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Friday
April 27, 1979

Highlights

Telecommunications Device for the Deaf—Office of the Federal Register provides a new service for deaf or hearing impaired persons who need information about documents published in the **Federal Register**. See the Reader Aids section for the telephone listing.

Principles of Regulations Writing Seminar—See the Reader Aids section at the end of this issue.

24868 **Nondiscrimination on the Basis of Handicap** State/AID proposes rules which apply to all recipients of federal financial assistance; comments by 5–29–79

24851 **Nondiscrimination in Construction** USDA/FmHA amends rules to simplify procedure for contract compliance and clarify responsibility for monitoring compliance in certain construction; effective 4–27–79

25186 **Medicare Program** HEW/HCFA proposes to modify rules dealing with validation of accreditation surveys of hospitals; comments by 6–26–79 (Part XI of this issue)

25142 **Public Housing** HUD proposes to expand public housing Modernization Program to include certain homeownership projects; comments by 6–26–79 (Part VII of this issue)

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Area Code 202–523–5240

Highlights

24863 **Rural Rental Housing** USDA/FmHA intends to redesignate and revise rules pertaining to loans and assistance; comments by 6–26–79

24844 **Express Mail Metro Service** PS temporarily implements new classification for certain areas of country, and requests comments for drafting permanent classification change; effective 4–30–79, comments by 6–30–79

24889 **Health Professions Capitation Grants Program** HEW/PHS proposes to establish criteria for educational programs of certain schools; comments by 6–26–79

25136 **Nursing School Grants** HEW/PHS establishes criteria for nursing capitation grants program; effective 4–27–79 (Part VI of this issue)

25148 **Basic Skills and Educational Proficiency Programs** HEW/OE requests comments and will hold meetings on proposals governing several programs established through the Education Amendments of 1978; comments by 6–26–79, meetings May 1979 (Part VIII of this issue)

24876 **Employee Retirement Income Security** Labor proposes rules relating to certain loans, leases, and dispositions of property prior to June 30, 1984; comments by 6–26–79

25046, 25111 **Army Discharge Review** DOD/Army publishes ADRB Standard Operating Procedures and memoranda on recharacterization for drug use or possession, designed for use by review board and applicants preparing for discharge review; (2 documents) (Parts II and III of this issue)

24837 **Income Tax** Treasury/IRS provides rules relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55; effective for sales or exchanges after 7–26–78

25017 **Sunshine Act Meetings**

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Rules and Regulations

Federal Register
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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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Area Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final Rule.

SUMMARY: The purpose of this amendment is to quarantine a portion of Macomb County in Michigan because of the existence of exotic Newcastle disease. Exotic Newcastle disease was confirmed in Macomb County on April 16, 1979. Therefore, in order to prevent the dissemination of exotic Newcastle disease it is necessary to quarantine a portion of Macomb County in Michigan.

EFFECTIVE DATE: April 19, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. M. A. Mixson, USDA, APHIS, VS, Federal Building, Room 748, Hyattsville, Maryland 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: This amendment quarantines a portion of Macomb County in Michigan because of the existence of exotic Newcastle disease in such area. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah, and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles, from quarantined areas, as contained in 9 CFR Part 82, as amended, will apply to the quarantined area.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect:

In § 82.3, the introductory portion of paragraph (a) is amended by adding thereto the name of the State of Michigan and a new paragraph (7) relating to the State of Michigan is added to read:

§ 82.3 Areas quarantined.

(a) * * *

(7) *Michigan.* The premises of All Pets, owned by Bertrum Mink and Bryan Villani, 2230 Metro Parkway, Sterling Heights, Macomb County.

* * * * *

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132 [21 U.S.C. 111–112, 115, 117, 120, 123–126, 134b, 134f]; 37 FR 28464, 28477; 38 FR 19141.)

The amendment imposes certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, and, therefore, must be made effective immediately to accomplish its purpose in the public interest.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by Dr. J. K. Atwell, Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C. this 19th day of April 1979.

E. A. Schilf,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79–12811 Filed 4–26–79; 8:45 am]
BILLING CODE 3410–34–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 3, 157

Certification of Pipeline Transportation for Certain High Priority Uses

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission is promulgating a final rule to implement Section 608 of the Public Utilities Regulatory Policies Act of 1978. The rule establishes procedures for the certification of transportation of natural gas purchased by agricultural or other high-priority users directly from producers.

EFFECTIVE DATE: April 23, 1979.

FOR FURTHER INFORMATION CONTACT: Robert C. Platt, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, 202–275–0161.

SUPPLEMENTARY INFORMATION:

I. Introduction

This rule implements, in part, the direct sale provision of the Public Utilities Regulatory Policy Act of 1978 (PURPA), Pub. L. 95–617, section 608, in conformance with the curtailment policies expressed in section 401 of the Natural Gas Policy Act of 1978 (NGPA), Pub. L. 95–621. Section 401 of the NGPA recognizes the high curtailment priorities of consumers such as residences, small commercial establishments, schools, hospitals, and essential agriculture users. Section 608 of PURPA adds Section 7(c)(2) of the Natural Gas Act to provide for the transportation of natural gas sold by a producer to an eligible user or produced and consumed by an eligible user (hereinafter referred to as "direct sale gas").

The Commission issued a Notice of Proposed Rulemaking in this Docket on February 5, 1979.[1] Public hearings were held on the proposal in Amarillo, Texas (on March 9, 1979), Little Rock, Arkansas (on March 18, 1979), Madison, Wisconsin (on March 16, 1979), San Francisco, California (on March 6, 1979), and Washington, D.C. (on March 13 and

[1] 44 FR 7740 (February 7, 1979).

14, 1979). Representatives of the United States Department of Agriculture and the United States Department of Energy participated on the hearing panels. This final rule is based upon the record compiled at these hearings, as well as the written comments submitted in this docket.

II. Summary of Comments

The February 5, 1979 Notice specifically sought comments on a number of issues including: (1) The expansion of the direct sales program into other areas, (2) the shifting of filing requirements from the pipelines onto the end users, (3) the appropriate length of certificate terms, (4) the possible interruption of direct sale deliveries to permit service to higher-priority users, and (5) various eligibility requirements for participation in the program.

A. *Expansion of User Eligibility.*— Some comments suggested expanding the program to serve process and feedstock users and to displace the consumption of imported fuel oil. The Commission will address the curtailment priority of non-agricultural process and feedstock users by implementing NGPA section 402. The eligibility of such users to participate in a direct sales program is deferred to permit consideration of their needs in light of the NGPA section 402 regulations and other pending proposals with respect to direct sales policies. The use of direct sale gas to displace imported fuel oil is now being considered in Docket No. RM79–34. Should the Commission later decide to permit other users to be included in the program, the resulting amendments would not disrupt transactions commenced under this subpart.

Such a step-by-step implementation of PURPA section 608 is prudent. As noted by some commentors, purchasers of direct sale gas may well be competing with interstate pipelines for supplies. Yet the Commission's direct sale program is designed to supplement and not to supplant the existing markets for natural gas. A step-by-step implementation process will enable the Commission to monitor the markets and avoid potential disruption.

Several comments advocated stricter eligibility requirements by imposing an alternative fuel test. NGPA section 401(b) specifies that the curtailment priority for essential agricultural uses does not apply when an alternative fuel is economically practicable and that the fuel is reasonably available. Although NGPA section 401(b) imposes this alternative fuel test upon essential agricultural users which seek priority access to low-cost pipeline system supplies, the policy underlying that test does not apply to direct sales. Congress fashioned NGPA section 401 to provide essential agricultural uses with a high-curtailment priority to the maximum extent practicable within the context of existing curtailment plans. Unlike curtailment priorities, direct sale gas is not allocated at the expense of other consumers. Hence, the public policy of affording a priority treatment to schools, hospitals, and essential agricultural uses can be implemented under this program without regard to alternative fuel capability. Such an approach has the added advantage of eliminating the practical difficulties of determining the alternative fuel capability of loads not previously classified in curtailment proceedings.

B. *Application Procedure.*— Several comments noted the practical difficulties in implementing direct sales transactions and observed that the application requirements placed upon a pipeline applicant posed an obstacle to participation by pipelines. The proposed rule eased the burden on the pipeline applicant by permitting the eligible user to apply on its behalf. The final rule would permit either the pipeline or the end user to file for transportation authority. In addition, the final rule clarifies the fact that the pipeline, the eligible user, or any other party may request a rehearing of the Commission's order on the application.

C. *Term.*—The proposed five-year certificate term drew varied reactions. Some parties contended that a five-year term, even with the option of renewal, did not provide the necessary certainty required to justify substantial investment in new plant and equipment. Others argued that given the changing nature of the natural gas industry and the undesirability of making long-term commitments of pipeline capacity, a shorter term may be preferable. The Commission finds that a five-year maximum term is reasonable. Parties with capacity concerns remain free to apply for certificates of shorter duration.

Some comments requested that reserves purchased in place by eligible users should qualify for certificates which last for the life of the reserves. Because this is an issue in a pending adjudication, Docket No. CP77–71, the Commission will defer the decision on this issue.

D. *Emergency Service to High Priority Users.*—The Commission sought comment upon the desirability of conditioning certificates with an interruption requirement. This condition would permit a pipeline to divert direct sale gas to serve high-priority users when curtailment of pipeline system supplies to these users was imminent. Some of the comments noted that the President has the authority to redirect direct sales gas during declared natural gas supply emergencies under NGPA section 303(d). Because the President may declare natural gas supply emergencies on a regional basis, the Commission views NGPA section 303(d) as offering sufficient flexibility to respond to emergency situations at this time.

Although NGPA section 303(d) provides for supply curtailment emergencies, capacity curtailment poses a separate problem. The Commission considers the interruption of direct sales gas deliveries as a result of pipeline capacity limitations to be a matter best left to the contractual negotiations between the parties.

E. *Relationship With Existing Programs.*—A number of comments suggested clarification of the direct sale program's relationship to the Commission's other regulations. In general, all applicable regulations apply unless expressly waived in the final rule. Hence, no provision for the interim collection of an incentive price by a producer is necessary, since NGPA section 503(c) and §§ 273.202 and 273.203 of this chapter provide for such collections pending the determination of a maximum lawful price. Similarly, the general procedures stated in Subpart A of Part 157 concerning certificate applications apply and need not be restated in this rule.

Several comments suggested adding additional eligibility requirements. Some have suggested that an eligible user who is served by a distributor must file an affidavit that the distributor cannot serve the user from the distributor's sources of supply. The Commission views such a filing requirement as unnecessary. User-distributor discussions are ensured by both the execution of the distributor's transportation contract and the filing of a statement by the distributor that it has capacity sufficient to perform the transportation services without detriment or disadvantage to its other customers (§ 157.103(d)). In addition, the price differential between the distributor's rolled-in systems supplies and the more expensive direct sale gas makes competition between direct sales and firm service by a distributor unlikely. Instead, the direct sale program established by this rule serves to complement the other services provided by distributors, within the

framework of the applicable state regulation.

Similarly, the direct sale program complements the role of the interstate pipelines in meeting their customer's needs. Interstate natural gas pipelines are not common carriers,[2] and their participation in this program is voluntary. However, several commentators note that some interstate pipelines have excess capacity which although not being utilized to meet the needs of current customers is being paid for by the pipeline's ratepayers. Direct sales programs offer interstate pipelines an opportunity to utilize unused capacity and to reduce the burden upon their ratepayers.[3] If an interstate pipeline is unwilling to avail itself of such opportunities, it becomes difficult to see why the ratepayer should continue to bear this burden. However, if necessary, such considerations are best addressed in individual rate proceedings where all facts can be fully developed.

In summary, we have concluded that the public interest is best served by accommodating customer requirements through pipeline system supply. Such an approach offers both economic and administrative advantages to the pipelines as well as reducing the regulatory burden of approving transactions on a case-by-case basis. However, a direct sale program is appropriate to serve high priority uses which cannot be served through pipeline system supplies.

F. *Eligibility of Gas Reserves.*— Several parties request that Outer Continental Shelf (OCS) gas should be eligible for participation in the direct sale program. In addition, the First Mississippi Corporation contends that excluding OCS gas from the program is "unlawful."[4]

The Commission views First Mississippi's legal objection to be without merit. First, the requirement that the reserves must not be "committed or dedicated to interstate commerce"[5] is subject to waiver under § 157.104(b). Although request for waivers will receive careful consideration in light of the public interest served by the individual transactions, the Commission considers the § 157.104(a) general eligibility rule to be necessary in order to provide guidance to parties in planning transactions. Second, the courts have repeatedly held that the Commission has discretion in evaluating the present and future public convenience and necessity of transportation of direct sale gas. In the context of direct sales, the Commission may consider,

> "among other factors, those of end use, preemption of pipeline facilities and price. * * *" (*F.P.C.* v. *Transcontinental Gas Corp.*, 365 U.S. 1, 31 (1961)).

Given the special nature of OCS gas and the pipeline facilities used to bring such gas onshore, the Commission acts within its discretion by cautiously approaching direct sales of OCS gas.

The "committed or dedicated" test adopted in § 157.104(a) furthers several important policies. The Commission seeks to avoid disruption of OCS supply patterns. Such disruptions are particularly undesirable in light of pending litigation.[6] In addition, the public interest is best served when low-cost "committed or dedicated" reserves are allocated according to priority of use within the framework of state-approved or FERC-approved curtailment plans. Continued allocation of "committed or dedicated" reserves according to the terms of such plans will protect existing high-priority uses. In contrast to the policy considerations which resulted in the assignment of a high-curtailment priority to residential and other uses, the eligible uses served by the direct sale program do not have as compelling an equitable claim to the traditional sources of interstate pipeline system supply. At this time of transition toward the new regulatory patterns established by the NGPA, the Commission is not prepared to jeopardize the availability of low-cost supplies to existing customers to make such gas available through direct sales to new customers or to existing customers seeking increased loads.

The selection of the "committed or dedicated" test is predicated upon an additional policy consideration. NGPA section 315(b)(3) gives interstate pipelines the opportunity to match the terms of a sales agreement "substantially accepted in principle" by a competing buyer. Because "committed or dedicated" gas is ineligible for transportation in the proposed direct sale program, and because section 315(b)(3) applies only to gas which is "committed or dedicated," the test prevents the direct sales program from affecting the contract terms available to interstate pipelines under section 315(b)(3).

For these reasons, the Commission will consider the use of "committed or dedicated" reserves only on a case-by-case basis under the waiver provision of § 157.104(b).

III. Summary of Final Rule

Subpart E of Part 157 supplements the Commission's existing direct sale authorization of allowing the transportation of direct sale gas to certain users that may not currently be eligible to have natural gas transported under 18 CFR 2.79.

Section 157.101 indicates the manner in which such direct sale authority is implemented. Subpart E would permit the transportation of direct sale gas to all essential agricultural users as certified by the Secretary of Agriculture, and all schools, hospitals, and similar institutions.

A transportation certificate under section 7(c)(2) of the Natural Gas Act would be issued to the transporting interstate pipeline. However, as indicated in § 157.10(a), either the pipeline or the eligible user on behalf of the pipeline may make application for the certificate. Because the application must include executed contracts, applications cannot be filed until the producer, pipeline, eligible user, and any distributor all consent to the transaction.

Applications for a permanent certificate may include application for a temporary transportation certificate. All applications will be processed on an expedited basis. Although section 7(c)(2) of the Natural Gas Act makes no explicit provision for temporary certificates, section 16 of the Natural Gas Act is sufficient legal authority for the Commission to grant such temporary certificates. (See *Hunt Oil Company* v. *F.P.C.*, 334 F.2d 474 (5th Cir. 1964).)

Temporary certificates may be issued by the Director of the Office of Pipeline and Producer Regulation. This delegation is achieved by including a conforming amendment to § 3.5(f)(1)(iv) of this chapter in this rulemaking. Permanent certificates will be issued by the Commission after notice, an opportunity for protest and, where appropriate, a hearing.

Secton 157.101(c) assures that the pipeline, the eligible user, as well as any

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[2] See NGPA Section 602(b).

[3] Section 157.105(g) requires the Part 284 rate to be used. Section 284.103(d) requires revenues in excess of out-of-pocket costs to be flowed through the ratepayers in Account 191.

[4] Washington Public Hearing transcript at 237.

[5] All OCS gas is defined to be "committed or dedicated" by NGPA section 2(18)(a)(i). The Commission recognizes that the "committed or dedicated" standard is applied to OCS gas in the NGPA for jurisdictional and pricing purposes only. While the legal application of the definition is limited to 16 substantive NGPA provisions, the test still represents the most practicable test for classifying reserves in a manner which will achieve the Commission's policy objectives. Many producers would have previously applied this test when filing under the NGPA interim collection procedures as set forth in § 273.201(c)(2) and § 273.202(d)(1)(v) of this chapter.

[6] *See, Air Products & Chemicals, Inc.* v. *F.E.R.C.*, 5th Cir., Docket No. 78-2011, and *Public Service Commission of the State of New York* v. *F.E.R.C.*, D.C. Cir., Docket No. 78-1572.

other party will have the opportunity to seek rehearing of a Commission order acting upon the application.

Section 157.102 defines "eligible uses" to include any use certified as an "essential agricultural use" by the Secretary of Agriculture pursuant to section 401(c) of the NGPA, and uses by hospitals and schools or similar institutions as those terms are defined in §§ 281.103(b)(2) and (3) of this chapter. These definitions reflect the priorities of section 401 of the NGPA. An "eligible user" is defined as anyone who consumes natural gas for an eligible use. Residential and small commercial users have historically been protected from curtailment of service from general pipeline supplies, and NGPA section 311(a) provides these users further protection through local distribution companies. As a result, they do not require the access to direct sales provided under the final rule. Additionally, the large number of such users in this category could not be accommodated practically under the direct sale program.

The Commission has determined that its policy governing the transportation of direct sale gas should be expanded to include eligible users who are not facing curtailment, to serve new eligible users, and to supply the increased loads of existing eligible users.

A determination under NGPA section 401(b) by the Commission that an essential agricultural user has an available alternative fuel will have no effect upon that user's eligibility to have its direct sale gas transported. (See Part II(A) above). Thus, eligible users can utilize direct sale gas to replace other fuels, in whole or in part, to meet its energy requirements.

Congress, in section 401(f), elevated the previously low-priority boiler fuel use by schools and hospitals to high-priority status. Such a change reflects a shift from "end-use" to "end-product" tests in determining curtailment priorities for the uses designated in NGPA section 401. The Department of Agriculture has used an "end-product" test as the sole criterion for defining "essential agricultural uses" in its Interim Final Rule.[7] The Commission has applied this same test in its proposed definition of "eligible uses" for direct sale gas transportation.

Section 157.102(c) is an exercise of the Commission's rulemaking authority under section 7(c)(2) of the Natural Gas Act. It determines that "high-priority uses" shall include eligible uses as defined in § 157.102. Section 157.103 sets out the data that must be supplied in an application for direct sale transportation authorization.

Section 157.104 limits the type of gas that qualifies for direct sale transportation by reliance upon the "committed or dedicated" test defined in NGPA section 2(18). This test is designed to prevent the disruption of the offshore supply patterns and to preserve low-cost supplies for interstate system supply. Proposed § 157.104(a) applies the "committed or dedicated" test as of November 8, 1978. This date is used for applying the test because it is used in pricing determinations under NGPA section 104, 105, 106, and 109 and in deciding which natural gas is subject to the right of first refusal under NGPA section 315(b). (See Part II(F) above.)

Should an applicant wish to transport direct sale gas that is ineligible for transportation under § 157.104(a), paragraph (b) authorizes a request for a waiver of the § 157.104(a) requirement. For example, the Commission could consider waivers for "committed or dedicated" gas classified under NGPA section 107, even though such natural gas does not qualify under § 157.104(a).

Section 157.105 establishes general conditions that are automatically incorporated into any certificates issued under the proposed rule.

The maximum term for the certificate is five years. The five-year term reflects several considerations. First, comments received during the Commission's consideration of 18 CFR 2.79 indicate that more than two years are required to attract many of the potential sources of new gas supplies. Second, users served by this program do not require more frequent recertification, as their progress toward conversion to alternative fuel is not a consideration under this program. Third, a number of optimistic supply projections have recently been put forward and, if correct, could provide a basis for extending the maximum term. On the other hand, natural gas production is in an evident period of transition and uncertainty. The public interest would not appear to be served by long-term transportation commitments, at this time.

The Commission will entertain requests for a ten-year term in applications by the users who develop and produce their own reserves. However, the ten-year term will not be available to eligible users who merely acquire reserves-in-place. This longer certificate term is intended to provide eligible users an incentive to develop new natural gas supplies.

Under § 157.105(b), a pipeline may apply for a renewal certificate. Such reapplication will be reviewed *de novo*. Thus, an eligible user who enters into a contract for the purchase of direct sale gas for a period of more than five years does so at its own risk. Paragraph (c) provides a six-month grace period to permit delivery of volumes beyond the end of the certificate's term if the producer contract includes a take-or-pay provision.

Section 157.105(d) requires an acceptance of the certificate to be filed only by the interstate pipeline company. The eligible user, the producer, and any nonjurisdictional transporter of the direct sale gas are deemed to consent to the transportation certificate through their execution of the contracts filed with the application. Under paragraph (e) if the gas is diverted to uses other than the eligible uses, the certificate authorization ceases and any further deliveries by the pipeline would be in violation of the Natural Gas Act. While interstate pipelines cannot completely monitor the end-uses of their customers, the sanctions of Natural Gas Act section 21 will apply to any pipeline which willfully and knowingly continues to transport direct sale gas to a customer who has diverted gas from eligible uses.

Paragraph (f) requires the eligible user to file an annual report within 60 days of the anniversary of the issue date of the certificate. The report will deter possible diversion of direct sale gas from eligible uses.

Paragraph (g) requires the interstate and intrastate pipelines transporting direct sale gas to use the same rate methodology that applies to transportation under section 311(a) of the NGPA. This rate methodology is also used in the recently promulgated emergency purchase regulations (Subpart C of Part 157).

(Natural Gas Act, as amended, 15 U.S.C. 717 *et seq.* Public Utilities Regulatory Policies Act of 1978, Pub. L. 95-617, Natural Gas Policy Act of 1978, Pub. L. 95-621, Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 43 FR 46267).

In consideration of the foregoing, Chapter I of Title 18, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Lois D. Cashell,
Acting Secretary.

[7] 7 CFR Part 2900, 44 FR 11518 (March 1, 1979). Although some end-use tests are incorporated into the Department of Agriculture's certification of Essential Agricultural Volumetric Requirements in 7 CFR 2900.4, such requirements are not incorporated into the 7 CFR 2900.3 test used here.

PART 3—ORGANIZATION, OPERATION, INFORMATION AND REQUESTS

1. Section 3.5(f) of Subchapter A of Chapter I, Title 18, Code of Federal Regulations, is amended to read as follows:

§ 3.5 Delegations of final authority.

The Commission authorizes:

* * * * *

(f) The Director of the Office of Pipeline and Producer Regulation or in the Director's absence, the Director's designee to:

(1) Pass upon the following types of applications or amendments to applications: *Provided,* That no formal opposition to the applications or amendments is timely filed with the Commission.

* * * * *

(iv) Applications for temporary certificates for the transportation of natural gas to end-users, pursuant to § 2.79 or § 157.101 of this chapter.

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

2. Subchapter E is amended by designating § 157.5 through 157.22 as Subchapter A—Applications for certificates of public convenience and necessity and for Orders permitting and approving abandonment under section 7 of the Natural Gas Act, as amended, concerning any operation, sales service, construction, extension, acquisition or abandonment and § 157.23 through 157.42 as subpart B—Filings by producers and gatherers of natural gas which are also natural gas companies.

Subpart A—Applications for Certificates of Public Convenience and Necessity and for Orders Permitting and Approving Abandonment Under Section 7 of the Natural Gas Act, as Amended, Concerning any Operation, Sales, Service, Construction, Extension, Acquisition, or Abandonment

§§ 157.5 through 157.22 [Redesignated as Subpart A]

Subpart B—Filings by Producers and Gatherers of Natural Gas Which Are Also Natural Gas Companies

§§ 157.23 through 157.42 [Redesignated as Subpart B]

3. Subchapter E is further amended by adding a new Subpart E to read as follows:

Subpart E—Transportation Certificates Under Section 7(c)(2) of the Natural Gas Act

Sec.

157.100 Applicability.
157.101 General rule.
157.102 Eligible uses.
157.103 Application requirements.
157.104 Eligible gas reserves.
157.105 General conditions.

Authority:

Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.* Public Utilities Regulatory Policies Act of 1978, Pub. L. 95–617, Natural Gas Policy Act of 1978, Pub. L. 95–621, Department of Energy Organization Act, Pub. L. 95–91, E.O. 12009, (43 FR 46267).

Subpart E—Transportation Certificates Under Section 7(c)(2) of the Natural Gas Act

§ 157.100 Applicability.

This subpart implements section 7(c)(2) of the Natural Gas Act and applies to transportation certificates of public convenience and necessity for direct sales of natural gas to certain high-priority users. This subpart covers both the transportation of gas sold by a producer and natural gas produced by high-priority users.

§ 157.101 General rule.

(a) *Applications.* Any interstate pipeline, or eligible user on behalf of an interstate pipeline, may file an application as described in § 157.103 for transportation to serve eligible uses as defined in § 157.102.

(b) *Temporary certificates.* Any such application may include a request for a temporary certificate and shall be processed by the Commission staff on an expedited basis.

(1) If the application for a temporary transportation certificate is sufficient on its face, a temporary transportation certificate may be issued by the Director of the Office of Pipeline and Producer Regulation pursuant to his authority under § 3.5(f)(1)(iv) of this chapter.

(2) The pipeline may, within 30 days of the date of issuance, file in writing its acceptance or rejection of the temporary certificate. If no acceptance or rejection has been filed within the 30 days, the temporary certificate shall be deemed to have been accepted and shall be effective on the issue date of the order granting such temporary certificate, or such other date prescribed by the Commission.

(c) *Rehearing.* The eligible user, the interstate pipeline or any other party may file for rehearing in any proceeding involving the application, under the provisions of § 1.34 of this chapter.

§ 157.102 Eligible uses.

(a) For the purposes of this subpart, the term "eligible uses" means:

(1) Any use of natural gas certified by the Secretary of Agriculture under 7 CFR 2900.3 as an "essential agricultural use" under section 401(c) of the Natural Gas Policy Act of 1978; or

(2) Any use of natural gas by a person who uses natural gas in a hospital or school or similar institution as defined in §§ 281.103(b)(2) and (3) of this chapter.

(b) An "eligible user" is any person who consumes natural gas for an eligible use.

(c) These eligible uses are "high-priority uses" within the meaning of section 7(c)(2) of the Natural Gas Act.

§ 157.103 Application requirements.

All applications pursuant to this subpart must:

(a) Indicate volumes to be transported under the proposed certificate on a peak day, average day and annual basis;

(b) Include a statement by the interstate pipeline that it has capacity sufficient to perform the transportation service without detriment or disadvantage to its existing customers who are dependent on the pipeline's general system supply;

(c) Indicate the impact of the proposed transportation on the pipeline's ability to provide systemwide deliveries for requirements defined in § 2.78(a)(1)(i) of this chapter;

(d) Provide a copy of the proposed transporation agreement, indicating the proposed transportation rate together with a breakdown and justification of the proposed rate level to the extent indicated in § 284.106 of this chapter for interstate pipelines or § 284.126 of this chapter for intrastate pipelines;

(e) Include a statement by the distributor or intrastate pipeline that it has capacity sufficient to perform the transportation service without detriment or disadvantage to its other customers;

(f) Describe any facilities that will be constructed in order to provide the services, as well as any other facilities that will be utilized, and specify their location. For purposes of this paragraph, interstate pipelines may file abbreviated applications without stating a justification. For purposes of this paragraph, the following provisions are waived for intrastate pipelines:

(1) 18 CFR 157.13—Form of Exhibits to be attached to applications;

(2) 18 CFR 157.14—Exhibits;

(3) 18 CFR Part 159—Fees and annual charges under the Natural Gas Act;

(4) 18 CFR Part 201—Uniform system of accounts for natural gas companies; and

(5) 18 CFR Part 260—Statements and reports (schedules).

(g) Indicate that the proposed end-users of such consumption are eligible uses;

(h) Indicate the total end-use requirements profile for natural gas at the location where the transported natural gas will be used;

(i) Provide a copy of the gas purchase contract with the producer underlying the proposed transportation;

(j) Provide a certified copy, if one has been obtained, of any currently effective determination by a jurisdictional agency under section 503 of the Natural Gas Policy Act of 1978 and Part 274 of this chapter applicable to the natural gas to be transported;

(k) File an affidavit that includes the well number of numbers from which the natural gas will be produced, and either state that the natural gas meets the eligibility requirements of § 157.104, or make applications for waiver of such requirements;

(l) If an intermediary participates in the transaction between the eligible user and the producer and charges a fee, indicate the amount of the fee and terms of payment and the intermediary's affiliation, if any, with the producer, pipeline and/or distributor;

(m) If the eligible user assumes the cost of the construction of any facilities in order to consummate the purchase, provide the cost, terms of payment, ownership and date of construction of the facilities.

§ 157.104 Eligible gas reserves.

(a) *Eligiblity test.* No certificate issued under this subpart may authorize the transportation of natural gas which was committed or dedicated to interstate commerce, as defined in section 2(18) of the Natural Gas Policy Act of 1978, on November 8, 1978.

(b) *Waiver.* A waiver of the requirement of paragraph (a) may be granted by the Commission upon a showing that such waiver is in the public interest.

§ 157.105 General conditions.

(a) *Term.* (1) Transportation certificates under this subpart may be issued for a term of up to 5 years.

(2) If the natural gas reserves are owned and developed by an eligible user, as determined by the Commission, a certificate may be issued under this subpart for a term of up to 10 years upon a showing that such longer term is necessary to permit the economical recovery of the reserves.

(3) The term shall commence upon the issuance of the certificate.

(b) *Renewal.* Certificates issued under this subpart may be renewed upon reapplication, within 12 months of its expiration.

(c) *Extention of term for take-or-pay users.* If an eligible user is unable to receive natural gas supplies for which it has paid under a take-or-pay provision in the underlying sales contract, the transporting pipelines may file a request for a six-month extension of the certificate authorization. The request shall include a statement of the undelivered volumes and the time necessary to complete delivery thereof. Upon receipt of a letter from the Secretary of the Commission acknowledging a filing of such purposes, the requested extension shall be deemed approved.

(d) *Acceptance of certificate.* Except as provided in subparagraphs (1) and (2) of this paragraph or in § 157.101(b) of this chapter, the certificate shall be void and without force or effect unless accepted in writing by the pipeline within 30 days from the issue date of the order issuing such certificate.

(1) When an application for rehearing of such order is filed in accordance with section 19 of the Natural Gas Act, the acceptance shall be filed within 30 days from the date on which the application for rehearing is denied or deemed to have been denied.

(2) When a petition for review is filed in accordance with the provisions of section 19 of the Natural Gas Act, acceptance shall be filed within 30 days after the final judicial review.

(e) *Termination.* The certificate issued to the pipeline is not transferable in any manner and shall be effective only so long as the natural gas is consumed for eligible uses and the pipeline continues the operations authorized by the order issuing such certificate and in accordance with the provisions of the Natural Gas Act, as well as the applicable rules, regulations, and orders of the Commission.

(f) *Annual filing.* The eligible user shall file annual reports, within 60 days of the anniversaries of the issue date of the certificate, containing:

(1) The total amount of natural gas consumed during the preceding 12 month period.

(2) The end-use of such amounts.

(3) The amount of natural gas consumed from other sources during the 12-month period.

(4) The end-use of the natural gas from those other sources together with a list of those other sources, and

(5) The average delivered cost per Mcf paid, itemized by amounts paid to:

(i) The producer,

(ii) Each pipeline and distributor involved in transporting the natural gas, and

(iii) Any other parties.

(g) *Rates and charges.* The rates for transporation by any interstate or intrastate pipelines will be charged in accordance with Part 284 of this chapter.

