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Monday	Tuesday	Wednesday	Thursday	Friday
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	LABOR			LABOR
	HEW/FDA			HEW/FDA

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NOTE: As of August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

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[3195-01-M]

Title 3—The President

Memorandum of December 6, 1978

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended, (The "Act"), Authorizing the Use of $5,000,000 of Funds Made Available From the United States Emergency Refugee and Migration Assistance Fund

[Presidential Determination No. 79-1]

Memorandum for the Secretary of State

THE WHITE HOUSE,
Washington, December 6, 1978.

In order to meet unexpected urgent needs arising in connection with the responsibility of the United Nations High Commissioner for Refugees to provide care and maintenance for Indochinese refugees in first asylum, I hereby determine, pursuant to Section 2(c)(1) of the Act, that it is important to the national interest that up to $5,000,000 from the United States Emergency Refugee and Migration Assistance fund be made available through the Department of State for this purpose.

The Secretary of State is requested to inform the appropriate committees of the Congress of this Determination and the obligation of funds made under this authority.

The Determination shall be published in the FEDERAL REGISTER.

Jimmy Carter

[FR Doc. 78-35093 Filed 12-13-78; 4:16 pm]

[3195-01-M]

Executive Order 12103 • **December 14, 1978**

President's Commission on the Coal Industry

By the authority vested in me as President by the Constitution of the United States of America, and in order to modify and continue, in accord with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), a balanced forum to review the state of the Nation's coal industry, it is hereby ordered as follows:

1-1. *Establishment.*

1-101. There is established the President's Commission on the Coal Industry.

1-102. The membership of the Commission shall be composed of five persons appointed by the President from citizens in private life. One shall represent the interests of labor, one shall represent management and three shall represent the general public. The labor and management representatives shall be chosen from among candidates recommended by the United Mine Workers of America and the Bituminous Coal Operators Association of America, but shall not be members of these organizations. The President shall designate one of the members representing the general public to chair the Commission.

1-103. The President of the Senate and the Speaker of the House of Representatives may designate three members of their respective Houses to attend and participate in all meetings of the Commission *ex officio.*

1-104. The Secretary of Labor and the Secretary of Energy or their designees may also attend and participate in all meetings of the Commission *ex officio.*

1-2. *Functions.*

1-201. The Commission shall conduct a comprehensive review of the state of the coal industry in the United States with particular emphasis on matters pertaining to productivity, capital investment, and the general economic health of the industry; collective bargaining, grievance procedures, and such other aspects of labor-management relations as the Commission deems appropriate; health, safety and living conditions in the Nation's coal fields; the development and application of new technologies to the industry; the impact on the coal industry of Federal regulations; and such other matters as the Commission deems appropriate.

1-202. The five members appointed by the President shall prepare and transmit a final report of their findings and recommendations to the President, the Secretary of Labor and the Secretary of Energy.

1-203. To assist the Commission in the exercise of its functions, the Commission may sponsor a White House conference on the future of the coal industry.

1-3. *Administration.*

1-301. The Chairman of the Commission is authorized to appoint and fix the compensation of a staff and such other persons as may be necessary to carry out its functions, subject to the applicable provisions of the Federal Advisory Committee Act, including Section 7(d)(2) thereof. Supergrade staff positions may not include more than one position at the GS-18 level, one position at the GS-17 level, and three positions at the GS-16 level, and shall be subject to the applicable provisions of law, including any applicable provisions of Sections 3324 and 5108 of Title 5 of the United States Code. The Commission may obtain services in accordance with the provisions of Section 3109 of Title 5 of the United States Code, to the extent that funds are available therefor.

1-302. To the extent authorized by law and requested by the Chairman of the Commission or by the Departments of Labor or Energy, the General Services Administration shall provide the Commission with necessary administrative services, facilities and support on reimbursable basis.

1-303. The Department of Labor and the Department of Energy shall, to the extent permitted by law and subject to the availability of funds, provide the Commission with such information, advice, facilities, support, funds and services, including staff, as may be necessary for the effective performance of the Commission's functions.

1-304. The Commission may request any Executive agency to furnish such information or assistance it deems necessary to carry out its functions. Each such agency is authorized, to the extent permitted by law, to furnish such information and assistance to the Commission upon request of the Chairman.

1-305. Each member of the Commission may receive compensation at the rate now or hereafter prescribed by law for GS-15 of the General Schedule for each day such member is engaged in the work of the Commission. Each member may also receive travel expenses, including per diem in lieu of subsistence (5 U.S.C. 5702 and 5703). Individuals designated to attend meetings under Section 1-103 of this Order may also receive such travel expenses, including per diem in lieu of subsistence, which are permitted by law.

1-306. The functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I) which are applicable to the Commission, except that of reporting annually to the Congress, shall be performed by the Administrator of General Services.

1-4. *Final Report and Termination.*

1-401. The final report required by Section 1-202 of this Order shall be transmitted not later than one year from the date of this Order.

1-402. The Commission shall terminate one year from the date of this Order.

1-403. Executive Order No. 12062 of May 26, 1978, is revoked.

Jimmy Carter

THE WHITE HOUSE,
December 14, 1978.

[FR Doc. 78-35142 Filed 12-14-78; 11:32 am]

rules and regulations

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

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

[6325-01-M]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Commerce

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under Schedule C a position at the Department of Commerce because it is confidential in nature. Appointments may be made to this position without examination by the Civil Service Commission.

EFFECTIVE DATE: August 25, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3314(r)(2) is amended as set out below:

§ 213.3314 Department of Commerce.

* * * * *

(r) *National Oceanic and Atmospheric Administration.* * * *

(2) One Private Secretary (Confidential Assistant) and one Special Assistant to the Deputy Administrator.

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

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

[FR Doc. 78-34937 Filed 12-14-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Department of Commerce, Temporary Boards and Commissions

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under Schedule C certain positions at the Department of Commerce and the Temporary Boards and Commissions because they are confidential in nature. Appointments may be made to these positions without examination by the Civil Service Commission.

EFFECTIVE DATES: Department of Commerce—November 14, 1978; Temporary Boards and Commissions—November 13, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3314(r)(1) is amended and 213.3399(d) is added as set out below:

§ 213.3314 Department of Commerce.

* * * * *

(r) *National Oceanic and Atmospheric Administration.*

(1) One Private Secretary, one Executive Assistant, and two Special Assistants to the Administrator.

* * * * *

§ 213.3399 Temporary Boards and Commissions.

* * * * *

(d) *Presidential Commission on World Hunger.*

(1) One Special Assistant to the Executive Director.

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

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

[FR Doc. 78-34931 Filed 12-14-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Department of Defense, Department of Commerce

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under Schedule C certain positions at the Department of Defense and Department of Commerce because they are confidential in nature. Appointments may be made to these positions without examination by the Civil Service Commission.

EFFECTIVE DATE: November 6, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3306(a)(89) & (98), and 213.3314(a)(34) are amended as set out below:

§ 213.3306 Department of Defense.

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

(89) One Confidential Assistant and one Special Assistant for Policy Analysis to the Deputy Assistant Secretary (Near Eastern, African and South Asian Affairs), Office of the Assistant Secretary of Defense for International Security Affairs.

* * * * *

(98) Four Special Assistants to the Deputy Assistant Secretary (Policy Plans and NSC Affairs), Office of the Assistant Secretary of Defense for International Security Affairs.

* * * * *

§ 213.3314 Department of Commerce.

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

(34) One Deputy Director and one Special Assistant, Office of Public Affairs.

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

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

[FR Doc. 78-34934 Filed 12-14-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Environmental Protection Agency, Department of Energy, National Foundation on the Arts and the Humanities.

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under Schedule C certain positions at the Environmental Protection Agency, Department of Energy, and the National Foundation on the Arts and the Humanities because they are confidential in nature. Appointments may be made to these positions without examination by the Civil Service Commission.

EFFECTIVE DATES: Environmental Protection Agency & National Foundation on the Arts and the Humanities—November 15, 1978; Department of Energy—November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3318(b)(8), 213.3331(m)(1) and 213.3382(b) are amended as set out below:

§ 213.3318 Environmental Protection Agency.

* * * * *

(b) *Office of Legislation.* * * *

(8) Three Special Assistants (Congressional Affairs).

* * * * *

§ 213.3331 Department of Energy

* * * * *

(m) *Office of the Assistant Secretary for Intergovernmental and Institutional Relations.*

(1) One Confidential Assistant (Secretary) and one Staff Assistant to the Assistant Secretary.

* * * * *

§ 213.3382 National Foundation on the Arts and the Humanities.

* * * * *

(b) One Special Assistant for Minority Concerns, and two Assistants to the Chairman, National Endowment for the Arts.

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

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

[FR Doc. 78-34932 Filed 12-14-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Department of Energy and National Foundation on the Arts and Humanities

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment changes the title of certain positions (1) at the Department of Energy from Confidential Secretary to the Secretary to Confidential Assistant (Secretary) to the Secretary to reflect the current duties of the position and (2) at the National Foundation on the Arts and the Humanities from Staff Assistant to the Special Assistant to the Chairman (for Constituency Liaison) to Staff Assistant to the Assistant Chairman for Institutional Relations, National Endowment for the Humanities to reflect the current title of the superior and an organizational redesignation.

EFFECTIVE DATES: Department of Energy—November 6, 1978; National Foundation on the Arts and the Humanities—October 31, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3331(a)(1) and 213.3382(m) are amended as set out below:

§ 213.3331 Department of Energy.

(a) *Office of the Secretary.*

(1) Two Confidential Assistants (Secretary), one Steward, and one Motor Vehicle Operator to the Secretary.

* * * * *

§ 213.3382 National Foundation on the Arts and Humanities.

* * * * *

(m) One Staff Assistant to the Assistant Chairman for Institutional Relations, National Endowment for the Humanities.

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

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

[FR Doc. 78-34933 Filed 12-14-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare; Department of Energy

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment (1) changes the title of a position at the Department of Health, Education, and Welfare from one Special Assistant to the Deputy Assistant Secretary for Education (Policy Communications) to Director, Office of Policy Communications, under the Deputy Assistant Secretary for Education to more appropriately reflect the duties of the position, (2) changes the title of a position at the Department of Energy from Staff Assistant, Congressional Affairs to the Special Assistant, Congressional Affairs to Staff Assistant, Congressional Affairs to the Director, Office of Congressional Affairs to more appropriately reflect the duties of the position and an organizational transfer. This position formerly existed at the Federal Energy Administration and was subsequently transferred to the Department of Energy on September 30, 1977, and (3) excepts under Schedule C one position at the Department of Energy because it is confidential in nature. Appointments may be made to these positions without examination by the Civil Service Commission.

EFFECTIVE DATES: Department of Health, Education, and Welfare—October 27, 1978; Department of Energy—October 23 & 21, 1978, respectively.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3316(r)(4) and 213.3331(m)(6) are amended as set out below:

§ 213.3316 Department of Health, Education, and Welfare.

* * * * *

(r) *Office of the Assistant Secretary for Education.* * * *

(4) Director, Office of Policy Communications, under the Deputy Assistant Secretary for Education.

* * * * *

§ 213.3331 Department of Energy.

* * * * *

(m) *Office of the Assistant Secretary for Intergovernmental and Institutional Relations.* * * *

(6) Five Staff Assistants, Congressional Affairs.

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

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

[FR Doc. 78-34938 Filed 12-14-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Department of Interior, Civil Aeronautics Board

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under Schedule C certain positions at the Department of Interior and the Civil Aeronautics Board because they are confidential in nature. Appointments to these positions may be made without examination by the Civil Service Commission.

EFFECTIVE DATE: November 2, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3312(a)(47) and 213.3340(h) are amended as set out below:

§ 213.3312 Department of Interior.

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

(47) Five Special Assistants to the Assistant Secretary, Land and Water Resources.

* * * * *

§ 213.3340 Civil Aeronautics Board.

* * * * *

(h) One Writer and one Deputy Director, Office of Community and Congressional Relations.

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

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

[FR Doc. 78-34936 Filed 12-14-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

National Foundation on the Arts and the Humanities

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment changes or corrects the titles of various Schedule A positions in the National Endowment for the Arts in order to keep the authorities current. In addition, this amendment shows the Schedule A authority for seven program director positions under separate authorities for each position instead of one authority in order to facilitate use of the authority. This amendment also revokes the Schedule A authorities for one position of Director, Interdisciplinary Programs, and one position of Director of Performing Arts and Public Media Programs because these authorities are no longer used.

EFFECTIVE DATE: November 30, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3182(a) (2), (3), (4), (6), (7), (13), (16), (22), (23), (24), (25), and (26) are amended, (a) (19) and (29) are revoked, and (a)(30), (31), (32), (33), (34), and (35) are added, as follows;

§ 213.3182 National Foundation on the Arts and the Humanities.

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

(2) Until September 30, 1980, one position of Director of Federal-State Partnership.

(3) Until September 30, 1980, one position of Director of Literature Programs.

(4) Until September 30, 1980, one position of Assistant Director of Theatre Programs. * * *

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

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

(13) Until September 30, 1980, two positions of Assistant Director of Federal-State Partnership. * * *

(16) Until September 30, 1980, one position of Director of Media Art Programs. * * *

(19) (Revoked). * * *

(22) Until September 30, 1980, one position of Assistant Director of Media Arts Programs.

(23) Until September 30, 1980, one position of Assistant Director of Architecture, Planning, and Design Programs.

(24) Until September 30, 1980, one position of Assistant Director of Dance Programs.

(25) Until September 30, 1980, one position of Assistant Director of Visual Arts Programs.

(26) Until September 30, 1980, one position of Assistant Director of Museum Programs. * * *

(29) (Revoked).

(30) Until September 30, 1980, one position of Director of Education Programs.

(31) Until September 30, 1980, one position of Director of Music Programs.

(32) Until September 30, 1980, one position of Director of Theatre Programs.

(33) Until September 30, 1980, one position of Director of Dance Programs.

(34) Until September 30, 1980, one position of Director of Visual Arts Programs.

(35) Until September 30, 1980, one position of Director of Architecture, Planning, and Design Programs.

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

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

[FR Doc. 78-34939 Filed 12-14-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

U.S. Arms Control and Disarmament Agency

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment changes the title of two positions at the U.S. Arms Control and Disarmament Agency as follows: (1) from Special Assistant for Congressional Relations to the General Counsel to Congressional Relations Officer to the General Counsel; (2) from Congressional Assistant to the General Counsel to Congressional Relations Officer to the General Counsel.

EFFECTIVE DATE: November 8, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3364(i) is revoked and (n) is amended as set out below:

§ 213.3364 U.S. Arms Control and Disarmament Agency.

* * * * *

(i) (Revoked)

* * * * *

(n) Two Congressional Relations Officers to the General Counsel.

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

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

[FR Doc. 78-34935 Filed 12-14-78; 8:45 am]

[3410-30-M]

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—CHILD NUTRITION PROGRAM

[Amdt. 3]

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

Children With Special Dietary Needs; Infant Formula, Caloric Requirement

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final Rule.

SUMMARY: The Food and Nutrition Service amends its regulations relating to special supplemental food program for women, infants and children. The amendment affects provisions relating to children with special dietary needs and will clarify the caloric requirement authorized for infant formula. The amendment is necessary because the regulation is currently subject to misinterpretation.

EFFECTIVE DATE: December 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Jennifer R. Nelson, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8206.

SUPPLEMENTARY INFORMATION: On June 2, 1978, Amendment No. 1 to the regulations for the Special Supplemental Food Program for Women, Infants and Children (WIC Program) was published in the FEDERAL REGISTER (43 FR 23983). As it is currently worded, Amendment No. 1 might be read to authorize for children only those formulas which supply exactly 54 kilocalories per 100 milliliters.

The intent of the provision is that, in addition to formulas which supply 67 kilocalories per 100 milliliters, children with special dietary needs may receive formulas which supply 54 kilocalories per 100 milliliters. In other words, both those formulas supplying 54 kilocalories per 100 milliliters and those supplying 67 kilocalories per 100 milliliters are allowable. Since this change merely confirms existing practice, it is not necessary to request public comments.

§ 246.8 [Amended]

In § 246.8(d)(3)(i), the first sentence is amended to read:

* * * * *

(i) Iron-fortified infant formula which is a complete formula not requiring the additon of any ingredients other than water prior to being served in a liquid state, which contains at least 10 milligrams of iron per liter at standard dilution and which supplies 54 kilocalories per 100 milliliters or 67 kilocalories per 100 milliliters, i.e. approximately 16 or 20 kilocalories per fluid ounce of formula at standard dilution.

CAROL TUCKER FOREMAN,
Assistant Secretary.

DECEMBER 12, 1978.

[FR Doc. 78-35039 Filed 12-14-78; 8:45 am]

[3410-02-M]

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

[Lemon Reg. 177; Lemon Reg. 176, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action estalishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period December 17-23, 1978, and increases the quantity of such lemons that may be so shipped during the period December 10-16. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective December 17, 1978, and the amendment is effective for the period December 10-16, 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, established under this marketing order, 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. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on December 12, 1978, to consider supply and market conditions and other factors affecting the need for regulation, and recommended quantities of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons continues very active.

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 and amendment are 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, and the amendment relieves restrictions on the handling of lemons. 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.

§ 910.477 Lemon Regulation 177.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period December 17, 1978, through December 23, 1978, is established at 225,000 cartons.

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

2. Paragraph (a) of § 910.476 Lemon Regulation 176 (43 FR 57582) is amended to read as follows: "The quantity of lemons grown in California and Arizona which may be handled during the period December 10, 1978, through December 16, 1978, is established at 250,000 cartons."

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

Dated: December 14, 1978.

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

[FR Doc. 78-35132 Filed 12-14-78; 11:10 am]

[3410-05-M]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES AND OTHER OPERATIONS

PART 1464—TOBACCO

Subpart A—Tobacco Loan Program

AGENCY: Commodity Credit Corporation, U.S.D.A.

ACTION: Final rule.

SUMMARY: An amendment to the tobacco price support regulations to provide price support for a limited quantity of 1978 crop burley tobacco was published in the FEDERAL REGISTER on October 11, 1978 (43 FR 46833). The authority citation for this action was inadvertently omitted. This document is being published to show the proper authority citation.

EFFECTIVE DATE: The amendment became effective October 11, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert P. Hieronymus (202) 447-6695. Price Support and Loan Division, ASCS, P.O. Box 2415, Washington, D.C. 20013.

FINAL RULE: The amendment to 7 CFR Part 1464 (43 FR 46833) is amended to add at the end thereof the citation for the amendment as follows:

(Sec. 4 and 5, 62 Stat. 1970 as amended (15 U.S.C. 714b, 714c), Sec. 101, 106, 401, 403, 63 Stat. 1051 as amended (7 U.S.C. 1441, 1445, 1421, 1423).)

Signed at Washington, D.C., on December 8, 1978.

RAY FITZGERALD,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 78-34968 Filed 12-14-78; 8:45 am]

[3410-05-M]

PART 1464—TOBACCO

Subpart A—Tobacco Loan Program

1978 CROP GRADE LOAN RATES—CIGAR TOBACCO

AGENCY: Commodity Credit Corporation, U.S. Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule establishes the schedule of grade loan rates which will apply to the various types of 1978 crop cigar tobacco. The rule is needed to provide the statutory levels of support for 1978-crop cigar tobacco. Eligible cigar tobacco of the various types may be delivered for price support at the specified rates.

EFFECTIVE DATE: December 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert P. Hieronymus, (202) 447-6695.

SUPPLEMENTARY INFORMATION: On September 28, 1978, notice was published in the FEDERAL REGISTER (43 FR 44546) inviting written comments, no later than November 27, 1978, on proposed schedules of grade loan rates for providing price support for 1978-crop cigar tobacco, types 42-44, 51, 52, 53-54, 55 and 46 at the statutory levels.

Section 106 of the Agricultural Act of 1949, as amended, prescribes a formula for computing, in cents per pound, the level of price support for each crop of tobacco for which marketing quotas are in effect or have not been disapproved by producers. Application of this formula requires that the 1978 crop of types 42-45 and 53-55 be supported at the level of 62.3 cents per pound, types 51-52 at the level of 86.3 cents per pound and type 46 at the level of 64.7 cents per pound. Price support will be provided through loans to producer associations which will receive eligible tobacco from the producers and make price support advances to the producers for the tobacco received. The price support advances will be based on the grade loan rates, which average the required level of support when weighted by estimated grade percentages, in accordance with section 403 of the Act. The price support advances will be the amount determined by multiplying the pounds of each grade received by the respective grade loan rate less 1 cent per pound which the producers' associations are authorized to deduct and to apply against overhead and receiving costs.

DISCUSSION OF COMMENTS

No responses were received with respect to the schedules of grade loan rates proposed for types 42-44, 51, 52, 53-54 or 55, and it has been decided to adopt these schedules as proposed.

One response was received with respect to the proposed loan rate schedule for Puerto Rican tobacco, type 46. The respondent noted that a larger increase from 1977 was proposed for the price block III grades than for the other grades, and recommended rates lower than proposed for the price block III grades and higher than proposed for the price block I and price block IV grades. The recommendation, if adopted, would result in the rate for the price block I grades being increased from 1977 substantially more than the rates for the other grades. After considering the recommendation and comments, it has been decided to modify the proposed schedule for type 46 tobacco by applying increases from the 1977 rates of 6.33 percent to the price block II, III, and IV grades and an increase of 6.15 percent to the price block I grades. This smaller percentage increase is applied to the price block I grades because price support deliveries and sales of 1977 crop type 46 tobacco indicate the 1977 rate for price block I grades is higher in relation to value than the rates for the other grades. With the increases applied, the rates for all grades average the required level of support.

FINAL RULE

Accordingly, 7 CFR Part 1464 is amended by revising §§ 1464.22 through 1464.27 to read as set forth below, effective for the 1978 crop of cigar tobacco. The material previously appearing under §§ 1464.22 through 1464.27 remains applicable to the crop to which each refers.

(Secs. 4, 5, 62 Stat. 1070, as amended, (15 U.S.C. 714b, 714c), secs. 101, 106, 401, 403, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1445, 1421, 1423).)

NOTE.—CCC has determined that this document does not contain a significant proposal having major economic consequences for the general economy requiring preparation of a regulatory analysis under Executive Order 12044.

Based on an assessment of the environmental impacts of the proposed action, it has also been determined that an Environmental Impact Statement need not be prepared since the proposals will have no significant effect on the quality of the human environment.

Signed at Washington, D.C. on December 8, 1978.

RAY FITZGERALD,
Executive Vice President,
Commodity Credit Corporation.

§ 1464.22 1978 crop—Ohio filler tobacco, types 42-44, loan schedule.[1]

[Dollars per hundred pounds, farm sales weight]

Grade	Loan rate
Crop run (stripped together):	
X1	67.0
X2	61.0
X3	56.0
X4	51.0
Nondescript: N	42.0

§ 1464.23 1978 crop—Connecticut Valley broadleaf tobacco, type 51, loan schedule.[2]

[Dollars per hundred pounds, farm sales weight]

Grade	Loan rate
Binders:	
B1	111.0
B2	101.0
B3	90.0
B4	80.0
B5	69.0
Nonbinders: X1	55.0

§ 1464.24 1978 crop—Connecticut Valley Havana seed tobacco, type 52, loan schedule.[2]

[Dollars per hundred pounds, farm sales weight]

Grade	Loan rate
Binders:	
B1	107.0
B2	99.0
B3	88.0
B4	79.0
B5	69.0
Nonbinders: X1	55.0

[1]Tobacco is eligible for loan only if consigned by the original producer. No loan is authorized for tobacco graded "S" (scrap) or designated "No-G" (no grade). The cooperative association through which price support is made available is authorized to deduct from the amount paid the grower $1 per hundred pounds to apply against overhead and receiving costs.

[2]Tobacco is eligible for loan only if consigned by the original producer. No loan is authorized for tobacco graded "N1" or "N2" (nondescript) or "S" (scrap) or designated "No-G" (no grade). The cooperative association through which price support is made available is authorized to deduct from the amount paid the grower $1 per hundred pounds to apply against overhead and receiving costs.

§ 1464.25 1978 crop—New York and Pennsylvania Havana seed tobacco, type 53, and southern Wisconsin tobacco, type 54, loan schedule.[1]

[Dollars per hundred pounds, farm sales weight]

Grade	Loan rate
Crop run:	
X1	69.0
X2	62.5
X3	56.0
Farm fillers:	
Y1	49.0
Y2	47.0
Y3	44.0
Nondescript:	
N1	42.0
N2	36.0

§ 1464.26 1978 crop—Northern Wisconsin tobacco, type 55, loan schedule.[1]

[Dollars per hundred pounds, farm sales weight]

Grade	Loan rate
Binders:	
B1	84.0
B2	79.0
B3	73.0
Strippers:	
C1	70.0
C2	63.5
C3	59.0
Crop run:	
X1	69.0
X2	63.0
X3	58.0
Farm fillers:	
Y1	47.0
Y2	45.0
Y3	41.0
Nondescript:	
N1	41.0
N2	35.0

§ 1464.27 1978 crop—Puerto Rican tobacco, type 46, loan schedule.[1]

(Dollars per hundred pounds, farm sales weight)

Grade	Loan rate
Price block I (C1F and C1P)	70.06
Price block II(X1F, X1P, and X1S)	64.86
Price block III (X2T, X2F, X2P, and X2S)	54.23
Price block IV (N)	27.65

[1]Tobacco is eligible for loan only if consigned by the original producer. No loan is authorized for tobacco graded "S" (scrap) or designated "No-G" (no grade). The cooperative association through which price support is made available is authorized to deduct from the amount paid the grower $1 per hundred pounds to apply against overhead and receiving costs.

[FR Doc. 78-35019 Filed 12-14-78; 8:45 am]

[3510-25-M]

Title 15—Commerce and Foreign Trade

CHAPTER III—INDUSTRY AND TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 370—EXPORT LICENSING GENERAL POLICY AND RELATED INFORMATION

Revision

AGENCY: Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

ACTION: Final Rule.

SUMMARY: This rule amends 15 CFR Part 370 by making the necessary changes to conform the CFR and the Department's *Export Administration Regulations.* The changes which have been made eliminate obsolete material, revise form numbers, update organizational titles and reorganize in alphabetical sequence the definitions contained in § 370.2.

EFFECTIVE DATE: December 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles C. Swanson, Director, Operations Division, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Tel. 202-377-4196).

Accordingly, Part 370 of the Export Administration Regulation (15 CFR Part 370) is revised to read as follows:

Sec.

370.1 General Policy.
370.2 Definitions of terms.
370.3 Prohibited exports.
370.4 Shipments to territories dependencies, and possessions of the United States, and to Trust Territories.
370.5 Intransit shipments without unloading.
370.6 Shipments entering foreign trade zones.
370.7 Unauthorized disposition of foreign excess personal property purchased from U.S. Armed Forces in foreign countries.
370.8 [Reserved]
370.9 Shipments that transit Country Group Y or Z en route to any other designation.
370.10 Exports which are not controlled by the Office of Export Administration.
370.11 Information to exporters.
370.12 Where to obtain Export Administration forms.
Supplement No.1—Country Groups.
Supplement No.2—U.S. Munitions List.
Supplement No.3—Nuclear Equipment and Material Under NRC Licensing Authority.

AUTHORITY: Sec. 4 Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E. O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated December 4, 1977, 42 F.R. 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 FR 64716 (1977).

§ 370.1 General Policy.

(a) *Purposes for controls over exports.* Export controls administered by the U.S. Department of Commerce under the Export Administration Act, are used to the extent necessary:

(1) To protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand;

(2) To further significantly the foreign policy of the United States and to fulfill its international responsibilities; and

(3) To exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States.

(b) *Continuing review of commodity controls.* (1) In accordance with the provisions of the Export Administration Act of 1969, it is the policy of the Department of Commerce to conduct a continuing review of commodities under its licensing jurisdiction to assure that validated export licenses are required for the purposes cited in

§ 370.1(a) above. Particular emphasis is placed in the Act on the review of commodities controlled for national security reasons. In this connection, commodities presently under validated license control are reviewed to determine whether such control is still warranted, and commodities that may be exported under general license to most destinations are examined to ascertain whether validated license controls should be extended to additional Country Groups. While each study must, of necessity, vary in content because of the nature of the commodity under review, the following factors are generally taken into account concerning each commodity:

(i) Its essential features (distinguishing physical or operating characteristics; variations between types, models, grade, etc.; and the technical and strategic significances of these differences).

(ii) Its civilian uses.

(iii) Its military or military-support uses.

(iv) Its end-use pattern in the United States.

(v) Its technological state of development (whether it involves a new product and represents the current state-of-the-art; whether it contains advanced technology that can feasibly be extracted).

(vi) Its availability abroad (whether the same or a comparable commodity is available from other non-Communist countries, and where and by whom; whether the foreign product is manufactured abroad with U.S.-origin technology or components).

(2) The Department welcomes recommendations from the export trade as to commodities that warrant review. Such recommendations should, if possible, identify the commodity by Export Control Commodity Number and provide information regarding uses (military or military support vs. civilian) and foreign availability in sufficient detail to permit thorough evaluation in accordance with the guidelines set forth above. Brochures or other literature pertaining to the production or availability abroad of a comparable commodity will prove most helpful.

(c) *Time period for processing applications.* (1) Each export license application and request for reexport authorization will be approved or disapproved by the Office of Export Administration within 90 days of receipt of the application or request, except as hereafter provided. For purposes of this § 370.1(c), when an incomplete application or request is received and it is determined necessary to return the application or request without action for completion by the applicant, the "date of receipt" means the date the completed application or request is received by the Office of Export Administration.

(2) When an application or request cannot be approved or disapproved within 90 days of its receipt, as defined above, the Office of Export Administration will inform the applicant, in writing, of the specific circumstances requiring additional time and the estimated date a decision will be reached. Also, to the maximum extent consistent with the national security of the United States, the applicant will be informed in writing of the questions raised and negative considerations or recommendations made by the Office of Export Administration or any other U.S. Department or agency from which advice has been sought by the Office of Export Administration regarding the application or request. The applicant will have the opportunity to respond to such questions, considerations and recommendations in writing prior to final action by the Office of Export Administration, and such written response will be taken fully into account in arriving at the decision to approve or deny the application or request. Should the Office of Export Administration fail to approve or disapprove an application within 90 days, or to provide notification to the applicant regarding the delay, as provided above, any application or request received on or after June 22, 1977, will be deemed to be approved and the applicant will have the right to require the Office of Export Administration to issue the relevant approval document. However, nothing contained in this § 370.1(c) relieves the applicant from any obligation to obtain an export license or reexport authorization prior to effectuating any export or reexport. Any rights accruing to an applicant as a result of an export license application or a reexport authorization having been deemed approved pursuant to the provisions of this § 370.1(c) shall terminate upon the issuance of the notification described above.

(d) *Restrictive trade practices or boycotts.* The United States opposes restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States. (See Part 369.)

(e) *End-use.* Where commodities are licensed for export on the basis of the specific end-use, applications will be considered for approval only if they conform to appropriate end-uses.

(f) *Commodity advisory panels and committees.* Commodity advisory panels and committees will be consulted regarding problems arising in the administration of export licensing policy. (See § 390.1.)

(g) *Foreign government recommendations.* The Department of Commerce reserves the right in all respects to determine to what extent any recommendations made by foreign governments should be followed.

§ 370.2 Definitions of Terms.

The following are definitions of terms as used in the Export Administration Regulations;

Airline. Any person or firm engaged primarily in the transport of persons or property by aircraft for compensation or hire, pursuant to authorization by the U.S. Government or a foreign government.

Amendment. An authorization by the Office of Export Administration revising the terms set forth on a validated export license.

Bill of Lading. The contract of carriage and receipt for commodities or technical data issued by the carrier. It includes an air waybill, but does not include an inland bill of lading or a domestic air waybill covering movement to port only.

Canadian Airline. Any citizen of Canada who is authorized by the Canadian Government to engage as an airline. For purposes of this definition, a Canadian citizen is:

(i) An individual who is a citizen of Canada; or

(ii) A partnership of which each member is such an individual; or

(iii) A Canadian company incorporated under the laws of Canada or any province having a total foreign stock interest not greater than 40 percent and having the Chairman or Acting Chairman and at least two-thirds of the Directors thereof Canadian citizens.[1]

Commodity. Any article, material, or supply except technical data.

Commodity Control List (CCL). The list of commodities under the export control jurisdiction of the Office of Export Administration, U.S. Department of Commerce.

Country Groups. For export control purposes, foreign countries are separated into seven country groups designated by the symbols Q, S, T, V, W, Y, and Z. Canada is not included in any country group and is referred to by name. (See Supplement No. 1 to Part 370 for a list of countries in each Country Group.)

Customs Officer. The customs officers in the U.S. Customs Service and postmasters unless the context indicates otherwise.

Department of Commerce. Specifically includes the Office of Export Administration and the Bureau of Trade Regulation.

Distribution License (§ 373.3). A special license authorizing export of certain commodities to approved consign-

[1] The substance of this definition of "Citizen of Canada" is also set forth in the regulations and/or policy of the Canadian Air Transport Board.

ees in specified countries during a period of one year. The consignees must be foreign distributors or users of the licensed commodity.

Export Administration Act. Export Administration Act of 1969, effective January 1, 1970.

Export Administration Regulations. Regulations set forth in Parts 368–399, inclusive, of Title 15 of the Code of Federal Regulations.

Export Control Commodity Numbers. The commodity classification numbers used in § 399.1 of the Export Administration Regulations. The Export Control Commodity Number consists of a four-digit number followed by a code letter. The four-digit number corresponds to the international COCOM export control structure format. The code letter is the key to documentation requirements and indicates the country group level of control for CCL entries.

Export Control Document. A validated export license; application for export license; request for authorization to reexport; any and all documents submitted in accordance with the requirements of the export Administration Regulations in support of, or in relation to, an export license application or a request for reexport authorization; application for International Import Certificate; International Import Certificate; Delivery Verification Certificate or similar evidence of delivery; Shipper's Export Declaration presented in connection with shipments to any country including Canada; a Dock Receipt or bill of lading issued by any carrier in connection with any export subject to the Export Administration Regulations; a U.S. exporter's report of request received for information, certification, or other action indicating a restrictive trade practice or boycott imposed by a foreign country against a country friendly to the United States, submitted to the U.S. Department of Commerce in accordance with the provisions of Part 369; Customs Form 7512, Transportation Entry and Manifest of Goods, Subject to Customs Inspection and Permit, when used for Transportation and Exportation (T. & E.) or Immediate Exportation (I.E.); and any other document issued by a U.S. Government agency as evidence of the existence of an export license for the purpose of loading onto an exporting carrier or otherwise facilitating or effecting an export from the United States of any commodity or technical data requiring an export license, or the reexport of any such commodity or technical data.

Exporting Carrier. Any instrumentality of water, land, or air transportation by which an export is effected, including any domestic air carrier on which any cargo for export is laden or carried.

Forwarding Agent. The person authorized by a named exporter to perform for that exporter actual services which facilitate the export of commodities or technial data. The forwarding agent need not be a person regularly engaged in the freight forwarding business. He shall be designated by the exporter in writing in the power-of-attorney set forth on the Declaration or in a general power-of-attorney, or other written form, subscribed and sworn to by a duly authorized officer or employee of the exporter.

General License. A license established by the U.S. Department of Commerce for which no application is required and for which no document is granted or issued. It is available for use by all persons, except those listed in and prohibited by the provisions of Supplement No. 1 to Part 388, and permits export within the provisions thereof as prescribed in the Export Administration Regulations. These general licenses are not applicable to exports under the licensing jurisdiction of agencies other than the Department of Commerce.

Individual License. Any validated license, other than the special licenses listed below, authorizing the export of specific technical data or a specified quantity of commodities during a specified period to a designated consignee.

Law or Regulation Relating to Export Control. An statute, proclamation, executive order, regulation, rule, license, or order applicable to any conduct involving an export transaction shall be deemed to be a "law or regulation relating to export control."

License Application; Application for License. License application and similar wording mean an application for a validated export license.

Licensee. The person named in the export control document as exporter.

Net Value.[2] The actual selling price less shipping charges or current market price, whichever is the larger, to the same type of purchaser in the United States.

Person or Firm. An individual, corporation, partnership, association, company, or any other kind of organization, situated, residing, or doing business in the United States or any foreign country, including any government or agency thereof, as well as a citizen or national of the United States or any foreign country.

Port of Export. The port where the cargo to be shipped abroad is laden aboard the exporting carrier. It includes, in the case of an export by mail, the place of mailing.

Project License (§ 373.2) A special license authorizing the export of commodities (and technical data where specified) required for a specified activity during a period of approximately one year from the issuance of the license.

Purchaser. The person abroad who has entered into the export transaction with the applicant (licensee) or order party to purchase the commodities or technical data for delivery to the ultimate consignee.

Reexport. The term "reexport" in the Export Administration Regulations, or any license, order, or export control document issued thereunder, includes reexport, transshipment, or diversion of commodities or technical data from one foreign destination to another.

Schedule B Numbers. The 7-digit commodity description numbers appearing in the 1978 edition of the Bureau of the Census publication, Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States, and amendments thereto.

Service Supply License (§ 373.7). A special license enabling persons or firms in the United States and abroad to provide prompt service for equipment (i) exported from the United states, (ii) produced abroad by a subsidiary, affiliate, or branch of a U.S. firm, or (iii) produced abroad by a manufacturer who uses parts imported from the United States in the manufactured product.

Shipper's Export Declaration. Any declaration required under regulations of the Department of Commerce and other U.S. Government departments or agencies in connection with exports.

Single Shipment. A shipment of commodities which moves at the same time from one exporter to one consignee or intermediate consignee on the same exporting carrier even through such shipment is to be forwarded to one or more ultimate consignees.

U.S. Exporter. That person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the commodities and technical data out of the United States.

United States. Unless otherwise stated, the 50 states, including such offshore areas as are within their jurisdiction pursuant to Section 3 of the Submerged Lands Act (43 U.S.C. 1311), the District of Columbia, the Canal Zone, Puerto Rico, and all territories, dependencies, and possessions of the United States including foreign trade zones established pursuant to 19 U.S.C. 81A–81U, and also including the outer continental shelf, as defined in

[2] Sec § 371.5(b)(1) for definition of "Net Value" when shipment is made under General License *GLV.*

section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331 (a)).

United States Airline. Any citizen of the United States who is authorized by the U.S. Government to engage as an airline. For purposes of this definition, a U.S. citizen is:

(i) An individual who is a citizen of the United States or one of its possessions; or

(ii) A partnership of which each member is such an individual; or

(iii) A corporation or association created or organized under the laws of the United States, or of any State, Territory, or possession of the United States, of which the president and two-thirds of the board of directors and other managing officers thereof are such individuals and in which at least 75 per cent of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.[3]

Validated License. A document issued by or under the authority of the Office of Export Administration, authorizing export.

§ 370.3 Prohibited exports.

(a) *General Provisions.* Subject to the provisions of §§ 370.4, 370.5, and 370.6, the export from the United States of all commodities, and all technical data as defined in § 379.1, is hereby prohibited unless and until a general license authorizing such export shall have been established or a validated license or other authorization for such export shall have been granted by the Office of Export Administration, except:

(1) Any export to Canada, for consumption in Canada [4] other than:

(i) The types of technical data described in § 379.4(c);

(ii) Commodities related to nuclear weapons, nuclear explosive devices, or nuclear testing, as described in §§ 378.1 and 379.4(c);

(iii) Helium, isotopically enriched in the helium-3 isotope in any form or quantity, and whether or not admixed with other materials, or contained in any equipment or device;

(iv) Electronic, mechanical, or other devices, as described in § 376.13(c), primarily useful for surreptitious interception of wire or oral communications; and

(v) Certain commodities subject to short supply control, as set forth in the Supplements to Part 377;

(2) Exports for the offical use of or consumption by the U.S. Armed Forces when shipped by or consigned to any branch thereof under a U.S. Government Bill of Lading or a U.S. Government space charter or by means of a U.S. Government-owned or Government-chartered carrier; and

(3) Exports of commodities and technical data controlled by another U.S. Government agency (see § 370.10).

(b) Revocation of Export Licenses and Other authorizations. All export licenses and other authorizations to export or reexport are subject to revision, suspension, or revocation without notice. It may be necessary for the Office of Export Administration to stop a shipment or an export transaction at any stage of its progress; e.g., in order to prevent an unauthorized export or reexport. If a shipment is already en route, it may be further necessary to order the return or unloading of such shipment at any port of call in accordance with the provisions of § 386.9.

§ 370.4 Shipments to territories, dependencies, and possessions of the United States, and to Trust Territories.

No license is required for shipments from the United States to the Canal Zone, Puerto Rico, or any territory, dependency, or possession of the United States as listed in *Schedule C, Classification of Country Designations Used in Compiling the United States Foreign Trade Statistics,* issued by the Bureau of the Census. Nor is a license required for shipments to the Trust Territory of the Pacific Islands; i.e., the Caroline Islands, the Marshall Islands, and the Northern Mariana Islands (except Guam, which is an island possession of the United States).

§ 370.5 Intransit shipments without unloading.

Commodities or technical data shipped by vessel from one foreign country and passing through the United States in transit to another foreign country may be exported without a license from the Office of Export Administration provided that (a) while in waters subject to the jurisdiction of the United States they have not been unladen from the vessel on which they entered such waters, and (b) they are not originally manifested to the United States.

§ 370.6 Shipments entering foreign trade zones.

Shipments of commodities or technical data of foreign origin for which no customs entry has been made and that enter a U.S. foreign trade zone may be exported from the foreign trade zone without a validated export license except as described below.

NOTE.—Commodities originating in the United States and located in a foreign trade zone are subject to U.S. export control requirements. Those commodities otherwise considered to be of foreign origin that, as a result of processing, manufacturing, or assembly while in a U.S. foreign trade zone, have been so altered that they have either been substantially enhanced in value or have lost their original identity with respect to form, are no longer deemed to be of foreign origin. they are, therefore, subject to U.S. export licensing requirements when exported from the foreign trade zone.

(a) *Country Group Restrictions*—(1) *Country Group W, Y, or Z.* Shipments to Country Group W, Y, or Z (see supplement No. 1 to Part 370 for list of countries in each Country Group) require a validated license if a shipment of similar commodities or technical data of U.S. origin could not be made from the customs territory of the United States to such a destination under the provisions of a general license.

(2) *Country Group Q.* Shipments to Country Group Q require a validated license (i) if the shipment consists of commodities identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List (§ 399.1), or (ii) if the shipment consists of technical data of a type that may not be exported from the customs territory of the United States to the named destination under the provisions of a general license.

(b) *Shipments Covered by International Import Certificates.* Commodities shipped to the United States under an International Import Certificate, Form DIB-645P, in accordance with the procedure described in § 368.2, require a validated license.

(c) *Shipments Originating in Canada.* Shipments of commodities originating in Canada require a validated license only when:

(1) The shipment meets the condition set forth in § 371.4(b)(1); or

(2) The shipment cannot be exported directly from the United States to Country Group T under the provisions of General License *G-DEST.*

(d) *Foreign excess property disposed of by the U.S. Government.* Commodities of U.S. or foreign origin disposed of by the U.S. Government under a foreign excess property disposal program which enter a U.S. foreign trade zone without a customs entry may be exported from the foreign trade zone without an export license; except that a validated export license is required where the same shipment made directly from the customs territory of the United States to the same destination would require a validated export license.

(e) *Commodities under Short Supply Controls.* A shipment of any commodity listed in a Supplement to Part 377 as under short supply control requires a validated license if the shipment

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[3] This definition of "citizen of the United States" is also set forth in Title I, Section 101(13) of the Federal Aviation Act of 1958, as Amended, Public Law 85-726, 72 Stat. 737 (49 U.S.C. 1301 *et seq.*).

[4] See § 386.1(d) for shipments to Canada, not intended for consumption in Canada, and regarding the requirement of a Shipper's Export Declaration for certain exports to Canada.

could not be made from the customs territory of the United States to the intended destination under the provisions of a general license.

§ 370.7 Unauthorized disposition of foreign excess personal property purchased from U.S. Armed Forces in foreign countries.

(a) *General.* In the event the U.S. Armed Forces shall sell in any foreign country any commodity, in used or new condition, that was exported from the United States pursuant to § 370.3(a)(2), the prohibitions and sanctions provided in Parts 387 and 388 shall apply whenever such commodity is, or is attempted to be, transshipped, diverted, or reexported to any destination contrary to the provisions of the contract of sale executed by the U.S. Armed Forces or to the Export Administration Regulations referred to therein.

(b) *Applicability.* The provisions of this § 370.7 shall apply to any person who directly or indirectly participates in, or has an interest in, any transaction involving commodities sold by the U.S. Armed Forces in any foreign country. Sanctions may include denial of participation in Armed Forces foreign excess personal property disposals, as well as denial of U.S. export privileges.

(c) *Enforcement.* By arrangement with the Department of Defense, in enforcing the provisions of this § 370.7, the Office of Export Administration will apply the prohibitions and sanctions of Parts 387 and 388 to:

(1) Cases involving any commodity of U.S. origin that is, or is attempted to be, transshipped, diverted, or reexported to Country Group Z; and

(2) Cases involving generally, but not exclusively, any commodity identified by the code letter "A," "B," or "M" following the Export control Commodity Number on the Commodity Control List (§ 399.1) that is, or is attempted to be, transshipped, diverted, or reexported to Country Group Y.

§370.8 [Reserved]

§ 370.9 Shipments that transit country Group Y or Z en route to any other destination.[5]

The export from the United States of commodities or technical data to be unladen from a vessel or aircraft in Country Group Y or Z, or to move in transit through Country Group Y or Z en route to Canada or a destination in Country Groups Q, S, T, V, or W, is hereby prohibited unless a validated license specifically authorizes the transshipment or intransit shipment, or both, except:

(a) An export to West Berlin that will transit the German Democratic Republic; or

(b) an export of technical data or of a commodity not identified by the code letter "A," "B," or "M" following the Export Control Commodity Number on the Commodity Control List, to any destination not in Country Groups Y or Z, provided that shipment is exportable under a general license directly from the United States to the country of transit or unlading in Country Groups Y or Z.

(Transshipment authority does not relieve any person from complying with foreign laws. See § 374.9.)

§ 370.10 Exports which are not controlled by the Office of Export Administration.

(a) *U.S. Munitions List.* Regulations administered by the Office of Munitions Control, U.S. Department of State, Washington, D.C. 20520, govern the export of defense articles and defense services on the U.S. Munitions List. These regulations are issued under the authority of section 38 of the Arms Export Control Act (22 U.S.C. 2778). The commodities covered by these regulations are listed in Supplement No. 2 to this Part 370.

(b) [Reserved]

(c) [Reserved]

(d) *Narcotics and Dangerous Drugs.* Regulations administered by the Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, govern the export of the following narcotic and non-narcotic substances. The five Schedules of Controlled Substances are summarized as follows: (For complete listing contact Drug Enforcement Administration.)

SCHEDULE I SUBSTANCES

Drugs in this schedule are those that have no accepted medical use in the United States and have a high abuse potential. Some examples are Heroin, Marijuana, LSD, Peyote, Mescaline, Psilocybin, Tetrahydrocannabinols, Ketobemidone, Levomoramide, Racemoramide, Benzylmorphine, Dihydromorphine, Morphine methylsulfonate, Nicocodeine, Nicomorphine, and others.

SCHEDULE II SUBSTANCES

The drugs in this schedule have a high abuse potential with severe psychic or physical dependence liability. Schedule II controlled substances consist of certain narcotic drugs, and drugs containing amphetamines or methamphetamines as the single active ingredient, or in combination with each other. Examples of Schedule II controlled substances are: opium, morphine, codeine hydromorphone (Dilaudid), methadone (Dolophine), Pantopon, Meperdine (Demerol), Cocaine, Oxycodone (Percodan), Anileridine (Leritine), Oxymorphone (Numorphan); and straight Amphetamines and Methamphetamines. Also in Schedule II are Phenmetrazine (Preludin), Methylphenidate (Ritalin), Amobarbital, Pentobarbital, Secobarbital, and Methaqualone.

SCHEDULE III SUBSTANCES

The drugs in this schedule have an abuse potential less than those in Schedules I and II, and include compounds containing limited quantities of certain narcotic drugs, and non-narcotic drugs such as: derivatives of barbituric acid except those that are listed in another Schedule, Glutethimide (Doriden), Methyprylon (Noludar), Chlorhexadol, Phencyclidine, Sulfondiethylmethane, Sulfonmenthane, Nalorphine, Benzphetamine, Chlorphentermine, Clortermine, Mazindol, Phendimetrazine. Paregoric is in this Schedule.

SCHEDULE IV SUBSTANCES

The drugs in this schedule have an abuse potential less than those listed in Schedule III and include such drugs as: Barbital, Phenobarbital, Methylphenobarbital, Chloral Betaine (Beta Chlor), Chloral Hydrate, Ethchlorvynol (Placidyl), Ethinamate (Valmid), Meprobamate (Equanil, Miltown), Paraldehyde, Pentaerythritol Chloral (Petrichloral), Methohexital, Fenfluramine, Diethylpropion, and Phentermine.

SCHEDULE V SUBSTANCES

The drugs in this schedule have an abuse potential less than those listed in Schedule IV and consist of preparations containing moderate, limited quantities of certain narcotic drugs generally for antitussive and antidiarrheal purposes, which may be distributed without a prescription order.

(All of these substances must be properly identified with regard to Schedule classification, etc., in accordance with the *"Regulations"* of the Drug Enforcement Administration.)

The regulations are issued under Title III, the Controlled Substances Import and Export Act [84 Stat. 1236; 21 U.S.C. 951-966 (1970)]

(e) *Commodities Subject to Atomic Energy Act.* Regulations administered by the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or the U.S. Department of Energy, Washington, D.C. 20545, govern the export of nuclear equipment and materials. These regulations are issued under the authority of the Atomic Energy Act of 1954, as amended. The commodities covered by these regulations are listed in Supplement No. 3 to Part 370.

(f) *Watercraft.* Regulations administered by the U.S. Maritime Administration, Washington, D.C. 20235, and the Office of Munitions Control, U.S. Department of State, Washington, D.C. 20520, in certain instances govern the export of watercraft.

(g) *Natural Gas and Electric Energy.* Regulations administered by the U.S. Department of Energy, Washington, D.C. 20545, govern the export of "natural gas" and "electric power," as defined in the Acts cited below, and the construction, operation, maintenance, or connection of facilities for such export at the United States side of in-

[5] See § 372.8(b) with respect to filing applications for validated licenses to export commodities that will be unladen from a vessel or aircraft in Country Group Y or Z or that will move in transit through Country Group Y or Z en route to a destination in any other country group.

ternational boundaries. The regulations relating to "natural gas" are issued under the authority of the Natural Gas Act of 1938, 52 Stat. 822. The regulations relating to "electric power" are issued under the authority of the Federal Power Act, 49 Stat. 847.

(h) *Tobacco Seeds and Plants.* Regulations administered by the Administrator, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20426, govern the export of any tobacco seed and/or live tobacco plants subject to the Tobacco Seed and Plant Exportation Act of June 5, 1940, 54 Stat. 231 (7 U.S.C. 516–517). The regulations are issued under the authority of the above-cited Act.

(i) *Endangered Fish and Wildlife, Migratory Birds, and Bald and Golden Eagles.* Regulations administered by the U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, govern the export of endangered fish and wildlife, migratory birds and bald and golden eagles or any part, product, egg or offspring thereof or the dead body or parts thereof, whether or not included in a manufactured product. These regulations are issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the Migratory Bird Treaty Act, as amended (16 U.S.C. 703–711) and the Act for the Protection of Bald and Golden Eagles, as amended (16 U.S.C. 668).

§ 370.11 Information to Exporters

(a) *Request for Status Information.* To minimize the administrative impact of export controls on U.S. business firms and to enable exporters to coordinate their business activities with the export control policies of the U.S. Department of Commerce, the Office of Export Administration will undertake to inform exporters of the reasons that may subject an export license application to lengthy examination or denial. At the request of an exporter, the Office of Export Administration will provide such information to the extent consistent with the national security, the foreign policy of the United States, and the confidentiality provisions of the Export Administration Act of 1969. Requests for this information should be held to a minimum, however, so as not to impede the normal processing of cases and thereby interfere with the effective administration of export control.

(1) *Considerations That May Occasion Lengthy Examination.* Listed below are the most frequent reasons for delay or lengthy examination. Exporters are urged to submit with their applications any evidence or information, including brochures and technical literature, pertinent to these considerations.

(i) Determination as to whether a comparable commodity or comparable technical data is produced abroad and is available to the proposed destination from Free World sources.

(ii) Determination as to the potential strategic uses of a commodity or technical data. Frequently, this involves consultation with technicians in other government agencies and in industry.

(iii) Because of the potential uses of a commodity or technical data in a manner that is of concern to the U.S. Government for national security or foreign policy reasons, the Office of Export Administration must:

(*a*) Attempt to verify, through government channels, the end-use stated in an application and/or supporting documents to assure that it is a reliable indication of the future use of the commodity or technical data;

(*b*) Seek additional information, through government channels, as to the range of activities engaged in by a prospective enduser; and/or

(*c*) Consult other U.S. Government agencies to obtain their views as to whether approval would be detrimental to the national security.

(iv) Because of the strategic nature of certain commodities and technical data, the United States and other Free World governments have agreed to control their exports to destinations in Country Groups Q, W, Y and Z. In certain instances, it is necessary to consult with these other Free World governments before action on an application can be taken.

(v) Where one or more of the foreign parties to an export transaction is unknown to the Office of Export Administration, the U.S. Foreign Service is requested to provide information that will permit action to be taken.

(2) *How to file Request.* (i) The request for information shall be submitted on Request for, and Advice on, Status of Pending Application, Amendment, or Reexport Request, Form DIB–6019P. The request may be made only by the applicant or applicant's agent. The Office of Export Administration will respond as soon as possible, noting on the reverse side of the form the pertinent reason(s) for the delay or likelihood of denial.

(ii) More than 90 percent of applications for licenses to export to Country Groups T and V are acted upon within two weeks of receipt in the Office of Export Administration. Applications for licenses to export to any other country group generally require more intensive scrutiny, but approximately 75 percent of these applications are acted upon within four weeks of receipt.

(iii) Unless emergency circumstances necessitate immediate notification, applicants should not request information until the following time periods expire:

(*a*) For a destination in Country Group T or V: Three weeks from date application, amendment, or reexport request was mailed.

(*b*) For a destination in any other country group: Five weeks from date application, amendment, or reexport request was mailed.

NOTE: An additional week has been added to the time period shown in § 370.11(a)(2)(ii) above to allow for postal transport time to and from the Office of Export Administration. Earlier submissions may only disrupt normal processing operations and cause unnecessary delay in acting upon the case.

(b) *Request for Documentation Review.* The Office of Export Administration, in reviewing specific export license applications and requests for reexport authorization, may consult with other U.S. Departments and agencies regarding the proposed export or reexport. While this consultation may be undertaken with respect to any application or request, such consultation usually relates to transactions involving proposed exports or reexports to consignees in Country Groups Q, W and Y, and requests for relief on the basis of unique hardship from short-supply export controls (15 CFR Part 377). The general practice of the Office of Export Administration is to provide a description of the proposed export or reexport to the other agencies in order to permit the agencies consulted to consider all aspects of the issue or issues involved. In order to insure that this documentation accurately describes the proposed export or reexport, the Office of Export Administration will, upon request from the applicant, provide a copy of that portion of the document(s) being forwarded to the other agencies that describes the export or reexport in question. If the proposed transaction involves an export from the United States, the request shall be made at the time the application is submitted by inserting in Item 12 of Form DIB–622P, Application for Export License, the phrase "Interagency referral information requested." If the proposed transaction involves the reexport of U.S.-origin commodities or technical data, the request shall be made at the time the request is filed by inserting in item 10 of Form DIB–699P, Request to Dispose of Commodities or Technical Data Previously Exported, the phrase "Interagency referral information requested." If the reexport request is made by letter, the request shall be included in the letter. Any comments or revisions which an applicant may make with respect to a particular application or request should be provided to the Office of Export Administration in writing. That office will provide the applicant's submission to the appropriate

other Federal agencies and such submissions will be taken into consideration in the interagency review.

(c) *Request for Notification of COCOM Review of Application.* (1) The United States participates in an international security export control system. The Coordinating Committee (COCOM) of this system reviews proposed transactions to export or reexport certain strategic commodities or technical data to Country Groups Q, W, and Y. Referral to COCOM will add approximately five weeks to the usual QWY processing time.

(2) Upon request, the Office of Export Administration will inform the applicant when the proposed transaction set forth in a specific application has been forwarded to the Coordinating Committee. To request such notification, enter the phrase "COCOM Referral Notification Requested" in Item 12 of Form DIB-622P, Application for Export License, or in Item 10 of Form DIB-699P, Request to Dispose of Commodities or Technical Data Previously Exported, as appropriate. If a reexport authorization request is made by letter, include the request in the letter.

§ 370.12 Where to obtain Export Administration forms.

Exporters may obtain the forms required to conduct their business in accordance with the Export Administration Regulations from all U.S. Deprtment of Commerce District Offices (see list on page i under District Office Addresses) and from the Office of Export Administration (Room 1617M), U.S. Department of Commerce, Washington, D.C. 20230. In addition, for the convenience of foreign consignees and other foreign parties to U.S. export transactions, certain forms commonly used abroad may be obtained at U.S. Foreign Service posts. When forms cited in the Regulations are not available from the above sources, instructions for ordering these will be included in a footnote. The initial time a form is cited within each Part, the name of the form, the current form number, and previous form number will be given during a reasonable change-over period. Thereafter, only the latest form number will be used when referring to this form, although previous versions will be accepted unless otherwise indicated. A Forms Supplement containing samples of the most commonly used export control forms is included as an addendum to the Export Administration Regulations.

SUPPLEMENT NO. 1 TO PART 370—Country Groups

For export control purposes foreign countries are separated into seven country groups designated by the symbols "Q", "S", "T", "V", "W", "Y", and "Z". Listed below are the countries included in each country group. Canada is not included in any country group and will be referred to by name throughout the Export Administration Regulations.

Country Group Q

Romania

Country Group S

Southern Rhodesia

Country Group T

North America

Northern Area:
- Greenland
- Miquelon and St. Pierre Islands

Southern Area:
- Mexico (including Cozumel and Revilla Gigedo Islands)

Central America

- Belize
- Costa Rica
- El Salvador
- Guatemala
- Honduras (including Bahia and Swan Islands)
- Nicaragua
- Panama

Bermuda and Caribbean Area:
- Bahamas
- Barbados
- Bermuda
- Dominican Republic
- French West Indies
- Haiti (including Gonave and Tortuga Islands)
- Jamaica
- Leeward and Windward Islands
- Netherlands Antilles
- Trinidad and Tobago

South America

Northern Area:
- Colombia
- French Guiana (including Inini)
- Guyana
- Surinam
- Venezuela

Western Area:
- Bolivia
- Chile
- Ecuador (including the Galapagos Islands)
- Peru

Eastern Area:
- Argentina
- Brazil
- Falkland Islands (Islas Malvinas)
- Paraguay
- Uruguay

Country Group V

All countries not included in any other country group (except Canada).

Country Group W

Poland

Country Group Y

- Albania
- Bulgaria
- Czechoslovakia
- Estonia
- German Democratic Republic (including East Berlin)
- Hungary
- Laos
- Latvia
- Lithuania
- Outer Mongolia
- People's Republic of China (excluding Republic of China)
- Union of Soviet Socialist Republics

Country Group Z

- North Korea
- Vietnam
- Cambodia
- Cuba

SUPPLEMENT NO. 2 TO PART 370—U.S. Munitions List

The following articles [1] are designated by the Office of Munitions Control, U.S. Department of State, as arms, ammunition, and implements of war: [2]

Category I—Firearms

(a) Non-automatic and semi-automatic firearms, to caliber .50 inclusive, shotguns with barrels less than 18 inches in length, and all components and parts therefor (see §§ 121.04 and 123.30 through 123.34).[3]

(b) Automatic firearms, and all components and parts therefor to caliber .50 inclusive (see § 121.04).[3]

(c) Insurgency-counterinsurgency type firearms or other weapons having a special military application regardless of caliber; and all components and parts therefor.

(d) Firearms silencers.

(e) Bayonets and specifically designed components therefor.

(f) Riflescopes (except sporting type sights including optical), and specifically designed components therefor.

Category II—Artillery and Projectors

(a) Guns over caliber .50, howitzers, mortars, and recoilless rifles.

(b) Military flame throwers and projectors.

(c) Components and parts, including but not limited to, mounts and carriages for the articles in paragraphs (a) and (b) of this Category.

Category III—Ammunition

(a) Ammunition for the arms in Categories I and II of this Section (see §§ 123.03 and 121.05).[3]

(b) The following components, parts, accessories, and attachments: cartridge cases, powder bags, bullets, jackets, cores, shells (excluding shotgun), projectiles, boosters, fuzes and components therefor, primers, and other detonating devices for such ammunition (see § 121.05).[3]

(c) Ammunition belting and linking machines.

(d) Ammunition manufacturing machines, and ammunition loading machines (except hand loading).

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[1] The term "article" shall mean any of the arms, ammunition, and implements of war and technical data relating thereto enumerated in the United States Munitions List.

[2] Arms, ammunition and implements of war must be mangled, crushed or cut beyond the possibility of restoration to their original identity, before they can be licensed by the Office of Export Administration for export as scrap metal. (See § 399.2, Interpretation 12.)

[3] This cross-referenced Section refers to the regulations of the Office of Munitions Control, U.S. Department of State, Washington, D.C. 20520.

Category IV—Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines

(a) Rockets (except meteorological sounding rockets), bombs, grenades, torpedoes, depth charges, land and naval mines, and military demolition blocks and blasting caps (see § 121.06).[3]

(b) Launch vehicles, guided missiles, and ballistic missiles, tactical and strategic.

(c) Apparatus, devices, and materials for the handling, control, activation, detection, protection, discharge, or detonation of the articles in paragraphs (a) and (b) of this Category (see § 121.07).[3]

(d) Missile and space vehicle powerplants.

(e) Military explosive excavating devices.

(f) Ablative materials fabricated or semi-fabricated from advanced composites (e.g., silica, graphite, carbon, and boron filaments) for the articles in this Category when clearly identifiable as arms, ammunition, and implements of war, including the tape wrapping and other techniques for their production.

(g) All specifically designed components, parts, accessories, attachments, and associated equipment for the articles in this Category.

Category V—Propellants, Explosives, and Incendiary Agents

(a) Propellants for the articles in Categories III and IV of this Section (see § 121.10).[3]

(b) Military explosives (see § 121.11).[3]

(c) Military fuel thickeners (see § 121.12).[3]

(d) Military pyrotechnics, except (1) non-irritant smoke, and (2) other pyrotechnic materials having dual military and commercial use.

Category VI—Vessels of War and Special Naval Equipment

(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels, service craft, floating dry docks, and experimental types of naval ships (see § 121.13).[3]

(b) Turrets and gun mounts, missile systems, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults and other components, parts, attachments, and accessories specifically designed for combatant vessels, including but not limited to, battleships, command ships, guided missile ships, cruisers, aircraft carriers, destroyers, frigates, escorts, minesweepers, and submarines.

(c) Submarine and torpedo nets and mine sweeping equipment. Components, parts, atttachments, and accessories specifically designed therefor.

(d) Harbor entrance magnetic, pressure, and acoustic detection devices, controls, and components thereof.

(e) Naval nuclear propulsion plants, their land prototypes and special facilities for their construction, support, and maintenance, including any machinery, device, component, or equipment specifically developed or designed for use in such plants or facilities (see § 123.38).[1]

Category VII—Tanks and Military Vehicles

(a) Military type armed or armored vehicles, military railway trains, and vehicles fitted with, designed, or modified to accommodate mountings for arms or other specialized military equipment.

(b) Military tanks, tank recovery vehicles, half-tracks, and gun carriers.

(c) Self-propelled guns and howitzers.

(d) Military trucks, trailers, hoists, and skids specifically designed for carrying and handling the articles in paragraph (a) of Categories III and IV; military mobile repair shops specifically designed to service military equipment.

(e) Military recovery vehicles.

(f) Amphibious vehicles (see § 121.08).[1]

(g) All specifically designed components, parts, accessories, attachments, and associated equipment, including military bridging and deep water fording kits, for the articles in this Category.

Category VIII—Aircraft, Spacecraft, and Associated Equipment

(a) Aircraft, including helicopters, designed, modified, or equipped for military purposes, including but not limited to the following: gunnery, bombing, rocket or missile launching, electronic surveillance, reconnaissance, refueling, aerial mapping, military liaison, cargo carrying or dropping, personnel dropping, military trainers, drones, and lighter-than-air aircraft (see § 121.14).[1]

(b) Spacecraft including manned and unmanned, active and passive satellites.

(c) Military aircraft engines, except reciprocating engines, and spacecraft engines specifically designed or modified for the aircraft and spacecraft specified in paragraphs (a) and (b) of this Category.

(d) Airborne equipment, including but not limited to airborne refueling equipment, specifically designed for use with the aircraft, spacecraft, and engines of the types in paragraphs (a), (b), and (c) of this Category.

(e) Launching, arresting, and recovery equipment for the articles in paragraphs (a) and (b) of this Category.

(f) Non-expansive balloons in excess of 3,000 cubic feet capacity, except such types as are in normal sporting use.

(g) Power supplies and energy sources specifically designed for spacecraft.

(h) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (a) through (g) of this Category, excluding propellers used with reciprocating engines, and aircraft tires.

(i) Developmental aircraft components known to have a significant military application, excluding aircraft components concerning which Federal Aviation Agency certification is scheduled.

(j) Parachutes, except such types as are in normal sporting use, and complete canopies, harnesses, and platforms, and electronic release mechanisms therefor.

(k) Ground effect machines (GEMS), including surface effect machines and other air cushion vehicles, except such machines as are in normal commercial use, and all components, parts, accessories, attachments, and associated equipment specifically designed or modified for use with such machines.

(l) Inertial systems, and specifically designed components therefor, inherently capable of yielding accuracies of better than 1 to 2 nautical miles per hour circular error of probability (c.e.p.).

Category IX—Military Training Equipment

(a) Military training equipment includes but is not limited to attack trainers, radar target trainers, radar target generators, gunnery training devices, anti-submarine warfare trainers, target equipment, armament training units, flight simulation devices, operational flight trainers, flight simulators, radar trainers, instrument flight trainers, and navigation trainers.

(b) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraph (a) of this Category.

Category X—Protective Personnel Equipment

(a) Military body armor (including armored vests), flak suits, and components and parts specifically designed therefor; military helmets, including liners.

(b) Partial pressure suits, pressurized breathing equipment, military oxygen masks, anti-"G" suits, protective clothing for handling guided missile fuel, military crash helmets, liquid oxygen converters used for aircraft (enumerated in Category VIII (a)), missiles, catapults, and cartridge-actuated devices utilized in emergency escape of personnel from aircraft (enumerated in Category VIII (a)).

(c) Protective apparel and equipment specifically designed for use with the articles in paragraphs (a) through (d) in Category XIV.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed for use with the articles in paragraphs (a), (b), and (c) of this Category.

Category XI—Military and Space Electronics

(a) Electronic equipment not included in Category XII of the Munitions List assigned a military designation or specifically designed, modified or configured for military application, including but not limited to the following items:

(1) Underwater sound equipment including long towed arrays, electronic beam formed sonar, target classification equipment, and spectrographic displays; search, acquisition, tracking, moving target indication and imaging radar systems; active and passive countermeasures, counter-countermeasures; electronic fuses; identification systems; command, control and communications systems, and regardless of designation, any experimental or developmental electronic equipment specifically designed or modified for military application, or for use with a military system, and

(2) Simple fathometers; underwater telephones; electro-mechanical beam former sonars and elementary sonobuoys; weather, navigation, and air traffic control radar systems; navigation, guidance, object-locating methods and means; displays; and telemetering equipment.

(b) Space electronics: (1) Electronic equipment specifically designed or modified for spacecraft, and spaceflight, other than equipment specifically designed or modified for use with communications satellites, and

(2) Electronic equipment specifically designed or modified for use with communications satellites.

(c) Electronic systems or equipment designed, configured, used, or intended for use in search, reconnaissance, collection, monitoring, direction-finding, display, analysis, and production of information from the electromagnetic spectrum for intelligence or security purposes.

[1] This cross-referenced Section refers to the regulations of the Office of Munitions Control, U.S. Department of State, Washington, D.C. 20520.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed for use or currently used with the equipment in paragraphs (a) through (c) of this Category, except such items as are in normal commercial use.

CATEGORY XII—FIRE CONTROL, RANGE FINDER, OPTICAL, AND GUIDANCE AND CONTROL EQUIPMENT

(a) Fire control systems; gun and missile tracking and guidance systems; military infrared, image intensifier, and other night sighting and night viewing equipment; military masers and military lasers; gun laying equipment; range, position, and height finders and spotting instruments; aiming devices (electronic, gyroscopic, optic, and acoustic); bomb sights, bombing computers, military television sighting and viewing units, inertial platforms, and periscopes for the articles of this section.

(b) Inertial and other weapons or space vehicle guidance and control systems; spacecraft guidance, control, and stabilization systems; astro compasses; and star trackers.

(c) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (a) and (b) of this Category, except such items as are in normal commercial use.

Category XIII—Auxiliary Military Equipment

(a) Aerial cameras, space cameras, special purpose military cameras, and specialized processing equipment therefor; military photointerpretation, stereoscopic plotting, and photogrammetry equipment, and specifically designed components therefor.

(b) Speech scramblers, privacy devices, cryptographic devices (encoding and decoding), and specifically designed components therefor, ancillary equipment, and especially devised protective apparatus for such devices, components, and equipment.

(c) Self-contained diving and underwater breathing apparatus designed for a military purpose, and specifically designed components therefor.

(d) Armor plate.

(e) Concealment and deception equipment, including but not limited to, special paints, decoys, and simulators, and components, parts, and accessories specifically designed therefor.

(f) Energy conversion devices for producing electrical energy from nuclear, thermal, or solar energy, or from chemical reaction, specifically designed or modified for military application.

(g) Chemiluminescent compounds and solid state devices specifically designed or modified for military application.

Category XIV—Toxicological Agents and Equipment; Radiological Equipment

(a) Chemical agents, including lung irritants, vesicants, lachrymators, and tear gases, sternutators and irritant smoke, and nerve gases and incapacitating agents (see § 121.08).[1]

(b) Biological agents adapted for use in war to produce death or disablement in human beings or animals, or to damage crops and plants.

(c) Equipment for dissemination, detection, and identification of, and defense against the articles in paragraphs (a) and (b) of this Category (see § 123.31).[1]

(d) Nuclear radiation detection and measuring devices, except such devices as are in normal commercial use.

(e) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (c) and (d) of this Category.

Category XV—[Reserved]

Category XVI—Nuclear Weapons Design and Test Equipment (see § 123.38).[1]

(a) Any article, material, equipment, or device which is specifically designed or specifically modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices.

(b) Any article, material, equipment, or device which is specifically designed or specifically modified for use in the devising, carrying out, or evaluating of nuclear weapons tests or any other nuclear explosions, except such items as are in normal commercial use for other purposes.

(c) Cold cathode tubes such as krytrons and sprytrons.

Category XVII—Classsified Articles

All articles, including technical data relating thereto, not enumerated herein, containing information which is classified as requiring protection in the interests of national defense.

Category XVIII—Technical Data

Technical data relating to the articles designated in this subchapter as arms, ammunition, and implements of war (see §§ 125.01, 125.11 and 123.38).[1]

Category XIX—[Reserved]

Category XX—Submersible Vessels, Oceanographic and Associated Equipment

(a) Submersible vessels, manned and unmanned, designed for military purposes or having independent capability to maneuver vertically or horizontally at depths below 1,000 feet or powered by nuclear propulsion plants.

(b) Submersible vessels, manned or unmanned, designed in whole or in part from technology developed by or for the U.S. Armed Forces.

(c) Any of the articles in Categories VI, IX, XI, XIII and elsewhere in § 121.01 [1] that may be used with submersible vessels.

(d) Equipment, components, parts, accessories, and attachments designed specifically for any of the articles in paragraphs (a) and (b) of this Category.

Category XXI—[Reserved]

Category XXII—Miscellaneous Articles

Any article and technical data relating thereto not enumerated herein, having significant military applicability, determined by the Director, Office of Munitions Control, Department of State, in consultation with appropriate agencies of the Government and having the concurrence of the Department of Defense.

[1] This cross-referenced Section refers to the regulations of the Office of Munitions Control, U.S. Department of State, Washington, D.C. 20520.

[1] This cross-referenced Section refers to the regulations of the Office of Munitions Control, U.S. Department of State, Washington, D.C. 20520.

SUPPLEMENT NO. 3 TO PART 370.—NUCLEAR EQUIPMENT AND MATERIAL UNDER NRC LICENSING AUTHORITY

(a) Nuclear reactors and specially designed or prepared parts and components therefor, as follows:

(1) Reactor pressure vessels, i.e., metal vessels as complete units or as major shop-fabricated parts therefor, which are specially designed to contain the core of a nuclear reactor and are capable of withstanding the operating pressure of the primary coolant.

(2) Reactor fuel charging and discharging machines, i.e., manipulative equipment specially designed or prepared for inserting or removing fuel in a nuclear reactor.

(3) Reactor control rods, i.e., rods specially designed or prepared for the control of the reaction rate in a nuclear reactor.

(4) Reactor pressure tubes, i.e., tubes specially designed or prepared to contain fuel elements and the primary coolant in a nuclear reactor at an operating pressure in excess of 50 atmospheres.

(5) Reactor primary coolant pumps, i.e., pumps specially designed or prepared for circulating the primary coolant in nuclear reactors.

(6) Zirconium tubes, i.e., zirconium metal and alloys in the form of tubes or assemblies of tubes specially designed or prepared for use in a nuclear reactor.

(7) Reactor internals, e.g., core support structures, control rod guide tubes, thermal shields, baffles, core grid plates and diffuser plates specially designed or prepared for use in a nuclear reactor.

(8) Reactor control rod drive mechanisms, including detection and measuring equipment to determine flux levels.

(9) Any other component specially designed or prepared for use in a nuclear reactor.

(10) Specially designed or prepared parts and components for any of the above.

(b) Plants for the separation of the isotopes of source material, special nuclear material or lithium, and specially designed or prepared equipment and components therefor, as follows:

(1) Uranium hexafluoride (UF_6) corrosion-resistant valves.

(2) Units capable of separating isotopes of source material, special nuclear material or lithium, such as (i) gas centrifuges, (ii) jet nozzle separation units, (iii) vortex separation units, and (iv) laser isotope separation units.

(3) Uranium hexafluoride (UF_6) corrosion-resistant axial or centrifugal compressors, and specially designed or prepared seals for such compressors.

(4) Gaseous diffusion barriers specially designed or prepared for use in separating isotopes of source material, special nuclear material or lithium.

(5) Gaseous diffuser housings specially designed or prepared for use in plants for separating isotopes of source material, special nuclear material or lithium.

(6) Heat exchangers specially designed or prepared for use in gaseous diffusion plants.

(7) Any other equipment or component specially designed or prepared for use in an isotope separation plant.

(8) Specially designed or prepared parts and components for any of the above.

(c) Plants for the reprocessing of irradiated nuclear reactor fuel elements or irradiated lithium and specially designed or prepared equipment and components therefor, as follows:

(1) Fuel element chopping machines, i.e., remotely operated equipment specially designed or prepared to cut, chop or shear irradiated nuclear reactor fuel assemblies bundles or rods.

(2) Criticality safe tanks, i.e., small diameter, annular or slab tanks specially designed or prepared for the dissolution of irradiated nuclear reactor fuel.

(3) Countercurrent solvent extractors specially designed or prepared for use in a reprocessing plant.

(4) Process control instrumentation specially designed or prepared for monitoring or controlling the processing of material in a reprocessing plant.

(5) Any other equipment or components specially designed or prepared for use in a reprocessing plant.

(6) Specially designed or prepared parts and components for any of the above.

(d) Plants for the fabrication of nuclear reactor fuel elements and specially designed or prepared parts and components therefor.

(e) Plants for the production of heavy water, deuterium and deuterium compounds, and specially designed parts and components therefor.

(f) Nuclear material as follows:

(1) Special nuclear material, as follows: plutonium, uranium-233 or uranium enriched above 0.711 percent by weight in the isotope uranium-235.

(2) Source material as follows: uranium or thorium, other than special nuclear material; and ores which contain by weight 0.05 percent or more of uranium or thorium, or any combination of these.

(3) Byproduct material as follows: radioactive material (except special nuclear material) produced by exposure to the radiation incident to the process of producing or using special nuclear material.

(4) Deuterium and any deuterium compound, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5,000.

(5) Nuclear grade graphite (graphite with a boron content of less than 5 parts per million and density greater than 1.5 grams per cubic centimeter).

RAUER H. MEYER,
Acting Deputy Assistant Secretary for Trade Regulation.

[FR Doc 78-34853 Filed 12-14-78; 8:45 am]

[3510-25-M]

PART 371—GENERAL LICENSES

Deletion of General License GLD; Dunnage

AGENCY: Office of Export Administration, Bureau of Trade Regulation, Department of Commerce.

ACTION: Final Rule.

SUMMARY: The Export Administration Amendments of 1977 requires a review of the provisions of the Export Administration Regulations with the view to simplifying and clarifying them. In order to simplify export procedures, this rule deletes General License GLD Dunnage and incorporates its provisions into General License Ship Stores and Plane Stores. These general licenses contains similar provisions, and the export of dunnage is a logical extension of ship stores and plane stores.

EFFECTIVE DATE: December 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles C. Swanson, Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Tel. 202-377-4196).

Accordingly, Part 371 of the *Export Administration Regulations* (15 CFR Part 371) is amended as follows:

§ 371.8 [Reserved]

1. Section 371.8 is deleted and reserved.

2. Section 371.9(a) is revised by renumbering §§ 371.9(a) (1) and (2) as §§ 371.9(a) (2) and (3), by amending the introductory paragraph, and by adding a new § 371.9(a)(1) to read as follows:

§ 371.9 General License Ship Stores

(a) *Scope.* A general license designated Ship Stores is established, subject to the provisions of § 371.9 authorizing the export on vessels of U.S. or foreign registry departing from the United States, of usual and reasonable kinds and quantities of the commodities indicated in (1) and (2) below, provided such commodities are not intended for unlading in a foreign country and are not exported under a bill of lading as cargo.[1]

(1) Dunnage necessary and appropriate to stow or secure cargo on the outgoing and immediate return voyage of an exporting carrier, when exported solely for use as dunnage, may be exported to any destination except North Korea, Vietnam and Cambodia.

* * * * *

3. Section 371.10(a) is revised by renumbering §§ 371.10(a) (1) and (2) as §§ 371.10(a) (2) and (3), by amending the introductory paragraph and by adding a new § 371.10(a)(1) to read as follows:

§ 371.10 General License PLANE STORES

(a) *Scope.* A general license designated PLANE STORES is established, subject to the provisions of § 371.10, authorizing the export on aircraft of U.S. or foreign registry departing from the United States, or usual and reasonable kinds and quantities of the commodities indicated in § 371.10(a) (1) and (2) below, provided such commodities are not intended for unlading in a foreign country and are not exported under a bill of lading as cargo.[1]

[1] When a validated license is required, see §§ 372.4 and 376.9.

(1) Dunnage necessary and appropriate to stow or secure cargo on the outgoing and immediate return flight of an exporting carrier, when exported solely for use as dunnage, may be exported to any destination except North Korea, Vietnam and Cambodia.

* * * * *

(Sec. 4 Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403, as amended; E. O. 12002, 42 F.R. 35623 (1977); Department Organization Order 10-3, dated December 4, 1977, 42 F.R. 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 F.R. 64716 (1977).)

RAUER H. MEYER,
Acting Deputy Assistant Secretary for Trade Regulation.

[FR Doc. 78-34855 Filed 12-14-78; 8:45 am]

[3510-25-M]

PART 374—REEXPORTS

Revision to Permissive Reexports of Certain Non-Naval Reserve Petroleum

AGENCY: Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

ACTION: Final Rule.

SUMMARY: Under certain conditions, reexports of U.S.-origin commodities may be made without prior written authorization. This revision authorizes the reexport of Non-Naval Reserve Petroleum which was first exported from the U.S. under General License *G-NNR.*

EFFECTIVE DATE: December 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles C. Swanson, Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Tel. 202-377-4196).

Accordingly, Part 374 of the *Export Administration Regulations* (15 CFR Part 374) is amended by revising § 374.2(a)(1) to read as follows:

§ 374.2 Permissive Reexports.

* * * * *

(a) * * *

(1) May be exported directly from the United States to the new country of destination under General License *G-DEST, GTE,* or *GNN-R,*

* * * * *

(Sec. 4 Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E. O. 12002, 42 FR 35623 (1977); Department Organiza-

tion Order 10-3, dated December 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 FR 64716 (1977).)

RAUER H. MEYER,
Acting Deputy Assistant Secretary for Trade Regulation.

[FR Doc. 78-34856 Filed 12-14-78; 8:45 am]

[6351-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

PART 31—LEVERAGE TRANSACTIONS

AGENCY: Commodity Futures Trading Commission.

AGENCY: Final rule.

SUMMARY: The Commodity Futures Trading Commission has determined to adopt an expanded version of § 30.03 of its regulations. Rule 30.03 makes unlawful fraudulent activities in connection with so-called leverage transactions in silver or gold bullion or bulk coins. The new rule, redesignated as § 31.03 within Part 31 of the Commission's regulations, reflects the enactment of the Futures Trading Act of 1978. Among other things, that Act expands the jurisdiction of the Commission to cover leverage transactions involving all commodities, in addition to gold and silver bullion and bulk coins.

EFFECTIVE DATE: December 15, 1978.

FOR FURTHER INFORMATION CONTACT:

John P. Connolly, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street N.W., Washington, D.C. 20581, 202-254-5304.

SUPPLEMENTARY INFORMATION: On November 14, 1978, 43 FR 52729, the Commission announced that it was proposing to adopt an expanded version of its existing antifraud rule pertaining to gold and silver leverage transactions. The Commission made clear that the proposed rule continues to apply to gold and silver leverage transactions, would employ the same standards contained in present § 30.03, would cover all leverage transactions involving all other commodities, such as platinum, diamonds and other precious gems, over which the Commission has been given jurisdiction pursuant to Section 19 of the Commodity Exchange Act and would also reflect the Commission's broadened jurisdiction over transactions contained in Section 19. The Commission provided for a ten-day comment period on the rule, during which one comment was received from a member of the general public—which was highly favorable of the Commission's proposed action. The Commission has now determined to adopt the rule substantially in the form proposed, but has redesignated the rule as § 31.03 within new Part 31 of its regulations, which applies to all leverage transactions. As a result of this redesignation, the Commission is deleting existing rule 30.03, since new rule 31.03 will cover the conduct now proscribed by the existing rule. Of course, the redesignation is technical in nature and will have no substantive effect on fraudulent activity in gold or silver leverage transactions referred to in rule 30.03 which occurred prior to, on or after the effective date of rule 31.03.

Rule 31.03 is adopted effective December 15, 1978. The Commission is satisfied that it would be contrary to the public interest to delay the effective date of this rule for the 30 days normally required under the Administrative Procedure Act, 5 U.S.C. § 553(d). The Commission has exclusive jurisdiction with respect to those transactions which are the subject of this rule. Fraudulent conduct in connection with gold or silver leverage transactions is already proscribed by § 30.03, and until the Commission's rule becomes effective, there will be a regulatory gap which will endanger the public interest with respect to those transactions over which the Commission has been granted exclusive jurisdiction by the Futures Trading Act of 1978. Furthermore, since the rule adopted does no more than forbid fraudulent activities, its immediate adoption will impose no cognizable hardships.

In consideration of the foregoing, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations by deleting § 30.03 from Part 30 and by adding § 31.03 to Part 31 to read as follows:

§ 31.03 Fraud in connection with certain transactions in silver or gold bullion or bulk coins, or other commodities.

It shall be unlawful for any person, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in, or in connection with (1) an offer to make or the making of, any transaction for the purchase, sale or delivery of silver bullion, gold bullion, bulk silver coins, bulk gold coins, or any other commodity pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or pursuant to any contract, account, arrangement, scheme, or device that serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract, or (2) the maintenance or carrying of any such contract.

The provisions of this section shall not apply to any transaction expressly prohibited by section 19(a) of the Act.

(Secs. 2(a), 8a, and 19 of the Commodity Exchange Act and secs. 2 and 23 of Pub. L. 95-405 (92 Stat. 865, 870-871); 7 U.S.C. 2 and 12a.)

Issued in Washington, D.C., on December 11, 1978.

GARY L. SEEVERS,
Acting Chairman,
Commodity Futures Trading Commission.

[FR Doc. 78-34949 Filed 12-14-78; 8:45 am]

[8010-01-M]

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Rel. No. SAB-28]

PART 211—INTERPRETATIVE RELEASES RELATING TO ACCOUNTING MATTERS

Subpart B—Staff Accounting Bulletins

STAFF ACCOUNTING BULLETIN No. 28

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This bulletin presents the staff's view of disclosures and accounting which should be made by electric utility companies concerning (1) financing through use of construction intermediaries, (2) interests in jointly-owned electric utility plants and (3) long-term contracts for purchase of power.

DATE: Effective December 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Lawrence J. Bloch, Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549 (202-472-3782).

SUPPLEMENTARY INFORMATION: The statements in staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval; they represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 6, 1978.

STAFF ACCOUNTING BULLETIN NO. 28

* * * * *

These interpretations detail the staff's view of disclosures and accounting which should be made by electric utility companies concerning (1) financing through use of construction intermediaries, (2) interests in jointly-owned electric utility plants and (3) long-term contracts for the purchase of power.

TOPIC 5: MISCELLANEOUS ACCOUNTING

* * * * *

L. Financing by electric utility companies through use of construction intermediaries.

Facts: Some electric utility companies finance construction of a generating plant or their share of a jointly-owned plant through the use of a "construction intermediary" which may be organized as a trust or a corporation. Typically the utility assigns its interest in property and other contract rights to the construction intermediary with the latter authorized to obtain funds to finance construction with term loans, bank loans, commerical paper and other sources of funds that may be available. The intermediary's borrowings are guaranteed in part by the work in progress but more significantly, although indirectly, by the obligation of the utility to purchase the project upon completion and assume or otherwise settle the borrowings. The utility may be committed to provide any deficiency of funds which the intermediary cannot obtain and excess funds may be loaned to the utility by the intermediary. (In one case involving construction of an entire generating plant, the intermediary appointed the utility as its agent to complete construction). On the occurrence of an event such as commencement of the testing period for the plant or placing the plant in commercial service (but not later than a specified date) the interest in the plant reverts to the utility and concurrently the utility must either assume the obligations issued by the intermediary or purchase them from the holders. The intermediary may also be authorized to borrow amounts for accrued interest when due and those amounts are added to the balance of the outstanding indebtedness. Interest is thus capitalized during the construction period at rates being charge by the lenders; however, it is deductible by the utility for tax purposes in the year of accrual.

Question: How should construction work in progress and related liabilities and interest expense being financed through a construction intermediary be reflected in an electric utility's financial statements?

Interpretive Response: The balance sheet of an electric utility company using a construction intermediary to finance construction should include the intermediary's work in progress in the appropriate caption under utility plant. The related debt should be included in long-term liabilities and disclosed either on the balance sheet or in a note.

The first sentence of 17 CFR 210.3-16(r)(1) applies to all registrants and provides that "The amount of interest cost capitalized in each period for which an income statement is presented shall be shown within the income statement." Consequently, capitalized interest included as part of an intermediary's construction work in progress on the balance sheet should be recognized on the current income statement as interest expense with a corresponding offset to allowance for borrowed funds used during construction. Income statements for prior periods should also be restated. The amounts may be shown separately on the statement or included with interest expense and allowance for borrowed funds used during construction.

A note to the financial statements should describe briefly the organization and purpose of the intermediary and the nature of its authorization to incur debt to finance construction. The note should disclose the rate at which interest on this debt has been capitalized and the dollar amount for each period for which an income statement is presented.

* * * * *

TOPIC 10: MISCELLANEOUS DISCLOSURE

* * * * *

L. Jointly-owned electric utility plants.

Facts: Groups of electric utility companies have been building and operating utility plants under joint ownership agreements or arrangements which do not create legal entities for which separate financial statements are presented. Under these arrangements a participating utility has an undivided interest in a utility plant and is responsible for its proportionate share of the costs of construction and operation and is entitled to its proportionate share of the energy produced.

During the construction period a participating utility finances its own share of a utility plant using its own financial resources and not the combined resources of the group. Allowance for funds used during construction is provided in the same manner and at the same rates as for plants constructed to be used entirely by the participant utility.

When a jointly-owned plant becomes operational, one of the participant utilities acts as operator and bills the other participants for their proportionate share of the direct expenses incurred. Each individual participant incurs other expenses related to transmission, distribution, supervision and control which cannot be related to the energy generated or received from any particular source. Many companies maintain depreciation records on a composite basis for each class of property so that neither the accumulated allowance for depreciation nor the periodic expense can be allocated to specific generating units whether jointly or wholly-owned.

Question: What disclosure should be made on the financial statements or in the notes concerning interests in jointly-owned utility plants?

Interpretive Response: A participating utility should include information concerning the extent of its interests in jointly-owned plants in a note to its financial statements. The note should include a table showing separately for each interest in a jointly-owned plant the amount of utility plant in service, the accumulated provision for depreciation (if available), the amount of plant under construction, and the proportionate share. The amounts presented for plant in service or plant under construction may be further subdivided to show amounts applicable to plant subcategories such as production, transmission, and distribution. The note should include statements that the dollar amounts represent the participating utility's share in each joint plant and that each participant must provide its own financing. Information concerning two or more generating plants on the same site may be combined if appropriate.

The note should state that the participating utility's share of direct expenses of the joint plants are included in the corresponding operating expenses on its income statement (e.g., fuel, maintenance of plant, other operating expense). If the share of direct expenses is charged to purchased power then the note should disclose the amount so charged and the proportionate amounts charged to specific operating expenses on the records maintained for the joint plants.

M. Long-term contracts for purchase of electric power.

Facts: Under long-term contracts with public utility districts, cooperatives or other organizations, a utility company receives a portion of the output of a production plant constructed and financed by the district or cooperative. The utility has only a nominal or no investment at all in the plant but pays a proportionate part of the plant's costs, including debt service. The contract may be in the form of a sale of a generating plant and its immediate lease back. The utility is obligated to pay certain minimum amounts which cover debt service requirements whether or not the plant is operating. At the option of other parties to the contract and in accordance with a predetermined schedule, the utility's proportionate share of the output may be reduced. Separate agreements may exist for the transmission of power to the utility's system.

Question: How should the cost of power obtained under long-term purchase contracts be reflected on the financial statements and what supplemental disclosures should be made in notes to the statements?

Interpretive Response: The cost of power obtained under long-term purchase contracts, including payments required to be made when a production plant is not operating, should be included in the operating expenses section of the income statement. A note to the financial statements should present information concerning the terms and significance of such contracts to the utility company including date of contract expiration, share of plant output being purchased, estimated annual cost, annual minimum debt service payment required and amount of related long-term debt or lease obligations outstanding.

Additional disclosure should be given if the contract provides, or is expected to provide, in excess of five percent of current or

estimated future system capability. This additional disclosure may be in the form of separate financial statements of the vendor entity or inclusion of the amount of the obligation under the contract as a liability on the balance sheet with a corresponding amount as an asset representing the right to purchase power under the contract.

The note to the financial statements should disclose the allocable portion of interest included in charges under such contracts. Accounting Series Release No. 122 (17 CFR 211.122) discusses the computation of the ratio of earnings to fixed charges for an enterprise which has guaranteed the debt of a supplier company or has entered into contracts with a supplier providing for payments designed to service debt of a supplier. The release states in art that in such instances the ratio "* * * for the registrant must be accompanied by effective disclosure of the significance of fixed charges of other companies included in the enterprise whether or not the revenues and expenses of such companies are set forth in the financial statements of the registrant. Such disclosure usually should be accomplished by presenting the ratio of earnings to fixed charges for the total enterprise in equivalent prominence with the ratio for the registrant or registrant and consolidated subsidiaries."

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[FR Doc. 78-34967 Filed 12-14-78; 8:45 am]

[4110-03-M]

Title 21—Food and Drugs

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

SUBCHAPTER A—GENERAL

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

Delegation of Authority to the Commissioner of Food and Drugs

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: This document amends the regulations for delegations of authority to the Commissioner of Food and Drugs to reflect a revocation and redelegation of program authorities, and to reflect the designation of the Commissioner as appeal authority for certain cases regarding Privacy Act regulations. The amendment will conform the regulations to organizational changes within the Department of Health, Education, and Welfare (DHEW) and the public Health Service (PHS).

EFFECTIVE DATE: December 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert L. Miller, Office of Management and Operations (HFA-340), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: By memorandum on June 23, 1978, the Assistant Secretary for Health revoked the delegations of program authorities made by the Deputy Assistant Secretary for Health-Programs to PHS agency heads and concurrently redelegated the authorities back to the agency heads. This action was announced in the FEDERAL REGISTER of July 5, 1978 (43 FR 29034).

In a separate action, by memorandum on October 3, 1978, the Executive Officer, PHS, designated PHS agency heads as appeal authorities to take final action upon an individual's appeal of a refusal to correct or amend the individual's record under DHEW Privacy Act regulations. Redelegation of the authority is not permitted.

This amendment changes § 5.1 (21 CFR 5.1) to reflect these actions as they relate to the Commissioner.

Therefore, under the Federal, Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), Part 5 is amended by revising the heading of § 5.1 and the introductory text of paragraph (a), and by adding new paragraph (d) to read as follows:

§ 5.1 Delegations from the Secretary, the Assistant Secretary for Health, and the Executive Officer, Public Health Service.

(a) The Assistant Secretary for Health has redelegated to the Commissioner of Food and Drugs, with authority to redelegate except when specifically prohibited, all authority delegated to the Assistant Secretary for Health by the Secretary of Health, Education, and Welfare, as follows:

* * * * *

(d) The Executive Officer, Public Health Service, has redelegated to the Commissioner of Food and Drugs appeal authority to take final action upon an individual's appeal of a refusal to correct or amend the individual's record when the appeal has been made by the individual under Privacy Act regulations (Part 21 of this chapter and 45 CFR Part 5b). The authority may not be redelegated.

Effective Date. This regulation is effective December 15, 1978.

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

Dated: December 8, 1978.

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

[FR Doc. 78-34861 Filed 12-14-78; 8:45 am]

[4110-03-M]

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 77N-0438]

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

Emulsifier/Surfactant

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: This document amends the food additive regulations to provide for the safe use of poly[(methylene-*p*-nonylphenoxy) poly(oxypropylene)(4-12 moles) propanol] as an emulsifier/surfactant in food-contact applications. This action responds to a food additive petition filed by the Witco Chemical Corp.

DATES: Effective December 15, 1978; objections by January 15, 1979.

ADDRESS: Written objections to this regulation may be filed with the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: A notice published in the FEDERAL REGISTER of March 3, 1978 (43 FR 8852) announced that a food additive petition (FAP 7B3333) had been filed by Witco Chemical Corp., 3230 Brookfield St., Houston, TX 77045, proposing to amend 21 CFR 178.3400 to provide for the use of poly[(methylene-*p*-nonylphenoxy) poly(oxypropylene)(4-12 moles) propanol] as a surfactant in food-contact applications.

Having evaluated data in the petition and other relevant material, the Commissioner of Food and Drugs concludes that § 178.3400 should be amended as set forth below to include the petitioned additive.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))) and under authority delegated to the Commissioner (21 CFR 5.1), Part 178 is amended in § 178.3400(c) by alphabeti-

cally inserting a new item in the list of substances, to read as follows:

§ 178.3400 Emulsifiers and/or surface-active agents.

* * * * *

(c) * * *

List of substances	*Limitations*
* * * * *	
Poly[(methylene-*p*-nonylphenoxy) poly(oxypropylene)(4-12 moles) propanol] of minimum molecular weight 3500.	For use in coatings at levels not to exceed 1 mg per square foot of food-contact surface.
* * * * *	

Any person who will be adversely affected by the foregoing regulation may at any time on or before January 15, 1979 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held, failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective December 15, 1978.

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

Dated: December 6, 1978.

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

[FR Doc. 78-34700 Filed 12-14-78; 8:45 am]

[4110-03-M]

SUBCHAPTER D—DRUGS FOR HUMAN USE

[Docket No. 78N-0258]

PART 310—NEW DRUGS

Large Volume Parenteral Drugs in Plastic Containers; Compatibility Studies

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The agency is issuing a final regulation requiring compatibility studies of each large volume parenteral drug for intravenous use that is packaged in a plastic container (LVP in plastic) and of certain other drugs that may be added regularly to the parenteral delivery system. In addition, a warning about the possible incompatibility of added drugs and the LVP in plastic, instructions for thorough mixing of the drugs, and a warning against storage of mixed solutions are required in all labeling and on the immediate container of each LVP in plastic. The agency is taking this action because of the safety concerns raised by the common practice of adding parenteral drugs to LVP's in plastic for single administration to patients.

EFFECTIVE DATE: February 13, 1979.

FOR FURTHER INFORMATION CONTACT:

Michael C. McGrane, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5220.

For requests for waivers and submission of protocols contact:

Robert A. Jerussi, Bureau of Drugs (HFD-160), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3560.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of November 7, 1974 (39 FR 39473), the Commissioner of Food and Drugs proposed to establish a new § 310.509 (21 CFR 310.509) to require each holder of an approved new drug application (NDA) for a large volume parenteral drug product for intravenous use packaged in a plastic container to conduct studies on the compatibility of the plastic container with certain other drugs that may be added regularly to the parenteral delivery system. The action was proposed on the recommendation of the Food and Drug Administration's (FDA's) Surgical Drugs Advisory Committee. While holders of NDA's for LVP's in plastic have demonstrated the suitability of plastic containers for specific parenteral drugs, little or no information is available on the reactivity of the plastic container with drugs added subsequently. The proposal would have permitted the continued marketing of an LVP in plastic only if (1) an approved NDA is in effect for the drug product, (2) the NDA holder submits a notice of intent to perform the compatibility studies with the drug products listed in the proposal, (3) the NDA holder submits a proposed protocol for the compatibility studies, and (4) the NDA holder submits interim status reports of the ongoing studies and a final report at the completion of the studies. In addition, a required warning statement was proposed for all labeling and the immediate container of LVP's in plastic. The proposed warning cautioned against the possible incompatibility of added drugs, but also advised that, if drugs are added, thorough mixing is required and the mixed solutions should not be stored.

Five comments were received in response to the proposal. They came from a pharmacist, a State health department, and three drug manufacturers. A summary of the comments on the proposal and the Commissioner's conclusions regarding them follows:

1. One comment stated that the proposal did not appear to require compatibility studies of hyperalimentation solutions (i.e., concentrated nutrient solutions for intravenous use such as amino acids, dextrose, and fructose) intended to meet nutritional needs, nor of the additives peculiar to those solutions (e.g., potassium phosphate, potassium acetate, calcium chloride, and other necessary minerals). The comment suggested that studies on these solutions and their additives also be required under a final regulation.

The Commissioner advises that hyperalimentation solutions for intravenous use are large volume parenteral drug products within the meaning of the proposal and the final regulation. No hyperalimentation solutions are packaged in plastic, although many mineral and vitamin supplements are often added to a parenteral system for the delivery of hyperalimentation solutions packaged in glass. As stated in the proposal, any parenteral drug product, including any hyperalimentation solution, that is packaged in plastic is a "new drug" within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) and requires an approved NDA as a condition for marketing. Thus, compatibility studies on each hyperalimentation solution packaged in plastic and the plastic container, as well as compati-

bility studies on mineral and vitamin supplements commonly added to hyperalimentation solutions, would be required to obtain approval of an NDA.

2. One comment recommended that the final regulation apply only to LVP's in plastic marketed in containers made of polyvinyl chloride on the ground that polyvinyl chloride, unlike other plastics such as polyethylene, contains a high percentage of plasticizers. The comment also recommended that the use of polyvinyl chloride for the packaging of any parenteral solution be reevaluated after consideration of the studies and scientific literature concerned with the toxicity of extractables from polyvinyl chloride tubing and containers. The reevaluation should also consider the fact that parenteral fluids remain in contact with the plastics for long periods of time.

A comment was submitted in response to these suggestions. The comment observed that while other plastics, such as polyethylenes, do not have plasticizers, they do have components, such as antioxidants, that may affect the compatibility of additive drugs. In addition, other plastics have gas transmission rates for oxygen and carbon dioxide that might influence the compatibility of additives to the parenteral system. The comment suggested that compatibility of additives be studied for each kind of plastic container.

The Commissioner does not agree that the requirement for compatibility studies should be limited to the polyvinyl chloride containers. The holder of an approved NDA for an LVP in a container made of polyvinyl chloride, polyethylene, or other type of plastic has demonstrated the suitability of the container for a specific parenteral drug product. Although basic differences in the plastics that are used in LVP containers may present different kinds of hazards when drugs are subsequently added to the parenteral delivery system, the potential for reactivity between the plastic container and the additive drug exists for all kinds of plastic containers.

3. One comment objected to the application of the proposed regulation to only LVP's in plastic. The comment contended that limiting the required studies to plastic containers infers that additive incompatibility is a problem peculiar to the packaging of LVP's in plastic. The comment stated that additive incompatibility is a complex problem for LVP's packaged in both plastic and glass containers. The comment suggested that the studies first be done in LVP's packaged in glass containers to provide an adequate and consistent data base for glass containers.

The Commissioner concludes that an appropriate protocol for a compatibility study of an additive drug and LVP container made of plastic must include a compatibility study of the additive drug in the same LVP solution in a glass container as a control. Although glass containers are composed of substances that may be leached into a solution in contact with the glass, and some glass compounds may themselves react with the additive or the solution, data from a study of the LVP in a glass container as a control is necessary to separate effects caused by the incompatibility of the solution and the additive drug from those caused by the incompatibility of the additive drug and the plastic container. If the result of the studies of the compatibility of LVP's in plastic and additive drugs suggest a potential problem concerning the compatibility of LVP's packaged in glass containers, the Commissioner will consider requiring specific studies concerning those products.

4. One comment observed that the problem of reactivity between additive drugs and plastic containers or large volume parenteral drug products, or both, is very complex. Accordingly, more exposition and definition of the problem are needed before protocols for studies capable of resolving the problem can reasonably be expected. The comment suggested that an appropriate nongovernment organization, such as the National Academy of Sciences/National Research Council or a pharmacy organization, should be asked to conduct a study to define the problem better and to outline possible solutions before protocols for studies are required.

The Commissioner does not agree with this comment. The kind of studies required by this final regulation has been conducted by LVP manufacturers for many of their products. Although the required compatibility studies will be extensive, the Commissioner does not anticipate that the protocols themselves will be beyond the present capabilities of the industry. In any event, FDA's Division of Surgical-Dental Drug Products will cooperate with manufacturers in assuring that the protocols are adequate. Proposed protocols and questions concerning them should be directed to the Director, Division of Surgical-Dental Drug Products, Bureau of Drugs (HFD-160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3560.

5. A comment contended that the additive drug manufacturers should have the burden of conducting studies on the compatibility of their products and LVP's in plastic because they recommend that their drugs be administered with the LVP drug products. Another comment stated that the active drug manufacturers are responsible for both the quantity and kinds of ingredients in their drug products and presumably have a data base upon which compatibility studies can be founded. In addition, only the additive drug manufacturers have the analytical capability for conducting the studies. If the results of the compatibility studies show a particular drug additive to be incompatible with an LVP in plastic, revised labeling or withdrawal of marketing approval of the drug additive, and not the LVP in plastic, should be considered.

The Commissioner does not agree with these comments. The manufacturers of LVP's in plastic produce and market dosage sizes (e.g., 100 milliliters (ml) and 150 ml) that are often used as carriers for additive drug products. In addition, although additive drug manufacturers may suggest or recommend that their drug be added to certain LVP solutions for intravenous administration, the kind of container in which the LVP solution is marketed is determined by the LVP manufacturer and not the manufacturer of the additive drug. Additive drug manufacturers may have information on the compatibility of their products with certain LVP solutions, but not various plastics used in containers for LVP drug products. Accordingly, if one kind of plastic LVP container is found to be incompatible with an additive drug, it is more practical to label the LVP in plastic to warn against the incompatibility than to list in the additive drug's labeling the LVP's in plastic with which it is or is not compatible. The Commissioner believes that the manufacturers of LVP's in plastic are capable of performing the compatibility studies.

6. Comments observed that the additive drugs for which compatibility studies were proposed are listed by nonproprietary or generic names and are produced by many manufacturers. The manufacturer of an LVP in plastic would have to conduct studies for each additive drug product because the inactive ingredients (e.g., fillers, antioxidants, and stabilizers) for additive drug products may differ among manufacturers. Comments questioned whether every brand of each listed drug is considered closely enough related in composition so that data will apply to all brands of the drug, regardless of differences from brand to brand or from formulation to formulation in the inactive ingredients.

The Commissioner advises that the concern about the compatibility of the additive drugs and the LVP's in plastic is directed primarily to the potential reactivity of the active ingredients of the additive drugs and the plastic container. Although the Commissioner

recognizes that inactive ingredients in an additive drug may have an effect upon the compatibility of the additive drug and an LVP in plastic, the Commissioner concludes that it is not feasible at this time to require studies of each brand of the additive drugs with each LVP in plastic. In addition, data and information are not currently available that would permit a determination that studies involving every brand of a particular additive drug should be required for an additive drug that contains a particular inactive ingredient or for a particular active ingredient. Accordingly, the results of the compatibility studies of an LVP in plastic and one brand of additive drug product will be considered to apply to all brands of the additive drug and to different formulations of the drug that contain the same active ingredients. The Commissioner anticipates, however, that NDA holders conducting individual studies under this final regulation will use different brands of additive drugs and, thus, may develop data and information on the effects of inactive ingredients on the compatibility of additive drugs and LVP's in plastic. If the studies demonstrate that the incompatibility of an additive drug and an LVP in plastic differs between different brands of the additive drug, the Commissioner will consider requiring additional studies to resolve the questions the finding would raise.

7. A comment suggested that the required compatibility testing of additive drugs be waived for the manufacturer of an LVP in plastic who includes a statement in the labeling of the product that parenteral drugs should not be added to the parenteral delivery system. The statement would be included in the labeling of an LVP in plastic either because of the nature of the product or at the discretion of the manufacturer.

The Commissioner agrees that a warning statement, such as the one proposed by the comment, would be appropriate for the labeling of LVP's in plastic that have been shown to be incompatible with many drug additives. The label warning and exemption from the compatibility testing requirements, however, would be inappropriate for LVP's in plastic that are ordinarily used as carriers for drug additives in common medical practice. Providing the option would not prevent the continued use of the LVP's in plastic as carriers for other parenteral drugs, and the safety and effectiveness oif this practice would remain unresolved.

8. One manufacturer commented that it had distributed millions of units of LVP's in plastic over several years and was not aware of a medically significant example of an additive drug influencing leaching and/or migration of plastic components or a drug absorption or adsorption that was unique to the plastic container. The manufacter contended that its experience demonstrated that the concern on which the proposal was based was not well founded.

The Commissioner does not agree with this comment. Reports in the scientific literature indicate that differences exist between glass containers and plastic containers used for large volume parenteral drug products. One report suggests the absorption in polyvinyl chloride of sodium warfarin, vitamin A acetate, and sodium methohexital, while these substances have not been shown to be absorbed in glass containers. (See Moorhatch, P., and W. L. Chiou, "Interactions Between Drugs and Plastic Intravenous Fluid Bags," *American Journal of Hospital Pharmacists*, 31:70-78, 1974, a copy of which has been placed on public display in the office of the Hearing Clerk, FDA). The Commissioner concludes that adequate differences have been demonstrated between the effects of drug additives on plastic containers and glass containers to cause concern as to whether the practice of adding drugs to LVP's in plastic is safe.

9. One manufacturer of large volume parenteral drug products disagreed with the statement in the proposal that little or no information is available on the reactivity of plastic containers and drugs added to an LVP in plastic. The manufacturer stated that it had already been actively involved in research in this area and had generated a considerable body of data, which is available to FDA in one of the manufacturer's drug master files. The manufacturer stated that data on 33 drug additives in large volume parenteral drugs in both glass containers and plastic containers were presented in that file and that no significant differences had been found when comparing the chemical compatibility of the additive drugs in either glass or plastic containers.

The Commissioner recognizes that studies have shown in some instances that a difference does not exist between plastic and glass containers when drugs are added subsequently, while other studies have shown that drug additives may not be compatible in either glass or plastic containers, or both. The FDA is aware of data supporting each of these positions. These data, together with the information and data received as a result of this final regulation, will form a basis for making a determination whether a labeling change or the withdrawal of an NDA for an LVP in plastic is an appropriate course of action to assure the safe and effective use of these drug products. Although manufacturers are not required to repeat studies already submitted to FDA that comply with the final rule, the Commissioner does not agree that currently available data can be considered determinative of these issues.

10. Two comments suggested that FDA consider a class approach to testing the drug additives in LVP's in plastic under this regulation. A class approach could make use of available knowledge on the common properties of similar solutions and similar plastic containers. If a drug additive has been shown to be compatible with several saline solutions, then a determination of the compatibility of the drug additive in 0.9 percent sodium chloride for injection in a plastic container should be determinative of whether or not the drug additive has an effect on the plastic container. Such an approach would substantially reduce the amount of testing required and would not sacrifice accuracy.

The Commissioner agrees that the approach suggested by the comment would reduce the required testing and would resolve the safety and effectiveness questions concerning drugs added to LVP's in plastic. Generally, a compatibility study of the most concentrated solution of an additive drug and the LVP solution would be determinative of the compatibility of the additive drug and the plastic container. The extent to which a class approach for testing additives should be considered for particular additive drugs and particular LVP's in plastic, however, should be more carefully examined in the protocols for the studies.

11. One comment observed that the studies are intended to reveal the compatibility of common drug additives with the plastic containers in which large volume parenteral drugs for intravenous use are packaged. Accordingly, the comment objected to the statement in proposed § 310.509(b) that the Commissioner is requiring full investigation of the compatibility of LVP's in plastic with additive drugs. Because the compatibility of the additive drug with the parenteral drug is not at issue, the comment recommended that the final regulation be reworded to avoid any ambiguity.

The Commissioner agrees with this comment. The studies required under the final regulation are intended to resolve questions concerning the reactivity between the plastic container and drugs added to the parenteral delivery system. Section 310.509(b) has been appropriately revised. The Commissioner notes, however, that information and data on the compatibility of the additive drug and the LVP solution probably also will be obtained from the studies. As stated in paragraph 3, appropriate protocols for the

studies will require the use of LVP's in glass containers to distinguish effects caused by the LVP solution from those caused by the plastic container.

12. A comment suggested that the requirement that interim status reports of the ongoing studies be submitted at 3-month intervals is excessive. The comment argued that the tabulation, summarization, and preparation of information and data in full report format for submission to FDA on a quarterly basis represents a considerable effort by manufacturers with questionable benefits to FDA. Because FDA would approve the protocols for the studies, the comment suggested that a final report summarizing and tabulating the complete study should be acceptable. The comment also suggested that the requirement for an 18-month time period in which to complete the studies is unrealistic because LVP manufacturers do not have ready access to analytical methods for many of the additives, particularly analytical methods that will differentiate between the additive drugs and their decomposition products. In any event, if the appropriate analytical methods were available to the LVP manufacturers, they would necessarily reassess those methods to assure that the components of the LVP solution do not interfere with the methods. The reassessments would have to be completed before any compatibility studies could be initiated. Because the warning statement would be required pending the completion and evaluation of the studies, the comment suggested that there would be a competitive incentive for the LVP manufacturers to complete the studies in as short a time as possible. Accordingly, there should be no need to impose a specific time limit for submission of the final report on the compatibility studies.

The Commissioner agrees, in part, with these comments. Thus, the final rule is revised to require a single interim status report of the ongoing studies 9 months after the applicant has received written acceptance of the protocol from FDA. The Commissioner believes that at least one interim status report is necessary to assure that the protocols for the studies are capable of providing the data and information necessary for a determination of the compatibility of the additive drugs with LVP's in plastic, that adequate progress in conducting the studies is being maintained, and that the completion date will be met.

The Commissioner also has revised the final regulation to require the submission of the final report on the studies within 24 months following the acceptance of the protocol by FDA. Although some reassessments of analytical methods may be necessary before beginning the studies, the studies themselves will not be time consuming. Accordingly, the Commissioner concludes that 24 months is adequate time within which to prepare for and conduct the studies and submit a final report. However, the Commissioner does not agree that being able to delete the warning statement would provide sufficient incentive for manufacturers to complete the studies quickly; the Commissioner therefore rejects the suggestion to remove the time limit.

13. A manufacturer commented that it had a large amount of data and information concerning the leaching, migration, and stability problems of plastic containers used for large volume parenteral drugs. It asked for assurance that that information would be considered in reviewing both the protocols under which the studies required by this regulation will be conducted and in evaluating the results of those studies. The comment suggested that the provision in the proposal that compatibility tests not be begun before the applicant is notified by FDA that its protocol has been accepted should not prohibit the submission of results of compatibility studies under way or completed by the NDA holder before the effective date of the final regulation.

The Commissioner advises that the prohibition in the rule against beginning the studies before the protocols have been accepted applies only to the protocols for the studies required under this regulation. Manufacturers of LVP's in plastic who have information and data on the reactivity of the plastic container and drugs added subsequently may submit the data and information to FDA for consideration in both the design of the protocols required by this regulation and in any final determination concerning these drug products.

14. One comment objected to the suggestion in the proposal that each manufacturer submit a protocol for conducting the required studies which would then be reviewed by FDA for its acceptability. The comment contended that the protocols for these studies should be uniform for all manufacturers and not based on separate agreements by each company with FDA.

The Commissioner agrees that these drugs should be tested under standardized conditions and under a common protocol so that interpretable data on the compatibility problems concerning each drug and container are developed. Accordingly, the Commissioner encourages the manufacturers of LVP's in plastic to work together in developing the protocols and performing the required studies; joint studies would be acceptable to FDA. The Commissioner has no legal authority, however, to compel joint studies or to allocate the costs of the studies among participants; that must depend upon private agreements among the manufacturers required to perform the studies.

15. Several comments asked for clarification of the list of additive drugs in the proposal. One comment observed that several of the additives were listed in the plural and asked whether compatibility testing of one member of a class, e.g., one of the cephalosporins, would be considered to apply to the entire class.

The Commissioner advises that a compatibility study of one drug product within a class would be considered adequate to determine the compatibility of all members of the class. As discussed in paragraph 10, however, the most concentrated solution of the additive drug in the LVP in plastic should be tested. The Commissioner is not aware of data that suggest differences between drugs in a class that would significantly affect the compatibility of the drug and the LVP container. If the studies required under this rule, however, reveal a difference within a class, additional studies within the class may be required.

16. A comment observed that two forms of chloramphenicol were included in the list in the proposal (that is, chloramphenicol and chloramphenicol sodium succinate). The comment asked whether compatibility testing of one of the chloramphenicols would be sufficient to determine the compatibility of the other.

Because chloramphenicol is only slightly soluble in water, the Commissioner advises that chloramphenicol sodium succinate was included in the list because the latter is used in aqueous LVP solutions. Thus, tests of one would not be informative as to the possible incompatibility of the other.

17. Two comments objected to the inclusion of cyclophosphamide and fluorouracil in the list of drug additives, on the ground that the product literature for those drugs recommends that they not be diluted before injection. One comment observed that the labeling for chloramphenicol sodium succinate, as well as the labeling for many of the other drugs listed in the proposal, does not recommend that the drug be given by diluting it in an LVP.

The Commissioner notes that the current package insert for one brand of cyclophosphamide suggests that it may be infused intravenously in dextrose injection, U.S.P., or dextrose and sodium chloride injection, U.S.P. In addition, although the labeling for fluorouracil states that no dissolution is required, it is frequently diluted in practice. The Commissioner believes that the additive drugs listed in the regulation are those drugs that, re-

gardless of statements in their labeling, are most frequently added to parenteral delivery systems. Thus, cyclophosophamide and fluorouracil are both retained in the list.

18. A comment contended that compatibility studies of drugs added to LVP's in plastic by the LVP manufacturer may suggest a route of administration for the additive drug that is not recommended or suggested by the additive drug manufacturer and, thus, potentially create civil liability for the LVP manufacturer when the drugs are added to the parenteral delivery system.

Investigational studies of drugs for new uses or for different routes of administration are continually being conducted and are reported in the scientific literature. Those studies have not significantly affected the civil liability of either the persons performing the studies or the persons marketing the drugs. The Commissioner cannot agree that the compatibility studies required by this final rule will significantly affect the civil liability of the LVP manufacturer and rejects the implied suggestion to abandon the rule as proposed.

19. One comment observed that the list in the proposal included those drugs most frequently added to large volume parenteral solutions. The comment asked who would be responsible for conducting compatibility studies of new drug additives that might be developed in the future, as well as compatibility studies required when new LVP solutions or new plastic containers are approved.

The proposal would have required applicants for pending or future NDA's to either submit results of compatibility studies with the protocols for the studies with the original NDA or as records and reports to the approved NDA. The Commissioner recognizes that the proposal did not clearly state if it is the applicant for an NDA for an LVP in plastic or the applicant for a drug additive, or both, that is required to conduct the studies. In addition, the proposal would have permitted an NDA to be approved before compatibility tests to demonstrate the safety and effectiveness of introducing an additive drug into an LVP in plastic were completed. To clarify this, the Commissioner has revised the final rule to require that, after the effective date, NDA's for both additive drugs and LVP's in plastic contain the results of compatibility studies.

20. Comments questioned the inclusion of sodium chloride, potassium chloride, and other inorganic salts in the list of drug additives. The comments contended that those drugs are commonly used as solutes in many LVP's in plastic. The substantial amount of data and information on these solutes accumulated for the NDA's for the LVP's in plastic must be considered when evaluating the compatibility of these same solutes when they are added to the parenteral delivery system by the user. The comments suggested that additional studies for these drugs should not be required if the manufacturer has an approved NDA for an LVP in plastic that contains one of the drugs in the additive drug list. One comment stated that it had a number of approved NDA's for LVP's that contain sodium chloride, potassium chloride, as well as calcium, magnesium, and gluconate ions.

The Commissioner does not agree that compatibility studies should be waived if the LVP in plastic contains a component that is also contained in the list of the drug additives, e.g., potassium chloride or sodium chloride. The concentration of the component in the LVP is for maintenance of isotonic body levels of the component and therefore is lower than the therapeutic concentration of the drug that may be added to the parenteral delivery system. Accordingly, although the NDA holder may have demonstrated the safety and effectiveness of the maintenance level of the drug in a plastic container, the safety and effectiveness of a therapeutic dose may not have been determined.

21. The proposed regulation stated that an applicant could receive a waiver from the required studies upon a showing that the compatibility studies are not necessary for any of the additive drugs listed in the proposal. Comments suggested that compatibility studies be waived for any LVP in plastic that is not recommended by an additive drug manufacturer for dilution of a drug. The comments also suggested that the studies be waived for additive drugs if the manufacturer has restricted its particular drug for use with large volume parenteral drugs specifically named in the labeling for the additive drug.

The Commissioner cannot agree with these comments. The compatibility studies may be waived upon a showing that particular additive drugs are or are not compatible with the LVP in plastic, or that it would be medically unreasonable to combine a particular additive drug and an LVP in plastic. However, as stated in paragraph 7, to waive the compatibility studies for LVP's in plastic that are not recommended for use by the additive drug manufacturer would not prevent the continued use of LVP's in plastic as carriers for additive drugs without evidence of the compatibility of the additive drug and the plastic container.

21. A comment suggested that the Commissioner waive the requirements for the compatibility studies upon a showing that techniques do not exist under which adequate studies can be conducted. Examples of instances in which techniques may not be available include: (1) Where the official monograph or published analytical methods are not adequately sensitive at the concentration levels of the drug additives commonly used in clinical practice; (2) where the official monograph or published analytical methods are not readily adaptable because of solute interference from the large volume parenteral; (3) where the available methods are exotic or specialized and, accordingly, are not routinely practiced by LVP manufacturers; or (4) where analytical difficulties, e.g., an interfering ion, are encountered. The comment further contended that it is unreasonable to require manufacturers of LVP's to develop suitably sensitive analytical techniques for such a variety of complex organic drugs, especially, as here, when very few of the drug additives are manufactured by the manufacturers of LVP's in plastic.

The Commissioner believes adequate techniques for conducting the studies of the compatibility of additive drugs and LVP's in plastic are currently available. The final regulation has been revised, however, to permit the waiver of individual requirements of the compatibility study protocols for specific LVP's in plastic or specific additive drugs upon a showing by the LVP manufacturer that compliance with the study protocol is impractical. A waiver will be granted in writing by the Director of the Division of Surgical-Dental Drug Products (HFD-160), FDA, if compliance with the protocol would not produce meaningful data.

22. Two comments objected to the proposed warning statement to be used for LVP's in plastic until the results of the compatibility studies are evaluated. One of the comments contended that 60 days after publication of the final regulation is an inadequate length of time in which to obtain new labeling containing the required warning statement. The comments also objected to the wording of the warning. The comments contended that the proposed warning statement was excessively wordy and consequently its impact was diluted. One comment suggested that the warning statement, beyond the first two sentences, was superfluous. The other comment suggested that the warning statement would have more impact, be more concise, and have more meaning if the trivia were removed. The comment observed that complete information is not now available and probably never will be available on the incompatibility of additives in LVP solutions and that few people knowingly intro-

duce incompatible additives to LVP solutions.

The Commissioner agrees that a more concise warning would have greater impact and, accordingly, has revised the warning statement. The Commissioner recognizes that all marketed LVP's in plastic already bear a warning statement in their labeling similar to the warning required under this final rule. Thus, it would be unreasonable to require new labeling containing a revised warning that differs only slightly in wording from the warnings currently in use. Accordingly, the Commissioner has revised the final regulation to require an appropriate warning statement, but the Commissioner is not specifying the exact wording of the warning. Manufacturers and distributors, however, can rely on the following warning as meeting the requirements for a warning under the final regulation:

WARNING

Additives may be incompatible. Consult with pharmacist, if available. When introducing additives, use aseptic techniques. Mix thoroughly. Do not store.

23. One comment argued that requiring a warning on LVP's in plastic for additive drugs and not on other kinds of containers is misleading. The comment observed that the hundreds of additive drug incompatibilities reported in the literature are caused by the additive drugs and LVP solutions and not the containers. The comment contended the warning should be addressed to drug incompatibilities and not the container system.

The Commissioner does not agree with this comment. Although many incompatibilities have been demonstrated for additive drugs and LVP solutions, the incompatibilities have often been identified in glass containers. This final regulation and the warning required under it, however, are directed at the question of the incompatibility of the additive drug and the plastic container for the LVP solution.

24. In the FEDERAL REGISTER of June 1, 1976 (41 FR 22202), the Commissioner proposed to establish current good manufacturing practice (CGMP) regulations for large volume parenteral drug products for human use. For the purposes of the proposed CGMP regulations, a "large volume parenteral" was defined as a terminally sterilized aqueous drug product packaged in a single-dose container with a capacity of 100 milliliters or more and intended to be administered or used in humans. The CGMP regulations apply to manufacturing processes and, accordingly, the definition of an LVP in those regulations was directed to the method of manufacture, i.e., terminally sterilized. For the purposes of the compatibility studies under this final rule, however, the Commissioner is concerned with the intended use of the drug. Accordingly, the final regulation has been revised to apply specifically to large volume parenteral drug products packaged in a single-dose plastic container with a capacity of 100 ml or more and intended for intravenous use in humans. The Commissioner notes that an important factor in the definition is the capacity of the container, regardless of the quantity of its contents.

25. The Commissioner has also revised the final regulation to clarify that it does not apply to a drug that is a biological product licensed under the Public Health Service Act of July 1, 1944 (42 U.S.C. 201). The only licensed large volume parenteral biological products packaged in plastic immediate containers are blood and blood products. The labeling for those products must bear a statement that no drug (except saline) should be added to the container. In addition, the Commissioner is unaware of information suggesting that drugs are added to the products. Accordingly, the compatibility studies required under this final regulation are unnecessary for licensed biological products.

The Commissioner has determined that this document does not contain an agency action covered by § 25.1(b) (21 CFR 25.1(b)) and, therefore, 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(a), 52 Stat. 1040-1042 as amended, 1050-1053 as amended, 1055 (21 U.S.C. 321, 352, 355, 371(a)) and under authority delegated to the Commissioner (21 CFR 5.1), Part 310 is amended by adding new § 310.509 to read as follows:

§ 310.509 Parenteral drug products in plastic containers.

(a) Any parenteral drug product packaged in a plastic immediate container is not generally recognized as safe and effective, is a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act, and requires an approved new drug application as a condition for marketing. A "Notice of Claimed Investigational Exemption for a New Drug" (Form FD-1571) set forth in § 312.1 of this chapter is required for clinical investigations designed to obtain evidence of safety and effectiveness.

(b) It is common medical practice to add various drugs to containers of large volume parenteral drug products for single administration to the patient, although in many cases the safety and effectiveness of that practice has not been demonstrated. Accordingly the Commissioner of Food and Drugs concludes that reports of a full investigation of the compatibility of the immediate container of certain large volume parenteral drugs with certain other drugs that may be added regularly to the parenteral delivery system is necessary under section 505(j) of the act to determine whether there is ground for requiring revision of the labeling to provide for safer use of the large volume parenteral drug products or ground for withdrawing approval, under section 505(e) of the act, of any of the approved new drug applications for the products. As used in this section, the term "large volume parenteral drug product" means a terminally sterilized aqueous drug product packaged in a single-dose container with a capacity of 100 milliliters or more and intended to be administered or used intravenously in a human.

(c) Each holder of an approved new drug application (NDA) for a large volume parenteral drug product for intravenous use in humans that is packaged in a plastic container shall submit the following to the Food and Drug Administration:

(1) The protocol that the NDA holder proposes to follow in conducting compatibility studies for its large volume parenteral drug product and each additive drug listed in paragraph (d) of this section, on or before April 16, 1979.

(2) A status report of the ongoing studies 9 months after the applicant has received written acceptance of the protocol from the Food and Drug Administration.

(3) The final report at the completion of the compatibility studies within 24 months following acceptance of the protocol by the Food and Drug Administration.

(d) Reports of compatibility studies with each of the following drugs shall be submitted under paragraph (c) of this section for each large volume parenteral drug product for intravenous use in humans that is packaged in a plastic immediate container, unless a waiver is granted under paragraph (e) of this section for a specific drug product:

Aminophylline
Amphotericin
Ampicillin
Calcium gluconate
Carbenicillin
Cephalosporins
Chloramphenicol
Chloramphenicol sodium succinate
Clindamycin phosphate
Cyclophosphamide
Cytarabine
Diphenhydramine
Erythromicins
Fluorouracil
Gentamicin
Heparin
Hydrocortisone sodium succinate
Insulin
Isoproterenol

Kanamycin
Levarterenol
Lidocaine
Lincomycin
Magnesium sulfate
Metaraminol
Methicillin
Methotrexate
Methyldopa
Oxacillin
Oxytocin
Penicillin G
Potassium chloride
Sodium bicarbonate
Sodium chloride
Tetracyclines
Vitamins (single-entity and multiple vitamin products)

(e) The required submission of a report of a compatibility study of a large volume parenteral drug product packaged in plastic and any additive drug listed in paragraph (d) of this section may be waived upon a showing that the report is unnecessary or techniques are not available for conducting a compatibility study that would produce meaningful data. A request for a waiver shall be submitted to the Director of the Division of Surgical-Dental Drug Products (HFD-160), Bureau of Drugs, Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857.

(f) Until the results of the compatibility studies are evaluated, a large volume parenteral drug product for intravenous use in humans that is packaged in a plastic immediate container on or after April 16, 1979 is misbranded unless its labeling contains a warning that includes the following information:

(1) A statement that additives may be incompatible.

(2) A statement that, if additive drugs are introduced into the parenteral system, aseptic techniques should be used and the solution should be thoroughly mixed.

(3) A statement that a solution containing an additive drug should not be stored.

(g) After February 13, 1979, the Food and Drug Administration shall approve a new drug application for a large volume parenteral drug product for intravenous use in humans that is packaged in a plastic immediate container if all of the following conditions are met:

(1) The application is otherwise approvable.

(2) The application contains the results of studies to determine the compatibility of the large volume parenteral drug product's plastic container with drugs that may be added regularly to the parenteral delivery system.

(h) After February 13, 1979, the Food and Drug Administration shall approve a new drug application for a drug product intended to be added to a parenteral delivery system that includes a large volume parenteral drug product for intravenous use in humans that is packaged in a plastic immediate container if all of the following conditions are met:

(1) The application is otherwise approvable.

(2) The application contains the results of studies to determine the compatibility of the additive drug product with the plastic immediate container of marketed large volume parenteral drug products for intravenous use in humans.

(i) Holders of new drug applications for large volume parenteral drug products that are subject to this section and who must submit supplements under § 314.8(d) of this chapter to provide for the labeling required under paragraph (f) of this section may put the labeling into use without advance approval by the Food and Drug Administration.

(j) This section does not apply to a biological product licensed under the Public Health Service Act of July 1, 1944 (42 U.S.C. 201).

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Effective date. This regulation is effective February 13, 1979.

(Secs. 201, 502, 505, 701(a), 52 Stat. 1040-1042 as amended, 1050-1053 as amended, 1055 (21 U.S.C. 321, 352, 355, 371(a)).)

Dated: December 7, 1978.

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

[FR Doc. 78-34595 Filed 12-14-78; 8:45 am]

[4910-22-M]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

[FHWA Docket No. 78-31]

PART 630—PRECONSTRUCTION PROCEDURES

Plans, Specifications, and Estimates

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: 23 CFR Part 630 relates to preconstruction procedures and the preparation, submission and approval of plans, specifications and estimates, and supporting documents for Federal-aid projects.

The provisions of this regulation apply to all highway construction projects financed in whole or in part with Federal-aid highway funds and to be undertaken by a State or political subdivision; *except* for projects carried out pursuant to 23 U.S.C. 117 relative to certification acceptance or a secondary road plan. This document is a restatement of existing procedures with minor editorial amendments.

DATES: Effective date: December 19, 1978. Comments must be received on or before February 13, 1979.

ADDRESS: Anyone wishing to submit comments may do so, preferably in triplicate, to FHWA Docket No. 78-31, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Pertinent comments concerning revisions should include supporting information. These will be processed through existing procedures for incorporating revisions.

FOR FURTHER INFORMATION CONTACT:

A. R. Cowan, Chief, Geometric Design Branch, 202-426-0312 or Wilbert Baccus, Attorney, Office of the Chief Counsel, 202-426-0786, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. The FHWA office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The existing regulations were originally published at 39 FR 36473 on October 10, 1974.

This revision is a restatement of existing procedures with minor editorial amendments. This modification does not add any additional requirements to the existing procedures.

The economic consequences of this regulation were considered are found to be minimal.

The regulation codifies the policies and procedures contained in Volume 6, Chapter 3, Section 3, Subsection 1 of the Federal-Aid Highway Program Manual.[1]

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

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[1]The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR 7, Appendix D.

This rule is issued under the authority of 23 U.S.C. 106 and 315, and the delegation of authority by the Secretary of Transportation at 49 CFR 1.48(b).

Issued on: December 5, 1978.

KARL S. BOWERS,
Federal Highway Administrator.

Part 630, Subpart B of Chapter I, Title 23, Code of Federal Regulations, is revised as set forth below:

PART 630—PRECONSTRUCTION PROCEDURES

* * * * *

Subpart B—Plans, Specifications, and Estimates

Sec.
630.201 Purpose.
630.203 Applicability.
630.205 Preparation, submission, and approval.

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

Subpart B—Plans, Specifications, and Estimates

§ 630.201 Purpose.

The purpose of this regulation is to prescribe Federal Highway Administration (FHWA) procedures relating to the preparation, submission, and approval of plans, specifications and estimates (PS&E), and supporting documents for Federal-aid projects.

§ 630.203 Applicability.

The provisions of this regulation apply to all highway construction projects financed in whole or in part with Federal-aid highway funds and to be undertaken by a State or political subdivision, except for projects carried out pursuant to 23 U.S.C. 117 relative to certification acceptance or a secondary road plan.

§ 630.205 Preparation, submission, and approval.

(a) The contents and number of copies of the PS&E assembly shall be determined by the FHWA.

(b) Plans and specifications shall describe the location and design features and the construction requirements in sufficient detail to facilitate the construction, the contract control and the estimation of construction costs of the project. The estimate shall reflect the anticipated cost of the project in sufficient detail to provide an initial prediction of the financial obligations to be incurred by the State and FHWA and to permit an effective review and comparison of the bids received.

(c) PS&E assemblies for Federal-aid highway projects shall be submitted to the FHWA for approval.

(d) The State highway agency (SHA) shall be advised of approval of the PS&E by the FHWA.

(e) No project or part thereof for actual construction shall be advertised for contract nor work commenced by force account until the PS&E has been approved by the FHWA and the SHA has been so notified.

[FR Doc. 78-34882 Filed 12-14-78; 8:45 am]

[4910-22-M]

[FHWA Docket No. 78-29]

PART 655—TRAFFIC OPERATIONS

Traffic Operations Improvement Programs (TOPICS); Revision

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration revises its regulations relating to traffic operations improvement programs. The amendments will delete provisions calling for timesaving procedures and listings of eligible projects and will prescribe fewer conditions on the eligibility of offstreet parking. The intended effect of the amendments is to simplify procedures for the program.

DATES: Effective date: December 18, 1978. Comments must be received on or before March 15, 1979.

ADDRESS: Submit comments, preferably in triplicate, to FHWA Docket No. 78-29, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 7:45 a.m. and 4:14 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

James E. Weaver, Traffic Programs Branch, Office of Traffic Operations, 202-426-0323; or Virginia Cherwek, Office of the Chief Counsel, 202-426-0786, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: Existing regulations were published originally on July 19, 1974, at 39 FR 26414 and amended on December 31, 1974, at 39 FR 45215.

Section 123(a) of the Federal-Aid Highway Act of 1976 (Pub. L. 94-280, 90 Stat. 439) amended 23 U.S.C. § 135 to make it applicable for improvements on any public road which will directly facilitate and control traffic flow on any of the Federal-aid systems. Formerly, the statute was applicable only in urban areas.

The timesaving procedures enumerated in former § 655.104(c) are deleted as these procedures are already mentioned in various regulations of Title 23, Code of Federal Regulations, such as Part 640 "Certification Acceptance" and Part 642 "Secondary Road Plan."

The detailed listing of eligible projects contained in former § 655.105(b) is replaced by a statement which describes the scope of eligible improvements. 23 CFR 450, Subpart A, Appendix A, "Advisory Information on Development of Transportation Systems Management Elements," contains a list of 41 actions which define the terms used to describe the broad categories of improvements.

Former § 655.105 is revised so that there are fewer conditions on the eligibility of offstreet parking. The new provisions are that offstreet parking facilities are eligible if onstreet parking in areas critically short of parking space is removed by a TOPICS project.

A report on the results of an evaluation of a State's program is no longer required. Program and project evaluation is still desirable, particularly of new or unusual features.

This revision codifies the regulatory material located in the Federal-Aid Highway Program Manual, Volume 6, Chapter 8, Section 2, Subsection 2.[1]

This regulation does not contain significant additions to previous requirements nor substantial cost effects.

Anyone wishing to submit written comments related to this regulation is advised to submit them to FHWA Docket No. 78-29. These comments may be considered as a request for rule revision, if necessary, and will be utilized in processing future amendments to this regulation.

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 E.O. 12044.

Issued on: December 5, 1978.

KARL S. BOWERS,
Federal Highway Administrator.

In consideration of the foregoing, and under the authority of 23 U.S.C. §§ 101(e), 135, and 315 and the delegation of authority by the Secretary of Transportation at 49 CFR 1.48(b), Chapter I of Title 23 of the Code of Federal Regulations, Part 655, Subpart A is revised to read as follows:

Subpart A—Traffic Operations Improvement Programs (Topics)

Sec.
655.101 Purpose.

[1]The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

Sec.
655.103 Policy and procedure.
655.105 Federal participation.
655.107 Eligibility.
655.109 Evaluation.

AUTHORITY: 23 U.S.C. §§ 101(e), 135, and 315; 49 CFR 1.48(b).

Subpart A—Traffic Operations Improvement Programs (Topics)

§ 655.101 Purpose.

The purpose of this regulation is to prescribe policies and procedures for the administration of traffic operations improvement programs.

§ 655.103 Policy and procedure.

Each State shall have a continuing program designed to reduce traffic congestion and to directly facilitate traffic flow.

§ 655.105 Federal participation.

Eligible traffic operation improvements may be financed from funds available for:

(a) The specific roadway on which the improvement is made, or

(b) The system which directly benefits from the improvement.

§ 655.107 Eligibility.

(a) Improvements on any public road which will ensure the efficient use of existing roadways on any of the Federal-aid systems through improved traffic flow, or reduced vehicle congestion, or improved transit service or eligible as projects (examples of these projects are listed in 23 CFR 450, Subpart A, Appendix A, "Advisory Information on Development of Transportation Systems Management Elements").

(b) *Parking improvements or modifications.* (1) Offstreet replacement parking facilities are eligible when as a part of an eligible improvement the removal of onstreet parking is required from areas already critically short of parking space.

(2) Angle (diagonal) parking is allowable on Federal-aid projects if in the judgment of the Division Administrator there will not be adverse effects on street capacity and safety.

§ 655.109 Evaluation.

The State's program should provide for evaluation of new or unusual features. Federal funding of evaluation work may be approved under 23 U.S.C. §§ 104, 307(c), or 402, as appropriate. Construction funds under 23 U.S.C. § 104 may be used for project evaluations, but shall not be used for program evaluations.

[FR Doc. 78-34929 Filed 12-14-78; 8:45 am]

[4510-29-M]

Title 29—Labor

CHAPTER XXV—PENSION AND WELFARE BENEFIT PROGRAMS, DEPARTMENT OF LABOR

PART 2509—INTERPRETIVE BULLETINS RELATING TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

An Interpretive Bulletin

AGENCY: Department of Labor.

ACTION: Interpretive Bulletin.

SUMMARY: This document announces the Department of Labor's interpretation of certain provisions of Part 4 of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), as those provisions apply to payments by multiple employer vacation benefit plans of money to which a participant or beneficiary of the plan is entitled to a party other than the participant or beneficiary. This Interpretive Bulletin provides necessary guidance to the public for compliance with ERISA and affects fiduciaries, participants and beneficiaries of such plans.

EFFECTIVE DATE: The interpretations announced in this bulletin are effective December 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth Marshall, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, (202) 523-8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In order to provide a concise and ready reference to its interpretations of ERISA, the Department of Labor publishes its Interpretive Bulletins in the Rules and Regulations section of the FEDERAL REGISTER.

Published in this issue of the FEDERAL REGISTER is ERISA Interpretive Bulletin 78-1, which sets forth conditions under which payments by a vacation plan of money to which a participant or beneficiary of the plan is entitled to a person other than the participant or beneficiary will comply with the provisions of ERISA. The Department is publishing this Interpretive Bulletin because it believes there is a need for guidance regarding the circumstances under which such payments by these plans are permissible.

(Sec. 505, Pub. L. 93-406, 88 Stat. 894 (29 U.S.C. 135).)

29 CFR § 2509.78-1 is added to read as follows:

§ 2509.78-1 Interpretive Bulletin relating to payments by certain employee welfare benefit plans.

The Department of Labor today announced its interpretation of certain provisions of Part 4 of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), as those sections apply to a payment by multiple employer vacation plans of a sum of money to which a participant of beneficiary of the plan is entitled to a party other than the participant or beneficiary.[1]

Section 402(b)(4) of ERISA requires every employee benefit plan to specify the basis on which payments are made to and from the plan.

Section 403(c)(1) of ERISA generally requires the assets of an employee benefit plan to be held for the exclusive purpose of providing benefits to participants in the plan and their beneficiaries[2] and defraying reasonable expenses of administering the plan. Similarly, section 404(a)(1)(A) requires a plan fiduciary to discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries of the plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan. Section 404(a)(1)(D) further requires the fiduciary to act in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of Title I of ERISA.

In addition, section 406(a) of ERISA specifically prohibits a fiduciary with respect to a plan from causing the plan to engage in a transaction if he knows or should know that such transaction constitutes, *inter alia*, a direct or indirect: furnishing of goods, services or facilities between the plan and a party in interest (section 406(a)(1)(C)); or transfer to, or use by or for the benefit of, a party in interest of any assets of the plan (section 406(a)(1)(D)). Section 406(b)(2) of ERISA prohibits a plan fiduciary from acting in any transaction involving the plan on behalf of a party, or representing a party, whose interests are adverse to the interests of the plan or of its participants or beneficiaries.

In this regard, however, Prohibited Transaction Exemptions 76-1, Part C, (41 FR 12740, March 26, 1976) and 77-10 (42 FR 33918, July 1, 1977) exempt from the prohibitions of section 406(a) and 406(b)(2), respectively, the provision of administrative services by a multiple employer plan if specified conditions are met. These conditions are: (a) the plan receives reasonable compensation for the provision of the services (for purposes of the exemption, "reasonable compensation" need not include a profit which would ordinarily have been received in an arm's length transaction, but must be sufficient to reimburse the plan for its costs); (b) the arrangement allows any mul-

[1] Multiple employer vacation plans generally consist of trust funds to which employers are obligated to make contributions pursuant to collective bargaining agreements. Benefits are generally paid at specified intervals (usually annually or semi-annually) and such benefits are neither contingent upon the occurrence of a specified event nor restricted to use for a specified purpose when paid to the participant.

[2] Section 403 (c) and (d) provide certain exceptions to this requirement, not here relevant.

tiple employer plan which is a party to the transaction to terminate the relationship on a reasonably short notice under the circumstances; and (c) the plan complies with certain recordkeeping requirements. It should be noted that plans not subject to Prohibited Transaction Exemptions 76-1 and 77-10—i.e., plans that are not multiple employer plans—cannot rely upon these exemptions.

A payment by a vacation plan of all or any portion of benefits to which a plan participant or beneficiary is entitled to a party other than the participant or beneficiary will comply with the above-mentioned sections of ERISA if the arrangement pursuant to which payments are made does not constitute a prohibited transaction under ERISA and:

(1) The plan documents expressly state that benefits payable under the plan to a participant or beneficiary may, at the direction of the participant or beneficiary, be paid to a third party rather than to the participant or beneficiary;

(2) The participant or beneficiary directs in writing that the plan trustee(s) shall pay a named third party all or a specified portion of the sum of money which would otherwise be paid under the plan to him or her; and

(3) A payment is made to a third party only when or after the money would otherwise be payable to the plan participant or beneficiary.

In the case of a multiple employer plan (as defined in Prohibited Transaction Exemption 76-1, Part C, Section III), if the arrangement to make payments to a third party is a prohibited transaction under ERISA, the arrangement will comply with the above-mentioned sections of ERISA if the conditions of Prohibited Transaction Exemptions 76-1, Part C, and 77-10 and the above three paragraphs are met. In this regard, it is the view of the Department that the mere payment of money to which a participant or beneficiary is entitled, at the direction of the participant or beneficiary, to a third party who is a party in interest would not constitute a transfer of plan assets prohibited under section 406(a)(1)(D). It is also the view of the Department that if a trustee or other fudiciary of a plan, in addition to his duties with respect to the plan, serves in a decisionmaking capacity with another party, the mere fact that the fiduciary effects payments to such party of money to which a participant is entitled at the direction of the participant and in accordance with specific provisions of governing plan documents and instruments, does not amount to a prohibited transaction under section 406(b)(2).

It should be noted that the interpretation set forth herein deals solely with the application of the provisions of Title I of ERISA to the arrangements described herein. It does not deal with the application of any other statute to such arrangements. Specifically, no opinion is expressed herein as to the application of section 302 of the Labor Management Relations Act, 1947 or the Internal Revenue Code of 1954 (particularly the provisions of section 501(c)(9) of the Code).

Signed at Washington, D.C., this 8th day of December 1978.

IAN D. LANOFF,
Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 78-34599 Filed 12-14-78; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 1015-4]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revision to the New Jersey State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces approval of a request from the State of New Jersey to revise its air pollution control plan. This revision will have the effect for seventeen air pollution sources in southern New Jersey of continuing a current temporary relaxation of a State regulation limiting the sulfur content of fuel oil. The current regulatory sulfur-in-fuel-oil limitation is 0.3 percent sulfur, by weight, for eight of these sources and 1.0 percent sulfur, by weight, for the other nine. Under provisions of this revision the burning of fuel oil containing up to 2.5 percent sulfur, by weight, will be permitted until January 12, 1979 or until new permanent State sulfur-in-fuel-oil regulations are approved by the Environmental Protection Agency. Receipt of the revision request from New Jersey was announced in the FEDERAL REGISTER on September 8, 1978 at 43 FR 40039, where a full description of the proposed revision is contained.

