	10.66	.55	.55	.45	.07
Water Pull when used for compaction	10.76	.55	.55	.45	.07
Washing and Screening Plant	10.76	.55	.55	.45	.07
Washing and Screening Plant Oiler	10.25	.55	.55	.45	.07
Yo-Yo Cat, both ends	10.96	.55	.55	.45	.07

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Statewide, except Gallatin, Park, Sweet Grass, Broadwater (south of U. S. Highway #12) Counties					
COMBINATION TRUCK; Concrete Mixer and Transit Mixer:					
To and including 4 cu. yds.	$ 9.61	.65	.50		
Over 4 cu. yds. to and including 6 cu. yds.	9.69	.65	.50		
Over 6 cu. yds. to and including 8 cu. yds.	9.77	.65	.50		
Over 8 cu. yds. to and including 10 cu. yds.	9.85	.65	.50		
Over 10 cu. yds. - additional $.08 per hour each additional 2 cu. yds. increment					
DISTRIBUTOR DRIVER and HELPER	9.59	.65	.50		
DRY BATCH TRUCKS:					
3 Batch or under	9.36	.65	.50		
Over 3 Batch to and including 5 Batch	9.49	.65	.50		
Over 5 Batch to and including 10 Batch	9.65	.65	.50		
Over 10 Batch to and including 15 Batch	9.81	.65	.50		
Over 15 Batch - addtional $.15 per hour each additional 5 Batch increment					
PICKUP DRIVER, HAULING MATERIALS	9.46	.65	.50		
DUMPMAN, GRAVEL SPREADER BOX OPERATOR; Pilot Car Driver, Teamsters and Helpers	9.36	.65	.50		

TRUCK DRIVERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
WAREHOUSEMEN, Partsmen, Cardex Men, Warehouse Expediter	$ 9.56	.66	.50		
DUMP TRUCKS AND SIMILAR EQUIPMENT, DW 20, DW 21, or EUCLID TRACTORS, Pulling P.R. 21 or similar Dump Wagons:					
Water Level Capacity, including Sideboards					
7 cu. yds. or less	9.36	.66	.50		
Over 7 cu. yds. to and including 10 cu. yds.	9.49	.65	.50		
Over 10 cu. yds. to and including 15 cu. yds.	9.65	.65	.50		
Over 15 cu. yds. to and including 20 cu. yds.	9.79	.65	.50		
Over 20 cu. yds. to and including 25 cu. yds.	9.85	.65	.50		
Over 25 cu. yds. to and including 30 cu. yds.	9.91	.65	.50		
Over 30 cu. yds. to and including 35 cu. yds.	9.97	.65	.50		
Over 35 cu. yds. to and including 40 cu. yds.	10.03	.65	.50		
Over 40 cu. yds. to and including 45 cu. yds.	10.09	.65	.50		
Over 45 cu. yds. - additional $.10 per hour each additional 5 cu. yds. increment					
DUMPSTERS	9.49	.65	.50		
SERVICEMEN	10.20	.65	.50		
POWER TRUCK DRIVER (bulk unloader type)	9.54	.65	.50		
FLAT TRUCKS:					
To and including 3 tons	9.51	.65	.50		
over 3 tons Factory rating	9.71	.65	.50		

TRUCK DRIVERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SERVICE TRUCK DRIVERS; FUEL TRUCK DRIVERS; TIREMEN	$ 9.95	.65	.50		
LOWBOYS, FOUR-WHEEL TRAILER, FLOAT SEMI-TRAILER	9.71	.65	.50		
LUMBER CARRIERS, LIFT TRUCKS AND FORK LIFTS	9.61	.65	.50		
POWER BROOM	9.45	.65	.50		
WATER TANK DRIVERS, PETROLEUM PRODUCTS DRIVERS:					
2,500 gallons and under	9.36	.65	.50		
Over 2,500 gallons to and including 4,500 gallons	9.65	.65	.50		
Over 4,500 gallons to and including 6,000 gallons	9.85	.65	.50		
Over 6,000 gallons to and including 8,000 gallons	9.91	.65	.50		
Over 8,000 gallons to and including 10,000 gallons	9.99	.65	.50		
Over 10,000 gallons - additional $.10 per hour each additional 2,000 gallons increment					
TRUCK WITH POWER EQUIPMENT IF UNDER TEAMSTERS JURISDICTION, SUCH AS:					
Winch, A-frame, Swedish Crane, Hydra-lift, Groutcrete, and Combination mulching, seeding and fertilizing	9.61	.65	.50		
TRUCK MECHANIC	10.35	.65	.50		

TRUCK DRIVERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Gallatin, Park, Sweet Grass, Broadwater (South of U. S. Highway #12)					
DUMP, 7 yards or less; Pickup; hauling materials; Flat trucks less than 2 ton; Service and A-Frame Trailers	$ 7.08	.60	.30		
HOUSE MOVERS	7.12	.60	.30		
DUMP, over 7 yards to and including yards; Flat trucks 5-8 tons; Semi and four wheel trailers	7.33	.60	.30		
DUMP, over 10 yards to and including 15 yards	7.49	.60	.30		
DUMP, over 15 yards to and including 20 yards	7.63	.60	.30		

MONTANA LINE CONSTRUCTION

LINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Flathead, Lake and Lincoln Counties					
All construction of "H" fixtures and steel tower transmission lines with capacity of 69 K.V. voltages and over, Switch yard and substation rated at 5000 K.V.A. and all work not covered by schedule "B".					
SCHEDULE "B"					
Lineman	$11.11	.45	3%		1/2%
Cable Splicer	12.36	.45	3%		1/2%
Powderman, Jackhammer, Compressorman	8.21	.45	3%		1/2%
Line Equipment Operators	9.46	.45	3%		1/2%
Groundman	6.64	.45	3%		1/2%
Groundman (Experienced)	7.70	.45	3%		1/2%
All work for power utilities except work covered under Schedule "A", all highway lighting, street lighting and motor traffic controlling					
SCHEDULE "B"					
Lineman	9.93	.45	3%		1/2%
Cable Splicers	11.04	.45	3%		1/2%
Pole Sprayer	9.81	.45	3%		1/2%
Line Equipment Operators	8.61	.45	3%		1/2%
Powderman, Jackhammer, Compressorman	7.50	.45	3%		1/2%
Groundman	7.04	.45	3%		1/2%
Tree Trimmer	10.20	.45	3%		1/2%

MONTANA LINE CONSTRUCTION

LINE CONSTRUCTION (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Remaining Counties					
Jobs over 69,000 volts:					
Lineman, Pole Sprayer	$ 9.74	.45	3%+.25		1/2%
Cable Splicer	10.27	.45	3%+.25		1/2%
Line Equipment Operator; Powderman	8.89	.45	3%+.25		1/2%
Groundman	7.17	.45	3%+.25		1/2%
Jobs 69,000 volts or less:					
Lineman	9.08	.45	3%+.25		1/2%
Cable Splicer	10.07	.45	3%+.25		1/2%
Line Equipment Operators; Powderman	8.88	.45	3%+.25		1/2%
Groundman	6.11	.45	3%+.25		1/2%
Experienced Groundman (1000 hours); Truck Drivers	6.93	.45	3%+.25		1/2%

SUPERSEDEAS DECISION

STATE: Montana
DECISION NUMBER: MT78-5121
COUNTIES: Statewide
DATE: Date of Publication
Supersedes Decision No. MT78-5027 dated April 28, 1978 in 43 FR 18467
DESCRIPTION OF WORK: Heavy and Highway Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters:					
Carpenters	$ 9.73	.70	.75		.02
Piledrivermen; Sawfilers, Carpenters on charred and creosote wood	9.88	.70	.75		.02
CEMENT MASONS:					
Cement Masons	8.90	.75	.25		
Grinder, Bush Hammer and Clipping Fan preparing finished surface; Epoxy	9.05	.75	.25		
ELECTRICIANS:					
Beaverhead, Deer Lodge, Granite, Jefferson, Madison, Silver Bow and Powell Counties	11.05	.80	3%+.35		1/2%
Gallatin County	10.35	.40	3%		1/2%
Broadwater, Lewis and Clark and Meagher Counties					
Electricians	11.05	.60	3%+.50		1/2%
Blaine, Hill, Liberty and Phillips Counties					
Electricians	10.35		3%+.50		1/2%
Cascade, Chouteau, Glacier, Judith-Basin, Pondera, Teton and Toole Counties					
Electricians	11.60	.60	3%+.75		1/2%
Cable Splicers	11.85	.60	3%+.75		1/2%
Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties					
Electricians	11.30	.55	3%+.25		1/2%
Cable Splicers	11.90	.55	3%+.25		1/2%
Big Horn, Carbon, Golden Valley, Musselshell, Powder River, Rosebud, Stillwater, Treasure and Yellowstone Counties					
Electricians	11.82	.45	3%+.50		1/2%
Cable Splicers	12.27	.45	3%+.50		1/2%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: (Cont'd)					
Fergus, Petroleum and Wheatland Counties					
(Electrical contracts less than $30,000)	$ 8.65	.40	3%+.25		1/2%
(Electrical contracts $30,000 or more)	10.25	.40	3%+.25		1/2%
Park and Sweetgrass Counties	10.45	.45	3%+.50		1/2%
Carter, Daniels, Dawson, Fallon, McCone, Prairie, Richland, Roosevelt, Sheridan, Valley and Wibaux Counties	10.97	.40	3%+.50		1/2%
Custer and Garfield Counties	9.40		3%		1/2%
IRONWORKERS:					
Beaverhead, Brodawater, Deer Lodge, Gallatin, Granite, Jefferson, Lewis and Clark (Southern half including Wolf Creek), Madison, Park, Powell, Ravalli and Silver bow Cos.	10.66	.65	1.15		.05
Flathead, Glacier, Lake, Lincoln, Mineral, Missoula and Sanders Counties	12.60	.93	1.45		.10
Remaining Counties (including Northern half of Lewis and Clark County)	10.66	.65	1.15		.05
PAINTERS:					
Beaverhead, Jefferson (Southern area, south of the City of Boulder), Madison (West of a line running north-south through the west limits of Harrison and Silver Bow Counties					
Brush	7.60	.25	.10		
Spray	10.40	.25	.10		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Golden Valley, Musselshell, Powder River, Prairie, Rosebud, Stillwater, Sweet Grass, Treasure Wheatland (south of the City of Harlowtown), Wibaux and Yellowstone Counties					
Brush, Roller	$ 9.26	.56	.20		
Spray (not steel), Sandblaster	10.24	.56	.20		
Steel brush or roller	9.51	.56	.20		
Spray (structural steel and tanks), Sandblaster (strucrural steel and tanks)	10.49	.56	.20		
Deer Lodge County and the southern part of Granite County from a line east-west through the southern limits of Philipsburg					
Painter	8.02				
Paint mitts	8.52				
Application of cold tar products, epoxies, polyurethanes and acid resistant paints; Water sandblasting and steam cleaning; Stacks and steepels; Brushing of steel; Spraying and air-less spraying; Work over 30 feet	10.80				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Cascade, Chouteau (south of a line running East and West through the southern limits of Big Sandy), Daniels, Pergus, Glacier, (excluding Glacier National Park), Garfield, Judith-Basin, Lewis and Clark, (Northern portion from a line running East and West through the northern limits of Craig), McCone, Phillips, Pondera, Petroleum, Richland, Roosevelt, Sheridan, Teton, Toole, Valley and Wheatland (northern area from a line running East and West through the southern limits of Harlowtown) Counties:					
Painter, brush, preparatory work, Pot Tender, Parking lot and related work, Roller up to 9 inches	$ 9.27	.56	.40		1%
Paperhanger, Brush on steel	9.77	.56	.40		1%
Water and sandblasting, Application of cold tar products, Epoxies, Polyurethanes and acid resistant paints, Spraying and airless spray	11.52	.56	.40		1%
Roller over 9" long	12.87	.56	.40		1%
Taper	9.67	.56	.40		1%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Broadwater, Gallatin, Jefferson (Northern area from a line running east and west five miles south of the southern City limits of Boulder), Lewis & Clark (southern portion from a line running east and west through the southern limits of Craig), Madison (east of the west City limits of Harrison), Meagher, Park, Powell (northern area from a line running east and west through the southern City limits of Helmsville)					
Brush, roller, high pressure wash	$ 8.69	.35	.30		.03
Spraying	9.69	.35	.30		.03
Sandblasting, Waterblasting	11.59	.35	.30		.03
Structural steel brush	10.19	.35	.30		.03
Structural steel spray	11.19	.35	.30		.03
Blaine, Hill, Liebrty and Chouteau (north of the southern limits of the City of Big Sandy) Counties	8.40				
Flathead, Granite (northern area north limits of Phillipsburg), Lake (southern area including the City of Ronan), Lincoln, Mineral, Missoula, Powell (northern area through south limits of Helmsville), Ravalli and Sanders Counties	9.35	.44	.40		.04
PLUMBERS:					
Flathead, Lake, Lincoln, Mineral, Missoula and Sanders Counties	12.60	.75	1.10		.14
Blaine, Cascade, Chouteau, Fergus, Glacier, Hill, Judith-Basin, Liberty, McCone, Meagher, Phillips, Pondera, Roosevelt, Teton, Toole and Valley Counties	11.60	.65	.95		1/2%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS: (Cont'd)					
Beaverhead, Brodawater, Deer Lodge, Gallatin, Granite, Jefferson, Lewis and Clark, Madison, Park, Powell, Silver Bow and Sweetgrass Counties	$ 11.70	.60	.75		.10
Big Horn, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Garfield, Golden Valley, Musselshell, Petroleum, Powder River, Prairie, Richland, Rosebud, Sheridan, Stillwater, Treasure, Wheatland, Wibaux and Yellowstone Counties	11.25	.40	.80		.10
SHEET METAL WORKERS:					
Broadwater, Jefferson (including north half of the City of Boulder), Lewis and Clark and Meacher Counties	10.31	.77	.25		.10
Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties	10.23	.82	.25		.10
Big Horn, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Fergus, Gallatin, Garfield, Golden Valley, McCone, Musselshell, Petroleum, Phillips, Powder River, Park, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, Treasure and Yellowstone Counties	9.945	.46	3%+.725		.12
Blaine, Cascade, Chouteau, Glacier, Hill, Judith-Basin, Liberty, Pondera, Teton and Toole Counties	11.43	.66	.25		.08
Beaverhead, Deer Lodge, Granite, Jefferson (southern half), Madison, Powell and Silver Bow Counties	10.04	.37	.44	1.00	.02

LABORERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asphalt Raker	$ 8.85	.60	.50		.05
Axeman	8.60	.60	.50		.05
Burning Bar	8.76	.60	.50		.05
Car and Truck Loaders, Scissorman	8.60	.60	.50		.05
Caisson Workers (free air)	8.76	.60	.50		.05
Carpenter Tender	8.60	.60	.50		.05
Cement Handlers	8.76	.60	.50		.05
Cement Mason Tender	8.76	.60	.50		.05
Choker Setter	8.76	.60	.50		.05
Chuck Tender and Nipper (above ground)	8.60	.60	.50		.05
Concrete Laborers (wet or dry); Bucketman and Signalman	8.76	.60	.50		.05
Concrete or Asphalt Saw	8.70	.60	.50		.05
Concrete Vibrator (5" and over)	8.90	.60	.50		.05
Cosmolene applying and removing	8.60	.60	.50		.05
Core Drill	9.20	.60	.50		.05
Curb Machine	8.70	.60	.50		.05
Drills, Air-tract, selff-propelled, Cat, or Truck mounted air operated	8.86	.60	.50		.05
Drills, Air-tract, with Dual Mast	8.96	.60	.50		.05
Drills, Air-tract, self-propelled, Mustang type or similar	8.91	.60	.50		.05
Dumpman (Spotter)	8.60	.60	.50		.05
Dumpman (Grademan)	8.76	.60	.50		.05
Fence Erector and Installer (including Installation and Erection of fences, guard rails, median rails, reference posts, guide posts and right-of-way markers)	8.60	.60	.50		.05
Form Stripper	8.60	.60	.50		.05
Form Setter	8.70	.60	.50		.05
Grade Setter	8.95	.60	.50		.05
General Laborer	8.60	.60	.50		.05

LABORERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Hand Faller	$ 8.68	.60	.50		.05
High Scaler	8.96	.60	.50		.05
High Pressure Machine Nozzleman	8.80	.60	.50		.05
Heater Tender	8.60	.60	.50		.05
Jackhammer, Pavement Breaker, Wagon Drills, Concrete Vibrator, Mechanic Tamper, Vibrating Roller, hand steered and other Power Tools	8.76	.60	.50		.05
Landscape Laborers	8.60	.60	.50		.05
Nozzleman-Air and Water, Gunite and Placo Machine	8.70	.60	.50		.05
Pipe Layer (all types)	8.76	.60	.50		.05
Pipe Wrapper	8.76	.60	.50		.05
Post Hole Digger (power auger)	8.70	.60	.50		.05
Power Saw, bucking	8.76	.60	.50		.05
Power Saw, falling	8.86	.60	.50		.05
Powderman Helper	8.70	.60	.50		.05
Powderman	9.16	.60	.50		.05
Power Driven Wheelbarrow	8.70	.60	.50		.05
Riprapper	8.76	.60	.50		.05
Riprap Helper	8.60	.60	.50		.05
Scaleman	8.76	.60	.50		.05
Sandblaster	8.80	.60	.50		.05
Sandblaster Tail Hoseman, Pot Tender	8.60	.60	.50		.05
Sodcutter-hand operated	8.60	.60	.50		.05
Spike Driver, single or dual or hand	8.76	.60	.50		.05
Stake Jumper for Equipment	8.60	.60	.50		.05
Switchman	8.76	.60	.50		.05
Tar Pot	8.70	.60	.50		.05
Tool Checker, Toolhouseman	8.60	.60	.50		.05
Welder	9.60	.60	.50		.05

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
A-Frame Truck Crane, Winch Truck and similar	$ 9.85	.55	.55	.35	.05
Air Compressor, single	9.54	.55	.55	.35	.05
Air Compressor, two or more	9.71	.55	.55	.35	.05
Air Doctor	10.01	.55	.55	.35	.05
Asphalt Paving Machine	10.01	.55	.55	.35	.05
Asphalt Paving Machine Screed	10.01	.55	.55	.35	.05
Automatic Finegrader, Gurries and other similar types	10.14	.55	.55	.35	.05
Belt Finish Machine	9.71	.55	.55	.35	.05
Bit Grinder	10.01	.55	.55	.35	.05
Bituminous Mixer Paving, Travel Plant	10.01	.55	.55	.35	.05
Boring Machine (small), Jeep, Pickup or Farm Tractor mounted	9.60	.55	.55	.35	.05
Boring Machine (large)	10.01	.55	.55	.35	.05
Broom, Self-propelled	9.68	.55	.55	.35	.05
Cableway Highline	10.52	.55	.55	.35	.05
Cement Silo	9.80	.55	.55	.35	.05
Central Mixing Plants, Concrete dam and stationary	10.26	.55	.55	.35	.05
Chain Bucket Loader	9.73	.55	.55	.35	.05
Chip or Gravel Spreader, Self-propelled	9.73	.55	.55	.35	.05
Concrete Batch Plant, one and two mixers	10.01	.55	.55	.35	.05
Concrete Batch plant, three and four mixers	10.21	.55	.55	.35	.05
Concrete Batch Plant, five mixers and over	10.41	.55	.55	.35	.05
Concrete Batch Plant Oiler, up to and including two mixers	9.53	.55	.55	.35	.05
Concrete Batch Plant Oiler, three mixers and over	9.84	.55	.55	.35	.05
Concrete Bucket Dispatcher	10.01	.55	.55	.35	.05
Concrete Curing Machine	10.01	.55	.55	.35	.05
Concrete Finish Machine Paving	10.01	.55	.55	.35	.05
Concrete Float-Spreader	10.01	.55	.55	.35	.05
Concrete Mixer, three bags and under	9.60	.55	.55	.35	.05
Concrete Mixer, four bags and over	9.77	.55	.55	.35	.05

POWER EQUIPMENT OPERATORS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Concrete Power Saw, self-propelled	$ 10.01	.55	.55	.35	.05
Concrete Travel Batcher	10.01	.55	.55	.35	.05
Concrete Conveyor under 40 ft	9.59	.55	.55	.35	.05
Concrete Conveyor over 40 ft.	10.34	.55	.55	.35	.05
Concrete Pump	10.34	.55	.55	.35	.05
Conveyor Loader Operator, up to and including 42' belt	9.59	.55	.55	.35	.05
Conveyor Loader Operator over 42" belt	9.71	.55	.55	.35	.05
Crane, to and including 80' boom	10.17	.55	.55	.35	.05
Crane, 81' to 130' boom	10.32	.55	.55	.35	.05
Crane, 131' to 150' boom	10.37	.55	.55	.35	.05
Crane, 151' boom and over	10.42	.55	.55	.35	.05
Crane Oiler	9.58	.55	.55	.35	.05
Crane with jibs an additional $.15 per hour					
Crusher	10.01	.55	.55	.35	.05
Crusher Oiler and Helper	9.50	.55	.55	.35	.05
Crusher Conveyor, when required	9.47	.55	.55	.35	.05
Distributor	10.01	.55	.55	.35	.05
DW 10, 15, or 20 Tractor pulling Roller	9.73	.55	.55	.35	.05
Electric Overhead Cranes	10.19	.55	.55	.35	.05
Elevating Grader	10.01	.55	.55	.35	.05
Farm type Tractor, up to and including 50 HP engine	9.47	.55	.55	.35	.05
Farm type Tractor, over 50 HP engine	9.55	.55	.55	.35	.05
Field Equipment Serviceman	9.93	.55	.55	.35	.05
Field Equipment Serviceman Helper	9.50	.55	.55	.35	.05
Fireman	9.60	.55	.55	.35	.05
Forklift, on construction job site	9.82	.55	.55	.35	.05
Form Grader	9.78	.55	.55	.35	.05
Gradall	10.01	.55	.55	.35	.05
Grade Setter	9.47	.55	.55	.35	.05

POWER EQUIPMENT OPERATORS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Heavy Duty Drill, all types	$ 10.01	.55	.55	.35	.05
Heavy Duty Driller Helper	9.60	.55	.55	.35	.05
Herman-Nelson Heaters and similar type	9.55	.55	.55	.35	.05
Hoist, two or more drums	10.01	.55	.55	.35	.05
Helicopter Hoist	10.51	.55	.55	.35	.05
Hot Plant	10.01	.55	.55	.35	.05
Hot Plant Fireman, when in operation	10.01	.55	.55	.35	.05
Hot plant Oiler, 100 ton per hour or over	9.50	.55	.55	.35	.05
Hydra lift and similar types	9.91	.55	.55	.35	.05
Industrial Locomotive all classes	10.01	.55	.55	.35	.05
Mechanic and/or Welder on job	10.11	.55	.55	.35	.05
Mechanic and/or Welder Helper on job	9.50	.55	.55	.35	.05
Mechanic, Shop (Dec. 1 to April 1)	9.71	.55	.55	.35	.05
Mechanic Helper, Shop (Dec. 1 to April 1)	9.17	.55	.55	.35	.05
Mixermobile	10.09	.55	.55	.35	.05
Motot Patrol	10.14	.55	.55	.35	.05
Mountain Logger or similar type	10.01	.55	.55	.35	.05
Mucking Machine	10.01	.55	.55	.35	.05
Oiler-Driver, Rubber Tired Cranes	9.58	.55	.55	.35	.05
Oilers, other than shovels and cranes	9.50	.55	.55	.35	.05
Oiler, hoist house, dams	9.91	.55	.55	.35	.05
Pavement Breaker, Emsco and similar	10.01	.55	.55	.35	.05
Paving and Mixing Machine	10.14	.55	.55	.35	.05
Power Auger, Large Truck or Tractor mounted and Punch	10.01	.55	.55	.35	.05
Power Mixer, single or double drum	10.02	.55	.55	.35	.05
Power Saw, multiple cut, self-propelled	10.01	.55	.55	.35	.05
Pumpcrete or Grout Machine	10.01	.55	.55	.35	.05
Pumpman	9.45	.55	.55	.35	.05
Push Tractor	10.01	.55	.55	.35	.05

POWER EQUIPMENT OPERATORS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Quad Cat	$10.31	.55	.55	.35	.05
Quad Loader and similar type	10.59	.55	.55	.35	.05
Radiator Repairman	9.82	.55	.55	.35	.05
Raygo Gaint	10.59	.55	.55	.35	.05
Refrigeration Plant	10.01	.55	.55	.35	.05
Retort	9.60	.55	.55	.35	.05
Roller, on blade or hot mix oil paving	10.01	.55	.55	.35	.05
Roller, on other blade or hot mic paving	9.71	.55	.55	.35	.05
Roller, 25 ton or over	10.01	.55	.55	.35	.05
Ross and similar type carriers, on construction site	10.01	.55	.55	.35	.05
Rubber-tried Dozer	10.01	.55	.55	.35	.05
Rubber-tired Front End Loader, 1 yard and under	9.72	.55	.55	.35	.05
Rubber-tired Front End Loader, 1 yard to and including 3 yds.	10.01	.55	.55	.35	.05
Rubber-tired Front End Loader, over 3 yards to and including 5 yards	10.13	.55	.55	.35	.05
Rubber-tired Front End Loader, over 5 yards to and including 10 yards	10.23	.55	.55	.35	.05
Rubber-tired Front End Loader, over 10 yards to and including 15 yards	10.33	.55	.55	.35	.05
Rubber-tired Front End Loader, over 15 yards	10.43	.55	.55	.35	.05
Scraper, DW 15, 20, 21 and similar type if power unit is not used	10.01	.55	.55	.35	.05
Scraper, single or twin engine pulling belly dump trailer	10.39	.55	.55	.35	.05
Scraper, single engine	10.14	.55	.55	.35	.05
Scraper, twin engine	10.24	.55	.55	.35	.05
Scraper, tandem engine or 3 engine	10.59	.55	.55	.35	.05
Self-propelled Sheepfoot and similar type	10.01	.55	.55	.35	.05

POWER EQUIPMENT OPERATORS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Shovels, including all attachments, under 1 cu. yd.	$10.01	.55	.55	.35	.05
Shovels, including all attachments, 1 cu. yd. to and including 3 cu. yds.	10.19	.55	.55	.35	.05
Shovels, including all attachments, over 3 cu. yds. to and including 5 cu. yds.	10.46	.55	.55	.35	.05
Shovels, including all attachments, over 5 cu. yds.	10.59	.55	.55	.35	.05
Shovel Oiler, 3 yards and under	9.50	.55	.55	.35	.05
Shovel Oiler, over 3 cu. yds.	9.91	.55	.55	.35	.05
Slip Form Paver	10.14	.55	.55	.35	.05
Stiff Leg Derrick and Guy Derrick	10.46	.55	.55	.35	.05
Track-type Front End Loaders, up to and including 5 cu. yds.	10.01	.55	.55	.35	.05
Track-type Front End Loaders, over 5 cu. yds. to and including 10 cu. yds.	10.24	.55	.55	.35	.05
Track-type Front End Loaders, over 10 cu. yds. to and including 15 cu. yds.	10.34	.55	.55	.35	.05
Track-type Front End Loaders, over 15 cu. yds.	10.44	.55	.55	.35	.05
Track-type Tractor w/wo attachments	10.01	.55	.55	.35	.05
Track-type Tractor, on Euclid Loader	10.19	.55	.55	.35	.05
Trenching Machine	10.01	.55	.55	.35	.05
Turnhead Conveyor, or Head Tower on Batch Plant	10.01	.55	.55	.35	.05
Wagner Roller and similar type	10.01	.55	.55	.25	.05
Whirley Crane	10.54	.55	.55	.35	.05
Whirley Crane Oiler	9.91	.55	.55	.35	.05
Water Pull when used for Compaction	1/ 10.01	.55	.55	.35	.05
Washing and Screening Plant	10.01	.55	.55	.35	.05
Washing and Screening Plant Oiler	9.50	.55	.55	.35	.05
Yo-Yo Cat, both ends	9.56	.55	.55	.35	.05

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
COMBINATION TRUCK; Concrete Mixer and Transit Mixer:					
To and including 4 cu. yds.	$ 9.61	.65	.50		
Over 4 cu. yds. to and including 6 cu. yds.	9.69	.65	.50		
Over 6 cu. yds. to and including 8 cu. yds.	9.77	.65	.50		
Over 8 cu. yds. to and including 10 cu. yds.	9.85	.65	.50		
Over 10 cu. yds. - additional $.08 per hour each additional 2 cu. yds. increment					
DISTRIBUTOR DRIVER and HELPER	9.59	.65	.50		
DRY BATCH TRUCKS:					
3 Batch or under	9.36	.65	.50		
Over 3 Batch to and including 5 Batch	9.49	.65	.50		
Over 5 Batch to and including 10 Batch	9.65	.65	.50		
Over 10 Batch to and including 15 Batch	9.81	.65	.50		
Over 15 Batch - addtional $.15 per hour each additional 5 Batch increment					
PICKUP DRIVER, HAULING MATERIALS	9.46	.65	.50		
DUMPMAN, GRAVEL SPREADER BOX OPERATOR; Pilot Car Driver, Teamsters and Helpers	9.36	.65	.50		

TRUCK DRIVERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
WAREHOUSEMEN, Partsmen, Cardex Men, Warehouse Expediter	$ 9.56	.66	.50		
DUMP TRUCKS AND SIMILAR EQUIPMENT, DW 20, DW 21, or EUCLID TRACTORS, Pulling P.R. 21 or similar Dump Wagons:					
Water Level Capacity, including Sideboards					
7 cu. yds. or less	9.36	.66	.50		
Over 7 cu. yds. to and including 10 cu. yds.	9.49	.65	.50		
Over 10 cu. yds. to and including 15 cu. yds.	9.65	.65	.50		
Over 15 cu. yds. to and including 20 cu. yds.	9.79	.65	.50		
Over 20 cu. yds. to and including 25 cu. yds.	9.85	.65	.50		
Over 25 cu. yds. to and including 30 cu. yds.	9.91	.65	.50		
Over 30 cu. yds. to and including 35 cu. yds.	9.97	.65	.50		
Over 35 cu. yds. to and including 40 cu. yds.	10.03	.65	.50		
Over 40 cu. yds. to and including 45 cu. yds.	10.09	.65	.50		
Over 45 cu. yds. - additional $.10 per hour each additional 5 cu. yds. increment					
DUMPSTERS	9.49	.65	.50		
SERVICEMEN	10.20	.65	.50		
POWER TRUCK DRIVER (bulk unloader type)	9.54	.65	.50		
FLAT TRUCKS:					
To and including 3 tons	9.51	.65	.50		
over 3 tons Factory rating	9.71	.65	.50		

TRUCK DRIVERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SERVICE TRUCK DRIVERS; FUEL TRUCK DRIVERS; TIREMEN	$ 9.95	.65	.50		
LOWBOYS, FOUR-WHEEL TRAILER, FLOAT SEMI-TRAILER	9.71	.65	.50		
LUMBER CARRIERS, LIFT TRUCKS AND FORK LIFTS	9.61	.65	.50		
POWER BROOM	9.45	.65	.50		
WATER TANK DRIVERS, PETROLEUM PRODUCTS DRIVERS:					
2,500 gallons and under	9.36	.65	.50		
Over 2,500 gallons to and including 4,500 gallons	9.65	.65	.50		
Over 4,500 gallons to and including 6,000 gallons	9.85	.65	.50		
Over 6,000 gallons to and including 8,000 gallons	9.91	.65	.50		
Over 8,000 gallons to and including 10,000 gallons	9.99	.65	.50		
Over 10,000 gallons - additional $.10 per hour each additional 2,000 gallons increment					
TRUCK WITH POWER EQUIPMENT IF UNDER TEAMSTERS JURISDICTION, SUCH AS:					
Winch, A-frame, Swedish Crane, Hydra-lift, Groutcrete, and Combination mulching, seeding and fertilizing	9.61	.65	.50		
TRUCK MECHANIC	10.35	.65	.50		