[Docket No. RM79-18]

[FR Doc. 79-13177 Filed 4-26-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 841

Public Housing Program; Development Phase; Prototype Cost Limits for Low Income Housing

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

ACTION: Notice of Prototype Cost Determination Under 24 CFR, Part 841, Subpart A.

SUMMARY: On June 22, 1978, the Department published a revised Schedule of "Prototype Cost Limits for Low-Income Housing". After consideration of additional factual data, a revision is necessary to increase the elevator prototype cost limits for the Kennewick, Washington Prototype area.

DATE: Effective April 27, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Jack R. VanNess, Director, Technical Support Division, Office of Public Housing, Room 6282, 451 7th Street, SW., Washington, D.C., 20410, (202) 755-5880. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: This schedule establishes per unit limits on prototype costs (dwelling construction and equipment) for development of public housing under the United States Housing Act of 1937. The Act provides (Section 6(b)) that the prototype costs shall become effective upon the date of publication in the **Federal Register**, and this Notice is therefore made effective April 27, 1979.

Timely written comments will be considered and additional amendments will be published if the Department determines that acceptance of the comments is appropriate. Comments with respect to cost limits for a given location should be sent to the address indicated above.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969, has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk.

Accordingly, the Prototype Per Unit Cost Schedules issued under 24 CFR, Part 841, Appendix A, Prototype Cost Limits for Low-Income Housing are amended as follows:

1. At FR 27054, revise the prototype per unit cost schedule for the elevator dwellings as shown on the prototype per unit cost schedule, Region X, Kennewick, Washington.

(Sec. 7(d), Department of HUD Act, (42 U.S.C. 3535(d)); sec. 6(d), U.S. Housing Act of 1937, (42 U.S.C. 1437(d)).)

Issued at Washington, D.C. on April 16, 1979.

Morton Baruch,

Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

BILLING CODE 4210-01-M

PROTOTYPE PER UNIT COST SCHEDULE

REGION X

KENNEWICK	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.							
Row Dwellings							
Walk-Up							
Elevator-Structure	22,250	24,500	31,100				

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.							
Row Dwellings							
Walk-Up							
Elevator-Structure							

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.							
Row Dwellings							
Walk-Up							
Elevator-Structure							

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.							
Row Dwellings							
Walk-Up							
Elevator-Structure							

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.							
Row Dwellings							
Walk-Up							
Elevator-Structure							

[Docket No. R-79-657]
[FR Doc. 79-13082 Filed 4-26-79; 8:45 am]
BILLING CODE 4210-01-C

24 CFR Part 888

Section 8 Housing Assistance Payment Program; Fair Market Rents for New Construction and Substantial Rehabilitation

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner—Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This final rule revises Fair Market Rents (FMRs) for the Ada, Ardmore, Enid, Guymon, Lawton, Oklahoma City, Shawnee, Stillwater, and Woodward, Oklahoma; and the Santa Ana and San Bernardino, California market areas.

EFFECTIVE DATE: May 29, 1979.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Supervisory Appraiser, Valuation Branch, Technical Support Division, Office of Multifamily Housing Development, 451–7th Street, SW., Washington, D.C. 20410 (202) 755–9320. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Notice was given on December 28, 1978 at 43 FR 60584, 60585, and 60586 that HUD was proposing to amend Title 24 of the Code of Federal Regulations by incorporating in Part 888 Subpart A, a revised Schedule A, "Fair Market Rents for New Construction and Substantial Rehabilitation (including Housing Finance and Development Agencies Program)" for the above Oklahoma and California market areas. HUD has received no comments in response to the December 28, 1978 publication; therefore, the Fair Market Rents as proposed are adopted without change.

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

Accordingly, Schedule A of Part 888 is amended as set forth below.

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

Issued at Washington, D.C., on April 16, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation (Including Housing Finance and Development Agencies Program).

These Fair Market Rents have been trended ahead two years to allow time for processing and construction of proposed new construction and substantial rehabilitation rental projects.

Note.—The Fair Market Rents for (1) dwelling units designed for the elderly or handicapped are those for the appropriate size units, not to exceed 2-Bedroom, multiplied by 1.05 rounded to the next higher whole dollar. (2) congregate housing dwelling units are the same as for non-congregate housing units, and (3) single room occupancy dwelling units are those for 0-Bedroom units of the same type.

BILLING CODE 4210-01-M

AREA OFFICE OKLAHOMA CITY, OKLAHOMA REGION VI - DALLAS.

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
OKLAHOMA CITY, OKLA.	DETACHED			307	386	452
	SEMI-DETACHED/ROW	218	252	284	350	404
	WALKUP	195	225	254	313	361
	ELEVATOR-2-4 Sty	219	249	278		
	5 + Sty	329	353	400		
ADA, OKLA.	DETACHED			362	414	468
	SEMI-DETACHED/ROW	213	251	335	382	451
	WALKUP	190	224	299	341	403
	ELEVATOR-2-4 Sty	214	248	323		
	5 + Sty	286	339	424		
ARDMORE, OKLA.	DETACHED			322	397	453
	SEMI-DETACHED/ROW	214	246	305	375	414
	WALKUP	191	220	272	335	370
	ELEVATOR-2-4 Sty	215	244	296		
	5 + Sty	311	334	414		
ENID, OKLA.	DETACHED			395	457	532
	SEMI-DETACHED/ROW	256	277	348	400	454
	WALKUP	229	247	311	358	405
	ELEVATOR-2-4 Sty	253	271	335		
	5 + Sty	370	401	511		
GUYMON, OKLA.	DETACHED			351	426	493
	SEMI-DETACHED/ROW	192	225	324	393	440
	WALKUP	171	201	289	351	393
	ELEVATOR-2-4 Sty	195	225	313		
	5 + Sty	284	315	450		
LAWTON, OKLA.	DETACHED			318	434	493
	SEMI-DETACHED/ROW	206	271	296	399	440
	WALKUP	184	242	264	356	393
	ELEVATOR-2-4 Sty	208	266	288		
	5 + Sty	301	366	401		

AREA OFFICE OKLAHOMA CITY, OKLAHOMA REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SHAWNEE, OKLA.	DETACHED			322	381	429
	SEMI-DETACHED/ROW	199	239	298	352	384
	WALKUP	178	213	266	314	343
	ELEVATOR-2-4 Sty	202	237	290		
	5 + Sty	293	323	406		
STILLWATER, OKLA.	DETACHED			313	404	474
	SEMI-DETACHED/ROW	218	244	289	373	424
	WALKUP	195	218	258	333	379
	ELEVATOR-2-4 Sty	219	242	282		
	5 + Sty	294	330	394		
WOODWARD, OKLA.	DETACHED			317	297	470
	SEMI-DETACHED/ROW	206	246	293	366	420
	WALKUP	184	220	262	327	375
	ELEVATOR-2-4 Sty	208	244	286		
	5 + Sty	309	340	410		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE LOS ANGELES, CA. REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SANTA ANA, CALIF.	DETACHED			472	530	570
	SEMI-DETACHED/ROW		369	450	502	543
	WALKUP	295	351	417	461	495
	ELEVATOR-2-4 Sty	310	367	435		
	5 + Sty	424	491	592		
SAN BERNARDINO, CALIF.	DETACHED			460	512	568
	SEMI-DETACHED/ROW		348	425	471	535
	WALKUP	362	316	377	409	454
	ELEVATOR-2-4 Sty	280	336	399		
	5 + Sty	387	428	544		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

[Docket No. R-79-589]
[FR Doc. 79-13061 Filed 4-26-79; 8:45 am]
BILLING CODE 4210-01-C

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 221

Colorado River Indian Irrigation Project, Arizona

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: The purpose of this final regulation is to delete provisions from Title 25 of the Code of Federal Regulations that are being replaced by a Public Notice to be published in the **Federal Register** simultaneously with this final rule.

EFFECTIVE DATE: This final rule shall become effective on June 30, 1979.

FOR FURTHER INFORMATION CONTACT: Vernon M. Hughes, Bureau of Indian Affairs, Colorado River Agency, Parker, Arizona 85344, telephone number 602–669–2187.

SUPPLEMENTARY INFORMATION: Pursuant to § 191.1(e) of Part 191, Chapter I, Subchapter T of Title 25 of the Code of Federal Regulations, this final rule is published under authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 230 DM 1 and redelegated by the Assistant Secretary of Indian Affairs to the Area Director in 10 BIAM 3. The principal author of this document is Vernon M. Hughes, Bureau of Indian Affairs, Colorado River Agency, Parker, Arizona 85344, telephone number 602–669–2187.

§§ 221.6, 221.7, 221.8, and 221.8a [Deleted]

Chapter I, Subchapter T of Title 25, Code of Federal Regulations is amended by deleting §§ 221.6, 221.7, 221.8, and 221.8a, of Part 221.

Note.—It is hereby certified that the economic and inflationary impacts of this final regulation have been carefully evaluated in accordance with Executive Order 11821.

Harold D. Roberson,
Assistant Area Director.

[FR Doc. 79-13073 Filed 4-26-79; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income taxes; One-Time Exclusion of Gain From Sale of Principal Residence by Individual Who Has Attained Age 55

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the one-time exclusion of gain from the sale of a principal residence by an individual who has attained age 55. These regulations make conforming changes in the existing regulations to reflect the amendments made by section 404 of the Revenue Act of 1978.

DATE: These regulations are effective for sales or exchanges after July 26, 1978.

FOR FURTHER INFORMATION CONTACT: Stephen J. Small of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202–566–3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This Treasury decision revises the existing regulations under section 121 of the Internal Revenue Code of 1954 to reflect the statutory changes made by section 404 of the Revenue Act of 1978 (Pub. L. 95–600, 92 Stat. 2763). Prior law allowed a taxpayer who had attained age 65 to exclude from gross income, on a one-time basis, the entire gain realized on the sale of his or her principal residence only if the adjusted sales price was $35,000 or less. If the adjusted sales price exceeded $35,000, the amount excludable was the portion of the gain determined by multiplying the total gain by a fraction, the numerator of which was $35,000 and the denominator of which was the adjusted sales price of the residence. The new law lowers the age requirement to 55 years and raises the ceiling on the amount of gain excludable from gross income to $100,000 ($50,000 in the case of a separate return by a married individual).

Additionally, prior law required that in order to qualify for the section 121 exclusion, the taxpayer must have owned and used the property as his or her principal place of residence for periods aggregating at least five of the eight years immediately preceding the sale. Section 404 of the Revenue Act of 1978 substituted an ownership and use requirement generally of three out of the five years preceding the sale.

Because the amendment to the regulations is nonsubstantive and essentially a computational change that reduces the burden of taxation for eligible taxpayers, it is found unnecessary to issue this Treasury decision with notice and public procedure. For the same reasons, this regulation is not a significant regulation under paragraph 8 of the Treasury Directive appearing in the **Federal Register** for November 8, 1978 (43 FR 52120).

Drafting Information

The principal author of this regulation is Stephen J. Small of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Waiver of Certain Procedural Requirements of the Treasury Directive

A determination has been made by Jerome Kurtz, Commissioner of Internal Revenue, that there is an immediate need for amendment of the regulations under section 121 in order to clarify for eligible taxpayers the application of the new provisions of the law in this area. Because of the immediate need for clarification, compliance with the procedural requirements of paragraphs 8 through 14 of the Treasury directive relating to improving regulations (43 FR 52120) would be impractical and, therefore, these requirements have not been followed.

Adoption of Amendments to the Regulations

PART 1—INCOME TAXES

Accordingly, 26 CFR Part 1 is amended as follows:

§ 1.121 [Deleted]

Paragraph 1. Section 1.121 is deleted.

§ 1.121–1 [Amended]

Par. 2. Section 1.121–1 is amended as follows:

1. The heading of § 1.121–1 is amended by deleting the number "65" and inserting in lieu thereof the number "55".

2. Paragraph (a) is amended by deleting the word "his" wherever it appears and inserting in lieu thereof the phrase "the taxpayer's", by deleting the number "65" and inserting in lieu thereof the number "55", by deleting the number

"5" and inserting in lieu thereof the number "3", by deleting the phrase "During the 8-year" and inserting in lieu thereof the phrase "Except as provided in paragraph (b) of this section, during the 5-year", and by deleting the last two sentences.

3. Paragraph (b) is amended as follows:

a. Example (1) is deleted and a new example (1) is inserted to read as set forth below.

b. Examples (2), (3), and (4) are re-designated (3), (4), and (5).

c. Example (3), as re-designated, is amended as follows:

i. The number "5" is deleted wherever it appears and the number "3" is inserted in lieu thereof.

ii. The letter "B" is deleted and the letter "C" is inserted in lieu thereof.

iii. The date "1957" is deleted and the date "1973" is inserted in lieu thereof.

iv. The date "1963" is deleted and the date "1979" is inserted in lieu thereof.

v. The phrase "January 1, 1964" is deleted and the phrase "January 1, 1980" is inserted in lieu thereof.

vi. The phrase "December 31, 1967" is deleted and the phrase "July 31, 1982" is inserted in lieu thereof.

vii. The number "8" is deleted and the number "5" is inserted in lieu thereof.

d. Example (4), as re-designated, is amended as follows:

i. The letter "C" is deleted wherever it appears and the letter "D" is inserted in lieu thereof.

ii. The date "January 1, 1960" is deleted and the date "January 1, 1980" is inserted in lieu thereof.

iii. The date "February 1, 1964," is deleted and the date "February 1, 1982," is inserted in lieu thereof.

iv. The date "March 1, 1965," is deleted and the date "March 1, 1983," is inserted in lieu thereof.

v. The number "5" is deleted and the number "3" is inserted in lieu thereof.

vi. The number "8" is deleted and the number "5" is inserted in lieu thereof.

e. Example (5), as re-designated, is amended as follows:

i. The phrase "years 1956 through 1961, inclusive," is deleted and the phrase "three summers from 1977 through 1979," is inserted in lieu thereof.

ii. The word "summer" is deleted.

iii. The number "8" is deleted and the number "5" is inserted in lieu thereof.

iv. The number "12" is deleted and the number "6" is inserted in lieu thereof.

v. The phrase "January 1, 1962, to July 1, 1964 (30 months) exceeds 3 years, he" is deleted and the phrase "January 1, 1980, to September 30, 1981 (21 months) exceeds 2 years, he" is inserted in lieu thereof.

f. A new example (2) is inserted, as set forth below.

4. Paragraph (b) is redesignated as paragraph (d).

5. A new paragraph (b) is inserted to read as set forth below.

6. A new paragraph (c) is inserted to read as set forth below.

§ 1.121–1 Gain from sale or exchange of residence of individual who has attained age 55.

* * * * *

(b) *Transitional rule.* In the case of a sale or exchange of a residence before July 26, 1981, a taxpayer who has attained age 65 on the date of such sale or exchange may elect to have this section applied by substituting "8-year period" for "5-year period" and "5 years" for "3 years" in paragraph (a) of this section and where appropriate in §§ 1.121–4 and 1.121–5.

(c) *Ownership and use.* The requirements of ownership and use for periods aggregating 3 years or more may be satisfied by establishing ownership and use for 36 full months (or 60 full months if the transitional rule is elected) or for 1,095 days (365 × 3) (or 1,825 days if the transitional rule is elected). In establishing whether a taxpayer has satisfied the requirement of three years of use, short temporary absences such as for vacation or other seasonal absence (although accompanied with rental of the residence) are counted as periods of use.

(d) *Examples.* * * *

Example (1). Taxpayer A owned and used his house as his principal residence since 1966. On January 1, 1980, when he is over 55, A retires and moves to another state with his wife. A leases his house from then until September 30, 1981, when he sells it. A may make an election under section 121 with respect to any gain on such sale since he has owned and used the house as his principal residence for 3 years out of the 5 years preceding the sale.

Example (2). Taxpayer B purchased his house in 1971 when he was 65 and lived there with his wife. On July 1, 1977, he moved out and leased the house to a tenant. On September 15, 1979, he sold the house. Although he does not meet the use requirements of section 1.121–1 he may elect to use the transitional rule in section 1.121–1 (b), since the sale was made before July 26, 1981. Because he owned and used the house as his principal residence for 5 out of the 8 years preceding the sale, under the transitional rule he may elect the section 121 exclusion.

§ 1.121–2 [Amended]

Par. 3. Secton 1.121–2 is amended as follows:

1. Paragraph (a)(1) is deleted and a new paragraph (a)(1) is inserted to read as set forth below.

2. Paragraph (a)(2) is amended as follows:

a. The word "Example" is inserted after "(2)".

b. The number "$30,800", is deleted and the number "$160,800" is inserted in lieu thereof.

c. The number "$30,400" is deleted and the number "$160,400" is inserted in lieu thereof.

d. The phrase "that the adjusted sales price is $30,000 (amount realized reduced by fixing-up expenses described in § 1.1034–1(b)(6) of $400)." is deleted.

e. The number "$15,000" is deleted and the number "$107,900" is inserted in lieu thereof.

f. The number "$15,400" is deleted and the number "$52,500" is inserted in lieu thereof.

g. The phrase "bears the same ratio to the total amount of such gain as $20,000 bears to the adjusted sales price as $10,000 ($20,000/$30,000 × $15,000)" is deleted and the phrase "Is taxable is $7,900 ($107,900 − $100,000)." is inserted in lieu thereof.

h. The number "$10,000" is deleted and the number "$100,000" is inserted in lieu thereof.

3. Paragraph (b)(1) is amended by inserting the phrase "Except as provided in paragraph (c)," immediately following (1).

4. A new Paragraph (c) is inserted to read as set forth below.

§ 1.121–2 Limitations.

(a) *Dollar limitation*—(1) *Amount excludable.* Under secton 121(a), an individual may exclude from gross income up to $100,000 of gain from the sale of his or her principal residence ($50,000 in the case of a separate return by a married individual).

* * * * *

(c) *Additional election if prior sale was made on or before July 26, 1978.* In the case of any sale or exchange after July 26, 1978, section 121 shall be applied by not taking into account any election made with respect to a sale or exchange on or before such date.

§ 1.121–3 [Amended]

Par. 4. Section 1.121–3 is amended as follows:

1. Paragraph (d) is deleted.

§ 1.121–4 [Amended]

Par. 5. Section 1.121–4 is amended as follows:

1. Paragraph (b) is amended as follows:

a. The phrase "(see Form 2119 and the accompanying instructions)" is inserted after the first sentence.

b. Number (4) is deleted.

c. Number (5) is redesignated as (4).

d. Number (6) is redesignated as (5); the words "8 years" are deleted and the phrase "5 years (8 years under the transitional rule)" is inserted in lieu thereof.

e. Number (7) is redesignated as (6).

§ 1.121–5 [Amended]

Par. 6. Section 1.121–5 is amended as follows:

1. Paragraph (a) is amended as follows:

a. The word "as" in paragraph (a)(1)(ii) is deleted and the word "is" is inserted in lieu thereof.

b. Paragraph (a)(2) is amended by deleting the date "January 1, 1964," and inserting in lieu thereof the date "January 1, 1979," by deleting the date "1958" and inserting in lieu thereof the date "1968", by deleting the number "66" and inserting in lieu thereof the number "56", and by deleting the number "62" and inserting in lieu thereof the number "54".

2. Paragraph (b) is amended as follows:

a. The word "decreased" in paragraph (b)(1) is deleted wherever it appears and the word "deceased" is inserted in lieu thereof.

b. The number "8" is deleted and the number "5" is inserted in lieu thereof.

3. Paragraph (b)(2) is amended as follows:

a. The date "January 1, 1964" is deleted and the date January 1, 1979 is inserted in lieu thereof.

b. The date "January 1, 1957" is deleted and the date January 1, 1967 is inserted in lieu thereof.

c. The date "January 1, 1966" is deleted and the date January 1, 1981, is inserted in lieu thereof.

d. The date "December 31, 1967" is deleted and the date August 31, 1981, is inserted in lieu thereof.

e. The number "65" is deleted and the number "55" is inserted in lieu thereof.

f. The number "8" is deleted and the number "5" is inserted in lieu thereof.

g. The phrase "(January 1, 1960, through December 31, 1967)" is deleted and the phrase "(September 1, 1976, through August 31, 1981)" is inserted in lieu thereof.

h. The number "5" is deleted and the number "3" is inserted in lieu thereof.

i. The phrase "by owning and using the property as his principal residence for 6 years (1960 through 1965)" is deleted and a "." is inserted in lieu thereof.

4. Paragraph (d) is deleted and a new paragraph (d) is inserted to read as set forth below.

5. Paragraph (e)(2) is amended by deleting the number "3" and inserting in lieu thereof the number "2" and by deleting the number "8" and inserting in lieu thereof the number "5".

6. Paragraph (g)(2) is deleted and a new paragraph (g)(2) is inserted to read as set forth below.

§ 1.121–5 Special Rules.

* * * * *

(d) *Tacking of holding periods in the case of involuntary conversion.* If the basis of the property sold or exchanged is determined (in whole or in part) under subsection (b) of section 1033 (relating to basis of property acquired through involuntary conversion), then the holding and use by the taxpayer of the converted property shall be treated as holding and use by the taxpayer of the property sold or exchanged.

For the treatment of involuntary conversion as a "sale or exchange" see § 1.121–3(b).

* * * * *

(g) *Application of sections 1033 and 1034.*

* * * (2) The provisions of this paragraph are illustrated by the following examples:

Example (1). Taxpayer A sells his residence for $180,000, incurring $2,000 in fixing-up expenses described in section 1034(b)(2). He has a basis of $65,000 for the residence. Of his total gain of $115,000 ($180,000 − $65,000), $100,000 is excluded from his gross income under this section.

He may still use the provisions of section 1034 to defer all or part of the remaining $15,000 of gain. To determine the adjusted sales price for purposes of section 1034, the amount realized (consideration received minus selling expenses, described in paragraph (b)(4)(i) of section 1.1034–1) is reduced by the sum of the fixing-up expenses (described in paragraph (b)(6) of section 1.1034–1) plus the amount excluded under section 121. Here, then, for purposes of section 1034, A's adjusted sales price is $78,000 [($180,000 − $2,000) − ($100,000)]. If his new residence costs at least $78,000, all $15,000 of the remaining gain will be deferred. However, if he purchases a new residence for $72,000, then $6,000 ($78,000 − $72,000) of his gain is currently taxable.

Example (2). Taxpayer B's residence has a basis of $65,000. She sells the residence for $115,000. If she makes an election under section 121(a), her gain of $50,000 is all excluded from gross income, and, accordingly, no portion of the realized gain remains to be deferred under section 1034.

* * * * *

This Treasury decision amends the regulations under section 121 in order to clarify for eligible taxpayers the application of the new provisions of the law in this area. Additionally, the amendment allows eligible taxpayers to reduce their burden of taxation. For these reasons, it is found unnecessary and impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: April 19, 1979.

Donald C. Lubick,
Assistant Secretary of the Treasury

§ 1.121 [Deleted]

§ 1.121–1 Gain from sale or exchange of residence of individual who has attained age 55.

(a) *General rule.* Section 121(a) provides that a taxpayer may, under certain circumstances, elect to exclude from gross income gain realized on the sale or exchange of property which was the taxpayer's principal residence. Subject to the other provisions of section 121 and the regulations thereunder, the election may be made only if—

(1) The taxpayer attained the age of 55 before the date of the sale or exchange of the taxpayer's principal residence, and

(2) Except as provided in paragraph (b) of this section, during the 5-year period ending on the date of the sale or exchange of the property the taxpayer owned and used the property as the taxpayer's principal residence for periods aggregating 3 years or more.

(b) *Transitional rule.* In the case of a sale or exchange of a residence before July 26, 1981, a taxpayer who has attained age 65 on the date of such sale or exchange may elect to have this section applied by substituting "8-year period" for "5-year period" and "5 years" for "3 years" in paragraph (a) of this section and where appropriate in §§ 1.121–4 and 1.121–5.

(c) *Ownership and use.* The requirements of ownership and use for periods aggregating 3 years or more may be satisfied by establishing ownership and use for 36 full months (or 60 full months if the transitional rule is elected) or for 1,095 days (365 × 3) (or 1,825 days if the transitional rule is elected). In establishing whether a taxpayer has satisfied the requirement of three years of use, short temporary absences such as for vacation or other seasonal absence (although accompanied with rental of the residence) are counted as periods of use.

(d) *Examples.* The provisions of paragraph (a) are illustrated by the following examples:

Example (1). Taxpayer A owned and used his house as his principal residence since 1966. On January 1, 1980, when he is over 55, A retires and moves to another state with his wife. A leases his house from then until September 30, 1981, when he sells it. A may make an election under section 121(a) with

respect to any gain on such sale since he has owned and used the house as his principal residence for 3 years out of the 5 years preceding the sale.

Example (2). Taxpayer B purchased his house in 1971 when he was 65 and lived there with his wife. On July 1, 1977, he moved out and leased the house to a tenant. On September 15, 1979, he sold the house. Although he does not meet the use requirements of section 1.121–1(a), he may elect to use the transitional rule in section 1.121–1(b), since the sale was made before July 26, 1981. Because he owned and used the house as his principal residence for 5 out of the 8 years preceding the sale, under the transitional rule he may elect the section 121 exclusion.

Example (3). Taxpayer C lived with his son and daughter-in-law in a house owned by his son from 1973 through 1979. On January 1, 1980, he purchased this house and on July 31, 1982 , he sold it. Although B used the property as his principal residence for more than 3 years, he is not entitled to make an election under section 121(a) in respect of such sale since he did not own the residence for a period aggregating 3 years during the 5 year period ending on the date of the sale.

Example (4). Taxpayer D, a college professor, purchased and moved into a house on January 1, 1980. He used the house as his principal residence continuously to February 1, 1982, on which date he went abroad for a 1-year sabbatical leave. During a portion of the period of leave the property was unoccupied and it was leased during the balance of the period. On March 1, 1983, 1 month after returning from such leave, he sold the house. Since his leave is not considered to be a short temporary absence for purposes of section 121(a), the period of such leave may not be included in determining whether D used the house as his principal residence for periods aggregating 3 years during the 5 year period ending on the date of the sale. Thus, D is not entitled to make an election under section 121(a) since he did not use the residence for the requisite period.

Example (5). Assume the same facts as in example (1) except that during the three summers from 1977 through 1979, A left his residence for a 2-month vacation each year. Although, in the 5 year period preceding the date of sale, the total time spent away from his residence on such vacations (6 months) plus the time spent away from such residence from January 1, 1980, to September 30, 1981 (21 months) exceeds 2 years, he may make an election under section 121(a) since the 2-month vacations are counted as periods of use in determining whether A used the residence for the requisite period.

[T.D. 6856, 30 FR 13316, Oct. 20, 1965]

§ 1.121–2 Limitations.

(a) *Dollar limitation*—(1) Amount excludable. Under section 121(a), an individual may exclude form gross income up to $100,000 of gain from the sale of his or her principal residence ($50,000 in the case of a separate return by a married individual).

(2) *Example.* The provisions of this paragraph are illustrated by the following example:

Example. Assume that A sells his principal residence for $160,800, that the amount realized is $160,400 (selling price reduced by selling expenses, described in paragraph (b)(4)(i) of § 1.1034–1, of $400); and that A's gain realized from the sale is $107,900 (amount realized reduced by adjusted basis of $52,500). The portion of the gain which is taxable is $7,900 ($107,900)—($100,000). Thus $100,000 is the portion of the gain excludable from gross income pursuant to an election under section 121(a).

(b) *Application to only one sale or exchange.* (1) Except as provided in paragraph (c), a taxpayer may not make an election to exclude from gross income gain from the sale or exchange or a principal residence if there is in effect at the time the taxpayer wishes to make such election—

(i) An election made by the taxpayer, under section 121(a), in respect of any other sale or exchange of a residence, or

(ii) An election made by the taxpayer's spouse (such marital status to be determined at the time of the sale or exchange by the taxpayer, see paragraph (f) of § 1.121–5) under the provisions of section 121(a) in respect of any other sale or exchange of a residence (without regard to whether at the time of such sale or exchange such spouse was married to the taxpayer).

If the taxpayer and his spouse, before their marriage each owned and used a separate residence and if (after their marriage) both residences are sold, whether or not in a single transaction, an election under section 121(a) may be made with respect to a sale of either residence (but not with respect to both residences) if, at the time of sale, the age, ownership, and use requirements are met.

(2) The provisions of this paragraph are illustrated by the following examples:

Example (1). While A and B are married, A sells his separately owned residence and makes an election under section 121(a) in respect of such sale. Pursuant to the requirement of section 121(c), B joins in such election. Subsequently, A and B are divorced and B married C. While B and C are married, C sells his residence. C is not entitled to make an election under section 121(a) since an election by B, his spouse, is in effect. It does not matter that B obtained no personal benefit from her election

Example (2). The facts are the same as in example (1) except that after the sale of C's residence, A and B, pursuant to the provisions of paragraph (c) of § 1.121–4, revoke their election. B and C, subject to the other provisions of this section, may then make an election with respect to any gain realized on the sale of C's residence.

Example (3). The facts are the same as in example (1) except that C marries B after C sells his residence but before he makes an election under section 121(a) with respect to any gain realized on such sale. C, if there is not in effect an election made by him under section 121(a) with respect to a prior sale, may make an election with respect to his sale since B does not have to join with him in such election. (In the case of a sale of property jointly held by husband and wife, see paragraph (a) of § 1.121–5.)

[T.D. 6856, 30 F.R. 13317, Oct. 20, 1965]

(c) *Additional election if prior sale was made on or before July 26, 1978.* In the case of any sale or exchange after July 26, 1978, section 121 shall be applied by not taking into account any election made with respect to a sale or exchange on or before such date.

§ 1.121–3 Definitions.

(a) *Principal residence.* The term "principal residence" has the same meaning as in section 1034 (relating to sale or exchange of residence) and the regulations thereunder (see paragraph (c) (3) of § 1.1034–1).

(b) *Sale or exchange.* A "sale or exchange" of a residence includes the destruction, theft, seizure, requisition, or condemnation of such residence.

(c) *Gain realized.* The term "gain realized" has the same meaning as in paragraph (b)(5) of § 1.1034–1 (determined without regard to section 121(d) (7) and paragraph (g) of § 1.121–5).

[T.D. 6856, 30 F.R. 13317, Oct. 20, 1965]

§ 1.121–4 Election.

(a) *General rule.* A taxpayer may make an election under section 121(a) in respect of a particular sale (or may revoke any such election) at any time before the expiration of the period for making a claim for credit or refund of Federal income tax for the taxable year in which the sale or exchange occurred. A taxpayer who is married at the time of the sale or exchange—

(1) May not make an election under section 121(a) unless his spouse (at the time of the sale or exchange) joins him in such election, and

(2) May not revoke an election previously made by him unless his spouse (at the time of the sale or exchange) joins him in the revocation.

If the taxpayer's spouse dies after the sale or exchange but before the expiration of the time for making an election under this section (and an election was not made by the husband and wife), the deceased spouse's personal representative (administrator

or executor, etc.) must join with the taxpayer in making an election. For purposes of making an election under section 121(a), if no personal representative of the deceased spouse has been appointed at or before the time of making the election, then the surviving spouse shall be considered the personal representative of such deceased spouse. Any election previously made by the taxpayer may be revoked only if the personal representative of the taxpayer's deceased spouse joins in such revocation.

(b) *Manner of making election.* The election under section 121(a) shall be made in a statement signed by the taxpayer and (where required) by his spouse and attached to the taxpayer's income tax return, when filed, for the taxable year during which the sale or exchange of his residence occurs. (See Form 2119 and the accompanying instructions). The statement shall indicate that the taxpayer elects to exclude from his gross income for such year so much of the gain realized on such sale or exchange as may be excluded under section 121. The statement shall also show—

(1) The adjusted basis of the residence as of the date of disposition;

(2) The date of its acquisition;

(3) The date of its disposition;

(4) The names and social security numbers of the owners of the residence as of the date of sale, the form of such ownership, and the age and marital status (as determined under paragraph (f) of § 1.121–5) of such owner or owners at the time of the sale;

(5) The duration of any absences (other than vacation or other seasonal absence) by such owner or owners during the 5 years (8 years under the transitional rule) preceding the sale; and

(6) Whether any such owner or owners have previously made an election under section 121(a), the date of such election, the taxable year with respect to which such election was made, the district director with whom such election was filed, and, if such election has been revoked, the date of such revocation.