DATES: This action becomes effective December 15, 1978.

FOR FURTHER INFORMATION CONTACT:

William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, N.Y. 10007, 212-264-2517.

SUPPLEMENTAL INFORMATION: On June 26, 1978 the Environmental Protection Agency (EPA) received a proposed revision to the New Jersey State Implementation Plan (SIP). The State's SIP revision submittal consists of seventeen administrative orders, a notice of public hearing, and a document setting the basis for the proposed revision, including a recent summary of air quality data for the southern New Jersey area. Each administrative order advises one of the seventeen air pollution sources, that, pending EPA approval, the State has granted it a further relaxation from the existing sulfur-in-fuel-oil limitation applicable to that source and that this relaxation is to remain effective until January 12, 1979 or until such time as a new comprehensive sulfur-in-fuel-oil regulation is placed into effect, whichever comes sooner.

In a recent Memorandum of Agreement entered into by EPA Region II, EPA Region III, and the New Jersey Department of Environmental Protection (NJDEP) which established a basis for the development of a regional strategy for control of sulfur dioxide emissions in the Metropolitan Philadelphia Interstate Air Quality Control Region, it is stated that EPA Region II and New Jersey DEP anticipate that New Jersey will submit new sulfur-in-fuel-oil limitations to EPA Region II for consideration as a revision to the State's SIP and that these new limitations will be set so as to be complementary to new limitations to be adopted by the Commonwealth of Pennsylvania.

Since that time when the Memorandum of Agreement was entered into by the parties, both Pennsylvania and New Jersey have adopted and submitted to EPA as proposed SIP revisions new sulfur-in-fuel-oil regulations. New Jersey's revised regulation was scheduled to become effective on October 12, 1978. However, it is anticipated that this revised regulation will not be made effective by the State prior to formal EPA approval.

Sulfur content of fuel oil is normally regulated under Title 7, Chapter 27, Subchapter 9 of the New Jersey Administrative Code (N.J.A.C. 7:27-9.1 et seq.), "Sulfur in Fuel". A public hearing on the proposed relaxations was held on June 13, 1978. A complete list of the affected sources and the limitations imposed under the approved orders and the previously existing regulations are provided in Table 1.

TABLE 1.1.—*New and Prior Sulfur in Fuel Oil Limitation*

Source	Location	Percent Sulfur, by weight	
		Prior Limitation	New Limitation
National Bottle Corp	Salem City, Salem County	0.3	2.0
E. I. du Pont de Nemours & Co	Deepwater, Salem County	0.3	1.5
Heinz—U.S.A	Salem City, Salem County	0.3	2.0
B. F. Goodrich Chemical Co	Pedricktown, Salem County	0.3	1.5
Anchor Hocking Corp	Salem City, Salem County	0.3	2.0
Atlantic City Electric, Deepwater Station.	Penns Grove, Salem County	0.3	1.5
E. I. du Pont de Nemours & Co	Carney's Point, Salem County	0.3	1.5
Mannington Mills, Inc	Salem City, Salem County	0.3	2.0
Atlantic City Electric, B. L. England Station.	Beesley Point, Cape May County	1.0	2.0
Kerr Glass Manufacturing Corp	Millville City, Cumberland County	1.0	2.5
Owens Illinois, Inc., Kimble Products Division.	Vineland City, Cumberland County	1.0	2.5
Leone Industries	Bridgeton, Cumberland County	1.0	2.5
Progresso Food Corp	Vineland City, Cumberland County	1.0	2.5
Bridgeton Dyeing and Finishing Corp	Bridgeton City, Cumberland County	1.0	2.5
Vineland Chemical co	Vineland City, Cumberland County	1.0	2.5
Hunt-Wesson Foods, Inc	Bridgeton, Cumberland County	1.0	2.5
Owens Illinois, Inc	Bridgeton, Cumberland County	1.0	1.5

The proposal for this revision to the New Jersey SIP was announced in the FEDERAL REGISTER on September 8, 1978 at 43 FR 40039, where a detailed description of the revision is provided. In this notice EPA advised the public that comments would be accepted as to whether the proposed revision to the New Jersey State Implementation Plan should be approved or disapproved. No comments were received.

Based upon the air quality data accompanying the proposed revision and previously submitted analyses of its air quality impact, EPA has found this revision to the New Jersey State Implementation Plan consistent with the requirements of Section 110(a) of the Clean Air Act and EPA regulations found at 40 CFR Part 51. Accordingly, EPA approves this revision. Furthermore, this action is being made effective immediately because the revision imposes no hardship on the affected sources.

(Section 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7601)).

Dated: December 6, 1978.

DOUGLAS M. COSTLE,
Administrator, Environmental Protection Agency.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart FF—New Jersey

1. Section 52.1570 paragraph (c) is amended by adding a new subparagraph (18) as follows:

§ 52.1570 **Identification of plan.**

* * * * *

(c) Supplemental information was submitted on:

* * * * *

(18) A revision submitted by the New Jersey Department of Environmental Protection consisting of a June 26, 1978 letter indicating the extension, to January 12, 1979 or until such time as the State places into effect revised permanent sulfur-in-fuel-oil regulations, of "variances" to the provisions of the New Jersey Administrative Code (N.J.A.C.) 7:27-9.1 *et seq., Sulfur in Fuel,* for 17 facilities and accompanying supplemental information. The extended "variances" including all their terms and conditions are made a part of the New Jersey State Implementation Plan. The facilities affected by these "variances", their locations, and applicable sulfur-in-fuel-oil limitations until January 12, 1979 or until such time as the State places into effect and EPA approves revised permanent sulfur-in-fuel-oil regulations are as follow:

Source	Location	Sulfur in Fuel Oil Limitation (Percent by Weight)
National Bottle Corp	Salem City, Salem County	2.0
E. I. du Pont de Nemours & Co	Deepwater, Salem County	1.5
Heinz—U.S.A	Salem City, Salem County	2.0
B. F. Goodrich Chemical Co	Pedricktown, Salem County	1.5
Anchor Hocking Corp	Salem City, Salem County	2.0
Atlantic City Electric, Deepwater Station	Penns Grove, Salem County	1.5
E. I. du Pont de Nemours & Co	Carney's Point, Salem County	1.5
Mannington Mills, Inc	Salem City, Salem County	2.0
Atlantic City Electric, B. L. England Station	Beesley Point, Cape May County	2.0
Kerr Glass Manufacturing Corp	Milville City, Cumberland County	2.5
Owens Illinois, Inc., Kimble Products Division	Vineland City, Cumberland County	2.5
Leone Industries	Bridgeton, Cumberland County	2.5
Progresso Food Corp	Vineland City, Cumberland County	2.5
Bridgeton Dyeing and Finishing Corp	Bridgeton City, Cumberland County	2.5
Vineland Chemical Co	Vineland City, Cumberland County	2.5
Hunt-Wesson Foods, Inc	Bridgeton, Cumberland County	2.5
Owens Illinois, Inc	Bridgeton, Cumberland County	1.5

(Section 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7601)).

[FR Doc. 78-35030 Filed 12-14-78; 8:45 am]

[6560-01-M]

[FRL 1015-5]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revision to the New Jersey State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces approval of two revisions to the New Jersey State Implementation Plan for the attainment and maintenance of air quality standards. One revision is to incorporate into the implementation plan changes made by the State to its regulation, "Sulfur in Coal." The other revision provides for the incorporation into the implementation plan of a less stringent particulate emission limitation applicable to the Atlantic City Electric Company's Units 1 and 2 at its B. L. England Generating Station and the subsequent return in 1981 to the more stringent prior limitation. With one exception, the changes in the State's "Sulfur-in-Coal" regulation only serve to reorganize and clarify the provisions of the regulation. The only substantive change made by the State has the effect of increasing the allowable sulfur content of bituminous coal burned at the Atlantic City Electric Company's B. L. England Generating Station, Units 1 and 2, located in Cape May County.

DATES: This action becomes effective December 15, 1978.

FOR FURTHER INFORMATION CONTACT:

William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, N.Y. 10007, 212-264-2517.

SUPPLEMENTAL INFORMATION: On July 6, 1978 the State of New Jersey submitted to the Environmental Protection Agency (EPA) two proposed revisions to its State Implementation Plan (SIP). The State requested that certain changes it made to its regulation, N.J.A.C. 7:27-10.1 *et seq.*, "Sulfur in Coal," and a Consent Judgment by which Units 1 and 2 of the Atlantic City Electric Company's B. L. England Generation Station would be required to comply with the State's applicable particulate emission requirements by 1981, be approved by EPA for incorporation into the SIP. A public hearing had been held by New Jersey on these two revisions on April 21, 1978.

With one exception, all of the changes to the New Jersey "Sulfur in Coal" regulation only serve to reorganize and clarify its provisions. The one substantive change to the regulation concerns the sulfur content of bituminous coal which may be used in Atlantic, Cape May, Cumberland and Ocean Counties in steam or electric power generating facilities.

Bituminous coal burning facilities in these areas of the State were limited under the State's prior regulation to the use of coal with a maximum sulfur content, by weight, of 1.5 percent. However, under the State's revised regulation, existing steam or electric power facilities in these areas may now be authorized by the New Jersey Department of Environmental Protection (NJDEP) to use, for a period not exceeding five years, bituminous coal with a maximum sulfur content of 3.5 percent, by weight, such authorization is based on the following conditions:

1. The person responsible for the use of bituminous coal demonstrates that bituminous coal, containing one percent sulfur or less by weight and suitable for use in the specific steam or electric power generating facility, is not reasonably available in sufficient quantities; and

2. Sulfur dioxide levels in the ambient atmosphere will at no time exceed or jeopardize the State's ambient air quality standards; and

3. The sulfur content of the coal burned by the facility represents the minimum sulfur content coal which can be used by the facility and is reasonably available in sufficient quantity; and

4. The person responsible for the use of bituminous coal agrees to such monitoring and reporting requirements as the State may deem appropriate to ensure compliance with the conditions set forth in this subsection; and

5. The person responsible for the use of bituminous coal submits to the State, for such authorization, an application which considers and addresses, as a minimum, in addition to the above, the following criteria:

i. Physical surroundings of the coal fired steam or electric power generating facility;

ii. Population density of the surrounding area;

iii. Dispersion characteristics of the source;

iv. Topography of the immediate vicinity;

v. Aesthetic or nuisance effects.

The effect of this change will be to allow the Atlantic City Electric Company to use 3.5 percent sulfur content bituminous coal at its B. L. England Generating Station, Units 1 and 2. This plant is located at Beesley's Point in Cape May County, New Jersey, an area which is currently attaining primary and secondary ambient air quality standards for both sulfur dioxide and particulate matter.

Based on its review of technical material provided by the State, EPA determined that the proposed revision to the State regulation, "Sulfur in Coal," is consistent with EPA policy regarding "new source review" requirements.

The other SIP revision being approved in this notice is related to the Consent Judgement which New Jersey submitted to EPA as a SIP revision. Although the terms of the implementation plan revision accomplished with this rulemaking are generally embodied in the New Jersey Consent Judgement, it is important to recognize that this rulemaking does not represent an approval of the referenced Judgement as an enforcement order. EPA approval of State enforcement orders is governed by Section 113(d) of the Clean Air Act, as amended 1977. Section 113(d) expressly proscribes EPA approval of State enforcement orders extending the date for source compliance with pre-existing SIP emission limitation requirements beyond July 1, 1979. The referenced Consent Judgement calls for the Atlantic City Electric Company's ultimate compliance with emission limitation requirements existing prior to this rulemaking, but does not subject the Atlantic City Electric Company to those requirements until June 1, 1981.

While the alteration of emission limitation requirements applicable to the Atlantic City Electric Company's B. L. England Station may not be approved by EPA as a compliance order (inasmuch as compliance with pre-existing emission limitations would not be achieved until after July 1, 1979), Section 110(a)(3) of the Clean Air Act allows a State to relax emission limitation requirements, as long as such relaxations do not jeopardize the attainment and maintenance of National Ambient Air Quality Standards (NAAQS). As both the primary and secondary NAAQS for particulate matter are being met in the area in which the B. L. England Station is located, and the imposition of the less stringent particulate emission limitation of 0.5 lbs/hour approved in this rulemaking will not change the attainment status of the area, approval of such new emission limitations is not inconsistent with Section 110 of the Clean Air Act. Furthermore, it has been determined that the impact of particulate emissions from the Station permitted by the particulate emission limitation approved in this rulemaking meets the requirements of EPA's program for Prevention of Significant Deterioration of air quality. In keeping with the intent of the Consent Judgement this rulemaking calls for returning to the more stingent prior emission limitation of 0.1 lbs/hour for Units 1 and 2 of the Station on and after June 1, 1981. However, EPA approval of this SIP revision does not make the compliance schedules contained in the Consent Judgment federally enforceable and the Company's failure to comply with such incremental requirements prior to June 1, 1981 will not trigger noncompliance penalties under Section 120 of the Clean Air Act."

Thus, what is being accomplished with this rulemaking, insofar as particulate emissions from Units 1 and 2 of the Atlantic City Electric Company's B. L. England Station are concerned, is an approval of a SIP revision which does not impair the attainment status for ambient air quality standards in the region affected and which establishes a new less stringent particulate emission limitation for a period beginning as of the date of this rulemaking and terminating June 1, 1981, along with a more stringent limitation to which the Company will be held on and after June 1, 1981.

The proposal for revisions to the SIP was announced in the FEDERAL REGISTER on September 19, 1978 at 43 FR 42019. In that notice, EPA advised the public that comments would be accepted as to whether the proposed revisions to the New Jersey State Implementation Plan should be approved or disapproved.

Comments have been received from the Pennsylvania Department of Environmental Resources (DER) which opposed the proposed revision to New Jersey's "Sulfur in Coal" regulation. DER expressed its concerns in two letters, dated September 11 and October 5, 1978. In the letter dated September

11, 1978 disapproval of the proposed revision to N.J.A.C. 7:27-10.1 *et seq.* was recommended on the bases that the revision (a) provides for interstate inequity in control requirements for coal-fired power plant boilers and (b) represents a major relaxation in the New Jersey State Implementation Plan. EPA's review of the revised "Sulfur in Coal" regulation, submitted by New Jersey, indicated that the only coal burning facility for which the revision provides a relaxation is the B. L. England Generating Station in Cape May County. In its subsequent letter of October 5, 1978 DER acknowledged that the revision is not a "major relaxation" but maintained that it should, nevertheless, be disapproved on the grounds of interstate inequity in coal sulfur content regulations. EPA points out, however, that disapproval of the revised regulation would do nothing to serve the cause of interstate equity in the Metropolitan Philadelphia Interstate Air Quality Control Region (the area of concern); as stated, the sulfur content limitations in the revised regulation are no different from those in the preceding regulation except for the one source in Cape May County.

EPA does feel, however, that DER's concern, as expressed in the September 11, 1978 letter, over the impact of possible future conversions from fuel oil to coal is, in some cases, valid. Since there are two coal conversions that could possibly have an adverse impact on air quality in the Pennsylvania portion of the Metropolitan Philadelphia Interstate AQCR and which can occur under either the previous or the revised "Sulfur in Coal" regulation, approval or disapproval action on the revised regulation can serve no purpose in this regard. However, any future SIP revision requested by New Jersey which would have the effect of increasing sulfur dioxide emissions above currently approved levels will have to be judged in light of these potential coal conversions. Such a future revision could not be approved without assurance that, if these potential coal conversions would increase emissions above current levels, the conversions would not be effected unless it is demonstrated to EPA that they can be accomodated within the revision without contravening any air quality standard or Prevention of Significant Deterioration increment.

In view of the preceding concerning the air quality impact of the revised "Sulfur in Coal" regulation and the revised emission limitation for Units 1 and 2 of the Atlantic City Electric Company's B. L. England Generating Station, EPA has found these revisions to the New Jersey State Implementation Plan consistent with the requirements of Section 110(a) of the Clean Air Act and EPA regulations found at 40 CFR Part 51. Accordingly, EPA approves these revisions.

Furthermore, this action is being made effective immediately because the revisions impose no hardship on the affected sources.

(Sections 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7601)).

Dated: December 6, 1978.

DOUGLAS M. COSTLE,
Administrator,
Environmental Protection Agency.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart FF—New Jersey

1. Section 52.1570 paragraph (c) is amended by adding a new subparagraph (19) as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(19) A revision submitted by the New Jersey Department of Environmental Protection on July 6, 1978 consisting of amendments to the provisions of the New Jersey Administrative Code (N.J.A.C.) 7:27-10.1 *et seq., Sulfur in Coal,* and accompanying supplemental information.

2. Section 52.1604 is amended by adding a new paragraph (b) as follows:

§ 52.1604 Control Strategy and Regulations: Total suspended particulates.

* * * * *

(b) Particulate emissions from Units 1 and 2 of the Atlantic City Electric Company's B. L. England Generating Station are limited to an emission rate of 0.5 lbs/hour until June 1, 1981. On and after June 1, 1981 these units shall be limited to an emission rate of 0.1 lbs/hour.

(Section 110 and 301 of the Clean Air Act, as amended (42 U.S.C., 7410, 7601)).

[FR Doc. 78-35016 Filed 12-14-78; 8:45 am]

[6820-26-M]

Title 41—Public Contracts and Property Management

CHAPTER 105—GENERAL SERVICES ADMINISTRATION

PART 105-61—PUBLIC USE OF RECORDS, DONATED HISTORICAL MATERIALS, AND FACILITIES IN THE NATIONAL ARCHIVES AND RECORDS SERVICE

Subpart 105-61.52—Fees

FEES FOR REPRODUCTION SERVICES: LOCATION OF RECORDS AND HOURS OF USE

AGENCY: General Services Administration, National Archives and Records Service (NARS).

ACTION: Final rule.

SUMMARY: This rule revises the fee schedule for reproduction services established by the National Archives and Records Service (NARS). The revised fee schedule will be in effect during fiscal year 1979.

EFFECTIVE DATE: November 20, 1978.

FOR FURTHER INFORMATION CONTACT: Ross Buffington, Planning and Analysis Division, Office of the Executive Director, National Archives and Records Service, General Services Administration (NAA), Washington, DC 20408. (202-523-3214).

SUPPLEMENTARY INFORMATION: On October 18, 1978, there was published in the FEDERAL REGISTER (43 FR 47981) a notice of proposed rulemaking with proposed revisions to the schedule of fees for reproduction services. Interested persons were given 30 days in which to submit comments regarding the proposed regulations. No comments were received.

Editorial corrections are made as follows:

§ 105-61.5201 Applicability.

* * * * *

(c) * * * (4) [Reserved]

* * * * *

§ 105-61.5208 Effective date.

The fees in § 105-61.5206 are effective beginning November 20, 1978, and ending on September 30, 1979. Orders received after September 30, 1979, will be subject to the fees in effect at that time.

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)); 41 CFR 105-61.000-2.)

Dated: November 20, 1978.

JAMES B. RHOADS,
Archivist of the United States.

[FR Doc. 78-34859 Filed 12-14-78; 8:45 am]

[3510-22-M]

Title 50—Wildlife and Fisheries

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 651—ATLANTIC GROUNDFISH

Fishery Closures

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Notice of fishery closures.

SUMMARY: This notice announces the closures of five of the fisheries for cod, haddock, and yellowtail flounder in the Gulf of Maine/Georges Bank and South areas.

EFFECTIVE DATES: The closures are effective December 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. William G. Gordon, Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; telephone 617-281-3600.

SUPPLEMENTARY INFORMATION: The regulations governing fishing for Atlantic groundfish were revised and published on October 4, 1978 (43 FR 45872). The regulations establish quarterly quotas for each fishery by species, area, and vessel class. Fishery closures are mandated when it becomes apparent that the catch, plus the anticipated incidental catch for the rest of the quarter, equals the quarterly quota.

Six closures were announced effective November 19. The Regional Director has monitored landings of groundfish for the period October 1-November 15. Pursuant to section 651.24(b) of the regulations, it has been recommended that five additional fisheries be closed effective December 17. The Assistant Administrator for Fisheries has determined that these fisheries must be closed in order to prevent the quarterly quotas from being exceeded. The following fisheries are closed effective December 17:

Species	Area	Vessel Class
Cod	Gulf of Maine	Fixed gear.
Cod	Georges Bank and South	Over 125 GRT.
Haddock	Gulf of Maine	Fixed gear.
Haddock	Georges Bank and South	61-125 GRT.
Yellowtail flounder	West of 69° West longitude	All vessels.

During the period of closure, which will continue until the beginning of the next quarter of the fishing year on January 1, 1979, the affected vessel classes are limited to an incidental catch of each species, under § 651.24(d), as shown below.

1. Section 651.24(d) (1) and (2) are revised to read as follows:

(1) Cod and haddock:

0-60 GRT: 500 pounds or 4 percent by weight of all fish on board, whichever is the *lesser* amount, per trip.

61-125 GRT: 1,000 pounds or 4 percent by weight of all fish on board, whichever is the *lesser* amount, per trip.

Over 125 GRT: 2,000 pounds or 4 percent by weight of all fish on board, whichever is the *lesser* amount, per trip.

Fixed gear: 500 pounds or 4 percent by weight of all fish on board, whichever is the *lesser* amount, per trip.

(2) Yellowtail flounder:

All vessels: 500 pounds or 4 percent by weight of all fish on board, whichever is the *lesser* amount, per trip.

No further closures or adjustments to catch limitations are anticipated for the remainder of this quarter.

Appendix B to the regulations, which contains the catch limitations by vessel class, species, and area, has been revised to conform to the actions stated in this notice, and is reprinted below.

Because these actions must be implemented quickly to carry out the objectives of the Fishery Management Plan for Atlantic Groundfish, and because they merely carry out pre-existing provisions in the regulations for closures, the Assistant Administrator finds that advance notice and opportunity for comment are unnecessary, impractical, and contrary to the public interest.

The Assistant Administrator also finds that this is not a significant Federal action within the meaning of the National Environmental Policy Act, and does not require compliance with Executive Orders 12044, 11821, and 11949.

(16 USC 1801 et seq.)

Dated: December 8, 1978.

WINFRED H. MEIBOHM,
Acting Executive Director,
National Marine Fisheries Service.

2. Appendix B to Part 651 is revised to read as follows:

APPENDIX B

Cod (pounds/week)

Vessel Class	Gulf of Maine		Georges Bank and South	
	Limits	Overruns	Limits	Overruns
0-60 GRT	2,500	1,500	4,900	3,500
61-125 GRT	2,500	1,500	4,900	1,500
Over 125 GRT	Closed Nov. 19		Closed Dec. 17.	
Fixed gear	Closed Dec. 17		13,000	0

Haddock (pounds/week)

0-60 GRT	Closed Nov. 19		Closed Nov. 19.	
61-125 GRT	Closed Nov. 19		Closed Dec. 17.	
Over 125 GRT	Closed Nov. 19		Closed Nov. 19.	
Fixed gear	Closed Dec. 17		8,000	0

*Yellowtail Flounder**

Vessel Class	West of 69° West	East of 69° West
0-60 GRT	Closed Dec. 17	5,000
61-125 GRT	Closed Dec. 17	5,000
Over 125 GRT	Closed Dec. 17	5,000

*Pounds per week or trip, whichever time period is longer. No overruns are allowed.

[FR Doc. 78-34770 Filed 12-14-78; 8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3510-25-M]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

[15 CFR Parts 370, 371, 385, 390, 399]

UGANDA

Embargo on Exports and Reexports; Proposed Rule

AGENCY: Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

ACTION: Proposed rule.

SUMMARY: On October 23, 1978 (43 FR 49304), regulations were issued announcing that any existing provisions of the Export Administration Regulations contrary to the provisions of the embargo on export trade with Uganda contained in Pub. L. 95-435 were superseded. The rule stated that the Department of Commerce was reviewing the statute to determine what further regulatory changes may be required. As a result of that review, the Department now proposes to revise the Export Administration Regulations by placing Uganda in Country Group Z for control purposes. The revision of certain general licenses also is proposed to assure that they will not be used to export to Uganda, and a definition for the phrase "person subject to the jurisdiction of the United States" is proposed to make it clear that the Department's control over exports and reexports to Uganda extends to shipments, regardless of origin, by foreign subsidiaries and other foreign entities owned or "controlled in fact" by U.S. persons or firms.

DATES: Comments must be received on or before January 15, 1979.

ADDRESSES: Written comments (six copies when possible) should be sent to: Stanley J. Marcuss, Deputy Assistant Secretary for Trade Regulation, U.S. Department of Commerce, Post Office Box 7138, Ben Franklin Station, Washington, D.C. 20044.

FOR FUTHER INFORMATION CONTACT:

Charles C. Swanson, Director, Operations Division Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Tel. 202-377-4196).

SUPPLEMENTARY INFORMATION: Although Section 8 of the Export Administration Act of 1969, as amended, provides an exemption from the notice of proposed rulemaking and opportunity for comment provisions of the Administrative Procedures Act, these changes to the Export Administration Regulations are being issued in proposed form for public comment. However, the comment period has been limited to 30 days. It should be noted that until these proposed rules are issued in final form, the rule announced on October 23, 1978 (43 FR 49304) remains in effect.

The Department proposes to revise the Export Administration Regulations to place Uganda in Country Group Z, along with certain other destinations for which there is a general embargo on trade: Cuba, North Korea, Cambodia and Vietnam. By use of this procedural device, exporters will know that a validated license is required to export any commodity on the Commodity Control List to Uganda, unless such exports are specifically permitted by the relevant Commodity Control List entry. Permitted exports currently are cereal grains and other food products. Other permitted exports will be non-commercial shipments of books, pamphlets and other publications and prerecorded phonograph records and exposed and developed microfilm reproducing in whole or in part the content of such books, periodicals and other publications, and non-commercial shipments of exposed and developed motion picture and film and sound track containing exclusively news and documentary material. A non-commercial shipment will be defined as a shipment not exceeding $50 in value moving at the same time from one exporter to one consignee or intermediate consignee on the same exporting carrier. Only one such shipment may be made by parcel post or mail per calendar week from one exporter to one consignee or intermediate consignee. The Department also proposes to revise certain General License authorizations to reflect the embargo on exports to Uganda. Accordingly, Uganda will be added to the list of countries for which the following General Licenses are not applicable: SHIP STORES, PLANE STORES, GIFT, AND GATS. General Licenses BAGGAGE, GUS, and GTDA currently are available for the types of exports defined therein for shipment to all destinations. It is proposed that these remain available for shipments to Uganda.

It is proposed that the term "person subject to the jurisdiction of the United States" means a "United States person" as defined by § 369.1 (a) through (c) of the Export Administration Regulations except that, for the purposes of this definition, "United States person" shall include foreign corporations, permanent foreign establishments or any other foreign entities which are "controlled in fact" by individual United States residents or nationals, wheresoever located. The definition of "controlled in fact" contained in subsection (c) of section 369.1, including the presumptions and other provisions contained therein, shall also apply to individual United States persons or residents.

Lastly, although validated export licenses to Uganda have already been revoked individually, the Department proposes to revise the Regulations to reflect the revocation. The rule also will specify that all authorizations granted under the Special Licensing procedures of Part 373 to export or reexport to or to service equipment in Uganda are revoked, and all authorizations to use U.S.-orgin parts or components in the production abroad of foreign-made end products for export to Uganda, whether issued in conjunction with an approved Special Licensing procedure or in response to any other request, are likewise revoked. All validated licenses or other authorizations revoked by this rule must be returned to the Office of Export Administration.

PART 370—EXPORT LICENSING GENERAL POLICY AND RELATED INFORMATION

Accordingly, the Export Administration Regulations (15 CFR Parts 370 *et seq.*) are proposed to be revised as follows:

1. The following definition is to be incorporated alphabetically in the listing of definitions contained in § 370.2(a):

§ 370.2 Definitions of terms.

* * * * *

Person Subject to the Jurisdiction of the United States. The term "person subject to the jurisdiction of the United States" means "United States person" as defined by § 369.1 (a) through (c) of the Export Administra-

tion Regulations except that, for the purposes of this paragraph 26, "United States person" shall include foreign corporations, permanent foreign establishments or any other foreign entities which are "controlled in fact" by individual United States residents or nationals, wheresoever located. The definition of "controlled in fact" contained in paragraph (c) of § 369.1, including the presumptions and other provisions contained therein, shall also apply to individual United States persons or residents.

* * * * *

§ 370.3 [Amended]

2. Section 370.3 is amended as follows:

a. The first portion of paragraph (a) is revised to read as follows:

(a) *Exports from the United States.* Subject to the provisions of §§ 370.4, 370.5, and 370.6, the export from the United States of all commodities, and all technical data as defined in § 379.1, and their reexport is hereby prohibited unless and until a general license authorizing such export or reexport shall have been established or a validated license or other authorization for such export or reexport shall have been granted by the Office of Export Administration, except:

* * * * *

b. Paragraph (b) is redesignated (c), and

c. A new paragraph (b) is added to read as follows:

(b) *Other Exports.* The Export Administration Act of 1969, as amended, authorizes the control of exports and reexports of foreign-origin commodities and technical data and other information by persons subject to the jurisdiction of the United States. See § 370.2(a) for definition of the term "person subject to the jurisdiction of the United States" and § 385.1 for provisions regarding exports and reexports to Uganda.

Supplement No. 1 to Part 370 [Amended]

3. Supplement No. 1 to Part 370 is amended by adding "Uganda" to the Country Group Z List.

PART 371—GENERAL LICENSES

Section 371.9 is amended by revising paragraph (a)(1) and (b)(3) as follows:

§ 371.9 General License Ship Stores

(a) *Scope.* * * *

(1) The items listed below may be exported (subject to the conditions set forth in § 371.9(b) below) for use on board a vessel of any registry, during the outgoing and immediate return voyage, except a vessel registered in North Korea, Vietnam, Cambodia, Cuba, or Uganda, or owned or controlled by, or under charter or lease to any of these countries or their nationals. However, subject to these same conditions, these items may be exported for use on board Cuban fishing vessels and fishery support vessels used in the processing, storage, and transport of the catch if the vessel was admitted into the United States under the agreement between the United States and Cuba concerning fisheries off the coasts of the United States, which entered into force on September 26, 1977.

* * * * *

(b) *Restrictions on Exports of Petroleum and Petroleum Products.* * *

(3) *Registry restrictions.* No export of petroleum or petroleum products (including those used as bunker fuel) listed in § 371.9(b)(4) below may be made under this general license on a foreign vessel of 500 or more gross registered tons departing from the United States for use on board such vessels if the vessel is registered in North Korea, Vietnam or Cambodia, or owned or controlled by, or under charter or lease to any of these countries or their nationals. No such export may be made on foreign vessel, regardless of tonnage, if the vessel is registered in Cuba or Uganda or owned or controlled by, or under charter or lease to either of these countries or their nationals, except for Cuban fishing and fishery support vessels admitted into the United States under the U.S.-Cuban Fisheries Agreement.

* * * * *

5. Section 371.10 is amended by revising paragraph (a)(1) and (a)(1)(i)(vi) to read as follows:

§ 371.10 General License Plane Stores.

(a) * * *

(1) The following commodities may be exported, subject to the conditions set forth in § 371.10(b) below, for use or consumption on board an aircraft of any registry, during the outgoing and immediate return flight, except an aircraft registered in, owned or controlled by, or under charter or lease to North Korea, Vietnam, Cambodia, or Uganda, or a national of any of these countries:

(i) Fuel;

(ii) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements;

(iii) Medical and surgical supplies;

(iv) Food stores;

(v) Slop chest articles; and

(vi) Saloon stores or supplies.

* * * * *

6. The first sentence of § 371.18(a)(1) is revised to read as follows:

§ 371.18 General License GIFT: Shipments of Gift Parcels.

(a) *Scope.* (1) A general license designated GIFT is established, subject to the provisions of § 371.18, authorizing the export of gift parcels by an individual in the United States (donor) addressed to an individual, or a religious, charitable, or educational organization (donee) located in any destination, except Noth Korea, Cambodia, and Uganda, for the use of the donee or the donee's immediate family.

* * * * *

7. Section 371.19 is amended by revising paragraphs (a), (a)(1) and (2) (b)(1)

§ 371.19 General License GATS; Aircraft on Temporary Sojourn.

* * * * *

(a) *Foreign Registered Aircraft.* An operating civil aircraft of foreign registry that has been in the United States on a temporary sojourn may depart from the United States under its own power for any destination, except Southern Rhodesia, North Korea, Vietnam, Cambodia, or Uganda: *provided,* That: (1) The aircraft has not been sold, leased or otherwise disposed of while in the United States, and (2) it does not carry from the United States any commodity for which export authorization has not been granted by the appropriate U.S. Government agency.

(b) *U.S. Registered Aircraft.* A civil aircraft of U.S. registry operating under an Air Carrier Operating Certificate, Commercial Operating Certificate, or Air Taxi Operating Certificate issued by the Federal Aviation Administration or conducting flights under operating specifications approved by the Federal Aviation Administration pursauant to Part 129 of the regulations of the Federal Aviation Administration, may depart from the United States under its own power for any destination other than Southern Rhodesia, North Korea, Vietnam, Cambodia, or Uganda provided that:

* * * * *

Part 385—Special Country Policies and Provisions

8. Part 385 is amended by deleting § 385.7 and by adding paragraph (c) to § 385.1 to read as follows:

§ 385.1 Country Group Z [1]

* * * * *

(c) *Uganda.* Pub. L. 95-435 which became effective October 10, 1978, states that "No article, material or supply, including technical data or other information, other than cereal grains and additional food products, subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States may be exported to Uganda until the President determines and certifies to the Congress that the Government of Uganda is no longer committing a consistent pattern of gross violations of human rights." Accordingly, the prior approval of the Department of Commerce is required to export from the United States or to reexport from any country, virtually all U.S.-origin commodities to Uganda. (Cereal grains and other food products and certain non-commercial transactions are excepted.) Prior approval also is required to export or reexport U.S.-origin technical data to Uganda except data that are generally available to the public in any form. These requirements extend to foreign-origin commodities and technical data exported or reexported by any person subject to the jurisdiction of the United States. The general policy is to deny all applications for licenses to export and all other requests to export or reexport commodities or technical data to this destination.

(1) The term "person subject to the jurisdiction of the United States" means "United States person" as defined by § 369.1 (a) through (c) of the Export Administration Regulations except that, for the purposes of this definition, "United States person" shall include foreign corporations, permanent foreign establishments or any other foreign entities which are "controlled in fact" by individual United States residents or nationals, wheresoever located. The definition of "controlled in fact" contained in paragraph (c) of § 369.1, including the presumptions and other provisions contained therein, shall also apply to individual United States persons or residents.

[1] See Supplement No. 1 to Part 370 for listing of country groups.

§ 385.7 [Deleted]

§ 386.6 [Amended]

9. Section 386.6(d) is amended as follows:

a. The first sentence of § 386.6(d)(2)(i)(*b*) is amended by inserting "Uganda," after "Cuba,".

b. The first sentence of § 386.6(d)(3) is amended by inserting "Uganda," after "Cuba,".

PART 390—GENERAL ORDERS

10. Section 390.5 is (revised) replaced by the following:

§ 390.5 Revocation of existing authorizations.

As of October 10, 1978, all outstanding validated export licenses and reexport authorizations to export or reexport commodities or technical data to Uganda are revoked. Also, all authorizations granted under the Special Licensing procedures of Part 373 to export or reexport to or to service equipment in Uganda are revoked. All authorizations to use U.S.-origin parts or components in the production abroad of foreign-made end products for export to Uganda, whether issued in conjunction with an approved Special Licensing procedure or in response to any other request, are likewise revoked. All validated licenses or other authorizations revoked by this § 390.5 must be returned to the Office of Export Administration as required by § 386.2(d)(3).

PART 399—COMMODITY CONTROL LIST AND RELATED MATTERS

11. The Commodity Control List, incorporated by reference at 15 CFR 399.1, is amended to read as follows:

a. Add new entry No. 7597 after entry No. 5597, to read as follows:

Export Control Commodity Number and Commodity Description	Unit	Processing Code	Validated License Required	GLV $ Value Limits		
				T	V	Q
7597G Exposed and developed microfilm reproducing in whole or in part, the content of printed books, pamphlets, and miscellaneous publications including newspapers and periodicals; and exposed and developed motion picture and film and sound track containing exclusively news and documentary material, and advertising printed matter exclusively related thereto.	---	EE	Uganda [1/]	-	-	-

[1] A validated license *is* not required for export of these commodities Uganda if the value per shipment is less than $50 and the shipment meets the provisions of paragraphs (b) and (c) of Section 371.5 (General License *GLV*).

b. Revise present entry No. 6599 to read as follows:

Export Control Commodity Number and Commodity Description	Unit	Processing Code	Validated License Required	GLV $ Value Limits		
				T	V	Q
6599G Other electronic and precision instruments, including photographic equipment and film, n.e.s.; and parts and accessories, n.e.s.	---	EE	SZ	-	-	-

c. Add new entry No. 7998 after entry No. 6998, to read as follows:

Export Control Commodity Number and Commodity Description	Unit	Processing Code	Validated License Required	GLV $ Value Limits T	V	Q
7998G Printed books, pamphlets, and miscellaneous publications, including newspapers and periodicals; prerecorded phonograph records reproducing in whole or in part the contents thereof; and advertising printed matter exclusively related thereto.	---	MG	Uganda 1/	-	-	-

[1] A validated license is not required for export of these commodities Uganda if the value per shipment is less than $50 and the shipment meets the provisions of paragraphs (b) and (c) of Section 371.5 (General License *GLV*).

d. Revise present entry No. 6999 to read as follows:

Export Control Commodity Number and Commodity Description	Unit	Processing Code	Validated License Required	GLV $ Value Limits T	V	Q
6999G Other commodities n.e.s.; and parts and accessories, n.e.s.	---	MG	SZ	-	-	-

e. Amend footnote 3 to entry No. 6999 to add the following:

[3] A validated license *is not* required for export of cereal grains and other food products to Uganda.

(Sec. 4 Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; sec. 5(d), Pub. L. 95-435, 92 Stat. 1501; E.O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated December 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 FR 64716 (1977).)

RAUER H. MEYER,
Acting Deputy Assistant Secretary for Trade Regulation.

[FR Doc. 78-34854 Filed 12-13-78; 1:47 pm]

[1505-01-M]

DEPARTMENT OF THE TREASURY

Customs Service

[19 CFR Part 177]

[058450]

WATCHES AND WATCH MOVEMENTS

Tariff Classification Under General Headnote 3(a), Tariff Schedules of the United States: Change of Practice Considered

Correction

In FR Doc. 78-34461, appearing at page 57921 in the issue of Monday, December 11, 1978, the title following Leonard Lehman's signature on page 57922 should be corrected to read "Acting Commissioner of Customs."

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 16, 56, 71, 171, 180, 310, 312, 314, 320, 330, 361, 430, 431, 601, 630, 1003, and 1010]

[Docket No. 77N-0350]

STANDARDS FOR INSTITUTIONAL REVIEW BOARDS FOR CLINICAL INVESTIGATIONS

Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Extension of Comment Period on Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period on the proposed standards for institutional review boards (IRB's) for clinical investigations to allow interested parties more time to analyze related agency proposals and provide more meaningful comments.

DATE: Comments by June 6, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and

Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

John Petricciani, Bureau of Biologics (HFB-4), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, Md. 20014, 301-496-9320.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs noted in the preamble to the original proposal published in the FEDERAL REGISTER of August 8, 1978 (43 FR 35186) that the proposal was being issued without a comprehensive definition of "informed consent" and that it may not be possible to publish the "informed consent" proposal so as to schedule and hold public hearings on both proposals within the comment period specified in the original proposal. The Commissioner also advised interested persons that the comment period for the proposed standards for IRB's would be extended beyond December 6, 1978 as appropriate. The extension provided in this notice will allow interested parties an opportunity to comment on the IRB proposal already published as well as the related proposal on informed consent which will be published soon in the FEDERAL REGISTER.

As noted in the August 8, 1978 proposal, the agency also intends to hold three open hearings to give the public an opportunity to make oral comments on both proposals. A notice of the date and location of these hearings will be published later with the proposed definitions of "informed consent."

Therefore, under the Federal, Food, Drug, and Cosmetic Act (secs. 406, 408, 409, 502, 503, 505, 506, 507, 510, 513-516, 518-520, 601, 701(a), 706, and 801, 52 Stat. 1049-1054 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 68 Stat. 511-518 as amended, 72 Stat. 1785-1788 as amended, 74 Stat. 399-407 as amended, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 560, 562-574 (21 U.S.C. 346, 346a, 348, 352, 353, 355, 356, 357, 360, 360c-360f, 360h-360j, 361, 371(a), 376, and 381)) and the Public Health Service Act (secs. 215, 351, 354-360F, 58 Stat. 690, 702, as amended, 82 Stat. 1173-1186 as amended (42 U.S.C. 216, 262, 263b-263n)) and under authority delegated to him (21 CFR 5.1), the Commissioner extends to June 6, 1979 the period for submitting comments on the August 8, 1978 proposal to establish standards for IRB's for clinical investigations.

Interested persons may, on or before June 6, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 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.

Dated: December 6, 1978.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc. 78-34594 Filed 12-8-78; 10:31 am]

[4110-03-M]

[21 CFR Part 146]

[Docket No. 78N-0236]

CANNED FRUIT JUICES

Grapefruit Juice; Standards of Identity and Fill of Container

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish standards of identity and fill of container for grapefruit juice in order to adopt, to the extent practicable, the Codex standard developed by the Codex Alimentarius Commission and submitted to the United States for acceptance. The purpose of this action is to promote honesty and fair dealing in the interest of consumers and to facilitate international trade.

DATES: Comments by February 13, 1979. The Commissioner proposes that all products initially introduced into interstate commerce on or after July 1, 1981, shall comply with the regulation, except as to any provisions that may be stayed by the filing of proper objections.

ADDRESS: Written comments, data, or information to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

F. Leo Kauffman, Bureau of Foods (HFF-414), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: This document proposes standards that will: (1) Provide for the use of concentrated grapefruit juice, with appropriate labeling, as a source of juice ingredient; (2) permit the use of liquid sweetener when concentrated juice is used in the preparation of the juice; (3) establish a minimum grapefruit juice soluble solids requirement of 9 percent by weight for the product prepared from concentrate; (4) permit the use of any safe and suitable dry or liquid nutritive carbohydrate sweeteners; (5) permit the addition of grapefruit oil and grapefruit essence derived from grapefruit in accordance with good manufacturing practice; (6) establish a standard of fill of container based upon a minimum of 90 percent of the total capacity of the container; and (7) employ a statistical sampling plan for determining compliance with fill of container requirements.

The Food and Agriculture Organization/World Health Organization (FAO/WHO) Codex Alimentarius Commission has submitted to the United States for consideration for acceptance a "Recommended International Standard for Grapefruit Juice Preserved Exclusively by Physical Means" (CAC/RS 46-1971), hereinafter referred to as the Codex standard.

The United States, as a member of the Food and Agriculture Organization of the United Nations and of the World Health Organization, is under treaty obligation to consider all Codex standards. The rules of procedure of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of three ways: full acceptance, target acceptance, or acceptance with specified deviations. A country's acceptance of a Codex standard signifies that, except as provided for by specified deviations, a product that complies with the Codex standard may be distributed freely within the accepting country; insofar as features dealt with by the Codex standard are concerned, products that do not comply, whether domestic or imported, will not be permitted to be distributed without restrictions under the name and description laid down in the standard. The restrictions that may be imposed are not incorporated in the Codex standards, but are left to the legislation and regulations of the individual countries. A participating country that concludes that it cannot accept the Codex standard in any of the three ways is requested to indicate, with the reasons therefor, the manner in which its requirements differ from the Codex standard and whether products complying with the Codex standard will be permitted to move freely in the commerce of that country. Members of the Commission are requested to notify the Secretariat of the Codex Alimentarius Commission-Joint FAO/WHO Food Standards Programme, FAO, Rome, Italy, of their decision.

There are no U.S. standards of identity, quality, or fill of container for grapefruit juice established by the Food and Drug Administration. However, the United States Department of Agriculture has established voluntary grade standards for marketing grapefruit juice (7 CFR 2852.6121 through 2852.6133) (formerly 7 CFR 52.6121 through 52.6133 prior to the realignment of the United States Department of Agriculture, "Agricultural Marketing Service" to "Food Safety and Quality Service," published in the FEDERAL REGISTER of June 27, 1977 (42 FR 32514)), hereafter referred to a USDA standards.

The Commissioner has carefully considered the Codex standard as it may relate to the expectations of American consumers and current industry practices. In doing so, he has compared the Codex standard with the provisions of the USDA standards. In his opinion, adoption of the Codex standard, to the extent practicable, will promote honesty and fair dealing in the interest of consumers and will facilitate international trade.

The Commissioner has noted certain differences in the composition and format of the Codex standard as contrasted with the U.S. standards. Measurements in the U.S. standards are sometimes stated in units of the U.S. customary system (pounds, inches) or in units of the international (metric) system, or both, whereas the Codex standard uses only the metric system. The Commissioner recognizes that the metric system is generally used throughout the world, and in the U.S. for technical purposes, and that it may eventually be adopted by this country for common usage. The Commissioner therefore proposes that the metric system be used in the U.S. standard for grapefruit juice with the equivalent units of the U.S. customary system shown parenthetically.

The Codex standard also includes requirements for hygiene, metals (referred to as contaminants), certain basic labeling, and other factors that are not considered a part of food standards under section 401 of the act (21 U.S.C. 341, the legal basis for the promulgation of food standards), but which are dealt with under other sections of the act and, therefore, are not discussed further in this proposal. The Codex standard sometimes uses subjective terms in stating its requirements; these cannot be expressed in terms precise enough to be legally enforceable, and they are omitted, whenever feasible, from the proposal.

Establishment of U.S. standards of identity and fill of container for grapefruit juice will be based upon consideration of the following Codex standard, the USDA standards, together with comments and supporting data received, and other available information.

CAC/RS 46-1971

RECOMMENDED INTERNATIONAL STANDARD FOR GRAPEFRUIT JUICE PRESERVED EXCLUSIVELY BY PHYSICAL MEANS

1. *DESCRIPTION*

Unfermented but fermentable juice, intended for direct consumption obtained by a mechanical process from the endocarp of sound, ripe grapefruit (*Citrus Paradisi* Macfadyen), preserved exclusively by physical means.[1] The juice may have been concentrated and later reconstituted with water suitable for the purpose of maintaining the essential composition and quality factors of the juice.

2. *ESSENTIAL COMPOSITION AND QUALITY FACTORS*

2.1 *Soluble Solids*

The soluble solids content of grapefruit juice, exclusive of added sugar, shall be not less than 9% m/m as determined by refractometer at 20°C, uncorrected for acidity and read as °Brix on the International Sucrose Scales.

2.2 *Sugars*

The following sugars may be added: sucrose (white sugar), dextrose and dried glucose syrup, as defined by the Codex Alimentarius Commission (CAC/RS 4, 7, 8 and 10-1969). The quantity added shall not exceed 50 g/kg.

2.3 *Ethanol Content*

The ethanol content shall not exceed 3 g/kg.

2.4 *Essential Oils*

The essential oils content shall not exceed 0.3 ml/kg.

2.5 *Organoleptic Properties*

The product shall have the characteristic colour, aroma and flavour of grapefruit juice. Natural volatile grapefruit juice components may be restored to any grapefruit juice from which natural grapefruit juice components have been removed.

2.6 *Use of Concentrates*

The addition of concentrate to juice is permitted. Only concentrate from grapefruit (*Citrus paradisi* Macfadyen) may be used.

3. *Contaminants*

		Maximum level
3.1	Arsenic (As)	0.2 mg/kg
3.2	Lead (Pb)	0.3 mg/kg (temporarily endorsed)
3.3	Copper (Cu)	5 mg/kg
3.4	Zinc (Zn)	5 mg/kg
3.5	Iron (Fe)	15 mg/kg
3.6	Tin (Sn)	250 mg/kg (temporarily endorsed)[2]
3.7	Total metal content precipitable by potassium hexacyanoferrate (II).	20 mg/kg, expressed as Fe

[2] The provisional limit of 250 mg/kg for tin is currently under review and will be re-examined in 1973.

[1] For the purpose of this standard preservation by physical means does not include ionizing radiation.

4. *HYGIENE*

4.1 It is recommended that the products covered by the provisions of this standard be prepared in accordance with the Recommended International Code of Hygienic Practice for Canned Fruit and Vegetable Products (Ref. No. CAC/RCP 2-1969) and the Recommended International Code of Hygienic Practice for Quick Frozen Fruits, Vegetables and their juices (Ref. ALINORM 71/13, Appendix IV).

4.2 When tested by appropriate methods of sampling and examination, the product:

(a) shall be free from microorganisms capable of development under normal conditions of storage; and

(b) shall not contain any substances originating from microorganisms in amounts which may be toxic.

5. *WEIGHTS AND MEASURES*

5.1 *Fill of Container*

5.1.1 Minimum Fill

The grapefruit juice shall occupy not less than 90% v/v of the water capacity of the container. The water capacity of the container is the volume of distilled water at 20°C which the sealed container will hold when completely filled.

6. *LABELLING*

In addition to Sections 1, 2, 4 and 6 of the General Standard for the Labelling of Prepackaged Foods (Ref. No. CAC/RS 1-1969) the following specific provisions apply;

6.1 *The Name of the Food*

The name of the product shall be "grapefruit juice". If a sugar is added in a quantity greater than 15 g/kg, the words "X added" shall plainly and conspicuously accompany the name "grapefruit juice", where X is the name of the sugar added. If the ratio of the total soluble solids, as determined in 2.1, to the total titratable acid expressed as anhydrous citric acid is more than 12 to 1, the word "sweetened" may be used in lieu of the statement "X added".

6.2 *List of Ingredients*

6.2.1 A complete list of ingredients shall be declared on the label in descending order of proportion, except that added water need not be declared.

6.2.2 In the case of grapefruit juice made from concentrate, the fact of reconstitution shall be declared in the list of ingredients as the first ingredient as follows: "grapefruit juice made from concentrate" or "reconstituted grapefruit juice".

6.3 *Net Contents*

The net content shall be declared by volume in one or more of the following systems of measurement: Metric ("Systeme International"), U.S. or British units, as required by the country in which the product is sold.

6.4 *Name and Address*

The name and address of the manufacturer, packer, distributor, importer,

exporter or vendor of the product shall be declared.

6.5 *Country of Origin*

6.5.1 The country of origin of the product shall be declared.

6.5.2 When the product undergoes processing in a second country which changes its nature, the country in which processing is performed shall be considered to be the country of origin for the purpose of labeling.

6.6 *Additional Requirements*

The following additional specific provisions shall apply:

6.6.1 No fruit or fruit juice may be represented pictorially on the label except grapefruit or grapefruit juice.

6.6.2 Where grapefruit juice requires to be kept under conditions of refrigeration, there shall be information for keeping and, if necessary, thawing of the product.

6.7 *Bulk Packs*

In the case of grapefruit juice in bulk the information required in 6.1 to 6.6.2 shall either be placed on the container or be given in accompanying documents.

7. *METHODS OF ANALYSIS AND SAMPLING*

The methods of analysis and sampling referred to hereunder are international referee methods.

7.1 *Taking of sample and expression of results as m/m*

According to the IFJU method No. 1: Determination of relative density and the IFJU General Sheet: Conversion of analytical results from g/1 (mg/1) to g/kg (mg/kg) and the reverse.

7.2 *Test for fermentability*

(To be elaborated)

7.3 *Determination of soluble solids*

7.3.1 Grapefruit juice without added sugar.

According to the IFJU method No. 8B, 1968: Estimation of soluble solids (indirect determination). Results are expressed as % m/m sucrose ("degrees Brix") with correction for temperature to the equivalent at 20° C.

7.3.2 Grapefruit juice with added sugar.

(To be elaborated)

7.4 *Determination of sugars*

According to the IFJU method No. 4, 1968: Determination of Sugar (Luft-Schoorl method). Results are expressed as % m/m.

7.5 *Determination of ethanol*

According to the IFJU method No. 2, 1968: Determination of alcohol (Ethyl alcohol) [3]. Results are expressed as g ethanol/kg.

7.6 *Determination of essential oils*

According to the AOAC (1970) method (Official Methods of Analysis of the AOAC, 1970, 22.096-22.097 and 19.117. Essential oil (37)—Official, First Action). Results are expressed as ml essential oils/kg.

7.7 *Determination of total titratable acids*

According to the IFJU method No. 3, 1968: Determination of titratable acid (total acid). Results are expressed as g anhydrous citric acid/kg.

7.8 *Determination of arsenic*

According to the method of the "Office International de la Vigne et du Vin" [4 5]. Results are expressed as mg arsenic/kg.

7.9 *Determination of lead*

According to the IFJU method No. 14, 1964: Determination of lead (photometric method) [5]. Results are expressed as mg lead/kg.

7.10 *Determination of copper*

According to the IFJU method No. 13, 1964: Determination of copper (photometric method) [5]. Results are expressed as mg copper/kg.

7.11 *Determination of zinc*

According to the AOAC (1970) method (Official Methods of Analysis of the AOAC, 1970, 25.077-25.082: Zinc—Official First Action, Colorimetric Method (*15*) [5]. Results are expressed as mg zinc/kg.

7.12 *Determination of iron*

According to the IFJU method No. 15, 1964: Determination of iron (photometric method) [5]. The determination shall be made after dry ashing as described in Section 5—Remark (b). Results are expressed as mg iron/kg.

7.13 *Determination of tin*

According to the Draft ISO Recommendation No. 2447: Fruit and Vegetable Products—Determination of Tin [5 6]. Results are expressed as mg tin/kg.

7.14 *Determination of total metal content precipitable by potassium hexacyanoferrate(II)*

According to the Method 30/22/23 of Schweitzerisches Lebensmittelbuch, Chapter 30, Wein [4 5]. Results are expressed as mg total metal content precipitable by potassium hexacyanoferrate(II)/kg.

7.15 *Determination of sulphur dioxide (checking absence of SO_2)*

According to the IFJU method No. 7, 1968: Determination of total sulphur dioxide. Results are expressed as mg SO_2/kg.

7.16 *Determination of water capacity and fill of containers*

According to the method published in the Almanac of the Canning, Freezing, Preserving Industries, 55th Edition, 1970, p. 131-132, E. E. Judge and Sons, Westminster MD (USA) [4 7].

The following is a comparison of what, in the Commissioner's opinion, are the principal differences between the Codex standard, the USDA standards, and the proposed U.S. standards on which the Commissioner invites comments with supporting data. Following each item of comparison is the action the Commissioner proposes to take:

COMPARISON OF IDENTITY ASPECTS AND PROPOSED COURSE OF ACTIONS

DESCRIPTION OF JUICE

1. Codex (1.) States that grapefruit juice intended for direct consumption is "unfermented but fermentable."

The USDA standard (7 CFR 2852.6121) requires that the juice be "unfermented."

The Commissioner agrees that grapefruit juice should be the "unfermented" juice of the grapefruit; the fact that the juice is unfermented is characteristic of all freshly extracted fruit juice. He believes, however, that no need exists to qualify the juice as being fermentable since the basic source of the juice is fresh grapefruit, which is fermentable, and no chemical preservatives are permitted.

BOTANICAL NAME

2. Codex (1.) identifies the botanical designation of grapefruits used in preparing grapefruit juice as *Citrus paradisi* Macfadyen.

The USDA standard (7CFR 2852.6121) for grapefruit juice identifies the botanical designation of grapefruit only as *Citrus paradisi* and does not include the name of the author, Macfadyen. The U.S. standard for canned grapefruit (21 CFR 145.145) however indentifies the grapefruit by the Codex designation.

To facilitate international trade, the Commissioner is proposing to provide for the use of the botanical name of grapefuit, *Citrus paradisi* Macfadyen, to be consistent with the Codex standard and the U.S. standard for canned grapefruit.

PRESERVATION

3. Codex (1.) states that the juice is "preserved exclusively by physical means," which would include refrigeration and/or freezing and heat sterilization.

The USDA standard (7 CFR 2852.6121) states that the product is "processed by appropriate physical means to assure its preservation through normal marketing channels." Such means would include, but are not limited to canning and refrigeration.

The Commissioner is proposing to limit the method of preservation by "physical means" to heat sterilization (canning), refrigeration, or freezing.

GRAPEFRUIT JUICE PREPARED FROM CONCENTRATES

4. Codex (1.) states that the juice may have been concentrated and later reconstituted with water suitable for the purpose of maintaining the essen-

[3] To be amended by IFJU to take into account operating temperatures higher than 20° C.

[4] To be included in the IFJU Manual at a later stage.

[5] Temproarily endorsed.

[6] To be finalized by 1972.

tial composition and quality factors of the juice.

The USDA standard (7 CFR 2852.6122) provides for "reconstituted type" grapefruit juice that is composed of grapefruit juice concentrate and water.

The Commissioner views the Codex provision as a desirable feature and is so providing for the use of concentrates with appropriate labeling, e.g., grapefruit juice from concentrate.

5. Codex (2.1.) states that the soluble grapefruit juice solids content, exclusive of added sweetener, shall be not less than 9 percent milligrams per milliliter (m/m) as determined by refractometer at 20° C.

The USDA standard (7 CFR 2852.6121) states that soluble solids content may be adjusted by suitable manufacturing procedures to any level within the normal range of mature grapefruit.

The Commissioner recognizes that for a number of reasons, grapefruits, like other fruits, vary in composition and natural soluble solids, and he believes that the unconcentrated liquid obtained from mature grapefruit should be recognized as grapefruit juice. Therefore, he is not proposing a minimum soluble solids requirement for grapefruit juice that is the unconcentrated liquid obtained from mature fruits.

At the same time, he is of the opinion that grapefruit juice prepared from concentrate should be standardized to a minimum soluble solids concentration to prevent excessive dilution of the juice with water. For grapefruit juice prepared from concentrate, exclusive of added sweeteners, the Commissioner is proposing to include the Codex minimum soluble solids requirement of 9 percent by weight.

ADDITION OF SWEETENERS

6. Codex (2.2) specifies that sucrose (white sugar), dextrose and dried glucose syrup, as defined by the Codex Alimentarius Commission (CRC/RS 4, 7, 8, and 10-1969), may be added in a quantity not to exceed 50 grams per kilogram.

The Commissioner notes that in recent years the standards of identity for other fruit juices have been amended to permit the use of safe and suitable dry and liquid nutritive carbohydrate sweeteners. He believes that such sweeteners will provide manufacturers with more flexibility in the use of sweetening agents and at the same time will benefit consumers economically. Nevertheless, to prevent dilution of the basic grapefruit juice with water, he is proposing to permit the use of liquid sweeteners only in sweetened grapefruit juice prepared from concentrate.

However, the Commissioner has no comparison studies on consumer acceptance of grapefruit juice at various levels of sweetness. Therefore, he invites interested persons to submit comments with supporting data concerning the quantity (limitation on the amount) of sweetener that may be added to the juice.

ETHANOL CONTENT

7. Codex (2.3) states that the ethanol content shall not exceed 3 grams per kilogram.

The Commissioner notes that U.S. standards for other juices such as orange juice and pineapple juice, do not have similar requirements, and he questions the need for such a provision in the standard for graapefruit juice. He therefore has not included an ethanol requirement in this proposal.

GRAPEFRUIT OIL AND ESSENCE

8. Codex (2.4) states that the essential oils content shall not exceed 0.3 milliliter per kilogram. Codex further states (2.5) that natural volatile grapefruit juice components may be restored to any grapefruit juice from which natural grapefruit juice components have been removed.

The USDA standard for flavor (7 CFR 2852.6130 (Grade B)) provides an oil maximum of 0.025 percent by volume.

The Commissioner believes that it is desirable to permit adjustment of the grapefruit oil and/or grapefruit essence content to compensate for changes that may result either from geographic or seasonal variations in the composition of the fruit used or from the loss of such components during the processing of the fruit. In view of the Codex requirement as it concerns grapefruit oil, the Commissioner is proposing that grapefruit oil, as well as grapefruit essence content, may be adjusted in accordance with good manufacturing practice. However, he invites the submission of any available data in support of a specific maximum for his consideration in the promulgation of a final regulation.

ORGANOLEPTIC PROPERTIES

9. Codex (2.5) states that the product shall have a characteristic color, aroma, and flavor of grapefruit juice.

The USDA quality standards (7 CFR Part 2852, quality factors for U.S. Grade B) for color, defects, and flavor state that the grapefruit juice should have a "reasonably good color," be "reasonably free from defects." and have a "reasonably good flavor."

The Commission agrees that grapefruit juice should have a characteristic color, aroma, and flavor. At the same time, he does not believe that either Codex or the USDA standards have sufficiently precise and objective requirements to use in establishing an enforceable standard of quality. Therefore, he is not including such requirements in this proposal. The Commissioner notes, however, that if the food is abnormal in color, aroma, or flavor, it may be found in violation of section 402 of the act (21 U.S.C. 342).

ADDITION OF CONCENTRATE TO JUICE

10. Codex (2.6) permits the addition of grapefruit concentrate to grapefruit juice.

The USDA standard for types of grapefruit juice (7 CFR 2852.6122) states that the "single strength type" may be composed of "single strength grapefruit juice, with or without added grapefruit juice concentrate."

The Commissioner is not proposing to include the Codex provision permitting the addition of concentrate to grapefruit juice. He invites interested persons to submit comments with supporting data concerning the benefit of such a provision in the U.S. standard for grapefruit juice. In the event that a benefit is demonstrated, he also invites comments regarding what limitation should be placed on the amount of concentrate which may be added to grapefruit juice and what type of labeling would be appropriate to inform the consumer of such addition.

LABELING

Name of the food

11. Codex (6.1) states that the name of the product is "grapefruit juice." Further, Codex states, in part, "If a sugar is added in a quanity greater than 15g/kg," the name of the "sugar" added shall accompany the name "grapefruit juice"; however, if the Brix-acid ratio is more than 12 to 1, the word "sweetened" may be used in lieu of the name of the "sugar" added.

The Commissioner agrees that, when the juice is prepared from freshly extracted grapefruit, the name of the food is "grapefruit juice." The Commissioner also believes that it is in the interest of consumers to alert them that nutritive sweeteners have been added. Therefore, he is inculding a provision tht would require the statement "sweetener added" when any amount of a nutritive sweetener is added. The word "unsweetened" may be use immediately preceding or following the words "grapefruit juice," when no nutritive sweetener has been added.

List of ingredients

12. Codex (6.2.1) states that a complete list of ingredients shall be declared on the label in descending order of proportion, except that added water need not be declared.

Codex (6.2.2) states that in the case of grapefruit made from concentrate,

the fact of reconstitution shall be declared in the list of ingredients as "grapefruit juice made from concentrate * * *."

The Commissioner is proposing that all ingredients be declared on the label in accordance with appropriate sections of Part 101 (21 CFR Part 101).

However, the Commissioner does not believe that the fact of reconstitution is sufficiently prominent when declared only as part of the ingredient statement. Therefore, he is proposing that whenever the food is prepared from concentrate the name shall be "grapefruit juice from concentrate" or "reconstituted grapefruit juice."

COMPARISON OF FILL OF CONTAINER ASPECTS FOR GRAPEFRUIT JUICE AND PROPOSED COURSE OF ACTION

MINIMUM FILL OF CONTAINER

13. Codex (5.1.1) provides for a minimum fill of not less than 90 percent of the water capacity of the container.

The USDA standard (7 CFR 2852.6125) recommends that the container be as full as practical.

The Commissioner believes that the Codex provision is reasonable and will control fill of container. He therefore proposes to adopt the Codes provision of 90-percent minimum fill, but is proposing that compliance be based upon the general method for fill of container presecribed in § 130.12(b) (21 CFR 130.12(b)).

LABELING OF SUBSTANDARD FILL OF CONTAINER

14. Codex (5.) does not provide for substandard labeling of juice that fails to meet the fill of container requirements.

In view of the proposed standard of fill of container, the Commissioner is of the opinion that it is reasonable to require that the label of a product that fails to meet the minimum fill of container requirement bear a declaration of substandard fill. He therefore is proposing that a product that does not meet the fill of container requirement be labeled "Below Standard in Fill" in accordance with § 130.14(b) (21 CFR 130.14(b)).

METHODS OF ANALYSIS

15. Codex (7.) provides methods of analysis for the analytical requirements in the standard, such methods generally being those of the International Federation of Fruit Juice Producers (IFJU).

The USDA standard (7 CFR 2852.6131) sets out methods of analysis for Brix, acid, Brix-acid ratio, recoverable oil, and free and suspended pulp.

The Commissioner proposes to follow the customary practice of referencing Association of Official Analytical Chemists (AOAC) procedures.

METHOD OF SAMPLING

16. Codex (7.1) references the IFJU method No. 1 for sampling and expression of results.

The Commissioner is proposing to the reference the sampling and acceptance procedure in § 146.3(h) (21 CFR 146.3(h)) as being more appropriate for compliance purposes.

The Commissioner proposes that all products initially introduced into interstate commerce on or after July 1, 1981, shall comply with the regulation, except as to any provisions that may be stayed by the filing of proper objections.

The Commissioner has considered the environmental effects of the issuance or amendment of food standards and has concluded in § 25.1(d)(4) (21 CFR 25,1(d)(4)) that food standards are not major agency actions significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required for this proposal.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C 341, 371(e))) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Part 146 be amended by adding § 146.132, to read as follows:

§ 146.132 Grapefruit juice.

(a) *Identify*—(1) *Description.* Grapefruit juice is the unfermented juice, intended for direct consumption, obtained by mechanical process, which may include centrifuging, but not filtering, from sound, mature grapefruit (*Citrus paradisi* Macfadyen), from which seeds (except embryonic seeds and small fragments of seeds that cannot be separated by good manufacturing practice) and excess pulp are removed. The grapefruit oil and grapefruit essence (derived from grapefruit) content may be adjusted in accordance with good manufacturing practice. The juice may have been concentrated and later reconstituted with water suitable for the purpose of maintaining essential composition and quality factors of the juice. It may be sweetened with any suitable dry nutritive carbohydrate sweetener. If the grapefruit juice is prepared from concentrate, such sweeteners, in liquid form, also may be used. Grapefruit juice from concentrate, exclusive of added sweetener, contains not less than 9 percent, by weight, of soluble solids taken as the refractometric sucrose value (of the filtrate), corrected to 20° C, but uncorrected for acidity, in accordance with the International Scale of Refractive Indices of Sucrose Solutions in table 52.012 of "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th ed., 1975 [8]. Grapefruit juice may be preserved by heat sterilization (canning), refrigeration, or freezing. When sealed in a container to be held at ambient temperatures, it is so processed by heat, before or after sealing, as to prevent spoilage.

(2) *Labeling.* (i) The name of the food is:

(*a*) "Grapefruit juice" if the food is prepared from unconcentrated, undiluted liquid extracted from mature grapefruit;

(*b*) "Grapefruit juice from concentrate" if the food is prepared from concentrated grapefruit juice and water.

(ii) If any nutritive sweetener is added, the principal display panel of the label shall bear the statement "Sweetener added." If no sweetener is added, the word "unsweetened" may immediately precede or follow the words "Grapefruit Juice" or "Grapefruit Juice from Concentrate."

(iii) Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

(c) *Fill of container.* (1) The standard of fill of container for grapefruit juice, except when the food is frozen, is not less than 90 percent of the total capacity of the container as determined by the general method for fill of container prescribed in § 130.12(b) of this chapter.

(2) Compliance is determined as specified in § 146.3(g)(2) and (h).

(3) If the grapefruit juice fails to meet the standard of fill as prescribed in paragraph (c)(1) and (2) of this section, the label shall bear the general statement of substandard fill specified in § 130.14(b) of this chapter, in the manner and form therein prescribed.

Interested persons may, on or before February 13, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 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.—Incorporation by reference in § 146.132(a)(1) approved by the Director of the Office of the Federal Register on March 11, 1976 and is on file in the Federal Register Library.

[8] Copies may be otained from: Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044.

Dated: December 5, 1978.

SANFORD A. MILLER,
Director, Bureau of Foods.

[FR Doc. 78-34698 Filed 12-14-78; 8:45 am]

[4110-03-M]

[21 CFR Part 155]

[Docket No. 78N-0103]

CANNED VEGETABLES

Asparagus; Standards of Identity and Quality

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: This document proposes to amend the standard of identity for "certain other canned vegetables" to delete those provisions applicable to canned asparagus and to establish separate standards of identity and quality for this food based on consideration of the international standards for these foods. This action is taken to facilitate international trade and promote honesty and fair dealing in the interest of consumers.

DATES: Comments by February 13, 1979. Proposed compliance for all products initially introduced into interstate commerce: July 1, 1981.

ADDRESS: Written comments, data, or information are to be sent to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

F. Leo Kauffman, Bureau of Foods (HFF-414), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: The Food and Agriculture Organization/World Health Organization (FAO/WHO) has submitted to the United States for consideration for acceptance a "Recommended International Standard for Canned Asparagus" (CA/RS 56-1972), hereinafter referred to as the Codex standard.

In order to adopt, insofar as practicable, the Codex standard developed by the Codex Alimentarius Commission, the Food and Drug Administration is proposing to amend the standard of identity for "Certain other canned vegetables" (21 CFR 155.200) to delete those provisions applicable to canned asparagus and to establish separate standards of identity and quality for this food. The proposed amendments will:

1. Combine the styles of "tips" and "points" into a single category of "tips or points" rather than two separate styles as in the current U.S. standard;

2. Provide for the optional designation "long spears" or "long shoots" when the asparagus stalks are cut to a length of not less than 12 cm (4.75 in) nor more than 18 cm (7.1 in);

3. Provide for four cultural color types—"green," "white," "green tipped and white" or "green tipped," and "mixed," a mixture of two or more color types;

4. Include provisions for optional size designations consistent with Codex;

5. Delete the current provision requiring that asparagus packed in asparagus juice shall bear the statement "Packed in asparagus juice" immediately and conspicuously preceding or following the name of the food, and propose instead that if asparagus juice is used as the packing medium, it must be declared in the ingredient statement;

6. Delete the provision for seasonings and garnishes (spice, mint leaves, onions, garlic, green or red peppers, and horseradish) as optional ingredients;

7. Delete the provisions for flavoring and flavor enhancers (disodium inosinate, disodium guanylate, hydrolyzed vegetable protein and autolyzed yeast extract), except monosodium glutamate;

8. Provide for the mandatory declaration of water in the ingredient statement when water is used as the optional packing medium;

9. Provide for the use of margarine or other edible vegetable and animal fats, in addition to butter, as optional ingredients;

10. Provide for the use of ascorbic acid to preserve color in "white" and "green tipped and white" color types;

11. Establish a standard of quality that will include allowances for units that are blemished or discolored, crushed or broken, poorly trimmed or are tough or fibrous;

12. Include an objective test for tough or fibrous units based on the fiberometer test as outlined in the USDA grade standards for canned asparagus;

13. Provide for a statistical sampling plan as a basis for determining compliance with quality and single size requirements;

14. Provide for labeling of substandard quality.

As a member of the Food and agriculture Organization of the United Nations and the World Health Organization, the United States is under treaty obligation to consider all Codex standards. The rules of procedure of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of three ways: Full acceptance, target acceptance, or acceptance with specified deviations. A country's acceptance of a Codex standard signifies that, except as provided for by specified deviations, a product that complies with the Codex standard may be distributed freely within the accepting country; insofar as features dealt with by the Codex standard are concerned, products that do not comply, whether domestic or imported, will not be permitted to be distributed without restrictions under the name and description laid down in the standard. The restrictions that may be imposed are not incorporated in the Codex standards, but they are left to the legislation and regulations of the individual countries. A participating country that concludes that it cannot accept the Codex standard in any of the three ways is requested to indicate, with the reasons therefore, the manner in which its requirements differ from the Codex standard and whether products complying with the Codex standard will be permitted to move freeely in the commerce of that country. Members of the Commission are requested to notify the Secretariat of the Codex Alimentarius Commission—Joint FAO/WHO Food Standards Programme, FAO, Rome, Italy, of their decision.

For many years, the United States has had a standard of identity for canned asparagus as a part of § 155.200 *Certain other canned vegatables* (21 CFR 155.200), hereinafter referred to as the U.S. standard. There are also voluntary grades standards for marketing developed by the United States Department of Agriculture (USDA) for canned asparagus, hereinafter referred to as USDA standards, which include, in addition to identity requirements, quality criteria and recommendations for fill of container based on drained weights. Because the Codex standard has requirements for quality and fill of container as well as compliance procedures for a number of product characteristics, the actions proposed herein would broaden the scope of the current U.S. regulations for canned asparagus and necessitate a number of substantive changes and additions to the current U.S. standard. (A fill of container standard for canned asparagus was proposed in the FEDERAL REGISTER of November 7, 1975 (40 FR 52172), as discussed below.) A number of the proposed changes are consistent with comparable provisions of the USDA standards.

The Commissioner of Food and Drugs believes this is an opportune time to update the canned asparagus standards to reflect current marketing and packing practices. It is the Commissioner's opinion that this proposal will not only accomplish that objective, but will also promote honesty and

fair dealing in the interest of consumers and facilitate international trade by adopting insofar as practicable the Codex standard.

In proposing to align to the extent possible the U.S. standards with the Codex standard, the Commissioner has noted certain differences in the composition and format of the Codex standards as contrasted with the U.S. standards. The units of measurments in the U.S. standards are stated in the customary U.S. system (e.g., pounds, inches) and sometimes in units of the metric system, or both; whereas the Codex standard uses only the metric system. The Commissioner recognizes that the International (Metric) System is commonly used throughout most of the world, and in the United States for technical purposes, and that it may eventually be adopted by the United States for common usage. The Commissioner therefore is proposing that the International (Metric) System be used in the U.S. standards for canned asparagus, with the equivalent units of the customary U.S. system shown parenthetically, and this approach will be adopted in all food standard proposals.

The Codex standard also includes hygiene requirements, certain basic labeling requirements, and other factors which are not considered a part of food standards under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341, the legal basis for the promulgation of food standards). The factors are dealt with under other sections of the act; therefore, the Commissioner will not discuss them in this proposal. Also the Codex standard sometimes uses subjective terms in stating its requirements which cannot be expressed in precise enough terms to be legally enforceable, and the Commissioner has also omitted them from the proposal when feasible.

In the FEDERAL REGISTER of November 7, 1975, the Commissioner proposed to require a declaration of drained weight on the label on certain canned foods; he also proposed to amend certain fill of container standards to incorporate requirements for minimum fill (90 percent of the total capacity of the container) and minimum drained weights. A fill of container standard for canned asparagus § 155.110(c) (21 CFR 155.110(c)) was included in the November 7, 1975 proposal, and this document proposes no changes in the provisions covered by that proposal.

This proposal to amend § 155.200 *Certain other canned vegetables* by revoking the provisions on canned asparagus and to establish a separate standard for canned asparagus is based on consideration of the following Codex standard (CAC/RS 56-1972), together with comments and supporting data received and other available information.

RECOMMENDED INTERNATIONAL STANDARD FOR CANNED ASPARAGUS

CAC/RS 56-1972

RECOMMENDED INTERNATIONAL STANDARD FOR CANNED ASPARAGUS

1. *DESCRIPTION*

1.1 *Product Definition*

Canned Asparagus is the product (a) prepared from the edible portion of stalks of varieties of the asparagus plant conforming to the characteristics of *Asparagus officinalis* L., and may be peeled or unpeeled; (b) packed with water or other suitable liquid medium and may contain other ingredients appropriate to the product; and (c) processed by heat in an appropriate manner, before or after being sealed in a container, so as to prevent spoilage.

1.2 *Styles*

1.2.1 Long Shoots or Long Spears—consist of the head and adjoining portion of the stalk not more than 18 cm, but not less than 15 cm in length.

1.2.2 Shoots or Spears—consist of the head and adjoining portion of the stalk less than 15 cm, but not less than 10.5 cm in length.

1.2.3 Tips or Points—consist of the head and adjoining portion of the stalk less than 10.5 cm, but not less than 4 cm in length.

1.2.4 Cuts and Heads or Cut Spears—consist of stalks cut transversely into pieces with and without heads, not more than 6 cm, but not less than 2 cm in length. At least 20%, by count, of pieces with heads must be present, except that when the spears are cut into pieces of 3 cm or less in length, at least 10%, by count, of pieces with heads must be present.

1.2.5 Cuts—consist of portions of stalks cut transversely into pieces not more than 6 cm in length. Pieces with heads may be present.

1.3 *Allowances for Styles*

1.3.1 The length requirements for the styles listed in sub-section 1.2 will be considered to be met when:

(a) the predominant length of the units in the sample falls within the designated style classification; and

(b) the length of the units is reasonably uniform.

1.3.2 "Reasonably uniform", based on sample average, means for:

(i) Long Shoots; Shoots; Tips—at least 75%, by count, of the units are within ± of the predominant length and at least 95%, by count, of the units are within ±2 cm of the predominant length;

(ii) Cuts and heads; Cuts—at least 75%, by count, of the units are within ± 1 cm of the predominant length and at least 90%, by count, of the units are within ± 2 cm of the predominant length.

1.4 *Colour Types*

1.4.1 White—units are white, cream or yellowish white; not more than 20%, by count, of the units may possess blue, green, light green, or yellowish green tips.

1.4.2 White and Blue Tipped; White and Green Tipped—"Long Shoots", "Shoots" and "Tips" which are white, cream, or yellowish-white may have blue, green, light green or yellowish-green heads and adjacent areas but not more than 25%, by count, of the units may have such colour that extends more than one-half the length of the unit.

1.4.3 Green—units are green, light green, or yellowish-green; not more than 20%, by count, of the units may possess a white, cream, or yellowish-white colour of the bottom portion of the stalk, but such colour shall not extend more than one-half the length of the unit.

1.4.4 Mixed—consists of a mixture of white, cream, yellowish-white, blue, green, light green, or yellowish-green units.

1.5 *Designations in Accordance with Size*

Long Shoots; Shoots; Tips—may be designated according to size in the following manner:

Single Sizes	Peeled Asparagus	Unpeeled Asparagus
"Small"	Up to 8 mm, inclusive	Up to 10 mm, inclusive.
"Medium"	Over 8 mm, and up to 13 mm, inclusive.	Over 10 mm, and up to 15 mm, inclusive.
"Large"	Over 13 mm, and up to 18 mm, inclusive.	Over 15 mm, and up to 20 mm, inclusive.
"Extra large"	Over 18 mm	Over 20 mm.
Blend of sizes or Assorted Sizes	A mixture of two or more single sizes.	

1.5.1 Definition of "diameter"

The diameter of a long shoot, shoot, or tip is the maximum diameter at the thickest part of the unit, measured at right angles to the longitudinal axis of the unit.

1.5.2 Compliance with "single size" designations

1.5.2.1 When the product is declared, presented or offered as conforming to the single size designations in sub-section 1.5—other than "Blend of Sizes" or "Assorted Sizes"—the sample unit shall conform to the diameter specified for each single size, except that not more than 25 percent, by count, of all the units in the container may belong to adjacent size group(s).

1.5.2.2 Any sample unit or container that exceeds the 25 percent allowance in the foregoing sub-section 1.5.2.1 will be considered a "defective" for Size Classification.

1.5.2.3 A lot will be considered as meeting the criteria for a "single size" designation when the number of defectives, as defined in sub-section 1.5.2.2 does not exceed the acceptance number (c) of the appropriate sampling plan in the Sampling Plans for Prepackaged Foods (1969) (AQL-6.5) (Ref. CAC/RM 42-1969).

2. *ESSENTIAL COMPOSITION AND QUALITY FACTORS*

2.1 *Basic Ingredients*

Asparagus and liquid packing medium appropriate to the product and other ingredients as follows:

2.1.1 Other permitted ingredients

2.1.1.1 Salt, vinegar.

2.1.1.2 Sucrose, invert sugar syrup, dextrose, glucose syrup, dried glucose syrup.

2.1.1.3 Butter or other edible animal or vegetable fats or oils. If butter is added, it must amount to not less than 3% of the final product.

2.1.1.4 Starches—natural (native), physically or enzymatically modified—only when butter or other edible animal or vegetable fats or oils are ingredients.

2.2 *Quality Criteria*

2.2.1 Colour

The colour of the product shall be normal for the colour type.

2.2.2 Packing medium

The liquid packing medium shall be practically clear except as it may be affected by other ingredients and only a small amount of sediment or parts of asparagus may be present.

2.2.3 Flavour

Canned asparagus shall have a normal flavour and odour free from flavours or odours foreign to the product.

Canned asparagus with special ingredient shall have the flavour characteristic of that imparted by the asparagus and the other substances used.

2.2.4 Texture

The asparagus units shall be reasonably free from units that are excessively fibrous or tough.

2.2.5 Defects and Allowances

	Limitations
(a) Shattered heads and other shattered asparagus material (consisting of broken or shattered pieces to the extent that the appearance of the product is seriously affected and includes pieces less than 1 cm in length).	The product shall be reasonably free from such material
(b) Extraneous matter (such as sand, grit, or earthy material).	The product shall be practically free from such material
(c) Units with peel (in Peeled Asparagus only) (those units with unpeeled areas which seriously affect the appearance or edibility of the unit).	10%, by count
(d) Hollow units (consisting of units that are hollow to the extent that the appearance of the unit is seriously affected.	10%, by count
(e) Misshapen units (includes shoots or heads badly crooked or any unit that is seriously affected in appearance by doubles or other malformations).	10%, by count
(f) Damaged units (includes discolouration, mechanical injury, disease, or damage by other means to the extent that the appearance or edibility of the unit is seriously affected).	10%, by count
Total of all the defects in (d), (e), (f) for these styles:	
Long Shoots	15%, by count
Shoots	15%, by count
Tips	15%, by count
Cuts and Heads	20%, by count
Cuts	25%, by count

2.2.6 Classification of "defectives"

A container that fails to meet one or more of the applicable quality requirements, as set out in subsections 2.2.1 through 2.2.5, shall be considered a "defective".

2.2.7 Acceptance

A lot will be considered as meeting the applicable quality requirements referred to in sub-section 2.2.6, when the number of "defectives", as defined in subsection 2.2.6, does not exceed the acceptance number (c) of the appropriate sampling plan in the Sampling Plans for Prepackaged Foods (1969) (AQL-6.5) Ref. CAC/RM 42-1969).

3. *Food Additives*

	Maximum level of use
3.1 Monosodium glutamate	Not limited [1] [2]
3.2 Stannous chloride [3]	25 mg/kg calculated as Sn
3.3 L-Ascorbic acid	Not limited
3.4 *Acidifying Agents*	
3.4.1 Acetic acid	
3.4.2 Citric acid	Not limited
3.4.3 Malic acid	
3.4.4. L-Tartaric acid	
3.5 *Vegetable gums*	
3.5.1 Arabic gum [1]	
3.5.2 Carrageenan [1]	
3.5.3 Furcellaran [1]	
3.5.4 Guar gum [1]	
3.6 Pectin	
3.7 Alginates (Ca, K, Na, NH_4) [1]	
3.7.1 Propylene glycol alginate [1]	
3.8 *Modified starches*	
3.8.1 Acid-treated starches	
3.8.2 Alkali-treated starches [4]	
3.8.3 Bleached starches	
3.8.4 Distarch phosphate (sodium trimetaphosphate treated)	1% m/m of the additives specified under 3.5 to 3.8 inclusive, singly or in combination
3.8.5 Distarch phosphate, phosphated	
3.8.6 Monostarch phosphate	
3.8.7 Starch acetate [1]	
3.8.8 Starch hydroxypropyl [1]	
3.8.9 Distarch, adipate acetylated [1]	
3.8.10 Distarch glycerol, hydroxypropyl [1]	
3.8.11 Oxidized starches [1]	
3.8.12 Distarch phosphate [1] (phosphorous oxychloride treated)	
3.8.13 Distarch phosphate, acetylated [1]	
3.8.14 Distarch glycerol, acetylated [1]	
3.8.15 Distarch glycerol [1]	

[1] Temporarily endorsed.
[2] Subject to review.
[3] May be used only for asparagus in glass or in fully enamel-lined (lacquered) cans.
[4] May be used only when butter or other edible animal or vegetable fats or oils are ingredients.

4. *CONTAMINANTS*

	Maximum level
Tin, in metal containers where tin is exposed.	250 mg/kg, calculated as total Sn [1]

[1] This is a provisional limit which is subject to review.

5. *HYGIENE*

5.1 Is is recommended that the product covered by the provisions of this standard be prepared in accordance with the International Code of Hygienic Practice for Canned Fruit and Vegetable Products recommended by the Codex Alimentarius Commission (Ref. CAC/RCP 2-1969).

5.2 To the extent possible in good manufacturing practice the product shall be free from objectionable matter.

5.3 When tested by appropriate methods of sampling and examination, the product.

(a) shall be free from microorganisms capable of development under normal conditions of storage and

(b) shall not contain any substances origniating from microorganisms in amounts which may be toxic.

5.4 The product shall have received a processing treatment sufficient to destroy all spores of *Clostridium botulinum.*

6. *WEIGHTS AND MEASURES*

6.1 *Fill of Container*

6.1.1. Minimum Fill

The container shall be well filled with asparagus and the product (including packing medium) shall occupy not less than 90% of the water capacity of the container. The water capacity of the container is the volume of distilled water at 20° C which the sealed container will hold when completely filled.

6.1.2 Classification of "Defective"

A container that fails to meet the requirements for minimum fill (90 percent container capacity) of subsection 6.1.1 shall be considered a "defective".

6.1.3 Acceptance

A lot will be considered as meeting the requirements of sub-section 6.1.1 when the number of "defectives", as defined in sub-section 6.1.2, does not exceed the acceptance number (c) of the appropriate sampling plan in the Sampling Plans for Prepackaged Foods (1969) (AQL-6.5) (Fef. CAC/RM 42-1969).

6.1.4 Minimum Drained Weight

6.1.4.1 The drained weight of the product shall be not less than the following percentages, calculated on the basis of the weight of distilled water at 20° C which the sealed container will hold when completely filled;

	Peeled Asparagus
Long Shoots	60%
All other styles	58%
	Unpeeled Asparagus
Long Shoots and Shoots	57%
All other styles	55%

6.1.4.2 The requirements for minimum drained weight shall be deemed to be complied with when the average drained weight of all containers examined is not less than the minimum required, provided that there is no unreasonable shortage in individual containers.

7. *LABELLING*

In addition to Sections 1, 2, 4, and 6 of the General Standard for the Labelling of Prepackaged Foods (Ref. CAC/RS 1-1969), the following specific provisions apply:

7.1 *The Name of the Food*

7.1.1. The name of the product shall be "Asparagus" and the word "peeled" or "unpeeled" shall be declared, as appropriate, if national legislation so requires.

7.1.2 The following, as appropriate, shall be included as part of the name or in close proximity to the name:

7.1.2.1 The style—

"Long Shoots" or "Long Spears";
"Shoots" or "Spears";
"Tips" or "Points";
"Cuts and heads" or "Cut Spears";
"Cuts".

7.1.2.2 The colour—

"White";
"White and Blue Tipped";
"White and Green Tipped";
"Green";
"Mixed Colours".

7.1.2.3 A declaration of any special sauce and/or seasoning which characterizes the product, e.g. "With X" or "In X", when appropriate. If the declaration is "With (or "In") Butter Sauce", the fat used shall only be butter fat.

7.2 *List of Ingredients*

A complete list of ingredients shall be declared on the label in descending order of proportion in accordance with sub-section 3.2 (c) of the General Standard for the Labelling of Prepackaged Foods, except that water need not be declared.

7.3. *Net Contents*

The net contents shall be declared by weight in either the metric ("Système International" units) or avoirdupois or both systems of measurement, as required by the country in which the product is sold.

7.4 *Name and Address*

The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the product shall be declared.

7.5 *Country of Origin*

7.5.1 The country of origin of the product shall be declared if its omission would mislead or deceive the consumer.

7.5.2 When the product undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling.

7.6 *Optional Declarations*

7.6.1 *Size representation—in styles of Long Shoots, Shoots, Tips*

7.6.1.1 If these size names comply with the applicable requirements of this standard, they may be stated as: "Small", "Medium", "Large", "Extra Large", "Blend of Sizes", or "Assorted Sizes", as appropriate.

7.6.1.1 The number of units present in the container may be shown by a range of approximate count, e.g. "approximately—to—Spears".

8. *METHODS OF ANALYSIS AND SAMPLING*

The methods of analysis and sampling referred to hereunder are international referee methods.

8.1 *Method of Sampling*

Sampling shall be in accordance with the FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods (1969) (AQL-6.5) (Ref. CAC/RM 42-1969).

8.2 *Determination of Drained Weight*

According to the FAO/WHO Codex Alimentarius method (FAO/WHO Codex Alimentarius Methods of Analysis for Processed Fruits and Vegetables, CAC/RM 36-1970, *Determination of Drained Weight—Method I*). Results are expressed as % m/m calcutated on the basis of the mass of distilled water at 20°C which the sealed container will hold when completely filled.

8.3 *Determination of Water Capacity of Containers*

According to the FAO/WHO Codex Alimentarius method (FAO/WHO Codex Alimentarius Methods of Analysis for Processed Fruits and Vegetables, Second Series, *Determination of Water Capacity of Containers*, CAC/RM 46-1972). Results are expressed as volume of distilled water that the container holds.

The following is a comparison of the principal differences between the Codex standard, the U.S. standard (21 CFR 155.200), and the Commissioner's proposed action. The Commissioner particularly requests comments and supporting data on these points. Since 21 CFR 155.200 does not currently have quality provisions, the Commissioner is proposing to adopt USDA standards of quality for canned asparagus, where appropriate, as a basis of comparison. Following each item of comparison is the action Commissioner proposes to take.

COMPARISON OF IDENTITY ASPECTS AND PROPOSED COURSE OF ACTION

1. *Varietal type.* Codex (1.1) states that the standard shall apply to varieties of the asparagus plant conforming to the characteristics of *asparagus officianalis* L. The U.S. standard (21 CFR 155.200) is silent on the botanical or scientific name.

The Commissioner proposes to adopt the species *asparagus officianalis* L., as provided for by Codex.

2. *Peeling.* Codex (1.1) provides that all styles of asparagus may be peeled or unpeeled. The U.S. standard (21 CFR 155.200 (b)) provides for the peeling of only the style of "stalks" (or "spears").

The Commissioner is aware of the practice of peeling certain types of asparagus, particularly white asparagus, to remove objectionable fibrous material and blemished areas, but the Commissioner is not aware of the practice of peeling asparagus in the United States. Nevertheless, in the interest of international uniformity the Commissioner is proposing to adopt the Codex provisions to permit peeling asparagus irrespective of color type or style.

3. *Packing media.* Codex (1.1) states that the asparagus is to be packed with water or other suitable liquid medium. The U.S. standard (21 CFR 155.200(c)) states that asparagus may be canned with added water, asparagus juice, or a mixture of both.

The Commissioner proposes to permit packing in water or any other suitable aqueous liquid medium, to be consistent with the Codex standard.

4. *Process.* Codex (1.1) states that the product shall be procesed by heat, before or after being sealed in a container. The U.S. standard (21 CFR 155.200(a)) states that the food is to be sealed in a container and then processed by heat to prevent spoilage.

In view of the development of aseptic canning techniques, the Commissioner proposes to adopt language similar to that of the Codex standard; also the food must be processed in ac-

cordance with 21 CFR Parts 108 and 113.

5. *Styles—a. Shoots or spears.* According to Codex (1.2.2) the style "shoots" or "spears" consists of the head and adjoining portion of the stalk between 15 cm (5.9 in) and 10.5 cm (4.1 in) in length. The U.S. standard (21 CFR 155.200(b)) permits the names "stalks" and "spears" for this style, and it defines the stlye as the edible portions of sprouts of the asparagus plant 3.75 in (9.5 cm) or more of the upper end. However, the U.S. standard does not include the term "shoots."

In the Commissioner's opinion, asparagus stalks cut in 3.75 in (9.5 cm) lengths have been commonly recognized and accepted by the U.S. consumer as "spears" for many years. In addition, the Commissioner is aware that U.S. packers of asparagus spears would probably have to select different size containers to accommodate spears that are cut in a length longer than 3.75 in (9.5 cm). Therefore, the Commissioner proposes to retain the minimum length requirement of 3.75 in (9.5 cm) as specified in the current U.S. standard. Because the term "shoots" is commonly used on imported asparagus products, the Commissioner is proposing to adopt the Codex term "shoots" and to retain the terms "spears." However, he is proposing to delete the provision for the use of the term "stalks" from the standard because it is his understanding that the term is no longer used by U.S. packers.

b. *Long shoots or long spears.* Codex (1.2.1) states that the style "long shoots" or "long spears" consists of the head and adjoining portion of the stalk which is between 18 cm (7.1 in) and 15 cm (5.9 in) in length.

The U.S. Standard (21 CFR 155.200(b)) does not provide for the optional style "long spears." Nevertheless, some U.S. processors who pack asparagus spears longer than the customary length usually alert consumers to the fact by use of words such as "long," "extra long," etc., although these styles differ from the Codex standard. It is the Commissioner's opinion that the designation "long shoots" or "long spears" will serve a useful purpose to consumers; therefore, the Commissioner is proposing to adopt both terms. Because U.S. processors cut spears to a minimum length of 12 cm (4.75 in) rather than the 15 cm (5.9 in) as proposed by Codex, the Commissioner is proposing to define the style "long shoots" or "long spears" in accordance with current U.S. practice; they must be cut to a length of a least 12 cm (4.75 in).

Codex (1.2.1) places a maximum length measurement of 18 cm (7.1 in) on the style of "long shoots" or "long spears," but the U.S. standard (21 CFR 155.200) does not have a limitation on the length of the spear.

In the United States it is not customary to pack asparagus spears that have lengths approaching 18 cm (7.1 in) because of the tough fiber in the butt portion of the spear. The largest container size listed in the USDA grade standards (7 CFR 2852.2546—Note: 7 CFR Part 52 was redesignated as 7 CFR Part 2852 in the FEDERAL REGISTER of June 27, 1977 (42 CFR 32514)) for asparagus spears will not accommodate units in excess of 15 cm (5.9 in) in length. The Commissioner therefore believes the maximum length of the unit is self-limiting. On the other hand, the Commissioner is aware that in some countries the asparagus units are peeled to reduce the fiber content of the spears, thereby permitting longer "low fiber" spears to be packed. The Commissioner therefore proposes a maximum length for the styles of "spears" and "long spears" of 18 cm (7.1 in) in the interest of international uniformity.

c. *Tips or points.* Codex (1.2.3) provides for the style of "tips or points" that consists of the head and adjoining portion of the stalk. It is between 10.5 cm (4.1 in) and 4 cm (1.6 in) in length. In the U.S. standard (21 CFR 155.200(b)), "tips" and "points" are separate styles. "Tips" are defined as the upper portion of the asparagus stalk having a length between 3.75 in (9.5 cm) and 2.75 in (7 cm). "Points," on the other hand, are shorter; they are the upper end of the asparagus shoot having a length of less than 2.75 in (7 cm).

The Commissioner believes that it is not in the consumer's interest to retain "tips" and "points" as two separate styles. Both styles consist of only the upper end of the asparagus shoot (head and adjoining stalk); the only difference between the current styles is in the amount of stalk material attached to the head. The Commissioner is therefore proposing to adopt the Codex terminology by combining "tips" or "points" as a single style; however, the Commissioner is proposing to adopt a hybrid between the Codex lengths and the lengths now used in the United States. The Commissioner proposes that "tips" or "points" style be less than 9.5 cm (3.75 in), but not less than 4 cm (1.6 in) in length.

d. *Cuts and heads or cut spears.* Codex (1.2.4) defines "cuts and heads" or "cut spears" as asparagus stalks cut transversely into pieces with and without heads. The length is between 0.8 in (2 cm) and 2.4 in (6 cm). At least 20 percent, by count, of the pieces must have heads; however, when the pieces are 3 cm (1.2 in) or less in length, at least 10 percent, by count, of the pieces must have heads. The U.S. standard (21 CFR 155.200(b)) defines "cut stalks" or "cut spears" as sprouts cut into pieces and it has no length limitations or any specific provision regarding head material. The USDA standards (7 CFR 2852.2542(d)) have requirements for "cut spears" comparable to those of Codex.

The Commissioner proposes to adopt the Codex provisions to better differentiate between this style ("cut spears") and "bottom cuts" or "cuts—tips removed," which are discussed below.

e. *Cuts.* Codex (1.2.5) defines this style as portions of stalks cut transversely into pieces not more than 6 cm (2.4 in) in length and which may contain pieces with heads. The U.S. standard (21 CFR 155.200(b)) and the USDA standards (7 CFR 2852.2542(e)) provide for a style of "bottom cuts" or "cuts—tips removed"; these are sprouts from which the tip has been removed, cut in pieces.

The Commissioner proposes to adopt the Codex definition since it provides more flexibility for a product that may, in fact, have some head material present, although not in sufficient amount to meet the requirements of the "cuts and heads" style. However, in the Commissioner's opinion, the Codex term "cuts" is not as meaningful as the terms "bottom cuts" or "cuts—tips removed," which appear in the U.S. standard. Therefore, the Commissioner proposes to retain the U.S. standard designations for this style.

6. *Allowances for styles.* Codex (1.3) provides objective criteria for uniformity of length of asparagus units for the respective styles. This provision requires that (1) the predominant length of the units fall within the length requirements for the respective style; and (2) the length of units be reasonably uniform. Codex further defines "reasonably uniform" as follows:

a. For "long shoots," "shoots," and "tips," at least 75 percent by count of the units are to be within ±1 cm (0.4 in) of the predominant length; and at least 95 percent by count of the units are to be within ±2 cm (0.8 in) of the predominant length; and

b. For "cuts and heads" and "cuts," at least 75 percent, by count, of the units are to be within ±1 cm (0.4 in) of the predominant length; and at least 90 percent, by count, of the units are to be within ±2 cm (0.8 in) of the predominant length.

Neither the U.S. standard (21 CFR 155.200) nor the USDA standards (7 CFR 2852.2542) for canned asparagus have similar provisions.

Although Codex includes the uniformity of length requirements as factors of identity, it does not have a provision for the disposition of products that fail to meet the specified require-

ments. Further, where uniformity of length might be considered as a factor of quality, the USDA standards do not have these requirements; therefore, the Commissioner has decided that they are unnecessary and is not providing for them in the standards as set out below. Nevertheless, the Commissioner particularly requests comment on the need for uniformity requirements, together with supporting information or data demonstrating that such uniformity would promote honesty and fair dealing in the interest of consumers.

7. *Color types.* Codex (1.4) provides for optional color types, whereas the U.S. standard (21 CFR 155.200) does not differentiate between color types (i.e., it does not monitor color). The USDA standards (CFR 2852.2544) provide for color types using categories and definitions similar to those in Codex. The USDA standards also provide additional criteria for color classification under 7 CFR 2852.2553.

a. *Green.* Under Codex (1.4.3) these units may be green, light green, or yellowish-green. Not more than 20 percent, by count, of the units can possess a white, cream, or yellowish-white color on the bottom portion of the stalk, and the nongreen color cannot extend more than one-half the length of the unit. The USDA standards (7 CFR 2852.2544) have almost identical provisions for "green type" spears, tips, or points; however, the white or cream color may not exceed one-fourth the length of the unit. For cut spears, bottom cuts, and mixed styles, the USDA standards state that not more than 20 percent, by count, of the units may be green and white or white; furthermore, not more than 5 percent, by count, of all the units may be white.

The Commissioner is proposing to adopt the Codex provisions for this color type; the units may be green, light green, or yellowish-green. However, for the styles of "cut spears" and "botton cuts," the Commissioner proposes to adopt the USDA provisions which are well known and accepted as reasonable by the U.S. industry. Not more than 20 percent, by count, of the units may be green and white or white, and not more than 5 percent, by count, of the units may be completely white in color.

b. *White.* Codex (1.4.1) states that the units may be white, cream, or yellowish white. Not more than 20 percent, by count, of the units may possess blue, green, light green, or yellowish-green tips. The USDA standards (7 CFR 2852.2544) have substantially the same definition. However, the areas of the spear adjacent to the head may also be green or light green, but the area cannot exceed one-half the length of the unit.

For "white" color type, the Commissioner proposes to adopt substantially the same as Codex. For the "long spears," "spears," and "tips" styles, however, the Commissioner is proposing not more than 20 percent, by count, of the units may possess blue, green, light green, or yellowish-green tips and adjacent stalk areas because this is more in line with the USDA standards.

c. *White and blue tipped; white and green tipped.* Codex (1.4.2) states that "long shoots," "shoots," and "tips" that are white, cream, or yellowish-white may have blue, green, light green, or yellowish-green heads and adjacent areas. However, not more than 25 percent, by count, of the units may have the blue, green, light green, or yellowish-green color that extends more than one-half the length of the unit. The USDA standards (7 CFR 2852.2544) define this color type substantially the same as Codex, except that the USDA standards permit twice the percentage, by count, of the units to have green, light green, or yellowish-green areas in excess of one-half the length of the units as does the Codex definition (50 percent vs. 25 percent). The USDA standards also designate this color type as "green tipped and white" instead of the Codex terminology "white and blue tipped" or "white and green tipped."

The Commissioner is proposing to adopt the Codex definition for this color type. However, he is again proposing the USDA designations "green tipped and white" or, alternatively, "green tipped" instead of the Codex designations "white and blue tipped" or "white and green tipped," based on current U.S. marketing experience.

d. *Mixed.* Codex (1.4.4) states that this color type consists of a mixture of white, cream, yellowish-white, blue, green, light green, or yellowish-green units. The USDA standards (7 CFR 2852.2544) do not provide for a "mixed" color type.

The Commissioner is not aware that asparagus of mixed color is packed in the U.S., but to be consistent with Codex, he proposes to provide for such a color type in the U.S. standard.

8. *Size designation.* Codex (1.5) provides for size designations of "long shoots," "shoots," and "tips" according to the diameter of the thickest part of the unit, measured at right angles to the longitudinal axis. The Codex designations are as follows:

Single Sizes	Peeled Asparagus	Unpeeled Asparagus
"Small"	Up to 8 mm, inclusive	Up to 10 mm, inclusive.
"Medium"	Over 8 mm, inclusive	Over 10 mm and up to 15 mm, inclusive.
"Large"	Over 13 mm and up to 18 mm, inclusive.	Over 15 mm and up to 20 mm, inclusive.
"Extra Large"	Over 18 mm	Over 20 mm.
Blend of Sizes or Assorted Sizes	A mixture of two or more single sizes.	

The U.S. standard (21 CFR 155.200) does not provide for size designations. The USDA standards (7 CFR 2852.2548) have provisions for single size designations based on nomenclature and diameter measurements, but they make no distinction between peeled and unpeeled style of pack. The USDA standards (7 CFR 2852.2549) also use terminology such as "extra large" ("Mammoth"), "Colossal" and "Giant" for asparagus of the larger sizes.

A comparison of the size designations contained in the USDA standards (7 CFR 2852.2549) with the Codex sizing requirements for unpeeled asparagus shows minor differences in the "small" and "medium" and "large" designations, due in part to the systems of measurement, metric for Codex and fractional inches for USDA. But the differences between the USDA and Codex designations for larger sizes are more substantial since Codex provides for only one size designation above "large" (namely, "extra large"), whereas the USDA standards permit the additional sizes "Colossal" and "Giant."

The Commissioner is of the opinion that it would be in the interest of consumers to reduce the number of designations for the large sizes of asparagus. Therefore, the Commissioner proposes to adopt Codex size designations and measurements.

9. *Compliance with size designations.* Codex (1.5.2) provides criteria for compliance with a single size designation, and the USDA standards (7 CFR 2852.2549) have comparable requirements. Codex also has a lot acceptance procedure for sample units or containers that do not individually comply with the designated size requirements, but the USDA standards do not have such a compliance procedure.

In the Commissioner's opinion, the Codex provisions (1.5.2) are more complete and objective than the USDA provisions; therefore, the Commissioner is including them in the proposed standard.

10. *Optional ingredients—a. Salt.* both Codes (2.1.1.1) and the U.S. standard (21 CFR 155.200(c)(4)) provide for salt as an optional ingredient.

The Commissioner proposes no change.

b. *Sweetening agents.* Codex (2.1.1.2) provides for sucrose, invert sugar syrup, dextrose, glucose syrup and dried glucose syrup. The U.S. standard (21 CFR 155.200(c)(3)) provides for the same sweeteners with the exception of invert sugar syrup.

The Commissioner proposes to provide for the optional use of any safe and suitable nutritive carbohydrate sweetener in lieu of specifying the individual nutritive carbohydrate sweeteners that may be used.

c. *Seasonsing agents.* Codex does not provide for the optional use of seasoning agents other than salt and sweetening agents. The U.S. standard (21 CFR 155.200(c)(3)) provides for a number of optional seasoning agents in canned asparagus—spice, green or red peppers (which may be dried), mint leaves, onions (which may be dried), garlic (which may be dried), and horseradish.

The Commissioner notes that the seasoning agents named apply to a variety of miscellaneous canned vegetables of which canned asparagus is only one. The Commissioner is not aware that the spices and the named vegetable ingredients are currently used in canned asparagus. Therefore, the Commissioner proposes to delete the provision for the optional use of spice, green and red peppers, mint leaves, onions garlic, and horseradish from the asparagus standard.

d. *Flavoring and flavor enhancers.* Codex does not provide for flavoring or flavor enhancers other than monosodium glutamate. The U.S. standard (21 CFR 155.200(c)(4) and (5)) provides for monosodium glutamate, disodium inosinate, disodium guanylate, hydrolyzed vegetable protein, autolyzed yeast extract, and flavoring except artificial.

The Commissioner proposes to provide only for monosodium glutamate, since he is not aware that disodium inosinate, disodium guanylate, hydrolyzed vegetable protein, autolyzed yeast extract, and flavoring are used in the canning of asparagus.

e. *Butter and other edible fats or oils.* Codex (2.1.1.3) permits the addition of butter or other edible animal or vegetable fats or oils. If butter is added, at least 3 percent must be present in the final product. The U.S. standard (21 CFR 155.200(c)(3)(xiii)) provides for the use of butter or margarine in a quantity that is not less than 3 percent by weight of the finished food.

Margarine may consist of either vegetable or animal fats and oils, and the plastic, emulsified physical form of margarine is lost during processing. Accordingly, the Commissioner believes it is reasonable to permit the use of edible vegetable or animal fats and oils or mixtures, whether added in the form of margarine or not. Because butter and margarine consist of a minimum of 80 percent fat (i.e., at least 2.4 percent by weight based on the 3 percent requirement), the Commissioner is proposing to permit the use of an equivalent amount of other fats or oils.

The Commissioner proposes to amend the U.S. standard to allow the use of other edible fats or oils, as well as butter or margarine. When other edible fats or oils are used however, they should be present in an amount equivalent to that of the fat content of butter or margarine. Therefore, the Commissioner is proposing that the optional addition of fats or oils be governed by the minimum 2.4 percent by weight requirement.

f. *Stabilizers and emulsifiers.* When butter or other edible animal or vegetable fats or oils are used, Codex (3.5), (3.6), (3.7), and (3.8) provides for specifically designated vegetable gums, pectin, alginates and chemically treated modified starches up to 1 percent by weight of the finished food, either singly or in combination. In addition, Codex (2.1.1.4) provides for the optional use of natural, physically or enzymatically modified starches. The U.S. standard (21 CFR 155.200(c)(3) (xiii)) permits safe and suitable emulsifiers or stabilizers, or both, when butter or margarine is added.

The Commissioner considers the emulsifires and stabilizers designated by Codex in the maximum amounts specified to be safe and suitable for the designated use. Therefore, he proposes no change from the present U.S. standard, other than to provide for their use with other edible fats or oils, as well as with butter or margarine.

g. *Stannous chloride.* Codex (3.2) states that stannous chloride, at a maximum level of 25 milligrams per kilogram (mg/kg) (25 parts per million (ppm)), calculated as tin (Sn) may be added to canned asparagus, but only when the asparagus is canned in glass or fully enamel-lined containers. The U.S. standard (21 CFR 155.200(c)(9)) provides for the addition of stannous chloride to canned asparagus packed in glass containers but at a maximum level of 15 ppm. For asparagus packed in glass containers with lids lined with an inert material, however, the level of stannous chloride may exceed 15 ppm, but it cannot be more than 20 ppm, calculated as tin (Sn).

There are two regulations governing the safe use of stannous chloride in foods: A GRAS regulation and a food additive regulation. The GRAS regulation (21 CFR 182.3845) provides for the use of stannous chloride as a preservative in foods at a level not to exceed 15 ppm. The food additive regulation (21 CFR 172.180) permits stannous chloride use for color retention, at a level not to exceed 20 ppm, for asparagus packed in glass containers with lids lined with an inert material. The Commissioner lacks information to propose an amendment that would bring 21 CFR 172.180 into agreement with Codex. Therefore, the Commissioner is proposing no change in the limitations set out in the present U.S. standard. But any interested person who has data to show that stannous chloride may be safely used in fully enamel-lined cans may file a petition in accordance with 21 CFR 171.1 proposing to amend the food additive regulation (21 CFR 172.180) and the standard of identity for canned asparagus (21 CFR 155.110), to provide for such use.

11. *Acidifying agents.* Codex (2.1.1.1) provides for the use of vinegar, and (3.4) provides for the use of acetic acid, citric acid, malic acid, and L-tartaric acid. The U.S. standard (21 CFR 155.200(c)(3)(vi) and (xii)) provides for the use of vinegar and lemon juice or concentrated lemon juice.

The Commissioner proposes to provide for the optional use of vinegar, lemon juice or concentrated lemon juice, and any safe and suitable organic acid that would include those acidifiers provided for by Codex and, also, would be consistent with other U.S. standards.

12. *Antioxidants.* Codex (3.3) provides for the addition of L-ascorbic acid, with no specific level of use, but the U.S. standard (21 CFR 155.200) does not provide for the use of ascorbic acid in canned asparagus.

The Commissioner is not aware of the need for ascorbic acid for canned asparagus of the green color type but understands that it may serve a useful purpose in preserving the color of asparagus of the white color type. Therefore, the Commissioner proposes to provide for the use of ascorbic acid in canned asparagus in accordance with § 182.3013, but only for the "white" and "green tipped and white" color types.

13. *Labeling*—a. *Name of food.* Codex (7.1.1) states that the name of the product shall be "asparagus" and the word "peeled" or "unpeeled," as appropriate, shall be declared if national legislation so requires. The U.S. standard (21 CFR 155.200) provides for the name "asparagus" and, if applicable, the declaration of the word "peeled" as part of the name when the asparagus is packed in the form of stalks or spears.

Because the customary pack in this country is unpeeled asparagus and the consumer is familiar with that type of

product, the Commissioner proposes that the word "peeled" be included as part of the name of the food when the asparagus is peeled.

b. *Packing medium.* Codex (1.1) states that asparagus may be packed with water or other suitable liquid medium. The U.S. standard (21 CFR 155.200(c)) states that asparagus may be canned with water, asparagus juice, or a mixture of both. Codex (7.2) requires a complete list of ingredients, except for water, as a part of the ingredient statement on the label. 21 CFR 155.200(f)(2) states that if asparagus juice is the packing medium, the label shall bear the statement "Packed in asparagus juice."

The Commissioner is proposing that asparagus may be packed in water or other suitable aqueous liquid media; therefore, the water, asparagus juice, or other liquid packing media become optional ingredients and must be declared in the ingredient statement.

c. *Style.* Codex (7.1.2.1) states that the style of the asparagus ingredient be a part of the name or in close proximity thereto. The U.S. standard (21 CFR 155.200(e)) states that the label shall show the form of the vegetable ingredients, and 21 CFR 155.200(g) states that the declaration of such form shall immediately and conspicuously precede or follow the name of the food. Since both the Codex and U.S. requirements are essentially the same, the Commissioner proposes to adopt the Codex language in regard to declaring the styles on the label.

d. *Color type.* Codex (7.1.2.2) specificies that the color type be designated as "white," "white and blue tipped" or "white and green tipped," "green," and "mixed colors" as appropriate. The U.S. standard (21 CFR 155.200) does not provide for color types and therefore does not include specific labeling provisions for this designation.

The Commissioner is proposing to adopt the Codex provisions, with one exception. The Commissioner proposes to adopt the color designation "green tipped and white" in accordance with the USDA quality standards, rather than "blue and white tipped" or "white and green tipped" as used in Codex.

e. *Characterizing ingredients.* Codex (7.1.2.3) requires a declaration of any sauce or seasoning which characterizes the product—for example, "In butter sauce." The U.S. standard (21 CFR 155.200) requires that the name of the food include a declaration of any flavoring that characterizes the product, as specified in 21 CFR 101.22, and a declaration of any spice or seasoning that characterizes the product—for example, "seasoned with butter."

Since the Commissioner proposes to delete the provision for the use of spices and flavorings, other than monosodium glutamate, which need not be declared as a characterizing ingredient, he proposes to require only the declaration of any seasoning that characterizes the product, e.g., "seasoned with butter."

f. *List of ingredients.* Codex (7.2) calls for a complete list of ingredients in descending order of proportion, except that water need not be declared. The U.S. standard (21 CFR 155.200(b)) requires each of the optional ingredients to be declared as prescribed in 21 CFR Part 101.

The Commissioner proposes no change from the current U.S. standard.

g. *Size designations.* Codex (7.6) provides for the declaration of optional size designations or names for the styles of long spears, spears, and tips as "Small," "Medium," "Large," "Extra Large," "Blend of Sizes," or "Assorted Sizes." The U.S. standard (21 CFR 155.200) does not provide for the sizing of asparagus.

The Commissioner proposes to adopt the Codex provisions for optional size declaration.

Comparison of Quality Aspects and Proposed Courses of Action

1. *Color.* Codex (2.2.1) states that the color of the product shall be normal for the color type. The U.S. standard (21 CFR 155.200) has no requirement for color. The USDA standards (7 CFR 2852.2553) provide criteria for color classification as a quality factor.

The Commissioner does not propose to include a color requirement in the standard as a factor or quality since he does not consider the Codex language to be specific enough for enforcement purposes.

2. *Packing medium.* Codex (2.2.2) states that the liquid packing medium shall be practically clear except as it may be affected by other ingredients and only a small part of sediment or parts of asparagus may be present. The U.S. standard (21 CFR 155.200) does not have requirements on the clearness of the packing medium. The USDA standards (7 CFR 2852.2552) provide requirements for classifying clearness of liquor substantially the same as Codex.

In the opinion of the Commissioner, neither the Codex language nor that used in the USDA standard is objective enough for legal enforcement purposed, and therefore he does not propose to provide quality requirements for the packing medium.

3. *Flavor and odor.* Codex (2.2.3) states that canned asparagus shall have a normal flavor and odor free from flavors or odors foreign to the product, allowing for the effect of permitted ingredients.

An abnormal flavor would connote spoilage, contamination, or other abnormal conditions which are not considered a part of food standards under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), but which are dealt with under other sections of the act. Therefore, the Commissioner does not propose to include requirements for flavor and odor.

4. *Texture.* Codex (2.2.4) states that the asparagus units shall be reasonably free from units that are excessively fibrous or tough. The U.S. standard (21 CFR 155.200(b)) states that asparagus is prepared from the edible portions of sprouts of the asparagus plant. The USDA standards (7 CFR 2852.2555) provide allowances for tough or fibrous units according to style and color type, employing an objective test outlined in 7 CFR 2852.2556 of the standards. The USDA standards for the Grade C classification permit the following with respect to tough or fibrous units:

a. *Green and green tipped*—25 percent, by count, for all styles.

b. *Green tipped and white and white*—50 percent, by count, for all styles.

The Commissioner notes that Codex does not set allowances for the presence of tough asparagus units, but that it uses only subjective terms with regards to their absence. Further, the Commissioner notes that USDA sets allowances based on color types for various styles, while the proposed U.S. standards sets out defect tolerances based on style only. The Commissioner understands, based on meetings with representatives of USDA, that improvements in cultural practices and in methods of harvesting asparagus have resulted in a reduction in the amount of tough fiber in asparagus. Consequently, he is proposing a lower figure than USDA for the tolerance for tough or fibrous units in the various styles as follows: For long spears, spears, and tips, 15 percent by count; for cut spears and bottom cuts, 30 percent by weight. He also proposed to require the USDA method of testing for tough and fibruos units. The Commissioner believes that the proposed tolerances for tough or fibrous units are reasonable, but he invites comments, together with supporting data and/or information, to demonstrate that these or other tolerances will promote honesty and fair dealing in the interest of consumers.

5. *Defects and allowances.* Codex (2.2.5) provides definitions and allowances for a number of defects common to canned asparagus. The U.S. Standard (21 CFR 155.200) does not include quality requirements for canned asparagus. The Codex requirements and, as applicable, the USDA standards requirements, are as follows:

a. *Shattered heads and other shattered asparagus material.* Codex (2.2.5(a)) states that the product shall be reasonably free from shattered heads or other shattered asparagus material, including pieces less than 1 cm (0.4 in) in length. The USDA standards (7 CFR 2852.2554) define "shattered heads" as any unit with the asparagus head broken or shattered to the extent that the appearance is seriously affected and sets a combined tolerance of 20 percent, by count, for shattered heads, misshapened and poorly cut units. The USDA standards also define "loose material" as pieces less than ⅜ in (1 cm) in length and further provide that such loose material may not seriously affect the appearance of the product.

The Commissioner is of the opinion that neither Codex nor USDA has defined "shattered heads" in sufficiently precise terms for legal enforcement purposes. The Codex provision of shattered pieces of less than 1 cm (0.4 in) in length is specific, but the allowance limitation of "reasonably free" lacks objectivity. Likewise, the USDA terminology "does not seriously affect" is no more precise than Codex. Therefore, the Commissioner proposes a more objective definition and tolerances for "shattered heads" and "small pieces", which he has developed in conjunction with USDA, as follows:

"Shattered heads" (in the styles of long spears, spears, and tips) is any asparagus unit in which 50 percent or more of the head is missing. The Commissioner proposes to provide for an allowance of 20 percent, by count, for shattered heads.

"Small pieces" (in the styles of cut spears and bottom cuts) are those asparagus pieces less than 1 cm (0.4 in) in length. The Commissioner proposes to provide for an allowance of not more than 5 percent by weight for small pieces.

b. *Extraneous matter* (sand, grit, and earthy material). Codex (2.2.5(b)) states that the product shall be practically free from such material. The USDA standards (7 CFR 2852.2554) state that not more than a trace of grit or silt may be present.

The Commissioner does not propose to adopt this provision, as the presence of such material indicates contamination, rather than a quality factor, and is dealt with under the adulteration provisions of the act.

c. *Units with peel (in peeled asparagus only).* In peeled asparagus, Codex (2.2.5(c)) provides a 10 percent by count allowance for asparagus units with unpeeled areas which seriously affect the appearance or edibility of the unit. The USDA standards (7 CFR 2852.2554) make no reference to units with peel.

The Commissioner is of the opinion that the Codex definition is not sufficiently objective for enforcement purposes; therefore, he does not propose to adopt the Codex requirement.

d. *Hollow units.* Codex (2.2.5(d)) provides an allowance of 10 percent, by count, for units that are hollow to the extent that appearance is seriously affected. The USDA standards (7 CFR 2852.2554) make no reference to hollow units.

The Commissioner is of the opinion that the Codex definition is not sufficiently objective for enforcement purposes; therefore, he does not propose to adopt the Codex requirement.

e. *Misshapen.* Codex (2.2.5(e)) defines misshapen units as shoots or heads that are badly crooked or seriously affected in appearance by doubles or other malformations and provides a tolerance of 10 percent by count. The USDA standards (7 CFR 2852.2554(a)(4)) have a similar definition for this defect, with a combined tolerance of 20 percent, by count, for shattered heads, misshapen units and poorly cut units.

The Commissioner is of the opinion that the Codex definition is not sufficiently objective for enforcement purposes; therefore, he does not propose to adopt the Codex provison.

f. *Damage.* Codex (2.2.5(f)) provides a tolerance of 10 percent by count for units that are damaged by discoloration, mechanical injury, disease or other means. The USDA standards (7 CFR 2852.2554(a)(6)) define "damage" in terminology similar to Codex and provide a tolerance of 10 percent, by count, for such damaged units.

The Commissioner views the Codex provision as reasonable and he therefore proposes to adopt the Codex requirement for "damaged units."

g. *Poorly cut.* Codex (2.2.5) does not have provisions specifically for "poorly cut" units, whereas the USDA standards (7 CFR 2852.2554) do provide for this defect. The USDA standards define a poorly cut unit as a unit that has a very ragged, stringy, or frayed edge or edges, a unit that is partially cut, or a unit cut at any angle of less than approximately 45 degrees.

The Commissioner proposes to adopt the USDA definition and proposes a 10 percent tolerance for "poorly cut units."

h. *Total defects.* Codex (2.2.5) provides for a 10 percent by count tolerance for each of the following defects: Units with peel (in peeled asparagus only), hollow units, misshapen units, and damaged units. It also provides for a combined tolerance when more than one of the defects (hollow units, misshapen units, and damaged units) occurs in the various styles as follows: Long shoots, 15 percent; shoots, 15 percent; tips, 15 percent; cuts and heads, 20 percent; and cuts, 25 percent.

The USDA standards (7 CFR 2852.2554(c)(1) and (2)) also provide for a combined tolerance when more than one defect is present. But the USDA standards differ from Codex in that they provide, in part, for different kinds of defects and base the tolerances on color type in addition to style. For shattered heads, misshapen units, poorly cut units, and damaged units, the USDA combined tolerance is: For spears, tips, and points, 20 percent by count for green and green tipped and 30 percent by count for green tipped and white, and white; for cut spears, bottom cuts, cuts, tips removed and mixed, 20 percent by count without regard to color.

The Commissioner also proposes to provide for a combined tolerance when more than one defect is present. But since the individual defects proposed by the Commissioner (as previously discussed) differ from both Codex and USDA defects, it logically follows that any figure set for the combined tolerance will also be different. Accordingly, he proposes a combined tolerance for defects occurring in various styles as follows: (1) For long spears, spears, and tips, 20 percent by count of poorly cut units, damaged units, and shattered heads; and (2) for cut spears and bottom cuts, 15 percent by weight of poorly cut units, damaged units, and pieces. The Commissioner realizes that the proposed combined tolerances are based on limited information which was also developed in conjunction with USDA. Therefore, he invites comments, together with supporting data and/or information, to demonstrate that these or other tolerances will promote honesty and fair dealing in the interest of consumers.

6. *Acceptance.* The Codex standard provides compliance or acceptance criteria for single size designations (1.5.2) and for quality criteria (2.2.7), such acceptance being based on Codex Sampling Plans for Prepackaged Foods (AQL 6.5)—1969. The U.S. standard (21 CFR 155.200), which does not contain statistical sampling plans, is based on the premise that each container either does, or does not, meet the requirements of the standard, and acceptance or rejection of the lot is left to administrative judgment. The USDA standards (7 CFR 2852.2557) provide for lot acceptance according to sampling plans substantially the same as those of Codex.

The Commissioner believes that statistical sampling plans will provide the consumer and food processor with more informative criteria of the requirements that the product must meet. Therefore, he proposes to provide for sampling plans comparable to Inspection Level II of the Codex sam-

pling plans. Such sampling plans were proposed as part of a new definition section (21 CFR 155.3) in the June 7, 1977 FEDERAL REGISTER (42 FR 29019). When the new definition section becomes effective, the Commissioner will propose that the sampling plans in the canned asparagus standard be deleted and the sampling plans in 21 CFR 155.3 made applicable to the canned asparagus standard by cross-reference.

7. *Substandard-in-quality labeling.* Codex is silent on what disposition is to be made of canned asparagus that does not meet the quality standard. All U.S. quality standards contain specific labeling provisions to provide a means of disposing of foods that fail to meet the minimum requirements of such standards.

The Commissioner proposes to provide for substandard labeling in the quality standard for canned asparagus.

The Commissioner has considered the environmental effects of the issuance or amendment of food standards and has concluded in § 25.1(d)(4) (21 CFR 25.1(d)(4)) that food standards are not major agency actions significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required for this proposal.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401. 701(e), 52 Stat. 1046, as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Part 155 be amended as follows:

1. By adding new paragraphs (a) and (b) to § 155.110, to read as follows:

§ 155.110 Canned asparagus.

(a) *Identity*—(1) *Definition.* Canned asparagus is the food prepared from the fresh, edible portion of the sprouts of varieties of the asparagus plant conforming to the characteristics of *Asparagus officianalis* L., which may be peeled or unpeeled. The food is prepared in any of the optional styles, color types, and sizes as set forth in paragraph (a)(2) of this section. The product is packed with water or other suitable aqueous liquid medium to which may be added one or more optional ingredients provided for in paragraph (a)(3) of this section. Such food is sealed in a container and, before or after sealing, is so processed by heat as to prevent spoilage.

(2) *Style, color types, and size designations.* The optional styes, color types, and size designations referred to in paragraph (a)(1) of this section are:

(i) *Optional styles.* The asparagus shall be one of the following distinct styles:

(*a*) *"Spears" or "shoots"*—consisting of the head and adjoining portion of the stalk not more than 18 centimeters (7 inches) but not less than 9.5 centimeters (3.75 inches) in length: *Provided,* That spears or shoots not more than 18 centimeters (7 inches) but not less than 12 centimeters (4.75 inches) in length may be designated as "long spears" or "long shoots."

(*b*) *"Tips" or "points"*—consisting of the head and adjoining portion of the stalk less than 9.5 centimeters (3.75 inches) but not less than 4 centimeters (1.6 inches) in length.

(*c*) *"Cut spears" or "cuts and heads"*—consisting of stalks cut transversely into pieces with and without heads, not more than 6 centimeters (2.4 inches) but not less than 2 centimeters (0.8 inches) in length. At least 20 percent, by count, of pieces with heads must be present, except that when the stalks are cut into pieces of 3 centimeters (1.2 inches) or less, at least 10 percent by count of pieces with heads must be present.

(*d*) *"Bottom cuts" or "cuts—tips removed"*—consisting of stalks cut transversely, into pieces less than 6 centimeters (2.4 inches) in length. Pieces with heads may be present.

(ii) *Optional color types*—(*a*) *"Green"*—consisting of asparagus units that are green, light green, or yellowish-green; with respect to the styles of "long spears," "spears" and "tips," not more than 20 percent, by count, of the units may possess a white, cream, or yellowish-white color on the bottom portion of the stalk, but such color may not extend more than one-half of the length of the unit; and with respect to the styles of "cut spears" and "bottom cuts," not more than 20 percent by count, of the units may be green and white or white provided that not more than 5 percent, by count, may be completely white in color.

(*b*) *"White"*—consisting of asparagus units that are white, cream, or yellowish-white; and with respect to the styles of "long spears," "spears," and "tips," not more than 20 percent, by count, of the units may possess blue, green, light green or yellowish-green tips and adjacent stalk area.

(*c*) *"Green tipped and white" or "green tipped"* (applicable only to the styles of "long spears," "spears" and "tips")—consisting of asparagus units that are predominantly white, cream or yellowish-white in color and which may have blue, green, light green or yellowish-green heads and adjacent areas, but not more than 25 percent, by count, of the asparagus units may have such color that extends more than one-half the length of the unit.

(*d*) *"Mixed"*—consisting of asparagus units of any of the prescribed styles that are a combination of two or more of the color types provided for in paragraph (a)(2)(ii) of this section and do not conform to a single color designation.

(iii) *Optional size designations.* (*a*) Long spears, spears, and tips may be designated according to size in the following manner:

Size designation	Peeled asparagus (diameter)	Unpeeled asparagus (diameter)
Small	8 mm (0.3 in) or less	10 mm (0.4 in) or less.
Medium	Over 8 mm (0.3 in) and up to 13 mm (0.5 in) inclusive.	Over 10 mm (0.4 in) and up to 15 mm (0.6 in) inclusive.
Large	Over 13 mm (0.5 in) and up to 18 mm (0.7 in) inclusive.	Over 15 mm (0.6 in) and up to 20 mm (0.8 in) inclusive.
Extra large	Over 18 mm (0.7 in)	Over 20 mm (0.8 in).
Blend of sizes or Assorted sizes	A mixture of two or more of the foregoing sizes.	

(*b*) For the purpose of this section the diameter of long spears, spears, and tips is the maximum diameter at the thickest portion of the unit and at right angles to the longitudinal axis of the unit. When the product is designated as a single size designation, the sample units shall conform to the diameter range specified for such single size, except that not more than 25 percent, by count, of all the asparagus units in the container may belong to adjacent size group(s).

(*c*) Any sample unit that exceeds the 25 percent allowance in paragraph (a)(2)(iii)(*b*) of this section shall be considered a "defective" for the purposes of size classification; and a lot will be considered as meeting the criteria for a single size designation when the number of such "defectives" does not exceed the acceptance number (c) of the appropriate sampling plan (acceptable quality level (AQL) 6.5) provided in paragraph (b)(4)(ii) of this section.

(3) *Optional ingredients.* In addition to the optional packing media listed in paragraph (a)(1) of this section, the following safe and suitable optional ingredients may be used:

(i) Salt.

(ii) Monosodium glutamate.

(iii) Nutritive carbohydrate sweeteners.

(iv) Vinegar.

(v) Lemon juice or concentrated lemon juice.

(vi) Organic acids.

(vii) Stannous chloride in an amount not to exceed 15 milligrams per kilogram (15 parts per million) calculated as tin (Sn) when packed in glass containers; except when asparagus is packed in glass containers with lids lined with an inert material, the quantity of stannous chloride may exceed 15 milligrams per kilogram (15 parts per million) but not 20 milligrams per kilogram (20 parts per million) calculated as tin (Sn).

(viii) Ascorbic acid in an amount necessary to preserve color in the "white" and "green tipped and white" color types.

(ix) Butter or margarine in a quantity not less than 3 percent by weight of the finished food, or other vegetable or animal fats or oils in a quantity not less then 2.4 percent by weight of the finished food. When butter, margarine, or other vegetable or animal fats or oils are added, emulsifiers or stabilizers, or both, may be added, but no spice or flavoring simulating the color or flavor imparted by butter or margarine may be used.

(4) *Labeling.* (i) The name of the food is "asparagus." The name shall also include the word "peeled" when the asparagus is peeled.

(ii) The following shall be included as part of the name or in close proximity to the name of the food:

(*a*) The optional styles as set forth in paragraph (a)(2)(i) of this section. Asparagus spears complying with the length requirements specified in paragraph (a)(2)(i)(*a*) of this section may be labeled "long spears" or "long shoots".

(*b*) The optional color type as set forth in paragraph (a)(2)(ii) of this section. When the product consists of a mixture of color types, as provided for in paragraph (a)(2)(ii)(*d*) of this section, the name of such optional color type shall be "mixture of ————", the blank to be filled in with the names designating the color types present and arranged in descending order of the proportion of the respective color types.

(*c*) If size is designated on the label, one of the terms specified in paragraph (a)(2)(iii)(*a*) of this section.

(*d*) When butter, margarine or other animal or vegetable oils are used, a declaration of such seasoning, e.g., "seasoned with butter" or "seasoned with margarine."

(iii) *Ingredient statement.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

(b) *Quality.* (1) The standard of quality for canned asparagus is as follows:

(i) In the case of asparagus of the styles long spears, spears, and tips:

(*a*) Not more than 15 percent, by count, of the units are tough or fibrous, when tested in accordance with the method prescribed in paragraph (b)(2) of this section;

(*b*) Not more than 10 percent, by count, of the units are broken or poorly cut (partially cut or ragged cut surfaces);

(*c*) Not more than 10 percent, by count, of the units are seriously damaged by discoloration, mechanical injury, disease, or other means.

(*d*) Not more than 20 percent, by count, consist of units in which the heads are shattered to the extent that 50 percent, or more, of the head is missing;

(ii) In the case of asparagus of the styles of cut spears and bottom cuts:

(*a*) Not more than 30 percent, by weight, of the units are tough or fibrous, when tested in accordance with the method prescribed in paragraph (b)(2) of this section.

(*b*) Not more than 10 percent, by weight, of the units are broken or poorly cut (partially cut or ragged cut surfaces);

(*c*) Not more than 10 percent, by weight, of the units are seriously damaged by discoloration, mechanical injury, disease, or other means;

(*d*) Not more than 5 percent, by weight, of the units consist of pieces less than 1 centimeter (0.4 inch) in length.

(iii) Irrespective of the tolerances for the defects listed in paragraph (b)(1)(i) and (ii) of this section, the cumulative total of all such defects listed in paragraph (b)(1)(i)(*b*), (*c*), and (*d*) of this section shall not exceed 20 percent, by count, for the styles of long spears, spears, and tips; and the cumulative total of all defects listed in paragraph (b)(1)(ii)(*b*), (*c*), and (*d*) shall not exceed 15 percent, by weight, for the styles of cut spears and bottom cuts.

(2) Canned asparagus shall be tested by the following method to determine whether or not it meets the requirements of paragraph (b)(1)(i)(*a*) and (ii)(*a*) of this section with respect to tough or fibrous units.

(i) *Asparagus fiberometer.* The cutting wire of the fiberometer shall be of stainless steel and have a diameter of 0.80 millimeter (0.031 inch) and shall be mounted in a metal frame having an overall weight of 1,362 grams (3 pounds) avoirdupois. The slots in the block supporting the asparagus unit to be tested shall be not less than 1.0 millimeter (0.039 inches) or more than 1.07 millimeters (0.042 inches) in width.

(ii) *Procedure.* Place the asparagus unit on the fiberometer in such a manner that the slot in the base will be 12.5 millimeters (½ inch) from the butt of spears and tips and at the approximate center of cut spears and bottom cuts. Lower the frame with the stainless steel wire over the unit immediately above the slot. Any asparagus unit that is not cut through within 5 seconds is considered a "tough or fibrous unit".

(iii) *Fractional unit rule.* In applying the allowances for the defects listed in paragraph (b)(1)(i) and (ii) of this section, fractional units are increased to the next higher full unit. For example, if the container being tested has 16 spears and the allowance for tough units is 10 percent, an individual container may have 2 spears that are tough (10 percent of the 16 is 1.6 units): *Provided,* That the average for all containers in the sample does not exceed 10 percent.

(3) Determine compliance as specified in paragraph (b)(4) of this section.

(4) *Sampling and acceptance procedure.* A lot is to be considered acceptable when the number of "defectives" does not exceed the acceptance number in the sampling plans given in paragraph (b)(4)(ii) of this section.

(i) Definitions of terms to be used in the sampling plans in paragraph (b)(4)(ii) of this section are as follows:

(*a*) *Lot.* A collection of primary containers or units of the same size, type, and style manufactured or packed under similar conditions and handled as a single unit of trade.

(*b*) *Lot size.* The number of primary containers or units in the lot.

(*c*) *Sample size* (*n*). The total number of sample units drawn for examination from a lot.

(*d*) *Sample unit.* A container, the entire contents of a container, a portion of the contents of a container, or a composite mixture of product from small containers that is sufficient for examination or testing as a single unit.

(*e*) *Defective.* Any sample unit shall be regarded as defective when the sample unit does not meet the criteria set forth in the standards.

(*f*) *Acceptance number* (*c*). The maximum number of defective sample units permitted in the sample in order to consider the lot as meeting the specified requirements.

(*g*) *Acceptable quality level* (*AQL*). The maximum precent of defective sample units permitted in a lot that will be accepted approximately 95 percent of the time.

(ii) Sampling plans and acceptance procedure:

Acceptable quality level 6.5:

Lot size (primary containers)	Size of container	
	Net weight equal to or less than 1 kg (2.2 lb.)	
	n	*c*
4,800 or less	13	2
4,801 to 24,000	21	3
24,001 to 48,000	29	4
48,001 to 84,000	48	6
84,001 to 144,000	84	9
144,001 to 240,000	126	13
Over 240,000	200	19
	Net weight greater than 1 kg (2.2 lb.) but not more than 4.5 kg (10 lb.)	
	n	*c*
2,400 or less	13	2
2,401 to 15,000	21	3
15,001 to 24,000	29	4
24,001 to 42,000	48	6
42,001 to 72,000	84	9
72,001 to 120,000	126	13
Over 120,000	200	19
	Net weight greater than 4.5 kg (10 lb.)	
	n	*c*
600 or less	13	2
601 to 2,000	21	3
2,001 to 7,200	29	4
7,201 to 15,000	48	6
15,001 to 24,000	84	9
24,001 to 42,000	126	13
Over 42,000	200	19

n=number of primary containers in sample.
c=acceptance number.

(5) If the quality of the canned asparagus falls below the standard prescribed in paragraph (b)(1)(i) and (ii) of this section, the label shall bear the general statement of substandard quality as specified in § 130.14(a) of this chapter, in the manner and form therein specified; but in lieu of such general statement of substandard quality when the quality of canned asparagus falls below the standard in only one respect, the label may bear the alternative statement, "Below standard in quality ————", the blank to be filled in with the words specified after the corresponding subparagraph number of paragraph (b)(1)(i) and (ii) of this section which such canned asparagus fails to meet, as follows:

(i) "Excess tough or fibrous units",

(ii) "Excessive broken (or poorly cut) units",

(iii) "Excessive seriously damaged (or discolored) units", or

(iv) "excessive shattered material (or small pieces)".

Such alternative statement shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "asparagus" and any words or statements required or authorized to appear with such name by paragraph (a)(4) of this section.

* * * * *

2. In § 155.200 by deleting all provisions dealing specifically with canned asparagus; thus, the table in paragraph (b) is amended by deleting the entry for asparagus; the introductory text of paragraph (c) is revised; and paragraphs (c)(9) and (f)(2) are deleted and designated "reserved," as follows:

§ 155.200 Certain other canned vegetables.

* * * * *

(c) Water is added to the vegetable ingredient, except that pimientos may be canned with or without added water; and sweet potatoes in mashed form are canned without added water. In the case of artichokes, a vinegar or any safe and suitable organic acid, which either is not a food additive as defined in section 201(s) of the Federal Food, Drug, and Cosmetic Act, or if it is a food additive as so defined, is used in conformity with regulations established pursuant to section 409 of the act, is added in such quantity as to reduce the pH of the finished canned vegetable to 4.5 or below. The following optional ingredients, in the case of the vegetables specified, may be added:

* * * * *

(9) [Reserved]

* * * * *

(f) * * *

(2) [Reserved]

* * * * *

The Commissioner proposes that all products introduced into interstate commerce on or before July 1, 1981 shall comply with the regulation, except as to any provisions that may be stayed by the filing of proper objections.

Interested persons may, on or before February 13, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 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.

Dated: December 5, 1978.

SANFORD A. MILLER,
Director, Bureau of Foods.

[FR Doc. 78-34699 Filed 12-14-78; 8:45 am]

[4110-03-M]

[21 CFR Part 522]

[Docket No. 78N-0267]

STATUS OF INJECTABLE ANIMAL DRUGS

Intent Regarding Sterility and Pyrogenicity of Injectable Animal Drugs

AGENCY: Food and Drug Administration.

ACTION: Notice of Intent.

SUMMARY: The Commissioner of Food and Drugs requests views and comments from interested persons regarding and intended proposal that would require all injectable animal drugs to be sterile and free of extrinsic pyrogenic material. The agency will carefully consider all responses received before it proposes to change the current requirements.

DATE: Comments by February 13, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Patricia N. Cushing, Bureau of Veterinary Medicine (HFV-234), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3460.

SUPPLEMENTARY INFORMATION: Requirements that injectable animal drugs be shown to be sterile and free of extrinsic pyrogenic material have not been uniformly applied. On the one hand, with the exception of certain products labeled for subcutaneous injection of fowl, injectable animal drugs that include a certifiable antibiotic ingredient have been consistently required to conform to such testing. These requirements are derived from their historical basis for approval under the requirements established for certifiable antibiotics under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357) prior to the New Animal Drug Amendments of 1968 (Pub. L. 90-399; 82 Stat. 342-353), which added section 512 of the act (21 U.S.C. 360b). In addition, since February 1977, the Bureau of Veterinary Medicine has required that new

animal drugs subject to section 512 of the act intended for injection be sterile and free of extrinsic pyrogenic material. On the other hand, those injectable animal drugs that were subject to new drug procedures under section 505 before enactment of the New Animal Drug Amendments of 1968 were approved in many cases without such testing requirements.

In the FEDERAL REGISTER of June 1, 1976 (41 FR 22202), the Food and Drug Administration (FDA) proposed to establish current good manufacturing practices in the manufacture of large volume parenteral (LVP) drugs for human use. In the preamble to the proposal, inadvertent reference was made to the fact that veterinary LVP drugs need not be pyrogen free. The Commissioner hereby revokes that statement in accordance with § 10.85(g) (21 CFR 10.85(g)). In response to that proposal, the Bureau of Veterinary Medicine received a petition requesting that the regulations be amended to delete the requirements for such testing from the published tests and methods of analysis for certifiable antibiotics.

Because of various opinions regarding the merits of the petition and the questions regarding the need for such a requirement as a spedification for the manufacture of drugs intended for the treatment of animals, a committee of Bureau of Veterinary Medicine scientists (the Committee) was established to study the issue.

The Committee corresponded with 21 schools of veterinary medicine, seeking opinions regarding any hazard involved if such preparations are not pyrogen free. Eleven responses were received. Eight responses favored a requirement that all injectable animal drugs be pyrogen free, two expressed no opinion, and one stated that pyrogenic contamination was not hazardous in animal drugs. Additionally, the Committee conducted a literature search on the significance of pyrogen contamination. The Committee found in the literature that the frank pyrogenic response may constitute only one of a number of subtle effects. The other effects may involve the structure and function of numerous organs and cells; change tissue and blood levels of many enzymes; modify carbohydrate, fat, and protein metabolism; raise or lower body temperature; increase or decrease resistance to bacterial and viral infections and other noxious stimuli; cause hemorrhage and increase coagulation of blood; modify hemodynamics in every accessible anatomical site; cause or prevent shock; modify gastric secretion; destroy tumors; and affect the function of several endocrine glands.

Numerous papers found in the literature search were by Dr. A. S. J. P. A. M. van Miert of the Institute of Veterinary Pharmacology, Royal University, Utrecht, The Netherlands. Dr. van Miert had documented specific hazards to animals resulting from the use of pyrogen-containing material. In response to a request for his opinion regarding the issue, Dr. van Miert stated that veterinary injectable preparations that are contaminated with pyrogens are unsuitable for therapeutic use. Pyrogen contamination is more likely to occur when injectable drugs are not sterile. In addition, nonsterile injectable drugs are not considered to be appropriate for therapeutic use.

The Commissioner is considering proposing that all injectable drugs for use in animals be sterile and free of extrinsic pyrogenic material. However, before proposing these requirements the Commissioner is issuing this advance notice to provide interested persons an opportunity to submit their views and comments, with supporting information, regarding the following issues:

1. Whether such requirements should be applied to all injectable animal drug products, or, instead, only to those intended for use in certain species for administration by certain routes; and

2. Any estimated increase in costs to drug manufacturers and consumers that might result from implementing these additional requirements.

Before issuing any proposal to change the current requirements regarding sterility and pyrogenicity of injectable animal drugs, the Commissioner will carefully consider all responses to this advance notice together with all other available information. Copies of information considered by the Committee are on file with the Hearing Clerk.

Interested persons may, on or before February 13, 1979, submit written comments regarding this notice of intent to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. Comments should be identified with Docket No. 78N-0267 and should be submitted in four copies, except that comments from individuals may be submitted in single copies. Received comments may be seen in the Hearing Clerk's office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 5, 1978.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc. 78-34697 Filed 12-14-78; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. R-78-585]

[24 CFR Parts 20 and 207]

CONGRESSIONAL WAIVER REQUEST ON PROPOSED AND FINAL RULE

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of Congressional waiver request under Section 7(o)(4) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes the Congress to review proposed and final HUD rules. The legislation, however, permits the Secretary to request waiver of its review requirements in appropriate instances. This Notice adds two items to the Department's recently published Notice of Waiver request.

FOR FURTHER INFORMATION CONTACT:

Burton Bloomberg, Director, Office of Regulations, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20401, (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with the Notice, the Secretary is forwarding two items, a proposed rule and an interim rule, to the Chairmen and Ranking Minority Members of the Senate Committee on Banking and Urban Affairs and House Banking, Finance and Urban Affairs Committee. These two items are additions to the proposed, interim and final rules on which waiver has been requested as described in the Notice of Congressional Waiver Request published December 8, 1978 at 43 FR 57612.

The additional items are:

24 CFR PART 20, PROPOSED RULE—BID PROTEST AMENDMENTS

SUMMARY

This proposed rule would amend 24 CFR Part 20 to grant the HUD Board of Contract Appeals jurisdiction over bid protests by contractors arising under National Housing Act contracts involving HUD-acquired properties. The Comptroller General has consistently ruled that GAO has no jurisdiction over contractor's bid protests under the National Housing Act.