MONTANA, LINE CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION					
(Flathead, Lake and Lincoln Cos.)					
All construction of "H" fixtures and steel tower transmission lines with capacity of 69 K.V. voltages and over, Switch yard and substation rated at 5000 K.V.A. and all work not covered by schedule "B".					
SCHEDULE "A"					
Lineman	$11.11	.45	3%		1/2%
Cable Splicer	12.36	.45	3%		1/2%
Powderman, Jackhammer, Compressorman	8.21	.45	3%		1/2%
Line Equipment Operators	9.46	.45	3%		1/2%
Groundman	6.64	.45	3%		1/2%
Groundman (Experienced)	7.70	.45	3%		1/2%
All work for power utilities except work covered under Schedule "A", all highway lighting, street lighting and motor traffic controlling.					
SCHEDULE "B"					
Lineman	9.93	.45	3%		1/2%
Cable Splicers	11.04	.45	3%		1/2%
Pole Sprayer	9.81	.45	3%		1/2%
Line Equipment Operators	8.61	.45	3%		1/2%
Powderman, Jackhammer, Compressorman	7.50	.45	3%		1/2%
Groundman	7.04	.45	3%		1/2%
Tree Trimmer	10.20	.45	3%		1/2%

MONTANA LINE CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION (Cont'd)					
Remaining Counties					
Jobs over 69,000 Volts:					
Lineman, Pole Sprayer	$9.74	.35	3%		1/2%
Cable Splicer	10.27	.35	3%		1/2%
Line Equipment Operator; Powderman	8.89	.35	3%		1/2%
Groundman	7.27	.35	3%		1/2%
Jobs 69,000 Volts or less:					
Lineman	9.07	.35	3%		1/2%
Cable Splicer	10.07	.35	3%		1/2%
Line Equipment Operators; Powderman	8.88	.35	3%		1/2%
Groundman	6.11	.35	3%		1/2%
Experienced Groundman (1000 hours); Truck Drivers	6.93	.35	3%		1/2%

DECISION NO. MT78-5121

MONTANA DREDGING

DREDGING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Assistant Mate (Deckhand)	$10.04	.60	1.05		.11
Fireman	10.14	.60	1.05		.11
Oiler	10.14	.60	1.05		.11
Assistant Engineer (Electric, Diesel, Steam or Booster Pump)	10.48	.60	1.05		.11
Mates and Boatman	10.48	.60	1.05		.11
Engineer Welder	10.53	.60	1.05		.11
Craneman	10.53	.60	1.05		.11
Assistant Engineer (Electric, Generator Operator for Primary Pump, Power Barge or Dredge)	10.58	.60	1.05		.11
Leverman, Dipper:					
(a) 5 Yards and Under	11.29	.60	1.05		.11
(b) Over 5 Yards	11.84	.60	1.05		.11
Leverman, Hydraulic	10.90	.60	1.05		.11

SUPERSEDEAS DECISION

STATE: NEW YORK

COUNTIES: ALBANY, RENSSELAER, SARATOGA AND SCHENECTADY

DECISION NO.: NY78-3060

DATE: DATE OF PUBLICATION

SUPERSEDES DECISION NO. NY78-3021 DATED APRIL 14, 1978 IN 43 FR 16066

DESCRIPTION OF WORK: BUILDING CONSTRUCTION (EXCLUDING SINGLE FAMILY HOMES AND GARDEN TYPE APARTMENTS UP TO AND INCLUDING 4 STORIES), HEAVY AND HIGHWAY CONSTRUCTION.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.14	.78	.41		.02
BOILERMAKERS	11.80	.95	10%		.02
BRICKLAYERS, CEMENT MASONS, MARBLE MASONS, PLASTERERS, POINTERS, CAULKERS & CLEANERS	10.90	.70	.75		.03
BRICKLAYERS, CEMENT MASONS, MARBLE MASONS, PLASTERERS, POINTERS, CAULKERS & CLEANERS (Rehabilitation work on residential structures over 4 stories defined to include demolition, alteration and repair on any existing structure which is intended for predominantly residential use)	7.81	.70	.75		.03
CARPENTERS:					
Saratoga County (Twps. of Day Hadley, Edinburg, Corinth and Moreau):					
Carpenters and Soft Floor Layers	9.60	.55	.70	a	.025
Millwrights	9.85	.55	.70	a	.005
Piledrivers	9.75	.55	.70	a	.005
Heavy and Highway	9.82	.55	.75		.025
Albany County, Rensselaer County, Saratoga County (Remainder of County), and Schenectady County:					
Carpenters, Drywall Installers and Soft Floor Layer	10.55	.70	.70		.02
Millwrights	11.05	.70	.70		.02
Piledrivermen	11.40	1.40	1.78	.76	.04
Heavy and Highway	9.67	.70	.70	b	.025
Rehabilitation work on residential structures over 4 stories defined to include demolition, alteration and repair on any existing structure which is intended for predominantly residential use	7.56	.70	.70		.02

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS:					
Heavy and Highway	9.71	.70	.59		
ELECTRICIANS:					
Albany County (Cohoes and Watervliet)	11.55	.70	3% + .60	a	.05
Albany County (Remainder of County)	11.60	.70	3% + .55	c	.03
Rensselaer County (Schodack, Rensselaer, East Greenbush, Nassau and Stephentown)	11.60	.70	3% + .55	c	.03
Rensselaer County (Remainder of County)	11.55	.70	3% + .60	a	.05
Saratoga County (Ganseveen, Mt. McGregor, Schuylerville, Victory Mills, Wayville, Stillwater, Mechanicville and Waterford)	11.55	.70	3% + .60	a	.05
Saratoga County (Remainder of County)	11.10	.70	3% + .95	a	.03
Schenectady County	11.10	.70	3% + .95	a	.03
ELEVATOR CONSTRUCTORS	10.77	.745	.56	d + e	.025
ELEVATOR CONSTRUCTORS HELPERS	7.54	.745	.56	d + e	.025
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	5.385				
GLAZIERS	8.66	.48	.25		.01
IRONWORKERS:					
Structural, Ornamental, Reinforcing, Machinery Mover, Fence Erector, Rigger, Rodman and Stone Derrickman	10.71	.75	1.04		.04
Sheeters	10.96	.75	1.04		.04
Sheeters, Bucker-up	10.835	.75	1.04		.04
(Rehabilitation work on residential structures over 4 stories defined to include demolition, alteration and repair on any existing structure which is intended for predominantly residential use)	7.58	.75	1.04		.04

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	10.46	.70	.30		.01
LATHERS (Rehabilitation work on residential structures over 4 stories defined to include demolition, alteration and repair on any existing structure which is intended for predominantly residential use)	7.59	.70	.30		.01
LEADBURNERS	10.75	.40	.25	d	.01
MARBLE TILE AND TERRAZZO WORKERS	10.40	.70	.75		
PAINTERS:					
Saratoga County (Twps. of Day, Hadley, Corinth, Moreau, Ganseveort and Mt. McGregor):					
Brush	8.42	.40	.30		
Window Jack, Structural Steel, Swing Scaffold, Bosun Chair and Bridge	8.87	.40	.30		
Spray, Sandblasting, and Waterblasting	9.11	.40	.30		
Albany County, Rensselaer County, Saratoga County (Remainder of County), Schenectady County:					
Brush	10.28		.35		
Structural Steel and Bridge	11.03		.35		
Swing Scaffold, Bosun Chair, Water Towers, Window Jacks	10.78		.35		
Flagpoles					
Spray Gun Application and Sandblasting	12.13		.35		
PLUMBERS AND STEAMFITTERS:					
Albany County (Green Island, Watervliet and Latham), Rensselaer County (Northern Half), Saratoga County (Twps. of Halfmoon and Stillwater):					
Building, Heavy and Highway	10.90	.60	1.00		.04
Rehabilitation work on residential structures over 4 stories defined to include demolition, alteration and repair on any existing structure which is intended for predominantly residential use	8.175	.60	1.00		.04

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS AND STEAMFITTERS:					
Saratoga County (Twps. of Clifton Park, Galway, Milton and Atomic Projects at Malta and West Milton), Schenectady County	10.95	.75	1.00		.10
Saratoga County (Twps. of Halfmoon and Stillwater)	10.90	.60	1.00		.04
Saratoga County (Remainder of County)	10.84	.70	.98	g	.05
Albany County (Remainder of County), Rensselaer County (Southern Half)	10.84	.70	.98	g	.05
Albany County (Remainder of County), Rensselaer County (Southern Half), Saratoga County (Remainder of County): Rehabilitation work on residential structures over 4 stories defined to include demolition, alteration and repair on any existing structure which is intended for predominantly residential use	7.53	.80	1.02		.05
ROOFERS:					
Roofers	10.65	1.37	.40		.04
Pitch and Asbestos	11.15	1.37	.40		.04
SHEET METAL WORKERS	10.62	.95	3% + .90	h	.05
SHEET METAL WORKERS: Rehabilitation work on residential structures over 4 stories defined to include demolition, alteration and repair on any existing structure which is intended for predominantly residential use	7.47	.95	3% + .90	h	.05
SPRINKLER FITTERS	11.86	.65	.95		.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS, BUILDING:					
Straight, winch, transit mix on job site, road oilers, dump, panel, pick-up, water and fuel trucks on site (including nozzle	9.37	1.00	.81	i	.12
Euclid or similar equipment	9.56	1.00	.81	i	.12
Lowboy or lowboy trailers	9.70	1.00	.81	i	.12
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day and F-Christmas Day.

FOOTNOTES:

a. Holiday: Thanksgiving Day provided employee reports for work the day after the holiday.

b. Holidays: Labor Day and 4th of July.

c. Holiday: E, provided the employee works the day after the holiday, 3 hrs. before X-Mas Eve and New Year's Eve.

d. Holidays: A thru F, Day after Thanksgiving.

e. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

f. Holidays: A thru F, Washington's Birthday, Good Friday and Christmas Eve, providing employee has worked 30 full days during the 90 days prior to the holiday, and the regularly scheduled work days immediately preceeding and fillowing the holiday.

g. Employer contributes $4.00 per day to a Vacation Fund.

h. 2 hours off with pay on the first Tuesday after the frist Monday of November, provided they are working on a job beyond 50 miles from the shop.

i. One week vacation after one year's work; 2 weeks after 5 years work.

DECISION NO. NY78-3060

Line Construction	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electricial Overhead and Underground Distribution Work:					
Lineman and Technicians	$10.00	1.00	3%+.75	a	3½%
Cable Splicers	12.87	1.00	3%+.75	a	3½%
Groundman Digging Machine Operator and Groundman Dynamiteman	9.00	1.00	3%+.75	a	3½%
Groundman Mobile Equipment Operator, Mechanic 1st Class, Groundman Truck Driver (tractor trailer units)	8.00	1.00	3%+.75	a	3½%
Groundman Truck Driver, Driver-Mechanic, Groundman (experienced)	7.50	1.00	3%+.75	a	3½%
All Overhead Transmission Line Work and Lighting For Athletic Fields:					
Lineman and Technicians	11.25	1.00	3%+.75	a	3½%
Groundman Digging Machine Operator, Groundman Dynamiteman	10.125	1.00	3%+.75	a	3½%
Groundman Mobile Equipment Operator, Mechanic 1st Class, Groundman Truck Driver (tractor trailer unit)	9.00	1.00	3%+.75	a	3½%
Groundman Truck Driver, Driver-Mechanic, Groundman (experienced)	8.4375	1.00	3%+.75	a	3½%
All Pipe Type Cable Installations:					
Lineman and Groundman Equipment Operator	11.70	1.00	3%+.75	a	3½%
Cable Splicer	12.87	1.00	3%+.75	a	3½%
Groundman Truck Driver, Groundman (experienced)	8.775	1.00	3%+.75	a	3½%

DECISION NO. NY78-3060

LINE CONSTRUCTION (CONT'D):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sub-station, Switching Structures (when not part of the line), Traffic Signals, Street Lighting and Electrical, Telephone or CATV Commercial Work:					
Linemen and Technicians	$11.70	1.00	3%+.75	a	3½%
Cable Splicers	12.87	1.00	3%+.75	a	3½%
Groundman Digging Machine Operator, Mechanic 1st Class, Groundman Truck Driver (tractor-trailer unit)	9.36	1.00	3%+.75	a	3½%
Groundman Truck Driver, Driver-Mechanic, Groundman (experiended	8.775	1.00	3%+.75	a	3½%
Telephone and other Communication Systems, both overhead and underground:					
Linemen and Installer Repairmen	8.34	.40	3%+.25	a	1%
Splicers	8.89	.40	3%+.25	a	1%
Groundman Digging Machine Operator	7.73	.40	3%+.25	a	1%
Groundman	5.72	.40	3%+.25	a	1%
Groundman Truck Driver	6.82	.40	3%+.25	a	1%
Groundman Dynamiteman	6.60	.40	3%+.25	a	1%

Paid Holidays: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day F-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Paid Holidays: A through F, Washington's Birthday, Good Friday, and Election Day for President of the United States and Governor of New York State, provided the employee works the day before and after the holiday.

Albany County (Cities of Cohoes and Watervliet)
Saratoga County (Twps. of Halfmoon and Stillwater)
Rensselaer County (Twps. of Berlin, Sand Lake, Poestenkill, Brunswick, Petersburg, Schaghticoke, Pittstown, Hoosick and Grafton)

LABORERS: HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$ 7.74	.95	1.00	a	.10
CLASS B	7.94	.95	1.00	a	.10
CLASS C	8.14	.95	1.00	a	.10
CLASS D	8.34	.95	1.00	a	.10

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE:
a. Paid Holidays: A through F, provided the employee has worked the day before and after the holiday.

LABORERS: HEAVY AND HIGHWAY CONSTRUCTION:

CLASS A
Laborers, drill helpers, flagmen, outboard and hand boats.

CLASS B
Bull float, chain saw, concrete aggregate, bin, concrete bootman, gin buggy, hand or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breaker, handlers of all steel mesh, small generators for laborers' tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or screw op. on asphalt paver, water pump op. (1½" and single diaphram), nozzle (asphalt, gunnite, seeding and sand blasting), laborers on chain link fence erection, rock splitter and power unit, pusher type concrete saw and all other gas, electric, oil and air tool operators, wrecking laborer.

CLASS C
All rock or drill machine operators (except quarry master and similar type), acetylene torch op., asphalt raker, powderman.

CLASS D
Blasters, form setter, stone or granite curb setters.

Albany County (Entire County except Cities of Cohoes and Watervliet)
Rensselaer County (Twps. of North Greenbush, East Greenbush, Schodack, Nassau and Stephentown)

LABORERS: HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$ 7.89	.80	1.00	a	.10
CLASS B	8.09	.80	1.00	a	.10
CLASS C	8.29	.80	1.00	a	.10
CLASS D	8.49	.80	1.00	a	.10

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE:
a. Paid Holidays: A through F, provided the employee has worked the day before and after the holiday.

LABORERS: HEAVY AND HIGHWAY CONSTRUCTION:

CLASS A
Laborers, drill helpers, flagmen, outboard and hand boats.

CLASS B
Bull float, chain saw, concrete aggregate, bin, concrete bootman, gin buggy, hand or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breaker, handlers of all steel mesh, small generators for laborers' tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or screw op. on asphalt paver, water pump op. (1½" and single diaphram), nozzle (asphalt, gunnite, seeding and sand blasting), laborers on chain link fence erection, rock splitter and power unit, pusher type concrete saw and all other gas, electric, oil and air tool operators, wrecking laborer.

CLASS C
All rock or drill machine operators (except quarry master and similar type), acetylene torch op., asphalt raker, powderman.

CLASS D
Blasters, form setter, stone or granite curb setters.

Saratoga (Twps. of Day, Hadley, Edinburg, Corinth, Moreau, Wilton, Providence, Greenfield, Northumberland, Galway, Milton, Charlton, Saratoga Springs, Malta, Ballston and Clifton Park)
Schenectady County

LABORERS: HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$ 7.94	.80	1.00	a	.05
CLASS B	8.14	.80	1.00	a	.05
CLASS C	8.34	.80	1.00	a	.05
CLASS D	8.54	.80	1.00	a	.05

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE:
a. Paid Holidays: A through F, provided the employee has worked the day before and after the holiday.

LABORERS: HEAVY AND HIGHWAY CONSTRUCTION:

CLASS A
Laborers, drill helpers, flagmen, outboard and hand boats.

CLASS B
Bull float, chain saw, concrete aggregate, bin, concrete bootman, gin buggy, hand or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breaker, handlers of all steel mesh, small generators for laborers' tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or screw op. on asphalt paver, water pump op. (1½" and single diaphram), nozzle (asphalt, gunnite, seeding and sand blasting), laborers on chain link fence erection, rock splitter and power unit, pusher type concrete saw and all other gas, electric, oil and air tool operators, wrecking laborer.

CLASS C
All rock or drill machine operators (except quarry master and similar type), acetylene torch op., asphalt raker, powderman.

CLASS D
Blasters, form setter, stone or granite curb setters.

Albany County: North to 1st Ave in Watervliet, West on 1st Ave (south side) to Lincoln Ave; North on Lincoln Ave (west side) to Watervliet-Shaker Rd. (route 155, south side) to Junction of Route 9; North on route 9 (west side) to Crescent Bridge and Mohawk River.
Rensselaer County: Twps. of North Greenbush, East Greenbush, Schodack, Nassau, Stephentown and Rensselaer City.

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Rehabilitation work on residential structures over 4 stories defined to include demolition, alteration and repair on any existing structure which is intended for predominantly residential use:					
GROUP I	$6.16	.90	1.10		.12
GROUP II	6.285	.90	1.10		.12
GROUP III	6.30	.90	1.10		.12
GROUP IV	6.34	.90	1.10		.12
GROUP V	6.375	.90	1.10		.12
GROUP VI	6.36	.90	1.10		.12
GROUP VII	6.54	.90	1.10		.12
LABORERS, BUILDING:					
GROUP I	8.92	.90	1.10		.12
GROUP II	9.07	.90	1.10		.12
GROUP III	9.095	.90	1.10		.12
GROUP IV	9.145	.90	1.10		.12
GROUP V	9.195	.90	1.10		.12
GROUP VI	9.175	.90	1.10		.12
GROUP VII	9.395	.90	1.10		.12

Albany County: The west side of the Hudson River, extending westerly along the north side of 1st street (Watervliet), to one-half mile of route 9 to Shaker Rd. to route 9 northerly to the north line of Albany County.
Rensselaer County: Twps. of Berlin, Sand Lake, Postenkill, Schodack, Pittstown, Hoosick, Brunswick, Grafton and Petersburg.
Saratoga County: Beginning southerly at the east side of route 9, running northerly along route 9 to Malta, including all of the Twp. of Stillwater, continuing along the east shore of Saratoga Lake to the Saratoga City Line, easterly of Saratoga City Line taking in all of the Twp. of Schuylerville. This includes all towns, cities, and villages in foresaid counties.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS: Rehabilitation work on residential structures over 4 stories defined to include demolition, alteration and repair on any existing structure which is intended for predominantly residential use:					
GROUP I	$6.21	.95	1.00		.12
GROUP II	6.335	.95	1.00		.12
GROUP III	6.35	.95	1.00		.12
GROUP IV	6.39	.95	1.00		.12
GROUP V	6.425	.95	1.00		.12
GROUP VI	6.41	.95	1.00		.12
GROUP VII	6.59	.95	1.00		.12
LABORERS, BUILDING:					
GROUP I	8.97	.95	1.00		.12
GROUP II	9.12	.95	1.00		.12
GROUP III	9.145	.95	1.00		.12
GROUP IV	9.195	.95	1.00		.12
GROUP V	9.245	.95	1.00		.12
GROUP VI	9.225	.95	1.00		.12
GROUP VII	9.445	.95	1.00		.12

Saratoga County: Twps. of Day, Hadley, Edinburg, Corinth, Moreau, South Glen Falls, Providence, Greenfield, Wilton, Northumberland, Galway, Milton, Saratoga Springs, Charlton, Ballston, Malta and Clifton Park
Schenectady County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Rehabilitation work on residential structures over 4 stories defined to include demolition, alteration and repair on any existing structure which is intended for predominantly residential use					
GROUP I	$6.41	.80	1.00		.07
GROUP II	6.535	.80	1.00		.07
GROUP III	6.55	.80	1.00		.07
GROUP IV	6.59	.80	1.00		.07
GROUP V	6.625	.80	1.00		.07
GROUP VI	6.61	.80	1.00		.07
GROUP VII	6.79	.80	1.00		.07
LABORERS, BUILDING:					
GROUP I	9.17	.80	1.00		.07
GROUP II	9.32	.80	1.00		.07
GROUP III	9.345	.80	1.00		.07
GROUP IV	9.395	.80	1.00		.07
GROUP V	9.445	.80	1.00		.07
GROUP VI	9.42	.80	1.00		.07
GROUP VII	9.645	.80	1.00		.07

LABORERS DEFINITIONS (RESIDENTIAL REHABILITATION)
ALL AREAS

GROUP I
Laborers

GROUP II
Pipelayers (2 man team) mortar mixers (hand or machine), jackhammer operator, well pointing, concrete vibrators, all air or gas driven tools, hod carriers, power driven buggies

GROUP III
Form setter (curb)

GROUP IV
Wagon drill operator

GROUP V
Acetylene burners

GROUP VI
Demolition

GROUP VII
Blasters

LABORERS DEFINITION (BUILDING CONSTRUCTION)
ALL AREAS

GROUP I
Laborers

GROUP II
Pipelayers (2 man team), Mortar mixers (hand or machine), jackhammer operator, well pointing, concrete vibrators, power driver buggies

GROUP III
Form setter (curb)

LABORERS DEFINITION (BUILDING CONSTRUCTION) CONT'D

GROUP IV
Wagon drill operator

GROUP V
Acetylene burners

GROUP VI
Demolition

GROUP VII
Blasters

POWER EQUIPMENT OPERATORS: HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
GROUP I	$10.83	.95	1.05	a	.15
GROUP II	10.47	.95	1.05	a	.15
GROUP III	9.46	.95	1.05	a	.15
GROUP IV	8.56	.95	1.05	a	.15

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Paid Holidays: A through F, providing the employee works the day before and the dat after the holiday.

POWER EQUIPMENT OPERATORS: HEAVY AND HIGHWAY CONSTRUCTION

Group I - Automated concrete spreader (CMI), automatic fine grader, backhoe (except tractor mounted, rubber tired), belt placer (CMI type), blacktop plant (automated), cableway, caisson auger, central mix concrete plant (automated), cherry picker (over 5 tons capacity), concrete pump (8" or over), crane, cranes & derricks (steel erection), dragline, dredge, dual drum paver, excavator (all purpose-hydraulically operated, (gradall or similar), fork lift (factor rated 15 ft. and over), front end loader 4 c.y. and over), head tower (sauerman or equal) hoist (2 or 3 drum), mine hoist, mucking machine or mole, over head crane (gantry or straddle type), piledriver, power grader, quarry master (or equivalent), scraper, shovel, sideboom, slip form paver (if second man is needed, he shall be an oiler), tractor drawn belt type loader, truck crane, tunnel shovel.

Group II - Backhoe (tractor mounted, rubber tired), bituminous spreader and mixer, blacktop plant (non-automated), blast or rotary drill truck or tractor mounted), boring machine, cage-hoist, central mix plant (non-automated and all concrete batching plants), cherry picker (5 tons capacity and under), compressors (4 or less) exceeding 2000 C.F.M. combined capacity concrete paver (over 16S), concrete pump (under 8"), crusher, diesel power unit, drill rigs (tractor mounted), front end loader (under 4 c.y.), hi-pressure - boiler (15 lobs. and over), hoist (one drum) Kolman plant loader and similar type loaders (if another man is required to clean screen or to maintain the equipment, he shall be an oiler), locomotive maintenance/engineer/greaseman/welder, mixer (for stablized base self-propelled), monorail machine, plant engineer, pump crete, ready mix concrete plant, refrigeration equipment (for soil stabilization), road widener, roller (all above subgrade), tractor with dozer and/or pusher, trencher, tugger-hoist, winch, winch cat.

POWER EQUIPMENT OPERATORS: HEAVY AND HIGHWAY CONSTRUCTION CONT'D.

CLASS III: Asphalt curb and gutter machines, blower for burning brush, chipping machine and chip spreader, compressors: 4 not exceed 2,000 c.f.m. combined capacity, 3 or less with more than 1,200 c.f.m. but not to exceed 2,000 c.f.m., compressor, (any size but subject to other provisions for compressors), dust collectors, generators, pumps, welding machines (4 of any type or combination) concrete pavement spreaders and finishers, concrete curb and gutter machine, concrete curing machines, conveyor drill core, drill well, electric pump used in conjunction with well point systems, farm tractor with accessories, fine grade machine, hammers-hydraulic-self-propelled, hydraulic rock expander or similar type machine, hydraulic pump, motorized hydraulic pin puller and seeders, post hole digger and post driver, roller (grade and fill), tractor with towed accessories, vibratory compactor, vibro tamp, well point

CLASS IV: Aggregate plant, boiler, (used in conjunction with production), C.M.I. and similar type concrete spreaders, cement bin operator, compressors: 3 or less not to exceed 1,200 c.f.m. combined capacity, compressors: (any size, but subject to other provisions, for compressors), dust collectors, generators, pumps, welding machines (3 or less of any type or combination), concrete mixer (16S and under), concrete saw self-propelled, fireman, form tamper, mulching machine, oiler, power broom,power heaterman, revinius widener, steam cleaner, tractor

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS, BUILDING CONSTRUCTION: Albany County, Rensselaer County, Saratoga County and Schenectady County					
GROUP I	9.99	.90	.90	a	.15
GROUP II	10.06	.90	.90	a	.15
GROUP III	10.17	.90	.90	a	.15
GROUP IV	10.36	.90	.90	a	.15
GROUP V	10.69	.90	.90	a	.15
GROUP VI	10.84	.90	.90	a	.15
GROUP VII	11.02	.90	.90	a	.15

POWER EQUIPMENT OPERATORS: BUILDING CONSTRUCTION

GROUP I
Oilers

GROUP II
Firemen and heavy duty greasers, all boilers and steam generators

GROUP III
Pumps, vibrators, concrete mixers, spreaders, concrete finishing machines, mortar mixers, air compressors, dust collectors,welding machines well points, two or more Herman Nelson and like heaters, batch and plant op., seed and mulching machines, generators, temporary light plants, concrete pump, beltcrete power pac (beltcrete system), electric submersible pump 4" and over

GROUP IV
Dinkey locomotives, Barber Greene loaders, loaders and conveyors, tractors, scoopmobiles, bulldozers, road rollers, form fine graders, power brooms and sweepers

GROUP V
Black top spreaders, black top rollers, high lifts, fork lifts, one drum hoist or hod hoists, post hole diggers, traxcavators, core and well well drillers (one drum), economobile and similar type machines, elevators, A-L frame winches, power hoisting (single drum)

POWER EQUIPMENT OPERATORS: BUILDING CONSTRUCTION CONT'D

GROUP VI
LeTourneau graders or scrapers, trenching machines, push cart

GROUP VII
Tractor road pavers, cranes, power road graders, shovels, backhoes, draglines, pile drivers, hoists two or more drums, three drum engines, hysters, two drum and swinging engines, three drum swinging engine, locomotive cranes, gradalls, hydrocrane, model CHB Vibrotamp or similar, Murphy type diesel generator-beltcrete system, side booms, hydro hammer, tractor mounted drill (quarry master), euclid loaders, concrete pumps, all CMI equipment, concrete central mix plant, automated asphalt, concrete central plant, derrick, whirlies, tower cranes, cableways, hydraulic cranes, power hoisting (2 drum and over), mucking machine

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day and F-Christmas Day.

FOOTNOTES:
a. Holidays: A through F.

TRUCK DRIVERS: HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$8.44	.85	.80	a	
CLASS 2	8.49	.85	.80	a	
CLASS 3	8.54	.85	.80	a	
CLASS 4	8.69	.85	.80	a	
CLASS 5	8.84	.85	.80	a	
PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.					

FOOTNOTE:

a. Paid Holidays: A through f, provided the employee has worked the working day before and after the holiday.

TRUCK DRIVERS: HEAVY AND HIGHWAY CONSTRUCTION:

CLASS 1

Warehouseman, yardmen, truck helpers, pickups, panel trucks, flatboy material trucks (straight jobs), single axle dump trucks, dumpsters, material checkers and receivers, greasers, truck tiremen, mechanic helpers and parts chaser.

CLASS 2

Tandems, batch trucks, mechanics and dispatcher.

CLASS 3

Semi-trailers, low-boy trucks, asphalt distributors trucks, agitator, mixer trucks and dumpcrete type vehicles, truck mechanic.

CLASS 4

Specialized earth moving equipment - euclid type or similar off-highway equipment, where not self loaded, and straddle (ross) carrier.

CLASS 5

Off- highway tandem back-dump, twin engine equipment and double hitched equipment where not self loaded.