(c) *Manner of revoking election.* The revocation of an election under section 121(a) shall be made by the taxpayer by filing a signed statement showing his name and social security number and indicating that the taxpayer revokes the election he made under section 121(a). The statement shall also show the taxable year of the taxpayer for which such election was made. The statement shall be signed by the taxpayer and (where required) by his spouse or their personal representatives and filed with the district director with whom the election was filed. In addition, if, at the time the statement is filed, the statutory period for assessment of a deficiency for the taxable year for which the election was made will expire within one year, then, the revocation is not effective unless the taxpayer also consents, in writing, that the statutory period for assessment of any deficiency (to the extent that such deficiency is attributable to the revocation of the election) shall not expire before the expiration of one year after the date the statement was filed with the district director. Such consent must be filed prior to the date of the expiration of the statutory period for assessment for the taxable year for which the election was made.

[T.D. 6856, 30 F.R. 13317, Oct. 20, 1965]

§ 1.121–5 Special rules.

(a) *Property held jointly by husband and wife.* (1) If—

(i) On the date of the sale or exchange of a residence, such residence is held by a husband and wife as joint tenants, tenants by the entirety, or community property,

(ii) A joint return under section 6013 is made by such husband and wife for the taxable year in which the residence is sold or exchanged, and

(iii) One spouse satisfies the age, ownership, and use requirements of section 121(a),

then both the husband and wife are treated as satisfying the age, ownership, and use requirements of section 121(a). Thus, if the above conditions exist and one spouse meets all the requirements of section 121(a), the other spouse will be treated as meeting all such requirements.

(2) The provisions of this paragraph are illustrated by the following example:

Example. On January 1, 1979, A and B while married, sell their jointly owned residence which they have owned and used as their prinicipal residence continuously since 1968. At the time of the sale, A is age 56 and B is age 54. If A and B file a joint return for the year of the sale, B will be considered to have satisfied the age, ownership and use requirements of section 121(a) since A has satisfied such requirements.

(b) *Property of deceased spouse.* (1) A taxpayer is treated as satisfying the ownership and use requirements of section 121(a)(2) with respect to property if—

(i) His spouse is deceased on the date of the sale or exchange of such property, and

(ii) Such deceased spouse, had, during the 5-year period ending on the date of the sale or exchange of the property, satisfied such ownership and use requirements with respect to such property.

This rule, however, has no application if the surviving spouse is married at the time of the sale or exchange of such property, or if an election made by the deceased spouse under section 121(a) is in effect with respect to any other sale or exchange.

(2) The provisions of this paragraph are illustrated by the following example:

Example. H and W become husband and wife on January 1, 1979. On and after such date they use as their principal residence property which H has owned and used as his principal residence since January 1, 1967. H dies on January 1, 1981, and W inherits the property and continues to use the property as her principal residence. W sells the property on August 31, 1981, at which time she is over 55 and not married. H, during the 5-year period ending on the date of the sale (September 1, 1976, through August 31, 1981), satisfied the 3-year use and ownership requirements of section 121(a)(2) with respect to such property. Accordingly, W may make an election under section 121(a).

(c) *Tenant-stockholder in cooperative housing corporation.* An individual who holds stock as a "tenant-stockholder" in a "cooperative housing corporation", as those terms are defined in section 216(b), may be eligible to make an election under section 121(a) in respect of the sale or exchange of such stock. In determining whether the taxpayer meets the requirements of section 121(a), the ownership requirements of such section are applied to the holding of such stock and the use requirements of such section are applied to the house or apartment which the individual was entitled to occupy because of such stock ownership.

(d) *Tacking of holding periods in the case of involuntary conversion.* If the basis of the property sold or exchanged is determined (in whole or in part) under subsection (b) of section 1033 (relating to basis of property acquired through involuntary conversion), then the holding and use by the taxpayer of the converted property shall be treated as holding and use by the taxpayer of the property sold or exchanged.

For the treatment of involuntary conversion as a "sale or exchange" see section 1.121–3(b).

(e) *Property used in part as principal residence.* (1) When a taxpayer can satisfy the ownership and use requirements of section 121(a)(2) only with respect to a portion of the property sold, then section 121 shall apply only with respect to so much of the gain from the sale or exchange of the property as

is attributable to such portion. Thus, if the residence was used only partially for residential purposes, only that part of the gain allocable to the residential portion is not to be recognized under section 121(a).

(2) The provisions of this paragraph are illustrated by the following example:

Example. Taxpayer A, an attorney, uses a portion of the property constituting his principal residence as a law office for a period in excess of 2 years out of the 5 years preceding the sale of such residence. Accordingly, section 121 does not apply with respect to so much of the gain on the sale of the property as is allocable to the portion of the property used as a law office.

(f) *Determination of marital status.* Marital status is to be determined as of the date of the sale or exchange of the residence. An individual who on the date of the sale or exchange is legally separated from his spouse under a decree of divorce or of separate maintenance is not considered as married on such date.

(g) *Application of sections 1033 and 1034.* (1) In applying sections 1033 (relating to involuntary conversions) and 1034 (relating to sale or exchange of residence), the amount realized from the sale or exchange of property used as one's principal residence is treated as being the amount determined without regard to section 121, reduced by the amount of gain excluded from gross income pursuant to an election made under section 121(a). Thus, the amount which must be invested in a new residence in order to fully satisfy the nonrecognition provisions of section 1033 or 1034 is reduced by the amount of gain not included in the taxpayer's gross income because of an election made under section 121(a).

(2) The provisions of this paragraph are illustrated by the following examples:

Example (1). Taxpayer A sells his residence for $180,000, incurring $2,000 in fixing-up expenses described in section 1034(b)(2). He has a basis of $65,000 for the residence. Of his total gain of $115,000 ($180,000–$65,000), $100,000 is excluded from his gross income under this section.

He may still use the provisions of section 1034 to defer all or part of the remaining $15,000 of gain. To determine the adjusted sales price for purposes of section 1034, the amount realized (consideration received minus selling expenses, described in paragraph (b)(4)(i) of section 1.1034–1) is reduced by the sum of the fixing-up expenses (described in paragraph (b)(6) of section 1.1034–1) plus the amount excluded under section 121. Here, then, for purposes of section 1034, A's adjusted sales price is $78,000 (($180,000—$2,000)—$100,000)). If his new residence costs at least $78,000, all $15,000 of the remaining gain will be deferred. However, if he purchases a new residence for $72,000, then $6,000 ($78,000—$72,000) of his gain is currently taxable.

Example (2). Taxpayer B's residence has a basis of $65,000. She sells the residence for $115,000. If she makes an election under section 121(a), her gain of $50,000 is all excluded from gross income, and, accordingly, no portion of the realized gain remains to be deferred under section 1034.

(h) *Special rules applicable to certain reacquisitions of real property.* For special rules relating to a case where real property with respect to which an election under this section is in effect is reacquired by the seller in partial or full satisfaction of the indebtedness arising from the sale of such property and resold by him within 1 year after the date of such reacquisition, sec. § 1.1038–2.

[T.D. 7614]
[FR Doc. 79-13241 Filed 4-26-79; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 222, 231

Grazing and Livestock Use on the National Forest System; Annual Grazing Fees

AGENCY: USDA, Forest Service.

ACTION: Final rulemaking.

SUMMARY: This rule amends the procedures for determining annual grazing fees on certain Federal lands administered by the Forest Service, U.S. Department of Agriculture. It implements the grazing fee procedures for the fee years 1979 through 1985 as prescribed in the Public Rangelands Improvement Act of 1978 for the National Forests in the 16 contiguous Western States.

DATE: Effective March 1, 1979.

ADDRESS: Chief John McGuire (2200), Forest Service, Department of Agriculture, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Melvin Bellinger, Range Managment Staff, Forest Service, P.O. Box 2417, Washington, D.C. 20013, Telephone, 703–235–8139.

SUPPLEMENTARY INFORMATION: This final rule implements the proposed rule published in the **Federal Register** at pages 58387–58389, December 14, 1978. This change is necessitated by the enactment of Pub. L. 95–514, which specifies a fee formula.

The Bureau of Land Management, U.S. Department of the Interior, published a similar final rule implementing Pub. L. 95–514, on January 10, 1979.

Pub. L. 95–514, the Public Rangelands Improvement Act, Sec. 6, states:

> For the grazing years 1979 through 1985, the Secretaries of Agriculture and the Interior shall charge the fee for domestic livestock grazing on the public rangelands which Congress finds represents the economic value of the use of the land to the user, and under which Congress finds fair market value for public grazing equals the $1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplies by the Economic Research Service (sic)) added to the Combined Index (Beef Cattle Price Index minus the Price Paid Index) and divided by 100: Provided, That the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percentum of the previous year's fee.

Formula Used

The formula specified by Pub. L. 95–514 and implemented by this regulation follows:

$$EC = \$1.23 \times \frac{FVI + (BCPI - PPI)}{100}$$

In which:
EC = Economic value.
FVI = Forage value index.
BCPI = Beef cattle prices index.
PPI = Prices paid index.

Implementation

Data for 1978 are used to compute the fee for the 1979 fee year (March 1, 1979, through February 29, 1980).

The economic value of grazing for the 1979 fee year is $2.03 per animal unit month.

Annual increases or decreases shall be limited to 25 percent of the previous year's fee.

Grazing fees have varied from unit to unit on the National Forests since 1933, and use of the 25 percent limit will continue the varying fees until all fees equal the economic value. Fees per unit month are shown below.

Fee year	Economic value	Fee	
		Low	High
1976–78	—	$1.25	$1.94
1979	$2.03	$1.56	$2.03

Any individual fee for 1979 can be computed by adding 25 percent to the fee paid in 1978, except that no fee will exceed the economic value of $2.03.

Public Participation

Previous publication in the **Federal Register** on February 4, 1977, and November 23, 1977, together with public meetings in March and April of 1977,

and Congressional Hearings during 1977 and 1978, have provided many opportunities for participation by many groups and individuals in the decisionmaking processes on grazing fees. Public comments on the proposal for this final rule were accepted throughout a review period of 60 days, ending February 12, 1979. A very limited number of public comments was received. These comments addressed several questions.

Summary of Comments

1. Grazing fee increases in 1979 of 25 percent are excessive and exceed the voluntary limits established by the Federal Government to control inflation.

2. The $1.23 base is outdated and fails to recognize the rancher's expenditures for a grazing permit (permit value) and construction of improvements.

3. A uniform fee is inadequate because it does not adjust for differences in forage quality, season of use, animal type and class.

Response to Public Comment

Pub. L. 95–514 is very specific concerning the establishment of grazing fees. Fees must be established by use of the formula in the law. This results in a single fee for all of the public lands covered by the law. The only exception to a single fee is when the existing variable fee is being adjusted to the fee prescribed by the law. At this time, the limit of 25 percent on change from the previous year's fee will result in fees at varying levels. Once economic value is reached, all fees will be the same. The increases in grazing fees of 25 percent are required by law and these cannot be changed by the President's Executive Order on control of inflation. However, since grazing fees were not increased in 1977 and 1978, the real rate of increase for the three year period is an annual rate of 7.75 percent for fees increased by 25 percent in 1979. Most fees increase at a rate less than 25 percent since they are closer to economic value. In addition, the noninflationary pay and price standards have certain exclusions. Sales of raw agricultural products and products exchanged in other than open and arms-length transactions are excluded from the price standards. This exclusion applies to grazing fees because fees are for a raw agricultural product, forage, and because fees are administered prices rather than open market transactions.

The 1966 base fee level of $1.23 is specified by Pub. L. 95–914. The law requires a single base fee, and does not allow for differences by geographic area, differences by forage quality or animal type and class. The Congress by selecting the $1.23 also eliminated from consideration the use of the permit value to reduce fees.

Paragraph (c) of § 222.50 as published on December 14, 1978, has been rewritten. The intent and interpretation of this paragraph has not been changed, but the new language clarifies the definition of animals for which payment is required.

Note.—The Department of Agriculture has determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment, and that a detailed statement pursuant to Section 102(2)(c) of the National Environment Policy Act of 1969 (42 U.S.C. 4332(2)(c) is not required.

Note.—An approved Final Environmental Assessment Report (includes Impact Analysis) is available from Range Management Staff, Forest Service, P.O. Box 2417, Washington, D.C. 20013.

Recodification

As part of an effort to correlate the numbering schemes used in 36 CFR Chapter II and the Forest Service Manual, regulations previously published in Part 231—GRAZING have been moved to Part 222—RANGE MANAGEMENT (42 FR 56730). This final rule completes the recodification by deleting 36 CFR Part 231 and establishing a new Subpart C in 36 CFR Part 222.

Accordingly, 36 CFR Chapter II is amended as follows:

PART 231—GRAZING [DELETED]

1. By deleting 36 CFR Part 231 in its entirety.

PART 222—RANGE MANAGEMENT

2. By adding a new Subpart C to Part 222 to read as follows:

Subpart C—Grazing Fees

Sec.

222.50 General Procedures.
222.51 National Forests in 16 Western States.
222.52 National Grasslands.
222.53 Other National Forest System Lands.

Authority: Sec. 1, 30 Stat. 35 as amended (16 U.S.C. 551; sec. 501, 65 Stat. 290, 31 U.S.C. 483a; 92 Stat. 1803, 43 U.S.C. 1901, note.)

Subpart C—Grazing Fees

§ 222.50 General Procedures.

(a) Fees shall be charged for all livestock grazing or livestock use of National Forest system lands, or other lands under Forest Service control. An exception is livestock authorized free of charge under provisions of § 222.3(c)(2)(ii)(B)–(G).

(b) Guiding establishment of fees are the law and general governmental policy as established by Bureau of the Budget (now, Office of Management and Budget) Circular A–25 of September 23, 1959, which directs that a fair market value be obtained for all services and resources provided the public through establishment of a system of reasonable fee charges, and that the users be afford equitable treatment. This policy precludes a monetary consideration in the fee structure for any permit value that may be capitalized into the permit holder's private ranching operation.

(c) The grazing fee shall be charged for each unit month of grazing or livestock use. A unit is: each cow, bull, steer, heifer, horse or mule, six (6) months of age or older at the time of entering National Forest System lands for grazing, or which becomes twelve (12) months of age during the permitted period of use; each weaned cow, bull, steer, heifer, horse or mule regardless of age; five (5) adult sheep or goats; or, five weaned sheep or goats regardless of age. A unit month is one unit of grazing or use for one month.

(d) No additional charge will be made for the privilege of lambing upon National Forest System lands, or other lands under Forest Service control.

(e) Transportation livestock may be charged for at a special rate, and at a minimum established for such use. Fees for horses, mules, or burros associated with management of permitted livestock on an allotment, or for research purposes and administrative studies, and authorized on a charge basis, are determined under provisions of paragraph (b) of this section.

(f) The fees for trailing livestock across National Forest System lands will conform with the rates established for other livestock. Where practicable, fees for trailing permitted livestock will be covered in the regular grazing fee and the crossing period covered in the regular grazing period.

(g) All fees for livestock grazing or livestock use of National Forest System lands or other lands under Forest Service control are payable in advance of the opening date of the grazing period, entry, or livestock use unless otherwise authorized by the Chief, Forest Service.

(h) Unauthorized grazing use rate will be determined by establishing a base value without giving consideration for those contributions normally made by the permittee under terms of the grazing permit. The base will be adjusted annually by the same indexes used to adjust the regular fee. This rate also will apply to excess numbers of livestock

grazed by permittees; or, to livestock grazed outside the permitted grazing season.

(i) Refunds or credits may be allowed under justifiable conditions and circumstances as the Chief, Forest Service, may specify.

(j) The fee year for the purpose of charging grazing fees will be March 1 through the following February.

(k) The data year for the purpose of collecting beef cattle price data for computing indexes will be November 1 through the following October and apply to the following fee year.

§ 222.51 National Forests in 16 Western States.

(a) Grazing fees are established on lands designated National Forests and Land Utilization Projects in the 16 contiguous Western States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. (National Grasslands are excluded, see § 222.52.)

(b) The fee for domestic livestock grazing on the National Forests and Land Utilization Projects in the 16 contiguous Western States shall be the amount which Congress finds represents the economic value of the use of the land to the user, and under which Congress finds fair market value for public grazing equals the $1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index, added to the Combined Index (Beef Cattle Price Index minus the Price Paid Index) and divided by 100.

(c) Starting with 1979 and continuing through 1985 fees shall be adjusted each year to the fee as computed by formula in (b) of this section, subject only to the provision that no fee shall be increased or decreased by more than 25 percent over the fee charged the previous year.

§ 222.52 National Grasslands.

Grazing fees for National Grasslands will be established under concepts and principles similar to those in § 222.51(b).

§ 222.53 Other National Forest System lands.

Grazing fees for all other National Forest System lands not listed in § 222.51(a), or § 222.52, will be established under concepts and principles similar to those in § 222.51(b), except that in some instances fees may be negotiated.

(Sec. 1, 30 Stat. 35 as amended (16 U.S.C. 551); sec. 501, 65 Stat. 290 (31 U.S.C. 483a); 92 Stat. 1803 (43 U.S.C. 1901 note).)

M. Rupert Cutler,
Assistant Secretary.
April 23, 1979.

[FR Doc. 79-13065 Filed 4-26-79; 8:45 am]
BILLING CODE 3410-11-M

36 CFR Part 251

Land Uses; Home and Industrial Sites in Alaska

AGENCY: Forest Service, USDA

ACTION: Rescind Regulation

SUMMARY: Section 9 of the National Forest Management Act of 1976, repealed the authority to eliminate lands from the National Forests in Alaska entered upon by special use permittees for establishing homes or industrial sites. Such action is now possible only by special Act of Congress.

It has been determined not to be in the public interest to follow the proposed rule and public comment procedures since this action is required by law.

EFFECTIVE DATE: April 27, 1979.

FOR FURTHER INFORMATION CONTACT: George Liddicoatt, Forest Service, Department of Agriculture, P.O. Box 2417, Washington, D.C. 20013, 202–235–8107.

§ 251.7 [Rescinded].

Section 251.7 of Title 36 of the Code of Federal Regulations is hereby rescinded.

Bob Bergland,
Secretary.
April 18, 1979.

[FR Doc. 79-13045 Filed 4-26-79; 8:45 am]
BILLING CODE 3410-11-M

POSTAL SERVICE

39 CFR Part 111

Express Mail Metro Service

AGENCY: Postal Service.

ACTION: Interim regulations with comments invited for consideration in final rule making.

SUMMARY: As announced in the **Federal Register** on April 19, 1979 (44 FR 23396), the Postal Service will implement a new classification for Express Mail Metro Service on April 30, 1979, on a temporary basis. Until further notice, the service will only be offered in three areas: Chicago, Ill.; Columbus, Ohio; and Gulfport, Miss. Implementing regulations for this new subclass have been developed and are set forth below. Athough they are to take effect on April 30, 1979, comments on these regulations are solicited, and will be considered in drafting regulations for a permanent classification change if the Postal Service proposal is approved.

EFFECTIVE DATE: April 30, 1979, and until final regulations are issued. Comment Date: Written comments should be received on or before June 30, 1979.

ADDRESS: Written comments should be directed to the General Manager, Expedited Mail Services Division, Customer Services Department, Room 5986, 475 L'Enfant Plaza, SW., Washington, D.C. 20260. Copies of all written comments received will be available for public inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday at the above location.

FOR FURTHER INFORMATION CONTACT: Walter (Cap) Neilson, 202/245–5624.

SUPPLEMENTARY INFORMATION: Classification schedule provisions on Express Mail presently provide for three domestic subclasses of Express Mail. These services offer inter-city and inter-metropolitan area movement of highly expedited, time sensitive materials. They do not readily fulfill the needs of the mailer of such materials who mails intra-city and intra-metropolitan area shipments. This temporary classification change recognizes that need and establishes a new subclass of Express Mail, called Express Mail Metro Service. This subclass will provide for same day and overnight service with early morning delivery within specified metropolitan areas. Until further notice, the service will be limited to three areas. Scheduled pickup is available (by pre-arranged agreement) and standard Express Mail features (insurance, receipting, etc.) are included. To implement this temporary classification change, acceptance and delivery procedures considered necessary by the Postal Service are set forth here. These regulations take effect when the Express Mail Metro Service sub-class is temporarily implemented on April 30, 1979. Although exempt from the notice and comment requirement of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rule-making by 39 U.S.C. 410(a), the Postal Service ordinarily invites comments from the public whenever it proposes a new or amended regulation such as this, which might eventually have a substantial effect on the public. In this case, however, publishing these rules as proposals, with a comment delay of 30 days, would delay even the very limited implementation of this new subclass.

Accordingly, the Postal Service finds it unnecessary and contrary to the public interest to follow its customary practice of publishing these rules as proposed rules for comment before they become effective. See 5 U.S.C. 553(d). However, we reiterate that comments are welcomed on the published rules, and that any proposed changes will be considered and acted upon as appropriate.

In view of the considerations discussed above, the Postal Service adopts the following revisions of the Postal Service Manual:

Part 181—Rates

1. In Part 181, add new 181.5 reading as follows:

181.5 Express Mail Metro Service Rates

.51 Rates per piece:

Lbs. and Rate	
1 Lb and under	$ 9
Over 1 through 8 lbs	.12
Over 8 through 70 lbs	.15

.52 For each collection stop, add $5.25 per occurrence.

Part 182—Classification

2. In Part 182, add new 182.5, reading as follows:

182.5 Express Mail Metro Service

.51 Availability of Service

Express Mail Metro Service is available in Chicago, Illinois; Columbia, Ohio; and Gulfport, Mississippi, at designated retail postal facilities for same day and next day delivery within their designated metropolitan areas. A metropolitan area consists of the city delivery area of one or more post offices. Names and locations of these designated facilities and post offices are in Notice 77, *Express Mail Metro Service Directory*, available at participating post offices. Service to or from post offices not listed is prohibited.

.52 Types of Service Available

.521 Items tendered by 10:00 AM in accordance with 182.51 will be delivered to the addressee within the designated metropolitan area by 5:00 PM of the same day.

.522 Items tendered by 12:00 Noon in accordance with 182.51, at selected designated retail facilities, will be delivered to the addressee within the designated metropolitan area by 5:00 PM of the same day. (Not available in all participating post offices.)

.523 Items tendered by 5:00 PM in accordance with 182.51 will be delivered to the addressee within the designated metropolitan area by 10:00 AM of the next day.

.53 Service Agreement

Pickup service is available for Express Mail Metro Service only on a scheduled basis, pursuant to a service agreement (Form 5631) between the Postal Service and a mailer. The service agreement shall specify the time, place, day or date, and frequency of such service. Service under a service agreement shall not be offered in a manner that makes any undue or unreasonable preference to any such user. Commencement and termination of service agreements are subject to the provisions of 182.322 and 182.323.

.54 Service Guarantee

The Postal Service will refund postage under provisions in 189.5 for an item not delivered in accordance with 182.52 unless the item was delayed by strike or work stoppage.

Part 186—Preparation Requirements

3. In Part 186, add new 186.4 reading as follows:

186.4 Express Mail Metro Service

.41 Customers must complete Label 11D, *Express Mail Metro Service*, for each piece of mail.

.42 Use Label 63–A, *Express Mail Metro Service-Outside Shipment*, for identification of outside pieces as defined in 186.12.

.43 For Express Mail Metro Service pickup (182.53) the customer must complete Form 5625B, *Mailing Statement for Next Day and Same Day Airport Express Mail Service*, for each pickup. Volume mailers must tender the mail in containers provided or approved by the Postal Service.

Additionally, sections, 181.1, 182.12, 183, 184.1, 187, 188.4, 189.3, and 189.421c should be read in conformity with the interim regulations and the limited offering of this service.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the Postal Service proposal on Express Mail Metro Service is approved.

(39 U.S.C. 401, 403, 404, 3621, 3623, 3641)

W. Allen Sanders,

Acting Deputy General Counsel.

[FR Doc. 79-13060 Filed 4-26-79; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

Air Quality Control Regions, Criteria, and Control Techniques; Attainment Status Designations: Florida and North Carolina

AGENCY: U.S. Environmental Protection Agency, Region IV.

ACTION: Final rule.

SUMMARY: Review of air quality data from Florida and North Carolina has shown that the original nonattainment designations made pursuant to section 107 of the Clean Air Act were based on invalid data in some cases. These were described in a notice of proposed rulemaking which appeared in the **Federal Register** on January 12, 1979 (44 FR 2617). The purpose of this notice is to announce that the proposed changes are now final: the designation of two ozone areas is changed from nonattainment to unclassifiable/attainment; and one particulate area, from nonattainment to unclassifiable.

DATE: These changes are effective April 27, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Bishop, Air Programs Branch, EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30308, 404/881-3286; FTS 257-3286.

SUPPLEMENTARY INFORMATION: The designation for ozone of Buncombe County, North Carolina, is changed from nonattainment to unclassifiable/attainment. Review of the air quality data on which the original designation was based has revealed that the data are not of sufficient quality to serve as the basis for designating an area nonattainment, primarily because proper procedures were not followed in calibrating the monitor showing the violation. In addition, the observance of quality assurance procedures cannot be verified in regard to the data, and anomalous recorder operation has been noted. The instrument will continue to operate, but under approved quality assurance procedures; if subsequently gathered data indicate nonattainment, the designation will be changed accordingly.

The designation for particulate matter of Seminole County, Florida, is changed from nonattainment for the secondary standards to unclassifiable. This change is based on an on-site review of the monitor showing violation. This review showed that the monitor was improperly sited according to the Agency's criteria, and was not collecting valid, representative data. In addition, quality control of sample measurement was found to be inadequate. The monitor is being relocated and will continue to operate. When sufficient valid data have been collected, the designation will be changed to attainment or nonattainment.

The designation for ozone of Leon County, Florida is changed from nonattainment to unclassifiable/attainment. A data audit conducted by EPA showed inadequate calibration of the monitor indicating nonattainment. The instrument will continue to operate, but under approved quality assurance procedures; if subsequently gathered data indicate nonattainment, the designation will be changed accordingly.

These changes were proposed in a notice of proposed rulemaking which appeared in the **Federal Register** of January 12, 1979 (44 FR 2617). No comments were received in response to

that notice. Background materials providing in greater detail the reasons for judging the data in these three cases to be unreliable may be obtained by contacting Walter Bishop of the Region IV Air Programs Branch (see address and telephone number above.)

These changes are effective immediately.

(Sections 107(d), 171(2), and 301(a) of the Clean Air Act as amended 1977 (42 U.S.C. 7407(d), 7501(2), and 7601(a)).)

Dated: April 20, 1979.

Douglas M. Costle,

Administrator.

It is proposed to amend Part 81 of Chapter I, Title 40, Code of Federal Regulations, as follows:

Subpart 81—Section 107 Attainment Status Designations

* * * * *

1. In § 81.310, the attainment status designation tables for TSP and ozone are amended as follows:

§ 81.310 Florida.

Florida—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better then national standards
The downtown Jacksonville area located just north and west of the St. Johns River and east of I-95.		X**		
Seminole County			X**	
Polk County			X**	
That portion of Hillsborough County which falls within the area of the circle having a centerpoint at the intersection of US 41 and State Road 60 and a radius of 12 km.		X**		
Rest of State				X**

* * * * * * *

Florida—O_3

Designated area	Does not meet primary standard	Cannot be classified or better than national standards
Duval County	X**	
Broward County	X**	
Dade County	X**	
Palm Beach County	X**	
Escambia County	X**	
Orange County	X**	
Hillsborough County	X**	
Pinellas County	X**	
Rest of State		X**

* * * * *

**EPA designation only.

2. In § 81.334, the attainment status designation table for ozone is amended as follows:

§ 81.334 North Carolina.

* * * * *

North Carolina—O_3

Designated area	Does not meet primary standard	Cannot be classified or better than national standards
Mecklenburg County	X	
Rest of State		X

* * * * *

[FRL 1211-7]

[FR Doc. 79-13234 Filed 4-26-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 180

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Methomyl

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide methomyl on blueberries at 6 parts per million. The regulation was requested by E. I. du Pont de Nemours & Co. This rule establishes a maximum permissible level for residues of methomyl on blueberries.

EFFECTIVE DATE: April 27, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Sanders, Product Manager (PM) 12, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington DC 20460 (202/426-9425).

SUPPLEMENTARY INFORMATION: On April 28, 1978, notice was given (43 FR 18246) that E. I. du Pont de Nemours & Co., Inc., Wilmington, DE 19898, had filed a pesticide petition (PP 8F2064) with the EPA. This petition proposed that 40 CFR 180.253 be amended to establish a tolerance for residues of the insecticide methomyl (*S*-methyl *N*-[(methylcarbamoyl)oxy] thioacetimidate) in or on the raw agricultural commodity blueberries at 6 parts per million (ppm). No comments were received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance included two-year rat and dog feeding studies with no-observed-effect levels (NOEL) of 100 ppm; a three-generation rat reproduction study with an NOEL of 100 ppm; a hen neurotoxicity study, which was negative at 28 milligrams (mg)/kilogram (kg) of body weight (bw); and a teratology study with an NOEL of 100 ppm.

Based on the two-year dog feeding study with an NOEL of 100 ppm and using a safety factor of 100, the acceptable daily intake (ADI) for man is 0.025 mg/kg bw/day. Tolerances have previously been established for residues of methomyl on a variety of raw agricultural commodities at levels ranging from 40 ppm to 0.1 ppm. The theoretical maximal residue contribution (TMRC) in the human diet from the previously established tolerances and the proposed tolerance does not exceed the ADI.

Desirable data lacking from the petition is an oncogenicity study in a second mammalian species. In a letter of April 20, 1978, the petitioner indicated that the study is underway and is expected to be completed in late 1980. The petitioner also agreed to voluntarily delete the use of methomyl on blueberries from the label should this study exceed the risk criteria for chronic toxicity in 40 CFR 162.11.

The metabolism of methomyl is adequately understood, and an adequate analytical method (gas chromatography using a microcoulometric detector) is available for enforcement purposes. No actions are currently pending against continued registration of methomyl, nor are there any other relevant considerations involved in establishing the proposed tolerance. There is no reasonable expectation of residues in eggs, meat, milk, or poultry since blueberries is not an animal feed.

The pesticide is considered useful for the purpose for which a tolerance is sought, and it is concluded that the tolerance of 6 ppm on blueberries established by amending 40 CFR 180.253 will protect the public health. It is

concluded, therefore, that the tolerance be established as set forth below.

Any person adversely affected by this regulation may, on or before May 29, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW, Washington, DC 20460. Such objections should be submitted in triplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective on April 27, 1979. Part 180 is amended as set forth below.

Dated: April 19, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

Statutory Authority: Section 408(d)(2) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(d)(2)].

Part 180, Subpart C, § 180.253 is amended by alphabetically inserting blueberries at 6 ppm in the table to read as follows:

§ 180.253 Methomyl; tolerance for residues.

* * * * *

Commodity—parts per million

* * * * *

Blueberries—6.

* * * * *

[PP6F2064/R203]

[FRL 1210-3]

[FR Doc. 79-13026 Filed 4-26-79; 8:45 am]

BILLING CODE 6560-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

Consolidated Rail Corp. Authorized To Operate Unit-Grain-Train Comprised of Privately Owned and Railroad Owned Covered Hoppers

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order. Service Order No. 1376.

SUMMARY: Service Order No. 1376 authorizes Consolidated Rail Corporation to operate a unit-grain-train from Toledo, Ohio, to Codorus Mills, Pennsylvania, comprised of 43 privately owned covered hopper cars and 7 railroad owned covered hopper cars.

DATES: Effective 4:00 p.m., April 24, 1979. Expires 11:59 p.m., May 10, 1979.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, Chief, Section of Rail and Pipeline Operations, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C., 20423, Telephone (202) 275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The Order is printed in full below.

Decided April 24, 1979.