24 CFR PART 207—INTERIM RULE, INSURANCE OF ADVANCES FOR BUILDING COMPONENTS STORED OFF-SITE

SUMMARY

These amendments will permit HUD to insure mortgage advances so that payment can be made for building components completed, but stored off-site. They authorize a financing procedure which will allow payment for manufacture or preassembled housing components without waiting for their delivery to the buiding site. The procedure will be advantageous to the individual manufacturer-supplier and to the supplier industry in that payment to the supplier can be made promptly, providing the cash so that the work can be completed and saving financing costs for the manufacturer.

(Sec. 7(o), Department of HUD Act (42 U.S.C. 3535.0).)

Issued at Washington, D.C., December 8, 1978.

JAY JANIS,
Acting Secretary, Department of Housing and Urban Development.

[FR Doc. 78-34866 Filed 12-14-78; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

U.S. Parole Commission

[28 CFR Part 2]

PAROLE, RELEASE, SUPERVISION, AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS

Hearing and Proposed Rulemaking; Supplemental Notice

AGENCY: U.S. Parole Commission.

ACTION: Public hearing on proposed rulemaking.

SUMMARY: On November 29, 1978, the U.S. Parole Commission published in the FEDERAL REGISTER a notice and schedule of public hearings to secure written and oral comment on proposed amendments of its paroling policy guidelines (28 CFR 2.20). In addition to the hearings already scheduled in Washington, D.C., the Commission will also conduct a public hearing on the proposed guideline revisions at the U.S. Courthouse, Courtroom 8, 3d and Constitution Avenue NW, Washington, D.C. on December 16, 1978, from 10 a.m. to 1 p.m.

DATE: Public hearing on December 16, 1978 from 10 a.m. to 1 p.m.

ADDRESS: The hearing will be held at the U.S. Courthouse, Courtroom 8, 3d and Constitution Avenue NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Barbara Meierhoefer, Research Analyst, U.S. Parole Commission, telephone (202) 724-3095.

Dated: December 11, 1978.

CECIL C. MCCALL,
Chairman, United States Parole Commission.

[FR Doc. 78-34869 Filed 12-14-78; 8:45 am]

[3410-11-M]

DEPARTMENT OF AGRICULTURE

Forest Service

[36 CFR Part 219]

NATIONAL FOREST SYSTEM LAND AND RESOURCE MANAGEMENT PLANNING

AGENCY: Forest Service, USDA.

ACTION: A Committee of Scientists meeting on proposed rules to guide land and resource management planning on the National Forest System.

SUMMARY: A Committee of Scientists meeting will be held regarding the proposed rules published August 31, 1978 (FEDERAL REGISTER, Volume 43, No. 170, pages 39046-39059), by the Department of Agriculture pursuant to Section 6 of the National Forest Management Act.

DATE: Committee of Scientists meeting: January 8-10, 1979—8:30 a.m.

ADDRESS: Meeting location: Holiday Inn Medical Center, 6701 S. Main Street, Houston, Texas.

FOR FURTHER INFORMATION CONTACT:

Charles R. Hartgraves, Director, Land Management Planning, P.O. Box 2417, Washington, D.C. 20013, 202-447-6697.

SUPPLEMENTARY INFORMATION: Notice of Meeting: There will be a Committee of Scientists meeting in Houston, Texas, January 8-10, 1979, to finalize the Committee's report to the Secretary of Agriculture regarding the scientific and technical adequacy of proposed regulations prepared by the Forest Service pursuant to Section 6 of the National Forest Management Act. The meeting will be held at the Holiday Inn Medical Center, 6701 S. Main Street, Houston, Texas.

This is primarily a working session for the purpose of finalizing the Committee's report to the Secretary, and therefore the Committee will not engage in extensive public discussion.

This notice of meeting was originally published in the October 20, 1978 FEDERAL REGISTER, Volume 43, No. 204, page 49028.

Dated: December 11, 1978.

DOUGLAS R. LEISZ,
Deputy Chief.

[FR Doc. 78-34867 Filed 12-14-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1025-7]

[40 CFR Part 52]

PROPOSED REVISION OF THE DISTRICT OF COLUMBIA

Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The District of Columbia submitted amendments to its air pollution control regulations and requested that they be reviewed and processed as a revision of the District of Columbia Implementation Plan (SIP). The amendments consist of changing the regulations governing control of particulate emissions from fuel burning equipment which are currently expressed in the form of a chart, adding a definition for "distillate oil," and exempting new gas-fired and distillate oil-fired fuel burning equipment with a capacity of 5 mmbtu/hr. or less heat input from the permit process requirements.

DATE: Comments must be submitted on or before January 15, 1979.

ADDRESSES: Copies of the proposed SIP revision and accompanying support documentation are available for public inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, Curtis Building, Tenth Floor, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106, ATTN: Mr. Harold A. Frankford (3AH12).

District of Columbia Department of Environmental Services, Bureau of Air and Water Quality, 5010 Overlook Avenue, S.W., Washington, D.C. 20031, ATTN: Mr. John V. Brink.

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

All comments on the proposed revision submitted within 30 days of publication of this notice will be considered and should be directed to: Mr. Howard R. Heim, (3AH10), Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth &

Walnut Streets, Philadelphia, Pennsylvania 19106, ATTN: AH007DC.

FOR FURTHER INFORMATION CONTACT:

Mr. Harold A. Frankford (3AH12) Air Programs Branch, U.S. Environmental Protection Agency, Curtis Building, Tenth Floor, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106, telephone (215) 597-8392.

SUPPLEMENTARY INFORMATION: On May 25, 1978, the District of Columbia submitted to the Regional Administrator, EPA Region III, amendments to its Air Quality Control Regulations and requested that they be reviewed and processed as a revision of the District's Implementation Plan (SIP). The amendments consists of the following changes:

1) Amendments to Section 8:2-708. This section, which governs control of particulate emissions from fuel burning equipment, provides for emission limitations determined by the following formula:

$E = 0.17455H^{-0.23522}$, where:

E = Allowable emissions in pounds per million BTU heat input, and

H = Heat input to the fuel-burning equipment in millions of BTU's per hour.

These amendments also establish an upper limit (0.13 lb/mmbtu of heat input) and a lower limit (0.02 lb/mmbtu per hour heat input) for allowable particulate emissions from fuel burning equipment. In conjunction with these changes, a chart in the current SIP designated as Appendix 1 is voided.

2) An amendment to Section 8-2:702 (Definitions). The amendment consists of a definition for the term "distillate oil."

3) An amendment to Section 8-2:720 (*Permits to Construct or Modify, Permits to Operate*). The amendment exempts from the permit process any gas-fired or distillate oil-fired fuel burning equipment which has a capacity of 5 million or less BTU's per hour heat input.

The primary purpose for the amendment to Section 8-2:708 is to correct an error in this section that had been submitted by the District to EPA as a SIP revision on July 7, 1972. The error appeared in a graph (designated Appendix 1) describing the relationship between allowable particulate emissions, (the vertical axis) and the boiler capacity expressed in terms of heat input (the horizontal axis). The vertical axis of the graph was incorrectly marked. Therefore, the graph shows a standard that is difficult to interpret and enforce. The District of Columbia subsequently submitted a correction to EPA on January 29, 1973 and EPA approved the change on October 23, 1973 (38 FR 29296). However a subsequent review of the 1973 correction revealed that it was not submitted by the properly designated official and therefore did not meet the requirements of 40 CFR Part 51 [Section 51.5(a)], Requirements for Preparation, Adoption, and Submittal of Implementation Plans. The amendments to Section 8-2:708 discussed in this notice of proposed rulemaking serve to correct the past technical and administrative deficiencies associated with this regulation.

The amendment to Section 8-2:720(j) exempts new gas-fired and distillate (Nos. 1 and 2) oil-fired fuel burning equipment with a heat input of 5 mmbtu/hr. or less from the District's permit process. Although the District of Columbia did not submit quantitative support documentation demonstrating the effects of these exemptions on national ambient air quality standards, a preliminary determination performed by EPA indicates that a boiler of the above-mentioned size and burning No. 2 oil for 24 hours/day, 7 days/week, 365 days/year would not exceed either the 100 tons per year of potential emissions or the 100 tons per year of allowable emissions of particulates or sulfur dioxide.

Therefore, such source would be exempt from EPA's Offset and Prevention of Significant Deterioration (PSD) requirements. The District did submit qualitative information indicating that exempted sources would consist of small apartment and office buildings.

The amendment to Section 8-2:702 (addition of definition for "distillate oil") specifies that the term "distillate oil" refers to any oil that meets the specifications of the American Society for Testing and Materials (ASTM) for No. 1 and No. 2 grades of fuel oil. This definition is added to avoid confusion with the term "middle distillate fuel" which refers to No. 4 grade fuel. The exemptions listed in Section 8-2:720(j) for distillate oil-fired fuel burning equipment refer to those sources which burn No. 1 or No. 2 grade fuel.

The District of Columbia provided proof that public hearings with regard to these amendments were held on September 10, 1976, in accordance with the requirements of 40 CFR Section 51.4.

The public is invited to submit to the address stated above, comments whether the amendments to Sections 8-2:702, 8-2:708, and 8-2:720 of the District of Columbia air pollution control regulations should be approved or disapproved as a revision of the District of Columbia's Implementation Plan.

The Administrator's decision to approve or disapprove the proposed SIP revision will further be based on whether it meets the requirements of Section 110 of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

(Authority: 42 U.S.C. 7401 et seq.)

Dated: November 15, 1978.

A. R. MORRIS,
Acting Regional Administrator.

[FR Doc. 78-35017 Filed 12-14-78; 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.

[3410-37-M]

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

REVIEW OF RELEASE OF SLAUGHTER AND PROCESSING DATA

Notice is hereby given that the release of certain slaughtering and processing data with respect to the operations of packers and poultry plants is being reviewed. All interested persons are invited to submit factual information, comments, and arguments concerning the matter.

BACKGROUND

Earlier this year, the Food Safety and Quality Service received requests filed pursuant to the Freedom of Information Act (5 U.S.C. 552; FOIA) for data concerning the volume of slaughtering and processing activities of meat packers. A determination was made that, based upon the available information relevant to the classification of the data under the FOIA, data concerning slaughtering operations more than one year old and data concerning processing operations more than two years old did not come within an exception under the FOIA and thus should be produced pursuant to such requests. Since that time, objections to the release of the data and requests for a review of the matter have been received from numerous representatives of meat packers, poultry processors, and trade associations.

Their objections and requests are based in general upon the assertion that the slaughtering and processing data come within the fourth exemption in the FOIA (5 U.S.C. 552(b)(4)) as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." They contend that the data with respect to slaughtering operations more than one year old and processing operations more than two years old are just as sensitive and confidential as more current data, and that the release of such data will injure competition and does not serve the public interest.

The requests for the data, and the objections to the release of the data and requests that the matter be reviewed, are on file in the Office of the Executive Secretariat, Food Safety and Quality Service, U.S. Department of Agriculture, Room 3167, South Building, 14th and Independence Avenue, SW., Washington, D.C. 20250 for inspection during normal business hours.

NOTICE OF REVIEW OF THE MATTER

Notice is hereby given that the availability under the FOIA of data concerning the slaughtering and processing operations of meat packers and poultry processors is being thoroughly reviewed. All persons having an interest in this matter are invited to submit relevant information, comments, and arguments on or before February 15, 1979. They should be sent to the Executive Secretariat, Food Safety and Quality Service, at the above address.

The information, comments, and arguments should be as specific as possible. If it is contended that the data is confidential and privileged, the basis for the contention should be explained in detail. Or if it is contended that the data is not confidential or privileged, explain in detail the basis for that position. If an allegation is made that release of such data would likely result in injury to competition, it should be stated specifically what the injury will be, how the injury would occur, and why the injury would be likely to result from the release of the data. In other words, rather than merely asserting that an anti-competitive effect might result from release of the data, the connection between the release of specific data and an anti-competitive effect should be detailed. Or if it is asserted that no injury would likely occur from the release of the data, it should be explained in detail why no injury can be anticipated. If a distinction is made between slaughter and processing data, explain why there is a difference and why such data should be treated differently or the same. If the release of data of a certain age is advocated, explain the basis for the period suggested and also explain why the release of the data before and after that age would or would not be likely to cause injury. In other words, the written submissions should contain sufficient detail to clearly establish the basis for each contention made with respect to the merits of the release or refusal to release the data, and with respect to the contention, set forth above in this notice, of those who have filed objections to the release of the data.

All written submissions will be available for public inspection during normal business hours at the Office of the Executive Secretariat, Food Safety and Quality Service, at the address stated above.

All information, comments and arguments previously submitted plus information, comments, and arguments submitted pursuant to this notice and other information and data available to the Department will be considered in this review.

Done at Washington, D.C., December 8, 1978.

DONALD L. HOUSTON,
Acting Administrator, Food Safety and Quality Service.

[FR Doc. 78-34857 Filed 12-14-78; 8:45 am]

[3410-15-M]

Rural Electrification Administration

LEE COUNTY ELECTRIC COOPERATIVE, INC.

Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration has prepared a Draft Environmental Impact Statement in accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969, in connection with a loan application from Lee County Electric Cooperative, Inc., P.O. Box 3455, North Fort Myers, Florida 33903. This loan application, together with funds from other sources, includes financing for the construction of approximately 11 miles of 230•kV transmission line and an associated 230/138 kV substation.

Additional information may be secured on request, submitted to Mr. Richard F. Richter, Assistant Administrator-Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. Comments are particularly invited from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved from which comments have not been requested specifically.

Copies of the REA Draft Environmental Impact Statement have been sent to various Federal, State and

local agencies, as outlined in the council on Environmental Quality Guidelines. The Draft Environmental Impact Statement may be examined during regular business hours at the offices of REA in the South Agriculture building, 12th Street and Independence Avenue, S.W., Washington, D.C., Room 4310, or at the borrower's address indicated above.

Comments concerning the environmental impact of the construction proposed should be addressed to Mr. Richter at the address given above. Comments must be received within sixty (60) days of the date of publication of this notice to be considered in connection with the proposed action.

Final REA action with respect to this matter (including any release of funds) will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 6th day of December, 1978.

JOSEPH VELLONE,
Acting Administrator, Rural Electrification Administration.

[FR Doc. 78-34661 Filed 12-14-78; 8:45 am]

[6302-01-M]

CIVIL AERONAUTICS BOARD

[Order 78-12-54; Docket Nos. 31260 and 33658]

ALLEGHENY AIRLINES, INC., ET AL.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 7th day of December, 1978. Application of Allegheny Airlines, Inc. under section 401 of the Federal Aviation Act of 1958, as amended, for an amendment of its certificate of public convenience and necessity for Route 97 authorizing air transportation (Boston-New York/Newark). Application of Air New England, Inc. for amendment of its certificate for Route 172 pursuant to section 401 of the Federal Aviation Act of 1958, as amended.

On August 9, 1977, Allegheny Airlines applied in Docket 31260 for an amendment of its certificate of public convenience and necessity for Route 97 to authorize it to engage in the scheduled nonstop air transportation of persons, property, and mail between Boston and New York/Newark, by eliminating the one-stop restriction contained in condition (4). It contemporaneously moved for consolidation of its application with that of Piedmont Aviation, filed in Docket 31177, which, *inter alia*, seeks nonstop authority between Boston and New York.

On August 17, 1978, in the *Piedmont-Boston Entry Case*, Orders 78-4-69 and 78-8-97, we denied Allegheny's motion, but solely for the purpose of avoiding "complicat[ion] and delay [in] a relatively straightforward proceeding on Piedmont's application." [1] However, we invited it to seek removal of the restriction in a separate proceeding and, based on the findings in Order 78-4-69 regarding competition in the Boston-New York market, we advised that "only the most minimal showing will be required to justify removing Allegheny's restriction in that market." [2]

Subsequently, on October 2, 1978, Allegheny requested us to issue an order eliminating its one-stop restriction in the Boston-New York/Newark market. The request was styled as a Petition for an Order to Show Cause.

Air New England responded, on October 11, 1978, with an application in Docket 33658 for removal of its two-stop restriction in the Boston-New York/Newark. It also moved to consolidate its application with that of Allegheny. Contemporaneously, it filed an answer to Allegheny's show cause petition, stating its non-opposition, provided that its own application is also granted.

On October 20, 1978, Eastern Air Lines, filed objections to Allegheny's show cause petition.[3]

On the basis of the tentative findings below, we tentatively conclude that it is consistent with the public convenience and necessity to amend the certificates of Allegheny and Air New England to permit nonstop operations in the Boston-New York/Newark market. Air New England's authority will be Category II subsidy ineligible. Further, we have tentatively concluded that there does not exist any substantial dispute as to material determinative facts which would necessitate a formal hearing. Therefore, we have tentatively determined not to hold such a hearing.[4]

Established Board policy calls for the removal of operating restrictions as inherently wasteful and inefficient unless a convincing affirmative showing is made of the necessity for their retention. This policy is bolstered by the competitive thrust of the Airline Deregulation Act of 1978, and specifically the factors contained in its declaration of policy, such as the "encouragement, development and maintenance of an air transportation system relying on actual and potential competition," "maximum reliance on competitive market forces" and "the encouragement of entry into additional air transportation markets of existing air carrier." [5]

In this case, we find that the grant of the applications will result in benefits to the traveling public, enhance competition in the markets and otherwise meet the decisional criteria of section 102 of the Act. Contrarily, denial would be inconsistent with these criteria.

Allegheny and Air New England each has submitted environmental evaluations of their respective proposed new service. [6] On the basis of this material, we tentatively conclude that the removal of certificate restrictions in these cases will not constitute a major Federal action significantly affecting the quality of the environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969. We further find that the aggregate estimated new fuel consumption resulting from our grant of the applications will fall well below the 10,000,000 gallon threshold we have determined in 14 C.F.R. § 313.4(a)(1) to constitute a major regulatory within the meaning of the Energy Policy and Conservation Act.[7]

We will give interested persons 30 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final, with answers due within 10 days thereafter. We expect such perons to support such objections with detailed economic analysis. If an evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a hearing that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

Accordingly,

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and amending the certificates of public convenience and necessity of Allegheny Airlines, Inc., and Air New England, Inc., by removing the one-stop and two-stop restrictions, respectively, so as to authorize the carriers

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[1] Order 78-8-97 at 19.

[2] *Id.*, note 36.

[3] Eastern argues that Allegheny's reliance on the *Piedmont Boston Entry Case* is misplaced since its greater market identify could lead to a greater competitive impact than was the case with Piedmont. It cites Allegheny's failure to provide diversion exhibits and disputes the need for new authority in the market.

[4] None of the parties has requested a hearing.

[5] Act, section 102(a)(4) as amended by 1978 Act, section 3(a).

[6] Petition of Allegheny Airlines, Docket 31260, App. B. Answer of Air New England, Docket 31260, App. B.

[7] Air New England's estimate is 442,530 gallons per year, Allegheny's estimate is 1,220,540.

to engage in nonstop operations between Boston, on the one hand, and Newark and New York, on the other;

2. We direct any interested persons objecting to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth here, no later than January 10, 1979, to file with us and serve upon all persons listed in paragraph 6, a statement of objections together with a summary of testimony, statistical data and other material expected to be relied upon to support the stated objections; answers to objections shall be filed no later than January 22, 1979;

3. If timely and properly supported objections are filed, we will give full consideration to the matters and issues raised by the objections before we take further action; [8]

4. In the event no objections are filed, we will deem all further procedural steps to have been waived and may proceed to enter an order in accordance with the tentative findings and conclusions set forth here;

5. We grant Air New England's motion to consolidate its application in Docket 33658 with the Allegheny application in Docket 31260; and

6. We shall serve this order upon all persons designated by rule 908 of the Board's Rules of Practice as recipients of service of applications.

We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board: [9]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-34982 Filed 12-14-78; 8:45 am]

[6320-01-M]

[Order No. 78-12-51; Docket No. 30777; Agreement C.A.B. 27705 R-1 through R-8]

IATA

Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 7th of December, 1978. Agreement adopted by Traffic Conference 1 of the International Air Transport Association relating to U.S.-Mexico free baggage allowances and excess-baggage charges.

An agreement has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, between various U.S. and foreign member air carriers of the International Air Transport Association (IATA). It was adopted at the Composite Passenger Traffic Conference held in Miami during October 1978.

The agreement, proposed for effectiveness December 15, 1978, through March 31, 1980, would establish new free baggage allowances and excess-baggage charges for passenger air transportation between the United States and Canada, on the one hand, and Mexico, on the other.

The proposed allowances and charges are based on a piece system (rather than a weight system) like that established between the United States and many other world areas, and approved by the Board.[1] The proposed free allowances would permit first-class passengers to check two pieces of 62 inches (length plus width plus depth) each; economy-class passengers could check two pieces, either of which could be as large as 62 inches, provided that their sum does not exceed 107 inches; and all passengers would be permitted a carry-on piece of no more than 45 inches, provided that it could be stowed under the seat. The excess-baggage charge for an oversized or additional piece would be $12. The agreement also provides for special treatment of such items as golf, ski and camping equipment, bicycles, and dogs trained to assist the blind and deaf.[2]

We will approve the agreement.

The provisions and charges contained in the agreement conform with our conclusion in *Baggage Allowance Tariff Rules in Overseas and Foreign Air Transportation*, Docket 24869,[3] that space, and not weight, should be the principal factor determining the value of baggage service. Moreover, the terms of the agreement are virtually identical to those we found reasonable in Order 77-4-97. We commend the participating carriers for finally reaching agreement on this important issue.

Pursuant to sections 102, 204(a), 412 and 414 of the Act:

1. We do not find that the following resolutions, which have direct application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act:

Agreement C.A.B.	IATA No.	Title	Application
27705:			
R-1	LA29	TC1 Limited Agreement—Baggage USA/Canada-Mexico (Expedited).	1
R-2	001gg	Special Baggage Escape, USA/Canada-Mexico (Expedited)	1
R-3	304	Carriage of Baggage at Cargo Rates, USA/Canada-Mexico (Expedited).	1
R-4	310	Free Baggage Allowance, USA/Canada-Mexico (Expedited)	1
R-5	310c	Pets, USA/Canada-Mexico (Expedited)	1
R-6	311	Excess Baggage charges, USA/Canada-Mexico (Expedited)	
R-7	311e	Charges for Bulky Baggage, USA/Canada-Mexico (Expedited)	1

2. We do not find that the following resolution, which has indirect application in air transportation as defined by the Act, is adverse to the public interest or in violation of the Act:

Agreement C.A.B.	IATA No.	Title	Application
27705:			
R-8	311	Excess Baggage Charges, USA/Canada-South America (Amending) (Expedited).	1

3. We have decided that the public interest requires a grant of antitrust immunity in this case. This agreement is a product of the IATA rate-setting machinery approved an immunized in Order E-9305, June 15, 1955. In Docket 32851, we are reviewing that machinery to determine whether or not it should continue under our approval and immunization. Pending our decision in that docket, we will continue to consider IATA rate agreements on a case-by-case basis.

Accordingly,

We approve Agreement C.A.B. 27705.

We shall publish this order in the FEDERAL REGISTER.

[8] Since provision is made for the filing of objections to this order, we will not entertain petitions for reconsideration.

[9] All Members concurred.

[1] See, for example, Orders 87-9-152, September 29, 1978, and 77-4-97, April 20, 1977.

[2] The agreement would also increase Canadian dollar-specified excess baggage charges between canada and various South American countries, but leave the U.S. dollar-specified charges unaffected.

[3] See Orders 76-3-81, March 12, and 76-5-26, May 10, 1976.

By the Civil Aeronautics Board:[4]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-34979 Filed 12-14-78; 8:45 am]

[6320-01-M]

[Docket 3216]

LOUISVILLE-KANSAS CITY NONSTOP ROUTE INVESTIGATION

Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on January 23, 1979, at 9:30 a.m. (local time) in Room 1003, Hearing Room D, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., December 11, 1978.

MARVIN H. MORSE,
Administrative Law Judge.

[FR Doc. 78-34980 Filed 12-14-78; 8:45 am]

[6320-01-M]

[Order No. 78-12-48; Docket No. 30452; Agreements CAB 26433 and CAB 26433-A1]

MEMBERS OF THE UNIVERSAL AIR TRAVEL PLAN 1976

Order Instituting Proceeding and Disclaiming Jurisdiction

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 7th day of December, 1978. Application of the members of the Universal Air Travel Plan—1976 for prior approval of agreements under Section 412 of the Federal Aviation Act of 1958, as amended.

Parties to the Universal Air Travel Plan (UATP) Agreement—1976 (the parties will be referred to as UATP or UATP members)[1] have submitted for prior approval under Section 412 of the Act, two agreements (Agreements CAB 26433 and 26433-A1, referred to as UATP Agreement—1976).[2] The UATP Agreement—1976 is designed to replace the existing UATP agreement and in most respects readopts existing provisions. As discussed more fully below, the UATP Agreement—1976 substantially changes the existing program in three areas.

Lufthansa German Airlines, Swiss Air Transport Co. Ltd, American Airlines, Trans World Airlines, and United Air Lines have filed answers in support of the UATP Agreement 1976. American Express Company, Carte Blanche Corporation, Interbank Card Association, VISA U.S.A., Inc. and the U.S. Department of Justice answered in opposition. The UATP members, American, United and Lufthansa filed consolidated replies.[3]

UATP is a credit card program in which airline parties of every class participate as Ticketors, Contractors, or both. UATP Contractors issue credit cards known as Air Travel Cards to customers (UATP Subscribers). Ticketor carriers do not issue Air Travel Cards, but accept the Air Travel Cards issued by all UATP Contractors.

The Plan is administered by the UATP Committee, consisting of eight members. Four are designated by the UATP Contractors that are members of the International Air Transport Association (IATA), and one is designated by each of the four Contractors that are Air Traffic Conference members having the largest number of subscribers. Actions by the Committee require a unanimous vote of the Committee members. Under the new agreements, the Committee would have authority to propose changes to the UATP Agreement—1976, which would be adopted if not more than 7.5 percent of UATP members representing at least 7.5 percent of Subscriber Contracts object.

Any carrier legally permitted to engage in passenger air transportation on a scheduled basis to, from, or between points in the continental United States can become a Ticketor party to UATP; airlines can become Contractors if they are certificated by the Board or if no objection is raised by any other UATP party. Withdrawal from UATP is permitted on notice, and is automatic upon bankruptcy, but does not relieve a carrier from obligations incurred while a UATP party. The UATP Agreement can be terminated as to a specific carrier by the vote of three-fourths of all the members of the Committee.

Under the new proposal, UATP Contractors would pay Ticketor carriers the proceeds from tickets sold on UATP cards less a one-percent discount, which is designed to reimburse them for the expense of processing charges made on their respective cards. In the case of interline ticket charges on a UATP card, the Ticketor carrier may at its option apply the discount on a pro rata basis to other carriers when reimbursing them for their share of the interline ticket.

The UATP Subscriber's Contract provides that the Subscriber pay a deposit of $425. Interest is required to be paid on accounts of Subscribers whose mailing addresses are within the United States, its territories and possessions, and Puerto Rico. The Subscriber can designate any individual or individuals to receive its UATP cards. The Contractor bills the Subscriber once a month, or more often at the Contractor's election, and the Subscriber must remit in full in 10 days. Under the Subscriber's Contract, Subscribers can change Contractors upon 30 days' notice, but a new Contractor cannot issue an Air Travel Card until the Subscriber has paid the balance due on the previous account.

Section 7 of the UATP Trade Practice Manual sets forth the procedures for the UATP Silver Card Program. This program would permit individual UATP members to enter into agreements with vendors of related services (currently limited to hotels, motels and car rental agencies), under which the Vendors would accept UATP Silver Cards issued by any Contractor as payment for services. Carriers making these agreements are called Central Settlement Carriers. The new Silver Card Program would not establish a standard Vendor Contract, but would impose certain requirements on Vendor-Central Settlement Carrier relationships. In general, each Central Settlement Carrier would be responsible for providing Vendors the promotional materials and supplies (such as charge forms) necessary to permit and encourage the use of the Silver Card. Also, each Central Settlement Carrier would be responsible for unauthorized use of the Silver Cards by Vendors with whom it contracts, but would be permitted to take a variety of steps to prevent such use.

The Central Settlement Carrier would receive billings from its Vendors and invoice them to Contractors on a daily basis. Contractors would remit to Central Settlement Carriers the amount of charges less a two-percent service charge. Reimbursement procedures between Central Settlement Carriers and Vendors are not set out in the Silver Card Vendor Program and are to be left to individual Carrier-Vendor agreements.

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[4] All Members concurred.

[1] Current parties are listed in the Appendix. Appendix filed as part of original.

[2] Agreements CAB 26433 and 26433-A1 constitute the UATP Manual. Section 1 of the Manual is the UATP Agreement; the remaining sections contain the operating rules of UATP.

[3] The comments of the individual air carriers largely echo those contained in the reply of the UATP members and will not be discussed unless a specific point which was not discussed by UATP is raised.

Carte Blanche and UATP filed additional comments accompanied by motions for leave to file otherwise unauthorized documents. These motions will be denied. The filings represent efforts by each party to have the final word in this matter and do not augment the existing record.

The UATP Agreement represents a departure from the existing agreement in three areas. The first is the 7.5-percent voting rule. Under the existing rule, a unanimous vote of UATP members is required to carry a measure. The use of the Ticketor discount is the second change. Under the existing agreement, Ticketors are reimbursed the full amount of charges, rather than 99 percent. Finally, the new Silver Card Program, departs from the one previously adopted in that, under the old program, UATP members as a group, through the UATP Committee, would have contracted with Vendors and a standard Vendor Contract would have been used.

We first considered the Silver Card concept in Order 75-8-35, August 8, 1975, and disclaimed jurisdiction over it. We noted that under Section 412 of the Act, the Board has authority to approve certain categories of intercarrier agreements affecting air transportation; that the Silver Card Program is an agreement among carriers relating to non-air transportation activities; and that we have asserted jurisdiction in such circumstances only where the non-air transportation activities had a substantial, rather than a peripheral or incidental, effect on air transportation. We concluded that assertion of jurisdiction over the Silver Card would go beyond our prior reading of the scope of the "affecting air transportation" clause of Section 412. The Silver Card Program was never implemented following our disclaimer of jurisdiction.

The UATP members claim that their failure to initiate the Silver Card scheme resulted from their hesitancy to proceed without Section 414 antitrust immunity. The carriers assert that changes in the Silver Card Program eliminate the grounds for the Board's previous disclaimer of jurisdiction. They stress that while prior Silver Card amendments provide for a standard Vendor agreement, including a prescribed Vendor discount, the program now before the Board provides that all contractual relationships between the carriers and the Vendors are to be negotiated on an individual basis. These individual contracts, going to the heart of the non-air transportation activities, would not be intercarrier agreements requiring Section 412 approval. The UATP members argue that since the current Agreement includes the Silver Card Vendor Program only to the extent necessary to provide for an extended services UATP card and to establish proceedings for the settlement of billings *inter se* among the airlines, the Board by approving this Agreement, will not be assuming any regulatory responsibility for the Vendor Program or the individual airline's arrangements with its Vendors.

As to the proposed abandonment of the unanimity rule, the UATP members assert that the rule was functional when the UATP was first established, but that it is no longer practical with membership numbering 191 parties. UATP asserts that it is virtually impossible to get unanimous consent from all 191 parties and that the unanimity rule permits a single party to prevent the adoption of changes in the UATP agreements that the vast majority of members recognize as beneficial and necessary to the continued vitality of the Plan.

Finally, UATP argues that the uniform Ticketor discount is necessary to eliminate inequities in the distribution of the cost of the plan. The applicants assert that the 1-percent discount will not fully reimburse Contractor carriers for the cost of processing charges for tickets, but that the remainder of the costs are offset by commercial benefits from the use and distribution of the Contractor's cards. They note that the Board approved the Ticketor discount concept, as part of the approved air transportation coverage of the Silver Card Program, in Order 75-8-35.

Carte Blanche, American Express, Interbank, VISA (the Credit Card Companies) and the Justice Department oppose Board approval of all or part of the UATP Agreements. All of the above parties urge the Board to disclaim jurisdiction over the Silver Card Program, stressing that the changes to the program do not affect the fundamental reason for the Board's disclaimer, i.e., that Silver Card is not an agreement affecting air transportation.

Some of the Credit Card Companies also assert that part or all of the basic UATP Agreement is adverse to the public interest and should be disapproved, or that, at minimum, can only be approved after an evidentiary hearing. They assert that UATP contains significant anticompetitive features and consequently should not be approved absent a clear showing that the program is required by a serious transportation need, or in order to secure important public benefits.[4] The Credit Card Companies note that at the time UATP was first approved as a credit card plan,[5] it was the only means available to purchase air transportation on credit. They assert, however, that with the availability of a variety of credit systems for the purchase of air transportation, the program is no longer necessary.[6]

The Credit Card Companies argue that UATP is an anticompetitive joint venture under the standards of *U.S.* v. *Penn-Olin Chemical Co.*, 378 U.S. 158 (1964), reducing the probability of individual UATP members entering the credit market. The Credit Card Companies also claim that, the joint venture question aside, many of the provisions of the UATP program would be anticompetitive combinations or conspiracies in restraint of trade. They allege that the standard Subscriber Contract, which establishes all terms and conditions for issuance of credit unreasonably restrains competition in the credit card market. The Credit Card Companies also view the standard Ticketor discount as an anticompetitive agreement fixing the price of Contractors' credit services to Ticketors.

In addition, the Credit Card Companies assert that several of UATP's provisions constitute group boycotts. They include the rule that permits, but does not require, a Ticketor to refuse to honor an Air Travel Card issued by a Contractor that is delinquent in reimbursing it. Other provisions of UATP that the opponents characterize as anticompetitive group boycotts include: the rule that a new Contractor cannot issue an Air Travel Card until the Subscriber has paid the balance due to its previous Contractor; the requirement that a carrier be a UATP member in order to deal as a Ticketor; the terms specifying UATP members' control over entry as a Contractor; and the UATP membership termination provisions. These parties also note that one of the stated reasons for the extension of UATP into nonair transportation uses is to stop the decline in UATP's share of the travel credit market and to regain previously lost ground. They allege that because UATP had a monopoly on air travel credit at one time, the UATP Agreement therefore represents a con-

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[4] See *Local Cartage Agreements Case*, 15 CAB 851, 855.

[5] *Universal Air Travel Plan*, 12 CAB 601 (1951).

[6] We note that the new Airline Deregulation Act of 1978, P.L. 95-504, 92 Stat. 1705, which became effective when the President signed it into law on October 24, 1978 includes a new standard for the approval of Section 412 agreements. In this respect, Section 412 (c)(2)(A)(i) of the new Act provides in pertinent part:

[T]he Board may not approve, or after periodic review, continue its approval of [an] . . . agreement, or any modification or cancellation thereof, which substantially reduces or eliminates competition, unless it finds that the . . . agreement . . . is necessary to meet a serious transportation need or to secure important benefits and it does not find that such need can be met or such benefits can be secured by reasonably available means having materially less anticompetitive effects."

Allocation of the burden of proof in Section 412 cases is stated at Section 412 (c) (2) (B) of the new Act. We also note that we must act on all pending agreements, including the UATP Agreement at issue in this case, in accordance with the standards and procedures set forth in the new law.

spiracy to monopolize the market for air travel credit.

In its joint reply, the UATP members again assert that the use of individual carrier-Vendor contracts in the Silver-Card Program would not be subject to Board approval under Section 412, and that it seeks approval only for the intercarrier settlement procedures under that program. UATP also requests that, if the Board does decide to disclaim jurisdiction over the Silver Card Program, it do so in such a way as to protect UATP carriers that are not active Silver Card participants from antitrust liability for actions of those carriers that are.

As to the arguments of the Credit Card Compaines against UATP as a whole, the UATP members note that these same arguments were made in 1973 and ultimately rejected by the Board in Order 75-8-35. UATP further asserts that it is not UATP's intention to compete in the general credit card market, but only to promote the use of the Air Travel Card in the purchase of air transportation and those services logically related to air travel, i. e., hotels, motels and car rentals, and that the Credit Card Companies opposing the Agreement now dominate the general purpose credit card market.[7] UATP asserts that disapproval of the agreement as a whole under these circumstances would result in a lessening, not an increase, in competition.

We have decided to disclaim jurisdiction over those aspects of the Silver Card Program which appear to have little or no effect on air transportation, and to institute an evidentiary proceeding to determine whether any of the remaining elements of the UATP Agreement violate the policies and standards set forth in the new Airline Deregulation Act of 1978. We are particularly interested in determining whether any aspects of the UATP Program conflict with the new Act's emphasis on promoting competition in the air transportation industry. We do not find persuasive UATP's arguments that changes in the Silver Card Program eliminate the grounds for the Board's previous disclaimer of jurisdiction. These arguments, stated above, overlook the fundamental reason for the position the Board took in Order 75-8-35. Section 412 of the Act confers on the Board jurisdiction only over agreements which affect air transportation. The fact that the intercarrier settlement procedure under the Silver Card Program constitutes an agreement among air carriers is not sufficient. What is determinative is that the intercarrier agreement at issue is one which governs non-air transportation activities which do not substantially affect air transportation. Thus, it is beyond the scope of our statutory jurisdiction.[8]

More specifically, we disclaim jurisdiction over the Silver Card Program to the extent it would authorize the use of the UATP Air Travel Card for the non-air transportation purchases discussed in Article 23 of UATP-1976. In particular, we disclaim jurisdiction over the Silver Card Program to the extent it authorizes individual carriers to enter into contracts with non-carrier Vendors; governs contractual relations between carriers and non-carrier Vendors; and establishes and governs the Centeral Settlement Carrier-Contractor relationship with respect to charges accepted by non-carrier Vendors.[9] We do not, however, disclaim jurisdiction over the UATP Agreement to the extent it provides for the use of the Silver Card in purchasing air transportation from UATP members and to the extent it establishes rules governing intercarrier settlement of such transactions.

As to the remainder of the Agreement, the Credit Card Companies have raised questions concerning the competitive effect of UATP which cannot be resolved on the basis of the present record. UATP's reply to their arguments, which relies heavily on the Board's approval of the UATP program three years ago, is not sufficient. In keeping with our reliance on competiton to promote the public interest, we are scrutinizing more carefully all agreements which may impair competition in air transportation markets, and we believe that a closer examination of the anticompetitive charges raised against the UATP is warranted. In this connection, we want to emphasize that we are not responsible for preventing anticompetitive effects in non-air transportation markets, including the credit card market, unless competition in air transportation markets is also adversely affected.[10]

Although UATP does not adequately answer the opposing parties charges, the Credit Card Companies' arguments are likewise insufficient to permit us to resolve the issues in their favor. The Credit Card Companies do, however, raise issues warranting exploration and argument on the record.

As discussed above, see note 6 *supra*, the Airline Deregulation Act of 1978 instructs us to apply a new standard when considering Section 412 agreements. While we have not yet applied this standard, we anticipate that our practice under it will closely parallel our practice under the standards stated in previous Section 412 cases. See notes 12 and 13 *infra*. In evaluating the antitrust implications of a Section 412 agreement, the Board is required to have before it "the materials requisite for a rational decision." [11] In short, we have to make an informed assessment of the public interest under Section 412. The opponents of UATP claim that the program has significant elements which are plainly repugnant to established antitrust principles. If the opponents are correct, our approval of UATP must rest on a clear showing that approval is required by a serious transportation need, or in order to secure important public benefits,[12] and that less anticompetitive alternatives do not exist to meet the same public interest ends.[13]

Moreover, if an agreement is not seriously repugnant to antitrust principles, we must decide, as an element of the public interest, whether approval of the agreement will imperil the existence of a market structure conducive to maximum feasible competition.[14] Of course, where the anticompetitive

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[7] UATP states that in 1976, VISA and Interbank had a total of 75 million cards in circulation; American Express had 7.8 million cardholders; and UATP had 2 million Air Travel Cards in circulation.

[8] *Foremost International Tours, Inc. v. Quantas Limited*, 525 F. 2d. 281 (9th Cir., 1975). Furthermore, it is unclear whether our assertion of jurisdiction and approval of the Silver Card Program would provide the antitrust immunity which the UATP member claim they need.

[9] This constitutes almost all of Section 7 of the UATP Manual. Also see Article 23 of UATP-1976.

[10] Accordingly, in the further proceedings on this matter, we may find it necessary to disclaim jurisdiction over additonal components of the UATP Agreement if we find these components have little or no effect on competition in air transportation markets or on any other air transportation interest which we have authority to regulate, regardless of possible anticompetitive consequences outside the field of air transportation. We want to emphasize, however, that a Board decision to disclaim jurisdiction is clearly distinguishable from a Board decision to disapprove. On the one hand, we must disclaim jurisdiction over agreements, or parts of agreements, which do not affect air transportation and therefore fall outside our statutory authority. On the other hand, we must disapprove any agreement affecting air transportation which we find to be adverse to the public interest, as defined in Section 102 of the Airline Deregulation Act, or in violation of the Act. We must also disapprove any agreement that substantially reduces or eliminates competition unless the agreement meets the standards contained in Section 412(c)(2)(A)(i) of the Act. See Note 6 *supra*.

[11] See, e.g., *Air Line Pilots Assn. v. C.A.B.*, 475 F.2d 900 (1973) and *National Air Carrier Assn. v. C.A.B.*, 442 F.2d 862 (1974).

[12] *Local Cartage Agreements Case, supra.*

[13] See *Capacity Reduction Agreements Case*, Order 75-7-98, July 21, 1975 and *Eastern Air Lines, Inc.*, Order 78-3-108, March 23, 1978.

[14] Section 102 of the new Act, 49 U.S.C. 1302, as amended by P.L. 95-504, October 24, 1978; also see *Texas International-National Acquisition Case Enforcement Investigation; North Central-Southern Merger Case*, Order 78-8-150, August 25, 1978 at 5.

effects are slight, the benefits required to balance them in our public interest determination need not be great.[15]

Finally, as agreements approved by the Board do not automatically receive antitrust immunity under Section 414 of the new Act, parties seeking approval of UATP-1976 will need to specify whether they are seeking antitrust immunity, and if so, why such immunity is required in the public interest.

To narrow and we hope to resolve the issues in this proceeding we intend to follow a flexible procedure to obtain additional facts not available from the pleadings. Our plan is to have BPDA conduct an administrative conference to elicit this information. We believe this process will provide us with a sufficient factual basis to reach a decision without additional formal proceedings. Of course, any issues which cannot be resolved in this manner will be set for oral evidentiary hearing or such other procedures as appear to the Board to be necessary.

In order to expedite these proceedings to the greatest extent feasible, we will instruct the Bureau of Pricing and Domestic Aviation to convene and conduct a conference of all the parties. At the conference the Bureau, as staff to the Board, will determine a precise statement of the issues, will specify the minimum written evidence needed to augment the record, and will establish procedural dates for submission of direct and rebuttal written evidence and briefs. After the Board has received additional information and briefs from the parties, it shall resolve those issues which may be decided on the basis of the written record before it and determine what further proceedings may be necessary to resolve the remaining issues.

Because the determination of the public interest in any proceeding of this type is complex and the evidentiary burden may be great, we have decided to indicate the subissues of particular concern to us.

The first is whether or not UATP is an illegal joint venture under the antitrust laws. In this respect, we note that UATP members do not seem to have a large share of the total number of credit cards in circulation. See note 7 *supra*. We do not know, however, what shares of the air travel credit market are held by the various credit card systems, including UATP. We expect to obtain this information during the course of this proceeding. In the argument on the joint venture question, we also expect a precise identification of the nature and extent of the injury, if any, which may result from the joint venture and of the class of persons who may be injured.

[15] *Bulter Aviation Co. v. C.A.B.*, 389 F.2d 517 (2d Cir. 1968).

Second, the Credit Card Companies have alleged that a number of UTAP's practices are seriously anticompetitive agreements in restraint of trade even if UATP is found to be a legal joint venture.

We wish to explore the following specific allegations by UATP's opponents to determine the effects, if any, of the UATP system on competition in air transportation markets:

(1) That the non-price terms of the standard subscriber Contract are unreasonable restraints of competition in the non-price terms of credit.

(2) That the standard Ticketor discount is an agreement to fix the price of credit management services in restraint of trade.

(3) That the rule that a new Contractor cannot issue an Air Travel Card to any Subscriber who is in arrears to a previous Contractor and the rules governing accreditation and termination of Ticketors and Contractors are anticompetitive group boycotts.

(4) That the current UATP program is a conspiracy to monopolize the air transportation credit market.

Once again, in exploring these allegations we expect a precise identification of the nature and extent of injury, if any, and of persons who may be injured.

Third, we seek advice as to whether we should modify, under the statutory standard of the public interest contained in the new Act, any anticompetitive aspects of the Agreement.

Fourth, we request the parties to submit argument on the issues of whether antitrust immunity should be granted to the UATP Agreement, assuming it is approved in its present or a modified form, and why such immunity is required, nor not required, by the public interest.

We want to emphasize, however, that the above list of issues is not intended to be exclusive. The parties and the Bureau of Pricing and Domestic Aviation should feel free to propose additional issues for our consideration.

ACCORDINGLY, 1. We dismiss Agreements CAB 26433 and 26433-A1, to the extent that they would permit UATP members to sign contracts with hotels, motels and rental car companies which would permit UATP Silver Card holders to bill charges to their UATP accounts, and to the extent that they would provide rules for governing transactions, including intercarrier settlement, which arise out of such contracts;

2. We institute a proceeding, pursuant to Sections 102, 204(a), 412 and 414 of the Act, to consider whether Agreements CAB 26433 and 26433-A1, and the air travel credit sales venture they embody, are adverse to the public interest; whether such Agreements should be approved, with or without conditions; and if approved, whether the Board should exercise its discretionary authority to authority to grant antitrust immunity to such Agreements;

3. We make the UATP member carriers, American Express Co., Interbank Card Association, VISA U.S.A., Inc., Carte Blanche, and the Department of Justice parties to the proceeding instituted by paragraph 2 above.

4. Petitions for intervention shall be filed no later than the date of the conference called for in paragraph 5 below;

5. We direct the Bureau of Pricing and Domestic Aviation to convene a conference of the parties; to determine a precise statement of issues in the proceeding; to establish minumum evidentiary and pleading requirements; and to set procedural dates for the above, all in conformity with this order; and

6. The order shall be served on all parties to the proceeding instituted by paragraph 2 above.

This order shall be published in the FEDERAL REGISTER.[16]

PHYLLIS T, KAYLOR
Secretary.

[FR Doc. 78-34978 Filed 12-14-78; 8:45 am]

[6320-01-M]

[Order No. 78-12-59; Docket 30789, 25997, etc.]

SATURN AIRWAYS, INC., ET AL.

Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 8th day of December, 1978.

Transatlantic Cargo Service Case: Applications of Saturn Airways, Inc., Overseas National Airways, Inc., Southern Air Transport, Inc., Evergreen International Airlines, Inc., DHL Airways, Inc., Rosenbalm Aviation, Inc., Southeast Airlines, Inc., Jet Executive International, Inc. for certificates of public convenience and necessity to engage in supplemental air transportation.

Application of DHL Airways, Inc. for a certificate of public convenience and necessity under section 401 of the Act. Docket 31540. Application of DHL Corporation for approval of §§ 408 and 409 relationships. Docket 31542.

By Order 77-4-118, dated April 25, 1977, the Board instituted the *Transatlantic Cargo Service Case*, Docket 30789, to consider certain issues remanded in the *Transatlantic Route Proceeding*, Docket 25908. These included the applications of Seaboard World Airlines, Inc, (Seaboard) for expanded scheduled transatlantic all-cargo authority,[1] and of Overseas Na-

[16] All Members concurred.

[1] Seaboard's remanded application included expanded scheduled transatlantic all-

Footnotes continued on next page

tional Airways, Inc. (ONA), Saturn Airways, Inc. (Saturn) Trans International Airlines, Inc. (TIA), and World Airways, Inc. (World) for transatlantic charter cargo authority.[2] A decision on the merits of these all-cargo issues was never reached in the *Transatlantic* case because of weaknesses in the evidentiary record. Additional consolidations include the applications of Alaska International Air, Inc. (AIA) in Docket 29237,[3] Evergreen International Airlies, Inc. (Evergreen) in Docket 29342, and Southern Air Transport, Inc. (SAT) in Docket 29332.[4] Finally, the Board specified that the issues would include the terms, conditions, or limitations to be imposed in connection with any new award, and that any new authority awarded shall be ineligible for subsidy.

BACKGROUND

The purpose of this order is to reactivate the *Transatlantic Cargo Service Case* and specifically define its scope. At the time this case was instituted, the Board's principal concern was to complete its investigation of U.S.-flag transatlantic air services as quickly as possible. After carefully reviewing the record, the Board concluded that transatlantic charter cargo authority for the charter air carrier applicants and expanded all-cargo authority for Seaboard would require additional hearing. Because the resulting delay to the other important issues was unacceptable, these matters were severed for later consideration.

Since this case was instituted, the Board has been striving to promote a more competitive transatlantic aviation environment. The results of these efforts should ultimately increase the available opportunities for all-cargo services as well as provide additional consumer benefits. For example, the Board's decision in the *Transatlantic Route Proceeding*, completed in January 1978,[5] provided for new competitive opportunities for U.S. air carriers and improved transatlantic services to many regions of the United States. Substantial efforts have also been devoted to promoting the availability of low-fare scheduled services and to more flexible charter rules in transatlantic markets and elsewhere. The Board has been an active participant in the recent transatlantic negotiations which produced procompetitive agreements with the Netherlands and Belgium this year, and a proceeding has been instituted to consider the issue of additional U.S.-flag service to these points and Luxembourg.[6] Other procompetitive agreements have been concluded with the United Kingdom, Israel, Poland, and the Federal Republic of Germany which have resulted in a substantial liberalization of aviation relations in terms of expanding charter opportunities, liberalizing Fifth Freedom services, and relaxing other unilateral operating restrictions. Most recently, this country has arrived at a liberal cargo agreement with Belgium (November 8, 1978) which would provide for essentially deregulated cargo operations between the United States and Belgium. The Board's objectives in these negotiations have been to eliminate restrictions on existing international air services and to promote additional opportunities for the carriers of all involved countries. While much remains to be done to increase competitive opportunities, it is now time to proceed with the transatlantic cargo markets which are the focus of this investigation.

SUMMARY OF CONCLUSIONS

Conditions today differ markedly from those that existed when the Board instituted this investigation. As a result, a review of the instituting order is clearly necessary. The case as originally instituted had limited objectives: the investigation of the service needs in the transatlantic cargo markets remanded in the *Transatlantic Route Proceeding*. Many months have now passed and the original limitations no longer seem necessary. We have decided therefore, to expand the scope of this proceeding to include new and amended applications for scheduled and charter-only transatlantic cargo authority between any point in any state of the United States, the District of Columbia, Puerto Rico, and the Virgin Islands, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia as far east as (and including) India, on the other.[7] In an order issued today we are also granting the applications of AIA, Evergreen, ONA, SAT, TIA, and World for interim exemption authority to provide all-cargo charter service in the transatlantic market until 90 days after the Board renders its final decision in this case.

COMPETITION IN THE TRANSATLANTIC CARGO MARKETS

As we recently concluded in the *Oakland Service Case*,[8] we are inclined today to view increased competition as the best method of assuring that the public is provided with the air services required by the public convenience and necessity consistent with our responsibilities under the Act. Although that proceeding concerned domestic, rather than foreign air transportation, it is important that the same declaration of policy (section 102) and certification review criteria (section 401) that then applied to domestic air transportation—subsequently changed by the Airline Deregulation Act of 1978[9]—still apply to foreign air trans-

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cargo authority between Atlanta, Baltimore, Boston, Chicago, Dallas/Ft. Worth, Denver, Detroit, Hartford, Houston, Kansas City, Mo., Las Vegas, Los Angeles, Miami, Minneapolis-St. Paul, New Orleans, New York, Philadelphia, Phoenix, Pittsbugh, Portland, St. Louis, San Diego, San Francisco-Oakland, San Juan, P.R., Seattle, Tampa, and Washington, D.C., on one hand, and the cities and areas of Afghanistan, Algeria, Austria, the Azores, Bangkok, Burma, Bulgaria, Casablanca, Ceylon, (now Sri Lanka), Czechoslovakia, Egypt, Estonia, Finland, France, Germany, Greece, Hanoi, Hong Kong, Hungary, Latvia, Lebanon, Leningrad, Libya, Lithuania, Luxembourg, Moscow, Oman, Pakistan, Poland, Portugal, Rumania, Saudi Arabia, Spain, Syria, Tunisia, Turkey, United Kingdom, Yeman and Yugoslavia (Docket 24825). (a) *Appendices filed as part of original.*

[2] The charter-only cargo authority at issue included the foreign air transportation of property between any point in any State of the United States or the District of Columbia, Puerto Rico or the Virgin Islands, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa and Asia, as far east as (and including) India, on the other, Orders 73-9-83, September 21, 1973 and 73-11-96, November, 1973. The applications of Capitol (Docket 25979), ONA (Docket 25973 as amended), Saturn (Docket 25997 as amended), TIA (Docket 25991 as amended), and World (Docket 25985) sought the entirety of this authority and, with the exception of Capitol which did not specify Puerto Rico or the Virgin Islands, were consolidated into the *Transatlantic Cargo Service Case* by Order 77-4-118. We are formally dismissing Docket 25997 by this order, since all of the authority requested by Saturn can now be pursued by TIA with whom Saturn merged in 1977.

[3] In addition to the application of AIA, the applications of ONA (Docket 28984) and Saturn (Docket 28730) also were severed from the *Alaska International Air Certification Proceeding*, and deferred for consideration in the *Transatlantic Cargo Service Case* to the extent transatlantic cargo authority was requested, Order 76-8-48, August 10, 1976. These deferred applications were not consolidated into this proceeding by Order 77-4-118 because they duplicated requests contained in the applications of ONA (Docket 25973) and TIA (Docket 25991) remanded from the *Transatlantic Route Proceeding*. We are dismissing Dockets 28730 and 28984 by this order.

[4] These applications, summarized in Appendix A, were consolidated to the extent that each seeks authority to engage in the charter air transportation of cargo between points in the 48 contiguous states and Alaska, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other.

[5] Opinion and Order 78-1-118, dated January 11, 1978.

[6] *United States/Benelux Low-Fare Route Proceeding*, Order 78-6-97, dated June 13, 1978.

[7] Petitions for reconsideration still outstanding in this case are disposed of in Appendix B.

[8] Order 78-4-121, dated April 19, 1978; Order 78-9-96, dated September 21, 1978.

[9] PL 95-504, 92 Stat. 1705, signed by the President on October 24, 1978.

portation. We have already indicated that our international air transportation policy also favors competition as the best mechanism for fostering and promoting a sound air transportation system responsive to the public's needs:

It is our policy—both domestically and internationally—to develop a system of air transportation that places principal reliance on actual and potential competition to determine the variety, quality and price of air services. Essential components of this policy are greater competitive opportunities for airlines and the promotion of low/fare transportation options for travelers and shippers.[10]

This procompetitive policy is fully consistent with this country's international aviation objectives set forth by the President.[11] Further, we cannot disregard the strongly procompetitive emphasis of the Congress in enacting the Airline Deregulation Act, although by its terms the new Act mainly concerns domestic and overseas air transportation.

We also draw support for a procompetitive international cargo policy from the passage of PL 95-163 substantially deregulating the domestic air cargo industry. Clearly, Congress intended that the forces of competition be given greater freedom in assuring that cargo services are made available, as necessary, to meet shipper demand. We have acted to implement this statutory directive as quickly as possible in domestic cargo markets consistent with our general confidence in competition to assure the development and continuation of efficient and economical cargo services in the public interest. While there are limits to our ability to encourage freer entry and rates in international cargo services as discussed below, we feel generally that the same benefits should be pursued with equal vigor.

Viewed in the context of our overall international aviation policy and the substantial deregulation of cargo domestically, the Board's historic transatlantic cargo policies have been restrictive and protectionist. Except for occasional flights by other carriers pursuant to *ad hoc* exemptions and the Board's recent out-size cargo exemptions,[12] U.S.-flag competition in these cargo markets has been limited to certificated combination carriers and Seaboard's authorized all-cargo services.[13] Even if these policies were justified in the past, the time has come to examine whether they remain so today. Accordingly, this proceeding will explore the feasibility of multiple new entry into the transatlantic cargo markets, both scheduled and charter. Further, we will explore whether any awards should be authorized on a noncomparative basis assuming the applicant demostrates that it is fit, willing, and able to perform properly the proposed air transportation.[14] An additional issue will be whether any new or existing scheduled all-cargo authority, including Seaboard's Route 119, should be made permissive.

In considering the authority requested in this investigation, we must consider also the attitudes of foreign governments. We recognize that the international services involved in this proceeding require the acceptance of United States air carriers by foreign governments before authorized operations can begin. We simply cannot assume that each applicant, if certificated for these transatlantic markets, will be permitted to commence services immediately. We do not feel, however, that the absence of a pre-arranged acceptance should limit this proceeding. We would be extremely shortsighted if we were to limit the scope of the proceeding to the currently existing opportunities for U.S.-flag carriers in the face of our national commitment to attain further competitive opportunities. As we have recently done with respect to liberalized charter rules and trans-Pacific services, we propose to consider first the need for additional authority and then to pursue the necessary international agreements.

Nevertheless, the fact remains that this proceeding concerns international markets in which we cannot be certain that all of the U.S.-flag services we might otherwise determine to authorize will be acceptable to foreign governments. As a result, we reluctantly conclude that the potential need for carrier selection cannot be disregarded. We cannot identify today those markets which will require carrier selection, because international air relationships are changing rapidly. Accordingly, the parties are advised that evidence will be necessary to determine a priority among applicants for the markets at issue in order to establish a record for selection—a difficult and unwelcome exercise which we hope will later prove unnecessary.[15] Backup authority, and a ranking of carriers for it, is also at issue in this proceeding.

SCOPE OF THE INVESTIGATION

This investigation currently includes only the applications of Seaboard and the transatlantic charter air carriers remanded in Docket 25908, and the applications AIA, Evergreen, and SAT filed for transatlantic charter cargo authority prior to April 1977. This limitation upon new authority would clearly frustrate our international aviation objectives if retained. In addition to the new applications already filed for transatlantic cargo authority addressed in this order, *infra*, potential applicants for such authority in both the *Former Large Irregular Air Service Investigation* and the *U.S.-Benelux Low-Fare Proceeding* have been directed to request certification in this proceeding. Denying these applicants access to this case would serve neither the public interest nor our goal of administrative economy. We therefore encourage all persons to file new or amended applications within the geographic boundaries of this proceeding.

For the same reason we have reexamined the geographic scope of this case. On reconsideration, we find no need to change the geographic scope for charter-only cargo authority used

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[10] *United States-Benelux Low-Fare Proceeding*, supra at 4, n.6.

[11] United States Policy for the Conduct of International Air Transportation Negotiations; August 21, 1978.

[12] Order 77-6-138, dated June 28, 1977; Order 78-3-86, dated March 20, 1978.

[13] Route 119 authorizes Seaboard to engage in foreign air transportation with respect to property and mail between the co-terminal points Los Angeles, Calif.; San Francisco-Oakland-San Jose, Calif., Chicago, Ill.; Detroit, Mich.; Cleveland, Ohio; Washington, D.C.-Baltimore, Md. (to be served through Dulles International Airport or Baltimore-Washington International Airport); Philadelphia, Pa.; New York, N.Y.-Newark, N.J.; Boston, Mass.; and Bangor, Maine (permissive); intermediate points in Newfoundland; Canada; Ireland; the United Kingdom; France; The Netherlands; Belgium; Western Germany; Denmark; Norway; Sweden; Switzerland; and Italy; and terminal points in Italy. At this time, Seaboard actually provides only limited service, compared to its authority. The following summarizes Seaboard's official November 1978 single-plane transatlantic cargo schedules filed with the Board:

	In weeks	
	Eastbound	Westbound
Amsterdam/ Brussels.	.....	1
Frankfurt	7	8
London	8	8
Milan	7	7
Paris	6	3
Pisa	3	3
Zurich	1	2

By order 77-7-111, effective July 26, 1977, Seaboard was suspended at all domestic points except New York, N.Y.-Newark, N.J., Boston, Mass., and Bangor, Maine for a period of two years.

[14] Each applicant for scheduled all-cargo authority will be expected to demonstrate that it is "fit, willing, and able to provide air service in a particular market" and to present a credible service plan dersigned to meet at least some of the demand in that market "even if the applicant requests nonexclusive, permissive authority," *Las Vegas-Dallas/Ft. Worth Nonstop Service Investigation*, Order 78-7-116, July 21, 1978 at 2, n.2.

[15] The precise nature and extent of the evidence to be required of the applicants will, of course, be subject to the discretion of the administrative law judge.

in the *Transatlantic Route Proceeding*. Specifically, we will consider the issue of certificate authority of charter transatlantic cargo transportation between any point in any State of the United States, the District of Columbia, Puerto Rico or the Virgin Islands, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia as far east as (and including) India, on the other. The charter cargo authority at issue is coextensive with the outstanding certificated charter transatlantic passenger authority held by Capitol, ONA, TIA, and World.[16]

Turning to the issue of scheduled cargo authority, however, Order 77-4-118 limited our inquiry to the transatlantic markets contained in Seaboard's remanded application for additional authority and excluded many other points, including those contained in Seaboard's current transatlantic certificate. We will therefore expand the scope of our review into scheduled all-cargo service to equal the geographic boundaries of our charter service inquiry. We will not, however, consider the issue of scheduled all-cargo service to Hanoi, Bangkok, Burma, and Hong Kong although these points were included in Seaboard's remanded application. Service to Hanoi is excluded for foreign policy reasons [17] and transpacific cargo authority to Bangkok, Burma, and Hong Kong is in issue in the *Transpacific* case, Docket 33068.[18] While including points in the Far East has the appealing feature of permitting round-the-world service when combined with existing or new transpacific authority, such an expansion would further extend this already large proceeding without substantial public benefit. Consistent with our practice in several recent cases, we will not predetermine domestic coterminals in order to allow each applicant to establish service patterns which are the most economical and efficient for its particular capabilities.[19] This proceeding will not include the issue of domestic or overseas scheduled or charter cargo rights except as these rights may be included on a fill-up basis for scheduled foreign air transportation.[20] Any person seeking domestic and overseas cargo authority may apply for such authority pursuant to section 418 of the Act.

We remain concerned about the potentially enormous burdens in terms of time, effort, and costs which a route case of this magnitude typically requires of the parties, the Board, and the Board's staff. As we have in other recent route cases, we invite the parties and the administrative law judge here to explore, at the prehearing conference, innovative approaches to exhibit material, with a view toward reducing its quantity, eliminating duplication and superfluous detail, standardizing methodology, and focusing only upon significant facts and assumptions. In addition, the possibility of stipulating facts and eliminating certain types of evidence should also be explored. We leave the resolution of these matters to the admininstrative law judge.

INTERVENTION AND CONSOLIDATION

We have received a number of petitions for intervention and consolidation. Leave to intervene was requested by petition of the City of Philadelphia and the Greater Philadelphia Chamber of Commerce. We will grant the petition. Evergreen and SAT have requested consolidation of their applications in Docket 29342 and 29332, respectively, as amended after our instituting order. Rosenbalm Aviation, Inc. has filed a motion to consolidate its application for supplemental transatlantic cargo authority in Docket 33168 accompanied by a motion for leave to file an otherwise unauthorized document.[21] Southeast Airlines, Inc., and Jet Executive International, Inc. have filed motions to consolidate their respective applications for charter transatlantic cargo authority in Dockets 33651 and 33964.[22] No person has objected to any of these motions and they will be granted.

We have also received a joint motion from DHL Airways and DHL Corporation requesting consolidation of DHL Airways' applications for transatlantic cargo charter authority in Docket 31540 and transatlantic cargo scheduled authority in Docket 31539. These consolidation requests are granted. DHL Corporation's motion for consolidation of Docket 31542 concerning its request for board approval of its control and interlocking relationships with DHL Airways and Air Polynesia, Inc. in Docket 31542, however, is denied since the issues involved will reach earlier board decision in the *U.S.-Benelux Low-Fare Proceeding*, Docket 30790. Similarly, we will not consider the issues of control and interlocking relationships raised by the application of AIA since these issues are to be decided earlier in the *AIA Conrol Case*, Docket 29237, pursuant to Order 78-9-153, dated September 29, 1978.

PROCEDURES

Consistent with these determinations, we invite the carrier parties to this proceeding to amend pending applications for transatlantic cargo authority and other interested persons to file new applications within the geographic boundaries established by this order. We will also entertain petitions by civic parties wishing to obtain such service. Although we are interested in deciding this case promptly, we are also interested in encouraging new competitors and broader public participation. We will therefore allow such amendments, applications, and petitions for intervention to be filed within 31 days from the date of service this order.[23] All parties will be expected to proceed expeditiously through final decision after that date.

Finally, applicants whose applications are consolidated into this proceeding, or who seek subsequent consolidation of new applications are directed to submit environmental evaluations (312.12), including the data required by 312.12(c)(1) through (5), by the date set for the submission of direct exhibits by the administrative law judge [notwithstanding 312.12 (a)(3)].[24] The Bureau of International Aviation will calculate the tests called for in 312.12(e)(5).

Accordingly,

1. This proceeding, known as the *Transatlantic Cargo Service Case* (Docket 30789) is set for hearing before an administrative law judge at a time and place to be designated after petitions for reconsideration have been acted upon by the Board;

2. The proceeding named in paragraph 1 shall include consideration of the following issues:

a.(1) Do the public convenience and necessity require in whole or in part, that all fit, willing, and able applicants be authorized to engage in the scheduled foreign air transportation of property and mail between any point in any state of the United States, the

[16] Order 77-1-100, dated January 6, 1977.

[17] *See also*, Order 78-3-112, dated March 23, 1978 at 3 (air service to Cuba).

[18] Transatlantic scheduled and charter carrier cargo authority to Sri Lanka is included in the investigation because service to that country is customarily considered via both transatlantic and transpacific routings. *Compare*, TWA Route 147 and Route 164.

[19] *U.S.-Bahamas Service Investigation*, Docket 32294; *U.S.-Benelux Low-Fare Route Proceeding*, Docket 30790; *Transpacific Low-Fare Route Proceeding*, Docket 33068.

[20] See section 401(d)(6) of the Federal Aviation Act as amended by PL 95-504. We will, however, consider removing the one daily flight limitation contained in the Act.

[21] We will grant the motion. Rosenbalm's application is summarized in Appendix A.

[22] Both applications are summarized in Appendix A. Jet Executive also requests Board permission or, alternatively, a § 416 exemption to allow it to continue air taxi operations. We will consider these requests.

[23] Petitions for reconsideration will be due no later than 21 days from the date of service of this order and answers must be filed within 10 days thereafter.

[24] The Board's energy regulation (Part 313) contemplates that an energy statement, if required, is to be incorporated within the body of the administrative law judge's decision. This presents no unusual procedural problem here, and we perceive no need to modify the requirements of Part 313.

District of Columbia, Puerto Rico, or the Virgin Islands, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, Asia as far east as (and including) India, on the other;

(2) If the answer to a.(1) is negative, in whole or in part, do the public convenience and necessity require the authorization of one or more fit, willing, and able carrier or carriers to engage in scheduled foreign air transportation of property and mail between any point in any state in the United States, the District of Columbia, Puerto Rico or the Virgin Islands, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia as far east as (and including) India, on the other;

(3) Whether the applicants for such authority are fit, willing, and able to perform the foreign air transportation found to be required by the public convenience and necessity;[25]

(4) If the answer to (1) is negative, in whole or part, and to (2) is positive, in whole or part, which carrier or carriers qualified under (3) should be authorized to provide the required service;

(5) Should all or part of the authority awarded be permissive;

b.(1) Do the public convenience and necessity require, in whole or in part, that all fit, willing, and able applicants be authorized to engage in charter-only foreign air transportation of property between any point in any state in the United States, the District of Columbia, Puerto Rico or the Virgin Islands, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa and Asia, as far east as (and including) India, on the other;

(2) If the answer to b.(1) is negative, in whole or in part, do the public convenience and necessity require the authorization of a fit, willing, and able carrier or carriers to engage in charter-only foreign air transportation of property between any point in any state in the United States, the District of Columbia, Puerto Rico or the Virgin Islands, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa and Asia, as far east as (and including) India, on the other;

(3) Whether the applicants for such authority are fit, willing, and able to perform the charter-only foreign air transportation found to be required by the public convenience and necessity; [26]

(4) If the answer to (1) is negative, in whole or part, and to (2) is positive, in whole or part, which carrier or carriers qualified under (3) should be authorized to provide the required service;

c. What terms, conditions, and/or limitations, if any, should be attached to any new authority which may be awarded; [27]

d. Should the authority of Seaboard World Airlines, Inc. to operate over Route 119 be made permissive;

3. No new authority awarded in this proceeding shall be eligible for federal subsidy; [28]

4. We grant the petition of Alaska International Air, Inc. for reconsideration of Order 77-4-118, and direct that ordering paragraph 3 of that Order be amended to read in relevant part, "applications by Alaska International Air filed originally in Docket *25296* . . . ";

5. We deny the petitions of Seaboard World Airlines, Inc., Capitol International Airways, Inc. and Overseas National Airways, Inc. for reconsideration of Order 77-4-118;

6. We grant the petitions to consolidate the applications of Evergreen International Airlines, Inc. amendment No. 1 to Docket 29342, Southern Air Transport, Inc. amendment No. 1 to Docket 29332, Rosenbalm Aviation, Inc. in Docket 33168, Southeast Airlines, Inc. in Docket 33651 and DHL Airways, Inc. and DHL Corporation in Dockets 31539 and 31540 with Dcket 30789 to the extent that each conforms to the scope of the proceeding established here; [29]

7. We deny the motion of DHL Corporation to consolidate its application in Docket 31542;

8. We grant the petition to intervene of the City of Philadelphia and the Greater Philadelphia Chamber of Commerce;

9. To the extent deferred in Order 76-8-48, we dismiss without prejudice the application of Saturn Airways, Inc. in Docket 25997, and the applications of Overseas National Airways, Inc. in Docket 28984 and Saturn Airways, Inc. in Docket 28730;

10. Applications, amendments to applications, motions to consolidate and petitions for leave to intervene shall be filed no later than January 12, 1979; [30]

11. Each applicant for authority within the scope of this proceeding shall file an environmental evaluation, under section 312.12 of the Board's Regulations, by the date set for the submission of direct exhibits by the administrative law judge;

12. Petitions for reconsideration of this order shall be filed no later than January 2, 1979; answers shall be filed no later than January 12, 1979; and

13. To the extent not specifically granted in this order, we deny all motions, petitions and all other requests for relief in all dockets contained in the caption to this order.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[31]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-34981 Filed 12-14-78; 8:45 am]

[25] This will include such issues as may arise under other sections of the Act, including section 408 and 409.

[26] *Id.*

[27] The issue concerning whether the Board should grant fill-up rights to authorized carriers in addition to those provided for in section 401(d)(6) of the Act is included.

[28] If the authority in this proceeding is awarded to a local service carrier, the authority will fall in category II for purposes of subsidy computations.

[29] We also grant the motion of Rosenbalm Aviation, Inc. in Docket 33168 for leave to file an otherwise unauthorized document.

[30] We delegate to the presiding administrative law judge the authority to consolidate by order applications which conform to the scope of this proceeding.

[31] All Members concurred.

[6335-01-M]

COMMISSION ON CIVIL RIGHTS

IOWA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that, a planning meeting of the Iowa Advisory Committee (SAC) of the Commission will convene at 10:00 a.m. and will end at 2:00 p.m. on January 9, 1979, Holiday Inn South, 2101 Fleur Drive, Room 286, Des Moines, Iowa 50315.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Central States Regional Office of the Commission, 911 Walnut Street, Kansas City, Missouri 64106.

The purpose of this meeting is to receive report from Regional SAC Conference, continue project planning for Fiscal Year 1980; and review status of current projects.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 11, 1978.

JOHN I. BINKLEY,
Advisor Committee Management Officer.

[FR Doc. 78-34976 Filed 12-14-78; 8:45 am]

[6335-01-M]

MASSACHUSETTS ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Massachusetts Advisory Com-

mittee (SAC) of the Commission will convene at 4:00 p.m. and will end at 6:30 p.m. on January 31, 1979, at Quincy School, 665 Washington Avenue, Boston, Massachusetts.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639 New York, New York 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 11, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-34975 Filed 12-14-78; 8:45 am]

[6335-01-M]

VIRGINIA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Virginia Advisory Committee (SAC) of the Commission will convene at 6:30 p.m. and will end at 9:30 p.m. on January 11, 1979, Richmond City Hall, 5th Floor Conference Room, Richmond, Virginia.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission 2120 L Street, N.W., Room 510, Washington, D.C. 20037.

The purpose of this meeting is to discuss program planning for 1979 for the Virginia State Advisory Committee.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 11, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-34977 Filed 12-14-78; 8:45 am]

[3510-15-M]

DEPARTMENT OF COMMERCE

Maritime Adminstration

[Docket No. S-630]

COVE CARRIERS INC. AND CTS ASSOCIATES

Additional Applications

Notice is hereby given that Cove Carriers Inc. (Carriers) and CTS Associates (CTS), related companies, have each filed application under the Merchant Marine Act, 1936, as amended (the Act), for operating-differential subsidy to engage in bulk cargo carrying service in the U.S. foreign trade, princpally between the United States and the Union of Soviet Socialist Republics, to expire on December 31, 1978, unless extended. Inasmuch as these applicants, and/or related persons or firms, employ or may employ ships in the domestic intercoastal or coastwise service, written permission of the Maritime Administration under section 805(a) of the Act will be required if the applications for operating-differential subsidy are granted.

Carriers and CTS request written permission under section 805(a) of the Act for their affiliate Cove Ships Inc. to own the COVE TIDE and for their affiliate Cove Shipping, Inc. to operate the COVE TIDE in the domestic trade. Permission is also requested for the right to move the COVE TIDE from one domestic trade to another, and/or from a foreign trade to a domestic trade.

It will be necessary to extend to Cove Ventures Inc., Cove Tankers Inc. and Cove Trading Inc., affiliates of the applicants and holders of operating-differential subsidy contracts in bulk trades with the Union of Soviet Socialist Republics, the foregoing written requested by Carriers and CTS.

The foregoing written permission is required notwithstanding the fact that a grain voyage would not be eligible for subsidy if the vessel engages in the domestic trade on that voyage.

The written permission requested is in addition to those previously requested by applicants in Dockets S-625 and S-625, Sub. 1, as published in the FEDERAL REGISTER issues of November 1, 1978 (43 FR 50954) and November 9, 1978 (43 FR 52275).

Any person, firm, or corporation having any interest (within the meaning of section 805(a) in such application and desiring to be heard on issues pertinent to section 805(a) and desiring to submit comments or views concerning the applications must, by close of business on Dec. 21, 1978 file same with the Secretary, Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS))

By Order of the Assistant Secretary for Maritime Affairs.

Dated: December 11, 1978.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 78-34837 Filed 12-14-78; 8:45 am]

[3510-15-M]

[Docket No. S-629]

MANHATTAN TANKERS COMPANY, INC. ET AL.

Applications

Notice is hereby given that Manhattan Tankers Company, Inc. and Albatross Tanker Corporation, being affiliated with each other through common ownership by Seatrain Lines, Inc., have made application for written permission required under section 805(a) of the Merchant Marine Act, 1936, as amended, for their affiliated company, Richmond Tankers, Inc., a Delaware corporation also owned by Seatrain Lines, Inc., to bareboat charter the TT BAY RIDGE for operation in worldwide trade including the domestic trade. In addition, permission is requested for the right to move the vessel from one domestic trade to another, and/or from a foreign trade to a domestic trade. Manhattan Tankers Company, Inc. and Albatross Tanker Corporation are holders of operating-differential subsidy agreements (ODSA's) in the grain trade to the U.S.S.R.

The BAY RIDGE is to be operated by Cove Shipping Inc., an affiliate of Cove Tankers Corporation, Cove Ventures Inc. and Cove Trading Inc., holders of ODSA's in the grain trade to the U.S.S.R., and of Cove Carriers Inc. and CTS Associates, applicants for ODSA's in the grain trade to the U.S.S.R. Written permission under section 805(a) of the Act is requested by these companies for Cove Shipping Inc. to operate the BAY RIDGE in worldwide trade including the domestic trade.

The foregoing written permissions are required notwithstanding the fact that a grain voyage would not be eligible for subsidy if the vessel engages in the domestic trade on that voyage.

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such applications and desiring to be heard on issues pertinent to section 805(a) and desiring to submit comments or views concerning the applications must, by close of business on Dec. 21, 1978, file same with the Secretary, Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operation (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS))

By Order of the Assistant Secretary for Maritime Affairs.

Dated: December 11, 1978.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 78-34838 Filed 12-14-78; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of Public Meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the fishery conservation and Management Act of 1976 (Public Law 94-265), will meet to discuss: (1) Shark Fishery Management Plan; (2) Fluke Fishery Management Plan; (3) Status of Fishery Management Plans; and (4) Other Administrative matters.

DATES: The meeting will convene on Wednesday, January 10, 1979, at 1:00 p.m. and will adjourn on Friday, January 12, 1979, at approximately 1:00 p.m. The meeting is open to the public.

ADDRESS: The meeting will be held at the Omni International Hotel, 777 Waterfront Drive, Norfolk, VA 23510. (804) 622-6664.

FOR FURTHER INFORMATION CONTACT:

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, North and New Streets, Room 2215, Federal Building, Dover, Delaware 19901, Telephone: (302) 674-2331.

Dated: December 12, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-34900 Filed 12-14-78; 8:45 am]

[3510-25-M]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

GOVERNMENTS OF THE UNITED STATES AND THE REPUBLIC OF CHINA

Amending the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement

DECEMBER 11, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: (1) Establishing a specific ceiling for cotton gloves and mittens in Category 331 at a level of 428,571 dozen pairs during the agreement year which began on January 1, 1978. At the request of the Government of the Republic of China, that level is also being increased to include flexibility, in the amount of 25,714 dozen pairs, to 454,285 dozen pairs.

(2) Increasing the previously established specific ceiling for men's and boys' knit shirts of man-made fibers in Category 638 from 1,352,206 dozen to 1,900,000 dozen during the agreement year which began on January 1, 1978, including all adjustments provided under the agreement, as amended.

(3) Further adjusting the previously established specific ceiling for women's, girls' and infants' knit shirts and blouses in Category 639 to 4,881,757 dozen during the agreement year which began on January 1, 1978. The level includes flexibility in the amount of 276,326 dozen which has been included at the request of the Government of the Republic of China.

(A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 342), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), and September 5, 1978 (43 FR 39408)).

SUMMARY: On November 1, 1978, the Governments of the United States and the Republic of China exchanged notes amending the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 8, 1978, among other things, to adjust the levels of restraint for Categories 331, 638 and 639 during the agreement year which began on January 1, 1978.

EFFECTIVE DATE: December 14, 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 June 16, 1978, a letter dated June 15, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the FEDERAL REGISTER (43 FR 26102), which established the levels of restraint applicable to certain specific categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of China and exported to the United States during the twelve-month period beginning on January 1, 1978 and extending 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 prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in Categories 331, 638 and 639, produced or manufactured in the Republic of China, in excess of the designated levels of restraint.

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

DECEMBER 11, 1978.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive issue to you on June 15, 1978 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of China.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 8, 1978, as amended, between the Governments of the United States and the Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to amend, effective on December 14, 1978, the directive of June 15, 1978 to include the following levels of restraint for the indicated categories:

Category	*Twelve-Month Level of Restraint*[1]
331	454,285 dozen pairs
638	1,900,000 dozen
639	4,881,757 dozen

[1]The levels of restraint have not been adjusted to reflect any imports after December 31, 1977.

Cotton textile products in Category 331 that have been exported to the United States before January 1, 1978 shall not be subject to this directive.

Cotton textile products in Category 331 that have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) before the effective date of this directive shall not be denied entry under this directive.

The actions taken with respect to the Government of the Republic of China and with respect to imports of cotton and man-made fiber textile products from the Republic of China have been determined by the Committee for the Implemetation 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 rulemaking provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

[FR Doc. 78-34829 Filed 12-14-78; 8:45 am]

[3510-25-M]

MALAYSIA

Increasing Import Restraint Levels for Certain Cotton and Man-Made Fiber Textile Products

DECEMBER 11, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing the designated consultation levels established under the bilateral agreement for cotton twills and sateens in Category 317; women's, girls' and infants' cotton knit shirts and blouses in Category 339; and other woven fabrics of man-made fibers in Category 613 during the twelve-month period which began on January 1, 1978.

(A description of the textile categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), and September 5, 1978 (43 FR 39408).)

SUMMARY: Under the terms of paragraph 6(b) of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 17 and June 8, 1978, between the Governments of the United States and Malaysia, the Government of the United States has acceded to the request of the Government of Malaysia to increase the designated consultation levels for Categories 317, 339 and 613 during the agreement year which began on January 1, 1978.

EFFECTIVE DATE: December 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert C. Woods, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On August 16, 1978, there was published in the FEDERAL REGISTER (43 FR 36297) a letter dated August 7, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Malaysia which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1978 and extends through December 31, 1978. The agreement also established designated consultation levels for categories, like Categories 317, 339 and 613, which are not subject to specific ceilings. In accordance with the terms of the bilateral agreement, and at the request of the Government of Malaysia, the United States Government has agreed to increase the designated consultation levels for Categories 317, 339 and 613 to 3,141,667 square yards, 175,425 dozen and 2,300,000 square yards, respectively. Accordingly, there is published below a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, directing that imports in Categories 317, 339 and 613 be limited to the designated levels of restraint. The levels have not been adjusted to reflect any imports during the period which began on January 1, 1978. Charges will be made to account for imports during the period beginning on January 1, 1978 and extending through the effective date of this action.

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

DECEMBER 11, 1978.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury, Washington, D.C. 20229

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive issued to you on August 7, 1978 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Malaysia.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 17 and June 8, 1978, between the Governments of the United States and Malaysia; 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 to prohibit, effective on December 13, 1978, and for the twelve-month period beginning on January 1, 1978 and extending through December 31, 1978, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 317, 339 and 613, produced or manufactured in Malaysia, in excess of the following amended levels of restraint:

Category	*Amended Twelve-Month Level of Restraint*[1]
317	3,141,667 square yards
339	175,425 dozen
613	2,300,000 square yards

[1]The levels of restraint have not been adjusted to account for any imports after December 31, 1977.

The actions taken with respect to the Government of Malaysia and respect to imports of cotton and man-made fiber textile products from Malaysia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

[FR Doc. 78-34830 Filed 12-14-78; 8:45 am]

[6820-33-M]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1979

Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1979 a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 15, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: On September 29, 1978 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (43 FR 44877) of proposed addition to Procurement List 1979, November 15, 1978 (43 FR 53151).

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following service is hereby added to Procurement List 1979:

SIC 0782

Grounds Maintenance, Quarters "A" Nonindustrial Area, Naval Ordnance Station, Indian Head, Maryland.

C. W. FLETCHER,
Executive Director.

[FR Doc. 78-34852 Filed 12-14-78; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

NATIONAL PETROLEUM COUNCIL, OIL SUPPLY DEMAND AND LOGISTICS TASK GROUP AND THE COORDINATING SUBCOMMITTEE OF THE COMMITTEE ON REFINERY FLEXIBILITY

Meetings

Notice is hereby given that the Oil Supply, Demand and Logistics Task Group and the Coordinating Subcommittee of the National Petroleum Council's Committee on Refinery Flexibility will meet at the Hyatt Regency Hotel, 5 Embarcadero Center, San Francisco, California on January 11 and January 15, 1979, respectively.

The National Petroleum Council provides technical advice and information to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries. Accordingly, the Committee on Refinery Flexibility has been requested by the Secretary to undertake an analysis of the factors affecting crude oil quality and availability and the ability of the refining industry to process such crudes into marketable products. This analysis will be based on information and data to be gathered by the Oil Supply, Demand and Logistics Task Group and the Refinery Capability Task Groups, whose efforts will be coordinated by the Coordinating Subcommittee.

The tentative agendas, meeting times and locations for the Task Group and the Coordinating Subcommittee meetings are as follows:

The Oil Supply, Demand and Logistics Task Group will meet in the Sea Cliff B Room of the Hyatt Regency Hotel, on January 11 and 12, 1979, beginning at 10:00 a.m.

Agenda:

1. Introductory remarks by S. E. Watterson, Jr., Chairman.
2. Remarks by Robert Long, Government Co-chairman.
3. Review and discuss historical data collected by Task Group members.
4. Review and discuss the collection of data for the projection period, 1979-1990.
5. Discussion of other pertinent matters relating to the overall assignment of the Task Group.

The Coordinating Subcommittee will meet in the Fountain View C Room of the Hyatt Regency Hotel on January 15, 1979 beginning at 9:00 a.m.

Agenda:

1. Introductory remarks by Warren B. Davis, Jr., Chairman.
2. Remarks by Frank A. Verrastro, Government Co-chairman.
3. Discussion and Review of the Scope of the Study.
4. Discussion of the Progress of the Task Groups.
5. Discussion of any other matters pertinent to the overall assignment of the Coordinating Subcommittee.

All meetings are open to the public. The Chairmen of the Task Group and the Subcommittee are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file written statement with either the Task Group or the Coordinating Subcommittee will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements should inform Mr. Frank Verrastro, U.S. Department of Energy, (202) 252-5688, prior to January 8, 1979, and reasonable provision will be made for their appearance on the agenda. Transcripts of the Subcommittee meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Bldg., 1000 Independence Avenue, SW, Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person(s) may purchase a copy of the transcripts from the reporter.

Issued at Washington, DC, on December 11, 1978.

ALVIN L. ALM,
Assistant Secretary for Policy and Evaluation.

[FR Doc. 78-34872 Filed 12-14-78; 8:45 am]

[6450-01-M]

URANIUM ENRICHMENT SERVICES

Termination Charges

On April 21, 1978, the Department of Energy (DOE) published for comment in the FEDERAL REGISTER a notice giving proposed revisions of termination charges applicable to existing fixed-commitment uranium enrichment services contracts, and proposed termination charges for the new Adjustable, Fixed-Commitment contract (43 FR 17028). Comments were received from a total of 49 parties, including 44 customers who presently hold enrichment contracts with DOE. Copies of all comments received as well as related DOE correspondence, may be examined at the DOE Public Reading Room, Forrestal Building, Room GA-152, 1000 Independence Avenue, S.W., Washington, D.C. After review and consideration of all of the comments, DOE has concluded that no substantive changes would be made in the notice. There follows a summary of the principal comments received and the DOE response to each comment.

Comment 1—Enrichment customers who no longer plan to build a nuclear reactor or who do not have a construction permit and wish to terminate a Long-Term, Fixed-Commitment (LTFC) enrichment contract should be allowed to terminate the enrichment contract with full refund of advance payments, or with full refund plus interest, or with full refund less the relatively small administrative expense which DOE can demonstrate it has incurred in administering the contract. DOE has not shown that costs which would be incurred by DOE in the event of termination prior to the issuance of a construction permit are as

great as the amount of advance payment.

DOE Response—The termination provision of the LTFC contract, applicable to termination prior to receipt of the construction permit, was agreed to by the customer and the AEC at the time of contract execution as a reasonable estimate of the costs which would be occasioned by such terminations. In a written response dated April 10, 1973, to the Joint Committee on Atomic Energy on the justification for the AEC retaining the entire down payment, the AEC stated:

> It is expected that actual costs to be incurred by the supplier in the event of such 'early termination' by the customer will equal or exceed the amount of the down payment lost by the customer.

Thus, the termination charge was intended to be a charge to recover government costs, not a penalty.

In order to meet the government's obligation to supply the enrichment services committed under its LTFC and other contracts, the capacity of the gaseous diffusion plants was increased by government investment in the Cascade Improvement Program (CIP) and Cascade Uprating Program (CUP). Costs to be incurred through FY 1978 for CIP/CUP total $1.05 billion, with an additional $0.47 billion to be expended in FY 1979–81 to complete the projects, bringing the total CIP/CUP cost to $1.52 billion. Imputed interest on the invested capital is an item of cost that is incurred each year, whether SWU sales are made or postponed.

The table contained in the April 21, 1978, notice presents an estimate of the cost of a termination, based on replacing lost SWU sales by later sales.

The basic rationale of the replacement sale table is that funds to support the uranium enrichment enterprise must come from revenues derived from the sale of enrichment services (including termination and schedule adjustment charges) or from the U.S. Treasury. Customers under contract to DOE are committed to make purchases on a fixed schedule. To the extent that such purchases are not made the U.S. Treasury must replace the lost revenue with Federal funds until a replacement sale is made, unless DOE were to reduce production in response to a termination.

Imputed interest, calculated on the average rate of outstanding marketable obligations of the U.S. Government applied to the Government investment in the enrichment complex, is included in the calculation of SWU charges. To the extent that the Government investment must be increased to replace revenue deficiencies resulting from terminations, the Government incurs an additional cost equal to the imputed interest on that increase. If this cost is not collected by way of termination charges it would have to be passed on to customers who do not terminate their contracts.

Based on this replacement sale concept, the cost resulting from a customer with a 1000 MWe nuclear plant terminating today an enrichment services contract with initial delivery in the period FY 1980 to FY 1984 would be in the range of $4 million to $13 million. Thus, a customer with deliveries as above who could terminate and be charged only the $3.3 million advance payment would be paying less than the estimated cost to DOE.

With the above as background it can be seen that the comment is based upon the erroneous assumption that the costs arising from a termination are limited to the expensed of administering the contract.

The cost arising from terminations, where DOE does not plan to reduce production in response to the termination, is the Government cost of money on the increased Government investment as a result of the termination. In the case of a customer without a construction permit the ability to recover this cost is limited by a contract clause which established a specific charge to be paid in the event of such termination. This provision provided a reasonable measure of liquidated damages at the time the contract was executed and is reasonable today because it will result in such a customer paying less than if the damages were measured by the customer replacement table.

Comment 2—DOE has made no attempt to mitigate costs arising due to termination. DOE could reduce the transaction tails assay by an amount sufficient to allow a given number of terminations as requested by certain customers and sell all of the previously committed SWUs to the remaining customers. That is, each remaining customer would take delivery of his originally scheduled amount of enriched uranium, but would take more SWUs and furnish less feed to DOE. This approach would be beneficial to remaining customers since the total cost of the enriched product they take would be less. Total SWUs sold and DOE revenues from SWU sales would be unaffected, therefore, the termination should go free.

DOE Response—This comment assumes that the sole criterion for establishing tails assay is the near term prospects for terminations and schedule slippages. In fact, such near term prospects are only one of many factors to be considered in establishing an operating plan for the uranium enrichment plants.

The operating plan is established to provide enrichment services to meet forecast demand in the most efficient manner which will provide the most economical enriched uranium over the long term. The demand is forecast upon the basis of DOE's current contract demand as it may be adjusted by terminations and adjustments in delivery schedules which are anticipated as the result of customer surveys, additional schedule adjustments which can be inferred from the status of reactor construction projects, and prospects for new customers based upon forecasts of reactor construction. In addition to tails assay changes, the operating plan can be adjusted by changing the amount of electric power supplied to the enrichment plants and by adjusting the schedule of new capacity additions.

Moreover, DOE, by law, must establish enrichment services charges on a basis which will recover the Government costs, and no more, over a reasonable period. Therefore, at whatever tails assay the plants are operating, failure of DOE to collect termination charges will cause the uranium enrichment services charge to remaining customers to increase.

For these reasons DOE finds it impermissible to adjust tails assay solely to benefit customers who, in the near term, may terminate contracts or adjust delivery schedules. Such action could only be taken at the expense of customers who do not terminate or adjust schedules.

In support of the statements cited in Comment 2 above, a group of utilities submitted to DOE a study which purported to show that proposed termination charges and schedule adjustment charges could be avoided, at no cost to DOE or to other customers, if DOE reduced the operating tails assay to 0.20 percent U-235 and held the transaction tails assay at 0.20 percent U-235 for the next ten-year period. DOE analysis showed that the utilities' study understated costs by failing to charge for Government-furnished feed used to produce enriched uranium at an operating tails assay of 0.25 percent U-235 and later delivering this product at a transaction tails assay of 0.20 percent U-235.

Comment 3—A customer who presently holds an LTFC contract, with a 10-year schedule of firm commitments, may convert to an AFC contract, which requires only a five-year firm delivery schedule. DOE has stated that in the event of termination of the AFC contract, for purposes of calculating the termination charges the LTFC delivery schedule will be used. This policy seems discriminatory between an old LTFC customer converting to an AFC contract versus a new AFC customer.

DOE Response—The policy is not discriminatory. It recognizes that until a replacement sale can be found the Government investment in enrich-

ment capacity can be protected only if existing LTFC customers are required to take firmly scheduled deliveries or pay the cost of terminating or delaying such deliveries. As indicated in the response to Comment 1, substantial investments were made by the Government in order to be in a positon to meet its obligations to existing LTFC customers.

DOE forecasts indicate that replacement sales cannot be expected to occur in any quantity prior to fiscal year 1988. The requirement to carry over the 10-year fixed schedule will result in a termination charge computed by applying the Government cost of money to revenue deferred until 1988 by termination of any delivery currently scheduled between now and 1988. Application of the table contained in the notice to any deliveries which are currently firmly scheduled for the post FY 1987 period will result in termination charges being assessed only if notice of termination is given less than 5 years prior to the date of delivery is scheduled.

In this regard LTFC customers who convert to an AFC contract and new AFC customers will be on an equal footing. Except in an unusual case, new AFC contracts must be executed at least 6 years prior to initial delivery. Thus, a new AFC customer would normally receive its initial delivery in FY 1985 at the earliest. The table in Section 10 of this notice is constructed so that termination charges will be assessed against a maximum of 5 years of deliveries scheduled in 1983 or beyond.

The fact that the policy is non-discriminatory can be illustrated by the following example: Assume an LTFC customer with initial delivery in FY 1985 converts to an AFC contract. Such customer would have a 10 year fixed schedule expiring in FY 1994. A new AFC customer with an initial delivery in FY 1985 would have a schedule expiring in FY 1989.

If both customers gave notice of termination to DOE in FY 1983, reference to the table in Section 10 of this notice would show that each would pay termination charges related to deliveries scheduled in the 1985, 1986, and 1987 fiscal years. The table shows that the termination charges, in such a case, would be zero for the balance of the scheduled deliveries.

Comment 4—The basis for the minimum charge referred to in paragraphs 3, 4, and 8, is inconsistent with the concept of keeping DOE financially whole in constant dollars.

DOE Response—Utilization of the minimum charge referred to in paragraph 3, 4, and 8 serves to carry forward the liquidated damages concept employed prior to firm up to such time as charges computed on a replacement customer basis equal liquidated damages. Both the LTFC and AFC contracts contain provisions which allow firm up more than 5 years prior to first delivery. The termination charge table in the notice is based upon obtaining a replacement customer within 5 years. Without the minimum charge a customer would be able to firm up a contract and then for a limited period of time, terminate the contract without charge. A termination without charge, in this instance, would result in customers who did not terminate bearing the costs caused by the customers who did terminate. The minimum charge avoids this inequitable result while assuring recovery of the Government's costs of providing enrichment services.

Comment 5—The nuclear power industry should be allowed to participate in a joint industry—DOE task force which would reassess the DOE termination policy and investigate means of avoiding schedule delay charges and termination charges without cost to DOE and remaining customers.

DOE Response—A number of comments similar to the above were received by May 22, 1978, the end of the comment period. Thereafter, DOE was contacted by a group of 21 utilities who formed an *Ad Hoc* committee to discuss the possibility of a joint DOE-industry working group. Meetings between DOE and representatives of the 21 utilities were held on July 11, 1978, and on August 1, 1978.

DOE has determined, and has so informed the *Ad Hoc* Utility Group, that the proposal to establish a joint DOE-industry task force should be denied for the following reasons: 1) the formation of such a joint task force during DOE's consideration of the proposed termination charges would require DOE to provide additional and equivalent opportunities for other interested parties to provide further input and could as a result unduly delay the establishment of new termination charges, 2) such a joint task force would in all likelihood be deemed to constitute an advisory committee and would require formal chartering and balanced representation pursuant to the Federal Advisory Committee Act, and 3) DOE sees little chance, based on information received to date, that such a committee could serve a useful purpose at this time with respect to DOE's consideration of termination charges.

The following changes were made in the notice published for comment on April 21, 1978:

In paragraphs 1 and 3, the numerals "(i)" and "(ii)" were inserted to improve clarity.

In paragraphs 3, 4, and 8 the words "at least five years" were deleted from the phrase, ". . . at least five years prior to the first scheduled delivery the termination charge will be not less than a minimum amount . . .". This change was made to assure that DOE would recover costs in the case where the termination charge as computed by use of the table in paragraph 10 might be zero, or an amount smaller than the estimated costs. If notice of termination is received after the first scheduled delivery, no minimum charge will be applicable and it would then be possible to terminate without charge provided that more than 4½ years notice of termination is received and notice of termination is received in FY 1983 or later.

In paragraph 4, the formula was changed to M=SP/G, where G=the number of separative work units scheduled for delivery during the initial firm period.

This change was made since paragraph 4 applies subsequent to the time the initial firm delivery schedule has been agreed to; hence, G is known. In paragraph 3, the initial delivery schedule is not yet firm, and the total SWUs to be delivered in the initial 10-year period is approximated in the formula of paragraph 3 by 3F, or three times the initial core.

In paragraph 7, in the 9th and 10th lines of the April 21, 1978, notice, the words "Including First Core" have been deleted, since there is only one form of contract available, which is referred to as the Adjustable Fixed-Commitment contract.

In the formula in paragraph 8, the symbol "C" has been changed to "D", since the definitions of "C" in paragraph 7 and "D" in paragraph 8 are different.

In the table in paragraph 10, the first and second columns have been changed. Instead of "at least 0 yr But less than 1 yr; At least 1 yr But less than 2 yr," etc. the table now reads: "Greater than 0 year But less than or equal to ½ yr; Greater than ½ yr But less than or equal to 1½ yr; Greater than 1½ yr But less than or equal to 2½ yr," etc. This change was made because, as originally written in the April 21, 1978, notice, the termination charge calculated if notice of termination was received in the last half of a given fiscal year was greater than the termination charge calculated if notice of termination was received in the first half of that same fiscal year. As revised, the termination charge is the same notice received any time within a given fiscal year.

The notice published in the FEDERAL REGISTER on December 23, 1977 (42 FR 64400), entitled, "Uranium Enrichment Services—Termination Charges" is hereby rescinded.

DOE hereby publishes the following provisions governing termination

charges for Long-Term, Fixed-Commitment, Short-Term, Fixed-Commitment, and Adjustable Fixed-Commitment uranium enrichment services contracts.

1. The termination charge applicable to termination, in whole, by the Customer or DOE of a Long-Term, Fixed-Commitment Agreement Including First Core (i) prior to receipt of the construction permit from the Nuclear Regulatory Commission in the case of domestic Customers (or comparable authorization in the case of an agreement entered into pursuant to an agreement for cooperation with a foreign nation), for the facility designated therein, or (ii) subsequent to receipt of such permit or authorization but prior to the time the Customer is required to agree upon an Appendix A to the Agreement shall be advance payment amounts already paid by the Customer at the time of such termination plus any advance payment installment for which payment is due and outstanding.

2. The termination charge applicable to termination, in part, by the Customer of a Long-Term, Fixed-Commitment Agreement Including First Core resulting from the rated MWe of the designated facility being less than the lower limit of the gross MWe range specified in Article II of such Agreement shall be the termination charge prescribed by the provisions of such Agreement which is incorporated herein by reference.

3. The termination charge applicable to termination, in part, (other than a partial termination resulting from the rated MWe of the designated facility being less than the lower limit of the gross MWe range specified in Article II of such Agreement), by the Customer or by DOE of a Long-Term, Fixed-Commitment Agreement Including First Core (i) prior to receipt of the construction permit from the Nuclear Regulatory Commission in the case of domestic Customers (or comparable authorization in the case of an agreement for cooperation with a foreign nation), for the facility designated therein, or (ii) subsequent to receipt of such permit or authorization but prior to the time the Customer is required to agree upon an Appendix A to the Agreement shall be determined by applying to the terminated enriching services a unit charge or charges as provided in the table in paragraph 10 (as adjusted by the provisions of paragraph 9, if applicable); provided, however, that in the event that notice of a termination in part is received prior to the first scheduled delivery the termination charge will be not less than a minimum amount computed as follows:

$$M=SP/3F$$

where M=minimum termination charge
S=the number of separative work units terminated
F=the number of separative work units estimated to be required for the first core
P=the sum of the advance payments already paid plus any advance payment installment for which payment is due and outstanding.

4. The termination charge applicable to termination, in whole or in part, (other than a partial termination resulting from the rated MWe of the designated facility being less than the lower limit of the gross MWe range specified in Article II of such Agreement), by the Customer or DOE of a Long-Term, Fixed-Commitment Agreement Including First Core subsequent to the receipt of a construction permit and subsequent to the time the Customer is required to agree to an Appendix A to the Agreement for the facility designated therein and the termination charge applicable to termination, in whole or in part, by the Customer or DOE of a Long-Term, Fixed-Commitment Agreement Excluding First Core or a Short-Term, Fixed-Commitment Agreement shall be determined by applying to the terminated enriching services a unit charge or charges as provided in the table in paragraph 10 (as adjusted by the provisions of paragraph 9, if applicable); provided, however, that in the event that notice of a termination in whole or in part is received prior to the first scheduled delivery the termination charge will be not less than a minimum amount computed as follows:

$$M=SP/G$$

where M=minimum termination charge
S=the number of separative work units terminated
G=the number of separative work units scheduled for delivery during the initial firm period
P=the sum of the advance payments already paid plus any advance payment installment for which payment is due and outstanding.

5. The termination charges applicable to termination, in whole, by the Customer or DOE of an Adjustable, Fixed-Commitment contract prior to the date upon which the Customer and DOE must agree upon appendices shall be advance payment amounts already paid by the Customer at the time of such termination plus any advance payment installment for which payment is due and outstanding.

6. The termination charge applicable to termination, in part, by the Customer of an Adjustable, Fixed-Commitment contract resulting from the rated MWe generating capacity of the designated facility being less than the lower limit of the gross MWe range specified in Article II of such contract shall be the termination charge prescribed by the provisions of such contract which is incorporated herein by reference.

7. The termination charge applicable to termination, in part, (other than a partial termination resulting from the rated MWe of the designated facility being less than the lower limit of the gross MWe range specified in Article II of such Agreement), by the Customer or by DOE of an Adjustable, Fixed-Commitment Contract prior to the date upon which the customer and DOE must agree upon appendicies shall be an amount computed as follows:

$$A=SP/C$$

where A=the termination charge
S=the number of separative work units terminated
C=the number of separative work units estimated to be required by the designated facility over the initial five year delivery period
P=the sum of the advance payments already paid plus any advance payment installment for which payment is due and outstanding.

8. The termination charge applicable to termination, in whole or in part, (other than a partial termination resulting from the rated MWe of the designated facility being less than the lower limit of the gross MWe range specified in Article II of such contract), by the Customer or DOE of an Adjustable, Fixed-Commitment contract subsequent to the date upon which the Customer and DOE must agree upon appendices shall be determined by applying to the terminated enriching services a unit charge or charges as provided in the table in paragraph 10 (as adjusted by the provisions of paragraph 9, if applicable); provided, however, that in the event that notice of a termination in whole or in part is received prior to the first scheduled delivery the termination charge will be not less than a minimum amount computed as follows:

$$B=SP/D$$

where B=the minimum termination charge
S=the number of separative work units terminated
D=the number of separative work units scheduled for delivery during the initial five-year firm delivery period as set forth in Appendix A of the contract
P=the sum of the advance payments already paid plus any advance payment installment for which payment is due and outstanding.

9. If the Customer terminating pursuant to paragraphs 3, 4, or 8 elects to make the termination effective on a date later than the date upon which DOE receives the notice, the applicable termination charges will be arrived at by multiplying the charges derived from paragraph 10 by 1.065^n, where n is the time stated in years and frac-

tions of years between the date of receipt of the notice and the effective date of termination, and such charge will become due on the effective date of termination.

10. TABLE OF TERMINATION CHARGES.—*Termination Charge per kilogram Unit of Separative Work Terminated, as Percentage of Applicable Enriching Services Charge* [2]

For Advance Notice of Termination [1]

Greater Than	But Less Than or Equal To	If Notice of Termination is Received in FY 78	FY 79	FY 80	FY 81	FY 82	FY 83 or later
0 yr	½ yr	48.5	45.1	41.5	36.5	32.3	27.9
½ yr	1½ yrs	42.4	39.0	34.2	30.4	26.2	21.8
1½ yrs	2½ yrs	36.6	32.2	28.5	24.6	20.5	16.1
2½ yrs	3½ yrs	30.2	26.8	23.1	19.3	15.1	10.7
3½ yrs	4½ yrs	25.1	21.7	18.1	14.2	10.1	5.7
4½ yrs	5½ yrs	20.4	17.0	13.3	9.5	5.3	0
5½ yrs	6½ yrs	15.9	12.5	8.9	5.0	0	0
6½ yrs	7½ yrs	11.8	8.3	4.7	0	0	0
7½ yrs	8½ yrs	7.8	4.4	0	0	0	0
8½ yrs	9½ yrs	4.1	0	0	0	0	0
9½ yrs		0	0	0	0	0	0

[1] For purposes of determining when enriching services would have been furnished but for such termination, enriching services scheduled to be delivered on a monthly basis shall be deemed to be scheduled for delivery on the 15th day of such months; and for services scheduled for delivery on a fiscal year basis, they shall be deemed to be scheduled for delivery on April 1 of such fiscal years.

[2] For purposes of determining the applicable enriching service charge per kilogram unit of separative work terminated which have been scheduled for delivery on a monthly basis, such applicable charge shall be the applicable charge scheduled to be effective on the 15th day of such months; and for services scheduled for delivery on a fiscal year basis, such applicable charge shall be the applicable charge scheduled to be effective on April 1 of such fiscal years.

11. Enriching services charges applicable to the terminated enriching services shall be determined in accordance with the established charges for enriching services in effect on the date of receipt of notice of termination; provided, however, that in the event revisions in the standard table of enriching services and/or revisions in the established charges for enriching services have been announced and are to become effective subsequent to receipt of notice of termination, the kg units of separative work and the enriching services charge applicable to the terminated enriching services which, but for such termination, would have been furnished under this agreement on and after the effective date of such revision shall be determined in accordance with such revised table of enriching services and/or revised charges for enriching services.

Effective Date. This notice shall become effective on December 15, 1978.

Dated: December 8, 1978.

STANLEY I. WEISS,
Deputy Assistant Secretary for Utility and Industrial Energy Applications; Resource Applications.

[FR Doc. 34930 Filed 12-14-78; 8:45 am]

[6450-01-M]

Economic Regulatory Administration

[ERA Docket No. 78-007-LNG]

COLUMBIA LNG CORP., CONSOLIDATED SYSTEM LNG CO., SOUTHERN ENERGY CO.

Request for Amendment to Orders Authorizing Importation of LNG

AGENCY: Department of Energy, Economic Regulatory Administration

ACTION: Notice of receipt of application and invitation to submit petitions to intervene in the proceedings.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of the Joint Application of Columbia LNG Corporation (Columbia LNG), Consolidated Systems LNG Company (Consolidated LNG) and Southern Energy Company (Southern Energy), in ERA Docket No. 78-007-ERA, requesting amendments of orders issued by the Federal Power Commission (FPC), more fully described hereinafter, pursuant to Section 3 of the Natural Gas Act. The requested amendements would increase the ceiling prices from 124 cents to 146 cents per MMBtu for deliveries of liquefied natural gas (LNG) to Columbia LNG and Consolidated LNG at Cove Point, Maryland, and from 131 cents to 156 cents per MMBtu for deliveries to Southern at Elba Island, Georgia.

Petitions to intervene are invited.

DATES: Petition to intervene: To be filed on or before January 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Finn K. Neilsen, 2000 M Street, N.W. Room 6318, Washington, D.C. 20461 Telephone: (202) 254-9730

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Joint Application by Columbia LNG, Consolidated LNG and Southern Energy (jointly referred to as Applicants) was filed with the Federal Energy Regulatory Commission (FERC) on August 29, 1978. FERC transferred the application to ERA on September 20, 1978, pursuant to the joint rule entitled "Transfer of Proceedings to the Seretary of Energy and the Federal Energy Regulatory Commission," adopted October 1, 1977, 10 CFR 1000.1 (d). The application was originally filed in FPC Docket Nos. CP71-68, CP71-153 and CP71-151. Upon its receipt by ERA it was assigned ERA Docket No. 78-007-LNG.

The Applicants request that previous FPC orders, in Opinion 622 (47 FPC 1624), as modified on rehearing by Opinion 622-A (48 FPC 723) and "Findings and Order Amending Prior Order and Granting Intervention" issued July 27, 1977, be amended by increasing the ceiling prices established by such orders. These ceiling prices are the prices, as authorized in the aforementioned Opinions and Order, to be paid to El Paso Algeria Corporation (El Paso Algeria) by the Applicants. Such authorization is presently "limited to a price of 124 cents per MMBtu plus additional costs which may be shown to serve the future public convenience and necessity, by application under Section 3" of the Natural Gas Act for deliveries by El Paso Algeria to Columbia LNG and Consolidated LNG at Cove Point, Maryland. The price for deliveries to Southern Energy at Elba Island, Georgia is limited to 131 cents per MMBtu pursuant to the aforementioned Opinions and Order. Columbia LNG and Consolidated LNG have requested that they be authorized to pay 146 cents per MMBtu for deliveries at Cove Point, and Southern Energy requests authorization to pay 156 cents per MMBtu for deliveries at Elba Island.

Columbia LNG and Consolidated LNG are authorized to import LNG at an average rate of 337.50 billion Btu

per day and 393.75 billion Btu per day, respectively, at Cove Point. Southern Energy is authorized to import 393.75 billion Btu per day at Elba Island. These amounts of LNG are being sold to the Applicants pursuant to purchase contacts with El Paso Algeria which were approved by the FPC in Opinion No. 622-A, and the delivered prices are stated to be calculated in accordance with formulas contained in those contracts.

The Applicants state that the increased ceiling prices requested are fully justified by increased transportation costs due to project delays and rates of inflation higher than previously anticipated, and that the evidence submitted compels a finding that the existing price limitations are inadequate for LNG delivered to Cove Point and Elba Island during the first year of full deliveries.

OTHER INFORMATION

The Applicants application in ERA Docket No. 7-007-LNG is on file with the ERA and open to inspection in the Public Docket Room at 2000 M Street, N.W., Washinton, D.C., Room B-110, between the hours of 8 A.M. to 5 P.M., Monday through Friday, except for Federal holidays.

The ERA invites petitions for intervention in the proceedings. Such petitions are to be filed with the Economic Regulatory Administration, Room 6318, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 157.10). Such petitions for intervention will be accepted for consideration if filed no later than 4:30 P.M. on January 2, 1979.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing which may be convened herein must file a petition to intervene. Any person desiring to make any protest with reference to the application should file a protest with the ERA in the same manner as indicated above for petitions to intervene. All protests filed with ERA will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Pursuant to the authority contained in Section 3 of the Natural Gas Act, as delegated to the ERA in the Department of Energy Delegation Order Nos. 0204-4 (42 FR 60726, November 29, 1977) and 0204-25 (43 FR 47769, October 17, 1978), and the rules of practice and procedure, a formal hearing will not be held unless a motion for such hearing is made by any party or intervener and is granted by ERA, or if the REA on its own motion believes that such a hearing is required. If such hearing is deemed required, due notice will be given.

Issued in Washington, D.C., on December 11, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 78-34871 Filed 12-14-78; 8:45 am]

[6740-02-M]

Federal Energy Regulatory Commission

[Docket No. EL78-10]

DELMARVA POWER & LIGHT CO.

Order Approving Mergers

DECEMBER 4, 1978.

On February 23, 1978, Delmarva Power & Light Company (Delmarva-Delaware) and its wholly-owned subsidiaries, Delmarva Power Light Company of Maryland (Delmarva-Maryland) and Delmarva Power & Light Company of Virginia (Delmarva-Virginia) (Applicants), filed a joint application pursuant to Section 203 of the Federal Power Act, for authorization to separately merge the facilities of Delmarva-Maryland and of Delmarva-Virginia with those of Delmarva-Delaware.[1] The Applicants state that Delmarva-Delaware, the surviving corporation, will carry on the same business as the individual Applicants.

Delmarva-Delaware is a Delaware corporation qualified to do business in Delaware, Maryland, New Jersey and Pennsylvania.[2] Delmarva-Delaware is also a registered public utility holding company subject to the jurisdiction of the Securities and Exchange Commission (SEC) under the Public Utility Holding Company Act of 1935, 15 U.S.C. 79, *et seq.* However, the SEC has granted it an exemption from certain provisions of the Holding Company Act, pursuant to a finding under 15 U.S.C. 79(c)(a)(2) that Delmarva-Delaware is also an operating company whose operations are confined to its state of incorporation and states contiguous thereto.[3] By letter dated January 23, 1978, Delmarva-Delaware was informed by the Director of the Division of Corporate Regulation, SEC, that the proposed merger would not require SEC approval and that it would terminate Delmarva-Delaware's status as a registered public utility holding company.

Each Applicant owns generation, transmission and distribution facilities within its respective service territory. These facilities are presently operated as an integrated system, also interconnected with the Pennsylvania-New Jersey-Maryland Power Pool pursuant to agreements with Philadelphia Electric Company. The Companies transmit electric energy in interstate commerce within the system and through the Philadelphia Electric interconnection. The Delmarva system provides electric energy to both wholesale and resale customers in a contiguous 5,700 square mile service area—the Delmarva Peninsula—which has a population of approximately 846,000.[4] All the operating facilities of Delmarva-Maryland and the Delmarva-Virginia would be merged with those of Delmarva-Delaware under the proposed merger.

Delmarva-Delaware is a combination electric and gas utility. In addition to its electric facilities, it owns and operates plants and properties for the production and distribution of natural gas and serves gas customers in an area of approximately 275 square miles in northern New Castle County, Delaware (including the City of Wilmington) which has a population of about 396,000. Delmarva-Delaware has another wholly-owned subsidiary, Delmarva Energy Company (Delmarva Energy), a Delaware corporation which is the only affiliated entity not a party to this merger application. Delmarva Energy is engaged in natural gas exploration, financed by internally-generated funds and funds provided from its parent's retained earnings. The merger application states that Delmarva Energy will be unaffected by the proposed mergers.

Under the proposal, the outstanding securities of Delmarva-Maryland and of Delmarva-Virginia (all of which are presently owned by Delmarva-Delaware) will be cancelled and Delmarva-Delaware will succeed to the rights and assume the obligations and liabilities of its two subsidiaries. Therefore, the Applicants have also requested this Commission to either disclaim jurisdiction to review Delmarva-Delaware's assumption of these liabilities and obligations under Section 204 of the Power Act, or authorize the proposed transactions upon a finding of such jurisdiction. The Applicants intend that the two mergers be con-

[1] Each Applicant is a "public utility" as defined in Section 201(e) of the Federal Power Act and each is a Class A utility as defined in the Commission's Uniform System of Accounts (18 CFR 101), i.e., they each have annual electric operating revenues in excess of $2,500,000.

[2] Delmarva-Maryland is a Maryland corporation and Delmarva-Virginia is incorporated under the laws of Virginia. In order to satisfy the requirements of Virginia law that a public utility operating in Virginia be a domestic corporation, the Applicants intend that Delmarva-Delaware will become a Virginia corporation as well as a Delaware corporation upon consummation of the mergers.

[3] *Delmarva Power & Light Company, et. al.*, Holding Company Act Release No. 19717 (October 19, 1976).

[4] Delmarva-Delaware also provides steam as well as electricity to a non-affiliate oil refinery in Delaware City, Delaware.

summated simultaneously, as soon as possible after the requisite shareholder and regulatory approvals are obtained.

Pursuant to Section 203(a) of the Federal Power Act, written notice of the application was given to the Delaware Public Service Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the Governors of each of those States. Public notice of the application was also issued in the FEDERAL REGISTER on March 2, 1978, with protests and petitions to intervene due on or before March 24, 1978. No petition, protest or request to be heard in opposition to the application has been received.

No evidentiary hearing on the proposed mergers has been held; however, none is warranted under the circumstances of this case. The Applicants are presently affiliated and operate as an integrated system. *See,* Order Approving Merger And Granting Intervention, *Wisconsin Electric Power Co., et al.,* Docket No. E-9596 (July 28, 1977). Moreover, no one has seen fit to protest the Delmarva proposal.

We find that the proposed mergers are "consistent with the public interest" and are, therefore, in compliance with the standards of Section 203. Our reasoning will be fully explained below. We shall approve the mergers as hereinafter ordered. Furthermore, we find that the assumption by Delmarva-Delaware of the obligations and liabilities of its two subsidiaries is not within our jurisdiction according to Section 204(f) of the Power Act because those transactions are subject to the jurisdiction of the Delaware Public Service Commission.[5]

Determination of the Public Interest Under Section 203—Before a public utility may merge or consolidate any of its jurisdictional facilities with the facilities of any other person, it must obtain this Commission's approval pursuant to Section 203 of the Federal Power Act. Section 203(a) provides that approval shall be granted if the Commission finds that the proposed merger "will be consistent with the public interest . . ." Section 203(b) states that the Commission may approve a proposed merger "in whole or in part and upon such terms as it finds necessary or appropriate to secure the maintenance of adequate service and the coordination in the public interest of facilities subject to the jurisdiction of the Commission." Applicants must fully disclose all material facts relating to the transaction. They also have a burden of affirmatively showing that the merger will be compatible with the public interest and "will not result in detriment to consumers or investors or to other legitimate national interests." *Pacific Power & Light Company* v. *Federal Power Commission,* 111 F. 2d 1014, 1016 (9th Cir. 1940).

In defining the public interest standard against which to evaluate a proposed merger, consideration must be given to the substantive standards of Section 202(a) of the Federal Power Act to assure "an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources." *Commonwealth Edison Company,* et. al., 36 FPC 927, 931 (1966), *aff'd sub nom., Utility Users League* v. *F.P.C.,* 394 F. 2d 16 (7th Cir. 1968), *cert. denied,* 393 U.S. 953. The Federal Power Commission developed the following criteria with which to determine the consistancy of a proposed merger with the public interest: 1) the effect of the proposed merger on service and operating costs, 2) the effect on rates, 3) the reasonableness of the acquisition price, 4) the contemplated accounting treatment for the merger, 5) the effect of the merger on state and federal regulatory authority, and 6) the effect the merger will have on the existing competitive situation. *Commonwealth Edison Company, supra,* at 932. Although additional criteria might be required to meet the exigencies of a particular case, we believe that analysis of these six will be sufficient for our evaluation of the consistency of the proposed Delmarva merger with the public interest.

Effect of the Merger on Operating Costs and Services. The Applicants anticipate that more efficient and economical operation of the Delmarva system will result from the proposed mergers. Separate corporate administrations for the companies will no longer be necessary resulting in the attrition or reassignment of some 28 employees, primarily in the areas of bookkeeping, financial reporting, property accounts, purchasing and inventory management. Although detailed records will still be maintained for cost allocation purposes in rate proceedings, Applicants claim administrative efficiencies will result from elimination of the need for separate and consolidated, monthly and annual reports and accounting statements. Inter-company billings for services and salaries will also be eliminated. Annual savings from the reductions in personnel are estimated by the Applicants to reach $560,000 after three to seven years.

The financing operations of the companies will no longer be encumbered by separate issuances of securities by the subsidiaries to Delmarva-Delaware in addition to issuances by Delmarva-Delaware to the public. Transfers of inventory within the reorganized system will be simplified. According to the Applicants, savings of about $400,000 per year will also be achieved due to a more efficient cash management—accelerated flow of receipts, the transfer of funds in collection banks to general operating accounts, the elimination of restrictions of the commingling of funds, and other factors.

The applicants also claim that the mergers will not affect existing contracts or service subject to this Commission's jurisdiction. The existing Delmarva System Power Pool Agreement, which provides for the sharing of generation and transmission costs among the Applicants would be discontinued after the mergers are completed.[6] An interconnection agreement between Delmarva-Maryland and the Town of Easton, Maryland, will be adopted by Delmarva-Delaware in addition all service agreements under tariffs of Delmarva-Virginia and Delmarva-Maryland.

Based on the foregoing, we believe that the effect of this proposed consolidation on the operating costs and on the service provided by the Delmarva system will be consistent with the public interest.

Effects of the Proposed Merger on Rates. The wholesale rates of the three Applicants are presently reviewed by this Commission on a unitary basis. Delmarva-Delaware, as the surviving corporation, would adopt the wholesale rates of Delmarva-Maryland and Delmarva-Virginia. Thus, the proposed mergers will not affect rates subject to this Commission's jurisdiction, other than through possible cost reductions. When Delmarva next applies for a wholesale rate increase, cost reductions projected by the Applicants should be scrutinized in light of the operating experience of the surviving company. Failure to realize anticipated savings could be grounds for our disallowance of certain alleged costs of wholesale service. Delmarva-Delaware will also adopt the existing retail rates of its two subsidiairies. These retail rates are not uniform due to differences of policy among the several state regulatory agencies with regard to rate design, allowed rates of return and expense allowances. It appears that the proposed merger will have no adverse effect on rates and, in this respect, will be consistent with the public interest.

[5] On May 9, 1978, the Delaware Public Service Commission, gave its approval to the proposed merger. Approval from the Maryland and Virginia regulatory authorities has not yet been obtained.

[6] This Agreement provides for the allocation of power costs based on the ratio of operating-company demands to the average of three highest historic annual peaks. The Applicants state that allocations after the merger will be based on the ratio of operating-company demands to the average of the four highest demands on separate days during a test period.

Reasonableness of the Acquistion Price. The facilities, rights and obligations, assets and liabilities of Delmarva-Maryland and Delmarva-Virginia will be acquired by Delmarva-Delaware and the outstanding securities of these subsidiaries, all owned by Delmarva-Delaware, will be cancelled upon completion of the merger. All securities of Delmarva-Delaware will be unaffected by the proposed transactions. No separate consideration will be given by Delmarva-Delaware to its two subsidiaries other than the assumption of their respective obligations.

The Boards of Directors of the three Delamarva companies have already submitted resolutions authorizing the proposed mergers. However, the Applicants state that the mergers will not be consummated until the preferred and common stockholders of Delmarva-Delaware give their approval of the proposal at the special stockholders meeting.

The general terms of the mergers with regard to the price of acquisition appear fair. If the Delmarva-Delaware stockholders give their approval to the proposed mergers, there is no evidence that any person was coerced into the agreements.

Accounting Treatment. Accounting treatment of the proposed merger appears to be in accordance with generally accepted accounting principles currently in effect and is consistent with the requirements of the Commission's Uniform System of Accounts.

Effect on Regulatory Authority. There is no evidence that regulation by the Delaware, Maryland and Virginia utility commission will be inhibited by the proposed mergers. Neither will regulation by this Commission of Delmarva-Delaware's interstate operations be adversely affected. Thus, we believe that the proposed mergers will be consistent with the public interest from the standpoint of regulatory effectiveness.

Effect of the Proposed Merger on Competition. Antitrust considerations are important to the determination of whether a merger will be consistent with the public interest. *Gulf States Utilities Co.* v. *FPC*, 411 U.S. 747, 758–59 (1973); *cf., California* v. *FPC*, 369 U.S. 482, 484 (1962). Again, we rely upon the holding in *Commonwealth Edison Co.*, 36 FPC 927, 941 (1966), for its enunciation of the separate areas of inquiry which must be pursued in determining whether the proposed Delmarva merger will have anticompetive consequences:

> In the context of regulated public utilities, the "anti-competitive effect" of a merger requires consideration of at least three different questions: (1) will the merger bring a significant added concentration of economic power? (2) will it eliminate any meaningful competition which may exist, either directly or by example, in attracting new industries to their respective service areas, in making wholesale sales, or in providing economical service? (3) will it have an adverse effect on competing sources?

There is no evidence that the proposed merger would in any way increase the economic power of the surviving corporation. Delmarva-Delaware is presently the sole owner of the outstanding securities of Delmarva-Maryland and Delmarva-Virginia. The proposal would only simplify the Delmarva corporate structure by merging these subsidiaries into the parent. No extra-system acquistion is involved. Moreover, the Applicants state that they do not contemplate any further mergers with either affiliated or non-affiliated entities.

The Applicants assert that there is presently no competition among themselves which might be inhibited by the proposed merger. They further claim that no competition exists "between the individual Applicants and their respective wholesale customers within the Applicant's service territories, and no lessening of competition will therefore result from the proposed merger." Considered alone, we certainly would not accept this second statement as dispositive of the question. However, as noted above, no wholesale customer of the Applicant has intervened in this proceeding to allege any potential diminution of competition. Whether or not the Applicants are correct in asserting that no competition exists between the Delmarva companies and their wholesale customers, we find no evidence of any anticompetitive problems with regard to wholesale sales of electricity by any of the Applicants.

In passing upon the proposed mergers the Commission must consider the effect combined operation of gas and electric facilities by a single utility could have on the preservation of competition betwen gas and electric utilities and the possibility that, in combined systems, one form of energy might be favored over the other. Although the Public Utility Holding Company Act of 1935, *supra*, was enacted to correct abuses found by Congress to be due to control of this nation's electric and gas utility industries by holding companies, *North America Co.* v. *S.E.C.*, 326 U.S. 686, 689 (1946), this Commission has made it clear that these Congressional policies are to be given recognition in the context of mergers of operating companies. *Iowa Power & Light Company*, 44 FPC 1640, 1643 (1970). Applicants have the burden of showing that a proposed merger and the combined operation of both gas and electric facilities will be consistent with the public interest. *Id.*

Applicants assert that Delmarva-Delaware has distributed natural gas for 30 years and that its ownership and operation of this utility business would be unaffected by the proposed merger. Essentially, Applicants continue to rely on arguments made in the above-referenced proceeding before the SEC wherein divestiture of Delmarva-Delaware's gas properties was considered, but not required.[7] Before the SEC Delmarva-Delaware argued that the continuing energy crisis and natural gas shortage made the coordination of more than one type of energy production and distribution consistent with the public interest. It claimed that divestiture would increase the cost of providing gas service to its customers and cause higher rates. The Delaware Public Service Commission supported combined utility operations, suggesting that the costs of financing an independent gas company would be greater than those incurred by Delmarva-Delaware and that divestiture of Delmarva's gas properties would not be in the interest of consumers who are served by the Delmarva gas system.

Additionally, the Applicants now state that the promotion of retail competition between its gas and electric utilities is less critical becasue of an order issued by the Delaware Public Service Commission which prohibits Delmarva-Delaware from accepting any new gas customers. The Applicants also state that since the close of the SEC proceedings, Delmarva-Delaware has invested in gas exploration through its subsidiary, Delmarva Energy, to offset gas curtailments imposed on Delmarva-Delaware by its sole natural gas pipeling supplier.

We conclude that the retention of Delmarva-Delaware's gas distribution properties after the proposed merger would not adversely affect competition between electric and gas utilities within the Applicants' service territories. This decision rests on the nature of the proposed transaction, which is a consolidation of operating utilities presently under one ownership rather than the acquisition of any additional electric or gas utility, and the Applicant's demonstration that the opportunity for increased competition through divestiture is not significant.

The Commission finds:

(A) Delmarva-Delaware, Delmarva-Maryland, and Delmarva-Virginia are public utilities within the meaning of Sections 201 and 203 of the Federal Power Act and subject to the jurisdiction of the Commision.

(B) Under the proposed mergers described above and set forth in the ap-

[7] *Delmarva Power & Light Company, et al.*, Holding Company Act Release No. 19717 (October 19, 1976).

plication, the facilities of Delmarva-Maryland and Delmarva-Virginia will be merged with those of Delmarva-Delaware.

(C) The proposed mergers, upon the terms and conditions specified in the application subject to the provisions of this order, will be consistent with the public interest as expressed in Section 203 of the Federal Power Act for the reasons set forth above.

(D) A hearing is not warranted in this proceeding.

The Commission orders:

(A) The proposed mergers of the facilities of Delmarva-Delaware with the facilities of Delmarva-Maryland and Delmarva-Virginia, all as described above, are hereby authorized and approved upon the terms and conditions set forth in the application and subject to the provisions of this order.

(B) Delmarva-Delaware shall record the merger transactions herein authorized and approved and the facilities and properties described above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licenses.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs or any matter whatsoever now pending or which may come before this Commission or any other regulatory body.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-34874 Filed 12-14-78; 8:45 am]

[6740-02-M]

[Docket No. CI62-585]

DORCHESTER GAS PRODUCING CO. (FORMERLY PALM PETROLEUM CORP.)

Merger and Petition To Amend Certificates of Public Convenience and Necessity, To Amend Applications, To Redesignate Rate Schedules, and To Redesignate Pending Proceedings

DECEMBER 11, 1978.

Take notice that on August 4, 1978, Dorchester Gas Producing Company, 1509 Main Street, Suite No. 901, Dallas, Texas 75201, filed in Docket No. CI62-585, a petition reflecting merger of Palm Petroleum Corporation into Dorchester Gas Producing Company, and to amend certificates and applications, to redesignate rate schedules and pending proceedings currently held by Palm Petroleum Corporation to show Dorchester Gas Producing Company as certificate holder.

Effective January 6, 1977, Palm Petroleum Corporation's natural gas activities were consolidated with Dorchester Gas Producing Company and will be operated under the name of Dorchester Gas Producing Company.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before December 19, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any 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. 78-34875 Filed 12-14-78; 8:45 am]

[6740-02-M]

[Docket No. RP79-12]

EL PASO NATURAL GAS CO.

Proposed Change in Rates

DECEMBER 7, 1978.

Take notice that on November 30, 1978, El Paso Natural Gas Company ("El Paso") tendered for filing a notice of a change in rates (and certain identified tariff provisions) for its interstate pipeline system containing the following revised tariff sheets:

Original Volume No. 1

Twenty-fourth Revised Sheet No. 3-B
First Substitute Sixth Revised Sheet No. 63-C.6
Third Revised Sheet No. 67-B

Third Revised Volume No. 2

Fourteenth Revised Sheet No. 1-D
Seventh Revised Sheet No. 1-D.2
First Substitute Sixth Revised Sheet No. 1-M.6

Original Volume No. 2A

Sixteenth Revised Sheet No. 1-C
Twelfth Revised Sheet No. 1-D
First Substitute Sixth Revised Sheet No. 7-MM.6

The tendered revised tariff sheets provide for a change in rates to apply to El Paso's interstate natural gas operations. The proposed effective date is January 1, 1979, except in the case of Third Revised Sheet No. 67-B, where the proposed effective date is June 1, 1979. El Paso states that its jurisdictional rates which are firm and which were approved by order issued Septemer 5, 1978, at Docket No. RP 78-18, are deficient based upon the test period cost of service and projected sales volumes in an amount of $167,875,256 annually. El Paso further states that approximately $110.0 million of such deficiency is comprised of increased gas well royalty and production tax expense which is directly attributable to the increased natural gas prices resulting from the enactment of the Natural Gas Policy Act of 1978 ("NGPA"). The remaining portion of the deficiency—approximately $57.9 million—is attributable to increases in other items of cost, including labor, capital, fuel, materials and supplies, and taxes, and to an increase in gas well royalty and production tax expense resulting from an increase in the estimated volumes of produced gas. El Paso is seeking an increase above the level of existing rates of approximately 4.2% in the instant filing, exclusive of the cost impact of the NGPA.

The increase in rates proposed by the filing and necessary to recover the deficiency is an overall increase of 17.22¢ per Mcf under all affected sales rate schedules, except for Rate Schedule X-1, and the special rate schedules "keyed" thereto, where the increase proposed is 13.82¢ per Mcf. The proposed increase in rates for transportation services is 2.74¢ per Mcf as to Mainline Transmission Charges, 2.08¢ per Mcf as to Field Transmission and Field Gathering Changes, 0.78¢ par Mcf as to Processing and 0.03¢ per Mcf applicable to Dehydration only. Additionally, the storage surcharge applicable to Rhodes Reservoir storage service rendered to protect Priority 1

and 2 requirements of east-of-California customers is proposed to be increased by 0.26¢ per Mcf.

For the reasons fully explained in the Statement of the Nature, the Reasons and the Basis for the notice of change, El Paso has specifically requested waiver of the requirements of Section 154.63(3)(2)(i) of the Commission's Regulations, in order to permit El Paso to include in its rates the effect of increased natural gas prices upon special overriding royalty costs which will be incurred by El Paso on June 1, 1979, only one (1) day beyond the end of the test period selected for the instant filing. El Paso has also requested waiver of the requirements of Section 154.63(3)(2)(ii) of the Commission's Regulations, to permit the inclusion in rate base of facilities not yet placed in service. In the event that such facilities have not been placed in service prior to the effective date of the rates which are the subject of this filing, El Paso states that it will adjust its rates to reflect the elimination of such facilities from rate base and the elimination of the associated costs from rates.

El Paso states that by letter order dated September 5, 1978, at Docket No. RP78-18, the Commission accepted and approved El Paso's Stipulation and Agreement dated June 23, 1978, which provides, *inter alia*, for the settlement of issues involves in the general rate increase proceeding before the Commission at Docket No. RP78-18. Among the provisions which were adopted as a part of said Stipulation and Agreement was a modification to El Paso's then effective Purchased Gas Cost Adjustment Provision ("PGAC") which changed the methodology for determining the annualized purchased gas cost from the utilization of twelve months of actual purchased gas volume to the utilization of one month of actual purchased gas volumes. El Paso further states that, in compliance with the directives of the aforementioned September 5, 1978, order, it has tendered, as part of its notice of change, Third Revised Sheet No. 67-B to its Original Volume No. 1 Tariff which provides that the determination of the gas cost adjustment will be based on the twelve months of actual purchased gas volumes methodology utilized prior to the approval of El Paso's Stipulation and Agreement at Docket No. RP78-18. The proposed effective date for such tariff sheet is June 1, 1979.

El Paso states that, in connection with the notice of change, it is also proposing certain permanent modifications to Section 19, Purchased Gas Cost Adjustment Provision to El Paso Original Volume No. 1 Tariff which would:

(i) Re-establish the use of one month of actual purchased gas volumes in determining the annualized change in purchased gas costs;

(ii) Permit the inclusion within the PGAC annualizing adjustment of producer rate escalations occurring pursuant to the NGPA within the six-month period that the PGAC rate adjustment is to be effective; and

(iii) Incorporate within El Paso's PGAC a permanent gas well royalty and production tax adjustment provision.

El Paso states that the purpose of modifications (i) and (ii) is to require that changes in purchased gas costs be reflected in El Paso's rates on a more current basis, thereby reducing the amounts collected by El Paso from its customers on a deferred basis. El Paso further states that the purpose of modification (iii) is to permit the periodic adjustment of El Paso's rates to reflect changes in the level of gas well royalty and production tax expense resulting from variations in the volume of produced gas and, as well, from changed in the price of natural gas.

To implement the proposed PGAC changes described above, El Paso has also included in its notice of change certain *pro forma* "Alternative Revised Tariff Sheets" which modify Section 19 of the General Terms and Conditions contained in Original Volume No. 1 of El Paso's FERC Gas Tariff. El Paso has requested that the Commission institute an investigation into the justness and reasonableness of the three proposed PGAC modifications, and that such investigation be conducted with and as a part of the Section 4 proceeding precipitated by the filing of the Notice of Rate Change. El Paso has further requested that the Commission approve the proposed modifications at its earliest convenience and that the tendered tariff sheets implementing such modifications be made effective for prospective application following the issuance of a final Commission order approving such tariff sheets.

El Paso states that if the effectiveness of the rates proposed by the instant notice is suspended beyond the date that its regularly scheduled PGAC rate adjustments, or any other rate adjustment or surcharge which El Paso may be authorized to collect, becomes effective, El Paso will make the necessary filings with the Commission of substitute revised tariff sheets to reflect in its rates, the subject of the instant notice, the effect of any such adjustment or surcharge.

El Paso has requested that waiver be granted of all applicable rules and regulations of the Commission as may be necessary so as to implement the notice of change in the manner described herein.

El Paso states that a copy of the notice of change, together with a copy of the documents filed concurrently, has been served upon all affected customers served under El Paso's Original Volume No. 1, Third Revised Volume No. 2 and Original Volume No. 2A Tariff, all direct sale customers served from El Paso's interstate system whose rates are "keyed" to jurisdictional rates and, otherwise, upon all interested state regulatory commissions.

Any person desiring to be heard or to protest said notice should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C., 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 C.F.R. 1.8, 1.10). All such petitions or protests should be filed on or before December 22, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding. Any person wishing to become a party must file a petition to intervene. El Paso's proposed tariff sheets and rate filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-34876 Filed 12-14-78; 8:45 am]

[6740-02-M]

[Docket Nos. CS72-807, *et al.*]

GODFREY OIL PROPERTIES, AN OKLAHOMA GENERAL PARTNERSHIP, ET AL.

Applications for "Small Producer" Certificates [1]

DECEMBER 4, 1978.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 28, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropri-

[1] This notice does not provide for consolidation for hearing of Lois D. Cashell covered herein.

ate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal 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 held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

Docket No.	Date Filed	Applicant
CS72-807[1]	9/18/78	Godfrey Oil Properties, an Oklahoma General Partnership, P.O. Box G, Madill, Oklahoma 73446
CS78-634[2]	9/12/78	Oxy Petroleum, Inc. And The Permian Corporation And Canadian Occidental of California, Inc., 5000 Stockdale Highway, Bakersfield, Ca. 93309
CS79-75	11/3/78	Dorothy F. Eckels, 2101 Youngfield, Golden, Colorado 80401
CS79-78	11/16/78	Golden Trend Oil & Gas Corp., 1820 The 600 Building, Corpus Christi, Texas 78473
CS79-86	11/13/78	Fletcher F. Farrar, Box 747, Mt. Vernon, Illinois 62864
CS79-87	11/13/78	Boardwalk Petroleum, Incorporated, 115 South Main, Suite 403, Salt Lake City, Utah 84111
CS79-88	11/13/78	Jane Gregory Marechal, 1700-A First City Natl. Bank, Houston, Texas 77002
CS79-89	11/13/78	JGJ Corporation, 1700-A First City Natl. Bank, Houston, Texas 77002
CS79-90	11/13/78	Jane Gregory Marechal & George, Stuart Heyer, Jr., Trustees, 1700-A First City Natl. Bank, Houston, Texas 77002
CS79-91	11/13/78	Sarah Hughes Wade, 7501 Democracy Blvd., Bethesda, Maryland
CS79-92	11/13/78	Sentry Oil & Gas Company, 501-120 S. Market, Wichita, Kansas 67202
CS79-93	11/13/78	Adeline K. Van Arsdale, 1345 Monterey Street, Redlands, California 92373
CS79-94	11/13/78	Anhur Resources, Inc., 600 Jefferson, Suite 1525, Houston, Texas 77002
CS79-95	11/13/78	Mervyn M. Mace & Wanda L. Mace, individually and as joint tenants, Petroleum Building, 221 South Broadway, Wichita, Kansas 67202
CS79-96	11/13/78	Integrity Oil & Gas Co., 410 17th Street—Suite 1670, Denver, Colorado 80202
CS79-97	11/13/78	Dave R. Sylvan, 525 South Main, Tulsa, Oklahoma 74103
CS79-98	11/14/78	Martin B. Muncy, P.O. Box 196, Artesia, New Mexico 88210
CS79-99	11/13/78	Elba Oil Corporation, 2308 Medford Court West, Fort Worth, Texas 76109
CS79-100	11/17/78	A. L. McQuaid, d.b.a. Appalachian Mineral Company, Route No. 1, Box 92, Lumberport, W. Va. 26386
CS79-101	11/17/78	Patrick H. Cunningham & Frank O. Cunningham, d.b.a. Ten-A Coal Company, Route No. 1, Box 92, Lumberport, W. Va. 26386
CS79-102	11/17/78	Carlson Petroleum Company, 2001 Bryan Tower, Suite 1100, Dallas, Texas 75201
CS79-103	11/17/78	William M. Shaw, P.O. Drawer 420, Homer, Louisiana 71040
CS79-104	11/20/78	Sanguine Ltd., P.O. Box 35486, Tulsa, Oklahoma 74135
CS79-105	11/20/78	Jeems Bayou Production Corporation, P.O. Box 639, Oil City, Louisiana 71061
CS79-106	11/21/78	C L Company, P.O. Box 6, Big Lake, Texas 76932
CS79-107	11/21/78	Al-Aquitaine Exploration, Ltd., 2000 Aquitaine Tower, 540-5th Ave. S.W., Calgary, Alberta, Canada, T2P OM4
CS79-108	11/20/78	William E. Bancroft, P.O. Box 91, Shreveport, Louisiana 71165
CS79-109	11/20/78	Bettie E. (B. E.) Canaday, 501 Petroleum Building, Wichita, Kansas 67202

Docket No.	Date Filed	Applicant
CS79-110	11/20/78	C-Oil, Inc., 501 Petroleum Building, Wichita, Kansas 67202
CS79-111	11/20/78	Reef Petroleum Company, Suite 575, 7701 E. Kellogg, Wichita, Kansas 67207
CS79-112	11/22/78	West Texas Exploration Company, P.O. Box 745, Odessa, Texas 79760.
CS79-113	11/24/78	Don J. Shaw, 3821 Old Bullard Road, Tyler, Texas 75701
CS79-114	11/22/78	AMCAP Petroleum Associates-1977, 2001 Bryan Tower, Suite 2916, Dallas, Texas 75206
CS79-115	11/24/78	Holden Energy Corporation, Suite 430 Neustadt Plaza, Ardmore, Oklahoma 73401

[1]Previous applicant Roy A. Godfrey, *et al.*, is filing to reflect that they are now operating under the name of "Godfrey Oil Properties, an Oklahoma General Partnership".

[2]Small Producer Certificate Docket No. CS78-634 is being amended to include Canadian Occidental of California, Inc., an affiliate of Oxy Petroleum, Inc., and The Permian Corporation, as an Applicant.

[FR Doc. 78-34873 Filed 12-14-78; 8:45 am]

[6740-02-M]

[Docket No. RP73-8]

NORTH PENN GAS CO.

Proposed Revised Tariff Sheets In FERC Gas Tariff

DECEMBER 8, 1978.

Take notice that North Penn Gas Company (North Penn) on December 1, 1978, tendered for filing revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, in compliance with Commission Order No. 13 to be effective January 1, 1979.

The revises tariff sheets provide for the semi-annual filing of purchased gas cost adjustments each March 1 and September 1; for interest on the debit or credit balances in the Unrecovered Purchased Gas Cost Account; and for the application of the principles of interperiod income tax allocation in connection with the balance recorded in that account.

North Penn requests a waiver of any of the Commission's Rules and Regulations as may be required to permit the revised tariff sheets to become effective as proposed.

Copies of this filing were served upon North Penn's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR § 1.8, § 1.10). All such petitions or protests should be filed on or before December 22, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 34878 Filed 12-14-78; 8:45 am]

[6740-02-M]

[Docket Nos. RP71-107, RP72-127]

NORTHERN NATURAL GAS CO.

Purchased Gas Cost Adjustment Rate Change

DECEMBER 11, 1978.

Take notice that on October 26, 1978, Northern Natural Gas Company (Northern) tendered for filing, as part of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets:

Third Revised Volume No. 1, Seventeenth Revised Sheet No. 4a.

Original Volume No. 2, Seventeenth Revised Sheet No. 1c.

Seventeenth Revised Sheet No. 4a is filed pursuant to Northern's Purchased Gas Adjustment provision of its F.E.R.C. Gas Tariff, Third Revised Volume No. 1. Seventeenth Revised Sheet No. 1c is filed pursuant to Northern's Purchased Gas Adjustment Clause applicable to Volume No. 2 sales. This change in Northern's rates reflects: (1) the increase in Northern's average estimated cost of purchased gas for the Year 1979; (2) the increase in the unrecovered cost of purchased gas; and (3) an adjustment to reflect refund obligations. The change in rates also reflects a decrease in the cost of Research and Development expenditures estimated for the twelve months ending September 30, 1979, as adjusted for the unrecovered cost incurred during the twelve months ended September 30, 1978. Also reflected in the rates is the Gas Research Institute (GRI) surcharge which is being filed pursuant to Paragraph 19 of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1. In addition, the change in rates reflects the elimination of the surcharge for the Northern Illinois Gas Company storage agreement which Northern effectuated April 27, 1978 pursuant to FERC Order issued April 26, 1978 in Docket No. RP78-46.

The Company states that copies of the filing have been mailed to each of the Gas Utility customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protest should be filed on or before December 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-34877 Filed 12-14-78; 8:45 am]

[6740-02-M]

[Docket No. CP78-136]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application To Amend

DECEMBER 4, 1978.

Take notice that on October 17, 1978, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77001, filed in Docket No. CP78-136 an application to amend the order issued August 18, 1978 in said docket granting a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act authorizing the transportation of natural gas for Amoco Production Company (Amoco), all as more fully set forth in the application to amend which is on file with the Commission and open to public inspection.