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Bexar

DECISION NO.: TX78-4075 DATE: Date of Publication

Supersedes Decision No. TX77-4193, dated August 19, 1977, in 42 FR 42121

DECRIPTION OF WORK: Building Construction (does not include single family homes & garden type appartments up to & including 4 stories). (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 11.05	.60	.60		.08
BOILERMAKERS	10.55	.80	1.00		.02
BRICKLAYERS-STONEMASONS	10.02	.45	.30	.25	.05
CARPENTERS:					
Carpenters	8.89	.48	.40	.40	.05
Millwrights	9.19	.48	.40	.40	.05
CEMENT MASONS	9.00	.45		.65	.02
ELECTRICIANS:					
Electricians	11.10	.44	5%		1%
Cable splicers	11.35	.44	5%		1%
ELEVATOR CONSTRUCTORS:					
Mechanics	9.945	.745	.56	4%+a+b	.025
Helpers	70%JR	.745	.56	4%+a+b	.025
Helpers (Probationary)	50%JR				
GLAZIERS	6.80				
IRONWORKERS	8.45	.55	1.00	.50	.07
LABORERS:					
GROUP 1 - General laborers	5.66	.38	.40		.05
GROUP 2 - All power tools & equipment operators; cutting torch man; power buggy op.; wagon drill op.; well driller; drilling rig tender; cement finisher tender; handling creosoted materials; scale man on batch plants; asphalt raker; concrete & clay & all non-metallic pipe laying; plasterer tender; brick tender; lather tender	5.91	.38	.40		.05
GROUP 3 - Mortar mixer man; grout machines; pumpcrete machines; gunnite mixing machines; running sand dryer & loading; operating sand blaster; bell hole man; blaster powderman; gunnite nozzleman	6.01	.38	.40		.05
LINE CONSTRUCTION:					
Lineman	11.42	.50	3%		1/2%
Cable splicer	11.67	.50	3%		1/2%
Groundman (1st year)	5.71	.50	3%		1/2%
Groundman	6.28	.50	3%		1/2%

(Rehabilitation work on residential structures over 4 stories defined to include demolition, alteration and repair on any existing structure which is intended for predominantly residential use)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Albany County, Rensselaer County, Saratoga County and Schenectady County					
GROUP I	$7.12	.90	.90	a	.15
GROUP II	7.17	.90	.90	a	.15
GROUP III	7.26	.90	.90	a	.15
GROUP IV	7.41	.90	.90	a	.15
GROUP V	7.06	.90	.90	a	.15
GROUP VI	7.78	.90	.90	a	.15
GROUP VII	7.93	.90	.90	a	.15

POWER EQUIPMENT OPERATORS

GROUP I
Oilers

GROUP II
Firemen and heavy duty greasers, all boilers and steam generators

GROUP III
Pumps, vibrators, concrete mixers, spreaders, concrete finishing machines, mortar mixers, air compressors, dust collectors, welding machines well points, two or more Herman Nelson and like heaters, batch and plant op., seed and mulching machines, generators, temporary light plants, concrete pump, beltcrete power pac (beltcrete system), electric submersible pump 4" and over

GROUP IV
Dinkey locomotives, Barber Greene loaders, loaders and conveyors, tractors, scoopmobiles, bulldozers, road rollers, form fine graders, power brooms and sweepers

GROUP V
Black top spreaders, black top rollers, high lifts, fork lifts, one drum hoist or hod hoists, post hole diggers, traxcavators, core and well well drillers (one drum), economobile and similar type machines, elevators, A-L frame winches, power hoisting (single drum)

POWER EQUIPMENT OPERATORS:

GROUP VI
LeTourneau graders or scrapers, trenching machines, push cart

GROUP VII
Tractor road pavers, cranes, power road graders, shovels, backhoes, draglines, pile drivers, hoists two or more drums, three drum engines, hysters, two drum and swinging engines, three drum swinging engine, locomotive cranes, gradalls, hydrocrane, model CHB Vibrotamp or similar, Murphy type diesel generator-beltcrete system, side booms, hydro hammer, tractor mounted drill (quarry master), euclid loaders, concrete pumps, all CMI equipment, concrete central mix plant, automated asphalt, concrete central plant, derrick, whirlies, tower cranes, cableways, hydraulic cranes, power hoisting (2 drum and over), mucking machine

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day and F-Christmas Day.

FOOTNOTES:
a. Holidays: A through F.

DECISION NO. TX78-4075

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
MARBLE SETTERS	9.14	.45	.30	.25	
MARBLE SETTERS' FINISHERS	6.37				
PAINTERS:					
Brush; Paperhanger; Taper & floater	8.85		.20		.05
Spray; Structural steel	9.10		.20		.05
Spray on structural steel; Sandblasting	9.35		.20		.05
PLUMBERS-PIPEFITTERS	11.48	.55	.55		.10
ROOFERS:					
Roofers; Deckman	6.95	.25			
Kettlemen	6.18	.25			
Waterproofers	6.54	.25			
SHEET METAL WORKERS	10.35	3%+.35	.66		.07
SOFT FLOOR LAYERS	6.35				
SPRINKLER FITTERS	11.60	.75	1.05		.08
TERRAZZO WORKERS	9.14	.45	.30	.25	
TERRAZZO WORKERS' FINISHERS					
Terrazzo finishers	6.37				
Floor machine operators	6.57				
Base machine operators	6.77				
TILE SETTERS	9.14	.45	.30	.25	
TILE SETTERS' FINISHERS	6.37				
TRUCK DRIVERS	3.64				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTES:
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 2% over 5 yrs. - 4% of basic hourly rate.
b - Paid Holidays A thru G

PAID HOLIDAYS
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

DECISION NO. TX78-4075

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
GROUP 1	9.27	.45	.75		
GROUP 2	8.28	.45	.75		
GROUP 3	6.98	.45	.75		
GROUP 4	6.71	.45	.75		

CLASSIFICATION DEFINITIONS

GROUP 1 - All foundation drilling rigs; All rollers (5 tons or over); Backfiller; Backhoe; Blade graders (self-propelled); Bull clam; Bulldozers; Cableway; Clamshell operator; Crane (power operated, all types); Derricks (power operated, all types); Draglines; DW-10 caterpillar and similar tractors; Elevating graders (self-propelled); Euclid; Fork lift used on construction; Gasoline or diesel-driven welding machines (7 to 12); Gradall; Heavy duty mechanic; High lifts; Hoist (two druns or more); Locomotives; Mixer (14 cu. ft. or over); Mixmobile; Paving mixers (all sizes); Piledrivers; Pumpcrete machine operator; Rock crusher operator on job; Scoopmobile; Scrapers; Shovel (power operated); Turnapulls; Trenching machines (all sizes); Winch truck; All other equipment of similar nature, coming within the heavy equipment class, when power operated

GROUP 2 - Air compressor (any time there are three or more attachments operating on a 125 cu. ft. air compressor or less, a light equipment operator shall be employed. Any compressor over 125 cu. ft. shall have a light equipment operator); Blade graders (towed); Building elevator used on construction; Flex planes; Form graders; Hoist (single drum); Mixer (less than 14 cu. ft.); Pneumatic roller; Pulsometers; Pump (2½ or larger shall require a light equipment operator); Three to six welding machines or any three pieces or equipment of equal or similar nature, coming within the light equipment class when power operated; Roller (under 5 tons); Truck crane drivers

GROUP 3 - Fireman

GROUP 4 - Oiler

SUPERSEDEAS DECISION

STATE: VIRGINIA
DECISION NO.: 78-VA-3057
SUPERSEDES DECISION NO. AQ-2031 DATED NOVEMBER 30, 1973 in 38 FR 33258
DATE: DATE OF PUBLICATION
DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION

COUNTIES: CAROLINE, ESSEX, GLOUCESTER, KING GEORGE, KING & QUEEN, KING WILLIAM, LANCASTER, MATHEWS, MIDDLESEX, NORTHUMBERLAND, RICHMOND, SPOTSYLVANIA, STAFFORD, WESTMORELAND AND THE INDEPENDENT CITY OF FREDERICKSBURG.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Asphalt Raker	$4.11				
Carpenter, Structure	5.86				
Carpenter Helper, Structure	4.67				
Cement Finisher	6.00				
Electrician	7.17				
Form Setter-Road	8.68				
Ironworker, Reinforcing	7.50				
Ironworker, Reinforcing Helper	4.25				
Ironworker, Structural	7.50				
Laborer, Unskilled	3.58				
Mechanic	4.40				
Piledriver-Leadsman	5.38				
Pipelayer	4.50				
Asphalt Distributor Operator	4.70				
Asphalt Paver Operator	4.19				
Backhoe Operator	5.00				
Bulldozer Operator	4.62				
Bulldozer Operator-Utility	3.50				
Crane, Derrick, Dragline (1 yard and under)	5.85				
Crane, Derrick, Dragline (over 1 yard)	7.00				
Drill Operator	4.95				
Loader Operator (2 yards and under)	3.75				
Loader Operator (over 2 yards)	4.62				
Motor Grader Operator-Fine Grade	5.00				
Motor Grader Operator-Rough Grade	4.98				
Oiler-Greaser	4.00				
Power Tool Operator	5.50				
Roller Operator-Rough	3.50				
Roller Operator-Finish	4.50				
Scraper-Pan Operator	4.50				
Stone Spreader Operator	4.00				
Subgrade Machine Operator	5.50				
Tractor Operator-Utility	4.50				
Truck Driver, Heavy Duty:					
7 c.y. and under	4.10				
over 7 c.y.	4.10				
Truck Driver:					
single rear axle	3.50				
multi rear axle	3.50				
Welders-receive rate prescribed for craft performing operation to which welding is incidental.					

SUPERSEDEAS DECISION

STATE: VIRGINIA
DECISION NO.: 78-VA-3058
SUPERSEDES DECISION NO. AQ-2032 dated November 30, 1973 in 38 FR 33259
DATE: DATE OF PUBLICATION
DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION

COUNTIES: AMHERST, APPOMATTOX, BUCKINGHAM, CAMPBELL, CHARLOTTE, CUMBERLAND, HALIFAX, NELSON, PITTSYLVANIA, PRINCE EDWARD AND THE CITIES OF DANSVILLE, LYNCHBURG AND SOUTH BOSTON

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Asphalt Raker	$3.54				
Carpenter, Structure	4.50				
Carpenter Helper, Structure	3.43				
Concrete Finisher	4.18				
Concrete Finisher Helper	3.50				
Fence Erector/Guard Rail	3.20				
Ironworker, Reinforcing	4.54				
Laborer, Unskilled	3.17				
Mechanic	4.14				
Mechanic Helper	3.15				
Pipelayer	3.19				
Sign Erector	3.75				
Asphalt Distributor Operator	3.70				
Asphalt Paver Operator	3.65				
Backhoe Operator	4.32				
Bulldozer Operator	4.13				
Bulldozer Operator-Utility	3.50				
Concrete Paving Machine Operator	4.50				
Crane, Derrick, dragline Operator:					
1 yard and under	4.57				
over 1 yard	4.98				
Drill Operator	3.75				
Loader Operator:					
2 yards and under	4.08				
over 2 yards	4.08				
Motor Grader Operator-Fine Grade	4.88				
Motor Grader Operator-Rough Grade	4.00				
Oiler/Greaser	3.25				
Power Tool Operator	3.50				
Roller Operator-Rough	3.50				
Roller Operator-Finish	4.20				
Scraper-Pan Operator	3.87				
Shovel Operator (over 1 Yard)	5.40				
Stabilizer Operator	3.75				
Stone Spreader Operator	3.98				
Tractor Operator-Utility	3.23				
Trenching Machine Operator	3.13				
Truck Driver, Heavy Duty:					
7 c.y. and under	3.25				
over 7 c.y.	3.25				
Truck Driver-Single Rear Axle	3.00				
Truck Driver-Multi Rear Axle	3.66				
Welders-recieve rate prescribed for craft performing operation to which welding is incidental.					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Stabilizer Operaotr	4.14				
Stone Spreader Operator	3.84				
Tractor Operator-Utility	3.50				
Transit Mix Truck Operator	3.25				
Truck Driver, Heavy Duty:					
7 C.Y. and under	3.00				
Over 7 C.Y.	3.00				
Truck Driver:					
single rear axle	3.31				
multi rear axle	3.50				
Welders-receive rate prescribed for craft performing operation to which welding is incidental.					

SUPERSEDEAS DECISION

STATE: VIRGINIA
DECISION NO. 78-VA-3059
Supersedes Decision No. AQ-2021 dated October 5, 1973 in 38 FR 27744
Date: Date of Publication
Description of Work: Highway Construction

COUNTIES: BEDFORD, BOTETOURT, CARROLL, CRAIG, FLOYD, FRANKLIN, GILES, HENRY, MONTGOMERY, PATRICK, PULASKI, AND ROANOKE. THE CITIES OF BEDFORD, GALAX, MARTINSVILLE, RADFORD, ROANOKE AND SALEM.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asphalt Raker	$4.01				
Carpenter, Structure	4.71				
Carpenter Structure Helper	3.51				
Concrete Finisher	4.08				
Concrete Finisher Helper	3.25				
Electrician	4.95				
Form Setter Road	3.18				
Fence Erector/Guardrail	3.41				
Ironworker, Reinforcing	5.07				
Ironworker, Reinforcing Helper	4.00				
Ironworker, Structural	6.30				
Laborer, Unskilled	3.00				
Landscape Worker	3.00				
Mechanic	4.47				
Mechanic Helper	3.79				
Painter, Bridge	3.88				
Pipelayer	3.75				
Powderman Blaster	4.50				
Asphalt Distributor Operator	3.89				
Asphalt Paver Operator	4.50				
Backhoe Operator	4.30				
Bulldozer Operator	4.40				
Bulldozer Operator, Utility	3.50				
Crane, Derrick and Dragline:					
1 yard and under	5.19				
over 1 yard	5.19				
Crusher Feeder Operator	3.75				
Drill Operator	3.91				
Form Grader Operator	3.15				
Loader:					
2 yards and under	4.14				
over 2 yards	4.14				
Motor Grader Operator:					
Fine Grade	4.80				
Rough Grade	4.80				
Oiler/Greaser	3.40				
Power Tool Operator	5.35				
Roller Operator:					
Finish	3.79				
Rough	3.46				
Scraper Pan Operator	4.00				
Shovel Operator:					
1 yard and under	4.73				
over 1 yard	4.85				

[FR Doc. 78-21397 Filed 8-3-78; 8:45 am]

federal register

FRIDAY, AUGUST 4, 1978
PART V

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Health Care Financing Administration, Public Health Service, Office of Human Development Services

■

MEDICARE AND MEDICAID PROGRAMS; MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES; SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES

Disclosure of Ownership and Related Information

[4110-35]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

[45 CFR Parts 405, 450, 455]

MEDICARE AND MEDICAID PROGRAMS

Disclosure of Information and Access to Provider Records; Requirements and Conditions for Participation

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Proposed rule.

SUMMARY: The proposed regulations would establish new requirements applicable to institutions and organizations providing services under medicare and medicaid (titles XVIII and XIX of the Social Security Act). The regulations would:

1. Require medicare and medicaid providers or fiscal agents to disclose to the Secretary or the State medicaid agency certain information about owners, employees, subcontractors, and suppliers;

2. Authorize the Secretary to refuse to enter into or renew an agreement with a provider if any of its owners, officers, directors, agents or managing employees has been convicted of a criminal offense involving any of the programs under titles XVIII, XIX, or XX of the Social Security Act;

3. Authorize the Secretary to terminate an agreement with a provider that failed to disclose fully and accurately the identity of any of its owners, officers, directors, agents, or managing employees who has been convicted of a program-related criminal offense at the time the agreement was entered into; and

4. Authorize access by the Secretary to medicaid providers' records.

The regulations implement sections 3, 8, 9, and 15 of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 (Pub. L. 95-142). The purpose is to strengthen the Department's capability to detect fraudulent activities in Federal health care programs and prosecute offenders.

DATES: Consideration will be given to written comments or suggestions received on or before October 3, 1978.

ADDRESSES: Address comments to: Administrator, Health Care Financing Administrative, Department of Health, Education, and Welfare, P.O. Box 2372, Washington, D.C. 20013. In commenting, please refer to PCO-181-P. Comments will be available for public inspection, beginning approximately 2 weeks after publication, in Room 5231 of the Department's offices at 330 C Street SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m., 202-245-0950.

FOR FURTHER INFORMATION, CONTACT:

Irwin Cohen, Health Care Financing Administration, Department of Health, Education, and Welfare, Room 588, East High Rise, 6401 Security Boulevard, Baltimore, Md. 21235, 301-594-5415.

SUPPLEMENTARY INFORMATION: Pub. L. 95-142 contains several provisions designed to preserve the integrity and improve the effectiveness of the medicare and medicaid programs. Some of these provisions apply as well to the maternal and child health and the crippled children's services programs (title V of the Social Security Act) and the title XX social services program.

This proposed rule is one of several regulations being promulgated by the Department to implement Pub. L. 95-142. It encompasses four provisions of Pub. L. 95-142—sections 3, 8, 9, and 15—which deal generally with disclosure of information to the Department by health care providers and fiscal agents involved in the medicare and medicaid programs.

In addition to proposing new regulations to implement Pub. L. 95-142, this proposed rule revises the existing medicare regulation (42 CFR 405.603) authorizing the Department to refuse a provider agreement to a provider which is bankrupt or insolvent. The revision is intended to improve clarity and understanding without making any significant substantive change.

Elsewhere in this issue of the FEDERAL REGISTER are proposed rules for the maternal and child health and the crippled children's services (MCH-CC) programs implementing section 3 of Pub L. 95-142, and for the title XX social services program implementing sections 3 and 8.

All of these proposed rules have been developed cooperatively among the Health Care Financing Administration, the Public Health Service, and the Office of Human Development Services, in order to achieve as much consistency as possible. This preamble attempts to deal comprehensively with the issues as they pertain to all these programs in order to avoid repetition in the preambles for the other proposed rules.

Pub. L. 95-142, particularly in section 3, explicitly calls for the Secretary to define or specify several important terms and requirements The following is an explanation of the major provisions in the proposed rule and the manner in which we propose to resolve the significant issues.

A. *Disclosure of ownership and related information.* Section 3 requires specified agencies and institutions (donoted as "disclosing entities") to disclose certain ownership information to the Secretary or to the appropriate State agency as a condition to their participation in the medicare, medicaid, MCH-CC, or title XX social services programs. Section 3 also requires that health care providers disclose certain information about their business tranactions.

1. *Disclosing entities.* The statute defines specifically and comprehensively the organizations and institutions which must report ownership information. They are:

(a) Medicare providers, including hospitals, skilled nursing homes, clinical laboratories, renal disease facilities, and health maintenance organizations, but excluding funds;

(b) Entities (other than a practitioner or group of practitioners) that furnish services, or arrange for furnishing services, under Medicaid or the MCH-CC programs;

(c) Fiscal intermediaries, fiscal agents and carriers participating in medicare or medicaid; and

(d) Entities (other than a practitioner or group of practitioners) that furnish, or arrange for furnishing health related services under the social services program.

2. *Ownership information that must be disclosed.* The statute requires that a disclosing entity provide the names of any person with an ownership or control interest in the entity or in a subcontractor in which the entity has at least a 5 percent ownership interest. Most of the key terms involved are defined by the statute, but a few are left to be defined by the Secretary. "Person with an ownership or control interest" is defined by the statute as a person who:

(a) Has a direct or indirect ownership of 5 percent or more;

(b) Has an ownership of 5 percent or more in a mortgage or other obligation secured (in whole or part) by the entity;

(c) Is an officer or director of a corporation; or

(d) Is a partner in a partnership.

The statute directs the Secretary to define indirect ownership. The legislative history acknowledges that this is a difficult task to do with precision, but makes clear that the Congress was particularly concerned about the "pyramiding" of corporate ownership, by which a person has an ownership interest in one corporation and that corporation has an ownership interest in another corporation. (See H. Report 95-393, pt. 1, p. 47.) With this concern in mind, we have defined "indirect ownership interest" to be any ownership interest in an entity that has an ownership interest in a disclosing entity. (Ownership interest is also defined in the regulation, at section 405.603-0 (b).)

In order to deal with the possibility that there may be three or more layers to a corporate pyramid, we have also made it clear that ownership in any entity higher in the pyramid than the disclosing entity constitutes indirect ownership for purposes of this rule. (We are not proposing that ownership in a corporation (other than a subcontractor) that is owned by a disclosing entity be reported. That is, we are not requiring disclosure of ownership in corporations which are below the disclosing entity in a pyramid.)

At the same time, we recognize that ownership of a small portion of one entity that has an ownership in a small portion of another may result in a very small indirect ownership interest. The benefits of obtaining information in this situation may be heavily outweighed by the administrative burden of obtaining it. Consequently, we are proposing that indirect ownership be traced through the pyramid, by multiplying the percentage of ownership at each level, and that an indirect ownership somewhere in the pyramid must be reported only, if on the basis of these calculations, it is equivalent to an ownership interest of 5 percent or more in the disclosing entity.

We also tried to deal with another form of indirect ownership which, in some instances, might be used by a person for an improper purpose—namely the deliberate placing of ownership under the name of a relative. We believe it would not be feasible to require an entity to identify every instance in which ownership is held by a relative of someone who has a direct or indirect ownership interest in a disclosing entity. However, we are proposing that an entity report whether any of the persons it is otherwise required to identify are related as spouse, parent, or child. We think this would provide us with lead information on situations with the most immediate potential for abuse.

As noted above, the statute requires the disclosure of a person holding 5 percent or more of a mortgage or other obligation secured (in whole or part) by a disclosing entity. We recognize, however, that if the mortgage is secured by only a portion of the entity's assets and a person holds only a small share of the mortgage, then that person's ownership interest might be equivalent to a very small fraction of the disclosing entity's assets. Consequently, we are proposing that a mortgage interest be reported only if the value of the person's interest in the mortgage is equal to at least 5 percent of the entity's assets. We believe this is consistent with the legislative intent of Pub. L. 95-142 and will effectively achieve its objectives.

The statute also directs the Secretary to define the term "subcontractor" for purposes of these reporting requirements. The legislative history provides some guidelines (see H. Rept. 95-393, pt. 1, p. 47). We propose defining subcontractor comprehensively, in order to obtain a broad base of information. We would define it to be any individual or organization to which a disclosing entity has contracted or delegated some of its management functions, its responsibilities to provide health care, or its responsibilities as a fiscal agent.

3. *Identification of common ownership.* The statute also requires that, to the extent determined by the Secretary to be feasible, a disclosing entity must report on whether any of the persons whom it must identify as having an ownership or control interest in itself also has an ownership or control interest in anoher disclosing entity. This form of cross-ownership is clearly a potential source of program abuse, and, therefore, such information is highly desirable. We also recognize, however, that holding an entity responsible for knowing the ownership and control interests of any other disclosing entity could create an extraordinary administrative burden. Consequently, we are proposing that this information be disclosed to the extent an entity can obtain it by making a written request of those people having an ownership or control interest in the entity.

4. *When the information must be disclosed.* The statute requires that the ownership information discussed above must be supplied to the Secretary or the appropriate State agency as a condition for participation in, certification or recertification for, or approval of a contract or agreement under, any of the programs established under title V, XVIII, XIX, or XX. This would be implemented by requiring every disclosing entity to submit the information routinely, at specified intervals, as explained below.

Because we recognize that routine submission will be a substantial burden on disclosing entities, we reviewed carefully whether the statute could be implemented by requiring each disclosing entity to maintain the information on a current basis and supply it to the Secretary or the State agency promptly upon request. We concluded, however, that the Congress had clearly required that the information be submitted routinely.

Looking first to the words of the statute, the most straightforward reading of the words "as a condition of * * * participation in, or certification or recertification under * * * [or] for approval or renewal of a contract or agreement" seems to be that the information must be submitted before a disclosing entity is permitted to participate, is certified, or is awarded a contract or agreement. This meaning is supported by the legislative history, which states that additional information must be disclosed, "but only when specifically requested" and explains that these disclosure requirements "were designed to be incorporated into the ongoing certification or contractual process." (See Sen. Rept. 95-453, pp. 8 and 10; H. Rept. 95-393, pt. 1, pp. 45 and 48.) Moreover, an early version of the proposed legislation would have required disclosure only upon request by the Secretary or the State agency, but the wording was changed following House committee hearings, in which the Congress was urged to require routine submittals. (See H.R. 3, January 4, 1977 print, and joint hearing before the Committee on Ways and Means and Committee on Interstate and Foreign Commerce, series 95-7, pp. 31, 36-37, 47, 64-65, and 214.)

We would follow this congressional intent by requiring disclosing entities to supply the information as part of either the certification or the contractual process, depending on the nature of the disclosing entity. Those entities which, as providers or suppliers of services, are surveyed annually or compliance with Federal and State standards would be required to furnish the information to the survey agency. Disclosing entities subject to this procedure would include hospitals, nursing homes, intermediate care facilities, home health agencies, outpatient clinics, independent clinical laboratories, and renal disease facilities. The survey agency would then give the information to HCFA, which would be responsible for collecting and compiling the information on all disclosing entities, irrespective of participation in medicare.

Since health maintenance organizations and medicare fiscal intermediaries and carriers enter into contract

with HCFA, we would obtain ownership information directly from these disclosing entities. The State medicaid agency would be responsible for obtaining ownership information from any medicaid fiscal agent or other provider of services that was not participating in medicare and then furnishing it to HCFA.

We are proposing that HCFA be responsible for compiling the data on all disclosing entities, even those which participate only in medicaid or the title V or title XX program, rather than requiring the appropriate agency to take responsibility for such entities. Doing so will avoid duplicative demands on providers who participate in more than one program and duplicative administrative burdens on the State agencies. The State agencies may, of course, maintain their own compilation of ownership information and undertake their own analysis if they wish. However, they would obtain their information from HCFA rather than the provider or survey agency. Conversely, because HCFA had a complete compilation of the information, it would not have to request data from the State, or make a duplicative request from the provider, in the case of a provider participating only in medicaid, title V, or title XX.

5. *Requirements for disclosing information about business transactions.* Section 3 of Pub. L. 95-142 also requires a health care provider under medicare, medicaid, or title XX to comply with a request from the Secretary or appropriate State agency for information about the ownership of any subcontractor with whom the provider has had more than $25,000 in business transactions during the previous 12 months, or for information as to any significant business transactions occurring during the previous 5 years between the provider and a subcontractor or a wholly-owned supplier. (The statute does not impose this requirement on the MCH-CC program.)

The statute again calls for the Secretary to define subcontractor, and we propose using the same definition for this purpose as was used above. The statute also requires that the Secretary define "significant business transactions." We are proposing to define the term as any transaction or series of transactions that, during any fiscal year, exceeds the lesser of $25,000 or 5 percent of the total operating expenses of the provider. We have selected the figure $25,000 simply in order to be consistent with the statutory figure for subcontractors. Although other figures might be logically defended, we think using the same figure will avoid confusion and facilitate our implementation of the statute. We are proposing the 5-percent alternative in recognition that there may be small providers for whom a dollar amount less than $25,000 may constitute a substantial portion of their overall business and, therefore, possibly present a significant opportunity for abuse.

The statute requires that this information be furnished within a period of time specified by the Secretary. Since we are not requiring that the provider keep information in this form on a current basis, the provider may need a few days to collect and prepare it. We are, therefore, proposing a period of 35 days from the date the request is sent by the Secretary or the State agency. (In setting this figure, we have allowed 5 days for mail delivery.)

6. *Consequences of failure to disclose information.* As explained above, the requirement to disclose ownership and control information is stated in the statute as a condition for participation, certification, or approval of any agreement between the disclosing entity and the Secretary or the State agency. Therefore, the Secretary would not approve or renew a medicare agreement with any provider, fiscal intermediary, or carrier that failed to supply such information. Moreover, in the case of hospitals and other medicare providers whose agreements or eligibility is not renewed annually, the Secretary would terminate their existing provider agreements or eligibility if they failed to supply the information to the survey agency.

We propose similar provisions for the medicaid, MCH-CC, and the title XX Social Services Programs. A State medicaid agency, a State title V agency, or a State title XX agency could not approve or renew an agreement with a provider or fiscal agent that fails to supply required information. These State agencies would also be authorized to terminate a provider agreement or other contract with any disclosing entity that fails to submit the information when required. Moreover, because supplying ownership information is a precondition for participation, the Department would withhold Federal financial participation in medicaid, title V, or title XX payments made to providers who fail to furnish the information.

The statute imposes the requirement on medicare providers to disclose information about business transactions by authorizing the Secretary to terminate the medicare provider agreement for any provider who fails to comply with a request for that information. The proposed regulation, therefore, establishes the medicare provider's obligations to disclose this information by treating the failure to disclose as grounds for terminating a provider agreement. (See 42 CFR 405.607.) For medicaid and title XX, the statute mandates that the State plan require a provider to furnish the information on business transactions upon request by the Secretary or the State agency. The statute also precludes Federal financial participation in any medicaid or title XX payments made to a provider who has failed to comply with a request from either the Secretary or the State agency. The proposed regulation simply follows these statutory requirements.

B. *Disclosure of owners and certain other individuals convicted of certain offenses.* Section 8 of Pub. L. 95-142 requires that, as a condition of participation in medicare, medicaid, or the title XX social services program, all institutional providers of services must disclose to the Secretary or appropriate State agency the name of any owners, officer, director, agent, or managing employee who has been convicted of a criminal offense related to his involvement in these programs.

1. *Persons who must be identified.* With respect to medicare and medicaid, the persons who must be identified under section 8 (if they have a criminal conviction) are the same as those who must be disclosed under section 3, plus agents and managing employees. (As explained in the proposed regulation for title XX, the types of providers covered for that program are broader.) The term "conviction" means that a judgment of conviction has been entered by a Federal, State, or local court irrespective of whether an appeal from that judgment is pending. The other definitions used for section 8 are the same as those for section 3.

2. *Date of conviction.* The statute provides for the identification of persons who were convicted "on or after the date of enactment of this section or within such period of time prior to that date as the Secretary shall specify in regulations. * * *" We propose requiring the identification of convictions at any time since the inception of these programs. In other words, we would require the identification of any convictions related to medicare since July 1, 1966, to medicaid since January 1, 1966, or to the social services program since October 1, 1975.

We believe this proposal is permissible and desirable for several reasons. First, we think we must be made aware of the involvement in these programs of persons with prior convictions in order to be able to monitor those situations more closely and to guard more carefully against a possible recurrence. Second, there will not necessarily be any adverse action taken against the entity making this disclosure. As explained more fully below, the Secretary or the State agency may deny a provider agreement or contract with the entity, but is not required to do so in all cases. Third, if the entity is denied an agree-

ment, the purpose is not punitive. Rather, it is taken to preserve the integrity of these programs. For this reason, it does not constitute an ex post facto sanction and does not violate constitutional standards of due process. (See *DeVeau* v. *Braisted*, 363 U.S. 144 (1960) and *Postma* v. *International Brotherhood of Teamsters*, 337 F.2d 609 (C.A. 2, 1964).)

3. *When information must be disclosed.* We are proposing that this information be furnished to the Secretary before a medicare provider agreement is approved or renewed, to a State medicaid agency before participation in medicaid is approved or renewed, and to a State title XX agency before a contract is entered into. We propose having it furnished routinely, rather than upon request, for three reasons. First we think it is important that this information be evaluated carefully before a decision is made to permit the provider to participate, or to continue its participation, in these programs. Second, furnishing this information will not be burdensome for the provider. Third, the statute specifically provides for the denial of a contract or agreement, or refusal to renew a contract or agreement, rather than termination of an existing agreement or contract, if the provider discloses the name of a person with a prior conviction. As discussed below, the statute only speaks of termination as the result of the provider failing to make a full and accurate disclosure at the time an agreement or contract was entered into or approval was given. Thus, the statutory authority to respond to a disclosure of prior conviction is effective only if the disclosure is made before an agreement or contract is made.

4. *Denial of participation.* If a provider discloses that an owner, officer, director, agent, or managing employee has been convicted of a crime related to his involvement in these programs, the statute authorizes the Secretary to deny (or refuse to renew) a medicare agreement and authorizes the State agency to deny (or refuse to renew) a contract or agreement under medicaid or the social services program. This action is discretionary, however, and will not be taken automatically with respect to medicare. We are proposing that, before deciding whether to approve or renew an agreement in this situation, the Secretary will consider the facts and circumstances in each case, including the nature and severity of the crime and whether he has been given reasonable assurance that the person will not commit any further criminal offense against the program.

5. *Termination of participation.* The statute authorizes the Secretary to terminate a medicare agreement if the provider did not fully and accurately disclose the required information at the time the agreement was approved. The statute also authorizes the State agency to terminate a contract, agreement, or approval to participate in medicaid or the social services program under the same circumstances. The proposed rule merely incorporates this authority. We want to point out in this discussion, however, that we view the failure to report this information fully and accurately as a serious matter. Although the statute gives the Secretary discretion whether to terminate an agreement for this reason, we anticipate doing so in every instance, unless the provider can show extraordinary mitigating circumstances why it did not report fully and accurately.