Consolidated Rail Corporation (CR) operates unit-grain-trains between Toledo, Ohio, and Codorus Mills, Pennsylvania, of wheat loaded in shipper or receiver owned or leased covered hopper cars. CR has published certain rates in Consolidated Rail Corporation Freight Tariff 22302 I.C.C. CR-4164 which require the use of at least fifty (50) shipper or receiver owned or leased covered hopper cars to transport a minimum of 5,000 net tons per shipment of wheat with a minimum of 200,000 pounds per car. CR is able to assemble only 43 cars for the next shipment but is willing to substitute 7 railroad owned covered hopper cars. The tariff does not authorize substitution of railroad owned covered hopper cars for privately owned cars. The consignee is badly in need of this shipment of wheat.

It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, that:

§ 1033.1376 Service Order No. 1376.

(a) *Consolidated Rail Corporation authorized to operate unit-grain-train comprised of privately owned and railroad owned covered hoppers.*—Consolidated Rail Corporation (CR) is authorized to waive the requirement that shipments of wheat move in at least 50 shipper or receiver owned or leased covered hopper cars provided in Consolidated Rail Corporation Freight Tariff 22302 I.C.C. CR-4164. CR is authorized to transport on a one trip basis one shipment comprised of 43 privately owned covered hoppers and 7 railroad owned covered hoppers from Toledo, Ohio, to Codorus Mills, Pennsylvania. The rate to be charged is the rate listed in that tariff. All other provisions of that tariff shall remain in effect.

(b) *Concurrence of Shipper Required.*—The concurrence of the shipper must be obtained before railroad owned covered hopper cars are substituted for privately owned covered hopper cars.

(c) *Minimum Weights.*—The minimum weight for this shipment shall be the minimum weight specified in the applicable tariff.

(d) *Endorsement of Billing.*—Bills of lading and waybills covering the shipment authorized by this order shall contain a notation that shipment is moving under authority of Service Order No. 1376.

(e) *Rules and regulations suspended.*—The operation of tariffs or other rules and regulations, insofar as they conflict with the provisions of this order, is hereby suspended.

(f) *Application.*—The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(g) *Effective date.*—This order shall become effective at 4:00 p.m., April 24, 1979.

(h) *Expiration date.*—The provisions of this order shall expire at 11:59 p.m., May 10, 1979, unless otherwise modified, changed, or suspended by order of this Commission.

(49 U.S.C. (10304-10305 and 11121-11126).)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael.

H. G. Homme, Jr.,

Secretary.

[Service Order No. 1376]

[FR Doc. 79-13239 Filed 4-26-79; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR PART 33

Sport Fishing; National Wildlife Refuges in Illinois, Iowa, Minnesota, Missouri, and Wisconsin

AGENCY: Fish and Wildlife Service.

ACTION: Special Regulations.

SUMMARY: The Director has determined that the opening to sport fishing of certain National Wildlife Refuges is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. These special regulations describe the condition under which sport fishing will be permitted on portions of certain National Wildlife Refuges in Illinois, Iowa, Minnesota, Missouri and Wisconsin.

DATES: Effective on April 27, 1979, for duration of calendar year 1979, subject to exceptions noted below for individual refuge areas.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate Refuge Manager at the address or telephone number listed below:

George G. P. Bekeris, Area Office Manager, U.S. Fish and Wildlife Service, 530 Federal Building & U.S. Court House, 316 North Robert Street, St. Paul, MN 55101. Telephone: (612) 725–7641.

James Heinecke, Refuge Manager, Big Stone National Wildlife Refuge, 25 N.W. 2nd Street, Ortonville, MN 56278. Telephone: (612)839–3700.

Thomas S. Sanford, Refuge Manager, Chautauqua National Wildlife Refuge, RR#2, Havanna, IL 62644. Telephone: (309)535–2290.

John Toll, Refuge Manager, Horicon National Wildlife Refuge, Route #2, Mayville, WI 53050. Telephone: (414)387–2658.

James M. Carroll, Jr., Refuge Manager, Necedah National Wildlife Refuge, Star Route, Necedah, WI 54646. Telephone: (608)565–2551.

Howard Lipke, Refuge Manager, Mark Twain National Wildlife Refuge, Great River Plaza, 311 N. 5th Street, Suite 100, Quincy, IL 62301. Telephone: (217)224–8580.

David Heffernan, Refuge Manager, Rice Lake National Wildlife Refuge, Route 2, McGregor, MN 55760. Telephone: (218)768–2402.

Ronald Papike, Refuge Manager, Sherburne National Wildlife Refuge, Route #2, Zimmerman, MN 55398. Telephone: (612)389–3323.

Jerry Schotzko, Refuge Manager, Upper Mississippi Wild Life and Fish Refuge, 122 W. 2nd Street, Winona, MN 55987. Telephone: (507) 452–4232.

SUPPLEMENTARY INFORMATION: Sport fishing on portions of the following refuges shall be in accordance with all applicable State and Federal regulations, subject to additional special regulations and conditions as indicated. Portions of refuges which are open to sport fishing are designated by signs and/or delineated on maps. Special conditions applying to individual refuges and maps are available at refuge headquarters or from the Office of the Area Manager (addresses listed above).

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

Illinois

Chautauqua National Wildlife Refuge

From December 15, 1978 through October 15, 1979, all waters of Chautauqua National Wildlife Refuge are open for sport fishing from a boat or through the ice. Bank fishing is permitted along the Cross dike, at the Recreation Area, and at Boatyard No. 3 as posted. All other areas of the refuge are closed to bank fishing. The use of boats, powered by motors of ten (10) horse power or less, is permitted in the waters of Lake Chautauqua. Fishing is allowed between sunrise and sunset only.

Minnesota

Big Stone National Wildlife Refuge

Sport fishing on Big Stone National Wildlife Refuge is allowed between sunrise and sunset during State fishing seasons. The Minnesota and Yellow Bank Rivers are open to fishing for their entire length through the refuge. Canoes, without motors, are allowed only on the Minnesota River channel canoe trail which is designated by signs. Bank fishing only is allowed in the pool areas or open marshes. No ice fishing is permitted.

Rice Lake National Wildlife Refuge

Sport fishing is permitted on the Rice Lake National Wildlife Refuge, Aitkin County, Minnesota, and the Sandstone Unit, Pine County, Minnesota, only on those areas designated by signs as being open to fishing. These areas comprise approximately 80 acres. The open season for sport fishing extends from May 12, 1979 through November 30, 1979, inclusive. Fishing is allowed between sunrise and sunset only. The use of canoes and boats, without motors, is allowed for sport fishing on that portion of Rice River posted as open to fishing and on the Twin Lakes fishing area only.

Sherburne National Wildlife Refuge

Sport fishing is permitted on the Sherburne National Wildlife Refuge only on those areas designated by signs as being open to fishing. The open season for sport fishing extends from May 1, 1979 through February 28, 1980, inclusive. Fishing is allowed between sunrise and sunset only. During periods when no ice exists, fishing activity is confined to the St. Francis River. Access to all fishing areas is permitted only at designated access sites. Boats, without motors, may be used on the St. Francis River only from designated access sites.

Wisconsin

Horicon National Wildlife Refuge

Sport fishing is permitted on the Horicon National Wildlife Refuge only on the areas designated by signs as being open to fishing. These areas comprise approximately five acres. The fishing season extends from May 15, 1979 through September 15, 1979, inclusive. Fishing is allowed between sunrise and sunset only. The use of boats or other floating devices is not permitted.

Necedah National Wildlife Refuge

Sport fishing is permitted on the Necedah National Wildlife Refuge only on those areas designated by signs as being open to fishing. Summer fishing is permitted on Sprague and Goose Pools from June 1 through September 30, 1979. Winter fishing is allowed on the entire refuge, except Rynearson No. 1 Pool, from December 15 through December 31, 1979. Fishing is allowed between sunrise and sunset only. The use of boats and canoes, without motors, is permitted.

Illinois, Iowa, Minnesota, Wisconsin

Upper Mississippi River Wild Life and Fish Refuge

Sport fishing, commercial fishing, and the taking of frogs, turtles, crayfish and clams on the Upper Mississippi River Wild Life and Fish Refuge, is permitted on all water areas of the refuge. The refuge water areas comprise 125,000 acres. All fish, frogs, turtles, crayfish and clams shall be taken in accordance with all applicable state regulations and seasons which are adopted herein and made a part hereof. All sport and commercial fishing on the Spring Lake Closed Area of the Upper Mississippi River Wild Life and Fish Refuge in Carroll County, Illinois, is prohibited from October 1 through December 20. All persons, including their helpers, exercising the privilege of commercial fishing on the Spring Lake Closed Area must possess a valid commercial fishing permit issued by the Refuge Manager and must comply with the conditions which are set forth in the permit.

Illinois, Iowa, Missouri

Mark Twain National Wildlife Refuge

The open season for sport fishing on the Batchtown Division, Calhoun County, Illinois, extends from January 1, 1979 through October 15, 1979, with the exception of certain designated areas which are open through December 31, 1979.

The open season for sport fishing on the southern portion of Swan Lake on the Calhoun Division, Calhoun County, Illinois, extends from April 1, 1979 through October 15, 1979. The northern portion of Swan Lake, from the man-made ditch at Six-Mile Island to the northern refuge boundary will be open from January 1, 1979 through December 31, 1979.

The open season for sport fishing on the Keithsburg Division, Mercer County, Illinois, and the Gardner Division, Adams County, Illinois, extends from January 1, 1979 through October 15, 1979.

The open season for sport fishing on the Louisa Division, Louisa County, Iowa, extends from January 1, 1979 through September 30, 1979, with the exception of certain designated areas adjacent to the Port Louisa Road which are open through December 31, 1979.

The open season for sport fishing on the Big Timber Division, Louisa County, Iowa, extends from January 1, 1979 through December 31, 1979.

The open season for sport fishing on the Clarence Cannon National Wildlife Refuge, Pike County, Missouri, is limited to Bryants Creek which is open from January 1, 1979 through December 31, 1979.

April 19, 1979.

George G. P. Bekeris,

Area Manager.

[FR Doc. 79-13083 Filed 4-26-79; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 654

Stone Crab Fishery Management Plan; Repromulgation of Emergency Regulations

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Repromulgation of emergency regulations.

SUMMARY: The emergency regulation implementing a portion of the Stone Crab Fishery Management Plan (FMP) (44 FR 18031) is continued in effect until final regulations are promulgated, but not later than June 19, 1979 if no final regulations are promulgated by that time.

EFFECTIVE DATE: The emergency regulations are extended from 0001 hours E.D.T. May 5, 1979 until June 19, 1979, or to the time when final regulations are promulgated, if sooner.

FOR FURTHER INFORMATION CONTACT: Mr. Willian H. Stevenson, Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702, Telephone: 813-896-3141.

On March 26, 1979, an emergency regulation implementing a portion of the Stone Crab Fishery Management Plan was published to govern that fishery in the Gulf of Mexico (44 FR 18031). This regulation created a line in the fishery conservation zone which separated crab fishermen who fish with fixed gear (pots or traps) from shrimp fishermen who fish with moving gear (otter trawls).

The Stone Crab Fishery Management Plan, Notice of Approval and proposed regulations, including the emergency regulation, implementing the entire FMP appeared in the **Federal Register** on April 3, 1979 (44 FR 19444).

The regulation is hereby extended, under provisions of sec. 305(e) of the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 *et seq.*, as amended, because the Assistant Administrator for Fisheries finds that the emergency continues to exist.

Executive Order 12044 does not apply to the emergency regulation, except for the 60-day comment period which began on March 26, 1979. The final environmental impact statement covering the FMP was filed with the Environmental Protection Agency on February 8, 1979.

(16 U.S.C. 1801 *et seq.*)

Signed in Washington, D.C. this 20th day of April, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-13236 Filed 4-26-79; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 724

Fire-Cured and Dark Air-Cured Tobacco; Marketing Quota Referendum Results

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final Rule.

SUMMARY: This rule announces the results of the fire-cured (types 21–24) and dark air-cured (types 35–36) tobacco marketing quota referendums. Producers of these kinds of tobacco approved marketing quotas for the 1979–80, 1980–81, and 1981–82 marketing years.

EFFECTIVE DATE: April 27, 1979.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, (202) 447-7601.

SUPPLEMENTARY INFORMATION: Sections 724.23 and 724.24 are issued pursuant to and in accordance with section 312 of the Agricultural Adjustment Act of 1938, as amended, to proclaim the marketing quota referenda results for fire-cured (types 21–24) and dark air-cured (types 35 & 36) tobacco, respectively, for the three marketing years beginning October 1, 1979, October 1, 1980, and October 1, 1981. The Secretary has proclaimed national marketing quotas for fire-cured (type 21), fire-cured (types 22–24) and dark air-cured (type 35 & 36) tobacco, for the 1979–80, 1980–81 and 1981–82 marketing years, and has announced the amount of the national marketing quota for each of such kinds of tobacco for the 1979–80 marketing year (44 FR 7108). The Secretary has announced (44 FR 10387) that separate referenda would be conducted by mail ballot during the period February 20–23, 1979, each inclusive, to determine whether producers of such tobacco were in favor of or opposed to marketing

quotas for the three marketing years beginning October 1, 1979, October 1, 1980 and October 1, 1981.

The material previously appearing in these sections under centerhead "Marketing Quota Referendum Results" remains in full force and effect as to the crops to which each is applicable.

The only purpose of this document is to proclaim the results of the referenda. It is hereby found and determined that with respect to this proclamation, compliance with the notice of proposed rulemaking procedure in 5 U.S.C. 553 and the requirements of E.O. 12044 is unnecessary.

PART 724-FIRE-CURED, DARK AIR-CURED, AND VIRGINIA SUN-CURED, CIGAR-BINDER (TYPES 51 AND 52), AND CIGAR FILLER AND BINDER (TYPES 42, 43, 44, 53, 54, AND 55) TOBACCO

Subpart—Proclamations, Determinations, and Announcements of National Marketing Quotas and Referendum Results

Therefore, 7 CFR Part 724 is amended by revising §§ 724.23 and 724.24 to read as follows:

§ 724.23 Fire-cured (types 21-24) tobacco—1979-80, 1980-81, and 1981-82 marketing years.

In a referendum of farmers engaged in the production of the 1978 crop of fire-cured (types 21-24) tobacco held during the period February 20 to 23, each inclusive, 9,885 farmers voted. Of those voting, 9,376 or 94.9 percent, favored quotas for a period of three years beginning October 1, 1979; 509 or 5.1 percent were opposed to quotas. Therefore, marketing quotas will be in effect for these kinds of tobacco for the three marketing years beginning October 1, 1979, October 1, 1980, and October 1, 1981.

§ 724.24 Dark air-cured (types 35 and 36) tobacco—1979-80, 1980-81, and 1981-82 marketing years.

In a referendum of farmers engaged in the production of the 1978 crop of dark air-cured (types 35 & 36) tobacco held during the period February 20 to 23, each inclusive, 10,302 farmers voted. Of those voting, 9,838 or 95.5 percent, favored quotas for a period of three years beginning October 1, 1979; 464 or 4.5 percent were opposed to quotas. Therefore, marketing quotas will be in effect for this kind of tobacco for the three marketing years beginning October 1, 1979, October 1, 1980, and October 1, 1981.

(Secs. 312, 375, 52 Stat. 46, as amended, 66, as amended; 7 U.S.C. 1312, 1375).

Note.—An Impact Analysis Statement is available from Jerome F. Sitter, Director, Price Support and Loan Division, Room 3741-South Building, P.O. Box 2415, Washington, D.C. 20013.

Note.—This proposal has been determined not significant under the USDA criteria implementing Executive Order 12044.

Signed at Washington, D.C. on: April 20, 1979.

Ray Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-13215 Filed 4-26-79; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 905

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Amendment of Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to Final rule.

SUMMARY: This amendment lowers the minimum grade requirements for domestic and export shipments of fresh Florida pink seedless grapefruit and white seedless grapefruit from Improved No. 2 to U.S. No. 2 Russet during the period April 23, 1979, through August 26, 1979. This action recognizes current market demand for U.S. No. 2 Russet grade pink and white seedless grapefruit and is consistent with the grade composition of the available crop in the interest of growers and consumers.

EFFECTIVE DATES: April 23, 1979, through August 26, 1979.

SUPPLEMENTARY INFORMATION: *Findings.* (1) This action is taken pursuant to the marketing agreement and Order No. 905, both as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). Based on the recommendations of the committee established under the marketing agreement and order, and upon other available information, it is found that the regulation of shipments of Florida pink seedless grapefruit and white seedless grapefruit 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.

(2) The minimum grade requirement, herein specified, for domestic and export shipments of pink seedless grapefruit and white seedless grapefruit reflect the Department's appraisal of the need for the amendment of the current regulation based on current supply and demand conditions. Relaxation of the minimum grade will make additional supplies of grapefruit available to meet market needs and will tend to promote orderly marketing.

The Citrus Administrative Committee, at an open meeting on April 17, 1979, reported there is market demand for larger quantities of pink and white seedless grapefruit.

It is concluded that the amendment of the grade requirement is necessary to establish and maintain orderly marketing conditions and to provide acceptable grades of fruit in the interest of producers and consumers pursuant to the declared policy of the act.

(3) 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 amendment is based and the effective date necessary to effectuate the declared policy of the act. Growers, handlers, and other interested persons were given an opportunity to submit information and views on the amendment at an open meeting, and the amendment relieves restrictions on the handling of Florida pink seedless grapefruit and white seedless grapefruit. It is necessary to effectuate the declared purposes of the act to make the regulatory provisions effective as specified, and handlers have been apprised of such provisions and effective time.

Accordingly, it is found that the provisions of § 905.302 (Orange, Grapefruit, Tangerine, and Tangelo Regulation 2) (43 F.R. 43013; 52197; 53027; 54617; 57139; 58175; 58353; 59335; 44 F.R. 6349; 9589; 12605; 21759), should be and are amended by revising Table I, paragraph (a) applicable to domestic shipments, and Table II, paragraph (b) applicable to export shipments, to read as follows:

§ 905.302 **Orange, Grapefruit, Tangerine, and Tangelo Regulation 2.**

(a) * * *

Table I

Variety	Regulation period	Minimum grade	Minimum diameter (in.)
(1)	(2)	(3)	(4)
Grapefruit:			
Seedless, pink	Apr. 23, 1979, thru Aug. 26, 1979	U.S. No. 2 Russet	3 5/16
Do	Aug. 27, 1979, thru Oct. 14, 1979	Improved No. 2	3 5/16
Seedless, except pink	Apr. 23, 1979, thru Aug. 26, 1979	U.S. No. 2 Russet	3 5/16
Do	Aug. 27, 1979, thru Oct. 14, 1979	Improved No. 2	3 5/16

(b) * * *

Table II

Variety	Regulation period	Minimum grade	Minimum diameter (in.)
(1)	(2)	(3)	(4)
Grapefruit:			
Seedless, pink	Apr. 23, 1979, thru Aug. 26, 1979	U.S. No. 2 Russet	3 5/16
Do	Aug. 27, 1979, thru Oct. 14, 1979	Improved No. 2	3 5/16
Seedless, except pink	Apr. 23, 1979, thru Aug. 26, 1979	U.S. No. 2 Russet	3 5/16
Do	Aug. 27, 1979, thru Oct. 14, 1979	Improved No. 2	3 5/16

* * * * *

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

Dated: April 23, 1979.

D. S. Kuryloski,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[Orange, Grapefruit, Tangerine, and Tangelo Regulation 2, Amendment 13]

[FR Doc. 79-13071 Filed 4-26-79; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1901

Nondiscrimination in Construction Financed by FmHA

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations concerning nondiscrimination in construction financed by FmHA. The action is taken to add a new Exhibit and provide for the use of a new Form. The intended effect of the action is to simplify the procedure for contract compliance and clarify responsibility for monitoring compliance.

EFFECTIVE DATE: April 27, 1979.

FOR FURTHER INFORMATION CONTACT: Ras L. Smith, (202) 447–2243.

SUPPLEMENTARY INFORMATION: FmHA amends Subpart E of Part 1901, Subchapter H, Chapter XVIII, Title 7, Code of Federal Regulations, as follows:

(1) Section 1901.205(b)(2)(ii) is revised to reference Form CC 257 "Monthly Employment Utilization Report", and to add a reference to Exhibit E.

(2) Section 1901.205(b)(3)(i)(C) is revised to read "Form CC 257" rather than "Standard Form 257".

(3) Section 1901.205(b)(3)(iii) is revised by adding a reference to Exhibit E.

(4) Section 1901.205(b)(3)(iv) is revised to make reference to the "appropriate regional office of USDL * * *" rather than "Department of Labor".

(5) Section 1901.205(e)(3) is revised to make reference to the "appropriate regional office of USDL * * *" rather than "agency charged with monitoring compliance with Executive Order 11246".

(6) Section 1901.205(g)(1) is revised to make reference to the "appropriate regional office of USDL" rather than "Director, Office of Federal Contract Compliance * * *"

(7) Section 1901.205(g)(4) is deleted.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This regulation, however, is being published as a final rule. Publication for comment is unnecessary because the changes are made to simplify procedure and to clarify responsibility for contract compliance. Due to the demand for loans for construction, any delay in issuing these regulations would be contrary to the public interest. This determination was made by William A. Tippins, Equal Opportunity Officer, Room 3106, Auditors Building, Washington, D.C., 20250.

This regulation has not been determined significant under the USDA criteria implementing Executive Order 12044. A copy of the Impact Statement prepared by FmHA is available at the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, Washington, D.C., 20250.

This document has been reviewed in accordance with FmHA Instruction 1901–G "Environmental Impact Statement". It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Accordingly, various paragraphs of § 1901.205 are revised and § 1901.205(g)(4) is deleted as follows:

1. The Table of Sections is amended by adding a new Exhibit E as follows:

* * * * *

Subpart E—Civil Rights Compliance Requirement *C*

Exhibit E—List of Regional Offices, Office of Contract Compliance Programs (OFCCP), U.S. Department of Labor (USDL)

* * * * *

2. Section 1901.205 is amended as follows:

§ 1901.205 Nondiscrimination in construction financed with FmHA loan or grant.

* * * * *

(b) *Requirements of applicants, contractors or subcontractors and responsible FmHA officials.* * * *

(2) *Contractor or subcontractor.* (i) The prospective contractor or subcontractor must submit Form FmHA 400–6, "Compliance Statement", to the County Supervisor before contract bid negotiations, and comply with the requirements of Executive Order 11246 which are included with Form FmHA 424–6, "Construction Contract", during the performance of the contract. The contract will contain the required "Standard Federal Equal Employment Opportunity Construction Contract Specifications" goals and timetables as set forth in Exhibit D.

(ii) The contractor or subcontractor will prepare and submit Form Contract Compliance (CC) 257, "Monthly Employment Utilization Report", to the appropriate regional office of the U.S. Department of Labor (USDL) (see Exhibit E, "List of Regional Offices") by the fifth of each month through completion of the contract.

(3) * * *

(i) * * *

* * * * *

(C) Form CC 257.

(ii) * * *

(iii) Explain to applicant and contractor the requirements of Executive Order 11246, when needed. However, inquiries concerning compliance must be addressed to the appropriate regional office of USDL (see Exhibit E).

(iv) Submit a report similar in form and content to Exhibit C ("FmHA Financed Contract") of this Instruction to the appropriate regional office of USDL (Exhibit E) within 10 days of the date a contract or subcontract in excess of $10,000 is awarded.

* * * * *

(e) *Compliance during construction.* * * *

* * * * *

(3) If there is any evidence of noncompliance, the County Supervisor will report all the facts to the appropriate regional office of USDL (see Exhibit E).

* * * * *

(g) *Discrimination complaints.* (1) Complaints alleging discriminatory acts may be filed directly with the appropriate regional office of USDL (see Exhibit E) or with the County Supervisor or the State Director for subsequent forwarding to the above address by any employee or applicant for employment with a contractor or subcontractor.

* * * * *

(4) [Deleted]

* * * * *

FmHA Instruction 1901–E—Exhibit E

List of Regional Offices, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor (USDL)

Region I (ME, NH, VT, MA, RI, CT)
Associate Regional Administrator, USDL/OFCCP, JFK Building, Room 1612–C, Government Center, Boston, MA 12203, (617) 223–4232.

Region II (NY, NJ, PR, VI)
Associate Regional Administrator, USDL/OFCCP, 1515 Broadway, Room 3306, New York, NY 10036, (212) 662–5563.

Region III (PA, MD, DE, VA, WV, DC)
Associate Regional Administrator, USDL/OFCCP, Gateway Building, Room 15434, 3535 Market Street, Philadelphia, PA 19104, (215) 596–1213.

Region IV (NC, SC, KY, TN, MS, AL, GA, FL)
Associate Regional Administrator, USDL/OFCCP, 1371 Peachtree Street, NE, Room 729, Atlanta, GA 30309, (402) 881–4211).

Region V (OH, IN, MI, IL, WI, MN)
Associate Regional Administrator, USDL/OFCCP, New Federal Building, 16th Floor, 2340 South Dearborn Street, Chicago, IL 60604, (312) 353–8887.

Region VI (LA, AR, OK, TX, NM)
Associate Regional Administrator, USDL/OFCCP), 555 Griffin Square Building, Room 506, Dallas, TX 75202, (214) 767–4771.

Region VII (MO, IA, NE, KS)
Associate Regional Administrator, USDL/OFCCP Regional Administrator, Federal Office Building, Room 2000, 911 Walnut Street, Kansas City, MO 64106, (816) 374–5384.

Region VII (ND, SD, MT, WY, CO, UT)
Associate Regional Administrator, USDL/OFCCP, 14431 Federal Office Building, 1961 Stout Street, Denver, CO 80202, (303) 837–5011.

Region IX (CA, NV, AZ, HI, GU)
Associate Regional Administrator, USDL/OFCCP, Federal Office Building, Room 10341, 450 Golden Gate, San Francisco, CA 94102, (415) 556–3597.

Region X (WA, OR, ID)
Associate Regional Administrator, USDL/OFCCP, Federal Office Building, 909 First Avenue, Room 4095, Seattle, WA 98174, (206) 44–4508.

(7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; Section 10 Pub. L. 93–357; 88 stat. 392; delegation of authority by the Secretary of Agriculture, CFR 223; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; delegation of authority by Director, Office of Equal Opportunity, 29 FR 14764, 33 FR 9850)

Dated: April 9, 1979.

Gordon Cavanaugh,
Administrator, Farmers Home Administration.

[FmHA Instruction 1901–E]

[FR Doc. 79–13067 Filed 4–26–79; 8:45 am]

BILLING CODE 3410–07–M

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period April 29–May 5, 1979, and increases the quantity of such lemons that may be so shipped during the period April 22–28. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective April 29, 1979 and the amendment is effective for the period April 22–28, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation and amendment are issued under 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. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other available information. It is hereby found that this action 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 April 24, 1979, 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 strong.

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.

1. Lemon Regulation 196 is set forth as follows:

§ 910.496 Lemon Regulation 196.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period April 29, 1979, through May 5, 1979, is established at 290,000 cartons.

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

2. Paragraph (a) of § 910.495 Lemon Regulation 195 (44 FR 23514) is amended to read as follows:

§ 910.495 Lemon Regulation 195.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period April 22, 1979, through April 28, 1979, is established at 295,000 cartons.

* * * * *

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

Dated: April 26, 1979.

D. S. Kuryloski,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[Lemon Reg. 196; Lemon Reg. 195, Amdt. 1]

[FR Doc. 79-13412 Filed 4-26-79; 11:33 am]

BILLING CODE 3410-02-M

Proposed Rules

Federal Register
Vol. 44, No. 83
Friday, April 27, 1979

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[7 CFR Part 1446]

General Regulations Governing 1979 and Subsequent Crops Peanut Warehouse Storage Loans and Handler Operations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: These proposed regulations provide the terms and conditions under which producers acting through their associations may receive price support on their eligible peanuts through warehouse storage loans for the 1979 and subsequent crop peanuts. Producers and handlers may market peanuts in accordance with the provisions of this subpart. This proposed revision is necessary so that the program may be administered more effectively.

DATES: Comments must be received before May 29, 1979.

ADDRESS: Send comments to the Director, Price Support and Loan Division, ASCS, U.S. Department of Agriculture, 3741-South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Thomas A. VonGarlem (ASCS), 202–447–7954.

SUPPLEMENTARY INFORMATION: The Commodity Credit Corporation (CCC), is inviting comments on the proposed revision of the regulation. Major changes are as follows:

Section 1446.3(o) is amended to provide that farmers stock peanuts shall include any loose shelled kernels removed by farmers from farmers stock peanuts. This change is necessary to permit producers to market loose shelled kernels separate from other farmers stock peanuts. Section 1446.3(z) is changed to provide that the raw or inshell peanuts of any crop exported for human consumption shall meet requirements as specified in the outgoing quality regulations of the peanut marketing agreement for such crops. This change is necessary in order to be consistent with industry requirements which are designed to provide that only quality peanuts are exported for edible consumption. Section 1446.3(ff) added to provide a definition for peanut products. This change is necessary in order for peanut handlers to market additional peanuts in accordance with the regulations. Section 1446.3(hh) is amended to provide that segregation 2 or 3 peanuts which have been placed under additional loan and purchased under the buy back provision shall be considered segregation 1 additional peanuts for allocation to pools. This provision will permit producers producing peanuts which are in demand to take advantage of the increased value. Section 1446.3(ll) is amended to provide a definition for raw peanuts.

Section 1446.5(a) is amended to delete from contract provisions the language that the amount of segregation 1 peanuts required to be delivered shall not exceed the difference between the farm base production poundage and the sum of the farm poundage quota and the quantity of additional peanuts covered by prior contracts. Section 1446.5(b) is amended to provide that a specified quantity in excess of the amount specified in part 2.A, of the contract may be delivered under part 2.B, of the contract provided the producers delivered the quantity specified under 2.A, of the contract and retains the right to market such peanuts as quota peanuts. These changes will enable additional peanuts to be traded more efficiently.

Section 1446.7 is amended to provide that the check and MQ–94 for additional peanuts must be postmarked not later than the second workday excluding Saturdays, Sundays, and Federal holidays following the day the peanuts were inspected. This will give handlers additional time in order to complete paperwork on such peanuts. Section 1446.8(b) is amended to delete the provision that shellers may account for commingled additional peanuts on a shelled basis. This procedure is deleted to eliminate substantial handler reports and recordkeeping requirements from the regulations.

Section 1446.9(d) is added to provide procedures for handling replacement of quota peanuts exported and for additional peanuts sold as domestic edible for which approval has not been previously given. Such additional peanuts may be used as domestic edible provided the handler pays CCC a penalty of 120 percent of the quota loan rate for such peanuts. When the handler establishes to the satisfaction of CCC that a like amount of quota peanuts has been exported, the money will be refunded and no penalty will be due. This will permit some handlers to use additional peanuts as quota peanuts without incurring needless expense when shipping addtional peanuts when small quantities are needed to complete shipments.

Section 1446.10(b) is expanded to show associations authorized to make CCC advances and Section 1446.10(i) added to assess liquidated damages against any person who causes ineligible peanuts to enter the loan. The provision is necessary since in many instances, ineligible peanuts have been mixed with eligible peanuts and cause damages to CCC since such peanuts cannot be accepted for loans. Section 1446.14(b) is amended to provide specified circumstances under which peanuts containing more than 10 percent foreign material and/or moisture may be eligible for additional loan. This will reduce farmers' marketing costs in making such peanuts eligible for the additional loan.

Section 1446.15 is amended to provide that segregation 2 peanuts are deleted from the antishopping procedure. Such peanuts do not create a hazard to health or the integrity of the support and inspection programs. Section 1446.15 is also amended to require as a condition for eligibility for continued quota support on all peanuts delivered for the rest of the marketing year that farmers make marketing decisions on any lot of peanuts graded as segregation 3 on the day of inspection. Farmers will not be permitted to attempt to clean such peanuts. This change is necessary in order to prevent these peanuts from being reclassed as segregation 1 or 2, entering the loan, contaminating other peanuts, and rendering all such peanuts unmerchantable as edible peanuts. Records show that buyers do not buy

such peanuts after they have previously been graded segregation 3.