It is stated that by the order of August 18, 1978 Transco is authorized to transport for Amoco, natural gas produced and delivered into Transco's existing pipeline facilities in Block 10, South Pelto Area, offshore Louisiana (Pelto 10). It is further stated that under the transportation agreement with Amoco dated October 7, 1977, Transco receives from that company in Pelto 10 a maximum daily quantity equal to the greater of the thermal equivalent of 12,000 Mcf of Pelto 10 gas or 40 percent of the capacity of Transco's pipeline facilities connecting Pelto 10 to adjoining Pelto 11 (Pelto 10 Facilities), and redelivers a ther-

mally equivalent quantity [1] onshore to Florida Gas Transmission Company (FGT) for the account of Amoco at the point of interconnection between Transco's Southeast Louisiana Gathering System (on which the Pelto 10 facilities are located) and FGT's main line in St. Helena Parish, Louisiana (Redelivery Point).

It is said that under the October 7, 1977 transportation agreement, Amoco has paid Transco for 40 percent of the actual cost of constructing the Pelto 10 facilities as a grant in aid, and is paying initially $350 per month as its *pro rata* share of the cost of operating and maintaining such facilities. It is further said that transportation through the Pelto 10 facilities is on a firm basis, with further transportation downstream from Pelto 11 to the Redelivery Point on a best efforts basis at Transco's sole discretion.

It is stated that for the transportation service downstream from Pelto 11, Amoco is paying Transco initially a charge of 10.25 cents per million Btu's delivered to Transco in Pelto 10 less the quantities retained by Transco for compressor fuel and Amoco's share of any gas lost and unaccounted for.

It is said that further development of Pelto 10 has made substantial additional quantities of gas available to Amoco which it desires Transco to transport to the Redelivery Point. It is further said that transportation of such added quantities would be made possible by additional facilities of Transco to be constructed in the area pursuant to Commission authorization in Docket No. CP78-252,[2] and in recognition of the cost of such additional facilities, Amoco has agreed to an increase in the transportation charge. Accordingly, it is said, the parties have executed a letter agreement dated August 16, 1978 amending the October 7, 1977 transportation agreement by increasing the maximum daily quantity to the thermal equivalent of 28,400 Mcf of Pelto 10 gas, and increasing the transportation charge applicable to such quantity to 15.7 cents per million Btu's.

In Transco's initial application herein it was stated that Amoco's desire to have the Pelto 10 gas transported and delivered to FGT is pursuant to certain current and on-going contractual obligations with (FGT) and Florida Power & Light Company (FPL).

Any person desiring to be heard or to make any protest with reference to said application should on or before December 26, 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.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-34879 Filed 12-14-78; 8:45 am]

[1] Less (1) 1.29 percent initially for compressor fuel, (2) gas lost and unaccounted for, and (3) fuel and shrinkage if the gas is processed.

[2] Order issued August 21, 1978.

[6450-01-M]

Office of Special Counsel For Compliance

[Case No. 630R00115]

TEXACO, INC.

Action Taken on Consent Order

Pursuant to 10 C.F.R. Section 205.199J, the Office of Special Counsel for Compliance (OSC) of the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of final action taken on a Consent Order. Under the terms of 10 C.F.R. Section 205.199J(c), no Consent Order involving sums of $500,000 or more shall become effective until DOE publishes notice of its execution and solicits and considers public comments with respect to its terms. On August 23, 1978, DOE published Notice of a Consent Order which was executed between Texaco Inc. and DOE (43 FR 37480, August 23, 1978). With that Notice and in accordance with 10 C.F.R. Section 205.199J(c) DOE invited interested persons to comment on the Consent Order.

No comments were received with respect to the Consent Order. DOE has concluded that the Consent Order as executed between DOE and Texaco is an appropriate resolution of the Compliance proceedings described in the Notice published on August 23, 1978, and hereby gives notice that the Consent Order shall become effective as proposed, without modification, on December 15, 1978.

Issued in Washington, D.C., on the 11th day of December, 1978.

PAUL L. BLOOM,
Special Counsel for Compliance.

[FR Doc. 78-34870 Filed 12-14-78; 8:45 am]

[6450-01-M]

[Case No. 630R00111]

TEXACO, INC.

Action Taken on Consent Order

Pursuant to 10 C.F.R. Section 205.199J, the Office of Special Counsel for Compliance (OSC) of the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of final action taken on a Consent Order. Under the terms of 10 C.F.R. Section 205.199J(c), no Consent Order involving sums of $500,000 or more shall become effective until DOE publishes notice of its execution and solicits and considers public comments with respect to its terms. On June 8, 1978, DOE published Notice of a Consent Order which was executed between Texaco Inc. and DOE (43 FR 24902, June 8, 1978). With that Notice and in accordance with 10 C.F.R. Section 205.199J(c) DOE invited interested persons to comment on the Consent Order.

No comments were received with respect to the Consent Order. DOE has concluded that the Consent Order as executed between DOE and Texaco is an appropriate resolution of the Compliance proceedings described in the Notice published on June 8, 1978, and hereby gives notice that the Consent Order shall become effective as proposed, without modification, on or before December 15, 1978.

Issued in Washington, D.C., on the 11th day of December, 1978.

PAUL L. BLOOM,
Special Counsel for Compliance.

[FR Doc. 78-34880 Filed 12-14-78; 8:45 am]

[6450-01-M]

[Case No. 630R00108]

TEXACO, INC.

Action Taken on Consent Order

Pursuant to 10 C.F.R. Section 205.199J, the Office of Special Counsel for Compliance (OSC) of the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of final action taken on a Consent Order. Under the terms of 10 C.F.R. Section 205.199J(c), no Consent Order involving sums of $500,000 or more shall become effective until DOE publishes notice of its execution and solicits and considers public comments with respect to its terms. On May 15, 1978, DOE published Notice of a Consent Order which was executed between Texaco Inc. and DOE (43 FR 20856, May 15, 1978). With that Notice and in accordance with 10 C.F.R. Section 205.199J(c) DOE invited interested

persons to comment on the Consent Order.

The only comment received by DOE with respect to the Consent Order concerned the ultimate disposition of the refunds made directly by Texaco to those firms who no longer purchase product from Gull Oil Co. After giving due consideration to the comment received, DOE has concluded that the Consent Order as executed between DOE and Texaco is an appropriate resolution of the Compliance proceedings described in the Notice published on May 15, 1978, and hereby gives notice that the Consent Order shall become effective as proposed, without modification, upon publication of this Notice in the FEDERAL REGISTER.

Issued in Washington, D.C., on the 11th day of December, 1978.

PAUL L. BLOOM,
Special Counsel for Compliance.

[FR Doc. 78-34881 Filed 12-14-78; 8:45 am]

[3125-01-M]
[6560-01-M]

[FRL 1025-5]

INTERAGENCY TOXIC SUBSTANCES DATA COMMITTEE

Change of Meeting Date

The next meeting of the Interagency Toxic Substances Data Committee, originally scheduled for the first Tuesday in January, will be held on Tuesday, January 9, 1979, 9:30 a.m. at the: New Executive Office Building, Room 2010, 17th and Pennsylvania Avenue, Washington, D.C. 20006.

This meeting will be open to the public.

The meeting information announced in the FEDERAL REGISTER of May 26, 1978, concerning this Committee is still in effect. These meetings will continue to take place on the first Tuesday of each month at the above time and location. The date of the following meeting will be February 6, 1979.

For further information, contact Ms. Barbara Ostrow, Executive Secretary, Interagency Toxic Substances Data Committee, at (202) 755-4880 or address correspondence to:

Ms. Barbara Ostrow, Office of Toxic Substances TS-793, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

MS. BARBARA OSTROW,
Executive Secretary, Interagency Toxic Substances Data Committee.

DECEMBER 11, 1978.

[FR Doc. 78-35015 Filed 12-14-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1025-1]

ATMOSPHERIC ARSENIC EXPOSURES

Availability of Revised External Review Drafts of Documents Assessing the Public Health Consequences

Revised External Review Drafts of (1) *An Assessment of the Health Effects of Arsenic Germane to Low-Level Exposure,* (2) *Human Population Exposures to Arsenic,* and (3) *Preliminary Estimates of Population Risks to Arsenic,* are available from the Criteria Development and Special Studies Division (Attn. Elizabeth Bush, 202-245-3025), U.S. Environmental Protection Agency, RD-683, 401 M Street, S.W., Washington, D.C. 20460.

Comments on the documents are welcome and should be sent to the same address, attention Dr. Alan Carlin by January 8, 1978.

Dated: November 27, 1978.

COURTNEY RIORDAN,
Acting Assistant Administrator for Research and Development.

[FR Doc. 78-34822 Filed 12-14-78; 8:45 am]

[6560-01-M]

[FRL 1026-2]

AGENCY COMMENTS ON ENVIRONMENTAL IMPACT STATEMENTS AND OTHER ACTIONS IMPACTING THE ENVIRONMENT

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, and section 309 of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) has reviewed and commented in writing on Federal agency actions impacting the environment contained in the following appendices during the period of November 1, 1977 and November 30, 1977.

Appendix I contains a listing of draft environmental impact statements reviewed and commented upon in writing during this review period. The list includes the Federal agency responsible for the statement, the number and title of the statement, the classification of the nature of EPA's comments as defined in Appendix II, and the EPA source for copies of the comments as set forth in Appendix VI.

Appendix II contains the definitions of the classifications of EPA's comments on the draft environmental impact statements as set forth in Appendix I.

Appendix III contains a listing of final environmental impact statements reviewed and commented upon in writing during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the statement, a summary of the nature of EPA's comments, and the EPA source for copies of the comments as set forth in Appendix VI.

Appendix IV contains a listing of final environmental impact statements reviewed but not commented upon by EPA during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the statement, and the source of the EPA review as set forth in Appendix VI.

Appendix V contains a listing of proposed Federal agency regulations, legislation proposed by Federal agencies, and any other proposed actions reviewed and commented upon in writing pursuant to section 309(a) of the Clean Air Act, as amended, during the referenced reviewing period. The listing includes the Federal agency responsible for the proposed action, the title of the action, a summary of the nature of EPA's comments, and the source for copies of the comments as set forth in Appendix VI.

Appendix VI contains a listing of the names and addresses of the sources of EPA reviews and comments listed in Appendices I, III, IV, and V.

Copies of the EPA Manual setting forth the policies and procedures for EPA's review of agency actions may be obtained by writing the Public Information Reference Unit, Environmental Protection Agency, Room 2922, Waterside Mall SW, Washington, D.C. 20460, telephone 202/755-2808. Copies of the draft and final environmental impact statements referenced herein are available from the originating Federal department or agency.

Dated: August 3, 1978.

WILLIAM D. DICKERSON,
Acting Director, Office of Federal Activities.

APPENDIX I.—*Draft environmental impact statements for which comments were issued between November 1 and November 30, 1977*

Identifying No.	Title	General nature of comments	Source for copies of comments
Corps of Engineers:			
DS-COE-E32017-GA	Savannah Harbor, Widening, Ga	LO1	E
D-COE-F32056-MI	Bolles Harbor, maintenance operations of Federal navigation channels and structure, Mich	LO2	F
DS-COE-F36037-OH	Water resources project, Logan and Nelsonville, Hocking River, Ohio	LO2	F
D-COE-G32026-AR	Improvement of Mississippi River, Helena Harbor, Phillips County, Ark	LO2	G
D-COE-L36053-OR	Extension, Tillamook South jetty, Tillamook Bay, Tillamook County, Oreg	LO2	K
D-COE-L39010-WA	Port of Port Angeles, Sequim Bay small boat basin, Wash	ER2	K
Department of Agriculture:			
D-AFS-L61096-WA	Cougar Lakes Wilderness study, Snoqualmie and Gifford Pinchot National Forests, Lewis and Yakima Counties, Wash.	LO1	K
D-AFS-L65035-WA	Upper Cispus planning unit, Gifford Pinchot National Forest, Skamania and Yakima Counties, Wash. (USDA-FS-R6-DES (ADM) 78-1).	LO1	K
DS-SCS-E36044-MS	Black Creek watershed, Holmes County, Miss	LO1	E
D-SCS-E36047-NC	Swift Creek watershed, Pitt, Beaufort and Craven Counties, N.C	ER2	E
D-SCS-H36033-KS	Grasshopper-Coal Creek watershed, Atchinson, Crown and Jefferson Counties, Kans	LO1	H
DS-ASC-A89057-OO	1978 Wheat and feed grain set-aside program	LO2	A
Department of Defense:			
D-UAF-K12004-CA	Space Shuttle Program, Vandenberg AFB, Santa Barbara County, Calif	LO2	J
DS-USN-A10047-OO	Seafarer ELF communications system, site selection and test operations	LO2	A
Department of Interior:			
D-BLM-J99004-CO	Uncompahgre basin resource area grazing, Colo	LO2	I
D-BPA-L08031-OO	Fiscal year 1979 proposed program, Bonneville Power Administration (DES 77-30)	ER2	K
D-NPS-E61023-FL	Proposed master plan for Everglades National Park, Fla. (DES 77-29)	LO1	E
Department of Transportation:			
DS-CGD-E50001-SC	Bridge across Station Creek to St. Phillips Island, Beaufort County, S.C	ER2	E
D-FAA-A51910-OO	National airport system plan (NASP), pursuant to Airport and Airway Development Act of 1970	LO2	A
D-FHW-D40054-VA	I-264 Chesapeake, Norfolk and Portsmouth, Va	ER2	D
D-FHW-D40055-VA	VA-1 and VA-301, Robert E. Lee Bridge and Approaches, Richmond, Va	LO2	D
D-FHW-D40056-DE	DE-4, DE-2 to DE-7, New Castle County, Del	ER2	D
D-FHW-E40125-NC	Lenoir, southwest loop throughfare, NC-18 business to U.S. 321, Caldwell County, N.C. (FHWA-NC-EIS-77-06-D)	LO2	E
D-FHW-F53006-IN	In-15, grade separation, Penn Central Railroad at Goshen, Elkhart County, Ind	LO2	F
D-FHW-G40062-AR	North Little Rock Riverside Expressway, Pulaski County, Ark	LO2	G
D-FHW-G40063-TX	TX-20, Benbrook, Parker, and Tarrant Counties, Tex	LO1	G
D-FHW-L40056-ID	ID-23, Forest Highway 23, North Fork Payette River, Boise County, Idaho	LO1	K
D-FRA-A53045-OO	Northeast corridor improvement project	LO2	A
Federal Energy Administration:			
D-FEA-G03010-OO	Strategic petroleum reserve, Texoma group salt domes, Cameron and Calcasieu Parish, La. and Jefferson County, Tex.	ER2	G
D-FEA-G03011-LA	Strategic petroleum reserves, sulphur mines salt dome, Calcasieu Parish, La	ER2	G
D-FEA-G03012-LA	Strategic petroleum reserve, Capline group salt dome, La	ER2	G
D-FEA-G03013-TX	Strategic petroleum reserve, seaway group salt domes, Brazoria and Fort Bend Counties, Tex	ER2	G
Department of Housing and Urban Development:			
D-HUD-D89020-DE	I-95 and DE-40 growth corridor, New Castle County, Del	LO2	D
D-HUD-E28025-TN	Water main extensions to serve TN-85 and Shepardsville Road, Jackson County, Tenn	LO1	E
D-HUD-E28026-AL	Boykin community water and street improvement project, Ala	LO2	E
D-HUD-E85027-AL	Green Valley Estates, Huntsville, Madison County, Ala	LO2	E
D-HUD-F85026-IL	Rohlwing Grove Apartments, Elkgrove Village, Cook County, Ill	LO1	F
D-HUD-G85063-TX	Lincoln Green Subdivision, Harris County, Tex	LO1	G
D-HUD-G85067-TX	Bear Creek Village Subdivision, Harris County, Tex	LO1	G
D-HUD-G85069-AR	Megehee water expansion and improvements, Megehee, Desha County, Ark	LO1	G
D-HUD-G85070-TX	Harvest Bend Subdivision, Harris County, Tex	LO1	G
D-HUD-G85071-TX	Timberhills Subdivision, Harris County, Tex	LO1	G
D-HUD-G85075-TX	Bridgestone Subdivision, Harris County, Tex	LO1	G
D-HUD-G85081-TX	Northglen Subdivision, Harris County, Tex	LO1	G
D-HUD-K61017-CA	Vallejo River Park, Vallejo, Solano County, Calif	3	J
D-HUD-L28001-WA	Proposed water facilities improvements, North Perry, Bremerton and Silverdale water systems, Kitsap County, Wash	LO1	K
U.S. Postal Service:			
D-UPS-F81005-IL	New postal facility, Gurnee, Ill	LO1	F

APPENDIX II—DEFINITIONS OF CODES FOR THE GENERAL NATURE OF EPA COMMENTS

ENVIRONMENTAL IMPACT OF THE ACTION

LO—Lack of Objection.—EPA has no objections to the proposed action as described in the draft impact statement; or suggests only minor changes in the proposed action.

ER—Environmental Reservations.—EPA has reservations concerning the environmental effects of certain aspects of the proposed action. EPA believes that further study of suggested alternatives or modifications is required and has asked the originating Federal agency to reassess these impacts.

EU—Environmentally Unsatisfactory.—EPA believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, The Agency believes that the potential safeguards which might be utilized may not adequately protect the environment from hazards arising from this action. The Agency recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

ADEQUACY OF THE IMPACT STATEMENT

Category 1—Adequate.—The draft impact statement adequately sets forth the environmental impact of the proposed project or action as well as alternatives reasonably available to the project or action.

Category 2—Insufficient Information.—EPA believes that the draft impact statement does not contain sufficient information to assess fully the environmental impact of the proposed project or action. However, from the information submitted, the Agency is able to make a preliminary determination of the impact on the environment. EPA has requested that the originator provide the information that was not included in the draft statement.

Category 3—Inadequate.—EPA believes that the draft impact statement does not adequately assess the environmental impact of the proposed project or action, or that the statement inadequately analyzes reasonable available alternatives. The Agency has requested more information and analysis concerning the potential environmental hazards and has asked that substantial revision be made to the impact statement.

APPENDIX III.—*Final environmental impact statements for which comments were issued between November 1, and November 30, 1977*

Identifying No.	Title	General nature of comments	Source for copies of comments
Corps of Engineers:			
F-COE-E32010-Ga	Operation and maintenance for selective snagging and clearing, Altamaha, Oconee and Ocmulgee Rivers, GA.	EPA's concerns were adequately addressed in the final EIS	E
F-COE-E32018-NC	Maintenance of Wilmington Harbor, Lower Cape Fear River, N.C.	EPA's concerns were generally adequately addressed in the final EIS. However, EPA believes that an addendum or supplement should be prepared which addresses the formulation of long-range maintenance plans for Wilmington Harbor.	E
F-COE-E36035-MS	Steele Bayou Basin, Greenville Urban Area, Miss.	EPA continues to have environmental reservations about certain aspects of the project, specifically concerning the operation of the projects so as to maintain water quality in Swan Lake compatible with the required fish and wildlife use classification, details on operation of Swan Lake water level controls, the extent to which pollutants will have already built up in the lake sediments, and monitoring for pollutants.	E
F-COE-F34003-IL	Rend Lake, operation and maintenance, Franklin and Jefferson Counties, Ill.	EPA's concerns were adequately addressed in the final EIS. However, EPA hopes that water supply practices from the Rend Lake Conservancy District can be a means to provide assurance that appropriate health requirements would be met at all new hookups with respect to the selection of acceptable sites for the septic system.	F
F-COE-K35009-CA	Humboldt Bay Harbor Marina, regulatory permit, Humboldt County, Calif.	EPA's concerns were adequately addressed in the final EIS	J
Department of Agriculture:			
F-AFS-J61012-OO	Flaming Gorge National Recreational Area, management plan, Ashley National Forest, Utah and Wyo.	EPA's concerns were adequately addressed in the final EIS	I
F-AFS-J65046-OO	Bears Ears land use plan, Routt National Forest, Colo. and Wyo.	EPA's concerns were adequately addressed in the final EIS	I
F-AFS-K61015-CA	Sierra Ski Ranch, proposed expansion, Eldorado National Forest, Eldorado County, Calif.	EPA's concerns were adequately addressed in the final EIS	J
F-REA-J07005-ND	Coyote Generating Station 440 MW Unit, Mercer County, N. Dak.	Most of EPA's concerns were adequately addressed in the final EIS; however, EPA urges that blowdown water be used in the bottom ash transport system or be disposed of rather than be discharged directly to the Missouri River.	I
Department of Commerce:			
F-NOA-L90011-AK	Fishery management plan, Gulf of Alaska Groundfish fishery during 1978, Alaska.	EPA believes that the final EIA understates the need for additional waste treatment facilities at shore-based seafood processing plants brought on by the increased domestic harvest. EPA is already finding significant water quality standards and NPDES permit violations at some Alaska seafood processing centers. EPA requests a site-specific, multi-scenario forecast of increasing waste loads and an analysis of specific mitigation measures.	K
F-NOA-L90012-AK	Fishery management plan, Tanner Crab, Alaska.	EPA believes that the final EIS understates the need for additional waste treatment facilities at shore-based seafood processing plants brought on by the increased domestic harvest. EPA is already finding significant water quality standards and NPDES permit violations at some Alaska seafood processing centers. EPA requests a site-specific, multi-scenario forecast of increasing waste loads and an analysis of specific mitigation measures.	K
Department of Interior:			
F-IBR-J83000-OO	Project Skywater, selected sites, Western States.	EPA's concerns were adequately addressed in the final EIS	I
F-IGS-J01002-WY	Proposed mining and reclamation plan, Eagle Butte Mine, Amax Coal Co., Coal Lease W-0313773, Campbell County, Wyo.	EPA is concerned that the final EIS does not contain sufficient data to conclude that compliance with Federal and State regulations will be assured. There is insufficient data to depict baseline surface water quality conditions. Compliance with the environmental protection performance standards provided for in the Surface Mining Control and Reclamation Act of 1977 should be assured in the mining and reclamation plan.	I
Department of Transportation:			
F-CGD-F52001-MN	Proposed Loran-C Transmitting Station, Lake-of-the-Woods and Koochiching Counties, Minn.	EPA's concerns were adequately addressed in the final EIS. EPA will make additional comments in regard to wetlands impacts when it reviews the Corps of Engineers 404 Permit Application.	F
F-FAA-E51020-FL	Southwest Florida Regional Airport, Fort Myers, Lee County, Fla.	Most of EPA's concerns were adequately addressed in the final EIS; however, a supplement to the final EIS was requested concerning the impact of hydrocarbons and photo-chemical oxidants, and to examine more alternatives relative to noise contours.	E
F-FHW-A41985-MN	I-35 and U.S. 61, Mesaba Ave. to 26th Ave. East, Duluth, St. Louis County, Minn.	EPA's concerns were adequately addressed in the final EIS	F
F-FHW-D40023-PA	LR 07076, 17th St. extension, Altoona, Belair County, Pa.	EPA's concerns were generally adequately addressed in the final EIS. EPA pointed out that acquisition, relocation, and noise insulation of the 73 private residences impacted by noise should be considered.	D
F-FHW-L40033-WA	WA-82, Union Gap vicinity, WA-97 connection, Yakima County, Wash.	EPA's concerns were generally adequately addressed in the final EIS. However, EPA suggests that the owner/occupants of structures impacted by excessive noise levels be reimbursed for interior noise mitigation "treatment.".	K
Federal Power Commission:			
F-FPC-E05008-SC	Project No. 199, Santee-Cooper, South Carolina Public Service Authority, S.C.	EPA continues to be concerned about potential adverse water quality impacts, and urges further discussion of the possibility of nutrient removal and alternatives to effluent discharges into areas having poor waste assimilative capacity.	E
Department of Housing and Urban Development:			
F-HUD-C85015-NJ	The Oaks at Glenwood, Madison Township, N.J.	Although EPA's comments concerning air and water quality have been satisfactorily addressed, EPA continues to express environmental reservations relating to the impact of the project on wetlands.	C

APPENDIX III.—*Final environmental impact statements for which comments were issued between November 1, and November 30, 1977*—Continued

Identifying No.	Title	General nature of comments	Source for copies of comments
F-HUD-C99002-NY	South Westchester Executive Park and access road, Yonkers, Westchester County, N.Y.	EPA's concerns were adequately addressed in the final EIS	C
F-HUD-F85020-MN	Maple Grove and Boundary Creek additions, Hennepin County, Minn.	EPA's concerns were adequately addressed in the final EIS. However, EPA believes that the wetlands within the center of the development should be maintained in their natural state.	F
F-HUD-F85021-OH	Eastwood Village Homestead Urban Redevelopment Corp., Hamilton County, Ohio.	EPA believes that supplemental information should be provided concerning: (1) Potential problems with asbestos emissions, (2) the compatibility of redevelopment of the area with carbon monoxide emissions generated from the bordering expressways, and (3) the disposal of debris material.	F
Nuclear Regulatory Commission:			
F-NRC-C06007-NY	Shoreham Nuclear Power Station, unit 1, (LILCO), Suffolk County, N.Y.	EPA's concerns were adequately addressed in the final EIS, but believes that the aquatic monitoring program should be improved and that the transportation of radioactive materials through the New York City metropolitan area should be assessed using the methodology developed in the true study.	C

APPENDIX IV.—*Final environmental impact statements which were reviewed and not commented on between November 1, and November 30, 1977*

Identifying No.	Title	Source of review
Department of Agriculture:		
F-AFS-D65005-WV	Land management plan, Monogahela National Forest, W. Va. (USDA-FS-R9-FES-ADM-77-04)	D
F-AFS-E65018-MS	DeSoto National Forest, timber management plan, Miss. (USDS-RS-FES-ADM-77-08)	E
F-AFS-G36053-MN	Eagle Creek Dam and Reservoir, Lincoln National Forest, N. Mex	G
F-AFS-L65022-OR	Timber management plan, Mt. Hood National Forest, 10 year timber management plan, Oreg. (USDA-FS-R6-FES(ADM)-76-14).	K
F-REA-D08002-PA	Susquehanna Steam Electric Station, 500 KV transmission system, Pennsylvania (USDA-REA-EIS(ADM)-77)	D
Department of Transportation:		
F-CGD-D32007-MD	Special Anchorage Area, Jacobs Nose, Elk River, Cecil County, Md	D
F-FHW-G53001-TX	Brownsville to Matamoros railroad relocation project, Cameron County, Tex	G
F-FHW-J40025-CO	Project U 160-2(14) through Alamosa, Alamosa County, Colo	I
F-FHW-L40035-OR	Neskowin and Little Nestucca Segment, Green Timber Road, Forest Highway 56, U.S. 101, Tillamook County, Oreg	K
General Services Administration:		
F-GSA-G81009-TX	Federal building alterations, 114 Commerce St., Dallas, Tex	G
Department of Housing and Urban Development:		
F-HUD-E28022-AL	Rural water system improvements, Bullock County, Ala. (B-77-DN-01-0146)	E
F-HUD-E28023-TN	Goosehorn Rd. rural waterline construction project, Lafayette, Macon County, Tenn	E
F-HUD-E28024-AL	Alabama rural water system improvements, Lowndes County, Ala	E
F-HUD-E85011-GA	Pepperridge Subdivision, Richmond County, Ga. (HUD-R04-EIS-76-05-F)	E
F-HUD-G85029-TX	"The Colonies" Subdivision, Harris County, Tex	G
F-HUD-G85034-TX	Bionaire Subdivision, Harris County, Tex	G
Veterans Administration:		
F-VAD-C99003-NY	New York National Cemetery, Suffolk County, N.Y	C

APPENDIX V.—*Regulations, legislation and other Federal agency actions for which comments were issued between November 1, and November 30, 1977*

Identifying No.	Title	General nature of comments	Source for copies of comments
Water Resources Council:			
A-WRC-A39125-OO	Level a framework studies and assessments, level B regional or river basin plans, comprehensive coordinated joint plans and special studies, policy statement No. 2 (revised).	EPA suggested certain changes to better integrate the WRC planning process with regards to NEPA and river basin commission reports.	A
Department of Interior:			
A-BLM-A02120-CA	Oil and gas lease sale No. 53, central and northern California, OCS potential conflicts between proposal and activities.	EPA advises that the emission offset policy must be observed for air quality control regions in the proposed lease area where air quality standards are presently being exceeded for oxidants and precursor hydrocarbon emissions.	A
A-BLM-A03078-))	Proposal for an intergovernmental coordinated planning process for the leasing and transportation of OCS oil and gas.	EPA believes that all affected Federal agencies be allowed to participate at the earliest possible point in the planning process.	

APPENDIX VI

SOURCE FOR COPIES OF EPA COMMENTS

A. Public Information Reference Unit (PM-213), Environmental Protection Agency, Room 922, Waterside Mall, SW, Washington, D.C. 20460.
B. Director of Public Affairs, Region I, Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203.
C. Director of Public Affairs, Region 2, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007
D. Director of Public Affairs, Region 3, Environmental Protectin Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.
E. Director of Public Affairs, Region 4, Environmental Protection Agency, 345 Courtland Street NE, Atlanta, Georgia 30308
F. Director of Public Affairs, Region 5, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.
G. Director of Public Affairs, Region 6, Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270.
H. Director of Public Affairs, Region 7, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, Missouri 64108.
I. Director of Public Affairs, Region 8, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80203.
J. Director of Public Affairs, Region 9, Environmental Protection Agency, San Francisco, California.
K. Director of Public Affairs, Region 10, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

[FR Doc. 78-35018 Filed 12-14-78; 8:45 am]

[6560-01-M]

[FRL 1025-8]

SCIENCE ADVISORY BOARD HEALTH EFFECTS RESEARCH REVIEW GROUP

Open Meeting

Under Pub. L. 92-463, notice is hereby given that a one day meeting of the Health Effects Research Review Group of the Science Advisory Board will be held on Monday, January 8, 1979. The location of this meeting will be Room 3906, 401 M Street S.W., Washington, D.C. 10460. The meeting will start at 9 a.m.

The Environmental Research Development and Demonstration Authorization Act of 1978, Pub. L. 95-155, requires a special report to be prepared by the Science Advisory Board. This will be a comprehensive report to the Administrator, the President, and the Congress, concerning (1) the health effects research authorized by this Act and other laws; (2) the procedures generally used in the conduct of such research; (3) the internal and external reporting of the results of such research; (4) the review procedures for such research and results; (5) the procedures by which such results are used in internal and external recommendations on policy, regulations and legislation; and (6) the findings and recommendations of the report to the House Committee on Science and Technology entitled "The Environmental Protection Agency's Research Program with primary emphasis on the Community Health and Environmental Surveillance System (CHESS): An Investigative Report."

The one day meeting will be used to discuss the content of a draft report and to complete the committee's work on this required document.

The one day meeting will be open to the public. Any member of the public wishing to attend should contact the Secretariat, Science Advisory Board (A-101), U.S. Environmental Protection Agency, Washington, D.C. 20460 by c. o. b. January 3, 1979. Please ask for Shirley Smith. The telephone number is 202-755-0263.

RICHARD M. DOWD,
Staff Director,
Science Advisory Board.

NOVEMBER 29, 1978.

[FR Doc. 78-35014 Filed 12-14-78; 8:45 am]

[6560-01-M]

[FRL 1026-1]

WATER SUPPLY-WASTEWATER TREATMENT COORDINATION STUDY

Public Workshops

Notice is hereby given that a series of public workshops will be held at five different locations across the country between January 17, 1979, and February 15, 1979, and that two public hearings will be held in Denver, Colorado, and Washington, D.C., during July 1979 to advance the purposes of reporting requirements in the Safe Drinking Water Act, as amended, and the Clean Water Act.

The Safe Drinking Water Act, Section 1442(c), requires a report to Congress discussing the availability of drinking water supplies both now and in the future. The Clean Water Act, Section 516(e) requires a report to Congress concerning administrative and legislative recommendations requiring coordination of water supply and wastewater treatment control plans as a condition to grants for construction of waste treatment works. The workshops will provide opportunity for participants to discuss and make recommendations on issues and problems concerning water supply treatment distribution and waste collection treatment and disposal.

The dates and workshops locations are as follows:

January 17 and 18, EPA Regional Office, San Francisco, California.
January 24 and 25, EPA Regional Office, Dallas, Texas.
January 31 and February 1, Civic Center, Atlanta, Georgia.
February 7 and 8, EPA Regional Office, New York, New York.
February 14 and 15, EPA Regional Office, Chicago, Illinois.

The public hearings, as required by Section 516(e) of the Clean Water Act, will be held in Denver, Colorado, and Washington, D.C., and will provide opportunity for comment on a draft report to Congress. Final dates and locations will be published in the FEDERAL REGISTER when established.

Each workshop will be open to the public on both days that they are conducted. Approximately 150 people who represent various constituencies have been invited to attend each workshop. Other members of the public wishing to attend a public workshop, present an oral statement or submit a written statement should contact the appropriate EPA Regional Office:

EPA Regional Office, Region II, Federal Bldg., 26 Federal Plaza, New York, NY 10007, 212 264-1800.

EPA Regional Office, Region IV, 345 Courtland Street, NE, Atlanta, GA 30308, 404 881-3781.

EPA Regional Office, Region V, 230 South Dearborn Street, 26th floor, Chicago, IL 60604, 312 353-2151.

EPA Regional Office, Region VI, 1201 Elm Street, First International Bldg., Dallas, Texas 75270, 214 749-2106.

EPA Regional Office, Region IX, 215 Freemont Street, San Francisco, CA 94105, 415 556-0774.

Project personnel encourage written and/or verbal comment on a "Background Discussion Paper" which will focus on the major issues and problems of municipal water supply and wastewater treatment coordination. The Background Discussion Paper will be available at the public workshops and from the Project Officer, George Denning, Office of Drinking Water (WH-550), Environmental Protection Agency, Washington, D.C. 20460, (202) 755-5643.

THOMAS C. JORLING,
Assistant Administrator for Water and Waste Management.

DECEMBER 11, 1978.

[FR Doc. 78-35013 Filed 12-14-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

SECURITY FOR THE PROTECTION OF THE PUBLIC; FINANCIAL RESPONSIBILITY TO MEET LIABILITY INCURRED FOR DEATH OR INJURY TO PASSENGERS OR OTHER PERSONS ON VOYAGES

Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540):

Italia Crociere Internazionali S.P.A. and Lloyd Triestino di Navigazione S.P.A. Italian Line Cruises International, 366 Madison Avenue, New York, New York 10017.

Dated: December 11, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-34841 Filed 12-14-78; 8:45 am]

[6730-01-M]

SECURITY FOR THE PROTECTION OF THE PUBLIC INDEMNIFICATION OF PASSENGERS FOR NONPERFORMANCE OR TRANSPORTATION

Issuance of Certificate [Performance]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Italia Crociere Internazionali S.P.A., Italia di Navigazione S.P.A. and Lloyd Triestino di Navigazione S.P.A., Italian Line Cruises International, 366 Madison Avenue, New York, New York 10017.

Dated: December 11, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-34841 Filed 12-14-78; 8:45 am]

[6730-01-M]

TEMPORARY EXEMPTION AND INTERIM APPROVAL OF AGREEMENT NO. LM-25, AS AMENDED AND SUPPLEMENTED

Notice is hereby given that on December 5, 1978, the Commission determined section 33 of Agreements Nos. LM-25, LM-25-G and LM-25-H to be approved on an interim basis, and determined the balance of the agreement to be temporarily exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814), pending FEDERAL REGISTER notice, opportunity for comment, and subsequent determination by the Commission that the agreement (or any specific provision thereof) should be permanently exempt from the filing and approval requirements of section 15, Shipping Act, 1916, or should be approved, disapproved or modified under that section. This action was taken in accordance with our *Interim Policy Statement—Collective Bargaining Agreements*, served June 12, 1978. This temporary exemption is effective until March 15, 1979.

Interested parties may inspect the agreements at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10218; or at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Comments on the agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, by January 4, 1979. Comments should include facts and arguments concerning the exemption, approval, modification or disapproval of the proposed agreements. Comments shall discuss with particularity allegations that the agreements are unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or are contrary to the public interest, or are in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: LM-25, as amended and supplemented, between the Seafarers' International Union, Pacific District and the Pacific Maritime Association.

Filing Party: R. Frederic Fisher, Esquire, Lillick, McHose and Charles, Two Embarcadero Center, San Francisco, California 94111.

SUMMARY: The following agreements constitute the 1978-1981 collective bargaining agreement between Pacific Maritime Association (PMA) and Seafarers' International Union, Pacific District, on behalf of the Sailors Union of the Pacific (SUP) the Marine Firemen's Union (formerly the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association (MFU, formerly MFOW)), and the Marine Cooks and Stewards Union (MCS) (collectively SIU):

LM-25:1975-1978 SUP-PMA collective bargaining agreement;
LM-25-1: SIU-PMA Memorandum of Understanding, August 15, 1978;
LM-25-2: Letter of Understanding, August 14, 1978;
LM-25-3: Letter of Understanding, August 14, 1978;
LM-25-4: Letter of Understanding, August 15, 1978;
LM-25-5: Letter of Understanding, August 15, 1978;
LM-25-A: Second Amended SIU-PMA Pension Plan Agreement;
LM-25-A-I: SIU-PMA Pension Plan—Declaration of Trust;
LM-25-A-II: Form Agreement for nonmember participation in the SIU-PMA Pension Plan;
LM-25-B: SIU-PMA Supplemental Benefits Agreement;
LM-25-B-I: Articles of Incorporation of the SIU-PMA Supplemental Benefits Fund, Inc.;
LM-25-B-II: By-Laws of the SIU-PMA Supplemental Benefits Fund, Inc.;
LM-25-B-III: Form Agreement for nonmember participation in SIU-PMA Supplemental Benefits Plan;
LM-25-C: Agreement providing for SIU-PMA Seamen's Medical Center;
LM-25-C-I: SIU-PMA Declaration of Trust applicable to Seamen's Medical Center;
LM-25-D: First Amended SIU-PMA Welfare Plan Agreement;
LM-25-D-I: Articles of Incorporation of the Sailors' Home of the Pacific;
LM-25-D-II: By-Laws of the Sailors' Home of the Pacific;
LM-25-D-III: Form Agreement for nonmember participation in SUP-PMA Welfare Plan;
LM-25-E: First Amended SUP-PMA Supplemental Pension Plan;
LM-25-E-I: SUP-PMA Supplemental Pension Trust Agreement;
LM-25-E-II: Form Agreement for nonmember participation in SUP-PMA Supplemental Pension Plan;

LM-25-F: SUP-PMA collective bargaining agreement concerning maintenance men, September 13, 1978;
LM-25-G: 1975-1978 MCS-PMA collective bargaining agreement;
LM-25-G-I: Second Amended MCS-PMA Supplementary Pension Trust Agreement;
LM-25-G-II: Regulations of the MCS-PMA Supplementary Pension Trust;
LM-25-G-III: Form Agreement for nonmember participation in MCS-PMA Pension Plan;
LM-25-G-IV: MCS-PMA Welfare Plan Agreement;
LM-25-G-V: Rules and Regulations of the MCS-PMA Welfare Plan;
LM-25-G-VI: For Agreement for nonmember participation in MCS-PMA Welfare Plan;
LM-25-G-VII: Articles of Incorporation of "Stewards Training and Recreation, Inc.";
LM-25-G-VIII: By-Laws of "Stewards Training and Recreation, Inc.";
LM-25-G-IX: Articles of Incorporation of "Stewards Security, Inc.";
LM-25-G-X: By-Laws of "Stewards Security, Inc.";
LM-25-H: 1975-1978 MFU-PMA collective bargaining agreement;
LM-25-H-I: Second Amended MFOW-PMA Welfare Plan Agreement;
LM-25-H-II: MFOW-PMA Welfare Fund Amended Declaration of Trust;
LM-25-H-III: Form Agreement for nonmember participation in MFOW-PMA Welfare Plan;
LM-25-H-IV: MFOW-PMA Supplementary Pension Plan;
LM-25-H-V: MFOW-PMA Supplementary Pension Trust;
LM-25-H-VI: Form Agreement for nonmember participation in MFOW-PMA Supplementary Pension Plan; and
LM-25-I: 1978-1981 MFOW-PMA collective bargaining agreement (maintenance employees).

By Order of the Federal Maritime Commission.

Dated: December 12, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-34941 Filed 12-14-78; 8:45 am]

[6730-01-M]

[Independent Ocean Freight Forwarder License No. 1449]

PERFECT PAK CO.

Order of Revocation

On November 16, 1978, Perfect Pak Company, 2722 Eastlake Avenue East, Suite 200, Seattle, Washington 98102, requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 1449.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), section 5.01(c), dated August 8, 1977:

IT IS ORDERED, that Independent Ocean Freight Forwarder License No. 1449, issued to Perfect Pak Company be and is hereby revoked effective November 16, 1978 without prejudice to reapplication for a license in the future.

IT IS FURTHER ORDERED, that Independent Ocean Freight Forwarder License No. 1449, issued to Perfect Pak Company be returned to the Commission for cancellation.

IT IS FURTHER ORDERED, that a copy of this Order be published in the FEDERAL REGISTER and served upon Perfect Pak Company.

ROBERT G. DREW,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-34943 Filed 12-14-78; 8:45 am]

[6730-01-M]

PETITIONS TO ALLOW OFFICERS OR EMPLOYEES OF A RATE-FIXING AGREEMENT TO SERVE AS THE POLICING AUTHORITY

Filing of Petition

Pursuant to § 528.3(b)(3) of Part 528, 46 CFR (General Order 7, Revised) petitions for exemption have been filed on behalf of the following rate-fixing agreements to allow agreement personnel to perform the self-policing functions in lieu of an independent policing authority; viz:

Pacific Coast Australasian Tariff Bureau, Agreement No. 50; West Coast United States & Canada/India, Pakistan, Ceylon & Burma Rate Agreement, Agreement No. 8760; India, Pakistan, Ceylon & Burma/West Coast United States Rate Agreement, Agreement No. 9247; Australia-Pacific Coast Rate Agreement, Agreement No. 10012; South Sea Islands Rate Agreement, Agreement No. 10205; New Zealand-Pacific Coast Rate Agreement, Agreement No. 10252; Atlantic & Gulf-Indonesia Conference, Agreement No. 8080; U.S. Atlantic & Gulf-Jamaica Conference, Agreement No. 4610; U.S. Atlantic & Gulf Santo Domingo Conference, Agreement No. 6080; U.S. Atlantic & Gulf-Venezuela and Netherlands Antilles Conference, Agreement No. 6190; U.S. Atlantic & Gulf-Venezuela and Netherlands Antilles Conference (Oil Agreement), Agreement No. 6870; Leeward & Windward Islands & Guianas Conference, Agreement No. 7540; U.S. Atlantic & Gulf Haiti Conference, Agreement No. 8120; and the Hawaii/Orient Rate Agreement, Agreement No. 8290.

Interested parties may inspect and obtain a copy of each of the petitions at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 11101, and at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; Sanfrancisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Comments on each petition may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before January 4, 1979. Comments should include facts and arguments concerning the request for an exemption.

By Order of the Federal Maritime Commission.

Dated: December 12, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-34944 Filed 12-14-78; 8:45 am]

[6730-01-M]

[Independent Ocean Freight Forwarder License No. 151R]

WITS AIR FREIGHT, WITS, INC., D/B/A

Order of Revocation

On December 1, 1978, Wits Air Freight, Wits, Inc. d/b/a, P.O. Box 3805, Seattle, Washington 98124, voluntarily surrendered its Independent Ocean Freight Forwarder License No. 151R for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in manual of Orders, Commission Order No. 201.1 (Revised), section 5.01(c), dated August 8, 1977;

IT IS ORDERED, that Independent Ocean Freight Forwarder License No. 151R issued to Wits Air Freight, Wits, Inc. d/b/a be and is hereby revoked effective December 1, 1978 without prejudice to reapplication for a license in the future.

IT IS FURTHER ORDERED, that a copy of this Order be published in the FEDERAL REGISTER and served upon Wits Air Freight, Wits, Inc. d/b/a.

ROBERT G. DREW,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-34942 Filed 12-14-78; 8:45 am]

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was accepted by the Regulatory Reports Review Staff, GAO, on December 11, 1978. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed CAB request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before January 2, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information maybe obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

CIVIL AERONAUTICS BOARD

On September 19, 1978, GAO received a request from CAB for clearance of an application to be filed under requirements contained in Section 304.5 of Part 304 of the Board's proposed regulations pertaining to Compensation of Participants in Board Proceedings. On October 2, 1978, GAO notified CAB that it had suspended clearance review of this submission because final Board action had not yet been taken regarding the application requirement. On December 11, 1978, GAO received the necessary documentation and the clearance review period will be restarted as of this date.

Part 304 of the Board's Procedural Regulations establishes a program which promotes public participation in CAB proceedings. Under this Part, reimbursement for the costs of participation will be provided to eligible participants. To qualify, an applicant must, among other things (1) represent an interest whose representation can reasonably be expected to contribute substantially to a full and fair determination of the issues presented in the proceedings, and (2) be financially unable to participate without compensation. The Board needs the information specified in section 304.5 for applications, to ascertain whether an applicant satisfies these criteria. The CAB estimates that approximately 50 applications will be filed annually and that respondent burden will average 4 hours per application.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 78-34927 Filed 12-14-78; 8:45 am]

[4110-02-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

NATIONAL ADVISORY COUNCIL ON VOCATIONAL EDUCATION

Meeting

AGENCY: National Advisory Council on Vocational Education.

ACTION: Notice of Public Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Vocational Education. It also describes the functions of the Council. Notice of these meetings is required under the Federal Advisory Committee Act (5 U.S. Code, Appendix I Section 10(a)(21)). This document is intended to notify the general public of its opportunity to attend.

DATE: January 11, 12, 1979.

ADDRESS: Hotel Washington, Pennsylvania Avenue at 15th Street N.W. Washington, D.C. The Capital Room.

The National Advisory Council on Vocational Education is established under Section 104 of the Vocational Education Amendments of 1968, Pub. L. 90-576. The Council is directed to:

(A) Advise the Commissioner concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to the Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

The Committees and Task Forces of the Council are as follows:

BOAE Task Force
Technical Assistance Committee
Communications Committee
MERC/Q Task Force
Special Populations Committee (*ad hoc*)
Committee on Council Goals and Priorities (*ad hoc*)

On January 11, 1979, the National Advisory Council on Vocational Education will meet in regular session from 8:30 a.m. to 5:00 p.m. in the Capital Room of the Hotel Washington, Washington, D.C. The following agenda will be included in the meeting:

January 11

Call to Order 8:30 a.m.
Determination of Quorum
Acceptance of December 4 National Council Minutes
Report of the Chairperson
Report of the Executive Director
Report from the Bureau of Occupational and Adult Education, U.S Office of Education
BOAE Evaluation Task Force Report, Discussion and Approval
Presentation, Discussion, and Approval of Council's FY '79-80 Work Plan

January 12

Continuation of Other Council Business
Adjournment—Noon

Records shall be kept of all Council proceedings and shall be available fourteen days after the meeting for public inspection at the Office of the National Advisory Council on Vocational Education, located at 425 13th Street NW., Suite 412, Washington, D.C. 20004. For further information call Virginia Solt: (202) 376-8873.

Signed at Washington, D.C., on December 12, 1978.

RAYMOND C. PARROTT,
Executive Director, National Advisory Council on Vocational Education.

[FR Doc. 78-34884 Filed 12-14-78; 8:45 am]

[4110-03-M]

Food and Drug Administration

ADVISORY COMMITTEES

Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, place	Type of meeting and contact person
1. Oral Cavity Panel	January 4 and 5, 9 a.m., Conference Rm. B, Parklawn Bldg. 5600 Fishers Lane, Rockville, MD.	Open public hearing January 4, 9 a.m. to 10 a.m.; open committee discussion January 4, 10 a.m. to 4:30 p.m.; January 5, 9 a.m. to 4:30 p.m.; John T. McElroy (HFD-510), 5600 Fishers lane, Rockville, MD 20857, 301-443-4960.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who desire to make such a presentation should notify the contact person by January 1, 1979, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The Panel will review data received in response to the over-the-counter (OCT) review's call for data for this Panel (see also § 330.10(a)(2) (21 CFR 330.10(a)(2))).

The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee Name	Date, time, place	Meeting place and contact person
2. Gastroenterology and Urology Devices Section of the General Medical Devices Panel.	January 12, 9 a.m., Rm. 507A, HHH Bldg., 200 Independence Ave. SW., Washington, DC.	Open public hearing 9 a.m. to 10:30 a.m.; open committee discussion 10:30 a.m. to 3 p.m.; Dennis J. Cotter (HFK-430), 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertaining to the development of a product development protocol for disposable hemodialyzers to Mr. Dennis J. Cotter. Submission of data related to tentative classification findings is also invited. Those desiring to make formal presentations should notify Mr. Cotter by January 2, 1979, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. The Gastroenterology and Urology Devices Section will draft the contents of a product development protocol for disosable hemodialyzers.

Committee name	Date, time, place	Meeting place and contact person
3. General and Plastic Surgery Section of the Surgical and Rehabilitation Devices Panel.	January 12, 9 a.m., Rm. 5169, HEW-N, 330 Independence Ave. SW., Washington, DC.	Open committee discussion 9 a.m. to 3 p.m.; open public hearing 3 p.m. to 4 p.m.; Mark F. Parrish (HFK-410), 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7238.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open committee discussion. Implanted synthetic fibers for hair replacement will be classified by the Panel. As a result of recent information brought to the attention of the agency regarding lint from surgical drapes, this aspect of the device will be reviewed again by the Panel. The Panel will review its classification of standards for absorbable gauze (surgical gauze that is implanted in, and subsequently absorbed by, the body). The Panel will classify isolation masks and instrument lubricants (milks).

Open public hearing. Interested parties are encouraged to present information pertaining to the classification of the devices listed above to Mark F. Parrish. Submission of data related to tentative classification findings is also invited. Those desiring to make formal presentations should notify Mark F. Parrish by January 1, 1979, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Committee name	Date, time, place	Meeting place and contact person
4. Allergenic Extracts Panel	January 12 and 13, Rm. 719, Rock-Wall Bldg., 11400 Rockville Pike, Rockville, MD.	Open public hearing January 12, 9 a.m. to 10 a.m.; open committee discussion January 12, 10 a.m. to 5:30 p.m., January 13, 8:30 a.m. to adjournment; Clay Sisk (HFB-5), 8800 Rockville Pike, Bethesda, MD 20014, 301-443-5455.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of biological products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss editing of the panel report on the safety, effectiveness, and labeling of allergenic extracts.

Committee name	Date, time, place	Type of meeting and contact person
5. Miscellaneous External Drug Products Panel.....	January 14 and 15, 9 a.m., Lobby Room, Holiday Inn, Chevy Chase, MD, (January 14); Conference Rm. L, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD, (January 15).	Open committee discussion January 14, 10 a.m. to 4:30 p.m.; open public hearing January 15, 9 a.m. to 10 a.m.; open committee discussion January 15, 10 a.m. to 4:30 p.m.; John T. McElroy (HFD-510), 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who desire to make such a presentation should notify the contact person by January 9, 1979, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The Panel will review data received in response to the over-the-counter (OTC) review's call for data for this Panel (see also § 330.10(a)(2) (21 CFR 330.10(a)(2))).

The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, place	Meeting place and contact person
6. General Hospital and Personal Use Devices Section of the General Medical Devices Panel.	January 15, 9 a.m., Rm. 1813, FB-8, 200 C St. SW., Washington, DC.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4:30 p.m.; Lillian L. Yin (HFK-470), 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertaining to the classification of general hospital and personal use devices to Lillian Yin. Submission of data related to tentative classification findings is also invited. Those desiring to make formal presentations should notify Lillian Yin by January 5, 1979, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. The following speakers will make presentations to the Panel concerning the use of phototherapy for hyperbilirubinemia: Audrey Brown, M.D., State University of New York, "Clinical Study of Phototherapy"; James Kenan, M.D., University of Cincinnati, "Thermal Changes Associated with Clinical Phototherapy"; Anthony McDonagh, Ph.D., University of California, "Light and the Gunn Rat"; and James Sidbury, M.D., National Institutes of Health, "National Institute of Child Health and Human Development Contract Phototherapy Study."

The Panel will discuss the presentations and will classify phototherapy units. The Panel will also classify rescue blankets and vein stabilization devices.

Committee name	Date, time, place	Type of meeting and contact person
7. Subcommittee of the Fertility and Maternal Health Drugs Advisory Committee.	January 17, 9 a.m., Conference Rm. B, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open public hearing/open committee discussion 9 a.m. to 5 p.m.; A. T. Gregoire (HFD-130), 5600 Fishers Lane, Rockville, MD 20857, 301-443-3520.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of obstetrics and gynecology.

Agenda—Open public hearing/open committee discussion. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

The Committee will discuss the comparisons of efficacy and incidence of adverse reactions of ethinyl estrodiol, conjugated estrogens, and diethylstilbestrol for postcoital contraception.

Committee name	Date, time, place	Meeting place and contact person
8. Oncologic Drugs Advisory Committee.....	January 18 and 19, 9 a.m., Conference Rm. F, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open committee discussion January 18, 9 a.m. to 11:30 a.m.; open public hearing January 18, 11:30 a.m. to 12:30 p.m.; open committee discussion January 18, 12:30 p.m. to 5 p.m., January 19, 9 a.m. to 5 p.m.; Joyce I. Creamer (HFD-150), 5600 Fishers Lane, Rockville, MD 20857, 301-443-4260.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of cancer.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss the committee action report; adequate and well-controlled studies; introduction to guidelines; the Federal Food, Drug, and Cosmetic Act, and advisory committee rules and regulations; and VP16 and Daunomycin.

Committee name	Date, time, place	Meeting place and contact person
9. Antimicrobial Panel	January 19 and 20, 9 a.m.; Conference Rm. C, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD, (January 19); Pennsylvania Rm., Holiday Inn, Bethesda, MD, (January 20).	Open public hearing January 19, 9 a.m. to 10 a.m.; open committee discussion January 19, 10 a.m. to 4:30 p.m., January 20, 9 a.m. to 4:30 p.m.; Lee Geismar (HFD-510), 5600 Fishers Lane, Rockville, MD 20857, 301-443-6057.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who desire to make such a presentation should notify the contact person before January 16, 1979, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The Panel will review data submitted in response to the over-the-counter (OTC) reviewer's call for data for this Panel (see also § 330.10(a)(2) (21 CFR 330.10(a)(2))).

The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minuntes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Dated: December 8, 1978.

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

[FR Doc. 78-34692 Filed 12-14-78; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

DEVICE GOOD MANUFACTURING PRACTICE ADVISORY COMMITTEE

Request for Nominations for Members

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration requests nominations for membership on the Device Good Manufacturing Practice Advisory Committee.

DATE: Nominations must be received by January 15, 1979.

ADDRESS: Nominations must be submitted to the Bureau of Medical Devices (HFK-132), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT:

Emery J. Sturniolo, Bureau of Medical Devices (HFK-132), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7194.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration requests nominations for membership on the Device Good Manufacturing Practice Advisory Committee. A vacancy will occur on May 31, 1979, in each of the following interest groups: (1) Health professional; (2) General public; and (3) local, State, or Federal government.

The Commissioner of Food and Drugs will point as members those nominees who are most representative of an interest group to serve on the advisory committee.

On May 28, 1976, the Medical Device Amendments of 1976 (Pub. L. 94-295) were enacted into law, amending the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.). Under section 520(f) of the act (21 U.S.C. 360j(f)), the agency has authority to develop and promulgate regulations requiring that methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installa-

tion of a medical device conform to current good manufacturing practice. These regulations are designed to assure that devices will be safe and effective and otherwise in compliance with the act.

Under section 520(f)(3) of the act, the Commissioner of Food and Drugs has established an advisory committee for the purpose of advising and making recommendations on these regulations. Additionally, under this provision, the Commissioner is authorized to request recommendations from the advisory committee on any petitions submitted requesting exemptions or variance from good manufacturing practice requirements.

As required by section 520(f) of the act, the advisory committee is composed of nine members selected from different interest groups as follows:

1. Three members who are officers or employees of any State or local government or of the Federal government;

2. Two members who are representative of interests of the device manufacturing industry;

3. Two members who are representative of the interests of physicians and other health professionals; and

4. Two members who are representative of the interests of the general public.

The term of office is 3 years.

The Food and Drug Administration has a special interest in assuring that women and minority groups are adequately represented on advisory committees and therefore extends particular encouragement to nominations for appropriately qualified female and minority candidates.

An interested person may nominate one or more qualified persons for membership. A complete curriculum vitae of the nominee shall be included, along with a description of the nominee's current employment and background, if any, with respect to medical devices. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the committee, and appears to have no conflict of interest. Potential candidates will be asked by the Food and Drug Administation to provide detailed information concerning financial holdings, consultancies, and research grants or contracts, to permit evaluation of possible sources of conflict of interest.

Dated: December 11, 1978.

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

[FR Doc. 78-34845 Filed 12-14-78; 8:45 am]

[4110-03-M]

[Docket No. 78N-0022]

LEAD AND CADMIUM IN DECORATED GLASS TUMBLERS

Availability of Interagency Task Force Report

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the availability of an interagency task force report. The purpose of this report, which has been accepted by the Commissioner of Food and Drugs, the Administrator of the Environmental Protection Agency (EPA), and the Consumer Product Safety Commission (CPSC) is to endorse and further define the decorated glass tumbler industry's voluntary quality control program concerning leachable lead and cadmium. The program will ensure that the public is not presented with any significant health risk due to lead and cadmium that may leach from decorated glass tumblers.

ADDRESS: Copies of the report are available from the Bureau of Foods (HFF-342), Food and Drug Administration, 200 C Street SW., Washington, D.C. 20204.

FOR FURTHER INFORMATION CONTACT:

Gary Dykstra, Office of the Associate Commissioner for Regulatory Affairs (HFC-13), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3470.

SUPPLEMENTARY INFORMATION: In July 1977, the Massachusetts Department of Public Health along with a cooperating EPA scientist announced that it was able to extract lead from a decorated promotional glass. This finding led to subsequent meetings between the Food and Drug Administration (FDA), EPA, CPSC, and the involved glass-decorating industry.

It was concluded from these preliminary meetings that an interagency task force effort was necessary to determine the scope and significance of lead and cadmium leachability in decorated glass tumblers.

In studying this situation, the task force, among other things, accomplished the following:

1. Convened a special group of toxicologists to assess the significance of the preliminary analytical results.

2. Developed a sampling and analytical plan to gather a necessary data base.

3. Held an open meeting on March 7, 1978, to solicit all relevant views and additional information on this subject. A verbatim transcript of this meeting was used, along with additional written comments, by the task force in its consideration of alternatives.

4. Worked with industry—both large and small decorators—towards development of an acceptable product testing program.

5. Improved decorated glass testing methodology that will be submitted to the American Society for Testing and Materials for validation purposes.

6. Requested from an expert behaviorist, and received, an in-depth analysis of the risk presented by decorated glasses to children and other populations.

After considering all of the information before it, the task force concluded that the voluntary program suggested by the industry would, with some modification, be adequate to ensure that decorated glasses pose no significant risk due to lead and cadmium. The basic elements of this program include the following:

1. The lip and rim area (i.e., the top 20 millimeters) of the decorated glass must not leach greater than 50 parts per million (ppm) lead or 3.5 ppm cadmium when analyzed by a modification of the existing ceramicware test procedure.

2. A production lot would be considered unacceptable if any 1 unit in a randomly selected sample of 6 glasses exceeds the above levels.

The Commissioner of Food and Drugs, the Administrator of the Environmental Protection Agency, and the CPSC have accepted the conclusions and recommendations of the task force.

It is anticipated that this full scale voluntary program, which is acceptable to the agencies and the industry, will be operational within 3 months. This program will require that the industry maintain appropriate testing records for periodic review by the cooperating agencies.

Persons interested in obtaining copies of the interagency task force report should write to the Bureau of Foods (HFF-342), Food and Drug Administration, 200 C Street SW., Washington, D.C. 20204. A copy of the report as well as the complete administrative file on this subject is on display in the Office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and may be seen in that office from 9 a.m. to 4 p.m., Monday through Friday.

Dated: December 11, 1979.

JOSEPH P. HILE,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-34846 Filed 12-14-78; 8:45 am]

[4110-03-M]

[Docket No. 78N-0420]

MEDICATED FEEDS

Availability of Task Force Report

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the availability of a Food and Drug Administration (FDA) task force report entitled "Second Generation of Medicated Feeds."

ADDRESSES: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. Copies of the report may be obtained from the Bureau of Veterinary Medicine, Industry Information Branch (HFV-226), 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

William Bixler, Bureau of Veterinary Medicine (HFV-220), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4438.

SUPPLEMENTARY INFORMATION: The purpose of the task force report is to examine FDA's current medicated feed program and make appropriate recommendations to the Commissioner of Food and Drugs for improvement. Implementation of these recommendations will lead to a more meaningful medicated feed program with emphasis on the human risks associated with such products. The report suggests that the medicated feed application process be modified in accord with the above emphasis to generally streamline it to lessen the paper work burden on industry and government alike.

The general concepts embodied in the report have been accepted by FDA's Director, Bureau of Veterinary Medicine and the Associated Commissioner for Regulatory Affairs. However, the Commissioner will not render the agency's final decision on the report's recommendations until a detailed manpower assessment and proposed implementation plan can be prepared. This additional information should be available to the Commissioner on or about April 1, 1979.

Written comments on the report are encouraged and may be addressed to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. A complete copy of the report including attachments may be seen in the Hearing Clerk's office between 9 a.m. and 4 p.m., Monday through Friday. Copies of the report without the attachments may be obtained from the Bureau of Veterinary Medicine, Industry Information Branch (HFV-226), 5600 Fishers Lane, Rockville, MD 20857.

Dated: December 11, 1978.

JOSEPH P. HILE,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-34844 Filed 12-14-78; 8:45 am]

[4110-03-M]

[Docket No. 78N-0279; DESI 12374]

SPARTEINE SULFATE INTRAMUSCULAR INJECTION AND OXYTOCIN CITRATE BUCCAL TABLETS

Opportunity for Hearing on Proposal To Withdraw Approval of New Drug Applications

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice proposes to withdraw approval of the new drug applications for sparteine sulfate intramuscular injection and oxytocin citrate buccal tablets. The ground for the action is that the drugs are not shown to be safe for use in the induction of labor and treatment of hypotonic uterine contractions.

DATE: Hearing requests due on or before January 15, 1979.

ADDRESSES: Communications forwarded in response to this notice should be identified with the Docket number 78N-0279, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Request for hearing (identify with Docket number appearing in the heading of this notice): Hearing Clerk, Food and Drug Administration (HFA-305), Rm. 4-65.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT:

Ronald L. Wilson, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: Sparteine sulfate intramuscular injection and oxytocin citrate buccal tablets have been used in the induction of labor and in cases of intrapartum hypotonic inertia. The drugs have a pharmacological action of stimulating contraction of the uterus. As part of the Drug Efficacy Study Implementation (DESI), sparteine sulfate was evaluated by the National Academy of Sciences-National Research Council (NAS-NRC) as an effective drug for the induction of labor and treatment of hypotonic uterine contractions (Ref. 1). In their evaluation of the drug the NAS-NRC included a warning that the action of the drug is quite unpredictable and other methods are available that are more predictable and that can be better controlled.

After reviewing the NAS-NRC report on sparteine sulfate, the Food and Drug Administration (FDA) issued a notice (DESI 12374) in the FEDERAL REGISTER of June 17, 1971 (36 FR 11676), evaluating sparteine sulfate intramuscular injection as effective in the induction of labor and treatment of hypotonic uterine contractions. The notice required the following warning in the physician labeling:

> The action of this preparation is quite unpredictable. It should not be given concomitantly with oxytocin. At least two hours should pass before a change is made from one drug to another. An occasional case of rupture of the uterus has been reported with use of sparteine sulfate.

Oxytocin citrate buccal tablets were not included in the DESI review as the drug had been approved after the Drug Amendments of 1962. The physician labeling of this drug also contains the above warning statement.

In recent years the benefit/risk ratio for the use of sparteine sulfate intramuscular injection and oxytocin citrate buccal tablets for stimulation of the uterus has become of increasing concern to FDA. Medical literature has documented that stimulation of the uterus by the administration of these drugs during labor may lead to uterine tetany with marked impairment of the uteroplacental blood flow, uterine rupture, cervical and perineal lacerations, amniotic fluid embolism, and trauma to the infant. Mothers and infants have been injured and some have died because of injudicious use of oxytocic drugs (Ref. 2).

At its meeting on July 18, 1975, the FDA Obstetrics and Gynecology Advisory Committee considered the subject of sparteine sulfate, the danger of tetanic uterine contractions associated with the drug, and the unpredictability of its action. A subcommittee was appointed to review all of the currently available information concerning sparteine sulfate intramuscular injection. Their report was submitted to the full Committee on October 3, 1975. The Committee concluded that because of the inability to control the

drug's action and the documented problems of hypertonicity with the association of obstetrical complications, the relative safety of sparteine sulfate is in question and its approval for marketing should be discontinued.

The benefit/risk ratio of oxytocic drugs used in the induction of labor was again discussed in the November 17, 1977, and January 31, 1978 meetings of the Committee. The consensus of the Committee was that for induction or stimulation of labor only oxytocin injection, administered by the intravenous route, should be used as this mode of administration is more predictable and can be more adequately controlled. The potential dangers regarding the use of oxytocic drugs in the induction of labor were also discussed at the hearing on the use of injectable oxytocic drugs for elective induction of labor held on June 21, 1978. A notice announcing the hearing was published in the FEDERAL REGISTER of April 14, 1978 (43 FR 15779).

Medical literature concerning sparteine sulfate intramuscular injection and oxytocin citrate buccal tablets that has been published in recent years supports the findings of the FDA Obstetrics and Gynecology Advisory Committee that the action of the two drug products is unpredictable compared to the action of oxytocin intravenous injection. One article (Ref. 3) is an in vitro comparison of sparteine intramuscular injection and oxytocin intravenous injection on the human pregnant uterus muscle. The investigator found that the initial onset of action of sparteine is unpredictable compared with oxytocin. He also found that increasing the dose level of oxytocin over a very wide range of values resulted in no appreciable increase in muscle tonus, while with sparteine, as soon as dose levels are increased beyond minimal response levels, there is a highly significant increase in the baseline tonus. This suggests that if no effective uterine contractions are obtained with oxytocin the dose level may be safely raised. However, with sparteine, increasing dose levels presents increasing risk of tetanic contractions. Another article (Ref. 4) is by an investigator who conducted an objective evaluation of the in vitro and in vivo effects of sparteine sulfate on human uterine contractility. In vitro, he observed tetanic contractions with sparteine in concentrations of 300 micrograms per milliter. In vivo, he noted that with sparteine, the increase in uterine activity is achieved principally by means of an increase in frequency of contractions, while with properly regulated oxytocin, the response is characterized by a more balanced increase in both frequency and amplitude. The effects on tonus were, again, variable. In some cases the tonus remained unchanged while in others definite uterine hypertonus was observed. In one instance where such temporary tetanic activity was seen, the fetal heart rate was markedly depressed. Another interesting finding was the variation in response to equal doses of sparteine in the same individual. With serial injections of intramuscular sparteine, it was noted that the first dose usually produced the greatest increment in uterine activity. It is apparent that uterine activity cannot be regulated to the desired level with intramuscular sparteine sulfate as is possible with controlled oxytocin infusion. Examples of several adverse reactions following the use of sparteine have appeared in the literature. One report (Ref. 5) is a ruptured uterus and another report (Ref. 6) is a uterine tetany and fetal distress. Copies of references cited above and physician labeling for the drug products are on file with the Hearing Clerk.

REFERENCES

1. Drug Efficacy Study Report, National Acacemy of Sciences-National Research Council, on Tocosamine, sparteine sulfate.

2. A.M.A. Drug Evaluations, Third Edition, "Oxytocics," pp. 620-626.

3. Landesman, R., et al., "Sparteine and Oxytocin: In-Vitro Comparison on Pregnant-Uterus Muscle," *Obstetrics and Gynecology*, 23:2-8, 1964.

4. Goodno, J. A., et al., "In Vitro and In Vivo Effects of Sparteine Sulfate on Human Uterine Contractility—An Objective Evaluation, "*Obstetrics and Gynecology*, 86:288-290, 1963.

5. Boysen, H., "Sparteine Sulfate and Rupture of the Uterus: Report of a Case," *Obstetrics and Gynecology*, 21:403-404, 1963.

6. Bedrosian, L. and J. J. Gamble, "Uterine Tetany and Fetal Distress Coincidental with Administration of Sparteine Sulfate: Report of a Case," *Obstetrics and Gynecology*, 21:400-402, 1963.

7. Greenhill, J. P. and E. A. Friedman, "Biological Principles and Modern Practice of Obstetrics," W. B. Saunders Co., Philadelphia, p. 309, 1974.

8. Page, E. W., C. I. Villie, and D. B. Villie, "Human Reproduction," 2d Ed., W. B. Saunders Co., Philadelphia, p. 306, 1976.

9. Pritchard, J. A. and P. C. MacDonald, "Williams Obstetrics," 15th Ed., Appleton-Century-Crofts, New York, p. 662, 1976.

10. Transcript of the Obstetrics and Gynecology Advisory Committee Meeting, July 18, 1975.

11. Transcript of the Obstetrics and Gynecology Advisory Committee Meeting, October 3, 1975.

12. Transcript of the Obstetrics and Gynecology Advisory Committee Meeting, November 17, 1977.

13. Transcript of the Obstetrics and Gynecology Advisory Committee Meeting, January 31, 1978.

14. Transcript of the Proceedings of the Hearing on Elective Induction of Labor—Injectable Oxytocic Drugs, June 21, 1978.

15. Tocosamine Sterile Solution for Intramuscular Use Only, labeling, 1971.

16. Spartocin Sterile Solution for Intramuscular Use Only, labeling, 1970.

17. Pitocin Citrate Buccal Tablet for Buccal Administration Only, labeling, 1975.

The Director of the Bureau of Drugs now proposes to withdraw approval of the new drug applications for sparteine sulfate intramuscular injection and oxytocin citrate buccal tablets on the ground that new evidence, not contained in the applications or not available to the Food and Drug Administration until after the applications were approved, evaluated together with the evidence available when the applications were approved, shows that the drug products are not shown to be safe for use under the conditions for use upon the basis of which the applications were approved. Specifically, the Director refers to the serious risks of uterine tetany and fetal distress associated with the use of these drugs, which give an unfavorable benefit-to-risk ratio to such drugs for their labeled indications, and the fact that oxytocin intravenous injection, having less potential for risk, is readily available.

This notice applies not only to sparteine sulfate intramuscular injection, which was subject to the DESI review, and oxytocin citrate buccal tablets, which was approved after the Drug Amendments of 1962, but to all such products that are the subject of a new drug application approved either before or after the Drug Amendments of 1962 and also to any identical, related, or similar drug product (21 CFR 310.6) whether or not it is the subject of an approved new drug application.

NDA 12-374; Tocosamine Sterile Solution containing sparteine sulfate; Trent Pharmaceuticals, Inc., 8 Winchester Plaza, Elmsford, NY 10523.

NDA 13-211; Spartocin Injection containing sparteine sulfate; Ayerst Laboratories, Division American Home Products Corp., 685 Third Ave., New York, NY 10017.

NDA 13-508; Pitocin Citrate Buccal Tablets containing oxytocin citrate; Parke, Davis & Co., Joseph Campau Ave. at the River, Detroit, MI 48232.

It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the

person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

Therefore, notice is given to the holders of the new drug applications and to all other interested persons that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug applications and all amendments and supplements thereto on the ground that new evidence of clinical experience, not contained in such applications or not available until after such applications were approved, evaluated together with the evidence available when the applications were approved, shows that such drugs are not shown to be safe for use in the induction of labor and treatment of hypotonic uterine contractions.

In addition to the specific ground for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it, e.g., any contention that a product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicants and all other persons who manufacture or distribute a drug product that is identical, related, or similar to a drug product named above (21 CFR 310.6) are hereby given an opportunity for a hearing to show why approval of the new drug applications should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to its legal status.

An applicant or any other person subject to this notice who decides to seek a hearing, shall file (1) on or before January 15, 1979, a written notice of appearance and request for hearing, and (2) on or before February 13, 1979, the data, information, and analyses relied upon to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed with respect to the product and constitutes a waiver of any contentions concerning the legal status of any such drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact that precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice of opportunity for hearing shall be filed in quintuplicate. Such submissions except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 352, 355)), and under authority delegated to the Director of the Bureau of Drugs (21 CFR 5.82).

Dated: November 30, 1978.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 78-34593 Filed 12-14-78; 8:45 am]

[4110-92-M]

FEDERAL COUNCIL ON THE AGING; LONG TERM CARE COMMITTEE

Meeting

The Federal Council on the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 93-29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. app. 1, sec. 10, 1976) that the Long Term Care Committee of the Council will hold a meeting on Friday, January 12, 1979 from 9:30 a.m. to 12:30 p.m., Rooms 703-705A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.

The agenda will consist of a discussion of issues in long term care will representatives of Federal Departments.

Further information on the Council may be obtained from the FCA Secretariat, Federal Council on the Aging, Washington, D.C. 20201, telephone 202-245-0441. FCA meetings are open for public observation.

Dated: December 11, 1978.

NELSON H. CRUIKSHANK,
Chairman, Federal Council on the Aging.

[FR Doc. 78-34901 Filed 12-14-78; 8:45 am]

[4110-92-M]

MODEL ADOPTION LEGISLATION AND PROCEDURES ADVISORY PANEL

Meeting

The Model Adoption Legislation and Procedures Advisory Panel was established by the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (Public Law 95-266, Title II, Section 202) to advise and assist the Secretary of HEW in the review of current conditions, practices, and laws relating to adoption, with special reference to their effect on facilitating or impeding the location of suitable adoptive homes for children who would benefit by adoption and the completion of suitable adoptions for such children. The Panel will propose to the Secretary model adoption legislation and procedures not later than twelve months after its appointment.

Notice is hereby given pursuant to the Federal Advisory Committee act (Public Law 92-463, 5 U.S.C. app. 1, sec. 10, 1976) that the Panel will hold

a meeting on January 8, 9 and 10, 1979 from 9:00 a.m. to 5:00 p.m., Room 425A, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C.

The Panel will consider and approve an agenda on the first day of a three day meeting. The Panel will discuss the first draft of the model adoption legislation and recommend items to be included in the first draft of model adoption procedures. The Panel will meet in both plenary and task force sessions during the three day meeting.

Further information on the Panel may be obtained from Mrs. Diane D. Broadhurst, Executive Secretary, Model Adoption Legislation and Procedures Advisory Panel, Children's Bureau, P.O. Box 1182, Washington, D.C. 20013, telephone (202) 755-7730. Model Adoption Legislation and Procedures Advisory Panel meetings are open for public observation.

ARNOLD SAMPSON,
HDS Committee Management Officer.

NOVEMBER 30, 1978.

[FR Doc. 78-34902 Filed 12-14-78; 8:45 am]

[4110-07-M]

Office of the Secretary

PRIVACY ACT OF 1974

New System of Records

AGENCY: Department of Health, Education, and Welfare; Social Security Administration

ACTION: Notification of New System of Records, National Recipient System, HEW/SSA/OFA, 09-60-0215.

SUMMARY: The Social Security Administration (SSA) proposes to establish under the Privacy Act a new system of records entitled the National Recipient System (NRS). The purpose of the new system is to assist in the reduction of fraud and abuse in the Aid to Families with Dependent Children (AFDC) program

DATES: The Department of Health, Education, and Welfare filed a new system report with the Speaker of the House, the President of the Senate, and the Director, Office of Management and Budget on December 8, 1978. The Department has requested a waiver of the 60 day advance notice requirement of OMB Circular A-108 in regard to the issuance of the Request for Proposal for this system. The routine use will become effective as proposed without further notice on January 14, 1979, provided the Department does not receive comments which results in a contrary determination.

ADDRESS: Address comments to Acting Director, Fair Information Practice Staff, Department of Health, Education and Welfare, 200 Independence Avenue, S.W., Washington, D.C. 20201. Comments received will be available for inspection in Room 526-F, Hubert H. Humphrey Building, at the above address.

FOR FURTHER INFORMATION CONTACT:

Mr. Frank N. Sass, Director, National Recipient System, Department of Health, Education, and Welfare, Switzer Building, 330 C. Street, S.W., Washington, D.C., (202) 235-2777.

SUPPLEMENTARY INFORMATION: The Department of Health, Education and Welfare has initiated a major project—the National Recipient System (NRS)—to assist in the reduction of fraud and abuse in the Aid to Families with Dependent Children (AFDC) program administered by DHEW and State agencies. The NRS will establish a central repository for data on all current applicants to and recipients of AFDC. The NRS will assist in the reduction of fraud and abuse in State AFDC programs and in the improvement of AFDC administration in several significant areas, including:

1. Increasing eligibility verification and the accuracy of payments
2. Avoiding duplicate payments between State and Federal benefit programs
3. Providing methods for program cross-checking, and protection against misreported or non-reported benefits
4. Improving quality control, cost allocation, and statistical reporting methods associated with the AFDC program.

The fifty States, Guam, Puerto Rico, the Virgin Islands, American Samoa, and the District of Columbia (herein referred to as "State"), which are responsible for the administration of the AFDC program, will use the system.

The NRS has three clearly defined functions:

1. To provide an interjurisdictional search/match service.
2. To provide verification of social security numbers (if the State supplies the numbers)
3. To transmit Federal payment information from other Federal systems of records.

The NRS will return information on the findings of the interjurisdictional match, social security number validation, and other Federal payments data for the individual AFDC applicant/recipient to the originating State for use in its eligibility determination process.

The NRS will require minimal input from the States and collect and retain only data that is absolutely necessary for the provision of useful information to the States. As such, the NRS is a highly efficient and properly controlled tool for AFDC fraud, abuse and error detection.

SSA maintains magnetic tapes and disks within an enclosure attended by security guards. Anyone entering or leaving this enclosure must have special badges which SSA issues to authorized personnel only. For computerized records transmitted between the NRS office and State office locations (including organizations administering SSA programs under contractual agreements), system securities comply with Departmental requirements and National Bureau of Standards Guidelines. Safeguards include a lock-unlock password system, a controlled mail system, and an audit trail. In addition to the safeguard measures described above, written agreements between the SSA/OFA and participating States will further insure the security and integrity of system data and the rights of individuals to privacy.

The NRS complies with the requirements in the HEW ADP Systems Manual, Part 6, ADP Systems Security.

FREDERICK M. BOHEN,
Assistant Secretary for Management and Budget.

09-60-0215

System name:

National Recipient System, HEW/SSA/OFA.

Security classification (If none, so state):

None.

System location: Office of Family Assistance, 330 C. Street, Room 4111, Washington, D.C. 20201.

Categories of individuals covered by the system:

The National Recipient System (NRS) will maintain records on all applicants to and recipients of the Aid to Families with Dependent Children (AFDC) program.

Categories of records in the system:

Name of AFDC applicant/recipient, date of birth, sex, social security number (when available), State originating the entry, county/local office (if provided), date of entry, State case/client identification number. The NRS will obtain Federal benefits and payments information, (amount and date received, by program), including Federal payroll data, and report the data to the State originating the entry, but will not retain this data in the NRS system. The NRS will automatically delete applicants/recipients without a validated social security number after 60 days. The NRS will not collect or report any data subject

to 26 U.S.C. 6103 (as amended by the Tax Reform Act of 1976) through this system.

Authority for maintenance of the system:

Section 402(a)(6) of the Social Security Act, as amended, and 45 CFR 205.60(a) (1) and (2).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Disclosure from this system may be made:

1. To State agencies administering Aid to Families with Dependent Children programs for use in fraud and abuse detection.

2. To Congressional offices from the record of an individual in response to an inquiry from that office made at the request of that individual.

3. In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purchase for which the records are collected.

4. To other Federal agencies who maintain systems of records from individual AFDC applicant/recipient records initiated by States, in the form of an inquiry to the following systems to obtain matching data:

a. 49 VA 21 Veterans, Dependent and Beneficiaries Compensation and Pension Records, VA—VA Benefits

b. CSC Government 3, General Personnel Records System—CSC—Federal Employee Payroll

c. CSC-2 Civil Service Retirement and Insurance Record, CSC—Federal Employee Benefits.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

The Social Security Administration maintains records on disk and magnetic tape.

Retrievability:

Based on name/date of birth (name code primary search key), social security number on disk, magnetic tape, printers, listings, and communication terminals. The use of the social security number is optional depending upon its availability within the States' Aid to Families with Dependent Children program. Section 205(c)(2)(B)(i)(II) and (C) and Section 402(a)(25) of the Social Security Act covers the use of the social security number.

Only a small group of employees (SSA and contractual employees) has direct access to data from the NRS in order to maintain a computer system which matches the AFDC applicant's/recipient's identification against that of other current AFDC applicants/recipients already known to the NRS. When a State enters an AFDC applicant's/recipient's social security number, the NRS will initiate a search of the SSA file of social security numbers (SSN) to validate the name, date of birth, and social security number of the individual in question.

When the SSA/SSN interface is successful (identity is validated), the NRS system will use the State-provided applicant/recipient data to cross-check with other Federal systems of records to obtain information on other Federal benefit payments.

Safeguards:

SSA maintains all magnetic tapes and disks within an enclosure attended by security guards. Special badges issued only to authorized personnel control access to the enclosure. For computerized records transmitted between the NRS office and State office locations (including the organization administering the NRS program under contractual agreements), system security complies with Departmental requirements and National Bureau of Standards Guidelines. Safeguards include a lock-unlock password system, a controlled mail system, and an audit trail. In addition to the safeguard measures described above, written agreements between SSA/OFA and participating States will further insure the security and integrity of system data and the rights of individuals to privacy. The NRS complies with the requirements found in HEW ADP System Manual, Part 6, ADP System Security.

Retention and disposal:

SSA retains an AFDC applicant/recipient record for those individuals with a validated social security number consisting of name, date of birth, sex, social security number, date of entry, State and case or client number on tape or disk until SSA receives a notification from a State agency that the individual is no longer a current AFDC applicant/recipient. The NRS will retain history tapes 60 days for back-up purposes only and magnetic tape records up to 30 days before erasing them. SSA will destroy all listings after use by shredding.

System manager and address.

Director, National Recipient System Department of Health, Education, and Welfare Switzer Building, 330 C Street SW., Washington, D.C. 20201. Telephone: (202) 235-2777

Notification procedure:

Contact the system manager in writing at the above address and provide your name, address, and proper identification. The system manager may request additional information, such as your date of birth, sex and social security number in order to distinguish between individuals having the same or similar names.

Record access procedures:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought. [These access procedures are in accordance with Departmental Regulations (45 CFR, Section 5b.5 (a)(2)].

Contesting record procedures:

Individuals who feel that the information provided through the above procedure is inaccurate, not timely, not relevant, or not complete should contact the system manager at the address shown above, and reasonably identify the records and specify the information they are contesting. [These procedures are in accordance with Department Regulations (45 CFR, Section 5b.7)]

Record source categories:

The NRS will obtain information from any State, commonwealth, or territorial agency responsible for administration of the AFDC program and from the individual, the Veterans' Administration, the Civil Service Commission, and the SSA systems of records Master Files of Social Security Number Holders, Master Beneficiary Record, Supplemental Security Income Records.

System exempted from certain provisions of the act:

None.

[FR Doc. 78-35012 Filed 12-14-78; 8:45 am]

[4110-07-M]

Social Security Administration

ADVISORY COUNCIL ON SOCIAL SECURITY

Public Hearings

AGENCY: Advisory Council on Social Security.

ACTION: Notice is hereby given of a change in the location of the January 4-5 public hearings of the Advisory Council on Social Security from the first Floor Auditorium, HEW North Building, to the Auditorium of the Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201. The hearings will run from 9 a.m. to 5 p.m. on each day.

Details concerning these public hearings were published previously in the FEDERAL REGISTER, 43 FR 39608, dated September 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Dorothy Sorter Stimpson, Coordinator for Public Hearings, Advisory Council on Social Security, DHEW, Hubert H. Humphrey Building, Room 410E, Washington, D.C. 20201.

(Catalog of Federal Domestic Assistance Program Numbers 13.800-13.805, Social Security Programs.)

LAWRENCE H. THOMPSON,
Executive Director, Advisory Council on Social Security.

[FR Doc. 78-34945 Filed 12-14-78; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[Docket No. N-78-904]

SMALL CITIES DISCRETIONARY GRANTS UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Dates for Submission of Preapplication

AGENCY: Department of Housing and Urban Development.

ACTION: Notice.

SUMMARY: HUD is issuing a notice of the dates for submission of preapplications to HUD Area Offices for the Small Cities Discretionary Grant program under the Community Development Block Grant program for Fiscal year 1979.

FINAL DATE FOR SUBMISSION

	No Earlier Than—	No Later Than—
REGION I		
Connecticut, Mass., R.I	January 2, 1979	January 15, 1979
Maine, N.H., Vermont	January 15, 1979	January 29, 1979
REGION II		
New Jersey, New York, Puerto Rico	January 22, 1979	February 5, 1979
REGION III		
Delaware, Maryland, Pennsylvania, Virginia, West Virginia	January 22, 1979	February 5, 1979
REGION IV		
Florida	January 2, 1979	January 15, 1979
North Carolina	January 8, 1979	January 22, 1979
Kentucky, Mississippi, Tennessee	January 15, 1979	January 29, 1979
Georgia, South Carolina	January 22, 1979	February 5, 1979
Alabama	February 5, 1979	February 19, 1979
REGION V		
Indiana, Michigan	January 2, 1979	January 15, 1979
Illinois	January 8, 1979	January 22, 1979
Wisconsin	January 15, 1979	January 29, 1979
Minnesota, Ohio	January 22, 1979	February 5, 1979
REGION VI		
Arkansas, Louisiana, New Mexico, Oklahoma, Texas	February 12, 1979	February 26, 1979
REGION VII		
Kansas, Missouri	January 2, 1979	January 15, 1979
Iowa, Nebraska	January 15, 1979	January 29, 1979
REGION VIII		
Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.	January 2, 1979	January 15, 1979
REGION IX		
Arizona, California, Hawaii, Nevada	January 15, 1979	January 29, 1979
REGION X		
Alaska, Idaho, Oregon	January 22, 1979	February 5, 1979
Washington	February 5, 1979	February 19, 1979

FOR FURTHER INFORMATION CONTACT:

Mr. James N. Forsberg, Small Cities Program Division, Office of Community Planning and Development, Department of Housing and Urban Development, Washington, D.C. 20410; 202-755-6306.

SUPPLEMENTAL INFORMATION: Notice is hereby given that in accordance with 24 CFR 570.420(h)(2) the Department of Housing and Urban Development (HUD) has established dates for submission of preapplications for Small Cities Discretionary Grants to be accepted by HUD for Fiscal Year 1979.

For applicants from both metropolitan and nonmetropolitan areas, the earliest and the latest dates for submission are the dates established above for each State. Preapplications for funding under the Single Purpose and Comprehensive Grant provisions of the Small Cities Discretionary Grant program will be accepted only during the designated time period.

Applicants are hereby advised to submit one copy of the preapplication for Single Purpose Grants pursuant to 24 CFR 570.429, or one copy of the preapplication for Comprehensive Grants pursuant to 24 CFR 570.425, to the appropriate HUD Area Office serving the applicant's jurisdiction.

Issued at Washington, D.C., December 8, 1978.

ROBERT C. EMBRY, Jr.,
Assistant Secretary for Community Planning and Development.

[FR Doc. 78-34863 Filed 12-14-78; 8:45 am]

[4210-01-M]

Office of the Secretary

[Docket No. N-78-905]

IMPROVING GOVERNMENT REGULATIONS

Semiannual Agenda of Significant Regulations

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of publication date of semiannual agenda of significant regulations under development or review.

SUMMARY: The date of publication of HUD's initial semiannual agenda of significant regulations under development or review will be December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, Department of Housing and Urban Development, Room 5218, 451 Seventh Street, S.W.,

Washington, D.C. 20410 (202) 755-6207.

SUPPLEMENTARY INFORMATION: Executive Order 12044 "Improving Government Regulations", (43 FR 12661) directs each executive agency to publish notice of when its semiannual agenda of significant regulations will be published. The Department indicated in the FEDERAL REGISTER of October 2, 1978 at page xiii that its first semiannual agenda would be published on December 15, 1978.

The date of publication of the first semiannual agenda is changed to December 29, 1978.

AUTHORITY: Section 2(a), Executive Order 12044, Improving Government Regulations.

Issued at Washington, D.C., on December 13, 1978.

JAY JANIS,
Under Secretary, Department of Housing and Urban Development.

[FR Doc. 78-35092 Filed 12-14-78; 8:45 am]

[4310-55-M]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

ENDANGERED SPECIES PERMIT

Receipt of Application

Applicant: San Diego Zoological Garden, P.O. Box 551, San Diego, California 92112.

The applicant requests a permit to purchase and import one male and one female Diana's leaf monkey (*Cercopithecus diana*) from the Calgary Zoo, Calgary, Alberta for captive breeding and exhibition.

Humane care and treatment during transport has been indicated by applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-3492. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before January 15, 1979. Please refer to the file number when submitting comments.

Dated: December 11, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 78-34831 Filed 12-14-78; 8:45 am]

[4310-55-M]

ENDANGERED SPECIES PERMIT

Receipt of Application

Applicant: Florida Department of Natural Resources, Division of Marine Resources, Bureau of Marine Science & Technology, 202 Blount Street, Crown Building, Tallahassee, Florida 32304.

The applicant requests a permit to take Atlantic ridley (*Lepidochelys kempi*), leatherback (*Dermochelys coriacea*), hawkbill (*Eretmochelys imbricata*), loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) sea turtle for the purpose of scientific research and enhancement of survival. Eggs and hatchlings will be removed to qualified aquaria for rearing and later release to the wild. Nesting surveys and tagging studies will also be conducted.

Humane care and treatment during transport has been indicated by applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-3456. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before January 15, 1979. Please refer to the file number when submitting comments.

Dated: December 11, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 78-34832 Filed 12-14-78; 8:45 am]

[4310-55-M]

ENDANGERED SPECIES PERMIT

Receipt of Application

Applicant: National Zoological Park, Washington, D.C. 20008.

The applicant requests a permit to purchase one captive-bred male dorcas gazelle (*Gazella dorcas dorcas*) from the San Antonio Zoo.

Humane care and treatment during transport has been indicated by applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-3507. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before January 15, 1979. Please refer to the file number when submitting comments.

Dated: December 11, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 78-34833 Filed 12-14-78; 8:45 am]

[4310-55-M]

ENDANGERED SPECIES PERMIT

Receipt of Application

Applicant: Minnesota Zoological Garden, 12101 Johnny Cake Ridge Road, Apple Valley, Minnesota 55124.

The applicant requests a permit to import to the Minnesota Zoological Gardens two (2) male and two (2) female Leopard Cats (*Felis bengalensis bengalensis*) from the Ravensden Zoo, England.

Humane care and treatment during transport has been indicated by applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-3500. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before January 15, 1979. Please refer to the file number when submitting comments.

Dated: December 8, 1978.

LARRY LA ROCHELLE,
Acting Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 78-34835 Filed 12-14-78; 8:45 am]

[4310-55-M]

ENDANGERED SPECIES PERMIT

Receipt of Application

Applicant: Smithsonian Institution, Dr. Richard W. Thorington, Jr., Natural History Building, Room 390, Washington, D.C. 20560.

The applicant seeks permission to reactivate a permit (PRT 2-1670) that expired August 31, 1978, to import the bones of 12 mountain gorillas (*Gorilla gorilla*) for scientific research.

A notice of this application was published in the FEDERAL REGISTER, Vol. 43, No. 1—Tuesday, January 3, 1978, and a 30 day public comment period was allowed. No comments were received. The application received a review by the Fish and Wildlife Service's Office of Endangered Species and the Wildlife Permit Office. The Endangered Species Scientific Authority reviewed and concurred in the issuance of the permit. All previous reviews were favorable and the permit was issued.

This office considers the requirements for review and comment by the public and the Service to have been satisfied. However, since the permit has expired, and was not made renewable at the time of issuance, and because the applicant has convinced this office that speed is of the essence in acquiring these valuable scientific specimens, we will therefore provide a 15 day public comment period concerning the re-issuance of the permit.

Telephone comments will be accepted at 703-235-1903. Interested persons may comment by submitting data, views, or arguments to the Director at the above address on or before December 27, 1978. Please refer to the file number PRT 2-1670 when submitting comments.

Dated: December 8, 1978.

LARRY LAROCHELLE,
Acting Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 78-34836 Filed 12-14-78; 8:45 am]

[4310-55-M]

THREATENED SPECIES PERMIT

Receipt of Application

The applicants listed below wish to apply for Captive Self-Sustaining Population permits authorizing the purchase and sale in interstate commerce, for the purpose of propagation, those species of pheasants listed in 50 CFR 17.11 as [T(C/P)]. Humane shipment and care in transit is assured.

These applications and supporting documents are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Va., or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240. Interested persons may comment on these applications on or before January 15, 1979, by submitting written data, views, or arguments to the Director at the above address.

Applicant: Tobie H. Yoder, 11565, CR. 116, Middlebury, Indiana 46540, PRT 2-3361, Species: All.

Applicant: Ray Sandefur, Box 112, Smithland, Kentucky 42801, PRT 2-3328, Species: Swinhoe's pheasant (*Lophura swinhoii*).

Applicant: Philip Buchholz, Roggen, Colorado 80652, PRT 2-3463, Species: All.

Applicant: Robert S. Paladini, Rd. 8, Kent Lake Ave., Carmel, New York 10512, PRT 2-3482, Species: Mikado pheasant (*Syrmaticus mikado*), Palawan Peacock pheasant (*Polyplectron emphanum*).

Applicant: Malcolm J. Sutherland, Route 2, Columbus, Nebraska, PRT 2-3242, Species: All.

Applicant: Douglas Eames, 915 Park Ave., Logan, Utah 84321, PRT 2-3508, Species: All.

Please refer to the individual applicant and the appropriately assigned PRT 2- 'file number when submitting comments.

Dated: December 11, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office.

[FR Doc. 78-34834 Filed 12-14-78; 8:45 am]

[4310-10-M]

Office of the Secretary

OUTER CONTINENTAL SHELF ADVISORY BOARD

Restructuring and Expansion Change

This notice is published to provide public notification of the restructuring and expansion of the National Outer Continental Shelf (OCS) Advisory Board.

The Board as restructured will be composed of the following committees: (1) A National Policy Committee; (2) a National Scientific Committee; and (3) six Regional Technical Working Group Committees.

The purposes of this change are (1) to provide an institutional structure in each OCS leasing region for technical input from the coastal States, the private sector, and other interests into OCS leasing and development decisions; and (2) to provide a forum and a mechanism for scientific input into the Bureau of Land Management's Environmental Studies program.

I have determined that these changes in the OCS Advisory Board are necessary and in the public interest.

The General Services Administration has concurred in the restructuring and expansion of this Board.

Further information regarding these changes may be obtained from Alan D. Powers, Director, Office of OCS Program Coordination, Department of the Interior, Washington, D.C. 20240 (phone: 202/343-9311).

Dated: December 7, 1978.

CECIL D. ANDRUS,
Secretary of the Interior.

[FR Doc. 78-34828 Filed 12-14-78; 8:45 am]

[4310-84-M]

Bureau of Land Management

DRAFT ENVIRONMENTAL STATEMENT, EASTERN POWDER RIVER BASIN WYOMING COAL

Extension of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of comment period on Draft Environmental Statement, Eastern Powder River Basin (EPRB) Wyoming Coal.

SUMMARY: Under guidelines published by the Council on Environmental Quality on April 23, 1971, the Department of the Interior will consider requests for an extension of the comment period on the Draft Envionmental Statement for Coal Development in EPRB Wyoming. Comments were requested through December 11, 1978, but are hereby extended for an additional period to December 26, 1978. Comments received by that date will be considered before final action is taken on the preparation of the final environmental statement. The Draft Environmental Statement is available for public review in Bureau of Land Management Offices in Cheyenne, Casper, and in public libraries in Natrona, Converse, Campbell and Johnson Counties, Wyoming.

DATE: Comments by December 26, 1978.

ADDRESS: Send comments to: Team Leader, Coal ES Team, Bureau of Land Management, 951 Union Blvd., Casper, Wyoming 82601.

FOR FURTHER INFORMATION CONTACT:

Julie Elfving, 307-265-5550 ext. 5101.

ARNOLD E. PETTY,
Director, Bureau of Land Management.

DECEMBER 12, 1978.

[FR Doc. 78-34883 Filed 12-14-78; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-60]

CERTAIN AUTOMATIC CRANKPIN GRINDERS

Investigation

Notice is hereby given that a complaint was filed with the United States International Trade Commission on November 15, 1978 (and amended on November 29, 1978, and December 1, 1978), under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of the Landis Tool Company, Waynesboro, Pa. 17268, alleging that unfair methods of competition and unfair acts exist in the importation of certain automatic crankpin grinders into the United States, or in their sale, by reason of the alleged coverage of such automatic crankpin grinders by claims 5, 8, 9, 11, 16, 19, and 24 of U.S. Letters Patent 3,118,258, owned by Litton Industrial Products, Inc. The amended complaint alleges that the effect or tendency of such unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Complainant requests that the articles in question be permanently excluded from entering the United States, and such additional temporary and permanent relief as the Commission authorizes.

Having considered the amended complaint, the U.S. International Trade Commission, on December 12, 1978, ORDERED THAT—

1. Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine under subsection (c) whether, on the basis of the allegations set forth in the amended complaint and the evidence adduced, there is a violation of subsection (a) of this section in the unauthorized importation of certain automatic crankpin grinders into the United States, or in their sale, by reason of the alleged coverage of such automatic crankpin grinders by claims 5, 8, 9, 11, 16, 19, and 24 of U.S. Letters Patent 3,118,258, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

2. For the purpose of this investigation so instituted, the following are hereby named as parties:

a. The complainant: Landis Tool Company, Division of Litton Industrial Products, Inc., Waynesboro, Pa. 17268.

b. The respondents are the following companies alleged to be involved in the unauthorized importation of such articles into the United States or in their sale, and are parties upon which the complaint and this notice are to be served:

i. Newall Machine Tool Company, Ltd., Oundle Road, Peterborough, England.

ii. The Ford Motor Company, The American Road, Dearborn, Michigan 48121.

c. Robert M. M. Seto, U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, is hereby named Commission investigative attorney and a party to this investigation.

3. For the purpose of the investigation so instituted, Chief Administrative Law Judge Donald K. Duvall shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with section 210.21 of the U.S. International Trade Commission's Rules of Practice and Procedure, as amended (19 CFR 210.21). Pursuant to sections 201.16(d) and 210.21(a) of the Rules, such responses will be considered by the U.S. International Trade Commission if received no later than 20 days after the date of service of the amended complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations, and will authorize the presiding officer and the U.S. International Trade Commission, without further notice to the respondents, to find the facts to be as alleged in the amended complaint and in this notice and to enter both a recommended determination and a final determination containing such findings.

The amended complaint is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, and in the New York City Office of the Commission, 6 World Trade Center.

Issued: December 12, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-34983 Filed 12-14-78; 8:45 am]

[4510-29-M]

DEPARTMENT OF LABOR

Labor-Management Services Administration

EMPLOYEE PROTECTION PROGRAM OF THE AIRLINE DEREGULATION ACT OF 1978

Meetings

The Labor-Management Services Administration will hold meetings concerning certain employee protection provisions of the Airline Deregulation Act of 1978.

Dates: A meeting for representatives of employees of U.S. domestic air carriers will be held at 2:00 p.m. on January 8, 1978, at the Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C., in room N-4437-A, B, and C.

Representatives of U.S. domestic air carriers certified by the Civil Aeronautics Board under Section 401 of the Federal Aviation Act will meet at 10:00 a.m. on January 10, 1978, at the Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. in room N-4437-A, B, and C.

Purpose: In general, Section 43(d) of the Act provides that under certain conditions protected employees shall have the first right of hire with air carriers certified by the Civil Aeronautics Board. That section also requires the Department of Labor to establish and maintain a comprehensive list of jobs available with carriers in the industry. The section reads as follows:

43. (d) Duty To Hire Protected Employees—(1) Each person who is a protected employee of an air carrier which is subject to regulation by the Civil Aeronautics Board who is furloughed or otherwise terminated by such an air carrier (other than for cause) prior to the last day of the 10-year period beginning on the date of enactment of the section shall have first right of hire, regardless of age, in his occupational specialty, by any other air carrier hiring additional employees which held a certificate issued under section 401 of the Federal Aviation Act of 1958 prior to such date of enactment. Each such air carrier hiring additional employees shall have a duty to hire such a person before they hire any other person except that such air carrier may recall any of its own furloughed employees before hiring such a person. Any employee who is furloughed or otherwise terminated (other than for cause), and who is hired by another air carrier under the provisions of this subsection, shall retain his rights of seniority and right of recall with the air carrier that furloughed or terminated him.

(2) The Secretary shall establish, maintain, and periodically publish a comprehensive list of jobs available with air carriers certificated under Section 401 of the Federal Aviation Act of 1958. Such list shall include that information and detail, such as job descriptions and required skills, the Secretary deems relevant and necessary. In addition to publishing the list, the Secretary shall make every effort to assist an eligible protected employee in finding other employment. Any individual receiving monthly

assistance payments, moving expenses, or reimbursement payments under this section shall, as a condition to receiving such expenses or payments, cooperate fully with the Secretary in seeking other employment. In order to carry out his responsibilities under this subsection, the Secretary may require each such air carrier to file with the Secretary the reports, data, and other information necessary to fulfill his duties under this subsection.

(3) In addition to making monthly assistance or reimbursement payments under this section, the Secretary shall encourage negotiations between air carriers and representatives of eligible protected employees with respect to rehiring practices and seniority.

Agenda: The Labor-Management Services Administration is currently developing plans to implement Section 43(d). The above cited meetings have been scheduled to establish liaison with carriers and representatives of protected employees to provide for their involvement in that process. The agenda at this first meeting will include a review of the Department's efforts to date and the solicitation of employee/carrier comments thereon. At that time the Department would also like to receive the nomination of individuals who might serve as representatives to a joint committee with which the Department could maintain a continuing working relationship for the purpose of effectuating the provisions of the Act. This would include the Department's responsibility to encourage the negotiations called for under Section 43.

From the nominations received, the Department will make selections for representation on the joint working committee. It is anticipated that a membership of approximately 7-9 representatives from carriers and a like number of employee representatives will be selected.

Parties interested in attending the meetings of January 8 or 10 should notify Mr. Peter Husselmann by January 3, 1979, of the names of their representatives. Mr. Husselmann may be reached by phone at (202) 523-6495.

Dated: December 12, 1978.

FRANCIS X. BURKHARDT,
Assistant Secretary for Labor-Management Relations, U.S. Department of Labor.

[FR Doc. 78-34985 Filed 12-14-78; 8:45 am]

[4510-28-M]

Office of the Secretary

[TA-W-4208]

APEX LEATHER MANUFACTURING CO., ENGLEWOOD, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4208: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 26, 1978, in response to a worker petition received on September 25, 1978, which was filed on behalf of workers and former workers producing school bags, brief cases, tote bags, and other specialized luggage products at Apex Leather Manufacturing Company in Englewood, New Jersey.

The Notice of Investigation was published in the FEDERAL REGISTER on October 10, 1978 (43 FR 46591-92). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Apex Leather Manufacturing Company, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of luggage increased on an absolute basis and relative to domestic production from 1975 to 1976, from 1976 to 1977, and in the first three quarters of 1978 compared to the same period in 1977.

Company imports of specialized luggage products by Apex Manufacturing Company were first recorded in May 1977, and increased by 681.9 percent in the first three quarters of 1978 compared to the same period in 1977.

Company sales of imported specialized luggage products as a percentage of total company sales increased from zero percent in 1976 to 6.4 percent in 1977, and from 7.3 percent in the first three quarters of 1977 to 42.7 percent in the first three quarters 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 school bags, brief cases, tote bags, and other specialized luggage products produced at Apex Leather Manufacturing Company, Englewood, New Jersey, contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Apex Leather Manufacturing Company, Englewood, New Jersey, who became totally or partially separated from employment on or after September 18, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-34987 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-3732B]

BENTONVILLE MANUFACTURING CO., BENTONVILLE, ARK.

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-3732B: 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 18, 1978 in response to a worker petition received on May 15, 1978 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing children's outerwear, including jackets and coats at Dan Deb Manufacturing Company, Auburn, Nebraska. The investigation was expanded to include the parent company, Danny Dare, Incorporated, Kansas City, Missouri and another subsidiary of Danny Dare: Bentonville Manufacturing Company, Bentonville, Arkansas. The investigation revealed that the plants primarily produce children's coats, jackets, pants, shorts, blouses, and T-shirts.

The Notice of Investigation was published in the FEDERAL REGISTER on June 13, 1978 (43 FR 25498). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Danny Dare, Incorporated, its customers, Dan Deb Manufacturing Company, Incorporated, Bentonville Manufacturing Company, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of 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 coats and jackets increased absolutely and relative to domestic production in 1977 and decreased in the first six months of 1978 compared with the first six months of 1977. U.S.

imports of women's, misses' and children's slacks and shorts increased absolutely and relative to domestic production in 1977 and increased in the first six months of 1978 compared with the first six months of 1977. U.S. imports of women's, misses' and children's blouses and shirts increased absolutely in 1977 and in the first six months of 1978 compared with the same period of 1978.

U.S. imports of men's and boys' outer coats and jackets increased absolutely and relative to domestic production in 1977 and increased in the first six months of 1978 compared with the same period of 1977. U.S. imports of men's and boys' tailored suits increased absolutely and relative to domestic production in 1977, and decreased in the first six months of 1978 compared with the same period of 1977. U.S. imports of men's and boys' dress and sport trousers and shorts increased absolutely in 1977 and in the first six months of 1978 compared with the first six months of 1977. U.S. imports of woven work trousers and one piece suits increased absolutely and relative to domestic production in 1977 and increased in the first six months of 1978 compared with the same period of 1977. U.S. imports of men's and boys' jeans and dungarees increased absolutely and relative to domestic production in 1977 and in the first six months of 1978 compared with the same period of 1977. U.S. imports of men's and boys' knit underwear, which includes T-shirts, increased absolutely in 1977 and increased in the first six months of 1978 compared with same period of 1977. U.S. imports of tailored dress coats and sport coats decreased absolutely and relative to domestic production in 1977 and decreased in the first six months of 1978 compared with the same period of 1978.

The parent company of Bentonville Maufacturing Company, Incorporated is Danny Dare, Incorporated, Kansas City, Missouri. A survey of customers of Danny Dare, Incorporated was conducted by the Department. Several respondents in the survey indicated that they increased import purchases of children's coats, jackets, and sportwear while decreasing purchases from Danny Dare in 1977 compared to 1976 and in the first three months of 1978 compared to the same period of 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 children's coats, jackets, pants, shorts, blouses and T-shirts produced at Bentonville Manufacturing Company, Incorporated, Bentonville, Arkansas contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Bentonville Manufacturing Company, Incorporated, Bentonville, Arkansas engaged in employment related to the production of children's coats, jackets, pants, shorts, blouses and T-shirts who became totally or partially separated from employment on or after May 11, 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 5th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-34998 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-3551]

BRIER MANUFACTURING CO., PROVIDENCE, RHODE ISLAND

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordnce with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3551: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investgation was initiated on April 27, 1978 in response to a worker petition received on April 17, 1978 which was filed on behalf of workers and former workers producing costume jewelry and hair goods at Brier Manufacturing Company, Providence, Rhode Island.

The Notice of Investigation was published in the FEDERAL REGISTER on May 16, 1978 (43 FR 21069). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Brier Manufacturing Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all the requirements have been met.

U.S. imports of costume jewelry increased absolutely in 1977 compared to 1976 and increased absolutely in the first six months of 1978 compared to the same period of 1977.

U.S. imports of hair ornaments increased absolutely and relative to domestic production in 1977 compared to 1976. Imports of hair ornaments increased absolutely in the first six months of 1978 compared to the same period of 1977.

Some of the customers of Brier Manufacturing Company were surveyed by the Department. The survey indicated that customers which accounted for a substantial proportion of the decline in Brier's sales in 1976 and 1977 purchased indirect imports 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 costume jewelry and hair goods produced at Brier Manaufacturing Company, Providence, Rhode Island contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Brier Manufacturing Company, Providence, Rhode Island who became totally or partially separated from employment on or after April 11, 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 7th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-34989 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-3951]

CAN TEEN SERVICES OF JOHNSTOWN, INC., JOHNSTOWN, 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-3951: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on July 6, 1978 in response to a worker petition received on July 5, 1978 which was filed by the International Brotherhood of Electrical Workers on behalf of workers and former workers providing food, drinks, and cigarettes for vending machines at Can Teen Services of Johnstown, Incorporated, Johnstown, Pennsylvania.

The Notice of Investigation was published in the FEDERAL REGISTER on July 18, 1978 (43 FR 30927). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Can Teen Services of Johnstown, Incorporated and Department files.

In order to make an affirmative detemination 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 (3) of the Act and that independent firms for which the subject firm provides services cannot be considered to be the "workers' firm."

The Department's investigation revealed that Can Teen Services of Johnstown, Incorporated operates a food service including commissary, warehouse, and vending machine repair shop in Johnstown, Pennsylvania. The company employees prepare sandwiches and salads, and transport the food to vending machines located at area customer's plants and offices. Employees also repair vending machines and operate office facilities. All vending machines are leased. The petitioning workers are employed by Can Teen Services to repair and service vending machines at the steel plants in the area.

Workers of Can Teen Services of Johnstown, Incorporated are engaged in providing food, drinks, and cigarettes for the company's vending machines and do not produce an article within the meaning of Section 222 (3) of the Trade Act.

Can Teen Services of Johnstown and its customers have no controlling interest in each other.

All workers engaged in providing food, drinks, and cigarettes for the company's vending machines are employed by Can Teen Services of Johnstown, Incorporated. All personnel actions and payroll transactions are controlled by Can Teen Services. All employee benefits are provided and maintained by Can Teen Services. Workers are not at any time under supervision or employment by customers of Can Teen Services. Thus, Can Teen Services of Johnstown, Incorporated must be considered the "workers' firm."

CONCLUSION

After careful review, I determine that all workers of Can Teen Services of Johnstown, Incorporated, Johnstown, Pennsylvania 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 6th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-34990 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-4159]

CLAIRE'S SPORTSWEAR, BOSTON, MASSACHUSETTS

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-4159: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 14, 1978 in response to a worker petition received on September 13, 1978 which was filed on behalf of workers and former workers producing ladies' sportswear garments at Claire's Sportswear, Boston, Massachusetts.

The Notice of Investigation was published in the FEDERAL REGISTER on September 26, 1978 (43 FR 43588). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Claire's Sportswear, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the 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 the firm or subdivision have decreased absolutely.

Sales and production increased in 1977 compared with 1976 and increased in the first three quarters of 1978 compared with the like period in 1977. Sales were adjusted for price changes using the wholesale price index for women's apparel.

CONCLUSION

After careful review, I determine that all workers of Claire's Sportswear, Boston, Massachusetts 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 20th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 34991 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-4248]

CLARKE PRECISION MOULDING CORP., FALL RIVER, 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-4248: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 10, 1978 in response to a worker petition received on October 10, 1978 which was filed on behalf of workers and former workers producing moulded luggage at Clarke Precision Moulding Corporation, Fall River, Massachusetts.

The Notice of Investigation was published in the FEDERAL REGISTER on October 23, 1978 (43 FR 49061). No public hearing was requested and none was held.

The information upon which the determinations was made was obtained principally from officials of Clarke Precision Moulding Corporation, 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 a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

The average number of production workers increased in 1977 compared to 1976, and increased in the first ten months of 1978 compared with the like period in 1977.

Average quarterly employment increased in every quarter when compared to the same quarter of the previous year from the third quarter of 1977 through the third quarter of 1978. There is no immediate threat of separation of workers at this plant.

Available evidence indicated that reductions in work hours have not occurred at the plant.

CONCLUSION

After careful review, I determine that all workers of Clarke Precision Moulding Corporation, Fall River, Massachusetts 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 6th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 78-34992 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-4115]

COWIN AND CO., GORDONSVILLE, TENNESSEE

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-4115: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on August 28, 1978 in response to a worker petition received on August 21, 1978 which was on behalf of workers and former workers performing construction work for mining companies at Cowin and Company, Gordonsville, Tennessee.

The Notice of Investigation was published in the FEDERAL REGISTER on September 8, 1978 (43 FR 40070). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Cowin and Company and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. The Department has determined that services are not "articles" within the meaning of Section 222 (3) of the Act and that independent firms for which the subject firm provides services cannot be considered to be the "workers' firm."

The Department's investigation revealed that Cowin and Company is a mine engineering and contracting business and is affiliated with Cowin Equipment Company, an equipment sales and rental company. Cowin and Company has subsidiary, Cowin Road Machinery, Incorporated, also an equipment sales and rental firm.

The petitioning workers are employed by Cowin and Company at the Gordonsville, Tennessee mine of a major zinc producer. At this location, Cowin and Company had a contract for the excavation and construction of zinc mine facilities such as shafts, tunnels, machinery installations, and concrete construction. The firm has a temporary office and warehouse at the Gordonsville mine, and all of the equipment used is owned by Cowin and Company.

Workers of Cowin and Company at the Gordonsville, Tennessee mine are engaged in constructing mine facilities and do not produce an article within the meaning of Section 222 (3) of the Trade Act.

Cowin and Company and its customers have no controlling interest in each other.

All workers engaged in constructing mine facilities at the Gordonsville, Tennessee mine are employed by Cowin and Company. All personnel actions and payroll transactions are controlled by Cowin and Company. All employee benefits are provided and maintained by Cowin and Company. Workers are not at any time under supervision or employment by customers of Cowin and Company. Thus, Cowin and Company must be considered the "workers' firm."

CONCLUSION

After careful review, I determine that all workers of the Gordonsville, Tennessee facility of Cowin and Company 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 6th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-34993 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W—3732]

DAN DEB MANUFACTURING CO., AUBURN, NEBR.

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-3732: 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 18, 1978 in response to a worker petition received on May 15, 1978 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing children's outerwear, including jackets and coats at Dan Deb Manufacturing Company, Auburn, Nebraska. The investigation was expanded to include the parent company, Danny Dare, Incorporated, Kansas City, Missouri and another subsidiary of Danny Dare: Bentonville Manufacuring Company, Bentonville, Arkansas. The investigation revealed that the plants primarily produce children's coats, jackets, pants, shorts, blouses, and T-shirts.

The Notice of Investigation was published in the FEDERAL REGISTER on June 13, 1978 (43 FR 25498). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Danny Dare, Incorporated, its customers, Dan Deb Manufacturing Company, Incorporated, Bentonville Manufacturing Company, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of 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 coats and jackets increased absolutely and relative to domestic production in 1977 and decreased in the first six months of 1978 compared with the first six months of 1977. U.S. imports of women's, misses' and children's slacks and shorts increased absolutely and relative to domestic production in 1977 and increased in the first six months of 1978 compared with the frst six months of 1977. U.S. imports of women's, misses' and children's blouses and shirts increased absolutely in 1977 and in the first six months of 1978 compared with the same period of 1978.

U.S. imports of men's and boys' outer coats and jackets increased absolutely and relative to domestic production in 1977 and increased in the first six months of 1978 compared with the same period of 1977. U.S. imports of men's and boys' tailored suits increased absolutely and relative to domestic production in 1977, and decreased in the first six months of 1978 compared with the same period of 1977. U.S. imports of men's and boys' dress and sport trousers and shorts increased absolutely in 1977 and in the first six months of 1978 compared with the first six months of 1977. U.S. imports of woven work trousers and one piece suits increased absolutely and relative to domestic production in 1977 and increased in the first six months of 1978 compared with the

same period of 1977. U.S. imports of men's and boys' jeans and dungarees increased absolutely and relative to domestic production in 1977 and in the first six months of 1978 compared with the same period of 1977. U.S. imports of men's and boys' knit underwear, which includes T-shirts, increased absolutely in 1977 and increased in the first six months of 1978 compared with the same period of 1977. U.S. imports of tailored dress coats and sport coats decreased absolutely and relative to domestic production in 1977 and decreased in the first six months of 1978 compared with the same period of 1978.

The parent company of Dan Deb Manufacturing Company, Incorporated is Danny Dare, Incorporated, Kansas City, Missouri. A survey of customers of Danny Dare, Incorporated was conducted by the Department. Several respondents in the survey indicated that they increased purchases of imported children's coats, jackets, and sportwear and decreased purchases from Danny Dare in 1977 compared to 1976 and in the first three months of 1978 compared to the same period of 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 children's coats, jackets, pants, shorts, blouses and T-shirts produced at Dan Deb Manufacturing Company, Incorporated, Auburn, Nebraska contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Dan Deb Manufacturing Company, Incorporated, Auburn, Nebraska engaged in employment related to the production of children's coats, jackets, pants, shorts, blouses and T-shirts who became totally or partially separated from employment on or after May, 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 5th day of December 1978.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 78-34991 Filed 12-14-78; 8:45 am]

[410-28-M]

[TA-W-3732A]

DANNY DARE, INC., KANSAS CITY, MO.

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-3732A: 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 18, 1978 in response to a worker petition received on May 15, 1978 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing children's outerwear, including jackets and coats at Dan Deb Manufacturing Company, Auburn, Nebraska. The investigation was expanded to include the parent company, Danny Dare, Incorporated, Kansas City, Missouri and another subsidiary of Danny Dare: Bentonville Manufacturing Company, Bentonville, Arkansas. The investigation revealed that the plants primarily produce children's coats, jackets, pants, shorts, blouses, and T-Shirts.

The Notice of Investigation was published in the Federal Register on June 13, 1978 (43 FR 25498). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Danny Dare, Incorporated, its customers, Dan Deb Manufacturing Company, Incorporated, Bentonville Manufacturing Company, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of 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 coats and jackets increased absolutely and relative to domestic production in 1977 and decreased in the first six months of 1978 compared with the first six months of 1977. U.S. imports of women's, misses' and children's slacks and shorts increased absolutely and relative to domestic production in 1977 and increased in the first six months of 1978 compared with the first six months of 1977. U.S. imports of women's, misses' and children's blouses and shirts increased absolutely in 1977 and in the first six months of 1978 compared with the same period of 1978.

U.S. imports of men's and boys' outer coats and jackets increased absolutely and relative to domestic production in 1977 and increased in the first six months of 1978 compared with the same period of 1977. U.S. imports of men's and boys' tailored suits increased absolutely and relative to domestic production in 1977, and decreased in the first six months of 1978 compared with the same period of 1977. U.S. imports of men's and boys' dress and sport trousers and shorts increased absolutely in 1977 and in the first six months of 1978 compared with the first six months of 1977. U.S. imports of woven work trousers and one piece suits increased absolutely and relative to domestic production in 1977 and increased in the first six months of 1978 compared with the same period of 1977. U.S. imports of men's and boys' jeans and dungarees increased absolutely and relative to domestic production in 1977 and in the first six months of 1978 compared with the same period of 1977. U.S. imports of men's and boys' knit underwear, which includes T-shirts, increased absolutely in 1977 and increased in the first six months of 1978 compared with the same period of 1977. U.S. imports of tailored dress coats and sport coats decreased absolutely and relative to domestic production in 1977 and decreased in the first six months of 1978 compared with the same period of 1978.

A survey of customers of Danny Dare, Incorporated was conducted by the Department. Several respondents in the survey indicated that they increased import purchases of children's coats, jackets, and sportwear while decreasing purchases from Danny Dare in 1977 compared to 1976 and in the first three months of 1978 compared to the same period of 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 children's coats, jackets, pants, shorts, blouses and T-shirts produced at Danny Dare, Incorporated, Kansas City Missouri contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Danny Dare, Incorporated, Kansas City, Missouri engaged in employment related to the production of children's coats, jackets, pants, shorts, blouses and T-shirts who became totally or partially separated from employment on or after May 11, 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 5th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-34995 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-4367]

DOWEN-ZIER-KNITS, INC., WEST HEMPSTEAD, N.Y.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 13, 1978, in response to a worker petition received on November 6, 1978, which was filed on behalf of workers and former workers producing knit goods used in women's clothing at Dowen-Zier-Knits, West Hempstead, New York.

Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978, (43 FR 50012-3). No public hearing was requested and none was held.

During the course of the investigation, it was established that all workers of Dowen-Zier-Knits, Incorporated, were separated from employment in June 1977. Section 223(b) of the Trade Act of 1974 states that a certification under this section may not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than one year before the date of the petition under Title II, Chapter 2 of the Trade Act of 1974.

The date of the petition in this case is November 1, 1978. Since workers separated from employment at Brentwood Fabrics Corporation prior to November 1, 1977, are not eligible to apply for program benefits under Title II, Chapter 2, Subchapter B of the Trade Act of 1974, continuation of this investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 6th day of December, 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-34996 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-2530]

GENERAL INSTRUMENT CORP., F. W. SICKLES DIVISION, CHICOPEE, MASSACHUSETTS

Revised Notice of Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued a Notice of Negative Determination Regarding Eligibility To Apply for Adjustment Assistance on March 31, 1978, applicable to workers and former workers at the Chicoppe, Massachusetts, plant of the F. W. Sickles Division of the General Instrument Corporation. The Notice of Negative Determination was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14762).

On the basis of additional information, the Office of Trade Adjustment Assistance on its own motion reviewed the determination. The review revealed that the transfer of support operations out of Chicopee is a continuation of the transfer of production operations initiated several years ago. Thus, increased imports of competitive articles have continued to contribute importantly to worker separations at the F. W. Sickles Division's Chicopee, Massachusetts, facility.

The revised notice of determination applicable to TA-W-2530 is hereby issued as follows:

All workers of the F. W. Sickles Division, General Instrument Corporation, Chicopee, Massachusetts, who became totally or partially separated from employment on or after October 19, 1976, and before January 1, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 34997 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-4105]

GENERAL MOTORS CORP., LINDEN, 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-4105: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on August 22, 1978 in response to a worker petition received on August 18, 1978 which was filed on behalf of workers and former workers engaged in the assembly of full-size automobiles at the Linden, New Jersey assembly plant of the General Motors Corporation. The investigation revealed that the workers also assemble luxury automobiles.

The Notice of Investigation was published in the FEDERAL REGISTER on September 5, 1978 (43 FR 39458). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the General Motors Corporation, 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 critreria 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.

U.S. imports of standard-size cars decreased both absolutely and relative to domestic production during the last quarter of MY 1977 and the first three quarters of MY 1978 compare to the same periods of the previous model year.

Prior to Model Year 1979, the Linden, New Jersey Assembly Plant produced only the standard-size Buick Electra, and Oldsmobile 98 and the luxury Cadillac de Ville. For the MY 1979, the General Motors Corporation retooled the Linden plant to produce only front-wheel drive personal luxury cars (the Buick Riviera, the Oldsmobile Toronado, and the Cadillac El Dorado) while transferring the production of the other models to other plants. During the retooling period some workers were laid off but these are being rehired as production increases.

Employment at the Linden plant increased continually from 1975 to May, 1978, the month when retooling began. Sales of the Cadillac de Ville increased from MY 1976 through MY 1978. The General Motors Corporation does not import any vehicle comparable to the Cadillac de Ville.

CONCLUSION

After careful review, I determine that all workers at the Linden, New Jersey assembly plant of the General Motor Corporation 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 5th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-34998 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-3400]

INTERLAKE, INC., TOLEDO, OHIO

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3400: 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 22, 1978 in response to a worker petition received on March 8, 1978 which was filed by the United Steelworkers of America on behalf of workers and former workers producing pig iron at the Toledo, Ohio plant of Interlake, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14775). No public hearing was requested and none was held.

On September 29, 1977, the Department denied the workers of Interlake's Toledo, Ohio plant eligibility to apply for adjustment assistance (TA-W-1478).

The determination was based upon information obtained principally from officials of Interlake, Incorporated its customers, the American Iron and Steel Institute, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of pig iron increased from 109 thousand tons in the fourth quarter of 1976 to 156 thousand tons in the fourth quarter of 1977. Imports increased from 43 thousand tons in the first quarter of 1977 to 112 thousand tons in the first quarter of 1978. The ratio of imports to domestic shipments increased from 22.6 percent in the fourth quarter of 1976 to 35.9 percent in the fourth quarter in 1977. The ratio increased from 8.9 percent in the first quarter of 1977 to 23.4 percent in the first quarter of 1978.

The Department surveyed several major customers of Interlake, Incorporated. Respondents accounting for a significant proportion of the Toledo plant's decline in sales increased imports of pig iron in 1977 compared with 1976 and in the first eight months of 1978 compared with the same period of 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 the pig iron produced at the Toledo, Ohio plant of Interlake, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of that plant. In accordance with the provisons of the Act, I make the following certification:

"All workers of the Toledo, Ohio plant of Interlake, Incorporated who became totally or partially separated from employment on or after March 26, 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 5th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-34999 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-4283]

LENOIR/HICKORY KNITTING MILLS, INC., LENOIR, N.C.

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-4283: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 24, 1978 in response to a worker petition received on October 19, 1978 which was filed on behalf of workers and former workers producing ladies' knit nylon polyester and orlon acrylic sweaters at Lenoir/Hickory Knitting Mills, Inc., Lenoir, North Carolina.

The investigation revealed that both men's wool and ladies' synthetic sweaters are produced at Lenoir/Hickory Knitting Mills, Inc., Lenoir, North Carolina.

The Notice of Investigation was published in the FEDERAL REGISTER on November 3, 1978 (43 FR 51476). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Lenoir/Hickory Knitting Mills, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's sweaters increased both absolutely and relative to domestic production for each year from 1974 through 1976 when compared to the previous year. Although imports declined absolutely in 1977 as compared to 1976 and in the first half of 1978 as compared to the same period in 1977, the ratio of imports to domestic production remained in excess of 140 percent.

U.S. imports of men's and boys' sweaters increased both absolutely and relative to domestic production in 1976 as compared to 1975, and in 1977 as compared to 1976. Imports continued to increase absolutely in the first nine months of 1978 as compared to the same period in 1977.

Results of a U.S. Department of Commerce survey indicated that customers of Lenoir/Hickory Knitting Mills, Inc. increased purchases of imported sweaters and decreased purchases from Lenoir/Hickory in 1976 compared to 1975 and in 1977 compared to 1976.

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' synthetic and men's wool sweaters produced at Lenoir/Hickory Knitting Mills, Inc. contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Lenoir/Hickory Knitting Mills, Inc., Lenoir, North Carolina who became totally or partially separated from employment on or after October 13, 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 5th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-35000 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-4284]

LENOIR/HICKORY KNITTING MILLS, INC., NEW YORK, 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-4284: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 24, 1978 in response to a worker petition received on October 19, 1978 which was filed on behalf of workers and former workers producing ladies' knit nylon polyester and orlon acrylic sweaters at the company headquarters of Lenoir/Hickory Knitting Mills, Inc., in New York, New York.

The investigation revealed that both men's wool and ladies' synthetic sweaters are produced at Lenoir/Hickory Knitting Mills, Inc., New York, New York.

The Notice of Investigation was published in the FEDERAL REGISTER on November 3, 1978 (43 FR 51476). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Lenoir/Hickory Knitting Mills, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's sweaters increased both absolutely and relative to domestic production for each year from 1974 through 1976 when compared to the previous year. Although imports declined absolutely in 1977 as compared to 1976 and in the first half of 1978 as compared to the same period in 1977, the ratio of imports to domestic production remained in excess of 140 percent.

U.S. imports of men's and boys' sweaters increased both absolutely and relative to domestic production in 1976 as compared to 1975, and in 1977 as compared to 1976. Imports continued to increase absolutely in the first nine months of 1978 as compared to the same period in 1977.

Results of a U.S. Department of Commerce survey indicated that customers of Lenoir/Hickory Knitting Mills, Inc., increased purchases of imported sweaters and decreased purchases from Lenoir/Hickory in 1976 compared to 1975 and in 1977 compared to 1976.

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' synthetic and men's wool sweaters produced at Lenoir/Hickory Knitting Mills, Inc., contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Lenoir/Hickory Knitting Mills, Inc., New York, New York who became totally or partially separated from employment on or after October 13, 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 5th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-35001 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-3650]

M & T FASHIONS, INC., JERSEY CITY, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3650: 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 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' fake fur lining at M & T Fashions, Inc., Jersey City, New Jersey. The investigation revealed that the plant primarily produced ladies' leather coats and jackets and recently started a line of ladies' fake fur 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 M & T Fashions, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. The Department's investigation revealed that all of the requirements have been met.

U.S. imports of leather coats and jackets increased absolutely in 1977 compared to 1976.

The Department conducted a survey of customers who purchased ladies' leather coats and jackets from M & T Fashions, Inc. The survey revealed that two customers who represented a major portion of the subject firm's decline in sales from 1976 to 1977 increased purchases of imported leather coats over the same period. Due to a lack of orders in 1978, the subject firm has been forced to look outside of the leather coat market for orders.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the ladies' leather coats and jackets produced at M & T Fashions Inc., Jersey City, New Jersey contributed importantly to the decline in sales and to the separation of workers at that plant, In accordance with the provisions of the Act, I make the following certification:

All workers of M & T Fashions, Inc, Jersey City, New Jersey engaged in employment related to the production of ladies' leather coats and jackets who became totally or partially separated from employment on or after April 25, 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 5th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-35002 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-4370]

MA-ZEL SPORTSWEAR MANUFACTURING, INC., BOSTON, MASS.

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 13, 1978 in response to a worker petition received on November 9, 1978 which was filed on behalf of workers and former workers engaged in the contracting of ladies' clothing at Ma-Zel Sportswear Manufacturing, Boston, Massachusetts.

The Notice of Investigation was published in the FEDERAL REGISTER on No-

vember 24, 1978 (43 FR 50012). No public hearing was requested and none was held.

The petitioner requested withdrawal of the petition in a letter. On the basis of the withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 6th day of November 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-35003 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-4128]

OAKHALL SPORTSWEAR, INC., FARMINGDALE LONG ISLAND CITY, 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-4128: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 31, 1978 in response to a worker petition received on August 22, 1978 which was filed on behalf of workers and former workers producing women's knitted apparel at Oakhall Sportswear Inc., Farmingdale Long Island City, New York. The investigation revealed the firm was located on Long Island, not Long Island City and that the firm produced women's knitted sweaters and knitted and woven jackets, pants, skirts, blouses, skirts and vests.

Fairfield-Noble, of which Oakhall Sportswear Inc. is a subsidiary, was certified by Commerce on June 29, 1978, case Number F252.

The Notice of Investigation was published in the FEDERAL REGISTER on September 12, 1978 (43 FR 40576). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Oakhill Sportswear Inc., its customers, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the 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 suits decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1973. Imports increased from 168 thousand dozen in the first half of 1977 to 192 thousand dozen in the first half of 1978. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977.

U.S. imports of women's, misses' and children's skirts decreased from 791 thousand dozen in 1976 to 654 thousand dozen in 1977. Imports increased from 220 thousand dozen in the first half of 1977 to 568 thousand dozen in the first half of 1978. The ratio of imports to domestic production decreased from 14.2 percent in 1976 to 10.5 percent in 1977.

U.S. imports of women's, misses' and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. Imports increased from 16,829 thousand dozen in the first half of 1977 to 19,854 thousand dozen in the first half of 1978. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977.

U.S. imports of women's, misses' and children's sweaters decreased from 9,613 thousand dozen in 1976 to 9,520 thousand dozen in 1977. Imports decreased from 4,008 thousand dozen in the first half of 1977 to 3,845 thousand dozen in the first half of 1978. The ratio of imports to domestic production decreased from 141.9 percent in 1976 to 140.8 percent in 1977.

U.S. imports of women's, misses' and children's coats and jackets increased from 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. Imports decreased from 1,231 thousand dozen in the first half of 1977 to 1,132 thousand dozen in the first half of 1978. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

U.S. imports of women's, misses' and children's slacks and shorts increased from 11,040 thousand dozen in 1976 to 11,622 thousand dozen in 1977. Imports increased from 8,233 thousand dozen in the first half of 1977 to 6,393 thousand dozen in the first half of 1978. The ratio of imports to domestic production increased from 36.8 percent in 1976 to 38.0 percent in 1977.

Customers representing a significant amount of business with Fairfield-Noble Inc. have decreased purchases from Oakhall and increased purchases of imported ladies' knitted apparel in 1977 compared to 1976.

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 women's knitted sweaters and knitted and woven jackets, pants, shirts, blouses, skirts and vests produced at Oakhall Sportswear, Inc., Farmingdale, Long Island, New York contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Oakhall Sportswear Inc., Farmingdale, Long Island, New York who became totally or partially separated from employment on or after August 2, 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 5th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-35004 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-4242]

REDA PUMP CO., BARTLESVILLE, OKLA.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4242: investigation regarding certification of eligibility to apply for worker adjustment assistance as described in section 222 of the Act.

The investigation was initiated on October 4, 1978 in response to a worker petition received on September 27, 1978 which was filed by the International Union of Operating Engineers on behalf of workers and former workers producing oil and water well pumps at the Reda Pump Company, Bartlesville, Oklahoma.

The Notice of Investigation was published in the FEDERAL REGISTER on October 20, 1978 (43 FR 49060-49061). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Reda Pump, 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 a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threat-

ened to become totally or partially separated.

The average number of production workers at Reda Pump Company increased in 1976 compared with 1975 and in 1977 compared with 1976. The average number of production workers increased during the first ten months of 1978 when compared with the same period in 1977. In addition, the average number of workers at Reda Pump Company increased in each quarter from the first quarter of 1976 to the third quarter 1978 when compared with the same quarter of the previous year.

CONCLUSION

After careful review, I determine that all workers of Reda Pump Company, Bartlesville, Oklahoma are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washingon, D.C. this 5th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-35005 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-3643]

R & S GARMENTS, INC., PASSAIC, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3643: 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 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats at R & S Garments, Inc., Passaic, 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 R & S Garments, Inc., its customers (manufacturers), the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. The Department's investigation revealed that all of the requirements have been met.

U.S. imports of women's, misses', and children's coats and jackets increased from 2252 thousand dozen in 1976 to 2723 thousand dozen in 1977. Imports declined from 590 thousand dozen in the first quarter of 1977 to 572 thousand dozen in the first quarter of 1978. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

Sales of ladies' spring coats declined in the first 4 months of 1978 compared to the same period in 1977. However, with the onset of the winter season, it was revealed through R & S Garments' only customer, that total sales had increased at R & S in the first 6 months of 1978 compared to the same period in 1977.

The Department conducted a survey of the principal manufacturers for which R & S Garments worked in 1976 and 1977. A manufacturer that accounted for 100 percent of sales in 1976, reported that they reduced purchases from R & S Garments and had a decline in sales, in the first quarter of 1978 compared to the same period in 1977. The manufacturer attributed their reduced purchases from R & S to the fact that they were forced to stop producing spring coats in the first quarter of 1978. A survey of the manufacturers' customers was conducted. Customers accounting for a significant proportion of sales reduced purchases from the manufacturer and increased purchases of imports in the first half of 1978 compared to the same period in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the ladies' coats produced at R & S Garments, Incorporated, Passaic, New Jersey contributed importantly to the decline in sales and to the separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of R & S Garments, Inc., Passaic, N.J., who became totally or partially separated from employment on or after December 2, 1977 and before July 1, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers who became totally or partially separated on or after July 1, 1978 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 5th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-35006 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-4031]

STEINER-LOBMAN MANUFACTURING CO., MONTGOMERY, ALA.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4031: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 2, 1978 in response to a worker petition received on July 31, 1978 which was filed on behalf of workers and former workers producing blue jeans at the Steiner-Lobman Manufacturing Company, Montgomery, Alabama.

The Notice of Investigation was published in the FEDERAL REGISTER on August 11, 1978 (43 FR 35759-35760). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Steiner-Lobman Manufacturing Company, its manufacturers, the U.S. Department of Commerce, the National Cotton Council of America, industry analysts and Department files.

In order to make an 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.

Steiner-Lobman produced under contract for several manufacturers during the period under investigation. Sales by all but one of the customers (manufacturers) of Steiner-Lobman who were surveyed increased in 1977 from 1976; none of those customers contracted with foreign sources. one customer who did reduce purchases from Steiner-Lobman in 1977 also reduced purchases from foreign contractors.

CONCLUSION

After careful review, I determine that all workers of the Steiner-Lobman Manufacturing Company, Montgomery, Alabama 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 7th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-35007 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-3966]

SZABO FOOD SERVICE CO., SOUTH WINDSOR, 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-3966: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 11, 1978 in response to a worker petition received on July 5, 1978 which was filed on behalf of workers and former workers engaged in food preparation and service for Szabo Food Service Company, South Windsor, Connecticut at the Naugatuck, Connecticut plant of Uniroyal.

The Notice of Investigation was published in the FEDERAL REGISTER on July 25, 1978 (43 FR 32199). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Szabo Food Service Company and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. The Department has determined that services are not "articles" within the meaning of section 222(3) of the Act and that independent firms for which the subject firm provides services cannot be considered to be the "workers' firm."

The Department's investigation revealed that Szabo Food Service Company, through its subsidiaries, provides food service to industrial plants and offices in 38 states. Szabo Food Service Company of New York, Incorporated, the subject firm, is a subsidiary of Szabo Food Service Company which operates out of a warehouse and office in South Windsor, Connecticut and is engaged in preparing food and providing food service through vending machines and cafeteria facilities in many industrial plants and offices in that region.

The petitioning workers were employed at Szabo's cafeteria facility located at the Naugatuck, Connecticut plant of the Uniroyal Footwear Division. Food service in the plant was provided through various food and beverage vending machines as well as the operation of a small cafeteria facility.

Workers of Szabo Food Service Company at the Naugatuck, Connecticut plant are engaged in food preparation and cafeteria services and do not produce an article within the meaning of section 222(3) of the Trade Act.

Szabo Food Service Company and its customers have no controlling interest in each other.

All workers engaged in food preparation and services at the Naugatuck, Connecticut plant of the Uniroyal Footwear Division are employed by Szabo Food Service Company. All personnel actions and payroll transactions are controlled by Szabo Food Service Company. All employee benefits are provided and maintained by Szabo Food Service Company. Workers are not at any time under supervision or employment by customers of Szabo Food Service Company. Thus, Szabo Food Service Company must be considered the "workers' firm."

CONCLUSION

After careful review, I determine that all workers of Szabo Food Service Company, South Windsor, Connecticut 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 6th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-35008 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-4207]

T&S APPAREL, INC., PASSAIC, N.J.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4207: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on September 21, 1978 in response to a worker petition received on September 18, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing women's sportswear at T&S Apparel, Incorporated in Passaic, New Jersey. The investigation revealed that the sportswear produced at T&S Apparel consists of high quality blazers and coordinated vests.

The Notice of Investigation was published in the FEDERAL REGISTER on October 10, 1978 (43 FR 46591). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of T&S Apparel, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of 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 the firm or subdivision have decreased absolutely.

Sales of ladies' sportswear, in both quantity and value, increased at T&S Apparel in 1977 compared with 1976 and continued to increase in the first nine months of 1978 compared with the like period of 1977. Sales and production are equivalent at T&S Apparel.

CONCLUSION

After careful review, I determine that all workers of T&S Apparel, Incorporated, in Passaic, New Jersey 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 7th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-35009 Filed 12-14-78; 8:45 am]

[4510-28-M]

[TA-W-4056]

WATERBORO PATENT CORP., WATERBORO, MAINE

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-4056: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 10, 1978 in response to a worker petition received on August 9, 1978 which was filed on behalf of workers and former workers producing patent leather at Waterboro Patent Corporation, Waterboro, Maine.

The Notice of Investigation was published in the FEDERAL REGISTER on August 29, 1978 (43 FR 38634). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Waterboro Patent Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of patent leather increased relative to domestic production in the first 9 months of 1978 compared to the first 9 months of 1977.

Major customers of Waterboro Patent who were surveyed reduced purchases of patent leather from Waterboro Patent while increasing their purchases of imports.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with patent leather produced at Waterboro Patent Corporation, Waterboro, Maine (formerly Allied Leather Company) contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Waterboro Patent Corporation, Waterboro, Maine (formerly Allied Leather Company) who became totally or partially separated from employment on or after January 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 78-35010 Filed 12-14-78; 8:45 am]

[7535-01-M]

NATIONAL CREDIT UNION ADMINISTRATION

EXECUTIVE ORDER NO. 12044: IMPROVING GOVERNMENT REGULATIONS

Semi-Annual Agenda of Regulations

AGENCY: National Credit Union Administration.

ACTION: Publication of Semi-Annual Agenda of Regulations.

SUMMARY: Pursuant to Executive Order No. 12044: Improving Government Regulations, NCUA is publishing a list of regulations under consideration by NCUA as of December 15, 1978.

DATE: Effective December 15, 1978.

ADDRESS: National Credit Union Administration, 2025 M Street, NW, Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT:

(a) On the Executive Order or the Agenda, Robert Monheit, Senior Attorney/Regulatory Development Coordinator, Office of General Counsel, National Credit Union Administration at the above address. Telephone: (202) 632-4870. (b) On a particular regulation, contact the person named in the listing for that regulation, at the above address.

SUPPLEMENTARY INFORMATION: On March 23, 1978, Executive Order No. 12044 was issued, directing each executive agency to publish a report on procedures to improve government regulations. The Executive Order also directed each agency to publish, twice a year, a list of significant regulations being considered, along with a description of the regulation, its need and legal basis, its status, the name and telephone number of an agency official familiar with the regulation, and whether a regulatory analysis is required for that regulation. On May 31, 1978, NCUA published its draft report for public comment (43 FR 23688); on October 2, 1978 NCUA published an announcement (43 FR xiii) stating that the Semi-Annual Agenda would be published on December 15, 1978 and June 30, 1979. NCUA's final report is presently awaiting approval by the President's Office of Management and Budget before it is published and it takes effect. At this time, NCUA has not determined to prepare a regulatory analysis for any of the regulations presently under development. As to many of these regulations, development has, prior to implementation of the Executive Order, proceeded beyond the stage at which a regulatory analysis would be required. As to the others, NCUA will make a determination once it obtains approval (from the Office of Management and Budget) of the criteria for determining whether a regulatory analysis is required.

AGENDA

1. a. § 701.27-2, Credit Union Service Corporation, authorizing Federal credit unions to invest in, to make loans to, or to extend lines of credit to, organizations providing services associated with the routine operations of credit unions.

b. Need: To implement the provisions of P.L. 95-22 in accordance with the specific guidance provided in the Report of the Committee on Banking, Finance, and Urban Affairs, House of Representatives, (H.R. Rep. No. 95-23).

Legal Basis: 12 U.S.C. §§ 1757(5)(D), 1757(7)(I), 1766, and 1789.

c. Status: Proposed regulation issued Nov. 3, 1978 (43 FR 51407), comments due January 2, 1979.

d. For Further Information Contact: Either Layne L. Bumgardner, Office of Examination and Insurance, telephone: (202) 254-8760, or Todd A. Okun, Office of General Counsel, telephone: (202) 632-4870.

2. a. § 701.36, Federal Credit Union Ownership of Fixed Assets, clarifying the permissible involvement in such ownership, establishing reporting and approval process, and setting forth factors to be considered by officials.

b. Need: To ensure that Federal credit union officials consider all relevant factors before committing to invest in excess of 5% of assets.

Legal Basis: 12 U.S.C. §§ 1757(4), 1766, and 1789.

c. Status: Final Regulation issued December 7, 1978, effective January 15, 1978.

d. For Further Information Contact: Joseph Bellenghi, Assistant Administrator, Office of Examination and Insurance, telephone: (202) 254-8760.

3. a. § 703.3, Investment Activities of Federal Credit Unions, restricting involvement in investment activities that are unauthorized or otherwise unsafe or unsound.

b. Need: To curb abuses, and resulting substantial losses, arising from certain speculative investment transactions, and to clarify the permissible range of authorized investment transactions.

Legal Basis: 12 U.S.C. §§ 1757, 1766, and 1789.

c. Status: Proposed regulation issued October 17, 1978 (43 FR 47731), public comment period extend to March 15, 1979.

d. For Further Information Contact: Robert F. Schafer, Office of Examination and Insurance, telephone: (202) 254-8760.

4. a. § 701.38, Borrowed Funds from Natural Persons, restricting Federal credit union borrowing from natural persons to the credit union's members, and limiting the interest rate and maturity.

b. Need: To ensure that Certificates of Indebtedness are not used to circumvent the rate controls for shares and share certificates, and to ensure that investment services offered to natural persons by Federal credit unions are limited to the credit union's members.

c. Status: Proposed regulation issued December 7, 1978, public comment period closes February 23, 1979.

d. For Further Information Contact: Mike Fischer, Special Assistant to the Assistant Administrator, Office of Examination and Insurance, telephone: (202) 254-8760.