C. *Federal access to records of medicaid providers.* Section 9 of Pub. L. 95-142 provides that persons or institutions providing services under medicaid are to furnish information to the Secretary to the extent they are already required to furnish it to the State medicaid agencies, under section 1902(a)(27) of the Social Security Act. Section 1902(a)(27) previously required that State medicaid plans provide for agreements with every person or institution providing services under which such persons or entities must keep complete records of services and, upon request, furnish the State medicaid agency with information regarding any payments claimed under the program. Prior to Pub. L. 95-142, the statute did not specifically provide the Secretary with the same access to these records, although we have consistently asserted a right of access under section 1902(a) (4) and (6) and section 1903(g). We are amending 42 CFR 450.21 to implement this change.

We are also proposing that providers be required to provide this information directly to the State medicaid fraud control unit, if such a unit has been established by the State and approved by the Secretary in accordance with 42 CFR 450.310. The statute does not specifically provide for direct access to this information by the fraud control unit. However, we have already required the State medicaid agency to supply the fraud control unit with any records or information in the possession of the medicaid agency which the fraud control unit determines may be useful in carrying out its responsibilities. (See amendments to 42 CFR 450.80 published on January 22, 1978, at 43 FR 3120.) We believe that authorizing the fraud control unit to have direct access will remove the administrative delay of requiring the medicaid agency to obtain the information first and turn it over to the fraud control unit. This will greatly enhance the effectiveness of the fraud control unit. We think that, for this limited purpose, the fraud control unit may be properly viewed as an agent of the medicaid agency and, therefore, to have the necessary statutory authority to obtain this information. The fraud control unit is required by the present regulation to safeguard the confidentiality of any information obtained (see 42 CFR 450.80). We will also encourage the fraud control unit to cooperate with the medicaid agency to avoid making duplicate requests for the same information.

We are also proposing a clarification of the language regarding what information a medicaid provider is required to disclose. The statute and the present regulation require disclosure of "such information, regarding any payments claimed by such person or institution for providing services under the State plan, as the State agency or the Secretary may from time to time request." (See sec. 1902(a)(27)(B) of the act and 42 CFR 450.21(b).) In our view, this language clearly encompasses information contained in the records which the provider is required to maintain, under the immediately preceding clause of the statute and regulation, "as are necessary fully to disclose the extent of the services provided to individuals receiving assistance under the State plan. * * *" There have been instances in which providers have claimed that it is not clear that the disclosure requirement applied to patient records which the provider must maintain. We are merely clarifying the regulation to state explicitly that it does. In response to concerns about the confidentiality of patient records, we note that the State medicaid agency and the fraud control unit will not always require confidential information from such records. Moreover, they must protect the confidentiality of any information which they do receive from such records, in accordance with 45 CFR 205.50.

D. *Disclosure of the hiring of certain former employees of fiscal intermediaries.* Section 15 of Pub. L. 95-142, in order to preserve the integrity of the relationship between intermediary and provider, and the integrity of the auditing process, requires any medicare provider to notify the Secretary promptly of its employment of an individual who at any time during the preceding year was employed in a managerial, accounting, auditing, or similar capacity (as defined in the proposed regulation) by a fiscal intermediary or carrier who served that provider. In the past, some providers of services under the medicare program have recruited and employed personnel of the fiscal intermediary serving it, apparently in order to assist the provider in justifying accounting and cost reporting procedures. Section 15

is intended to discourage such employment practices, especially when information suggests possible conflict of interest situations, and permits the Department to monitor closely situations in which such employment exists. The statute requires that the Secretary define the term "similar capacity." We propose defining it to include any person who performs the same functions as those of a manager, accountant, or auditor even though the person is not so designated by title.

A. 42 CFR Part 405 is amended as follows:

1. Section 405.603 is deleted and new §§ 405.603-0 through 405.603-3 are added to read as follows:

§ 405.603 [Deleted]

§ 405.603-0 Decision by the Secretary to accept or renew an agreement.

(a) *Scope and purpose.* Sections 405.603-1 through 405.603-3 set forth the terms by which the Secretary may refuse to enter into an agreement for any of the following reasons:

(1) Bankruptcy or insolvency of the provider; (2) principals of the provider are found to have been convicted of fraud; or (3) failure by the provider to disclose ownership or control interests in accordance with § 405.603-3 of this part.

(b) *Definitions.* As used in this section and in §§ 405.603-1 through 405.603-3, unless the context indicates otherwise:

(1) "Agent" means any person who has been delegated the authority to obligate or act on behalf of a provider.

(2) "Disclosing entity" means:

(i) A provider of services, an independent clinical laboratory, a renal disease facility, or a health maintenance organization (as defined in section 1301(a) of the Public Health Service Act);

(ii) An entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, items or services for which payment may be claimed by the entity under any plan or program established under title V of the Social Security Act or under an approved State medicaid plan;

(iii) A carrier or other agency or organization that is acting as a fiscal intermediary or agent for one or more providers of services for purposes of part A or part B of medicare, or both, or for purposes of a State medicaid plan; or

(iv) An entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, health related services for which payment may be claimed by the entity under a State plan or program approved under title XX of the Act.

(3) "Managing employee" means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of, the institution, organization, or agency.

(4) "Provider" or "provider of services" means a hospital, a skilled nursing facility, or a home health agency, or, if it provides outpatient physical therapy or speech pathology services, a clinic, rehabilitation agency, or public health agency. It does not include a fund.

(5) "Subcontractor" means an individual, agency, or organization to which a disclosing entity has contracted or delegated some of its management functions or responsibilities of providing medical care to its patients or some of its responsibilities as a fiscal intermediary or agent (e.g., an independent radiological service or a management company with which the disclosing entity has contracted to administer either all or part of its day-to-day operations).

(6) "Supplier" means an individual, agency, or organization from which a provider purchases goods and services used in carrying out its responsibilities under medicare (e.g., a commercial laundry, a manufacturer of hospital beds, or a pharmaceutical firm).

(7) "Wholly owned supplier" means a supplier whose total ownership interest is held by a provider or by a person, persons, or other entity with an ownership or control interest in a provider.

(8) "Significant business transaction" means any business transaction or series of transaction that, during any one fiscal year, exceeds the lesser of $25,000 or 5 percent of the total operating expenses of the provider.

(9) "Ownership interest" means the possession of equity in the capital of, or stock in, or of any interest in the profits of the disclosing entity.

(10) "Indirect ownership interest" means any ownership interest in an entity that has ownership interest in the disclosing entity. The term includes an ownership interest in any entity that has an indirect ownership interest in the disclosing entity.

(11) "Person with an ownership or control interest" means a person or corporation that:

(i) Has an ownership interest of 5 percent or more in a disclosing entity;

(ii) Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;

(iii) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity, if such interest equals at least 5 percent of the value of the property or assets of the disclosing entity;

(iv) Is an officer or director of a disclosing entity that is organized as a corporation; or

(v) Is a partner in a disclosing entity that is organized as a partnership.

(12) "Group of practitioners" means two or more health care practitioners who practice their profession at a common location (whether or not they share common facilities, common supporting staff, or common equipment), but who have not formed a partnership or corporation and are not employees of a person, partnership, corporation, or other entity owning or operating the health care facility at which they practice.

(13) "Conviction" means that a judgment of conviction has been entered by a Federal, State, or local court irrespective of whether an appeal from that judgment is pending.

§ 405.603-1 Bankruptcy and Insolvency.

(a) *Evidence of financial condition.* Prior to the Secretary's acceptance of a provider agreement, the provider must furnish a statement in writing indicating whether or not it has been adjudged insolvent or bankrupt in any State or Federal court or there is pending a court proceeding to make a judgment of this matter.

(b) *Refusal of agreement.* The Secretary will not enter into an agreement with a provider that has been adjudged insolvent or bankrupt under appropriate State or Federal law, or against which there is pending a court proceeding to make a judgment concerning this matter, on the grounds that the provider is unable to give satisfactory assurances of compliance with the requirements of title XVIII of the Act.

(c) *Effect on participating providers.* If a provider who is participating and receiving payments under medicare is subsequently adjudged insolvent or bankrupt by a court of competent jurisdiction, the Secretary will not terminate the provider's participation in the program because of that financial condition.

§ 405.603-2 Principals convicted of a program related crime.

(a) *Information required.* Prior to the Secretary's acceptance of a provider agreement, the provider must furnish the Secretary with the identity of any person who has an ownership or controlling interest in the provider, or who is an agent or managing employee of the provider, and has been convicted of a criminal offense relating to involvement in medicare, medicaid, or the title XX social services program.

(b) *Refusal to enter into or renew agreement.* The Secretary may refuse to enter into or renew an agreement

with a provider of services if any person who has an ownership or controlling interest in the provider, or who is an agent or managing employee, has been convicted of a criminal offense related to the involvement of that person in medicare, medicaid, or the title XX social services program. In making this decision, the Secretary will consider the facts and circumstances of the specific case, including the nature and severity of the crime and the extent to which it adversely affected beneficiaries and the programs involved. The Secretary will also consider whether he has been given reasonable assurance that the person will not commit any further criminal offenses against the programs.

(c) *Notification of Inspector General.* The Secretary will promptly notify the Inspector General of the Department of the receipt of any application or request for participation, certification, or recertification that identifies any person described in paragraph (a) of this section and of the action taken on that application or request.

§ 405.603-3 Disclosure of identities of persons having ownership, financial, or control interest.

(a) *Information that must be disclosed.* A disclosing entity must submit the following information in the manner specified in paragraph (b) of this section:

(1) The identity of each person with an ownership or control interest in the entity or in any subcontractor in which the entity has a direct or indirect ownership interest of 5 percent or more. Such identification shall include the person's name and address, if known. If a disclosing entity reports the name of more than one person, and any of the persons named are related to each other as spouse, parent, or child, that fact shall be reported.

(2) The name of any other disclosing entity in which any person with an ownership or control interest in the disclosing entity also has an ownership or control interest, to the extent that the entity can obtain the information by requesting it in writing from the person.

(b) *Time and manner of disclosure.* (1) any disclosing entity that is subject to periodic survey and certification of its compliance with medicare standards must supply the information specified in paragraph (a) of this section to the survey agency at the time it is surveyed. The survey agency will promptly furnish the information to the Secretary.

(2) Any other disclosing entity must supply the information specified in paragraph (a) of this section to the Secretary before entering into a contract or agreement to participate in medicare.

(c) *Consequences of failure to disclose.* (1) The Secretary will not approve an agreement or contract with, or make a determination of eligibility for, any disclosing entity that fails to comply with paragraph (b) of this section.

(2) The Secretary will terminate any existing agreement or contract with, or withdraw a determination of eligibility for, any disclosing entity that fails to comply with paragraph (b) of this section. (See § 405.614 and subpart 0 of this part.)

(d) *Public disclosure.* Information disclosed to the Secretary under the provisions of this section shall be subject to public disclosure as specified in 20 CFR Part 422.

2. Section 405.607 is amended by adding a new paragraph (c) to read as follows:

§ 405.607 Essentials of agreements with providers of services.

Under the terms of the agreement (see 405.606) the provider agrees:

* * * * *

(c) To notify the Secretary promptly if it employs or obtains the services of an individual who, at any time during the year preceding such employment, was employed in a managerial, accounting, auditing, or similar capacity by an agency or organization which currently serves, or at any time during the preceding year served, as a medicare fiscal intermediary or carrier for the provider. "Similar capacity" means the performance of essentially the same work functions as those of a manager, accountant, or auditor even though the individual is not so designated by title.

3. Section 405.614 is amended by adding new paragraphs (a)(6), (a)(7), and (a)(8) to read as follows:

§ 405.614 Termination by the Secretary.

(a) *Cause for termination.* The Secretary may terminate an agreement if he determines that the provider of services: * * *

(6) Fails to submit to the Secretary, within 35 days after the date of a written request by the Secretary, full and complete information on:

(i) The ownership of a subcontractor with whom the provider has had, during the previous 12 months, business transactions in an aggregate amount in excess of $25,000; and

(ii) Any significant business transactions occurring during the 5-year period ending on the date of such request between the provider and any wholly owned supplier or between the provider and any subcontractor.

(See § 405.603-0(b) for definitions of "subcontractor," "significant business transaction," and "wholly owned supplier.")

(7) Failed, at the time the agreement was entered into, to disclose fully and accurately to the Secretary the name of any person who has an ownership or control interest in the provider, or who is an agent or managing employee of the provider, and who has been convicted of a criminal offense related to the involvement of the person in medicare, medicaid, or the title XX social services program. (See § 405.603-0(b) for definitions of "conviction," "agent," "person with an ownership or control interest," and "managing employee.")

(8) Fails to comply with the ownership disclosure requirements of § 405.603-3(a).

* * * * *

B. 42 CFR Part 449, § 449.33 is amended by vacating and reserving paragraph (a)(3) and transferring its content to part 455 of subchapter C.

§ 449.33 Standards for payment for skilled nursing facility and intermediate care facility services.

(a) *State plan requirements.* A State plan for medical assistance under title XIX of the Social Security Act must:

* * * * *

(3) [Reserved]

* * * * *

C. 42 CFR Part 450 is amended as follows:

1. Section 450.21 is revised to read as follows:

§ 450.21 Agreements with providers regarding record keeping and furnishing of information.

(a) *Purpose.* This section sets forth State plan requirements under section 1902(a)(27) of the act relating to the keeping of records and the furnishing of information by all providers of services (including individual practitioners and groups of practitioners).

(b) *Plan requirements.* A medicaid State plan must provide for an agreement between the State agency and each provider furnishing services under the plan in which the provider agrees to:

(1) Keep any records necessary to disclose fully the extent of services furnished to individuals receiving medical assistance under the plan; and

(2) On request, furnish the State agency, the State medicaid fraud control unit (if such a unit has been approved by the Secretary under section 450.310 of this part), or the Secretary any information maintained under

paragraph (b)(1) of this section and any information regarding payments claimed by the provider for furnishing services under the plan.

2. Section 450.70 is amended by revising paragraph (a)(1) to read as follows:

§ 450.70 Disclosure of information on providers of health care services and contractors.

A State medicaid plan must provide that:

(a) The State agency will establish a procedure for disclosure of the documents described in this section, and of pertinent findings from surveys by State standard-setting agencies (described in section 1902(a)(9) of the act) of health care facilities, laboratories, agencies, clinics, or other organizations providing health care services. The procedure must meet the following requirments:

(1) Documents subject to disclosure include survey reports, offical notifications of findings prepared by the survey agency based on the reports, any pertinent parts of written statements that are furnished by the provider to the survey agency relating to survey reports and findings, and information regarding ownership as specified in sections 405.603-3 and 455.104 of this chapter.

* * * * *

D. 42 CFR Chapter IV, Subchapter C is amended by adding a new part 455, subpart B to read as follows:

PART 455—PROGRAM INTEGRITY

Subpart B—Disclosure of Information by Providers and Fiscal Agents

Secs.
455.100 Purpose.
455.101 Definitions.
455.104 Disclosure by providers and fiscal agents of information on ownership and control.
455.105 Disclosure by providers of information on business transactions.
455.106 Disclosure by providers of information on persons convicted of crimes.

AUTHORITY: Sections 1124, 1126, 1902(a)(38), 1903(i)(2), and 1903(n) of the Social Security Act; 49 Stat. 647, 91 Stat. 1177; 42 U.S.C. 1302, 1320a-3, 1320a-5, 1396a(a)(38), 1396b(i)(2), and 1396b(n).

§ 455.100 Purpose.

This subpart implements sections 1124, 1126, 1902(a)(38), 1903(i)(2), and 1903(n) of the Social Security Act. It prescribes State plan requirements regarding disclosure by providers and fiscal agents of ownership and control information, and disclosure of information on a provider's owners and other persons convicted of criminal offenses against the medicare, medicaid, and the title XX social services programs. The subpart also specifies conditions under which the Adminstrator will deny Federal financial participation for services furnished by providers or fiscal agents who fail to comply with the disclosure requirements.

§ 455.101 Definitions.

(a) "Agent" means any person who has been delegated the authority to obligate or act on behalf of a provider.

(b) "Convicted" means that a judgment of conviction has been entered by a Federal, State, or local court, irrespective of whether an appeal from that judgment is pending.

(c) "Disclosing entity" means:

(1) A provider of services, an independent clinical laboratory, a renal disease facility, or a health maintenance organization (as defined in section 1301(a) of the Public Health Service Act);

(2) An entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, items or services for which payment may be claimed by the entity under any plan or program established under title V of the Social Security Act or under a State medicaid plan;

(3) A carrier or other agency or organization that is acting as a fiscal intermediary or agent for one or more providers of services for purposes of part A or part B of medicare of the Act, or both, or for purposes of a State medicaid plan; or

(4) An entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, health related services for which payment may be claimed by the entity under a State plan or program approved under title XX of the Act.

(d) "Fiscal agent" means a contractor which processes or pays vendor claims on behalf of the medicaid agency.

(e) "Managing employee" means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of, an institution, organization, or agency.

(f) "Provider" or "provider of services" means a hospital, a skilled nursing facility, an intermediate care facility, a clinic, a psychiatric facility, a mental institution, an independent clinical laboratory, a health maintenance organization, a pharmacy, and any other entity that furnishes or arranges for the furnishing of services for which payment is claimed under the medicaid program. It does not include individual practitioners or groups of practitioners.

(g) "Subcontractor" means an individual, agency, or organization to which a disclosing entity has contracted or delegated some of its management functions or responsibilities for providing medical care to its patients, or some of its responsibilites as a fiscal intermediary or agent (e.g., and independent radiological service or management company with which the disclosing entity has contracted to administer either all or part of its day-to-day operations).

(h) "Supplier" means an individual, agency, or organization from which a provider purchases goods and services used in carrying out its responsibilites under medicaid (e.g., a commercial laundry, a manufacturer of hospital beds, or a pharmaceutical firm).

(i) "Wholly owned supplier" means a supplier whose total ownership interest is held by a provider or by a person, persons, or other entity with an ownership or control interest in a provider.

(j) "Significant business transaction" means any business transaction or series of transactions that, during any one fiscal year, exceeds the lesser of $25,000 or 5 percent of the total operating expenses of a provider.

(k) "Ownership interest" means the possession of equity in the capital of, of stock in, or of any interest in the profits of the disclosing entity.

(l) "Indirect ownership interest" means any ownership interest in an entity that has ownership interest in the disclosing entity. The term includes an ownership interest in any entity that has an indirect ownership interest in the disclosing entity.

(m) "Person with an ownership or control interest" means a person or corporation that:

(1) Has an ownership interest of 5 percent or more in a disclosing entity;

(2) Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;

(3) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity, if such interest equals at least 5 percent of the value of the property or assets of the disclosing entity;

(4) Is an officer or director of a disclosing entity that is organized as a corporation; or

(5) Is a partner in a disclosing entity that is organized as partnership.

(n) "Group of practitioners" means two or more health care practitioners who practice their profession at a common location (whether or not they share common facilities, common supporting staff, or common equipment), but who have not formed a partnership or corporation and are not employees of a person, partnership or corporation, or other entity owning or operating the health care facility at which they practice.

§ 455.104 Disclosure by providers and fiscal agents of information on ownership and control.

(a) *Purpose.* This section sets forth medicaid State plan requirements regarding disclosure of ownership and control information by providers and by fiscal agents.

(b) *Plan requirement.* A medicaid State plan must require each provider and fiscal agent to disclose information on ownership and control interest in accordance with paragraphs (c) and (d) of this section.

(c) *Ownership and control information that must be disclosed.*

(1) A provider or fiscal agent must submit the following information in the manner specified in paragraph (d) of this section:

(i) The identity of each person with an ownership or control interest in the provider or fiscal agent, or in any subcontractor in which the provider or fiscal agent has direct or indirect ownership of 5 percent or more; and

(ii) The name of any other disclosing entity in which a person with an ownership or control interest in the provider or fiscal agent also has an ownership or control interest. This requirement applies to the extent that the provider or fiscal agent can obtain this information by requesting it in writing from the person.

(2) If a provider or fiscal agent reports the name of more than one person under the provisions of paragraph (c)(1) of this section, and any of the persons named are related to each other as spouse, parent, or child, it shall report this fact.

(d) *Time and manner of disclosure.* (1) Any disclosing entity that is subject to periodic survey and certification of its compliance with medicaid standards must supply the information specified in paragraph (c) of this section to the survey agency at the time it is surveyed. The survey agency will promptly furnish the information to the Secretary.

(2) Any other provider or fiscal agent that has not supplied the information specified in paragraph (c) of this section to the Secretary within the prior 12-month period must submit the information to the State medicaid agency before entering into a contract or agreement to participate in medicaid. The State agency will promptly furnish the information to the Secretary.

(e) *Provider agreements and fiscal agent contracts.* (1) A State medicaid agency shall not approve a provider agreement or a contract with a fiscal agent, and shall terminate an existing agreement or contract, if the provider or fiscal agent fails to disclose ownership or control information as required by this section.

(2) FFP is not available for payments made to a provider or fiscal agent which fails to disclose ownership or control information as required by this section.

§ 455.105 Disclosure by providers of information on business transactions.

(a) *Purpose.* This section sets forth medicaid State plan requirements regarding disclosure by providers of information on business transactions.

(b) *Plan requirement.* A medicaid State plan must provide for an agreement with each provider under which the provider agrees to furnish to the Secretary or the State agency on request information on business transactions in accordance with paragraph (c) of this section.

(c) *Business transactions.* A provider shall submit, within 35 days of the date on a request by the Secretary or the State agency, full and complete information about:

(1) The ownership of any subcontractor with whom the provider has had business transactions totaling more than $25,000 during the 12-month period ending on the date of the request; and

(2) Any significant business transactions between the provider and any wholly owned supplier, or between the provider and any subcontractor, during the 5-year period ending on the date of the request.

(d) *Federal financial participation (FFP).* (1) FFP is not available in expenditures for services furnished by providers who fail to comply with a request made by the Secretary or the State agency under paragraph (c) of this section or under section 450.614(a)(6) of this chapter (medicare requirements for disclosure).

(2) FFP will be denied for services furnished during the period beginning on the day following the date the information was due to the Secretary and ending on the day before the date on which the information was supplied.

§ 455.106 Disclosure by providers of information on persons convicted of crimes.

(a) *Purpose.* This section sets forth medicaid State plan requirements and authorities regarding disclosure by all providers of owners and other persons convicted of offenses relating to medicare, medicaid, or the title XX social services program.

(b) *Plan requirements.* A medicaid State plan must provide that prior to entering into or renewing a provider agreement, the provider must disclose to the State medicaid agency the identity of any person who:

(1) Has ownership or control interest in the provider, or is an agent or managing employee of the provider; and

(2) Has been convicted of a criminal offense related to that person's involvement in any program under medicare, medicaid, or the title XX social services program.

(c) *Notification to Inspector General.* (1) The State agency shall notify the Inspector General of the Department of Health, Education, and Welfare of any disclosures made under paragraph (b) of this section within 20 days of the date it receives the disclosure.

(2) The State agency shall also promptly notify the Inspector General of any action taken on the provider's application for participation in the program.

(d) *State denial or termination of provider participation.* (1) The State agency may refuse to enter into or renew an agreement with a provider if any person who has an ownership or control interest in the provider, or who is an agent or managing employee of the provider, has been convicted of a criminal offense related to that person's involvement in any program established under medicare, medicaid, or the title XX social services program.

(2) The State agency may refuse to enter into or may terminate a provider agreement if it determines that the provider did not fully and accurately make any disclosure required under paragraph (b) of this section.

(Sections 1124, 1126, 1861(j)(11), 1866(a), 1866(b)(2), 1902(a)(38), 1903(i)(2), and 1903(n) of the Social Security Act; 49 Stat. 647, 91 Stat. 1177; 42 U.S.C. 1302, 1320a-3, 1320a-5, 1395x(j)(11), 1395cc(a), 1395cc(b)(2), 1396a(a)(38), 1396b(i)(2), and 1396b(n).)

(Catalog of Federal Domestic Assistance Program Nos. 13.714, Medical Assistance Programs; 13.773, Medicare—Hospital Insurance; and 13.774, Medicare—Supplementary Medical Insurance.)

Dated: May 5, 1978.

WILLIAM D. FULLERTON,
Acting Administrator, Health Care Financing Administration.

Approved: July 21, 1978.

HALE CHAMPION,
Acting Secretary.

[FR Doc. 78-21448 Filed 8-3-78; 8:45 am]

[4110-84]

Public Health Service

[42 CFR Part 51a]

MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES

Disclosure of Ownership and Related Information

AGENCY: Public Health Service, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation would require an entity (other than an individual practitioner or group of practitioners) which furnishes services reimbursable under the maternal and child health and crippled children's services (MCH-CC) programs, as a condition of participation in these programs, to disclose to the appropriate State agency the names of persons who hold a specified ownership or control interest in the entity. It implements section 3 of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977.

DATE: Comments must be received by October 3, 1978.

ADDRESS: Written comments and recommendations should be submitted to the Director, Division of Policy Development, Bureau of Community Health Services, Health Services Administration, Room 6-17, 5600 Fishers Lane, Rockville, Md. 20857. All comments received in timely response to this notice will be considered and will be available for public inspection in the above-named office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Ceilon R. Hill, Public Health Advisor, Office for Maternal and Child Health, Bureau of Community Health Services, Health Services Administration, Room 7-39, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-2170.

SUPPLEMENTARY INFORMATION: The Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, Pub. L. 95-142, added provisions to the Social Security Act which strengthen the Government's ability to detect fraudulent activities in title V, XVIII, XIX, and XX programs. Most of the amendments focus on titles XVIII (medicare) and XIX (medicaid). However, section 3 of Pub. L. 95-142 enacted section 1124 of the Social Security Act, which requires providers of items or services for which reimbursement may be claimed to disclose certain ownership information as a condition of participation, certification or recertification in these programs. This section applies to title V (MCH-CC) and title XX (social services program), as well as to title XVIII and XIX programs. Therefore, it is necessary to amend the title V regulations (42 CFR Part 51a) to implement section 3 of Pub. L. 95-142.

Elsewhere in this issue of the FEDERAL REGISTER, there appear proposed rules implementing section 3 for medicare and medicaid and for the title XX social services program. These proposed rules were developed cooperatively among the Office of Human Development Services, the Health Care Financing Administration, and the Public Health Service, in order to achieve as much consistency as possible among the requirements being imposed in each of the programs. In order to avoid repetition in explaining how the Department proposes to resolve issues that pertain to all four programs, a comprehensive discussion of the common definitions and procedures is set forth in the preamble to the proposed rules for medicare and medicaid. This preamble deals only with issues particularly germane to title V. Therefore, readers wishing to understand fully and to comment on the proposed rule for title V are encouraged to review the proposed rules for medicaid and medicare.

This regulation would provide that title V disclosing entities (providers and fiscal agents) must furnish to the title V State agency full and complete information as to the identity of each person with an ownership or control interest in the entity or in any subcontractor in which the entity directly or indirectly has a 5 percent or more ownership interest. In addition, the regulation would require, to the extent that the title V disclosing entity can obtain this information, that it identify any other disclosing entity (participating in the medicare, medicaid, title V or title XX programs) in which a person with an ownership or control interest in the disclosing entity also has an ownership or control interest.

Each title V disclosing entity would be required under this proposed regulation to furnish the specified information to the title V State agency prior to approval by the State agency of any contract or agreement with that disclosing entity. The State agency would be required to forward promptly this information to the Secretary. If a title V disclosing entity fails to supply the required information to the State agency, the proposed regulation would require that the State agency (1) not approve or renew an agreement with that entity; and (2) terminate any existing agreement or contract with that entity.

Providers of items or services under medicare or medicaid and of medical or remedial care under the title XX social services program are all subject to the same disclosure requirements. Since almost all title V providers of items or services are also providers under at least one of the other programs, only a few title V providers would be subject to additional requirements under this proposed regulation. To eliminate some duplicative and repetitious requirements for this information, the proposed regulation would require the title V State agencies to coordinate their information requirements, to the extent possible, with the State medicaid agency.

Accordingly, it is proposed that subpart A of 42 CFR Part 51a be amended by adding a new section 51a.144, to read as set out below.

Dated: July 17, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: July 21, 1978.

HALE CHAMPION,
Acting Secretary.

§ 51a.144 Disclosure of ownership and control information.

(a) The State plan shall require each title V disclosing entity to furnish to the State agency full and complete information as to:

(1) The identity of each person with an ownership or control interest in the disclosing entity, or in any subcontractor in which the disclosing entity has direct or indirect ownership of 5 percent or more. If a disclosing entity reports more than one name under the provisions of this paragraph, and any two or more of the persons named are related to each other as spouse, parent or child, it shall report this fact.

(2) The name of any other disclosing entity in which a person with an ownership or control interest in the disclosing entity also has an ownership or control interest. This requirement applies to the extent that the disclosing entity can obtain this information by requesting it from the person.

(b) The information specified in paragraph (a) of this section must be furnished to the State agency prior to the approval by that agency of any contract or agreement under this subpart.

(c) The state agency must furnish promptly to the Secretary all information received in accordance with the requirements of paragraph (a) of this section.

(d) The State agency shall cooperate with the State medicaid agency in order to avoid imposing duplicative or repetitious requirements for information on a disclosing entity.

(e) If a disclosing entity fails to furnish the information described in paragraph (a) of this section, the State agency shall not approve or renew an agreement or contract with that disclosing entity and shall terminate any existing agreement or contract with that disclosing entity.

(f) For purposes of this section:

(1) "State agency" means the agency described in § 51a.101(b) from which the provider receives reimbursement under this subpart.

(2) All other terms have the same meaning as specified in §455.101 of this title.

[FR Doc. 78-21449 Filed 8-3-78; 8:45 am]

[4110-12]

Office of Human Development Services

[45 CFR Part 228]

SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES, TITLE XX

Disclosure of Certain Ownership Interests and Other Information

AGENCY: Administration for Public Services (APS), Office of Human Development Services (HDS), Department of Health, Education, and Welfare.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would require private providers of medical or remedial care and health-related homemaker services under title XX of the Social Security Act to disclose the names of persons with an ownership or control interest. It would also require private institutions, organizations, or agencies which provide any social service as well as medical or remedial care, or health-related homemaker services under title XX to identify any owners or other specified individuals who have been convicted of a criminal offense related to involvement in any program under medicare, medicaid or title XX. The proposed regulation implements sections 3 and 8 of the Medicare-Medicaid Anti-Fraud and Abuse Act of 1977 (Pub. L. 95-142, October 25, 1977).

DATES: Consideration will be given to written comments or suggestions received on or before October 3, 1978. Agencies or organizations are requested to submit their comments in duplicate.

ADDRESSES: Address comments to: Commissioner, Administration for Public Services, Department of Health, Education, and Welfare, P.O. Box 1923, Washington, D.C. 20013. Comments will be available for public inspection beginning approximately 2 weeks after publication, in room 2225 of the Department's offices at 330 C Street SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (area code 202-245-9415).

FOR FURTHER INFORMATION CONTACT:

Mrs. Johnnie Brooks, 202-245-9415.

SUPPLEMENTARY INFORMATION:

Background

Most of the provisions of Pub. L. 95-142, the "Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977," are directed at enhancing the Federal Government's ability to detect or prevent fraudulent activities under the medicare and medicaid programs (titles XVIII and XIX of the Social Security Act) and to prosecute the offenders. However, some of the provisions are also applicable to the maternal and child health and crippled children's services program (title V) and to the title XX social services program. This proposed regulation implements sections 3 and 8 of Pub. L. 94-142, which require disclosure of information from certain providers under title XX.