Executive Order 12044 (43 FR 12661, March 24, 1978) requires at least a 60-day public comment period on proposed significant regulations except where the Agency determines that this is not possible or in the best interests of the producers. Peanut producers are making production plans. Peanut producers and handlers need to know the content of these regulations prior to entering into contracts for the marketing of additional peanuts. It is in the best interests of producers to have the final regulations published by late May 1979. Therefore, I have determined that compliance with the notice of proposed rulemaking and public procedure of 5 U.S.C. 553 and the requirements of Executive Order 12044 is impossible and contrary to the public interest. Accordingly, this notice is being issued without compliance with such procedure and requirements.

Proposed Rule

It is proposed to amend 7 CFR Section 1446.1–1446.16 and title of the subpart to read as follows effective for the 1979 and subsequent crops.

Subpart—General Regulations Governing 1979 and Subsequent Crops Peanut Warehouse Storage Loans and Handler Operations

General

Sec.

1446.1 General statement.
1446.2 Administration.
1446.3 Definitions.

Handler Operations

1446.4 Handler operations.
1446.5 Contracts for additional peanuts for crushing or export.
1446.6 Commingling quota and additional peanuts.
1446.7 Use of additional peanuts as domestic edible peanuts.
1446.8 Compliance by handlers of contract additional peanuts.
1446.9 Supervision and handling of additional contract peanuts.

Warehouse Storage Loans

1446.10 Availability of warehouse storage loans.
1446.11 Pooling and distribution of proceeds.
1446.12 Producers indebtedness.
1446.13 Eligible producer.
1446.14 Eligible peanuts.
1446.15 Disposition and liquidated damages on segregation 3 peanuts.
1446.16 Producers transfer of additional loan stocks to quota pools.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 101, 108, 401, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1421); sec. 359, 52 Stat. 31, as amended (7 U.S.C. 1359).

Subpart—General Regulations Governing 1979 and Subsequent Crops Peanut Warehouse Storage Loans and Handler Operations

General

§ 1446.1 General statement.

(a) *Scope.* This subpart sets forth conditions under which producers and handlers may trade in 1979 and subsequent crop(s) peanuts. This subpart also sets forth the terms and conditions under which eligible producers acting collectively through specified marketing associations (referred to severally in this subpart as "the association") may obtain price support on their 1979 and subsequent crop farmers stock peanuts. Eligible farmers stock peanuts produced by eligible producers which are quota peanuts shall be eligible for price support at the quota support rate. Farmers stock peanuts which are not quota peanuts shall be eligible for price support at the additional support rate. Additional peanuts may only be marketed through contracts with handlers or by being pledged to Commodity Credit Corporation for loans. Annual supplements to this subpart will specify support prices, and other terms and conditions not contained in this subpart which are applicable to the warehouse storage loan program for peanuts of a particular crop.

(b) *Price Support Advances.* Producers may obtain price support loans at the rates specified in the applicable annual supplement through the applicable association. Each association will make appropriate loan advances on peanuts delivered to it by producers at warehouses operating under peanut receiving and warehouse contracts with the association. CCC will make a loan (referred to in this subpart as a "warehouse storage loan") to the association. Such loan will be secured by peanuts received by the association.

(c) *Farm storage loans and purchases from producers.* Regulations containing the terms and conditions under which CCC will make farm storage loans directly to producers and purchases directly from producers on any crop farmers stock peanuts will be published separately in the **Federal Register.**

§ 1446.2 Administration.

(a) *Responsibility.* Under the general direction and supervision of the Executive Vice President, CCC, the Producer Association Division, Agricultural Stabilization and Conservation Service (referred to in this subpart as "ASCS") will administer this subpart.

(b) *Limitation of authority.* State and county committees or their employees and the associations have no authority to modify or waive any of the provisions of this subpart or any amendments or supplements thereto.

(c) *Supervisory authority.* No delegation of authority in this subpart shall preclude the Executive Vice President, CCC, or the Executive Vice President's designee from determining any questions arising under the regulations or from reversing or modifying any determination made pursuant to such delegation.

§ 1446.3 Definitions.

As used in this subpart, and in instructions and documents in connection herewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the content or subject matter otherwise requires.

(a) *Additional peanuts.* Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

(b) *Additional support rate.* The support rate published in annual crop supplements to this part applicable to additional peanuts.

(c) *ASCS.* The Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

(d) *Association.* An area marketing association which is operated primarily for the purpose of conducting loan activities and which is selected and approved for such activities by the Secretary.

(e) *CCC.* The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture.

(f) *Compliance regulations.* The Regulations Governing Acreage and Compliance Determinations for Farm Marketing Quotas, Acreage, Allotments, and Related ASCS Programs, as amended, issued by the Administrator, ASCS, and effective for the applicable crop, Part 718 of this title.

(g) *Contract additional peanuts.* Additional peanuts for crushing or exporting, or both, on which a contract has been entered into between a handler and producer in accordance with § 1446.5.

(h) *County committee.* Persons elected within a county as the county committee under the regulations governing the selection and function of Agricultural Stabilization and Conservation county and community committees in Part 7 of

subtitle A of this title, except that for Puerto Rico and the Virgin Islands, the Carribbean Area Agricultural Stabilization and Conservation committee shall insofar as applicable, perform the functions of the county committee.

(i) *County office.* The office of the county ASC committee where records for the farm are kept.

(j) *Domestic edible use.* Use for milling to produce domestic food products or seed and use on the farm.

(k) *Effective farm allotment.* The effective farm peanut acreage allotment for the applicable crop of peanuts, as defined in the peanut marketing quota regulations, Part 729 of this title.

(l) *Effective farm poundage quota.* The effective farm poundage quota for the applicable crop of peanuts as defined in the marketing quota regulations, Part 729 of this title.

(m) *Extra large kernals.* Shelled Virginia type peanuts which are "whole" and free from "minor defects" and "damage" as such terms are defined in the U.S. Standards for Shelled Virginia type peanuts effective on the date of inspection and which will not pass through a screen having 21.5/64 by 1 inch openings.

(n) *Farm.* A farm, as defined in the Regulations Governing Reconstitution of Farm, Allotments, and Bases, Part 719 of this title.

(o) *Farmers stock peanuts.* Picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels removed by producers from farmers stock peanuts.

(p) *Final acreage.* The acreage on the farm from which peanuts are picked or threshed as determined and adjusted under Part 718 of this title.

(q) *Form MQ–94 and Form FVQ–95.*— (1) *Form MQ–94.* Inspection Certificate and Sales Memorandum for farmers stock peanuts.

(2) *Form FVQ–95.* Federal-State Inspection Service, Peanut Inspection Note Sheet.

(r) *Handler.* Any person or firm who acquires peanuts through a business of buying, shelling, or drying peanuts.

(s) *Inspector.* A Federal-State inspector authorized or licensed by the Secretary, U.S. Department of Agriculture.

(t) *Lot.* That quantity of farmers stock peanuts for which one MQ–94 or other inspection certificate is issued. In case of farmers stock peanuts delivered to the association for a loan advance, a lot shall consist of not more than the content of one vehicle, or two or more vehicles containing approximately 24,000 pounds.

(u) *Marketing cards.* Forms MQ–76 issued each year according to Part 729 of this title by ASCS county offices to growers for use in marketing peanuts of the applicable crop. Each Form MQ–76 shall indicate the farm operator's eligibility for quota price support and the pounds that may be marketed as quota peanuts and contract additional peanuts.

(v) *Marketing quota penalties.* The penalties prescribed in the marketing quota regulations, Part 729 of this title, which shall be computed and collected in accordance with those regulations.

(w) *Marketing quota regulations.* The Allotment and Marketing Quota Regulations for Peanuts of the 1978 and Subsequent Crops, as amended, issued by the Administrator, ASCS, Part 729 of this title.

(x) *Marketing year.* The period beginning on August 1 of the year in which the peanuts of the applicable crop are planted and ending on July 31 of the following year.

(y) *Net weight.* That weight of farmers stock peanuts obtained by deducting from the gross scale weight of the peanuts (1) foreign material, and (2) moisture in excess of seven percent in the Southwestern and Southeastern areas, and eight percent in the Virginia-Carolina area.

(z) *Edible export standard for contract additional peanuts.* (1) Raw shelled or inshell peanuts of any crop exported for human consumption shall meet such U.S. grade requirements, or modifications thereof, or requirements as to wholesomeness as specified in the outgoing quality regulations for such crop in the Marketing Agreement for peanuts No. 146.

(2) Peanuts shown by the applicable Federal-State Inspection Certificate to deviate from these requirements may be exported if the handler certifies to the association that such deviations are acceptable (i) to the export buyer and (ii) under the Marketing Agreement.

(aa) *Eligible country.* Any destination outside the United States, other than any country or area for which a validated export license is required under regulations issued by the Bureau of International Commerce, unless such license for shipment or transshipment thereto has been obtained from the Bureau, except that neither Canada nor Mexico shall be considered an eligible country for the export of peanut products other than treated seed peanuts.

(bb) *Export and exportation.* A shipment of peanuts or peanut products from the United States directed to a destination outside the United States to become part of the mass of goods of the country of destination.

(cc) *Fragmented peanuts.* Peanuts not more than 20 percent of which are whole kernels which will not pass through the following openings, by type: Spanish $^{15}/_{64} \times {}^{3}/_{4}$ inch slot; Runner $^{16}/_{64} \times {}^{3}/_{4}$ inch slot; and Virginia $^{15}/_{64} \times 1$ inch slot.

(dd) *Loan value.* The amount of the loan which may be obtained under these regulations on a lot of eligible farmers stock peanuts computed for quota or additional peanuts, as applicable, on the basis of the weight, quality, and the support values for such type appearing in the applicable crop supplement.

(ee) *Peanut meal.* Any meal, cake pellets, or other forms of residue remaining after extraction or expulsion of oil from peanut kernels, but not including pressed peanuts.

(ff) *Peanut Products.* Any products manufactured or derived from peanuts such as peanut candy, peanut butter, peanut granules or peanut flakes.

(gg) *Peanut receiving and warehouse contract.* Form CCC—1028 Identity Preserved, Form CCC–1028–A, Commingled Storage, or any other form approved by CCC for this purpose.

(hh) *Peanut segregations-(1) Segregation 1.* Farmers stock peanuts which (i) have at least 99 percent peanuts of one type, (ii) have not more than two percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay, nor more than 0.5 percent freeze damage, and (iii) are free from visible Aspergillus flavus mold;

(2) *Segregation 2.* Farmers stock peanuts which (i) have less than 99 percent peanuts of one type, or (ii) have more than two percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay, or more than 0.5 percent freeze damage, and (iii) are free from visible Aspergillus flavus mold; *Provided, however,* If such peanuts are placed under additional loan and purchased under the immediate buy back procedure, as provided in § 1446.7 of these regulations, such peanuts shall be considered Segregation 1 additional peanuts for loan pool accounting purposes.

(3) *Segregation 3.* Farmers stock peanuts which have visible Aspergillus flavus mold. *Provided, however,* if such peanuts are placed under additional

loan and purchased under the immediate buy back procedure as provided in § 1446.7 of these regulations, such peanuts shall be considered Segregation 1 additional peanuts for loan pool accounting purposes.

(ii) *Pools.* Accounting pools established by the association and on which complete and accurate records are maintained by area, by type, and by segregation for quota peanuts and additional peanuts not under contract.

(jj) *Quota peanuts.* Peanuts which are eligible for domestic edible and related use, are marketed or considered marketed from a farm as quota peanuts, and which are not in excess of the farm poundage quota.

(kk) *Quota support rate.* The support rate published in annual crop supplements applicable to quota peanuts.

(ll) *Raw Peanuts.* Inshell, shelled peanuts, or blanched peanuts which have not passed through any other processing operation.

(mm) *Sound mature kernels.* Kernels which are free from "damage" and "minor defects" as defined in the U.S. Standards for the applicable type of peanuts effective on the date of the inspection, and which will not pass through screens with the following openings:

Runner type: $^{16}/_{64} \times {}^{3}/_{4}$ inch slot
Spanish type: $^{15}/_{64} \times {}^{3}/_{4}$ inch slot
Virginia type: $^{15}/_{64} \times 1$ inch slot

(nn) *Type.* The generally known types of peanuts (i.e., Runner, Spanish, Valencia, and Virginia), as defined in the marketing quota regulations.

(oo) *United States.* The 50 States of the United States, Puerto Rico, the territories and possessions of the United States, and the District of Columbia.

(pp) *United States government agency.* Any corporation wholly owned by the Federal Government, and any department, bureau, administration, or other agency of the Federal Government.

(qq) *Valencia type peanuts produced in the Southwest suitable for cleaning and roasting.* Valencia type peanuts produced in the Southwest containing not more than 25 percent having shells damaged by (1) discoloration, (2) cracks or broken ends, or (3) both.

Handler Operations

§ 1446.4 Handler responsibilities.

(a) *Examination of producer's marketing card.* All handlers shall examine producer's marketing cards and record each purchase or delivery of peanuts as required in Part 729 of this title. Any peanuts delivered under the additional peanut contract (Form CCC–1005) in excess of the provisions of such contract shall be considered as a marketing of quota peanuts. No peanuts shall be handled from any producer who does not present a marketing card and farm identification card at time of delivery.

(b) *Purchase records.* (1) Purchases of quota peanuts on which and MQ 94 is prepared. Each handler shall maintain records of the peanuts, the State and county code, and the farm number of the farm on which the peanuts were produced or the registration number of the seller if the seller is a handler and must indicate the quantity, type, date of purchase, and applicable MQ 94 serial number. The handler shall imprint forms MQ–94 and FVQ–95 (Peanut Note Sheet) with the farm identification card, the peanut buyers card, and the buying point card.

(2) Purchases of quota peanuts from producers on which MQ–94 is not prepared. The handler shall immediately transmit a record of such purchase to CCC. Such record shall show name and addrss of producer, State and county code, farm number, handler's name, address and registration number, buying point, any marketing quota penalty collected, quantity, and date of purchase.

(c) *Sales and disposal records.* Each handler shall maintain records of all sales and other disposals of peanuts. Such records shall show date of sale, quantity, type, to whom sold, whether sold as edible peanuts or for crushing, and any other information required by this subpart.

(d) *Method of keeping records.* Handler records shall be maintained within their operation in such a manner than will enable representatives of the Secretary to readily reconcile the quantities, grades, and qualities of all such peanuts disposed of by a handler. Records concerning the acquistion and disposal of contract additional peanuts must also be kept in such a manner that representatives of the Secretary can readily determine compliance with the regulations and contract provisions.

(e) *Retention of records.* All records shall be maintained for a period of three years following the end of the marketing year in which the peanuts were produced.

§ 1446.5 Contracts for additional peanuts for crushing and export.

(a) *Contracts between handlers and producers.* Handlers who have a U.S. address may contract with producers on form CCC–1005 to buy additional peanuts from the producers for crushing or export, or both. The type and quality of each lot of contract peanuts delivered under contract shall be determined by an inspector when such peanuts are delivered by a producer. All such contracts shall be completed and submitted to the county office for approval prior to June 15 of the year in which the crop is produced. Such contracts cannot be sold or traded: *Provided,* That if a handler is unable to perform under such contracts because of conditions beyond his control, including but not limited to insolvency, bankruptcy, death, or destruction of warehouse facilities, the handler and the producers may agree to the delivery of the peanuts to other handlers under the terms of the original contract, if specifically authorized by the Deputy Administrator, State and County Operations, ASCS. The county office shall summarize contracts and send such summary to the association through the State office. Contracts shall include at least the following provisions:

(1) Name and address of operator, State and county code, and farm serial number of the farm.

(2) Name, address of handler, and registration number.

(3) Amount of segregation 1 peanuts in pounds by type.

(4) Contract price shown as a percentage of quota peanut support rate.

(5) Requirement for disclosure by producer of any liens on peanuts on date of delivery.

(6) A provision that the producer shall not be liable for failure to deliver against such contract above the actual production of such type and quality on the farm: *Provided,* That such physical loss of production resulted solely from an external source such as drought, fire, lighting, inherent explosion, windstorm, tornado, flood, or other acts of God.

(7) Signature of farm operator and producer if different from operator.

(8) Signature of handler or authorized agent.

(9) The following agreement by the handler:

I agree that I will either export or crush the peanuts delivered under this contract as provided in Part 1446, Subpart-General Regulations Governing 1979 and Subsequent Crops Peanuts Warehouse Storage Loan and Handler Operations, by August 31 following the calendar year in which the crop is grown and that, upon my failure to do so, I shall be subject to liquidated damages as specified in such regulations, on all such peanuts which have not been so crushed or exported. I further agree that if I contract with another Handler to market any such peanuts, I shall include as part of the contract the agreement contained herein, and upon my failure to do so, I shall be subject to liquidated damages,

as specified in the regulations on all such peanuts.

(b) *Deliveries under optional provisions of the contract.* Contracts may also include provisions under which a specified quantity of segregation 1 peanuts in excess of the quantity specified in paragraph (a) of this section may be delivered under the contract: *Provided,* The quantity of segregation 1 peanuts specified in paragraph (a) of this section has been delivered and the producer retains the right to market Segregation 1 peanuts as quota peanuts to the extent that the farm poundage quota has not been filled. Contracts may also provide for delivery of segregations 2 and 3 peanuts without regard to any quantity limits specified in this section.

(c) *Contracts between handlers.* Handlers may contract with other handlers to market additional contract peanuts. Such contracts must contain the agreement specified in paragraph (a)(9) of this section and an agreement that such agreement will be included in all subsequent contracts covering resale of such peanuts.

§ 1446.6 Commingling of quota and additional peanuts.

Quota and additional farmers stock peanuts of like type and segregation may be commingled and exchanged on a dollar value basis to facilitate handling and marketing. The dollar value basis shall be determined on the basis of the quota support rate. The handler shall receive, store, and deliver all such peanuts in accordance with good commercial practice and instructions provided by CCC. For each lot of quota and/or additional peanuts stored commingled, the records of the handler shall show at all times the date of place received, name and address of the producer, the type, segregation, pounds, and dollar-value-in. The handler shall keep such other accounts and records and furnish such information and reports relating to the dollar value out and disposition of such peanuts as may be prescribed by the association or CCC.

§ 1446.7 Use of additional peanuts as domestic edible peanuts.

During harvest season, a handler shall have the right to purchase additional peanuts for domestic edible use at buying points owned or controlled by such handler at 100 percent of the quota loan value of such peanuts plus handling charges. Such purchase may be made only from the association and only on the date such peanuts were offered by producers to the association for loan. The handler shall advance to the producer, as an agent for the association, price support at the additional level and forward to the association a check payable to CCC for the peanuts at the quota support rate plus handling charges. The check and applicable MQ–94 will identify the peanuts as additional peanuts that may be used as domestic edible peanuts and must be postmarked not later than the second work day excluding Saturdays, Sundays, and Federal holidays following the day the peanuts were inspected. The association shall credit such receipts to the additional pool for such peanuts. Handlers may also purchase additional peanuts from the loan pool for domestic edible use after delivery by producers to the association, under terms and conditions announced by CCC. The minimum price for such purchases shall be not less than carrying charges plus (a) 105 percent of the quota loan value if purchased not later than December 31 of the marketing year, or (b) 107 percent of the quota loan value if purchased after December 31 of the marketing year.

§ 1446.8 Compliance by handlers of contract additional peanuts.

All contract additional peanuts acquired by a handler shall be disposed of by domestic crushing or export to an eligible country. All handler's records shall be subject to a review by CCC or other representatives of the Secretary, to determine compliance with the provisions of this subpart. Failure to dispose of such peanuts by August 31 following the calendar year in which the crop was grown or such later date as may be authorized by the association shall constitute noncompliance with the provisions of this subpart. Refusal to make such handler's records available to authorized representatives of the Secretary or failure of such records submitted to establish such disposition shall constitute prima-facie evidence of noncompliance with this subpart. Reviews shall be made by the association in accordance with guidelines established by CCC and the association shall not take any administrative or any other actions concerning indicated program violations until directed to do so by the Director, Producer Associations Division, ASCS.

(a) *Quota peanuts.* A handler will be subject to a penalty for noncompliance if it is determined by CCC that he marketed from any crop, for domestic edible use, a larger quantity, or higher grades or quality of peanuts than could reasonably be produced from the quantity of peanuts having the grade, kernel content and quality of quota farmers stock peanuts purchased by the handler for domestic edible use during the applicable marketing year and of those purchased under § 1446.7, whether or not additional peanuts were acquired by the handler. In such case, the handler will be obligated to pay a penalty equal to 120 percent of the basic quota support rate on that quantity of farmers stock peanuts determined by CCC to be necessary to produce the excess quantity or grade or quality of peanuts sold.

(b) *Method of determining compliance (1) Commingled storage.* Handlers may commingle quota loan, quota commercial, additional loan and contract additional peanuts. In such instance, quota loan and additional loan peanuts must be inspected as farmers stock peanuts and settled on a dollar value basis less adjustments for shrinkage except when such peanuts are purchased from the association for domestic edible and related use on an in-grade, in-weight basis. Contract additional peanuts must be inspected on a farmers stock basis and accounted for on a dollar value basis less a one time adjustment for shrinkage for each crop equal to 3.5 percent of the dollar value for Virginia type peanuts and 3.0 percent for all other types except that if the additional contract peanuts are graded out and accounted for prior to February 1, the adjustment shall be 3.0 for Virginia type and 2.5 percent of the dollar value for all other peanuts.

(2) *Identity preserved storage.* Contract additional peanuts stored identity preserved shall be inspected as farmers stock peanuts and settled on a dollar value basis. The handler shall receive, store, and otherwise handle such peanuts in accordance with good commercial practices.

§ 1446.9 Supervision and handling of additional contract peanuts.

The association shall supervise domestic handling of contract additional peanuts including storing, shelling, crushing, cleaning, weighing, and shipping.

(a) *Access to facilities.* The handler, by entering into contracts to receive contract additional peanuts, shall be deemed to have agreed that authorized representative(s) of CCC and the association:

(1) May enter and remain upon any of the premises when such peanuts are being received, shelled, cleaned, bagged, sealed, weighed, graded, stored, crushed, packaged, shipped, or otherwise handled.

(2) May inspect such peanuts and the oil, meal, and other products thereof, and

(3) May inspect the premises, facilities, operations, books, and records to the extent necessary to determine that such peanuts have been handled in accordance with these regulations.

(b) *Notifying the association.* Before moving or processing any peanuts, the handler (or cleaner, sheller, or processor under contract with the handler) shall notify the association of the time such operation will begin and the approximate period of time required to complete the operation. When a plant is not currently under supervision, the handler shall give at least five working days advance notice to the association so that supervision can be arranged.

(c) *Processing.* The peanuts shall be shelled or otherwise milled, crushed, or shelled and crushed as a continuous operation separate from other peanuts. Shelled peanuts shall be identified with positive lot identify tags before being stored and moved for crushing, export or domestic use in peanut products to be exported. Except as authorized by the association, positive lot identify shall be maintained when peanuts are transported or stored in the following manner:

(1) *Transportation.* The peanuts shall be transported from the storage location in a covered vehicle, such as a truck or railroad car. The vehicle shall be sealed unless the association determines that identify of the peanuts can be maintained without sealing.

(2) *Storage.* The peanuts shall be stored in separate building(s) or bin(s) which can be sealed or which the association determines will satisfactorily maintain lot identify.

(d) *Replacements.* The identical additional farmer stock peanuts contracted shall be handled in accordance with this section except that with prior notification and approval of the association, farmer stock quota peanuts of the same crop, type, quality, and area may be used to replace such additional peanuts. The identical additional milled peanuts shelled under supervision of the association shall be disposed of in accordance with this section except that with prior notification and approval of the association, such peanuts may be used to replace in domestic use quota peanuts of the same crop, type, area, and screen size which have been exported. The quota peanuts exported, for which replacement is requested, must have been positive lot identified and otherwise handled as additional peanuts. Additional peanuts may be used in domestic edible and related uses with prior notification of the association and upon full payment of the marketing quota penalty of 120 percent of the quota support rate on any portion of the lot for which replacement has not been approved. The handler may, at a later date, obtain a refund of such payment upon delivery to the association of satisfactory evidence that a like amount of quota peanuts of appropriate screen sizes have been exported in accordance with these regulations. Such evidence must be submitted no later than 30 days after August 31, the final date for exportation or such later date as may be approved by the association.

(e) *Expense charged to handlers.* All supervision costs shall be borne by handlers.

(f) *Domestic sale or transfer-(1) farmers stock.* The handler must submit contracts covering any domestic sale, transfer, or other dispostion of farmers stock contract additional peanuts to the association and obtain written approval prior to any physical movement of the peanuts from the buying point. Approval of such contracts may be made before or after delivery by the producer. Approval of any domestic sale, transfer, or other disposition may be made only if the person to whom the peanuts are sold, transfered, or diposed of agrees in writing to handle and crush or export as raw peanuts or peanut products in accordance with the terms and conditions of these regulations.

(2) *Milled peanuts.* The handler must submit contracts covering any domestic sale, transfer, or other disposition of milled contract addtional peanuts to the association and obtain approval prior to any physical movement of the peanuts. Approval of any domestic sale, transfer, or other disposition may be made only if the person to whom the peanuts are sold, transfered, or disposed of agrees, in writing, to handle and crush or export the peanuts in accordance with the terms and conditions of these regulations.

(g) *Disposal of additional contract peanuts.* Contract additional peanuts may be disposed of by domestic crushing or by exporting to an eligible county as follows:

(1) All kernels may be crushed domestically, or

(2) All kernels may be exported for crushing, if fragmented, or

(3) All kernels that are graded to meet the edible export standards may be exported and the remaining kernels:

(i) Crushed domestically, or

(ii) Exported for crushing if peanuts are fragmented, or

(4) All of the peanuts may be exported as farmers stock peanuts, or

(5) Peanuts may be exported as peanut products if such peanuts meet edible export standards, or

(6) Peanuts may be exported as milled or inshell peanuts.

(h) *Disposal of meal contaminated by aflatoxin.* All meal produced from peanuts which are crushed domestically and found to be unsuitable for use as feed because of contamination by aflatoxin shall be disposed of for nonfeed purposes only. If the meal is exported, the export bill of lading shall reflect the analysis of the lot by inclusion thereon of the following statement, "This shipment consists of lots of meal which contain aflatoxin ranging from ——— to ——— PPB and averaging ——— PPB."

(i) *Final dates for scheduling supervision.* Additional contract peanuts shall be scheduled for supervision by the association during the normal marketing period but not later than July 31 following the calendar year in which the crop is grown unless prior approval of a later date is authorized by the association.

(j) *Export provisions-*

(1) *General.* Exports to Southern Rhodesia, North Korea, Vietnam, Cambodia, and Cuba are regulated by U.S. Department of Commerce regulations and require a validated export license. Additional information concerning the regulations may be obtained from the Bureau of International Commerce or from the field office of the Department of Commerce.

(2) *Export to a U.S. Government agency.* Except for the export of raw peanuts to the military exchange services for processing outside the United States, export of peanuts in any form by or to a United States government agency shall not be considered an export to an eligible country. However, sales to a foreign government which are financed with funds made available by a United States agency such as the Agency for International Development are not considered sales to a United States government agency: Provided, The peanuts were not purchased by the foreign buyer for transfer to a United States agency.

(3) *Exportation of contract additional peanuts.* All contract additional peanuts which are not crushed domestically and which are eligible for export shall be exported to an eligible country as peanuts or peanut products.

(4) *Reentry-Transshipment and Liquidated Damages*—(i) *Reentry*

Transshipment. Peanuts and peanut produts exported shall not be reentered by anyone into the United States in any form or product and shall not be caused by the handler to be diverted or transshipped to other than an eligible country in any form or product, and if they are reentered, the handler shall be subject to liquidated damages as specified in subparagraph (4)(ii) of this paragraph.

(ii) *Liquidated Damages.* The handler, by entering into contracts to receive contract additional peanuts, shall be deemed to have agreed that CCC will incur serious and substantial damages to its program to support the price of quota peanuts if additional contract peanuts are exported and later are reentered into the United States or diverted or transshipped to other than an eligible country in any form or product; that the amount of such damages will be difficult, if not impossible, to ascertain exactly; and that the handler shall, with respect to any peanuts or peanut products reentered into the United States or diverted or transshipped to other than an eligible country, pay to CCC, as liquidated damages and not as a penalty, ten cents ($.10) per net pound for such peanuts or peanut products. It is agreed that such liquidated damages are a reasonable etimate of the probable actual damages which CCC would suffer because of such reentry, diversion, or transshipment.

(5) *Evidence of Export.* The handler shall furnish the association with the following documentary evidence of exportation of peanuts or permit products not later than 30 days after August 31, the final date for exportation, or such later date as may be approved by the association:

(i) *Export by water.* A nonnegotiable copy of an onboard ocean bill of lading, signed, on behalf of the carrier, showing the date and place of loading onboard vessel, the weight of the peanuts, peanut meal, or products exported, the name of the vessel, the name and address of the exporter, and the country of destination. Peanut meal which is unsuitable for use as feed because of contamination by aflatoxin shall be identified on the bill of lading in accordance with this section.

(ii) *Export by rail or truck.* A copy of the bill of lading (showing the weight of the peanuts or peanut meal exported), supplemented by a copy of the Shipper's Export Declaration or other documentation acceptable to the association. Peanut meal which is unsuitable for feed use because of contamination by aflatoxin shall be identified on the bill of lading according to this section.

(iii) *Certified Statement.* A statement signed by the handler specifying the name and address of the consignee and the applicable Bureau license number if exportation has been made to one or more of the countires or areas for which a validated license is required under regulations issued by the Bureau of International Commerce, U.S. Department of Commerce.

(6) *Penalties.* Failure to dispose of contract additional peanuts acquired by a handler for domestic crushing or export by August 31 following the calendar year in which the crop was grown or such later date as may be authorized by the association shall constitute noncompliance with the provisions of this subpart. In such case, the handler will be obligated to pay a penalty equal to 120 percent of the basic quota support rate on that quantity of the additional peanuts not crushed or exported.

Warehouse Storage Loans

§ 1446.10 Availability of warehouse storage loans.

(a) *Loans to associations.* CCC will make warehouse storage loans to the associations specified in paragraph (b) of this section which contract with CCC to arrange for the storing and handling of farmers stock peanuts, make price support advances to producers on such peanuts, and use such peanuts as collateral for loans to be obtained from CCC. Loans on quota peanuts shall be made on the basis of the quota support rate, and loans on additional peanuts shall be made on the basis of the additional support rate. The association shall establish an adequate system of records to identify each lot of peanuts delivered from producers as quota or additional peanuts and shall establish adequate records to identify whether such peanuts were pledged to CCC at the quota loan rate or additional loan rate. Such loans will mature on demand.

(b) *Associations and Areas.* Price support advances will be available through:

(1) GFA Peanut Association, Camilla, Georgia, in the Southeastern area consisting of the States of Alabama, Georgia, Mississippi, Florida, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers.

(2) The Southwestern Peanut Growers Association, Gorman, Texas, in the Southwestern area consisting of the States of Arizona, Arkansas, California, Louisiana, New Mexico, Oklahoma, and Texas.

(3) The Peanut Growers Cooperative Marketing Association, Franklin, Virginia, in the Virginia-Carolina area consisting of the States of Missouri, North Carolina, Tennessee, Virginia, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

(c) *Where available.* Price support advances will be available to eligible producers at warehouses which have entered into peanut receiving and warehouse contracts with the association. Such contracts will require the warehouses to inform producers that price support advances are available and to make advances to producers on eligible peanuts tendered for price support as provided in paragraph (g) of this section. The contracts will require warehousemen to examine the producer's marketing cards to determine price support eligibility and make entries on the marketing card as required by Part 729 of this title and record each delivery as to quota or additional peanuts and date of delivery. If quota peanuts or contract additional peanuts are delivered, the balance of the quota or contract additional peanuts must be shown on the marketing card after each delivery. The names and locations of such warehouses may be obtained from the office of the appropriate association or from a State or county ASCS office. The associations shall pledge to CCC all peanuts upon which they have made price support advances as security for loans obtained pursuant to agreements with CCC.