5. a. § 701.21-8, Purchase, Sale, and Pledge of Eligible Obligations, governs and defines the permissible scope of a Federal credit union's authority to purchase, sell, or pledge credit union members' obligations.

b. Need: To implement P.L. 95-22, and to provide Federal credit unions with greater flexibility in meeting liquidity needs, in meeting member demands, and in spreading the risk of those demands.

Legal Basis: 12 U.S.C. §§ 1757(13), 1757(14), 1766 and 1789.

c. Status: proposed regulation drafted.

d. For Further Information Contact: Either Stephen Raver, Director, Division of Examination, Office of Examination and Insurance, telephone: (202) 254-8760, or John L. Culhane, Jr., Attorney-Advisor, Office of General Counsel, telephone: (202) 632-4870.

6. a. § 701.31, Nondiscrimination Requirements, anti-"redlining" regulation prohibiting the sole consideration of the age or location of a dwelling, and the consideration of the race, color, religion, sex, or national origin of persons living in the vicinity, when a Federal credit union decides on granting a mortgage loan.

b. Need: To prevent the discriminatory practice of "redlining".

Legal Basis: Fair Housing Act of 1968 (42 U.S.C. §§ 3601, et seq.), 12 U.S.C. §§ 1757(5)(A)(i), 1766, and 1789.

c. Status: Proposed regulation drafted.

d. For further Information Contact: Edward J. Dobranski, Senior Attorney, Office of General Counsel, telephone: (202) 632-4870.

7. a. § 701.37, Treasury Tax and Loan Accounts, to permit Federal credit unions to participate as depositaries for funds representing payments for certain U.S. obligations and payments of Federal taxes.

b. Need: To implement P.L. 95-147 and to accommodate the requirements of the regulations of the Department of the Treasury, 31 CFR Part 203.

Legal Basis: P.L. 95-147; 12 U.S.C. §§ 1766, 1767, and 1789.

c. Status: Regulation drafted.

d. For Further Information Contact: Mike Fisher, Special Assistant to the Assistant Administrator, Office of Examination and Insurance, telephone: (202) 254-8760.

8. a. §§701.21-2(a) and 701.21-3(b)(2), to permit payment on loans at intervals greater than one month and less than 12 months.

b. Need: To permit credit unions to establish repayment periods which coincide with the receipt of income by those members whose income is necessarily irregular.

Legal Basis: (1) Petition for rulemaking pursuant to 5 U.S.C. § 553(e) submitted by Credit union National Association, Inc.; (2) P.L. 95-22.

c. Status: Preliminary Review.

d. For Further Information Contact: Layne L. Bumgardner, Office of Examination and Insurance, telephone: (202) 254-8760.

9. a. Part 747, procedures for imposing civil penalties for violations of cease and desist orders.

b. Need and Legal Basis: Title I, P.L. 95-630.

c. Status: Proposed regulation under development.

d. For Futher Information Contact: Jay Keithley, Attorney-Advisor, Office of General Counsel, telephone: (202) 632-4870.

10. a. Management Interlocks, to regulate the practice of management officials of credit unions serving as management officials of other depository institutions.

b. Need and Legal Basis: "Depository Institutions Management Interlocks Act", Title II, P.L. 95-630.

c. Status: Proposed regulation under development.

d. For Further Information Contact: Ross P. Kendall, Attorney-Advisor, Office of General Counsel, telephone: (202) 632-4870.

11. a. NCUA Restructuring, to revise NCUA's internal procedures and NCUA regulations in light of the creation of a three person Board to manage the agency.

b. Need and Legal Basis: Title V, P.L. 95-630, and 5 U.S.C. 552b.

c. Status: Proposed regulations under development.

d. For Further Information Contact: J. Leonard Skiles, Deputy General Counsel, Office of General Counsel, telephone: (202) 632-4870.

12 a. National Credit Union Central Liquidity Facility, to govern membership in access to, and the internal procedures of the Central Liquidity Facility.

b. Need and Legal Basis: Title XVIII, P.L. 95-630.

c. Status: Proposed regulation being developed.

d. For Further Information Contract: Robert Dugger, Executive Officer, Office of the Administrator, telephone; (202) 254-9800.

Review of Regulations

The following is a list of regulations to be reviewed in the future. The purpose of the review will be to update, clarify, and simplify existing regulations, and to eliminate redundant and unnecessary provisions.

1. §§ 701.2, 701.14, and 701.15, Incorporation By Reference, review to determine whether the manuals listed should have the force and effect of law.

For Further Information Contact: Robert S. Monheit, Senior Attorney, Office of General Counsel, telephone: (202) 632-4870.

2. §§ 701.3, and 701.4, Standard Form of Bylaws and Amendment of Bylaws, review to determine whether the regulations on this subject are necessary.

For further Information Contact: Jon Lander, Division of Chartering and Insurance, Office of Examination and Insurance, telephone: (202) 254-8760.

3. §§ 701.6, 701.7, and 701.8, Fees for Supervision and for Examination of Federal Credit Unions, and for Examination of Federal Credit unions in Liquidation, review to replace the present fee system with an operating fee.

For further Information Contact: John R. Sander, Office of the Comptroller, telephone: (202) 254-9825.

4. §§ 701.10, Establishment of Cash Fund, review to determine whether a regulation is necessary on this subject.

For further Information Contact: Jerry Courson, Division of Examination, Office of Examination and Insurance, telephone: (202) 254-8760.

5. §§ 701.11 and 701.13, Election Report, and Financial and Statistical and Other Reports, review to determine whether the regulation is necessary to require submission of needed reports.

For further Information Contact: Jerry Courson, Division of Examination, Office of Examination and Insurance, telephone: (202) 254-8760.

6. § 701.12, Supervisory Committee Audit, review to determine whether the regulation on this subject is necessary or whether the subject might be covered in a manual.

For Further Information Contact: Mike Fischer, Special Assistant to the Assistant Administrator, Office of Ex-

amination and Insurance, telephone: (202) 254-8760.

7. §§ 701.16 and 701.17, Statements of Policy, List of Federal Credit Unions, review to consolidate these regulations with the regulation on availability of information, Part 720, subpart B of NCUA's Rules and Regulations.

For Further Information Contact: Robert S. Monheit, Senior Attorney, Office of General Counsel, telephone: (202) 632-4870.

8. §§ 701.22 and 701.23, Selling and Cashing Checks and Money Orders, review to determine whether the regulations on this subject are necessary or whether the subject may be covered in a manual.

For Further Information Contact: Thomas A. Straslicka, Division of Examination, Office of Examination and Insurance, telephone: (202) 254-8760.

9. § 701.24, Refund of Interest, review of question of uniform percentage.

For Further Information Contact: Stephen Raver, Director, Division of Examination, Office of Examination and Insurance, telephone: (202) 254-8760.

10. §§ 701.27-1, 701.27-2, and 701.28, Purchase and Sale of Accounting Services, Accounting Service Center, and Joint Operations, review to consolidate and update in light of the proposed § 701.27-2, Credit Union Service Corporation.

For Further Information Contact: Layne Bumgardner, Division of Examination, Office of Examination and Insurance, telephone: (202) 254-8760.

11. § 701.30, Safe Deposit Box Service, review to consolidate with regulations on Minimum Security Devices and Procedures, Part 748 of NCUA's Rules and Regulations.

For Further Information Contact: Wilmer Theard, Division of Examination, Office of Examination and Insurance, telephone: (202) 254-8760.

12. § 701.35, Share Accounts and Share Certificate Accounts, review to simplify language.

For Further Information Contact: Robert Schafer, Division of Examination, Office of Examination and Insurance, telephone: (202) 254-8760.

13. Part 703, Investments and Deposits, review to update in light of proposed § 703.3.

For Further Information Contact: Robert Schafer, Division of Examination, Office of Examination and Insurance, telephone: (202) 254-8760.

14. Parts 706 and 707, Conversion from Federal to State Credit Union, and Conversion from State to Federal Credit Union, review to determine whether the regulations on this subject are necessary or whether the subject may be covered in a manual.

For Further Information Contact: Jon Lander, Division of Chartering and Insurance, Office of Examination and Insurance, telephone: (202) 254-8760.

15. Parts 708 and 709, Mergers of Credit Unions, Division of Assets, Liabilities, and Capital, review to determine whether regulations on these subjects are necessary or whether they may be covered in a manual.

For Further Information Contact: Jon Lander, Division of chartering and Insurance, Office of Examination and Insurance, telephone: (202) 254-8760.

16. Part 710, Voluntary Liquidation, review to determine whether regulations on this subject are necessary or whether the subject may be covered in a manual.

For Further Information Contact: William Berens, Division of Chartering and Insurance, Office of Examination and Insurance, telephone: (202) 254-8760.

17. Part 722, Advisory Committee Procedures, to be eliminated upon termination of the NCU Board.

For Further Information Contact: Robert S. Monheit, Senior Attorney, Office of General Counsel, telephone: (202) 632-4870.

18. Part 735, Employee Responsibility and Conduct, review to update.

For Further Information Contact: James J. Engel, Assistant General Counsel, Office of General Counsel, telephone: (202) 632-4870.

19. Part 747, Subparts B, C, and D, Rules of Practice and Procedure for Involuntary Termination of Insured Status, for Cease and Desist Orders, and for Suspension and removal Orders, review to determine whether to eliminate provisions that merely duplicate the Federal Credit Union Act.

For Further Information Contact: James J. Engel, Assistant General Counsel, Office of General Counsel, telephone: (202) 632-4870.

20. Part 748, Minimum Security Device and Procedures, review to update and simplify in view of the needs of Federal credit unions.

For Further Information Contact: Stephen Raver, Director, Division of Examination, Office of Examination and Insurance, telephone: (202) 254-8760.

LAWRENCE CONNELL,
Administrator.

DECEMBER 12, 1978.

[FR Doc. 78-35020 Filed 12-14-78; 8:45 am]

[7555-01-M]

NATIONAL SCIENCE FOUNDATION

SEMI-ANNUAL REGULATIONS AGENDA

Executive Order 12044 requires that the National Science Foundation publish semiannually an agenda of significant regulations under development or review.

A. SIGNIFICANT EXISTING REGULATIONS UNDER REVIEW

1. GRANT POLICY MANUAL (NSF 77-47)

This document sets forth the basic policies and procedures in the award and administration of all Foundation grants. The manual is revised periodically as policies and procedures change. As such, the manual is undergoing continuous review.

Legal Basis for Issuance: Section 11 of the National Science Foundation Act of 1950, as amended (42 U.S.C. § 1870).

Name of Agency Official: Mr. Francis G. Naughten, Division of Grants and Contracts (202) 632-4148.

Regulatory Analysis: None required.

2. CONFLICT-OF INTEREST REGULATIONS (45 CFR PART 600)

These regulations govern the conduct of NSF employees and officers and special Government employees.

Legal Basis for Issuance: Section 11 of the National Science Foundation Act of 1950, as amended (42 U.S.C. § 1870); Executive Order 11222; 5 CFR Part 735.

Name of Agency Official: Harriet E. Tucker, Esq., Office of General Counsel (202) 634-4257.

Regulatory Analysis: None required.

B. SIGNIFICANT NEW REGULATIONS UNDER DEVELOPMENT

1. AMENDMENTS TO 45 CFR PART 600, "EXEMPTION OF CERTAIN FINANCIAL INTERESTS"

On November 29, 1978, the Foundation published for comment proposed amendments to regulations which would exempt certain financial interests of National Science Board members from the prohibitions of 18 U.S.C. 208(a). Comments are required on or before February 1, 1979.

Legal Basis for Issuance: Section 11 of the National Science Foundation Act of 1950 (42 U.S.C. § 1870); 18 U.S.C. 208(b).

Name of Agency Official: Harriet E. Tucker, Esq., Office of General Counsel (202) 634-4257.

Regulatory Analysis: None required.

2. AGE DISCRIMINATION REGULATIONS (45 CFR PROPOSED PART 605)

These regulations, which will prohibit discrimination on the basis of

age in all Foundation-assisted programs, are being developed in coordination with the Department of Health, Education, and Welfare. Proposed regulations for public comment are not expected to be issued until mid-to-late 1979.

Legal Basis for Issuance: Section 11 of the National Science Foundation Act of 1950, as amended (42 U.S.C. § 1870); the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 *et seq*).

Name of Agency Official: Jesse E. Lasken, Esq., Office of General Counsel (202) 632-4393.

Regulatory Analysis: None required.

3. HANDICAPPED REGULATIONS (45 CFR PROPOSED PART 615)

These regulations, which will prohibit discrimination on the basis of physical handicap in all Foundation-assisted programs, were published for comment in the April 19, 1978 FEDERAL REGISTER. The proposed regulations are awaiting clearance by DHEW before final publication.

Legal Basis for Issuance: Section 11 of the National Science Foundation Act of 1950, as amended (42 U.S.C. § 1870); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794).

Name of Agency Official: Jesse E. Lasken, Esq., Office of General Counsel (202) 632-4393.

Regulatory Analysis: None required.

C. SIGNIFICANT EXISTING REGULATIONS SCHEDULED FOR REVIEW WITHIN THE NEXT SIX MONTHS

1. AVAILABILITY OF RECORDS AND INFORMATION (45 CFR PART 612)

These are the regulations issued pursuant to the Freedom of Information Act. The Foundation is considering consolidating the regulations with various implementing memoranda and NSF bulletins issued since publication of the regulations.

Name of Agency Official: Arthur J. Kusinski, Esq., Office of General Counsel (202) 632-4396.

2. FELLOWSHIP REGULATIONS (45 CFR PART 610 AND 630)

These regulations were published in 1964, and in the 15-year history have never been used. They establish procedures and criteria for resolving questions involving moral character or loyalty of applicants for and holders of NSF Fellowships. Consequently, the Foundation will consider whether they are necessary, and after affording the public time to comment, will consider repeal.

Name of Agency Official: Arthur J. Kusinski, Esq., Office of General Counsel (202) 632-4396.

Dated: December 8, 1978.

JOHN B. SLAUGHTER,
Acting Director.

[FR Doc. 78-34851 Filed 12-14-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

APPLICATIONS FOR LICENSES TO EXPORT NUCLEAR FACILITIES OR MATERIALS

Pursuant to 10 CFR 110.70, "Public Notice of Receipt of an Application", please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, N.W., Washington, D.C.

Dated this day December 8, 1978 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

GERALD G. OPLINGER,
Assistant Director, Export/Import and International Safeguards, Office of International Programs.

EXPORT LICENSE APPLICATIONS SOURCE AND SPECIAL NUCLEAR MATERIAL IN KILOGRAMS

Name of Applicant, Date of Application, Date Received, Application Number	Material Type	Total Element	Total isotope	End-Use	Country of Ultimate Destination
NL Industries, 11/27/78, 12/01/78, XU08441.	Depleted uranium	50,000		To be used as counterweight in aircraft.	Condition Countries
Delegation of Commission of European Communities, 11/24/78, 11/29/78, XSNM01425.	93.3% Enriched Uranium.	35.070	32.720	Fuel for FRG-1 and FRG-2 reactors.	West Germany
Mitsui & Company, 11/28/78, 12/05/78, XSNM01426.	2.55% Enriched Uranium.	157,382	3.511	Fuel for Fukushima II, Unit I....	Japan
Nuclear Metals, Inc., 11/14/78, 11/20/78, XU08439.	Depleted uranium	23,000		To be used for shielding for materials that are used in radiography.	UK

[FR Doc. 78-34899 Filed 12-14-78; 8:45 am]

[7590-01-M]

[Docket No. 50-368]

ARKANSAS POWER & LIGHT CO., ARKANSAS NUCLEAR ONE, UNIT 2

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 7 to Facility Operating License No. NPF-6 to Arkansas Power and Light Company for operation of Arkansas Nuclear One, Unit 2 (the facility) located at the licensee's site in Pope County, Arkansas. The amended license is effective as of its date of issuance.

The amendment modifies or removes three conditions to Facility Operating License No. NPF-6 that had restricted the facility from going critical and operating at full power. One of these conditions is removed by finding that the environmental qualification test results are acceptable for certain safety-related instrumentation located inside containment. Modifications to two other conditions include changes to the Technical Specifications to permit reliance on portable radiation monitors to meet the requirement for the capability to monitor the radiation level inside the containment following an accident; and a restriction on making any software changes on the core protection calculator system

pending Commission approval of change procedures.

The amendment also reflects modification to or removal of other license conditions involving acceptable completion of certain conduit penetration fire barrier testing; correction of an implementation date for an action required by the fire protection program; completion of acceptable changes needed for protection from degraded offsite power voltage; and modification of the schedule for the remaining actions needed to complete the review of three core protection calculator system positions.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter I, which are set forth in the amended license. The application for the license complies with the standards and requirements of the Act and the Commission's regulations.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4) an environmental impact statement, or negative declaration and environmental appraisal impact need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) Amendment No. 7 to Facility Operating License No. NPF-6 complete with Preoperational Tests and Other Items Which Must Be Completed By the Indicated Operational Mode (Attachment 2); and (2) the Commission's related Safety Evaluation supporting Amendment No. 7 to License No. NPF-6. These items are available for public inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and the Arkansas Polytechnic College, Russellville, Arkansas 72801. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland this 1st day of December 1978.

JOHN F. STOLZ,
Chief, Light Water Reactors Branch No. 1, Division of Project Management.

[FR Doc. 78-34886 Filed 12-14-78; 8:45 am]

[7590-01-M]

[NUREG-0396, EPA 520/1-78-016]

PLANNING BASIS FOR THE DEVELOPMENT OF STATE AND LOCAL GOVERNMENT RADIOLOGICAL EMERGENCY RESPONSE PLANS IN SUPPORT OF LIGHT WATER NUCLEAR POWERPLANTS

Report of NRC/EPA Task Force on Emergency Planning; Availability of Report for Public Comment

A joint Task Force with members from the Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) have prepared a report title "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants," (NUREG-0396, EPA 520/1-78-016), dated November 1978. The report was prepared in response to a request to the NRC from the Conference of Radiation Control Program Directors to "make a determination of the most severe accident basis for which radiological emergency response plans should be developed by offsite agencies." This request followed other expressions of uncertainty from States regarding the extent of offsite planning and operational preparedness needed to cope with radiological emergencies at nuclear power plants.

This report suggests a planning basis for State and local government emergency organizations to determine the scope of planning efforts around nuclear power plants. The Task Force found that a specific single accident could not be identified as the planning basis. Instead, it recommended establishing two generic Emergency Planning Zones (EPZs) around light water nuclear power plants: an inner zone of about 10 miles for the plume exposure pathway and an outer zone of about 50 miles for the ingestion exposure pathway. The precise size and shape of the EPZs would be based on the judgment of emergency planners after considering local conditions. The Task Force concluded that planning is warranted within these zones so that predetermined protective actions, such as sheltering in the plume exposure zone, can be taken in the event of a serious accident at a nuclear power plant. It also recommended time frames and radiological characteristics of the accidents for use in determining the appropriate emergency actions which could be taken to reduce the accident consequences. The Task Force believes that if the basic planning elements in existing emergency planning guidance documents are already being considered, the establishment of EPZs should not result in large increases in State and local government emergency planning and preparedness costs.

The contents and recommendations of the report were discussed at a meeting of the U.S. Nuclear Regulatory Commission on December 1, 1978, where it was agreed that comments from the public should be sought prior to final Commission action. We are, therefore, asking for comments from interested organizations, groups and individuals on NUREG-0396, EPA 520/1-78-016.

Copies of the report will be available after December 20, 1978. Copies will be sent directly to State and local officials with responsibilities for radiological emergency response planning, environmental and public interest groups and utility industry groups and associations. Other copies will be available for review at the NRC Public document Room, 1717 H Street, NW., Washington, D.C. and the Commission's local public document rooms located in the vicinity of existing nuclear power plants. Addresses of these local public document rooms can be obtained by contacting the Chief, Local Public Document Rooms Branch, Mail Stop 309, Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 492-7536. As long as the supply lasts, single copies of the report can be obtained by writing to the Director, Division of Technical Information and Document Control, Nuclear Regulatory Commission, Washington, D.C. 20555.

We invite specific public attention to the following issues: (1) Usefulness of the guidance in the radiological emergency response planning process and the development of related preparedness measures by state and local governments; (2) anticipated impact of the guidance contained in the report on existing radiological emergency response plans and those yet to be developed; (3) validity of the report's conclusions and the proposed two emergency planning zones; (4) relationship, between the guidance in the report and that included in other NRC/EPA or Federal guidance documents or regulations; (5) costs or difficulty of putting the guidance into use or practice.

Comments should be forwarded to Harold E. Collins, Assistant Director for Emergency Preparedness, Office of State Programs, Nuclear Regulatory Commission, Washington, D.C. 20555, by March 30, 1979.

Dated at Bethesda, Md., this 11th day of December 1978. For the Nuclear Regulatory Commission.

ROBERT G. RYAN,
Director,
Office of State Programs.

[FR Doc. 78-34885 Filed 12-14-78; 8:45 am]

[7590-01-M]

[Dockets Nos. 50-325 and 50-324]

CAROLINA POWER & LIGHT CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 16 and 41 to Facility Operating Licenses Nos. DPR-71 and DPR-62, respectively, issued to Carolina Power & Light Company (the licensee) for operation of the Brunswick Steam Electric Plant, Units Nos. 1 and 2 (the facility), located in Brunswick County, North Carolina. The Amendments are effective as of November 8, 1978.

These amendments revise the Technical Specifications to permit a temporary change to the limiting condition for operation for the suppression pool-reactor building vacuum breakers. This change will require the manual valves to be closed for containment integrity during normal operation, and will require the manual valves to be opened during abnormal operations which may lead to an unacceptable vacuum in the primary containment. The amendments also include an administrative change to the Technical Specifications on hydraulic snubbers.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

For further details with respect to this action, see (1) the application for amendment dated november 3, 1978, as supplemented November 8, 1978, (2) the Commission's letter to the licensee dated November 8, 1978, (3) Amendment Nos. 16 and 41 to License Nos. DPR-71 and DPR-62, and (4) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the Southport-Brunswick County Library, 109 West Moore Street, Southport, North Carolina 28461. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 11th day of December 1978.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-34887 Filed 12-14-78; 8:45 am]

[7590-01-M]

[Docket Nos.: 50-454; 50-455; 50-456; 50-457]

COMMONWEALTH EDISON CO. (BYRON STATION, UNITS 1 AND 2 AND BRAIDWOOD STATION, UNITS 1 AND 2)

Receipt of Application for Facility Operating Licenses; Notice of Consideration of Issuance of Facility Operating Licenses; Notice of Availability of Environmental Reports; and Notice of Opportunity for Hearing

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received an application for facility operating licenses from Commonwealth Edison Company (the applicant) which would authorize the applicant to possess, use, and operate the Byron Station, Units 1 and 2, and the Braidwood Station, Units 1 and 2, four pressurized water nuclear reactors (the facilities) each having a core power level of 3411 megawatts thermal with an electrical output of 1120 megawatts electric. The Byron Station is located in Rockvale Township, Ogle County, Illinois and Braidwood Station is located in Reed Township, Will County, Illinois.

The applicant has also filed, pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in 10 CFR Part 51, an Environmental Report for each facility which discuses environmental considerations related to the proposed operation of that facility.

The Environmental Report for the Bryon Station is being made available at the local public document room at the Byron Public Library, Third and Washington Streets, Byron, Illinois 61010. The Environmental Report for the Braidwood Station is being made available at the local public document room at the Wilmington Township Public Library, 201 South Kankakee Street, Wilmington, Illinois 60481, and the Northeastern Illinois Planning Commission, 400 West Madison Street, Chicago, Illinois 60606. Both reports are being made available at the State Clearinghouse, Bureau of the Budget, Lincoln Tower Plaza, 524 S. Second Street, Room 315, Springfield, Illinois 62706.

After the environmental reports have been analyzed by the Commission's staff, draft environmental statements will be prepared. Upon preparation of the draft environmental statements, the Commission will, among other things, cause to the published in the FEDERAL REGISTER, a notice of availability of the draft statements requesting comments from interested persons on the draft statements. The notice will also contain a statement to the effect that any comments of Federal agencies and State and local officials will be made available when received. The draft environmental statements will focus only on any matters which differ from those previously discussed in the final environmental statements prepared in connection with the issuance of the construction permits. Upon consideration of comments submitted with respect to the draft environmental statements, the Commission's staff will prepare final environmental statements, the availability of which will be published in the FEDERAL REGISTER.

The Commission will consider the issuance of facility operating licenses to Commonwealth Edison Company which would authorize the applicant to possess, use, and operate the Byron and Braidwood Stations in accordance with the provisions of the licenses and the technical specifications appended thereto, upon: (1) The completion of a favorable safety evaluation of the application by the Office of Nuclear Reactor Regulation; (2) the completion of the environmental review required by the Commission's regulations in 10 CFR Part 51; (3) the receipt of a report on the applicant's application for facility operating licenses by the Advisory Committee on Reactor Safeguards: and (4) a finding by the Commission that the application for the facility licenses, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter I. Construction of the facilities was authorized by Construction Permits Nos. CPPR-130, CPPR-131, CPPR-132, and CPPR-133, issued by the Atomic Energy Commission on December 31, 1975. Construction of the Byron Unit 1 is anticipated to be completed prior to June 1, 1982; Byron Unit 2 prior to November 1, 1983; Braidwood Unit 1 prior to November 1, 1982; and Braidwood Unit 2 prior to November 1, 1983.

Prior to issuance of any operating licenses, the Commission will inspect each facility to determine whether it has been constructed in accordance with the application as amended, and the provisions of the Construction Permit. In addition, the licenses will

not be issued until the Commission has made the findings reflecting its review of the application under the Act, which will be set forth in the proposed licenses, and has concluded that the issuance of the licenses will not be inimical to the common defense and security or the health and safety of the public. Upon issuance of the licenses, the applicant will be required to execute an indemnity agreement as required by Section 170 of the Act and 10 CFR Part 140 of the Commission's regulations.

By January 15, 1979 the applicant may file a request for a hearing with respect to issuance of the facility operating licenses and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the Commission, or designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by January 15, 1979. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, and to John W. Rowe, Esq., Isham, Lincoln and Beale, One First National Plaza, Chicago, Illinois 60690, attorney for the applicant. Any questions or requests for additional information regarding the content of this notice should be addressed to the Chief Hearing Counsel, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR § 2.714(a)(1)(i)-(v) and § 2.714(d).

For further details pertinent to the matters under consideration, see the application for the facility operating licenses dated November 30, 1978, and the applicant's Environmental Reports dated November 30, 1978, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the above named local public document rooms for Byron and Braidwood. As they become available, the following documents may be inspected at the above locations: (1) the Safety Evaluation Report prepared by the Commission's staff; (2) the Draft Environmental Statement; (3) the Final Environmental Statement; (4) the report of the Advisory Committee on Reactor Safeguards (ACRS) on the application for facility operating licenses; (5) the proposed facility operating licenses; and (6) the technical specifications, which will be attached to the proposed facility operating licenses.

Copies of the proposed operating licenses and the ACRS report, when available, may be obtained by request to the Director, Division of Project Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies of the Commission's staff Safety Evaluation Report and Final Environmental Statement, when available, may be purchased at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 5th day of December, 1978.

For the Nuclear Regulatory Commission

STEVEN A. VARGA,
Chief, Light Water Reactors Branch No. 4, Division of Project Management.

[FR Doc. 78-34888 Filed 12-14-78; 8:45 am]

[7590-01-M]

[Docket No. 40-8102]

EXXON MINERALS CO, U.S.A.

Availability of Final Environmental Statement for Highland Uranium Solution Mining Project

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that the Final Environmental Statement prepared by the Commission's Office of Nuclear Material Safety and Safeguards, related to the proposed Highland uranium solution mining project to be located in Converse County, Wyoming, is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

The final Environmental Statement is also being made available at the State Clearinghouse, State Planning Coordinator, Office of the Governor, Capitol Building, Cheyenne, Wyoming 82001.

The notice of availability of the Draft Environmental Statement for the Highland uranium solution mining project and requests for comments from interested persons was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22796). The comments received from Federal agencies, State and local officials and interested members of the public have been included as appendices to the Final Environmental Statement.

Copies of the Final Environmental Statement (Document No. NUREG-0489) may be purchased on or about December 22, 1978, from the National Technical Information Service, Springfield, Virginia 22161. (Printed copy: $9.50; Microfiche: $3.00)

Dated at Silver Spring, Maryland, this 30th day of November, 1978.

FOR THE NUCLEAR REGULATORY COMMISSION.

L. C. ROUSE,
Acting Chief, Fuel Reprocessing and Recycle Branch, Division of Fuel Cycle and Material Safety.

[FR Doc. 78-34889 Filed 12-14-78; 8:45 am]

[7590-01-M]

INTERNATIONAL ATOMIC ENERGY AGENCY DRAFT SAFETY GUIDE

Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is developing a limited number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides will be developed in the following five areas: Government Organization, Siting, Design, Operation, and Quality Assurance. The purpose of these codes and guides is to provide IAEA guidance to countries beginning nuclear power programs.

The IAEA Codes of Practice and Safety Guides are developed in the following way. The IAEA receives and collates relevant existing information used by member countries. Using this collation as a starting point, an IAEA Working Group of a few experts then develops a preliminary draft. This preliminary draft is reviewed and modified by the IAEA Technical Review Committee to the extent necessary to develop a draft acceptable to them. This draft Code of Practice or Safety Guide is then sent to the IAEA Senior Advisory Group which reviews and modifies the draft as necessary to reach agreement on the draft and then forwards it to the IAEA Secretariat to obtain comments from the Member States. The Senior Advisory Group then considers the Member State comments, again modifies the draft as necessary to reach agreement and forwards it to the IAEA Director General with a recommendation that it be accepted.

As part of this program, Safety Guide SG-D4, "Protection Against Internally Generated Missiles and Their Secondary Effects in Nuclear Power Plants," has been developed. The Working Group, consisting of Mr. H. Wagner, Federal Republic of Germany, and Mr. W. C. Gangloff (Westinghouse Electric Corporation), United States of America, developed the initial draft of this Safety Guide from an IAEA collation during a meeting on September 6-17, 1976. The Working Group draft of this Safety Guide was modified by the IAEA Technical Review Committee on Design at its meetings in March 1977 and March 1978. The Senior Advisory Group subsequently reviewed and further modified this Guide at its meeting on June 19-23, 1978, and we are soliciting public comments on this modified draft. Comments on this draft received by January 15, 1979 will be useful to the U.S. representatives to the Technical Review Committee and Senior Advisory Group in evaluating its adequacy prior to the next IAEA discussion.

Single copies of this draft may be obtained by a written request to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Rockville, Maryland this 6th day of December 1978.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director,
Office of Standards Development.

[FR Doc. 78-34890 Filed 12-14-78; 8:45 am]

[7590-01-M]

[Docket No. 50-245]

NORTHEAST NUCLEAR ENERGY CO., ET AL.

Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 54 to Provisional Operating License No. DPR-21, issued to Northeast Nuclear Energy Company, The Hartford Electric Light Company, Western Massachusetts Electric Company, and Connecticut Light and Power Company (the licensees), which revised the Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 1 (the facility) located in Waterford, Connecticut. The amendment is effective as of its date of issuance.

The amendment revises the provisions of the Appendix A Technical Specifications to allow in-place testing of the Standby Gas Treatment System at lower flow rates.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 20, 1978, (2) Amendment No. 54 to License No. DPR-21, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 1st day of December, 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-34893 Filed 12-14-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-245 and 50-336]

NORTHEAST NUCLEAR ENERGY CO., ET AL.

Issuance of Amendments to Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 55 to Provisional Operating License No. DPR-21 and Amendment No. 44 to Facility Operating License No. DPR-65 to Northeast Nuclear Energy Company, the Connecticut Light and Power Company, The Hartford Electric Light Company, and Western Massachusetts Electric Company (the licensees), which revised the Appendix B Technical Specifications for operation of the Millstone Nuclear Power Station, Unit Nos. 1 and 2, located in the Town of Waterford, Connecticut. The amendments are effetive as of their date of issuance.

These amendments modify the Technical Specifications by deleting the primary coolant iodine sampling and analyses requirement.

The applicaton for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated March 20, 1978, (2) Amendment Nos. 55 and 44 to Licenses Nos. DPR-21 and DPR-65, respectively, and (3) the Commission's related approval letter. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Atttention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 4th day of December, 1978.

For the Nuclear Regulatory Commission,

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-348944 Filed 12-14-78; 8:45 am]

7590-01-M1]

[Docket No. 50-285]

OMAHA PUBLIC POWER DISTRICT

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 41 to Facility Operating License No. DPR-40 issued to Omaha Public Power District (the licensee), which revised the Technical Specifications for operation of the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska. The amendment is effective as of its date of issuance.

This amendment adds Technical Specification requirements for the emergency power system at Fort Calhoun and corrects a typographical error in the definitions section of the Technical Specifications.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act, and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant enviornmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the licensee's submittal dated August 30, 1978, (2) Amendment No. 41 to License No. DPR-40, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Blair Public Library, 1665 Lincoln Street, Blair, Nebraska. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 27th day of November 1978.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 78-34897 Filed 12-14-78; 8:45 am]

[7590-01-M]

[Byproduct Material License No. 29-13613-02]

RADIATION TECHNOLOGY, INC.

Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority in 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this civil penalty proceeding:

Richard S. Salzman, Chairman
Dr. Lawrence R. Quarles
Michael C. Farrar

Dated: *December 8, 1978.*

MARGARET E. DU FLO,
Secretary to the Appeal Board

[FR Doc. 78-34895 Filed 12-14-78; 8:45 am]

[7590-01-M]

[Docket No. 50-244]

ROCHESTER GAS & ELECTRIC CORP.

Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 20 to Provisional Operating License No. DPR-18, issued to Rochester Gas and Electric Corporation (the licensee), which revised Tenchnical Specifications for operation of the R. E. Ginna Plant (the facility) located in Wayne County, New York. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specification to more explicitly define the existing requirements for surveillance frequency.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the Commission's letter dated August 11, 1978, (2) the application for amendment dated October 10, 1978, (which was transmitted by a letter dated October 12, 1978), and (3) Amendment No. 20 to License No. DPR-18, including the Commission's related evaluation as contained in the transmittal letter. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N. W., Washington, D.C. and at the Rochester Public Library, 115 South Avenue, Rochester, New York 14627. A copy of item (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 27th day of November, 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-34896 Filed 12-14-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-259, 50-260 and 50-296]

TENNESSEE VALLEY AUTHORITY

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 46, 42, and 19 to Facility Operating License Nos. DPR-33, DPR-52 and DPR-68 issued to Tennessee Valley Authority (the licensee), which revised the Technical Specifications for operation of the Browns Ferry Nuclear Plant Units Nos. 1, 2 and 3, located in Limestone County, Alabama. The amendments are effective as of the date of issuance.

The amendments revised the Technical Specificatons to incorporate requirements for establishing and maintaining the drywell to suppression chamber differential pressure and suppression chamber water level, to maintain the margins of safety established in the NRC staff's "Mark I containment Short Term Program Safety Evaluation," NUREG-0408. Operation in accordance with the conditions specified in NUREG-0408 has been previously authorized in 43 FR 13117 dated March 29, 1978.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated November 5, 1976, as supplemented by letter dated October 18, 1978, (2) Amendment No. 46 to License No. DPR-33, Amendment No. 42 to License DPR-52, and Amendment No. 19 to License DPR-68, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Athens Public Library, South and Forrest, Athens, Alabama 35611. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 8th day of December 1978.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-34898 Filed 12-14-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORT

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 December 8, 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 name of the agency sponsoring the proposed collection of information;

The title of each request received;

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 signficant issues are to be approved after brief notice thru this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Managment and Budget Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF ENERGY

Initial Report of First Sales of Natural Gas Under Section 105 of the Natural Gas Policy Act, Existing Intrastate Contracts
FERC-123
Single-time
Natural gas producers and pipelines, 50,000 responses; 12,500 hours
Hill, Jefferson B., 395-5867

Report of First Sales of Natural Gas Under Section 106(B) of the Natural Gas Policy Act, Intrastate Rollover Contracts
FERC-124
Annually
Natural gas producers, 2,000 responses; 500 hours
Hill, Jefferson B., 395-5867

MFBI/Powerplant Petition for Existing ERA-300A and 300B
Single-time
"New" MFBI'S and powerplants, 225 responses; 5,175 hours
Hill, Jefferson B., 395-5867

DEPARTMENT OF COMMERCE

Departmental and Other Customer Research Survey
Single-time
Manufacturing, 63,000 responses; 5,250 hours
C. Louis Kincannon, 395-3211

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration
Study of the Impact and Effectiveness of SIDS Information and counseling Projects
Single-time
Educational/training institutions or organizations, 4,535 responses; 2,042 hours
Richard Eisinger, 395-3214

REVISIONS

NATIONAL SCIENCE FOUNDATION

Survey of Scientific and Engineering Personnel Employed at University and Colleges, January 1979 and January 1980
NSF 724S and 724
Annually
Institutions of higher education with S/E programs, 2,251 responses; 24,851 hours
Office of Federal Statistical Policy and Standard 673-7956

Survey of Scientific and Engineering Expenditures at Universities and Colleges, fiscal year 1978 and fiscal year 1979
NSF 411S and 411
Annually
Institutions of higher education with S/E programs, 879 responses; 25,200 hours
Office of Federal Statistical Policy and Standard, 673-7956

EXTENSIONS

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service
Fish Application (for Stocking Purposes) 3-1688
On occasion
Individuals with farm ponds, 30,000 responses; 5,000 hours
Ellett, C. A., 395-6132

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-34928 Filed 12-14-78; 8:45 am]

[7715-01-M]

POSTAL RATE COMMISSION

[Docket No. MC79-2]

MAIL CLASSIFICATION SCHEDULE, 1978

United States Postal Service Filing of a Request for a Recommended Decision on Establishing an Express Mail Metro Service

DECEMBER 12, 1978.

Notice is hereby given that on December 7, 1978, the United States Postal Service ("Postal Service"), pursuant to § 3623 of the Postal Reorganization Act (39 U.S.C. § 3623), filed a request with the Postal Rate Commission for a recommended decision on establishing an express mail metro service. This filing has been assigned Docket No. MC79-2.

The Postal Service states that its request is filed in accordance with the Commission's rules of practice and contains such information and data which explain the nature, scope, significance and impact of the proposed express mail metro service subclass. Further, the Postal Service states that the proposed new subclass would provide expeditious express mail service on the local level, thereby responding to a discrete need which has been established for this postal service. According to the Postal Service, metro mail service will be available at designated retail postal facilities for same day and next day service within the originating metro area. Delivery time is determined by the time and place of tender in accordance with the following:

a. Delivery by 5:00 p.m. for items tendered by 10:00 a.m. at any designated station and for items tendered by 12:00 noon at selected designated stations; or

b. Delivery by 10:00 a.m. next day for items tendered by 5:00 p.m. at any designated station.

In addition to the above specified delivery service, pickup service will be available only on a scheduled basis pursuant to a service agreement between the Postal Service and the mailer. The service agreement shall specify the time, place, day or date, and the frequency of such service. Service under a service agreement shall be offered in a manner consistent with 39 U.S.C. § 403(c).[1] The Postal Service will refund postage for an item not delivered in accordance with the terms of the proposed subclass, unless the item was delayed by strike or work stoppage.[2]

Hearings will be held on the proposals submitted by the Postal Service in Docket No. MC79-2. Any person desiring to be heard with reference thereto and to become a party to the proceeding, or to participate as a party in any hearing thereon, should file a petition for leave to intervene. Petitions for leave to intervene must be filed with the Secretary, Postal Rate Commission, Washington, D.C. 20268 on or before December 29, 1978, and must be in accordance with § 20 of the Commission's rules of practice (39 C.F.R. § 3001.20). We direct specific attention to § 20(b) which provides that petitions for leave to intervene shall affirmatively state whether or not petitioner requests a hearing or, in lieu thereof, a conference; and further, whether or not the petitioner intends to participate actively in the hearing.[3] Alternatively, persons seeking limited participation, but who do not wish to become parties may, on or before December 29, 1978, file a written request for leave to be heard as a "limited participator," pursuant to § 19a of the Commission's rules of practice (39 C.F.R. § 3001.19a). In addition, persons wishing to express their views informally, and not desiring to become a party or limited participant, may file comments pursuant to § 19b of the Commission's rules, 39 C.F.R. § 3001.19b.

The request of the Postal Service for a recommended decision on establishing an express mail metro service subclass is on file with the Commission and is available for public inspection during regular business hours.

Further, the Commission designates Stephen L. Sharfman, Assistant General Counsel, Litigation (Acting), as the Officer of the Commission in Docket No. MC79-2.

DAVID F. HARRIS,
Secretary.

[FR Doc. 78-34984 Filed 12-14-78; 8:45 am]

[1] The specific changes proposed by the Postal Service are set out, in legislative format, in Attachment A to the Postal Service's Request.

[2] *See* Express Mail, Insurance Claims and Procedures, § 500.65 of the Service's Domestic Mail Classification Schedule.

[3] In this regard, parties who intend to participate actively in this proceeding are encouraged informally and promptly to inform the Postal Service of desired preliminary clarifications of the Postal Service's presentation wherever the participant believes such clarification will expedite this proceeding.

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 15376, File Nos. SR-Amex-77-3 and SR-Amex-77-18]

AMERICAN STOCK EXCHANGE, INC.

Order Approving Proposed Rule Changes

On March 14, 1977, the American Stock Exchange, Inc., ("Amex") 86 Trinity Place, New York, New York, 10006, filed a proposed rule change (File No. SR—Amex-77-3) with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, to amend the Amex *Company Guide* by adding Section 117 to Part 1 (Original Listing Requirements) and Section 1003A to Part 10 (Suspension and Delisting).[1] Section 117 establishes alternate criteria for original listing of common stock by issuers which are unable to meet the Amex's existing earnings requirements. Section 1003A would provide for the prospective application of certain delisting criteria in respect of corporations which determine to list stock pursuant to the alternate criteria in Part 1, Section 117. Implementation of the alternate listing standards proposed in SR-Amex-77-3 would expand the universe of issuers eligible to list securities on the Amex.

On May 13, 1977, the Commission (Commissioner Loomis dissenting) instituted a proceeding, pursuant to Section 19(b)(2) of the Act, to determine whether SR-Amex-77-3 should be disapproved; Sections 6(b)(5) and 6(b)(8) of the Act were cited as providing the grounds under consideration for disapproval.[2] In so acting, the Commission noted that implementation of the Amex's proposed alternate listing criteria would broaden the reach of Amex Rule 5, which restricts members' off-board principal transactions in stocks listed on the Amex, to the extent that over-the-counter ("OTC") issues qualified and became listed pursuant to the standards set forth in SR-Amex-77-3. This proceeding culminated in disapproval (Commissioner Loomis again dissenting) of SR-Amex-77-3 on August 31, 1977.[3] Approxi-

[1] Notice of SR-Amex-77-3 (Securities Exchange Act Release No. 13391 (March 18, 1977)) including the terms of substance was published in the FEDERAL REGISTER on March 24, 1977 (42 FR 15994).

[2] *See* Securities Exchange Act Release No. 13542 (May 13, 1977).

[3] *See* Securities Exchange Act Release No. 13912 (August 31, 1977). In that release, the Commission indicated that it would have approved SR-Amex-77-3 if the Amex had been willing to exempt any security listed pursuant to the proposed listing standards from its off-board trading restrictions.

mately two months after the Commisson's proposal of Rule 19c-2. The Commission's action reflected the pendency of proposed Rule 19c-2 under the Act [17 CFR 240.19c-2], which, if adopted, was, by its terms, to have taken effect on January 1, 1978, and would have abrogated all exchange rules which restrict the ability of members to effect off-board principal and "in-house" agency cross transactions.[4]

Disapproval was based, in part, on the belief that "the existing competitive balance between the exchanges and the OTC markets should not be upset through exchange rule-making, which would subject additional securities and market makers therein to rules which have been identified as anti-competitive, while the Commission is actively considering whether the competitive burdens represented by those rules can be justified by reference to the purposes of the Act."[5]

On July 20, 1977, the Amex filed a second listing standard proposal (File No. SR-Amex-77-18), which would modify Part 1, Section 110 and Part 2, Sections 231 and 232 of the *Company Guide* to establish alternate listing criteria for securities of foreign issuers.[6] As was the case with SR-Amex-77-3, adoption of SR-Amex-77-18 would expand the universe of companies eligible to list stock on the Amex. SR-Amex-77-18 was directed at foreign companies, however, while SR-Amex-77-3 was directed at new listing standards for certain domestic issuers.

The congruity of issues raised by SR-Amex-77-3 and SR-Amex-77-18 led the Amex to request that the Commission reconsider its disposition of SR-Amex-77-3.[7] On November 29, 1977, the Commission instituted a proceeding, pursuant to Section 19(b)(2) of the Act, to determine whether SR-Amex-77-18 should be disapproved and, in response to the Amex request, concurrently granted a rehearing to reconsider whether SR-Amex-77-3 should be disapproved.[8] In granting the rehearing, the Commission indicated that a "change of circumstances involving the Commission's proceedings, pursuant to Section 19(c) of the Act, concerning off-board trading restrictions" might impel "a different conclusion from that recited in its August 31, 1977 order."[9]

Comments Received

The Amex[10] and the National Security Traders Association ("NSTA")[11] submitted the only comments received in connection with this proceeding.

Amex articulated three arguments in support of unconditional Commission approval of its proposals. First, Amex contended that disapproval of the instant proposals (or, approval only if Amex exempted from its Rule 5 trading in securities which might be listed pursuant to the proposed standards) would be discriminatory in light of the Commission's approval in May, 1976, of two amendments to the NYSE's listing standards.[12] Similarly, Amex contrasted Commission approval of the NYSE proposals in 1976 with its unfavorable response to the Amex's efforts, dating back to 1974, to attract additional listings through modification of listing standards, and asserted that disapproval of the instant proposals would constitute an unjustified pattern of discriminatory treatment.

Second, Amex argued that any modification of exchange off-board trading rules should not be required apart from a rulemaking proceeding calculated to further the development of a national market system. Amex noted that the Commission's proposal of Exchange Act Rule 19c-2 was such a proceeding and reiterated that a proceeding to consider the statutory validity of one exchange's proposals to amend listing standards was not the appropriate forum in which to make a determination affecting retention of off-board trading restrictions.

Finally, Amex identified certain benefits which it attributes to exchange listing (*e.g.*, limited order protection, dissemination of real-time last sale reports, centralization of order flow, improved continuity and quotation spreads) and observed that these benefits would be denied to shareholders of OTC companies whose stock could not be listed on the Amex absent approval of SR-Amex-77-3 and SR-Amex-77-18.[13]

The NSTA, on the other hand, opposed approval of the Amex proposal (SR-Amex-77-18) which would provide alternate listing standards for foreign issues.[14] The NSTA urged the Commission to disapprove the Amex proposal unless the Amex provided that its Rule 5 would not restrict Amex members from trading off-board in foreign securities listed pursuant to the proposal contained in SR-Amex-77-18. The NSTA noted that the majority of OTC market makers are also Amex members and would therefore be obliged to cease marketmaking in any issue which became listed on the Amex, thereby depriving investors of the benefits of those market-makers' extensive expertise and substantial capital. The NSTA concluded that it would be inimical to the promotion of intermarket competition and the development of a national market system to extend the scope of Amex Rule 5 to additional foreign issues through approval of SR-Amex-77-18 as submitted.[15]

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[4] *See* Securities Exchange Act Release No. 13662 (June 23, 1977).

[5] *Supra* note 3. Contrasting its disapproval of SR-Amex-77-3 with its approval of listing criteria amendments proposed by the New York Stock Exchange ("NYSE") some fifteen months earlier, notwithstanding the fact that the NYSE's proposals indirectly extended the reach of that exchange's off-board trading rules, the Commission stated that, in May, 1976, "remaining questions relating to . . . exchange restrictions on off-board trading were not then ripe for resolution." *Id.* But in August of 1977, the Commission declared that "we must give recognition to the fact that those questions now are in the process of being resolved." *Id.* at 4. Further, the Commission stated that, until it had "determined whether the maintenance of exchange off-board restrictions is necessary or appropriate," a decision which, at that time, the Commission planned to make prior to the scheduled effective date of proposed Rule 19c-2 (January 1, 1978), it could not find SR-Amex-77-3 consistent with the requirements of the Act. *Id.*

[6] Notice of SR-Amex-77-18 (Securities Exchange Act Release No. 13796 (July 22, 1977)) including the terms of substance was published in the Federal Register on August 1, 1977 (42 FR 38948).

[7] This request was made in a November 4, 1977 letter from Norman F. Poser, Executive Vice President of the Amex, to George A. Fitzsimmons, Secretary of the Commission.

[8] *See* Securities Exchange Act Release No. 14214 (November 29, 1977). The Commission cited as grounds under consideration for disapproval the same statutory bases upon which the disapproval of SR-Amex-77-3 had been grounded. The order announcing this action invited interested persons to submit written data, views and arguments respecting both proposals.

[9] *Id.* note 6 at 4. The Commission also noted that "new and compelling reasons" could also alter its conclusion. Absent such new reasons or a change in circumstances with respect to its off-board trading restrictions proceeding, the Commission warned that a different conclusion was "unlikely." *Id.*

[10] The Amex's comments were set forth in two letters, dated January 16 and February 6, 1978 respectively, from Fred M. Stone, Vice President of the Legal and Regulatory Affairs Division, to George A. Fitzsimmons, Secretary of the Commission.

[11] The views of the NSTA were expressed in a May 19, 1978 letter to George A. Fitzsimmons of the Commission staff from Lawrence R. Rice and Morton N. Weiss, respectively the Chairman and President of the NSTA.

[12] *See* Securities Exchange Act Release Nos. 12450 (May 13, 1976) and 12471 (May 20, 1976) in which the Commission approved SR-NYSE-75-23 and SR-NYSE-76-22. *See* text, *infra* at 7.

[13] Amex alleged that its provision of these benefits would be consistent with the development of a national market system and was supported by the Congressional findings set forth in paragraphs (C) and (D) of section 11A(a)(1) of the Act.

[14] The NSTA submission did not address SR-Amex-77-3 directly, but its arguments concerning fair competition among markets appears to apply to both Amex proposals.

[15] The NSTA's submission included copies of letters and supporting material which the NSTA had sent to the Commission in 1974 expressing its opposition at that time to a proposal by the Amex to attract additional listings through modification of its listing standards and a petition by the Amex for Commission rulemaking to exempt certain

Footnotes continued on next page

RELATED COMMISSION ACTIONS

The Commission has been considering, in the context of rulemaking proceedings, whether off-board trading restrictions impose burdens on competition which are not necessary or appropriate in furtherance of the purposes of the Act. In the course of these proceedings, however, the Commission has not made a final determination on the off-board trading restrictions which are imposed by exchange rules such as Amex Rule 5.

Although the Commission previously had conducted numerous studies of these restrictions,[16] the Securities Acts Amendments of 1975 (the "1975 Amendments") added Section 11A(c)(4) to the Act directing the Commission to conduct a review of "any and all rules which limit or condition the ability of members to effect transactions in securities otherwise than on such exchanges," and, within ninety days of the enactment of the 1975 Amendments, to "(i) report to the Congress the results of its review, including the effects on competition of such rules, and (ii) commence a proceeding in accordance with Section 19(c) of [the Act] to amend any exchange rule which does not appear to the Commission to be necessary or appropriate in furtherance of the purposes of [the Act]." On September 2, 1975, the Commission transmitted its report to the Congress [17] and concurrently initiated proceedings to determine:

(i) the extent to which such rules do engender significant anti-competitive effects;

(ii) whether, although such rules are anti-competitive, there are countervailing considerations which appropriately outweigh the need to abrogate or amend such rules at the present time; and

(iii) whether such rules could be appropriately modified so as to further the purposes of the Act.[18]

This proceeding culminated on December 19, 1975, in the Commission's announcement of its determination to adopt Rule 19c-1 under the Act, prohibiting any exchange from having a rule which restricts the execution of agency transactions by exchange members with OTC market makers and block positioners off exchange floors.[19] At the same time, while the Commission found that exchange restrictions on off-board principal transactions were anti-competitive, it did not reach the legal conclusion that these anti-competitive effects were not necessary or appropriate in furtherance of the purposes of the Act. While stating that it would be desirable at some time in the future, under appropriate circumstances, to remove those barriers to competition, the Commission deferred action on those remaining off-board trading restrictions pending further analysis of the timing and consequences of removing those restrictions, and in order to assess future progress toward a national market system. The Commission undertook to revisit the issue in early 1977.

Following the conclusion of that proceeding, the Commission considered and approved, in May, 1976, two NYSE rule proposals (SR-NYSE-75-23 and SR-NYSE-76-22), permitting additional listings on that exchange respectively through provision of downward flexibility, based on fluctuations in the NYSE Composite Index, in certain numerical listing and delisting standards, and establishment of alterate listing criteria for foreign securities. Although the Commission understood that such rule changes would expand the anti-competitive effects of NYSE restrictions on off-board principal transactions, the Commission, in light of its December commitment to devote further study to remaining off-board trading restrictions, approved these NYSE rule changes.[20] Thus, the approval of the NYSE proposals in May, 1976, was consistent with the Commission's determination, only five months earlier, to retain remaining exchange off-board trading rules "for the present time."[21]

Approximately one year after its approval of the NYSE proposals, the Commission proposed amendments to Rule 19c-1 and proposed Rule 19c-2, to be adopted pursuant to Section 19(c) under the Act, which would eliminate all off-board principal restrictions and remaining off-board agency restrictions appicable to transactions other than "in-house" cross transactions for all listed equity securities.[22] The Commission's actions in August and November, 1977, to disapprove SR-Amex-77-3 and institute disapproval proceedings in respect of SR-Amex-77-18, were based partially on the pendency of proposed Rule 19c-2, which, as proposed, contained an effective date of January 1, 1978. Since then, however, pertinent circumstances have changed.

On December 30, 1977, the Commission announced adoption of certain amendments to Rule 19c-1 under the Act, concerning OTC agency transactions, and stated that it would continue its consideration of proposed Rule 19c-2 beyond January 1, 1978.[23] Shortly thereafter, on January 26, 1978, the Commission announced, in its Policy Statement on the Development of a National Market System (the "January Policy Statement"),[24] deferral of further consideration of proposed Rule 19c-2 and a series of specific national market system initiatives which the commission deemed necessary to facilitate progress towards the establishment of that system. The Commission specifically noted in its January Policy Statement that deferral of further consideration of proposed Rule 19c-2 appeared appropriate to allow additional time for study of industry and self-regulatory organizations' responses to the Commission's national market system initiatives announced in the January Policy Statement.[25] The Commission announced that it expected those responses "to clarify the need for collateral action to ensure an appropriate pattern of regulation for an environment in which exchange members are permitted to engage in off-board market making and other principal transactions in securities subject to proposed Rule 19c-2."[26]

Further, since the Commission's January Policy Statement, a number of significant developments indicative of progress toward the establishment of a national market system have occurred. For example, in January, 1978, the Commission adopted Rule 11Ac1-1, which was intended to facilitate the creation of a composite quotation system.[27] firm quotations from all markets first became available pursuant to that Rule on its effective date, August 1, 1978.[28] An initiative noted in the January Policy Statement was the implementation of an Intermarket Trading System ("ITS") linking the princi-

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Footnotes continued from last page

foreign securities from the registration requirements of Section 12 of the Act.

[16] *See* notes 29-31 at 14-15 of the *Report of the Securities and Exchange Commission on Rules of National Securities Exchanges Which Limit or Condition the Ability of Members to effect Transactions Otherwise Than on Such Exchanges* (September 2, 1975).

[17] *Id.*

[18] Securities Exchange Act Release No. 11628 (September 2, 1975).

[19] Securities Exchange Act Release No. 11942 (December 19, 1975).

[20] *See* Securities Exchange Act Release No. 12450 (May 13, 1976) and Securities exchange Act Release No. 12471 (May 20, 1976).

[21] Securities Exchange Act Release No. 11942 (December 19, 1975) at 28.

[22] Securities Exchange Act Release No. 13662 (June 23, 1977).

[23] *See* Securities Exchange Act Release No. 14325 (December 30, 1977).

[24] Securities Exchange Act Release No. 14416 (January 26, 1978); 43 FR 4354 (February 1, 1978).

[25] *Id.* at 4360.

[26] *Id.* The Commission also noted that commentators on proposed Rule 19c-2 under the act "were virtually unanimous in the view that the risks which many believe would attend removal of the remaining off-board trading restrictions could be minimized by assuring more effective integration of the markets for securities presently covered by those restrictions by means of national market system mechanisms." *Id.* at 4357-58 and 4360.

[27] Securities Exchange Act Release No. 14415 (January 26, 1978).

[28] Securities Exchange Act Release No. 14711 (April 27, 1978).

pal exchange markets. The commission approved, on a provisional basis, operation of the ITS in April, 1978,[29] and has since extended its provisional approval of ITS until August 10, 1979.[30] An additional initiative noted in the January Policy Statement was a pilot program for a Regional Market System ("RMS"). Operation of the RMS, with some modifications, has been continued by the Cincinnati Stock Exchange ("CSE") as a multiple dealer trading system and a pilot program for operation of that system was approved by the Commission in April, 1978.[31] In approving this pilot program, the Commission noted that the "characateristics of trading which develop in the CSE pilot program and the technological features employed in this experiment should be of assistance to the Commission in assessing the implications of the national market system initiatives announced in the January release." [32] Further steps toward enhancement of "upstairs" order routing capability to all markets and increased visibility to and protection of limit orders on a national basis are in various stages of planning and development.[33]

Critical to our decision today is the fact that relevant circumstances with respect to our proceeding under Section 19(c) concerning off-board trading restrictions have changed and, as the Commission indicated might be the case in granting a rehearing on SR-Amex-77-3, that change in circumstances warrants a change in its disposition of the Amex proposals.[34] In June, 1977, when that proceeding was commenced, it appeared to the Commission that it would have to resolve the difficult problems inherent in assessing whether, when and under what circumstances remaining off-board trading restrictions should be removed in the absence of meaningful progress toward achievement of a national market system.[35] Since that time, however, several steps toward achievement of the national market system objectives of the Act have been commenced and it appears considerably more likely than was the case in June, 1977, that the Commission will be able to deal with the general problem of off-board trading restrictions in the context of meaningful progress toward a national market system. Consideration of particular aspects of off-board trading restrictions on an *ad hoc*, exchange-by-exchange basis seems particularly unwise in light of these developments—developments which, to an increasing degree, mold the various markets for securities into a coherent, interlinked system. Thus, it seems especially important to persevere in efforts to deal with the various issues presented by off-board trading rules in proceedings addressed to al exchanges.

Consequently, pending further assessment of the range of questions presented by off-board trading restrictions in the context of these recent national market system developments, the Commission does not believe it is either necessary or appropriate to attempt a final resolution of certain of those questions in the confines of this specific proceeding relating only to the Amex. The circumstances under which the Commission is now considering off-board trading restrictions is vastly different from that in which, more than a year ago, the Commission determined to disapprove SR-Amex-77-3. This change in relevant circumstances warrants a parallel change in our posture with respect to the Amex listing standards proposals, and justifies our severance of Amex Rule 5 issues from our consideration of whether these Amex listing standards proposals may be found consistent with the Act.[36]

Commission Findings

As an administrative agency with broad responsibilities for the administration of the Federal securities laws, the Commission has the flexibility to promulgate new policies or standards of conduct by means of adjudicating particular matters which came before it or by engaging in rulemaking wherein the Commission may structure generic approaches to regulatory matters which are appropriate for its consideration.[37] In this instance, the Commission has chosen to engage in rulemaking applicable to all exchanges as the most suitable means of addressing the remaining off-board trading restrictions, and that rulemaking proceeding is inextricably tied to rapidly changing developments concerning implementation of a national market system. Disapproval of the Amex proposals, precluding an expansion of the effects of Amex Rule 5 in one narrow way (through alteration of listings standards), would address the anti-competitive effects of off-board trading restrictions only tangentially, and then only on one exchange, without regard to the market structure context in which those restrictions, as a general matter, necessarily must be viewed. At the same time, similar restrictions would remain in effect (with respect to currently listed issues and new listing under existing listing standards) both on the Amex and on other exchanges. Under current circumstances, as indicated above, the Commission believes that consideration of whether the effect of Amex Rule 5 on trading in listing pursuant to these Amex proposals ought not to be separated from the Commission's broad, ongoing consideration of proposed Rule 19c-2 and of off-board trading rules generally.[38]

By conducting hearings concerning off-board trading rules, specifying the steps to be taken in developing a national market system, and overseeing various pilot programs and other activities germane to achievement of a national market system, the Commission has sought to further, in a coordinated manner, various objectives of the Act pertaining both to exchange off-board trading rules and facilitation of the establishment of a national market system. Consistent with this approach, the Commission has determined that, in this limited instance, it would not be appropriate to disapprove SR-Amex-77-3 or SR-Amex-77-18 solely because of potential coincidental consequence of approving those rule changes will be to expand the effects of the off-board trading restrictions of one exchange or because proposed Rule 19c-2 remains pending.

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[29] Securities Exchange Act Release No. 14661 (April 14, 1978).

[30] Securities Exchange Act Release No. 15058 (August 11, 1978).

[31] Securities Exchange Act Release No. 14674 (April 18, 1978).

[32] *Id.* at 5.

[33] *See* letters from James E. Buck, Secretary, NYSE, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, dated April 17, 1978 and May 31, 1978.

[34] *See* Securities Exchange Act Release No. 14214 (Nov. 29, 1977) at 4.

[35] *See* Securities Exchange Act Release No. 13662 (June 23, 1977) at 32-34.

[36] The Commission expects, in the relatively near future, to issue a statement as to the status of the pending proceeding concerning off-board trading, as it indicated it would in the January Policy Statement, detailing, at the same time, its current plans and expectations with respect to further action to facilitate implementation of a national market system.

[37] *See, Securities and Exchange Commission* v. *Chenery Corp.*, 332 U.S. 194, 202-3 (1947) and *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.*, U.S., No. 76-419 (April 3, 1978).

[38] The Commission's function in approving new or modified rules of a self-regulatory organization was recently discussed by the Court of Appeals for the District of Columbia Circuit. In describing the Section 19(b)(1) procedures under the Act as "quasi-legislative," the Court noted that judicial review of the Commission's decision as to a proposed rule change was "controlled by the 'substantial evidence' rule in its factual aspects, [but] is otherwise left unspecified, and, therefore, is apparently limited to review for arbitrariness, caprice, and abuse of discretion." *Bradford National Clearing Corp., et al* v. *Securities and Exchange Commission*, D.C. Cir., Nos. 77-1199, 77-1547 at 11, September 19, 1978. Additionally, the Court noted that where predictions are based upon pure legislative judgment (such as is involved here regarding the relationship of these proposals to the Commission's rulemaking proceedings concerning proposed Rule 19c-2 under the Act and whether these proposals may be found consistent with the Act), the traditional deference shown to an administrative agency's decision "increases and becomes less qualified." *Id.* at 33-34.

The Commission also finds that the amendments to the Amex *Company Guide* set forth in SR-Amex-77-3 and SR-Amex-77-18 constitute, in the present regulatory setting, a legitimate exercise of exchange authority to establish standards for listing and delisting of securities. Further, we conclude that neither proposal, on balance, would effect a lowering of listing standards having the effect of a diminishing the level of investor protection afforded by the Amex's current standards for original listing of stock.

In the Commission's order granting Amex's request for reconsideration of SR-Amex-77-3 and instituting a proceeding to determine whether SR-Amex-77-18 should be disapproved, the Commission cited extension of the reach of Amex Rule 5 to OTC securities which might become eligible for listing and Sections (b)(5) and (b)(8) of the Act as possible grounds for disapproval.

The competitive burden at issue here is that imposed by Amex Rule 5 in the context of changes in the Amex listing standards to permit a number of issuers, not heretofore eligible, to seek Amex listing for their securities. As the Commission noted above, even under current Amex listing standards, securities traded solely OTC may become listed on the Amex and thereby, at least under current rules, become subject to the restrictions of Amex Rule 5. The Amex's instant proposals do not lower those standards but establish alternate criteria for a certain set of select issuers. Thus, given the present status of the Commission's deliberations concerning remaining off-board trading restrictions, permitting the Amex to list securities of those issuers that meet alternate criteria would not, in the Commission's view, impose any new burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

It appears that, at least under current conditions, issuers choosing to list on the Amex do so in anticipation of deriving certain benefits from listing on the Amex for themselves and for investors in their securities. These potential benefits may include greater public exposure of trading in a security listed on the Amex through publicity afforded by newspapers and the consolidated transaction reporting system, a greater opportunity for investors to obtain agency-type limit order protection, and the possibility of increased ease of access to new capital. Under current circumstances, the Commission believes that issuers which would become eligible for Amex listing under its altered criteria should not continue to be denied an opportunity to pursue these perceived benefits.[39]

In sum, the Commission believes that it is both illogical and somewhat unfair to single out the securities here involved and provide that they cannot be traded on the Amex—a single exchange—unless they are subjected to different trading rules than those applicable to all other securities traded on exchanges generally, including additional securities which may be listed on those exchanges under existing listing standards. Since there is no serious doubt that the proposed listing criteria here involved are, in themselves, proper and acceptable and do not represent a lowering of listing standards, the applicability of these listing criteria does not provide a reasonable basis for imposing different trading rules for these securities on the Amex alone. Furthermore, the Amex indicated, in response to the Commission's initial proceedings to consider whether SR-Amex-77-3 should be disapproved, that it was unwilling to permit off-board principal trading in the securities which might list pursuant to its amended criteria if such an amendment of those proposals was necessary to gain Commission approval of that proposal.[40] Thus, it appears that if the Commission disapproves the Amex proposals as currently submitted, the Amex will choose not to amend its Rule 5 to permit off-board principal trading in securities which would become eligible for listing under these proposals, but rather would preclude additional issuers from an opportunity to elect the benefits of exchange listing for trading in their securities.

This is a decision which the Amex is entitled to make, but the consequence is that disapproval, without such an amendment by the Amex (*i.e.*, an amendment precluding application of Amex Rule 5 to those securities) would not result in a greater scope for off-board trading in Amex-listed securities. Rather, our insistence on such an amendment in this particular case could reduce our action to a mere symbolic gesture having the practical consequence of denying to those issuers eligible for Amex listing under the new criteria and their shareholders the benefits they regard as inherent in listing on that exchange. In the narrow context in which the issues are presently before us, the Commission is reluctant to engage in action likely to be construed as such a gesture.

As noted above, the broad question of whether off-board trading restrictions impose burdens on competition which are not necessary or appropriate in furtherance of the purposes of the Act is the subject of the Commission's pending proceedings on proposed Rule 19c-2. While the Commission has found that off-board trading restrictions impose burdens on competition and has proposed Rule 19c-2 to eliminate remaining restrictions on off-board trading, it has not yet concluded that, under current conditions, those restrictions impose burdens on competition which are not necessary or appropriate in furtherance of the purposes of the Act.

Therefore, we do not believe that implementation of these two listing proposals, by itself, will create additional burdens on competition which are unnecessary or inappropriate in furtherance of the purposes of the Act.[41] Accordingly, as discussed above, the Commission finds that the proposed rule changes, SR-Amex-77-3 and SR-Amex-77-18, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges.

The Commission wishes to emphasize that approval of SR-Amex-77-3 and SR-Amex-77-18 should not be viewed as inconsistent with the objectives set forth in its January Policy Statement or in any way as bearing upon resolution of the pending questions of whether, when and under what cirumstances to adopt proposed Rule 19c-2. We simply believe, that, under the circumstances present here, it would be inappropriate to preclude Amex from altering its listing standards in the manner contemplated by its rule filings as a consequence of the continued existence of Amex Rule 5 or the Commission's pending proposed

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[39] The question of whether Amex listing of a particular security eligible under the amended Amex listing standards actually will benefit issuers, market professionals, or investors is difficult to answer with any degree of certainty. Nevertheless, until the Commission reaches definitive conclusions concerning disposition of some or all applications of remaining off-board trading restrictions of all exchanges, it believes that the interests of issuers seeking benefits they believe inherent in achieving listing on the Amex are not outweighed by the interests of Amex members who currently deal in the securities of newly-eligible issuers in the OTC markets, but who would be precluded from continuing to do so upon any Amex listing of those issuers' securities.

[40] *See* Amex submissions dated January 16, 1978, at 3 and July 22, 1977, at 8-9. In its January 16, 1978 submission, Amex repeated it unwillingness to accept, as a condition of the Commission's approval of SR-Amex-77-3 (and by implication, of SR-Amex-77-18), two classes of listed securities distinguished by the applicability of Amex Rule 5 to off-board trading in those securities.

[41] To the extent national market system questions are presented by these Amex listing proposals, those questions are being addressed in our deliberations on proposed Rule 19c-2 and off-board trading restrictions generally and in the course of pursuing our several national market system initiatives announced in the January Policy Statement. Disapproval of SR-Amex-77-3 and SR-Amex-77-18, on grounds that they would extend the impact of Amex Rule 5 to some additional securities, would not facilitate resolution of the complex issues involved in those deliberations.

Rule 19c-2 deliberations. This decision should not be perceived as a withdrawal from the position which the Commission has repeatedly taken, namely, that the present off-board trading restrictions ultimately must be abolished.[42]

The Commission's decision to approve these rule proposals was announced at an open Commission meeting on September 14, 1978. While this order was being prepared, the Commission received several letters requesting reconsideration of this decision.[43] Although the Commission has carefully considered these letters and the reasons stated therein, the Commission has determined to approve the rule proposals submitted by the Amex for the reasons stated above in this order.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes, SR-Amex-77-3 and SR-Amex-77-18, be, and they hereby are, approved. Insofar as SR-Amex-77-3 was previously disapproved, that disapproval order is hereby withdrawn.

By the Commission (Chairman Williams, Commissioners Loomis and Karmel), Commissioners Pollack and Evans dissenting.

GEORGE A. FITZSIMMONS,
Secretary.

SEPARATE STATEMENT OF VIEWS BY COMMISSIONERS EVANS AND POLLACK

We respectfully disagree with the action of our colleagues approving SR-Amex-77-3 and SR-Amex-77-18. We do not believe that the approval is sound in law, policy or equity; nor do we believe these proposals, as currently structured, are necessary to permit the Amex to fulfill its policy objectives of increasing the number of securities eligible for listing on the Amex. Approval of these proposals magnifies the already severe anti-competitive consequences of off-board trading restrictions and is inconsistent with both the letter and spirit of the Securities Acts Amendments of 1975, which require us to assure fair competition among brokers and dealers and between markets. Further, the Amex has not demonstrated that the listing of securities under its proposals will confer any benefits to the markets, market professionals, issuers or investors which would offset the clearly anti-competitive burdens accompanying any such listings.

We also believe that it would be unsound to treat the anti-competitive impact of these proposals only in the context of our general proceedings dealing with proposed Rule 19c-2, since those proceedings address the removal of off-board trading restrictions as they apply to securities currently listed on exchanges. The Amex proposals, on the other hand, permit the extension of off-board trading restrictions to a new group of securities which currently are traded in an environment free of such barriers to competition. The Amex could achieve its listing objectives in a manner consistent with the Act if it agreed to amend its proposals to make inapplicable the anti-competitive provisions of Rule 5 insofar as they would apply to securities which may list pursuant to these proposals.

Our conclusions are based on our inability to make the affirmative findings which we believe the Act requires.[1] We believe that approval of the Amex proposals must be based on specific findings that those proposals, including the application of Amex Rule 5 to securities listed thereunder, are consistent with the Act.[2]

Severe anti-competitive effects will result whenever any security is listed pursuant to the proposed listing standards. We understand that most of the securities which would qualify for Amex listing under the instant proposals currently are traded in the OTC market and most of the broker dealers making OTC markets in these securities are also Amex members. Those market makers have extensive experience in trading the foreign securities which are the subject of SR-Amex-77-18 and have devoted substantial capital to the competitive OTC markets in those securities.[3] The effects of Amex Rule 5 upon trading in any security which may be listed after these proposals are approved will be the curtailment or elimination of intense interdealer competition in the OTC market with little possibility of inter-market competition between the Amex and the OTC markets.[4] In place of this existing intra-market competition or the

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[42] And, as noted above, the Commission will be alert for a more appropriate framework than the present proposed changes in a single exchange's listing standards within which to address some or all of the broad issues raised in this proceeding.

[43] The following persons have submitted requests for reconsideration by letters dated as indicated: William A. Schreyer, President, Merrill Lynch, Pierce, Fenner and Smith, Inc., September 29, 1978; Dennis Marino, Vice President, Sherwood Securities Corp., October 5, 1978; Stanford S. Warshawsky, Senior Vice President, Arnold and S. Bleichroeder, Inc., October 6, 1978; Helen Shenkman, Secretary-Treasurer, Carl Marks & Co., Inc.; Morton, N. Weiss, President, and Lawrence R. Rice, Chairman, NSTA, October 10, 1978; Thomas L. Kemper, Chairman, Loeb Rhoades, Hornblower & Co., October 10, 1978; and Gordon S. Macklin, President, National Association of Securities Dealers, Inc., October 10, 1978.

In addition, the Commission received a telgram dated October 6, 1978 from James T. Gahan, Executive Vice President, E. F. Hutton & Company, Inc., requesting deferral of the Commission decision. By letter dated October 19, 1978, however, Mr. Gahan informed the Commission that, upon further consideration, the Commission's approval of the Amex proposals was not "unacceptable" to E. F. Hutton & Company, Inc. Finally, the Commission received a letter dated October 9, 1978, from the Honorable Harrison A. Williams, Jr., United States Senate, in which Senator Williams questioned whether the Commission should approve the Amex proposals absent an agreement by Amex not to enforce its rules which would restrict competition in issues listed pursuant to those proposals.

[1] Section 19(b) of the Act provides that the Commission "shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of [the Act] and the rules and regulations thereunder applicable to such organization." The Commission must disapprove a proposed rule change in the absence of making such a finding. Sections 6(b)(5) and 6(b)(8) of the Act reflect the Congressional finding, stated in Section 11A(a)(1)(C)(ii) of the Act, that "it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure—(ii) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets." Section 6(b)(5) of the Act requires that the rules of an exchange be designed "to remove impediments to and perfect the mechanism of a free and open market and a national market system." Section 6(b)(8) of the Act requires that the rules of an exchange not impose "any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]."

[2] Our views are unrelated to the finding that the Amex proposals do not constitute a lowering of Amex's listing standards which would adversely affect the level of investor protection currently afforded by its listing standards, but stem instead solely from the undisputed expansion of the number of securities which may become subject to the anti-competitive impact of Amex Rule 5 under the amended listing standards.

[3] It is estimated that twenty market makers with a combined capital of $500,000,000 would be lost if issuers of the newly-eligible securities elect to list those securities on the Amex. *See* letter from Lawrence R. Rice, Chairman, and Morton N. Weiss, President, of the National Security Traders Association, Inc. ("NSTA"), dated May 19, 1978, to George A. Fitzsimmons, pg. 1.

[4] Between May 14, 1976 and August 28, 1978 forty-two securities which had been traded OTC and were quoted through the NASDAQ system were listed on the Amex. In each of these instances, there is now virtually no OTC market being made in the now Amex-listed securities. Although the Commission order notes that the anti-competitive impact of the Amex proposals will arise only if an issuer voluntarily chooses to list, an issuer's decision to list need not reflect a consideration of the anti-competitive impact of any such listing or the benefits which its shareholders may derive from competitive markets.

potential for inter-market competition, approval of these proposals will create an environment where market making in eligible securities which list is restricted to a unitary specialist on the Amex.[5]

Both the statute and legislative history emphasize the importance of competition as a statutory objective, particularly with respect to off-board trading restrictions.[6] The 1975 Amendments require us to accord great deference to the competitive impact of all rule proposals which we review. In this instance, we believe approval is inconsistent with the statute, legislative history, and with the Commission's subsequent examination of off-board trading restrictions.

In December, 1975, the Commission adopted Rule 19c-1 under the Act and determined not to reach, at that time, the conclusion that remaining off-board trading restrictions were not necessary or appropriate in furtherance of the purposes of the Act. That determination, however, and the Commission's decision in January, 1978, to defer further consideration of proposed Rule 19c-2 under the Act relate solely to the application of *existing* off-board trading restrictions to securities currently listed, or eligible for listing, on a national securities exchange.[7]

The Commission's inability, in 1975 or earlier this year, to make the negative finding that existing trading restrictions could not be justified by reference to the purposes of the Act cannot be legitimately construed as a basis upon which to make the required affirmative finding that the extension of demonstrably anti-competitive trading restrictions to new securities is consistent with the purposes of the Act.[8] Further, there has been no showing that the possible benefits of listing outweigh the obvious anti-competitive effects of the Amex proposals.[9]

We believe that approval of these proposals as a means of providing investors and issuers with an opportunity to derive benefits from listing is particularly inequitable because a fair and logical alternative exists. As the Commission noted when it initially disapproved the first Amex proposal, the interests both of fair competition between markets and of issuers and investors in the benefits of listing could be served simultaneously if the approval order were conditioned upon the Amex amending its proposals to permit off-board principal trading in securities which might list pursuant to the new criteria.

It is suggested that such a condition would be a mere "symbolic gesture" because the Amex has indicated that it is unwilling to amend the proposals, thus denying the perceived benefits of listing to those newly-eligible issuers. How Amex would respond if the rules were approved with the condition we propose is a matter of speculation. The Amex might well decline to amend its rule proposal to adopt the suggested condition when Commission approval of the proposal without such a condition remains a possibility. Amex, of course, could still determine, at a later date, to amend the proposal if an amendment in fact became a condition to Commission approval. Indeed, if the Amex chose not to accept the proposed rules as we would condition the approval, it would indicate that the Amex's primary objective is to enhance its competitive position (at the expense of the OTC market) and that the purported benefits to issuers which are cited as the basis for these proposals are, at most, incidental to this overriding goal.

We note that in an analogous situation, where the Pacific Stock Exchange ("PSE") desired to continue trading in Pacific Resources, Inc. ("PRI") common stock when that stock was delisted from the PSE, the Commission accommodated the interests of both the PSE and OTC markets in furthering competition. The Commission granted the delisting of PRI common stock but deferred the effective date of that delisting to permit the PSE to continue trading in PRI common stock until the Commission rules upon PSE's application, pursuant to Section 12(f)(1)(C) of the Act, for unlisted trading privileges in PRI common stock.[10] As a condition of its deferral of the effective date of the delisting, the Commission noted that PSE had filed, and the Commission had approved, a rule proposal to permit PSE members to trade off-board in PRI common stock.[11] Thus, in that proceeding, the path was cleared for both markets to compete for order flow in PRI common stock and for investors, consistent with the national market system objectives of the Act, to obtain the advantages of trading in both market places. We see no reason why the same course of action should not be followed here.

In granting Amex's request for reconsideration of our disapproval of SR-Amex-77-3, the Commission specifically emphasized that "absent some new and compelling reasons or a change of circumstances involving the Commission's proceedings [concerning proposed Rule 19c-2], it is unlikely that the Commission will reach a different conclusion from that recited in its August 31, 1977 order."[12] In that order the Commission noted that questions with respect to exchange restrictions on off-board trading were then in the process of being resolved and that until it determined whether the maintenance of exchange off-board restrictions were necessary or appropriate in furtherance of the purposes of the Act, it was unable to find that SR-Amex-77-3 was consistent with the requirements of the Act.

The Amex has not presented any new or compelling reasons upon which the Commission might reverse its earlier position. In our view, the decision to defer *further* consideration of proposed Rule 19c-2 does not merit characterization as a change in circumstances in the rulemaking proceeding sufficient to justify reversal of the Commission's initial disapproval of SR-Amex-77-3. In fact, deferral makes disapproval more important because approval would extend the ap-

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[5] There are currently no competing specialists on the Amex.

[6] For example, the Senate Report on S. 249 found that:

"A healthy, highly competitive system of market makers is essential to an efficient national market system. Investigations by the Committee have adequately demonstrated that in our increasingly complex and institutional markets a single specialist, regardless of the regulation and exhortation to which he is subject, cannot provide adequate liquidity and continuity to the market for a security. To assure that out markets are able to serve the needs of both individual and institutional investors, the Committee believes many types of market makers are necessary and that encouragement should be given to all dealers to make simultaneous competing market within the new national system."

S. Rep. No. 94-75, 94th Cong., 1st Sess. at 14 (1975).

[7] Since 1975, the Commission has emphasized that these remaining restrictions also must be eliminated. *See, e.g.*, Securities Exchange Act Release No. 13366 (June 23, 1976), which proposed Rule 19c-2, and the January Policy Statement.

[8] While the anti-competitive effects of these Amex proposals may not be unique in that they will occur any time an issuer chooses to list its securities under existing Amex listing standards, those voluntary listings of currently eligible securities do not require the Commission to make any affirmative findings of consistency with the purposes of the Act.

[9] The NSTA, in the materials appended to its submission, presented considerable evidence that the competing dealers in the OTC market consistently have made markets of considerable size and with minimum, one-eighth spreads in a large number of securities which may become eligible for listing under the Amex proposals. We believe those markets are evidence of the benefits of competition and must seriously question whether investors will be provided with a market of equal liquidity and depth by a single Amex specialist. In short, even if the statute's emphasis on competition is ignored, the Amex has not made any showing that issuers and investors will obtain the benefits of better markets in these securities by listing on the Amex.

[10] *See* Securities Exchange Act Release No. 13657 (June 22, 1977).

[11] *See* Securities Exchange Act Release No. 13656 (June 22, 1977).

[12] *See* letter dated November 11, 1977, from Michael K. Wolensky, Assistant General Counsel, to Norman S. Poser and Securities Exchange Act Release No. 14214 (November 29, 1977).

plication of the anti-competitive rules.[13]

In addition to believing that we cannot make the affirmative findings required for approval of these proposals, we also believe that the Commission's established policy toward further consideration of proposed Rule 19c-2 requires disapproval of the Amex proposals. The Commission has repeated numerous times, and repeats again in its approval order, that the present off-board trading restrictions ultimately must be abolished. In the Commission's January Policy Statement, the Commission explained that its decision to defer further consideration of proposed Rule 19c-2 was designed to provide it with an opportunity to evaluate industry and self-regulatory organizations' responses to the national market system initiatives announced in the January Policy Statement. Underlying the decision to defer further consideration of proposed Rule 19c-2 was the Commission's recognition of the concerns expressed by commentators as to the possible deleterious effects of removing remaining off-board trading rules under the then prevailing circumstances.

In essence, those concerns are directed to the possibility that removal of remaining off-board trading restrictions would damage the manner in which securities currently listed on national securities exchanges are traded. Whatever the merit of these concerns, they do not apply to the OTC securities which will become eligible for listing pursuant to the Amex proposals. By permitting the Amex to extend its off-board trading restrictions to new classes of OTC securities, new burdens are imposed on competition and the adverse impacts presently flowing from the continued application of anti-competitive rules, such as Amex Rule 5, are extended and intensified and a premium is placed on their continuation.[14]

Further, by expanding the number of securities eligible for listing, the Amex is, in effect, taking an action which is comparable to the designation of those securities as comprising a category of securities qualified for trading in a national market system.[15] In this regard, however, the Commission stated explicitly in its January Policy Statement that, "[i]n connection with designating certain securities now traded exclusively over-the-counter as 'qualified securities' for purposes of Section 11A of the Act, the Commission wishes to emphasize that, if those securities are traded on exchanges in a national market system context (*e.g.*, as a consequence of the extension of unlisted trading privileges on an exchange to these securities pursuant to Section 12(f) of the Act), the Commission does not intend to permit trading in those securities to become subject to restrictions on transactions in the over-the-counter market such as those imposed by existing exchange off-board trading rules." [16]

While the Commission noted unlisted trading privileges as only one means by which an exchange could trade qualified securities, Amex's expansion of its listing standards is an equally effective means for an exchange to trade these securities. Accordingly, we believe that permitting Amex to apply its Rule 5 to securities listed pursuant to the new listing standards is contrary to that Policy Statement.

In summary, we do not believe the Amex has presented any new and compelling information which justifies reversal of the disapproval of SR-Amex-77-3 or a different result with respect to SR-Amex-77-18. The Amex's decision to apply its Rule 5 to trading in securities listed under these proposals will present severe anti-competitive burdens upon Amex members who wish to act as market makers or otherwise trade as principal in the OTC market. In our opinion, those burdens cannot be justified or characterized as "necessary or appropriate in furtherance of the purposes of the Act" and, indeed, are contrary to the intent of Congress as reflected in the Securities Acts Amendments of 1975.

In the face of the demonstable harm which will result from the listing on the Amex of newly-eligible issues in accordance with these proposals, there are no countervailing findings of benefits to the markets, market professionals, investors or issuers, within the contemplation of the purposes of the Act, which might reasonably be considered to outweigh the anti-competitive consequences. Moreover, the anti-competitive impact may be avoided by removing applicability of Amex Rule 5 to trading in securities listed under these proposals.

The stated preference for resolving questions of off-board trading restrictions by general rulemaking cannot avoid the requirement for approval of a finding that the Amex proposals are consistent with the Act. While we appreciate the desire to confine the problems inherent in the continued existence of off-board trading rules to some separate proceeding, business and competitive realities of the markets and the legal requirements of the Act will not conform themselves to this desire. Accordingly, we would reaffirm the Commission's earlier disapproval of SR-Amex-77-3 and also disapprove SR-Amex-77-18 unless the Amex amended its proposals to provide that its Rule 5 would not be extended to securities which may list pursuant to these proposals.

[FR Doc. 78-34905 Filed 12-14-78; 8:45 am]

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[13] *See* Securities Exchange Act Release No. 13912 (August 31, 1977).

[14] By refusing to draw a line against extensions of off-board trading restrictions, we believe the Commission is foregoing an opportunity to avoid further entanglement in the complex issues which have made resolution of its proceedings on proposed Rule 19c-2 so difficult.

[15] Section 11A(a)(2) of the Act provides that "[t]he Commission, by rule, shall designate the securities or classes of securities qualified for trading in the national market system from among securities other than exempt securities."

[16] Securities Exchange Act Release No. 14416 (January 26, 1978); 43 F.R. 4354, note 63 at 4361 (February 1, 1978).

[8010-01-M]

[Rel. No. 20816; 70-6235]

CENTRAL & SOUTHWEST FUELS, INC. ET AL.

Proposed Fuel Exploration and Development Budget Authorization

DECEMBER 5, 1978.

In the matter of Central and Southwest Fuels, Inc., P.O. Box 10773, Golden, Colorado 80401, Central Power and Light Co., P.O. Box 2121, Corpus Christi, Texas 78403, Public Service Co. of Oklahoma, Ash Creek Mining Co., P.O. Box 201, Tulsa, Oklahoma 74102, Southwestern Electric Power Co., P.O. Box 21106, Shreveport, Louisiana 71156, West Texas Utilities Co., P.O. Box 841, Abilene, Texas 79604.

Notice is hereby given that Central Power and Light Company ("CPL"), Public Service Company of Oklahoma ("PSO"), Southwestern Electric Power Company ("SWEPCO") and West Texas Utilities Company ("WTU"), each an electric utility subsidiary company of Central and South West Corporation ("CSW"), a registered holding company, together with Central and South West Fuels, Inc. ("CSWF"), a fuel subsidiary of CPL, PSO, SWEPCO and WTU, and Ash Creek Mining Company ("Ash Creek"), a mining subsidiary of PSO, have filed with this Commission an application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a), 10, 12 and 13 of the Act and Rules 90-95 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in File No. 70-6086 dated August 2, 1978 (HCAR No. 20658), this Commission authorized the organization of CSWF, whose common stock is owned by CPL, PSO and SWEPCO (each owning 30%) and WTU (owning 10%) (such ownership percentages hereinafter the "Existing Ownership

Ratio"). CSWF conducts nonpetroleum fuel exploration, development and related activities as agent for its owner companies. Prior to establishment of CSWF, the CSW operating companies conducted nonpetroleum fuel exploration and development generally in joint ventures coordinated by PSO or SWEPCO. CPL, PSO and SWEPCO have also conducted fuel exploration and development activities unilaterally or by arrangement with various non-affiliated companies. Expenditures for such activities through December 31, 1978, have been previously authorized in separate orders in the following file numbered matters: CPL, 70-5769; PSO and Transok Pipe Line Company, 70-5736; PSO and Ash Creek, 70-5868; SWEPCO, 70-5703; and WTU, 70-5962. Applicants-declarants propose that expenditure authorizations for all periods subsequent to 1978 be combined, with certain exceptions noted below, in a single filing. Applicants-declarants also request that such authorization cover expenditures for the 15-month period from January 1, 1979, through March 31, 1980.

The expenditure authorizations being sought for the 15 months commencing January 1, 1979, are as follows:

CSWF	$52,932,000
CPL	6,750,000
PSO	30,838,500
SWEPCO	5,930,000
Total	$96,450,500

The CSWF $52,932,000 budget authorization is composed as follows: Coal Projects, $4,189,000; Lignite Projects, $20,169,000; Uranium Projects, $22,194,000; administrative expenditures, $1,568,000; and contingency margin, $4,812,000 (a sum representing 10% of the total other bugeted expenditures).

The $4,189,000 Coal Projects authorization ineludes coal exploration and development activities to be conducted in Colorado, Montana, New Mexico, Texas, Utah and Wyoming by CSWF as agent for the operating companies which will own undivided interests in any acquisitions as tenants in common, their respective interests being in the Existing Ownership Ratio. As agent for the operating companies, CSWF would continue the acquisition of leasehold interests and surface titles, the disposal of interests deemed not attractive or appropriate to the operating companies' needs, geological evaluation and testing and exploratory drilling and other related engineering and evaluation processes. Activities may be entered into through joint ventures, partnerships or other enterprises involving entities not affiliated with the operating companies, and may entail farm-ins, farm-outs and other transactions.

The $20,169,000 Lignite Projects authorization includes allocations among its activities as follows: Karnack-Woodlawn/Smithland Area (Texas), $3,789,000; Walker-Grimes Area (Texas), $3,348,000; Cass-Morris Area (Texas), $1,382,000; Dolet Hills Area (Louisiana), $2,500,000; South Hallsville Area (Texas); $6,500,000; and preliminary exploration and acquisitions, $2,650,000.

At September 30, 1978, the Karnack-Woodlawn/Smithland prospect involved 33,215 net acres and cumulative expenditures of $3,300,702 since the inception of exploration and development. Drilling has identified a potentially viable lignite deposit with identified resources of approximately 300,000,000 tons in six seams with a minimum of three feet of lignite thickness and a maximum of 150 feet of overburden. CSWF plans further leasehold assemby which could, depending upon drilling evaluations and other factors, entail the acquisition of up to 10,000 additional net acres. This prospect's lignite is estimated to be sufficient for two 640 MW units, Karnack I and II. Some $3,789,000 of the lignite budget is projected for further exploration, acquisition and development of this prospect.

At September 30, 1978, the Walker-Grimes prospect involved 50,737 net acres and cumulative expenditures of $4,338,118 since the inception of exploration and development. Drilling has identified resources of approximately 490,000,000 tons in ten seams with a minimum of three feet of lignite thickness under less than 150 feet of overburden. Further leasehold assembly could entail the acquisition of up to 25,000 additional net acres. This prospect's lignite is estimated to be sufficient for two 640 MW units, Walker I and II. Some $3,348,000 of the lignite authorization is budgeted for further exploration, acquisition and development of this prospect.

At September 30, 1978, the Cass-Morris prospect involved 12,781 net acres and cumulative expenditures of $865,955 since the inception of exploration and development. Drilling has not progressed to permit evaluations of the quantity and quality of lignite available, although it is estimated that about 50,000,000 tons could be mined, about one-third of which is included in CSW system leaseholds. Applicants-declarants state they cannot predict whether sufficient lignite will be available on this prospect to fuel a generating unit. Some $1,382,000 of the lignite authorization is for further exploration, acquisition and development of this prospect.

At September 30, 1978, the Dolet Hills prospect involved 15,569 net acres and cumulative expenditures of $2,685,718 since the inception of exploration and development. Drilling has identified resources of over 250,000,000 recoverable tons, nearly half of which are under SWEPCO control. The fuel obtained from this area is planned to be used for a 640 MW unit to be owned in equal shares by SWEPCO and Central Louisiana Electric Power Company, a non-affiliated utility. No Dolet Hills lignite will become available to other CSW operating companies. SWEPCO owns all CSW interests in this area and will reimburse CSWF for all related exploraton and development expenditures. Some $2,500,000 of the lignite budget, all to be borne by SWEPCO, is allocated for further exploration and development of this prospect.

At September 30, 1978, the South Hallsville prospect involved 39,172 net acres and cumulative expenditures of $4,830,379 since the inception of exploration and development. Drilling has identified resources of more than 120,000,000 tons in three seams with a minimum of a three feet lignite thickness under less than 140 feet of overburden. SWEPCO controls more than half of the recoverable tonnage on this prospect. The fuel obtained from this prospect will support a SWEPCO-only 640 MW unit (Pirkey), planned for operation in 1984, with a requirement of 75 to 90 million tons of fuel over the unit's 30-year useful life. It is anticipated that additional acquisitions and development in the area will permit the construction of a second SWEPCO-only 640 MW unit. No South Hallsville lignite will be available to other CSW operating companies. SWEPCO owns all CSW interests in this area and will reimburse CSWF for all related exploration and development expenditures. Some $6,500,000 of the lignite budget, all to be borne by SWEPCO, is allocated to further exploration and development of this prospect.

In addition to the prospects specified above, the lignite budget includes an allocation of $2,650,000 for preliminary exploration and acquisitions, on other prospects which have not been delineated but which may be discovered to be compatible with the operating companies' plans and fuel needs.

The $22,194,000 CSWF uranium budget includes uranium exploration and development activities to be conducted in Arizona, Colorado, Idaho, New Mexico, Utah and Wyoming. It is stated that CSWF, as agent for the operating companies, will continue to conduct exploratory drilling mainly on the Chaco Canyon and Seven Lakes properties in New Mexico and the Uravan joint venture in Colorado, with other exploratory drilling on the Gallup SAG state leases in New

Mexico and assessment work and core drilling on the Whetstone Mountains joint venture in Arizona. No further drilling is planned on the Salt Valley Anticline in Utah due to unfavorable drilling results. Exploratory drilling programs to determine the extent, grade and thickness of uranium deposits will be required for several years before development drilling to delineate uranium reserves can proceed, and no mining operations can be expected until well into the 1980's. Approximately $11,000,000 of the uranium budget has been allocated for a possible purchase of a major property in Wyoming with proved reserves of about 2,000,000 pounds and which may, after further exploration and analysis, be shown to contain a substantially greater quantity. Negotiations for this purchase are not expected to be concluded until early 1979.

Under the uranium budget CSWF, as agent for PSO, will continue preliminary exploratory drilling on prospects in Colorado, Wyoming and Arizona which are wholly owned by PSO, which will be charged with all of CSWF's expenditures related thereto. Ownership of these prospects will not be reallocated among the CSW operating companies until exploration demonstrates some promise for development. Expenditures of $2,125,000 of the uranium budget have been allocated for such exploration.

CSWF has also allocated $1,568,000 of its total budget to cover administrative, general and miscellaneous services, such budget to be allocated according to the operating companies respective interests in CSWF. CSWF also proposes to provide at cost administrative, general and miscellaneous services for Ash Creek which will be charged to Ash Creek and which do not constitute a significant portion of the $1,568,000 budget. Applicants-declarants also propose a contingency margin of $4,812,000 (10% of all the projects specified above plus the administrative budget) to allow for unforeseeable increases in the cost or extent of planned activities.

Authority is also requested for Ash Creek and the operating companies to reimburse CSWF for expenditures made under the proposed CSWF budget each month, subject only to the conditons (a) that all such expenditures fall within the overall CSWF 15-month ceiling, and (b) that all reimbursements are made in accordance with the Existing Ownership Ratio, except as specifically noted above. Expenditures for administrative or general services would also be reimbursed in accordance with the existing Ownershp Ratio, while expenditures for administrative or consulting services provided to a specific CSW system company would be reimbursed entirely by the company receiving such services.

It is estimated that of the total $52,932,000 CSWF budget, $12,109,000 (23%) would be reimbursed by CPL; $14,504,000 (27%) would be reimbursed by PSO; $22,283,000 (42%) would be reimbursed by SWEPCO; and $4,036,000 (8%) would be reimbursed by WTU. Ash Creek's share of CSWF's administrative expenses would be less than 1% of the CSWF budget. These shares would exclude any allowance for funds used during construction or any internal administrative overhead which the operating companies might reflect on their books as a result of their participation in the CSWF fuel exploration and development programs.

The allocations proposed above are subject to developments in the CSW interconnection proceedings being conducted under HCAR No. 19361 (Admin. Proc. File No. 3-4951). Should such proceedings result in the adoption of generating plans which would make the allocations inappropriate for each company's fuel needs, then applicants-declarants would apply for supplemental authority to reallocate fuel interests and expenditures in a manner consistent with the revised proportions of ownership of future generating plants.

CPL, PSO, and SWEPCO request expenditure authorizations of $6,750,000, $30,838,500 and $5,930,000, respectively (excluding any allowance for funds used during construction), for the 15-month period ending March 31, 1980, for oil and gas exploration and development activities to be conducted by them unilaterally or with nonaffiliated entities. CPL, PSO, and SWEPCO propose to continue severally to acquire leasehold interests and surface titles, to dispose of interest deemed not attractive or appropriate to their needs, to conduct geological evaluation and testing, to drill exploratory and development wells, to operate wells, to acquire and operate gathering and pipeline facilities in connection with gas or oil wells in which any of them has a participation, to arrange for any necessary treatment or processing and to make incidental sales of products or by-products where no use can feasibly be made of them. Activities may be entered into through joint ventures, partnerships or other nonaffiliated entities and may involve farm-ins, farm-outs, bottom-hole or dry-hole contributions and other transactions.

At September 30, 1978, CPL had acquired 17,591 net leasehold acres containing estimated proved reserves of 7,192,000 mcf of gas and 475,287 barrels of oil. Expenditures since the inception of the program have totaled $10,127,833, of which $7,954,560 was expended in connection with the Hass-McNeil-Wilson venture described in File No. 70-5769. All of the $6,750,000 budgeted for the upcoming 15-month period is for this program. CPL does not expect to initiate significant new oil and gas exploration ventures, although it does plan to continue and expand its present programs as long as they remain promising as a supplemental source of fuel for existing oil- and gas-fired generating units.

At September 30, 1978, PSO had acquired 309,671 net leasehold acres containing estimated reserves of 36,025,740 mcf of gas and 1,757,642 barrels of oil, having spent $30,568,640 since the inception of its oil and gas exploration and development program. PSO is also a participant in a fuel exploration and development program with Saga Petroleum U.S.A. in Mississippi, which has been the subject of a separate authorization in File No. 70-5601. Of the $30,838,500 budgeted for the 15-month period ending March 31, 1980, approximately $30,166,000 will be spent under ongoing programs in Oklahoma in the Anadarko and Arkoma Basin areas, 90% in the Anadarko area and 10% in the Arkoma area. Approximately $672,500 has been allocated for enlargement of the Chunchulla gas processing plant in Mississippi and for pressure maintenance for increased recoveries of reserves.

At September 30, 1978, SWEPCO had acquired 3,615 net leasehold acres of oil and gas interests having spent $28,466,730 since the inception of its oil and gas exploration and development program. Through September 30, 1978, SWEPCO had participated in the drilling of 74 wells of which 41 were producing, 7 were shut-in pending completion of pipeline and gathering systems, 18 were plugged and abandoned as dry or uneconomical to produce, 1 was being drilled, 3 were awaiting completion, 2 were in the process of completion, and 2 were farmed out. SWEPCO anticipates continuing oil and gas exploration and development largely in or near its service territory, and has budgeted $5,930,000 for such purposes for the 15-month period ending March 31, 1980.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $15,000, including legal fees of $10,000. It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than December 28, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires

to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-34906 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Rel. No. 20813; 70-5929]

CONNECTICUT LIGHT & POWER CO., ET AL.

Proposal To Sell Interest in Nuclear-Fired Electric Generating Facility

DECEMBER 5, 1978.

In the matter of the Connecticut Light & Power Co., Selden Street, Berlin, Connecticut 06037, Western Massachusetts Electric Co., 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, The Hartford Electric Light Co., Selden Street, Berlin, Connecticut 06037.

Notice is hereby given that The Connecticut Light & Power Company ("CL&P"), The Hartford Electric Light Company ("HELCO") and Western Massachusetts Electric Company ("WMECO"), all of which are public utility subsidiaries of Northeast Utilities, a registered holding company, have filed post-effective amendments to a declaration previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Section 12(d) of the Act and Rule 44 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the amended declaration for a complete statement of the proposed transactions.

By orders dated December 13, 1976 (HCAR No. 19805), February 28, 1977 (HCAR No. 19904) and October 21, 1977 (HCAR No. 20223) in this matter, the Commission authorized CL&P and WMECO to sell their respective interests in Pilgrim Unit No. 2, a nuclear fired electric generating facility under construction in Plymouth, Massachusetts, and authorized CL&P, HELCO and WMECO to sell portions of their respective interests in Millstone Unit No. 3, a nuclear fired electric generating facility under construction in Waterford, Connecticut. In those orders jurisdiction was reserved over the proposed sale by CL&P of its entire joint ownership interest in Seabrook Unit Nos. 1 and 2 ("Seabrook 1 and 2"), which are nuclear fired electric generating facilities presently under construction in Seabrook, New Hampshire pending completion of the record with respect to that transaction.

CL&P, HELCO and WMECO have now filed post-effective amendments to their declaration proposing to sell CL&P's interest in Seabrook 1 and 2. CL&P is a party to an agreement ("Seabrook Agreement") with Public Service Company of New Hampshire ("PSNH") and several New England utilities setting forth the rights and obligations of CL&P, PSNH and those other utilities with respect to the ownership, construction and operation of Seabrook 1 and 2. CL&P proposes to transfer to the utilities listed below all of its contractual rights and obligations under the Seabrook Agreement, including whatever interests CL&P may have or hereafter acquire in real and personal property associated therewith ("Seabrook Project"). CL&P proposes to sell the following percentage ownership interests in the Seabrook Project to the purchasers specified below.

SEABROOK UNITS NOS. 1 AND 2 Percent Ownership Interest and Amount of Megawatts Proposed To Be Sold

Purchasers	Amount of Interest To Be Sold	
	Percent Interest	Megawatts
Bangor-Hydro Electric Company	0.37377	8.597
Fitchburg Gas & Electric Light Company	0.43480	10.000
Maine Public Service Company	1.46556	33.708
Massachusetts Municipal Wholesale Electric Company	5.44830	125.311
Montaup Electric Company	1.03897	23.896
New Bedford Gas & Edison Light Company	3.03480	69.800
Taunton Municipal Lighting Plant Commission	0.10068	2.316
Vermont Electric Cooperative, Inc.	0.08072	1.856
Total	11.97760	275.484

CL&P's proposal to sell its entire interest in the Seabrook Project is subject to the right of Massachusetts Municipal Wholesale Electric Company (MMWEC") and the Town of Hudson, Massachusetts Light & Power Company ("Hudson") to acquire from CL&P up to .04091 percent of the Seabrook Project pursuant to paragraph 3 of the Seabrook Agreement. If MMWEC and Hudson exercise such rights prior to the transaction proposed herein, as expected, the percentage interests specified in the table for the prospective purchasers will be ratably reduced.

The sale to the prospective purchasers of CL&P's 11.97760 percent interest in the Seabrook Project is conditioned upon the prior receipt by CL&P and the purchasers of the required regulatory and shareholder approvals and upon the fulfillment of certain other conditions, described in the several Agreements To Transfer Ownership Shares which govern the sales to the various utilities. Under Massachusetts law, CL&P, Fitchburg Gas & Electric Light Company, Montaup Electric Company and New Bedford Gas & Edison Light Company must obtain approval of the Seabrook Project transfer by those of their respective shareholders having general voting rights.

The opportunity to purchase portions of CL&P's interest in the Seabrook Project was the result of two offers to all New England utilities made by CL&P on December 22, 1975 and September 7, 1977. As a result of those offers, each of the prospective purchasers has entered into one or more Agreements To Transfer Ownership Shares covering its purchase. There are thirteen agreements covering the proposed transfers. Unless otherwise mutually agreed upon by the parties, all of the agreements will expire by their terms on December 31, 1978.

The consideration to be received by CL&P for the sales will be the costs paid or accrued by CL&P in connection with the Seabrook Project at the time of the transfer, including carrying costs and property taxes. If all the transfers were to occur on December 31, 1978, CL&P estimates that the approximate aggregate consideration would be $72,000,000. The total costs paid or accrued by CL&P in the Seabrook Project as of September 30, 1978 were approximately $58,355,000.

It is estimated that the proposed transfer by CL&P of its interest in the Seabrook Project will reduce CL&P's expenditures for capital programs, including nuclear fuel expenditures by $255,400,000 for the years 1977 through 1984. It is stated that these reductions will benefit the consumers and improve the financial quality of

CL&P's securities. CL&P weighed these benefits against the need for the generating capacity represented by their respective interests in these projects to meet their forecasted loads. It was concluded that consummation of the proposed sales will achieve a better balance between the needs of the purchasing New England utilities and CL&P for base load nuclear capacity in the 1980's without jeopardizing CL&P's ability to meet its forecasted loads.

A statement of the fees, commissions and expenses to be incurred by CL&P in connection with the proposed transactions will be filed by amendment. The proposed transactions were expressly approved by the Connecticut Public Utilities Control Authority ("PUCA") by orders dated August 13, 1976. Although it is expected that the PUCA will be notified of the changes in the identities of the purchasers of interests in the Seabrook Project and other changes related thereto, no further approval will be sought from the PUCA. The Massachusetts Department of Public Utilities has jurisdiction over the transfers of interests in the Seabrook Project to Fitchburg Gas & Electric Light Company, Montaup Electric Company and New Bedford Gas & Edison Light Company. The New Hampshire Public Service Commission has jurisdiction over CL&P's sale of its interest in the Seabrook Project. The United States Nuclear Regulatory Commission must authorize the amendment of the construction permits reflecting the proposed changes in ownership of the Seabrook Project. It is stated that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given That any interested person may, not later than December 28, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing theron. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D. C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-34907 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Rel. No. 20819; 70-6153]

CONSOLIDATED NATURAL GAS CO., ET AL.

Post-Effective Amendment Regarding Intrasystem Financing

DECEMBER 6, 1978.

In the matter of Consolidated Natural Gas Company, 30 Rockefeller Plaza, New York, New York 10020, and CNG Coal Company, CNG Development Company Ltd., CNG Producing Company, CNG Research Company, Consolidated Gas Supply Corporation, Consolidated Natural Gas Service Company, Inc., Consolidated System LNG Company, The East Ohio Gas Company, The Peoples Natural Gas Company, The River Gas Company, West Ohio Gas Company.

Notice is hereby given that Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its above-named subsidiary companies have filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a), 7, 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding certain proposed transactions. All interested persons are referred to the post-effective amendment to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By orders in this proceeding dated June 5, 1978, August 15, 1978, and November 28, 1978 (HCAR Nos. 20578, 20674, and 20796), Consolidated was authorized to issue and sell short-term notes to banks and commercial paper and to provide financing for certain of its subsidiary companies. In the present post-effective amendment, additional financing is proposed for CNG Producing and three other subsidiary companies that would take place in 1979 prior to Commission authorization of the system's financing program for that year.

Consolidated proposes to make open account advances of up to $15,000,000 to CNG Producing Company ("CNG Producing") to finance exploration and development of Gulf offshore leases. Such advances will be made as called for from time to time by the Treasurer of CNG Producing through May 31, 1979, and will bear interest at the prime commercial rate of interest at The Chase Manhattan Bank, N.A., in effect from time to time. The advances, to the extent outstanding, will be repaid through long-term financing for which authorization will be requested in the system's 1979 financing program.

Consolidated also proposes to make open account advances of up to $10,000,000 to Consolidated System LNG Company ("LNG Company") to finance working capital requirements. Such advances may be made, repaid, and remade, as requested from time to time by the Treasurer of LNG Company, through May 31, 1979, upon letter agreement. The open account advances will be repaid on or before a date not more than one year from the date of the first advance, with interest at substantially the same effective rate of interest as the related commercial paper or short-term bank borrowings by Consolidated. Should Consolidated have no commercial paper sales or bank borrowings during this period, the interest rate would be the prime commercial interest rate of The Chase Manhattan Bank, N.A., in effect from time to time.

In said order of June 5, 1978, CNG Research Company ("CNG Research") was authorized to issue and sell 20,000 shares of its common stock, $100 par value, at par, aggregating $2,000,000, (and Consolidated was authorized to acquire such shares) during 1978 to finance continuing research projects. CNG Research will not require all of such financing during 1978 but will require an estimated $400,000 during the early months of 1979. Therefore, it is now requested that this authorization be extended from December 31, 1978, to and including May 31, 1979. Moreover, further financing of these research projects is needed, and it is proposed that Consolidated purchase and CNG Research issue and sell an additional 10,000 shares of its common stock, at par, aggregating $1,000,000, prior to May 31, 1979.

In said order of June 5, 1978, CNG Coal Company ("Coalco") was authorized to issue and sell during 1978, and Consolidated was authorized to acquire, 25,000 shares of Coalco's common stock, $100 par value, at par, aggregating $2,500,000. Only an estimated $1,050,000 related to this authorization is expected to have been used by year end, expended on the acquisition of coal reserves in western

Pennsylvania. Accordingly, a request has also been made for an extension of the period to issue and sell the balance of said shares until May 31, 1979. It is further proposed that during the period January 1-May 31, 1979, an additional 5,000 shares of common stock be issued and sold to Consolidated, at par, aggregating $500,000, also to be used for acquiring coal reserves.

It is stated that no state or federal commission, other than this commission, has jurisdiction over the proposed transactions. The fees and expenses to be incurred in connection with the proposed transactions are estimated not to exceed $750, including $650 for the system service company charges, at cost. All of such fees and expenses are to be paid by Consolidated. It has also been proposed that the Rule 24 certificates of notification regarding the proposed transactions be filed on a quarterly basis.

Notice is further given that any interested person may, not later than January 2, 1979, request in writing that a hearing be held in respect of such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-34908 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Administrative Proceeding File No. 3-5590; File No. 81-428]

FELSWAY CORP.

Application and Opportunity for Hearing

DECEMBER 7, 1978.

Notice is hereby given that the Felsway Corporation ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for exemption from the filing requirements of Sections 13 and 15(d) of the 1934 Act.

The Application states, in part:

1. The Applicant is a Delaware corporation subject to the reporting provisions of Sections 13 and 15(d) of the 1934 Act.

2. On October 5, 1978, the Applicant became a wholly-owned subsidiary of Heck's, Inc. as the result of a merger.

3. There is no trading in Applicant's securities.

In the absence of an exemption, Applicant is required to file certain periodic reports with the Commission pursuant to Sections 13 and 15(d) of the 1934 Act.

The Applicant argues that no useful purpose would be served in filing the required periodic reports.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C. 20549.

Notice is further given that any interested person not later than January 2, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-34909 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Release No. 10514, 812-4259]

FIDELITY MUNICIPAL BOND FUND, INC.

Filing of Application

DECEMBER 8, 1978.

Notice is hereby given that Fidelity Municipal Bond Fund, Inc. ("Fidelity"), 82 Devonshire Street, Boston, Massachusetts 02109, a Maryland corporation registered as an open-end, diversified, management investment company under the Investment Company Act of 1940 ("Act"), filed an application on January 18, 1978, and an amendment thereto on May 30, 1978, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Fidelity from the provisions of Sections 13(a)(2), 18(d) and 18(f)(1) of the Act, and an order of the Commission, pursuant to Section 11 of the Act, permitting an offer of exchange on a basis other than net asset value in order to permit certain Convertible Debentures to remain outstanding in connection with the proposed merger of Bowen Investment Company ("Bowen"), a diversified, closed-end management investment company registered under the Act, with and into Fidelity. All interested persons are referred to the application, on file with the Commission for a statement of the representations contained therein, which are summarized below.

Fidelity is engaged in the business of investing in a diversified, professionally managed portfolio of municipal bonds, including industrial revenue bonds. Fidelity Management & Research Co. ("FMR") serves as investment adviser to Fidelity. As of June 30, 1978, Fidelity had 63,898,206 shares of capital stock outstanding and had total net assets of $617,898,206. Bowen, a North Carolina corporation, is in the business of investing exclusively in various types of debt securities (i.e., bonds, debentures, notes, including tax-free government and agency debt securities) which are publicly distributed and for which a market exists. Bowen's portfolio presently consists of tax-free municipal bonds and cash reserves. On March 31, 1978, Bowen had 293,420 shares outstanding and total assets of $2,953,081.

Fidelity and Bowen have entered into an Agreement and Plan of Reorganization ("Agreement") meeting the requirements of Section 368(a)(1)(C) of the Internal Revenue Code of 1954,

as amended. Pursuant to the terms of the Agreement, Fidelity will acquire the assets and assume the obligations of Bowen contained in an Indenture by and between Bowen and the bank of North Carolina, N.A. ("Trustee") dated as of February 1, 1968, further described herein ("Indenture"). In exchange therefor, Fidelity will issue to Bowen a certain number of shares of Fidelity stock according to a ratio based upon the relative net assets of Fidelity and Bowen as of the close of business on the last day preceding the effective date of the proposed merger. Fidelity further represents that immediately following consummation of the proposed merger Bowen will be liquidated and dissolved and the shares of Fidelity stock will be distributed pro rata to the shareholders of Bowen, with the exception of certain shares of Fidelity stock which will be placed in an escrow account as further described below.

As of December 31, 1977, Bowen had outstanding $865,000 principal amount of its 6% Convertible Subordinated Debentures due February 1, 1983 ("Convertible Debentures"). In accordance with Section 5 of the Indenture entered into between Bowen and the Trustee on February 1, 1968,. in connection with the initial offering of such Convertible Debentures, the remaining Convertible Debentures outstanding are presently convertible into shares of Bowen common stock, at the option of the holder thereof, at the rate of 5.369 shares for each $100 principal amount of Convertible Debentures if converted prior to February 1, 1980, and at a rate of 4.908 shares of Bowen common stock for each $100 principal amount if converted thereafter up to and including February 1, 1983. Following the purchase of the operating assets of Bowen by ASC Vending Company, Inc. (Purchaser") on September 16, 1976, and in accordance with the First Supplemental Indenture entered into between the Purchaser, Bowen and the Trustee as of the same date to evidence the Purchaser's succession to the assets of Bowen, the Purchaser assumed sole responsibility for the previous liability of Bowen under the Indenture for the payment of the principal, premium, if any, and interest on any of the Convertible Debentures outstanding. In addition, the Purchaser assumed sole responsibility for a certain "cash conversion privilege" created under Section 5-A of the First Supplemental Indenture whereby each $100 principal amount of Convertible Debentures is redeemable prior to maturity, at the option of the holder thereof, for $53.69. According to the application, following the purchase of Bowen's assets by the Purchaser, Bowen became a registered investment company on October 16, 1976, and 575,782 shares of the 869,202 shares of Bowen then outstanding were redeemed. Fidelity further represents that of the 293,420 shares of Bowen presently outstanding, 277,598 or 94.6% are owned by Stuart V. Bowen ("Mr. Bowen") and his wife. The remainder of such shares of Bowen are presently held by approximately 309 holders.

Upon consummation of the proposed merger of Bowen into Fidelity, and pursuant to a Second Supplemental Indenture to be entered into by Fidelity, Bowen, and the Purchaser, Bowen's existing obligation under the Indenture (as supplemented by the First Supplemental Indenture) to convert any of the Convertible Debentures outstanding into shares of Bowen common stock will be cancelled and, in lieu thereof, such convertible debenture holders will thereafter be entitled to exchange such outstanding Convertible Debentures into shares of the surviving corporation, Fidelity. Since these proposed rights to purchase shares of Fidelity stock would be exercisable during approximately a four year period beginning on the effective date of the proposed merger, Fidelity states that the issuance of such rights by Fidelity may contravene the provisions of Section 18(d) of the Act which make it unlawful for any registered management company to issue any warrant or rights to subscribe or to purchase a security of which such company is the issuer except in the form of warrants or rights to subscribe expiring not later than one hundred and twenty days after their issuance and issued exclusively and ratably to a class or classes of such company's securityholders.

In addition, Fidelity states that the agreement of Fidelity (as the surviving fund in the proposed merger and successor to Bowen) to convert the Convertible Debentures outstanding on the effective date of the proposed merger into shares of Fidelity may involve the issuance of a "senior security" by Fidelity in contravention of the provisions of Section 18(f)(1) of the Act. Section 18(f)(1) of the Act prohibits any registered, open-end management investment company from issuing senior securities except in connection with a bank borrowing. Since Fidelity is an open-end investment company, it is prohibited by Section 18(f)(1) of the Act from issuing any senior securities.

The application further states that Fidelity's status, as the surviving corporation in the proposed merger and, thus, successor to Bowen, may also subject Fidelity to contingent liability on the basis of equitable principles in case of a default by the Purchaser of its existing obligation for the payment of principal, premium, interest and "cash conversion" amounts with respect to any of the Convertible Debentures outstanding. Section 18(g) of the Act, in pertinent part, defines the term, senior security, as any bond, *debenture*, note, or similar obligation or instrument constituting a security and *evidencing indebtedness.* (emphsis added).

Accordingly, that Fidelity's contingent equitable liability for such payments upon the Purchaser's default, on its face, may also involve the issuance of a prohibited senior security for which exemptive relief from the provisions of Section 18(f)(1) will be required to permit the proposed merger to be consummated as planned.

Moreover, Section 11(a) of the Act provides that it shall be unlawful for any registered open-end company or any principal underwriter for such company to make, or cause to be made, an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submittted to and approved by the Commission. Section 13(a)(2) of the Act further prohibits a registered investment company from issuing senior securities unless authorized by the vote of a majority of its outstanding voting securities. Since it is arguable that Fidelity will be offering the holders of the outstanding Convertible Debentures the right to exchange their securities for shares of Fidelity common stock on a basis other than the relative net asset value of such common stock within the meaning of Section 11(a) of the Act; and Fidelity will have issued senior securities to the holders of such outstanding convertible debentures without the vote of the shareholders of Fidelity in contravention of the provisions of Section 13(a)(2) of the Act, Fidelity states that an exemption from the provisions of Section 13(a)(2) and an order under Section 11 permitting an offer of exchange on a basis other than net asset value are also required to permit consummation of the proposed merger to proceed as planned.

Accordingly, Fidelity requests an order of the Commission, pursuant to section 6(c) of the Act, exempting the Convertible Debentures from the provisions of Sections 13(a)(2), 18(d) and 18(f)(1) of the Act, and an order of the Commission, pursuant to Section 11 of the Act, permitting an offer of exchange on a basis other than net asset value.

Section 6(c) of the Act, provides in pertinent part that the Commission, by order upon application, may condi-

tionally or unconditionally exempt any person, security, or transaction, or any class or classes or persons, securities, or transactions from any provision of the Act or from any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Fidelity states that, as of September 30, 1978, the Purchaser had a net worth of $4,500,000 and, therefore, the likelihood of the Purchaser defaulting on its obligations for payment of the principal, interest and premium including the cash conversion privilege is remote. In addition, Mr. Bowen has agreed to set up an escrow account described below with the Fidelity shares he will receive upon consummation of the proposed merger which will help protect Fidelity against any contingent liability arising in connection with such Convertible Debentures, including any obligation to pay principle, premium or interest. Furthermore, as noted below, in the unlikely event that Fidelity does incur losses in connection with the Convertible Debentures FMR has agreed to indemnify Fidelity against any such losses, thereby shifting the risk of loss associated with the terms of the proposed merger from the shareholders of Fidelity to FMR. Fidelity states that, as of the date of the application, no event of default of payment of principal and interest exists under the Indenture nor has any such default occurred in the past. On the basis of the above Fidelity contends that it is improbable that any of the assets of Fidelity will ever have to be used to redeem any of the outstanding Convertible Debentures.

With respect to the possibility of dilution, Fidelity further represents that the shareholders of Fidelity are protected by the fact that action by the holders of the Convertible Debenture to convert their debentures into Fidelty shares is unlikely, since based on the respective net asset value per share of Bowen and Fidelity as of November 3, 1977, the conversion ratio adjusted in accordance with the Indenture would be 5.140 shares of Fidelity's stock per $100 principal amount of Convertible Debentures if converted prior to February 1, 1980, and 4.699 shares thereafter up to and including February 1, 1983. Thus, assuming there is minimal change in the net asset value of Fidelity stock as of November 7, 1977 (i.e., $10.55) as of the effective date of the proposed merger, a $100 principal amount Convertible Debenture, immediately after the proposed merger, would be worth in stock value approximately one-half the value of a Convertible Debenture which has been purchased and retired to meet the Purchaser's sinking fund obligation, or has matured on February 1, 1983. On these terms, Fidelity concludes that it seems apparent that the Convertible Debenture holders will prefer to hold their debentures to maturity rather than exercise their privilege of conversion in the absence of an approximate 50% appreciation in the value of the Fidelity stock receivable upon the conversion of the Convertible Debentures. Moreover, Fidelity states that assuming for demonstration purposes only, that the price of Fidelity's stock remains constant at $10.55 a share, if Fidelity issues 420,000,000 additional shares (approximately seven times the number of Fidelity shares presently outstanding) prior to February 1, 1980, the date on which the conversion price will be adjusted, the conversion ratio (after the adjustment provided in Article Five of the Indenture) will be $11.668 on January 31, 1979, still in excess of the market price of $10.55, the conversion price at which a Convertible Debenture holder could by converting into Fidelity's shares obtain, upon the sale thereof, an amount equivalent to the face amount of such Convertible Debenture prior to its maturity.

Fidelity further states that in the interest of the protection its shareholders, Stuart V. Bowen, President and principal stockholder of Bowen, has agreed to set up an escrow account having at all times on deposit with an escrow agent the number of shares of Fidelity received by him pursuant to the liquidation of Bowen equal to the greater of (a) the number of such shares necessary under the Indenture as modified by the First Supplemental Indenture and the Second Supplemental Indenture to effect conversion of all Convertible Debentures then outstanding, or (b) having a net asset value (as of the close of business on the last business day preceding the effective date of the proposed merger of 125% of the sum of the principal amount of Convertible Debentures outstanding and any other known contingent liabilities of Bowen. Promptly after the end of each calendar quarter a determination shall be made as to (i) the number or shares necessary to effect conversion of all Convertible Debentures then outstanding (including any convertible debentures held by Mr. Bowen), (ii) the aggregate principal amount of outstanding Convertible Debentures (including any Convertible Debentures held by Mr. Bowen), and (iii) any other known contingent liabilities, and to the extent that the value of the escrow account is in excess of or less than the greater of (a) or (b) above, the escrow will be adjusted as required to meet Mr. Bowen's above defined obligation.

According to the application, the effect of this arrangement will be to help insure the shareholders of Fidelity against the possibility that the assets of Fidelity will ever have to be used to satisfy any existing or future obligation to redeem or convert any of the Convertible Debentures outstanding. For example, Fidelity states that pursuant to the Second Supplemental Indenture those shares of Fidelity which would be deposited under the above described escrow account would be available to Fidelity to satisfy its obligation to holders of Convertible Debentures who elect to exercise their rights of conversion. The Second Supplemental Indenture further provides that, upon delivery of Fidelity stock from such escrow account to satisfy Fidelity's obligation to convert any outstanding Convertible Debenture into shares of Fidelity, Fidelity will deliver any converted Convertible Debenture to Mr. Bowen. Thereafter, Mr. Bowen will stand in the place of a Convertible Debenture holder with respect to right of payment against the Purchaser, but without further right to convert such Convertible Debentures into shares of Fidelity.

Fidelity notes that while the above escrow arrangement would adequately protect the shareholders of Fidelity against loss in the value of their investment as a result of assets of Fidelity having to be used to redeem or convert any of the Convertible Debentures in all circumstances that are likely to occur during the period in which the Convertible Debentures will be outstanding, it would not so protect Fidelity shareholders if in a given calendar quarter the net asset value of Fidelity shares suffered a drastic decline. Under the terms of the escrow arrangement if in a given calendar quarter the net asset value of Fidelity shares were to decline by more than twenty five percent, there might no longer be sufficient Fidelity shares on deposit to equal the number of Fidelity shares needed to satisfy Fidelity's obligation to redeem or convert any of the Convertible Debentures then outstanding. According to the application in order to protect the shareholders of Fidelity against loss in the value of their investment in the event that Fidelity does incur losses in connection with the Convertible Debentures FMR has agreed to indemnify Fidelity against any such losses, thereby shifting the risk of loss associated with the terms of the proposed merger from the shareholders of Fidelity to FMR. Fidelity states that under this indemnity arrangement any losses incurred by Fidelity in connection with the Convertible Debentures, including any obligation to pay principal, premium

or interest will be reimbursed to Fidelity by FMR.

It is argued that the proposed merger will be beneficial to the shareholders of Fidelity because even after offsetting brokerage commissions and approximate principal transaction costs involved in disposition of any portfolio securities of Bowen which Fidelity does not expect to retain for any significant period after consummation of the proposed merger, the transfer of such portfolio securities to be retained pursuant to the proposed merger will cause Fidelity less expense than the purchase of such securities of the same issuers in the open market. Moreover, the proposed merger will enable Fidelity to acquire at one time additional securities for its existing portfolio without affecting the market in such securities.

According to the application, the directors of Fidelity have determined that the acquisition of the assets of Bowen is to the advantage of Fidelity, and therefore to the general advantage of Fidelity's shareholders. Fidelity further asserts that the approximately 309 remaining shareholders of Bowen will benefit from the proposed merger by exchanging their shares in Bowen, a small, closely-held, closed-end investment company, for stock in a larger open-end investment company in a tax-free reorganization. In this regard, counsel for Fidelity represents that the practical effect of the tax laws will be that those shares of Fidelity stock received by the remaining shareholders of Bowen upon consummation of the proposed merger will constitute long-term investment in Fidelity. Moreover, the shareholders of Bowen will have the opportunity to approve or disapprove the merger at their upcoming meeting.

On the basis of the foregoing, Fidelity submits that the proposed merger does not involve any of the realm of activities which Sections 11(a), 13(a)(2), 18(d) and 18 (f)(1) were designed to protect against and that, accordingly, granting of an order of exemption, pursuant to Section 6(c) of the Act, exempting Fidelity for the provisions of Sections 13(a)(2), 18(d) and 18(f)(1) of the Act, and an order of the Commission, pursuant to Section 11 of the Act, permitting an offer of exchange on a basis other than net asset value in order to permit the Convertible Debentures to remain outstanding upon consummation of the proposed merger is appropriate in the public interest and consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 28, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-34910 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Release No. 10512; 811-1622]

GREATER WASHINGTON INDUSTRIAL INVESTMENTS, INC.

Filing of Application

DECEMBER 17, 1978.

Notice is hereby given that Greater Washington Industrial Investments, Inc., ("Applicant"), 1015 18th Street, N.W., Washington, D.C. 20036, a closed-end, non-diversified, management investment company registered under the Investment Company Act of 1940 ("Act") has filed an application on October 23, 1978, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Applicant states that it registered under the Act on March 11, 1968, and that it has not filed a registration statement pursuant to the Securities Act of 1933. The application further states that on June 30, 1978, Applicant merged into its parent corporation (and sole stockholder) Greater Washington Investors, Inc. ("Parent") and that under District of Columbia law, Applicant's separate existence ceased at that time.

The Applicant further states that as of March 31, 1978, it had issued only common stock, of which 1000 shares were outstanding. According to the application, on the above date, the Applicant had net assets of $829,048.

The Applicant asserts that on April 21, 1978, the Boards of Directors of both Parent and Applicant approved the merger of Applicant into Parent as part of a plan of reorganization. A special meeting of stockholders of Parent was called on June 21, 1978, at which the shareholders voted to approve the merger.

The applicant states that all its assets were transferred to, and all its debts and liabilities were assumed by, Parent upon completion of the merger. According to the application, all expenses of the merger, including legal fees, filing costs and certain travel expenses, were paid by Parent.

The Applicant further states that it presently has no security-holders and does not now, nor does it propose to, engage in any business activity. Parent has, according to the application, filed, under applicable provisions of District of Columbia law, appropriate documents to effectuate the elements of the plan of reorganization.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than December 29, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason or such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hear-

ing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-34911 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Administrative Proceeding File No. 3-5582; File No. 81-427]

HOME SAVINGS AND LOAN ASSOCIATION

Notice of Application and Opportunity for Hearing

DECEMBER 7, 1978.

Notice is hereby given that Home Savings and Loan Association (the "Applicant"), as originator and servicer under a Pooling and Servicing Agreement providing for the issuance of Mortgage Pass-Through Certificates, Second Series, Variable Pass-Through Rate (the "Certificates"), has filed an application for an exemptive order pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "Act"), for exemption from certain reporting requirements under Section 13 and from the operation of Section 16 of the Act.

The Application states in part:

In the absence of an exemption, the Applicant would be required to file reports adhering to all the item requirements of Form 10-K, 10-Q and 8-K, as well as reports required pursuant to Section 16 of the 1934 Act.

Applicant believes that the exemptive order requested by it is appropriated in view of the fact that Form 10-Q and certain items of Form 10-K, as well as reports required pursuant to Section 16 of the 1934 Act are inapplicable to the pass-through mortgage pool arrangement.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the office of the Commission at 500 North Capitol Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person, not later than January 2, 1979, may submit to the Commission his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549, and should briefly state the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-34912 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Administrative Proceeding File No. 3-5586; File No. 81-430]

INDIAN HEAD, INC.

Notice of Application and Opportunity for Hearing

DECEMBER 7, 1978.

Notice is hereby given that Indian Head Inc. (the "Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order exempting the Applicant from the provisions of Section 15(d) for the current fiscal year ending December 3, 1978.

The Applicant states, in part:

1. Applicant is incorporated under the laws of the State of Delaware.

2. All of the outstanding common stock of the Applicant is owned by Thyssen-Bornemisza Inc., a Maryland corporation, which is in turn a wholly owned subsidiary of Thyssen-Bornemisza N.V., a Netherlands Antilles Corporation.

3. Applicant has 15,973 shares of its $6 Preferred Stock outstanding which is owned by 11 shareholders.

4. As a result of a tender offer, there are now 279 holders of the Applicant's 5½% Subordinated Debentures due May 15, 1990. Other than the holdings of Thyssen-Bornemisza Inc. there is $10,754,500 principal amount of the Debentures outstanding of which $9,389,000 principal amount is held by 9 institutional investors.

5. Applicant has $987,000 principal amount of its 5½% Convertible Subordinated Debentures due 1993 outstanding which are owned by 79 holders. These Debentures are no longer convertible into equity securities and are being redeemed effective November 30, 1978 at 102.75% of par plus accrued interest.

In the absence of an exemption, the Applicant would be required to file report on Form 8-K as well as an annual report on Form 10-K for the current fiscal year ending December 3, 1978. The Applicant believes that its request for an order exempting it from the provisions of Section 15(d) of the 1934 Act is appropriate in view of the fact that the Applicant is now a wholly owned subsidiary whose Preferred Stock and Debentures are held by a limited number of investors and have a small amount of trading interest. The Applicant believes that the time, effort and expense involved in the preparation of the periodic reports for the current fiscal year, before the obligation to file such reports is suspended pursuant to Rule 15d-6, would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C.

Notice is further given that any interested person not later than January 2, 1979, may submit to the Commission in writing his views of any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-34913 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Release No. 10511; 812-4324]

INTERNATIONAL DOLLAR INCOME FUND, FIRST MONTHLY PAYMENT SERIES (AND SUBSEQUENT SERIES), ET AL.

Filing of Application

DECEMBER 7, 1978.

Notice is hereby given that the International Dollar Income Fund, First Monthly Payment Series (and subsequent Series) (hereinafter the "Fund" or individually, a "Series"), registered under the Investment Company Act of 1940 (the "Act") as a unit investment trust, and Merrill Lynch, Pierce, Fenner & Smith Incorporated, Atlantic Capital Corporation, the Nikko Securities Co. International, Inc., Bache Halsey Stuart Shields Incorporated, and Dean Witter Reynolds Inc. (the "Sponsors") (collectively, the "Applicants"), c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated, 125 High Street, Boston, Massachusetts 02110, filed an application on June 9, 1978, and an amendment thereto on November 22, 1978, requesting an order, pursuant to Section 6(c) of the Act, exempting them from (j) the provisions of Section 14(a) of the Act, insofar as such provisions would require the Sponsors and underwriters of the Fund to take for their own account, or place privately with not more than 25 other persons, $100,000 or more worth of units in the Fund ("Units"); (ii) the provisions of Rule 19b-1 under the Act which limit distribution of capital gains to one time in a taxable year; (iii) the provisions of Rule 22c-1 which require that net assets are to be determined as of the time of the close of trading on the New York Stock Exchange during the initial offering period, and all provisions of Rule 22c-1 in secondary market trading. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that each Series will be created under Massachusetts law by a Trust Indenture ("Indenture") between the Sponsors, the Trustee (the Bank of New York), the Co-Trustee (Shawmut Bank of Boston, N.A.) and the Evaluator (Interactive Data Services, Inc.). The portfolio of each Series of the Fund will consist of interest bearing debt obligations or preferred stocks (the "Securities") payable in United States dollars, issued primarily by foreign issuers and foreign subsidiaries of U.S. companies with the possibility of a limited number of obligations of U.S. issuers. While the securities to be deposited in the first Series will all be straight debt obligations without participating or equity features, subsequent Series may contain debt obligations, or preferred stocks, with equity features such as rights of conversion into common stock or have warrants or rights to purchase common stock attached.

According to the application, Units of the first Series will be offered to the public at a public offering price computed by adding to the offering side evaluation of the Securities divided by the number of Units, a sales charge of an amount equal to 3.896% of such evaluation. The sales charge may vary for subsequent Series. Although the public offering price of Units will be determined on the basis of the offering side evaluation of the securities deposited in a Series, the unit value at which Units may be redeemed will be determined on the basis of the bid side evaluation thereof. The aggregate offering side evaluation of the Securities is to be determined by the Evaluator on each business day during the initial public offering period and on the last business day of each week upon completion of the public offering as of the Evaluation Time set forth in the Prospectus for each Series (3:30 P.M. New York time, in the case of the first Series), effective for all sales made during the preceding 24 hours or the following week, respectively.

The Applicants state that, although the Sponsors are not obligated to do so, it is the intention of certain of the Sponsors to maintain a market for Units of each Series and to offer to purchase such Units at prices which are based upon the aggregate offering price of the securities in each Series. The Applicants state that although it is therefore anticipated that Units in most cases can be sold in the secondary market for an amount in excess of the redemption price, Units can be submitted to the Trustee for redemption at any time. In such event, the Trustee will liquidate certain of the securities in the Series and the tendering unitholder will receive cash from the proceeds of such liquidation, all as more fully described in the prospectus for each Series. Consistent with Rule 22c-1, the unitholder would receive cash in an amount per Unit equal to the unit value as determined on the business day next following such tender as of the time of the evaluation.

The Applicants state that the Sponsors may direct the Trustee to dispose of securities upon default in payment of principal or interest or the occurrence of other market or credit factors that in the opinion of the Sponsors would make the retention of such securities in the Series detrimental to the interests of the unitholders, or if the disposition of such securities is desirable in order to maintain the qualification of the Series under the Federal Internal Revenue Code or to prevent the Trustee from being required to withhold United States income tax from distributions to unitholders who are, as to the United States, non-resident aliens or foreign corporations. The proceeds of any such dispositions may be distributed to unitholders or may be reinvested in accordance with the provisions of the Indenture.

Section 14(a)

Section 14(a) of the Act, in substance, provides that no registered investment company and no principal underwriter for such a company shall make a public offering of securities of which such company is the issuer unless (1) the company has a net worth of at least $100,000; (2) at the time of a previous public offering it had a net worth of $100,000; or (3) provision is made that a net worth of $100,000 will be obtained from not more than twenty five responsible persons within ninety days, or the entire proceeds received, including sales charge, will be refunded.

The Applicants state that each Series, at the date of deposit of the underlying Securities and before any Unit is offered to the public, is intended to have a net worth, represented by the market value of the Securities on that date as determined by the Evaluator, in excess of $100,000. The Applicants contend that each Series will have a net worth far in excess of $100,000 fully invested in Securities on the date of deposit for each Series and will therefore fully comply with the first requirement of Section 14(a). It is contended that any requirement that the Sponsors take for their own accounts or sell $100,000 worth of Units pursuant to the third requirement of Section 14(a) of the Act would be double compliance with the Act.

In connection with their request for exemption, the Applicants agree, as a condition to such exemption, that they will refund, on demand and without deduction, all sales charges to purchasers of Units of any Series from the Sponsors or from any underwriter or dealer participating in the distribution, and liquidate the Securities held by such Series and distribute the proceeds thereof, if, within 90 days from the time that the registration statement relating to the Units of such Series shall have become effective under the Securities Act of 1933, the net worth of such Series shall be reduced to less than $100,000 or if such Series shall have been terminated. The Sponsors further agree to instruct the Trustee to terminate such Series in the event redemption by the Sponsors of Units which have not been sold in the initial distribution thereof re-

sults in such Series have a net worth of less than 40% of the face amount of securities in its original portfolio, and in the event of any such termination the Sponsors will refund, on demand and without reduction, all sales charges to purchases of Units of such Series from the Sponsors or from any underwriter or dealer participating in the distribution. The Sponsors further agree that any future Sponsor will, as a condition to becoming a Sponsor, agree to the foregoing undertaking.

Rule 19b-1

Rule 19b-1(a) provides, in pertinent part, that no registered investment company which is a "regulated investment company" as defined in Section 851 of the Internal Revenue Code shall make more than one distribution of capital gains per taxable year.

Applicant proposes that distributions of principal, including any capital gains, and interest on each Series will be made to Unitholders each month. The Applicants state that distributions of principal constituting capital gains to Unitholders may arise in the following instances: (1) an issuer might call or redeem Securities held in the portfolio; (2) Securities might be liquidated in order to provide funds necessary to make redemptions; and (3) Securities might be disposed of in order to maintain the qualification of such Series as a regulated investment company under the Federal Revenue Code.

In support of the requested exemption the application states that the dangers against which Rule 19b-1 is intended to guard do not exist in the situation of the Fund since the Fund and the Sponsors have no control over events which might trigger capital gains. Literal compliance with the Rule would require each Series to hold any monies constituting capital gains from the disposition of Securities until the end of its taxable year. It is contended by the Applicants that such practice would clearly be to the detriment of Unitholders. Applicants further point out that Paragraph (b) of Rule 19b-1 provides that a unit investment trust may distribute capital gains dividends received from a regulated investment company within a reasonable time after receipt. The purpose behind such provision is to avoid forcing a unit investment trust to accumulate valid distributions received throughout the year until year-end. It is contended by the Applicants that the situation of the Fund is squarely within the intended objectives of such provision.

Rule 22c-1

Rule 22c-1 provides, in part, that redeemable securities of registered investment companies may be sold, redeemed or repurchased at a price based on the current net asset value (computed on each day during which the New York Stock Exchange is open for trading not less frequently than once daily as of the time of the close of trading on such Exchange) which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

The Applicants state that Investment Company Act Release Nos. 5413 and 5519 put forward two purposes for Rule 22c-1: (1) to eliminate or reduce any dilution of the value of outstanding redeemable securities of registered investment companies occurring through the practice of redeeming or repurchasing securities at a price above their net asset value or selling securities at a price based upon a previously established net asset value which permits a potential investor to take advantage of an upswing in the market and an accompanying increase in the net asset value of investment company shares, and (2) to minimize speculative trading practices which so comprise registered investment companies as to be unfair to the holders of their outstanding securities.

The Applicants contend that the sale and repurchase of Units of the Series in the secondary market cannot possibly dilute the value of outstanding securities. The Applicants also contend that the procedures followed in secondary market operations of the Fund cannot be regarded as encouraging speculative trading practices.

The application states that backward pricing in the secondary market is also a necessity. As a condition to the granting of an exemptive order by the Commission, the Applicants agree that a procedure will be instituted to ensure, without additional cost to investors, that an investor who wishes to dispose of his Units by selling his Units to the Sponsors who maintain a secondary market in Units will never receive less than the redemption value. The Evaluator will determine, without a formal evaluation and thus without the expense which a formal evaluation would impose upon investors, if the bid side evaluation on any day during the week, which would be used for redemption purposes, has so changed that it might have become higher than, or equal to the previous Friday's offering side evaluation, which is used by such Sponsors for their bid. Such Sponsors accordingly agree to obtain from the Evaluator, for each Series and on each trading day, a letter to the effect that in the Evaluator's independent judgment the bid side evaluation is not higher than or equal to the previous Friday's offering side evaluation, and if the Evaluator does not feel that it can give such letter such Sponsors will order a new evaluation.

Applicants state further that, in order to minimize the risk that a purchasing investor will pay more than he would pay if daily evaluations were made, the Evaluator will, without a formal evaluation, also determine if the evaluation has decreased by an amount greater than or equal to one-half point ($5.00 on a Unit representing $1,000.00 principal amount of underlying securities). If the Evaluator determines that such a decrease has occurred, it will perform a new evaluation which will become the basis for the public offering price until the next succeeding evaluation. Rule 22c-1, in addition, requires that net asset value be determined as of the time of the close of trading on the New York Stock Exchange. The Applicants note that only rarely will Securities in the various Series be listed on the New York Stock Exchange and, if so listed, the principal market therefor will be over-the-counter. It is contended that the time of the close of trading on the New York Stock Exchange therefore bears little relationship to the evaluation procedures used in determining net asset value for the Fund. The Applicants state that the Evaluator has informed them that 3:30 P.M. is the most reliable time for evaluations, regardless of the time of the close of trading on the New York Stock Exchange, which may change from time to time.

Section 6(c) of the Act provides, in part, that the Commission may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision of the Act or of any rule or regulation under the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not late than December 29, 1978, at 5:30 P.M., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be

filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-34914 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Administrative Proceeding File No. 3-5584; File No. 81-431]

INTERNATIONAL LIFE INSURANCE CO. OF BUFFALO

Notice of Application and Opportunity for Hearing

DECEMBER 7, 1978.

Notice is hereby given that International Life Insurance Company of Buffalo. ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), seeking an exemption from the requirements to file reports pursuant to Section 15(d) of the 1934 Act.

The Applicant states, in part:

1. The Applicant is a New York corporation subject to the reporting provisions of Section 15(d) of the 1934 Act.

2. Pursuant to an exchange offer, initiated on June 8, 1978 and terminated July 17, 1978, the Holding Corporation increased its ownership of Internal Life to 99.363%.

3. Applicant's public shareholders decreased to 205 as a result of the exchange of shares.

In the absence of an exemption, Applicant is required to file periodic reports pursuant to Section 15(d) of the 1934 Act. Applicant believes that its request for an order exempting it from the reporting requirements is appropriate in view of the fact that Applicant believes that the time, effort and expense involved in preparation of additional periodic reports would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, N.W., Washington, D.C.

Notice is further given that any interested person not later than January 2, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) any postponements thereof. At any time after said date, an order granting the application may be issued upon reqest or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-34915 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Release No. 20814; 70-6051]

MIDDLE SOUTH UTILITIES, INC., AND MIDDLE SOUTH ENERGY, INC.

Proposal by Subsidiary To Issue Common Stock to Parent

DECEMBER 5, 1978.

Notice is hereby given that Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and Middle South Energy, Inc. ("MSEI"), 225 Baronne Street, New Orleans, Louisiana 70112, a wholly owned subsidiary of Middle South, have filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10 and 12(f) of the Act and Rule 43 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transaction.

By Commission order dated December 20, 1977 (HCAR No. 20327), MSEI was authorized to issue and sell to Middle South, and Middle South was authorized to purchase, from time to time, through and including December 31, 1978, 75,000 shares of MSEI's presently authorized but unissued common stock, no par value ("New Common Stock"), at a price of $1,000 per share for an aggregate cash purchase price of $75,000,000.

Sales of New Common Stock aggregating 53,000 shares had occurred as of October 15, 1978, leaving 22,000 remaining shares of New Common Stock authorized to be sold through and including December 31, 1978.

It now appears that, based upon MSEI's revised estimate of cash requirements for the remainder of 1978, it may be necessary for MSEI to issue and sell to Middle South during the remainder of 1978 an aggregate of only 12,000 shares of New Common Stock of the remaining 22,000 shares of New Common Stock which MSEI is authorized to issue and sell to Middle South during 1978. Thus, it is presently expected that 10,000 shares of New Common Stock may remain unsold at December 31, 1978.

Authority has been requested for MSEI to issue and sell, and for Middle South to purchase, up to such 10,000 shares of New Common Stock ("Carryover Shares") during 1979, through and including June 30, 1979, at a price of $1,000 per share for an aggregate cash purchase price of $10,000,000.