Elsewhere in this issue of the FEDERAL REGISTER (see pages 34710 and 34717) there appear proposed rules implementing sections 3 and 8 for medicare and medicaid and implementing section 3 for the maternal and child health and crippled children's services program. These proposed rules were developed cooperatively by the Office of Human Development Services, the Health Care Financing Administration, and the Public Health Service, in order to achieve as much consistency as possible among the requirements being imposed in each of the programs. In order to avoid repetition in explaining how we propose to resolve issues that pertain to all four programs, a comprehensive discussion of the common definitions and procedures is set forth in the preamble to the proposed rules for medicare and medicaid. Only those issues particularly germane to title XX are addressed in this preamble. Therefore, readers wishing to understand fully and to comment on the proposed rule for title XX are encouraged to review the proposed rules for medicaid and medicare.

Disclosure of Information on Ownership and Control and on Certain Business Transactions

Section 3 of Pub. L. 95-142 requires any "entity" (other than an individual practitioner or group of practitioners) that is reimbursed for furnishing "health related services" under title XX, to disclose to the Secretary or the State title XX agency, specified information about the ownership or control of the entity, and specified information about its business transactions with subcontractors and suppliers. The proposed regulation follows closely the proposed regulation for medicare and medicaid, except for the following specific definitions and procedures.

1. *Health related services.* The term "health related services" is not defined in Pub. L. 95-142, in the Social Security Act, or in the existing regulations for title XX. The report of the Senate Finance Committee on S. 143 contains the following language that is relevent: "The committee's bill would require * * * entities providing health-related services under title XX, such as homemaker, and home health agencies to disclose certain ownership interests.* * *"

Since the States have considerable latitude in selecting the services they believe should be provided under title XX, and they may label these services as they wish, the range of activities being carried out under the heading "health related services" is quite diverse. A service which is called health related in one State may bear a different label in another. Therefore, if we were to define health related services to mean whatever activities a State carries out under that label, we would not only have inconsistent requirements among the States, but it is also likely we would be requiring disclosure from providers of services which have little or nothing to do with the central purpose of Pub. L. 95-142. Thus, the term is ambiguous and needs a definition which can be used consistently throughout the program.

We are proposing to equate the term health related services, for the purpose of this regulation, with the terms "medical or remedial care and health-related homemaker services." The term, "medical or remedial care," is defined in the existing regulations, at 45 CFR 228.1 as:

> care directed toward the correction or amelioration of a medical condition which has been diagnosed as such by a licensed medical practitioner operating within the scope of medical practice as defined by State law, and which care is provided by or under the direct supervision of such a medical practitioner or other health professionals licensed by the State or credentialed by the appropriate professional organization.

We propose to define "health-related homemaker services," as "homemaker services provided for persons who need personal care and other appropriate services in the home because they have medical problems."

In our view, this is consistent with the purpose and focus of Pub. L. 95-142, which is directed primarily at preserving the integrity and improving the effectiveness of Federal health care programs. The term "medical or remedial care" has the advantage of being well understood by State title XX agencies and being defined comprehensively enough so that, with the addition of the phrase, "and health-related homemaker services," the proposed regulations will meet the purposes of Pub. L. 95-142.

2. *Disclosing entity.* For clarity and simplicity, we have used the term "private provider" in this regulation when referring to a title XX disclosing entity. The term "private provider" means any nongovernmental party (other than an individual practitioner

or group of practitioners) that has a contract with a State or local agency to provide medical or remedial care or health-related homemaker services under title XX. A provider may be either a nonprofit or a for-profit organization.

The term "disclosing entity" must still be defined in the regulation, however, with respect to the other three programs. This is necessasry because of the statutory requirement that a provider must identify (to the extent which the Secretary determines to be feasible), whether any of the persons who have an ownership or control interest in it also have an ownership or control interest in any other title XX provider or in a title V, XVIII or XIX entity which is required to disclose ownership and control information.

DISCLOSURE OF NAMES OF OWNERS AND CERTAIN OTHER INDIVIDUALS CONVICTED OF CERTAIN OFFENSES

Section 8 of Pub. L. 95-142 requires a private provider to disclose the names of any owners and certain other individuals who have been convicted of criminal offenses related to their involvement in medicare, medicaid or the title XX program. Unlike section 3 of the statute, which applies only to providers of "health related" services, section 8 does not state any such limitation on the type of provider covered. Rather, section 8(a) refers to "any hospital, nursing facility, or other institution, organization, or agency" participating or seeking to participate in medicare, medicaid or title XX. In addition, section 8(d) refers to a "provider of services" without any limitation or qualification. We believe this wording indicates a Congressional intent not to narrow the applicability of section 8 to providers of medical or remedial care or health-related homemaker services. Therefore, the proposed rule would apply the disclosure requirements of section 8 to all title XX providers, whether they furnish social services, medical or remedial care, or health-related homemaker services, or all three.

In all other respects, the proposed rule for title XX conforms to the proposed rule for medicare and medicaid. The State or local title XX agency may refuse to enter into a contract with, or to approve the participation of, a provider if any person having an ownership or controlled interest in the provider, or holding a specified position with the provider (as described in § 228.73(a)(1)) has been convicted of a crime related to his involvement in medicare, medicaid, or the title XX program. The State or local agency may also terminate a contract with the provider if it determines the provider did not make a full and accurate disclosure when required.

(Sec. 1102, 1124, 1126, 2002 and 2003 of the Social Security Act; 49 Stat. 647, 91 Stat. 1177, 1194; (42 U.S.C. 1302, 1320-3, 1320a-5, 1397a and 1397b).)

(Catalog of Federal Domestic Assistance Program No. 13.642, Social Services for Low Income and Public Assistance Recipients.)

NOTE.—It has been determined that this document does not require preparation of an inflationary impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: June 30, 1978.

ARABELLA MARTINEZ,
Assistant Secretary for Human Development Services.

Approved: July 21, 1978.

HALE CHAMPION,
Acting Secretary.

45 CFR 228 is revised as follows:

1. The Table of Contents for Subparts B and G is revised as set forth below:

* * * * *

Subpart B—State Plan Requirements, Reports, Maintenance of Effort, Compliance

228.4 State plan requirements.
228.5 Appropriate State agency.
228.6 State financial participation.
228.7 Statewide operation.
228.8 Merit system.
228.9 Requirement to obtain certain information.

* * * * *

Subpart G—Purchase of Service

228.70 Procurement standards.
228.71 Rates of payment.
228.72 Disclosure of information about ownership and business transactions.
228.73 Disclosure of information about individuals convicted of crimes.

2. Subpart B is revised to recodify existing §§ 228.5 through 228.9 as 228.4 through 228.8, to add a new § 228.9, and to change references in § 228.19 to comport to the recodification, as follows:

Subpart B—State Plan Requirements, Reports, Maintenance of Effort, Compliance

§ 228.4 State plan requirements.

Each State which establishes a services plan under title XX shall operate in pursuant to a State plan, approved as meeting the requirements of §§ 228.5 through 228.10.

§ 228.5. Appropriate State agency.

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§ 228.6 State financial participation.

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§ 228.7 Statewide operation.

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§ 228.8 Merit system.

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§ 228.9 Requirement to obtain certain information.

The State agency shall require that:

(a) Each private provider (other than an individual practitioner or group of practitioners) with whom the State or local agency contracts for medical or remedial care (as defined in § 228.1); or

(b) Each private agency with whom the State or local agency contracts for health-related homemaker services (as defined in § 228.72(a)(4)) comply with the requirements of § 228.72 regarding submission of information concerning ownership or control and past business transactions.

§ 228.19 Noncompliance.

(a) *Withholding of payment.* If the Secretary, after reasonable notice and opportunity for a hearing to the State, in accordance with 45 CFR 213, finds that the plan of the State no longer complies with any of the requirements of § 228.5 through § 228.15, that in the administration of the plan, there is a substantial failure to comply with any of those requirements, or that there is a substantial failure to comply with the requirements of §§ 228.17 or 228.18, he shall, except as provided in paragraph (b) of this section, notify the State that further payments will not be made to the State under this part until he is satisfied that there will no longer be any such failure to comply.

(b) *Alternate 3 percent penalty.* The Secretary may suspend implementation of any termination of payments under paragraph (a) of this section for such period as he deems appropriate and, alternatively, reduce the amount otherwise payable to the State under this part for expenditures during that period by 3 percent for each requirement set forth in § 228.5 through § 228.18 with respect to which there was a finding of noncompliance and with respect to which he is not yet satisfied that there will no longer be any failure to comply.

* * * * *

3. Section 228.40 is revised to add a paragraph (d) as follows:

§ 228.10 Minor medical and remedial care.

* * * * *

(d) FFP is not available for medical or remedial care or health-related homemaker services purchased from a private provider for any period during

which the provider fails to comply with § 228.72(d) that requires disclosure of certain information about past business transactions.

* * * * *

4. Subpart G is revised to add paragraph (14) to § 228.70, and to add §§ 228.72 and 228.73 as follows:

Subpart G—Purchase of Service

§ 228.70 Procurement standards.

FFP is available in the costs of purchased services only if they are secured in accordance with relevant provisions of Subpart P of 45 CFR 74, and the requirements of this Subpart.

(a) *Written contracts.* The State agency executes a written contract in accordance with requirements under this part and 45 CFR 74.159 with the agency, individual, or organization from which services are purchased. In addition to the applicable requirements of § 74.159, the contract shall:

* * * * *

(14) In the case of a private provider of medical or remedial care or health-related homemaker services, include a provision that the provider will comply with the requirements of § 228.72 regarding submission of certain information about ownership or control, past business transactions, and certain other disclosing entities.

* * * * *

§ 228.72 Disclosure of information about ownership and business transactions.

(a) *Definitions.* For purposes of this section, § 228.73, and § 228.9, the following definitions apply:

(1) "Agent" means any person (including a corporation, where applicable) to whom a provider delegates the authority to obligate or act.

(2) "Convicted" means that a Federal, State or local court has entered a judgment of conviction, irrespective of whether an appeal from that judgment is pending.

(3) "Group of practitioners" means two or more providers of medical or remedial care who practice their profession at a common location (whether or not they share common facilities, common supporting staff, or common equipment) but who have not formed a partnership or corporation and are not employees of a person, partnership or corporation, or other entity owning or operating the facility at which they practice.

(4) "Health-related homemaker services" means homemaker services provided for persons who need personal care and other appropriate services in the home because they have medical problems.

(5) "Indirect ownership interest" means any ownership interest in an entity that has ownership interest in the provider. The term includes an ownership interest in any entity that has an indirect ownership interest in the provider.

(6) "Managing employee" means a general manager, business manager, administrator, director or other individual who exercises operational or managerial control over the hospital, nursing facility, or other institution, organization, or agency, or who, directly or indirectly, conducts the day-to-day operations of the institution.

(7) "Other disclosing entity" means any entity required to disclose certain information of ownership or control because of participation in any of the programs established under titles V, XVIII, or XIX of the Social Security Act. (See 42 CFR 51a.144, 405.603-3, and 455.104.)

(8) "Ownership interest" means the ownership of equity in the capital of, or stock in, or any interest in the profits of, the provider.

(9) "Person with an ownership or control interest" means a person (including, where appropriate, a corporation) who:

(i) Has an ownership interest of 5 percent or more in the provider;

(ii) Has an indirect ownership interest equal to 5 percent or more in the provider;

(iii) Is the owner of an interest of 5 percent or more in any obligation secured by the provider, if the interest equals at least 5 percent of the value of the property or assets of the provider;

(iv) Is an officer or director of a provider which is organized as a corporation or association; or

(v) Is a partner in a provider which is organized as a partnership.

(10) "Private provider" means (a) a non-governmental party (other than an individual practitioner or group of practitioners) to a contract with the State or local agency for the purchase of medical or remedial care under title XX; or (b) a private agency that is a party to a contract with the State or local agency for the purchase of health-related homemaker services under title XX. Private provider means either a non-profit or forprofit provider.

(11) "Significant business transaction" means any business transaction or series of transactions which, during any 1 fiscal year, exceeds the lesser of either $25,000 or 5 percent of the total operating expenses of the provider.

(12) "Subcontractor" means an individual agency, or organization which by contract:

(i) Assumes major management functions of the provider (including determination of eligibility); or

(ii) Agrees to deliver specific services which the provider has agreed to deliver under contract with the State or local agency.

(13) "Supplier" means an entity from which a provider purchases goods and services used in fulfilling a contract with the State or local agency.

(14) "Wholly owned supplier" means a supplier wholly owned by the provider or wholly owned by a person or persons holding ownership or control interests in the provider.

(b) *Disclosure about ownership and control interests.* (1) Prior to the approval of a contract for the purchase of medical or remedial care or health-related homemaker services, a private provider must furnish to the State or local agency, full and complete information on:

(i) The identity of each person with an ownership or control interest in the provider or in any subcontractor in which the provider has direct or indirect ownership of 5 percent or more; and

(ii) The name of any other private provider or any other disclosing entity in which a person with an ownership or control interest in the provider also has an ownership or control interest. The provider shall request this information in writing from any person with an ownership or control interest in the provider.

(2) If a provider reports more than one name of persons described in paragraph (b)(1) of this section, and any of the persons named are related to each other as spouse, parent, or child, it shall report this fact.

(c)(1) A State or local agency shall not approve or renew a contract or shall terminate an existing contract with a private provider of medical or remedial care or of health-related homemaker services, if the provider fails to disclose ownership or control information required under this section.

(2) Federal financial participation is not available for payments made to a private provider who fails to disclose ownership or control information as required by this section.

(d) *Disclosure about certain business transactions.* (1) A private provider of medical or remedial care or of health-related homemaker services shall provide, in response to a specific written request by the Secretary or State agency, complete information about:

(i) The ownership of any subcontractor with whom the provider has had business transactions totaling more than $25,000 during the 12-month period ending on the date of the request; and

(ii) Any significant business transactions between the provider and any wholly owned supplier, or between the

provider and any subcontractor, during the 5-year period ending on the date of the request.

(2) The provider shall furnish such information within 35 days of a request of the Secretary, and shall respond to a request by a State agency within the period specified in regulations of the State agency.

(3) FFP is not available in expenditures for medical or remedial care or health-related homemaker services furnished by a provider who fails to comply with paragraphs (1) and (2) of this section.

§ 228.73 Disclosure of information about individuals convicted of crimes.

(a) *Disclosure.* Any private hospital, nursing facility, or other private institution, organization, or agency for which funding is, or will be, claimed under title XX for the purchase of any social service, medical or remedial care, or health-related homemaker services shall disclosure to the State title XX agency the name of any person:

(1) Who has an ownership or control interest in, or is an agent or managing employee of, the hospital, nursing facility, institution, organization, or agency; and

(2) Who has been convicted of a criminal offense related to the person's involvement in any programs under titles XVIII, XIX, or XX of the Social Security Act.

This information shall be provided to the State agency prior to the approval or renewal of a contract for purchase of social services, medical or remedial care, or health-related homemaker services.

(b) *Reports to the Inspector General.* The State agency shall notify the Inspector General of the Department of Health, Education, and Welfare within 20 working days of the receipt of any application or request for participation which discloses the name of a person described in paragragh (a), and shall provide the name to the Inspector General. The State agency shall also notify the Inspector General of any action it takes on the application or request.

(c) *State agency denial or termination of provider participation.* (1) The State agency may refuse to enter into or renew a purchase of services contract, or otherwise refuse to approve a provider for participation under title XX, if any person who has an ownership or control interest in the provider, or who is an agent or managing employee of the provider, has been convicted of a criminal offense related to that person's involvement in any program established under title XVIII, IX, or the title XX social services program.

(2) The State agency may refuse to enter into or may terminate a contract if it determines that the provider did not fully and accurately make any disclosure required under paragraph (a) of this section.

[FR Doc. 78-21450 Filed 8-3-78; 8:45 am]

FRIDAY, AUGUST 4, 1978
PART VI

Federal Register

OFFICE OF MANAGEMENT AND BUDGET

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PRIVACY ACT OF 1974

Supplemental Guidance for Matching Programs; Request for Comments

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

PRIVACY ACT OF 1974

Supplemental Guidance for Matching Programs; Request for Comments

AGENCY: Office of Management and Budget.

ACTION: Request for comments on proposed supplement to OMB Privacy Act Guidelines.

SUMMARY: These guidelines establish procedures and limitations for matching programs carried out by Federal agencies to reduce fraud or unauthorized payments in a Federal program, or to collect debts owned to the Federal Government; establish reporting requirements for matching programs carried out by Federal agencies for other purposes; and establish reporting requirements for certain disclosures to non-Federal entities for purposes of matching. The procedures have been developed to assure compliance with the Privacy Act and to balance concerns for personal privacy with the need to maintain the integrity and efficiency of Federal benefit programs.

DATE: Comments must be received on or before October 2, 1978.

ADDRESS: Written comments should be addressed to the Information Systems Policy Division, Office of Management and Budget, Room 9002, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT:

Leslie Greenspan, Information Systems Policy Division, Room 9002, NEOB, 202-395-4814.

SUPPLEMENTARY INFORMATION: During mid-1977, the Office of the Inspector General in the Department of Health, Education, and Welfare began a program to reduce fraud and unauthorized payments in certain Federal assistance programs. A major part of this program, called "Project Match," involved a computerized comparison of files of recipients of Aid to Families with Dependent Children (AFDC) with lists of Federal employees maintained by the Civil Service Commission and the Department of Defense. Federal employees who appeared to be receiving improper AFDC payments were investigated to determine whether they were receiving benefits to which they were not entitled.

The proponents of Project Match asserted that it was necessary to preserve the integrity of Federal assistance programs, to prevent or curtail fraud and abuse, and that it would result in considerable financial benefits to the Government. Critics of the program questioned whether the matching was an invasion of privacy; whether the benefits were great enough to outweigh either the privacy considerations or the cost of the matching itself; and whether the due process rights of the subjects of the matching were being observed. The issue is complex, and interests on both sides are compelling. The guidelines attempt to balance the competing interests involved.

Project Match was subject to the Privacy Act of 1974 because it was performed by a Federal agency using Federal personal records. The Office of Management and Budget has responsibility for assisting agencies in interpreting the Privacy Act. When asked for its views on the appropriate basis for making disclosures of computer tapes of personnel files to HEW, OMB advised that a "routine use" was the most appropriate mechanism. The act defines a routine use as a disclosure, made without the advance written consent of the subject of the record, which is compatible with the purpose for which the record was collected (5 U.S.C. 552a(a)(7)). Before an agency can make a disclosure pursuant to a routine use, it must publish in the FEDERAL REGISTER a notice describing it, and allow 30 days for public comment (5 U.S.C. 552a(e)(11)).

While Project Match disclosures met the requirements for a routine use under the Privacy Act and significant benefits could be gained it is also clear that matching programs present the potential for significant invasions of personal privacy. Because of its responsibilities under the Privacy Act, and at the request of the interested agencies and the relevant congressional committees, OMB in conjunction with the Domestic Policy Staff undertook the development of guidelines to be used by agencies in future matching programs. During the period of the formulation of the guidelines, HEW has not acquired additional records for matching programs other than Project Match. Two additional matching programs planned by HEW were suspended pending development of these guidelines. The two programs are (1) a matching of the Federal employment rolls with the list of defaulters under the Guaranteed Student Loan Program, and (2) a comparison of the Federal employment rolls with the old age and disability recipients under programs of Social Security Administration. OMB has advised HEW, DOD, and CSC that we would not object to these additional matching programs provided they are conducted in accordance with the proposed guidelines, but that no further matching programs should be conducted until public comments on the proposed guidelines are evaluated and final guidelines are issued.

The guidelines are advisory rather than mandatory, for two reasons. First, OMB's responsibility under the act is to provide oversight and assistance, rather than to be a regulatory body, and second, the Privacy Act places the final responsibility for agency actions with the agencies themselves. It is OMB's view that in situations such as this, an agency can best decide whether to disclose a record, and that OMB should not mandate or prohibit disclosures of records, at least until more experience with matching programs is gained. OMB expects, however, that agencies will follow this guidance.

During the comment period, OMB will continue to discuss with the Internal Revenue Service the interplay of these guidelines with existing similar requirements for the Internal Revenue Service.

The text of the guidelines is set forth below.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

MEMORANDUM TO HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Subject: Privacy Act of 1974; Supplemental Guidance for Matching Programs.

AUGUST 2, 1978.

This memorandum requests the views of your agency on the attached supplement to the OMB Guidelines on the Privacy Act of 1974.

The supplemental guidelines have been developed to establish procedures for the conduct of "matching programs," which are computerized comparisons of personal records maintained by various agencies, for the purpose of curtailing fraud or unauthorized payments under Federal programs, or to aid in collecting debts owed the Federal Government. A summary of the background of the guidelines, along with its full text, is attached.

Your views are requested by September 14, 1978, and should be submitted to the Information Systems Policy Division, Room 9002, New Executive Office Building, Washington, D.C. 20503. Any questions may be directed to the Division at 202-395-4814.

Sincerely,

JAMES T. MCINTYRE, Jr.,
Director.

Attachment.

OFFICE OF MANAGEMENT AND BUDGET

IMPLEMENTATION OF THE PRIVACY ACT OF 1974 SUPPLEMENTARY GUIDANCE

The following sets forth guidelines on matching programs conducted by Federal agencies, and further supplements the Office of Management and Budget guidelines for implementing section 3 of the Privacy Act of 1974. (FEDERAL REGISTER, vol. 40, No. 132, dated July 9, 1975, pp. 28949-28978, as supplemented in the FEDERAL REGISTER, vol. 40, No. 284, dated December 4, 1975, pp. 56741-56743).

Section 1. Scope.

These guidelines establish procedures and limitations for matching programs carried out by Federal agencies to reduce fraud or unauthorized payments in a Federal program, or to collect debts owed to the Federal Government; establish reporting requirements for matching programs carried out by Federal agencies for other purposes; and establish reporting requirements for certain disclosures to non-Federal entities for purposes of matching.

These guidelines do not authorize activities which are not permitted by law; nor do they prohibit activities expressly required to be performed by law. The procedures and limitations set forth in these guidelines apply, even when a law authorizes or requires a matching program to be carried out, to the extent that these procedures and limitations would not frustrate the legislative purpose of that law.

Section 2. Definitions.

(a) *General.* The definitions in the Privacy Act apply to these guidelines except to the extent that they are modified by this section.

(b) *Additional Definitions.*

(1) A "matching program" is a procedure carried out by a Federal agency under which all or substantially all of the records within a system of records maintained by the agency, or within a subsystem of it, are compared by computer with—

(A) All or substantially all of the records within a system of records (or subsystem) maintained by another agency, or

(B) All or substantially all of any other group of records (or subsystem) that would be covered by the Privacy Act if the records were maintained by an agency.

Subsection (B) includes as a "matching program" a program which would otherwise not be covered by these guidelines for the sole reason that a system is maintained or under the control of a matching source (see section 2(b)(3)) which is not an agency, e.g., a State or local unit of Government, or a "person" (5 U.S.C. 551(2)).

A "matching program" does not include a computer matching carried out by an entity which is not an agency; nor does it include computer matches which are carried out with records obtained within the agency; nor does it include the matching of records within a system of records with other Federal records which are not from a system of records. (See, however, sec. 6 which establishes certain reporting requirements for these activities.)

A "matching program" includes the disclosures which are made to and from a "matching agency" (see sec. 2(b)(2)) to carry out a matching program or as a result of a matching program.

A "matching program" does not include, for example, checks, regardless of the number of such checks, on specific individuals in response to an application for benefit or as a result of the acquisition of information which raises questions concerning a specific individual's eligibility which are reasonably contemporaneous with that application or acquisition.

(2) A "matching agency" is the agency which is carrying out (or which seeks to carry out) a matching program.

(3) A "matching source" is an entity (including an agency) which discloses or provides records to a matching agency to conduct a matching program.

Section 3. Requirements for Matching Programs—Matching Agency.

(a) *General.* An agency which intends to carry out a matching program to reduce fraud or unauthorized payments in a Federal program, or to collect debts owed to the Federal Government, should initiate and conduct the program in accordance with these guidelines.

(b) A matching agency should carry out a matching program—

(1) Only if there is no other way to accomplish the purposes of the matching programs without incurring substantially greater costs;

(2) Only in accordance with the Report on New Systems (see section 3(b)(3)), and only if the matching program will be fair and equitable to the individuals involved and will minimize any "chilling" effect upon the exercise of individual rights;

(3) Either by (a) establishing a new system of records for each matching program (a "matching system"), or (b) by submitting a Report on New Systems in accordance with subsection (o) of the act and OMB Circular A-108, if an existing system is amended; and

(4) Only if there will be a demonstrable financial benefit to the Federal Government from the matching program, and the benefit significantly outweighs any harm to individuals. Benefits may include dollar savings (from the reduction of the numbers of unqualified recipients; from deterrence of those who would seek benefits for which they are not eligible; from expected improvements in deficient Federal program operation, etc.) and dollar recoveries from those who have received benefits to which they were not entitled. Any costs associated with the matching program, including those of the matching, collection, litigation, etc., should be deducted from the benefits.

(c) In addition to the requirements set forth in OMB Circular A-108 and in these guidelines, the Report on New Systems for a new or a changed system of records should include the following:

(1) An explanation of why the matching program is needed;

(2) An explanation of why the matching program can reasonably be expected to meet its objectives;

(3) A description of the other means of achieving the objectives of the matching program that the matching agency has used or considered;

(4) A description of the procedures pursuant to which the matching program will be carried out, including a description of the provisions for safeguarding information, and for protecting personal privacy and other individual rights;

(5) A statement of when the matching program will begin, and when it will end;

(6) A description of the disclosures of records which will be made to or from the system, including the legal justification for any routine use involved;

(7) A description of any new information which will be maintained as a result of the matching program;

(8) An identification of each proposed matching source for the program; a copy of each routine use each source proposes for the matching program; and an explanation of every other authority by which the matching source furnishes records; and

(9) A discussion of those findings set forth in sections 3(b) (2) and (4).

(d) The matching agency should assure before expenses are incurred that there is a written agreement among the participating agencies concerning the expenses of the matching program that each will bear.

(e) Matching programs should be carried out by officials of the matching agency and not by contract or grant.

(f) The number of persons with access to information used in the matching program should be limited to the minimum number necessary to accomplish its purposes, and screening

procedures for such employees should be established where appropriate, taking into account the potential for harm or disadvantage that a disclosure of the information might entail.

(g) The matching program should minimize the number and extent of the disclosures of information which pertain to identifiable individuals.

(h) The matching agency should not collect records for a matching program from a matching source other than in accordance with these guidelines.

Section 4. Disclosures, Accounting and Destruction of Records.

(a) Disclosures of records from a matching program should be made only with the prior written approval of the matchig agency official who is responsible for the system of records.

(b) Except when specifically required by law, there should be no disclosure by the matching agency of records obtained from a matching source other than as provided in this section.

(c) There should be no disclosure of those records which result from a matching program unless the disclosure is necessary to conduct the matching program or to achieve its purposes, is limited to the minimum number of persons, and is limited to the minimum amount of information.

(d) With regard to disclosures pursuant to the "routine use" provisions of the act (5 U.S.C. 552a(d)(3)) of those records which result from a matching program, the agency should:

(1) Make the routine use as specific and limited as possible, and, wherever possible, of a limited duration;

(2) Clearly state as a part of the routine use that the records to be disclosed include records which have resulted from a matching program;

(3) Publish with the FEDERAL REGISTER notice of the routine use an explanation of the legal justification for the routine use;

(4) Provide with the FEDERAL REGISTER notice of the routine use an explanation of why the records which may be disclosed pursuant to the routine use cannot be disclosed without identifying individuals;

(5) Republish in the FEDERAL REGISTER, following consideration of the comments received, an explanation of the comments received and the changes made in sufficient detail to permit an understanding of the basis for the acceptance or rejection of each comment by the agency; and

(6) Ensure that the disclosure is consistent with any conditions placed upon the disclosure of records by the matching source at the time the records were disclosed to the matching agency by the matching source.

(e) All disclosures of those records which result from a matching program which are specifically authorized by law but are not made pursuant to the routine use provisions of the act, should be made in accordance with the procedures in paragraph (d) of this section whenever possible. For example, although the procedures in (d) would not apply to each disclosure made in response to a written request by the head of a law enforcement agency, the procedures of (d) should be followed prior to the initial disclosure to the law enforcement agency.

(f) Whenever an agency discloses records which result from a matching program the agency should, as an express condition of the disclosure, set forth the following:

(1) The use to which the records will be put by the entity to whom they are disclosed;

(2) A stipulation that the entity receiving the records will disclose them further only where required by law or where (e.g., in the case of a law enforcement or administrative agency) such disclosure is compatible with the purpose for which the records were originally disclosed to it;

(3) The date by which the records transferred will be destroyed, returned to the matching agency or, if it is necessary that the records be retained by the entity to which they were disclosed, a written explanation of that necessity.

(g) Compliance with these guidelines by the matching agency does not relieve that agency of compliance with the requirements of the act, including, for example, the requirement to keep an accurate accounting of disclosures of records (5 U.S.C. 552a(c)).

(h) All records which result from a matching program should be destroyed within 6 months, and those records which are obtained from a matching source should be destroyed or returned to the matching source within 6 months of the beginning of the matching program, except for those records which are (1) necessary to the completion of pending law enforcement activities, or administrative activities which are consistent with the purposes of the matching program and are authorized by law; or (2) otherwise specifically required to be maintained by law. Any extension of the 6-month period should be published, with appropriate explanation, in the FEDERAL REGISTER. As soon as all of the records have been returned to the matching source or destroyed, the matching agency should notify the Office of Management and Budget in writing.

Section 5. Requirements for Matching Programs—Matching Sources

(a) *General.* The OMB Privacy Act Guidelines in discussing Conditions of Disclosure, state in part:

Disclosure, however, is permissive not mandatory. An Agency is authorized to disclose a record for any purpose enumerated below [the exceptions to the advance written consent of the individual to whom the informatio pertains] when it deems that disclosure to be appropriate and consistent with the letter and intent of the act and these guidelines.

Nothing in the Privacy Act should be interpreted to authorize or compel disclosures of records, not otherwise permitted or required, to anyone other than the individual to whom a record pertains pursuant to a request by the individual for access to it.

Agencies shall not automatically disclose a record to someone other than the individual to whom it pertains simply because such a disclosure is permitted by this subsection. Agencies shall continue to abide by other constraints on their authority to disclose information to a third party including, where appropriate, the likely effect upon the individual of making that disclosure. Except as prescribed in subsection (d)(1), (individual access to records) this act does not require disclosure of a record to anyone other than the individual to whom the record pertains (40 FR 28949 at 28953, July 9, 1975).

(b) *Specific Requirements.*

(1) A Federal matching source should review with the matching agency the purposes of and the procedures for the matching program, and determine after such review whether to make the disclosure requested of it by the matching agency.

(2) All disclosures of records from a system of records by a Federal matching source to a matching agency pursuant to a matching system program should be made in accordance with this section and the "routine use" provisions of the act.

(3) Unless specifically provided otherwise by law, no disclosure should be made by a matching source for a matching program unless "* * * the use of such record [is] for a purpose which is compatible with the purpose for which [the record] was collected." [5 U.S.C. 552a(a)(7)].

(4) All routine uses permitting disclosures for matching programs should—

(A) Be as specific and limited as possible;

(B) Expressly state that the routine use is intended to permit the disclosure of records for a matching program;

(C) Identify the matching program;

(D) Set forth any conditions which the matching source has established for the use of the records by the matching agency in addition to

those set forth in these guidelines; and

(E) Be noticed in the FEDERAL REGISTER with an explanation or the legal justification for the routine use.