(d) *Time.* Price support advances to eligible producers on peanuts of any crop will be available from the beginning of harvest through the following January 31 or such later date as may be established by the Executive Vice President, CCC. If the final date of availability falls on a nonworkday for the association, the applicable final date shall be the next workday.

(e) *Inspection.* The type and quality of each lot of farmers stock peanuts delivered to an association for a price support advance shall be determined by an inspector when such peanuts are received at a warehouse under contract with an association.

(f) *Producer agreement.* To obtain a price support advance, the producer shall, in writing, authorize the association to pledge peanuts delivered to the association to CCC as collateral for a warehouse storage loan and relinquish any right to redeem or obtain possession of such peanuts.

(g) *Advance to producer.* For each lot of peanuts received, the associations will make a price support advance to the

producer in an amount equal to the support value of such peanuts, except that, in addition to marketing quota penalties and the deductions specified in § 1446.12, the association will deduct from such advances and pay over to the proper State authorities, any assessments or excise taxes imposed by State law, and the Southwestern Peanut Growers Association will, upon the prior agreement of the producer, deduct from such advance an amount approved by CCC, not to exceed 50 cents per net weight ton of peanuts upon which such advance was made, to be used in payment for its peanut activities outside the price support program.

(h) *Fraud by Producer.* The making of any fraudulent representation by a producer in the loan documents or in obtaining a loan or an advance shall render him subject to criminal prosecution under Federal law. The producer shall be personally liable to CCC, aside from any additional liability under criminal or civil frauds statutes, for the amount of such advance and for all costs which CCC would not have incurred except for the producer's fraudulent representation, together with interest upon such amounts at the rate for fraudulent representation as shown in a separate notice in the **Federal Register**: *Provided,* That the producer shall be given credit for the proceeds received by CCC upon sale of the peanuts upon which such advance was made.

(i) *Ineligible Peanuts.* Any person who causes ineligible peanuts, as defined in § 1446.14, to enter the loan, shall pay to CCC, as liquidate damages, the amount by which the average quota or additional loan level for that type of peanuts exceeds the market price as determined by CCC and shall pay such amount to CCC promptly upon demand. The market price shall be based upon the estimated value for crushing stock.

§ 1446.11 Pooling and distribution of net gains.

The association shall establish separate pools by area, type, and segregation or quality of peanuts and maintain separate, complete and accurate records for quota peanuts under loan and for additional peanuts not under contract. Net gains on peanuts in each pool shall be distributed to each grower in proportion to the value of peanuts placed in the pool by the grower except any distribution of net gains on additional pools of any type to a producer shall be reduced to the extent of any loss incurred by CCC on quota peanuts of a different type placed under loan by the same producer, and the proceeds available to any producer from any pool shall be reduced by the amount of any losses to CCC on peanuts transfered from an additional loan pool to a quota loan pool under the provisions of this subpart.

(a) *Quota pool.* Net gains from peanuts in the quota pool consist of:

(1) The net gains over and above the loan indebtedness on quota peanuts and other costs or losses incurred by CCC on such peanuts placed in the pool by a producer, plus

(2) An amount from the net gains on additional peanuts sold into domestic food and related uses equal to the losses incurred on disposing of an equal quantity of quota peanuts of the same type and segregation in the same production area, considering sales of quota peanuts for export first and then as necessary sales for crushing.

(b) *Addtional pool.* Net gains for peanuts in the additional pool consist of:

(1) The net gains over and above the loan indebtedness on additional peanuts and other costs or losses incurred by CCC on such peanuts placed in the pool by a grower, less

(2) An amount of the net gains on the additional pool allocated to the quota pool to offset any loss on that pool attributed to addtional peanuts being used in domestic edible use.

§ 1446.12 Producer indebtedness.

(a) *Facility and drying equipment loans.* If any installment or installments on any loan made by CCC on farm storage facilties or drying equipment are payable under the provisions of the note evidencing such loan and the amount due is recorded on the producer's marketing card, any amount due the producer under this subpart, after deduction of amounts due prior lienholders, shall be applied to such installment(s).

(b) *Producers listed on county debt record.* If the producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the county debt record and recorded on the producer's marketing card, amounts due the producer under this subpart, after deduction of amounts due prior lienholders and on farm storage facilities or drying equipment, shall be applied to such indebtedness as provided in the Secretary's Setoff Regulations, Part 13 of this title.

(c) *Producer's right.* Compliance with the provisions of this section shall not deprive the producer of any right to otherwise contest the justness of the indebtedness involved in the setoff action either by administrative appeal or by legal action.

§ 1446.13 Eligible producer.

(a) *Requirements.* An eligible producer is an individual, partnership, association, corporation, estate, trust, or other legal entity, and whenever applicable, a State, political subdivision of a State or any agency thereof, producing peanuts as a landowner, landlord, tenant, or sharecropper on a farm. No producer on a farm for which the farm operator fails timely to file a report of crop or land use acreages as required by Part 718 of this title shall be eligible for price support at the quota rate unless the late filed report was accepted by the county committee.

(b) *Estates and trusts.* A receiver of an insolvent debtor's estate, an executor or an administrator of a deceased persons' estate, a guardian of an estate or of a ward or of an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian or trustees shall be considered to be the production of the person represented. Loan documents executed by any such person shall be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for price support only if such minor meets one of the following requirements: (1) the right of majority has been conferred on such minor by court proceedings or by statute; (2) a guardian has been appointed to manage such minor's property and the applicable price support documents are signed by the guardian; or (3) a bond is furnished under which a surely guaranteed to protect CCC from any loss incurred for which the minor would be liable had such minor been an adult.

§ 1446.14 Eligible peanuts.

Eligible peanuts shall be farmers stock peanuts of the applicable crop which were produced in the United States by an eligible producer.

(a) *Quota support.* Peanuts eligible for quota support are peanuts which (1) are segregation 1 peanuts; and (2) contain not more than 10 percent moisture, nor less than 6 percent moisture; and (3) contain not more than 10 percent foreign material; (4) are free and clear of all liens and encumbrances, including landlord's lien, or if liens or encumbrances exist on the peanuts, acceptable waivers are obtained; and (5) the beneficial interest is in the producer who delivers them to the association

and has always been in such producer or in such producer and a former producer whom such producer succeeded before the peanuts were harvested. To meet the requirements of succession to a former producer, the rights, responsibilities, and interest of the former producer with respect to the farm on which the peanuts were produced shall have been substantially assumed by the person claiming succession. Mere purchase of a crop prior to harvest, without acquisition of any additional interest in the farm on which the peanuts were produced, shall not constitute succession. Any producer in doubt as to whether such interest in the peanuts complies with the requirements of this section should, before applying for price support, make available to the county ASC committee all pertinent information which will permit a determination with respect to succession to be made by CCC; (6) are, if delivered to the association in bags in the Southwestern area, in new or thoroughly cleaned used bags which are made of material other than mesh or net, weighing not less than 7½ ounces nor more than 10 ounces per square yard and containing no sisal fibers, are free from holes and are finished at the top with either the selvage edge of the material, binding, or a hem. Such bags shall be of uniform size with approximately 2 bushel capacity; (7) must not have been produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession; (8) must have been produced on a farm on which the effective farm allotment has not been knowingly exceeded; and (9) must have been inspected as farmer stock peanuts and have an official grade determined by an inspector.

(b) *Additional support.* Peanuts eligible for additional support are peanuts which (1) contain not more than 10 percent moisture; and (2) contain not more than 10 percent foreign material, except that such peanuts may contain more foreign material if the handler agrees to purchase for domestic edible use as provided in the first sentence in § 1446.7 of these regulations; (3) segregation 2 or 3 peanuts which will be sold without storage for crushing, may contain more than 10 percent moisture and/or foreign material up to a maximum determined appropriate by the producer association based on the crushing market and other local conditions; (4) are free and clear of all liens and encumbrances, including landlord's lien, or if liens or encumbrances exist on the peanuts, acceptable waivers are obtained; and (5) the beneficial interest is in the producer who delivers them to the association and has always been in such producer or in such producer and a former producer whom such producer succeeded before the peanuts were harvested. To meet the requirements of succession to a former producer, the rights, responsibilities, and interest of the former producer with respect to the farm on which the peanuts were produced shall have been substantially assumed by the person claiming succession. Mere purchase of a crop prior to harvest, without acquisition of any additional interest in the farm on which the peanuts were produced, shall not constitute succession. Any producer in doubt as to whether such interest in the peanuts complies with the requirements of his section should, before applying for price support, make available to the county ASC committee all pertinent information which will permit a determination with respect to succession to be made by CCC; (6) are, if delivered to the association in bags in the Southwestern area, in new or thoroughly cleaned used bags which are made of material other than mesh or net, weighing not less than 7½ ounces nor more than 10 ounces per square yard and containing no sisal fibers, are free from holes and are finished at the top with either the selvage edge of the material, binding, or a hem. Such bags shall be of uniform size with approximately 2 bushel capacity; (7) must not have been produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession; (8) if produced on acreage in excess of the effective farm allotment, the penalty has been collected in accordance with Part 729 of this title; and (9) must have been inspected as farmer stock peanuts and have an official grade determined by an inspector.

§ 1446.15 Disposition and liquidated damges on segregation 3 peanuts.

(a) Any producer who has a lot of farmers stock peanuts classified by the inspector as segregation 3 peanuts shall (1) deliver the peanuts to the association for loan at the additional loan rate, (2) deliver such lot as contract additional peanuts under the provisions of § 1446.5, (3) sell as quota peanuts to a handler who is a signer of the peanut marketing agreement or (4) retain the lot for seed. If the producer does not dispose of or market such peanuts as provided above on the day of inspection, such producer shall be ineligible for continued quota price support for the rest of the marketing year on all peanuts at the close of business on the day of the inspection. If the producer elects to retain a lot for seed, he shall designate such peanuts as quota peanuts, have the net weight of such peanuts determined and deducted from the farm marketing card, and advise the inspector that the peanuts are being retained for seed. The producer shall be given a copy of the MQ–94 as a record showing the quantity and quality factors of the peanuts and must store such peanuts separate from other peanuts on the farm. The producer shall notify CCC when such peanuts are used and otherwise account for the disposition of such peanuts. Should it later be determined that such peanuts are unfit for seed use, the producer may sell such peanuts for crushing as quota peanuts without benefit of price support after receiving prior approval from the county office.

(b) *Liquidated damages.* The producer, by participating in the loan program, shall be deemed to have agreed that CCC will incur serious and substantial damages to its program to support the price of peanuts if segregation 3 peanuts are disposed of other than in accordance with the provisions of paragraph (a) of this section; that the amount of such damage will be difficult, if not impossible, to ascertain exactly; and that the producer shall, with respect to any lot of peanuts ineligible for quota support which are placed under quota loan or any lot of peanuts which is placed under quota loan by a producer after he has disposed of any lot of segregation 3 peanuts in any manner other than in the manner prescribed in paragraph (a) of this section, pay to CCC as liquidated damages and not as a penalty, seven cents ($.07) per net pound of such peanuts. It is agreed that such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer because of such action by the producer. The provisions of § 1446.11 relating to the producer's liability (aside from liability under criminal and civil frauds statutes) shall not be applicable to such peanuts.

§ 1446.16 Producer transfers of additional loan stocks to quota pools.

Producers may transfer Segregation 2 and 3 additional loan stocks to quota loan after the producer has completed marketing and returned his marketing card to the county office not to exceed the smaller of the farm poundage quota minus the production of segregation 1 peanuts on the farm, or the undermarketing of quota peanuts shown on the farm marketing card: *Provided:* That the proceeds available to such

producer from peanuts in any other pool shall be reduced by the amount of any losses to CCC on the peanuts so transferred. The support values for any segregation 2 peanuts so transferred shall be the support value for quota peanuts minus the damage discount published in the quota support schedule and the support value for segregation 3 peanuts shall be the support value for quota peanuts minus the applicable discount published in the quota support schedule. Producers eligible to transfer additional loan peanuts to the quota loan in accordance with this section may apply for such transfers with the county office. The county office shall determine the quantity of undermarketing of quota peanuts and the quantity of additional peanuts which are eligible for transfer. The producer may indicate to the county office the net weight and applicable Form MQ–94 numbers for the peanuts to be transferred. Such pounds shall be considered as quota peanuts marketed, the applicable MQ–94's recomputed at the quota loan level, and the producer advanced the difference between the additional and quota support.

All written submissions will be available at the Office of the Director, Price Support and Loan Division, Room 3741-South Building, 14th & Independence Avenue, Southwest during regular business hours (7 CFR 127(b)).

Note.—This regulation has been determined to be not significant under the USDA criteria implementing Executive Order 12044 and only contains necessary operating decisions and requirements to implement the national average peanut price support rates announced on February 15, 1979. An approved draft impact analysis is available from Thomas A. VonGarlem (ASCS) 202 447–7954.

Signed at Washington, D.C., on April 23, 1979.

Ray Fitzgerald,

Executive Vice President, Commodity Credit Corporation.

[CCC Warehouse Stored Peanut Price Support Regs.]

[FR Doc. 79–13106 Filed 4–26–79; 8:45 am]

BILLING CODE 3410–05–M

Farmers Home Administration

[7 CFR Part 1822]

Rural Housing Loans and Grants; Rural Rental Housing Loan Policies, Procedures, and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: Notice is hereby given that the Farmers Home Administration intends to redesignate and revise its regulation pertaining to rural rental housing (RRH) loans and rural rental assistance. This action is taken in accordance with the review requirements of Executive Order 12044. The intended effect of this action is to develop a regulation which can be easily understood by the public and FmHA employees.

DATES: Comments must be received on or before June 26, 1979.

ADDRESSES: Submit written comments to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT: Mr. L. D. Elwell, Acting Assistant Administrator, Multiple Family Housing, telephone (202) 447–5177; or Mr. Lynn E. Voigt, Multiple Family Housing Loan Officer, Rural Rental Housing Loan Division, telephone (202) 447–7207.

SUPPLEMENTARY INFORMATION: The Farmers Home Admionistration intends to revise and redesignate the present Subpart D of Part 1822, Subchapter B, Title 7 in the Code of Federal Regulations to a new Part 1944, Subpart E of Subpart H.

This redesignation and revision action is being undertaken for the following purposes:

1. To redesign and reformat Part 1822 Subpart D so that it will be consistent with the **Federal Register** format.

2. To reflect the internal restructuring of the FmHA, giving primary responsibility for the RRH program to FmHA District Offices rather than County Offices.

3. To simplify and clarify loan application and processing procedures.

4. To revise procedures by which rental market demand can be demonstrated or documented.

5. To clarify occupancy requirements, especially occupancy by students and active military personnel.

6. To establish criteria by which loan funds can be targeted toward providing housing in rural communities having the greatest need, those communities with and significant populations of poor and disadvantaged persons.

7. To revise the FmHA requirement for financial statements from limited partners holding an interest of 10 percent or more in limited partnership applicants.

8. To change the 5-year term of rental assistance agreements used for existing projects and the 20-year term of rental assistance agreements used for new projects, to a common term for either use.

9. To consolidate, to the extent possible, the numerous exhibits to the present regulation.

FmHA desires the comments of any interested parties that may wish to express their views on the purposes for this proposed action, or suggest other items for consideration in the proposed amendments. All communications received in accordance with this notice will be considered in developing the proposed amendments.

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

Dated: April 18, 1979.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FmHA Instruction 444.5]

[FR Doc. 79–13066 Filed 4–26–79; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

[9 CFR Part 92]

Importation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed Rulemaking.

SUMMARY: This document proposes to amend the regulations to delete the requirement for a negative equine piroplasmosis test on horses imported into the United States. This action would eliminate a procedure no longer believed necessary. The intended effect of this action would be to reduce unnecessary time and expense associated with the importation of horses.

DATE: Comments on or before June 19, 1979.

ADDRESS: Written comments to Deputy Administrator, USDA, APHIS, VS, Room 821, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. D. E. Herrick, USDA, APHIS, VS, Federal Building, Room 815, Hyattsville, MD 20782 (301) 436–8170.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that, pursuant to Section 2 of the Act of February 2, 1903, as amended; and Sections 4 and 11 of the Act of July

2, 1962 (21 U.S.C. 111, 134c, and 134f), the Animal and Plant Health Inspection Service, is considering amending Part 92, Title 9, Code of Federal Regulations.

Equine piroplasmosis (EP) is a tick-borne diseasecaused by species of Babesia, which penetrate and destroy red blood cells. The two recognized types of this equine disease are Babesia equi (B. equi) and Babesia caballi (B. caballi). B. caballi is the type most frequently encountered in the United States. The tropical horse tick, Dermacentor nitens (D. nitens), is known to transmit B. caballi and is a suspected vector of B. equi. In the United States, D. nitens is established only in Southern Florida and several counties in the extreme tip of Southern Texas. The tick Rhipicephalous sanguineus (R. Sanguineus) has been reported to be capable of transmitting the B. equi in other countries. In the United States, R. sanguineus does not commonly feed on horses. Dermacentor albipictus also has been infected with piroplasmosis under experimental conditions but natural infection under field conditions has not been demonstrated.

In August 1961, equine piroplasmosis (B. caballi) was first reported in Southern Florida. Florida has developed and is continuing its own broad control program requiring tick control, quarantine, and chemotherapy of infected animals.

Equine piroplasmosis has also been diagnosed on a limited basis and dealt with in horses through quarantine, tick control, and babesiacidal treatments in Arizona, Arkansas, California, Colorado, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Nebraska, New Jersey, New York, North Carolina, Ohio, South Dakota, Tennessee, and Virginia. Neither these, nor any of the other States, except Florida, have found the disease to be significant enough to make it necessary to develop equine piroplasmosis control programs.

A negative test for equine piroplasmosis has been required as a prerequisite for importation of horses into the United States since October 1970. This rulemaking document proposes to amend the regulations to delete such requirement.

A drug, imidocarb® has been found to be effective in treating piroplasmosis infected equines. Further measures taken by the States should be adequate to control the disease domestically.

Additionally, from a review of the situation, the administrative officials of the Department believe that (1.) the tick vectors of this disease are severely limited in number and distribution in this country; (2.) without the availability of vectors, the potential for disease dissemination is markedly lower than with other forms of communicable disease; (3.) many animals with positive test reactions do not show symptoms of the disease; (4.) many horses that otherwise meet the import requirements are denied entry because they are carrying antibodies; (5.) the presence of antibodies does not always mean there is infection in animals; (6.) the disease has not been shown to be a significant economic threat to the United States, nor has been considered a significant economic threat to other countries. Testing for the disease in other countries is usually limited to those equines to be exported to the United States.

The Department will continue to maintain laboratory capability to assist the horse industry in identifying horses affected with equine piroplasmosis in the United States and to assist in the differential diagnosis. The Department will also continue to offer the training to prepare the antigen and conduct the test to any country that desires to develop this laboratory capability.

Accordingly, Part 92, Title 9, Code of Federal Regulations, would be amended in the following respects:

§ 92.11 [Amended].

1. In the fourth sentence of § 92.11(d), the term "equine piroplasmosis" would be deleted.

§ 92.34 [Amended].

1. In the second sentence of § 92.34(c), the term "equine piroplasmosis" would be deleted.

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 821, Hyattsville, Maryland, during regular hours of business (8:00 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the **Federal Register.**

Done at Washington, D.C., this 20th day of April 1979.

Note.—This proposal has been reviewed under the USDA criteria established to implement E.O. 12044, "Improving Government Regulations," and has been designated "significant." A Draft Impact Analysis Statement has been prepared and is available from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. 301–436–8695.

M. T. Goff,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79-13066 Filed 4-26-79; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

[12 CFR Part 225]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board of Governors of the Federal Reserve System proposes to revise its regulation governing foreign bank holding companies. Under current regulations, foreign bank holding companies are afforded certain exemptions from the nonbanking prohibitions applicable to bank holding companies. The proposed rule would amend the definition of "foreign bank holding company" to include only those foreign organizations principally engaged in banking outside the United States.

DATE: Comments must be received by June 20, 1979.

ADDRESS: Send comments to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All comments should refer to Docket No. R–0219.

FOR FURTHER INFORMATION CONTACT: Michael G. Martinson, Senior Financial Analyst, Division of Banking Supervision and Regulation (202–452–3621); or C. Keefe Hurley, Jr., Senior Attorney, Legal Division (202–452–3269), Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION: Section 4(c)(9) of the Bank Holding Company Act ("Act") (12 U.S.C. 1843(c)(9)) permits the Board, by regulation or order, to grant an exemption from the nonbanking prohibitions of the Act with respect to the nonbanking activities of foreign bank holding companies that do the greater part of their business outside the United States if the exemption would not be substantially at variance with the purposes of the Act and would be in the public interest. The Board has exercised its regulatory authority pursuant to section 4(c)(9) and granted foreign bank holding companies limited exemptions from the nonbanking prohibitions of the Act (see § 225.4(g) of Regulation Y, 12 CFR 225.4(g)). The Board's regulatory exemptions relate primarily to

nonbanking activities that are conducted outside the United States. In order to qualify for these exemptions, the foreign organization must be a "foreign bank holding company" which, according to the regulation, means a bank holding company organized under the laws of a foreign country, more than half of whose consolidated assets are located, or consolidated revenues derived, outside the United States.

Although not required by the regulation, most foreign bank holding companies are also foreign banks with a high degree of banking expertise. The banking experience of such foreign banks has generally contributed to the managerial strength of their subsidiary banks. In the Board's judgment, it would be inconsistent with the purposes of the Act and would not be in the public interest for the exemptions afforded by section 4(c)(9) of the Act and § 225.4(g) of Regulation Y to be extended to a foreign organization that is not principally engaged in banking.

Accordingly, the Board proposes to amend the regulatory definition of "foreign bank holding company" so as to include only those foreign organizations that are principally engaged in the banking business outside the United States. In order to meet this test, more than one-half of an organization's consolidated deposits must be located outside the United States. For the purpose of this test, the foreign deposits of a United States bank will not be considered to be located outside the United States.

The Board specifically invites comment on the desirability of using a proportion of deposits as a criteria for determining foreign bank holding company status. Also, the Board invites comment on the question of whether the criteria for determining foreign bank holding company status should be applied solely at the time of application or on a continuing basis. Those few foreign organizations that qualify as foreign bank holding companies under the current regulation but which would not qualify under the proposed definition, would be permitted to retain investments and engage in activities that were undertaken in reliance on the current exemption.

This action is taken in connection with a regulatory analysis of the need and purposes of the regulation, and pursuant to the Board's authority under sections 4(c)(9) and 5(b) of the Act (12 U.S.C. 1843(c)(9) and 1844(b)).

It is proposed that 12 CFR Chapter II be amended as follows:

PART 225—BANK HOLDING COMPANIES

1. By deleting existing § 225.4(g)(1)(iii) and adding a new subsection; and by adding a new § 225.4(g)(4) so that § 225.4(g) reads as follows:

§ 225.4 Nonbanking activities.

* * * * *

(g) Foreign bank holding companies.

(1) As used in this paragraph: * * *

(iii) "foreign bank holding company" means a bank holding company, organized under the laws of a foreign country, that is principally engaged in the banking business outside the United States. A company will not be considered to be principally engaged in the banking business outside the United States unless at least 50 per cent of its consolidated deposits are located outside the United States.

* * * * *

(4) A company that (i) was a bank holding company on April 21, 1979; (ii) is organized under the laws of a foreign country; and (iii) has more than half of its consolidated assets located, or consolidated revenues derived, outside the United States may continue to engage in activities or retain investments that were permissible at the time they were commenced or acquired.

* * * * *

By order of the Board of Governors, April 18, 1979.

Theodore E. Allison,

Secretary of the Board.

Regulatory Analysis of Proposed Amendment to [6] 225.4(g) of Regulation Y

Section 4(c)(9) of the Bank Holding Company Act allows the Board to exempt foreign bank holding companies from certain prohibitions on ownership of nonbanking companies. The proposed change in Regulation Y narrows the definition of foreign companies that can qualify for these exemptions to those that are primarily in banking abroad.

Need for the Purpose of the Amendment

The Board recently completed a review of its policies toward foreign bank holding companies. That review took account of the growth of foreign ownership of U.S. banking institutions, the experience gained with foreign bank holding companies since the 1970 amendments to the Bank Holding Company Act, and the provisions of the recently enacted International Banking Act of 1978. The Board's policy statement of February 23, 1979, which was issued as a consequence of that review, emphasized the Board's position that foreign bank holding companies, like domestic bank holding companies, should be sources of strength to their U.S. subsidiary banks.

In U.S. banking law, Congress has mandated a separation of banking and commerce as a way of discouraging conflicts of interest and potentially unfair competition in the United States. However, an exception to these rules and standards was provided for bona fide foreign organizations in their operations outside the United States. Thus, in Section 4(c)(9) of the Bank Holding Company Act, the Board was empowered to grant exemptions from the nonbanking prohibitions of that Act to foreign companies conducting the greater part of their business outside the United States. The legislative history of that section makes it clear that it was intended to apply to companies principally engaged in the banking business. That view was reinforced by the 1978 amendments to section 2(h) of that Act which enlarged the statutory exemptions given to foreign companies principally engaged in the banking business outside the United States.

Present provisions of Regulation Y implementing Section 4(c)(9) permit any foreign company, whether principally engaged in banking or not, to qualify for these exemptions so long as the majority of its assets or revenues are outside the United States. Most of the companies qualifying for these exemptions have in fact been principally engaged in banking, and indeed have been the large international banks. However, experience has indicated that nonbanking companies can qualify as foreign bank holding companies. Moreover, because of the revenue-generating capabilities of certain nonbanking businesses, even relatively small companies can meet the criteria and acquire a U.S. bank that by most other standards is larger than itself. These possibilities contradict the policy objective that a foreign bank holding company should be a source of financial and managerial strength to the U.S. subsidiary bank.

The purpose of the amendment is to correct this potential dificiency by limiting exemptions under section 4(c)(9) to companies principally engaged in the business of banking outside the United States.

Possible Alternatives to the Proposed Regulatory Change

One alternative would be to substantially increase the supervision of foreign bank holding companies that are not primarily banking institutions. This avoids changing the Regulation, but would increase supervisory costs and

would require bank examiners to assess operations in which they lack expertise. It also continues to permit foreign firms that are essentially commercial in nature to own U.S. banks, while similar domestic firms are prohibited from doing so.

A second alternative would be to increase the required percentage of foreign assets or revenues. This approach would ensure that the foreign organization is larger relative to the U.S. bank than is permitted now, but would not prevent a foreign nonbanking organization from acquiring a U.S. bank and qualifying for Section 4(c)9 exemptions. Additionally, it might conflict with the intent of (amended) Section 2(h) of the Bank Holding Company Act, which states that the Act's restrictions on nonbank activities do not apply to foreign organizations "principally engaged in business outside the U.S. if such shares are held or acquired by a bank holding company organized under the laws of a foreign country that is *principally* engaged in the banking business outside the U.S." (emphasis added).

A third approach would be to drop the revenue test. This would disqualify relatively small revenue intensive companies, but also fails to address the issued of nonbanking business. Foreign commercial companies could continue to apply for foreign bank holding company status based on the assets of their foreign activities.

Economic Implications and Competitive Effects

Few foreign bank holding companies would be affected by the proposed change. With few exceptions, existing foreign bank holding companies are relatively large foreign banks that meet the proposed test. Activities of any existing foreign bank holding company not meeting the test would be grandfathered by the proposed regulation. Consequently, no existing foreign bank holding company would be required to divest its U.S. bank subsidiary or its foreign nonbanking activities due to the proposed change.

Preventing nonbanking organizations from becoming foreign bank holding companies in the future should not have an adverse competitive effect in U.S. financial markets. Foreign bank holding companies generally increase competition by establishing new U.S. banks or by providing financial support and growth to existing banks. The companies most likely to do this are foreign *banks*, which are unaffected by this proposal. Foreign nonbank organizations can still acquire U.S. banks, but they would be treated as domestic bank holding companies, and required to divest of any nonbanking activities not permitted under Section 4(c)8 or 4(c)13 of the Bank Holding Company Act.

There would also be no additional compliance, reporting, or recordkeeping requirements associated with this regulatory change. Bank holding companies must continue to demonstrate that they meet the standards required to qualify as a foreign bank holding company, but the procedures would be similar to those under existing requirements.

The proposed change is designed to discourage misuse of the U.S. bank's resources and to reduce its possible risk exposure. To that extent the primary beneficiaries are the U.S. banking industry, U.S. bank depositors, creditors, and shareholders, the FDIC as insurer of bank deposits, and the other state and federal bank supervisory agencies.

Advantages of the Recommended Change

The proposed change has several advantages over the existing requirements and over the specified alternatives. Requiring that the foreign company be principally engaged in banking provides greater assurance that its management is familiar with the banking business and gives priority to managing its banking activities and maintaining its reputation in financial markets. When banking is a minor part of the parent company's business, the parent may be less inclined to monitor the bank's activities and to provide adequate support. Moreover, when the foreign parent is primarily a banking organization, there is less likelihood that the U.S. bank's resources would be diverted to its nonbanking affiliates.

Domestic bank holding companies must restrict their nonbanking activities to those permissible under Sections 4(c)8 or 4(c)13 of the Bank Holding Company Act. Section 2(h) of that Act permits other nonbanking activities, but only for foreign bank holding companies that are primarily banks. Only the recommended change restricts the Section 4(c)9 exemptions to similar institutions and avoids an unnecessarily wide exemption. The change to measurement of holding company size based on deposits, rather than assets or revenues, recognizes that banking includes different activities outside the U.S. but that deposit-taking activities are central to any banking function involving risks similar to those taken by U.S. banks.

In most countries banking is more highly regulated and supervised than other industries. Where U.S. authorities are limited in supervising the parent companies, this foreign supervision and the restriction of risks to those of a banking nature provide an additional layer of protection for U.S. banking subsidiaries, financial markets, and the U.S. public.

[Regulation Y; Docket No. R-0219]
[FR Doc. 79-13043 Filed 4-26-79; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 546]

Chlortetracycline Soluble Powder for Animal Use; Proposed Rulemaking

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Director of the Bureau of Veterinary Medicine proposes to amend the regulations that provide for the certification of chlortetracycline soluble powders for animal use by deleting certain provisions and editorially revising the regulations. The products currently being certified under these provisions are subject to a notice of opportunity for hearing published elsewhere in this issue of the **Federal Register.**

DATE: Comments by May 29, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Rm. 4-65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donald Gable, Bureau of Veterinary Medicine (HFV-100), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register,** the Director is announcing the effective conditions of use for chlortetracycline soluble powder in animals and is proposing to withdraw those products labeled for conditions of use lacking substantial evidence of effectiveness.

Consistent with that notice, the Director is proposing to revoke the conditions of use lacking substantial evidence of effectiveness in § 546.110c (21 CFR 546.110c) and editorially amend the section, and to revoke and reserve § 546.113a (21 CFR 546.113a) because the

products certified under it are proposed to be withdrawn. The Director is also editorially amending § 546.113b (21 CFR 546.113b) because it cross-references certain certification requirements to be revoked.

The sponsors of products subject to the corresponding notice of opportunity for hearing may submit supplemental applications and labeling in accordance with the requirements of the notice. When a supplement is approved, notice will be published in the **Federal Register** in accordance with section 512(i) of the act (21 U.S.C. 360b(i)) amending the appropriate regulation and identifying the sponsor.

The Director has carefully considered the environmental effects of the amendments to the regulation and, because they 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 (HFA–305), Food and Drug Administration (address above).

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 512, 59 Stat. 463 as amended, 82 Stat. 343–351 (21 U.S.C. 357, 360b)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director (21 CFR 5.84), it is proposed that Part 546 be amended as follows:

1. In § 546.110c by revising paragraph (c)(2) and (5) to read as follows:

§ 546.110c Chlortetracycline powder (chlortetracycline hydrochloride powder).

* * * * *

(c) * * *

(2) *Sponsor.* No. 000010 in § 510.600(c) of this chapter.