MSEI also proposes to issue and sell to Middle South, and Middle South proposes to purchase, from time to time as further described below, 75,000 additional shares of MSEI's presently authorized but unissued common stock, no par value ("Additional Shares") at a price of $1,000 per share for an aggregate cash purchase price of $75,000,000.

MSEI will apply the proceeds of sales of Carryover Shares and Additional Shares to costs incurred by it in the construction of the Grand Gulf Project.

As of October 15, 1978, MSEI had issued and sold 272,000 shares of its common stock, no par value, to Middle South for an aggregate cash consideration of $272,000,000. MSEI is authorized by its articles of incorporation to issue up to 1,000,000 shares of its common stock, no par value.

MSEI and Middle South believe it is preferable for sales of the Carryover Shares and the Additional Shares to be timed to coincide with MSEI's cash needs from time to time, which are primarily determined by the nature and pace of the construction work on the Grand Gulf Project. Accordingly, MSEI and Middle South request that the Commission's order permit the sale of (1) the Carryover Shares to occur from time to time at any time through and including June 30, 1979 and (2) the Additional Shares to occur from time to time at any time through and including December 31, 1979, in

each case in increments to be determined by MSEI and Middle South. Each such sale will be reported to the Commission by a Certificate filed pursuant to Rule 24.

To the extent funds are required from external sources to acquire the Carryover Shares and the Additional Shares, Middle South will obtain such funds through the issuance and sale of its unsecured short-term promissory notes issued under a revolving credit agreement dated as of June 29, 1978 with a group of banks headed by Manufacturers Hanover Trust Company, New York, New York, as authorized by the Commission's order dated June 15, 1978 (HCAR No. 20593), or through extensions thereof or such other forms of financing as may be approved by the Commission.

Sale of the Carryover Shares and the Additional Shares will enable MSEI to continue construction of the Grand Gulf Project and to maintain capitalization ratios required under various agreements, including its Restated and Amended Bank Loan Agreement with a group of lending banks and its Mortgage and Deed of Trust dated June 15, 1977.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than December 28, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-34916 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Release No. 20812; 70-5831]

NATIONAL FUEL GAS CO. AND NATIONAL FUEL GAS SUPPLY CORP.

Proposed Extension of Intra-System Loans

DECEMBER 5, 1978.

Notice is hereby given that National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10020, a registered holding company, and National Fuel Gas Supply Corporation ("Supply Corporation"), 308 Seneca Street, Oil City, Pennsylvania 16301, a wholly owned subsidiary of National, have filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43 and 45 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration for a complete statement of the proposed transactions.

By order dated December 14, 1977 (HCAR No. 20317) the Commission authorized the extension of the maturity of a $5,000,000 note of Supply Corporation to National from December 31, 1977 to December 31, 1978. It was anticipated at that time that Federal Energy Regulatory Commission ("FERC") authorization regarding certain transactions involving National Gas Storage Corporation ("Storage Corporation") a proposed subsidiary of National, would be received before December 31, 1978. National has now been informed that it is unlikely that such FERC authorization will be received before December 31, 1978, thereby delaying consummation of the above-mentioned transactions involving Storage Corporation. It is therefore requested that the authority of National to loan, and of Supply Corporation to borrow, be extended so that National may loan or reloan such $5,000,000 to Supply Corporation in exchange for a promissory note maturing at the earlier of twelve months from the date of issue or receipt of the FERC authorization mentioned above and the need for the cash for Storage Corporation. National's authority to loan or reloan such $5,000,000 would expire upon receipt of the above-mentioned FERC authorization and the need for the cash for the storage project. The interest rate, which is 9.6% per annum based upon the effective dividend cost to National of its preferred stock and all of the terms of the note will remain the same as stated in the order of December 14, 1977.

Also in connection with the establishment of Storage Corporation, the Commission, in its order dated September 20, 1977 (HCAR No. 20181), authorized the extension of the maturity of a $4,900,000 note of Supply Corporation to National from December 31, 1977 to December 31, 1978. As mentioned above, National has learned that FERC authorization regarding certain transactions involving Storage Corporation will not be received before December 31, 1978. Accordingly, it is hereby also requested that the authority of National to loan, and of Supply Corporation to borrow, be extended so that National may loan or reloan such $4,900,000 to Supply Corporation in exchange for a promissory note maturing at the earlier of twelve months from the date of issue or receipt of the FERC authorization mentioned above and the need for the cash for Storage Corporation. National's authority to loan or reloan such $4,900,000 would expire upon the earlier of December 31, 1979 or the receipt of the above-mentioned FERC authorization and the need for the cash for Storage Corporation. The interest rate will continue to be the prime rate at the Chase Manhattan Bank, N.A., as it fluctuates from time to time (currently 11.5%) and all of the terms of the note will remain the same as stated in the Commission's order of September 20, 1977.

It is stated that no special and separable fees, commission, and expenses are anticipated in connection with the proposed transactions. It is further stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than December 28, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact of law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof or service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time

after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rule 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-34917 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Release No. 20822; 70-5915]

NATIONAL FUEL GAS DISTRIBUTION CORP. AND NATIONAL FUEL GAS SUPPLY CORP.

Post-Effective Amendment Seeking Extension of Authorization To Make "Cross-stream" Loans

DECEMBER 8, 1978.

Notice is hereby given that National Fuel Gas Distribution Corporation ("Distribution Corporation"), 10 Lafayette Square, Buffalo, New York 14203, and National Fuel Gas Supply Corporation ("Supply Corporation"), 308 Seneca Street, Oil City, Pennsylvania 16301, two subsidiaries of National Fuel Gas Company ("Company"), a registered holding company, have filed with this Commission a post-effective amendment to the application in this proceeding pursuant to Sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42, 43 and 45 promulgated thereunder regarding the following proposed transactions. All interested persons are referred to the amended application which is summarized below, for a complete statement of the proposed transactions.

By order dated March 9, 1978 (HCAR No. 20440), the Commission authorized, among other things, Supply Corporation to loan to Distribution Corporation: (1) certain excess cash in an aggregate principal amount not to exceed $8,000,000 in exchange for unsecured notes maturing at the earlier of twelve months from the date of issue or receipt of Federal Energy Regulatory Commission ("FERC") authorization regarding certain transaction involving National Gas Storage Corporation ("Storage Corporation"), a proposed subsidiary of the Company and need for the cash for the storage project (see File No. 70-5961); and (2) cash generated as a result of the sale by Supply Corporation of gas withdrawn from storage to the extent that such cash was required by Distribution Corporation for working capital, but not in excess of $20,000,000. While it was originally anticipated that the FERC authorization with the respect to Storage Corporation would be received before December 31, 1978, it now appears that such authorization will be delayed beyond that date. Also, it appears that Supply Corporation will again have excess cash as a result of the sale by Supply Corporation of gas withdrawn from storage. Accordingly, Supply Corporation and Distribution Corporation are filing this post-effective amendment to File No. 70-5915 to request that Supply Corporation's authority to loan, and Distribution Corporation's authority to borrow, be extended so that Supply Corporation may loan or reloan to Distribution Corporation: (1) up to $8,000,000 aggregate principal amount at any one time outstanding in exchange for unsecured notes of Distribution Corporation until the earlier of the receipt of the above-mentioned FERC authorization and the need for the cash for the storage project on December 31, 1979; and (2) up to $50,000,000 aggregate prinicpal amount at any one time outstanding of cash generated as a result of the sale by Supply Corporation of gas withdrawn from storage until December 31, 1979 in exchange for unsecured notes of Distribution Corporation.

Such funds would be for Distribution Corporation's working capital and construction program. Interest would be paid at the commercial paper rate applicable to the Company in effect at the time the loan is made (currently 10.3% per annum). Distribution Corporation will have the option, after payment of all notes of prior maturity, to prepay any note issued pursuant to this transaction at any time or from time to time, in whole or in part, without premium, upon payment of all interest accrued on the principal amount so prepaid to the date of such prepayment. Distribution Corporation proposes to repay these loans through monies received as a result of bank borrowings or sale of commercial paper or other securities by the Company.

The above proposed transactions will save the system money by eliminating the amount by which the interest expense the Company would incur in borrowing needed funds through bank loans (currently 11.5%) and/or sale of commercial paper (currently 10.3%) exceeds the interest income Supply Corporation would realize through investment of excess cash in temporary investments (based upon the current temporary investment rate of 9.375%).

No special and separable fees, commissions or expenses are anticipated in connection with the consummation of the proposed transactions. It is stated that no federal or state regulatory authority, other than this Commission has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than January 3, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants at the above stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date or the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-34918 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Rel. No. 20821; 70-6067]

NINEVEH WATER CO. AND PENNSYLVANIA ELECTRIC CO.

Proposed Increase in Loans to Water Company Subsidiary

DECEMBER 7, 1978.

Notice is hereby given that Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, an electric utility subsidiary company of General Public Utilities Corporation, a registered holding company, and Nineveh Water Company ("Nineveh"), a water company subsidiary of Penelec, have filed

with this Commission a post-effective amendment to their application-declaration previously filed and amended in this matter pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, 9(a), 10 and 12(b) of the Act and Rules 43 and 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By order dated December 22, 1977 (HCAR No. 20333), Nineveh was authorized to issue and sell up to $800,000 principal amount of its demand notes to Penelec through December 31, 1978. The proceeds from such borrowings were to be used by Nineveh to repair its facilities damaged by the July 1977 flood at Johnstown, Pennsylvania and to modify the Findley Run Dam. Through November 27, 1978, Nineveh has so issued and sold $420,000 of such notes.

By post-effective amendment it is stated that the estimated cost of repairs and improvement has increased from $800,000 to $1,231,000, all of which increase is attributable to additional work at the Findley Run Dam spillway, as follows:

Increase spillway capacity	$368,000
Warning system	25,000
Pizemeter installation	22,000
Contingency	16,000
Total	431,000

Applicants-declarants request that the aggregate principal amount of notes which Nineveh is authorized to issue and sell to Penelec be increased by $431,000 to $1,231,000 and that the period within which such notes be issued and sold be extended until December 31, 1979. Such notes will bear interest at a rate of 1.25 times the prime rate in effect from time to time at Mellon Bank. Interest on the notes shall be paid by Nineveh only if and to the extent that the "available net income," as defined in the notes, is sufficient to pay such interest.

Nineveh has applied to the Small Business Administration ("SBA") for a $775,600 disaster relief loan, which loan is the subject of a separate application before this Commission (File No. 70-6201) and the proceeds from which loan would be used by Nineveh to repay the borrowings from Penelec. It is stated that Nineveh has requested the SBA to increase the amount of that loan to $1,230,600 to reflect the increased cost of repairs and improvements.

The additional fees and expenses to be incurred in connection with the proposed transaction are estimated at $1,000. It is stated that the Pennsylvania Public Utilities Commission has jurisdiction over the proposed transaction and that no other state commission and no federal commission, other than this Commission, has such jurisdiction.

Notice is further given that any interested person may, not later than January 2, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as amended by said post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-34919 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Rel. No. 20815; 70-4549]

PENNSYLVANIA ELECTRIC CO.

Proposed Extension of Time for Acquiring Notes of Unaffiliated Mining Companies by Electric Utility, and the Extension of the Maturity of Such Notes

DECEMBER 5, 1978.

Notice is hereby given that Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, an electric utility subsidiary company of General Public Utilities Corporation, a registered holding company, has filed a seventeenth post-effective amendment to its application previously filed and amended in this matter pursuant to Sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transaction. All interested persons are referred to the application, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By order dated April 19, 1978 (HCAR No. 20507), this Commission authorized, among other things, Penelec to make loans to the Helvetia Coal Company ("Helvetia"), a non-affiliated mining company, by acquiring promissory notes to be issued by Helvetia in an amount not in excess of $12,225,000 through December 30, 1978. Helvetia is engaged in developing coal mines for the Homer City Generating Station, in which Penelec has a 50% interest. The other 50% interest in the Homer Station is held by New York State Electric & Gas Corporation ("NYSEG"), a utility not affiliated with Penelec, which supplies 50% of the financing for Helvetia. By its seventeenth post-effective amendment filed in this proceeding Penelec states that as of the date hereof it and NYSEG have each loaned Helvetia $11,625,000, or an aggregate of $23,250,000, Helvetia now expects to borrow the remaining $1,250,000 from time to time during the period ending June 30, 1979. Accordingly, Penelec now seeks permission to extend to September 30, 1979, the time within which it may make loans to Helvetia, and to extend to December 31, 1981 the maturity of the Notes.

By order of June 6, 1978, (HCAR 20368) Penelec was authorized to acquire promissory notes to be issued by The Helen Mining Company ("Helen"), a non-affiliated mining company, not later than December 30, 1978, in an amount not in excess of $9,750,000, representing one-half of the estimated cost of Helen's requirements to develop and equip its coal mine. The other half of the financing for the coal mine was to be furnished by NYSEG, Penelec's 50% co-tenant. The mine supplies part of the coal requirements of the first two units of the Homer City generating station, in which Penelec and NYSEG have 50% undivided interests.

At the date hereof, Penelec and NYSEG have each loaned Helen $7,750,000 or an aggregate of $15,500,000. The borrowings by Helen from Penelec and HYSEG have been secured by an indenture of mortgage, as previously filed with this Commission.

Penelec states that it does not appear that permanent financing of mine development will be achievable at a cost less than the cost of the present financing arrangement although

efforts to explore alternatives continue. in view of this situation, Penelec now proposes to acquire Notes of Helen until December 30, 1981. Penelec proposes to extend the maturity of the notes until December 31, 1981. The interest rates for the notes shall be 1½% above the prime rate for commercial borrowing at Manufacturers Hanover Trust Company.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $12,200, including $10,200 in attorney's fees.

It is stated that no state commission and no federal commission, other than this Commission has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than December 28, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application, as further amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended by said post-effective amendment, or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-34920 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Release No. 6004; 18-23]

PROFIT-SHARING RETIREMENT PLAN FOR KRAMER, LOWENSTEIN, NESSEN, KAMIN & SOLL

Filing of Application

DECEMBER 8, 1978.

Notice is hereby given that Kramer, Lowenstein, Nessen, Kamin & Soll, 919 Third Avenue, New York, NY 10022, a law firm organized as a partnership under the laws of the State of New York (hereinafter referred to as the "Applicant"), on October 16, 1978, filed an application for exemption from the registration requirements of the Securities Act of 1933 (the "Act") for participations or interests issued in connection with the Profit-Sharing Retirement Plan for Kramer, Lowenstein, Nessen, Kamin & Soll (the "Plan"). All interested persons are referred to that document, which is on file with the Commission, for the facts and representations contained therein, which are summarized below.

I. INTRODUCTION

Partners (other than certain partners whose interest in either the capital or profits of the Applicant exceeds 10%) and employees of the Applicant are eligible to participate in the Plan if they are at least 25 years of age and have completed three years of full-time service without interruption with the Applicant. As of September 30, 1978, approximately 20 partners and 29 employees were eligible to participate in the Plan.

Applicant states the Plan is of the type commonly referred to as a "Keogh" plan, which covers persons some of whom (in this case, Applicant's partners) are employees within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954, as amended (the "Code"), and, therefore, is excepted from the exemption from the registration provisions of the Act provided by Section 3(a)(2) of the Act for interests or participations in certain employee benefit plans of corporate employers. However, Section 3(a)(2) of the Act provides that the Commission may exempt from the provisions of Section 5 of the Act any interest or participations issued in connection with a pension or profit-sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

II. DESCRIPTION AND ADMINISTRATION OF THE PLAN

Applicant states the Plan has been maintained since 1975 as a defined contribution profit-sharing plan qualified under Section 401(a) of the Code. The Internal Revenue Service (the "IRS") has issued a determination letter stating that the Plan, as in effect prior to January 1, 1977, meets the qualification requirements of Section 401(a) and that the trust thereunder is exempt under Section 501(a) of the Code. On April 14, 1978, the Applicant filed with the IRS a request for a determination of continued qualification under Section 401(a) and exemption under Section 501(a) following an amendment to the Plan, effective January 1, 1977, *inter alia*, reflecting a change in the Applicant's fiscal year from a calendar year to a fiscal year ending September 30. Applicant requests that the Commission assume that the IRS will rule favorably as to the qualification of the Plan.

Applicant states that, under the Plan, which is designed to integrate with Social Security, the Applicant makes contributions to a trust established under a trust agreement (the "Trust Agreement") between the Applicant and The Marine Midland Trust Company of New York, as trustee (the "Trustee"). Such contributions on an annual basis equal 7% of a participant's annual earnings (up to $100,000) in excess of the Social Security Wage Base. Each participant is also permitted, at his option, to make voluntary contributions. The amount of such voluntary contributions by participants during each fiscal year of the Applicant is limited as required by Section 415 of the Code and by the terms of the Plan. In particular, aggregate contributions "allocable" to a participant in any year, as defined under the Plan, may not exceed the lesser of (a) $25,000 (as adjusted for subsequent cost-of-living increases pursuant to applicable regulations) or (b) 25% of his earnings for the fiscal year in which such contributions are made.

Applicant represents that the Plan is administered by an Administrative Committee (the "Committee") of not less than two persons appointed by the Applicant. The Committee has the authority to control and manage the operation and administration of the Plan. Its responsibility for the day-to-day administration of the Plan includes the making of rules and regulations for the administration and interpretation of the Plan, the determination of eligibility of participants to receive benefits and the resolution of disputes between the Applicant and participants. The Committee also has the authority to employ clerical help, consultants, doctors, accountants and other agents to assist in administering

the Plan. The Committee is relieved of its authority and responsibility to manage the operation and administration of the Plan with respect to those matters which are the responsibility of the Trustee or the Investment Committee referred to below.

Applicant states that the assets of the Plan are held by the Trustee pursuant to the Trust Agreement in a Trust Fund provided for under the Plan. The interest of each participant in the Trust Fund and the amounts of the Applicant's contributions and the participant's voluntary contributions made in respect of or by such participant are reflected in such participant's individual account. The making of appropriate provision for the investment and reinvestment of the Trust Fund is the responsibility of an Investment Committee of not less than three persons appointed by the Applicant, to serve at the pleasure of the Applicant. The Investment Committee issues such investment directions to the Trustee as it deems necessary or appropriate and is charged with the fiduciary responsibility to control or manage the assets of the Plan. The Investment Committee has appointed Ruane Conniff & Co., Inc., a registered investment adviser, as "investment manager", as defined in the Employment Retirement Income Security Act of 1974 ("ERISA"), to manage the assets of the Plan in accordance with the general guidelines provided by the Investment Committee. The Investment Committee is also authorized to establish separate funds within the Trust Fund and to formulate rules allocating participants' interests in the Trust Fund among such funds. Under the Trust Agreement, the Trustee is also given authority to manage such portion of the assets of the Plan as the Investment Committee shall specify. The Plan's investment manager, pursuant to the authority granted to it by the Investment Committee, from time to time instructs the Trustee to invest Trust Fund assets on a short-term basis in so-called "master notes"—undivided percentage interests in large denomination short-term commercial paper which the Trustee selects and makes available to its trust customers.

Applicant represents that the Trust Agreement further authorizes the Trustee, with the consent of the Investment Committee, to invest such assets in any commingled investment fund administered by the Trustee for the collective investment of property of qualified employee benefit trusts of which it is trustee. However, the Investment Committee has never authorized investment of Trust Fund assets by the Trustee in its commingled investment funds, and Trust Fund assets will not in the future be so invested unless such commingled investment funds are registered under the Act. Applicant further represents that the Plan is subject to the reporting and disclosure provisions, as well as other requirements, of ERISA and that the Applicant has furnished each participant with a summary of the Plan, describing its principal provisions. The Applicant has not distributed and does not intend to distribute any type of promotional material relating to the Plan.

Discussion

Applicant contends that the exemption from registration under Section 3(a)(2) of the Act would be available if the Applicant were incorporated, for in that event there would be no Section 401(c)(1) employees participating therein. However, merely because the Applicant is unincorporated is no reason for subjecting interests and participations in the Plan to the registration requirements of the Act. Similarly, were partners of the Applicant excluded from participation, the Section 3(a)(2) exemption would be available since there would then be no other Section 401(c)(1) employees participating in the Plan. Again, however, there would seem to be no policy basis for requiring registration simply because the principals responsible for establishing and administering the Plan, the partners of the Applicant, are included as participants.

Applicant further represents that the Plan is not a uniform prototype plan designed to be marketed to numerous unrelated self-employed persons; it covers the partners and employees of a single firm. Plan assets have not heretofore been commingled in collective investment media with assets of plans of other employers, and the Applicant states that it has no intention of doing so. Rather, the Applicant has employed independent experts to provide investment advisory and other consulting services with respect to the Plan, and itself exercises substantial administrative responsibilities in connection with the Plan. Since the Applicant is engaged in furnishing legal services of a type which necessarily involves financially sophisticated and complex matters, the Applicant considers itself able adequately to represent its interests and those of its employees who participate in the Plan. Finally, the Plan is subject to the fiduciary standards and reporting and disclosure requirements of ERISA which provide additional protections for Plan participants.

Applicant concludes that for the foregoing reasons, granting the requested exemption would be appropriate to the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 2, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application, accompanied by a statement of the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed to: George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following January 2, 1979, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 78-34921 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Rel. No. 20818; 70-6237]

PUBLIC SERVICE CO. OF OKLAHOMA AND CENTRAL & SOUTH WEST CORP.

Proposed Capital Contribution by Holding Company to Subsidiary

December 6, 1978.

Notice is hereby given that Central and South West Corporaton ("CSW"), P.O. Box 1631, Wilmington, Delaware 19899, a registered holding company, and Public Service Company of Oklahoma ("PSO"), P.O. Box 201, Tulsa, Oklahoma 74102, one of CSW's electric utility subsidiary company, have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(a), 7, 9, 10, and 12(f) of the Act and Rules 23, 43 and 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

CSW proposes to made a $15,000,000 capital contribution to PSO. The capital contribution will be added to PSO's common stock paid-in surplus account and will be used to repay short-term debt incurred in connection with its 1978 construction expenditures. As of December 15, 1978, short-term debt for PSO will be approximately $25,000,000. This Commission has authorized through December 31, 1978 short-term debt for PSO not to exceed $80,000,000 (HCAR No. 20608). PSO estimates that its construction expenditures for 1978 will be $198,000,000, of which $142,000,000 had been expended by October 31, 1978.

CSW proposes to finance the capital contribution through the issuance and sale of $15,000,000 of its common stock through its dividend reinvestment plan, its employee stock ownership plan and its thrift plan, all of which were previously approved by this Commission (HCAR Nos. 19850, 19710, 20675, and 20742).

It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. Fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,550, including legal fees of $500.

Notice is further given that any interested person may, not later than December 28, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Divison of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-34922 Filed 12-14-78; 8:45 am]

[8010-01-M]

[File No. 500-1]

SUPERBLOCK INDUSTRIES, INC.

Suspension of Trading

NOVEMBER 30, 1978.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of Superblock Industries, Inc. being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

Therefore, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from 11:15 a.m. on November 30, 1978 through December 9, 1978.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-34923 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Administrative Proceeding File No. 3-5567; File No. 81-426]

WEIGHT WATCHERS INTERNATIONAL, INC.

Notice of Application and Opportunity for Hearing

DECEMBER 7, 1978.

Notice is hereby given that Weight Watchers International, Inc. (the "Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting it from the periodic reporting requirements under Section 15(d) of the 1934 Act.

The Applicant states,

(1) On September 25, 1978, Applicant became a wholly-owned subsidiary of H. J. Heinz Company. As a result of the merger Applicant no longer has any public security holders.

(2) The merger was approved by the stockholders of Applicant at a special meeting held on September 22, 1978, proxies for which were solicited in accordance with the requirements of Regulation 14A under the 1934 Act.

(3) Applicant has filed a report on Form 8-K reporting consummation of this merger.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person no later than January 2, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-34924 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Release No. 34-15382; File No. SR-NASD-78-18]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Self-Regulatory Organization; Proposed Rule Change

On November 24, 1978, the National Association of Securities Dealers, Inc. ("NASD") rescinded a rule which had become effective upon filing (SR-NASD-78-15 filed September 25, 1978) pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and which had increased the variable portion of its annual membership assessment. It simultaneously submitted a new proposal (SR-NASD-78-18) identical in substance to the one submitted as File No. SR-NASD-78-15). That proposal became effective upon filing pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934. Thus, the Commission may summarily abrogate it on or before January 23, 1978.

Publication of the previous submission was made in 43 FR 50528 (October 30, 1978). Interested persons are invited to submit written data, views and arguments concerning the new submission on or before January 2, 1979. Persons desiring to make written submissions should file six copies thereof with the Secretary of the

Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-78-18.

Copies of the submission and of all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the NASD.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 5, 1978.

[FR Doc. 78-34925 Filed 12-14-78; 8:45 am]

[8010-01-M]

[Release No. 34-15387; File No. SR-NASD-78-13]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Self-Regulatory Organization; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on October 19, 1978, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission a proposed rule change as follows:

THE NASD'S STATEMENT ON THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

1. *Text of proposed rule change*

The following is the full text of the proposed amendment to Article I, Section 2 of the Association's By-Laws. A new subsection (d) has been added to Article I, Section 2 and existing subsection (d) has been redesignated as subsection (e). (New language is indicated by italics.)

Proposed Amendment to Article I, Section 2 of the Association's By-Laws

(d)(1) No broker or dealer shall be admitted to or continued in membership in the Corporation if it has associated with it any person barred or suspended from association with any member or if such association would contravene restrictions imposed pursuant to the authority granted by this subsection (d).

(2) The Board of Governors may bar, suspend or restrict the association with any member of any person who, within six (6) months of the institution of proceedings against a broker or dealer pursuant to the Securities Investor Protection Act of 1970, was an officer, director, general partner (including the Financial Principal), or owner of ten (10) per centum or more of the voting securities, or controlling person, of that broker or dealer, or a person performing similar functions for that broker or dealer if, after appropriate notice and opportunity for a hearing before a panel selected by the Board of Governors, or its delegate, the Board of Governors finds such person to be unqualified for association with any member, taking into consideration such person's responsibility for an cause of the financial and/or operational difficulties that led to the institution of such proceedings and finding such bar, suspension or restriction to be in the public interest.

(3) The President of the Corporation, or his delegate, may notify any person enumerated in paragraph (2) hereof that the Corporation proposes to bar or suspend such person from association, or restrict such person's association with any member of the Corporation. Such notice shall be sent by registered mail.

(4) The recipient of the notice provided in paragraph (3) hereof may request a hearing before a panel selected by the Board of Governors within three (3) days of the receipt of the notice.

(5) If the recipient does not request a hearing or waives a hearing, the matter shall be decided promptly on the basis of the existing record. If a hearing is requested, it shall be held promptly and may be held within three (3) days of the request.

(6) The decision shall be in writing and a copy sent by registered mail to the recipient. Where no hearing is held, the decision shall be rendered by a person or persons designated by the Board of Governors. Where a hearing is held, the decision shall be rendered by the hearing panel. The written decision shall contain the reasons supporting the decision.

(7) The decision shall be subject to review by the Board of Governors on its own motion within thirty (30) days after issuance. Any such decision shall also be subject to review upon application of any person aggrieved thereby, filed within fifteen (15) days after issuance. The institution of review, whether by application or by motion of the Board, shall not operate as a stay of the action taken.

(8) Upon consideration of the record, and after such further hearings as the Board of Governors shall order, if the Board finds that the evidence in the record does not support the findings made in the decision, the Board shall modify, amend, or abrogate such decision. Otherwise, the Board shall affirm the decision.

(9) Any person aggrieved by any action taken pursuant to this subsection (d) may make application for review to the Securities and Exchange Commission in accordance with the provisions of the Securities Exchange Act of 1934.

THE NASD'S STATEMENT ON THE PURPOSE OF PROPOSED RULE CHANGE

The purpose of the proposed amendment to Article I, Section 2 of the By-Laws is to permit the Association to determine in an expeditious manner whether certain individuals are qualified to become associated or to continue in association with NASD members in view of their previous association with a broker or dealer against whom proceedings have been instituted under the Securities Investor Protection Act of 1970. The proposed amendment will establish the Association's authority to examine, on a timely basis, the involvement of these individuals in, and their responsibility for, the activities which led to the liquidation of the broker or dealer under the Securities Investors Protection Act of 1970.

The proposal applies to any person who, within six (6) months of the institution of proceedings against a broker or dealer pursuant to the Securities Investor Protection Act of 1970, was an officer, director, general partner (including the Financial and Operations Principal), or owner of ten (10) per centum or more of the voting securities, or a controlling person, of that broker or dealer.

The proposed amendment authorizes the Association to notify any person in the above-enumerated categories if the Association intends to bar or suspend that individual from association with another member or to restrict his association with another member. An individual so notified is entitled to a hearing before a panel selected by the Board of Governors if requested within three (3) days after receipt of the notice. If a hearing is requested, it will be held promptly. If a hearing is not requested or a hearing is waived, the matter will be decided promptly on the basis of the record. A written decision will be rendered containing the reasoning supporting the decision.

The decision shall be subject to review by the Board of Governors on its own motion within thirty (30) days after issuance. The decision shall also be subject to review upon application of any person aggrieved thereby, filed within fifteen (15) days after issuance. The institution of review, whether by application or by motion of the Board, shall not operate as a stay of the action taken. Any person aggrieved by

any action taken by the Association pursuant to subsection (d) of Article I, Section 2 of the By-Laws may make application to the Securities and Exchange Commission for review of such action pursuant to the Securities Exchange Act of 1934.

THE NASD'S STATEMENT ON BASIS UNDER THE ACT FOR PROPOSED RULE CHANGE

Section 15A(g)(3)(B) of the Securities Exchange Act of 1934 provides that a registered securities association may bar a natural person from becoming associated with a member or condition the association of a natural person with a member if such natural person (i) does not meet such standards of training, experience and competence as are prescribed by the rules of the association or (ii) has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade. It further provides that a registered securities association may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the association and require a natural person associated with a member, or any class of such natural persons, to be registered with the association in accordance with procedures so established.

Section 15A(h)(2) of the Act provides that in any proceeding by a registered securities association to determine whether a person shall be denied membership or barred from becoming associated with a member, the association shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial or bar under consideration, and a record must be kept. A determination by the association to deny membership or bar a person from becoming associated with a member shall be supported by a statement setting forth the specific grounds on which the denial or bar is based.

THE NASD'S STATEMENT ON COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS OR OTHERS ON PROPOSED RULE CHANGE

Four comment letters were received following the circulation of the proposed amendment to the membership in September 1973. While one of the letters opposed the amendment, the other comments were generally supportive of higher entry standards. The letter opposing the amendment stated that business failures do not justify the institution of higher entry qualifications for those associated with SIPC trusteed firms and that the proposed procedures lack objective standards for determining whether the association of such persons with NASD members would be in the public interest.

THE NASD'S STATEMENT ON BURDEN ON COMPETITION

The proposed amendment to Article I, Section 2 of the Association's By-Laws results from the Association's statutory responsibility to aid in the protection of the investing public. Section 15A(g)(3)(B) of the Securities Exchange Act of 1934 authorizes a registered securities association to bar a natural person from becoming associated with a member or condition the association of a natural person with a member if such natural person (i) does not meet such standards of training, experience and competence as are prescribed by the rules of the association or (ii) has engaged and there is reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade. This section of the Act also provides that the association may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the association and require a natural person associated with a member to be registered with the association in accordance with procedures so established. The Association's establishment of a procedure to determine whether individuals whose activities have contributed to the liquidation of a broker or dealer under the Securities Investor Protection Act of 1970 are qualified to become associated or to continue in association with NASD member does impose a burden on competition. Since the protection of investors is greatly increased as a result of this proposal, however, the Association believes that such a burden on competition is necessary and in furtherance of the purposes of the Act.

Within 35 days of the date of publication of this notice in the Federal Register, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before January 4, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 6, 1978.

[FR Doc. 78-34926 Filed 12-14-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #1548]

MICHIGAN

Declaration of Disaster Loan Area

The following 10 counties and adjacent counties within the State of Michigan constitute a disaster area as a result of natural disasters as indicated.

County	Natural disaster(s)	Date(s)
Genesee	Drought	02/01/78-08/31/78
Isabella	Drought	04/01/78-08/30/78
Lenawee	Drought	02/01/78-08/31/78
Livingston	Drought	05/06/78-08/29/78
Macomb	Drought	04/01/78-09/01/78
Monroe	Drought	06/27/78-09/11/78
Oakland	Drought	07/03/78-09/11/78
Saginaw	Drought	04/01/78-09/01/78
Sanilac	Drought	05/01/78-09/01/78
Wayne	Drought	06/01/78-09/17/78

Applications will be processed under the provision of Public law 95-89. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on June 7, 1979, and for economic injury until the close of business on September 7, 1979, at:

Small Business Administration, District Office, 477 Michigan Avenue—McNamara Bldg., Room 515, Detroit, Michigan 48226

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 7, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-34849 Filed 12-14-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1517; Amendment No. 2]

NEBRASKA

Declaration of Disaster Loan Area

The above numbered Declaration (See 43 FR 39880) and Amendment No. 1 (See 43 FR 51885) are amended by adding the following counties:

County	Natural disaster(s)	Date(s)
Chase	Drought and grasshopper infestation.	9/1/77-9/30/78
Cass	Hail	9/01/78
Frontier	Hail and Wind	9/11/78
Familton	Hail	9/01/78

and adjacent counties within the State of Nebraska as a result of natural disasters as indicated. All other information remains the same; i.e., the termination date for filing applications for physical damage is close of business on March 30, 1979 and for economic injury until the close of business on June 30, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 7, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-34847 Filed 12-14-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1549]

TEXAS

Declaration of Disaster Loan Area

Jasper County and adjacent counties within the State of Texas constitute a disaster area as a result of damage caused by heavy rains and flooding which occurred on November 13-14, 1978. Applications will be processed under the provisions of Public Law 94-305. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on February 5, 1979, and for economic injury until the close of business on September 7, 1979 at:

Small Business Administration, District Office, One Allen Center—Suite 705, 500 Dallas, Houston, Texas 77002

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 7, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-34850 Filed 12-14-78; 8:45 am]

[8025-01-M]

WASHINGTON

Declaration of Disaster Loan Area

Walla Walla County and adjacent counties within the State of Washington constitute a disaster area as a result of natural disaster as indicated:

County	Natural disaster(s)	Date(s)
Walla Walla	Heavy rainfall	8/1/78-9/30/78

Applications will be processed under the provisions of Public Law 95-89. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on June 7, 1979 and for economic injury until the close of business on September 7, 1979 at:

Small Business Administration, District Office, 651 U.S. Courthouse, Spokane, Washington 99210

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program No. 59002 and 59008.)

Dated: December 7, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-34848 Filed 12-14-78; 8:45 am]

[4810-31-M]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 79-3; Reference: ATF O 1100.100]

DELEGATION TO THE ASSISTANT DIRECTOR (REGULATORY ENFORCEMENT) OF AUTHORITIES OF THE DIRECTOR, PRODUCTION OF VINEGAR BY THE VAPORIZING PROCESS

Delegation Order

1. *Purpose.* This order delegates certain authorities, now vested in the Director by regulations in 27 CFR Part 195, to the Assistant Director (Regulatory Enforcement), and permits redelegation to Regulatory Enforcement personnel, Headquarters and field.

2. *Background.* Under current regulations, the Director has authority to take final action on matters relating to the production of vinegar by the vaporizing process. It has been administratively determined that certain authorities now vested in the Director by regulations in 27 CFR Part 195, Production of Vinegar by the Vaporizing Process, belong at and should be delegated to a lower organizational level.

3. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, there is hereby delegated to the Assistant Director (Regulatory Enforcement) the authority to take final action on the following matters relating to 27 CFR Part 195, Production of Vinegar by the Vaporizing Process:

a. To prescribe all forms required by 27 CFR Part 195, including applications, notices, reports, returns, and records, under 27 CFR 195.2.

b. To approve other materials and methods for plats and plans, under 27 CFR 195.96.

c. To approve, pursuant to written applications submitted under 27 CFR 195.226:

(1) Variations from specified requirements in regulations for construction and equipment, under 27 CFR 195.224.

(2) Emergency methods of operations in lieu of methods of operations provided in regulations, under 27 CFR 195.225.

4. *Redelegation.* a. The authority in paragraph 3a above may be redelegated to Regulatory Enforcement personnel in Bureau Headquarters not lower than the position of branch chief.

b. The authorities in paragraphs 3b and 3c above may be redelegated to Regulatory Enforcement personnel in Bureau Headquarters not lower than the position of ATF specialist.

c. The authority in paragraph 3C(2) above, to aprove emergency methods of operations, and the authority in paragraph 3b above may be redelegated to regional regulatory administrators, who may redelegate these authorizations to regional Regulatory Enforcement personnel not lower than the position of chief, technical services, or area supervisor.

d. The authority in paragraph 3c(1) above, to approve details of construction and equipment in lieu of those specified in regulations, may be redelegated to regional regulatory administrators who may approve, without submission to Headquarters, those applications for variations which are identical to variations previously approved by Bureau Headquarters. Regional regulatory administrators may redelegate this authority to regional Regulatory Enforcement personnel not lower than the position of chief, technical services, or area supervisor.

Effective date. This order becomes effective on December 5, 1978.

Signed: December 5, 1978.

JOHN G. KROGMAN,
Acting Director.

[FR Doc. 78-34840 Filed 12-14-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice No. 757]

ASSIGNMENT OF HEARINGS

DECEMBER 12, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC-82965 (Sub-4F), Amador Stage Lines, Inc., now assigned for hearing on January 29, 1979, (3 days), at San Francisco, California in a hearing room to be later designated.

MC-143884 (Sub-2), Personalized Agent Service, Inc., now being assigned for hearing on January 29, 1979, (3 days), at Atlanta, Georgia in a hearing room to be later designated.

MC-117119 (Sub-619), Willis Shaw Frozen Express, Inc., now being assigned for hearing on January 25, 1979, (1 day), in room No. 204A, Everett McKinley Dirksen Bldg., 219 South, Dearborn St., Chicago, Illinois.

MC-143917 (Sub-3F), Sam Young, Inc., now being assigned for hearing on January 26, 1979, (1 day), in room No. 204A, Everett McKinley Dirksen Bldg., 219 South, Dearborn St., Chicago, Illinois.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-34946 Filed 12-14-78; 8:45 am]

[7035-01-M]

[Notice No. 231]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

DECEMBER 8, 1978.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

NOTE.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

MOTOR CARRIERS OF PROPERTY

MC 2900 (Sub-341TA), filed September 18, 1978, and published in the FEDERAL REGISTER issue of November 14, 1978, and republished as corrected this issue. Applicant: RYDER TRUCK LINES, INC., P.O. Box 2408, Jacksonville, FL 32203. Representative: S. E. Somers, Jr., 2050 Kings Road, Jacksonville, FL 32216. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, classes A and B Explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment. Between New Orleans, LA and Albertville, AL; from New Orleans over U.S. Hwy 90 to Mobile, AL, thence over U.S. Hwy 31 to Birmingham, thence over AL Hwy 75 to Albertville, and return. Between Meridian, MS and Columbus, GA over U.S. Hwy 80. Between Laurel, MS and Bainbridge, GA over U.S. Hwy 84. Between Meridian, MS and Pensacola, FL; from Meridian over U.S. Hwy 45 to Mobile, AL, thence over U.S. Hwy 90 to Pensacola and return. Between Eutaw, AL and Pensacola, FL; from Eutaw over U.S. Hwy 43 to Mobile, AL; thence over U.S. Hwy 98 to Pensacola and return. Between Huntsville, AL and Marianna, FL; from Huntsville over U.S. Hwy 231, thence over U.S. Hwy 90 to Marianna and return. Between Huntsville and Dothan, AL over U.S. Hwy 431. Between Safford and Clanton, AL over AL Hwy 22. Between Harpersville and Thomasville, AL; from Harpersville over AL Hwy 25 to junction of AL Hwy 5, thence over AL Hwy 5 to Thomasville return. Between Tallassee and Uniontown, AL; from Tallassee over AL Hwy 14 to Greensboro, thence over AL Hwy 61 to Uniontown and return. Between Cuthbert, GA and Tuscaloosa, AL over U.S. Hwy 82. Between Seale and Troy, AL; from Seale over AL Hwy 26 to junction of U.S. Hwy 82, thence U.S. Hwy 82 to junction of U.S. Hwy 29, thence U.S. Hwy 29 to Troy and return. Between Midway and Brundidge, AL; from Midway over AL Hwy 51 to Clio, thence over AL Hwy 10 to Brundidge and return. Between Gadsden and Birmingham over U.S. Hwy 411. Between Anniston and Sylacauga, AL; from Anniston over AL Hwy 21 to the junction to Alternate U.S. Hwy 231, thence over Alternate U.S. Hwy 231 to Sylacauga and return. Between Selma and Atmore, AL; from Selma over AL Hwy 41 to junction AL Hwy 21, thence over AL 21 to Atmore and return. Between Arab and Guntersville, AL over AL Hwy 69. Serving all intermediate points and serving all commercial zone points, and all points within 1 mile of the routes named, for 180 days. Applicant seeks to tack this authority with MC-2900 and subs thereto, and also to interline. Supporting shipper(s): There are approximately 224 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: District Supervisor, G. H. Fauss, Jr., ICC Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 55896 (Sub-99TA), filed October 31, 1978. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI 48180. Representative: George E. Batty (same address as applicant). *Batting, batts, pads, padding, wads, or wadding*, from Herrin, IL, to Alma, MI, for 180 days. Supporting shipper: Dayco Corporation, P.O. Box 1004, Dayton, OH 45402. Send protests to: Timothy S. Quinn, 604 Federal Building and US Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226.

NOTE.—An underlying ETA seeks 90 days authority.

MC 56799 (Sub-4TA), filed October 27, 1978. Applicant: CLAXON TRUCK LINE, INC., P.O. Box 678, Frankfort, KY 40602. Representative: George M. Catlett, 708 McClure Building, Frankfort, KY 40601. Authority sought to operate as a *common carrier*, by motor

vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Frankfort, KY, and points in its commercial zone, and Cincinnati, OH, and points in its commercial zone, from Frankfort, KY, over Interstate Hwy 64 to junction of Interstate Hwy 75, thence over Interstate Hwy 75 to Cincinnati, Oh, and return over the same route, serving no intermediate points. Applicant proposes to tack this authority at Frankfort, KY and to interline and interchange at Louisville, KY and Cincinnati, OH, for 180 days. An underlying ETA seek 90 days of authority. SUPPORTING SHIPPER(S): There are approximately 28 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: Linda H. Sypher, DS, ICC, 426 P.O. Bldg., Louisville, KY 40202.

MC 85970 (Sub-13TA), filed October 24, 1978. Applicant: SARTAIN TRUCK LINE, INC., 1354 N. Second Street, Memphis, Tennessee 38307. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, Tennessee 38137. Authority sought to operate as a common carrier by motor vehicle, in interstate and foreign commerce, over regular routes transporting: *General commodities* (except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, articles which require special equipment and items of unusual value), 1. Between Dyersburg, TN and Portageville, MO: From Dyersburg over Tennessee Highway 78 to its junction with Tennessee Highway 21, thence over Tennessee Highway 21 to the Mississippi River, thence over Missouri Highway 162 to Portageville, and return over the same route, serving all intermediate points and all points in the Tennessee Counties of Lake and Dyer as off-route points. 2. Between Nashville, TN and Trenton, TN: (a) From Nashville over U.S. Highway 70 to its junction with U.S. Highway 70-A, thence over U.S. Highway 70-A to its junction with Tennessee Highway 104, thence over Tennessee Highway 104 to Trenton, and return over the same route, serving no intermediate points. (b) From Nashville over Interstate Highway 40 to its junction with U.S. Highway 45 and/or Tennessee Highway 5, thence over U.S. Highway 45 and/or Tennessee Highway 5 to their junctions with U.S. Highway 45-W, thence over U.S. Highway 45-W to Trenton and return over the same route, serving the intermediate points of Jackson, TN. 3. Between the junction of Interstate Highway 40—Tennessee Highway 22 and Gleason, TN: From the junction of Interstate Highway 40—Tennessee Highway 22 over Tennessee Highway 22 to Gleason, and return over the same route, as an alternate route for operating convenience only. 4. Between St. Louis, MO and Nashville, TN: From St. Louis over Interstate Highway 55 to its junction with Interstate Highway 155, thence over Interstate Highway 155 to its junction with U.S. Highway 51, thence over U.S. Highway 51 (or any other available access roads) to its junction with Tennessee Highway 20, thence over Tennessee Highway 20 to its junction with Interstate Highway 40, thence over Interstate Highway 40 to Nashville, and return over the same route, serving all intermediate points between St. Louis, MO and Dyersburg, TN, including Dyersburg. 5. Between Dyersburg, TN and Nashville, TN: From Dyersburg over U.S. Highway 51 to its junction with Tennessee Highway 54, thence over Tennessee Highway 54 to its junction with U.S. Highway 70, thence over U.S. Highway 70 to its junction with Interstate Highway 40, thence over Interstate Highway 40 to Nashville, and return over the same route serving the intermediate points of Halls, Gates, Ripley, Henning, Covington, Brownsville and Jackson, TN. 6. Between Union City, TN and Fulton, KY: From Union City over U.S. Highway 51 and 45-W to Fulton, and return over the same route, serving the intermediate point of South Fulton, TN. 7. Between Union City, TN and Hickman, KY: From Union City over Tennessee Highway 5 to the Tennessee-Kentucky State Line, thence over Kentucky Highway 125 to Hickman, return over the same route, serving the port of Hickman as an off-route point. RESTRICTION: Restricted against the handling of traffic which originates at, is destined to, or is interlined at Memphis, TN, which such traffic is moving to or from St. Louis, MO or Nashville, TN; for 180 days. SUPPORTING SHIPPERS: There are approximately 55 shippers. Their statements may be examined at the office below and Headquarters. SEND PROTESTS TO: Floyd A. Johnson, ICC, 100 North Main Bldg., Suite 2006, 100 North Main St., Memphis, TN 38103.

NOTE.—Applicant intends to tack the authority here applied for to authority presently held by it in Docket No. MC 85970 and subs thereunder. Applicant further intends to interline with other carriers at Memphis, TN; Nashville, TN; St. Louis, MO; Jackson, TN; Fulton, KY; Union City, TN; Alamo, TN; Trenton, TN; and Dyersburg, TN.

MC 93186 (Sub-4TA), filed November 1, 1978. Applicant: EUDELL WATTS, III, d/b/a WATTS TRANSFER COMPANY, 825 First Avenue, Rock Island, IL 61201. Representative: Daniel C. Sullivan, 10 South LaSalle Street, Suite 1600, Chicago, Illinois 60603. *Such merchandise* as is dealt in by wholesale, retail, and chain grocery and feed business houses, Between Clinton and Davenport, IA, on the one hand, and, on the other, points in IL, IN, MI, MO, OH, and WI, for 180 days. SUPPORTING SHIPPER: L. N. Brown, Ralston Purina Company, Checkerboard Square, St. Louis, MO 63188. SEND PROTESTS TO: Lois M. Stahl, ICC, 219 South Dearborn St., Rm. 1386, Chicago, IL 60604.

MC 106401 (Sub-54TA), filed October 18, 1978. Applicant: JOHNSON MOTOR LINES, INC., P.O. Box 31577, Charlotte, NC 28231. Representative: Thomas G. Sloan (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) serving the facilities of National Home Products Co., at or near Port Gibson, MS as an off-route point in connection with applicant's existing regular-route between Atlanta, GA and Ft. Worth, TX restricted to traffic moving to, from, or through Atlanta, GA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): National Home Products Company, P.O. Box 568, Port Gibson, MS 39150. SEND PROTESTS TO: District Supervisor Terrell Price, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 106674 (Sub-354TA), filed October 23, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123-U.S. Hwy. 24 West, Remington, IN 47977. Representative: Jerry L. Johnson, P.O. Box 123, Remington, IN 47977. *Clay* and *clay products*, from Paris, Tennessee, to points in and east of the states of Minnesota, Iowa, Missouri, Arkansas and Texas, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Lowe's Inc., 348 So. Columbia Street, South Bend, IN 46601. SEND PROTESTS TO: J. H. Gray, District Supervisor, Bureau of Operations, ICC, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 109564 (Sub-18TA), filed October 23, 1978. Applicant: LYONS TRANSPORTATION LINES, INC., 138 East 26th Street, Erie, PA 16512. Representative: John P. McMahon, George, Greek, King, McMahon & McConnaughey, 100 East Broad Street, Columbus, OH 43215. Authori-

ty sought to operate as a common carrier, by motor vehicle, over regular routes, transporting: *General commodities* except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, livestock and commodities requiring special equipment (1) from Pittsburgh, PA, via U.S. Highway 22 to Holidaysburg, PA, thence via PA Route No. 36 to Altoona, PA and return over the same routes. (2) From Pittsburgh, PA via U.S. Highway 22 to Junction PA Route No. 56 thence PA Route No. 56 to Johnstown, PA and return over the same routes. (3) From Pittsburgh, via U.S. Highway 30 to Junction U.S. Highway 271, thence via U.S. Highway 271 to Johnstown, PA and return over the same routes, for 180 days. SUPPORTING SHIPPER(S): There are (32) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: John J. England, District Supervisor, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 110525 (Sub-1269TA), filed October 23, 1978. Applicant: CHEMICAL LEAMAN TANK LINES, INC., P.O. Box 200, Dowingtown, PA 19335. Representative: Thomas J. O'Brien, same as above. *Sugar, dry,* in bulk, in tank vehicles, from Yonkers, NY to Fredericksburg, VA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Refines Syrups & Sugars, Inc., 1 Federal St., Yonkers, NY 10702. SEND PROTESTS TO: T. M. Esposito, Trans. Asst., 600 Arch St., Room 3238, Phila., PA 19106.

MC 111231 (Sub-250TA), filed July 21, 1978. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, AR 72764. Representative: Don A. Smith, 510 North Greenwood, P.O. Box 43, Fort Smith, AR 72902. *Cheese, cheese food, synthetic cheese, and cheese spreads, and refused and rejected shipments,* from the facilities of L. D. Schreiber Cheese Company, Incorporated, at or near Carthage, MO and Monett, MO, to La Grange, GA, for 180 days. An underlying ETA seeks 90 day authority. SUPPORTING SHIPPER(S): L. D. Schreiber Cheese Company, Incorporated, 425 Pine Street, P.O. Box 610, Green Bay, WI 54305. SEND PROTESTS TO: William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 111812 (Sub-595TA), filed October 17, 1978. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: David Peterson (same address as applicant). *Meats, meat products, meat by-products* and *articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk) from the facilities of Farmland Foods, Inc. at or near Denison, Carroll, Iowa Falls, Sioux City, Ft. Dodge and Des Moines, IA, and Crete, Omaha and Lincoln, NE, to points in FL and GA, for 180 days. Supporting shipper: Farmland Foods, Inc., P.O. Box 403, Denison, IA 51442. Send protests to: Mr. James L. Hammond, ICC, 455 Federal Building, Pierre, SD 57501.

NOTE.—An underlying ETA seeks 90 days authority.

MC 113362 (Sub-338TA), filed October 23, 1978. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, 1105½ Eighth Avenue NE., P.O. Box 429, Austin, MN 55912. *Meats, meat products, meats by-products,* and *articles distributed by meat packinghouses,* (except hides and commodities in bulk), and foodstuffs, from the facilities of Geo. A. Hormel & Co., at Austin, and Owatonna, MN and Ft. Dodge, IA to points in AR, OK, and TX, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Geo. A. Hormel & Co., P.O. Box 800, Austin, MN, 55912. SEND PROTESTS TO: Herbert W. Allen, DS Bureau of Operations ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 116200 (Sub-15TA), filed October 13, 1978. Applicant: UNITED PARCEL SERVICE, INC. (New York), 643 West 43rd Street, New York, New York 10036. Representative: Everett Hutchinson, Suite 400, 1150 Connecticut Avenue NW., Washington, DC 20036; Application to permit Applicant to continue tacking between Applicant's Subs 2, 3 and 5 certificates. Territory covered by these certificates is: ME, NH, VT, MA, CT, RI, NY, NJ, PA, DE, MD, VA, WV, and DC, and points in OH, within ten miles of the OH-PA and the OH-WV State lines, for 90 days. SUPPORTING SHIPPERS: There are 73 shippers. Their statements may be examined at the office below or Headquarters. SEND PROTESTS TO: Maria B. Kejss, ICC, 26 Federal Plaza, New York, NY 10007.

NOTE.—An underlying ETA seeks 90 days authority.

MC 117816 (Sub-2TA), filed October 23, 1978. Applicant: BERWICK & SONS INC., Plainfield Rd., W. Lebanon, NH 03784. Representative: Donald C. Berwick (as above). Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Plastic items* and *equipment, materials* and *supplies* used in the manufacture and distribution of plastic items between the facilities of Consolidated Plastechs, Inc. in East Hampton, CT and Hampstead, NH, on the one hand, and, on the other, points and places in ME, NH, VT, CT, RI, MA, NY, MD, PA and DE, restricted against the transportation of commodities in bulk, in tank vehicles, and to the performance of a transportation service under a continuing contract or contracts with Consolidated Plastechs, Inc. of Hampstead, NH, for 180 days. SUPPORTING SHIPPER(S): Consolidated Plastechs, Inc., Rt. 111, Hampstead, NH 03841 Attn: Ken Woods President. SEND PROTESTS TO: District Supervisor, Ross J. Seymour, Bureau of Operations ICC, Rm. 3, 6 Loudon Rd., Concord, NH 03301.

MC 117883 (Sub-230TA), filed October 24, 1978. Applicant: SUBLER TRANSFER, INC., One Vista Drive, Versailles, OH 45380. Representative: Edward J. Subler (same address as applicant). *Canned and preserved foodstuffs,* from the facilities of Heinz U.S.A., Division of H. J. Heinz Company, at or near Pittsburgh, PA, to points in Kansas, Minnesota, Missouri, Nebraska and WI, restricted to traffic originating at the facilities of Heinz U.S.A., Division of H. J. Heinz Company at or near Pittsburgh, PA, and destined to the named destinations, for 180 days. SUPPORTING SHIPPER(S): Paul J. Lowry DS, ICC, 5514-B Federal Bldg., 550 Main St., Cincinnati, OH 45202.

MC 118959 (Sub-184TA), filed October 19, 1978. Applicant: JERRY LIPPS, INC., 130 S. Frederick Street, Cape Girardeau, MO 63701. Representative: Robert M. Pearce, P.O. Box 1899, Bowling Green, KY 42101. *Janitorial supplies, cleaning compounds, materials, equipment and supplies used in connection therewith,* except commodities in bulk, between Cairo and Downers Grove, IL and Lancaster, PA, on the one hand, and, on the other, points in the U.S. except AK and HI, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Servicemaster Industries, Inc., 2300 Warrenville Road, Downers Grove, IL 60515. SEND PROTESTS TO: District Supervisor P. E. Binder, Room 1465, 210 N. 12th Street, St. Louis, MO 63101.

MC 119493 (Sub-238TA), filed October 23, 1978. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone, P.O. Box 1196, Joplin, MO 64801. (1) *Plastic pipe and fittings and accessories* used in the installation of plastic pipe, from Rolla,

MO and its commercial zone to points in the U.S. in and east of MT, WY, CO, NM (2) *Materials and supplies* used in the manufacture of plastic pipe and fittings and accessories used in the installation of plastic pipe (except in bulk), from pts. in U.S. in and east of MT, WY, CO, NM, to Rolla, MO and its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Robintech, Inc., Rolla, MO. SEND PROTESTS TO: District Supervisor, John V. Barry, Rm., 600, 911 Walnut Street, Kansas City, MO 64106.

MC 121607 (Sub-9TA), filed September 18, 1978. Applicant: COLUMBIA-PACIFIC TRANSPORT CO., 208 North Gum St., (P.O. Box 6377), Kennewick, WA 99336. Representative: Michael B. Crutcher, 2000 IBM Building, Seattle, WA 98101. (1) *General commodities,* (except household goods as defined by the Commission, commodities of unusual value, and classes A and B explosives), in containers or trailers having a prior or subsequent movement by water or rail, between points in Benton, Franklin, and Walla Walla Counties, WA and points in Benton, Franklin, Walla Walla, Columbia, Garfield, Asotin, Whitman, Adams, Grant, Yakima, Lincoln, and Spokane Counties in WA, Morrow, Umatilla, Wallowa, LaGrande, Baker, Sherman, and Gilliam Counties in OR, Kootenai, Benewah, Latah, and Nez Perce Counties in ID; (2) *Empty used containers, used trailers, and used trailer chassis,* between the points described above; and (3) *Foodstuffs,* in refrigerated containers, vans, or trailers having an immediately prior or subsequent movement by rail, between Hinkle, OR, Wheeler and Othello, WA, and points in Benton, Franklin, Walla Walla, Columbia, Garfield, Asotin, Whitman, Adams, Grant, Yakima, Lincoln and Spokane Counties in WA, Morrow, Umatilla, Wallowa, LaGrande, Baker, Sherman, and Gilliam Counties in OR, Kootenai, Benewah, Latah, and Nez Perce Counties in ID, for 180 days. Applicant intends to interline with barge carriers or rail carriers at points in Benton, Franklin, and Walla Walla Counties. SUPPORTING SHIPPER(S): There are (11) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: Hugh H. Chaffee, 858 Federal Building, 915 Second Avenue, Seattle, WA 98174.

MC 124078 (Sub-891TA), filed October 13, 1978. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53201. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. *Cement,* in bulk, from Botetourt County, VA to IL, IN, KY and OH for 180 days. Supporting Shipper: Lone Star Cement, Inc., P.O. Box 420, Norfolk, VA 23501, Mr. J. R. Baiocco. Send protests to: Gail Daugherty, ICC, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

NOTE.—An underlying ETA seeks 90 days authority.

MC 124078 (Sub-892TA), filed October 17, 1978. Applicant: SCHWERMAN TRUCKING COMPANY, 611 South 28 Street, Milwaukee, WI 53215. Representative: Richard H. Prevette (Same as above). *Cement, in bulk,* in tank vehicles, from Ragland, to Brinkley, AR, for 180 days. An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): Pampa Conceret Co., Inc. 220 W. Tyng, Pampa, TX 79065. SEND PROTEST TO: Gail Daugherty, Transportation Assistant, ICC, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 124078 (Sub-893TA), filed October 17, 1978. Applicant: SCHWERMAN TRUCKING COMPANY, 611 South 28 Street, Milwaukee, WI 53215. Representative: Richard H. Prevette (Same as above). *Vegetable oil,* in bulk, in tank vehicles, from Columbus, OH to Beloit, Burlington and Milwaukee, WI, for 180 days. SUPPORTING SHIPPER(S): Capital City Products Co., P.O. Box 569, Columbus, OH 43216. SEND PROTESTS TO: Gail Daugherty, Transportaion Assistant, I.C.C., U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconcin 53202.

MC 124078 (Sub-893TA), filed October 17, 1978. Applicant: SCHWERMAN TRUCKING COMPANY, 611 South 28 Street, Milwaukee, WI 53215. Representative: Richard H. Prevette (Same as above). *Vegetable oil,* in bulk, in tank vehicles, from Columbus, OH to Beloit, Burlington and Milwaukee, WI, for 180 days. SUPPORTING SHIPPER(S): Capital City Products Co., P.O. Box 569, Columbus, OH 43216. SEND PROTESTS TO: Gail Daugherty, Transportation Assistant, I.C.C., U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconcin 53202.

MC 124328 (Sub-126TA), filed October 2, 1978, and published in the FEDERAL REGISTER issue of November 17, 1978 as MC 145463TA, and republished as corrected this issue. Applicant: BRINK'S INCORPORATED, Thorndal Circle, Darien, CT 06820. Representative: Richard H. Streeter, 1729 H Street, NW, Washington, DC 20006. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Precious metals,* between Rochester, MN and Cudahy, WI on the one hand, and, on the other, Rochester, MN, Elk Grove Village, IL, and Fairfield, CT, under a continuing contract or contracts with Handy & Harman, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Handy & Harman, Richard E. Hart, General Manager, 1770 Kings Highway, Fairfield, CT 06430. SEND PROTESTS TO: Lois M. Stahl, ICC, 219 South Dearborn Street Room 1386, Chicago, IL 60604.

MC 128527 (Sub-128TA), filed November 3, 1978. Applicant: MAY TRUCKING COMPANY, P.O. Box 400, Payette, ID 83661. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *CONCRETE PANELS AND MATERIALS AND SUPPLIES used in the installation and manufacture thereof,* from the facilities of the Reinforced Earth Company, at or near Glenns Ferry, ID, to points in CA and OR, for 180 days. Supporting shipper, the Reinforced Earth Company 1414 Twenty-second Street, N.W. Washington, D.C. 20037. Send protests to Barney L. Hardin, 1471 Shoreline Drive, Suite 110, Boise, ID. 83706.

MC 128543 (Sub-11TA), filed November 1, 1978. Applicant: CRESCO LINES, INC., 13900 South Keeler Avenue, Crestwood, IL 60445. Representative: Allan C. Zuckerman, 39 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *fire sprinkler systems, pipe, valves, sprinkler heads, pipe hangers,* and *materials used in the installation of fire sprinkler systems* and (2) *materials, equipment and supplies used in the manufacture, installation, and distribution of fire sprinkler systems,* between points in the United States east of ND, SD, NE, KS, OK, and TX, under continuing contract with Grinnell Fire Protection Systems Company, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Grinnell Fire Protection Systems Company, John R. Horner, Corporate Traffic Manager, 10 Dorrance Street, Providence, RI 02903. Send protests to: Lois Stahl, ICC, Room 1386, 219 South Dearborn Street, Chicago, IL 60604.

MC 129032 (Sub-60TA), filed October 17, 1978. Applicant: TOM INMAN TRUCKING, INC., 6015 So. 49th West Ave., Tulsa, OK 74107. Representative: David R. Worthington, 6015 So. 49th West Ave., Tulsa, OK 74107. *Animal*

feed, feed ingredients, additives, supplements, materials and supplies used in the manufacture and promotion of animal feed, between the facilities of Kal Kan Foods, Inc., at or near Hutchinson, KS on the one hand, and on the other, points in the states of AR, CO, IL, IN, IA, MN, MO, NE, & OH, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Kal Kan Foods, Inc., 3386 E. 44th Street, Vernon, CA 90058. SEND PROTESTS TO: Connie Stanley, Trans. Asst., Rm. 200 Old Post Office & Courthouse Bldg., 215 NW. 3rd, Oklahoma City, OK 73102.

MC 134467 (Sub-34TA), filed October 11, 1978. Applicant: POLAR EXPRESS, INC., P.O. Box 845, Springdale, AR. 72764. Representative: Charles M. Williams, Kimball, Williams & Wolfe, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. *Candy, confectionery products and foodstuffs*, (except in bulk), from the facilities utilized by the Nestle Company, at or near Burlington, WI., to Memphis, TN., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): The Nestle Company, 100 Bloomingdale Road, White Plains, NY. 10605. SEND PROTESTS TO: William H. Land, Jr., DS, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR. 72201.

MC 135082 (Sub-77TA), filed October 19, 1978, and published in the FEDERAL REGISTER issue of November 28, 1978 as MC 135082 (Sub-33TA), and republished as corrected this issue. Applicant: ROADRUNNER TRUCKING, INC., P.O. Box 26748, 415 Rankin Road, NE, Albuquerque, MN 87125. Representative: Randall R. Sain (Same as above). *Brick and tile, and the commodities used in the installation thereof*, from Los Angeles and Elsinore, CA, to points in AR, LA and OK, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Pacific Clay Building Products, 9500 South Norwalk Boulevard, Santa Fe Springs, CA 90607. SEND PROTESTS TO: ICC District Supervisor, 1106 Federal Office Building, 517 Gold Avenue, SW, Albuquerque, NM 87101.

MC 136605 (Sub-78TA), filed October 17, 1978. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as applicant). *Wrought iron pipe*, from the facilities of Unarco-Leavitt located at or near Chicago, Blue Island, and Evanston, IL, to destinations in CA, IA, KS, MO, NE, OK, TX, and WA; also Vermillion, SD, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER: Unarco-Leavitt Div., Unarco Industries, Inc., 1717 W. 115th St., Chicago, IL 60643. SEND PROTESTS TO: Paul J. Labane, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 136605 (Sub-80TA), filed November 8, 1978. Applicant: DAVIS BROS. DIST., INC., Post Office Box 8058, Missoula, Montana 59807. Representative: Allen P. Felton (same address as above applicant). *Steel Pipe and Seamless Oil Well Casing*, from the facilities of PENTON, INC., at or near Seattle, WA, to points in MT, ID, WY, ND, SD, UT, and CO, for 180 days. SUPPORTING SHIPPER: Penton Pipe & Tube Corp., Pier 91, Bldg. 47, Seattle, WA 98119. SEND PROTESTS TO: Paul J. Labane, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 138144 (Sub-39TA), filed November 1, 1978. Applicant: FRED OLSON CO., INC., 6022 West State Street, Milwaukee, WI 53213. Representative: William D. Brejcha, 10 S. LaSalle St., Chicago, IL 60603. *Wrought iron pipe*, From the facilities of Unarco-Leavitt Division, Unarco Industries, at or near Blue Island, Chicago and Evanston, IL, to points in MN, for 180 days. SUPPORTING SHIPPER: Unarco-Leavitt Div., Unarco Industries, Inc., 1717 West 115th St., Chicago, IL 60643. SEND PROTESTS TO: Gail Daugherty, ICC, U.S. Federal Bldg. & Courthouse, 517 East Winconsin Ave., Rm. 619, Milwaukee, WI 53202.

NOTE.—An underlying ETA seeks 90 days authority.

MC 138265 (Sub-1TA), filed October 23, 1978. Applicant: W. A. BARNES TRUCKING CO., INC., Rt. 2, Box 234 D-1, Stoney Creek, Virginia 23882. Representative: Calvin F. Major, Attorney at Law, 200 West Grace Street, Suite 415, Richmond, Virginia 32220. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber* and *building materials*, from points in VA to points in NY, NJ, CT, MA, NH, VT, ME, RI, PA, MD, DE, DC, OH, WV, TN, NC, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): The Continental Group, Inc., P.O. Box 8969, Savannah, GA 31402. Wrenn Lumber Corp., P.O. Box 1002, Roanoke, VA 24005. Roper Brothers Lumber Co., Inc., P.O. Box 630, 130 Pocahontas Street, Petersburg, VA 23803. SEND PROTESTS TO: District Supervisor Paul D. Collins, Bureau of Operations, Rm. 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 139495 (Sub-77TA), filed August 21, 1978, and published in the FEDERAL REGISTER issue of October 25, 1978, and republished as corrected this issue. Applicant: NATIONAL CARRIER, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan

Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. (1) *Paper and paper products*, from the facilities of Union Camp Corp., at or near Tifton, GA, to points in the U.S.; and (2) *materials, equipment, and supplies used in the manufacture and distribution of paper and paper products* (except commodities in bulk), from points in the U.S. to the facilities of Union Camp Corp., at or near Tifton, GA, for 180 days. SUPPORTING SHIPPER(S): Union Camp Corporation, 1600 Valley Road, Wayne, NJ 07470. SEND PROTESTS TO: M. E. Taylor, ICC, 101 Litwin Building, Wichita, KS 67202. The purpose of this republication is to reflect the proper territory sought.

MC 139917 (Sub-7TA), filed October 18, 1978. Applicant: SEARAIL, INC., 701 South Royal Street, P.O. Box 909, Mobile, AL 36601. Representative: George M. Boles, 727 Frank Nelson Building, Birmingham, AL 35203. *General commodities* (except Classes A and B explosives, those injurious to other lading, and those requiring special equipment), (1) Between Mobile, AL and Evergreen, AL (a) from Mobile over U.S. Highway 31 to Evergreen, AL and return over the same route, serving all intermediate points. (b) from Mobile over U.S. Highway Interstate 65 and return over the same route, for operating convenience only, with no service at intermediate points. (2) Between Bay Minette, AL and Evergreen, AL; from Bay Minette over Alabama State Highway 59 to its intersection with Alabama State Highway 21 at or near Uriah, AL, then over Alabama State Highway 21 to its intersection with U.S. Highway 84, then over U.S. Highway to Evergreen and return over the same route. (3) Between Monroeville, AL and Hybart, AL; from Monroeville over Alabama State Highway 47/21 to Beatrice, AL, then over unnumbered County State Highway to its intersection with County Highway 56 south of Chestnut, AL, then over Alabama State Highway 56 via Vredenburgh to Hybart and return over the same route, serving all intermediate points. Serving as off-route points in connection with route (2) above, Claiborne, Perdue, Hill, Mexia, Monroeville, Goodway, Huxford, McCullough, Lottie, Rabun, Robinsville, Sardine, Range, Daphne, and Loxley, AL, for 180 days. Applicant intends to tack the authority here applied for to the authority presently held by it. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): There are approximately (16) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: Mabel E. Holston, Trans. Asst., Room 1616, 2121 Bldg., Birmingham, AL 35203.

MC 139979 (Sub-3TA), filed October 18, 1978. Applicant: AMERICAN COLLOID CARRIER CORP., P.O. Box 706, Gering, NE 69361. Representative: James P. Beck, Suite 2600-717 17th Street, Denver, CO 80202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Railroad car wheel sets*, between Alliance, NE, on the one hand, and Oelwein, IA; El Dorado, KS; Laurel and Miles City, MT; Hugo, OK; Ft. Worth, TX; and Evanston, WY, restricted to a transportation service to be performed under a continuing contract, or contracts, with Railcar Maintenance Company of CA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Railcar Maintenance Company of California, 50 California Street, San Francisco, CA 94111. SEND PROTESTS TO: Max Johnston, District Supervisor, 285 Federal Building, Lincoln, NE 68508.

MC 141581 (Sub-1TA), filed September 1, 1978, and published in the FEDERAL REGISTER issue of November 9, 1978 as MC 145333TA, and republished as corrected this issue. Applicant: JAMES P. DOYLE, d/b/a J. DOYLE TRUCKING, P.O. Box 76, Wisconsin Dells, WI 53965. Representative: David V. Purcell, 111 East Wisconsin Avenue, Milwaukee, WI 53202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Vinyl, loose-leaf binder mechanisms, and chipboard*, from Lynn and New Bedford, MA, Burlington, NJ, Winchester, VA, Toledo, OH, and Chicago, IL, to Edgerton, MN, under a continuing contract or contracts with Fey Industries, Inc., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Fey Industries, Inc., 200 Fourth Avenue West, Edgerton MN 56128. SEND PROTESTS TO: Ronald A. Morken, ICC, 212 East Washington Avenue, Room 317, Madison, WI 53703.

MC 141932 (Sub-5TA), filed November 1, 1978. Applicant: POLAR TRANSPORT, INC. 176 King Street, Hanover, MA 02339. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. *Soap, cleaning, scouring and washing compounds, and Softeners* (exempt commodities in bulk), from the facilities of the Procter and Gamble Company at points in the Baltimore, MD Commercial Zone, to points in CT, MA, ME, NH, RI and VT, for 180 days. Supporting shipper: Procter and Gamble Distributing Company, Division of Procter and Gamble Company, Cincinnati, OH 45201. Send protests to: John

B. Thomas, ICC, 150 Causeway Street, Boston, MA 02114

MC 143058 (Sub-6 TA), filed October 23, 1978; Applicant: TRANS WEST CARRIERS, INC., 111 Erie Street, Pamona, CA. 91768. Representative: Richard C. Celio, 1415 West Garvey Avenue, Suite 102, West Covina, CA. 91790. Authority sougth to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commoditities* that are dealt in by a manufacturer of toilet articles and cosmetics (except commodities in bulk), from Monrovia and Pasadena, CA., to points in Oregon and Wash., under a continuing contract or contracts, with Avon, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Avon, 1600 South Shamrock, Monrovia, CA. 91016. SEND PROTESTS TO: Walter W. Strakosch DS, ICC, Room 1321 Federal Bldg., 300 N. Los Angeles Street, Los Angeles, CA. 90012.

MC 143436 (Sub-15 TA), filed October 17, 1978. Applicant: CONTROLLED TEMPERATURE TRANSIT, INC., 9049 Stonegate Road, Indianapolis, IN 46227. Representative: Stephan M. Gentry, 1500 Main Street, Speedway, IN 46224. *Confectionery items, dessert preparations, gumball machines and stands and display and advertising material* in vehicles equipped with mechanical refrigeration. From the facilities of Leaf Confectionery, Inc. located at or near Chicago, IL, to points in IN, KY, MI, OH, and WV, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Leaf Confectionery, Inc., 1155 North Cicero Avenue, Chicago, IL 60651. SEND PROTESTS TO: Beverly J. Williams, Transportation Assistant, ICC, Federal Building & U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, Indiana 46204.

MC 143678 (Sub-4TA), filed October 13, 1978. Applicant: PAUL NICKLAUS dba NICK'S TRUCKING, 1805 Lloyd Street, Apartment 1B, Bellevue, Nebraska 68005. Representative: Paul D. Kratz, Suite 610, 7171 Mercy Road, Omaha, Nebraska 68106. (1) *concrete products*, from the facilities of Wilson Concrete Co. at or near Washington and Buffalo, Iowa, to points in Iowa, Illinois and Missouri; and (2) *steel articles*, from points in Illinois to the facilities of Wilson Concrete Co. at or near Washington and Buffalo, Iowa. SUPPORTING SHIPPER: Wilson Concrete Co., Washington, Iowa 52353. Send protests to Carroll Russell, ICC, Suite 620, 110 North 14th Street, Omaha, Nebraska 68102.

NOTE.—Applicant has filed underlying ETA for 90 days of operating authority.

MC 144077 (Sub-3TA), filed October 23, 1978. Applicant: MINI TRUCK LINES, INC., 1820 W. University Dr., Lot 21, Tempe, AZ 85281. Representative: Donald E. Fernaays, 4040 E. McDowell Rd., Suite 320, Phoenix, AZ 85008. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Uncrated mini cars, (replicas toys)*, from Tempe, AZ to points in the United States, except AK and HI, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): F W & Associates, Inc., 2605 W. First St., Tempe, AZ 85281. SEND PROTESTS TO: Andrew V. Baylor, District Supervisor, ICC, Rm. 2020 Federal Bldg., 230 N. First Ave., Phoenix, AZ 85025.

MC 145170 (Sub-1TA), filed August 11, 1978. Applicant: BRELAR, INC., P.O. Box 796, Greenville, MS 38701. Representative: C. Edward Glasscock, 1600 Citizens Plaza, Louisville, KY 40202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs* (except frozen and in bulk): and (2) *materials, equipment, and supplies* (except commodities in bulk) used or useful in the manufacture, distribution, and sale of foodstuffs, from points in the United States (except AK, HI, and MS) to the facilities of Vlasic Foods, Inc., at or near Greenville, MS, under a continuing contract or contracts with Vlasic Foods, Inc., for 180 days. SUPPORTING SHIPPER(S): Vlasic Foods, Inc., 33200 W. 14 Mile Road, W. Bloomfield, MI 48033. SEND PROTESTS TO: Alan C. Tarrant, Room 212, 145 East Amite Building, Jackson, MS 39201.

MC 145342 (Sub-1TA), filed September 7, 1978. Applicant: C & B OF VIRGINIA, INC., 130 Christian Avenue, N.E., Roanoke, VA 24012. Representative: L. N. Cleveland (Same as above). *Insulating materials*, from Spring Hope, NC, to points in the United States in or east of WI, IL, KY, TN, MS and LA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Spring Hope Rockwool, Inc., Spring Hope, NC 27882. SEND PROTESTS TO: ICC District Supervisor, P.O. Box 210, Roanoke, VA 24011.

MC 145383 (Sub-1TA), filed October 5, 1978, and published in the FEDERAL REGISTER issue of November 21, 1978, and republished as corrected this issue. Applicant: JAMES RENALDO AND GAY ROSE RENALDO, d.b.a. KAI MOTOR FREIGHT, I-295 and Harmond Road, Gibbstown, NJ 08027. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting:

Cleaning, washing and polishing soaps and compounds, varnishes, rust preventatives, oils, and greases (except in bulk, and on return, *materials, equipment, and supplies* used in the manufacture, sale and distribution thereof (except in bulk), from Avenel, NJ, to points in AR, FL, GA, NC, SC, TN and TX, under a continuing contract or contracts with Economics Laboratory, Inc., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Economics Laboratory, Inc., 255 Blair Road, Avenel, NJ 07001. SEND PROTESTS TO: John P. Lynn, ICC, 428 East State Street, Room 204, Trenton, NJ 08608. The purpose of this republication is to *soaps* in lieu of scaps and also to add Texas (TX) as a destination point as previously omitted.

MC 145467 (Sub-1TA), filed October 24, 1978. Applicant: D & N ENTERPRISES, INC., 511 Morning Star Lane, Idaho Falls, ID 83401. Representative: Jerold G. Oldroyd, 485 "E" Street, Idaho Falls, ID 83401. Authority sought to operate in interstate or foreign commerce as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *LUMBER, LUMBER MILL PRODUCTS, PARTICLEBOARD, SHAKES AND SHINGLES*, from points in ID, WA, OR, MT, west of Interstate 15; CA, north of Interstate 80, to points in WY and CO. Supporting shippers: Denver Reserve Company 555 West 48th Avenue, Denver, CO 80216. Send protestes to Barney L. Hardin, ICC, 1471 Shoreline Drive, Suite, 110, Boise, ID 83706.

MC 145596TA, filed October 23, 1978. Applicant: A & M EXPRESS, INC., 618 United American Bank Building, Nashville, TN 37219. Representative: Robert L. Baker, 618 United American Bank Building, Nashville, TN 37219. *Mining equipment, motors, conveyors,* and *related parts, and commodities* used in the manufacture and distribution of mining equipment, motors, and conveyors, between Rutherford County, TN on the one hand, and on the other, points in the United States in and east of ID, UT, and AZ, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Goodman Conveyor Corporation, 450 Butler Road, Murfreesboro, TN 37130. SEND PROTESTS TO: Glenda Kuss, Transportation Asst., Bureau of Operations ICC, Suite A-422—U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 145623TA, filed October 25, 1978. Applicant: O.K. MESSENGER SERVICE, INC., 9107 South Telegraph Road, Taylor, MI 48180. Representative: David E. Jerome, 22375 Haggerty Road, PO. Box 400, Northville, MI 48167. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Over-length structural steel beams, angles and channels*, in excess of 40 feet in length, transported with trailers extendable to at least 60 feet in length from the facility of Federal Pipe and Steel Corporation, Plymouth, MI, to IL, IN, KY, OH, PA, WV, NY, VA, and WI, under a continuing contract or contracts with Federal Pipe and Steel Corporation, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Federal Pipe and Steel Corporation, 41600 Joy Road, Plymouth Township, MI. SEND PROTESTS TO: Timothy S. Quinn, District Supervisor, 604 Federal Building & U.S. Courthouse, 231 W. Lafayette Boulevard, Detroit, MI.

MC 145782 (Sub-1TA), filed September 28, 1978, and published in the FEDERAL REGISTER issue of November 17, 1978 as MC 143503 (Sub-15TA), and republished as corrected this issue. Applicant: MERCHANTS HOME DELIVERY SERVICE OF TEXAS, INC., P.O. Box 5067, Oxnard, California 93031. Representative: David B. Schneider, P.O. Box 1540, Edmond, Oklahoma 73034. *New furniture, furnishings, and appliances*, from the facilities of Finger Furniture Company, Inc., at or near Beaumont and Houston, TX, to points in Acadia, Allen, Beauregard, Calcasie, Cameron, Evangeline, Jefferson Davis, Lafayette, Rapides, Sabine, Vermilion, and Vernon Parishes, LA for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Finger Furniture Company, Inc., P.O. Box 194, Houston, TX 77001. Send protests to: Walter W. Strakosch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

PASSENGER CARRIER

MC 143475 (Sub-3TA), filed October 16, 1978. Applicant: POTOMAC VALLEY TRANSIT AUTHORITY, dba POTOMAC COMMUTER, 46 S. Main Street, Petersburg, WV 26847. Representative: J. Douglas Carter, Director (Same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage, in the same vehicle*, between Keyser, WV and Westvaco at Westernport, MD; serving the intermediate point of Piedmont, WV; from Keyser, WV over U.S. Route 220 to its junction with WV Route 46, then over WV Route 46 to Piedmont, WV, then over MD Route 36 to its intersection with MD Route 135 to Westvaco in Westernport, MD, for 180 days. An underlying ETA seeks 90 days authority.

SUPPORTING SHIPPER(S): Westvaco Corporation, Luke, MD 21540. SEND PROTESTS TO: J. A. Niggemyer, District Supervisor, 416 Old Post Office Building, Wheeling, WV 26003.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-34947 Filed 12-14-78; 8:45 am]

[7035-01-M]

ELIMINATION OF NOTIFICATION PROCEDURE IN THE PROCESSING OF EMERGENCY TEMPORARY AUTHORITY APPLICATIONS UNDER 49 U.S.C. 10928

DECEMBER 11, 1978.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of procedural change.

SUMMARY: The Commission has determined that it is no longer necessary for its field staff to notify competing carriers and other interested parties when a motor carrier files an application for an Emergency Temporary Authority (ETA). The time saved by the Commission employees will enable them to handle ETA applications more efficiently and expeditiously, resulting in a substantial monetary saving to the Commission and improved transportation service to the public.

EFFECTIVE DATE: January 2, 1979.

FOR FURTHER INFORMATION CONTACT:

William F. Sibbald, Jr., Tel. (202) 275-7844.

SUPPLEMENTARY INFORMATION: In considering whether to discontinue the ETA notification process, the Commission has determined that discontinuance would have little adverse effect, if any, on applicants, competing carriers, or supporting shippers. Further, neither 49 U.S.C. 10928 (formerly section 210a(a) of the Interstate Commerce Act) nor any current Commission regulation requires notification.

A survey of the time which the Commission's technical and clerical staff spends notifying carriers and interested parties of the filing of ETA applications has disclosed that a large amount of time is devoted to this activity in each of the Commission's six regions. Since ETA's are limited to 30 days in duration, since applicants must show an immediate need for the proposed service, and since supporting shipper statements must be made under oath, the Commission sees no need to continue its present practice.

The field staff will continue to accept protests if a competing carrier becomes aware of the pendency of an ETA application. In addition, any adversely affected carrier may appeal an ETA grant, any time within 15 days after it becomes aware of the grant.

The Commission anticipates that a substantial saving in person-years will result from this action, thus providing an opportunity for field staff resources to be directed more towards the handling of consumer assistance and compliance matters.

Provisions for notice and comment are being omitted because of the exemptions in the Administrative Procedure Act, 5 U.S.C. 553(b)(A) and (B). This change constitutes a general statement of Commission policy that will have little, if any, substantive or binding impact on interested parties. Therefore, for good cause, notice and public comment are unnecessary since the technical change in practice is not major and it will have little adverse effect.

Dated: December 1, 1978.

By the Commission, Chairman O'Neal, Vice Chairman Christian, Commissioners Brown, Stafford, Gresham. Commissioner Clapp dissenting.

H. GORDON HOMME, Jr.,
Secretary.

[FR Doc. 78-34940 Filed 12-14-78; 8:45 am]

[1505-01-M]

[Decisions Volume No. 42]

DECISION-NOTICE

Correction

In FR Doc. 78-30895 appearing at page 51167 in the issue for Thursday, November 2, 1978, on page 51172, in the middle column, in the paragraph for "MC 118989 (Sub.-204F)", in the 11th line, after the word "containers" insert "(except commodities in bulk), between points in the United States".

[7035-01-M]

[Notice No. 194]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-29539 appearing at page 48799 in the issue for Thursday, October 19, 1978, make the following correction: On page 48800, in the third column, in the third full paragraph,

"MC 12617 (Sub-407TA)" should read "MC 112617 (Sub-407TA)".

[7035-01-M]

[Notice No. 200]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-31589 appearing at page 52328 in the issue for Thursday, November 9, 1978, make the following correction: On page 52334, in the middle column, in the first full paragraph, "MC 145251 (Sub-1TA)" should read "MC 145241 (Sub-1TA)".

[7035-01-M]

[Notice No. 201]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Important Notice

Correction

In FR Doc. 78-31590 appearing at page 52335 in the issue for Thursday, November 9, 1978, make the following correction: On page 52335, in the third column, under the heading, "MOTOR CARRIERS OF PROPERTY", in the third paragraph, "MC 10311 (Sub-49TA)" should read "MC 19311 (Sub-49TA)".

[7035-01-M]

[Notice No. 202]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-31711 appearing at page 52594 in the issue for Monday, November 13, 1978, make the following corrections:

(1) On page 52595 in the middle column, in the second full paragraph, "MC 95540 (Sub-104TA)" should read "MC 95540 (Sub-104 1TA)".

(2) Also on page 52595 in the middle column, in paragraph MC 95540 (Sub-104 1TA), in the 2nd line, "WALKINS" should read "WATKINS".

[7035-01-M]

[Notice No. 207]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-31974 appearing at page 52828 in the issue for Tuesday, November 14, 1978, make the following correction: On page 52835, in the first column, in the third paragraph, "MC 145041 (Sub-37TA)" should read "MC 145041 (Sub-3TA)".

[7035-01-M]

[Notice No. 206]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-31975 appearing at page 52836 in the issue for Tuesday, November 14, 1978, make the following correction: On page 52841, in the middle column, in the second paragraph, "MC 14118 (Sub-6TA)" should read "MC 140118 (Sub-6TA)".

[7035-01-M]

[Decisions Volume No. 43]

DECISION-NOTICE

Correction

In FR Doc. 78-31591 appearing at page 52341 in the issue for Thursday, November 9, 1978, make the following corrections:

(1) On page 52345, in the first column, in the second full paragraph, "MC 106389 (Sub-844F)" should read "MC 106398 (Sub-844F)"

(2) Also on page 52345, in the first column, in the fourth full paragraph, "MC 106603 (Sub-18F)" should read "MC 106603 (Sub-184F)".

(3) On page 52347, in the first column, in the first full paragraph, "MC 114273 (Sub-463F)" should read "MC 114273 (Sub-464F)".

[1505-01-M]

[Volume No. 121]

PETITIONS, APPLICATIONS, FINANCE MATTERS (INCLUDING TEMPORARY AUTHORITIES), ALTERNATE ROUTE DEVIATIONS, AND INTRASTATE APPLICATIONS

Correction

In FR Doc. 78-30896 appearing at page 51178 in the issue for Thursday, November 2, 1978, make the following corrections:

(1) On page 51178, in the third column, the paragraph beginning "MC 30204 (Sub-17) (MF)" should begin "MC 30204 (Sub-17) (M1F)".

(2) On page 51182, in the first column, the paragraph beginning "MC 133119 (Sub-89(MIF)" should begin "MC 133119 (Sub-89)(M1F)".

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6351-01-M]

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., December 19, 1978.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Fiscal Year 1979 Second Quarter Commission Calendar.

Recommendation of Final Rule on Daily speculative Trading Limits.

Issues Paper on Revision of Commission Procedures for Registration of Associated Persons.

Proposed Amendment to Part 15 of the Regulations to Raise the Reporting levels for Five Commodities.

Proposed Rule 1.52 (the 25 percent Rule).

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2526-78 Filed 12-13-78; 11:43 am]

[6712-01-M]

2

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, December 19, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special Open Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Broadcast—1—AM Clear Channel Reallocation Proceeding (Docket No. 20642).

Broadcast—2—Petition for rulemaking to amend Television Table of Assignments to add new VHF stations in the top 100 markets and to assure that the new stations maximize diversity of ownership, control and programming.

This meeting may be continued the following workday to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone 202-632-7260.

Issued: December 13, 1978.

[S-2528-78 Filed 12-13-78; 3:34 pm]

[6715-01-M]

3

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Wednesday, December 20, 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 and Audit Policy, Compliance, Personnel.

DATE AND TIME: Thursday, December 21, 1978 at 10 a.m.

STATUS: Portions of this meeting will be open to the public and portions will be closed.

MATTERS TO BE CONSIDERED:

Portions open to the public:

Setting of dates for future meetings.

Correction and approval of minutes.

Advisory opinions: AO 1978-86, AO 1978-89.

First fiscal year 1979 management report.

Proposed addition to information sheet on disclosure documents.

Outreach program for presidential candidates.

Recommendations for membership on clearinghouse advisory panel.

Draft regulations for presidential primary matching fund, Title 11, Code of Federal Regulations, Subchapter C.

Appropriations and budget.

Pending litigation.

Liaison with other Federal agencies.

Classification actions.

Routine administrative matters.

Portions of the meeting closed to the public:

Any matters not concluded on December 20, 1978.

PERSONS TO CONTACT FOR INFORMATION:

Ms. Sharon Snyder, Press Office, telephone 202-523-4065.

LENA L. STAFFORD,
Acting Secretary to the Commission.

[S-2529-78 Filed 12-13-78; 3:34 pm]

[6210-01-M]

4

FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10:00 a.m. Wednesday, December 20, 1978. The closed portion of the meeting will commence at the conclusion of the open discussion.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Part of the meeting will be open; part will be closed.

MATTERS TO BE CONSIDERED: Open portion.

SUMMARY AGENDA

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a memeber of the Board requests that the item be moved to the discussion agenda.

1. The Board's 1978 Annual Report to the Congress on Truth in Lending.

DISCUSSION AGENDA

1. Proposed revisions to Regulation 2 (Truth in Lending) regarding methods of calculating and disclosing annual percentage rates.

2. Proposed regulations to implement sections of the Electronic Fund Transfer Act limiting liability for the unauthorized use of an EFT card and restricting the unsolicited distribution of such cards.

3. Proposed Federal Reserve Board budget for 1979.

4. Any agenda items carried forward from a previously announced meeting.

NOTE.—The open portion of this meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling 202-452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Closed portion:

1. Various matters relating to internal personnel rules and procedures reflected in the employee benefits plans of the Federal Reserve Banks.
2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Date: December 12, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-2525-78 Filed 12-13-78; 11:43 am]

[7600-01-M]

5

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 57420, December 7, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 1 p.m. on December 13, 1978.

CHANGES IN THE MEETING: This meeting will be canceled and rescheduled at a later date to be announced.

[S-2524-78 Filed 12-13-78; 11:43 am]

[3210-01-M]

6

OVERSEAS PRIVATE INVESTMENT CORPORATION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT 3210-01-M, December 7, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m., Tuesday, December 12, 1978.

CHANGES IN THE MEETING: Immediately before the above cited meeting was convened, an additional item was added to the closed portion of the meeting by recorded vote of a majority of the active directors: Resolved that the business of the Corporation requires the including of Proposal (8) OPIC Finance for a Latin American Country an additional item on the closed portion of the Agenda; and further resolved that no earlier announcement of the change in the Agenda was possible.

CONTACT PERSON FOR MORE INFORMATION:

Elizabeth A. Burton, Corporate Secretary, (202) 632-1839.

ELIZABETH A. BURTON.

DECEMBER 12, 1978.

[S-2523-78 Filed 12-13-78; 11:43 am]

[8010-01-M]

7

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of December 18, 1978, in Room 825, 500 North Capitol Street, Washington, D.C.

A closed meeting will be held on Tuesday, December 19, 1978 at 10 a.m. An open meeting will be held on Thursday, December 21, 1978 at 10 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be 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 and Commissioners Loomis, Evans, Pollack and Karmel determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 19, 1978, at 10 a.m., will be:

Access to investigative files by Federal, State or self-regulatory authorities.
Consideration of amicus participation.
Formal orders.
Freedom of Information Act appeals.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Litigation matter.
Settlement of administrative proceedings of an enforcement nature.
Subpoena enforcement actions.

The subject matter of the open meeting scheduled for Thursday, December 21, 1978, at 10 a.m., will be:

1. Consideration of a request by The Firestone Tire & Rubber Company that the Commission review the Division of Corporation Finance's determination concerning a shareholder proposal submitted to the Company by Mr. Edward C. Calvert. For further information, please contact William E. Morley at 202-755-1240.
2. Consideration of a release that would amend the uniform net capital rule as it pertains to the treatment to be accorded specific receivables and undue concentration deductions relating to transactions in municipal securities. For further information, please contact James G. Moody at 202-376-8135.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Nancy Wojtas at 202-755-1129.

DECEMBER 12, 1978.

[S-2527-78 Filed 12-13-78; 3:34 pm]

federal register

FRIDAY, DECEMBER 15, 1978
PART II



DEPARTMENT OF LABOR

Employment Standards Administration

■

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

[4510-27-M]

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.

MODIFICATION 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.

California:	
CA78-5006; CA78-5007	Jan. 27, 1978.
CA78-5122	Aug. 11, 1978.
CA78-5123	Aug. 18, 1978.
Kansas:	
KS78-4007	Feb. 3, 1978.
Louisiana:	
LA78-4099	Oct. 6, 1978.
LA78-4113	Oct. 13, 1978.
New Hampshire:	
NH78-2100; NH78-2101	Oct. 6, 1978.
NH78-2164	Dec. 1, 1978.
Pennsylvania:	
PA78-3005	Feb. 24, 1978.
Rhode Island:	
RI78-3050; RI78-3051; RI78-3052	July 21, 1978.
Texas:	
TX78-4017	Mar. 10, 1978.
TX78-4034; TX78-4038	Apr. 14, 1978.
TX78-4079	Aug. 11, 1978.
TX78-4080	Aug. 4, 1978.
TX78-4081	Aug. 18, 1978.
TX78-4082; TX78-4083; TX78-4084; TX78-4085; TX78-4086; TX78-4087; TX78-4088	Aug. 25, 1978.
TX78-4090; TX78-4091	Sept. 15, 1978.
TX78-4095; TX78-4096	Sept. 22, 1978.
TX78-4114	Oct. 20, 1978.
TX78-4115	Dec. 1, 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.

District of Columbia:	
DC78-3008(DC78-3098)	Mar. 17, 1978.
Maryland:	
DC78-3008(DC78-3098)	Mar. 17, 1978.
Pennsylvania:	
PA78-3103(PA78-3099)	July 22, 1978.
Virginia:	
DC78-3008(DC78-3098)	Mar. 17, 1978.

CANCELLATION OF GENERAL WAGE DETERMINATION DECISIONS

General Wage Determination Decision No. MS77-1062 Lafayette County, Mississippi is cancelled. Agencies with building construction projects pending in this County should utilize the project determination procedure by submitting form SF-308. See Regulations Part 1 (29 CFR), Section 1.5. Contracts for which bids have been opened shall not be affected by this notice, and consistent with 29 CFR 1.7(b)(2), the incorporation of Decision No. MS77-1062 in contract specifications the opening of bids for which is within ten (10) days of this notice need not be affected.

Signed at Washington, D.C. this 8th day of December 1978.

DOROTHY P. COME,
Assistant Administrator,
Wage and Hour Division.

DECISION NO. CA78-5006 - Mod. #2
(43 FR 3659 - January 27, 1978)
San Diego County, California

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Brick, Block and Stonemasons' Tenders	$10.62	.77	2.05		
Glaziers	12.10	.95	1.30		
Plumbers, Steamfitters	13.12	10%	16%	13%	2%

DECISION NO. CA78-5007 - Mod. #2
(43 FR 3863 - January 27, 1978)
San Diego County, California

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Brick, Block and Stonemasons' Tenders	$10.62	.77	2.05		
Glaziers	12.10	.95	1.30		
Plumbers; Steamfitters	13.12	10%	16%	13%	2%

DECISION NO. CA78-5122 - Mod.#3
(43 FR 35835 - August 11, 1978)
Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties, California

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Plumbers; Steamfitters: Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties	$13.12	10	16	13%	2%

DECISION NO. CA78-5123 - Mod. #3
(43 FR 35835 - August 11, 1978)
Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties, California

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Plumbers; Steamfitters: Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties	$13.12	10	16	13%	2%

DECISION NO. KS78-4007 - Mod. #2
(43 FR 4908 - February 3, 1978)
Leavenworth, County, KS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	$12.67	.60	1.55		.05
Boilermakers	12.00	1.15	1.00		.03
Bricklayers - Stonemasons	11.025	.80	.35	1.00	
Cement Masons	10.925	.65	.50		
Ironworkers	10.80	.70	1.40	1.00	.05
Lathers	11.98	.40			
Marble Setters & Tile Setters	11.95	5%	4.25%		
Pipefitters	12.98	.67	1.50		.10
Plasterers	12.50				
Plumbers	13.14	.85	1.05		.12
Roofers	10.80	.75	.75		.14
Sheet Metal Workers	9.96	.75	.625		.08
Sprinkler Fitters	11.93	.75	1.05		.08
Terrazzo Workers	11.61	5%	4.25%		

DECISION #LA78-4099 - Mod. #5
(43 FR 46449 - October 6, 1978)
Statewide Louisiana

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$11.05	.80	1.00		.02
Electricians:					
Zone 6 - Electricians	12.05	1.15	3%		1%
Cable splicers	12.55	1.15	3%		1%
Line construction:					
Zone 7:					
Linemen; Operators	12.05	1.15	3%		1%
Cable splicers	12.55	1.15	3%		1%

DECISION #LA78-4113 - Mod. #4
(43 FR 47429 - October 13, 1978)
Bossier, Caddo & Calcasieu Parishes, Louisiana

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	11.05	.80	1.00		.02
Electricians:					
Bossier & Caddo Parishes:					
Electricians	12.05	1.15	3%		1%
Cable splicers	12.55	1.15	3%		1%

MODIFICATIONS P. 3

DECISION NO. NH78-2100- Mod #1 (43 FR 46466- October 6, 1978) Hillsboro & Merrimack Counties, New Hampshire	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Hillsboro County (Build.&Heavy):					
Boilermakers	$12.30	1.05	10%		.02
Electricians: Rem. of County	11.25	.50	3%		.03
Line Construction:					
Linemen	9.84	.70	3%+.50	d	3/8of1%
Equipment operators	9.24	.70	3%+.50	d	3/8of1%
Groundmen	6.86	.70	3%+.50	d	3/8of1%
Driver groundmen	7.88	.70	3%+.50	d	3/8of1%
Painters:					
Brush	7.30	.25			
Paperhangers	7.45	.25			
Spray & Sandblasting	8.80	.25			
Open structural steel	8.50	.25			
Enclosed structural steel & steeple jack	8.30	.25			
Sheet Metal Workers	9.92	.60	.60		.02
Merrimack County (Build.&Heavy):					
Boilermakers	12.30	1.05	10%		.02
Electricians: Hookset	11.25	.50	3%		.03
Line Construction:					
Linemen	9.84	.70	3%+.50	d	3/8of1%
Equipment groundmen	9.24	.70	3%+.50	d	3/8of1%
Groundmen	6.86	.70	3%+.50	d	3/8of1%
Driver groundmen	7.88	.70	3%+.50	d	3/8of1%
Painters:					
Brush	7.30	.25			
Open structural steel work to 25'	8.50	.25			
Enclosed structural steel work and steeplejack	8.30	.25			
Paperhangers	7.45	.25			
Spray and sandblasting	8.80	.25			
Sheet Metal Workers	9.92	.60	.60		.02
POWER EQUIPMENT OPERATORS: Building:					
Hillsboro & Merrimack Counties:					
Class 1	9.75	.95	.75	a	.05
Class 2	9.50	.95	.75	a	.05
Class 3	9.30	.95	.75	a	.05
Class 4	8.615	.95	.75	a	.05
Class 5	8.59	.95	.75	a	.05
Class 6	7.85	.95	.75	a	.05

MODIFICATIONS P. 4

DECISION NO. NH78-2100 -Mod #1 (Continued)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
PEO's (Cont.):					
Class 7	$8.05	.95	.75	a	.05
Class 8	10.75	.95	.75	a	.05
Class 9	10.25	.95	.75	a	.05
Add:					
Hillsboro & Merrimack Counties:					
Lathers	9.75	1.00	.55		
DECISION NO. NH78-2101- Mod #1 (43 FR 46470- October 6, 1978) Rockingham & Strafford Counties, New Hampshire					
Change:					
Rockingham County (Building,Heavy):					
Boilermakers	12.30	1.05	10%		.02
Electricians: Rem. of County	11.25	.50	3%		.03
Line Construction:					
Linemen	9.84	.70	3%+.50	d	3/8of1%
Equipment Operator	9.24	.70	3%+.50	d	3/8of1%
Groundman	6.86	.70	3%+.50	d	3/8of1%
Driver groundman	7.88	.70	3%+.50	d	3/8of1%
Painters:					
Deerfield, Candida, Raymond, Auburn, Chester, Londonderry, Derry, and Windham:					
Brush	7.30	.25			
Paperhangers	7.45	.25			
Spray & Sandblasting	8.80	.25			
Open structural steel	8.50	.25			
Enclosed structural steel and steeplejack	8.30	.25			
Remainder of County:					
Brush	7.00		.25		
Spray & tender	8.00		.25		
Structural steel	7.60		.25		
Structural steel 45' or more	8.60		.25		
Taping & paperhanging	7.25		.25		
Sheet Metal Workers	9.92	.60	.60		.02

DECISION NO. NH78-2001- Mod #1 (Continued)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Strafford County (Build.&Heavy):					
Boilermakers	$12.30	1.05	10%		.02
Line Construction:					
Linemen	9.84	.70	3%+.50	d	3/8of1%
Equipment operator	9.24	.70	3%+.50	d	3/8of1%
Groundmen	6.86	.70	3%+.50	d	3/8of1%
Driver groundman	7.88	.70	3%+.50	d	3/8of1%
Painters:					
Brush	7.00		.25		
Spray & Tender	8.00		.25		
Structrual Steel	7.60		.25		
Structural Steel (45' or more)	8.60		.25		
Taping & Paperhanging	7.25		.25		
Sheet Metal Workers	9.92	.60	.60		.02
POWER EQUIPMENT OPERATORS:(Heavy					
Rockingham & Strafford Counties					
Class 1	10.07	1.10	1.00	a	.03
Class 2	10.87	1.10	1.00	a	.03
Class 3	9.95	1.10	1.00	a	.03
Class 4	8.795	1.10	1.00	a	.03
Class 5	9.41	1.10	1.00	a	.03
Class 6	8.01	1.10	1.00	a	.03
Class 7	8.09	1.10	1.00	a	.03
DECISION NO. NH78-2164- Mod #1 (43 FR 56350- December 1, 1978) Statewide, New Hampshire					
Change:					
Carroll County:					
Truck Drivers-- 2 & 3 axle	$3.50				
Power Equipment Operators:					
Bulldozer	7.47				
Front End Loader	6.76				
Grader	6.37				
Laborers	5.68				

DECISION #PA78-3005 - Mod. #4 (43 FR 7923 - February 24, 1978) Butler, Cambria, Erie, Fayette, Mercer, Washington, Westmoreland, Lawrence, Somerset, Allegheny, Beaver, Armstrong, Blair, Cameron, Centre, Clarion, Clearfield, Crawford, Forest, Green, Indiana, McKean, Venango, Warren, Bedford, Jefferson, Clinton, Elk, Franklin, Fulton, Huntingdon, Mifflin and Potter County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Ironworkers:					
Zone 2					
Structural, Ornamental & Reinforcing	$12.105	1.14	1.36		.03
DECISION #RI78-3050 - MOD #2 (43 FR 31551 - July 21, 1978) Bristol, Kent, & Providence Counties, Rhode Island					
CHANGE:					
GLAZIERS	$ 9.35	.62	1.38		.01
LABORERS:					
Laborers, Building:					
Laborers, Carpenter tenders, cement finisher tender, mason tender & wrecking laborers	8.50	.60	.75		.10
Asphalt rakers, adzemen, pipe trench bracers, demolition burners, chain saw ops., fence and guard rail erectors, setters of metal forms for roadways, mortar mixers, pipelayers, riprap, & dry stonewall builders, highway stone spreaders, pneumatic tools ops., wagon drill ops., tree trimmers, barco type jumping tampers, mechanical grinder operatros, plasterer's tenders, scaffold builders, & mortar mixers	8.75	.60	.75		.10
Air track ops., block pavers, rammers, and curb setters	9.00	.60	.75		.10
Powderman and blasters	9.25	.60	.75		.10

MODIFICATIONS P. 7

DECISION #RI78-3051 - MOD #3
(43 FR 31555 - July 21, 1978)
Newport County, Rhode Island

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
GLAZIERS	$ 9.35	.62	1.38		.01
LABORERS:					
Laborers, Building:					
Laborers, Carpenter tenders, cement finisher tender, mason tender & wrecking laborers	8.50	.60	.75		.10
Asphalt rakers, adzemen, pipe trench bracers, demolition burners, chain saw ops., fence and guard rail erectors, setters of metal forms for roadways, mortar mixers, pipelayers, riprap, & dry stonewall builders, highway stone spreaders, pneumatic tools ops., wagon drill ops., tree trimmers, barco type jumping tampers, mechanical grinder operators, plasterer's tenders, scaffold builders, & mortar mixers	8.75	.60	.75		.10
Air track ops., block pavers, rammers, and curb setters	9.00	.60	.75		.10
Powderman and blasters	9.25	.60	.75		.10

MODIFICATIONS P. 8

DECISION #RI78-3052 - MOD #2
(43 FR 31559 - July 21,1978)
Washington County, Rhode Island

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
GLAZIERS	$ 9.35	.62	1.38		.01
LABORERS:					
Laborers, Building:					
Laborers, Carpenter tenders, cement finisher tender, mason tender & wrecking laborers	8.50	.60	.75		.10
Asphalt rakers, adzemen, pipe trench bracers, demolition burners, chain saw ops., fence and guard rail erectors, setters of metal forms for roadways, mortar mixers, pipelayers, riprap, & dry stone wall builders, highway stone spreaders, pneumatic tools ops., wagon drill ops. tree trimmers, barco type jumping tampers, mechanical grinder operators, plasterer's tenders, scaffold builders, & mortar mixers	8.75	.60	.75		.10
Air track ops., block pavers, rammers, and curb setters	9.00	.60	.75		.10
Powderman and blasters	9.25	.60	.75		.10

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX78-4017 - Mod. #6 (43 FR 10272 - March 10, 1978) Taylor County, Texas					
Change: Boilermakers	$11.05	.80	1.00		.02
DECISION #TX78-4034 - Mod. #4 (43 FR 16121 - April 14, 1978) Cameron, Hidalgo, Starr & Willacy Cos., Texas					
Change: Boilermakers	11.05	.80	1.00		.02
DECISION #TX78-4079 - Mod. #7 (43 FR 35884 - August 11, 1978) Bee, Kleberg & Nueces Cos., Texa					
Change: Boilermakers	11.05	.80	1.00		.02
DECISION #TX78-4080 - Mod. #5 (43 FR 35886 - August 4, 1978) Jefferson & Orange Cos., Texas					
Change: Boilermakers	11.05	.80	1.00		.02
DECISION #TX78-4081 - Mod. #5 (43 FR 36851 - August 18, 1978) Bexar County, Texas					
Change: Boilermakers	11.05	.80	1.00		.02
DECISION #TX78-4082 - Mod. #6 (43 FR 38278 - August 25, 1978) Brazos County, Texas					
Change: Boilermakers	11.05	.80	1.00		.02

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX78-4083 - Mod. #5 (43 FR 38279 - August 25, 1978) El Paso County, Texas					
Change: Boilermakers	$11.05	.80	1.00		.02
DECISION #TX78-4084 - Mod. #6 (43 FR 38281 - August 25, 1978) Galveston & Harris Cos., Texas					
Change: Boilermakers	11.05	.80	1.00		.02
DECISION #TX78-4038 - Mod. #7 (43 FR 16129 - April 14, 1978) Harrison County, Texas					
Change: Boilermakers	11.05	.80	1.00		.02
DECISION #TX78-4085 - Mod. #4 (43 FR 38283 - August 25, 1978) Travis County, Texas					
Change: Boilermakers	11.05	.80	1.00		.02
DECISION #TX78-4086 - Mod. #1 (43 FR 38285 - August 25, 1978) Tom Green County, Texas					
Change: Boilermakers	11.05	.80	1.00		.02
DECISION #TX78-4087 - Mod. #5 (43 FR 38285 - August 25, 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 Cos., Texas					
Change: Boilermakers	11.05	.80	1.00		.02

MODIFICATIONS P. 11

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX78-4088 - Mod. #6 (43 FR 38287 - August 25, 1978) Wichita County, Texas					
Change: Boilermakers	$11.05	.80	1.00		.02
DECISION #TX78-4090 - Mod. #3 (43 FR 31364 - September 15, 1978) Bowie County, Texas					
Change: Boilermakers	11.05	.80	1.00		.02
DECISION #TX78-4091 - Mod. #3 (43 FR 41365 - September 15, 1978) Gregg County, Texas					
Change: Boilermakers	11.05	.80	1.00		.02
DECISION #TX78-4095 - Mod. #3 (43 FR 43241 - September 22, 1978) Ector & Midland Cos., Texas					
Change: Boilermakers	11.05	.80	1.00		.02
DECISION #TX78-4096 - Mod. #7 (43 FR 43242 - September 22, 1978) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas					
Change: Building Construction: Boilermakers	11.05	.80	1.00		.02
DECISION #TX78-4114 - Mod. #3 (43 FR 49208 - October 20, 1978) Lubbock County, Texas					
Change: Boilermakers	11.05	.80	1.00		.02

MODIFICATIONS P.12

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX78-4115 - Mod. #1 (43 FR 56408 - December 1, 1978) Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas					
Change: Boilermakers	$11.05	.80	1.00		.02
Elevator constructors: Mechanics	9.91	.745	.35	4%+a+b	.02
Helpers	70%JR	.745	.35	4%+a+b	.02

SUPERSEDEAS DECISION

STATE: District of Columbia, Maryland and Virginia

COUNTIES: Distict of Columbia; Maryland-Montgomery and Prince Georges; and D.C. Training School; Virginia-Independent City of Alexandria & Arlington

DECISION NO.: DC78-3098

DATE: Date of Publication

Supersedes Decision No. DC78-3008, dated March 17, 1978, in 43 FR 11464.

DESCRIPTION OF WORK: Building Construction (Does not include single family homes and garden type apartments up to and including 4 stories) and also excluding the Independent City of Alexandria, Heavy Construction (excluding Water and Sewer Lines), Highway Construction (District of Columbia Only), Water and Sewer Lines (District of Columbia Only)

HEAVY CONSTRUCTION EXCLUDING WATER AND SEWER LINES: All Counties BUILDING CONSTRUCTION: Excluding Alexandria, Virginia	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.41	.75	1.29		.03
BOILERMAKERS - BLACKSMITHS	12.025	1.075	1.00		.02
BRICKLAYERS	11.55	1.10	.85		.10
CARPENTERS	10.45	.85	.60		.05
CARPET LAYERS	7.05	.30			.05
CEMENT MASONS:					
Cement masons	10.50	.855	.60		.11
Grinding machine	10.75	.855	.60		.11
DIVERS	18.125	.55	.49		.07
DIVER TENDER	10.75	.55	.49		.07
ELECTRICIANS	11.40	.70	3%+.80		.13
ELEVATOR CONSTRUCTORS	11.77	.745	.56	a+b	.025
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.745	.56	a+b	.025
ELEVATOR CONSTRUCTORS' HELPERS (PROBATIONARY)	50%JR				
GLAZIERS	11.48	.61	.50		.05
IRONWORKERS:					
Structural, ornamental and chain link fence	10.80	.90	.85		.07
Reinforcing	10.95	.72	1.05		.03
LABORERS (EXCLUDING, HEAVY CONSTRUCTION)					
Common laborers, landscapers	8.46	.65	.45		.05
Acetylene burners used on wrecking	8.96	.65	.45		.05
Air tool op., scaffold builders, paving breakers, towmasters, buggy mobiles, spaders, mortar men and scootcretes	8.61	.65	.45		.05
Pipelayers	8.61	.65	.45		.05
Plasterers' tenders	8.96	.65	.45		.05
Plumbers' laborers	8.31	.65	.45		.05
Powdermen	9.635	.65	.45		.05
Powersaw, well points	8.71	.65	.45		.05
LATHERS	10.66	.65	.50		.025
LEADBURNERS	10.75	.40	.25	c	.01

DECISION NO. DC78-3098

HEAVY CONSTRUCTION (EXCLUDING WATER AND SEWER LINES): All Counties BUILDING CONSTRUCTION: Excluding Alexandria, Virginia	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Linemen, cable splicers, equipment operators	12.66	.60	3%		½ of 1%
Truck with winch, truck pole or steel handling	7.58	.60	3%		½ of 1%
Groundmen (0 to 1 year)	6.16	.60	3%		½ of 1%
Groundmen (1 to 2 years)	7.07	.60	3%		½ of 1%
Groundmen (over 2 years)	7.32	.60	3%		½ of 1%
MARBLE SETTERS	11.60	.80	.65		.06
MARBLE SETTERS' HELPERS	7.35				
MILLWRIGHTS	10.94	.85	.60		.05
MOTOR REPAIRMAN (Removal and reinstalling of electrical motors)	9.87	.70	3%+.80	h	
PAINTERS:					
Brush, spray, paperhangers, tapers	10.61	.86	1.10		.08
Steel, sandblasting, swing stage, power brushing	11.11	.86	1.10		.08
PILEDRIVERMEN	10.68	.85	.60		.05
PLASTERERS	10.40	.60	.75		.06
PLUMBERS	11.32	1.05	1.00		.27
ROOFERS:					
Composition	9.87	.61	.30		
Slate, tile mopmen, waterproofer proofers, sprayers, sprandrel and ironite	10.43	.61	.30		
SHEET METAL WORKERS	11.14	g	1.21		.14
SOFT FLOOR LAYERS	10.45	.85	.60		.05
SPRINKLER FITTERS	12.15	.75	1.05		.08
STEAMFITTERS, REFRIGERATION AND AIR CONDITION MECHANIC	11.48	.95	1.00		.16
STONE MASONS	11.60	.80	.65		.07
STONE CUTTERS:					
Fitters and trimmers	11.65	.18	.40		
Ornamental cravers	10.38	.18	.40	d	
Figure carvers	11.00	.18	.40	d	
TERRAZZO AND MOSAIC WORKERS	11.59	.70	.70		.04

DECISION NO. DC78-3098

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HEAVY CONSTRUCTION (EXCLUDING WATER AND SEWER LINES: All Counties					
BUILDING CONSTRUCTION: Excluding Alexandria					
TERRAZZO WORKERS' HELPERS	9.95	.70	.70		
TILE SETTERS	11.59	.70	.70		.04
TILE SETTERS' HELPERS	9.95	.70	.70		
TRUCK DRIVERS:					
Boom trucks	8.45	.415	.425	e+f	
Small dump, water sprinkler, grease and oil	8.20	.415	.425	e+f	
Flat, pick-up hauling materials, small Euclids, dump over 8 wheels	8.30	.415	.425	e+f	
Trailers, low boys, tractor pulls	8.50	.415	.425	e+f	
Helpers	8.05	.415	.425	e+f	
Carryalls, large Euclids, Euclid water sprinkler, tunnel work under ground	8.60	.415	.425	e+f	
Mechanics	8.35	.415	.425	e+f	
RIGGERS AND WELDERS - Receive rates prescribed for crafts performing and welding are incidental.					

DECISION NO. DC78-3098

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Holidays: A through F, plus the Friday after Thanksgiving Day.

b. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

c. Holidays: A through F plus Washington's Birthday, Good Friday and Christmas Eve (provided an employee has worked at least 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holiday).

d. Holidays: A-D-E-F and Veteran's Day.

e. Holidays: A-D-E and F (provided the employee works the regularly scheduled work days immediately preceeding and following the holiday.

f. One weeks paid vacation providing the employee has worked 3 years and a minimum of 1450 hours during any calendar year.

g. Employer contributes to Health & Welfare $1.07, in District of Columbia, and $1.17, in all other areas.

h. Employer contributes to employee who have worked six (6) months or more, shall be given two and one-half days vacation or equivalent thereof. All men in the employ of the employer for one (1) year or more shall be given one week's vacation with pay or the equivalent thereof. All men in the employ of the employer three (3) years or more shall be given two (2) week's vacation with pay or the equivalent thereof. All men in the employ of the employer ten (10) years or more shall be given three (3) weeks vacation with pay or the equivalent thereof.

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LABORERS (HEAVY CONSTRUCTION EXCLUDING WATER AND SEWER LINES):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	8.46	.65	.45		.05
GROUP II	8.61	.65	.45		.05
GROUP III	8.66	.65	.45		.05
GROUP IV	8.71	.65	.45		.05
GROUP V	8.91	.65	.45		.05
GROUP VI	9.11	.65	.45		.05
GROUP VII	9.235	.65	.45		.05
GROUP VIII	9.635	.65	.45		.05

CLASSIFICATIONS

LABORERS:

GROUP I - Carloader, choker setter, concrete crewman, crushed feeder, demolition laborer (including salvaging all material, loading and cleaning up), wrecking, driller helper, dumpman, flagman, fence erector and installer (including installation and erection of fence, guard rails, median rails, reference posts, guide posts and right-of-way markers), form stripper, general laborers, railroad track laborer, riprap man, scale man, stake jumper, structure mover (includes foundation, separation, preparation, cribbing, shoring, jacking and unloading of structures), water nozzleman, timber bucker and faller, truck loader, water boys, tool room men

GROUP II - Combined air and water nozzlemen, cement handler, dope pot fireman (nonmechanical), form cleaning machine, mechanical railroad equipment (includes spiker, puller, tie cleaner, tamper pipe wrapper, power driven wheelbarrow, operators of hand derricks, towmasters, scootcretes, buggymobiles and similar equipment), tamper or rammer operator, trestle scaffold builders over one tier high, power tool operator (gas, electric or pneumatic), sandblast or gunnite tailhose man, scaffold erector (steel or wood), vibrator operator (up to 4'), asphalt cutter, mortar men, shorer and lagger, creosote material handler, corrosice enamel or equal, paving breaker and jackhammer operators

GROUP III - Multi-section pipe layer, non-mentallic clay and concrete pipe layer (including caulker, collarman, jointer, rigger and jacker) thermite welder and corrugated metal culvert pipe layer

GROUP IV - Asphalt block pneumatic cutter, asphalt roller, walking chain-saw with attachment, concrete saw (walking), high scalers, jackhammer (using over 6' of steel), vibrator (4' and over), well point installers, air-trac operator

GROUP V - Asphalt screeder, big drills, cut of the hole drills (1½ piston or larger) down the hole drills (3½" piston or larger), gunnite or sandblaster nozzleman, asphalt raker, asphalt tamper, for setter, demolition torch operator, shotcrete nozzlemen and potman

GROUP VI - Powderman, master for setters

GROUP VII - Brick paver (asphalt block paver, asphalt block saw man, asphalt block grinder; hasting block or similar type)

GROUP VIII - Miners

DECISION NO. DC78-3098

LABORERS (HEAVY CONSTRUCTION):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	8.735	.55	.40		.05
GROUP II	9.035	.55	.40		.05
GROUP III	9.685	.55	.40		.05
GROUP IV	9.935	.55	.40		.05

CLASSIFICATIONS

TUNNELS, RAISES AND SHAFTS - FREE AIR

GROUP I

Brakeman, bull gang, dumper, trackman, concrete man

GROUP II

Chuck tender, powdermen in prime house, form setters and movers, nippers, cableman, hosemen, groutman, bell or signalman, top or bottom vibrator operator, caulkers' helpers

GROUP III

Miners, rodmen, re-bar underground, concrete or gunnite nozzlemen, powderman, timberman and re-timberman, wood steel including liner plate or any other support, material, motorman, caulkers, diamond drill operators, riggers, cement finishers - underground, welders and burners, shield driver, air trac operator, shotcrete nozzleman and potman

GROUP IV

Mucking machine operator (air)

LABORERS - COMPRESSED AIR RATES (EXCLUDING SEWER AND WATER LINES) Gauge Presure Pounds	Work Period Hours				
1-14	7	91.26	.65	.45	.05
14-18	6	94.60	.65	.45	.05
18-22	5-1/2	97.89	.65	.45	.05
22-26	5	101.28	.65	.45	.05
26-32	4	104.61	.65	.45	.05
32-38	3	107.91	.65	.45	.05
38-44	2-1/2	119.29	.65	.45	.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HEAVY CONSTRUCTION EXCLUDING WATER AND SEWER LINES: BUILDING CONSTRUCTION:					
POWER EQUIPMENT OPERATORS:					
GROUP I	11.70	.60	.60		.12
GROUP II	11.45	.60	.60		.12
GROUP III	11.30	.60	.60		.12
GROUP IV	11.12	.60	.60		.12
GROUP V	11.07	.60	.60		.12
GROUP VI	11.05	.60	.60		.12
GROUP VII	11.04	.60	.60		.12
GROUP VIII	10.87	.60	.60		.12
GROUP IX	10.85	.60	.60		.12
GROUP X	10.65	.60	.60		.12
GROUP XI	10.17	.60	.60		.12
GROUP XII	9.99	.60	.60		.12
GROUP XIII	8.55	.60	.60		.12

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP I - 35 ton cranes and above, tower and climbing cranes

GROUP II - Back hoes, boom-cat, cableways, cranes or derricks, draglines, elevating graders, hoists, multiple concrete conveyors, elevators (permanent), paving mixers, pile driving engines, power shovels, tunnel shovels, mucking machines, batch plant, concrete pumps, locomotives (standards, narrow guage), power driven wheel scoops and scrapers (50 cu. yd. struck capacity or above), front end loader above 3½ cu. yd., boom trucks, moles, shields, tunnel mining machines, loaders used as muckers in tunnel mining, gradalls, shotcrete machines and grout pumps with discharge of two inches I.D. or more, drill rigs

GROUP III - Hydraulic back hoes of less than ½ yd. capacity, mounted on tractors, front end loader above 2-3/4 to 3½ cu. yd.

GROUP IV - Air compressor on steel

GROUP V - Mechanic, mechanic-welder, welder

GROUP VI - Front end loader, highlift, fork lift

GROUP VII - Boilers (skeleton), trenching machines, tug boat, well drilling machines

GROUP VIII - Concrete mixer, tunnel motorman

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POWER EQUIPMENT OPERATORS CLASSIFICATIONS (CONT'D)

GROUP IX - Power driven wheel scoops and scrapers (below 50 cu. yd. struck capacity), blade graders, motor graders, bulldozers

GROUP X - Rollers, asphalt spreaders, bullfloat finishing machines, concrete finishing machines, concrete spreaders, fine graders

GROUP XI - Air compressors(except steel), welding machines, pumps, generators, space heaters, wellpoints, deepwells, hydraulic pumps

GROUP XII - Firemen

GROUP XIII - Oilers
(District of Columbia Only)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DEMOLITION (EXCLUDING ALEXANDRIA):					
Laborers	6.40	.40	.40		.05
Burners	6.90	.40	.40		.05
Power tool operator	6.55	.40	.40		.05
Bobcat operator	7.40	.40	.40		.05

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(DISTRICT OF COLUMBIA ONLY)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAVING AND INCIDENTAL GRADING					
ASPHALT SHOVELER	7.05	.32	.35		
ASPHALT RAKER	7.25	.32	.35		
ASPHALT TAMPER	7.15	.32	.35		
BRICKLAYERS	11.55	1.10	.85		.10
CARPENTERS	10.45	.85	.60		.05
CEMENT MASONS	7.50	.32	.35		
CONCRETE SAW OPERATORS	7.25	.32	.35		
CONCRETE SHOVELER	7.15	.32	.35		
FORM SETTER	7.50	.32	.35		
LABORERS:					
Laborers	7.00	.32	.35		
Jackhammer	7.20	.32	.35		
Hand Burner Operator	7.15	.32	.35		
POWER EQUIPMENT OPERATORS:					
Concrete Spreader Operator, Finishing Machine, Roller (rough), Compressor, Rubber-tired Loader (1-½ cu. yds., or less), Asphalt Plant Mixer	7.25	.27	.35		
Loader Operator Tracks (2-½ cu. yds. or less), Burner Planer, Bulldozer, Mechanic or Welder, Rubber Tired Loader (over 1-½ cu. yds.)	7.45	.27	.45		
Asphalt Spreader, Hydraulic Backhoe (½ cu. yd., or less), Asphalt Plant Engineer, Asphalt Roller Operator, Concrete Breaker (machine)	7.50	.27	.35		
Crane Operator, Concrete Paving Operator	7.65	.27	.35		
Shovel Operator	7.75	.27	.35		
Gradall Operator (1-½ cu. yds. or less), Motor Grader, Operator Tracks (over 2-½ cu. yds	8.40	.27	.35		
G-1000 Gradall Operator (over 1½ cu. yds.)	8.65	.27	.35		
Power Broom, Oiler	7.15	.27	.35		
Sand Setter	7.45	.27	.35		
TRUCK DRIVERS:					
Truck Drivers (standard)	7.00	.27	.35		
Tandem	7.12	.27	.35		
Tractor trailer (capable of moving heavy equipment)	7.50	.27	.35		

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(DISTRICT OF COLUMBIA ONLY)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SEWER AND WATER LINES					
BRICKLAYERS	11.55	1.10	.85		.10
CARPENTERS	10.45	.85	.60		.05
CEMENT MASONS	10.50	.855	.60		.11
IRONWORKERS; Reinforcing	10.95	.72	1.05		.03
LABORERS:					
Open Cut:					
Laborers, jackhammer, rammers and spaders	5.78	.33	.25		.03
Timbermen, sheeting-men, shoring-men, caulkers pipelayers helpers	5.93	.33	.25		.03
Bottom man	5.83	.33	.25		.03
Wagon drillers, air track drillers	6.13	.33	.25		.03
Pipelayers	6.13	.33	.25		.03
Rock drillers	5.88	.33	.25		.03
Tunnel:					
Brakeman, bull gang, dumper, trackmen, concrete man	6.415	.33	.25		.03
Chuck tender, powder in prime house, form setters and movers, nippers, cablemen, hosemen, grout men, bell or signal men, top or bottom, vibrator operator, caulkers' helpers	6.715	.33	.25		.03
Miners, rodmen, re-bar underground, concrete or gunite nozzlemen, powermen, timbermen and retimberman wood or steel including liner plate or any other support material, motorman, caulkers, diamond drill riggers, cement finishers (underground), welders and burners, shield driver	7.365	.33	.25		.03
Mucking machine operator (air)	7.615	.33	.25		.03

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(DISTRICT OF COLUMBIA)

		Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
SEWER AND WATER LINES CONT'D						
COMPRESSED AIR: (All rates per day)						
Gauge Pressure Pounds	Work Period					
From 1 to 14	7 hours	72.74	.33	.25		.03
From 14 to 18	6 hours	76.08	.33	.25		.03
From 18 to 22	5½ hours	79.41	.33	.25		.03
From 22 to 26	5 hours	82.76	.33	.25		.03
From 26 to 32	4 hours	86.09	.33	.25		.03
From 32 to 38	3 hours	89.44	.33	.25		.03
From 38 to 44	2½ hours	92.77	.33	.25		.03
PILEDRIVERMEN		10.68	.85	.60		.05
PLUMBERS		11.32	1.05	1.00		.27
POWER EQUIPMENT OPERATORS:						
Backhoes, cable ways, cranes, draglines power shovels, tunnel shovels, tunnel mucking machines, derricks, 1 cu. yd. and over		8.94	.35	.45		.05
Backhoes, cableways, cranes derricks, dragline, tunnel shovels, tunnel mucking machines up to 1 cu. yd., boom cats, elevating graders, hoists, paving mixers, pile-driving engines, batch plants concrete pumps		8.69	.35	.45		.05
Trenching machines (above 8' 3")		8.49	.35	.45		.05
Backhoes (hydraulic, under ½ c.y.)		8.57	.35	.45		.05
Trenching machines (up to 8' 3"), boilers skeleton, well drilling machines		8.39	.35	.45		.05
Air compress, tunnel		8.36	.35	.45		.05
Front end loaders (high lift), bulldozers		8.34	.35	.45		.05
Concrete mixers, power sheel scoops and scrapers, motor graders, tunnel motor men, blade graders, tunnel mechanics		8.24	.35	.45		.05

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(DISTRICT OF COLUMBIA ONLY)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SEWER AND WATER LINES CONT'D					
POWER EQUIPMENT OPERATORS CONT'D:					
Mechanics	8.42	.35	.45		.05
Bulldozer, hydraulic tampers	8.14	.35	.45		.05
Roller	8.04	.35	.45		.05
Air compressors, pump, welding machine well points	7.965	.35	.45		.05
TRUCK DRIVERS:					
Dump trucks	6.10	.415	a		
Dump trucks over 8 wheels	6.20	.415	a		
Flat trucks	6.20	.415	a		
Trailers	6.45	.415	a		
Fuel and oil trucks	6.10	.415	a		
Euclids	6.60	.415	a		

FOOTNOTE:

a. $10.00 per week when employee has worked 90 days and work three days in any work week.

SUPERSEDES DECISION

STATE: Pennsylvania COUNTIES: Bradford, Tioga & Union
DECISION NO.: PA78-3099 DATE: Date of Publication
Supersedes Decision No.: PA77-3103, dated July 22, 1977, in 42 FR 37759
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	$11.325	.65	.60		.01
Boilermakers	13.775	1.075	1.00		.02
Bricklayers & Stonemasons	9.90	.75	.60		
Carpenters	10.30	.50	.55		.05
Cement Masons	9.45				
Electricians					
ZONE I	9.73	.50	3%+.60	.75	.02
ZONE II	11.45	.50	3%+.20		.05
ZONE III	10.45	.50	3%+.50	.50	.10

AREA COVERED BY ELECTRICIANS ZONES

ZONE I - Tioga County; Remainder of Union and Bradford Counties

ZONE II - E. Buffalo, Union & Lewisburg Borough in Union County

ZONE III - Bradford County, town of Towanda, that portion of the County last of the Susquehanna River South of Towanda and last of U. S. Highway 309, North of Towanda

Elevator Constructors	10.55	.745	.56	a+b	.025
Elevator Constructors Helpers	70%JR	.745	.56	a+b	.025
Elevator Constructors Helpers (Prob.)	50%JR				
Glaziers					
ZONE I	10.00	.65	.85		
ZONE II	9.79	.40	.50		.01

AREA COVERED BY GLAZIERS ZONES

ZONE I - Bradfors & Tioga Counties

ZONE II - Union County

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Ironworkers:					
Structural, Ornamental & Reinforcing					
Zone 1	$12.105	1.14	1.36		.03
Zone 2	10.38	.70	.92		.05

AREA COVERED BY IRONWORKERS ZONES

ZONE 1 - Union County

ZONE 2 - Bradford & Tioga Counties

Laborers					
Class I	7.45	.40	.45		
Class II	7.60	.40	.45		

LABORER CLASSIFICATION DEFINITIONS

Class I - Unskilled laborers, scaffold builders, wrecking, window cleaners & demolition

Class II - Operator of jackhammers, paving breakers, vibrators & other pneumatic & mechanical tools coming under the jurisdiction of laborers, wagon drill operators, excavating for caisson, under pinning & pier holes (below 12'), non-metallic pipe layers, plaster tenders, mortar men (mixed by hand), handling & using cutting or burning torches in the wrecking of buildings & mason tenders

Lead Burners	10.75	.40	.25	c	.01
Line Construction:					
Lineman, dynamite man, heavy equipment operator	10.80	.50	3%		3/8 of 1%
Winch truck drivers	7.50	.50	3%		3/8 of 1%
Groundman	7.20	.50	3		3/8 of 1%

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Millwrights	11.45	.50	.55		.05
Painters:					
Brush	9.55	.75	.40		.10
Tapers	9.81	.75	.40		.10
Hazardous	10.81	.75	.40		.10
Piledrivermen	11.12	2.33	1.35	d	.12
Plasterers					
ZONE I	9.30	.40	.40		
ZONE II	10.20				

AREA COVERED BY PLASTERERS ZONES

ZONE I - East of Susquehanna River in Bradford County

ZONE II - Tioga, Union and Remainder of Bradford County

Plumbers & Steamfitters					
ZONE I	10.95	.74	.60	.50	.05
ZONE II	11.24	.80	1.25		.05

AREA COVERED BY PLUMBERS AND STEAMFITTERS ZONES

ZONE I - Tioga & Union Counties and Eastern half of Bradford County

ZONE II - Western half of Bradford County

Power Equipment Operators					
GROUP 1	12.44	7%	10.3%	a	1.8%
GROUP 2	12.15	7%	10.3%	a	1.8%
GROUP 3	11.28	7%	10.3%	a	1.8%
GROUP 4	10.51	7%	10.3%	a	1.8%
GROUP 5	10.04	7%	10.3%	a	1.8%
GROUP 6	9.13	7%	10.3%	a	1.8%
GROUP 7	12.69	7%	10.3%	a	1.8%
GROUP 7-A	12.94	7%	10.3%	a	1.8%
GROUP 7-B	13.18	7%	10.3%	a	1.8%

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CLASSIFICATION DEFINITIONS

GROUP 1: Machines doing hook work, any machine handling machinery, cable spinning machines, helicopters, machines similar to the above.

GROUP 2: All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, hoist with two towers, pavers 21E and over all types overhead cranes, building hoists (double drum) gradalls, mucking machines in tunnel, all front end loaders 3½ c.y. and over, tandem scrapers, pippin type backhoes, boat Captains, batch plant operators (concrete) drills, self-contained rotary drills, fork lift, 20 ft. lift and over machine to the above

GROUP 3: Conveyors, building hoists (single drum) scrapers and tournapulls, spreaders, high or low pressure boilers, concrete pumps, well drillers, bulldozers and tractors, asphalt plant engineers, roller (high grade finishing), ditch witch type trencher, all loaders under 3½ cu. yds., mechanic-welders, motor patrols, drill helper-self contained rotary drills, core drill operator, forklift trucks under 20 ft lift, machines similar to the above.

GROUP 4: Welding machines, well joints, compressors, pumps, heaters, farm tractors, form line graders, fine grade machines, road finishing machines, concrete breaking machines, rollers, seamen pulverizing mixer, power broom, seeding spreader, tireman (for power equipment), machines similar to the above

GROUP 5: Fireman, grease truck

GROUP 6: Oilers and deck hands (personnel boats), core driller helper

GROUP 7: All machines with booms (including jib, masts, leads, etc.): 100 ft. and over

GROUP 7A: 150 ft. and over

GROUP 7B: 200 ft. and over

FOOTNOTE:
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, provided the employee works the day before and after the holiday.

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Roofers					
Composition & Kettleman	10.15	.85	.90		
Sheet Metal Workers	11.12	.73	.40		.02
Soft Floor Layers	9.20	.50	.55		.05
Sprinkler Fitters	12.31	.75	1.05		.08
Truck Drivers					
ZONE I	7.20				
ZONE II					
CLASS 1	7.20	.20	.20		
CLASS 2	7.30	.20	.20		
CLASS 3	7.40	.20	.20		
CLASS 4	7.50	.20	.20		
CLASS 5	7.35	.20	.20		
CLASS 6	7.70	.20	.20		
CLASS 7	7.80	.20	.20		
CLASS 8	7.45	.20	.20		

TRUCK DRIVERS CLASSIFICATIONS DEFINITIONS

CLASS 1 - Trucks up to 30,000 lbs. (includes pickups, fuel and water trucks), warehousemen

CLASS 2 - Trucks over 30,000 lbs. (includes fuel and water trucks)

CLASS 3 - Tri-Axle Trucks over 30,000 lbs. (includes fuel and water trucks, Semi-trailer

CLASS 4 - Low Boy

CLASS 5 - Concrete mixer trucks

CLASS 6 - Earth moving equipment up to 35 ton (belly dump, side dump, end dump, etc.), distributor truck (oil, jar, asphalt, etc.)

CLASS 7 - Earth moving equipment over 35 ton (belly dump, side dump, end dump, etc.)

CLASS 8 - A-frame and winch trucks (when used for hauling material in bed of truck), concrete, mixer trucks (tri-axle)

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AREA COVERED BY TRUCK DRIVERS ZONES

ZONE 1 - Union County

ZONE 2 - Tioga County

Welders - receive rate prescribed for craft performing operation to which welding is incidental

PAID HOLIDAYS (WHERE APPLICABLE):
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as vacation pay credit.

b. Six Paid Holidays: A through F, plus the Friday after Thanksgiving.

c. Nine Paid Holidays: A through F and Washington's Birthday, Good Friday and Christmas Eve provided the employee has worked 45 full days for the employer during the 120 days prior to the holiday and is available for work the days preceeding and following the holiday.

d. Paid Holidays: Washington's Birthday, Good Friday, Memorial Day, Labor Day, Presidential Election Day, Veterans' Day and Thanksgiving Day.

[FR Doc. 78-34648 Filed 12-14-78; 8:45 am]

federal register

FRIDAY, DECEMBER 15, 1978
PART III



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Community Planning and Development

■

COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVES

Final Rule

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER V—OFFICE OF THE 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

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This amendment applies the Community Development Block Grant Program to eligible Indian Tribes, including Alaska Natives. It is necessary because the 1977 amendments to the Block Grant Program contain special provisions for Indian Tribes. These regulations are intended to make the Block Grant Program flexible and responsive to the special needs, cultural traditions and legal circumstances of Indian Tribes.

EFFECTIVE DATE: This rule is expected to take effect after 20 calendar days of continuous session of Congress have elapsed from the date of this publication. However, that effective date can be further delayed by action of Congress pursuant to Section 7(o)(3) of the Department of Housing and Urban Development Act. More specific information as to the effective date of this rule can be obtained from the contact person identified below.

FOR FURTHER INFORMATION CONTACT:

Donald G. Dodge, Acting Director, Office of Policy Planning, Office of Community Planning and Development, (202) 755-5890.

SUPPLEMENTARY INFORMATION:

General

The 1977 amendments to the Housing and Community Development Act of 1974, 42 U.S.C. 5301 et seq., established a separate Community Development Block Grant Program for Indian Tribes and Alaska Natives (Section 107(a)(7)). Interim regulations were published on March 23, 1978 (FEDERAL REGISTER Volume 43, No. 54, Part IV). This final rule incorporates the comments received on the Interim Rule, clarifies legal ambiguities, and establishes the regional funding allocation formula for FY'79.

Although the interim regulations were developed in consultation with Tribal chairmen and representatives prior to drafting the actual language, the provisions need further refinement based on Tribal recommendations which time has thus far precluded. The unanticipated delays incurred in publishing the interim regulations considerably foreshortened the FY'78 program year. Further, the FY'79 program year will be underway before these final regulations become effective. Therefore, it seems appropriate to publish the final regulations as soon as possible so the FY'79 program may begin, and later amend the regulations during FY'79 when time permits extensive consultations with Tribal participants. Accordingly, further improvements in the Indian Community Development Block Grant Program will begin as soon as the final regulations become effective. These final regulations do not make extensive departures from either the block grant entitlement program (Part 570) or the interim Indian block grant program requirements. However, Sections 571.305(d) and 571.405(e) which will set forth the Housing Assistance Plan application requirements are currently reserved. It is the Department's intention to publish these requirements in time for full application submissions. The following is a description of changes made to the interim regulations published on March 23, 1978.

Definitions

The definition of "Eligible Indian Population" affects funding distribution directly and rating systems indirectly. Section 571.3(h), "Eligible Indian Population", was revised to expand the available sources of data beyond that compiled by the Department of the Interior, Bureau of Indian Affairs and the Department of the Treasury, to other resources such as the Census data compiled by the Department of Commerce, Bureau of the Census. The current provision is too restrictive given the demonstrations of Census data collection currently taking place on Indian reservations and the forthcoming 1980 Census which will provide better Indian population characteristics than in the past.

The consolidation of Regions I-IV or I-V provided in § 571.3(t) was eliminated for further study. Section 571.100(a)(4) was similarly eliminated.

Eligible Applicants

A potentially misleading provision in the Preamble regarding the applicability of Part 570, which implied that Tribes could be eligible applicants under Section 106 of the Act, has been eliminated. Tribes are only eligible applicants under Section 107.

Alaskan Regional Corporations are eligible recipients under the Indian Self-Determination and Education Assistance Act. However, the Corporations are composed of many of the same persons composing their constituent villages. So, to designate the Corporations as eligible applicants under Part 571 would result in a double-count and, thus, double-funding. To avoid double-funding, the final regulations provide that Regional Corporations are eligible applicants whenever one or more of their constituent villages does not apply and the Corporation obtains a "Concurring Resolution" from the village council authorizing the Corporation to apply on behalf of the village (§ 571.4(c)). However, only the non-profit arms of the Regional Corporations are eligible. Section 571.101(b) is clarified by eliminating the reference to all Indians and replacing it with Indian Tribes which were then and are now eligible recipients.

Allocation of Funds

Funding allocation provisions in § 571.101 (a) and (b) were raised from 47½% to 50%, and § 571.101(c) was eliminated since the additional 5% of funds to Oklahoma applied only to FY'78. The § 571.102 sub-regional allocation for Region VI was similarly eliminated.

Eligible Activities

Section 571.200(c) was eliminated because Model Cities Program activities are no longer taking place on any Indian Reservations; § 571.201(r), Urban Renewal Completion, was also eliminated.

Special Information

A Finding of Inapplicability with respect to environmental impact has been prepared in accordance with HUD Handbook 1390.1. Copies of the finding are available for inspection and copying in the Office of the Rules Docket Clerk, HUD, Washington, D.C.

Accordingly, a new part of Title 24 of the Code of Federal Regulations, Part 571, is adopted to read as follows:

PART 571—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVES

Subpart A—General Provisions

Sec.

571.1 Applicability and scope.
571.2 Program objectives.
571.3 Definitions.
571.4 Eligible applicants.
571.5 Consultations with eligible applicants.
571.6 Waivers.

Subpart B—Allocation of Funds

571.100 General policies.
571.101 Allocation of funds to regional or field offices.

571.102 Subregional allocation procedures.
571.103 Recapture of funds.
571.104 Reallocation of funds.

Subpart C—Eligible Activities

571.200 General policies.
571.201 Basic eligible activities.
571.202 Eligible rehabilitation and preservation activities.
571.203 Eligible economic development activities.
571.204 Eligible activities by private nonprofit entities, neighborhood-based nonprofit organizations, local development corporations, or small business investment companies.
571.205 Eligible planning, urban environmental design, environmental studies and administrative costs.
571.206 Ineligible activities.

Subpart D—Application Procedures and Selection Criteria for Basic Grants

571.300 General policies.
571.301 Pre-applications.
571.302 Threshold factors.
571.303 Criteria for selection and rating process.
571.304 Letter to proceed and advance of funds.
571.305 Application requirements.
571.306 HUD review and approval of applications.
571.307 Program amendments.
571.308 Imminent threats to public health and safety.

Subpart E—Application Procedures and Selection Criteria for Comprehensive Grants

571.400 General policies.
571.401 Pre-applications.
571.402 Threshold factors.
571.403 Criteria for selection and rating process.
571.404 Letter to proceed and advance of funds.
571.405 Application requirements.
571.406 HUD review and approval of applications.
571.407 Program amendments.

Subpart F—Grant Administration

571.500 Designation of public agency.
571.501 Grant agreement and conditions.
571.502 Method of payment.
571.503 Release of funds.
571.504 Standards for grantee financial management systems.
571.505 Program income.
571.506 Force account construction.
571.507 Indian preference requirements.
571.508 Procurement and contracting standards.
571.509 Bonding and insurance requirements.
571.510 Audit.
571.511 Retention of records.
571.512 Grant close-out procedures.

Subpart G—Other Program Requirements

571.600 Nondiscrimination.
571.601 Relocation and acquisition.
571.602 Environment.
571.603 Labor standards.
571.604 Architectural Barriers Act of 1968.
571.605 Activities for which other Federal funds must be sought.
571.606 Hatch Act.
571.607 National flood insurance program.
571.608 Clean Air Act and Federal Water Pollution Control Act.
571.609 Activities conducted by nonprofit entities, SBICs, and local development corporations [Reserved].
571.610 Lead-Based Paint Poisoning Prevention Act.
571.611 Property rehabilitation standards [Reserved].

Subpart H—Program Management

571.700 General policies.
571.701 Property management standards.
571.702 Reports to be submitted by recipients.
571.703 Records to be maintained by recipients.
571.704 Secretarial review of recipient's performance.
571.705 Performance standards.
571.706 Corrective and remedial action.
571.707 Other remedies for non-compliance.

AUTHORITY: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); Title I, Housing and Community Development Act of 1977 (42 U.S.C. 5301 et seq.); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 571.1 Applicability and scope.

The policies and procedures described in this Part apply only to Community Development Block Grants to eligible Indian Tribes. This Part defines eligible applicants, the allocation of funds, eligible activities, application procedures and selection criteria, grant administration, other program requirements, and program management. These regulations shall be reviewed annually in consultation with Indian Tribes and amended where necessary.

§ 571.2 Program objectives.