Section 6. Agency Reports on Other Programs

(a) Each agency which is carrying out, or which intends to carry out, a matching program for purposes other than to reduce fraud or unauthorized payments in Federal programs, or to collect debts owed to the Federal Government, should provide notice of that program to the Office of Management and Budget.

(b) Each agency which intends to disclose records from a system of records for purposes of carrying out what would be a matching program if the program were being carried out by a Federal agency, should provide notice to the Office of Management and Budget.

(c) Each agency which intends to carry out, or is carrying out, an intra-agency matching program that would be subject to these guidelines if it involved the disclosure by another agency of records to it, should provide notice to the Office of Management and Budget.

(d) These notices should include a description of the program in sufficient detail to permit an understanding of the purposes and the procedures of the program, and should set forth the legal authority for the program and the action of the agency. The notice and description of the matching program should be submitted at least 60 days prior to the disclosure of information by the agency or 60 days prior to the initiation of the proposed program, or, as soon as practicable.

Section 7. Safeguards.

(a) Each matching program (including those matching programs upon which reports were made under section 5 of these guidelines) should incorporate physical, administrative and technical safeguards against unauthorized disclosure, alteration, or destruction. Safeguards should be selected commensurate with the risk and magnitude of loss, harm or disadvantage that could result from an unauthorized disclosure, alteration or destruction of the information within the matching system.

(b) The safeguards should, unless the matching source of the records agrees otherwise, provide that the records are protected at least as stringently as in the systems from which the records were obtained.

(c) Periodic audits or evaluations of the operation of these safeguards should be conducted during the matching program to assure their adequacy.

(d) The agency official who is responsible for the system should certify that based upon the audit or evaluation, the safeguards are adequate, and that they meet all applicable policies, regulations and standards.

Section 8. Implementation and Oversight

The Office of Management and Budget will oversee the implementation of and shall review, interpret and advise upon agency proposals and actions under these guidelines.

[FR Doc. 78-21830 Filed 8-3-78; 8:45 am]

Federal Register

FRIDAY, AUGUST 4, 1978
PART VII

ENVIRONMENTAL PROTECTION AGENCY

■

CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES OR THE REVOCATION OR SUSPENSION OF PERMITS

Interim and Proposed Rules of Practice

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 919-8]

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES OR THE REVOCATION OR SUSPENSION OF PERMITS

Interim Rules of Practice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim rules of practice.

SUMMARY: These rules of practice set forth procedures to be followed by parties litigating administratively assessed civil penalties under section 16(a) of the Toxic Substances Control Act (TSCA). The rules are being promulgated in interim form so that they may be in place to guide civil penalty actions presently arising under TSCA.

DATES: Effective date: August 4, 1978.

Comments on the rules should be received on or before October 3, 1978.

ADDRESS: Comments should be directed to:

Steve Leifer, Attorney, Toxic Substances Branch (EN-342), Pesticides and Toxic Substances Enforcement Division, EPA, 401 M Street SW., Washington, D.C. 20460, 202-755-9404.

FOR FURTHER INFORMATION CONTACT:

Steve Leifer, 202-755-9404.

SUPPLEMENTARY INFORMATION: These consolidated rules of practice govern adjudicatory proceedings for the assessment of civil penalties under section 16(a) of the Toxic Substances Control Act (15 U.S.C. 2601 et seq.). These rules were developed as part of a larger project covering five statutes administered by EPA. The result of this project is the Consolidated Rules, which are set forth below in interim form. The rules are proposed with respect to the other four statutes, and can be found in the proposed rules portion of this part. The proposed and interim rules will be promulgated under a single heading in final form.

For an expanded discussion of the rules, see the preamble to the proposed rules.

NOTE.—EPA has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Analysis Statement under Executive Order No. 12044.

Accordingly, the new Part 22 set forth below is hereby added to 40 CFR under the authority of TSCA section 16(a), and is effective on an interim basis on August 4, 1978.

Dated: July 26, 1978.

DOUGLAS M. COSTLE,
Administrator.

RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES UNDER THE TOXIC SUBSTANCES CONTROL ACT

Subpart A—General

Sec.

22.01 Scope of these rules.
22.02 Use of number and gender.
22.03 Definitions.
22.04 Powers and duties of the Administrator, Regional Administrator, judicial officer, regional judicial officer, and presiding officer, disqualification.
22.05 Filing, service, and form of pleadings and documents.
22.06 Filing and service of rulings, orders and decisions.
22.07 Computation and extension of time.
22.08 Ex parte discussion of proceeding.
22.09 Examination of documents filed.

Subpart B—Parties and Appearances

22.10 Appearances.
22.11 Intervention.
22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

22.13 Issuance of complaint.
22.14 Content and amendment of the complaint.
22.15 Answer to the complaint.
22.16 Motions.
22.17 Default order.
22.18 Informal settlement; consent agreement and order.
22.19 Prehearing conference.
22.20 Accelerated decision; dismissal.

Subpart D—Hearing Procedure

22.21 Scheduling the hearing.
22.22 Evidence.
22.23 Objections and offers of proof.
22.24 Burden of presentation; burden of persuasion.
22.25 Filing the transcript.
22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion To Reopen a Hearing

22.27 Initial decision.
22.28 Motion to reopen a hearing.

Subpart F—Appeals and Administrative Review

22.29 Appeal from or review of interlocutory orders or rulings.
22.30 Appeal from or review of initial decision.

Subpart G—Final Order on Appeal

22.31 Final order on appeal.
22.32 Motion to reconsider a final order.

Subpart H—Supplemental Rules of Practice Governing Administrative Assessment of Civil Penalties Under the Toxic Substances Control Act

22.33 Supplemental rules of practice governing administrative assessment of civil penalties under the Toxic Substances Control Act.

Appendix.

AUTHORITY: Sec. 16(a) of the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

Subpart A—General

§ 22.01 Scope of these rules.

(a) Unless otherwise specified, these rules of practice govern all adjudicatory proceedings for the assessment of any civil penalty conducted under section 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a)). These supplemental procedures set forth the rules governing those aspects of the proceeding in question which are not covered in these rules, and also specify procedures which supersede any conflicting procedures set forth in this part.

(b) Questions arising at any stage of the proceeding which are not addressed in these rules shall be resolved at the discretion of the presiding officer or the Administrator, as appropriate.

§ 22.02 Use of number and gender.

As used in these rules of practice, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§ 22.03 Definitions.

(a) The term "Act" means the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

(b) "Administrative law judge" means an administrative law judge appointed under 5 U.S.C. 3105 (see also Pub. L. 95-251, 92 Stat. 183). This term is synonymous with the term "hearing examiner" as used in the Act or in title 5 of the United States Code.

(c) "Administrator" means the Administrator of the U.S. Environmental Protection Agency or his delegate.

(d) "Agency" means the U.S. Environmental Protection Agency.

(e) "Complainant" means any person authorized to issue a complaint on behalf of the Agency to persons alleged to be in violation of the Act. The complainant shall not be the regional judicial officer, or any other person who will participate or advise in the decision.

(f) "Complaint" means a written communication, alleging one or more violations of specific provisions of the Act or regulations promulgated thereunder, issued by the complainant to a person under §§ 22.13 and 22.14.

(g) "Consent agreement" means any written document, signed by the parties, containing stipulations or conclusions of fact or law and a proposed penalty acceptable to both complainant and respondent.

(h) "Final order" means an order issued by the Administrator disposing of a matter in controversy between the parties or an initial decision which becomes a final order under § 22.27(c).

(j) "Hearing" means a hearing on the record open to the public and conducted under these rules of practice.

(k) "Hearing Clerk" means the Hearing Clerk, U.S. Environmental Protection Agency, Washington, D.C. 20460.

(l) "Initial decision" means the decision issued by the presiding officer based upon the record of the proceedings out of which it arises.

(m) "Judicial officer" means the person designated by the Administrator under § 22.04(b) to serve as the judicial officer.

(n) "Party" means any person that participates in a hearing as complainant, respondent, or intervenor.

(o) "Person" includes any individual, partnership, association, corporation, and any trustee, assignee, receiver, or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency, or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

(p) "Presiding officer" means the administrative law judge designated by the Chief Administrative Law Judge to serve as presiding officer, unless otherwise specified by any supplemental rules.

(q) "Regional Administrator" means the Administrator of any regional office of the Agency or any officer or employee thereof to whom his authority is duly delegated. Where the Regional Administrator has authorized the regional judicial officer to act, the term "Regional Administrator" shall include the regional judicial officer.

(r) "Regional Hearing Clerk" means an individual duly authorized by the Regional Administrator to serve as hearing clerk for a given region. Correspondence may be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency (address of regional office—see appendix).

(s) "Regional Judicial Officer" means a person designated by the regional administrator under § 22.04(b) to serve as a regional judicial officer.

(t) "Respondent" means any person proceeded against in the complaint.

(u) Terms defined in the act and not defined in these rules of practice are used consistent with the meanings given in the act.

§ 22.04 Powers and duties of the Administrator, regional administrator, judicial officer, regional judicial officer, and presiding officer; disqualification.

(a) *Administrator and regional administrator.* The administrator and the regional administrator shall exercise all powers and duties as prescribed or delegated under the Act and these rules of practice.

(b) *Judicial officer and regional judicial officer.* (1) *Office.* One or more judicial officers may be designated by the administrator to perform the functions described below. One or more regional judicial officers may be designated by the regional administrator to perform, within the region of their designation, the functions described below.

(2) *Qualifications.* A judicial officer or a regional judicial officer shall be an attorney who is a permanent or temporary employee of the Agency or some other Federal agency and who may perform other duties within the Agency. A regional judicial officer shall not be employed by the region's enforcement division or by the regional division directly associated with the type of violation at issue in the proceeding. The Regional judicial officer shall not have performed prosecutorial or investigative functions in connection with any hearing in which he participates as regional judicial officer or any related hearing. A judicial officer shall not be a member of the office of enforcement.

(3) *Functions.* The administrator may delegate to the judicial officer, or the regional administrator may delegate to the regional judicial officer, all or part of his authority to act in a given proceeding. This delegation does not prevent the judicial officer or regional judicial officer from referring any motion or case to the Administrator or regional administrator when appropriate. The judicial officer and regional judicial officer shall exercise all powers and duties prescribed or delegated under the act or these rules of practice.

(c) *Presiding officer.* The presiding officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The presiding officer shall have authority to:

(1) Conduct administrative hearings under these rules of practice;

(2) Rule upon motions, requests, and offers of proof, dispose of procedural requests, and issue all necessary orders;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine witnesses, receive documentary or other evidence;

(5) For good cause, upon motion or sua sponte, order a party, or an officer or agent thereof, to produce testimony, documents or other nonprivileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear oral argument on facts or law;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

(9) Issue subpoenas authorized by the act; and

(10) Do all other acts and take all measures necessary for the maintenance or order and for the efficient, fair, and impartial adjudication of issues arising in proceedings governed by these rules.

(d) *Disqualification; withdrawal.* (1) The administrator, regional administrator, judicial officer, regional judicial officer, or presiding officer may not perform functions provided for in these rules of practice regarding any matter in which they (i) have a financial interest or (ii) have any relationship with a party or with the subject matter which would make it inappropriate for them to act. Any party may at any time by motion made to the regional administrator request that the regional judicial officer or presiding officer be disqualified from the proceeding. Any party may at any time by motion to the administrator request that the regional administrator or judicial officer be disqualified or request that the administrator disqualify himself from the proceeding. The administrator, regional administrator, judicial officer, regional judicial officer, or presiding officer may at any time withdraw from any proceeding in which they deem themselves disqualified or unable to act for any reason.

(2) If the regional administrator, regional judicial officer, judicial officer, or presiding officer is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned to replace him. Assignment of a replacement for the regional administrator or judicial officer, or for the regional judicial officer shall be made by the administrator or the regional administrator, respectively. The administrator shall assign the regional administrator from the region where the case originated to replace the administrator should he withdraw or disqualify himself. The regional administrator shall assign a new presiding officer if the original presiding officer was not an administrative law judge. The chief administrative law judge shall assign a new presiding officer from among available administrative law judges if the original presiding officer was an administrative law judge.

(3) The chief administrative law judge, at any stage in the proceeding, may reassign the case to an administrative law judge other than the one originally assigned in the event of the unavailability of the administrative law judge or where reassignment will result in efficiency in the scheduling of hearings.

§ 22.05 Filing, service, and form of pleadings and documents.

(a) *Filing of pleadings and documents.* (1) The original and two copies of the complaint, of the answer, and of all subsequent documents served in the proceeding shall be filed with the regional hearing clerk. The regional hearing clerk shall open and maintain the official file of the proceeding upon receipt of the complaint. The regional hearing clerk shall forward a copy of the complaint to the presiding officer upon his assignment to the proceeding.

(2) A certificate of service shall accompany each document filed or served. Except as otherwise provided, a party filing documents with the regional hearing clerk, after the filing of the complaint, shall serve copies thereof upon all other parties and the presiding officer at the same time.

(3) Notwithstanding § 22.05(a)(1), when the presiding officer corresponds directly with the parties, the original of the correspondence shall be sent to the regional hearing clerk, a copy shall be maintained by the presiding officer in the duplicate file, and a copy shall be sent to all parties. Parties who correspond directly with the presiding officer shall in addition to serving all other parties send a copy of all such correspondence to the regional hearing clerk. A certificate of service shall accompany each document served under this subsection.

(b) *Service of pleadings and documents*—(1) *Service of complaint.* (i) Service of the complaint, together with a copy of these rules of practice, may be made personally or by certified mail, return receipt requested, on the respondent (or his representative).

(ii) Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name shall be made by personal service or certified mail, as prescribed by subparagraph (1)(i) of this paragraph, directed to an officer, partner, a managing or general agent, or to any other person authorized by appointment or by Federal or State law to receive service of process.

(iii) Service upon an officer or agency of the United States shall be made by delivering a copy of the complaint to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the complaint shall be served as prescribed in subparagraph (1)(ii) of this paragraph.

(iv) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation, or other instrumentality shall be made by serving the complaint in the manner prescribed by the law of the State for the service of process on any such person, or:

(A) If upon a State or local unit of government, or a State or local department, agency, corporation, or other instrumentality, by delivering a copy of the complaint to the chief executive officer thereof;

(B) If upon a State or local officer by delivering a copy to such officer.

(v) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed return receipt. Such proof of service shall be filed with the complaint immediately upon completion of service.

(2) *Service of documents other than complaint.* All documents other than the complaint may be served personally or by certified or first class mail. A certificate of service shall accompany each document served.

(c) *Form of pleadings and documents.* (1) Except as provided herein, or by order of the presiding officer or administrator, there are no specific requirements as to the form of documents.

(2) The first page of every pleading, letter, or other document shall contain a caption identifying the respondent and the docket number which is exhibited on the complaint.

(3) The original of any pleading, letter or other document (other than exhibits) shall be signed by the party filing or by his counsel or other representative. The signature constitutes a representation by the signer that he has read the pleading, letter or other document, that to the best of his knowledge, information, and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The initial document filed by any person shall contain his name, address, and telephone number. Any changes in this information shall be communicated promptly to the regional hearing clerk, presiding officer, and all parties to the proceeding. A party who fails to furnish such information shall be deemed to have waived his right to notice and service under these rules.

(5) The administrator, presiding officer, hearing clerk, or regional hearing clerk may refuse to file any document which does not comply with this paragraph. Written notice of such refusal shall be promptly given to the person submitting the document.

§ 22.06 Filing and service of rulings, orders, and decisions.

All rulings, orders, decisions, and other documents issued by the regional administrator, regional judicial officer, or the presiding officer, as appropriate, shall be filed with the regional hearing clerk. All such documents issued by the administrator or judicial officer shall be filed with the hearing clerk. Copies of such rulings, orders decisions, or other documents shall be served directly upon all parties by the administrator, regional administrator, judicial officer, regional judicial officer, or presiding officer, as appropriate.

§ 22.07 Computation and extension of time.

(a) *Computation.* In computing any period of time prescribed or allowed in these rules of practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included in computing the time allowed for such filing. However, if the period of time prescribed is five (5) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period shall be extended to include the next business day.

(b) *Extensions of time.* The presiding officer may grant an extension of time for the filing of any pleading, document, or motion (1) upon timely motion of a party to the proceeding only for good cause shown and after consideration of prejudice to other parties, or (2) upon his own motion. Such a motion by a party may only be made after notice to all other parties, unless the movant can show good cause why serving notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed, unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.

(c) *Service by mail.* Service is complete upon mailing. However, where a pleading or document is served by mail, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading.

§ 22.08 Ex parte discussion of proceeding.

At no time after the issuance of the complaint shall the administrator, regional administrator, judicial officer, regional judicial officer, presiding officer, or any other person who will advise these officials in the decision on the case, discuss ex parte the merits of the proceeding with any interested

person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a related proceeding, or with any representative of such person. Any memorandum or other communication addressed to the administrator, regional administrator, judicial officer, regional judicial officer, or the presiding officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication.

§ 22.09 Examination of documents filed.

(a) Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during Agency business hours, inspect and copy any document filed in any proceeding. Such documents shall be made available by the regional hearing clerk or hearing clerk, as appropriate.

(b) The cost of duplicating documents filed in any proceeding shall be borne by the person seeking copies of such documents.

Subpart B—Parties and Appearances

§ 22.10 Appearances.

Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

§ 22.11 Intervention.

(a) *Motion.* Any person may file a motion for leave to intervene in any proceeding conducted under these rules of practice. The motion must set forth the grounds for the proposed intervention, the position and interest of the movant and the likely impact that intervention will have on the expeditious progress of the proceeding. Any person already a party to the proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in the foregoing sentence and paragraph (c) of this section, within ten (10) days after service of the motion for leave to intervene.

(b) *When filed.* A motion for leave to intervene in a proceeding must ordinarily be filed before the first prehearing conference or, in the absence of a prehearing conference, before the initiation of correspondence under § 22.19(e), or if there is no such correspondence, prior to the setting of a time and place for a hearing. Any motion filed after that time must include, in addition to the information set forth in paragraph (a) of this section, a statement of good cause for the failure to file in a timely manner. An untimely motion for leave to intervene shall be granted only upon finding that extraordinary circumstances justify the granting of the motion. The intervenor shall be bound by any agreements, arrangements and other matters previously made in the proceeding.

(c) *Disposition.* Leave to intervene shall be granted only if the movant demonstrates that (1) there exists a common question of law or fact, and (2) his presence in the proceeding would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties. In evaluating the merits of a motion for leave to intevene, the presiding officer shall consider the extent to which the movant will be adversely affected by a final order and the extent to which the interests of the movant are not being adequately represented by the original parties.

(d) *Amicus curiae.* Persons not parties to the proceeding who wish to file briefs may, upon good cause shown, so move the presiding officer or the Administrator as appropriate. The motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. If the motion is granted, the presiding officer or Administrator shall issue an order setting the time for filing such brief. An amicus curiae is eligible to participate in any briefing after his motion is granted, and shall be served with all briefs, reply briefs, motions, and orders relating to issues to be briefed.

§ 22.12 Consolidation and severance.

(a) *Consolidation.* The presiding officer may, by motion or sua sponte, consolidate any or all matters at issue in two or more proceedings docketed under these rules of practice where there exist common parties of common questions of fact or law, and where consolidation would expedite or simplify consideration of the issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(b) *Severance.* The presiding officer may, by motion of sua sponte, for good cause shown, order any proceedings severed with respect to any or all parties or issues.

Subpart C—Prehearing Procedures

§ 22.13 Issuance of complaint.

If the complainant has reason to believe that a person has violated any provision of the act or regulations promulgated under the act, he may institute a proceeding for the assessment of a civil penalty by issuing a complaint under the act and these rules of practice.

§ 22.14 Content and amendment of the complaint.

(a) *Content of complaint.* Each complaint shall include:

(1) A statement reciting the section(s) of the act authorizing the issuance of the complaint;

(2) Specific reference to each provision of the act and implementing regulations which respondent is alleged to have violated;

(3) A concise statement of the factual basis for alleging the violation;

(4) The amount of the civil penalty which is proposed to be assessed;

(5) A statement indicating the appropriateness of the proposed penalty;

(6) Notice of respondent's right to request a hearing on any material fact contained in the complaint, or on the appropriateness of the amount of the proposed penalty.

A copy of these rules of practice shall accompany each complaint served.

(b) *Derivation of proposed civil penalty.* The dollar amount of the proposed civil penalty shall be determined in accordance with any criteria set forth in the act relating to the proper amount of a civil penalty and with any civil penalty guidelines published under the act.

(c) *Amendment of the complaint.* The complainant may amend the complaint as a matter of right at any time before the answer is filed. Respondent shall have fifteen (15) additional days from the date of service of the amended complaint to file his answer. At any time after the filing of an answer to the complaint, the complaint may be amended only upon motion granted by the presiding officer.

(d) *Withdrawal of the complaint.* The complainant may withdraw the complaint without prejudice one time before the answer has been filed. The complainant may withdraw the complaint, without prejudice, only upon motion granted by the presiding officer.

§ 22.15 Answer to the complaint.

(a) *General.* Where respondent (1) contests any material fact upon which the complaint is based; (2) contends that the amount of the penalty proposed in the complaint is inappropriate; or (3) contends that he is entitled to judgment as a matter of law, he shall file a written answer to the complaint with the regional hearing clerk. Any such answer to the complaint must be filed with the regional hearing clerk within fifteen (15) days after service of the complaint.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense, (2) the facts which respondent intends to place at issue, and (3) whether a hearing is requested.

(c) *Request for hearing.* A hearing upon the issues raised by the complaint and answer shall be held upon request of respondent in the answer. In addition, a hearing may be held at the discretion of the presiding officer, sua sponte, if issues appropriate for adjudication are raised in the answer, although no hearing is requested, or upon motion of any party other than the respondent. Any request for hearing filed by a party other than the respondent shall state objections to the complaint with particularity and shall set forth the issues which the party intends to raise during the hearing.

(d) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

(e) *Amendment of the answer.* The respondent may amend the answer to the complaint upon motion granted by the presiding officer.

§ 22.16 Motions.

(a) *General.* All motions, except those made orally on the record during a hearing, shall (1) be in writing; (2) state the grounds therefor with particularity; (3) set forth the relief or order sought; and (4) be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. Such motions shall be served as provided by § 22.05(b)(2).

(b) *Response to motions.* Any party may file a response to any written motion within ten (10) days after service of such motion, except as otherwise provided by the presiding officer or the Administrator. This response shall be accompanied by any affidavit, certificate legal memorandum, or other evidence relied upon. If no response is filed within the designated period, the parties may be deemed to have waived any objection to the granting of the motion. The presiding officer or Administrator may set a shorter time for response, or make such other orders concerning the disposition of motions as they deem appropriate.

(c) *Decision.* The Administrator shall rule upon all motions filed or made after the filing of an initial decision, except as provided in § 22.28. The presiding officer shall rule on all other motions. Oral argument on motions will be permitted where the presiding officer or the Administrator considers it necessary or desirable.

§ 22.17 Default order.

(a) *Default.* A party may be found to be in default (1) after motion, upon failure to file a timely answer to the complaint; (2) after motion or sua sponte, upon failure to comply with a prehearing or hearing order of the presiding officer; or (3) after motion or sua sponte, upon failure to appear at a conference or hearing without good cause being shown. No finding of default on the basis of a failure to appear at a hearing shall be made unless the appearing party presents sufficient evidence to the presiding officer to establish a prima facie case against the opposing party. Any motion for a default order shall include a proposed default order and shall be served upon all parties. The alleged defaulting party shall have fifteen (15) days from service to reply to the motion. Default by respondent constitutes an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations. The civil penalty proposed in the complaint shall become due and payable by respondent without further proceedings sixty (60) days after a final order issued upon default. Default by the complainant shall result in the dismissal of the complaint with prejudice.

(b) *Procedures upon default.* When the presiding officer finds a default has occurred, he shall render a proposed default order to be issued against the defaulting party. This order constitutes the initial decision of the presiding officer, and shall be filed with the regional hearing clerk.

(c) *Contents of a proposed default order.* A proposed default order shall include findings of fact, conclusions regarding all material issues of law, fact, or discretion, and the penalty which is therein assessed.

§ 22.18 Informal settlement; consent agreement and order.

(a) *Settlement policy.* The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. The respondent may confer with complainant concerning the settlement whether or not respondent requests a hearing. Settlement conferences shall not affect the respondent's obligation to file a timely answer under § 22.16.

(b) *Consent agreement.* The parties shall forward a signed written consent agreement and a proposed consent order to the Regional Administrator whenever settlement or compromise is proposed. The consent agreement shall state that, for the purpose of this proceeding, respondent (1) admits the jurisdictional allegations of the complaint; (2) admits the facts stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; and (3) consents to the assessment of a stated civil penalty. The consent agreement shall include any and all terms of the agreement.

(c) *Consent order.* No settlement or consent agreement shall dispose of any proceeding under these rules of practice without a consent order from the Regional Administrator. In preparing such an order, the Regional Administrator may require that the parties to the settlement appear before him to answer inquiries relating to the consent agreement or order.

§ 22.19 Prehearing conference.

(a) *Purpose of prehearing conference.* Unless a conference appears unnecessary, the presiding officer, at any time before the hearing begins, shall direct the parties and their counsel or other representative to appear at a conference before him to consider:

(1) The settlement of the case;

(2) The simplification of issues and stipulation of facts not in dispute;

(3) The necessity or desirability of amendments to pleadings;

(4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;

(5) The limitation of the number of expert or other witnesses;

(6) Setting a time and place for the public hearing; and

(7) Any other matters which may expedite the disposition of the proceeding.

(b) *Exchange of witness lists and documents.* Unless otherwise ordered by the presiding officer, each party at the prehearing conference shall make available to all other parties the names of the expert and other witnesses he intends to call, together with a brief narrative summary of their expected testimony. Copies of all documents and exhibits which each party intends to introduce into evidence shall be marked for identification as ordered by the presiding officer.

(c) *Record of the prehearing conference.* No transcript of any prehearing conference shall be made unless ordered by the presiding officer upon motion of a party or sua sponte. The presiding officer shall prepare and file for the record a written summary of the action taken at the conference.

The summary shall incorporate any written stipulations or agreements of the parties and all rulings and appropriate orders containing directions to the parties.

(d) *Location of prehearing conference.* The prehearing conference shall be held in the city in which the relevant Environmental Protection Agency Regional Office is located unless (1) the presiding officer determines that there is good cause to hold it at another location in the region or by telephone, or (2) supplemental rules of practice published under the Act provide otherwise.

(e) *Unavailability of a prehearing conference.* If a prehearing conference is unnecessary or impracticable, the presiding officer, on motion or sua sponte, may direct the parties to correspond with him to accomplish any of the objectives set forth in this section.

§ 22.20 Accelerated decision; dismissal.

(a) *General.* The presiding officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the complainant or the respondent as to all or any part of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, or dismiss any party with prejudice, under any of the following conditions:

(1) Failure to state a claim upon which relief can be granted, or direct or collateral estoppel;

(2) No genuine issue of material fact exists and a party is entitled to judgment as a matter of law, as to all or any part of a proceeding; or

(3) Such other reasons as are just.

(b) *Effect.* (1) If an accelerated decision is issued as to all the issues and claims in the proceeding, the decision constitutes an initial decision of the presiding officer, and shall be filed with the regional hearing clerk.

(2) If an accelerated decision is rendered on less than all issues or claims in the proceeding, the presiding officer shall determine what material facts exist without substantial controversy and what material facts remain controverted in good faith. He shall thereupon issue an interlocutory order specifying the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed.

Subpart D—Hearing Procedure

§ 22.21 Scheduling the hearing.

(a) When a complaint is filed, the regional hearing clerk or hearing clerk shall refer the proceeding to the Chief Administrative Law Judge who shall assign himself or another administrative law judge as presiding officer. The presiding officer shall then notify the parties of his assignment.

(b) Notice of hearing. If the respondent requests a hearing in his answer, or one is ordered by the presiding officer under § 22.15(c), the presiding officer shall serve upon the parties a notice of hearing. This notice shall set a time and place for the hearing and may provide for a future prehearing conference. The presiding officer may issue the notice of hearing after a prehearing conference is held. The parties shall be notified at least fifteen (15) days prior to the date set for the hearing.

(c) Postponement of hearing. No request for postponement of a hearing will be granted except upon motion and for good cause shown.

(d) Location of the hearing. The location of the hearing shall be determined in accordance with the method for determining the location of a prehearing conference under § 22.19(d).

§ 22.22 Evidence.

(a) *General.* The presiding officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value, except that statements made during settlement conferences are not admissable. In the presentation, admission, disposition, and use of evidence, the presiding officer shall preserve the confidentiality of trade secrets and other privileged commercial and financial information. The confidential or trade secret status of any information shall not, however, preclude its being introduced into evidence. The presiding officer may make such orders as may be necessary to consider such evidence in camera, including the preparation of a supplemental initial decision to address questions of fact, law, or discretion which arise out of that portion of the evidence which is confidential or which includes trade secrets.

(b) *Examination of witnesses.* Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in these rules of practice or by the presiding officer. Parties shall have the right to cross-examine a witness who appears at the hearing provided that such cross-examination is not unduly repetitious.

(c) *Verified statements.* The presiding officer may admit and insert into the record as evidence, in lieu of oral testimony, statements of fact or opinion prepared by a witness. The admissibility of the evidence contained in the statement shall be subject to the same rules as if the testimony were produced under oral examination. Before any such statement is read or admitted into evidence, the witness shall deliver a copy of the statement to the presiding officer, the reporter, and opposing counsel. The witness presenting the statement shall swear to or affirm the statement and shall be subject to appropriate oral cross-examination upon the contents thereof.

(d) *Admission of affidavits where the witness is unavailable.* The presiding officer may, upon good cause shown, admit into evidence affidavits of witnesses who are unable to be present at the hearing.

(e) *Exhibits.* Where practicable, an original and one copy of each exhibit shall be filed with the presiding officer for the record and a copy shall be furnished to each party. A true copy of any exhibit may be substituted for the original.

(f) *Official notice.* Official notice may be taken of any matter judicially noticed in the Federal courts, and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 22.23 Objections and offers of proof.

(a) *Objection.* Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the presiding officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be automatic and is not waived by further participation in the hearing.

(b) *Offer of proof.* Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. The offer of proof for excluded documents or exhibits shall consist of the insertion in the record of the documents or exhibits excluded. Where the Administrator decides that the ruling of the presiding officer in excluding the evidence was both erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence or, where appropriate, the Administrator may evaluate such evidence in preparing his final order. If the Administrator in the preparation of his final order relies upon any evidence excluded at the hearing by the presiding officer, he shall explicitly identify in the final order any such excluded evidence relied upon and his reasons therefor.

§ 22.24 Burden of presentation; burden of persuasion.

The complainant has the burden of going forward with and of proving that the violation occurred as set forth in the complaint and that the pro-

posed civil penalty, revocation, or suspension, as the case may be, is appropriate. Following the establishment of a prima facie case, respondent shall have the burden of presenting and of going forward with any defense to the allegations set forth in the complaint. Each matter of controversy shall be determined by the presiding officer upon a preponderance of the evidence.

§ 22.25 Filing the transcript.

The hearing shall be transcribed verbatim. Promptly following the taking of the last evidence, the reporter shall transmit to the regional hearing clerk the original and as many copies of the transcript of testimony as are called for in the reporter's contract with the Agency, and also shall transmit to the presiding officer a copy of the transcript. A certificate of service shall accompany each copy of the transcript. The regional hearing clerk shall notify all parties of the availability of the transcript and shall furnish the parties with a copy of the transcript upon payment of the cost of reproduction, unless a party can show that the cost is unduly burdensome. Any person not a party to the proceeding may receive a copy of the transcript upon payment of the reproduction fee.