* * * * *

(5) *Conditions of use*—(i) *Swine.* It is used as chlortetracycline hyrochloride in drinking water as follows:

(*a*) *Amount.* A drug level per gallon to provide approximately 10 milligrams per pound of body weight daily. The concentration of drug required in medicated water must be adjusted to compensate for variations (.e.g., age of the animal, environmental temperature) that affect water consumption.[1]

(*b*) *Indications for use.* It is used as an aid in the control and treatment of bacterial enteritis (scours) caused by *Escherichia coli* and bacterial pneumonia associated with *Pasteurella* spp., *Hemophilus* spp., *and Klebsiella* spp.[1]

(*c*) *Limitations.* Prepare a fresh solution twice daily, as sole source of chlortetracycline; administer for not more than 45 days; do not slaughter animals for food within 5 days of treatment.

(ii) *Calves:* It is used as a chlortetracycline hydrochloride drench as follows:

(*a*) *Amount.* Use of 10 milligrams per pound of body weight daily in divided doses.[1]

(*b*) *Indications for use.* It is used as an aid in the control and treatment of bacterial enteritis (scours) caused by *Escherichia coli* and bacterial pneumonia (shipping fever) associated with *Pasteurella* spps., *Hemophilus* spp., and *Klebsiella* spp.[1]

(*c*) *Limitations.* As sole source of chlortetracycline, administer for not more than 5 days; do not slaughter animals for food within 24 hours of treatment.

* * * * *

§ 546.113a [Revoked]

2. By revoking § 546.113a *Chlortetracycline bisulfate soluble powder* and marking it "Reserved."

3. In § 546.113b by revising paragraphs (a), (b), and (c)(2) to read as follows:

§ 546.113b Chlortetracycline bisulfate-sulfamethazine bisulfate soluble powder.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Chlortetracycline bisulfate-sulfamethazine bisulfate soluble powder is chlortetracycline bisulfate and sulfamethazine bisulfate with or without one or more suitable and harmless colorings, buffer substances, and diluents. It contains the equivalent of 102.4 grams of chlortetracycline hydrochloride and 102.4 grams of sulfamethazine per pound. The moisture content is not more than 2 percent. The chlortetracycline bisulfate used conforms to the requirements of § 539.210b of this chapter. Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling.* It shall be labeled in accordance with the requirements of paragraph (c) of this section and § 510.55 of this chapter.

(3) *Request for certification; samples.* In addition to complying with the requirements of § 514.50 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The chlortetracycline used in making the batch for potency, safety, moisture, butyl alcohol content, sulfate content, absorptivity, and crystallinity.

(*b*) The batch for potency and moisture.

(ii) Samples required:

(*a*) The chlortetracycline bisulfate used in making the batch, 10 packages, each containing approximately 0.5 gram.

(*b*) The batch: One 1-ounce portion for each 5,000 immediate containers in the batch, but in no case less than five 1-ounce portions.

(b) *Tests and methods of assay*—(1) *Potency.* Using an accurately weighed sample of approximately 500 milligrams, proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve the 500 milligrams to be tested in 0.01*N* HC1 to make a stock solution of convenient conentration. Further dilute with sterile distilled water to the reference concentration of 0.06 microgram of chlortetracycline hydrochloride equivalent (estimated).

(2) *Moisture.* Proceed as directed in § 436.200(b) of this chapter.

(c) * * *

(2) *Specifications.* Meets the requirements in paragraph (a) of this section.

* * * * *

Interested persons may, on or before May 29, 1979, file with the Hearing Clerk (address given above) written comments (preferably four copies and identified with the docket number appearing in the heading) regarding this proposal, except that comments pertaining to issues which are the subject of the related notice of opportunity for hearing published elsewhere in this issue of the **Federal Register** shall be filled in accordance with that notice. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may by seen in the above-named office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this action have been carefully analyzed, and it has been determined that this action 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.

Dated: April 19, 1979.

Terence Harvey,

Acting Director, Bureau of Veterinary Medicine.

[Docket No. 79N–0024]

[FR Doc. 79–13029 Filed 4–26–79; 8:45 am]

BILLING CODE 4110–03–M

[1] These claims are NAS/NRC reviewed and are deemed effective. Applications for these uses need not include the effectiveness data specified by § 514.111 of this chapter.

[21 CFR Part 882]

Medical Devices; Classification of Preformed Alterable Cranioplasty Plates

Correction

In FR Doc. 78–32942, appearing at page 55709 in the issue for Tuesday, November 28, 1978, the sixteenth line of the first complete paragraph in column two of page 55710 should read, "can be modified freely by cutting, bending."

[Docket No. 78N–1085]

BILLING CODE 1505–01–M

[21 CFR Part 882]

Medical Devices; Classification of Lesion Temperature Monitors

Correction

In FR Doc. 78–32945, appearing at page 55713 in the issue of Tuesday, November 28, 1978, the fifth line of paragraph 1. at the bottom of the third column on page 55713, should read, "surgeon uses a radiofrequency (RF) lesion".

[Docket No. 78N–1089]

BILLING CODE 1505–01–M

[21 CFR Part 882]

Medical devices; classification of central nervous system fluid shunts and components

Correction

In FR Doc. 78–32946, appearing at page 55714 in the issue for Tuesday, November 28, 1978, make the following changes:

1. On page 55716, first column, the initials in the first line of reference 1. on page 55716 should read, "T.H.".

2. On page 55716, first column, the section heading at the bottom of the page should read. "§ 882.5550".

[Docket No. 78N–1090]

BILLING CODE 1505–01–M

DEPARTMENT OF STATE

Agency for International Development,

[22 CFR Part 217]

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance

AGENCY: Agency for International Development, State.

ACTION: Proposed rule.

SUMMARY: This regulation implements section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 706, with regard to federal financial assistance administered by the Agency for International Development. Section 504 provides that "no otherwise qualified handicapped individual * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance." The regulation, which applies to all recipients of federal financial assistance from AID in the United States is intended to ensure that their federally assisted programs and activities are operated without discrimination on the basis of handicap. The regulation defines and forbids acts of discrimination against qualified handicapped persons in employment and in the operation of programs and activities receiving assistance from the Agency. As employers, recipients must make reasonable accommodation to the handicaps of applicants and employees unless the accommodation would cause the employer undue hardship. As providers of services, recipients are required to make programs operated in existing facilities accessible to handicapped persons, to ensure that new facilities are constructed so as to be readily accessible to handicapped persons, and to operate their programs in a nondiscriminatory manner.

DATE: Comments must be received on or before May 29, 1979.

FOR FURTHER INFORMATION, CONTACT: Pauline G. Johnson, Director, Office of Equal Opportunity Programs, Agency for International Development, Room 2664 Department of State, Washington, D.C. 20523, (202–632–7996).

SUPPLEMENTARY INFORMATION:

Background

As part of the Rehabilitation Act of 1973 (Pub. L. 93–112) Congress enacted section 504, which provides that "no otherwise qualified handicapped individual in the United States, as defined in section 7(6), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance". In the same statute, Congress defined the term "handicapped individual" solely with relationship to employment; section 7(6) of the 1973 Act defined the term "Handicapped individual" as "any individual who (a) has a physical or mental disability which for such individual constitutes or results in substantial handicap to employment and (b) can reasonably be expected to benefit in terms of employability from vocational rehabilitation services * * *." However, the following year, in section 111(a) of the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516), Congress amended the definition of "handicapped individual" for purposes of section 504 and the Rehabilitation Act so that the definition is no longer limited to the dimension of employability. For purposes of section 504 of the Act, a "handicapped individual" is defined as "any person who (A) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (B) has a record of such an impairment, or (C) is regarded as having such an impairment." With this amended definition, it became clear that section 504 was intended to forbid discrimination against all handicapped individuals, regardless of their need for or ability to benefit from vocational rehabilitation services.

Section 504 thus represents the first Federal civil rights law protecting the rights of handicapped persons and reflects a national commitment to end discrimination on the basis of handicap. The language of section 504 is almost identical to the comparable nondiscrimination provisions of title VI of the Civil Rights Act of 1964 and title IX of the Education Amendments of 1972 (applying to racial discrimination and to discrimination in education on the basis of sex). It establishes a mandate to end discrimination and to bring handicapped persons into the mainstream of American life.

In consideration of the foregoing, Part 217, to read as set forth below, is hereby proposed to be added to Title 22 of the Code of Federal Regulations.

Robert H. Nooter

Acting Administrator.

April 13, 1979.

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217.61 Procedures.

Appendix A.—Federal Financial Assistance to Which These Regulations Apply.

Authority: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706).

Subpart A—General Provisions

§ 217.1 Purpose.

The purpose of this part is to effectuate section 504 of the rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity within the United States receiving Federal financial assistance.

§ 217.2 Application.

This part applies to all programs carried on within the United States by recipients of Federal financial assistance pursuant to any authority held or delegated by the Administrator of the Agency for International Development, including the Federally-assisted programs and activities listed in Appendix A of this part. (Appendix A may be revised from time to time by notice in the **Federal Register**). It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this regulation, even if the application for such assistance is approved prior to such effective date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred or other assistance extended uner any such program before the effective date of this part, (c) any assistance to any individual who is the ultimate beneficiary under any such program, (d) any procurement of goods or services, including the procurement of training. This part does not bar selection and treatment reasonably related to the foreign assistance objective or such other authorized purpose as the Federal assistance may have. It does not bar selections which are limited to particular groups where the purpose of the program calls for such a limitation nor does it bar special treatment including special courses of training, orientation or counseling consistent with such purpose.

§ 217.3 Definitions.

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93–112, as amended by the Rehabilitation Act Amendments of 1974 Pub. L. 93–516, 29 U.S.C. 794.

(b) "Section 504" means section 504 of the Act.

(c) "Agency" means the Agency for International Development.

(d) The Term "Administrator" means the Administrator of the Agency for International Development or any person specifically designated by him to perform any function provided for under this part.

(e) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance and any sovereign foreign government.

(f) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by an Agency official or by a recipient as a condition to becoming a recipient.

(g) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than the fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(h) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(i) "Handicapped Person." (1) "Handicapped persons" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (i)(1) of this section the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems; neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others towards such impairment; or (C) has none of the impairments defined in paragraph (i)(2)(i) of this section but is treated by a recipient as having such an impairment.

(j) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(3) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(k) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

§ 217.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recepient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefits, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal finanical assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

§ 217.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Administrator, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Agency.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Agency the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(1) of this section in the effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Agency the covenant shall also include a condition coupled with a right to be reserved by the Agency to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvment of existing, facilities on the property for the

purposes for which the property was transferred, the Administrator may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 217.6 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) if the Administrator finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Administrator deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that had discriminated, the Administrator, where appropriate, may require either or both recipients to take remedial action.

(3) The Administrator may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate with the assistance of interested persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirement of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organization representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Administrator upon request: (i) A list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

§ 217.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§ 217.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504, and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employement in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 217.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising an reprinting the materials and publications.

§ 217.9 Administrative requirements for small recipients.

The Administrator may require any receipient with fewer than fifteen employees, or any class of such recipients, to comply with §§ 217.7 and 217.8 in whole or in part, when the Administrator finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§ 217.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportuities in amy occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B—Employment Practices

§ 217.11 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely

affects their opportunities or status because of handicap.

(3) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the procession of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virture of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 217.12 Reasonable accommodation.

(a) A recipient shall make reasonable accomodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipients workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 217.13 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Administrator to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual or speaking skills (except where those skills are the factors that the test purports to measure).

§ 217.14 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 217.6(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted programs or activity pursuant to § 217.6(b) or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants fo employment to indicate whether and to what extent they are handicapped. *Provided,* That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty: *Provided,* That: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

§§ 217.15–217.20 [Reserved]

Subpart C—Program Accessibility

§ 217.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities within the United States are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 217.22 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirement of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, alteration of existing facilities and construction of new facilities in conformance with the requirements of §217.23, or any other methods that may result in making its program or activity accessible to handicapped persons. A recipient is not require to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(e) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

§ 217.23 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *American Standards Institute accessibility standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accesssible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1–1961 (R1971)),[1] which is incorporated by reference in this part, shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

[1] Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018.

§§ 217.24–217.40 [Reserved]

Subpart D—Postsecondary Education

§ 217.41 Application of this subpart.

Subpart D applies within the United States to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from federal financial assistance and to recipients that operate, or that receive or benefit from federal financial assistance for the operation of such programs or activities within the United States.

§ 217.42 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitation upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons (i) the test or criterion, as used by the recipient has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Administrator to be available;

(3) Shall assure itself that (i) admissions tests are selected and administered so as to best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual or speaking skills are offered as often and in as timely a

manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 217.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 217.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped: *Provided,* That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

§ 217.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health, insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

§ 217.44 Academic adjustments.

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaption of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluations represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 217.45 Housing.

(a) *Housing provided by the recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in Subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 217.46 Financial and employment assistance to students.

(a) *Provision of financial assistance.* (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not (i), on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of

scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate Subpart B if they were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates Subpart B.

§ 217.47 Nonacademic services.

(a) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of § 217.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular carrers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

§§ 217.48–217.60 [Reserved]

Subpart E—Procedures

§ 217.61 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§209.6–209.13 of this title.

§§ 217.62–217.99 [Reserved]

Appendix A—Federal Financial Assistance to Which This Regulation Applies

1. Grants to research and educational insitutions in the United States to strengthen their capacity to carry on programs concerned with the economic and social development of less developed friendly countries (Section 122d, Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2221 and Section 297 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2220(b).

2. Grants to non-profit organizations, universities, hospitals, accredited health institutions and voluntary health or other qualified organizations with respect to problems of populations growth and family planning in friendly countries and areas. (Section 104(b), Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2151b).

3. Grants to land grant and other qualified agricultural universities and colleges to develop their capabilities to assist developing countries in agricultural teaching, research and extension services. (Section 297, Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2220(b)).

[FR Doc.79-13084 Filed 4-26-79; 8:45 am]

BILLING CODE 4710-02-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for the City of Cape Coral, Lee County, Fla., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Cape Coral, Lee County, Florida.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 815 Nicholas Parkway, Cape Coral, Florida.

Send comments to: Hon. Lyman Moore, Mayor, city of Cape Coral, P.O. Box 900, Cape Coral, Florida 33904.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202–755–5581 or toll-free line 800–424–8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Cape Coral, Florida, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganizaion Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Gulf of Mexico	Intersection of Durden Parkway West and Northwest 34th Avenue.	11
	Intersection of Pine Island Road and Santa Barbar Boulevard.	11
	Intersection of Chiquita Boulevard and Miracle Parkway.	10
	Intersection of Country Club Boulevard and Retunda Parkway.	11
	Intersection of Pelican Boulevard and Gleason Parkway.	10
	Intersection of Tropicana Parkway and Northwest 36th Avenue.	10
	Intersection of Diplomat Parkway and Chiquita Boulevard.	11
	Intersection of Pine Island Road and Nicholas Parkway.	11
	Intersection of Hancock Bridge Parkway and Del Prado Parkway.	11
	Intersection of Cape Coral Parkway West and South Chiquita Boulevard.	10
	Junction of Sands Boulevard and El Dorado Parkway West.	11
	Intersection of Cape Coral Parkway and Coronodo Parkway.	11

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: April 23, 1979.

Gloria M. Jiminez,

Federal Insurance Administrator.

[Docket No. FI–5379]

[FR Doc. 79–13056 Filed 4–26–79; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR PART 1917]

Proposed Flood Elevation Determinations for the Borough of Oradell, Bergen County, N.J.; Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the borough of Oradell, Bergen County, New Jersey.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the borough hall in Oradell.

Send comments to: Hon. Carl Marggraff, mayor, borough of Oradell, Borough Hall, 355 Kinderkamack Road, Oradell, New Jersey 07649.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755–5581 or Toll-Free Line (800) 424–8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the borough of Oradell, New Jersey, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic
Hackensack River	Corporate Limits—200 feet*	10
	New Milford Avenue**	12
	Oradell Avenue—200 feet*	15
	Oradell Reservoir	25
Hackensack River Bypass.	New Milford Avenue—60 feet***.	13
	Elm Street—180 feet*	14

* Upstream from centerline
** At centerline
*** Downstream from centerline

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

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95–557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: March 21, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[Docket No. FI–5378]

[FR Doc. 79–3055 Filed 4–26–79; 8:45 am]

BILLING CODE 4210–01

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension Welfare and Benefits Program

[26 CFR Part 54]

[29 CFR Part 2550]

Proposed Regulations Relating to Certain Loans, Leases, and Dispositions of Property Prior to June 30, 1984

AGENCY: Department of Labor.[1]
ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains proposed regulations under the Employee Retirement Income Security Act of 1974 (Act) relating to loans or other extensions of credit, leases or joint uses of property, and sales of leased or jointly used property where an employee benefit plan is involved in the transaction. The proposed regulations are intended to clarify the scope of certain provisions of the Act which, in effect, allow such transactions to take place for a limited period of time and under specified circumstances. If adopted, the regulations might affect participants and beneficiaries of employee benefit plans, and employers and other persons engaged in loan, lease, joint use, or sale transactions with employee benefit plans.

DATES: Written comments concerning the proposed regulations must be received by the Department of Labor (the Department) on or before June 26, 1979. The regulations, if adopted, would be effective as of January 1, 1975.

ADDRESS: Interested persons are invited to submit written data, views or arguments concerning the proposed regulations to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, Washington, D.C. 20216, Attention: Proposed regulations 2550.414c–1,2, and 3. All submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefit Programs, Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William J. Flanagan, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20216, telephone (202)–523–7931. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department of Labor proposes to adopt regulations under sections 414(c)(1), (2) and (3) of the Act.[2] The Department's reasons for issuing the proposed regulations are set forth below, followed by a discussion of the provisions of the proposed regulations.

A. Background

Section 406(a) of the Act generally prohibits a fiduciary [3] with respect to an employee benefit plan from causing the plan to engage in certain types of transactions with a party in interest.[4] These prohibited transactions with parties in interest include, among others, leases, loans, and sales or exchanges of property. Moreover, section 406(b) of the Act among other things prohibits fiduciaries from acting with respect to the plan in certain situations where they have a conflict of interest or in such a way as to benefit themselves. In addition, section 406(a) of the Act, together with section 407(a), delimits the circumstances under which a plan may acquire or hold real property which is leased to an employer of persons covered by the plan.

However, section 414(c)(1) of the Act provides that the prohibitions and limitations of sections 406 and 407(a) will not apply until June 30, 1984 to a loan of money or other extension of credit between a plan and a party in interest, provided, among other things, that the loan or extension of credit is made pursuant to either a binding contract which was in effect on July 1, 1974, or a renewal of such a contract. Section 414(c)(2) of the Act contains similar provisions with respect to leases or joint uses of property involving a plan and a party in interest, and, under section 414(c)(3), property described in section 414(c)(2) may, until June 30, 1984, be the subject of a sale, exchange, or other disposition between the plan and the party in interest provided that the plan receives no less than, or pays no more than, fair market value for the property. The purpose of including these provisions in the Act was to avoid the undue hardship which might have resulted from making the prohibitions of the Act applicable immediately with respect to certain activities which were being engaged in by employee benefit plans at the time the Act was passed, and which did not violate prior law.[5]

If the proposed regulations are adopted, the Department will generally not regard transactions as coming within the terms of section 414(c)(1), 414(c)(2), or 414(c)(3) of the Act unless the transactions come within the terms of the regulations. Whether or not the proposed regulations are adopted, determinations as to whether particular transactions come within the scope of the transitional rules should be made by plan fiduciaries on the basis of relevant facts and circumstances. Because the question of whether a transaction is within the scope of a transitional rule is essentially factual, the Department generally will not issue advisory opinions with regard to questions of this nature.[6]

It should be noted that the fact that a transaction comes within the scope of the transitional rules of section 414(c) does not relieve a fiduciary with respect to the plan from the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of plan participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must be operated for the exclusive benefit of employees and their beneficiaries. Even though a transaction might be within the scope of the transitional rules of section 414(c) (1), (2) or (3), a plan fiduciary could not lawfully cause the plan to engage in such a transaction unless the action on the part of the fiduciary was consistent with the requirements of section 404 of the Act.

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[1] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to promulgate regulations of the type proposed herein to the Secretary of Labor. Therefore, if the Department determines to adopt the proposed regulations on the basis of comments received, it contemplates adopting provisions for similar treatment under the Internal Revenue Code of 1954 of the transitional rules contained in section 2003(c)(2)(A)–(C) of ERISA. Those provisions were formerly administered by the Secretary of Treasury.

This document does not meet the criteria for significant regulations set forth in Department of Labor guidelines (44 FR 5570, January 26, 1979) issued to implement Executive Order 12044 (43 FR 12661, March 23, 1978).

[2] As noted in footnote 1 above, the Department, on the basis of comments received on this proposal, will consider adopting similar regulations under section 2003(c)(2)(A)–(C) of ERISA.

[3] Section 3(21)(A) of the Act provides in part that, in general, a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.

[4] The term "party in interest" is defined in section 3(14) of the Act to include fiduciaries, employers of individuals covered by the plan, and persons or organizations having other relationships with the plan which are specified in that section.

[5] *See* H.R. Rep. No. 93–1280, 93d Cong., 2d Sess. 325 (1974). Transitional relief relating to certain other types of activities and transactions is provided in section 414(c)(4) and (5) of the Act. The Department previously has adopted Regulation 2550.414c–4, clarifying the scope of the transitional relief provided in section 414(c)(4) of the Act.

[6] *See* section 5 of ERISA Proc. 76–1 (41 FR 36281 August 7, 1976), the Advisory Opinion Procedure.

In this connection, plan fiduciaries should also note that the transitional relief provided by section 414(c) (1), (2) and (3) extends only until June 30, 1984. In determining whether to renew existing contracts or dispose of property in transactions consistent with the section 414(c) (1), (2) or (3) transitional rules, plan fiduciaries should take into account the fact that existing arrangements must terminate, and any dispositions of property must be completed, by June 30, 1984.

B. Discussion of Proposed Regulations

1. *Proposed Regulations § 2550.414c–1 and § 2550.414c–2.*—Proposed regulation § 2550.414c–1, concerning loans or other extensions of credit, and proposed regulation § 2550.414c–2, concerning leases or joint uses of property, each contains certain provisions substantially identical to the statutory transitional rule to which it relates. Thus, proposed regulation § 2550.414c–1 provides in part that sections 406 and 407(a) of the Act will not apply until June 30, 1984 to a loan of money or other extension of credit between a plan and a party in interest made pursuant to either a binding contract which was in effect on July 1, 1974, or a renewal of such a contract, provided that the loan or extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and provided that the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction within the meaning of section 503(b) of the Code or the corresponding provisions of prior law. Proposed regulation § 2550.414c–2 contains a similar provision with regard to leases or joint uses of property involving a plan and a party in interest. The two proposed regulations then set forth provisions defining or clarifying certain of the terms used therein. These provisions are discussed below.

a. *Binding contract.* The proposed regulations state that a "binding contract" means one which is binding under applicable state law.[7] The validity of contracts generally is determined under State law, and it would appear unnecessary and impractical to formulate special federal rules for determining whether a contract is binding for purposes of section 414(c) of the Act. In this connection, the Department recognizes that the laws governing contracts vary from state to state, and that an arrangement which would constitute a binding contract under the law of one state might not be binding under the law of another state. To this extent, the effect of the proposed regulations could vary depending upon which state law is applicable. However, such a result does not seem unreasonable in view of the fact that, as suggested above, the purpose of providing transitional relief in section 414(c) of the Act was to avoid precipitous disruption of certain arrangements which were in effect prior to passage of the Act. Since the validity of contracts relating to such arrangements would have been determined under state law if the Act had not been passed, the purpose of section 414(c) may be served by referring to state law in this area.

b. *At least as favorable:* Under proposed regulations 2550.414c–1 and 2550.414c–2, arrangements will be regarded as remaining "at least as favorable to the plan as an arm's-length transaction with an unrelated party would be" only if two conditions are met. First, the arrangement, at the time it is entered into and at any time it it renewed, must be on terms at least as favorable to the plan as those which reasonably would be expected to exist in the case of an otherwise identical transaction in a normal commercial setting between the plan and the party in interest if they were unrelated parties. Secondly, the plan must require termination or modification of the contract at such time as, and in such manner and to such extent that, it reasonably would be expected to do so in a normal commercial setting if the plan and the party in interest were unrelated parties.

The first of the two conditions described above is self-explanatory. With regard to the second condition, the question of whether a plan would have to require termination or modification of an agreement would depend upon both the plan's legal rights under the agreement and relevant economic considerations. For example, if a plan loaned money to a party in interest in exchange for a demand note and prevailing interest rates increased while the loan was outstanding, the plan normally would have to require either a corresponding increase in the interest paid on the note or immediate repayment of the note. Similarly, if a plan were leasing property to a party in interest pursuant to a month-to-month lease and the fair rental value of the property increased, in most cases the plan either would have to require an increase in the rent paid by the party in interest to reflect such increase in value, or would have to terminate the lease.

On the other hand, under the proposed regulations, renegotiation of an existing contract would not be required if the terms of the contract did not permit an adjustment of the contract terms.[8]

c. *Renewal.* A renewal of a contract will be regarded as coming within the terms of proposed regulations 2550.414c–1 and 2550.414c–2 only if two conditions are met.

First, the renewal must be one which the plan reasonably would be expected to agree to in the case of an identical transaction in a normal commercial setting with unrelated parties. It should be noted that these proposed regulations do not require that the original contract explicitly provide for renewal.

Second, except as required in order for the arrangement to remain at least as favorable to the plan as an arm's length transaction with an unrelated party would be, a renewal would come within the scope of the proposed regulations only if any changes in the terms of the existing contract or arrangement are not substantial. For example, if a plan leased office space in a portion of an upper floor of an office building to a party in interest pursuant to the transitional rules, a renewal of the lease which was otherwise in accord with those rules would, depending upon the facts and circumstances of the particular transactions, generally be permissible if the renewal involved office space in the same portion of that floor or the same plus some additional portion of that floor. However, a lease by the party in interest of office space in the same portion of the floor and commercial storefront space in the building owned by the plan would appear to involve a substantial change from the original lease, and thus, would not be considered a renewal for purposes of the proposed regulations.[9]

[7] For example, the question of whether an oral agreement is a binding contract would be determined according to applicable state law.

[8] In this respect the proposed regulations differ from Department of the Treasury regulation 26 CFR § 53.4941(d)–4 issued under section 101(1)(2) of the Tax Reform Act of 1969, 83 Stat. 533. Section 101(1)(2), which provides transitional relief for private foundations from the prohibited transaction provisions of section 4941 of the Code, is similar to the transitional provisions of ERISA. Despite this similarity in statutory language, the Department believes that this liberalization in treatment (by expanding the class of transactions to which the transitional rules apply) is justified in view of the substantial differences in the operation of employee benefit plans and private foundations under their respective transitional rules.

[9] Similarly, if a contract provided for a line of credit, renewal would not represent a substantial change in the existing arrangement so long as the amount of credit committed upon renewal, including any amount outstanding at the time of renewal, does not exceed the limit placed on the line of credit

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With respect to the requirement that the transaction remain at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, it should be noted that it would not be necessary to renegotiate a contract at the time of renewal if the plan is obligated to renew on terms which had been set by the original contract. Such an obligatory renewal clause would be taken into account in determining whether the original contract was, at time of its making, at least as favorable to the plan as an otherwise identical arm's-length transaction in a normal commercial setting would be. If this criterion is met and the contract otherwise qualifies for transitional relief, the renewal could, under the proposed regulations, take place on the predetermined terms even though those terms might not appear favorable in light of developments occurring subsequent to the making of the original contract. This is because it could reasonably be expected that an unrelated party would renew a contract at terms it was obligated to accept.

However, where a contract indicates that any renewal must take place under predetermined terms but the plan has the right not to renew the contract at all, such renewal could, under the proposed regulations, take place only if the predetermined terms are, at the time of renewal, terms which the plan would reasonably be expected to agree to in an otherwise identical arm's-length transaction. If the predetermined terms fail to satisfy this criterion, the plan could not enter into the renewal under the proposed regulations.

Similarly, where renewal terms have not been predetermined, it could reasonably be expected that unrelated parties to a contract would renegotiate its terms at the time of renewal in order to reflect changed circumstances. Therefore, to the extent that changed circumstances placed a plan in a position to obtain renewal terms more favorable that those of the original contract, such terms would have to be obtained in order for the renewal to qualify for transitional relief under the proposed regulations.

2. *Proposed Regulation 2550.414c–3.*— Paragraph (a) of proposed regulation 2550.414c–3 is similar in substance to section 414(c)(3) of the Act. That paragraph provides that sections 406 and 407(a) of the Act will not apply until June 30, 1984 with respect to a sale, exchange, or other disposition of leased or jointly-used property described in regulation 2550.414c–2 between a plan and a party in interest,[10] provided that, in the case of a sale, exchange, or other disposition of the property by the plan to the party in interest, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition, and, in the case of the acquisition of the property by the plan, the plan does not pay more than such an amount.[11]

However, the proposed regulation is drafted in recognition of the fact that transitional relief might not be necessary where one or more unrelated persons leases or jointly uses any portion or portions of the property representing a total value equal to or greater than the value of the portion of the property leased to or jointly used by parties in interest. In such a circumstance, the plan presumably would be able to sell such property to a person other than the party in interest. Thus, no undue hardship to the plan or party in interest participating in a lease or joint use would seem likely to result from applying the restrictions of section 406 of the Act with respect to disposition of the property. Accordingly, paragraph (b) of proposed regulation 2550.414c–3 provides that a sale of property, a portion of which is subject to a lease or joint use between a plan and a party in interest, will not be within the scope of the transitional relief afforded by that section if one or more unrelated persons leases or jointly uses any portion or portions of the property representing a total value equal to or greater than the value of the portion of the property leased to or jointly used by parties in interest. Under this provision, the relief provided in the proposed regulation would be available where, for example, a portion of property representing 40% of the property's total value was leased to or jointly used by a party in interest and the remainder of the property was vacant. However, if in that example the remainder of the property *i.e.*, a portion representing 60% of its value, was leased to or jointly used by one or more persons unrelated to the plan, the relief provided in the proposed regulation would not be available. On the other hand, the relief afforded by the proposed regulation would be available if, for example, the plan were selling to a party in interest only that portion of the property leased to the party in interest, even if a sale of the entire property would not be within the scope of the regulation.

In addition, paragraph (b) of proposed regulation 2550.414c–3 provides that fair market value must be determined without regard to any diminution in value resulting from the property being subject to a lease to, or joint use by, a party in interest. This provision is included because it would seem inappropriate to allow a party in interest to acquire property from a plan for a price lower than the plan would otherwise be able to receive, where the plan's inability to obtain the higher price results from the property's being burdened by a party in interest lease which depresses the property's market price.

STATUTORY AUTHORITY: The proposed regulations set forth herein are issued pursuant to sections 414(c) and 505 of the Act.

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

PROPOSED REGULATIONS: In consideration of the matters discussed above, it is proposed to amend Part 2550 of Chapter XXV of Title 29 of the Code of Federal Regulations by adding after § 2550.414b–1 the following new sections:

§ 2550.414c–1 Transitional rule relating to certain loans or other extensions of credit prior to July 1, 1984.

(a) Before July 1, 1984, sections 406 and 407(a) of the Employee Retirement Income Security act of 1974 (Act) shall not apply with respect to a loan of money or other extension of credit between a plan and a party in interest under a binding contract in effect on July 1, 1974, or pursuant to renewals of such a contract, if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction within the meaning of section 503(b) of the Internal Revenue Code of 1954 or the corresponding provisions of prior law.

(b) For purposes of this section,

(1) "Binding contract" means only a contract which is binding under applicable state law;

Footnotes continued from last page

in the existing contract. On the other hand, where a loan has been made for a fixed amount, renewal of that loan would not represent a substantial change in the existing arrangement only if the amount of the loan renewed does not exceed the original loan amount minus any amounts repaid before renewal.