(a) The primary objective of the Indian Community Development Block Grant Program is the development of viable Indian communities, including decent housing, a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, the Federal assistance provided in this Part is for the support of community development activities which are directed toward the following specific objectives:

(1) the elimination of blight, the prevention of blighting influences and the deterioration of property and community facilities of importance to the welfare of the community, principally persons of low and moderate income;

(2) the elimination of conditions which are detrimental to health, safety, and public welfare, through code enforcement, demolition, interim rehabilitation assistance, and related activities;

(3) the conservation and expansion of the nation's housing stock in order to provide a decent home and a suitable living environment for all persons, but principally for those of low and moderate income;

(4) the expansion and improvement of the quantity and quality of community services, principally for persons of low and moderate income, which are essential for sound community development and for the development of viable Indian Tribes;

(5) a more rational utilization of land and other natural resources and the better arrangement of residential, commercial, industrial, recreational, and other needed activity centers;

(6) the restoration and preservation of properties of special value for historic, architectural or esthetic reasons.

(b) It is also the purpose of this Part to further the development of a national Indian policy by consolidating a number of complex and overlapping programs of financial assistance to communities of varying sizes and needs into a consistent system of Federal aid which:

(1) encourages community development activities consistent with comprehensive local and areawide development planning; and in a coordinated and mutually supportive manner;

(2) furthers achievement of the national housing goal of a decent home and a suitable living environment for every American family;

(3) promotes more rational patterns of community and economic development for Indian Tribes;

(4) provides incentives for Indian Tribes to improve their capacity in planning for and carrying out housing, community, and economic development activities;

(5) allows Indian Tribes to take advantage of their physical and cultural resources to achieve the objectives of self-determination by:

(i) making this part flexible and responsive to the special problems and circumstances of Indian Tribes consistent with responsible management and use of Federal funds;

(ii) adapting activity eligibility requirements to the special needs of Indian Tribes;

(iii) providing for the maximum participation by eligible applicants in advising HUD regarding the development of national and regional policies under this Part pursuant to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450);

(iv) providing comprehensive, multi-year assistance on a demonstration basis to selected Tribes.

(6) It is intended under this part that the Federal assistance made available not be utilized to reduce the amount of local financial support for

community development activities below the level of such support prior to the availability of such assistance.

§ 571.3 Definitions.

(a) "Act" means Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.).

(b) "Basic Grant" means a grant provided pursuant to the provisions of this Part to eligible Indian applicants for the purpose of carrying out one or more activities set forth in an approved Community Development Program.

(c) "BIA" means the Bureau of Indian Affairs.

(d) "Chief executive officer" means the elected official or legally-designated official who has the prime responsibility for the conduct of the affairs of an Indian Tribe. Examples are the chairperson, chief, governor or president of an Indian Tribe.

(e) "Comprehensive Grant" means a grant provided pursuant to the provisions of this Part to eligible Indian applicants for the purpose of carrying out a Comprehensive Community Development Program comprised of two or more activities requiring single or multi-year assistance that bear a relationship to each other, are carried out in a coordinated manner and have a substantial beneficial impact in meeting one or more of the applicant's community development needs.

(f) "Community Development Program" means the program formulated by the applicant in its application to HUD as described in Subparts D and E of this Part, which:

(1) includes the activities to be undertaken to meet its community development needs and objectives identified in its summary community development plan, together with the estimated costs and general location of such activities;

(2) indicates resources other than those provided under this Part which are expected to be made available toward meeting its identified needs and objectives; and

(3) takes into account appropriate environmental factors.

(g) "Consultation" means any procedure of oral or written communication that provides adequate opportunity for eligible Indian applicants to advise HUD in formulating national or regional program policies or procedures that relate to Indian Tribes and Alaska Natives.

(h) "Eligible Indian Population" means the most accurate and uniform population data available from reliable sources (e.g., Bureau of the Census, Bureau of Indian Affairs, General Revenue Sharing) for Indian Tribes eligible under the Act (Section 571.3(n)).

(i) "Extent of housing overcrowding" means the number of housing units with 1.01 or more persons per room based on data compiled and published by the U.S. Bureau of the Census for 1970.

(j) "Extent of poverty" means the number of persons whose incomes are below the poverty level based on data compiled and published by the United States Bureau of the Census for 1970 and the latest reports of the Office of Management and Budget. For the purposes of this Part, the Secretary has determined that it is neither feasible nor appropriate to make adjustments at this time in the computations of "extent of poverty" for regional or area variations in income and cost of living.

(k) "HUD" means the Department of Housing and Urban Development.

(l) "Identified service area" means:

(i) "a geographic location within the jurisdiction of a Tribe (but not the entire jurisdiction) designated in comprehensive plans, ordinances or other local documents described in the Community Development Program as a service area;

(ii) the BIA service area including residents of areas outside the geographical jurisdiction of the Tribe;

(iii) the entire area under the jurisdiction of a Tribe which is under 10,000 population.

(m) "Indian-owned firms" means any commerical, industrial or other economic enterprise that is at least 51 percent owned by Indians.

(n) "Indian regulations" means the policies and procedures in this Part which apply only to eligible Indian Tribal applicants.

(o) "Indian Tribe" means any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan Native Village of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs. Eligible recipients under the State and Local Fiscal Assistance Act of 1972 will be determined by the Department of Treasury, Office of Revenue Sharing. Data pertaining to such determinations of eligible recipients should be available ninety days prior to the beginning of each fiscal year.

(p) "Low- and moderate-income families" or "lower-income families" means families whose incomes do not exceed eighty percent (80%) of the median family income of their metropolitan area, or in the case of families residing in nonmetropolitan areas, of all nonmetropolitan areas of the State. (In determining the income eligibility of individual low- and moderate-income or lower-income families to receive assistance through direct benefit activities under the block grant program, applicants may use the applicable income units published by HUD for lower-income housing assistance under Section 8 of the United States Housing Act of 1937, (42 U.S.C. 1437(f)).

(q) "Low- and moderate-income persons" or "lower-income persons" means members of families whose incomes are within the income limits of lower-income families as defined in § 571.3(p). This term may, where appropriate, also include unrelated individuals, as defined by the U.S. Census Bureau, whose incomes do not exceed eighty percent (80%) of the median income of all unrelated individuals residing in their metropolitan area, or in the case of unrelated individuals residing in nonmetropolitan areas, of all nonmetropolitan areas of the State.

(r) "Low-income persons" means members of families whose incomes do not exceed fifty percent (50%) of the median family income of their metropolitan area, or in the case of families residing in nonmetropolitan areas, of all nonmetropolitan areas of the State. This may, where appropriate, also include unrelated individuals, as defined by the U.S. Census Bureau, whose incomes do not exceed fifty percent (50%) of the median income of all unrelated individuals residing in their metropolitan area, or in the case of unrelated individuals residing in nonmetropolitan areas, of all nonmetropolitan areas of the State.

(s) "Metropolitan area" means a standard metropolitan statistical area, as established by the Office of Management and Budget.

(t) "Regions" means the regional or field offices of HUD as they are currently defined for Indian Tribes. The Secretary may establish special field organization alignments as necessary for effective management.

(u) "Secretary" means the Secretary of the Department of Housing and Urban Development.

(v) "State" means any State of the United States, and instrumentality thereof approved by the Governor, and the Commonwealth of Puerto Rico.

(w) "Tribal Government." "Tribal Governing Body," "Tribal Council" means the recognized governing body of an Indian Tribe.

(x) "Tribal Resolution" means the formal manner in which the Tribal government expresses its legislative will in accordance with its organic documents. In the absence of such organic documents, a written expression

adopted pursuant to Tribal practices will be acceptable.

§ 571.4 Eligible applicants.

(a) The Secretary shall consider eligible Indian Tribes as single applicants regardless of the boundaries of the jurisdictions (counties or States) in which the Indian community is located.

(b) Only Indian Tribes, as defined in these regulations under § 571.3(o) may apply for funds provided under this Part. Eligible applicants may contract or otherwise agree with non-eligible entities such as States, cities, counties or Regional Corporations, as in the case of Alaska, to prepare applications and help implement assisted activities on their behalf. HUD shall make grants only to eligible applicants.

(c) States, cities, or counties may not be applicants for funds provided under this Part. Alaskan Regional Corporations, as defined in the Indian Self-Determination and Education Assistance Act (25 USC 450), may be eligible applicants on behalf of one or more of their constituent villages if they obtain a "Concurring Resolution" from the village council authorizing them to do so. Only the non-profit arm of the Regional Corporation may become an eligible applicant.

§ 571.5 Consultations with eligible applicants.

(a) HUD will, to the maximum extent feasible, afford adequate time and opportunity for consultation, as defined in this Part to eligible Indian applicants prior to initiating major changes in program policies or undertaking any activities set forth in Paragraph (b) of this Section. The consultation process is advisory in nature, and HUD is not bound to accept the comments offered as a result of consultation.

(b) Consultation with as many eligible applicants as possible pursuant to paragraph (a) of this section will apply to the following actions:

(1) the consolidation of Indian functions in certain Regions for purposes of providing assistance under this Part and the designation of the HUD office or offices that will have administrative responsibility for the Indian Community Development Block Grant program pursuant to this Part;

(2) the development of annual rating and ranking policies and procedures by Regional Offices or by Field Offices to whom the Regional Offices have delegated authority to administer funds provided under this Part. Consultation regarding the review and rating system shall occur no later than 60 days after the amount of funds to be made available that year for the annual program are made known, excluding amounts committed to applicants under Subpart E of this Part;

(3) the sub-regional allocation of funds in Region X;

(4) the establishment of policies and procedures concerning Comprehensive Grants by Regional or Field Offices with delegated authority to administer funds provided under this Part;

(5) the amount, if any, of funds to be set aside for funding planning activities pursuant to §§ 571.100(a)(6) and 571.303(a)(4).

§ 571.6 Waivers.

The Secretary may waive any requirement of this Part not required by law whenever it is determined that undue hardship will result from applying the requirement and would adversely affect the purposes of the Act.

Subpart B—Allocation of Funds

§ 571.100 General policies.

(a) *General.* This Section describes the types of grants that may be provided under this Part, the policies and procedures for allocating the Indian portion of the Secretary's Discretionary Fund to the Regions, with general policies for subregional allocation, recapture and reallocation of funds; and other policies for funds distribution.

(1) The Secretary shall establish an annual allocation of funds to be made available to Regions under this Part on a timely basis.

(2) The Secretary shall establish early funding allocations for succeeding fiscal years to permit applicants to participate in the Comprehensive Indian Community Development Grant Program. All amounts so established shall be subject to appropriations.

(3) Region X may suballocate funds for Alaska Natives to its Field Office.

(4) The Secretary will annually review and develop procedures for the allocation of funds for use in the subsequent program year.

(5) Regional or Field Offices may, from within the total amount of funds allocated to their offices under this Part, set aside or otherwise earmark a reasonable amount of such funds specifically for eligible planning activities pursuant to § 571.205 and as provided for in § 571.303(c).

(b) *Types of Grants.* To achieve these purposes and recognizing that the needs and capabilities of eligible Indian applicants vary widely, two general types of grants will be provided under this Part: Basic Indian Community Development Grants (hereinafter referred to as the "Basic Grant Program") and Comprehensive Single- or Multi-Year Indian Community Development Grants (hereinafter referred to as the "Comprehensive Grant Program").

(1) *Basic Indian Community Development Grants.* Grants will be made to assist one or more single-purpose activities that are essentially unrelated but meet a variety of basic community development needs of Indian Tribes. A Basic Grant may be provided for planning purposes pursuant to § 571.303(c).

(2) *Comprehensive Single- or Multi-Year Indian Community Development Grants.* Grants will be made available on a demonstration basis to eligible Indian applicants for comprehensive single- or multi-year community development programs designed to address multiple programs or purposes in a coordinated manner. Funds may be provided in increments of up to three years. Commitments for additional years' funding will be made only under special circumstances to certain applicants and will be subject both to the availability of funds and the applicant's past performance in carrying out activities and programs funded under the Community Development Block Grant Program pursuant to 24 CFR Part 570 or 24 CFR Part 571.

(3) Grant amounts under both programs shall take into account the population of the applicant; the needs of the applicant as measured by substandard housing and poverty conditions; the activities for which funds are sought; and the proven ability of the applicant to carry out the program proposed.

(4) Unless specifically approved by the Secretary, no Region may commit more than twenty percent (20%) of its available funds to the Comprehensive Grant Program in order to ensure that adequate funds are available for Basic Grant Program applicants.

§ 571.101 Allocation of funds to regional and field offices.

The following provisions apply to the allocation of funds to Regional and Field Offices:

(a) Fifty percent (50%) of funds available under this Part shall be allocated among all regions according to the percentage of the total eligible Indian population that resides in each region.

(b) Fifty percent (50%) of funds available under this Part shall be allocated to each Region according to the ratio of previous Community Development Block Grant funding to and for Indian Tribes which were eligible recipients then and are now eligible recipients.

§ 571.102 Subregional allocation procedures.

Funds allocated pursuant to § 571.101 may be suballocated within Regions at their discretion provided that such subregional allocations use population percentage and previous

program participation as their principal criteria.

§ 571.103 Recapture of funds.

The Secretary, in order to ensure maximum utilization of funds, may include conditions in the grant agreement providing that all or part of the funds for an approved activity or activities may be recaptured at the discretion of the Regional or Field Office for any of the following reasons:

(a) the recipient and the Regional or Field Office agree that the approved activity is no longer feasible;

(b) the funding level approved is substantially greater than that which is needed to carry out the approved activity and there is no other activity which is as highly rated for which funds could be reprogrammed;

(c) the recipient has not commenced the approved activity within a reasonable period of time (a reasonable period of time depends upon the nature of the project and will be made specific in the condition of the grant agreement.)

(d) The performance of the Grantee is determined to be grossly inadequate when evaluated against the standards set forth in Section 571.705 of the regulations and HUD has exhausted other available remedies for non-compliance.

§ 571.104 Reallocation of funds.

The following policies and procedures apply to the reallocation of funds by Regions:

(a) as a general rule, recaptured funds will be reallocated either for activities that were not included in an approved grant because of limited funds or to the next highest rated project of an unfunded applicant that could be undertaken with the amount of recaptured funds available;

(b) funds allocated to Regions, under this Section, that are not used within the fiscal year of allocation will remain available in those Regions for distribution in the next fiscal year, provided that the appropriation has not lapsed;

(c) funds suballocated within Regions as provided for in § 571.102 may be recaptured and reallocated by the Field Office only after approval of the Regional Office.

Subpart C—Eligible Activities

§571.200 General policies.

(a) *Policy.* The general policy with regard to eligible activities is that grant assistance may be used only for activities which comply with the requirements of this Part.

(b) *Determinations of Eligibility.* This Subpart sets forth the variety of eligible activities that may be undertaken with assistance under this Part to meet community development and housing needs principally for low- and moderate-income persons or for the prevention or elimination of slums and blight. The listing of certain eligible types of activities in this Subpart does not by itself, however, render specific activities, proposed to be conducted by individual applicants, eligible for assistance under this Part. There are other requirements that must also be met to qualify a specific activity for assistance. An activity may be assisted only in those instances where it complies with all other applicable requirements of this Part and the basic statutory objectives of the block grant program and applicable state and local law. Further, there must be compliance with an applicable environmental review and clearance procedures set forth in 24 CFR Part 58.

(c) *Special policies governing facilities.* The following special policies apply to:

(1) *facilities containing both eligible and ineligible uses.* Where a facility, otherwise eligible for assistance under the block grant program is to be provided as a part of a multiple-use building and/or facility that also contains otherwise ineligible uses, the portion of the costs attributed to the eligible facility may be assisted with block grant funds where:

(i) the facility, which is otherwise eligible and proposed for assistance, will occupy a designated and discrete area within the larger facility; and

(ii) the applicant can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility. For example, a senior center, which is to occupy space within a building that is otherwise used for the conduct of general governmental business, may be assisted when it exclusively occupies a separate and designated area within the building (i.e., the senior center does not "float" to different locations within the building that happen to be available on a less than permanent basis) and the applicant can determine the cost associated with providing the senior center as distinct from those costs associated with all remaining ineligible portions of the building.

(2) *facilities located on school property.* Any facility eligible for assistance pursuant to § 571.201(c), which is designed primarily for a public purpose other than education is not considered to be a school or educational facility where although it is to be located on a site controlled by a school district, school board or similar body responsible for public education, the facility will only be used by any adjacent school or educational facility on an incidental basis. In order to determine whether the facility is to be used on an incidental basis, the applicant shall at a minimum demonstrate that:

(i) after school hours and on weekends, the facility shall be available for use by the general public to the same extent as similar facilities operating within the applicant's jurisdiction; and

(ii) during school hours, the facility is not used for school purposes for more than four hours each day.

(d) *Consultant Activities.* Applicants may employ consultants to provide professional assistance in program planning, application preparation, and professional guidance relating to program execution. The use of consultants is governed by the following provisions:

(1) *Program Requirements* including the requirements of this part, Federal Management Circular 74-4, OMB Circular A-102, and applicable Federal, State, and local laws;

(2) *Written Agreements* which shall be executed between the parties detailing the responsibilities, standards, and fees;

(3) *Compensation for Consultants.* Persons employed as consultants or by firms providing consultant services shall receive no more than a reasonable rate of compensation for personal services which, on a daily basis, may not exceed the maximum daily rate of compensation for a GS-18 as established by Federal law; and

(4) *Adjustments resulting from audits or monitoring reviews.* The rates of compensation for personal services and payments under lump sum contracts may be adjusted where audits or monitoring reviews indicate that the rates of compensation were not reasonable or exceeded the maximum daily rate for a GS-18, or the actual time required to provide the consultant service was significantly less than the estimate upon which the lump sum amount was based.

§ 571.201 Basic eligible activities.

Grant assistance may be used for the following activities:

(a) *Acquisition.* Acquisition in whole or in part by a public agency, by purchase, lease, donation or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) which is:

(1) blighted, deteriorated, deteriorating, undeveloped or inappropriately developed from the standpoint of sound community development and growth, as determined by the recipient pursuant to State and local laws;

(2) appropriate for rehabilitation or conservation activities;

(3) appropriate for the preservation or restoration of historic sites, the beautification of land, the conservation of open spaces, natural resources and scenic areas, the provision of rec-

reational opportunities or the guidance of community development;

(4) to be used for the provision of public works, facilities and improvements eligible for assistance under this Subpart; or

(5) to be used for other public purposes, including the conversion of land to other uses where necessary or appropriate to the community development program. For example, an applicant may purchase land to be used for the development of housing for low- and moderate-income persons.

(b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with block grant funds or its retention for public purposes, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in § 571.505.

(c) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation, or installation of certain publicly owned facilities and improvements. This may include the execution of architectural design features, and similar treatments intended to enhance the esthetic quality of facilities and improvements receiving block grant assistance, such as decorative pavements, railings, sculpture, pools of water and fountains, and other works of art. Public facilities and improvements eligible for assistance under this Paragraph include:

(1) *Senior Centers,* but excluding any facility whose primary function is to provide residential accommodations or care on a 24-hour day basis (such as a group home);

(2) *Parks, playgrounds and other recreational facilities* which are designed for participation, but not spectator facilities such as stadia;

(3) *Centers for the handicapped.* The term "center for the handicapped" means any single or multipurpose facility which seeks to assist persons with physical, mental, developmental and/or emotional impairments to become more functional members of the Community by providing programs or services which may include, but are not limited to recreation, education, health care, social development, independent living, physical or vocational rehabilitation; but excluding any facility whose primary function is to provide residential care on a 24-hour a day basis (such as a group home or halfway house). For example, a center designed solely as a sheltered workshop would be a single purpose center for the handicapped, and a facility providing several services for the handicapped, including a sheltered workshop, would be a multipurpose center for the handicapped, both of which are eligible for assistance;

(4) *Tribal facilities.* Such facilities may be of either a single purpose or multipurpose nature and be designed to provide health, social, recreational or similar community services primarily for residents of an identified service area.

(d) *Solid waste disposal facilities,* which are defined as those physical parts of solid waste management systems commencing at and including the site or sites at which publicly or privately owned collection vehicles discharge solid wastes, through the point of ultimate disposal including necessary site improvements and conveying systems, including appropriate fixed and movable equipment, including vehicular containers used after the first stage of disposal at transfer stations, but not including the final collections.

(1) Such facilities or equipment must be located in identified service areas.

(2) Equipment and appurtenances used in the initial collection of solid waste are not included among those solid waste disposal facilities eligible for assistance under this part.

(e) *Fire protection facilities and equipment.* Such facilities and equipment must be located in or serve identified service areas.

(1) Fire protection facilities are defined as the land and necessary improvements thereto which are necessary for properly housing and storing fire protection equipment and personnel by a fire organization, but not including fire fighting schools and their appurtenances.

(2) Fire protection equipment is defined as appropriate equipment and apparatus, including equipment for emergency medical aid, which a fire protection organization requires to protect property and maintain the safety and welfare of the public, from the dangers of fire.

(f) *Parking facilities.* Such facilities must be located in or serve identified service areas.

(g) *Public Utilities,* other than water and sewer, which include:

(1) facilities necessary for distribution or collection of the utility (but not production or generation, such as electrical generation plants);

(2) buildings and improvements that are an integral part of the utility and are of such a nature that the utility will not function without them; and

(3) the placing underground of existing or new distribution or collection facilities. Further information regarding the eligibility of assistance to privately owned utilities is set forth in § 571.201(v)

(h) *Street improvements.* Streets, street lights, traffic signals, signs, street furniture, trees, bridges, culverts, causeways, curbs, gutters, sidewalks, and other normal appurtenances to streets and structures facilitating the passage on, or usage of, streets, but excluding expressways and other limited access ways and their appurtenances.

(i) *Water and sewer facilities,* including storm sewers, except for sewage treatment works and interceptor sewers which are described in § 571.207(a)(2)(V). The term "storm sewers" means sewers or other conduits, open or closed, or their appurtenances which collect, transport and dispose of storm waters, surface water, street wash, other wash and ground water or drainage into an existing water course, but excluding domestic waste water and commercial and industrial wastes.

(j) *Foundations and platforms for air rights sites.*

(k) *Pedestrian malls and walkways.*

(l) *Flood and drainage facilities.* In cases where assistance for such facilities has been determined to be unavailable under other Federal laws or programs pursuant to the provisions of § 571.607. The term "flood and drainage facilities" means those undertakings designed to influence or affect the flow in a natural water course (such as a river, stream, lake, estuary, bay, ocean or intermittent stream) and excludes storm sewers.

(m) *Other public facilities and improvements,* not listed in this paragraph, except those described in §§ 571.207(a)(1) and (f), which are necessary and appropriate to the implementation of the applicant's strategy for housing or revitalization of the identified service area.

(1) The applicant shall provide HUD with a description of the proposed facility or improvement and its relationship to the applicant's strategy for housing or revitalization of the identified service area.

(2) Among the factors HUD will take into account in authorizing assistance under this paragraph are: The amount of benefit to low- and moderate-income persons, the degree of impact on the identified needs of the applicant, and the availability of other Federal funds for the activity.

(n) *Clearance activity.* Clearance, demolition and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD-assisted housing units may be undertaken only with the prior approval of HUD.

(o) *Public services.* Provision of public services (including labor, supplies and materials) which are directed toward improving Tribal services and facilities, including those concerned with employment, crime prevention, child care, health, drug abuse, education, welfare, or recreational needs, and which are directed toward coordinating public and private development

programs. Such services may be provided by State or local government, quasi-public, private or nonprofit agencies including, but not limited to, HUD approved counselling agencies selected by the applicant for funds provided under this Part. In order to be eligible for block grant assistance, public services must meet each of following criteria.

(1) Public services are to be provided for residents in identified service areas in which block grant-assisted physical development activities are being carried out in a coordinated manner. Such public services may be supported with block grant funds during the period in which block grant assisted physical development activities are being carried out in a concentrated manner, and may be continued for no more than three years after the completion of such physical development activities. For the purpose of this paragraph:

(i) physical development activities include only those described in § 571.201(a) through (d), (f) through (h), (j) and (k), and § 571.202 through § 571.203;

(ii) the phrase "concentrated manner" shall mean that the block grant-assisted physical development activities are being carried out within an area in a coordinated manner to serve a common objective or purpose pursuant to a locally developed plan or strategy in identified service areas with a comprehensive, physical development program for the improvement, conservation or preservation of the identified service area.

(2) Such services must be directed toward meeting the needs of residents of such areas. Block grant assistance may incidentally be provided for such services only for those who are not residents of an identified service area.

(3) A public service must be either (i) a new service, or (ii) a quantifiable increase in the level of a service above that which has been provided by or in behalf of the applicant from local revenue sources or State funds received by the applicant in the 12 calendar months prior to submission of the block grant application. (An exception to this requirement with regard to State-funded services may be made if HUD determines that the decrease in the level of a service was the result of events not within the control of the applicant.)

(4) Federal assistance in providing or securing such public services must have been applied for and denied or not made available pursuant to the provisions of § 571.605.

(5) Public services must be determined by the applicant to be necessary or appropriate to support the physical development activities to be carried out within the identified service areas. For example, the provision of job training for area residents working on revitalization projects would be appropriate to support a concentration of block grant assisted physical development activities being carried out in the area. (i) The specific determination of support for each proposed public service is not required to be included in the application, but the applicant must briefly describe the relationship of the public service to the physical development activities (ii) HUD will accept the applicant's determination that a public service is necessary and appropriate to support the physical development activities unless there is substantial evidence to the contrary, in which case additional information or assurances may be requested from the applicant prior to a determination of eligibility.

(p) *Interim assistance.* Interim assistance to alleviate harmful conditions where immediate public action is determined by the applicant to be necessary.

(1) The following activities may be undertaken as a prelude to more comprehensive treatment in identified service areas where activities included in the Community Development Program are to be carried out in order to hold the area from further deterioration during the interim period;

(i) the repair of streets, sidewalks, parks, playgrounds, publicly owned utilities and public buildings;

(ii) the improvement of private properties to the extent necessary to eliminate immediate danger to public health, safety or welfare;

(iii) the establishment of temporary public playgrounds on vacant land; and

(iv) the execution of special garbage, trash, and debris removal, including clean up campaigns, but not the regular curbside collection of garbage or trash in an area.

(2) The following activities may be undertaken to the extent necessary to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer of the applicant determines that an imminent threat to the public health and safety exists requiring immediate resolution of emergency conditions;

(i) the improvement of private properties;

(ii) the repair of streets, sidewalks, utilities, and other public facilities and improvements; and

(iii) the removal of trash and debris, unsafe structures, clearance of streets including snow removal, and other similar activities. The chief executive officer, or his designee, shall notify the appropriate HUD Field Office within several days of determining that a situation exists which poses an imminent threat to the public health and safety and that block grant funds will be used to alleviate the emergency conditions.

(q) *Payment of the non-Federal share* required in connection with a Federal grant-in-aid program undertaken as part of the block grant activities: *provided*, that such payment shall be limited to activities otherwise eligible under this subpart.

(r) *Relocation.* Relocation payments and assistance for individuals, families, businesses, nonprofit organizations, and farm operations displaced by activities assisted under this Part.

(s) *Loss of rental income.* Payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by program activities assisted under this Part.

(t) *Removal of architectural barriers.* Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly-owned and privately-owned buildings, facilities, and improvements. Further information regarding the removal of architectural barriers is available in publication: ANSI A117.1-1961 (R. 1971) of the American National Standards Institute, Inc.

(v) *Privately owned utilities.* Acquisition, construction, reconstruction, rehabilitation, or installation of distribution facilities and lines of privately owned utilites where necessary and appropriate to implement the applicant's strategy for revitalization or housing. Activities may include the placing underground of new or existing distribution facilities.

(1) The applicant shall provide HUD with a description of the proposed activity and its relationship to the applicant's strategy for neighborhood revitalization or housing.

(2) Among the factors HUD will take into account in authorizing such activities are:

(i) the degree of benefit to low- and moderate-income persons;

(ii) the degree of impact on the identified needs of the applicant; and

(iii) the availability of other Federal funds for the activity.

§ 571.202 Eligible rehabilitation and preservation activities.

Grant assistance may be used for the following activities for the rehabilitation of buildings and improvements:

(a) *Rehabilitation of public residential structures.* Rehabilitation of publicly-owned or acquired properties for use in the provision of housing including:

(1) permanent housing units, both single family and multifamily, for rental or sale; and

(2) residential facilities, including group homes, halfway houses, and emergency shelter. For example a group home for the handicapped or a temporary shelter for battered women man be provided through acquisition and rehabilitation of properties for those purposes.

(b) *Public housing modernization.* Modernization and modernization planning of publicly-owned low-income housing (excluding, the new construction of office facilities for such public housing). (Block grant funds may also be provided by an applicant to a public housing agency to be used for otherwise eligible activities, e.g., public services such as security and day care meeting the requirements of § 571.201(o) and planning and policy-planning-management activities under § 571.205 related to public housing improvements.)

(c) *Rehabilitation of private properties.* Block grant assistance may be used for the rehabilitation of privately owned properties. Assistance may consist of:

(1) *Acquisition for the purpose of rehabilitation.* Block grant funds may be used to assist private entities, including those organized for profit and on a not-for-profit basis to acquire, for the purpose of rehabilitation, and rehabilitate properties for use or resale in the provision of housing which, upon completion of rehabilitation, at a minimum will meet the Section 8 Existing Housing Quality Standards set forth in 24 CFR 882.109, including:

(i) permanent housing units, both single family and multifamily, for rental or sale; and

(ii) residential facilities, including group homes, halfway houses, and emergency shelters.

(2) *Rehabilitation financing.* Block grant funds may be used to finance the rehabilitation of privately-owned residential, non-residential (excluding industrial properties), and mixed use properties either within identified service areas where activities included in the Community Development Program are being carried out or on a spot basis throughout the jurisdiction of the applicant for low- and moderate-income persons. Block grant funds may be used directly to finance rehabilitation, including settlement costs, through the direct use of block grant funds in the provision of assistance such as grants, loans, loan guarantees and interest supplements, for:

(i) costs of rehabilitation of properties, including, repair directed toward cure of an accumulation of items of deferred maintenance, replacement of principal fixtures and components of existing structures, and renovation through alteration, additions to, or enhancement of existing structures, which may be undertaken singly, or in combination;

(ii) refinancing existing indebtedness secured by a property being rehabilitated if such refinancing is necessary or appropriate to the execution of a Community Development Program;

(iii) measures to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification or replacement of heating and cooling equipment, including the use of solar energy equipment;

(iv) financing of costs associated with the connection of residential structures to water distribution lines or local sewer collection lines; or

(v) costs of initial homeowner warrantly premiums for rehabilitation carried out with block grant assistance.

(3) *Materials.* Block grant funds may be used to provide materials, including tools, for use in the rehabilitation of properties either by the property owner or tenant, or where arrangement have been made for the provision of labor, such as through a CETA grant.

(d) *Temporary relocation assistance.* Block grant funds may be used for temporary relocation payments and assistance to individuals, families, businesses, non-profit organizations, and farm operations displaced temporarily by rehabilitation activities assisted under this Part.

(e) *Code enforcement.* Code enforcement in identified service areas where activities included in the Community Development Program are being carried out, which are deteriorating or deteriorated in which such enforcement together with public improvements, and services to be provided may be expected to arrest the decline of the area.

(f) *Historic preservation.* Rehabilitation, preservation, restoration and acquisition of historic properties, either publicly or privately-owned, which are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a State or local Inventory of Historic Places, or designated as a State or local landmark or historic district by appropriate law or ordinance. Publicly-owned historic properties may be assisted, including those properties which are otherwise ineligible for assistance under this Subpart. However, eligibility is limited only to those costs necessary for rehabilitation, preservation or restoration of the property and not for conversion or expansion of the property for any ineligible use. For example, a city museum serving low- and moderate-income persons, and listed in the National Register may be restored, but the addition of a new wing on the museum could not normally be assisted, unless it were otherwise eligible for assistance pursuant to § 571.203(b).

§ 571.203 Eligible economic development activities.

Grant assistance may be provided for the following development activities which are not otherwise eligible for block grant assistance, which are directed toward the alleviation of physical and economic distress, through stimulation of private investment, community revitalization, and expansion of economic opportunities for low- and moderate-income persons and which are necessary and appropriate to implement the applicant's strategy for economic development. The applicant shall provide HUD with a description of the activity, and of its relationship to the applicant's strategy for economic development. In authorizing activities, HUD will take into account the amount of long-term employment to be generated by the activity accessible to low- and moderate-income persons, the necessity of the activity to stimulate private investment, the degree of impact on the economic conditions of the applicant, and the availability of other Federal funds.

(a) *Acquisition.* Acquisition of real property for economic development purposes.

(b) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements not otherwise eligible for assistance, except buildings and facilities for the general conduct of government which are excluded by § 571.207(a)(1). For example, in an area with an unemployment rate in excess of the national rate, a manpower training center which is designed to prepare for the work force low- and moderate-income persons who are unemployed may be assisted where it is determined by the applicant that such a facility is necessary and appropriate to support its economic development strategy.

(c) *Commercial and industrial facilities.* Acquisition, construction, reconstruction, rehabilitation, or installation of:

(1) commercial or industrial buildings and structures, including: (i) purchase of equipment and fixtures which are part of the real estate, but not personal property; and (ii) energy conservation improvements designed to encourage the efficient use of energy resources, (including renewable energy resources or alternative energy resources);

(2) commercial or industrial real property improvements, (including railroad spurs or similar extensions).

§ 571.204 Eligible activities by private non-profit entities, Tribal-based non-profit organizations, local development corporations, or small business investment companies.

(a) *General.* Grant assistance may be used by applicants to provide block grant funds for activities designed to implement the applicant's strategies for economic development and neighborhood revitalization set forth in this section to be carried out by a private nonprofit entity, a Tribal-based non-profit organization, local development corporation, or Small Business Investment Company (SBIC).

(1) *Applicant responsibilities.* Applicants are nonetheless responsible for insuring that block grant funds are utilized by such entities in a manner consistent with the requirements of this part and other applicable Federal, State, or local law. Applicants will also be responsible for the carrying out of applicable environmental review and clearance responsibilities.

(2) *Eligible entities.* Entities eligible to receive block grant funds under this section are:

(i) a private non-profit entity which is any organization, corporation, or association duly organized to promote and undertake community development activities on a not-for-profit basis;

(ii) a Tribal-based non-profit organization which is an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit basis within an identified service area. An organization is considered to be Tribal-based if the majority of either its membership, clientele, or governing body are residents of the identified service area.

(iii) a Small Business Investment Company (SBIC) which is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)) including those which are profitmaking; and

(iv) a local development corporation which is an entity organized pursuant to title VII of the Head Start, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 298); an entity eligible for assistance under section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696); a State development entity eligible for assistance under section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695); or other similar entity incorporated pursuant to Federal, State, or local law.

(b) *Activities eligible under §§ 571.201-571.203, and § 571.205 and § 571.206.* Grant assistance may be provided by an applicant to be utilized by private nonprofit entities, Tribal-based non-profit organizations, SBIC's, or local development corporations for activities otherwise eligible for block grant assistance pursuant to §§ 571.201-571.203, § 571.205, and § 571.206. Where such entities use block grant funds to acquire title to facilities, including those described in § 571.201(c) or § 571.203(b), they shall be operated so as to be open for use by the general public during all normal hours of operation. Reasonable fees may be charged for the use of facilities acquired by such entities, but charges, such as excessive membership fees, which will have the effect of precluding low- and moderate-income persons from using the facilities are not permitted.

(c) *Community economic development or revitalization activities.* Grant assistance may be provided by an applicant to be used by Tribal-based non-profit organizations, SBIC's, or local development corporations, but not private non-profit entities as defined in § 571.204(a)(2)(i) for community or economic development revitalization activities which are not otherwise eligible for assistance under this Subpart and which are determined by the applicant to be necessary or appropriate to the accomplishment of its Community Development Program. Such activities may include the provision of block grant assistance for use by Tribal-based non-profit organizations, SBIC, or local development corporations for:

(1) assistance through grants, loans, guarantees, interest supplements, or technical assistance to new or existing small businesses, minority businesses, and tribal non-profit businesses for: (i) working capital or operational funds; and (ii) capital for land, structures, property improvements, and fixtures;

(2) capitalization of a SBIC or local development corporation required to qualify for assistance under other Federal programs;

(3) assistance to minority contractors to obtain performance bonding; or

(4) other activities, excluding those described as ineligible for block grant assistance in §§ 571.207(a)(1) and (e), appropriate for community economic development or neighborhood revitalization. Where an applicant proposes to fund such entities to undertake activities pursuant to this paragraph, the applicant shall: (i) provide HUD with a complete description of the proposed activity; (ii) provide HUD with a description of the relationship of the proposed activity to the applicant's strategy for neighborhood revitalization or economic development; and (iii) receive specific authorization from HUD to undertake the activity.

§ 571.205 Eligible planning and urban environmental design costs.

Grant assistance may be used for the following planning, design and environmental costs:

(a) *Development of a Comprehensive Community Development Plan.* For the purpose of this section, the term "Comprehensive Community Development Plan" means a statement or statements (in words, maps, illustrations, or other methods of communication) which identify the present conditions, needs, and major problems of the applicant's jurisdiction relating to the specific objectives of its Community Development Program as set forth in § 571.2(a) and set forth objectives, policies, and standards to guide the development and implementation of such Community Development Program. Activities necessary to develop a Comprehensive Community Development Plan may include:

(1) data gathering and studies necessary for the development of the plan or its components, including the production of base mapping and aerial photography in coordination with the U.S. Geological Survey, and gathering information from citizens, but excluding the gathering of detailed data and preparing of analyses necessary for the engineering and design of facilities or activities ineligible for block grant assistance pursuant to § 571.207;

(2) development of statements of objectives, policies, and standards regarding proposed or foreseeable changes in the present conditions or problems affecting the applicant's jurisdiction that are to be addressed by the Community Development Program;

(3) development of a 3-year Community Development Plan which identifies community development, housing, economic conditions and needs, demonstrates a comprehensive strategy for meeting those needs and specifies both short- and long-term objectives to guide the applicant's community development program;

(4) related planning and urban environmental design activities including the preparation of communitywide plans for land use, housing, open space, recreation, utilities, historic preservation, including surveys of historic properties, economic development, neighborhood preservation, removal of architectural barriers to the elderly and handicapped, and environmental assessments;

(5) collection of detailed data, preparation of analyses, engineering, and design of facilities eligible for assistance which can be constructed with block grant funds; and

(6) development of codes, ordinances, and regulations necessary for the implementation of the plan.

(b) *Development of a policy-planning-management capacity so that the applicant may:* (1) set long-term and short-term objectives related to the community development and housing needs of its jurisdiction;

(2) devise programs and activities to meet these goals and objectives;

(3) establish an environmental design administrative capacity to use a systematic, interdisciplinary approach to the integrated use of natural and social sciences and environmental design arts in planning and decision-making;

(4) evaluate the progress of such programs and activities and the extent to which the goals and objectives have been accomplished; and

(5) carry out the management, coordination, and monitoring of the activities and programs that are a part of the applicant's community development program.

(c) *Comprehensive planning activities.* In addition to planning activities otherwise eligible for assistance under this section, assistance may be also provided for comprehensive planning activities eligible for assistance under the section 701 planning assistance program pursuant to 24 CFR part 600: *provided,* That such additional planning activities are necessary or appropriate to meeting the needs and objectives of the applicants' Community Development Program. The applicant shall submit a description of the activities to HUD. Among the factors HUD will take into account in authorizing activities will be the impact of the activity on the needs and objectives identified by the applicant, and the availability of other Federal funds.

§ 571.206 Reasonable administrative costs.

Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities financed, in whole or in part, with funds provided under this part and housing activities covered in the applicant's Housing Assistance Plan (HAP). Costs incurred in carrying out the program, whether charged to the program on a direct or an indirect basis, must be in conformance with the requirements of Federal Management Circular (FMC) 74-4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments". All items of cost listed in Attachment B, Section C of that Circular (except Item 6, prearrangement costs, which are eligible only to the extent authorized) are allowable without prior approval to the extent they constitute reasonable costs and are otherwise eligible under this Subpart.

(a) *Eligible program administration costs.* Reasonable administrative costs and staff expenses include necessary expenditures for the following:

(1) salaries, wages and related costs of the applicant's staff and the staff of local public agencies engaged in carrying out the program;

(2) travel costs incurred for official business in carrying out the program;

(3) administrative services performed under third-party contracts or agreements, including such services as general legal services, accounting services and audit services;

(4) other costs for goods and services required for administration of the program, including such goods and services as rental and maintenance of office space, insurance, utilities, office supplies and rental or purchase of office equipment;

(5) costs associated with the administration of individual program activities; and

(6) reasonable administrative costs relating to the provision of rehabilitation loans under Section 312 of the Housing Act of 1964, as amended, and, where appropriate, administration of an urban homesteading program pursuant to Section 810 of the Housing and Community Development Act of 1974, as amended, in accordance with the Community Development Program or Housing Assistance Plan.

(b) The provision of information and other resources to residents and citizen organizations participating in the planning, implementation or assessment of activities being carried out with block grant funds. This may include assistance to Tribal organizations in identified service areas conducting training or other activities designed to increase the capability of low- and moderate-income persons to be involved effectively in the development and planning and design of a Community Development Program consistent with the applicable citizen participation requirements set forth in this Part.

(c) Provision of fair housing counseling services and other activities designed to further fair housing and the housing objective of promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of lower-income persons. For example, activities may involve informing Tribal members including the handicapped, of housing opportunities in non-reservation residential areas and providing information about such areas, and assisting Tribal members including the handicapped, through provision of escort services to brokers offices in non-reservation residential areas.

(d) Provision of assistance to facilitate performance and payment bonding necessary for contractors carrying out activities assisted with block grant funds including, payment of bond premiums in behalf of contractors.

(e) *Property management.* Reasonable costs of managing properties acquired with block grant funds.

(f) Applications for Federal programs, including the block grant program, may be prepared with block grant funds where necessary and appropriate to implement the applicant's comprehensive strategy for community development.

(g) Activities to facilitate the implementation of a housing assistance plan for necessary expenses, prior to construction, in planning and obtaining financing for the new construction or substantial rehabilitation of housing for lower-income persons. Activities may include:

(1) the costs of conducting preliminary surveys and analyses of market needs;

(2) site and utility plans, narrative descriptions of the proposed construction, preliminary cost estimates, urban design documentation and "sketch drawings", but excluding architectural, engineering and other details ordinarily required for construction purposes, such as structural, electrical, plumbing and mechanical details;

(3) reasonable costs associated with development of applications for mortgage and insured loan commitments, including commitment fees, and of applications and proposals under the Section 8 housing assistance payments program pursuant to 24 CFR Parts 880-883; and

(4) fees associated with processing applications for mortgage and insured loan commitments under programs including those administered by HUD, Farmers Home Administration (FmHA), Federal National Mortgage Association (FNMA), and the Government National Mortgage Association (GNMA).

The new construction or direct financing of new construction of housing is not eligible for assistance under this Part.

(h) *Environmental studies.* The reasonable costs of environmental studies, including historic preservation clearances, necessary to comply with 24 CFR Part 58, including project specific environmental assessments and clearances for activities eligible for assistance under this Part.

§ 571.207 Ineligible activities.

The following is a list of activities which are ineligible for block grant assistance under most circumstances and which serves as a general guide regarding ineligible activities. There are several authorities set forth in Subpart C of this part which would permit activities cited in this section to be undertaken with block grant funds. When an activity used as an example in this

section meets the requirements for eligibility pursuant to Subpart C of this Part, such an activity may be assisted with block grant funds even though it is used as an example of an eligible activity. The list of examples of ineligible activities is merely illustrative and does not constitute a list of all ineligible activities:

(a) *Public works, facilities and site or other improvements.* The general rule is that public works, facilities and site or other improvements are ineligible to be acquired, constructed, reconstructed, rehabilitated or installed unless they are eligible pursuant to § 571.201(c) or § 571.203(b), or were previously eligible under any of the programs consolidated by the Act (except the Public Facilities Loan Program, the Model Cities Program, and as an Urban Renewal local grant-in-aid eligible under Section 110(d)(3) of Housing Act of 1949). Activities undertaken to make facilities and improvements otherwise ineligible for development with block grant assistance accessible to the elderly and handicapped through removal of architectural barriers, or for the purposes of historic preservation pursuant to §§ 571.201(u) and 571.202(f), respectively, are eligible for assistance with block grant funds and are not precluded by this section. Where acquisition of real property includes an existing improvement which is to be utilized in the provision of an ineligible public facility, the portion of the acquisition cost attributable to such improvement, as well as the cost of any rehabilitation or conversion undertaken to adapt or make the property suitable for such use, shall be ineligible. Examples include the following:

(1) buildings and facilities for the general conduct of government cannot be provided with block grant assistance, such as city halls and other headquarters of government where the governing body of the recipient meets regularly and which are predominantly used for municipal purposes, court houses, police stations and other municipal office buildings;

(2) other facilities and improvement, which cannot be provided with block grant funds unless they are determined by HUD to be necessary and appropriate to the implementation of an applicant's strategy for community development and housing include:

(i) facilities used for exhibitions, spectator events and cultural purposes, including stadia, sports arenas, auditoriums, concert halls, cultural and art centers, convention centers and exhibition halls, museums, central libraries, and similar facilities. For the purpose of this paragraph, libraries (including central libraries of Tribes under 25,000 population where the criteria set forth in § 571.201(c)(4) are satisfied), cultural art and museum facilities which meet the requirements for Tribal facilities set forth in § 571.201(c)(4) are considered Tribal facilities and are, therefore, eligible for assistance;

(ii) Schools and educational facilities (including elementary, secondary, college, and university facilities). For the purpose of this paragraph—a Tribal facility, senior center or center for the handicaped in which classes in practical and vocational activities (such as first aid, homemaking, crafts, independent living, etc.) are among the services provided is not considered as a school or educational facility;

(iii) airports, subways, trolley lines, bus or other transit terminals, stations, and other transportation facilities (excluding railroad spurs assisted pursuant to § 571.203(c);

(iv) hospitals, nursing homes and other medical facilities. For the purpose of this paragraph, a Tribal facility, senior center, center for the handicapped, which provides general health services, is not considered to be a medical facility.

(v) treatment works for sewage or industrial wastes of a liquid nature consisting of the various devices used in the treatment of sewage and commercial and industrial wastes of a liquid nature, including the necessary interceptor sewers, outfall sewers, actual treatment facilities, pumping stations, power and other equipment, and their appurtenances. The term "interceptor sewer" means a line which has as its primary purpose the diversion or transmission of sewage from a collection system to a treatment facility, and applies to the following:

(A) in those situations where raw or inadequately treated sewage is being discharged from an existing public sewer, those sewer lines, whether gravity or force and any pumping stations or other appurtenances thereto which are necessary to prevent or eliminate the discharge into any waterway of raw or inadequately treated sewage from an existing point or points of discharge in a public system are not eligible. This includes any necessary pumping stations, force mains or other appurtenances thereto; and

(B) in all other situations, the line or lines which divert the flow to the treatment facility from the points of natural discharge of a collection system, were no treatment to be provided, including any necessary pumping stations, force mains or other appurtenances are not eligible.

(b) *Purchase of equipment.* The purchase of equipment with block grant funds is generally ineligible.

(1) *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation or use allowances pursuant to Attachment B of OMB Circular A-102 for an otherwise eligible activity is an eligible use of block grant funds. An exception is the purchase of construction equipment which is used as a part of a solid waste disposal facility which is eligible for block grant assistance pursuant to § 571.201(d), such as a bulldozer used at a sanitary landfill.

(2) *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, or furnishings or other personalty not an integral structural fixture is ineligible, except when necessary for use by a recipient or its subgrantees in the administration of its Community Development Program pursuant to § 571.206, or as a part of a public service pursuant to § 571.201(o).

(c) *Operating and maintenance expenses.* The general rule is that any expense associated with operating, maintaining or repairing public facilities and works or any expense associated with providing public services not assisted with block grant funds is ineligible for assistance. However, operating and maintenance expenses associated with providing public services or interim assistance otherwise eligible for assistance under this part may be assisted. For example, the cost of a public service being operated with block grant funds in a Tribal facility may include reasonable expenses associated with operating the public service within the facility, including costs of rent, utilities and maintenance. Examples of activities which are not eligible for block grant assistance are:

(1) maintenance and repair of streets, parks, playgrounds, water and sewer facilities, Tribal facilities, senior centers, centers for the handicapped, parking and similar public facilities. Examples of maintenance and repair activities for which block grant funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs.

(2) payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities; and

(3) expenses associated with provision of any public service which is not eligible for assistance pursuant to § 571.201(o).

(d) *General government expenses.* Expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this Part. Examples include all ordinary general government expenditures not related to the Community Developmnent Program and not related to activities eligible under this Subpart.

(e) *Political activities.* No expenditure may be made for the use of equipment or premises for political purposes, sponsoring or conducting candidates' meeting, engaging in voter registration activity or voter transportation activity or other partisan political activities

(f) *New housing construction.* Assistance may not be used for the construction of new permanent residential structures or any program to subsidize or finance such new construction, except as provided under the last resort housing provisions set forth in 24 CFR Part 43, or pursuant to § 571.204(c)(4). For the purpose of this paragraph, activities in support of the development of low- or moderated-income housing in accordance with an approved Housing Assistance Plan including clearance site assemblage, provision of site and provision of public improvements and certain housing preconstruction costs set forth in § 571.206(g), are not considered as programs to subsidize or finance new residential construction.

(g) *Income payments.* The general rule is that assistance shall not be used for income payments for housing or other purpose. Examples of ineligible income payments include the following: Payments for income maintenance, housing allowances, down payments and mortgage subsidies.

Subpart D—Application Procedures and Selection Criteria for Basic Grants

§ 571.300 General policies.

(a) *Preapplications* are required for assistance provided under this Part. Full applications for assistance shall be submitted only upon invitation by HUD. HUD shall invite full applications based upon the rating system pursuant to §§ 571.302 and 561.303 or based on imminent threat to health and safety pursuant to § 571.308. The following provisions apply both to preapplications and full applications.

(b) *Data.* Applicants may submit data that are unpublished and not generally available in order to meet the requirements of this section if the applicant can demonstrate that generally available, published data are substantially inaccurate or incomplete. The applicant must demonstrate to the satisfaction of HUD that the data submitted meet all of the following requirements:

(1) the data provided have been collected systematically;

(2) the data are, to the greatest extent possible, independently verifiable.

(3) The data differentiate between reservation and BIA service area population.

(c) *Review of Applications.* Preapplications and full applications for grants under this section will be reviewed by HUD according to the following:

(1) the preapplication and full application have been received or are postmarked by the date established by the Secretary, or as required in an invitation to submit a full application.

(2) the preapplication and full application are substantially complete as required in this Subpart.

(3) timing of Review. While the Secretary is not bound by the statute to act on an application within a prescribed period of time, every effort will be made to review all preapplications within 45 days and all full applications within 75 days of their receipt.

(d) *A-95 Requirements.* (1) Indian Tribes are not required to comply with the provisions of OMB Circular A-95. However, they are encouraged to submit preapplications and full applications to the State and areawide clearinghouses for review and comment.

(2) Where the Indian tribal government has established a clearinghouse pursuant to OMB Circular A-95 and such clearinghouse has been duly recognized by OMB, any Tribal entity submitting a Basic Grant or Comprehensive Grant preapplication or full application shall submit it to the Tribal clearinghouse in accordance with the requirements of OMB Circular A-95 and HUD which are applicable to Indian Tribes.

(e) *Administrative Capacity.* For purposes of this Part "administrative capacity" means that an applicant can demonstrate to HUD's satisfaction that it possesses, or can acquire, the managerial, technical, or administrative staff of capability to carry out the activities proposed for assistance under this Part in a timely manner. HUD will judge an applicant's administrative capacity by such measures as the following:

(1) the number and kind of activities of similar magnitude and complexity that the applicant has successfully completed in the past with funds provided under this Part or from other Federal, State, or local sources;

(2) the number and complexity of other activities currently being carried out by the applicant. If it is determined by HUD that such activities will have an adverse impact on the applicant's ability to carry out the activity or activities proposed for funding under this Part, the applicant must describe how it will acquire the additional staff or capability to carry out the activities proposed for funding under this Part;

(3) the identification of staff currently or potentially in the empty of the applicant who have the qualifications to carry out the managerial, technical, or administrative tasks involved in carrying out activities funded under this Part.

§ 571.301 Preapplications.

(a) *General.* Preapplications are required for grants provided under this Part in order to provide HUD with sufficiently detailed project information to make accurate judgments and comparisons in determining which applicants will be invited to submit full applications and to save Indian Tribes the cost of preparing full applications which have no chance of being funded.

(1) Invitations to submit full applications will be made by comparing an applicant's substandard housing and poverty conditions and activities proposed with the criteria for selection and with similar conditions and activities of other applicants.

(2) Each HUD Regional or Field Office responsible for administering programs under this Part shall annually establish a review and rating system that is based on all threshold factors and criteria for selection set forth in § 571.302 and § 571.303 to evaluate comparatively the preapplications from applicants within its jurisdiction. Copies of the review and rating system may be obtained from the appropriate Regional or Field Office at that time.

(3) HUD will establish the deadlines for submission of preapplications for funds under this Part each fiscal year by publication of notice in the FEDERAL REGISTER.

(b) *Scope of Preapplication.* A preapplication may include any number of eligible activities. Preapplications will include activities that can be completed within a reasonable period of time, generally not more than two years. The amount of funds applied for, together with other resources that may be available, should be enough to complete the proposed activities. While a recipient remains eligible to receive funds provided under this part in subsequent years, an applicant should not assume that additional funds will be available to expand or complete activities. However, recipients selected to participate in the multi-year Comprehensive Program pursuant to Subpart E of this part may assume subsequent year's funding, subject to the availability of funds.

(c) *Submission Requirements.* Preapplications shall be submitted on HUD forms to the designated HUD Field Office and shall consist of the following:

(1) standard form 424 as prescribed by OMB Circular A-102;

(2) a program narrative statement which consists of the following:

(i) information, including the demographic data of the quality described above in § 571.300(b), which addresses

the criteria for selection described below in § 571.303(b),

(ii) a description of the activities proposed, their scope and magnitude, their costs (including administrative and project planning costs), as precisely estimated as possible.

(iii) a brief description of how the activities will address the applicant's community development needs,

(3) for applicants previously funded under this Part or Part 570, a narrative report describing the status of activities previously funded under this Part or under Part 570 and, if necessary, explaining the reasons for lack of progress in completing such activities,

(4) for first time-applicants, a narrative which includes the information required by § 571.302(d),

(5) a map showing the location of proposed activities, if appropriate or necessary to describe the activities or how they relate to the applicant's community development needs and program, and

(6) assurance, in the form of a Tribal Resolution, that adequate citizen participation, as required in this Part § 571.305(e)), has taken place.

§ 571.302 Threshold factors.

In order for a preapplication to be considered for inclusion in the rating process pursuant to § 571.303, HUD must determine that:

(a) the applicant is eligible as provided in § 571.4;

(b) the activity or activities are eligible for assistance as provided in Subpart C of this part;

(c) adequate progress has been made by applicants previously funded under the Community Development Block Grant Program pursuant to 24 CFR Part 570 or to 24 CFR Part 571 toward implementing and completing assisted activities, and the applicant demonstrates the administrative capacity to continue to carry out assisted activities. In no event will HUD's determinations regarding the administrative capacity of a previously funded applicant be based solely on some minimum percentage of achievement for any factor. Determination of administrative capacity for first-time applicants will be based on a demonstration of the capacity, or definite plans to establish the capacity, to carry out the proposed program and to control and account for the funds requested. The submission of a description of the applicant's previous experience in carrying out activities proposed for assistance under this Part with other Federal, State and local funds or the submission of a description of the applicant's plans to hire or contract for the managerial, technical and administrative capabilities required to carry out the proposed activity shall provide the information for the determination to be made by HUD;

(d) the applicant has taken or will take steps toward the provision of new or better housing for low or moderate income members of the Tribe or Native Alaskan Village; or has taken steps within its control to remove impediments to the provision of such housing. For previously funded applicants, positive steps must have been taken toward meeting the housing goals contained in the most recently approved Housing Assistance Plan.

§ 571.303 Criteria for selection and rating process.

(a) *General Policies.* The following policies shall govern all review and rating systems.

(1) all rating systems shall recognize in some appropriate manner the needs of smaller applicants without ignoring the magnitude of the needs of the larger applicants. This balance may be achieved by a competition in which applicants of similar size compete with each other;

(2) all review and rating systems must be principally numerical in character with points being awarded according to the relative weights of the selection factors established in consultation with applicants;

(3) all review and rating systems shall provide for the wide diversity of values among different eligible activities in order to insure that the system does not result in only one or two kinds of projects being funded;

(4) all rating systems shall recognize in some appropriate manner the need for carrying out planning activities eligible pursuant to § 571.205 so that Tribes seeking such assistance shall not be penalized. This may be achieved by holding a separate competition in which applicants compete with each other for funds specifically set aside for planning activities pursuant to § 571.100(a)(6). Requests for planning assistance included in applications for comprehensive multi-year assistance under Subpart E of this Part shall be included in any planning competition and be funded out of any funds set aside for planning purposes.

(b) *Criteria for Selection.* Preapplications which meet the threshold requirements established in § 571.302 will be rated competitively in accordance with ratings that take into account the following criteria:

(1) the degree of impact of the proposed activity on the provision of basic community facilities and services. For example, a water system for a reservation or area that is without water at all has a greater impact than improving an existing, if deficient, system;

(2) the relative need of the applicant. Relative need will be measured by the extent of poverty and substandard housing conditions as represented by both the numbers and percentages of families and individuals living under these conditions;

(3) the importance of the project to the provision of more or better housing for low- and moderate-income families and individuals;

(4) the degree of benefit of the proposed activity or activities as measured by the number and percentage of low- and moderate-income families or persons to be served;

(5) the degree to which the proposed activity or activities, substantially or entirely, meets a community development need;

(6) the degree to which the proposed activity will alleviate or remove a serious threat to health or safety;

(7) the priority placed on the proposed activity by the applicant. Applicants applying for more than one activity must indicate the relative priority of the proposed activities;

(8) the direct impact of the proposed activity or activities on the economic development of the applicant's community. Such impact shall be measured by factors such as increased job opportunities for community residents, capital formation and other economic benefits to be derived;

(9) the extent to which other resources will either be generated by or be used in coordination with the proposed project as evidenced by a firm financial commitment from these sources.

(c) *Selection Criteria for Planning Activities.* Regional or Field Offices that elect to hold separate competitions for eligible planning assistance with funds provided under § 571.100(a)(6) shall develop planning, rating and ranking systems that reflect the following priorities:

(1) priority consideration will be given to planning proposals that directly benefit the applicant's ability to provide new or better housing. Such planning activities could include, for example, topographical mapping to identify suitable sites for new housing; or development of Tribal housing site selection policies and procedures;

(2) priority consideration will be given to planning proposals that have the objective of coordinating all funding sources that will or can be brought to bear on carrying out the applicant's community or economic development plan or to develop and implement a comprehensive Community Development Plan;

(3) The relative priority of the following high priority planning objectives may be determined by the funding office but shall reflect in all cases:

(i) management and capacity building; and

(ii) development of three-year community development plans.

(d) *Notification to Applicants.* HUD will promptly notify preapplicants whether or not they are invited to submit full applications.

(1) The notification to applicants not invited to submit a full application will include the numerical rating of the applicant's preapplication and such other information as is appropriate to fully explain why a full application is not being invited.

(2) Invitations to submit full applications shall contain the following:

(i) the final date for submission of full applications;

(ii) a list of the activity or activities and the specific amount or amounts for which application may be made;

(iii) if a choice arises among equally highly rated activities, the activity or activities to be included in the application will be established by the applicant in writing prior to the submission of the full application;

(iv) the invitation may be for fewer projects and less money than the applicant requested in its preapplication. In determining the amount and the project to be invited, the Secretary may take into account the level of demand, the nature of the activity or activities proposed, and the administrative capacity of the applicant to complete the activities in a timely manner;

(v) the Secretary may invite more full applications than she can approve in order to have "backup" applications available in case other invited applications are disapproved or not submitted;

(vi) any conditions for acceptance of a full application pursuant to Subdivision (viii) of this Subparagraph;

(vii) HUD may require the submission of information at the time of full application regarding an applicant's plans for administering the block grant program in cases when there is substantial evidence that an applicant might lack the administrative capacity to carry out proposed activities;

(viii) the Secretary may also condition an invitation for a full application from a previously funded applicant in a case where HUD has substantial evidence of poor past performance as measured by adverse financial or management audit findings outstanding at the time of the invitation to submit a full application. The reason for the condition shall be clearly explained and the actions necessary for acceptance and review of the full application clearly described.

(e) *Performance Reports.* Upon completion of activities funded under this Part or Part 570 or upon submission of a subsequent application for funds under this Part, whichever is earlier, applicants are required to submit a performance report as described in § 571.702.

§ 571.304 Letter to proceed.

In response to a request, the Secretary may allow applicants invited to submit a full application to incur costs for planning and preparation of a full application. Letters to proceed will be issued only in cases of demonstrated need. Under a letter to proceed, applicants expend their own funds for which they may be reimbursed if the application is approved. Only the costs of actual application preparation may be reimbursed. In no event shall an applicant be reimbursed for fees based on a percentage of the grant received. Costs incurred for preparation of a preapplication or prior to the issuance of a letter to proceed will not be reimbursed.

§ 571.305 Application requirements.

Full applications will be accepted only as invited by HUD. Addition or substitution of an activity or activities different from those invited or proposed in the preapplication will be approved only if the addition or substitution will not lower HUD's rating of the preapplication. Full applications shall meet the requirements of this section.

(a) *Community Development Plan Summary.* This part of the application will consist of the following:

(1) *General Needs Assessment.* The application will contain a list and a brief description of the applicant's most pressing community development needs. Only those needs that the applicant plans to address during the next three years must be identified and described;

(2) *Specific Needs Identification.* The application will specifically identify and describe in detail the nature and magnitude of the needs that will be addressed during the current funding cycle with funds provided under this part;

(3) *Strategy.* The application should contain a description of the applicant's strategy for meeting the specific needs identified in Subparagraph (2) of this Paragraph including resources other than those provided for under this Part;

(b) *Community Development Program.* The application should describe in detail the activities for which funds are being sought and the anticipated results. If other funds, in addition to the assistance requested under this Part, are to be used to carry out these activities, the source of the other funds must be identified and evidence of firm commitment provided.

(c) *Community Development Budget.* The application should contain the following cost information:

(1) the total cost of each activity;

(2) the amount of block grant funds to be used for each activity;

(3) the amount of block grant funds needed for program administration and planning for each activity;

(4) the amount of other funds needed to carry out the project and the parts of the activities for which the other funds will pay.

(d) *Housing Assistance Plan.* (Reserved)

(e) *Certification.* An applicant is require to certify in a manner prescribed by HUD that:

(1) it possess the legal authority to apply for the grant and execute the proposed program;

(2) the Tribal Council has duly authorized the filing of the application, including all understandings and assurances contained in the application and has directed and authorized the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required;

(3) prior to submission of its application, the governing body of the applicant has:

(i) prepared and followed a written Citizen Participation Plan which provides Tribal citizens, especially those living in areas where activities are proposed or on-going, with adequate information concerning the amount of funds available for proposed community development and housing activities, the range of activities that may be assisted, the most highly rated activities under the approved rating system; other important program requirements and solicited their views and participation;

(ii) has followed traditional Tribal means of citizen involvement that meet the standards required in § 571.703(b) of this part as well as this Subsection or held at least two adequately publicized meetings of the Tribal Council at a time and location convenient to Tribal citizens which provided an adequate opportunity to articulate needs, express preferences about proposed community development and housing activities, assist in the selection of priorities, and otherwise participate in the development of the appliction. (No part of this paragraph shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of its Basic Grant Program. Accordingly, the citizen participation requirements of this paragraph do not include concurrence by any person or group involved in citizen participation in making final determinations concerning the findings and contents of the application. The sole responsibility and authority to make such final determinations rests exclusively with the applicant.);

(4) the chief executive officer or other official of the applicant approved by HUD:

(i) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 insofar as the provisions of such Act apply to the applicant's proposed program pursuant to 24 CFR 571.602; and

(ii) is authorized and consents on behalf of the applicant and him/her self to accept the jurisdiction of the Federal courts for the purpose of enforcement of his/her responsibilities as such an official. (Applicants for whom HUD has approved a claim of incapacity to accept the responsibilities of the Federal government for purposes of complying with the environmental review requirements of 24 CFR Part 58 purusant to § 571.602 need not include the provisions of the paragraph in their resolutions/certifications.);

(5) the Program has been developed principally to benefit low- and moderate-income persons;

(6) it will comply with the regulations of FMC 74-4 and OMB Circular A-102 as they apply to applicants under this Part;

(7) it will administer and enforce the labor standard requirements prescribed by these regulations;

(8) it will comply with the requirements of Title II of Pub. L. 90-284 (25 U.S.C. 1301) (the Indian Civil Rights Act);

(9) it will comply with the Indian preference provisions required in § 571.507 of these regulations;

(10) it will establish written safeguards to prevent employees from using positions funded under this Section for a purpose that is, or gives the appearance of being, motivated by private gain for themselves or their close family or business associates. Nothing in this certification should be construed as to limit employees from benefitting from program activities for which they would otherwise be eligible;

(11) it will give HUD and the Comptroller General access to and right to examine all books, records, papers or documents related to the grant for a period of no less than three years after project completion.

§ 571.306 HUD review and approval of applications.

(a) *Acceptance of Application.* HUD will accept applications for review:

(1) that are received by the date specified by the Secretary;

(2) that are substantially complete as required by these regulations unless some of the submission requirements have been waived;

(3) that do not request funds in an amount greater than the amount invited, unless a revised amount is acceptable to HUD;

(4) that satisfy any conditions established at the time of invitation to submit a full application.

(b) *Notification to Applicants.* The Secretary will notify an applicant in writing that its application has been approved, disapproved, partially approved, or conditionally approved. The Secretary will inform applicants in writing of the specific reasons for partial or conditional approval or disapproval.

(c) *Disapproval of a Full Application.* The Secretary may disapprove a full application funded under this section if:

(1) the applicant has substituted another activity or activities for which a full application was invited and the new activity or activities is ineligible or would receive a lower rating than the project invited after reviewing of the preapplication; or

(2) the applicant has failed to satisfy any conditions established in the invitation to submit a full application; or

(3) other resources needed to complete the proposed activity are no longer available or will not become available within a reasonable period of time; or

(4) the activity can no longer be completed within the estimated costs or resources available to the applicant; or

(5) there is substantial evidence that the applicant lacks the administrative capacity to carry out the activity as proposed or in a timely manner; or

(6) funding for the activities and assistance under this Part is no longer needed; or

(7) the Secretary determines that the application does not comply with the requirements of this and other applicable Sections of this Part or other applicable law.

(d) *Applications Not Acted Upon.* Applications submitted in accordance with the provisions of § 571.303(d)(2)(vii) which HUD is unable to act on will be returned to the applicant with an explanation of the reasons for this action.

(e) *Conditional Approvals.* The Secretary may conditionally approve an application for assistance under this Section. The total amount of a conditionally approved full application may be awarded to the applicant, but obligation and expenditure of funds for affected activities would be restricted. Conditional approvals will be made under the following circumstances as applicable:

(1) applicable environmental review requirements have not been completed. With respect to an applicant for whom HUD has approved a claim for legal incapacity as described in 24 CFR Part 58 (the environmental review requirements), HUD will invite a full application for activity or activities included in the applicant's preapplications that receive ratings high enough to be funded. Full applications submitted under the circumstances cited above will be conditionally approved as provided for in § 571.307(e) until HUD completes the actions necessary to comply with the applicable environmental review and clearance requirements or 24 CFR Part 58;

(2) the requirements of § 571.605 regarding provisions of public services and flood or drainage facilities have not been met;

(3) there is substantial evidence that there has been or will be a lack of progress, non-compliance or non-conformance, with these regulations as described in § 571.705; or that the applicant lacks the administrative capacity to carry out the proposed activity as described in § 571.302(c); or there is substantial evidence that the proposed activity or activities may become infeasible or impractical to carry out as proposed, in which case the applicant will be given the opportunity to amend its program according to the policies established for the recapture of funds as provided for under § 571.103(a). In all cases of conditional approval, the actions necessary to remove the condition will be specified;

(4) failure to satisfy the conditions may result in reduction of the grant amount or recapturing unexpended funds pursuant to the provisions of § 571.103.

§ 571.307 Program amendments.

(a) Amendments and other changes to the Community Development Program, Community Development Plan and Housing Assistance Plan require citizen participation prior to implementation. Formally announced Tribal Council meetings and the recertification requirements of paragraph (b) of this section apply only where prior HUD approval pursuant to § 571.307(c) is also required.

(b) At submission of full application: HUD will accept for review and possible approval full applications that include activities different from those invited on the basis of a preapplication: *Provided,* That the activities submitted would receive an equal or higher rating and that the applicant certifies again to the citizen participation requirements of § 571.305(e).

(c) After full application approval:

(1) submission of an amended application and HUD approval of this amended application is required prior to implementation by a recipient of program amendments proposed after approval of a full application if:

(i) new activities are proposed; or

(ii) there is alteration to the scope and location of approved activities or

intended beneficiaries resulting in a change in costs in excess of ten percent (10%) of the approved budget; or

(iii) the cumulative effect of a number of smaller changes adds up to an amount that exceeds ten percent of the approved budget; or funds remain after completion of all approved activities.

(2) in cases where new activities are proposed or existing activities are altered so as to require prior HUD approval pursuant to Subparagraph (1)(ii) or (iii) of this Paragraph, these activities will be rated in accordance with the rating system and selection criteria in effect at the time of receipt of the amendment. The rating of new activities shall be equal to or greater than the rating of the lowest rated activity approved during the most recent funding cycle.

§ 571.308 Imminent threat to health and safety.

The following criteria apply to requests for assistance under this section to alleviate an imminent threat to health and safety that requires an immediate solution:

(a) the Secretary may waive the preapplication requirements of § 571.301, and invite a full application for funds under this Section in response to a request for assistance to alleviate or remove an imminient threat to health or safety that requires an immediate solution. The urgency and immediacy of the threat shall be independently verified prior to approval of a full application. Funds to alleviate imminent threats to health and safety may only be used to deal with threats that are not a recurring nature and which represent a unique and unusual circumstance;

(b) funds to alleviate imminent threats may be granted only if the applicant can demonstrate to the satisfaction of HUD that other local or Federal sources cannot be made available to alleviate the threat;

(c) prior to inviting full applications from other applicants, Regional or Field Offices may invite full applications to alleviate an imminent threat to health and safety: *provided*, that the amount so invited does not exceed 15 percent of the funds allocated for an individual field office. Regional or Field Offices may hold up to 15 percent of the funds allocated under this Part for funding imminent threats;

(d) the only funds to be reserved for imminent threats to health or safety are those set aside by Regional or Field Officies. Once depleted, no further applications may be considered during the fiscal year;

(e) The Secretary may issue the applicant a letter to proceed to incur costs to alleviate imminent threats: *provided*, that applicable environmental review requirements pursuant to § 571.602 have been met.

Subpart E—Application Procedures and Selection Criteria for Comprehensive Grants

§ 571.400 General policies.

(a) *Compehensive Indian Community Development Demonstration Program.* In order to meet the objectives of this section, HUD may accept applications for assistance to carry out a Comprehensive Community Development Program as described below. Indian Tribes will receive this form of assistance on a limited, demonstration basis. Recipients of comprehensive program assistance will be selected by HUD according to the threshold requirements and criteria for selection established in this Part. Preapplications and full applications are required for funding under this Subpart.

(b) *Definition of Comprehensive Grant Programs.* A Comprehensive Grant Program is comprised of those community development activities requiring single- or multi-year assistance provided under this Part and shall have the following characteristics:

(1) it shall consist of two or more activities that bear a relationship to each other, which either in terms of support or necessity are carried out in a coordinated manner; and

(2) the activities which are the components of this program will have a substantial beneficial impact in meeting one or more of the applicant's community development needs.

(c) *Other factors to be considered.* (1) In determining whether or not a program is comprehensive and eligible for funding as such, HUD will take into consideration funds from other sources which are being used to treat similar problems in the same general area.

(2) For purposes of this Section, administration and management are not considered activities. Planning can be considered a comprehensive program activity.

To the greatest extent feasible, Comprehensive Grant Program activities shall be concentrated within a defined geographical area unless the applicant can demonstrate to the satisfaction of HUD that carrying out more widely dispersed activities is the only logical means to address the problem identified.

(d) Full applications for comprehensive programs will be accepted only upon the invitation of HUD.

(e) In order to ensure that adequate resources are available to fund Basic Grant applications, not more than twenty percent (20%) of the funds allocated to a Regional or Field Office will be used to fund Comprehensive Grant Programs in any fiscal year unless otherwise waived by the Secretary to meet special situations.

(f) Notwithstanding any of these provisions, consideration of an application for a Comprehensive Grant in no way commits HUD ultimately to funding such a proposal. Final funding determinations will be based solely on the information provided in the applications and on the amount of funds made available under this part and allocated to Regional or Field Offices.

(g) HUD may approve single- or multi-year comprehensive grants for fewer activities and less money than requested taking into consideration:

(1) the amount of funds available;

(2) the nature of the activities proposed;

(3) the relative need of the applicant and the potential impact of the comprehensive program when compared with other applications for comprehensive assistance.

§ 571.401 Preapplications.

(a) *General.* Preapplications are required for funding under this Part. Applicants applying for Comprehensive Grants shall submit a preapplication that meets the requirements of § 571.301, together with a letter informing HUD that the preapplication should be considered for inclusion in the Comprehensive Grant Program.

(b) *Preapplication for Comprehensive Grants* shall also:

(1) address each of the threshold factors set forth in § 571.402 and the criteria for selection set forth in § 571.403;

(2) explain specifically how the proposed activities relate to the Comprehensive Plan required under § 571.402(b)(6);

(3) list activities proposed for assistance under this Part and their estimated costs indicating the activities or program of activities that have the highest local priority in order to allow HUD to select among local priorities should requests for assistance exceed funds available for Comprehensive Grants.

§ 571.402 Threshold factors.

(a) *General.* In order for preapplications to be considered for comprehensive program funding, applicants must meet the threshold factors set forth in this section in addition to those set forth in § 571.302. Applicants who meet all these requirements may, at the option of HUD, be invited to submit a full application for some or all of the activities proposed in a preapplication.

(b) In order to meet the requirements of this section, an applicant must:

(1) have carried out a community development activity previously funded under this part or Part 570;

(2) have demonstrated adequate capacity in carrying out such previously funded activities as measured by the degree of completion of such approved activities in comparison with other recipients carrying out programs of similar complexity and grant size;

(3) have successfully participated in a variety of activities funded under other Federal programs;

(4) have currently available staff experienced in carrying out community development activities and demonstrate a commitment that staff of equal capacity will remain available for the duration of the comprehensive grant program;

(5) have demonstrated substantial progress in providing housing assistance to low- and moderate-income families; and

(6) demonstrate that there is currently in effect and under implementation an adopted comprehensive community or economic development plan that forms the basis for the proposed activities.

§ 571.403 Criteria for selection and rating process.

(a) Applicants deemed by HUD to meet the threshold factors set forth in §§ 571.302 and 571.402 will be rated according to the following criteria in addition to the criteria for selection of basic program grants set forth in § 571.302.

(b) The additional criteria applicable to this selection and the rating process for Comprehensive Grants are the following:

(1) the relative magnitude and degree of commitment of other local and Federal resources as compared with similar resources pledged by other Comprehensive Grant applicants;

(2) the adequacy of performance in carrying out activities previously funded under this Part or Part 570 compared with the performance of other applicants for Comprehensive Grants as measured by the number of outstanding adverse audit and monitoring findings;

(3) the need for comprehensive funding compared to other Comprehensive Grant applicants measured by such factors as numbers of low- and moderate-income families living in substandard housing; or opportunities for substantial economic or community development impact that could not occur if the Comprehensive Grant were not approved.

(c) *HUD Review of Preapplications.* The following procedures govern the rating of preapplications for Comprehensive Grants and the inviting of full applications;

(1) preapplications for Comprehensive Grants will be rated and ranked separately from and prior to all other preapplications under this Part;

(2) HUD will invite full applications from the Tribes seeking Comprehensive Grant assistance that receive the highest ratings and best meet the objectives of this Subpart;

(3) preapplications from applicants not invited to participate in the Comprehensive Grant Program will automatically be rated and ranked in accordance with the procedures for the Basic Grant Program. Such applicants will be invited to submit full applications for specific project or projects included in their preapplications that receive ratings in the competitive range under § 571.303;

(4) activities contained in Comprehensive Grant applications that are not included in invitations to submit full applications for Comprehensive Grants will not be considered for funding under the Basic Grant Program.

(e) *Notification to Applicants*—(1) *Applicants Invited to Submit Full Applications.* HUD shall notify applicants as to which of the activities proposed in the preapplication for the Comprehensive Grant Program should be included in the full application and shall specify any conditions being placed on the acceptance of a full application pursuant to § 571.306(e).

(2) *Applicants Not Invited to Submit Full Applications.* HUD shall notify applicants that have not been selected to participate in the Comprehensive Grant Program that their applications will not be considered for comprehensive single or multi-year assistance, specify the reasons for rejection, and inform such applicants that their applications will be considered for funding under the Basic Grant Program.

§ 571.404 Letter to proceed.

The provisions of § 571.304 apply to applications invited under this section.

§ 571.405 Full application requirements.

Full applications for Comprehensive Grants shall contain the following in a format prescribed by HUD:

(a) *Community Development Plan Summary.* This document shall consist of:

(1) *General Needs Assessment.* The application shall contain a list and a brief description of the applicant's most pressing community development needs. Only the needs that the applicant plans to address during the next three years must be identified.

(2) *Specific Needs Identification.* The application should specifically describe in detail the nature and magnitude of the needs that will be addressed with funds requested under this Subpart.

(3) *Community Development Objectives Identification.* The application should specifically describe the objectives for meeting the needs identified in Subparagraph (2) of this Paragraph. The specific needs and objectives identified must be based on the Comprehensive Plan required pursuant to § 571.402(b)(6).

(b) *Comprehensive Strategy.* Applications for assistance under this Subpart shall contain a general description of the applicant's comprehensive strategy for meeting the housing, community, and economic development needs identified under paragraph (a) of this section, including a description of the applicant's strategy for resource coordination. Strategy statement shall, at a minimum, consist of the following:

(1) a reference to the general needs assessment identifying the major needs to be addressed;

(2) a statement, in quantifiable terms where possible, of the objectives to be served by activities to be assisted under this Subpart;

(3) a description of the types and sequence of actions and programs required to achieve the objectives, the coordination and timing of activities funded under this Subpart with other local actions and program resources, opportunities for project linkages and leveraging of other resources;

(4) a list and description of the activities designed to meet those needs or objectives, their estimated costs, and proposed funding sources.

(c) *Comprehensive Schedule.* Applicants shall include a three-year schedule outlining generally the sequences in which the activities in all elements of the strategy will take place. This schedule is not intended to be a detailed implementation schedule but rather a brief chart or overall narrative showing which activities must be logically completed before others can be initiated. It would be logical, for example, in a comprehensive housing rehabilitation program, to install the water system and rehabilitate the houses before paving the roads.

(d) *Annual Activity Summary.* The application shall list the activities to be carried out during the current program year with funds provided under this Section. The summary shall contain:

(1) the name of the project;

(2) location and BIA-designated service area, if appropriate;

(3) number of low- and moderate-income families or individuals to be served by the activity;

(4) description of the kind and implementation sequence of activities comprising the project;

(5) environmental review status;

(6) cost summary by functional area; and

(7) other funds to be provided.

(e) *Housing Assistance Plan.* (Reserved.)

(f) *Certifications.* The applications shall contain the certification required under § 571.305(e).

(g) *Annual Application Requirements.* Applicants applying for the second or third year of a comprehensive program need only submit the following:

(1) *Community Development Program Summary.* This shall describe the community development activities to be carried out with block grant funds during the program year. Such activities shall be generally consistent with the Community Development Needs and Conditions Summary submitted with the initial application. It shall include the following:

(i) name of project or activity;

(ii) location and service area;

(iii) number of low- and moderate-income families or individuals who will be served by the activity;

(iv) description of the kind or sequence of activities comprising the project;

(v) environmental review status;

(vi) cost summary by functional area.

(2) *Annual Housing Action Program.* This shall describe the actions to be taken during the program year to carry out the Housing Assistance Plan, in accordance with § 571.405(e);

(3) *Schedule.* Beginning and ending dates of all activities to be undertaken during the program year shall be indicated;

(4) *Certifications.* The applicant shall submit the certifications required under § 571.305(e) (certify its compliance with applicable statutory and other requirements in accordance with this part).

§ 571.406 HUD review and approval of applications.

The provisions of § 571.306 regarding HUD review and approval of applications apply to applications submitted pursuant to this Subpart.

§ 571.407 Program amendments.

The provisions of § 571.307 regarding program amendments apply to grants made under this Subpart.

Subpart F—Grant Administration

§ 571.500 Designation of public agency.

One or more Tribal departments or authorities may be designated by the chief executive officer of an Indian Tribe as the operating agency to undertake activities assisted under this Part. The Indian Tribe itself, however, shall be the applicant. Designation of an operating agency does not relieve the Indian Tribe of its responsibility in assuring that the program will be administered in accordance with all HUD requirements, including these regulations.

§ 571.501 Grant agreement and conditions.

(a) Upon approval of the application submitted for funding, the Secretary will authorize the execution of a grant agreement. These regulations become part of the grant agreement.

(b) The Secretary may condition grant agreements for any of the reasons set forth in § 571.306(e).

§ 571.502 Method of payment.

(a) *Advance Payment.* Advance payments will be made either by Letter of Credit (the preferred method) or by U.S. Treasury checks to recipients pursuant to the following conditions:

(1) the recipient has demonstrated to the Secretary its willingness and ability to establish procedures that will ensure that requests for funds will be only in amounts necessary to meet the recipients' actual cash disbursement needs;

(2) the recipient's financial management system meets the standards established for grantee financial management systems as set forth in § 571.504.

(b) *Reimbursement by Treasury Check.* Recipients who do not meet the above conditions will receive grant payments by U.S. Treasury check on a reimbursement basis.

§ 571.503 Release of funds.

(a) Recipients may spend funds for projects requiring environmental review pursuant to § 571.602 (Environmental Review Requirements) only after certification to HUD that the requirements of that Section have been met and pursuant to this certification HUD has authorized the expenditure of funds for those projects. Certification to HUD shall consist of the submission to the HUD administering office of the form prescribed in 24 CFR Part 58.

(b) Recipients may spend funds for activities described in §§ 571.201(l) and 571.201(o) only after notification to HUD that the requirements of § 571.605 (activities for which other Federal funds must be sought) have been met and, pursuant to this notification, HUD has authorized the recipient to spend funds for the affected activities. Notification to HUD shall consist of a letter from the chief executive officer of the Tribe containing the information required by § 571.605.

(c) If recipients receive funds through a Letter of Credit, the Letter of Credit, at the time of approval of the application, shall be in the amount of all grant funds approved in the application, including those portions for the projects subject to the environmental review requirements of § 571.602 and those projects subject to the requirements of § 571.605 regarding activities for which other federal funds must be sought. However, the provisions and requirements of these two sections must be satisfied and HUD must authorize the recipient to spend funds for those projects before the recipient may draw down and expend funds for the affected activities.

§ 571.504 Standards for grantee financial management systems.

Each recipient shall be required to maintain a financial management system which complies with standards for funds control and accounting prescribed in Attachment G of OMB Circular A-102 "Standards for Grantee Financial Management Systems". With the exception that HUD requires that accounting reports be accrual-based, these standards are the same as those set forth under the regulations for the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) found at 25 CFR 276.7.

§ 571.505 Program income.

(a) Indian Tribes shall be required to return to the Federal Government interest (except for interest described in paragraph (c) of this section) earned on grant funds pending their disbursement for program purposes in accordance with Attachment E of OMB Circular A-102. It is important to note that this differs from the provisions of the regulations for the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) found at 25 CFR 276.6 (Program Income) under which Act such remittance is not required.

(b) Proceeds from the sale of personal property shall be handled in accordance with Attachment N of OMB Circular A-102, "Property Management Standards".

(c) All other program income earned during any period under which the recipient is assisted under this Part shall be retained by the recipient and shall be used for activities with respect to which the unconditional obligation and utilization of funds made available under this Part have been approved. Included in the category of other program income are proceeds from the disposition of real property, payments of principal and interest on rehabilitation loans and interest earned on revolving funds. Receipts derived from the operation of a public work or facility, the construction of which was assisted under this Part (e.g., admission fees paid by persons using recreational facilities constructed with grant funds, and service fees paid by households using a water facility constructed with grant funds) do not constitute program income.

(d) Recipients shall record the receipt and expenditure of revenues related to the program (such as taxes, special assessments, levies, fines, etc.)

as a part of the grant program transactions.

(e) The disposition of program income received subsequent to the closeout of a grant shall be governed by the provisions of § 571.512(c).

§ 571.506 Force account construction.

(a) The utilization of Tribal work forces for construction or renovation activities performed as part of the activities funded under this Part shall be approved by HUD prior to the start of project implementation.

(b) In its request for an approval of force account construction or renovation a grantee shall provide the following:

(1) documentation to indicate that it has carried out or can carry out successfully a project of this size or magnitude;

(2) documentation to indicate that it has obtained or can obtain adequate supervision for the workers to be utilized;

(3) information showing that the workers to be utilized are listed on the Tribal payroll and are employed directly by an arm, department or other governmental instrumentality of the Tribe.

(c) Any and all excess funds derived from the force account construction or renovation activities shall accrue to the grantee and may be reprogrammed for other activities eligible under this Part.

(d) Insurance coverage for force account workers and activities shall, where applicable, include workman's compensation, public liability, property damage, builder's risk and vehicular liability.

(e) The grantee shall specify and apply reasonable construction or renovation standards to work performed under the force account.

(f) The contracting and procurement standards set forth in § 571.508 do not apply to activities undertaken by force account, with the exception of material equipment and supply procurements for which those standards shall apply.

§ 571.507 Indian preference requirements.

(a) Activities funded under this Part are subject to the following Indian preferences requirements:

(1) preference and opportunities for training and employment in connection with the administration of these activities shall be given to Indians and Alaska Natives;

(2) all prospective contractors shall be required to submit, as part of their bid submissions, a plan for the maximum utilization of Indian and Alaska Native workers;

(3) preference in the award of contracts and subcontracts in connection with the administration of these activities shall be given to Indians and Alaskan Native organizations and economic enterprises. The grantee shall give preference to an Indian or Alaska Native-owned firm so long as the bid by this firm does not exceed the lowest bid submitted by more than 10 percent. All preferences shall be publicly announced in the bid announcements. Any contractor claiming Indian preference shall provide evidence, as required by the grantee to support its claim.

§ 571.508 Procurement and contracting standards.

The standards contained in this Section are identical to OMB procurement and contracting standards except for two additions: the Indian preference requirements and the Secretarial waiver of Davis-Bacon requirements. The standards do not relieve the grantee of the contractual responsibilities arising from its contracts. The grantee is the responsible authority, without recourse to HUD, regarding the settlement of all contractual and administrative issues arising from the procurements entered into in support of a grant. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such Tribal, Federal, or other authority as may have proper jurisdiction. Grantees may use their own procurement regulations provided that procurements made with HUD grant funds adhere to the standards set forth as follows:

(a) the grantee shall maintain a code or standard of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending HUD grant funds. The Grantee's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors. To the extent permissible by law, rules or regulations, such standards shall provide for penalties, sanctions, or other disciplinary actions to be applied for violations of such standards by either the grantee's officers, employees or agents or by contractors or their agents;

(b) all procurement transactions regardless of whether negotiated or advertised and without regard to dollar value shall be conducted in a manner so as to provide maximum open and free competition. The grantee should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade;

(c) the grantee shall establish procurement procedures which provide for, as a minimum, the following requirements:

(1) proposed procurement actions shall be reviewed by grantee officials to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement;

(2) invitations for bids or requests for proposals shall be based upon clear and accurate descriptions of the technical requirements for the materials, products, or services to be procured. Such descriptions shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by offerors should be clearly specified;

(3) positive efforts shall be made by the grantee to utilize small business and minority business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed utilizing Federal grant funds;

(4) the type of procuring instruments used (i.e., fixed price contracts, cost reimbursable contracts, etc.) shall be appropriate for the particular procurement and for promoting the best interests of the grant program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used. Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to the provisions of the following Paragraph is necessary to accomplish sound procurement. However, procurements of $10,000 or less need not be advertised unless otherwise required by local law or regulations. Where such advertised bids are obtained, the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the grantee, price, Indian preference, and other factors considered. (Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid). Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the grantee. Any or all bids may be rejected when it is in the grantee's interest to do so, and such rejections are in accordance with applicable laws, rules and regulations. Procurements may be negotiated if it is impracticable and infeasible to use formal advertising. Generally procurements may be negotiated by the grantee if:

(i) the public exigency will not permit the delay incident to advertising;

(ii) the material or service to be procured is available from only one person or firm (all contemplated sole source procurements where the aggregate expenditure is expected to exceed $5,000 shall be referred to HUD for prior approval);

(iii) the aggregate amount involved does not exceed $10,000;

(iv) the contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution;

(v) the material or services are to be procured and used outside the limits of the United States and its possessions;

(vi) no acceptable bids have been received after formal advertising;

(vii) the purchases are for highly perishable material or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work for supplies purchased for authorized resale and for technical or specialized supplies requiring substantial initial investment for manufacture;

(viii) otherwise authorized by law, rules or regulations. Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

(1) Procurement records or files for purchase in amounts in excess of $10,000 shall provide at least the following pertinent information: justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiated.

(2) A system for contract administration shall be maintained to assure contractor conformance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely follow-up of all purchases.

(e) The grantee shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts and subgrants:

(1) contracts shall contain such contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such remedial actions as appropriate;

(2) all contracts in excess of $10,000 shall contain suitable provisions for termination by the grantee including the manner by which they will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contracts may be terminated because of circumstances beyond the control of the contractors;

(3) in all contracts for construction of facility improvements awarded in excess of $10,000, grantees shall observe the bonding requirements set forth in these regulations in § 571.509(j)(11);

(4) all construction contracts awarded by recipients and their contractors or subgrantees having a value of more than $10,000 shall contain a provision requiring compliance with Executive Order No. 11246, entitled "Equal Employment Opportunity", as amended by Executive Order No. 11375 and supplemented in Department of Labor Regulations (41 CFR Part 60). However, this Equal Opportunity provision shall apply only to the extent that it is not inconsistent with the Indian Preference requirements set forth in § 571.507.

(5) all contracts and subgrants shall contain provisions for compliance with the Copeland "Anti-Kick-Back" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public works, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency;

(6) unless waived by the Secretary, as provided in § 571.603(b) of these regulations, all construction contracts awarded by grantees and subgrantees in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (20 CFR Part 5). Contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to HUD.

(f) Where applicable, all contracts awarded by grantees and subgrantees in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the Contract Work Hours and Safety Standards Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or work week is permissible: *Provided*, that the worker is compensated at a rate of no less than 1½ times the basic rate for pay for all hours worked in excess of 8 hours in any calandar day or 40 hours in a work week. Section 107 of the Contract Work Hours and Safety Standards Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(g) All negotiated contracts (except those of $10,000 or less) awarded by grantees shall include a provision to the effect that the grantee, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to all books, documents, papers, and records of the contractor which are directly pertinent to a specific grant program for the purpose of making audits, examinations, excerpts, and transcriptions for a period of no less than three years after project completion.

(h) Contracts and subgrants of amounts in excess of $100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.). Violations shall be reported to HUD and the regional office of the Environmental Protection Agency.

§ 571.509 Bonding and insurance requirements.

A Tribe receiving a grant under this Section for an activity which requires contracting for construction or Facility improvement shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding $100,000. For contracts exceeding $100,000 the minimum requirements shall be:

(a) a bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;

(b) a performance bond or other security acceptable to HUD, such as a Letter of Credit or escrow, for an amount determined by HUD to be adequate for the protection of the interests of the federal government;

(c) a payment bond or other security acceptable to HUD, such as a Letter of Credit or escrow, for an amount determined by HUD to be adequate for the protection of the interests of the Federal government.

§ 571.510 Audit.

(a) The Secretary, the Comptroller General of the United States or any of their duly authorized representatives shall have access to all books, accounts, records, reports, files and other papers or property of recipients or their subgrantees and contractors pertaining to funds provided under this section for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) The recipient's financial management systems shall provide for audits to be made by the recipient or at his direction, in accordance with HUD Audit Guidelines contained in HUD Handbook IG 6505.2, "Audit Guide and Standards for Community Development Block Grant Recipients".

(c) Only a final audit of the grant funds provided will be necessary: *provided,* that the program period does not extend beyond two years. Should the program period extend beyond two years, an audit will be required not less frequently than once every two years.

(d) HUD may waive the requirements for a final audit.

(e) The Secretary may undertake such further or additional audits as she finds necessary or appropriate.

§ 571.511 Retention of records.

Financial records, supporting documents, statistical records, the environmental review records required by 24 CFR Part 58 and all other records pertinent to the grant program shall be retained by the recipient for a period of three years from the date of the submission of the performance report except as follows:

(a) records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later;

(b) records for nonexpended property which was acquired with Federal grant funds shall be retained for three years after the final disposition.

§ 571.512 Grant close-out procedures.

(a) *Applicability.* The policies and procedures contained in this Section apply to the closeout of grants made pursuant to this Part. Grants made to Indian Tribes in Fiscal Years 1975, 1976 and 1977, pursuant to Subpart E of Part 570 (Discretionary Grants) shall be closed out in accordance with the policies and procedures set forth at 24 CFR 570.512.

(b) *Initiation of Closeout.* HUD will advise the recipient to initiate closeout procedures when HUD determines, in consultation with the recipient, that there are no impediments to closeout and that the following criteria have been met or will be shortly:

(1) all costs to be paid with grant funds have been incurred, with the exception of (i) closeouts costs such as payment for the final audit; and (ii) any unsettled third-party claims against the recipient. Costs are incurred when goods and services are received and contract work is performed. With respect to activities (such as property rehabilitation) which are carried out by means of revolving loan accounts, loan guarantee accounts, or similar mechanisms, costs shall be considered as incurred at the time funds for such activities are drawn from the recipient's letter of credit and initially used for the purposes described in the approved Community Development Program;

(2) the recipient has submitted a grantee performance report. If a performance report was previously submitted with a subsequent grant application, as required by § 571.702, it shall be updated and resubmitted upon completion of the activities carried out with the discretionary grant;

(3) other responsibilities of the recipient under the grant agreement, applicable law and regulations appear to have been carried out satisfactorily, or there is no further Federal interest in keeping the grant agreement open for the purpose of securing performance, such as a good faith effort by the recipient to achieve its housing assistance plan goals for the grant period. A final review of the recipient's compliance with the grant agreement, applicable law and regulations will be made during the final audit or HUD review in lieu of final audit pursuant to § 571.512(g).

(c) *Program Income.* Subject to the requirements of Paragraphs (d) and (e) of this Section, program income received subsequent to grant closeout may be treated by the recipient as miscellaneous revenue, the use of which is not governed by the provisions of this part: *provided,* the recipient has no other grant program under this part which is active at the time the first grant is closed out. If the recipient has another such grant program, the program income received subsequent to the grant closeout shall be treated as program income of the active grant program.

(d) *Disposition of Tangible Personal Property.* The recipient shall account for any tangible personal property acquired with grant funds in accordance with Attachment N of OMB Circular A-102, "Property Management Standards."

(e) *Disposition of Real Property.* Proceeds derived after the grant closeout from the disposition of real property acquired with grant funds shall be subject to the program income requirements of Paragraph (c) of this section: *provided,* that where such income may be treated as miscellaneous revenue pursuant to Paragraph (c) of this section, it shall be used by the recipient for community development activities eligible under § 571.200 to further the general purposes and objectives of the Act. The use of income subject to this provision is not governed by any other requirements of this Part.

(f) *Status of Housing Assistance Plan after Closeout.* After closeout of a grant, the Housing Assistance Plan will remain in effect until one of the following occurs:

(1) the recipient submits, and HUD approves, a revised Housing Assistance Plan.

(2) three years elapse since the date of approval of the current Housing Assistance Plan.

(g) *Audit.* Upon notification from HUD to initiate closeout procedures, the recipient shall arrange for a final audit to be made of its grant accounts and records in accordance with HUD Handbook IG 5605.2, "Audit Guide and Standards for Community Development Block Grant Recipients," § 571.510, and any other audit requirements of HUD hereafter in effect. HUD may determine that, due to the nature of the recipient's program or the relatively small amount of funds which have not been audited, a final audit is not required. In such instances, HUD will notify the recipient that HUD will perform the necessary

reviews of documentation and activities to determine that claimed costs are valid program expenses and that the recipient has met its other responsibilities under the grant agreement.

(h) *Certificate of Completion and Final Cost.* Upon resolution of any findings of the final audit, or if the final audit is waived, after HUD has performed the review of documentation described in paragraph (g) of this Section, the recipient shall prepare a certificate of completion and final cost, in a form prescribed by HUD, and submit it to the appropriate HUD Office.

(i) *Refund of Excess Grant Funds.* The recipient shall refund to HUD any cash advanced in excess of the final grant amount, as shown on the certificate of completion approved by HUD.

(j) *Termination of Grant for Mutual Convenience.* Grant assistance provided under this Part may be cancelled, in whole or in part, by HUD or the recipient, prior to the completion of the approved community development program, when both parties agree that the continuation of the program is infeasible or would not produce beneficial results commensurate with the further expenditure of funds. HUD shall determine whether an environmental review of the cancellation is required, and if such review is required, shall perform it pursuant to HUD Handbook 1390.1 and/or specific guidelines issued by the Secretary. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. HUD shall allow full credit to the recipient for the noncancelable obligations properly incurred by the recipient in carrying out the program prior to termination. The closeout policies and procedures contained in this section shall apply in all such cases except where the total grant is cancelled in its entirety, in which event only the provisions of § 571.512(h) and (i) shall apply.

Subpart G—Other Program Requirements

§ 571.600 Nondiscrimination.

A recipient shall comply with the provisions of Title II of Pub. L. 90-284 (24 U.S.C. 1301—Commonly referred to as the Indian Civil Rights Act) in the administration of a program or activity funded in whole or part with funds made available under this Part. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient. "Funded in whole or in part with funds made available under this Part" means that community development funds in any amount in the form of grants proceeds from HUD guaranteed loans have been transferred by the recipient to an identifiable administrative unit and disbursed in a program or activity.

§ 571.601 Relocation and acquisition

(a) *Relocation.* (1) Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601), hereafter referred to as the Uniform Act, and HUD implementing regulations at 24 CFR Part 42 apply to the displacement of any family, individual, business, nonprofit organization, or farm operation that results from the acquisition of real property by a State agency (as that term is defined at 24 CFR 42.20(s)) and which occurs on or after the date of submission of the application requesting the Federal assistance under this Part which is granted for an activity in connection with which the acquisition has been or will be undertaken.

(2) With respect to other displacement-causing activities that are assisted under this Part but which are not within the purview of the Uniform Act, the following policies shall apply:

(i) no occupant of a dwelling shall be required to move permanently from the dwelling, unless first given reasonable opportunity to relocate to a safe and habitable replacement dwelling at a monthly housing cost, including utilities, that does not exceed 25 percent of his gross income;

(ii) the recipient shall adopt a uniform written policy for providing relocation payments and other assistance to ensure that displaced families and individuals obtain a safe and habitable replacement dwelling and that all persons, including families, individuals businesses, nonprofit organizations and farm operations, are reimbursed for all moving and related expenses, including utility hook-up and storage costs;

(iii) all families, individuals, businesses, nonprofit organizations, and farm operations to be displaced shall be provided advance information sufficient to enable them to fully understand the reason for their displacement and the relocation payments and other assistance to which they are entitled under these regulations;

(iv) in any case in which the occupant of a dwelling is required to relocate for a temporary period in order to permit rehabilitation or demolition, the temporary relocation shall not exceed 12 months in duration, a safe and habitable dwelling shall be available to the person for the period of the temporary relocation, and the recipient shall pay actual reasonable out-of-pocket expenses, including any moving costs or increase in monthly housing costs, incurred by the person in connection with the temporary relocation.

(b) *Real Property Acquisition.* (1) Title III of the Uniform Act and HUD implementing regulations at 24 CFR Part 42 apply to any acquisition of real property by a State agency (as that term is defined at 24 CFR 42.20(s)) that occurs on or after the date of the submission of the application requesting the Federal assistance under this Part which is granted for an activity in connection with which the acquisition is undertaken. It does not matter whether or not the acquisition itself is federally assisted.

(2) With respect to acquisitions for activities assisted under this Part that are not within the purview of the Uniform Act, the following policies shall apply:

(i) each property owner shall be given a written offer of the amount determined to be just compensation for the property. Just compensation shall be based upon one or more appraisals of the fair market value of the property as prepared by a qualified appraiser. However, this provision shall not prevent a person from donating real property if, prior to the donation, he has been fully informed of his right to receive just compensation;

(ii) HUD may review any acquisition price established pursuant to Subdivision (i) of this Subparagraph prior to compensation being paid to the seller. In any case in which the acquisition price exceeds the fair market value of the property, a justification for the payment shall be included in the applicable case file.

§ 571.602 Environment.

(a) The recipient shall comply with the applicable provisions of 24 CFR Part 58.

(b) Whenever the provisions of § 571.607—National Flood Insurance Program—do not apply to recipients proposing development in flood prone areas, under this Part, the evaluation of potential or existing flood hazards in the areas for which acquisition or construction activities funded under this Section are proposed shall be a priority concern in any environmental assessment conducted by a recipient pursuant to the provisions of 24 CFR Part 58, E.O. 11988 (Flood Plain Management) and E.O. 11990 (Protection of Wetlands).

§ 571.603 Labor standards.

(a) Unless waived by the Secretary pursuant to the provisions of this Section, or inapplicable pursuant to Paragraph (c) of this Section, all laborers and mechanics employed by contractors or subcontractors on construction

work assisted under this Part shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), and shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), and the contractors and subcontractors shall comply with all regulations issued pursuant to these Acts and with other applicable Federal laws and regulations pertaining to labor standards. This section shall not apply to the rehabilitation of the residential property designed for the use of seven or fewer families. The Secretary of Labor has, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. 133z-15) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

(b) Labor Standards requirements as set forth in Paragraph (a) of this Section may be waived by the Secretary on a case-by-case basis. However, in no instance shall the wage paid be lower than the comparable wage paid on or near the reservation or Indian community as determined by the grantee. The criteria to be taken into consideration by HUD in evaluating a request for a waiver of the Labor Standards requirements set forth in Paragraph (a) of this section shall include the following:

(1) the effect that a waiver would have upon increasing the participation of Indian-owned firms in the program; and

(2) the effect that a waiver would have upon increasing the probability that the grant funds provided would be sufficient to cover the construction costs of the project. Additional criteria may be developed by the HUD administering office. If such criteria are developed they must be provided to recipients of funds provided under this Part prior to decision on a waiver being made and they shall not be so narrowly written so as to effectively eliminate waiver possibilities.

(c) Labor standards requirements set forth in Paragraph (a) of this Section shall not apply to force account construction activities funded under this Section.

§ 571.604 Architectural Barriers Act of 1968.

The Architectural Barriers Act of 1968, 42 U.S.C. 4151, is applicable to assistance under this Part and requires that the design of any facility constructed with funds under this Part comply with the "American Standard Specification for Making Buildings and Facilities Accessible, and Usable, by the Physically Handicapped," No. A-117-1971 as modified (41 CFR Parts 101-19, 603).

§ 571.605 Activities for which other Federal funds must be sought.

A recipient may use community development funds for the provision of public services as described in § 571.201(e) § 571.201(o) for activities; or for flood or drainage facilities as described in § 571.201(l). *provided*, that:

(a) the recipient has applied or inquired in writing to the Federal agency or agencies, if any, which conduct a program or programs most likely to meet the needs for which community development funds are being considered;

(b) the recipient has received:

(1) a written statement of rejection from such Federal agency, if any;

(2) a written statement that funds cannot be made available for at least 90 days after the request; or

(3) no response from the Federal agency, if any, within a 90 day period from the date of application or inquiry; and

(c) the recipient has notified HUD of the results of the application or inquiry and has received authorization from HUD to incur costs for such activities.

§ 571.606 Hatch Act.

Neither the Community Development Program nor the funds provided therefor, nor the personnel employed in the administration of the program shall be in any way or to any extent be engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Code.

§ 571.607 National Flood Insurance Program.

The provisions of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128 et seq.) and the regulations thereunder (24 CFR Ch. X, Subchapter B) apply to assistance under this Part. Under that Act no Federal office or agency shall approve any financial assistance for acquisition or construction purposes as defined under Section 3(a) of said Act, on and after July 1, 1975 (or one year after a community has been formally notified of its identification as a community containing an area of special flood hazard, whichever is later) for use in any area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards, unless the community in which such area is situated is then participating in the National Flood Insurance Program. Notwithstanding the date of HUD approval of the recipients' application, funds approved under this Part shall not be expended on or after July 1, 1975, or one year after a community has been formally notified, whichever is later, for acquisition or construction purposes in an area identified by the Secretary as having special flood hazards which is located in a community not in compliance with the requirements of the National Flood Insurance Program pursuant to Section 201(d) of said Act. The use of any funds provided under this part for acquisition or construction purposes in identified special flood hazard areas shall be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act.

§ 571.608 Clean Air Act and Federal Water Pollution Control Act.

The recipient must comply with the provisions of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.), and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.) and the regulations thereunder (40 CFR Part 14 and 40 CFR Part 61).

§ 571.609 Activities by non-profit entities, SBICs and local development corporations [Reserved]

§ 571.610 Lead-Based Paint Poisoning Prevention Act.

The recipient must comply with the Department's Lead-Based Paint Regulations (24 CFR Part 35) issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 et seq.) requiring prohibition of the use of lead-based paint, whenever assistance under this Part is used directly or indirectly by the recipient for constructing, rehabilitating, or modernizing residential structures; for eliminating immediate lead-based paint hazards in residential structures assisted under this Part; or for notifying purchasers and tenants of residential structures constructed prior to 1950 and assisted under this Part of the hazards of lead-based paint poisoning.

§ 571.611 Property rehabilitation standard [Reserved]

Subpart H—Program Management

§ 571.700 General policies.

(a) This Subpart sets forth the following:

(1) the operational program requirements or standards against which the Secretary will evaluate the recipient's performance;

(2) the timing and basis of the Secretary's review of an applicant's or recipient's performance;

(3) the reports to be submitted to HUD and the records to be maintained by a recipient;

(4) the corrective and remedial actions available to the Secretary if program deficiencies or noncompliance are discovered.

(b) The objectives of the Secretary's review of a recipient's performance are to determine whether:

(1) the recipient has carried out the Indian Community Development Block Grant Program substantially as described in its approved application;

(2) the recipient has complied with the requirements of this Part and other applicable laws and regulations;

(3) the recipient has an administrative capacity to carry out the approved Indian Community Development Block Grant Program in a timely manner.

§ 571.701 Property management standards.

(a) The standards governing the utilization and disposition of personal property acquired in whole or in part with funds provided under this Part by recipients are set forth in Attachment N, Paragraphs 2 and 4–6 of OMB Circular A-102.

(b) The standards governing the utilization of real property acquired by recipients with funds provided under this Part are set forth in Paragraphs 3 a and b of Attachment N of OMB Circular A-102. The standards governing the disposition of this real property are set forth in § 571.512(e) (Disposition of Real Property).

§ 571.702 Reports to be submitted by recipients.

(a) *General.* Recipients will submit such reports, including litigation, financial management, relocation and acquisition reports, as the Secretary may require.

(b) *Performance report.*—(1) *Submission.* Each recipient shall submit a narrative performance report upon the completion of the activities carried out under this Part or upon submission of a subsequent grant application whichever comes earlier; except that a recipient of a multi-year Comprehensive Grant shall submit a performance report annually at the end of its program year. This report shall contain the following:

(i) progress on approved projects and activities. The recipient shall indicate progress on each activity described in its approved application, each activity added by a HUD approved program amendment, and each activity added by a local program amendment;

(ii) recipient assessment—the performance report must include the recipient's assessment of the effectiveness of the approved activities in meeting the objectives identified in the recipient's application.

(2) *Listing of environmental reviews.* The recipient shall indicate the nature and status of all environmental reviews required on projects or activities funded under this Part.

(3) *Citizen participation.* The recipient shall indicate compliance with the standards set forth in § 571.705.

(4) *Housing assistance provided.* If applicable, the performance report should indicate the progress made in achieving housing assistance goals set forth in the recipient's most recently approved Housing Assistance Plan.

(c) *Status report.* As part of the preapplication submitted for funding, each applicant who has previously received funds under this Part shall submit a narrative report describing the progress made on approved activities. This report shall be brief and shall indicate the nature of the degree of completion attained and any substantial deviation from the schedule for completion of the approved activities.

§ 571.703 Records to be maintained by recipient.

(a) *Financial management.* Recipients are to maintain records in accordance with OMB Circular A-102, Attachment G, which adequately identify the source and application of funds for grant-supported activities. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income.

(b) *Citizen participation.* Recipients shall maintain records which will indicate the actions undertaken to comply with the citizen participation requirements set forth in § 571.305(e)(3)(ii). These records shall include minutes of Tribal council meetings, a copy of the written Citizen Participation Plan and other records indicating compliance with citizen participation requirements.

(c) *Other resources.* All recipients subject to the provisions of § 571.305(b) (Community Development Program) are required to set forth a community development program which includes activities to be undertaken to meet identified community development needs and objectives and to indicate resources other than funds provided under this Part which are expected to be made available toward meeting identified needs and objectives. Records shall be maintained which indicate what amount of the resources identified in any previous application were actually provided for community development activities and for which activities they were used.

(d) *Relocation.* The recipient shall maintain a record for each person or organization displaced as part of an activity funded under this Section. The records shall include information which indicates compliance with the standards set forth in § 571.601.

(e) *Acquisition.* The recipient shall maintain records which document the amount and basis for determination of the compensation paid for acquisitions funded under this Part. The records shall include information which indicates compliance with the standards set forth in § 571.601.

(f) *Labor Standards.* If applicable, recipients shall maintain records regarding compliance of all contractors performing construction work using grant funds with the labor standards requirement set forth in § 571.603.

(g) *Unavailability of Other Federal Assistance.* Recipients using funds provided under this Part for the provision of public services as described in § 571.201(o), or for the acquisition, construction, reconstruction, or installation of flood and drainage facilities as described in § 571.201(1), shall maintain records of compliance with the procedures set forth in § 571.605 indicating that assistance for such facilities under other Federal laws or programs is unavailable.

(h) *Environment.* Recipients shall prepare and maintain environmental review records as specified in 24 CFR Part 58 and as the Secretary may otherwise require.

(i) *Equal Opportunity.* (1) The recipient shall maintain records which document its compliance with the provisions of Title II of Pub. L. 90-284 (25 U.S.C. 13a), commonly referred to as the Indian Civil Rights Act, in the administration of a program or activity funded in whole or part with funds made available under this Part.

(2) The recipient shall maintain records which documents its compliance with the Indian Preferences Requirements set forth in § 571.507 of these regulations.

§ 571.704 Secretarial review of recipient's performance.

(a) *General Policy.* The Secretary shall review the grantee's performance against the standards set forth in § 571.705 and on the basis of the documentation set forth below. The Secretary's review and determinations will serve as the basic assurance that grants are being used properly to achieve the objectives of this Part.

(b) *Basis of Review.* In reviewing each recipient's performance, the Secretary will consider all available evidence which may include, but need not be limited to the following:

(1) the approved block grant application and any amendments thereto;

(2) reports prepared by the recipient including the performance report described in § 571.702(b);

(3) records maintained by the recipient pursuant to § 571.703;

(4) results of HUD's monitoring of the recipient's performance, including field evaluation of the quality of the work performed;

(5) audit reports;

(6) records of drawdowns on the Letter of Credit;

(7) records related to the provision of housing assistance; and

(8) records of comments and complaints by citizens and organizations or litigation.

(c) *Timing of Review.* (1) The Secretary may, either while grant funded activities are being undertaken or after they are completed, review, monitor and evaluate the recipient's Community Development Program.

(2) The Secretary will review a recipient's performance at least once prior to approval of a subsequent grant to the same recipient and, in the case of other recipients, prior to final closeout of the grant.

§ 571.705 Performance standards.

The following are the standards against which the Secretary may measure the performance of recipients in carrying out activities funded under this Part.

(a) *Relocation.* With respect to displacement pursuant to § 571.601(a) the recipient has established operating procedures under which:

(1) all displaced persons, businesses nonprofit organizations, and farm operations were provided sufficient information so that they fully understood the reason for their displacement and the payments and assistance to which they were entitled;

(2) all displaced families and individuals were provided assistance in obtaining replacement housing of acceptable quality;

(3) all displaced persons, businesses, nonprofit organizations and farm operations received all the relocation payments to which they were entitled pursuant to a written schedule of payments and they received them in a prompt manner.

(b) *Acquisition.* The real property acquisition policies of the recipient complied with the requirements set forth in § 571.601(b).

(c) *Equal Opportunity.* (1) The recipient has complied with the objectives of Title II of Pub. L. 90-284 (25 U.S.C. 1301) in its administration of activities funded in whole or part under this Part.

(d) *Citizen Participation.* Prior to the submission of an application for funding, the grantee has complied with citizen participation requirements set forth in § 571.305(e)(3).

(e) *Substantial Progress.* During the review scheduled in accordance with these regulations, the Secretary will assess a recipient's performance to determine whether the recipient has made substantial progress in carrying out its approved program.

(1) In the review of a recipient's progress in carrying out approved activities, such factors as the following will be taken into account:

(i) expenditure of funds;

(ii) obligation of funds;

(iii) award of third party contracts; and

(iv) other measures of progress including field evaluations of quality of work performed.

In measuring a recipient's progress, HUD will compare its progress with that of other recipients. No absolute standards will be established or enforced.

(2) HUD will review a recipient's progress in achieving its stated housing assistance goals. In reviewing this progress HUD will consider the extent to which actions under the control of the recipient have been taken to achieve the goals.

(f) *Conformance with Approved Program.* HUD will review a recipient's performance to determine whether the recipient conforms substantially to the Community Development Program described in the approved application including any amendments to this program approved by HUD.

(1) This review may include whether any activities that were undertaken which were not included in the approved Community Development Program are eligible under Subpart C of this Part, conform to the certification under § 571.305, and are within amounts not requiring prior HUD approval pursuant to § 571.305.

(2) HUD's review of activities will not include new determinations of eligibility, except where there is substantial evidence challenging the basis for the original finding of eligibility.

Compliance. HUD will review a recipient's performance to determine whether the program carried out complies with the requirements of the Act, this Part, and all applicable laws and regulations.

(h) *Administrative Capacity.* HUD will review a recipient's performance to determine whether the recipient has an administrative capacity to carry out the approved Community Development Program in a timely manner. The primary factors to be taken into consideration in this determination are those factors described in Paragraphs (e), (f) and, (g) of this Section.

§ 571.706 Corrective and remedial actions.

(a) *General.* One or more of the corrective or remedial actions set forth in this Section and § 571.707 will be taken by the Secretary when she determines on the basis of review conducted in conformance with the provisions of § 571.705 that:

(1) The recipient has not carried out a Community Development Program substantially as described in its application; or

(2) The Community Development Program did not comply with the requirements of this section and other applicable laws and regulations; or

(3) The recipient does not have an administrative capacity to carry out the approved Community Development Program in a timely manner.

In each instance, the action taken will be designed to first, prevent a continuance of the deficiency (lack of progress, nonconformance, noncompliance, lack of administrative capacity); second, to mitigate any adverse effects or consequences of the deficiency to the extent possible under the circumstances; and third, prevent a recurrence of the same or similar deficiencies.

(b) *Actions authorized.* The following is a listing of actions that HUD may take in response to review of a recipient's performance. Such actions may be taken either singly or in combination, as appropriate to the circumstances;

(1) request the recipient to submit additional information:

(i) concerning the administrative, planning, budgeting, management and evaluation functions to determine any reasons for lack of progress;

(ii) explaining any actions being taken to correct or remove the causes for delay;

(iii) documenting that activities undertaken were in conformance with the approved program or in compliance with applicable laws or regulations; or

(iv) demonstrating that the recipient has an administrative capacity to carry out the approved program in a timely manner.

(2) request the recipient to submit progress schedules for completing approved activities;

(3) issue a letter of warning that advises the recipient of the deficiency and puts the recipient on notice that more serious sanctions will be taken if the deficiency is not corrected or is repeated;

(4) advise the recipient that a certification will no longer be acceptable and that additional information or assurances will be required;

(5) advise the recipient to suspend, discontinue or not incur costs for the affected activity;

(6) advise the recipient to reprogram funds from affected activities to other eligible activities: provided that such action shall not be taken in connection with any substantial violation of § 571.602 and 24 CFR Part 58;

(7) advise the recipient to reimburse the recipient's program account or Letter of Credit in any amounts improperly expended;

(8) change the method of payment from a Letter of Credit basis to a reimbursement basis;

(9) condition the approval of any subsequent application if there is substantial evidence of a lack of progress, nonconformance, noncompliance, or lack of a continuing capacity; or pursuant to § 571.103. In such cases, the reasons for the conditional approval and the actions necessary to remove the condition shall be specified, as provided in § 571.306(e)(4).

§ 571.707 Other remedies for noncompliance.

(a) *Secretarial referral to the Attorney General.* The Secretary may, if she has reason to believe that a recipient has failed to comply substantially with any provision of the Act, refer the matter to the Attorney General of the United States with a recommendation that an appropirate civil action be instituted. Upon such a referral the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this Part which was not expended in accordance with it, or for mandatory or injunctive relief. The following regulations govern the procedure and practice requirements involving adjudications where the Secretary desires to take action requiring reasonable notice and opportunity for hearing. The regulations in this Part shall be liberally construed to secure just, expeditious, and efficient determination of the issues presented. The Administrative Procedure Act (5 U.S.C. 551 et seq.) where applicable shall be a guide in any situation not provided for or controlled by this Subpart but shall be liberally construed or relaxed when necessary.

(b) *Secretarial actions on payments.* If the Secretary finds a recipient has failed to comply substantially with any provision of this Part, including the performance standards set forth in § 571.705, she may undertake the following provided her finding of failure to comply is made after reasonable notice and opportunity for hearing:

(1) terminate payments to the recipient; or

(2) reduce payments to the recipient by an amount equal to the amount of such payments which were not expended in accordance with this Part; or

(3) limit the availability of payments to programs, projects or activities not affected by such failure to comply, *provided, however,* that the Secretary may on due notice revoke the recipient's Letter of Credit in whole or in part at any time after the initial finding of failure to comply, pending such hearing and a final decision of the Department, to the extent the Secretary determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply. The following regulations govern the procedures and practice requirements involving adjudications where the Secretary desires to take action requiring reasonable notice and opportunity for hearing. The regulations in this Part shall be liberally construed to secure just, expeditious, determination of the issues presented. The Administrative Procedure Act (5 U.S.C. 551 et seq.) where applicable shall be a guide in any situation not provided for or controlled by this Subpart, but shall be liberally construed or relaxed when necessary.

(c) (*Reasonable notice and opportunity for hearing.*)

(1) Whenever the Secretary has reason to believe that a recipient has failed to comply substantially with any Section of the Act or of the provisions of this Part, and that termination, reduction or limiting the availability of payments is required, she shall give reasonable notice and opportunity of hearing to such recipient prior to the invocation of any sanction under the Act.

(2) Except in proceedings involving willfulness or those in which the public interest requires otherwise, a proceeding under this Part will not be instituted until such facts or conduct which may warrant such action have been called to the attention of the chief executive officer of the recipient in writing and he has been accorded an opportunity to demonstrate or achieve compliance with the requirements of the Act and of this Part. If the recipient fails to meet the requirements of the Act and regulations within such reasonable time as may be specified by the Secretary, a proceeding shall be initiated. Such proceeding shall be instituted by the Secretary by a complaint which names the recipient as the respondent.

(3) A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against it so that it is able to prepare a defense to the charges. Notification shall be given in the complaint as to the place and time within which the respondent shall file its answer, which time shall be not less than 30 days from the date of service of the complaint. The complaint shall also contain notice that a decision by default will be rendered against the respondent in the event it fails to file its answer as required.

(4)(i) The complaint or a true copy thereof may be served upon the respondent registered or by certified mail, return receipt requested; or it may be served in any manner which has been agreed to in writing by the respondent. Where the service is by certified mail, the return Postal Service receipt duly signed on behalf of the respondent shall be proof of service.

(ii) Any paper other than the complaint may be served upon the respondent or upon its attorney of record by registered or certified mail, return receipt requested. Such mailing shall constitute complete service.

(iii) Whenever the filing of a paper is required or permitted in connection with a proceeding under this Part, and the place of filing is not specified in this Subpart or by rule or order of the administrative law judge, the paper shall be filed with the Secretary, Washington, D.C. 20410. All papers shall be filed in duplicate.

(iv) Motions and requests shall be filed with the designated administrative law judge, except that an application to extend the time for filing an answer shall be filed with the Secretary pursuant to § 571.707(c)(4)(iii).

(5)(i) The respondent's answer shall be filed in writing within the time specified in the complaint, unless on application the time is extended by the Secretary. The respondent's answer shall be filed in duplicate with the Secretary.

(ii) The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which it knows to be true, nor shall a respondent state that it is without sufficient information to form a belief when in fact it possesses such information. The respondent may also state affirmatively special matters of defense.

(iii) Every allegation in the complaint, which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced at a hearing.

(iv) Failure to file an answer within the time prescribed in the complaint, except as the time for answer is extended under § 571.707(c)(5)(i), shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the administrative law judge shall make his findings and decision by default without a hearing or further procedure.

(v) No reply to the respondent's answer is required unless the administrative law judge so requests. Otherwise, the Secretary may file a reply in her discretion, but in any event within 10 days from her receipt of respondent's answer.

Upon receipt of the answer by the Secretary or upon filing a reply if one is deemed necessary, or upon failure of the respondent to file an answer within the time prescribed in the complaint or as extended under § 571.707(c)(5)(i), the complaint (and answer, if one is filed) shall be referred to the administrative law judge. Where an answer has been filed, the administrative law judge shall set a time and place for hearing and shall serve notice thereof upon the parties at least 15 days in advance of the hearing date.

(6)(i) If it appears to the Secretary that the respondent in its answer falsely and in bad faith, denies a material allegation of fact in the complaint or states that it has no knowledge sufficient to form a belief, when in fact it does possess such information, or if it appears that the respondent has knowingly introduced false testimony during the proceedings, the Secretary may thereupon file supplemental charges against the respondent. Such supplemental charges may be tried with other charges in the case: *provided,* the respondent is given due notice thereof and is afforded an opportunity to prepare its defense thereto.

(ii) In the case of variance between the allegations in a pleading and the evidence adduced in support of the pleading, the administrative law judge may order or authorize amendment of the pleading to conform to the evidence: provided, the party that would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegation of the pleading as amended. The administrative law judge shall make findings on any issue presented by the pleadings as so amended.

(iii) A respondent may appear in person through its chief executive officer and must be represented by counsel. Respondent's counsel may also appear as a witness in the proceeding. The Secretary shall be respresented by the General Counsel of HUD.

(d) *Administrative law judge; powers*—(1) An administrative law judge, appointed as provided by Section 11 of the Administrative Procedure Act (5 U.S.C. 3105), shall conduct proceedings upon complaints filed under this Subpart.

(2) Among other powers provided by law, the administrative law judge's authority, in connection with any proceeding under this Subpart, shall include authority to:

(i) administer oaths and affirmations;

(ii) making ruling upon motions and requests. Prior to the close of the hearing no appeal shall lie from any such ruling except, at the discretion of the administrative law judge, in extraordinary circumstances;

(iii) determine the time and place of hearing and regulate its course and conduct. In determining the place of hearing the administrative law judge may take into consideration the requests and convenience of the respondent or its counsel;

(iv) adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(v) rule upon offers of proof, receive relevant evidence, and examine witnesses;

(vi) take or authorize the taking of dispositions;

(vii) receive and consider oral or written arguments on facts of law;

(viii) hold or provide for the holding of conferences for the settlement or simplication of the issues by consent of the parties;

(ix) perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(x) make initial findings and decisions.

(e) *Hearings.* (1) The administrative law judge shall preside at the hearing on a complaint. Testimony of witnesses shall be given under oath or affirmation. The hearing shall be stenographically recorded and transcribed. Hearings shall be conducted pursuant to section 7 of the Administrative Procedure Act (5 U.S.C. 556).

(2) If, after proper service and notice, a respondent fails to appear at the hearings, it shall be deemed to have waived the right to a hearing and the administrative law judge shall make his findings and decision against the respondent by default.

(3) A respondent may waive the hearing by informing the administrative law judge, in writing on or before the date set for hearing, that it desires to waive the hearing. In such event the administrative law judge shall make his findings and decision based upon the pleadings before him. The decision shall plainly show that the respondent waived hearing.

(4) The administrative law judge shall prior to or at the beginning of the hearing require that the parties attempt to arrive at such stipulations as will eliminate the necessity of taking evidence with respect to allegations of facts concerning which there is no substantial dispute. The administrative law judge shall take similar action, where it appears appropriate, throughout the hearing and shall call and conduct any conferences which he deems advisable with a view to the simplification, clarification, and disposition of any of the issues involved.

(f) *Evidence.* (1) Any evidence which would be admissible under the rules of evidence governing proceedings in matters not involving trial by jury in the Courts of the United States, shall be admissible and controlling as far as possible: *provided,* that, the administrative law judge may relax such rules in any hearing when in his judgment, such relaxation would not impair the rights of either party and would more speedily conclude the hearing, or would better serve the ends of justice. Evidence which is irrelevant, immaterial and unduly repetitious shall be excluded by the administrative law judge.

(2) The deposition of any witness may be taken pursuant to § 571.707(g) and the deposition may be admitted.

(3) Official documents, records and papers of a respondent shall be admissable as evidence without the production of the originial: *provided,* that such documents, records and papers are evidenced as the orginial by a copy attested to or identified by the chief executive officer of the respondent or the custodian of the document, and contain the seal of the respondent.

(4) If any document, record, paper, or other tangible or material thing is introduced in evidence as an exhibit, the administrative law judge may authorize the withdrawal of the exhibit subject to any conditions he deems proper. An orginial document, paper, or record need not be introduced and a copy duly certified (pursuant to § 571.707(f)(3)) shall be deemed sufficient.

(5) Except as requested by counsel or the administrative law judge, oral or written objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include subsequent argument thereon, except as permitted by the administrative law judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the right of either party to the proceeding.

(g) *Depositions*—(1) Depositions for use at a hearing may, with the written approval of the administrative law judge, be taken by either the Secretary or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than 15 days written notice to the other party, before any officer duly authorized to administer an oath for general purposes. Such written notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 15 days written notice may be waived by the parties in writing, and depositions may then be taken from the persons and at times and places mutually agreed to by the parties.

(2) When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogatories shall be mailed by first-class mail or delivered to the opposing party at least 10 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file with the administrative law judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

(h) *Stenographic record; oath of reporter; transcript*—(1) A stenographic record shall be made of the testimony and proceedings, including stipulations and admissions of fact in all proceedings. Arguments of counsel may be heard on request. A transcript of the proceedings (and evidence) at the hearing shall be made in all cases.

(2) The reporter making the stenographic record shall subscribe an oath before the administrative law judge, to be filed in the record of the case, that he will truly and correctly report the oral testimony and proceedings at such hearing and accurately transcribe the same to the best of his ability.

(3) Copies of the transcript may be obtained from the reporter at rates not to exceed the actual cost of duplication. Copies of exhibits introduced at the hearings or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (31 U.S.C. 483(a)).

(i) *Proposed findings and conclusions.* Except in cases where a respondent has failed to appear to answer the complaint or has failed to appear at the hearing, or has waived the hearings, the administrative law judge, prior to making his initial decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

(j) *Initial decision of the administrative law judge.* Within 30 days after the conclusion of a hearing, the administrative law judge shall make his initial decision. However, where proposed findings and conclusions are timely submitted by the parties, such decision shall be made within 30 days after receipt of the findings and conclusions. The initial decision shall include a statement of the findings of fact and the conclusions therefrom, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion preserved on the record, and may provide for one of the following orders:

(1) an order that the respondent's payments be terminated, or

(2) an order that the respondent's payments be reduced, or

(3) an order that the Secretary limit the availability of payments to activities not affected by respondent's failure to comply, or

(4) an order in favor of respondent. After reaching his initial decision the administrative law judge shall certify to the complete record, together with a certified copy of his initial decision, to the Secretary. The administrative law judge shall serve also a copy of the initial decision by certified mail to the chief executive officer of the respondent or to its attorney of record.

(k) *What constitutes record.* The transcript of testimony, pleadings and exhibits, all papers and requests filed in the proceeding together with all findings, decisions and orders, shall constitute the exclusive record in the matter.

(l) *Procedure on review of decision of administrative law judge*—(1) Within 30 days from the date of the initial decision and order of the administrative law judge, the respondent may appeal to the Secretary and file his exceptions to the initial decision and his reasons therefor. The respondent shall transmit a copy of his appeal and reasons therefor to the HUD counsel who may, within 30 days from receipt of the respondent's appeal, file a reply brief in opposition to the appeal. A copy of the reply brief, if one is filed, shall be transmitted to the respondent or its counsel of record. Upon the filing of an appeal and a reply brief, if any, the Secretary shall make the final agency decision on the record of the administrative law judge submitted to her.

(2) In the absence of exceptions by the respondent within the time set forth in Paragraph (l)(1) of this Section or a review initiated by HUD counsel within 45 days after the initial decision, such initial decision of the administrative law judge shall constitute the final decision of the Department.

(m) *Decision of the Secretary.* On appeal from or review of the initial decision of the administrative law judge, the Secretary will make the final agency decision. In making her decision the Secretary will review the record or such portions thereof as may be cited by the parties to permit limiting of the issues. The Secretary may affirm, modify, or revoke the findings and initial decision of the administrative law judge. A copy of the Secretary's decision shall be transmitted immediately to the chief executive officer of the respondent or its counsel of record.

(n) *Publicity of proceedings*—(1) A proceeding conducted under this Subpart shall be open to the public and to elements of the news media provided that in the judgment of the administrative law judge, the presence of the media does not detract from the decorum and dignity of the proceeding.

(2) The record established in any proceeding conducted under this Subpart shall be made available for inspection by the public as provided for and in accordance with regulations of the Department of HUD pursuant to 24 CFR Part 15.

(3) The statement of findings and the initial decision of the administrative law judge in any proceedings, whether or not on appeal or review, shall be indexed and maintained by the Secretary and made available for inspection by the public at the public documents room of the Department. If practicable, the statement of findings and the decisions of the administrative law judge shall be published periodically by the Department and offered for sale through the Superintendent of Documents.

(4) Based on written advice from the Department of Justice that publicity of the proceedings or public release of the record pursuant to Paragraph (n) (1), (2), and (3), of this Section would adversely affect criminal prosecution, the Secretary may deem the applicability of Paragraph (n) (1), (2), and (3) stayed.

(o) *Judicial review.*

(1) Actions taken under administrative proceedings pursuant to this Subpart shall be subject to judicial review pursuant to Section 111(c) of the Act. If a respondent desires to appeal a decision of the administrative law judge which has become final, or a final order of the Secretary for review of appeal, to the U.S. Court of Appeals, as provided by law, the Secretary, upon prior notification of the filing of the petition for review, shall have prepared in triplicate, a complete transcript of the record of the proceedings, and shall certify to the correctness of the record. The original certificate together with the original record shall then be filed with the Court of Appeals which has jurisdiction.

(2) Any recipient which receives the final agency decision of the termination, reduction or limitation of payments under this title may, within sixty days after receiving such notice, file with the United States Court of Appeals for the circuit in which such State is located, or in the United States Court of Appeals for the District of Columbia, a petition for review of the Secretary's action. The petitioner shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

(3) The Secretary shall file in the court the record of the proceeding on which she based her action, as provided in Section 2112 of Title 28, United States Code. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(4) The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may order additional evidence to be taken by the Secretary, and to be made part of the record. The Secretary may modify her findings of fact, or make new findings, by reason of the new evidence so taken and filed with the court, and she shall also file such modified or new findings, which findings with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole, and shall also file her recommendations, if any, for the modification or setting aside of her original action.

(5) Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in Section 1254 of Title 28, United States Code.

Issued at Washington, D.C., October 31, 1978.

ROBERT C. EMBRY, Jr.,
Assistant Secretary for Community Planning and Development.

[FR Doc. 78-34647 Filed 12-14-78; 8:45 am]

federal register

FRIDAY, DECEMBER 15, 1978
PART IV



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

■

FEDERAL LAND POLICY AND MANAGEMENT ACT

Proposed Planning Regulations

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 1600]

PLANNING, PROGRAMMING, AND BUDGETING

Subpart 1601—Planning

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking establishes in regulations a planning system for public lands and resources. The Federal Land Policy and Management Act provides for land use planning on public lands. The intended effect is to insure that actions on public lands are based upon the best available information and sound land use planning. The Bureau is proposing to use the term Resource Management Plan for the land use plans mandated by the cited legislation.

DATES: Comments by April 1, 1979. A public meeting will be held March 13, 1979, 9:00 a.m., in the U.S. Department of the Interior Auditorium, 18th and C Street, NW., Washington, D.C., to receive public comment on the proposed rulemaking.

ADDRESS: Send comments to: Director (210), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240. Comments will be available for public review in Room 5555 at the above address from 8:00 a.m., to 4:00 p.m., on regular working days.

FOR FURTHER INFORMATION, CONTACT:

Robert A. Jones 202-343-5682 or
Billy R. Templeton 202-343-8735.

SUPPLEMENTARY INFORMATION: The principal author of this document is Robert A. Jones, Chief of the Washington Office Division of Environmental and Planning Coordination.

A notice of intent to develop proposed rulemaking was published on page 8814 of the FEDERAL REGISTER of March 3, 1978. Discussion packages containing a draft regulation were made available at the State Offices of the Bureau of Land Management and at the Washington Office. Comments were requested by July 3, 1978.

We received comments on the draft regulations from 130 sources in 23 States and Washington, D.C. Those commenting represented the academic community, business and industry, organized recreation groups, organized environmental and conservation groups, individual citizens, and Federal, State and local government agencies. The concepts contained in the draft regulations were general and we appreciate the efforts of the many persons, groups, and agencies to analyze them and provide helpful suggestions to us. The comments focused on several major concerns, including lack of explicit discussion of National Environmental Policy Act requirements, the need for more detailed coordination arrangements with State and local governments, failure to indicate which BLM organizational levels were responsible for various aspects of planning, and lack of direction on how alternatives were to be handled. A variety of planning process steps were suggested.

During early 1978 the Bureau of Land Management contracted with the American Society of Planning Officials for an evaluation of planning procedure needs in response to the Federal Land Policy and Management Act. That evaluation has also been useful in developing this proposed rule.

In the meantime, the Forest Service has also been working on planning regulations to implement provisions of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976. Their proposed rulemaking was issued on August 31, 1978. The Bureau of Land Management has been coordinating closely with the Forest Service, and decided, partially in response to many suggestions from the public, to restructure the Bureau of Land Management March 1978 draft rulemaking to provide for as many linkages and common features between the Forest Service and BLM planning processes as possible. Full comparability is not possible due to differing legislative authorities and the difference in scope between the Forest Service and BLM rulemakings. The Forest Service rulemaking covers program planning under the Renewable Resources Planning Act; all aspects of Forest Management Planning under the Forest Management Act; plus technical and policy standards for individual resources in response to legislative history accompanying the Forest Management Act. The Bureau of Land Management rulemaking proposal is limited to the resource management planning process for resource areas (subdivisions of districts) under the Federal Land Policy and Management Act and the Coal Leasing Amendments Act. The BLM regulation proposal does not cover program planning or technical and policy standards for specific resource uses.

The rewriting and reorganizing of the Bureau of Land Management draft proposed rulemaking makes many of the specific substantive comments on the March 1978 draft no longer directly applicable. Therefore, those who commented on the discussion package are urged to review the proposed rulemaking carefully to see if their original concerns are remedied and whether they wish to make additional comments.

BACKGROUND

The Bureau of Land Managaement (BLM) has been preparing resource management plans, called Management Framework Plans (MFP) since 1969. About 80 percent of the Federal lands administered by BLM outside Alaska are covered under MFP's. New MFP's are now being prepared, or existing MFP's are being revised or supplemented, under very tight schedules to guide decisions for the range, timber, and other resource management programs and to provide the proposed actions for related environmental impact statements (EIS). The range and timber EIS schedules are mandated by court orders. The MFP's currently undergoing development or revision are being prepared under a system of planning procedure which BLM implemented in 1969 and partially revised in 1975.

The BLM's planning procedure has been evolving over time to meet needs generated by changing policy and legislation and increasing resource use pressures. The planning process now needs further additions and changes to comply with new legislation and to improve the quality of resource management planning to match current and anticipated resource demands. The significant changes needed include better national policy communication to the local BLM planner; modification of the planning process, in coordination with the Forest Service, to make the planning processes used by both agency as similar as possible to minimize public confusion; improved coordination with State and local governments; improved development, display, and assessment of alternatives; selection of a standard area for which resource management plans are normally prepared; the preparation of a reproducible planning document for each planning area which shows how alternatives were assessed and how the planning decision was reached; the assessment of the environmental and other effects of the proposed plans in a combined draft and final plan/environmental impact statement; and provision for expeditious resource management plan amendment to permit the plan to be responsive to emerging needs.

OVERVIEW OF THE PROPOSAL

1. GENERAL

The Department proposes this rulemaking as a framework for guiding the modification now needed in BLM's resource management planning process.

Plans developed under this process shall be developed in accordance with Section 202 of the Federal Land Policy and Management Act and shall be called resource management plans. "Resource" is defined in the broadest sense and includes all public land values; renewable and nonrenewable resources of all types. Resource management includes supporting services such as fire control, and cadastral survey; land use authorization and control; and land disposition, exchange or acquisiton.

The intent of this proposed rulemaking is to provide for decentralized resource management plan preparation, which is fully responsive to national level policy direction contained in legislation, executive orders, Secretarial orders, Bureau manuals, and other such directives. Therefore, it is proposed that State Directors, after considering a variety of factors including public input, and advice of State and local government, provide planning guidance to Districts for their use in preparing resource management plans. Such guidance will relate national level policy direction to specific or unique characteristics of the State and district. The District Manager will apply this guidance to the on-the-ground subtleties and needs of the resource area, the smallest administrative sub-unit of a BLM district, and the area for which a resource management plan is to be proposed. State Directors are also to review and concur in the proposed resource management plan before it is approved by the District Manager, to further insure conformance to national policy.

2. ENVIRONMENTAL ASSESSMENT STRATEGY

The BLM planning process will be in full compliance with the final regulations for the National Environmental Policy Act which were issued by the Council on Environmental Quality on November 29, 1978. We believe this proposed regulation is in such compliance but have not had time, between November 29 and the date of this proposal, to make a complete analysis. If any areas of noncompliance are identified during the public review period, they will be corrected in the final regulation. The proposed BLM planning process is especially responsive to two specific features of the CEQ regulations.

Tiering of environmental assessment. The resource management plan and environmental impact statement will not supplant all subequent environmental assessment. Such assessments will be required for specific actions as they are subjected to more detailed planning and design, in accordance with the resource management plan. However, to the extent the major character and nature of such actions is covered within the scope of the resource management plan, and is addressed in the resource management plan environmental impact statement, subsequent environmental statements should not be needed. Also, the environmental assessment of more specific plans and actions will be more efficient in that such assessments can concentrate on any gaps in the environmental assessment incorporated into the resource management plan. We expect that the environmental assessment process in the proposed rulemaking will be more efficient than the current process of preparing Management Framework Plans without environmental impact statements followed by preparation and filing of environmental impact statements as necessary for individual actions or programs, based on the MFP. The proposed process should also materially improve the quality of resource management planning. Some resource management actions will be subject to further planning and decisionmaking in contexts substantially different than that provided within a resource management plan (e.g. the proposed coal regional tract ranking process). Further environmental impact statements may be needed in those contexts.

Integration of plan and environmental statement process and documentation. Planning and environmental assessment processes will be fully integrated so that the actual assessment findings are available to the District Manager before a preferred alternative is selected. A single document will contain both the plan and the environmental impact statement, and will be formatted to eliminate overlap and duplication to the maximum extent possible.

The efficiency of this environmental assessment strategy is also dependent upon the proposed delegation of authority to BLM State Director, to file environmental impact statements with the Environmental Protection Agency (for resource management plans only). This will match environmental impact statement filing authority with plan concurrence authority and will permit establishing an integrated plan and environmental impact statement quality control process within each BLM State Office. This delegation of environmental impact statement filing authority matches the delegation to Regional Foresters now existing in the Forest Service. Environmental impact statements for other programs will continue to be filed under existing Departmental procedures.

3. PUBLIC PARTICIPATION

The proposed planning process relies heavily on public involvement early in and throughout the planning process to help identify issues and concerns which should be addressed. Public involvement is also critical to the development and assessment of alternative plans. The proposed rulemaking provides for full notice and access to this planning process.

Public assistance in identifying issues early will add to the efficiency of the planning process by helping the District Manager concentrate data collection and alternative formulation and assessment on those issues that are of particular concern.

4. COORDINATION WITH OTHER FEDERAL AGENCIES, STATE AND LOCAL GOVERNMENT, AND INDIAN TRIBES

The State Director will be a major policy coordination point for other Federal agencies, State and local government, Indian Tribes, and Statewide public groups. Each State director is to seek agreement with the Governor of that State on the process of preparing planning guidance for districts, and on providing State government involvement for resource management planning. This should generate the best possible coordination between State governments and the BLM planning process. Coordination between the State Director and State agencies will be a major means of implementing consistency requirements of the Federal Land Policy and Management Act.

In addition to any coordination process agreed to with Governors or in lieu of an agreed upon process if an agreement is not completed, District Managers will provide full notice of intent to initiate a resource management plan to all concerned State agencies through the A-95 clearinghouses plus direct mailings to concerned Federal agencies; involved Tribal Chairmen or Alaska Native Leaders; and to the heads of local governments. Coordination meetings will be held upon request to explain the planning process and identify the most effective involvement points. BLM resource management plans will be made consistent with officially approved and adopted resource related policies, plans and programs of State and local government and Indian Tribes to the extent consistent with Federal law and the purposes of the Federal Land Policy and Management Act of 1976. When a District Manager is notified of an inconsistency, the plan documentation shall show how that inconsistency was addressed and, if possible, resolved.

5. RESOURCE MANAGEMENT PLANNING PROCESS

Resource management plans are the major means for coordinating among the multiple uses of public land. They prescribe the management and protection needed for areas of critical envi-

ronmental concern (ACEC). A resource management plan approval constitutes ACEC designation as required by the Federal Land Policy and Management Act. Resource management plans contain allocations of resources between uses and/or levels of use and indicate the direction of any change needed in resource use or management. For example, they are used to initially determine which wilderness study areas (or portions) should be recommended to the President for recommendation to the Congress as suitable or unsuitable for addition to the National Wilderness Preservation System. They are used to indicate coal areas unsuitable for coal leasing and coal areas that are acceptable for further consideration for leasing. They are used to establish desired allocations of forage to wildlife, wild horse, and domestic livestock use and to prescribe the type of livestock and wild horse management needed to insure accomplishment of the planned forage uses. They are used to establish areas open to outdoor recreation vehicle use as well as areas closed or open to limited outdoor recreation vehicle use. There are, of course, many other resource uses and values which are covered and for all uses the plan establishes appropriate terms and conditions to insure coordination and resource protection. In summary, resource management plan preparation is a critical portion of the BLM's multiple use decisionmaking process.

Resource management plans are to be prepared for resource areas, the smallest administrative subarea used by BLM. BLM districts have from two to four resource areas each. There are 178 resource areas in the Western States (exclusive of Alaska) averaging 950,000 Federal surface areas in size. There can be exceptions to the use of resource areas as a plan base, when fully justified.

Resource management plans are to be the result of a set of required planning process actions, which are the same actions prescribed by the proposed Forest Service process. This should enhance common understanding of these processes. The actions are listed below and basic requirements are established in the rulemaking proposal. Additional operational procedures will be prepared by the BLM Director. There will be substantial variation in how these process actions are accomplished and documented, both between the BLM and Forest Service and from plan to plan within the BLM, based on variation in issues, concerns, data, and legal authorities.

While the process actions are listed in the general sequence they are to be initiated, in actual practice a great deal of review and recycling among actions is expected to insure an adequate plan. The principal test will be whether, at the plan approval stage, there is clear documentation that all actions have been completed adequately.

The required process actions are:

Identification of issues, concerns, and opportunities.

Development of planning criteria.

Inventory data and information collenction.

Analysis of the managment situation.

Formulation of alternative plans.

Estimation of the effects of alternative plans.

Selection of preferred alternative and filing the draft environmental impact statement.

Selection of preferred resource management plan and filing the final environmental impact statement.