§ 22.26 Proposed findings, conclusions, and order.

Within twenty (20) days after the parties are notified of the availability of the transcript, or within such longer time as may be fixed by the presiding officer, any party may submit for the consideration of the presiding officer proposed findings of fact, conclusions of law, and a proposed rule or order, together with briefs in support thereof. The presiding officer shall set a time by which reply briefs must be submitted. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

Subpart E—Initial Decision and Motion To Reopen a Hearing

§ 22.27 Initial decision.

(a) *Filing and contents.* The presiding officer shall issue and file with the regional hearing clerk his initial decision as soon as practicable after the period for filing reply briefs under § 22.26 has expired. The initial decision shall contain his findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefor, a recommended civil penalty assessment, and a proposed final order. The regional hearing clerk shall forward the initial decision (which includes an accelerated decision or a proposed default order) and the record of the proceeding to the hearing clerk.

(b) *Amount of civil penalty.* The presiding officer shall determine the dollar amount of the recommended civil penalty to be assessed in the initial decision in accordance with any criteria set forth in the act relating to the proper amount of a civil penalty, and must consider any civil penalty guidelines published under the act. The presiding officer may increase or decrease the assessed penalty from the amount proposed to be assessed in the complaint.

(c) *Effect of initial decision.* The initial decision of the presiding officer shall become the final order of the Administrator within forty-five (45) days after its receipt by the hearing clerk and without further proceedings unless (1) an appeal to the Administrator is taken from it by a party to the proceedings, or (2) the Administrator elects, sua sponte, to review the initial decision.

§ 22.28 Motion to reopen a hearing.

(a) *Filing and content.* A request to reopen a hearing to take further evidence must be made by motion to the presiding officer and filed with the regional hearing clerk at any time after service of the initial decision and prior to the issuance of the final order. Each such motion shall (1) state the specific grounds upon which relief is sought, (2) state briefly the nature and purpose of the evidence to be adduced, (3) show that such evidence is not cumulative, and (4) set forth a good reason why such evidence was not adduced at a hearing.

(b) *Disposition of motion to reopen a hearing.* Within ten (10) days following the service of a motion to reopen a hearing any other party to the proceeding may file with the regional hearing clerk and serve on all other parties an answer thereto. The presiding officer shall announce his intent to grant or to deny such motion as soon as practicable thereafter. The conduct of any proceeding which may be required as a result of the granting of any motion allowed in this section shall be governed by the provisions of the applicable section of these rules.

Subpart F—Appeals and Administrative Review

§ 22.29 Appeal from or review of interlocutory orders or rulings.

(a) *Request for interlocutory appeal.* Except as provided in this section, appeals to the Administrator shall obtain as a matter of right only from a proposed default order, an accelerated decision issued under § 22.20(b)(1), or a decision rendered after an evidentiary hearing. Appeals from other orders or rulings shall lie only if the presiding officer, upon motion of a party, certifies such orders or rulings to the Administrator on appeal. Requests to the presiding officer for such certification shall be filed in writing within five (5) days of notice of the ruling or service of the order, and shall state briefly the grounds to be relied upon on appeal.

(b) *Availability or interlocutory appeal.* The presiding officer may certify a ruling for appeal to the Administrator when (1) the order or ruling involves an important question of law or policy concerning which there are substantial grounds for difference of opinion; and (2) either (i) an immediate appeal from the order or ruling will materially advance the ultimate termination of the proceeding, or (ii) review after the final order is issued will be inadequate or ineffective.

(c) *Decision.* If the Administrator determines that certification was improvidently granted, or if he takes no action within thirty (30) days of the certification, the appeal is dismissed. When the presiding officer declines to certify an order or ruling to the Administrator on interlocutory appeal, it may be reviewed by the Administrator only upon appeal from the initial decision, except when the Administrator determines, upon motion of a party and in exceptional circumstances, that to delay review would be contrary to the public interest. Such motion shall be made within five (5) days of service of an order or the presiding officer refusing to certify a ruling for interlocutory appeal to the Administrator. Ordinarily, the interlocutory appeal will be decided on the basis of the submissions made by the presiding officer. The Administrator may, however, allow further briefs and oral argument.

(d) *Stay of proceedings.* The presiding officer may stay the proceedings pending a decision by the Administrator upon an order or ruling certified by the presiding officer for an interlocutory appeal. Proceedings will not be stayed except in extraordinary circumstance. Where the presiding officer grants a stay of more than thirty (30) days, such stay must be separately approved by the Administrator.

§ 22.30 Appeal from or review of initial decision.

(a) *Notice of appeal.* (1) Any party may appeal any adverse ruling or order of the presiding office by filing a notice of appeal and an accompanying appellate brief with the hearing clerk within twenty (20) days after receipt by the hearing clerk of the initial decision. The notice of appeal shall set forth alternative findings of fact, alternative conclusions regarding issues of law or discretion, and a proposed order together with relevant refer-

ences to the record and the initial decision. The appellant's brief shall contain a statement of the issues presented for review, a statement of the nature of the case and the facts relevant to the issues presented for review, argument on the issues presented, and a short conclusion stating the precise relief sought, together with appropriate references to the record. The hearing clerk shall serve the notice of appeal and the appellant's brief upon all other parties and amicus curiae.

(2) Within fifteen (15) days of the service of notices of appeal and briefs under paragraph (a)(1) of this section, any other party or amicus curiae may file and serve with the hearing clerk a reply brief responding to argument raised by the appellant, together with references to the relevant portions of the record, initial decision, or opposing brief. Reply briefs shall not, however, raise additional arguments.

(b) *Sua sponte review by the Administrator.* Whenever the Administrator determines sua sponte to review an initial decision, the hearing clerk shall serve notice of such intention on the parties within forty-five (45) days after receipt of the initial decision. The notice shall include a statement of issues to be briefed by the parties and a time schedule for the service and filing of briefs.

(c) *Scope of appeal or review.* The appeal of the initial decision shall be limited to the issues raised by the appellant unless the Administrator determines that additional issues should be argued. If the Administrator determines that additional issues should be argued, he shall give counsel for the parties reasonable written notice of such determination to permit preparation of adequate argument.

(d) *Argument before the Administrator.* The Administrator may, upon request of a party or sua sponte, assign a time and place for oral argument after giving consideration to the convenience of the parties.

Subpart G—Final Order on Appeal

§ 22.31 Final order on appeal.

(a) *Contents of the final order.* When an appeal has been taken or the Administrator issues a notice of intent to conduct review sua sponte, the Administrator shall issue a final order as soon as practicable after the filing of all appellate briefs or oral argument, whichever is later. The Administrator shall adopt, modify or set aside the findings and conclusions contained in the decision or order being reviewed, and shall set forth in the final order the reasons for his actions. The Administrator may, in his discretion, increase or decrease the assessed penalty from the amount recommended to be assessed in the decision or order being reviewed.

(b) *Payment of a civil penalty.* The respondent shall pay the full amount of the civil penalty assessed in the final order within sixty (60) days after receipt of the final order unless otherwise agreed by the parties. Payment shall be made by forwarding to the regional hearing clerk a cashier's check or certified check in the amount of the penalty assessed in the final order, payable to the United States of America.

§ 22.32 Motion to reconsider a final order.

Motions to reconsider the final order shall be filed within ten (10) days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall not stay the effectiveness of the final order unless the Administrator provides otherwise.

Subpart H—Supplemental Rules of Practice Governing Administrative Assessment of Civil Penalties Under the Toxic Substances Control Act

§ 22.33 Supplemental rules of practice governing administrative assessment of civil penalties under the Toxic Substances Control Act.

(a) *Scope of these supplemental rules.* These supplemental rules of practice shall govern, in conjunction with the consolidated rules of practice (40 CFR Part 22), all formal adjudications for the assessment of any civil penalty conducted under section 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a)). Where inconsistencies exist between these supplemental rules and the consolidated rules, these supplemental rules shall apply.

(b) *Subpenas.* (1) The attendance of witnesses or the production of documentary evidence may be required by subpena. The presiding officer may grant a request for a subpena upon a showing of (i) the grounds and necessity therefor, and (ii) of the materiality and relevancy of the evidence to be adduced. Requests for the production of documents shall describe with specificity the documents sought.

(2) Subpenas shall be served in accordance with section 22.05(b)(1) of the consolidated rules of practice.

(3) Witnesses summoned before the presiding officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears. Where a witness appears pursuant to a request initiated by the presiding officer, fees shall be paid by the agency.

APPENDIX

Region I, John F. Kennedy Federal Building, Boston, Mass. 02203.
Region II, 26 Federal Plaza, New York, N.Y. 10007.
Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, Pa. 19106.
Region IV, 345 Courtland Street NE., Atlanta, Ga. 30308.
Region V, 230 South Dearborn Street, Chicago, Ill. 60604.
Region VI, First International Building, 1201 Elm Street, Dallas, Tex. 75270.
Region VII, 1735 Baltimore, Kansas City, Mo. 64108.
Region VIII, 1860 Lincoln Street, Denver, Colo. 80295.
Region IX, 215 Fremont Street, San Francisco, Calif. 94105.
Region X, 1200 6th Avenue, Seattle, Wash. 98101.

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[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 22]

[FRL 919-8A]

CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES OR THE REVOCATION OR SUSPENSION OF PERMITS

Proposed Rules

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rules of practice

SUMMARY: This document sets forth consolidated rules of practice to be followed by parties litigating administratively assessed civil penalties or revocations or suspensions of permits under certain statutes administered by EPA. These statutes are listed in § 22.01(a) of the consolidated rules. The consolidated rules are designed to accomplish two purposes. The first is the development of a common set of procedural rules for several programs in order to reduce paperwork, inconsistency, and the burden on persons regulated. The second is the improvement of formal administrative adjudicatory procedures through substantive revisions.

DATES: Comments on the rules should be received on or before October 3, 1978.

ADDRESS: Comments should be directed to: Steve Leifer, Attorney, Toxic Substances Branch (EN-342), Pesticides and Toxic Substances Enforcement Division, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-755-9404.

FOR FURTHER INFORMATION CONTACT:

Steve Leifer, 202-755-9404.

SUPPLEMENTARY INFORMATION: These consolidated rules of practice govern all adjudicatory proceedings for the assessment of a civil penalty or for the revocation or suspension of a permit authorized by the statutory provisions listed in § 22.01(a) (1)-(4). The consolidated rules, when promulgated, will replace existing rules of practice promulgated under section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 40 CFR Part 168, section 211 of the Clean Air Act, 40 CFR 80.301-332, and section 105(a) of the Marine Protection, Research, and Sanctuaries Act (Ocean Dumping Act), 40 CFR Part 226. They are the initial rules of practice published under section 3008 of the Solid Waste Disposal Act (SWDA).

The consolidated rules also govern civil penalty assessments conducted under the Toxic Substances Control Act (TSCA) section 16(a) (15 U.S.C. 2615(a)). However, the consolidated rules are interim with regard to TSCA, and thus are promulgated in the rules section of this part. The proposed rules set forth below and the TSCA interim rules will be promulgated under a single heading in final form.

The consolidated rules are designed to accomplish two purposes. The first is the development of a common set of procedural rules for several programs in order to reduce paperwork, inconsistency, and the burden on persons regulated. The second is the improvement of formal administrative adjudicatory procedures through substantive revisions.

The rules proposed here are similar to the rules which currently guide proceedings under section 14 of FIFRA, section 211(d) of the Clean Air Act, and section 105(a) of the Ocean Dumping Act. The major substantive revision to these rules is a shift in appellate jurisdiction. The responsibility for hearing appeals from initial decisions, default orders, and accelerated decisions has been shifted from the Regional Administrator to the Administrator. This change was made in order to foster consistency in Agency decisionmaking nationwide. In addition, consolidating appellate responsibility into a single office will facilitate the assembly and publication of civil penalty and permit hearings decisions. The Regional Administrator, however, will retain the authority to issue consent orders finalizing agreements between parties.

It should also be noted that the proposed solid waste supplemental rules, unlike previous civil penalty procedures, require the presiding officer to follow, not just consider, any civil penalty guidelines or schedules promulgated under the SWDA. Comments would be particularly appreciated on this proposal.

Hearings under all but one of the four statutory provisions covered by these rules will be held in conformity with the adjudicatory hearing provisions of the Administrative Procedure Act (APA). The only exceptions are hearings to assess penalties for violating regulations on fuels or fuel additives under section 211 of the Clean Air Act. The reasons for concluding that the formal APA hearing requirements do not apply to this section were set forth at 40 FR 39963, August 29, 1975, when the original hearing rules under that section were promulgated.

Similarly, the rules providing for a formal hearing in connection with assessment of penalties for violating FIFRA and for assessing penalties and revoking permits under the Ocean Dumping Act follow the previous EPA position on these questions in 39 FR 27657, July 31, 1974, 42 FR 60702, November 28, 1977, except that the ocean dumping procedures have been rewritten to conform literally to the APA.

Our conclusion that a formal hearing is also required for issuing compliance orders or revoking or suspending permits under the Solid Waste Disposal Act is based on the following considerations:

1. The statute explicitly requires an opportunity for a "public hearing" before these steps may be taken. Although there are many cases where, in EPA's opinion, this language should not be read to require formal adjudicatory procedures, the nature of the decision at issue in these cases indicates to us that such formal procedures were probably intended. In these cases the Agency will be accusing someone of violating established legal standards through their past conduct, and will be seeking to impose a sanction for it. These are the kinds of "accusatory" cases for which the statutorily independent "hearing examiners," established by the APA to preside over formal hearings, were largely intended. In addition, the facts at issue will be specific ones involving the past conduct of regulated persons.

2. The statute on its face contains some indication that formal hearings were intended. Though this might not be enough in itself to require a formal hearing, in this context it reinforces the arguments based on the nature of the decision summarized above.

EPA does not believe that formal hearing procedures will be required for the initial issuance of permits under the Solid Waste Disposal Act as opposed to their revocation. The statute does not provide for any hearing at all when permits are being issued. In addition, the decisions on initial licensing are less adversarial and accusatory by nature than decisions on penalties or revocations, and therefore less in need of the safeguards of a formal hearing. However, as a matter of policy, EPA will provide for informal hearings in connection with the initial issuance of permits.

NOTE.—EPA has determined that this document does not contain a major proposal requiring preparation of an economic impact analysis statement under Executive Order No. 12044.

Accordingly, it is hereby proposed, under the authority of sections 5(a) and 16(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, sections 301 and 211 of the Clean Air Act, section 105 (a) and (f) of the Marine Protection, Research, and Sanctuaries Act, and sections 2002 and 3008 of the Solid Waste Disposal Act, to add to 40 CFR the new part 22 set forth below.

Dated: July 26, 1978.

DOUGLAS M. COSTLE,
Administrator.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES OR THE REVOCATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec.
22.01 Scope of these rules.
22.02 Use of number and gender.
22.03 Definitions.
22.04 Powers and duties of the Administrator, Regional Administrator, Judical Officer, Regional Judicial Officer, and Presiding Officer; disqualification.
22.05 Filing, service, and form of pleadings and documents.
22.06 Filing and service of rulings, orders, and decisions.
22.07 Computation and extension of time.
22.08 Ex parte discussion of proceeding.
22.09 Examination of documents filed.

Subpart B—Parties and Appearances

22.10 Appearances.
22.11 Intervention.
22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

22.13 Issuance of complaint.
22.14 Content and amendment of the complaint.
22.15 Answer to the complaint.
22.16 Motions.
22.17 Default order.
22.18 Informal settlement; consent agreement and order.
22.19 Prehearing conference.
22.20 Accelerated decision; dismissal.

Subpart D—Hearing Procedure

22.21 Scheduling the hearing.
22.22 Evidence.
22.23 Objections and offers of proof.
22.24 Burden of presentation; burden of persuasion.
22.25 Filing the transcript.
22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

22.27 Initial decison.
22.28 Motion to reopen a hearing.

Subpart F—Appeals and Administrative Review

22.29 Appeal from or review of interlocutory orders or rulings.
22.30 Appeal from or review of initial decision.

Subpart G—Final Order on Appeal

22.31 Final order on appeal.
22.32 Motion to reconsider a final order.

Subpart H—Supplemental Rules

22.33 Supplemental rules of practice governing the administrative assessment of civil penalties under section 211 of the Clean Air Act.
22.34 Supplemental rules of practice governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.
22.35 Supplemental rules of practice governing the administrative assessment of civil penalties and the revocation or suspension of permits under the Marine Protection, Research, and Sanctuaries Act.
22.36 Supplemental rules of practice governing administrative assessment of civil penalties and the revocation or suspension of permits under the Solid Waste Disposal Act.

Appendix.

AUTHORITY: Secs. 5(a) and 16(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, secs. 301 and 211 of the Clean Air Act, sec. 105 (a) and (f) of the Marine Protection, Research, and Sanctuaries Act, and Secs. 2002 and 3008 of the Solid Waste Disposal Act.

Subpart A—General

§ 22.01 Scope of these rules.

(a) Unless otherwise specified:

(1) These rules of practice govern all adjudicatory proceedings for the assessment of any civil penalty conducted under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 1361(a));

(2) These rules of practice govern adjudicatory proceedings for the assessment of any civil penalty conducted under section 211 of the Clean Air Act as amended (42 U.S.C. 7545);

(3) These rules of practice govern adjudicatory proceedings for the assessment of any civil penalty or for the revocation or suspension of any permit conducted under section 105 (a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a));

(4) These rules of practice govern adjudicatory proceedings for the issuance of a compliance order, the assessment of any civil penalty, or for the revocation or suspension of any permit conducted under section 3008 of the Solid Waste Disposal Act as amended (42 U.S.C. 6928). The supplemental rules of practice set forth in subpart H establish rules governing those aspects of the proceeding in question which are not covered in subparts A through G, and also specify procedures which supersede any conflicting procedures set forth in those subparts.

(b) Questions arising at any stage of the proceeding which are not addressed in these rules shall be resolved at the discretion of the presiding officer or the Administrator, as appropriate.

§ 22.02 Use of number and gender.

As used in these rules of practice, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§ 22.03 Definitions.

(a) The term "act" means the particular statute and its supplements and amendments authorizing the institution of the proceeding at issue.

(b) "Administrative law judge" means an administrative law judge appointed under 5 U.S.C. 3105 (see also Pub. L. 95-251, 92 Stat. 183).

(c) "Administrator" means the Administrator of the U.S. Environmental Protection Agency or his delegate.

(d) "Agency" means the U.S. Environmental Protection Agency.

(e) "Complainant" means any person authorized to issue a complaint on behalf of the Agency to persons alleged to be in violation of the act. The complainant shall not be the regional judicial officer, or any other person who will participate or advise in the decision.

(f) "Complaint" means a written communication, alleging one or more violations of specific provisions of the act, or regulations or permit promulgated thereunder, issued by the complainant to a person under §§ 22.13 and 22.14.

(g) "Consent agreement" means any written document, signed by the parties, containing stipulations or conclusions of fact or law and a proposed penalty or proposed revocation or suspension acceptable to both complainant and respondent.

(h) "Final order" means an order issued by the Administrator disposing of a matter in controversy between the parties or an initial decision which becomes a final order under § 22.27(c).

(i) "Hearing" means a hearing on the record open to the public and conducted under these rules of practice.

(j) "Hearing clerk" means the hearing clerk, U.S. Environmental Protection Agency, Washington, D.C. 20460.

(k) "Initial decision" means the decision issued by the presiding officer based upon the record of the proceedings out of which it arises.

(l) "Judicial officer" means the person designated by the Administrator under § 22.04(b) to serve as the judicial officer.

(m) "Party" means any person that participates in a hearing as complainant, respondent, or intervenor.

(n) "Permit" means a permit issued either under section 102 of the Marine Protection, Research, and Sanctuaries Act or under section 3005 of the Solid Waste Disposal Act, as appropriate.

(o) "Person" includes any individual, partnership, association, corporation, and any trustee, assignee, receiver, or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency, or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

(p) "Presiding officer" means the administrative law judge designated by the chief administrative law judge to

serve as presiding officer, unless otherwise specified by any supplemental rules.

(q) "Regional Adminstrator" means the Administrator of any regional office of the Agency or any officer or employee thereof to whom his authority is duly delegated. Where the regional administrator has authorized the regional judicial officer to act, the term "Regional Administrator" shall include the regional judicial officer.

(r) "Regional hearing clerk" means an individual duly authorized by the Regional Administrator to serve as hearing clerk for a given region. Correspondence may be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency (address of regional office—see appendix).

(s) "Regional judicial officer" means a person designated by the Regional Administrator under § 22.04(b) to serve as a regional judicial officer.

(t) "Respondent" means any person proceeded against in the complaint.

(u) Terms defined in the act and not defined in these rules of practice are used consistent with the meanings given in the act.

§ 22.04 Powers and duties of the Administrator, Regional Administrator, judicial officer, regional judicial officer, and presiding officer; disqualification.

(a) *Administrator and Regional Administrator.* The Administrator and the Regional Administrator shall exercise all powers and duties as prescribed or delegated under the act and these rules of practice.

(b) *Judicial officer and regional judicial officer.*—(1) *Office.* One or more judicial officers may be designated by the Administrator to perform the functions described below. One or more regional judicial officers may be designated by the Regional Administrator to perform, within the region of their designation, the functions described below.

(2) *Qualifications.* A judicial officer or a regional judicial officer shall be an attorney who is a permanent or temporary employee of the Agency or some other Federal agency and who may perform other duties within the Agency. A regional judicial officer shall not be employed by the region's enforcement division or by the regional division directly associated with the type of violation at issue in the proceeding. The regional judicial officer shall not have performed prosecutorial or investigative functions in connection with any hearing in which he participates as regional judicial officer or any related hearing. A judicial officer shall not be a member of the Office of Enforcement.

(3) *Functions.* The Administrator may delegate to the judicial officer, or the Regional Administrator may delegate to the regional judicial officer, all or part of his authority to act in a given proceeding. This delegation does not prevent the judicial officer or regional judicial officer from referring any motion or case to the Administrator or Regional Administrator when appropriate. The judicial officer and regional judicial officer shall exercise all powers and duties prescribed or delegated under the act or these rules of practice.

(c) *Presiding officer.* The presiding officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The presiding officer shall have authority to:

(1) Conduct administrative hearings under these rules of practice;

(2) Rule upon motions, requests, and offers of proof, dispose of procedural requests, and issue all necessary orders;

Administer oaths and affirmations and take affidavits;

(4) Examine witnesses, receive documentary or other evidence;

(5) For good cause, upon motion or sua sponte, order a party, or an officer or agent thereof, to produce testimony, documents or other nonprivileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear oral argument on facts or law;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

(9) Issue subpeonas authorized by the Act; and

(10) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these rules.

(d) *Disqualification; withdrawal.* (1) The Administrator, Regional Administrator, judicial officer, regional judicial officer or presiding officer may not perform functions provided for in these rules of practice regarding any matter in which they (i) have a financial interest or (ii) have any relationship with a party or with the subject matter which would make it inappropriate for them to act. Any party may at any time by motion made to the Regional Administrator request that the regional judicial officer or presiding officer be disqualified from the proceeding. Any party may at any time by motion to the Administrator request that the Regional Administrator or judicial officer be disqualified or request that the Administrator disqualify himself from the proceeding. The Administrator, Regional Administrator, judicial officer, regional judicial officer or presiding officer may at any time withdraw from any proceeding in which they deem themselves disqualified or unable to act for any reason.

(2) If the Regional Administrator, regional judicial officer, judicial officer, or presiding officer is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned to replace him. Assignment of a replacement for the Regional Administrator or judicial officer, or for the regional judicial officer shall be made by the Administrator or the Regional Administrator, respectively. The Administrator shall assign the Regional Administrator from the region where the case originated to replace the Administrator should he withdraw or disqualify himself. The Regional Administrator shall assign a new presiding officer if the original presiding officer was not an administrative law judge. The chief administrative law judge shall assign a new presiding officer from among available administrative law judge if the original presiding officer was an administrator law judge.

(3) The chief administrative law judge, at any stage in the proceeding, may reassign the case to an administrative law judge other than the one originally assigned in the event of the unavailability of the administrative law judge or where reassignment will result in efficiency in the scheduling of hearings.

§ 22.05 Filing, service, and form of pleadings and documents.

(a) *Filing of pleadings and documents.* (1) The original and two copies of the compliant, of the answer, and of all subsequent documents served in the proceeding shall be filed with the regional hearing clerk. The regional hearing clerk shall open and maintain the official file of the proceeding upon receipt of the compliant. The regional hearing clerk shall forward a copy of the complaint to the presiding officer upon his assignment to the proceeding.

(2) A certificate of service shall accompany each document filed or served. Except as otherwise provided, a party filing documents with the regional hearing clerk, after the filing of the complaint, shall serve copies thereof upon all other parties and the presiding officer at the same time.

(3) Notwithstanding § 22.05(a)(1), when the presiding officer corresponds directly with the parties, the original of the correspondence shall be sent to the regional hearing clerk, a copy shall be maintained by the presiding officer in the duplicate file, and a copy shall be sent to all parties. Parties who correspond directly with the presiding

officer shall in addition to serving all other parties send a copy of all such correspondence to the regional hearing clerk. A certificate of service shall accompany each document served under this subsection.

(b) *Service of pleading and documents.*—(1) *Service of complaint.* (i) Service of the compliant, together with a copy of these rules of practice, may be made personally or by certified mail, return receipt requested, on the respondent (or his representative).

(ii) Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name shall be made by personal service or certified mail, as prescribed by subparagraph (1)(i) of this paragraph, directed to an officer, partner, a managing or general agent, or to any other person authorized by appointment or by Federal or State law to receive service of process.

(iii) Service upon an officer or agency of the United States shall be made by delivering a copy of the complaint to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the complaint shall be served as prescribed in subparagraph (1)(ii) of this paragraph.

(iv) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving the complaint in the manner prescribed by the law of the State for the service of process on any such persons, or:

(A) If upon a State or local unit of government, or a State or local department, agency, corporation or other instrumentality, by delivering a copy of the complaint to the chief executive officer thereof;

(B) If upon a State or local officer by delivering a copy to such officer.

(v) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed return receipt. Such proof of service shall be filed with the complaint immediately upon completion of service.

(2) Service of documents other than complaint. All documents other than the complaint may be served personally or by certified or first class mail. A certificate of service shall accompany each document served.

(c) *Form of pleadings and documents.* (1) Except as provided herein, or by order of the presiding officer or Administrator, there are no specific requirements as to the form of documents.

(2) The first page of every pleading, letter, or other document shall contain a caption identifying the respondent and the docket number which is exhibited on the complaint.

(3) The original of any pleading, letter or other document (other than exhibits) shall be signed by the party filing or by his counsel or other representative. The signature constitutes a representation by the signer that he has read the pleading, letter or other document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The initial document filed by any person shall contain his name, address and telephone number. Any changes in this information shall be communicated promptly to the regional hearing clerk, presiding officer and all parties to the proceeding. A party who fails to furnish such information shall be deemed to have waived his right to notice and service under these rules.

(5) The Administrator, presiding officer, hearing clerk, or regional hearing clerk may refuse to file any document which does not comply with this paragraph. Written notice of such refusal shall be promptly given to the person submitting the document.

§ 22.06 Filing and service of rulings, orders, and decisions.

All rulings, orders, decisions, and other documents issued by the Regional Administrator, regional judicial officer, or the presiding officer, as appropriate, shall be filed with the regional hearing clerk. All such documents issued by the Administrator or judicial officer shall be filed with the hearing clerk. Copies of such rulings, orders, decisions, or ther documents shall be served directly upon all parties by the Administrator, Regional Administrator, judicial officer, regional judicial officer, or presiding officer, as appropriate.

§ 22.07 Computation and extension of time.

(a) *Computation.* In computing any period of time prescribed or allowed in these rules of practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included in computing the time allowed for such filing. However, if the period of time prescribed is five (5) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period shall be extended to include the next business day.

(b) *Extensions of time.* The presiding officer may grant an extension of time for the filing of any pleading, document, or motion (1) upon timely motion of a party to the proceeding only for good cause shown and after consideration of prejudice to other parties, or (2) upon his own motion. Such a motion by a party may only be made after notice to all other parties, unless the movant can show good cause why serving notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed, unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.

(c) *Service by mail.* Service is complete upon mailing. However, where a pleading or document is served by mail, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading.

§ 22.08 Ex parte discussion of proceeding.

At no time after the issuance of the complaint shall the Administrator, Regional Administrator, judicial officer, regional judicial officer, presiding officer, or any other person who will advise these officials in the decision on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a related proceeding, or with any representative of such person. Any memorandum or other communication addressed to the Administrator, Regional Administrator, judicial officer, regional judicial officer, or the presiding officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication.

§ 22.09 Examination of documents filed.

(a) Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during Agency business hours, inspect and copy any document filed in any proceeding. Such documents shall be made available by the regional hearing clerk or hearing clerk, as appropriate.

(b) The cost of duplicating documents filed in any proceeding shall be borne by the person seeking copies of such documents.

Subpart B—Parties and Appearances

§ 22.10 Appearances.

Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons

who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

§ 22.11 Intervention.

(a) *Motion.* Any person may file a motion for leave to intervene in any proceeding conducted under these rules of practice. The motion must set forth the grounds for the proposed intervention, the position and interest of the movant and the likely impact that intervention will have on the expeditious progress of the proceeding. Any person already a party to the proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in the foregoing sentence and paragraph (c) of this section, within ten (10) days after service of the motion for leave to intervene.

(b) *When filed.* A motion for leave to intervene in a proceeding must ordinarily be filed before the first prehearing conference or, in the absence of a prehearing conference, before the initation of correspondence under § 22.19(e), or if there is no such correspondence, prior to the setting of a time and place for a hearing. Any motion filed after that time must include, in addition to the information set forth in paragraph (a) of this section, a statement of good cause for the failure to file in a timely manner. An untimely motion for leave to intervene shall be granted only upon finding that extraordinary circumstances justify the granting of the motion. The intervenor shall be bound by any agreements, arrangements and other matters previously made in the proceeding.

(c) *Disposition.* Leave to intervene shall be granted only if the movant demonstrates that (1) there exists a common question of law or fact, and (2) his presence in the proceeding would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties. In evaluating the merits of a motion for leave to intervene, the presiding officer shall consider the extent to which the movant will be adversely affected by a final order and the extent to which the interests of the movant are not being adequately represented by the original parties.

(d) *Amicus curiae.* Persons not parties to the proceeding who wish to file briefs may, upon good cause shown, so move the presiding officer or the Administrator as appropriate. The motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. If the motion is granted, the presiding officer or Administrator shall issue an order setting the time for filing such brief. An amicus curiae is eligible to participate in any briefing after his motin is granted, and shall be served with all briefs, reply briefs, motions, and orders relating to issues to be briefed.

§ 22.12 Consolidation and severance.

(a) *Consolidation.* The presiding officer may, by motion or sua sponte, consolidate any or all matters at issue in two or more proceedings docketed under these rules of practice where there exist common parties or common questions of fact or law, and where consolidation would expedite or simplify consideration of the issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(b) *Severance.* The presiding officer may, by motion or sua sponte, for good cause shown, order any proceedings severed with respect to any or all parties or issues.

Subpart C—Prehearing Procedures

§ 22.13 Issuance of complaint.

If the complainant has reason to believe that a person has violated any provision of the act, or regulations promulgated, or a permit issued under the act, he may institute a proceeding for the assessment of a civil penalty by issuing a complaint under the act and these rules of practice. If the complainant has reason to believe that:

(a) A permittee violated any term or condition of the permit, or

(b) A permittee misrepresented or inaccurately described any material fact in the permit application or failed to disclose all relevant facts in the permit application, or

(c) Other good cause exists for such action,

he may institute a proceeding for the revocation or suspension of a permit by issuing a complaint under the act and these rules of practice. A complaint may be for the suspension or revocation of a permit in addition to the assessment of a civil penalty.

§ 22.14 Content and amendment of the complaint.

(a) *Complaint for the assessment of a civil penalty.* Each complaint for the assessment of a civil penalty shall include:

(1) A statement reciting the section(s) of the act authorizing the issuance of the complaint;

(2) Specific reference to each provision of the act and implementing regulations which respondent is alleged to have violated;

(3) A concise statement of the factual basis for alleging the violation;

(4) The amount of the civil penalty which is proposed to be assessed;

(5) A statement indicating the appropriateness of the proposed penalty;

(6) Notice of respondent's right to request a hearing on any material fact contained in the complaint, or on the appropriateness of the amount of the proposed penalty.

A copy of these rules of practice shall accompany each complaint served.

(b) Complaint for the revocation or suspension of a permit. Each complaint for the revocation or suspension of a permit shall include:

(1) A statement reciting the section(s) of the act, regulations, and/or permit authorizing the issuance of the complaint;

(2) Specific reference to each term or condition of the permit which the respondent is alleged to have violated, to each alleged inaccuracy or misrepresentation in respondent's permit application, to each fact which the respondent allegedly failed to disclose in his permit application, or to other reasons which form the basis for the complaint;

(3) A concise statement of the factual basis for such allegations;

(4) A statement as to whether it is proposed that the permit be revoked or suspended, and, if suspended or revoked in part, the terms and conditions of the proposed partial suspension or revocation;

(5) A statement indicating the basis for recommending the revocation, rather than the suspension, of the permit, or vice versa, as the case may be;

(6) Notice of the respondent's right to request a hearing on any material fact contained in the complaint, or on the appropriateness of the proposed revocation or suspension.

A copy of these rules of practice shall accompany each complaint served.

(c) *Derivation of proposed civil penalty.* The dollar amount of the proposed civil penalty shall be determined in accordance with any criteria set forth in the act relating to the proper amount of a civil penalty and with any civil penalty guidelines published under the act.

(d) *Amendment of the complaint.* The complaint may amend the complainant as a matter of right at any time before the answer is filed. Respondent shall have fifteen (15) additional days from the date of service of the amended complaint to file his answer. At any time after the filing of an answer to the complaint, the complaint may be amended only upon motion granted by the presiding officer.

(e) *Withdrawal of the complaint.* The complainant may withdraw the complaint without prejudice one time before the answer has been filed. After the answer is filed, the complainant

may withdraw the complaint, without prejudice, only upon motion granted by the presiding officer.

§ 22.15 Answer to the complaint.

(a) *General.* Where respondent (1) contests any material fact upon which the complaint is based; (2) contends that the amount of the penalty proposed in the complaint or the proposed revocation or suspension, as the case may be, is inappropriate; or (3) contends that he is entitled to judgment as a matter of law, he shall file a written answer to the complaint with the regional hearing clerk. Any such answer to the complaint must be filed with the regional hearing clerk within fifteen (15) days after service of the complaint.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense, (2) the facts which respondent intends to place at issue, and (3) whether a hearing is requested.

(c) *Request for hearing.* A hearing upon the issues raised by the complaint and answer shall be held upon request of respondent in the answer. In addition, a hearing may be held at the discretion of the presiding officer, sua sponte, if issues appropriate for adjudication are raised in the answer, although no hearing is requested, or upon motion of any party other than the respondent. Any request for hearing filed by a party other than the respondent shall state objections to the complaint with particularity and shall set forth the issues which the party intends to raise during the hearing.

(d) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

(e) *Amendment of the answer.* The respondent may amend the answer to the complaint upon motion granted by the presiding officer.

§ 22.16 Motions.

(a) *General.* All motions, except those made orally on the record during a hearing, shall (1) be in writing; (2) state the grounds therefor with particularity; (3) set forth the relief or order sought; and (4) be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. Such motions shall be served as provided by § 22.05(b)(2).

(b) *Response to motions.* Any party may file a response to any written motion within ten (10) days after service of such motion, except as otherwise provided by the presiding officer or the Administrator. This response shall be accompanied by any affidavit, certificate, legal memorandum, or other evidence relied upon. If no response is filed within the designated period, the parties may be deemed to have waived any objection to the granting of the motion. The presiding officer or Administrator may set a shorter time for response, or make such other orders concerning the disposition of motions as they deem appropriate.

(c) *Decision.* The Administrator shall rule upon all motions filed or made after the filing of an initial decision, except as provided in § 22.28. The presiding officer shall rule on all other motions. Oral argument on motions will be permitted where the presiding officer or the Administrator considers it necessary or desirable.

§ 22.17 Default order.

(a) *Default.* A party may be found to be in default (1) after motion, upon failure to file a timely answer to the complaint; (2) after motion or sua sponte, upon failure to comply with a prehearing or hearing order of the presiding officer; or (3) after motion or sua sponte, upon failure to appear at a conference or hearing without good cause being shown. No finding of default on the basis of a failure to appear at a hearing shall be made unless the appearing party presents sufficient evidence to the presiding officer to establish a prima facie case against the opposing party. Any motion for a default order shall include a proposed default order and shall be served upon all parties. The alleged defaulting party shall have fifteen (15) days from service to reply to the motion. Default by respondent constitutes an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations. If the complaint is for the assessment of civil penalty, the penalty proposed in the complaint shall become due and payable by respondent without further proceedings sixty (60) days after a final order issued upon default. If the complaint is for the revocation or suspension of a permit, the conditions of revocation or suspension proposed in the complaint shall become effective without further proceedings on the date designated by the Administrator in his final order issued upon default. Default by the complainant shall result in the dismissal of the complaint with prejudice.

(b) *Procedures upon default.* When the presiding officer finds a default has occurred, he shall render a proposed default order to be issued against the defaulting party. This order constitutes the initial decision of the presiding officer, and shall be filed with the regional hearing clerk.

(c) *Contents of a proposed default order.* A proposed default order shall include findings of fact, conclusions regarding all material issues of law, fact, or discretion, and the penalty which is therein assessed or the terms and conditions of permit revocation or suspension, as appropriate.

§ 22.18 Informal settlement; consent agreement and order.

(a) *Settlement policy.* The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. The respondent may confer with complainant concerning the settlement whether or not respondent requests a hearing. Settlement conferences shall not affect the respondent's obligation to file a timely answer under § 22.16.

(b) *Consent agreement.* The parties shall forward a signed written consent agreement and a proposed consent order to the Regional Administrator whenever settlement or compromise is proposed. The consent agreement shall state that, for the purpose of this proceeding, respondent (1) admits the jurisdictional allegations of the complaint; (2) admits the facts stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; and (3) consents to the assessment of a stated civil penalty or to the stated permit revocation or suspension, as the case may be. The consent agreement shall include any and all terms of the agreement.

(c) *Consent order.* No settlement or consent agreement shall dispose of any proceeding under these rules of practice without a consent order from the Regional Administrator. In preparing such an order, the Regional Administrator may require that the parties to the settlement appear before him to answer inquiries relating to the consent agreement or order.

§ 22.19 Prehearing conference.

(a) *Purpose of prehearing conference.* Unless a conference appears unnecessary, the Presiding Officer, at any time before the hearing begins, shall direct the parties and their counsel or other representative to appear at a conference before him to consider:

(1) The settlement of the case;

(2) The simplification of issues and stipulation of facts not in dispute;

(3) The necessity or desirability of amendments to pleadings;

(4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;

(5) The limitation of the number of expert or other witnesses;

(6) Setting a time and place for the public hearing; and

(7) Any other matters which may expedite the disposition of the proceeding.

(b) Exchange of witness lists and documents. Unless otherwise ordered by the presiding officer, each party at the prehearing conference shall make available to all other parties the names of the expert and other witnesses he intends to call, together with a brief narrative summary of their expected testimony. Copies of all documents and exhibits which each party intends to introduce into evidence shall be marked for identification as ordered by the presiding officer.

(c) *Record of the prehearing conference.* No transcript of any prehearing conference shall be made unless ordered by the presiding officer upon motion of a party or sua sponte. The presiding officer shall prepare and file for the record a written summary of the action taken at the conference. The summary shall incorporate any written stipulations or agreements of the parties and all rulings and appropriate orders containing directions to the parties.

(d) *Location of prehearing conference.* The prehearing conference shall be held in the city in which the relevant Environmental Protection Agency Regional Office is located unless (1) the presiding officer determines that there is good cause to hold it at another location in the region or by telephone, or (2) supplemental rules of practice published under the Act provide otherwise.

(e) *Unavailability of a prehearing conference.* If a prehearing conference is unnecessary or impracticable, the presiding officer, on motion or sua sponte, may direct the parties to correspond with him to accomplish any of the objectives set forth in this section.

§ 22.20 Accelerated decision; dismissal.

(a) *General.* The presiding officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the complainant or the respondent as to all or any part of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, or dismiss any party wih prejudice, under any of the following conditions:

(1) Failure to state a claim upon which relief can be granted, or direct or collateral estoppel;

(2) No genuine issue of material fact exists and a party is entitled to judgment as a matter of law, as to all or any part of a proceeding; or

(3) Such other reasons as are just.

(b) *Effect.* (1) If an accelerated decision is issued as to all the issues and claims in the proceeding, the decision constitutes an initial decision of the presiding officer, and shall be filed with the regional hearing clerk.

(2) If an accelerated decision is rendered on less than all issues or claims in the proceeding, the presiding officer shall determine what material facts exist without substantial controversy and what material facts remain controverted in good faith. He shall thereupon issue an interlocutory order specifying the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed.

Subpart D—Hearing Procedure

§ 22.21 Scheduling the hearing.

(a) When a complaint is filed, the regional hearing clerk or hearing clerk shall refer the proceeding to the chief administrative law judge who shall assign himself or another administrative law judge as presiding officer. The presiding officer shall then notify the parties of his assignment.

(b) Notice of hearing. If the respondent requests a hearing in his answer, or one is ordered by the presiding officer under § 22.15(c), the presiding officer shall serve upon the parties a notice of hearing. This notice shall set a time and place for the hearing and may provide for a future prehearing conference. The presiding officer may issue the notice of hearing after a prehearing conference is held. The parties shall be notified at least fifteen (15) days prior to the date set for the hearing.

(c) Postponement of hearing. No request for postponement of a hearing will be granted except upon motion and for good cause shown.

(d) Location of the hearing. The location of the hearing shall be determined in accordance with the method for determining the location of a prehearing conference under § 22.19(d).

§ 22.22 Evidence.

(a) *General.* The presiding officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value, except that statements made during settlement conferences are not admissible. In the presentation, admission, disposition, and use of evidence, the presiding officer shall preserve the confidentiality of trade secrets and other privileged commercial and financial information. The confidential or trade secret status of any information shall not, however, preclude its being introduced into evidence. The presiding officer may make such orders as may be necessary to consider such evidence in camera, including the preparation of a supplemental initial decision to address questions of law, fact, or discretion which arise out of that portion of the evidence which is confidential or which includes trade secrets.

(b) *Examination of witnesses.* Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in these rules of practice or by the presiding officer. Parties shall have the right to cross-examine a witness who appears at the hearing: *Provided,* That such cross-examination is not unduly repetitious.

(c) *Verified statements.* The presiding officer may admit and insert into the record as evidence, in lieu of oral testimony, statements of fact or opinion prepared by a witness. The admissibility of the evidence contained in the statement shall be subject to the same rules as if the testimony were produced under oral examination. Before any such statement is read or admitted into evidence, the witness shall deliver a copy of the statement to the presiding officer, the reporter, and opposing counsel. The witness presenting the statement shall swear to or affirm the statement and shall be subject to appropriate oral cross-examination upon the contents thereof.

(d) *Admission of affidavits where the witness is unavailable.* The presiding officer may, upon good cause shown, admit into evidence affidavits of witnesses who are unable to be present at the hearing.

(e) *Exhibits.* Where practicable, an original and one copy of each exhibit shall be filed with the presiding officer for the record and a copy shall be furnished to each party. A true copy of any exhibit may be substituted for the original.

(f) *Official notice.* Official notice may be taken of any matter judicially noticed in the Federal courts, and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 22.23 Objections and offers of proof.

(a) *Objection.* Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the presiding officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be auto-

matic and is not waived by further participation in the hearing.

(b) *Offer of proof.* Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. The offer of proof for excluded documents or exhibits shall consist of the insertion in the record of the documents or exhibits excluded. Where the Administrator decides that the ruling of the presiding officer in excluding the evidence was both erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence or, where appropriate, the Administrator may evaluate such evidence in preparing his final order. If the Administrator in the preparation of his final order relies upon any evidence excluded at the hearing by the presiding officer, he shall explicitly identify in the final order any such excluded evidence relied upon and his reasons therefor.

§ 22.24 Burden of presentation; burden of persuasion.

The complainant has the burden of going forward with and of proving that the violation occurred as set forth in the complaint and that the proposed civil penalty, revocation, or suspension, as the case may be, is appropriate. Following the establishment of a prima facie case, respondent shall have the burden of presenting and of going forward with any defense to the allegations set forth in the complaint. Each matter of controversy shall be determined by the presiding officer upon a preponderance of the evidence.

§ 22.25 Filing the transcript.

The hearing shall be transcribed verbatim. Promptly following the taking of the last evidence, the reporter shall transmit to the regional hearing clerk the original and as many copies of the transcript of testimony as are called for in the reporter's contract with the Agency, and also shall transmit to the presiding officer a copy of the transcript. A certificate of service shall accompany each copy of the transcript. The regional hearing clerk shall notify all parties of the availability of the transcript and shall furnish the parties with a copy of the transcript upon payment of the cost of reproduction, unless a party can show that the cost is unduly burdensome. Any person not a party to the proceeding may receive a copy of the transcript upon payment of the reproduction fee.

§ 22.26 Proposed findings, conclusions, and order.

Within twenty (20) days after the parties are notified of the availability of the transcript, or within such longer time as may be fixed by the presiding officer, any party may submit for the consideration of the presiding officer proposed findings of fact, conclusions of law, and a proposed rule or order, together with briefs in support thereof. The presiding officer shall set a time by which reply briefs must be submitted. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authories relied on.

Subpart E—Initial Decision and Motion to Reopen a Hearing

§ 22.27 Initial decision.

(a) *Filing and contents.* The presiding officer shall issue and file with the regional hearing clerk his initial decision as soon as practicable after the period for filing reply briefs under § 22.26 has expired. The initial decision shall contain his findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefor, a recommended civil penalty assessment, if appropriate, and a proposed final order. The regional hearing clerk shall forward the initial decision (which includes an accelerated decision or a proposed default order), and the record of the proceeding to the hearing clerk.

(b) *Amount of civil penalty.* The presiding officer shall determine the dollar amount of the recommended civil penalty to be assessed in the initial decision in accordance with any criteria set forth in the Act relating to the proper amount of a civil penalty, and must consider any civil penalty guidelines published under the Act. The presiding officer may increase or decrease the assessed penalty from the amount proposed to be assessed in the complaint.

(c) *Effect of initial decision.* The initial decision of the presiding officer shall become the final order of the Administrator within forty-five (45) days after its receipt by the hearing clerk and without further proceedings unless (1) an appeal to the Administrator is taken from it by a party to the proceedings, (2) the Administrator elects, sua sponte, to review the initial decision.

§ 22.28 Motion to reopen a hearing.

(a) *Filing and content.* A request to reopen a hearing to take further evidence must be made by motion to the presiding officer and filed with the regional hearing clerk at any time after service of the initial decision and prior to the issuance of the final order. Each such motion shall (1) state the specific grounds upon which relief is sought, (2) state briefly the nature and purpose of the evidence to be adduced, (3) show that such evidence is not cumulative, and (4) set forth a good reason why such evidence was not adduced at a hearing.

(b) *Disposition of motion to reopen a hearing.* Within ten (10) days following the service of a motion to reopen a hearing any other party to the proceeding may file with the regional hearing clerk and serve on all other parties an answer thereto. The presiding officer shall announce his intent to grant or to deny such motion as soon as practicable thereafter. The conduct of any proceeding which may be required as a result of the granting of any motion allowed in this section shall be governed by the provisions of the applicable section of these rules.

Subpart F—Appeals and Administrative Review

§22.29 Appeal from or review of interlocutory orders or rulings.

(a) *Request for interlocutory appeal.* Except as provided in this section, appeals to the Administrator shall obtain as a matter of right only from a proposed default order, an accelerated decision issued under § 22.20(b)(1), or a decision rendered after an evidentiary hearing. Appeals from other orders or rulings shall lie only if the presiding officer, upon motion of a party, certifies such orders or rulings to the Administrator on appeal. Requests to the presiding officer for such certification shall be filed in writing within five (5) days of notice of the ruling or service of the order, and shall state briefly the grounds to be relied upon on appeal.

(b) *Availability of interlocutory appeal.* The presiding officer may certify a ruling for appeal to the Administrator when (1) the order or ruling involves an important question of law or policy concerning which there are substantial grounds for difference of opinion; and (2) either (i) an immediate appeal from the order or ruling will materially advance the ultimate termination of the proceeding, or (ii) review after the final order is issued will be inadequate or ineffective.

(c) *Decision.* If the Administrator determines that certification was improvidently granted, or if he takes no action within thirty (30) days of the certification, the appeal is dismissed. When the presiding officer declines to certify an order or ruling to the Administrator on interlocutory appeal, it may be reviewed by the Administrator only upon appeal from the initial decision, except when the Administrator determines, upon motion of a party and in exceptional circumstances, that

to delay review would be contrary to the public interest. Such motion shall be made within five (5) days of service of an order of the presiding officer refusing to certify a ruling for interlocutory appeal to the Administrator. Ordinarily, the interlocutory appeal will be decided on the basis of the submissions made by the presiding officer. The Administrator may, however, allow further briefs and oral argument.

(d) *Stay of proceedings.* The presiding officer may stay the proceedings pending a decision by the Administrator upon an order or ruling certified by the presiding officer for an interlocutory appeal. Proceedings will not be stayed except in extraordinary circumstance. Where the presiding officer grants a stay of more than thirty (30) days, such stay must be separately approved by the Administrator.

§ 22.30 Appeal from or review of initial decision.

(a) *Notice of appeal.* (1) Any party may appeal any adverse ruling or order of the presiding officer by filing a notice of appeal and an accompanying appellate brief with the hearing clerk within twenty (20) days after receipt by the hearing clerk of the initial decision. The notice of appeal shall set forth alternative findings of fact, alternative conclusions regarding issues of law or discretion, and a proposed order together with relevant references to the record and the initial decision. The appellant's brief shall contain a statement of the issues presented for review, a statement of the nature of the case and the facts relevant to the issues presented for review, argument on the issues presented, and a short conclusion stating the precise relief sought, together with appropriate references to the record. The hearing clerk shall serve the notice of appeal and the appellant's brief upon all other parties and amicus curiae.

(2) Within fifteen (15) days of the service of notices of appeal and briefs under paragraph (a)(1) of this section, any other party or amicus curiae may file and serve with the hearing clerk a reply brief responding to argument raised by the appellant, together with references to the relevant portions of the record, initial decision, or opposing brief. Reply briefs shall not, however, raise additional arguments.

(b) *Sua sponte review by the Administrator.* Whenever the Administrator determines sua sponte to review an initial decision, the hearing clerk shall serve notice of such intention on the parties within forty-five (45) days after receipt of the initial decision. The notice shall include a statement of issues to be briefed by the parties and a time schedule for the service and filing of briefs.

(c) *Scope of appeal or review.* The appeal of the initial decision shall be limited to the issues raised by the appellant unless the Administrator determines that additional issues should be argued. If the Administrator determines that additional issues should be argued, he shall give counsel for the parties reasonable written notice of such determination to permit preparation of adequate argument.

(d) *Argument before the Administrator.* The Administrator may, upon request of a party or sua sponte, assign a time and place for oral argument after giving consideration to the convenience of the parties.

Subpart G—Final Order on Appeal

§ 22.31 Final order on appeal.

(a) *Contents of the final order.* When an appeal has been taken or the Administrator issues a notice of intent to conduct review sua sponte, the Administrator shall issue a final order as soon as practicable after the filing of all appellate briefs or oral argument, whichever is later. The Administrator shall adopt, modify or set aside the findings and conclusions contained in the decision or order being reviewed, and shall set forth in the final order the reasons for his actions. The Administrator may, in his discretion, increase or decrease the assessed penalty from the amount recommended to be assessed in the decision or order being reviewed.

(b) *Payment of a civil penalty.* The respondent shall pay the full amount of the civil penalty assessed in the final order within sixty (60) days after receipt of the final order unless otherwise agreed by the parties. Payment shall be made by forwarding to the regional hearing clerk a cashier's check or certified check in the amount of the penalty assessed in the final order, payable to the United States of America.

§ 22.32 Motion to reconsider a final order.

Motions to reconsider a final order shall be filed within ten (10) days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall not stay the effectiveness of the final order unless the Administrator provides otherwise.

Subpart H—Supplemental Rules

§ 22.33 Supplemental rules of practice governing the administrative assessment of civil penalties under section 211 of the Clean Air Act.

(a) *Scope of these supplemental rules.* These supplemental rules of practice shall govern, in conjunction with the consolidated rules of practice (40 CFR Part 22), all formal adjudications for the assessment of any civil penalty conducted under section 211 of the Clean Air Act as amended (42 U.S.C. 7445). Where inconsistencies exist between these supplemental rules and the consolidated rules, these supplemental rules shall apply.

(b) *Headquarters enforcement.* Where the complainant is the Assistant Administrator for enforcement or his delegate,

(1) All documents shall be filed with the hearing clerk, and

(2) The prehearing conference and hearing shall be held in Washington, D.C., unless the presiding officer determines that there is good cause for it to be held at another location.

(c) *"Presiding Officer."* For purposes of hearings conducted pursuant to section 211 of the Clean Air Act, "presiding officer" means the administrative law judge appointed under 5 U.S.C. 3105 (see also Pub. L. 95-251, 92 Stat. 183) or an attorney who is an employee or authorized representative of the Agency.

(d) *Assignment of a presiding officer.* Upon the filing of a complaint, the regional hearing clerk or hearing clerk shall forward the case to the Regional Administrator or Administrator, respectively, who shall assign the presiding officer. The Regional Administrator or Administrator may, however, request that the chief administrative law judge assign an administrative law judge as presiding officer. If the chief administrative law judge finds that such an assignment can be made without impairing the ability of his office to timely discharge its other responsibilities, he shall make the assignment. Otherwise, he shall notify the Regional Administrator or Administor that he is unable to make such an assignment.

(e) *Evaluation of proposed civil penalty.* In determing the dollar amount of the recommended civil penalty assessed in the initial decision, the presiding officer shall consider (1) The gravity of the violation, (2) the size of respondent's business, (3) the respondent's history of compliance with the Act, (4) the action taken by respondent to remedy the specific violation, and (5) the effect of such proposed penalty on respondent's ability to continue in business. The presiding officer must also consider any guidelines for the assessment of civil penalties published in the FEDERAL REGISTER.

§ 22.34 Supplemental rules of practice governing administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.

(a) *Scope of these supplemental rules.* These supplemental rules of practice shall govern, in conjunction

with the consolidated rules of practice (40 CFR Part 22), all formal adjudications for the assessment of any civil penalty conducted under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 1261(a)). Where inconsistencies exist between these supplemental rules and the consolidated rules, these supplemental rules shall apply.

(b) *Venue.* The prehearing conference and the hearing shall be held in the county, parish, or incorporated city of the residence of the person charged, unless otherwise agreed in writing by all parties.

(c) *Evaluation of proposed civil penalty.* In determing the dollar amount of the recommended civil penalty assessed in the initial decision, the presiding officer shall consider, in addition, to the criteria listed in section 14(a)(3) of the Act, (1) Respondent's history of compliance with the Act or its predecessor statute and (2) any evidence of good faith or lack thereof. The presiding officer must also consider the guidelines for the assessment of civil penalties published in the FEDERAL REGISTER (39 FR 27711).

§ 22.35 Supplemental rules of practice governing administrative assessment of civil penalties and the revocation or suspension of permits under the Marine Protection, Research, and Sanctuaries Act.

(a) *Scope of these supplemental rules.* These supplemental rules shall govern, in conjunction with the consolidated rules of practice (40 CFR Part 22), all formal adjudications conducted under section 105 (a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415 (a) and (f)). Where in consistencies exist between these supplemental rules and the consolidated rules, these supplemental rules shall apply.

(b) *Additional criterion for the issuance of a complaint for the revocation or suspension of a permit.* In addition to the three criteria listed in 40 CFR 22.13 for issuing a complaint for the revocation or suspension of a permit, complaints may be issued on the basis of a person's failure to keep records and notify appropriate officials of dumping activities, as required by 40 CFR 224.1 and 223.2.

§ 22.36 Supplemental rules of practice governing administrative assessment of civil penalties and the revocation or suspension of permits under the Solid Waste Disposal Act.

(a) *Scope of these supplemental rules.* These supplemental rules of practice shall govern, in conjunction with the consolidated rules of practice (40 CFR Part 22), all formal adjudications conducted under section 3008 of the Solid Waste Disposal Act (42 U.S.C. 6928) (the "Act"). Where inconsistencies exist between these supplemental rules and the consolidated rules, these supplemental rules shall apply.

(b) *Issuance of notice.* Whenever, on the basis of any information, the Administrator determines that any person is in violation of (1) Any requirement of subtitle C of the Act, (2) any regulation promulgated pursuant to subtitle C of the Act, or (3) a term or condition of a permit issued pursuant to subtitle C of the Act, the Administrator shall issue notice to the alleged violator of his failure to comply with such requirement, regulation or permit.

(c) *Content of notice.* Each notice of violation shall include:

(1) A specific reference to each provision of the Act, regulation, or permit term or condition which the alleged violator is alleged to have violated; and

(2) A concise statement of the factual basis or alleging such violation.

(d) *Service of notice.* Service of notice shall be made in accordance with § 22.05(b)(2) of the consolidated rules of practice.

(e) *Issuance of the complaint.*

(1) Except as provided in paragraph (e)(3) of this section, the complainant may issue a complaint whenever he has reason to believe that any violation extends beyond the 13th day after service of the notice of violation.

(2) The complaint shall include, in addition to the elements stated in § 22.14 of the consolidated rules, an order requiring compliance within a specified time period. The complaint shall be equivalent to the compliance order referred to in section 3008 of the Act.

(3) Whenever a violation is of a non-continuous or intermittent nature, the Administrator may issue, without any prior notice to the violator, a complaint pursuant to § 22.14 of the consolidated rules of practice which may also require the violator to take any and all measures necessary to offset all adverse effects to health and the environment created, directly or indirectly, as a result of the violation.

(4) Notwithstanding § 22.15(a), any answer to the complaint must be filed with the regional hearing clerk within thirty (30) days after the filing of the complaint.

(f) *Scheduling of the hearing.* The hearing shall not be held prior to the expiration of the time for compliance as set forth in the compliance order.

(g) *Subpenas.*

(1) The attendance of witnesses or the production of documentary evidence may be required by subpena. The presiding officer may grant a request for a subpena upon a showing of (i) the grounds and necessity therefor, and (ii) of the materiality and relevancy of the evidence to be adduced. Requests for the production of documents shall describe with specificity the documents sought.

(2) Subpenas shall be served in accordance with § 22.05(b)(1) of the consolidated rules of practice.

(3) Witnesses summoned before the presiding officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears. Where a witness appears pursuant to a request initiated by the presiding officer, fees shall be paid by the Agency.

(h) *Evaluation of proposed civil penalty.* Notwithstanding § 22.27(b), the presiding officer shall determine the dollar amount of the recommended civil penalty to be assessed in the initial decision in accordance with the penalty assessment guidelines published under the authority of sections 2002 and 3008 of the Act (42 U.S.C. 6912, 6928).

APPENDIX

Region I, John F. Kennedy Federal Building, Boston, Mass. 02203.
Region II, 26 Federal Plaza, New York, N.Y. 10007.
Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, Pa. 19106.
Region IV, 345 Courtland Street NE., Atlanta, Ga. 30308.
Region V, 230 South Dearborn Street, Chicago, Ill. 60604.
Region VI, First International Building, 1201 Elm Street, Dallas, Tex. 75270.
Region VII, 1735 Baltimore, Kansas City, Mo. 64108.
Region VIII, 1860 Lincoln Street, Denver, Colo. 80295.
Region IX, 215 Fremont Street, San Francisco, Calif. 94105.
Region X, 1200 6th Avenue, Seattle, Wash. 98101.

[FR Doc. 78-21769 Filed 8-3-78; 8:45 am]

Federal Register

FRIDAY, AUGUST 4, 1978
PART VIII

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

■

COMMUNITY DEVELOPMENT BLOCK GRANTS

Indian Tribes and Alaska Natives

[4210-01]

Title 24—Housing and Urban Development

CHAPTER V—ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-78-514]

PART 571—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVES

Deletion of Housing Assistance Plan in Project Application Requirement

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: The Secretary is amending the community development block grant program for Indian tribes and Alaska Natives for fiscal year 1978 to forego the requirement that a Housing Assistance Plan (HAP) be included in the project applications. This action is taken because it has been determined that the present HAP form is not sufficient to meet all of the special conditions which exist on Indian reservations, and because there is now insufficient time in which to develop a revised form.

DATE: This amendment is effective on August 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Howard Ball, Director, Office of Policy Planning, Room 7158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: On March 23, 1978 (43 FR 12221) the Department published by interim rule a new part 571, which applied the community development block grant program to eligible Indian tribes, including Alaska Natives. Sections 571.305(d) and 571.405(e) of that rule require applicants for assistance to submit a Housing Assistance Plan (HAP). The Secretary has considered requiring applicants to submit their HAP's on the same HAP form in use for the basic part 570 block grant program. Further analysis has indicated, however, that the part 570 HAP form will have to be substantially revised before it is suitable in view of special conditions which exist on Indian reservations. There is now insufficient time in which to produce a revised part 571 HAP form prior to application deadlines for this fiscal year. Therefore, the Secretary is foregoing amending, for this fiscal year, the requirement of §§ 571.305(d) and 571.405(e) regarding submission of a HAP.

Similarly, because of this urgency, it is impracticable to provide for comment and public participation before adoption of a final rule. Also, because this amendment relaxes existing requirements, it may be made effective August 4, 1978.

A finding of environmental inapplicability has been made pursuant to HUD Handbook 1390.1. The finding is available for inspection during regular business hours in the office of the rules docket clerk, room 5218, at the above address.

Accordingly, 24 CFR part 571 is amended by suspending the effectiveness of §§ 571.305(d) and 571.405(e) for all applications filed on or before September 30, 1978.

(Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d); 42 U.S.C. 5301, et seq.).)

Issued at Washington, D.C., July 28, 1978.

ROBERT C. EMBRY, Jr.,
Assistant Secretary for Community Planning and Development.

[FR Doc. 78-21780 Filed 8-3-78; 8:45 am]

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