Monitoring and evaluation of the plan.

The proposed approach for formulating alternative plans has been given a great deal of consideration. Our intent is to explore all reasonable land use alternatives and quickly eliminate unreasonable or impractical alternatives from detailed study. The District Manager and staff will first prepare a no action (no land use change) alternative. Then an alternative plan will be prepared which is as responsive as possible to established guidance and expressed opinions of public groups and the several levels of government. There will be portions of this alternative where additional reasonable alternatives exist because guidance is general, alternative objectives could be pursued as well as alternative uses of the public land resources, and public and governmental agency opinion is divided. In some cases the need for these additional alternatives will be indicated early, during the issue identification process. In other cases the need will be discovered during the plan development process.

Additional, issue oriented alternatives will then be prepared which will encompass all reasonable ways to utilize the public land resource and resolve issues and differences of opinion. If, due to the complexity of the resource area or the volume of issues and concerns, these additional alternatives become so interrelated that they are difficult to describe clearly, complete resource management plan alternatives may be developed which focus on different goals such as resource protection or resource production.

The consequences of all alternatives will be comparatively assessed before a proposed alternative is selected for publication in the draft plan and draft environmental impact statement.

The preferred alternative and the finally approved resource management plan will be annotated to show those portions that can be implemented under authority delegated to the State Director and those portions which are the basis for recommendation for consideration at higher levels. This should avoid misunderstangings and false expectations about what the BLM State Director can do upon approval of a plan.

Resource management plans are to be prepared at the District level, and approved by the District Manager after the State Director reviews and concurs in the plan and files the final environmental impact statement. State Directors will be involved throughout the planning process to exercise quality control, particularly during the preparation of planning criteria. During the 30 days following filing the final environmental impact statement, protests against the impending approval of the plan (as proposed in the final environmental statement) may be filed with the State Director. If the State Director cannot satisfy the protest, it may be carried to the Director who will give final opinion of the Department.

6. USING THE RESOURCE MANAGEMENT PLAN

Upom approval of the plan, several things can happen:

a. *Use Changes.* If there are existing uses not in conformance with the plan, a deliberate program of change, over time, will be initiated. Generating and guiding such change is a major purpose of the resource management plan. Accomplishing a change may require further detailed planning (e.g. Allotment Management Plan for livestock) and related program and budget planning. Indivivual actions will need environmental assessment.

b. *Resource Management.* There will be new management initiatives set forth in the resource management plan. These may require more detailed plans and will require further environmental assessment. Some actions in the resource management plan can and will be taken within the field office's authority and financial capability and others will be the basis for funding or action proposals to higher organizational levels.

c. *Action on Proposals Made to BLM.* Public land users may propose actions on public lands as the need arises. With the resource management plan available, BLM managers will be able to act decisively on these proposals by either (1) concluding they are in conformance with the plan and proceeding their authorization, (2) concluding they are not in conformance with the plan, and are not in the public interest, or (3) concluding that they appear to have merit and warrant further consideration and possible plan amendment.

7. RESOURCE MANAGEMENT PLAN AMENDMENT AND REVISION

Resource managment plans may be amended quite simply. This flexibility is designed to permit timely and efficient response to sound proposals or changes in national legislation or policy that were not foreseen when the plan was prepared, and to permit the plan itself to be a viable and useful management tool for as long a period as possible. The amendment procedure requires an environment assessment of the proposal including public notice, filed as an environmental impact statement if necessary, supplemented by additional data and public comment as are necessary to permit an informed decision. A favorable decision on the proposal also amends the plan. The District Manager then posts the amendment to the plan.

The resource management plan plus accrued amendments is required to be reviewed at least every 5 years to determine whether it is still a viable and adequate document. The plan is revised when it is no longer viable, and is automatically scheduled for revision when 15 years old.

8. COORDINATION WITH DEPARTMENT'S DEVELOPING COAL MANAGEMENT POLICY AND PROGRAM

At about the same time this proposed rulemaking is being issued, the Department is filing a draft environmental impact statement covering alternative policies and programs for coal. The preferred option for that program places great reliance on the Bureau's land use planning system. That is the system for which regulations in this proposed rulemaking will provide direction. The determination to propose calling these plans resource management plans rather than land use plans was made too late to correct the coal program DES. The national policies assessed in the coal program DES, and as ultimately decided, are examples of the national level guidance discussed in many places in this proposed rule for planning.

9. RELATIONSHIP TO THE MANAGEMENT OF AREAS OF CRITICAL ENVIRONMENTAL CONCERN

The Federal Land Policy and Management Act requires that priority be given to the identification and protection of areas of critical environmental concern (ACEC). These are areas within the public lands where special management attention is required to protect and prevent irreparable damage to important historic, cultural or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards when such areas are developed or used or where no development is required.

We propose that ACEC be identified and the appropriate protection prescribed in the resource management planning process which is described in this proposed regulation. Approval of a resource management plan would constitute designation of an ACEC as required by the Federal Land Policy and Management Act.

A draft of the policies, procedures and criteria for ACEC is presently being prepared. Notice of its availability will be published in the FEDERAL REGISTER to obtain public review and comment prior to being formalized.

TRANSITION

Existing Management Framework Plans (MFP'S) will remain valid and provide guidance for program actions until revised, over time, with resource management plans prepared and approved under these regulations. MFP's now under preparation, or scheduled to start or to be revised or supplemented before these regulations and related procedure changes are final, will be completed under existing plannng procedure. Upon issuance of final planning process regulations, and development of any needed planning procedure, new planning starts will fall under and be governed by these regulations and procedures. As a result, some areas with critical problems will be placed under new resource management plans relatively soon while others, less involved with problems and issues, will continue to be managed under existing plans for longer periods of time. Any action pursuant to existing plans, or plans presently in process, will be subjected to an environmental assessment, and an environmental impact statement if necessary, which will serve as a check to insure the adequacy of the planning base. If the existing MFP is shown to be inconsistent with current legislation and policy, the action decision will differ from that MFP.

Where no plans exist, or the existing MFP's are out-of-date or too general to provide guidance, actions will be considered based primarily on environmental assessments, supplemented with such other data as are necesssary to support and guide a decision. If such actions are of a nature requiring the filing of environmental impact statements, such filings will be made.

ANALYSIS OF REGULATIONS

1. REGULATORY ANALYSIS

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

2. ENVIRONMENTAL ASSESSMENT

An environmental assessment has been prepared, exploring the possible enviromental consequences of several alternative approaches to the subject regulations. It has been found that these regulations, by themselves, will not have a significant environmental impact. The measurable environmental impact will be developed for assessment as actual resource situations and alternatives are addressed during the planning process. The regulations prescribe the means for accomplishing the assessments and filings required by NEPA during the planning process. Therefore, an environmental impact statement on these proposed regulations is not required under Section 102(c)(c) of the National Environmental Policy Act.

PROPOSAL

Under the authority of sections 201 and 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711 and 1712), it is proposed to amend Subchapter A, Chapter II, Title 43 of the Code of Federal Regulations by adding Part 1600 as set forth below.

1. Subchapter A is amended by adding Part 1600 to read as follows:

PART 1600—PLANNING, PROGRAMMING, BUDGETING

Subpart 1601—Planning

Sec.

1601.0-1 Purpose.
1601.0-2 Objective.
1601.0-3 Authority.
1601.0-4 Responsibilities.
1601.0-5 Definitions.
1601.0-6 Environmental Statement Policy.
1601.0-7 Scope.
1601.0-8 Principles.
1601.1 Resources Management Planning—General.
1601.2 Interdisciplinary approach.
1601.3 Public participation.
1601.4 Coordination with other Federal Agencies, State and local governments, and Indian Tribes.
1601.4-1 Coordination by State Directors.
1601.4-2 Coordination by District Manager.
1601.4-3 Consistency requirements.
1601.5 Resource management planning process.
1601.5-1 Identification of issues, concerns, and opportunities.
1601.5-2 Development of planning criteria.
1601.5-3 Inventory data and information collection.
1601.5-4 Analysis of the management situation.
1601.5-5 Formulation of alternatives.
1601.5-6 Estimation of effects of alternatives.
1601.5-7 Selection of preferred alternatives.
1601.5-8 Selection of resource management plan.
1601.5-9 Monitoring and evaluation.
1601.6 Resource management plan approval, use and modification.

Sec.
1601.6-1 Resource management plan approval and administrative review.
1601.6-2 Conformity and implementation.
1601.6-3 Changing the resource management plan.
1601.6-4 Situations where action can be taken based on another agency's plan or a land use analysis.
1601.6-5 Management decision review by Congress.
1601.6-6 Designation of areas unsuitable for surface mining.
1601.7 Resource management plan content and documentation.
1601.7-1 Planning process records.
1601.7-2 Authority annotations.
1601.7-3 Plan and environmental impact statement document.
1601.8 Transition period.

AUTHORITY: 43 U.S.C. 1740

§ 1601.0-1 Purpose.

The purposes of this Subpart are (a) to establish in regulations a process for the development, maintenance, and revision of resource management plans for public lands administered by the Bureau of Land Management and (b) to set forth how existing plans or other data will be used until plans are developed under these regulations.

§ 1601.0-2 Objectives.

The objective of this Subpart is to improve resource management decisions on public lands through a process of resource management planning that includes participation by the public and Federal, State and local governments, maximizing use of the best available data, and assessment of alternatives.

§ 1601.0-3 Authority.

These regulations are issued under the authority of sections 201 and 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711-1712); section 3 of the Federal Coal Leasing Amendments Act of 1976 [30 U.S.C. 201(a)]; and sections 522, 601, and 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

§ 1601.0-4 Responsibilities.

(a) National level policy and procedure guidance for planning shall be provided by the Secretary and the Director.

(b) State Directors shall provide quality control for planning and related environmental impact statements and shall provide additional guidance, as necessary, for use by District Managers. State Directors shall file draft and final environmental impact statements associated with resource management plans.

(c) Resource Management plans, revisions, and amendments shall be prepared by District Managers, reviewed and concurred in by State Directors, and approved and issued by District Managers.

§ 1601.0-5 Definitions.

As used in this subpart:

(a) "Applicant proposed action" means any resource use or development proposed to BLM by a member of the public or by another agency (not exclusively generated by BLM) through any procedure established by regulations including nominations, petitions, and applications.

(b) "Areas of critical environmental concern" (ACEC) means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.

(c) "Conformity or conformance" means that a resource use or management action shall be specifically provided for in the plan, or if not so mentioned shall be clearly consistent with the intent, terms, conditions, and expected results of the approved plan.

(d) "District manager" means the line official in charge of a resource managing field office reporting to a State Director. In some case (e.g., Eastern States) these officials may not be titled District Manager.

(e) "Goal" means the desired state or condition that a resource management policy or program is designed to achieve. A goal is usually not quantifiable and may not have a specific date by which it is to be completed. Goals are the base from which objectives are developed.

(f) "Guidance", means any type of communication or instruction which establishes objectives, goals, constraints or any other direction which helps the District Manager and staff know how to prepare a specific resource management plan.

(g) "Land use analysis" means the process authorized in the Federal Coal Leasing Amendments Act of 1976. It is an environmental assessment supplemented to include all data relevant to a decision. It is used only when public land resources are limited as prescribed under § 1601.6-4. It is generally limited to a much smaller area than a resource area since the process can only be used where very limited public land resources are involved. It generally covers one or two types of public land resource use. Upon approval, it meets the land use planning requirements of Sec. 202 of the Federal Land Policy and Management Act.

(h) "Local government" means any political subdivision of the State and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulation authority.

(i) "Minimum acceptable levels or standards of protection and/or production" means those levels or standards which are required by law or policy as a base that must be achieved, or accomplished, as a minimum, when considering multiple use mixes and resolution of resource use conflicts.

(j) "Objectives" mean planned results to be achieved within a stated time period. Objectives are subordinate to goals, are narrower and shorter in range, and have increased possibility of attainment. Time periods for completion, and outputs or achievement that are measurable and quantificable, are specified.

(k) "Public" means affected or interested individuals, including consumer organizations and special interest groups; officials of State, local, and Indian tribal governments; and officials of other Federal agencies.

(l) "Public lands" means any land or interest in land owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos.

(m) "Surface owner" means the person or persons (or corporation, majority stock of which is held by a person or persons who meet the following requirements of Section 714 of the Surface Mining Control and Reclamation Act of 1977 (91 Stat. 455)) who:

(1) Hold legal or equitable title to the land surface; and

(2) Have their principal place of residence on the land, or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface mining operations; or receive directly a significant portion of their income, if any, from such farming and ranching operations.

(n) "Resource and resource management" is defined in the broadest sense and includes all public land values, renewable and non-renewable resources of all types, supporting services such as fire control and cadastral survey, land use authorization and control, and land disposition, exchange or acquisition.

(o) "Resource area" means a geographic portion of a BLM district, under the supervision of an area manager. It is the smallest administrative subdivision in the Bureau and is, in most instances, the area for which resource management plans are prepared and maintained.

(p) "Resource management plan" means a land use plan as prescribed by the Federal Land Policy and Management Act and a comprehensive land use plan as prescribed by the Federal

Coal Leasing Amendments Act. The resource management plan establishes (1) coordination and allocation between the various resource uses, (2) goals for resource conditions and use, and (3) general strategies or sequences for resource management actions. The resource management plan, for example, indicates (1) the allocation of forage for livestock, wild horses and wildlife and the general management system intended to accomplish such allocation; (2) the initial determination of whether a wilderness study area shall be recommended to the President for recommendation to the Congress as suitable or unsuitable for addition to the National Wilderness Preservation System; (3) coal lands which are unsuitable for coal leasing or are acceptable for further consideration for coal leasing; (4) areas of critical environmental concern (ACEC) and the type of management to be provided; etc. A resource management plan is not a final implementation decision on actions which require further specific plans, process steps, or appealable decisions under specific provision of law and regulations.

§ 1601.0-6 Environmental Statement Policy.

Approval of a resource management plan is considered a major Federal action significantly affecting the quality of the human environment. The environmental assessment of alternatives and the proposed plan shall be accomplished as part of the resource management planning process and shall be documented and filed as an environmental impact statement. A combined plan and environmental impact statement document shall be prepared by the District Manager. The State Director shall review and concur in the document and file it with the Environmental Protection Agency.

§ 1601.0-7 Scope.

These regulations apply to all BLM administered public lands, including any public land area subject to acts of Congress such as the Wild and Scenic Rivers Act, the O&C Act of 1937, National Trails System Act, the Wilderness Act, and national recreation areas acts, and other similar statutes specifically designating lands for particular uses.

§ 1601.0-8 Principles.

The development and revision of resource management plans shall reflect the following principles:

(a) The principles of multiple use and sustained yield set forth in the Federal Land Policy and Management Act and other applicable laws shall be used;

(b) A systematic interdisciplinary approach shall be used to achieve integrated consideration of physical, biological, economic, and other sciences, including human resource disciplines and the design arts;

(c) Areas of critical environmental concern shall be identified and protected;

(d) The relative significance of the public land products, services, and uses to local economies shall be considered;

(e) To the extent it is available, the inventory of the public lands, their resources, and other values shall be relied upon;

(f) Present and potential uses of the public lands shall be considered;

(g) Impact on uses of adjacent or nearby non-Federal lands shall be considered;

(h) The relative scarcity of the resources involved and the availability of alternative means (including recycling) and sites for realization of those resources shall be considered;

(i) Long term benefits to the public shall be weighed against short term benefits;

(j) Compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans shall be provided for;

(k) To the extent consistent with the laws governing the administration of the public lands, the resource inventory, planning, and management activities of or for such lands will be coordinated with the resource planning and management programs of other Federal departments and agencies, States and local governments, and Indian Tribes; and

(l) The public shall be provided with early notice and frequent opportunity to participate in and comment on the preparation of plans.

§ 1601.1 Resource Management Planning—General.

(a) District Managers shall supervise the preparation, amendment and revision of resource management plans within their districts. Resource management plans will be prepared and maintained for resource areas. However, if an individual resource area is not an appropriate area for a resource management plan, the Director may authorize a more appropriate planning area.

(b) Guidance for resource management planning shall be provided by the Director and State Director. In providing such guidance, the Director and State Director shall take into consideration factors such as but not limited to:

(i) requirements of applicable law;

(ii) the principles listed under § 1601.0-8 above;

(iii) the expected ability of public lands to achieve contemplated goals and objectives;

(iv) issues and concerns raised by the public, other Federal agencies, State and local government, and Indian Tribes;

(v) policies, plans, programs and advice from other Federal agencies, State and local government, and Indian Tribes; and

(vi) the minimum acceptable levels or standards for resource protection and production which might be prescribed to limit the range of resource management plan alternatives.

(c) Director and State Director guidance may include predetermined resource management commitments, such as a right-of-way corridor crossing several resource areas. Such commitments must have been developed through environmental assessment and other analysis as prescribed by relevant law and regulations.

§ 1601.2 Interdisciplinary approach.

An interdisciplinary approach shall be used in the preparation, amendment and revision of resource management plans. The District Manager shall use whatever combination of BLM staff, consultants, contractors, and advisors is necessary to achieve this objective.

§ 1601.3 Public participation.

(a) Public participation is to be designed to facilitate opportunities for meaningful involvement of the public in the Bureau of Land Management planning process. Public participation is especially important and shall be strongly encouraged at the early stages of issue definition and development of planning criteria for a specific resource management plan. Public participation will be sought and used throughout the development, revision and amendment of plans. (See additional provisions for governmental coordination in § 1601.4).

(b) Public participation activities and means of notification shall be appropriate to the areas and people involved, and the stage of planning (preparation, amendment or revision). Public participation activities may include requests for written comments, surveys, meetings, hearings, conferences, seminars, workshops, tours, and similar events scheduled and held to foster public reactions and suggestions.

(c) Upon starting the preparation or revision of resource management plans, public participation shall be initiated by media notice which includes the following information:

(1) Description of the proposed planning action;

(2) Identification of the geographic area to be planned;

(3) the general types of issues anticipated;

(4) The kind and extent of public participation activities to be provided;
(5) The times, dates, and locations scheduled or anticipated for public meetings, hearings, conferences or other gatherings, as known at that time;
(6) The name, title, address, and telephone number of the BLM official who may be contacted for further information; and
(7) The location and availability of documents relevant to the planning process.
(d) Public participation in the preparation of a draft environmental impact statement for a plan shall begin with the publication of a notice of intent in the FEDERAL REGISTER. After this publication, public participation opportunities for planning and those required by the National Environmental Policy Act, shall be provided simultaneously.
(e) At least 15 days' public notice shall be given for public participation activities where the public is invited to attend a meeting of some sort. Any notice requesting written comments shall provide for at least 30 calendar days for response. Ninety days shall be provided for review of the draft plan and draft environmental impact statement.
(f) A list of individuals and groups known to be interested in or affected by a resource management plan shall be maintained. They shall be notified of public participation activities.
(g) The responsible BLM official or his representative shall attend all BLM scheduled and conducted public participation activities.
(h) All BLM scheduled public participation activities shall be documented by a summary of the principal issues discussed, comments made, and a register of those in attendance.
(i) Copies of an approved resource management plan and amendments shall be reasonably available for public review. This includes copies at the State Office for that district, that District Manager's Office, and district offices contiguous to that district, each Area Manager's office in that district, and those area Managers' Offices in other districts that are contiguous to that district, and at least one additional location determined by the District Manager which will offer convenient access to the public.
(j) Supporting documents to plans shall be available for public review at the office where the plan was developed.
(k) Fees for reproducing requested documents beyond those used as part of public participation activities may be charged according to the BLM schedule for Freedom of Information Act requests in 43 CFR Part 2.
(l) When resource management plans involve areas of potential mining for coal, by means other than underground mining, and the surface is private, the surfce owners shall be contacted to obtain their prferences in accordance with Sec. 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304). This contact shall be made after the review in the planning process which determines whether there are areas unsuitable for coal leasing to avoid contacting owners where the land would not be considered for coal leasing based on unsuitability criteria. Contact shall be made in time to fully consider the owner's views. This contact may be made by mail or in person by the District Manager or his representative. A period of at least 30 days from the time of contact shall be provided for the surface owners to provide their preference to the District Manager.

§ 1601.4 Coordination with other Federal agencies, State and local governments, and Indian Tribes.

In addition to the public involvement prescribed by § 1601.3, the following coordination is to be accomplished with other Federal agencies, State and local governments, and Indian Tribes.

§ 1601.4-1 Coordination by the State Director.

State Directors are intended to be a primary point for policy coordination with other Federal agencies, State government, and Indian Tribes. Coordination shall include the following:
(a) State Directors will coordinate with and seek advice from Federal agencies, State governments, and Indian Tribes, to understand and consider their concerns.
(b) To facilitate coordination with State government, State Directors will seek agreements with Governors or their designated representatives on procedure topics such as exchanging information, providing advice and participation, and time frames for receiving State government input and review in a timely fashion. If an agreement is not reached the State Director will provide opportunity for Governor and State agency review, advice, and suggestions on guidance topics that the State Director has reason to believe could affect or influence State government programs.
(c) Before issuing guidance to District Managers, in compliance with 1601.(b), State Director shall:
(i) Insure that it is consistent with existing officially adopted and approved resource related policies, plans or programs of other Federal agencies, State agencies and Indian Tribes, and any local governments that may be affected, as prescribed by 1601.4-3; and
(ii) Identify areas where the proposed guidance is inconsistent with such policies, plans or programs and provide rationale for such inconsistency.

§ 1601.4-2 Coordination by the District Manager.

District Managers are intended to be a primary point of coordination with other Federal agencies, State and local governments, and Indian Tribes, in the preparation of resource management plans.
The District Manager shall submit a notice of intent to prepare or revise a resource management plan along with a general schedule of anticipated planning steps to the State Clearinghouse (OMB Circular A-95) for circulation among State agencies. A similar notice shall be mailed to (1) concerned Federal agencies that have requested such notices, (2) All Tribal Chairman or Alaska Native Leaders to the extent Indian Reservations, Alaskan Regional Corporations or Village corporations are impacted, (3) the heads of county boards for the counties that are involved as well as the heads of any other local government unit having zoning or other land use regulatory jurisdiction in the geographical area within which the public lands are located, and (4) desigated areawide clearinghouses. These notices shall be issued simultaneously with the public notices required under § 1601.3(c).
(b) The District Manager shall schedule coordination meetings with any of the addresses of the notice, at their request, to identify the most effective points for their involvement in the BLM resource management planning process, depending on the specific interest of each addressee. Early data exchange, consultation, and coordination are encouraged.
(c) Resource management plans shall be coordinated with land use policies, plans, processes, and management programs of other Federal agencies, State and local governments, and Indian Tribes. They shall be made consistent with existing officially approved and adopted resource related policies, plans, and programs of these agencies as prescribed by 1601.4-3.
(d) Federal agencies, State and local governments, and Indian Tribes shall have the time periods prescribed under § 1601.3(e) above for review and comment on resource management plan proposals. Should they notify the District Manager, in writing, of what they believe to be specific inconsistencies between the BLM resource management plan, and their existing officially approved and adopted resource related policies, plans or programs, the resource management plan documentation shall show how that inconsistency was addressed and if possible resolved.

(e) When an Advisory Council has been formed under Sec. 309 of the Federal Land Policy and Management Act for the district in which the resource area is located, that council shall be informed and involved throughout the resource management planning process.

§ 1601.4-3 Consistency requirements.

(a) Guidance for resource management plans and the plans themselves will be as consistent as possible with officially adopted and approved resource related policies, plans or programs of other Federal agencies, State and local governments and Indian Tribes. State Directors and District Managers will maintain awareness of such policies, plans and programs. But they will not be accountable for insuring consistency if they have not been notified, in writing, by State or local government or Indian Tribe of their policies, plans and programs.

(b) When considering consistency issues, the following requirements will be met:

(1) Consistency will always be maintained with the purposes of the Federal Land Policy and Management Act, specific requirements of Federal law or Federal regulations applicable to public land, including Federal and State pollution control laws as implemented by applicable State and Federal air, water noise or other pollution standards or implementation plans.

(2) Where State and local policies, plans or programs differ, that of higher authority will normally be followed.

§ 1601.5 Resource management planning process.

In the preparation, revision of a resource management plan and environmental impact statement, and in evaluating its impact, a process including at least the following actions will be used.

§ 1601.5-1 Identification of issues, concerns, and opportunities.

Public issues, management concerns, and resource and development opportunities, including those identified through public participation activities and coordination with other Federal agencies, State and local government, and Indian Tribes shall be analyzed continually in the planning process. These analyses shall be periodically reviewed by the District Manager who shall determine the major issues, management concerns, and use and development opportunities to be addressed in the planning process. This action, plus the development of planning criteria action (1601.5-2) shall together include the scoping process required by NEPA regulations (40 CFR 1501.7).

§ 1601.5-2 Development of planning criteria.

The District Manager shall prepare criteria to guide development of the resource management plan, or revision, to insure that it is tailored to the resource, issues, concerns and opportunities involved and to insure that unnecessary data collection and analyses are avoided. Planning criteria will be written and included in the draft and final plan, for public information and review. Planning criteria will apply to collection and use of inventory data and information, analysis of the management situation, the design and formulation of alternatives, and the estimate of effects of alternatives. Planning criteria shall be used to evaluate alternatives and to select one alternative to serve as the proposed resource management plan. Planning criteria may need to be changed as planning proceeds, based on public suggestions and findings of the various studies and assessments. A record shall be made of any significant change in the criteria. Generally, planning criteria shall be based on:

(a) Laws, executives orders, and regulations;

(b) The principles cited under 1601.0-8 of these regulations;

(c) Goals, objectives, and guidelines prescribed in national and State Director guidance for that resource area;

(d) Public issues, management concerns, resource conditions, and resource use and development opportunities; and

(e) Available inventory and planning budgets and time available before resource management decisions must be made. The amount of inventory data and other information collection prescribed will take account of the cost of such collection, the importance of the decision being made and the degree of improvement in the decision that could be expected from additional inventory data and other information.

§ 1601.5-3 Inventory data and information collection.

Resource, environmental, social, economic, and institutional data and information shall be collected, or assembled if already available, with pertinent maps, graphic material, and explanatory aids, as prescribed by planning criteria. Inventory data and information needs may vary as planning problems develop from identification of issues, concerns, and opportunities. Inventory data will identify potential areas of critical environmental concern.

§ 1601.5-4 Analysis of the management situation.

The District manager shall analyze the management situation to determine the capability and suitability of the public land resources to meet social, economic and environmental needs defined earlier in the planning process through State Director guidance, public participation, and coordination with other Federal, State and local government and Indian Tribes. Factors to consider may include, but are not limited to——

(a) the types of resource use and protection authorized by the Federal Land Policy and Management Act and other relevant legislation;

(b) opportunities to meet goals and objectives as defined in State Director guidance and as expressed through public participation activities;

(c) the estimated sustained levels of the various goods, services and uses that may be attained under existing biological and physical conditions and under differing management practices and degrees of management intensity which are economically viable under benefit cost or cost effectiveness standards prescribed in national or State Director guidance; and

(d) specific requirements and constraints to achieve consistency with policies, plans, and programs, other Federal agencies, State and local government and Indian Tribes.

§ 1601.5-5 Formulation of alternatives.

Alternatives are to be formulated in the draft and final plan and assessed in the draft and final environmental impact statements. The Resource area may be subdivided into subunits to facilitate display and assessment of alternatives. The intent is to explore all reasonable resource management alternatives and quickly eliminate unreasonable and impractical alternatives from detailed study. As a minimum, the following resource management plan alternatives will be formulated and assessed as a basis for the selection of a preferred alternative:

(1) A no action (no resource use or management change) alternative; and

(2) An alternative resource management plan which shall be as responsive as possible to established guidance and to public and other Federal, State and local government and Indian Tribe suggestions, given the information available at this stage of planning; and

(3) Additional alternatives for those portions of the above described resource management plan ((2) above) where reasonable resource management alternatives exist. If these additional alternatives become significantly interrelated due to the complexity of the resource area or the volume of issues and concerns, complete resource management plan alternatives may be developed which focus on different goals such as resource production or resource protection.

§ 1601.5-6 Estimation of effects of alternatives.

The physical, biological, economic, and social effects of implementing each alternative shall be estimated and displayed, using the data and technology available. The estimate may be stated in terms of probable ranges, where effects cannot be precisely determined. Estimation of effects shall be guided by planning criteria and will comply with National Environmental Policy Act regulations, (40 CFR 1502.16), which require estimation of:

(a) Direct effects and their significance.

(b) Indirect effects and their significance.

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned.

(d) The environmental effects of alternatives including the proposed action.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts.

§ 1601.5-7 Selection of preferred alternatives.

The alternatives and their effects, shall be evaluated according to the planning criteria. The District Manager shall review this evaluation and shall develop a preferred alternative which will best meet national and State Director guidance. Only the preferred alternative is to be annotated as prescribed by 1601.7-2. The preferred alternative is incorporated into the draft plan and draft environmental impact statement. The resulting document is forwarded to the State Director for concurrence, publication and filing with the Environmental Protection Agency.

§ 1601.5-8 Selection of resource management plan.

After publication of the draft plan and draft environmental impact statement, and evaluation of public comments, the District Manager shall select and forward, to the State Director, for review and concurrence, a proposed resource management plan and final environmental statement using current planning criteria developed pursuant to § 1601.5-2. The proposed resource management plan will be the previously developed preferred alternative modified as appropriate to respond to comments on the draft plan and draft environmental impact statement. If the proposed resource management plan is not within range of the alternatives in the draft plan and draft environmental impact statement and the environmental impact are significantly different, a new draft plan and draft environmental impact statement will be prepared and filed. After review and concurrence in the proposed resource menagement plan, the State Director shall publish and file the plan and related environmental impact statement. Only the proposed resource management plan shall be annotated as prescribed by § 1601.7-2.

§ 1601.5-9 Monitoring and evaluation.

At intervals established in the resource management plan, an evaluation shall be made to determine whether the effects projected for the approved plan were correct and whether there is a sufficient divergence from anticipated effects, or sufficient new data, to warrant amendment or revision of the plan.

§ 1601.6 Resource management plan approval, use, and modification.

§ 1601.6-1 Resource management plan approval and administrative review.

(a) When the District Manager transmits the proposed resource management plan or revision to the State Director for review and concurrence, the State Director shall take either of the following actions.

(1) Concur in the proposed plan, and return it to the District Manager for approval; or

(2) Refuse to concur in all or some aspect of the proposed plan. If concurrence cannot be granted, the proposed plan is returned to the District Manager with a written statement of reasons for nonconcurrence. The planning process will be repeated as necessary to resolve the problems identified by the State Director.

(b) Upon receipt of concurrence from the State Director, and no earlier than 30 days after filing the final environmental statement, and subsequent to final action on any protest that may be filed, the District Manager shall approve the plan. The approval will be documented in a concise public record of the decision, meeting the requirements of regulations for the National Environmental Policy Act (40 CFR 1505.2).

(c) Any person who is directly affected by the approval of a resource management plan as proposed in the final environmental impact statement may protest such approval to the State Director during the 30 days following the filing of the final environmental statement. The decision of the State Director may be protested to the Director of the Bureau of Land Management. The decision of the Director shall be the final decision of the Department of the Interior.

§ 1601.6-2 Conformity and implementation.

(a) As soon as practicable after approval of the plan, the District Manager shall insure that, subject to valid existing rights and within the District's authority and budget capability, resource management authorizations such as outstanding and future permits, contracts, cooperative agreements, and other instruments for occupancy and use of the public lands are in conformity with the plans.

(b) In addition, subsequent more detailed activity or functional planning, as well as budget or other action proposals to higher levels in the Bureau and Department, shall conform to the plan.

(c) Any person adversely affected by implementation of a resource management plan may appeal such action pursuant to 43 CFR 4.400.

§ 1601.6-3 Changing the resource management plan.

(a) *Maintenance*—Resource management plans and supporting components shall be maintained as necessary to reflect minor changes in data. Such maintenance may include updating or supplementing to further refine, or constrain, or to further document a previously approved planning decision. Updating and supplementing may not result in significant expansion in the scope of a resource use from that prescribed in a previously approved plan. Such maintenance is not considered a plan amendment and shall not require the formal public involvement and interagency coordination process described under § 1601.3 and .4 above or the preparation of environmental assessments or environmental impact statements.

(b) *Amendment*—a resource management plan may be changed through amendment. An amendment is initiated by the need to consider a proposal which would result in a significant change in the approval plan. The proposal and related amendment to the plan shall be considered through an environmental assessment, supplemented as necessary to include all data and analysis relevant to a decision. The nature and extent of supplemental data and analysis to be provided is determined by regulations and/or procedure for the proposal involved. In all cases the assessment will consider the impact of the proposal on the existing resource management

plan. Any person adversely affected by the implementation of an amendment to a resource management plan may appeal such action pursuant to 43 CFR 4.400.

(1) If the environmental assessment does not disclose the need to prepare an environmental impact statement and the proposal is approved under relevant regulations and/or procedure, such approval is also a decision to amend the plan. This approval must be concurred in by the State Director. The District Manager issues a public notice that the plan has been amended and 30 days after such public notice the action can be implemented.

(2) If a decision is made to prepare an environmental impact statement, the established Departmental process for preparing and filing a draft and final environmental impact statement for the proposal involved shall be followed, including all provisions for public notice. If a proposal can be developed which is considered appropriate under relevant regulations and/or procedure, its approval shall also be a decision to amend the plan (or plans if more than one is involved). A protest may be filed against the proposed amendment, as reflected in the proposed action in the final environment impact statement, under the same procedure as provided for plan approval (1601.6-1(c)).

(3) Upon approval of a proposal and related plan amendment the District Manager will post the amendment to the resource management plan and to all copies which are maintained under provisions of 1601.3(i).

(c) *Revision*—Resource management plans shall be reviewed periodically and revised as necessary to reflect new data and revised policy. Review shall be accomplished at least every 5 years. Plans shall be revised at least every 15 years, or earlier if the review indicates a need for revision. Revisions shall comply with all the requirements of these regulations for preparation of original resource management plans.

§ 1601.6-4 Situations where action can be taken based on another agency's plan, or a land use analysis.

If any action is proposed by an applicant (see definition of applicant proposed action) and a resource management plan has not been prepared, the action may be considered under the following conditions:

(a) All environmental assessment and other process required by law, regulations and established department and bureau procedure will be accomplished.

(b) If BLM administers only the mineral or subsurface estate and the surface is administered by another Federal agency, a proposed action may be considered if such action is coordinated with the plan of the surface management agency. Or, if coal is involved, a land use analysis may be used to assess the impact of coal development on other resources, and to establish a plan for the coal resources under BLM administration.

(c) If BLM administers only the mineral of subsurface estate, and the surface is non-Federal, a proposed action may be considered if it is coordinated with a comprehensive land use plan prepared and adopted by the State and/or local government having legal authority to prepare and adopt such plan. Or, if coal is involved, a land use analysis may be used to assess the impact of coal development on other resources, and to establish a plan for the coal resources under BLM administration.

(d) If surface and/or subsurface administration is shared with another Federal agency (e.g., military withdrawals), a proposed action may be considered if it is coordinated with a plan prepared and adopted by the other Federal agency. Or, if coal is involved, a land use analysis may be used to assess the impact to the proposed action on other values and to establish a plan for the coal resource under BLM administration.

§ 1601.6-5 Management decision review by Congress.

The Federal Land Policy and Management Act requires that any BLM management decision, or action pursuant to a management decision, which totally eliminates one or more principal or major uses for two or more years with respect to a tract of 100,000 acres or more, shall be reported by the Secretary to Congress before it can be implemented. This report shall not be required prior to approval of a resource management plan which, if fully or partially implemented would result in such an elimination. The required report shall be submitted as the first action step in implementing that portion of a resource management plan which would require elimination of such a use.

§ 1601.6-6 Designation of areas unsuitable for surface mining.

The resource management planning process is the process by which the public lands are reviewed to determine whether there are areas unsuitable for surface mining of coal, pursuant to Sections 522(b) and 601 of the Surface Mining Control and Reclamation Act of 1977. Criteria for this review are found in 43 CFR 3461. Formal designation is made following approval of the resource management plan. When petitions under Section 522(c) of the Act are referred to BLM for comment, the resource management plan, if available, shall be the basis for comment.

§ 1601.7 Resource management plan content and documentation.

§ 1601.7-1 Planning process records.

Records shall be maintained that support assessments and conclusions reached by the District Manager and staff throughout the planning process. Such supporting records shall provide the basis for the draft and final environmental impact statements and the development of, revision, or amendment to, the resource management plan.

§ 1601.7-2 Authority annotations.

The resource management plan shall be annotated to show:

(a) Portions that may be implemented pursuant to authority delegated to the State Director.

(b) Portions that are not within the State Directors delegated authority.

§ 1601.7-3 Plan and Environmental Impact Statement document.

There shall be one document or set of documents in a standard format serving as both a resource management plan and environmental impact statement. It shall contain at least:

(a) A brief description of the major issues and management concerns;

(b) The planning criteria used in its preparation;

(c) Descriptions and appropriate maps of the area covered;

(d) Goals, objectives and other direction from national policy, State Director guidance, and public participation;

(e) For the proposed plan and each alternative, a narrative description of planned resource use and management activities including (1) statement of expected the types and amounts of outputs, services, and/or the kinds of actions and uses in specific and quantified terms, (2) the vicinity or geographic location of uses and activities, and, as appropriate (3) timing of activities and uses to insure proper sequencing; and (4) areas designated as areas of critical environmental concern and the management and protection required;

(f) An assessment of the environmental impacts of the proposed plan and alternatives considered;

(g) Rationale for the selection of the proposed plan over the alternatives, coordination requirements for resource use and management actions, stipulations to protect resource values, and standards and guidelines for subsequent resource use and management activities. (This section should provide much of the basis for determining whether future resource management proposals are in conformance with the plan.);

(h) Relationship between the proposed plan and policies, plans, and programs of other Federal agencies,

State and local government plans, Indian Tribes, including documentation required on consistency issues;

(i) Provisions for monitoring the plan and changing the plan when needed; and

(j) Signature of concurring and approving officers.

(k) Appropriate references to information used in development of the resource management plan.

§ 1601.8 Transition period.

Until such time as a resource area is placed under an approved resource management plan such areas of public lands may continue to be managed under existing Management Framework Plans. Pending preparation and approval of a resource management plan, Management Framework Plans may be revised or supplemented to include management requirements and proposed actions consistent with provisions of the Federal Land Policy and Management Act and other relevant legislation. If an action is proposed where BLM administered public lands are not covered by a Management Framework Plan, an environmental assessment supplemented as necessary to include all data and analysis necessary for a decision may be used to assess the impacts of the proposal and to provide a basis for a decision on the proposal. Such assessment will be prepared and filed as an environmental impact statement if the proposal would be a major Federal action significantly affecting the quality of the human environment.

Date: December 7, 1978.

CECIL D. ANDRUS,
Secretary of the Interior

[FR Doc. 78-34691 Filed 12-14-78; 8:45 am]

Federal

FRIDAY, DECEMBER 15, 1978
PART V



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

FEDERAL COAL MANAGEMENT PROGRAM

Intent to Propose Rulemaking, Availability of Draft Environmental Statement, and Notice of Federally Owned Coal Areas in Alabama

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 3400]

FEDERAL COAL MANAGEMENT PROGRAM

Intent To Propose Rulemaking

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Propose Rulemaking.

SUMMARY: The Department of the Interior is conducting a review of the Federal coal management program. The Department is analyzing its past coal management practices in light of new legislation, Presidential directives, and requirements under the National Environmental Policy Act. The result of the review will be the adoption, largely through rulemaking, of a new Federal coal management program.

DATES: Comments by February 13, 1979.

ADDRESS: Send comments to: Director (210), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 at the above address from 8:00 a.m. to 4:00 p.m. on regular working days.

FOR FURTHER INFORMATION, CONTACT:

Monte Jordan, 202-343-4537, or Robert C. Bruce, 202-343-8735.

SUPPLEMENTARY INFORMATION: The Department of the Interior hereby gives notice that it intends to propose rulemaking for the purpose of adopting a new Federal coal management program. The Department feels new rulemaking is needed for two reasons.

1. The Secretary of the Interior initiated a Federal coal management review in July 1977, in response to the President's May 23, 1977, Environmental Message and the President's May 24, 1977, directive to the Secretary to establish and implement a comprehensive Federal coal management program. The decision and order of the U.S. District Court for the District of Columbia issued in September 1977 in *NRDC* v. *Hughes*, requiring the preparation of a new programmatic environmental impact statement (EIS) on coal management that had to address certain coal management issues, provided additional significance to the review. As a result of the studies accomplished to date in the review, including the preparation of the draft EIS being published in response to the court order, the Department may wish to adopt several Federal leasing policies that would require changes in the current regulations.

2. During the review the Department found that the current coal management regulations lacked clarity and were difficult to follow, in part because of their position in the Code of Federal Regulations, interspersed with the regulations covering other leasable minerals, and in part because of vague wording and complex language.

As a result, the Department has decided that, regardless of any substantial policy changes that may be adopted by Secretarial decisions following publication of the final coal management EIS, the coal regulations should be gathered into a separate Group within 43 CFR Part 3400 and be rewritten in a more detailed and descriptive manner using plainer English.

Concurrently with the release of this notice, the Department is releasing the draft EIS. The draft EIS considers the environmental impacts of seven alternatives for a Federal coal management program to be adopted by the Department of the Interior. The proposed action is the adoption of the preferred Federal coal management program alternative. The preferred program alternative would establish standards and procedures for determining if, when, where, and in what manner coal owned by the United States Government would, through competitive lease sales, be sold to parties who will mine the coal. As part of the program, before competitive lease sales would be held, the Secretary of the Interior would determine whether there is a need for such sales in order to make Federally owned coal available for production. Determination of the need for leasing would be based on analyses of expected coal production in relation to projected demand for coal.

The preferred program alternative provides that identification of Federal coal that can be considered for leasing would be done through the land use planning processes of the Bureau of Land Management, Department of the Interior, under the Federal Land Policy and Management Act of 1976 and the Federal Coal Leasing Amendments Act of 1976, and of the Forest Service, Department of Agriculture, under the Multiple-Use Sustained-Yield Act of 1960 and the National Forest Management Act of 1976. The Bureau of Land Management would select specific tracts of coal to offer for lease and administer the lease sales. Specific criteria would be used to identify lands where mining Federal coal would cause unacceptable impacts on lands or resources. Tracts in areas not found unsuitable for mining would be further evaluated and the value of potential coal development considered in comparison to other values, such as wildlife management, recreation, watershed protection, or stock grazing, which might be foreclosed or diminished if the coal were to be developed. All tracts identified in each Federal coal production region for possible leasing would be ranked region-wide on the basis of coal quantity and quality; cost of extraction; and social, economic, and environmental impacts of mining. Priority in selecting tracts in each region to be offered at lease sales would be assigned to those tracts which could be most productively developed with the least adverse social, environmental, and economic impact.

A central feature of the preferred Federal coal management program would be emphasis on participation by the public and by State and local governments in all aspects of the program. Information, advice, and opinion would be sought from all parties interested in decisions about Federal coal management. Assessment of the need for leasing, establishment of coal production goals, application of standards for determining lands unsuitable for leasing, planning to decide which areas that could be leased should actually be leased and not be put to other uses, and, ranking and selection of tracts to be offered for lease sale will be conducted in an open, accountable way, in a process designed to make decisions as responsive as possible to suggestions from those interests most affected by the decisions. Consideration of social and economic consequences as evaluated by State governments will be given special weight when decisions about Federal coal management are made.

Appendix A of the draft coal management EIS is a set of example regulations. The example regulations are intended to indicate the form and content of regulations the Department will propose in accordance with this notice if the Secretary were to select the preferred program alternative described in Chapter 3 of the draft EIS. The example regulations will provide readers of the draft EIS with the opportunity to obtain a sound understanding of how the Department would manage Federal coal resources under the preferred program alternative. Their only purpose is to ensure a complete understanding of the preferred program alternative and how it could be implemented. They reflect all of the considerations described in Chapter 3, new legal requirements established by the Surface Mining Control and Reclamation Act of 1977, and certain additional changes from the former coal program regulations that would be required to make them compatible with the preferred program alternative or assure more efficient management of the Federal coal resource. As mentioned earlier, the De-

partment will locate all Federal coal resource regulations within one new Group in the *Code of Federal Regulations* (43 CFR Part 3400).

The example regulations were drafted under procedures similar to those that would be followed in the preparation of proposed regulations, including review by all key agencies. The example regulations are indicative of the extent and depth of coverage of any Federal coal management program regulations which the Department would adopt. Additional and detailed working procedures of a coal management program would be defined through agency field office guidelines, instruction memoranda and manuals.

As previously mentioned, the example regulations are published solely to help the draft EIS reader to better understand the preferred program. They are *not* intended to serve as proposed rulemaking. During March 1979, the Department plans to publish the proposed rulemaking. Comments on program elements described in the draft EIS will be considered in the drafting of that proposed rulemaking. By scheduling the proposed rulemaking to fall between the publication of the draft and final EISs, the Department seeks to provide the public with sufficient time to comment on the proposed rules without the burden of simultaneously addressing the varied issues discussed in an environmental impact statement. The publication of this notice and inclusion of example regulations and the detailed program description in the draft EIS offer interested citizens an extra period of time to become thoroughly familiar with the preferred program and to develop their views on it prior to being requested to make specific comments on the proposed regulations. The Secretary will decide the shape of the new coal management program in June 1979. The final regulations are planned for publication on or about June 1, 1979.

Executive Order No. 12044 requires that a regulatory analysis must be prepared for significant regulations which may have major economic consequences for the general economy.

Executive Order No. 12044 specifies that the following requirements shall govern the preparation of regulatory analyses:

(a) *Criteria.* Agency heads shall establish criteria for determining which regulations require regulatory analyses. The criteria established shall:

(1) Ensure that regulatory analyses are performed for all regulations which will result in (a) an annual effect on the economy of $100 million or more; or (b) a major increase in costs or prices for individual industries, levels of government or geographic regions; and

(2) Provide that in the agency head's discretion, regulatory analysis may be completed on any proposed regulation.

(b) *Procedures.* Agency heads shall establish procedures for developing the regulatory analysis and obtaining public comment.

(1) Each regulatory analysis shall contain a succinct statement of the problem; a description of the major alternative ways of dealing with the problems that were considered by the agency; an analysis of the economic consequences of each of these alternatives and a detailed explanation of the reasons for choosing one alternative over the others.

(2) Agencies shall include in their public notice of proposed rules an explanation of the regulatory approach that has been selected or is favored and a short description of the other alternatives considered. A statement of how the public may obtain a copy of the draft regulatory analysis shall also be included.

(3) Agencies shall prepare a final regulatory analysis to be made available when the final regulations are published.

In accordance with Executive Order No. 12044, the reader is invited to submit comments on whether the potential economic consequences of the rules contemplated require preparation of a regulatory analysis, based on the above criteria.

Copies of the draft EIS referred to in this notice may be obtained from the Office of Coal Management, BLM, Room 3610, Main Interior Building, 18th and C Streets, NW., Washington, D.C. 20240, telephone (202) 343-4537. For further information on how to obtain copies of the draft EIS or how to participate in the meetings or hearings being held in relation to its release, please refer to the notice of availability of the draft environmental statement (on the Federal coal management program) also located in this issue of the FEDERAL REGISTER.

ARNOLD E. PETTY,
Acting Associate Director,
Bureau of Land Management.

DECEMBER 11, 1978.

[FR Doc. 78-34811 Filed 12-14-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[INT DES 78-50]

FEDERAL COAL MANAGEMENT PROGRAM

Availability of Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, notice is hereby given that the Department of the Interior has prepared a draft environmental statement for the Federal coal management program, and has made copies of the document available for public review and comment.

The draft statement addresses various alternatives for a Federal coal management program as proposed by Secretary of the Interior Cecil D. Andrus and what the possible impacts would be, if implementation of a program would lead to additional coal leasing and production to help meet the Nation's future energy needs.

Copies of the draft statement will be available for inspection at the following locations (see attached list).

Written comments on the draft statement will be accepted on or before February 13, 1979, submitted to the Office of Coal Management, (140) Bureau of Land Management, Department of the Interior, 18th & C Streets NW., Washington, D.C. 20240.

A series of public information meetings are scheduled to be held during early January 1979, in selected Western U.S. cities to discuss the program covered by the draft statement. Top level Departmental and Bureau of Land Management officials will participate in the meetings. Meetings are proposed to be held in Billings, Montana; Miles City, Montana; Cheyenne, Wyoming; Sheridan, Wyoming; Rock Springs, Wyoming, Bismarck, North Dakota; Salt Lake City, Utah; Price, Utah; Grand Junction, Colorado; Craig, Colorado; Denver, Colorado and Albuquerque, New Mexico.

In addition to the public meetings formal hearings will be conducted during late January and early February 1979, throughout the United States. Oral testimony and submission of written comments will be received at the hearings. Locations of the hearings are: Craig, Colorado; Denver, Colorado; Salt Lake City, Utah; Billings, Montana; Bismarck, North Dakota; Casper, Wyoming; Albuquerque, New Mexico; Lexington, Kentucky; Chicago, Illinois and Washington, D.C.

Dates, times and locations for the public meetings and hearings will be announced in local, regional and national news media. Information regarding the meetings and hearings is also available from any of the offices listed.

Hearings sessions will begin at 1:30 and 7:30 p.m. at each location. Oral testimony at the hearings will be restricted to 10 minutes maximum length from each witness at the hearing in lieu of written comments or in addition to any written comments submitted by each witness. The 10 minute time limitation will be strictly enforced. The complete text of prepared testimony may be filed with the presiding officer at the hearing.

Speakers will be heard, if present, in their established order on the witness list. After the last listed witness has been heard the presiding officer will consider the request of any other person present and wishing to testify. Only one witness will be allowed to present the viewpoints of a single organization. However, any witness will be permitted to give germane testimony if offered as the views or opinions of a private citizen.

Written requests to testify orally at the hearings should be received at the Bureau of Land Management State Office's indicated in the attached list prior to the close of business five calendar days prior to the scheduled hearing date. Requests to testify at hearings in Bismarck should be addressed to the BLM State Director, Billings, Montana and requests to testify at Chicago and Lexington respectively, should be addressed to the Director, Eastern States Office, BLM. Any requests to testify at the hearings in Washington, D.C. should be addressed to the Office Of Coal Management, BLM. Requests should identify the organization represented and should be signed by the prospective witness. The cutoff date is necessary so that a witness list can be made available in each appropriate office on the day before the public hearing.

Written and oral comments on the draft statement will receive equal consideration in preparation of the final environmental statement scheduled for publication in April 1979.

ARNOLD E. PETTY,
Acting Associate Director,
Bureau of Land Management.

Approved:

LARRY E. MEIEROTTO,
Deputy Assistant
Secretary of the Interior.

Office of Coal Management, Bureau of Land Management, Room 3615, 18th & C Streets N.W., Washington, D.C. 20240

Office of Public Affairs, Bureau of Land Management, Room 5627, 18th & C Streets N.W., Washington, D.C. 20240

Director, Office of Coal Leasing, Planning and Coordination, U.S. Department of the Interior, Room 3423, 18th & C Streets N.W., Washington, D.C. 20240

Office of Public Affairs, U.S. Department of the Interior, Room 7214, 18th & C Streets N.W., Washington, D.C. 20240

Office of Coal Leasing, Planning and Coordination, U.S. Department of the Interior, 101 World Savings Building, 1221 West Alameda Parkway, Lakewood, Colorado 80228

Director, Denver Service Center, Bureau of Land Management, Building 50, Denver Federal Center, Denver, Colorado 80225

State Director, Bureau of Land Management, Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501

State Director, Bureau of Land Management, California State Office, Room E-2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825

State Director, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Bldg., 1600 Broadway, Denver, Colorado 80202

Director, Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Maryland 20910

State Director, Bureau of Land Management, Idaho State Office, Room 398, Federal Building, 550 West Fort Street, Boise, Idaho 83724

State Director, Bureau of Land Management, Montana State Office, Granite Towers, 222 N. 32nd Street, Billings, Montana 59107

State Director, Bureau of Land Management, Nevada State Office, Room 3008, Federal Building, 300 Booth Street, Reno, Nevada 89509

State Director, Bureau of Land Management, New Mexico State Office, U.S. Post Office & Federal Building, So. Federal Place, Santa Fe, New Mexico 87501

State Director, Bureau of Land Management, Oregon State Office, 729 N.E. Oregon Street, Portland, Oregon 97208

State Director, Bureau of Land Management, Utah State Office, 136 E. South Temple, Salt Lake City, Utah 84111

State Director, Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82001

[FR Doc. 78-34805 Filed 12-14-78; 8:45 am]

[4310-84-M]

ALABAMA

Federally-Owned Coal Areas

The United States Government holds the mineral rights on approximately 75,000 acres of coal lands in the Warrior Coal Field, Alabama. All coal operators, exploration drillers, and those who purchase land and/or coal rights are reminded that any drilling for coal information in Federally-owned coal areas is unauthorized and constitutes trespass unless a license is obtained pursuant to 43 CFR Part 3507 from the Department of the Interior, Bureau of Land Management. For ownership maps (at nominal cost) and information concerning exploration licenses, contact the Bureau of Land Management, 1315 McFarland Boulevard, East, Tuscaloosa, Alabama 35401. Telephone: (205) 759-5441.

LOWELL J. UDY,
Director,
Eastern States.

[FR Doc. 78-34804 Filed 12-14-78; 8:45 am]

federal register

FRIDAY, DECEMBER 15, 1978
PART VI



DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

■

NATIONAL SCHOOL LUNCH PROGRAM

Regulation of Competitive Foods; Withdrawal of Proposed Rule; Meetings

[3410-30-M]

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR Part 210]

NATIONAL SCHOOL LUNCH PROGRAM

Regulation of Competitive Foods; Withdrawal of Proposed Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This notice withdraws the proposed competitive foods regulation published in the FEDERAL REGISTER on April 25, 1978 (43 FR 17476). The Department proposed to prohibit the sale of soda water, frozen desserts, candy, and chewing gum to children on school premises until after the last lunch period. This proposal was intended to amend the National School Lunch Program regulations to implement section 10 of the Child Nutrition Act of 1966 as amended by section 17 of Public Law 95-166, respecting the sale of foods in competition with lunches served under the National School Lunch Program. In view of the fundamental questions raised by commentors both in favor of and opposed to the proposal, the Department has determined it necessary to provide for additonal opportunity for comprehensive public participation in the rulemaking process.

EFFECTIVE DATE: December 12, 1978.

FOR FURTHER INFORMATION CONTACT:

Margaret O'K. Glavin, Director, School Programs Division, USDA, FNS, Washington, D.C. 20250, 202-8130.

SUPPLEMENTARY INFORMATION: In 1970, section 10 of the Child Nutrition Act of 1966 was amended by Public Law 91-248 to give the Secretary of Agriculture the authority to prescribe regulations relating to food services in competition with nonprofit programs authorized under the Child Nutrition Act and the National School Lunch Act. Federal regulations were then amended to limit the types of food items sold in food service facilities and areas to those items making a contribution to, or served as part of the school lunch or breakfast during the time the nonprofit food serfvice was in operation. Section 10 was further amended in 1972 by Public Law 92-433 and the implementing regulations placed the authority for regulation of competitive foods with State agencies and School Food Authorities. These local officials were allowed to establish such instructions as were necessary to control the sale of competitive foods, provided that any such sales of foods in food service facilities or areas during the time or service of program meals would accrue to the benefit of the school's nonprofit lunch and breakfast programs or to the school or to student organizations approved by the school. Since the passage of these laws, parents, food service personnel, nutritionists, school administrators, teachers, physicians and members of Congress have had a growing concern about the sale of competitive foods in schools. The Department shares this concern.

Public Law 95-166 gives the Secretary the authority to regulate competitive foods and allows the sale of those competitive foods approved by the Secretary. In compliance with Public Law 95-166 the Department proposed on April 25, 1978, to specify certain competitive foods which were not approved to be sold. The Department proposed to prohibit the sale of soda water, frozen desserts, candy, and chewing gum to children on school premises until after the last lunch period.

During the open public comment period (April 25 to June 30, 1978) the Department received over 2,100 comments from students, parents, teachers, school administrators, nutritionists, dentists, medical professionals and other concerned citizens. Eighty-two percent of the commentors were in favor of the Department's proposed regulation. Of those in favor, approximately 40 percent suggested expanding the proposal to restrict more food items and/or lengthening the restrictions to beyond the last lunch period. Only 18 percent of the commentors opposed the proposal. The basic objection was to a federal rule of any kind, with many expressing the opinion that a competitive foods policy should be left to the local school districts.

In view of the fundamental questions raised by commentors both in favor of and opposed to the proposal, the Department has determined it necessary to provide for additional opportunity for comprehensive public participation in the rulemaking process. Therefore, the Department is withdrawing the April 25, 1978, proposal at this time. Prior to issuing a new proposal the Department is planning to hold a series of public meetings on the competitive foods issue in late January and February of 1979. For further information on these public meetings see the competitive foods notice in the FEDERAL REGISTER of today's date.

Until final rules are issued, schools will continue to operate under existing regulations which allow State and local authorities to adopt and enforce their own competitive foods policies. We will continue to encourage local schools to work toward a lunch program that has each child's nutritional well-being as its first goal.

Dated: December 12, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary for Food and Consumer Services.

[FR Doc. 78-35050 Filed 12-14-78; 8:45 am]

[3410-30-M]

[7 CFR Part 210]

NATIONAL SCHOOL LUNCH PROGRAM

Regulation of Competitive Foods; Notice of Meetings

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The U.S. Department of Agriculture announces three public meetings to discuss the regulation of competitive foods. The Department is announcing the withdrawal of the April 25, 1978, competitive foods proposal elsewhere in this separate part of the FEDERAL REGISTER.

DATES:

Hearings:
January 30, 1979—Nashville, Tennessee
February 6, 1979—Detroit, Michigan
February 13, 1979—Seattle, Washington

Comments may be submitted in writing on or before February 16, 1979.

ADDRESSES:

Hearings:
January 30, 1979:
University of Tennessee Center
Room 358
10th and Charlotte Avenue
Nashville, TN 37203
February 6, 1979:
Henry Ford Hospital
Robin C. Buerkei Auditorium
2799 West Grand Boulevard
Detroit, MI 48206
February 13, 1979:
Seattle Public School District's Board Meeting Room
815 4th Avenue North
Seattle, WA 98109

Comments may be addressed to:
Margaret O'K. Glavin, Director,
School Programs Division
Room 3405 Auditors Building
FNS/USDA
Washington, D.C. 20250

FOR FURTHER INFORMATION CONTACT:

Margaret O'K. Glavin, Director, School Programs Division, USDA, FNS, Washington, DC 20250, 202-447-8130.

SUPPLEMENTARY INFORMATION: Today the U.S. Department of Agriculture is withdrawing the April 25, 1978, competitive foods proposal and is announcing three public meetings to help form a basis for a new proposal. The public metings will allow for additional comments from all concerned parties.

The public meetings will emphasize discussion of regulatory standards in relation to the following topics:

I—Nutrition Education;
II—Health;
III Eating Habits; and
IV—Local Administration and Impact

A discussion of each topic is published as an appendix to this notice. Copies of the appendix are on file in the office of the contact person above. Additional copies may be obtained from there.

The public meetings will be held on the dates and at the locations listed above. Each will begin at 9 a.m. and will be presided over by a USDA representative. Alternative standards and all four topics will be discussed at each meeting.

The public meetings will be conducted in accordance with the requirements of Executive Order 12044 and USDA Decisionmaking Procedures. Any person who desires to make an oral presentation may do so at any of the hearings. However, it would ease scheduling if the participation form attached to this notice were filled out and returned to the appropriate office.

All interested parties are invited to attend all three hearings, however, individuals and organizations will be allowed only one opportunity to present their views in the course of the three meetings. At the time of each meeting, written submissions from those who want to include additional information in the record will be accepted. Individual citizens may submit a single copy of their statement; organizations and groups should submit four copies. All submissions should be clearly marked with the words COMPETITIVE FOODS.

In addition, persons unable to attend the meetings are urged to submit their views in writing by February 16 to Margaret O'K. Glavin, Director, School Programs Division, Room 3405 Auditors Building, FNS/USDA Washington, D.C. 20250. This material will be considered in the development of the proposed rule. The Department will also seek public comments on the proposed regulation which is expected to be issued in April. Submissions may be reviewed by the public at the above address from 8:30 a.m. to 5 p.m., Monday through Friday.

Dated: December 12, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary for Food and Consumer Services.

[3410-30-C]

Please send this form to:

For Nashville meeting:	For Detroit meeting:	For Seattle meeting:
FNS, USDA	FNS, USDA	FNS, USDA
100 Spring St., N.W.	536 S. Clark St.	550 Kearny St.
Atlanta, Ga. 30309	Chicago, Ill. 60605	San Francisco, Calif. 94108
ATTN: Competitive Foods Meeting	ATTN: Competitive Foods Meeting	ATTN: Competitive Foods Meeting

COMPETITIVE FOODS PUBLIC MEETINGS
NOTICE OF PARTICIPATION

Please enter participation of: _____
(Name)

_____
Street Address)

_____
(City, State, Zip Code)

I am representing (if other than self): _____

_____

1. I will make an oral presentation at the _____
(Name of City)

Competitive Foods Public Meeting. I request _____
(Maximum of 10 minutes

minutes for my total presentation. I will be speaking on

Competitive Foods standards as related to the following topics:

Please check:

I ____ Nutrition Education

II ____ Health

III ____ Eating Habits

IV ____ Local Administration and Impact.

_____
Signature

_____
Date

INTRODUCTION

Public Law 95-166 gives the Secretary of Agriculture authority to regulate "competitive foods" sold in schools. The law states "The Secretary shall prescribe such regulations * * * including regulations relating to the service of food * * * in competition with the programs * * * Such regulations shall not prohibit the sale of competitive foods approved by the Secretary * * *."

"Competitive foods" are those foods sold in competition with the Type A meals that schools are required to serve in order to qualify for Federal reimbursement. These competitive foods can be soups, salads, candies, or chips or other foods and may be available at a la carte or alternative lunch lines or from vending machines or snack counters.

At issue is which competitive foods to approve.

The April 1978 proposed regulation issued by the Department recommended that four categories of "competitive foods" (candy, soda water, frozen desserts, and chewing gum) not be approved for sale.

The proposal elicited a large number of public comments and raised some significant questions. Some of the commentors asserted that the basis for selecting the four categories was not adequately developed. In light of these concerns and because "competitive food" issues deserve considerable public scrutiny, the Department is soliciting broader public participation in the rulemaking procedure.

The April proposal has been withdrawn, and a new proposal will be offered after testimony is received at three public meetings around the country. During this pre-proposal period, the public is also invited to submit written comments to the Department. A new 1979 proposal which reflects recommendations by the public will be issued in April. This proposed regulation will be subject to public comment, and a final rule will be promulgated in time for the 1979-80 school year.

BACKGROUND

Today, more than 45 million students, a full 90 percent of America's school children, have access to low-cost, nutritious lunches through the National School Lunch Program. Some children, who are unable to pay the full price for lunch, receive them either free or at reduced prices.

The lunch program, which was initiated in 1946, makes an important contribution to the well-being of children. The "Type A" meal pattern, which is the basis for Federal reimbursement, requires that meals served to children include specified minimum quantities of food components: meat and meat alternates, vegetables and fruits, bread and bread alternates, and fluid milk. Local schools have considerable flexibility in making up the menus that meet this minimum Federal requirement. In addition to offering foods that meet the "Type A" requirement, schools may sell other foods on an a la carte basis.

Over the last 8 years, legislation has treated competitive foods in a variety of ways. In 1970, Congress gave the Secretary authority to regulate competitive foods, and regulations put into effect the then existing departmental policy that limited food items sold in the schools to those which either contributed to the required Type A meal pattern or were served as an additional item with the Type A Lunch (P.L. 91-248). Under this latter provision, if a school sometimes served cake as dessert with the Type A meal, cake could then be sold as a competitive food. Because of wide local discretion in the choice of foods served, the result of this rule in many places was that only soft drinks—which were rarely served along with the school meals—were disallowed.

When it became clear that the regulation had effectively eliminated soft drinks and, to a lesser extent, candy sales, from most schools, some groups advocated the transfer to State and local education agencies of the Secretary's authority to regulate competitive foods. In 1972 Congress made that change in the law, and the regulation of competitive foods fell within the exclusive authority of local officials.

Between 1972 and 1977, few States or localities restricted the sale of competitive foods in schools. The reasons appear to be varied. It may have been a question of priorities; it may have been opposition from school fund-raising organizations and/or industry; it may have been a conscious choice or simply that the issue was not addressed. Whatever the reasons for the lack of local action, the 95th Congress took another look at the issue. In 1977, regulatory authority was returned to the Secretary of Agriculture by Public Law 95-166. Like the one in 1970, the 1977 authority covers schools which participate in programs covered under the Child Nutrition Act and National School Lunch Act. The proposed regulation issued by the Department in April, 1978 was in response to the 1977 legislation.

The April proposal—which would have restricted the sale of candy, soda water, frozen desserts, and chewing gum—elicited more than 2,100 comments from students, parents, teachers, school administrators, nutritionists, dentists, medical professionals, and other concerned citizens.

Eighty-two percent of the commentors were in favor of the regulation or some variation of it. Of those in favor, approximately 40 percent suggested expanding the proposal to restrict more food items. Some addressed another aspect of the proposal which put a time limitation on the competitive foods restriction. Some commentors advocated that the restriction apply to the entire school day instead of only through the last lunch period as proposed. Eighteen percent of the commentors opposed the proposal. Some objected to a Federal rule of any kind. Others raised questions about the standards used in selecting the four food categories. For example, a major candy manufacturer questioned the nutritional criteria used as a standard in the Department's proposal and recommended assessment of the levels of specified nutrients. The commentor noted that a particular peanut and chocolate candy bar "is superior to canned pears in protein, thiamine, niacin, and calcium content." The proposed rule was based on considerations besides levels of specified nutrients and on that basis had approved canned pears but not candy.

The four categories of foods proposed to be restricted were those: (1) identified in the legislative history of the 1977 provision as categories which do not make a positive contribution to children's diets; (2) usually considered as snack type foods; and (3) relatively high in sugar content. Food categories were used rather than identification of individual food items because a categories approach is used throughout all child nutrition program meal patterns. Furthermore, food categories are frequently used in nutrition education by both Government and private organizations. Finally, a categories approach is less burdensome administratively.

The legislative history offers some guidance to the Secretary on how to implement the law. Senator George McGovern, Chairman of the Subcommittee on Nutrition, Committee on Agriculture, Nutrition, and Forestry, stated:

"The Secretary would have the authority, however, to regulate the sale of foods of limited nutritional value. The general category of foods that have limited nutritional value include gum, candy, pop, and foods that even though they may be fortified with vitamins, are too high in sugar and caloric content to be wholesome." 123 Cong. Rec. S11187 (June 30, 1977). (See also Congressional Record June 30, 1977, at pages S11191, S11197, S11200, S11206.)

In addition, both House and Senate committee reports dealt with the competitive foods and nutrition education amendments as companion issues, one reinforcing the other. Statements from those reports can be found in the

following section on Nutrition Education.

In designing any proposed regulation, legislative intent, the public view, and standards must be considered. The regulation and the standards on which it is based should be intelligible, feasible, and enforceable.

The standard that is established for competitive foods should also consider at least the following four factors which are discussed in detail in this paper under the titles: I—Nutrition Education, II—Health, III—Eating Habits, and IV—Local Administration and Impact. Suggestions for standards fall roughly into three groups as described below. Probably no single one of the three can address equally well all of the factors that need to be weighed and considered in designing an appropriate regulation. A combination of the standards may need to be developed, or some of the factors may need to be stressed more than others.

A. Food Composition Standard

One possible alternative is to restrict the sale of foods on the basis of composition, that is, by the levels of ingredients such as sugar, salt, fat, etc., contained in a given food.

This would require that the Department set maximum levels for one or more of these components to determine acceptable food items. For example, one proposal might be that all foods which exceeded X proportion (or percentage) of sugar would be restricted. Another proposal could be that all foods which exceed X proportion (or percentage) of fat would be restricted. There are a number of possible combinations under this standard.

Some questions with this standard include:

Will establishing maximum levels of components result in the exclusion of foods considered by some to be nutritious?

How high or low should the levels be?

Which components should be considered?

How should sugar and/or fat be defined?

Should we consider sugar/fat/or salt, etc., in a different light when they are added to a food?

Who should test the food composition of each item to see if it meets the standard?

Who should bear the cost? Government or industry?

If individual foods are assessed against a standard, should that preclude the use of grouping foods into a category which would be restricted?

B. Nutrient Standard

This approach would provide a standard based on specified nutrient content, that is—vitamins, minerals, and protein. For example, a proposed regulation could allow only those particular foods which had X level of specified nutrient(s).

A variation of the nutrient standard approach is one based on nutrient density, which measures a food's nutrient content in relation to its energy (calorie) value. Under this variation, foods would be assessed as to X level of specified nutrient(s) relative to total calories.

In addition to the questions above, some other questions with this standard include:

Does exclusive consideration of nutrients ignore other important issues such as levels of sugar, fat, or salt?

Which of the 44 nutrients and trace minerals should be measured? How many?

Would this approach lead to the fortification of foods not now fortified? Should this be an issue of concern?

C. Meal Standard

The third alternative is the balanced meal standard. This standard allows the sale of any food served as part of a meal, including desserts. For example, if a school served cookies or ice cream as dessert items with a meal, it could also sell these items as competitive foods. Some questions with this standard include:

What meal should be the standard? The Type A? A sandwich and beverage service?

Should the standard approve as competitive foods only those which the Type A meal pattern requires: meat or meat alternate, fruit or vegetable, milk, bread? (This would eliminate most dessert type foods from competitive sale as well as yogurt, seeds, and nuts because these foods are not now part of the required Type A lunch although they are sometimes served with the meal).

Should the standard approve as competitive foods those which are served along with the meal (essentially, the standard in effect in 1970)?

Summary

Whatever standard or combination of standards is finally chosen, there are other factors which must be considered. Should a competitive foods rule also apply to foods served as part of the school lunch? For example, if a rule were to eliminate candy and cake as competitive foods, would that necessarily mean they could not be served as lunch desserts?

Time is another consideration. Should a restriction apply only to meal periods? To an hour before and after? Or should it extend to an entire day?

The Department is keenly interested in the views of citizens about a suitable standard on which to base a proposal. Public response is also sought on the related factors raised in the following papers.

I—Nutrition Education

Nutrition education provides information that helps people improve their own eating practices. Because eating habits are such a personal matter, nutrition educators generally believe learning experiences can be most effective if they take into consideration a variety of factors including age, previous knowledge, present habits, and the general environment. Children's eating habits may be influenced by their experiences at home and in school, by the behavior of adults or authority figures, by various media and by peers.

Educators tell us that learning takes place in many different ways. Children can learn directly about nutrition in the classroom. Children also learn through participation in activities, games, or cooking lessons related to nutrition. In addition to such direct "messages," children are exposed to many indirect influences. Examples of good nutritional practices may be valuable teaching tools. The whole school environment, including examples set by teachers and peers, may be indirectly instructive. (*1*)

The Type A lunch pattern requires that meals served to children include specific quantities of food components (meat and meat alternates, vegetables and fruits, bread and bread alternates, and fluid milk). The integration of nutrition education with effective food service has been the intent of the National School Lunch Program since its inception, as clearly stated in the report form the House Committee on Agriculture (House Report No. 684) which accompanied the National School Lunch Act. The report says. "The educational features of a properly chosen diet served at school should not be underemphasized."

From 1946 until 1977, the educational role of the National School Lunch Program was primarily one of providing model meals to children. In 1977, Congress expanded the nutrition education component of the Program. This legislation, Pub. L. 95-166, authorized the Department to establish "a system of grants to State education agencies for the development of comprehensive nutrition information and education programs. Such education programs shall use as a learning laboratory the National School Lunch Program and the Child Nutrition Program."

The desire of Congress to have information provided to children in the classroom reinforced by experiences in the lunch room was expressed throughout the legislation. In establishing the Nutrition Education and

Training Program, Congress recognized that "there is a need to create opportunities for children to learn about the importance of the principles of good nutrition in their daily lives and how these principles are applied in the school cafeteria." (42 U.S.C. 1788(a)(5))

The competitive foods amendment is closely related to the nutrition education amendment. Congressman Carl Perkins, Chairman of the Subcommittee on Elementary, Secondary, and Vocational Education, of the Committee on Education and Labor, said: "The conference committee dealt with two provisions, namely the competitive food service amendment, and the nutrition education amendment, in a manner that is thoroughly consistent. One provision tends to be reinforcing the other. Both provisions are designed to upgrade children's dietary habits and food intakes." (123 Cong. Rec. H11169, October 27, 1977.)

Senate Report 95-227 states: "It is counterproductive for the Federal Government to attempt to provide nutritious, health-supporting meals through child nutrition programs and, at the same time, permit food of low nutritional value to compete directly with nutritious meals. S. 1420 would permit the sale of nutritious foods, such as fruits, vegetables, dairy products, pure fruit and vegetable juices, and other items determined to be nutritious. Restoration to the Secretary of the regulatory authority over competitive foods will help point out the role of good nutrition in health care, and help instill good future eating habits in children." (S. Report No. 227, 95th Congress, 1st Session. 17 (1977)).

The approved competitive food service in schools might serve as a vehicle for nutrition education in much the same way that the National School Lunch Program has. The school lunch program is an opportunity to offer model meal patterns. The competitive foods rule may be an opportunity to offer model snacks. Snacks may form a considerable part of the diet for many people, especially young people. (*2,3,4*) It may therefore, be particularly important that good snacking habits be exemplified in the schools. To limit the sale of competitive foods in schools is not to suggest that particular foods should never be eaten. This is not the intent of the legislation. The question here is whether or not selling such foods in a learning environment is appropriate.

QUESTIONS

1. Which of the alternative standards (or combination of standards) described in the Introduction best addresses the issues raised in this section?

2. To what extent do children learn by example? Are children more likely to put the principles of nutrition that they are taught in the classroom into practice if those practices are followed by adults; that is parents, teachers, school authorities?

3. How can schools best provide examples of meals and snacks that are consistent with the principles of nutrition taught in the classroom?

4. Does the availability of foods within a school affect a child's perception of the acceptability of these foods?

5. Will the time certain foods are offered (before lunch, after lunch, all day) convey "messages" to children about those foods?

II—Health

The human struggle to get enough to eat occupied mankind through most of history. Problems arising from abundance, overconsumption, and poor food choices are more recent developments. While many Americans are still unable to get enough to eat without assistance, a significant portion of the population has nutritional problems resulting from overconsumption and poor food choices.

The possible effects of this shift on the health of Americans has been summarized in a report by the Office of Technology Assessment of the United States Congress:

> Over the past 50 years, the basic goal of nutrition strategy in the United States has been to ensure an adequate intake of all essential nutrients for the population. Nutritional advice to the public has consistently stressed a balanced diet that provides necessary protein, minerals, and vitamins. This strategy has been largely successful. However, it was developed and carried out with little understanding of the long-term effects of the abundant diet currently consumed by the majority of Americans.
>
> Studies during the past decade have indicated that overconsumption of food and relative overconsumption of certain kinds of food are important contributing factors in heart disease, stroke, hypertension, cancer, diabetes, osteoporosis, and dental disease. Increased research into the role of diet in causing and preventing such major chronic diseases may lead to findings which could reduce their incidence or delay their onset.(*5*)

The causes of diseases such as heart disease, diabetes, cancer, stroke, hypertension, dental cavities, and associated conditions such as obesity are not fully understood. There are many factors which may be involved. One of these is diet. Epidemiologic studies, that is studies of disease trends among different population groups, demonstrate associations between these diseases and various components of the diet. A causal role of diet is supported by various other types of experimental studies and clinical investigations.(*6*) It has been recommended that Americans modify their consumption of fat, cholesterol, sugar, and salt in order to reduce their risk of these common diseases although there is not complete agreement on the importance of these recommendations or what they might achieve.(*7*)

Sugar

Dietary sugar consists of a group of sweeteners including sucrose (cane and beet sugar), other caloric sweeteners such as corn or glucose sirups, and sugars that occur naturally in foods—lactose in milk and fructose in fruit. The most common sweetener is table sugar (sucrose).

More than ten milllion tons of sucrose are marketed as food in the United States annually. Of this, 25 percent is sold directly to consumers and 5 percent to institutional users. The remainder is used by food industries, principally in the baking, confectionary, ice cream, and beverage industries. Sucrose is added during processing not only to "sweet" foods but also to many foods such as ketchup, peanut butter, and salad dressing.(*8*)

Sugar is a source of calories which are needed by the body to provide energy, but excess consumption of calories in relation to the energy needs of individuals will result in weight gain. Weight gain will occur whether these calories come from sugar or other sources, but because sweets are often well liked, it is easier to overconsume foods with "concentrated calories" such as desserts than more fibrous (bulky) foods such as vegetables. People may be apt to eat sweets in excess and to consume more calories than they need.

The body needs vitamins, minerals, and protein as well as calories. Because sugars offer little nutritionally except calories there is a concern that if sugary foods make up a substantial share of calories in the diet, they may replace foods which offer other nutrients as well. Sweet foods, especially sticky sweets, are a major cause of dental caries (cavities). As stated in the conclusion of the report "Evaluation of the Health Aspects of Sucrose as a Food Ingredient" prepared by the Federation of American Societies for Experimental Biology (FASEB) for the Food and Drug Administration, "* * * reasonable evidence exists that sucrose is a contributor to the formation of dental caries when used at levels that are now current and in the manner now practiced." (*8*) The total amount of sugar eaten is not as important as how frequently the sugar is eaten, the form of the sugary food (liquid or solid, for example) to which the teeth are exposed, and whether or not people clean their teeth after eating sugary foods. Between-meal sweets are worse than the same foods

eaten with meals. This is because they are often eatern alone without liquid to wash the sugar from the tooth surface and because people are less likely to brush their teeth after a snack than they are after a meal. the FASEB report states, "* * * when such foods are consumed as part of the meal they are less cariogenic than if they were consumed as between-meal snacks." (*8*)

There has been much discussion about the relationship of the amount of sugar that is eaten to the development of heart disease. It has been suggested that high levels of sugar in the diet may contribute to a sequence of events that ultimately may lead to heart disease. Specifically, the suggestion is that in some individuals excessive dietary sucrose increases the level of a certain fat (lipid) present in the blood called triglyceride. This fat may play a part in the development of atherosclerosis, a condition which is associated with the development of heart disease. (*9*)

Apart from sugar's role in tooth decay, there is little conclusive evidence that directly links sugar consumption with ill health. Yet diabetes, a condition in which the metabolism of sugar is abnormal, is increasing in the United States. Sugar consumption in this condition must be controlled and the intake limited and excess consumption is thought by some to be a causal factor. (*10*) Both diabetes and hypertension (high blood pressure) are linked to obesity. (7)

Salt

Hypertension (high blood pressure) is a major public health problem in the adult population in the United States. It has been associated with heart disease, stroke, and renal failure. Twenty percent of the adult population and up to forty percent of older age groups are hypertensive. (*11*)

Many factors contribute to the development of hypertension, some are genetic and others environmental. Excess sodium in the diet is believes to be one factor that contributes to high blood pressure, particularly among individuals who are susceptible for genetic reasons. The major source of sodium in the American diet is salt or salty foods. Low salt intakes can be therapeutic for individuals with hypertension and excessive salt intake by many hypertensives is known to increase blood pressure. (*9, 11*)

Salt is frequently added at the table and used in food preparation. It is also used in food processing. In the United States, current salt intake varies between 6 and 18 grams per person per day. It has been suggested that the adult need for sodium is not more than 0.5 grams daily and that the consumption of 3 grams of salt per day would be more than adequate. (*11*) Information from the FDA Total Diet Studies indicates that the amount of sodium consumed increases with age. (*12*)

Concern has been expressed specifically about the amount of salt consumed by children. The American Academy of Pediatrics Committee on Nutrition reviewed information on salt intake and eating patterns of infants and children in relation to blood pressure. The Committee concluded that specific dietary modifications should be made for individuals at risk rather than for the population as a whole. However, recommendations were also made for actions that would reduce or avoid increasing the present level of salt intake by children in the population at large. These actions included the development of guidelines for restraining the use of salt by food processors, the provision of more information to consumers concerning the amount of salt added to processed foods, the marketing of foods for low salt diets, and the emphasis on dietary variation in nutrition education efforts. (*13*)

Fat

Although fat is an essential element of any diet, a relatively small is required in the diet. Fat consumption is of particular concern in relation to weight gain. As stated earlier, weight gain occurs when individuals consume an excess of calories in relation to energy needs. Fat supplies 9 calories per gram while other energy-yielding nutrients, protein and carbohydrate, supply only 4 calories per gram. Because fat is the most concentrated form of food energy, its overconsumption can lead to calorie excess. For this reason, some associations have been made between fat consumption and obesity.

The terms "saturated" and "unsaturated" refer to the chemical composition of fats. Most fats from animal sources are saturated while most unsaturated fats are of plant origin. People who eat a high-fat diet, especially a high-saturated fat diet, often have higher levels of cholesterol. The levels of lipids, especially cholesterol, in the blood are associated with the development of atherosclerosis. Atherosclerosis is the condition in which fatty materials, especially cholesterol, accumulate in the walls of the arteries. There is strong evidence that the major disease process underlying susceptability to heart attacks is atherosclerosis and thus, many groups have recommended that Americans modify their diet to reduce the levels of lipid, particularly cholesterol, in their blood. (7) Since it may take many years to develop a sufficient degree of atherosclerosis to cause heart attacks, some scientists have suggested that modification of the diet of children may be effective in reducing the risk of heart attacks later in life, particularly since it may be difficult to modify dietary habits once they are learned. Others have argued that such dietary recommendations should be reserved for those with high cholesterol levels in the blood. (*14*)

Fortified Foods

Many foods contain added nutrients as a result of enrichment, restoration or fortification. Enrichment refers to the addition of specific nutrients as established in a federal standard of identity and quality (for example: enriched bread). Amounts of nutrients added generally are moderate levels of nutrients naturally present in the food. Restoration is the addition of nutrients to food products to a level necessary to restore that lost during processing. Fortification is the addition of nutrients to food products which are not necessarily a natural source of such nutrients.

Some people believe fortification of foods people like to eat is desirable to make needed nutrients not only available but also likely to be consumed. Others object on the grounds that while fortified foods may indeed contain high levels of nutrients, some of them contain high levels of sugar, fat, and salt as well. Additionally, children may not differentiate between fortified snack foods sold in the school and similar foods sold elsewhere which may not be fortified. Accordingly, there may be disagreement about whether it is better to allow fortified products to be sold competitively in schools or whether to limit sales to a variety of foods containing naturally occurring nutrients.

Associations between diet and disease have been widely publicized and Americans are becoming increasingly aware of what they eat. Advertising and popular literature have done a great deal to bring these issues to public attention. There is sufficient evidence to relate diet to well being. There is debate, however, about how diseases are caused or effected by specific dietary practices.

QUESTIONS

1. Which of the alternative standards (or combination of standards) described in the Introduction best addresses the issues raised in this section?

2. Should diet-related health issues, including the consumption of sugar, fat, and salt, be considered in a discussion of competitive foods?

3. Should the Department consider the issue of fortification in determining what foods should be sold competitively?

4. There is no evidence that reducing levels of sugar, fat, and salt in the diet is harmful. There is some indication that such reduction may be helpful. Is this sufficient reason for the Department to consider the levels of sugar, fat, and salt in foods when formulating regulations for competitive foods? Is it reasonable to make decisions regarding the sale of competitive foods on the basis of potential health implications?

5. Will the foods that a child eats be a determining factor for health status in later life?

III—Eating Habits

One reason that the competitive foods issue is a controversial one is that eating habits are a personal matter. Whether eating habits developed in childhood carry over to adult life is a matter of debate. There is also debate about what foods should be sold competitively in the schools because these foods may have an influence on the development of a child's eating habits.

Eating habits are not just what people eat; they also include where, when, and with whom. People eat because they need food, but eating is also an important part of social interaction and it may provide personal satisfaction. There are some ideas concerning why people eat the way they do, but there are still many unanswered questions. Influences on eating habits are numerous and grow out of personal, social, cultural, religious, and economic factors. Some studies have identified factors such as family income, parents' education, and television advertising as specific influences on children's eating habits. (*1, 2, 15*)

The eating pattern of three balanced meals a day has been traditionally recommended as the basis for a good diet but that is changing. Although there is a lack of knowledge about the degree of change, we do know the direction. There is a tendency to eat smaller amounts more frequently. For many people, snacks form a major part of the diet. If not everyone eats three meals every day—and they don't—examples of ways to achieve a balanced diet even with nontraditional eating patterns may be helpful.

Snacking habits are one part of the broader area of food habits. What differentiates a snack from a meal is difficult to define. Meals are generally considered to contain a variety of components from different food groups, to include an entree, to be eaten at certain times of the day in certain places. Snacks, on the other hand, are generally eaten between meals and in any location.

For many people snacking has negative connotations. It is often assumed that a snack provides excess calories and is associated with excessive amounts of certain food components, particularly sugar, fat, and salt. A snack, however, can consist of almost any kind of food and does not necessarily contain excessive calories. Of concern, is which foods comprise the snacks.

The between meal consumption of foods—snacks—high in sugar content often contributes to the formation of dental cavities. (*8*) Additionally, if foods that have low levels of essential nutrients and have high concentrations of fat and sugar, that is high calorie foods, make up a large part of the diet, there is concern that the rest of the diet may not provide all of the essential nutrients that a child needs. A greater variety of foods is a traditional formula for improving the diet, but if certain foods are consumed consistently and frequently for snacks, the variety of items in the diet may be diminished. This, in turn, may reduce the nutritional value of the diet.

If children are to have the opportunity to snack in the schools it may be important to determine what foods should be available.

QUESTIONS

1. Which of the alternative standards (or combination of standards) described in the Introduction best addresses the issues raised in this section?

2. Why do children snack? Is it important for children to snack?

3. What constitutes a balanced diet? What constitutes a "good" snack?

4. Does your child snack on foods you consider "good" or "bad"?

5. Does the consumption of some foods before meals, for example, foods high in sugar or fat content, limit the consumption of other foods? Does it result in a diet which is not balanced?

6. Should approved competitive foods be available all day in the school? If not, when should they be available?

7. Do the meals served in your school satisfy your child? Is it important for children to have the opportunity to purchase foods at school other than complete meals?

8. Should different snack foods be made available to children of different ages? Do older children exercise more discretion in making food choices?

9. What foods would you like to be available for snacking in the schools?

IV—Local Administrative and Impact

Local and State officials carry out whatever final Federal regulation is promulgated. Local impact at a variety of levels must be weighed in designing the competitive foods regulation.

Administratively, the regulation must be both locally feasible and enforceable while accomplishing the intent of the law. That means setting rational standards for selection of approved foods and using them as a basis for an effective and efficient regulation.

Other local concerns relate to how the final regulation affects the child's overall food consumption (or lack of consumption and the resulting "plate waste") and participation in the school lunch program.

Furthermore, a competitive foods regulation may have implications for other school programs. Profits from the sale of competitive foods are sometimes used by the school for social activities, equipment, or uniforms.

Another fundamental issue is local involvement with the competitive foods regulation. This includes two kinds of public participation. On the one hand, there is involvement of local school officials, parents, teachers, and students in determining what foods should be sold. On the other, there is the issue of how to get local people to reinforce a rule on competitive foods.

A Federal regulation on competitive foods does not preclude local schools or States from setting their own stricter rules. Some already have. The Secretary's authority offers flexibility. The Secretary could establish a minimum standard for use by local officials or alternatively, take no action whatsoever. Some commentors suggested that rather than a Federal standard, it would be better for the Secretary to require States or local schools to set their own policies on approval or disapproval of competitive foods.

Public comments on the April proposal raised these issues:

A city-wide student affairs council from a major metropolitan center recommended that the Department encourage each secondary school to adopt a phase-out of "sweets" and set its own timeline. The commentor included the observation that students would be more inclined to accept a phase-out if they were involved in the decisions.

The director of food services in a large suburban county, who implemented a competitive foods policy in a different way, also stated that we must give students credit: "Our County Board of Education banned minimally nutritious food from sales in our schools and soft drinks during lunch time last year, and I must say we have had our most successful year in food service ever, with an 11 percent increase in lunches. The larger increases [were] in senior and junior high schools.

"Our students display a remarkable degree of maturity in accepting the ban and fully support the action. It took considerable public relations by student councils at many meetings in our 61 secondary schools, but once the

student governments and [student] body understood the reasons for the action they became supportive.

"We owe it to our youth to provide good nutritional eating habits in an educational environment, and we must withstand the pressures commercial organizations apply."

Some commentors stated that the need for revenue for equipment, uniforms, or social activities is a poor excuse for the sale of certain competitive foods. The need for funds should not infringe upon the nutritional well-being of students, these commentors felt. They recommended that schools sell other foods or other items to raise necessary funds. One vendor recommended that schools install apple vending machines to sell apples.

Some of those opposed to the April, 1978, proposal felt that the lunch programs would suffer if it were adopted. Comments from some school food service managers and staff, teachers, and principals of open campus schools expressed the belief that a ban on popular food items, especially in high schools, would encourage students to leave school to get what they wanted. They fear this would result in reduced participation in the National School Lunch Program. A few commentors stated that students would be more likely to purchase a Type A lunch if they were allowed all competitive foods as well.

A few principals, teachers, and parents were concerned that regulation of competitive foods would increase the purchase of drugs, alcohol, and tobacco by students since these items are readily available on the street, where the students would presumaly be if they were unable to get the foods they wanted inside the school.

Several commentors stated that if the Department did not regulate competitive foods, schools would not be in tune with what parents were teaching their children at home. They see a need to create opportunities for children to learn about the principles of good nutrition in their daily lives, and in everyday situations such as the school cafeteria. Using the school lunch room as a learning laboratory would reinforce principles taught in nutrition education classes, they said.

These local considerations raise such questions as:

1. Which of the alternative standards (or combination of standards) described in the Introduction best addresses these issues?

2. Should the Secretary establish the standards? Should States? Should no action in this area be required even though Congress passed a competitive foods law in 1977?

3. How and to what extent could students, parents, and teachers be involved in the decisionmaking process? School boards and principals?

4. Would lunch participation and/or plate waste increase or decrease if certain competitive foods were not sold on school premises?

5. In your school district, have parents taken part in the decision to sell certain competitive foods in the schools?

6. Do you think children would leave the school premises to buy competitive foods that are not sold in the school?

7. If competitive foods were restricted in elementary schools, but not in junior and senior high schools, would this restriction cause those food items to be more attractive to younger children?

8. Would schools drop out of the National School Lunch Program to continue providing all competitive foods to children?

9. Does your school use the profits from food sales to buy textbooks, band uniforms, athletic equipment, etc.? Could you substitute other sales (food or nonfood) if certain foods were restricted in schools?

10. What form of sanction should be applied when competitive foods regulations are not followed?

11. What are the administrative concerns with regard to each of the Standards in the Introduction?

FOOTNOTES

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FRIDAY, DECEMBER 15, 1978
PART VII



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

Accidental Radioactive Contamination of Human and Animal Feeds and Potassium Iodide as a Thyroid-Blocking Agent in a Radiation Emergency

Recommendations For State and Local Agencies and Request for Submissions of New Drug Applications

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 1090]

[Docket No. 76N-0050]

ACCIDENTAL RADIOACTIVE CONTAMINATION OF HUMAN FOOD AND ANIMAL FEEDS

Recommendations for State and Local Agencies

AGENCY: Food and Drug Administration.

ACTION: Proposed Recommendations.

SUMMARY: This document provides guidelines and recommendations for action to be taken in the event of a radiological incident resulting in the contamination of human food or animal feeds. These guidelines and recommendations are for use by State and local agencies responsible for constructing response plans in the event of a radiological incident. The proposal would establish a set of guidelines that can be used to determine whether or not levels of radiation encountered in food after a radiological incident warrant protective action and would suggest appropriate actions that may be taken if action is warranted. This proposal is being made because the Food and Drug Administration (FDA) has a responsibility to issue guidance on appropriate planning actions neccessary for evaluating and preventing contamination of foods and animal feeds and on the control and use of such products, should they become contaminated.

DATE: Comments by February 13, 1979.

ADDRESSES: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857; copy of supporting data to the Bureau of Radiological Health (HFX-440), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

G. D. Schmidt, Bureau of Radiological Health (HFX-460), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, (301-443-3426).

SUPPLEMENTARY INFORMATION: The purpose of these proposed recommendations is to provide guidance to State and local agencies for use in the development of emergency plans and for use in the emergency response to incidents involving the contamination of food and animal feeds by radioactive materials. The guidance contains basic criteria, defined as protective action guides (PAG's), for establishing the level of radioactive contamination at which action should be taken to protect the public health and assure the safety of food. This document also proposes specific guidance on what emergency protective actions should be taken to prevent further contamination or restrict the use of food, as well as more general guidance on the development and implementation of emergency action. The protective action guides (PAG's) have been developed on the basis of a risk evaluation to identify that level of contamination where action is necessary to assure the safe use of food.

BACKGROUND

This proposed guidance on accidental radioactive contamination of food from fixed nuclear facilities, transportation accidents, and fallout is part of a Federal interagency effort coordinated by the Federal Preparedness Agency, General Services Administration. The Nuclear Regulatory Commission is the lead agency and among other activities has published a "Guide and Checklist for Development and Evaluation of State and Local Government Radiological Emergency Response Plans in Support of Fixed Nuclear Facilities" (NUREG-75/111 Dec. 1974).

The Federal Preparedness Agency issued a notice in the FEDERAL REGISTER of December 24, 1975 (40 FR 59494) which reflected governmental reorganizations and reassigned agency responsibilities for radiological incident emergency response planning.

Among the responsibilities of the Department of Health, Education, and Welfare (HEW) is "Issuance of guidance on appropriate planning actions necessary for evaluating and preventing radioactive contamination of foods and animal feeds and the control and use of such products should they become contaminated." Within HEW this function has been delegated to the Commissioner of Food and Drugs.

In the preparation of this proposal, FDA has reviewed the protective action guidance adopted by the Federal Radiation Council (FRC) (Refs. 8 and 9). The Federal Radiation Council was created to provide guidance to the Federal agencies on radiation protection standards.

Although the Federal Radiation Council no longer exists and its functions have been transferred to the Environmental Protection Agency (EPA), FRC expected that each Federal agency, by virtue of its immediate knowledge of its operating problems, would use the applicable FRC guides (Refs. 6 through 9) as a basis for developing detailed standards to meet the particular needs of the agency. Historically, recommendations on radiation protection have involved a judgmental analysis that balances the health hazards associated with radiation against the benefits of using radiation. These benefits include the use of radiation in industry, research, and diagnosis and treatment of disease, and in providing new sources of energy.

Scientific findings indicate that human exposure to radiation can induce genetic and somatic effects. Although current evidence is insufficient to prove with certainty the nature of the dose-effect relationship at low doses and dose rates (which are doses per unit of time) present radiation protection practice assumes a direct linear relationship between the probability of biological effect occurring and the amount of dose. By extrapolation from high-dose and dose-rate experimental and epidemiological data to low doses and dose rates, it becomes possible to estimate the probability of biological effects from low doses. It is generally agreed that the frequency with which an effect may actually occur will not exceed the frequency predicted by this assumption. In any case, a basic principle of radiation protection is to keep exposure to radiation as low reasonably achievable.

The FRC guides (Refs. 6 through 9) have served as the basic guidance for control of environmental radiation. Since the publication of these documents, data on radiation risks have been reviewed in light of additional information on biological effects that became available (Ref. 10), and environmental standards for nuclear power operations have been specifically defined by EPA (see the FEDERAL REGISTER of January 13, 1977 (42 FR 2858)). Thus, it is appropriate for FDA to issue response-planning recommendations which consider recent radiation risk and measurement data for use in the event of a contaminating radiation incident.

THE PROPOSED RECOMMENDATIONS

Proposed § 1090.400(b) defines a PAG as the projected radiation dose equivalent or dose commitment to individuals in the general population that warrants protective action following a release of radioactive material. Protective action would be warranted if the expected individual dose reduction is not offset by negative social, economic, or health effects. A negative impact could, for example, occur if an adequate alternative food supply is not available. The PAG does not include the radiation dose that has occurred before the assessment, nor do these recommendations imply an acceptable radiation dose from food containing radioactivity during normal

conditions. Rather, their purpose is to prevent additional radioactivity from entering the human food chain and to reduce or avoid future radiation doses to the population after an accidental contaminating event. Such events include accidents at nuclear facilities, transportation accidents, and fallout from nuclear devices. The proposed protective actions are intended for implementation within hours or days from the time an emergency is recognized, and their duration should not be expected to exceed 1 or 2 months, based on previous experience with atmospheric fallout. Long-term regulation of radioactivity in the environment is the responsibility of the Environmental Protection Agency.

These recommendations would define projected radiation dose equivalent limits, exclusive of doses contributed by natural radioactivity, at which appropriate actions are suggested. The basic unit used in these recommendations is the radiation dose equivalent, defined in proposed § 1090.400(b) as "a quantity that expresses all radiation on a common scale for calculating the effective absorbed dose. It is defined as the product of the absorbed dose in rads and certain modifying factors. The unit of dose equivalent is the rem." "Dose commitment" means the radiation dose equivalent, delivered over a lifetime, from a single event received by an exposed individual to the organ cited. Ideally, if a particular tissue is subject to radiation from more than one source, the combined dose from all sources should be considered. However, in an accident at a fixed nuclear facility the food chain is likely to be the major route of significant population exposure (Ref. 1). For the purpose of these recommendations, the Commissioner has considered only the food pathway because FDA authority specifically relates to food and animal feeds. The proposed recommendations assume that the population group receiving radiation doses via the food chain receives only insignificant doses from other pathways, e.g., external radiation or inhalation.

PAG's are proposed in § 1090.400(c) for two levels of response:

1. Preventive PAG—applicable to situations where protective actions causing minimal impact on the food supply are appropriate. A Preventive PAG establishes a level at which responsible officials should take protective action to prevent or reduce the concentration of radioactivity in food or animal feed.

2. Emergency PAG—applicable to incidents where protective actions of great impact on the food supply are justified because of the projected health hazards. An Emergency PAG establishes a level at which responsible officials sould isolate food containing radioacitivity to prevent its introduction into commerce, and at which the responsible officials must determine whether condemnation or another disposition is appropriate.

Proposed § 1090.400(d) lists derived response levels in the following terms: initial ground deposition (activity per unit of area), the concentration of radioactivity in milk (activity per unit of volume) or pasture (activity per unit of weight), and total dietary intake (total activity) that corresponds to these two PAG's. Thus, the derived response levels provide concentrations of specific radionuclides in specific media that can be directly compared to the levels of measured radioactivity to assure rapid and effective protective actions.

The recommendations in § 1090.400(e) provide guidance on the implementation of the PAG's for other food items, animal feeds, radionuclide mixtures, and other critical organs. The sampling sites are identified in § 1090.400(f), and references to recommended methods of analysis are provided in § 1090.400(g).

These recommendations proposed in § 1090.400(h) appropriate actions at Preventive and Emergency PAG response levels that are recommended within the context of the health benefit that may be achieved through the prevention of unnecessary radiation exposure.

Public Comments

In the Federal Register of May 7, 1976 (41 FR 18897) the Commissioner invited interested persons to submit data, information, and views on guidelines for planning emergency response to radiological incidents that may result in radioactive contamination of human food and animal feeds. The Commissioner received and considered the following suggestions and views in preparing the proposed recommendations:

a. In radiation incidents involving a potential threat to the public health, recommendations in terms of specific radionuclide quantities, such as activity per unit volume or weight, are most easily applied.

b. Guidance should be based on evaluation of potential health risks associated with radiation levels at which protective action would be recommended and on cost-benefit analysis of various options available for preventing and reducing radiation exposure via the food pathway.

c. Proposed recommendations should be based on the potential radiation hazard to designated critical organs. They should consider the specific exposure and metabolic pathways, the radiobiological characteristics of individual radionuclides, and the radiosensitivity of the most critical group in the exposed population.

d. Proposed recommendations should be generally adaptable over a wide range of conditions, have a rapid response time, and be limited to the immediate emergency situation.

Based on responses to the May 1976 notice and other available data, proposed recommendations were drafted and distributed on December 7, 1976 to interested individuals, all States having radiological health programs, Federal agencies involved in radiological health programs, and Federal agencies involved in radiological emergency response planning. Some 24 respondents offered more than 100 pages of comments. A summary of the most pertinent comments and the Commissioner's response to them follows:

1. Many comments pointed out that responsibilities for formulating guidelines on radioactivity in foods seem to overlap, thus leading to an apparent duplication of effort. In general, these comments stated or assumed that the Environmental Protection Agency (EPA) was to set the PAG's; in fact, EPA has already done so for external radiation, i.e., radiation from fixed sources, and inhalation, i.e., airborne radiation, (Ref. 5). The comments nonetheless did recognize that setting guidance for foods falls within the purview of FDA. The consensus among the comments was that there should be cooperation between EPA and FDA, and that all Federal recommendations about radioactivity in foods and animal feeds should be compatible.

The Commissioner recognizes that several of the Federal responsibilities overlap. However, the Interagency Agreement (see the Federal Register of December 24, 1975 (40 FR 59494)), made EPA responsible for "Establishment of protection action guides in coordination with appropriate Federal agencies," and HEW responsible for "Issuance of guidance on appropriate actions necessary for evaluating and preventing radioactive contamination of foods and animal feeds and the control and use of such products should they become contaminated." The Director, Bureau of Radiological Health, FDA, and the Deputy Assistant Administrator for Radiation Programs, EPA, established an official liaison to assure an exchange of opinion and information and to avoid a duplication of effort on the proposed FDA recommendations on radioactivity in foods.

2. Several comments requested a clarification of the relevance of prohibitions in section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348) to radioactive contamination of foods.

In the Federal Register of September 30, 1977 (42 FR 52814), FDA estab-

lished procedures for regulating food contaminants and naturally occurring poisonous or deleterious substances in food. In § 109.6 (21 CFR 109.6) the Commissioner recognizes that when a food contaminant is unavoidable but cannot be approved under the criteria of section 409 of the act, a procedure to control its use under authority of sections 306, 402(a), and 406 of the act (21 U.S.C 336, 342(a), 346) is still available. Accidental radioactive contamination of food for man or animals may fall within the scope of these provisions. Moreover, the Commissioner advises that establishing guidelines for radionuclide contamination of foods is required to meet HEW's responsibility as specified in the December 1975 notice. For these reasons the Commissioner concludes that such action is in complete accord with the act.

3. Several comments asked whether milk containing radioactivity at a specific level could be diluted with milk at a lower radioactive concentration so the resultant product could be consumed.

There is a longstanding FDA policy against blending, which is the intentional adulteration of unadulterated food with contaminated or adulterated food (see generally 21 CFR Parts 109 and 509). It is the agency's position that blending adulterates the unadulterated food in violation of section 402(a)(1) of the act. The agency does, however, permit the diversion of contaminated human food into use as animal feed when such diversion would pose no significant risk to human or animal health. The Commissioner believes diversion of milk contaminated from a radiological incident should be considered on a case-by-case basis to evaluate the potential for ultimate contamination of human food and the risk to man and animals.

4. Some reviewers questioned the use of the linear nonthreshold hypothesis as a basis for risk analysis because they believe that it underestimates risk. A related comment suggested that both fatal and nonfatal health risks, and genetic as well as somatic effects, be examined to define each proposed PAG level.

The Commissioner believes the linear nonthreshold approach to somatic risk evaluation is the most prudent approach. Hence, the Commissioner is proposing that it be employed in these evaluation. Genetic risks were also considered, but the adequacy of existing data does not allow as precise an estimate of those risks. Also, nonfatal effects were not deemed valid as an endpoint for risk analysis because "health effects" and "ill health" are biological endpoints that are difficult, if not impossible, to quantify. In sum, the Commissioner concludes that the linear model is sufficiently conservative that it provides an adequate margin of safety for these nonquantifiable effects and has adopted it for assessing the risks of all health effects.

5. Several comments argued that the rationale for the PAG values (especially the Preventive and Emergency PAG's) were based on old information that could be replaced with newer data. These comments also suggested defining the PAG's in terms of the dose commitment to the critically exposed population i.e., children less than 1 year of age), rather than a "suitable sample" (which in turn is defined as children less than 1 year of age). They proposed these definitions to avoid any confusion that "suitable sample" might refer to food or animal feed rather than to human beings as intended in the draft (i.e., a "suitable sample" of the exposed population). Furthermore, use of a critically exposed population would eliminate the one-third factor used as an operational technique and associated with a projected dose to a "suitable sample" of the exposed population.

One comment stated that although the use of a "suitable sample" has historical precedence, its use was not adequately justified in the draft. Another reviewer suggested just the reverse; namely, that information applicable only to the operational technique concept and not the critically exposed population concept be cited in any recommendations. In any case, there is a consensus that a single defined exposed group should be selected as a basis for making the necessary calculations.

For the sake of simplicity and to be consistent with other Federal agency guidelines, the concept of a "suitable sample" is no longer employed. Rather, the Commissioner proposes to define PAG levels in terms of projected dose to an exposed individual in the critical segment of the population (i.e., persons receiving the greatest dose per unit intake and having the greatest sensitivity).

6. One reviewer recommended that the fetus be considered the critically exposed population for iodine-131.

The Commissioner advises that the problem has been evaluated by several investigators (Refs. 3 and 4), who found that the newborn infant and not the fetus has the highest iodine-131 uptake per gram of thyroid tissue. The Commissioner believes this group should constitute the critical segment of the population.

7. Several comments suggested removal or modification of the Alert PAG, which was included in the original draft, because:

a. Appropriate protective actions are not recommended.

b. The informational and administrative actions that are suggested are covered by other standards and regulations.

c. At times the major protective action at this level (e.g., control at source) is not possible within the framework of situations the recommendations are designed to cover, nor, as one reviewer points out, is this action within the scope of FDA responsibilities.

d. Sampling and analysis at the Alert PAG response levels would be difficult and expensive, especially on a nationwide basis.

e. The Alert PAG lends itself to misinterpretation by the public; if used, it should emphasize more strongly the extremely low levels of contamination it represents.

f. As presently conceived, the PAG's apply to an acute abnormal situation; the Alert PAG, evaluated in terms of chronic contamination (perhaps from normal operations) and long-term effects, is confusing when applied to abnormal situations. Further complications exist because the Alert PAG presents radionuclide concentrations in terms of average yearly concentration, while the other PAG's present the response level concentrations in terms of peak concentrations.

Based on these extensive comments, the Commissioner has deleted the Alert PAG concept.

8. Several comments noted that the problem of multiple contaminating events was not addressed in the December 1976 draft.

The Commissioner agrees that the draft recommendation did not directly address the possibility that the projected dose associated with a specific PAG could be exceeded by multiple events, each one of which by itself would not exceed the PAG. However, the proposed recommendation would express radioactivity in food in terms of total intake (microcuries) at which the projected dose would be equal to or exceed the PAG. The Commissioner believes this provides an option for the emergency planner to utilize in the event of multiple contaminating events.

9. One comment submitted evidence that the shelf life of milk can be extended by storage at lowered temperature, provided ultrahigh heat treatment is employed in processing.

The Commissioner has incorporated this procedure as a feasible protective action that will allow the decay of iodine-131 in contaminated milk.

10. One comment noted that the recommendations imply an ongoing routine sampling program capable of detecting levels of radioactivity associated with the PAG's. The comment asked whether such a system exists or whether FDA would assume responsi-

bility for future operation of such a system.

The Commissioner advises that there is no extensive routine national program of sampling and analysis of radioactivity in food. As noted in paragraph 7 of this preamble, the Alert PAG has been deleted, and the recommendations no longer imply the need for an ongoing routine sampling program. In the event of an incident, the sampling programs required would be provided by State and local agencies and the nuclear facilities with the assistance of Federal agencies. This has been the agency's experience.

11. Another comment asked whether actions taken when the projected dose is exceeded are based on calculation from air concentrations from accidentally released radioactivity or from food that is actually contaminated.

The Commissioner notes that under the Federal Food, Drug and Cosmetic Act, action can be taken only on evidence that the food may be rendered injurious to health. In a protective action involving avoidance of projected doses, action may be appropriate based upon air concentration or ground deposition. However, action based solely on radioactive air concentrations is beyond the scope of these recommendations.

Rationale for the PAG's

The process of determining numerical limits for setting radiation standards has traditionally been one of risk assessment. The process of risk assessment consists of two elements: Determination of the probability that an event will occur, and determination of "acceptable risk." Because initiation of protective action assumes that an incident has occurred, the emphasis in this case will be on the determination of acceptable risk or safety. A recent discussion of acceptable risk defines risk as a measure of the probability and severity of adverse effects and defines safety as the degree to which risks are judged acceptable (Ref. 13). The Commissioner agrees that safety involves a judgment as to the acceptability of the risks but recognizes that there may not be universal agreement because various individuals may not all judge a given risk to be acceptable. Thus, the PAG's proposed here represent the Commissioner's judgment as to that level of contamination resulting from radiation incidents at which protective actions should be taken to protect the public health.

To provide a basis for this judgment, the risk of radiation exposure was compared to the risk of prevalent hazards accepted by society and to the variability of the natural radiation environment. The numerical dose commitment values that were derived are comparable to the risk from natural disasters (approximately a one in a million annual individual risk of death) and to the risk associated with two standard errors of the mean (the 95% confidence level) of the natural radiation environment in the United States (8.5 millirem per year). Both somatic risks (cancer deaths) based on an absolute risk model (Ref. 10) and genetic effects have been assessed in this evaluation. An absolute risk approach (estimates of deaths per rem of dose) was used in preference to a relative risk model because a relative risk model is based on natural cancer rates. Natural cancer rates are highly variable and depend upon such diverse factors as age, location, socioeconomic class, race, genetic makeup, and environmental factors.

For the Preventive PAG the most conservative estimates assume a dose commitment to the whole U.S. population that is associated with the somatic risk equivalent to two standard errors of the mean of the natural radiation environment. This statistic is a measure of the variability or scatter of the average doses of natural radioactivity amongst the states. These dose commitments are approximately 0.47 rem to the whole body, bone marrow, or other organs, and 1.4 rem to the thyroid.

In the case of the Emergency PAG, it is reasonable to expect a smaller population would be affected; and the value 15 million has been assumed, this being the estimated maximum population within 25 miles of present reactor sites. These population assumptions yield values for the Emergency PAG of 7 rem whole body, bone marrow and other organs, and 21 rem thyroid.

The procedures for estimating genetic risks are less precise than those for somatic risks, and it is therefore necessary to give a range for the genetic dose that is considered equivalent to the risk of two standard errors of the mean for natural radiation. The range of genetic dose values is 0.07 to 1.73 rem for the preventive PAG and 1 to 24 rem for the Emergency PAG.

Risks can be compared to the risks from natural disasters for the purpose of determining their acceptability. The radiation doses equivalent to the risk for natural disaster (taken as one in a million annual individual risk of death) are 1.01 rem to the whole body or bone marrow for the preventive PAG and 15 rem for the emergency PAG. These values are quite consistent with the dose of 0.47 rem for the Preventive PAG and 7 rem for the Emergency PAG that are equivalent to the risk of two standard errors of the mean natural radiation dose.

To obtain some perspective of the economic impact of the PAG's as a function of the numerical level recommended, NRC performed a cost-effectiveness analysis using existing data. The cost-effectiveness analysis was done for two models based on projected incidents with different magnitudes of the radioactive release from light-water nuclear power plants. Under the limited scenarios investigated, the rate of change in costs for condemnation of milk drops rapidly when interdiction criteria are between a 0.5 and 10 rem dose commitment to the infant thyroid. The rate of change drops more gradually when the criteria are between 10 and 20 rem, and the rate of change only moderately drops following an interdiction criterion of greater than 20 rem.

the Commissioner concludes that it is prudent to recommend in proposed § 1090.400(c) numerical limits for the Preventive PAG equivalent to 0.5 rem dose commitment to the whole body, bone marrow, or other organs, and 1.5 rem dose commitment to the thyroid gland. Numerical limits for the Emergency PAG are recommended at 5 rem and 15 rem, respectively, representing a factor of 10 over the Preventive PAG.

In summary, the Preventive and Emergency PAG's refer to projected dose commitments to an individual in the exposed population. For the Preventive PAG the most critical segment of the population consists of newborn infants or children less than 1 year of age. For the Emergency PAG two critical segments are defined: (1) An infant group and (2) an adult group (excluding young children). This definition permits a greater flexibility in cases where exposure can be limited to adults only because children are more easily removed from the area of contamination or their diet limited to canned or other stored food.

Applicability

Proposed § 1090.400(a) applies the recommended PAG's to many types of contaminating events, including accidents at nuclear facilities, tansportation accidents, and fallout from nuclear devices under peacetime conditions. Several radionuclides are considered particularly important and receive special attention in calculation of derived response levels. These are iodine-131, cesium-137, strontium-90, and strontium-89, which are relatively abundant among the fission products, enter the food chain easily, and are taken up and retained by the human body.

For transportation accidents the greatest hazard may be from the potential consequences of long-lived gamma emitters such as cobalt-60 and alhpa emitters such as plutonium. For man, due to limited absorption through the gastrointestinal tract, these radionuclides are unlikely to have as great an impact through the

human food chain as the radionuclides mentioned above; however, the proposed regulation refers to sources in the literature from which dose commitments to the gastrointestinal tract can be determined, should the need arise.

For other radionuclides not specified in the recommendations, the proposed response levels for the Preventive and Emergency PAG's may be calculated for individual radionuclides deposited on soil or pasture or present in milk or other foods based on dose commitment factors available in the literature (Refs. 2, 11, and 12).

Specific response levels are proposed for initial deposition, concentration in grazed forage and milk, and total radionuclide intake. The proposed recommendations suggest a method for relating individual food constituents to the total diet. Thus, response levels can be calculated for an appropriate PAG for individual foods that could be significant because of their relative proportion in the total diet by weight and/or high radionuclide concentrations.

Initial deposition on animal feeds, other than pasture, should be dealt with on a case-by-case basis, taking into consideration retention of the radionuclide in the particular feed and the relationship between radionuclide concentration in the animal feed and the concentration of radionuclides in human food. For hay or silage fed to lactating cows, the initial deposition should not exceed that equivalent to the recommendations for grazed forage (pasture).

Sampling

It is important that sampling be carried out at a site which permits sufficient time for action to be taken at an appropriate stage in the farm-processor-market cycle, and that the method of radionuclide measurement be predicated upon the specific response level. Proposed § 1090.400(f) recommends the retail market, processing plant, and farm as sampling sites. Proposed methods of measuring radionuclides in food and animal feeds recommended in § 1090.400(g) would meet the following criteria: (1) The complexity of the method decreases as the need for more rapid action increases; and (2) the sensitivity and selectivity of the method decreases with an increase in the level of detectability required. Methodology referred to in these recommendations includes precise, albeit complex, laboratory methods, rapid methods employing simple laboratory or modified field techniques, and field methods using a simple Geiger-Mueller detector. No action should be initiated without prior verification of the analysis.

Protective Action

Protective action can be initiated at the source or at the beginning of the food chain (soil, vegetation, or cattle), applied to the intermediate vector prior to ingestion by man (milk or food), or administered to the population itself. For the purpose of these proposed recommendations the Commissioner expects specific actions would be limited to the food chain.

The most efficient protective action should be taken. Therefore, an attempt should be made to achieve a reasonable cost-benefit ratio.

The Commissioner emphasizes that prior to taking protective action, the responsible officials should weigh the health benefits to be gained from a reduction in radiation dose against the costs of disrupting the food supply. In this respect, the population to benefit from the dose reduction may not be the same as that receiving the impact. It is probable that both the State in which the contaminating event occurs and adjacent States may be involved; coordination among these affected jurisdictions would be essential and would require a knowledgeable consideration of all pertinent factors. Because this may involve a broad range of informed participation, the Commissioner recommends that if an action with a major impact is contemplated, the food processing and food distribution agencies and industries, as well as the health and agricultural agencies, be consulted. These recommendations envision that the contamination of food in the event of a radiation incident will be controlled at the State and local levels. However, should food in interstate commerce become involved, FDA will use these PAG recommendations as the basis for regulatory action.

References

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3. Dyer, N. C., and A. B. Brill, "Fetal Radiation Dose from Maternally Administered ^{59}Fe and ^{131}I," AEC Symposium Series No. 17, p. 73, 1969.

4. Evans, T. C., R. M. Kretzschmar, R. E. Hodges, and C. W. Song, "Radioiodine Upstake Studies of the Human Fetal Thyroid," *Journal of Nuclear Medicine, 8:157-167, 1967.*

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7. Federal Radiation Council, Memorandum for the President, "Radiation Protection Guidance for Federal Agencies," *Federal Register*, Sept, 26, 1961, as corrected.

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9. Federal Radiation Council, Memorandum for the President, "Radiation Protection Guidance for Federal Agencies," *Federal Register*, May 22, 1965.

10. National Academy of Sciences, National Research Council, "The Effects on Populations of Exposure to Low Levels of Ionizing Radiation," Report of the Advisory Committee on the Biological Effects of Ionizing Radiation (BEIR), 1972.

11. Ng, Y. C., C. A. Burton, S. E. Thompson, R. K. Tandy, H. K. Kretner, and M. W. Pratt, "Prediction of the Maximum Dosage to Man from the Fallout of Nuclear Devices, IV. Handbook for Estimating the Maximum Internal Dose from Radionuclides Released to the Biosphere, Lawrence Radiation Laboratory," UCRL-50163 Part IV, 1968.

12. U.S. Nuclear Regulatory Commission, Regulatory Guide 1.109, "Calculation of Annual Doses to Man from Routine Releases of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR Part 50," Appendix I, Oct. 1977.

13. Lowrance, W. W., "Of Acceptable Risk," William Kaufmann Inc., Los Altos, CA, p. 8-11, 1976.

Pertinent background data and information on the guidelines proposed herein are on file in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, and copies are available from the address above.

The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Public Health Service Act (secs. 301, 310, 311, 58 Stat. 691-693 as amended, 88 Stat. 371 (42 U.S.C. 241, 242o, 243)) and authority delegated to him (21 CFR 5.1), the Commissioner proposes to amend Part 1090 by establishing Subpart E consisting of § 1090.400, to read as follows:

Subpart E—Emergency Radiation Protection Recommendations

§ 1090.400 Recommendations on protective action planning for human food and animal feeds.

(a) *Applicability.* These guidelines are recommended for use by appropriate State or local agencies in response planning and the conduct of radiation protection activities involving the production, processing, distribution, and use of human food and animal feed in the event of an accident resulting in

the release of radioactivity to the environment. The Food and Drug Administration recommends that this guidance be used on a case-by-case basis to determine the need for taking appropriate protective action. These recommendations are intended for implementation within hours or days from the time an emergency is recognized, and their duration should not exceed 1 or 2 months. Protective actions are appropriate when the health benefits associated with the reduction in exposure to be achieved are sufficient to offset the undesirable features of the protective actions. The Protective Action Guides in paragraph (c) of this section represent judgments as to when corresponding protective actions are justified.

(b) *Definitions.* (1) "Dose" is a general term denoting the quantity of radiation or energy absorbed. For special purposes it must be appropriately qualified. In these recommendations it refers specifically to the term "dose equivalent."

(2) "Dose commitment" means the radiation dose equivalent received by an exposed individual to the organ cited over a lifetime from a single event.

(3) "Dose equivalent" is a quantity that expresses all radiation on a common scale for calculating the effective absorbed dose. It is defined as the product of the absorbed dose in rads and certain modifying factors. The unit of dose equivalent is the rem.

(4) "Projected dose commitment" means the dose commitment that would be received in the future by individuals in the population group from the contaminating event if no protective action were taken.

(5) "Protective action" means an action taken to avoid most of the exposure to radiation that would occur from future ingestion of foods contaminated with radioactive materials.

(6) "Protective action guide" (PAG) means the projected dose commitment values to individuals in the general population that warrant protective action following a release of radioactive material. Protective action would be warranted if the expected individual dose reduction is not offset by negative social, economic, or health effects. The PAG does not include the dose that has unavoidably occurred prior to the assessment.

(7) "Rad" means the unit of absorbed dose equal to 0.01 Joule per kilogram in any medium.

(8) "Rem" is a special unit of dose equivalent. The dose equivalent in rems is numerically equal to the absorbed dose in rads multiplied by the quality factor, the distribution factor, and any other necessary modifying factors.

(9) "Response level" means the activity of a specific radionuclide (1) initially deposited on pasture; or (2) per unit weight or volume of food or animal feed; or (3) in the total dietary intake which corresponds to a particular PAG.

(c) *Protective action guides (PAG).* To permit flexibility of action for the reduction of radiation exposure to the public via the food pathway due to the occurance of a contaminating event, the following Preventive and Emergency Protective Action Guides for an exposed individual in the population are adopted:

(1) *Preventive PAG* which is (i) 1.5 rem projected dose commitment to the thyroid, or (ii) 0.5 rem projected dose commitment to the whole body, bone marrow, or any other organ.

(2) *Emergency PAG* which is (i) 15 rem projected dose commitment to the tryroid, or (ii) 5 rem projected dose commitment to the whole body, bone marrow, or any other organ.

(d) *Response levels equivalent to PAG.* Although the basic PAG recommendations are given in terms of projected dose equivalent, it is often more convenient to utilize specific radionuclide concentrations upon which to initiate protective actions. Derived response levels equivalent to the PAG's for radionuclides of interest are:

(1) *Response level for Preventive PAG.*

Infant [1] *as critical segment of population*

	131_I [2]	137_{Cs}	90_{Sr}	89_{Sr}
Initial deposition (microcuries/meter) [3]	0.14	1.7	0.34	6
Peak activity:				
Pasture (microcuries/kilogram) [3]	0.27	3.5	0.7	13
Milk (microcuries/liter)	0.012	0.34	0.007	0.13
Total intake (microcuries)	0.09	7	0.2	2.6

[1] Newborn infant critical segment of population for iodine-131. For other radionuclides, "infant" refers to child less than 1 year of age.
[2] From fallout, iodine-131 is the only radioiodine of significance with respect to milk contamination beyond the first day. In case of a reactor accident the cumulative intake of iodine-133 via milk is about 0.5 percent of iodine-131 assuming equivalent deposition.
[3] Fresh weight.

(2) *Response level for Emergency PAG.* The response levels equivalent to the Emergency PAG are presented for both infants and adults, to permit use of either level and thus assure a flexible approach to taking action in cases where exposure of the most critical portion of the population (infants and pregnant women) can be prevented:

	131_I [3]		137_{Cs}		90_{Sr}		89_{Sr}	
	Infant [1]	*Adult*	*Infant* [2]	*Adult* [5]	*Infant* [2]	*Adult*	*Infant* [2]	*Adult*
Initial deposition (microcuries/meter [3])	1.4	18	17	65	3.4	25	60	3,000
Peak activity:								
Pasture (microcuries/kilogram) [4]	2.7	37	35	50	7	50	130	6,000
Milk (microcuries/liter)	0.12	1.7	3.4	[6] 22	0.08	0.55	1.3	60
Total intake (microcuries)	0.9	10	70	110	2	12	26	1,000

[1] Newborn infant critical segment of population for iodine-131.
[2] "Infant" refers to child less than 1 year of age.
[3] From fallout, iodine-131 is the only radioiodine of significance with respect to milk contamination beyond the first day. In case of a reactor accident the cumulative intake of iodine-133 via milk is about 0.5 percent of iodine-131 assuming equivalent deposition.
[4] Fresh weight.
[5] Response levels for the adult population for cesium-137 refer to the meat pathways.
[6] Peak activity in meat, microcurie per kilogram.

(e) *Implementation.* When using the PAG's and associated response levels for response planning or protective actions, the following conditions should be followed:

(1) *Specific food items.* To obtain the response level (microcurie/kilogram or liter) equivalent to the PAG for other specific foods, it is necessary to weigh

the contribution of the individual food to the total dietary intake; thus,

Response level for a single food item (microcurie/kilogram or liter)=Response level (total intake) ÷ dietary factor × intake factor × days of intake

(i) The "intake factor" is 1 kilogram per day for the infant and 2.2 kilograms per day for the adult. Tap water is included in the adult intake and represents about 10 percent of the total intake. Dietary factors based on average consumption that may be used for other foods are as follows:

Group	Food Items	"Dietary factor" for any single food item in the group
I	Liquid Milk	0.70 for infants and children less than 1 year of age. 0.25 adults.[1]
II	Meat, bakery products, fresh vegtables, fresh fruit, beverages (excluding those individually listed)	0.10.
III	Fats and oils, potatoes and seeet potatoes, flour and cereal, poultry, eggs, sugar and sweeteners, canned, frozen, and dried vegetables	0.05.
IV	Condiments, spices and flavoring agents, fish and shellfish, canned frozen and dried fruit, vegetable and fruit juices, soups and gravies, nuts and peanut butter	0.02.

[1]This value is based on the calcium equivalent, i.e., the quantity of whole fluid milk to which dairy products are equivalent in calcium content. It includes cream, cheese, and ice cream.

(ii) For population groups having significantly different dietary intakes, an appropriate adjustment of dietary factors should be made.

(2) *Radionuclide mixtures.* If a mixture of radionuclides is present, the sum of all the ratios of the concentration of each specific radionuclide to its specific response level equivalent to the PAG should be less than one.

(3) *Other radionuclides.* The response level for the Preventive and Emergency PAG for other radionuclides should be calculated from dose commitment factors available in the literature (Ng, Y. C. et al. (1968), UCRL-50163; Cowser, K. E. et al., ORNL-4101 (1967); and U.S. Nuclear Regulatory Commission Reg. Guide 1.109 (1977)).

(4) *Other critical organs.* Dose commitment factors in the literature cited in paragraph (e)(3) of this section refer to bone rather than bone marrow dose commitments. For the purpose of these recommendations dose commitment to the bone marrow is considered to be 0.3 of the bone dose commitment. This is based on the ratio of dose rate per unit activity in the bone marrow to dose rate per unit activity in a small tissue-filled cavity in bone and assumes that the strontium-90 is distributed only in the mineral bone (Spiers, F. W. et al., in "Biomedical Implications of Radiostrontium Exposure," AEC Symposium 25, (1972)). The ratio for strontium-89 is the same because the mean particle energies are similar (0.56 MeV(megaelectronvolts)). Situations could arise in which an organ other than those discussed in this paragraph could be considered to be the organ receiving the highest dose per unit intake. In the case of exposure via the food chain, depending on the radionuclide under consideration, the gastrointestinal tract could be the primary organ exposed. The references cited in paragraph (e)(3) of this section contain dose commitment factors for the following organs: bone, kidneys, liver, ovaries, spleen, whole body, and gastroinstestional tract.

(5) *Animal feeds other than pasture.* Animal feeds, other than pasture, should be dealt with on a case-by-case basis taking into consideration the relationship between the radionuclide concentration in the animal feed and the concentration of the radionuclide in human food. For hay and silage fed to lactating cows, the concentration should not exceed that equivalent to the recommendations for pasture.

(f) *Sampling paramenter* Generally, sites for sample collection should be the retail market, the processing plant, and the farm.

(g) *Recommended methods of analysis.* Techniques for measurement of radionuclide concentrations should have detection limits equal to or less than the response levels equivalent to a specific PAG. Some useful methods of radionuclide analysis can be found in: (1) Laboratory Methods-"HASL Procedure Manual," edited by John H. Harley, HASL 300, ERDA, Health and Safety Laboratory, New York, NY, 1973; "Rapid Methods for Estimating Fission Product Concentrations in Milk," U.S. Department of Health, Education, and Welfare, Public Health Service Publication No. 999-R-2, May 1963; "Evaluation of Ion Exchange Cartridges for Field Sampling of Iodine-131 in Milk," Johnson, R. H., and T. C. Reavy, *Nature*, 208, (5012):750-752, Nov. 20, 1965; and (2) Field Methods—Kearny, C. H., ORNL 4900, Nov. 1973; Distenfeld, C., and J. Klemish, Brookhaven National Laboratory, to be published; and International Atomic Energy Agency, "Environmental Monitoring in Emergency Situations," 1966. Analysis need not be limited to these methodologies but should provide comparable results. No action should be taken without verification of the analysis.

(h) *Protective actions.* Actions are appropriate when the health benefit associated with the reduction in dose that can be achieved is considered to offset the undesirable health, economic, and social factors. It is the intent of these recommendations that not only the protective actions cited for the Emergency PAG be initiaited when the equivalent response levels are reached, but also that actions appropriate at the Preventive PAG be considered. This has the effect of reducing the period of time required during which the protective action with the greater economic and social impact needs to be operative. Once one or more protective actions are initiated, it is recommended that the action or actions continue for a sufficient time to avoid most of the projected dose. There is a longstanding FDA policy on the purposeful blending of adulterated and unadulterated food. The following protective actions should be considered for implementation when the projected dose equals or exceeds the appropriate PAG:

(1) *Preventive PAG*—(i) For pasture: (*a*) Removal of lactating dairy cows from contaminated pasturage and substitution of uncontaminated stored feed.

(*b*) Substitute source of uncontaminated water.

(ii) For milk: (*a*) Withholding of contaminated milk from the market to allow radioactive decay of short-lived radionuclides. This may be achieved by storage of frozen fresh milk, frozen concentrated milk, or frozen concentrated milk products.

(*b*) Storage for prolonged times at reduced temperatures also is feasible provided ultrahigh temperature pasteurization techniques are employed for processing (Finley, R. D., H. B. Warren, and R. E. Hargrove, "Storage Stability of Commercial Milk," *Journal of Milk and Food Technology*, 31(12):382-387, December 1968).

(*c*) Diversion of fluid milk for production of dry whole milk, nonfat dry milk, butter, or evaporated milk.

(iii) For fruits and vegetables: (*a*) Washing, brushing, scrubbing, or peeling to remove surface contamination.

(*b*) Preservation by canning, freezing, and dehydration or storage to permit radioactive decay of short-lived radionuclides.

(iv) For grains: (*a*) Milling and (*b*) polishing.

(v) For other food products, processing to remove surface contamination.

(vi) For meat and meat products, consider on a case-by-case basis.

(vii) For animal feeds: (*a*) Actions relative to animal feeds, other than pasture, should be carried out on a case-by-case basis.

(*b*) Increase noncontaminated mineral calcium to a maximum.

(2) *Emergency PAG.* Responsible officials should isolate food containing radioactivity to prevent its introduction into commerce and determine whether condemnation or another disposition is appropriate. Before taking this action, the following factors should be considered:

(i) The availability of other possible protective actions discussed in paragraph (h)(1) of this section.

(ii) Relative proportion of the total diet by weight represented by the item in question.

(iii) The importance of the particular food in nutrition and the availability of uncontaminated food or substitutes having the same nutritional properties.

(iv) The relative contribution of other foods and other radionuclides to the total projected dose.

(v) The time and effort required to effect corrective action.

Interested persons may, on or before February 13, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 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. A copy of the economic impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Dated: December 8, 1978.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc. 78-34860 Filed 12-14-78; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 78D-0343]

POTASSIUM IODIDE AS A THYROID-BLOCKING AGENT IN A RADIATION EMERGENCY

Request for Submissions of New Drug Applications and Notice of Availability of Labeling Guidelines

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) requests submissions of new drug applications (NDA's) for potassium iodide in oral dosage forms for use as a thyroid-blocking agent in a radiation emergency. The approval of oral dosage forms of potassium iodide as a thyroid-blocking agent for use in a radiation emergency would be one step in meeting the responsibilities of the Department of Health, Education, and Welfare (DHEW) to State and local governments for radiological emergency response planning. The agency encourages interested persons to submit NDA's in the interest of the public safety. The agency is also announcing the availability of labeling guidelines for potassium iodide for such use.

ADDRESS: Submit new drug applications to the Food and Drug Administration, Division of Metabolism and Endocrine Drug Products (HFD-130), Rm. 14B04, 5600 Fishers Lane, Rockville, MD 20857. Comments concerning the labeling guideline and requests for copies of the guideline should be sent to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Edwin V. Dutra, Jr., Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION: By FEDERAL REGISTER notice of December 24, 1975 (40 FR 59494), the General Services Administration (GSA) outlined the responsibilities of several Federal agencies concerning certain emergency response planning guidance that the agencies should provide to State and local authorities. The Department of Health, Education, and Welfare (DHEW) is responsible for assisting State and local authorities in developing plans for preventing adverse effects from exposure to radiation in the event that radioactivity is released into the environment. These plans are to include the prophylactic use of drugs that would reduce the radiation dose to specific organs due to the sudden release into the environment of large quantities of radioactivity that might include several radioactive isotopes of iodine.

BACKGROUND

The GSA notice of December 24, 1975, concluded that there is an exceedingly low probability that incidents will occur involving either the use of radioactive materials in fixed nuclear facilities or the transportation of those materials. Because of the possible increase in number of nuclear power plants, however, several Federal agencies are identifying those possibilities, however remote, that could adversely affect the public, should an incident occur. One possibility is the sudden release of large quantities of radionuclides, which might include a number of isotopes of radioiodine, into the environment. When radioiodines are inhaled or ingested, they rapidly accumulate in the thyroid gland and are metabolized into organic iodine compounds. These compounds could reside in the thyroid gland long enough to allow for local radiation damage, resulting in thyroiditis, hypothyroidism, or thyroid neoplasia with either benign or malignant characteristics. Therefore, it is considered in the public interest that State and local authorities be prepared to take effective measures to prevent or curtail markedly the accumulation of radioiodines by the thyroid gland, should such an incident occur. These measures may include the use of a thyroid-blocking agent.

An ad hoc committee to the National Council on Radiation Protection and Measurements (NCRP), which included FDA representatives as consultants, studied the feasibility of using certain drug products as thyroid-blocking agents to reduce radiation dose to the thyroid gland. The NCRP, located in Bethesda, Maryland, is a nonprofit corporation chartered by Congress in 1964 to collect, analyze, develop, and disseminate information and recommendations about radiation protection. The NCRP is made up of 56 scientific committees, composed of experts having detailed knowledge and competence in the particular area of the committee's interest. An NCRP report published August 1, 1977 (NCRP Report No. 55, "Protection of the Thyroid Gland in the Event of Release of Radioiodine") discusses the safety and efficacy of thyroid-blocking agents and recommends that potassium iodide be considered for thyroid-blocking purposes under certain emergency conditions.

The report discusses stockpiling thyroid-blocking agents at appropriate outlets for ease of distribution in the event their use is necessary in a radiation emergency. The report concludes, however, that the details of stockpiling, if this method is to be used, and of distribution would be determined best at the State and local levels.

ANALYSIS

The Commissioner of Food and Drugs has analyzed the NCRP report and the available scientific literature about the possible prophylactic use of drugs to reduce the radiation dose to the thyroid gland in a radiation emergency. Although a variety of chemical substances can block the accumulation of radioiodine in the thyroid gland, iodide in the form of potassium iodide appears to be most suitable for this purpose. A number of factors were considered in choosing iodide (and specifically potassium iodide) over other blocking agents such as propylthiouracil, methimazole, perchlorate, thiocyanate, or iodate. These factors included the degree of the blocking achieved, the rapidity on onset of the blocking effect, the duration of the blocking effect, and the safety of the blocking agent. Although iodide acts on the thyroid gland in several ways, its use in this instance is primarily predicated on its ability to saturate the iodide transport system, and thus effectively abolish entry of radioiodine except for small amounts that might enter the gland by diffusion. Almost complete (greater than 90 percent) blocking of peak radioactive iodine uptake by the thyroid gland can be obtained by the oral administration of 100 milligrams (mg) of iodide (130 mg of potassium iodide) just before or at the time of exposure. A smaller dose (65 mg of potassium iodide) can be used in infants under 1 year of age. A daily dose is required to maintain the blocked state. The use of a blocking agent is not expected to exceed about 10 days.

Experiments designed to study the rapidity of onset of blocking have shown that at a 100-mg dose of iodide, the onset of blocking is readily demonstrated 30 minutes after oral administration. The decay of the blocking effect after cessation of iodide administration is relatively slow, so that a daily dose of 100 mg of iodide (130 mg of potassium iodide) appears to maintain effective blocking. To have the greatest effect in decreasing the accumulation of radioiodine in the thyroid gland, the thyroid-blocking agent should be administered immediately before or after initial exposure. A substantial benefit (e.g., a block of 50 per-

cent) is attainable, however, when the blocking agent is first given within 3 to 4 hours after acute exposure. If a person is exposed to radioiodine when circumstances do not permit the immediate administration of potassium iodide, the initial administration will be of some limited benefit even as long as 12 hours after exposure.

Although most of the radioiodine that is not taken up by the thyroid gland is excreted in the urine within 48 hours, the radioiodine that is taken up by, and accumulated in, the thyroid gland may be "leaked" back into the general circulation system as a consequence of intrathyroidal metabolism. Thus, there is a possibility that circulating and recirculating radioiodine may be taken up by the thyroid gland (from the circulatory system) even though there are no radioiodines remaining in the environment. To prevent or curtail the accumulation of radioiodine by the thyroid gland from any source, including chronic exposure, a daily dose of a thyroid-blocking agent is necessary for a period of time after exposure. The duration of time that a blocking agent would be required is not expected to exceed about 10 days. A minimum of 3 to 7 days of daily administration is anticipated based on the biological events described above and the effective half-life of ^{131}I.

Potassium iodide has been used widely for many years in the treatment of bronchial asthma and other pulmonary disorders. Daily oral doses of potassium iodide ranging from 300 to 1200 mg have been given to asthmatics over long periods of time. Daily oral doses of potassium iodide of 100 mg or greater have been administered in cough preparations to children. Although a variety of adverse reactions have been reported in connection with the use of potassium iodide, these reactions are considered, in general, to be directly proportional to the dose and duration of therapy, and most toxicity has been related to chronic administration (see pp. 38357-38358 of the findings of the Advisory Review Panel on Over-the-Counter (OTC) Cold, Cough, Allergy, Bronchodilator and Antiasthmatic Drug Products, published in the FEDERAL REGISTER of September 9, 1976 (41 FR 38312)). In addition to its use in pulmonary disorders, potassium iodide is used in daily doses ranging from 250 to 300 mg in patients for up to 3 weeks in connection with the diagnostic use of radiopharmaceutical drug products to block the uptake of radioiodine by the thyroid gland. The Commissioner is unaware of reports of significant toxicity with this use of potassium iodide.

CONCLUSIONS

The Commissioner concludes that potassium iodide is safe and effective for use as a thyroid-blocking agent in a radiation emergency under certain specified conditions of use because it has been widely used for many years, in large doses, and on a long-term basis with an incidence of side effects and toxicities, in general, proportional directly to dose and duration of therapy. The risks from the short-term use of relatively low doses of potassium iodide in a radiation emergency are outweighed by the risks involved from exposure to radioiodine. However, the Commissioner does not believe that potassium iodide has been used to such an extent or for a period of time under these specified conditions to permit the conclusion that the drug is generally recognized as safe and effective. Accordingly, it is regarded as a new drug requiring an approved new drug application as a condition of marketing. Thus, the Commissioner will accept new drug applications meeting the requirements of § 314.1 (21 CFR 314.1). Because of the publicly available safety and efficacy data documenting the drug's use, the safety and efficacy requirements of § 314.1 may be met by citing the published literature in the List of Material Consulted (below) documenting its use. The Commissioner advises that it is unnecessary to submit (1) copies and reprints of the data cited in the List of Material Consulted in this document, and (2) copies and reprints contained in the journals listed in § 310.9 (21 CFR 310.9). Both the safety and efficacy data upon which the Commissioner bases the above conclusions and NCRP Report No. 55, "Protection of the Thyroid Gland in the Event of Release of Radioiodine," are on file for public inspection in the office of the Hearing Clerk, Food and Drug Administration. The Commissioner invites applicants to submit any other pertinent studies and literature of which they are aware.

The Commissioner also believes for this specific use of potassium iodide, and at the dosages intended, that the prescription-dispensing requirements of section 503(b)(1) (21 U.S.C. 353(b)(1)) of the Federal Food, Drug, and Cosmetic Act are unnecessary. Only the chronic administration of daily doses of potassium iodide far in excess of those necessary for thyroid-blocking in a radiation emergency have resulted in significant side effects and toxicities. These problems should not occur from the short-term use of a relatively low daily dose of potassium iodide. However, the Commissioner advises that the conclusion that a potassium iodide drug product manufactured for use as a thyroid-blocking agent in a radiation emergency is suitable for OTC sale does not affect the present status as a prescription drug of a potassium iodide drug product manufactured for other uses or at higher dosages.

The importance to the public of ready and convenient access to this product and the unlikelihood that it will be needed reinforce the Commissioner's belief that potassium iodide as a thyroid-blocking agent in a radiation emergency should be considered suitable for OTC use. The Commissioner also believes that special labeling directed to the patient must accompany the immediate container of these OTC preparations to ensure they are used safely and effectively. A labeling guideline that describes the kind of information to be included on the container label, if space permits, and if the accompanying labeling is on file with the Hearing Clerk, FDA. The guideline sets forth specific language that would be acceptable to the agency.

The guideline is entitled "Guideline Labeling for Potassium Iodide for Use as a Thyroid-Blocking Agent in a Radiation Emergency."

The person responsible for maintaining the guideline labeling is JoAnne C. Marrone, Food and Drug Administration, Division of Metabolism and Endocrine Drug Products (HFD-130), Room 14B04, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3520. Copies of the guideline are available from the Hearing Clerk (address above).

LIST OF MATERIAL CONSULTED

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7. Il'in, L. A., G. V. Arkhangel'skaya, Yu. O. Konstantinov, and I. A. Likhtarev, "Radioactive Iodine in the Problem of Radiation Safety, Translation Series," USAEC 7536, published in Moscow 1972, issued 1974.

8. Cole, R., "Inhalation of Radioiodine from Fallout: Hazards and Counter Measures," Contract No. DAHC20-70-C-0381, Defense Civil Preparedness Agency, Office of

the Secretary of Defense, Washington, DC, 1972.

9. Saxena, K. M. et al., "Minimal Dosage of Iodide Required to Suppress Uptake of Iodine-131 by Normal Thyroid," *Science*, 138:430-431, 1962.

10. Vagenakis, A. G. et al., "Iodide-Induced Thyrotoxicosis in Boston," *New England Journal of Medicine*, 287:523-527, 1972.

11. "Reactor Safety Study: An Assessment of Accident Risks in U.S. Commercial Nuclear Power Plants, Appendix VI, Calculation of Reactor Accident Consequences," U.S. Nuclear Regulatory Commission, Report WASH-1400, NUREG-75/014 (1975).

12. National Council on Radiation Protection Report No. 55, "Protection of the Thyroid Gland in the Event of Releases of Radioiodine," National Council on Radiation Protection and Measurements, August 1, 1977.

13. General Services Administration FEDERAL REGISTER notice, 40 FR 59494, December 24, 1975.

14. Talbot, J. M., K. D. Fisher, and C. J. Carr, "A Review of the Significance of Untoward Reactions to Iodine in Foods," Report of the Federation of American Societies for Experimental Biology under FDA Contract Number 71-294, September 1974.

15. Maxon, H. R. et al., "Ionizing Irradiation and the Induction of Clinically Significant Disease in the Human Thyroid Gland," *American Journal of Medicine*, 63:967-978, 1977.

16. Radiation-Associated Thyroid Carcinoma, Edited by L. J. DeGroot with L. A. Frohman, E. L. Kaplan, and S. Refetoff; Grune and Stratton, Inc. publishers, 1977.

17. Lengemann, F. W. and J. C. Thompson, Jr., "Prophylactic and Therapeutic Measures for Radioiodine Contamination," *Health Physics*, 9:1391-1397, 1963.

18. Pochin, E. E. and C. F. Barnaby, "The Effect of Pharmacological Doses of Non-Radioactive Iodide on the Course of Radioiodine Uptake by the Thyroid," *Health Physics*, 7:125-126, 1962.

19. Conard, R. A. et al., "A Twenty Year Review of Medical Findings in a Marshallese Population Accidentally Exposed to Radioactive Fallout," Report BNL-50424, Brookhaven National Laboratory, Upton, NY, 1975.

20. Goodman, L. S. and A. Gilman, *The Pharmacological Basis of Thereapeutics*, 5th Ed., MacMillan Publishing Co., Inc., New York, pp. 801, 802, 1975.

The agency encouraged interested persons to submit written comments (preferably four copies, specifying Hearing Clerk docket no. 78D-0343) on the guideline labeling to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. If, as a result of comments received on the guideline labeling, the Commissioner determines that the labeling should be revised, a notice will be published in the FEDERAL REGISTER announcing that such changes have been made.

The Commissioner has determined that this document does not contain an agency action covered by § 25.1(b) (21 CFR 25.1(b)) and, therefore, consideration by the agency of the need for preparing an environmental impact statement is not required.

Dated: December 8, 1978.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc. 78-34843 Filed 12-14-78; 8:45 am]

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