[10] For the purposes of proposed regulation 2550.414(c)–1, the term "property described in 29 CFR § 2550.414c–2" includes all properties subject to a lease or joint use involving a plan and a party in interest under a binding contract in effect on July 1, 1974, or pursuant to renewals of such contracts.

[11] The fact that a transaction does not meet the criteria of section 414(c)(3) of the Act and the regulations thereunder does not preclude the possibility that the transaction might nonetheless qualify for relief under section 414(c)(5) of the Act.

(2) A loan or other extension of credit will not be considered to "remain at least as favorable to the plan as an arm's-length transaction with an unrelated party would be" unless:

(i) Such loan or extension of credit, at the time of the execution of the contract and any renewal, is on terms at least as favorable to the plan as those which reasonably would be expected to exist in the case of an otherwise identical transaction in a normal commercial setting between the plan and the party in interest if they were unrelated parties, and

(ii) The plan requires termination or modification of the contract at such time as, and in such manner and to such extent that, it reasonably would be expected to require such termination or modification in the case of an otherwise identical transaction in a normal commercial setting with the party in interest if they were unrelated parties; and

(3) "Renewal" of a contract means only a renewal which:

(i) The plan reasonably would be expected to agree to in the case of an otherwise identical transaction in a normal commercial setting with the party in interest if they were unrelated parties, and

(ii) Except to the extent required by paragraph (b)(2)(ii) of this section, does not result in any substantial change or modification of the terms of the existing contract.

§ 2550.414c-2 Transitional rule relating to certain leases or joint uses of property prior to July 1, 1984.

(a) Before July 1, 1984, sections 406 and 407(a) of the Employee Retirement Income Security Act of 1974 shall not apply with respect to a lease or joint use of property involving the plan and a party in interest pursuant to a binding contract in effect on July 1, 1974 or pursuant to renewals of such a contract, if such lease or joint use remains at least as favorable to the plan as an arm's length transaction with an unrelated party would be and if the execution of the contract was not, at the time of such execution, a prohibited transaction within the meaning of section 503(b) of the Internal Revenue Code of 1954 or the corresponding provisions of prior law.

(b) For purposes of this section,

(1) "Binding contract" means only a contract which in binding under applicable state law;

(2) A lease or joint use of property will not be considered to "remain at least as favorable to the plan as an arm's-length transaction with an unrelated party would be" unless:

(i) The contract for such lease or joint use of property, at the time of the execution and any renewal thereof, is on terms at least as favorable to the plan as those which reasonably would be expected to exist in the case of an otherwise identical transaction in a normal commercial setting between the plan and the party in interest if they were unrelated parties, and

(ii) The plan requires termination or modification of the contract at such time as, and in such manner and to such extent that, it reasonably would be expected to require such termination or modification in the case of an otherwise identical transaction in a normal commercial setting with the party in interest if they were unrelated parties; and

(3) "Renewal" of a contract means only a renewal which:

(i) The plan reasonably would be expected to agree to in the case of an otherwise identical transaction in a normal commercial setting with the party in interest if they were unrelated parties, and

(ii) Except to the extent required by paragraph (b)(2)(ii) of this section, does not result in any substantial change or modification of the terms of the existing contract.

§ 2550.414c-3 Transitional rule relating to certain sales, exchanges, or other dispositions of property prior to July 1, 1984.

(a) Before July 1, 1984, section 406 of the Employee Retirement Income Security Act of 1974 shall not apply with respect to a sale, exchange, or other disposition of leased or jointly used property described in 29 CFR § 2550.414c-2 between a plan and a party in interest provided that:

(1) In the case of a sale, exchange, or other disposition of such property by the plan to the party in interest, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

(2) In the case of the acquisition of such property by the plan, the plan pays an amount which is not in excess of the fair market value of the property at the time of such acquisition.

(b) For purposes of this section,

(1) The term "property described in 29 CFR § 2550.414c-2" includes all properties subject to a lease or joint use involving a plan and a party in interest under a binding contract in effect on July 1, 1974, or pursuant to renewals of such contracts;

(2) A property will not be regarded as the subject of a lease or joint use between a plan and a party in interest to the extent that one or more unrelated persons leases or jointly uses any portion or portions of such property representing a total value equal to or greater than the value of the portion of the property leased to or jointly used by one or more parties in interest and the plan; and

(3) Fair market value must be determined without regard to any diminution in value resulting from the property being subject to a lease to, or joint use by, a party in interest.

(4) The term "property" means any property or part thereof.

Signed at Washington, D. C., this 20th day of April 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, United States Department of Labor.

[FR Doc. 79-12934 Filed 4-26-79; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

Approval and Promulgation of Implementation Plans; Nevada State Implementation Plan Revision; Truckee Meadows Nonattainment Area Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Revisions to the Truckee Meadows portion of the Nevada State Implementation Plan (SIP) have been submitted to the Environmental Protection Agency (EPA) by the Governor. The intended effect of the revisions is to meet the requirements of Part D of the Clean Air Act, as amended in 1977, "Plan Requirements for Nonattainment Areas." This notice provides a description of the proposed SIP revisions, summarizes the Part D requirements, compares the revisions to these requirements, identifies major issues in the proposed revisions, and suggests corrections. On April 4, 1979 (44 FR 20372) EPA published a General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas. The general preamble supplements this proposal, by identifying the major considerations that will guide EPA's evaluation of the submittal. The EPA invites public comments on these revisions, the identified issues, suggested corrections, and whether the revisions should be approved or disapproved, especially

with respect to the requirements of Part D of the Clean Air Act.

DATES: Comments may be submitted up to June 26, 1979.

ADDRESSEES: Comments may be sent to: Regional Administrator, Attn.: Air & Hazardous Materials Division, Air Technical Branch, Regulatory Section (A–4), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

Copies of the Proposed Revisions/ Nonattainment Area Plan and EPA's associated Evaluation Report are contained in document file NAP–NV–6 and are available for public inspection during normal business hours at the EPA Region IX Library at the above address and at the following locations:

Washoe Council of Governments, 241 Ridge Street, Reno, NV 89502.
Department of Conservation and Natural Resources, 201 S. Fall Street, Carson City, NV 89710.
Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, Regulatory Section, Air & Hazardous Materials Division, EPA, Region IX, (415) 556–2938.

SUPPLEMENTARY INFORMATION:

Background

New provisions of the Clean Air Act, enacted in August 1977, Public Law No. 95–95, require states to revise their SIPs for all areas that do not attain the National Ambient Air Quality Standards (NAAQS). The amendments required each state to submit to the Administrator a list of the NAAQS attainment status for all areas within the state. The Administrator promulgated these lists, with certain modifications, on March 3, 1978 (43 FR 8962). State and local governments were required to develop, adopt, and submit to EPA revisions to their SIP, for nonattainment areas, by January 1, 1979 which meet the requirements of Part D of the Clean Air Act and which provide for attainment of the NAAQS as expeditiously as practicable. The Truckee Meadows area has been designated nonattainment for particulate matter, photochemical oxidants (ozone), and carbon monoxide.

Description of Proposed SIP Revisions

On December 29, 1978 the Governor submitted the Truckee Meadows Air Quality Implementation Plan to EPA as a revision to the Nevada SIP. Preparation of the proposed SIP revisions was coordinated by the Washoe Council of Governments, which was designated by the Governor as the air quality planning organization for the Truckee Meadows nonattainment area. The nonattainment area plan for the Truckee Meadows area consists of the following major components:

—A basic description of the Federal, State, and local air pollution control requirements both past and present;

—A discussion of those pollutants that exceed the NAAQS, specifying the violations by pollutant, and their health effects;

—An examination of air quality trends through the use of growth projections and emission inventories, and a determination of the level of control needed to attain the standards;

—A discussion of alternative air quality control measures that examines feasibility, costs, technical effectiveness, and enforcement aspects;

—An examination of the impact that new, modified, or relocated sources will have on air quality;

—A discussion of the specific strategies for particulate matter, carbon monoxide, and photochemical oxidants (ozone) that describes the implementation mechanisms, schedules for reasonable further progress, annual reporting provisions, and continuing planning requirements, as well as the environmental, social and economic impacts for the strategies; and

—A discussion of the planning process including: how the plan was prepared, the agencies involved in the process, public participation, intergovernmental consultation, and the transportation planning process.

The plan proposes to attain the carbon monoxide standard by 1982. The control measures to be used include: inspection and maintenance programs, road improvements, traffic controls, and areawide ride-sharing programs.

The plan proposes to attain the particulate standard by 1982 by using construction dust control, street sweeping, and the paving of unpaved roads, alleys, driveways, and parking lots.

The plan proposes to attain the 0.08 ppm photochemical oxidants (ozone) standard by 1987 using new regulations controlling emissions from the storage and transfer of fuels, asphalt paving, degreasing activities, dry cleaning operations, and oil based paints. In addition, the plan proposes to use one or more of the following controls to reduce emissions: expanded public transit, land use controls, vapor recovery systems for filling vehicle gas tanks, moving Reno International Airport, and energy conservation measures.

Criteria for Approval

The following list summarizes the basic requirements for Nonattainment Area Plans.

1. An accurate inventory of existing emissions.
2. A provision for expeditious attainment of the standards.
3. A determination of the level of control needed to attain by 1982 and, in the case of an extension request, by 1987.
4. Adoption in legally enforceable form of all reasonably available control measures necessary to provide for attainment or, for some measures, where adoption by 1979 is not possible, a schedule for development, adoption, submittal, and implementation of these measures.
5. Emission reduction estimates for each adopted control measure.
6. Provisions for reasonable further progress as defined in Section 171 of the Clean Air Act.
7. An identification of emissions growth.
8. Provisions for annual reporting with respect to items (4) and (6) above.
9. A permit program for major new or modified sources consistent with Section 173 of the Clean Air Act.
10. An identification of and commitment to the resources necessary to carry out the plan.
11. Evidence of public, local government, and state involvement and consultation.
12. Evidence that the proposed SIP revisions were adopted by the state after reasonable notice and public hearing.
13. For carbon monoxide and photochemical oxidants (ozone) SIP revisions that provide for attainment of the primary standards later than 1982:

a. A permit program for major new or modified sources requiring an evalution of alternative sites and consideration of environmental and social costs.

b. In addition, in urbanized areas:

(1) An Inspection/Maintenance program or schedule for development, adoption, and implementation of such a program.

(2) A provision for implementation of reasonably available control measures for mobile sources.

(3) A commitment to establish, expand, or improve public transportation measures.

14. In photochemical oxidants (ozone) nonattainment areas requiring an extension beyond 1982, the revision must provide for adoption of legally enforceable regulations to reflect the application of reasonably available

control technology (RACT) to those stationary sources for which EPA has published a Control Techniques Guideline by January 1978, and a commitment to adopt RACT regulations for additional sources to be covered by guidelines. For rural areas, only large sources (more than 100 tons/year potential emissions) must be so regulated.

Issues

This section discusses whether the plan elements of the Truckee Meadows Nonattainment Area Plan satisfy the basic criteria for approval. The paragraph numbers correspond to the preceding section, Criteria for Approval. Where a significant plan discrepancy is identified, recommendations for revision of the plan are specified. The citations in the comments refer to Sections 108, 110, and Part D, Sections 171–178, of the Clean Air Act, as amended.

1. Emission Inventory

The plan includes an emission inventory for particulate matter, hydrocarbons, nitrogen oxides, and carbon monoxide, which identifies emission source categories and present and future emissions. The inventory is used in formulating control strategies designed to attain the national standards. Stationary, mobile, and area source estimates, which comprise the inventory, are based on emission factors cited in EPA's "Compilation of Air Pollution Emission Factors" (AP–42), or derived from source test data, surveys, computer models, or transportation studies. The emission inventory for each pollutant is reasonably comprehensive, current, and accurate for air pollution planning purposes for this area, as required by Section 172(b)(4).

2. Attainment Provision

Particulate matter. This plan provides for attainment of the total suspended particulate primary standards through a commitment to an emissions reduction schedule from 1979 to the attainment year of 1982. For purposes of this demonstration, the more stringent annual standard was used.

The plan commits to a schedule of studies to improve the accuracy of emission factors, refine the baseline emissions inventory, and estimate more precisely area-specific emission reductions from control strategies for nontraditional sources. Adopted tactics, commitments to implement them, and amendments to the control strategy must be submitted to EPA as SIP revisions following completion of the scheduled studies.

The State requested an extension of 18 months for submittal of a plan showing attainment of the secondary standard for total suspended particulates. This request appears to be consistent with the provisions of 40 CFR 51.31, since the SIP revision shows that attainment of this standard will require emission reductions greater than those that would result from the expeditious application of reasonably available control technology.

Ozone. The plan addresses the national standard for photochemical oxidants of 0.08 ppm, which was superseded on February 8, 1979 (44 FR 8202) by the promulgation of a revised standard for ozone of 0.12 ppm. This revision to the standard may provide the opportunity to amend the plan, including changes in the control tactics and the attainment date. Upon receipt of an official SIP revision, EPA will consider the proposed changes. The present plan, however, provides for attainment of the 0.08 ppm level by 1987 through regular annual reductions achieved by identified measures.

Justification in the plan for an extension beyond the 1982 deadline is based upon a showing that the standard for photochemical oxidants of 0.08 ppm cannot be achieved, despite expeditious implementation of reasonably available control measures.

Carbon Monoxide. The plan attempts to provide for the attainment of the carbon monoxide standards through reductions in emissions from 1979 to the attainment year of 1982. The provision for attainment depends in part upon a strategy no longer included in the plan. This strategy (enhancement of the existing vehicle inspection and maintenance program) must be replaced by other tactics with equivalent emission reductions.

3. Level of Control

For all three pollutants the plan uses a proportional or rollback analysis to relate ambient concentrations to emissions. This is an acceptable screening method for estimating required reductions in emissions. The plan indicates that dispersion models conforming to EPA guidelines will be used to refine the analysis and identify the need for geographical- and seasonal-specific controls for each pollutant.

4. Legally Adopted Measures/Schedules

The SIP revision does not indicate that all necessary control measures have been adopted at the state or local level, as required by Sections 172(b)(2), 172(b)(8), and 172(b)(10). Specifically, the plan fails to show adoption in legally enforceable form of reasonably available control measures and, for all other measures, either adopted control strategies or schedules and commitments for development, adoption, submittal, and implementation. Upon EPA's receipt of evidence that all essential plan elements have been adopted by the implementing agencies, the requirements of Section 172(b) would be satisfied.

Particulate. For particulate matter the plan includes adopted regulations establishing, for source categories, an emission limit that can be met by reasonably available control technology. The plan indicates that local agencies have committed to necessary additional scheduled studies, pilot projects, and control provisions for nontraditional emission sources of fugitive dust.

Carbon Monoxide. The plan does not include written evidence that the agencies identified as responsible for transportation related measures have adopted, by legally enforceable commitments, the necessary transportation control measures and schedules of implementation, and are committed to implement and enforce the transportation elements of the plan. The plan must provide evidence that agencies with transportation planning and implementing authority have (1) adopted an emissions reduction target for the transportation sector, and (2) clearly acknowledged and accepted responsibility for the implementation of the transportation control measures presented in the plan on a schedule consistent with the requirements for reasonable further progress.

Ozone. The plan must include adopted regulations reflecting reasonably available control technology, for stationary source categories, for which EPA has published a Control Techniques Guideline document by January 1978. Transportation measures, which account for necessary hydrocarbon emission reductions, must be supported by the commitments identified in the above discussion of carbon monoxide controls.

5. *Emission Reduction Estimates.* Due to the unavailability of area-specific data, the plan includes only tentative emission reduction estimates for transportation and fugitive dust control measures for all pollutants. The plan provides for studies to determine the local effectiveness of these control tactics. This information must be supplied in future annual reports. The hydrocarbon emission reduction estimates for stationary source ozone strategies appear to be accurate.

6. *Reasonable Further Progress.* The showing of planned emission reductions for each of the three pollutants appears to be consistent with the requirements of Section 172(b)(3) and the definition of reasonable further progress in Section 171(1). The schedule represents regular incremental reductions needed for expeditious attainment, with application of reasonably available control technology. The schedule must be supported by adoption of regulations identified in the plan.

7. *Emissions Growth.* The plan indicates no growth in emissions from major stationary sources since new or expanded sources will be subject to permit conditions requiring full offsets of emissions. In order to satisfy the requirements of Section 172(b)(5), the State and the Washo County District Health Department (WCDHD) must submit permit regulations requiring these emissions offsets or conformity with an identified emissions growth increment.

8. *Annual Reporting.* The plan contains a commitment to submit annual reports of reasonable further progress, including an updated emissions inventory. This commitment should be further supplemented by additional specific commitments from all participating agencies to develop and describe in the SIP:

(1) Procedures for determination of conformity between transportation programs and projects and SIP revisions;

(2) Programs to monitor and report on actual field effectiveness of each transportation control measure.

9. *Permit Program.* The plan does not contain regulations for a permit program for major new or modified sources conforming to the provisions of Section 173. Because the State has exclusive statewide permitting authority over fossil fuel-fired steam generators, both the State and WCDHD must submit regulations for a permit program satisfying the Part D provisions.

10. *Resources.* The plan does not specifically identify and commit all financial and manpower resources necessary for plan implementation, nor does the plan provide commitments to these resources on the part of all implementing agencies. Upon receipt of these essential commitments, the provisions of Section 172(b)(7) would be met.

11. *Public and Government Involvement.* The plan provides evidence of public, local government, and State involvement and consultation in the planning process. In addition, the plan identifies air quality, health, welfare, economic, energy, and social effects of the plan provisions. The plan also documents the process used in designating responsible entities for preparing and implementing the revised SIP. Upon EPA's receipt of a summary of public comments, all requirements of Section 172(b)(9) would be satisfied.

12. *Public Hearing.* The plan conforms to Section 172(b)(1) and 40 CFR 51.4, since it includes evidence that the SIP was adopted by the State after reasonable notice and public hearing.

13. *Extension Requirements.* Since the State has requested an extension of the attainment date beyond 1982 for photochemical oxidants (ozone), the plan must meet additional requirements of the Act. The revision of the NAAQS for ozone, however, may provide the opportunity to show attainment of the standard by December 31, 1982. Upon EPA's receipt and approval of an SIP revision making such a demonstration of attainment, these Clean Air Act requirements would not be applicable.

In order to meet the requirements of Section 172(b)(11)(A), both the State and the WCDHD must submit a new source review permit program requiring an analysis of alternative sites, sizes, processes, and controls, and demonstrating that the benefits of a major emitting facility outweigh environmental costs.

The plan must also include a vehicle emission control inspection and maintenance program or specific schedule for adoption and implementation of such a program. This requirement of Section 172(b)(11)(B) appears to be satisfied by the State's submittal of additional statutory authority and regulations for such a program. The revision to the State's inspection and maintenance program is the subject of a separate Notice of Proposed Rulemaking.

As required by Section 172(b)(11)(C), the plan identifies and commits to other measures, which are not now reasonably available, that are necessary to provide for the attainment of the ozone NAAQS by the end of 1987.

The provisions of Sections 110(a)(3)(D), and 110(c)(5)(B) are not met, since the plan does not contain adequate commitments by agencies with legal authority to establish, expand, or improve public transportation to meet basic transportation needs. These basic transportation needs must be met as expeditiously as practicable using Federal grants and State and local funds to implement public transportation programs. Explicit commitments and schedules must be provided by agencies with transportation planning and implementing authority to conduct the necessary studies to determine basic transportation needs in the Truckee Meadows nonattainment area, and to develop and implement the public transportation measures necessary to meet those needs. Further commitments must be provided to use all available funding for the purpose of implementing the necessary measures to meet basic transportation needs.

The plan fails to provide adequate commitments to undertake a comprehensive technical analysis of transportation control options including, at a minimum, those measures listed in Section 108(f).

14. *Extension Requirements for RACT.* The plan indicates that attainment of the 0.08 ppm oxidant standard is not possible by 1982. Therefore, the plan must contain adopted, legally enforceable regulations which reflect the application of reasonably available control technology (RACT) for those stationary source categories for which EPA has published a Control Techniques Guideline (CTG) document by January 1978. The plan does include a commitment to adopt RACT regulations for additional source Categories, to be covered by future CTG documents.

The plan indicates that, of the eleven source categories for which adopted regulations are required, only six exist in the nonattainment area. These categories are service stations (stage I gasoline vapor recovery), gasoline bulk plants, gasoline bulk terminals, fixed roof tanks, solvent metal cleaning (degreasing), and cutback asphalt. Adpoted regulations which reflect RACT have not as yet been submitted to EPA for these six applicable source categories.

The WCDHD has adopted regulations for only five of these six categories, following public notice and hearing. Upon official submittal from the State, the regulations pertaining to the following categories may be approved as providing enforceable controls comparable to those identified in the EPA guidance documents: service stations (stage I gasoline vapor recovery), gasoline bulk plants, gasoline bulk terminals, fixed roof tanks, and solvent metal cleaning. However, all future effective regulations must be accompanied by schedules of compliance.

Public Comments

Under Section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove revisions to the SIP

submitted by the State. This proposal includes draft VOC RACT regulations which have been adopted after public hearing by the local agency, but not yet adopted by the State. The State has requested EPA to review these draft regulations and invite public comment on whether these regulatons meet the requirements of Part D of the Clean Air Act. EPA may proceed to final rulemaking on these VOC RACT regulations without providing further opportunity for public comment, if the State adopts and submits regulations to EPA in accordance with those described here, along with any recommended changes. The Regional Administrator hereby issues this notice setting forth the above described revisions as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office during the specified comment period. Comments received will be available for public inspection at the EPA Region IX Library and at the locations listed in the Addressees Section of this notice.

The Administrator's decision to approve or disapprove the proposed revisions will be based on the comments received and on a determination whether the revisions meet the requirements of Section 110, and Part D of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

(Section 110, 129, 171 to 178 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410, 7429, 7501 to 7508, and 7601(a)).)

Dated: March 28, 1979.

Paul De Falco, Jr.,

Regional Administrator.

[FRL 1211-1]

[FR Doc 79-13028 Filed 4-26-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 52]

Approval and Promulgation of Implementation Plans; Nevada State Implementation Plan Revision, Las Vegas Valley Nonattainment Area Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Revisions to the Las Vegas Valley portion of the Nevada State Implementation Plan (SIP) have been submitted to the Environmental Protection Agency (EPA) by the Governor. The intended effect of the revisions is to meet the requirements of Part D of the Clean Air Act, as amended in 1977, "Plan Requirements for Nonattainment Areas." This notice provides a description of the proposed SIP revisions, summarizes the Part D requirements, compares the revisons to these requirements, identifies major issues in the proposed revisions, and suggests corrections. On April 4, 1979 (44 FR 20372) EPA published a General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas. The general preamble supplements this proposal by identifying the major considerations that will guide EPA's evaluation of the submittal. The EPA invites public comments on these revisions, the identified issues, suggested corrections, and whether the revisions should be approved or disapproved, especially with respect to the requirements of Part D of the Clean Air Act.

DATE: Comments may be submitted on or before June 26, 1979.

ADDRESS: Comments may be sent to: Regional Administrator, Attn: Air & Hazardous Materials Division, Air Technical Branch, Regulatory Section (A-4), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco CA 94105.

Copies of the Proposed Revisions/Nonattainment Area Plan and EPA's associated Evaluation Report are contained in document file No. NAP-NV-4 and are available for public inspection during normal business hours at the EPA Region IX Library at the above address and at the following locations:

Clark County Department of Comprehensive Planning, Environmental Planning Division, 200 East Carson Avenue, Las Vagas NV 89101.

Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 201 South Fall Street, Carson City NV 89710.

Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, Regulatory Section, Air and Hazardous Materials Division, EPA, Region IX, (415) 556-2938.

SUPPLEMENTARY INFORMATION:

Background

New provisions of the Clean Air Act enacted in August 1977, Public Law No. 95-95, require states to revise their SIPs for all areas that do not attain the National Ambient Air Quality Standards (NAAQS). The amendments required each state to submit to the Administrator a list of the NAAQS attainment status for all areas within the state. The Administrator promulgated these lists, with certain modifications, on March 3, 1978 (43 FR 8962). State and local governments are required to develop, adopt, and submit to EPA revisions to their SIP, for nonattainment areas, by January 1, 1979 which meet the requirements of Part D of the Clean Air Act and which provide for attainment of the NAAQS as expeditiously as practicable. The Las Vegas Valley area has been designated nonattainment for carbon monoxide, photochemical oxidants (ozone), and particulate matter.

Description of Proposed SIP Revisions

On December 29, 1978 the Governor submitted the Las Vegas Valley Air Quality Implementation Plan to EPA as a revision to the Nevada SIP. Preparation of the proposed SIP revision was coordinated by the Clark County Board of Commissioners which was designated by the Governor as the air quality planning organization for the Las Vegas Valley nonattainment area. The nonattainment area plan for the Las Vegas Valley area consists of the following major components:

A basic description of the Federal, State, and local air pollution control requirements;

A discussion of ambient air quality past and present, with identification of those pollutants that exceed the standards, listing violations by pollutant and their health effects. The plan also discusses the topography and meteorology of the area;

An examination of air pollution sources and air quality trends through the use of emission inventories by pollutant and growth projections;

A discussion of alternative air quality control strategies, by pollutant that examines feasibility, costs, technical effectiveness, and enforcement aspects;

An examination of the impact that new, modified, or relocated sources of air pollution may have on air quality;

A discussion of specific strategies for particulate matter, carbon monoxide, and photochemical oxidants (ozone) that describes the implementation mechanisms, schedules for reasonable further progress, annual reporting provisions, and continuing planning requirements;

An analysis of the environmental, social and economic impacts of the recommended plan; and

An identification of the agencies responsible for implementation of the plan and a description of the planning process.

Strategies for controlling particulate matter emissions are divided into two broad categories—traditional, stationary sources and nontraditional sources. The

proposed plan indicates that all stationary sources presently are in compliance with the Clark County Health District's restrictive emission regulations for new and existing sources or are on compliance schedules. Nontraditional sources are more difficult to define and control. Examples of nontraditional sources include emissions from roads and land disturbing activities. Recommended actions for controlling nontraditional sources include requirements for reducing vehicle miles traveled on unpaved roads and demonstration projects for other source categories to identify the most cost-effective methods for controlling emissions from cleared areas, paved roads, and construction activities.

The plan addresses the national standard for photochemical oxidants of 0.08 ppm, which was superseded on February 8, 1979 (44 FR 8202) by the promulgation of a revised standard for ozone of 0.12 ppm. The plan proposes to provide for the attainment of the 0.08 ppm photochemical oxidants standard prior to December 31, 1987. The attainment will require enforcement by the Clark County Health District (CCHD) of stationary source hydrocarbon control strategies (degreasing; cutback asphalt; bulk gasoline terminals; gasoline bulk plants; service stations, Stage I gasoline vapor recovery; large appliance manufacture; and gasoline and crude oil storage), enforcement by the Department of Motor Vehicles of the current inspection/maintenance regulations and enforcement of EPA of the Federal motor vehicle emission control programs.

For carbon monoxide and also for photochemical oxidants (ozone), the plan includes a request for an extension of the attainment date beyond 1982 based on a showing that the standards cannot be achieved despite expeditious implementation of reasonably available control measures, including reasonably available control technology on stationary sources, and inspection and maintenance program for automobiles, traffic flow improvements, carpooling, and enhanced public transit system, and increased bicycle use.

Criteria for Approval

The following list summarizes the basic requirements for Nonattainment Area Plans.

1. An accurate inventory of existing emissions.
2. A provision of expeditious attainment of the standards.
3. A determination of the level of control needed to attain by 1982 and, in the case of an extension request, by 1987.
4. Adoption in legally enforceable form of all reasonably available control measures necessary to provide for attainment or, for some measures, where adoption by 1979 is not possible, a schedule for development, adoption, submittal, and implementation of these measures.
5. Emission reduction estimates for each adopted control measure.
6. Provisions for reasonable further progress as defined in Section 171 of the Clean Air Act.
7. An identification of emissions growth.
8. Provisions for annual reporting with respect to items (4) and (6) above.
9. A permit program for major new or modified sources consistent with Section 173 of the Clean Air Act.
10. An identification of and commitment to the resources necessary to carry out the plan.
11. Evidence of public, local government, and state involvement and consultation.
12. Evidence that the proposed SIP revisions were adopted by the state after reasonable notice and public hearing.
13. For carbon monoxide and photochemical oxidants (ozone) SIP revisions that provide for attainment of the primary standards later than 1982:
   a. A permit program for major new or modified sources requiring an evaluation of alternative sites and consideration of environmental and social costs.
   b. In addition, in urbanized areas:
   (1) An Inspection/Maintenance program or schedule for development, adoption, and implementation of such a program.
   (2) A provision for implementation of reasonably available control measures for mobile sources.
   (3) A commitment to establish, expand, or improve public transportation measures.
14. In photochemical oxidants (ozone) nonattainment areas requiring an extension beyond 1982, the revision must provide for adoption of legally enforceable regulations to reflect the application of reasonably available control technology (RACT) to those stationary sources for which EPA has published a Control Techniques Guideline by January 1978 and a commitment to adopt RACT regulations for additional sources to be covered by guidelines. For rural areas, only large sources (more than 100 tons/year potential emissions) must be so regulated.

Issues

This section discusses whether the plan elements of the Las Vegas Valley Nonattainment Area Plan satisfy the basic criteria for approval. The paragraph numbers correspond to the preceding section, Criteria for Approval. Where a significant plan discrepancy is identified, recommendations for revision of the plan may be specified. The citations in the comments refer to Sections 108, 110, and Part D, Sections 171 to 178, of the Clean Air Act, as amended.

1. Emission Inventory

The plan includes an emission inventory for particulate matter, hydrocarbons, nitrogen oxides, and carbon monoxide, identifying emission source categories and present and future emissions. The inventory is used in formulating control strategies designed to attain the national standards. Stationary, mobile, and area source estimates, which comprise the inventory, are based on emission factors cited in EPA's "Compilation of Air Pollution Emission Factors" (AP-42), or derived from source test data, surveys, computer models, or transportation studies. The emission inventory for each pollutant is reasonably comprehensive, current, and accurate for air pollution planning purposes for this area, as required by Section 172(b)(4).

2. Attainment Provision

Particulate matter: This plan provides for attainment of the total suspended particulate primary standards through a commitment to an emissions reduction schedule from 1979 to the attainment year of 1982. For purposes of this demonstration, the more stringent annual standard was used.

The plan commits to a schedule of studies to improve the accuracy of emission factors, refine the baseline emissions inventory, and estimate more precisely area-specific emission reductions from control strategies for nontraditional sources. Adopted tactics, commitments to implement them, and amendments to the control strategy must be submitted to EPA and SIP revisions following completion of the scheduled studies.

The State requested an extension of 18 months for submittal of a plan showing attainment of the secondary standard for total suspended particulates. This request appears to be consistent with the provisions of 40 CFR 51.31, since the SIP revision shows that attainment of this standard will require emission reductions greater than those that would result from the expeditious application of reasonably available control technology.

Ozone: The plan addresses the national standard for photochemical oxidants of 0.08 ppm, which was superseded on February 8, 1979 (44 FR 8202) by the promulgation of a revised standard for ozone of 0.12 ppm. This revision to the standard may provide the opportunity to amend the plan, including changes in the control tactics and the attainment date. Upon receipt of an official SIP revision, EPA will consider the proposed changes. The present plan,

however, provides for attainment of the 0.08 ppm level by 1987 through regular annual reductions achieved by identified measures. Justification in the plan for an extension beyond the 1982 deadline is based upon a showing that the standard for photochemical oxidants of 0.08 ppm cannot be achieved, despite expeditious implementation of reasonably available control measures.

Carbon Monoxide: The plan attempts to provide for the attainment of the carbon monoxide standards through reductions in emissions from 1979 to the attainment year of 1987. For purposes of this showing, the more stringent 8-hour standard was used, rather than the 1-hour standard, However, the plan does not show sufficient emission reductions to reach the allowable emission level to attain the standards.

The plan includes a request for an extension of the attainment date beyond 1982 based on a showing that the standards cannot be achieved despite expeditious implementation of reasonably available control measures, including an inspection and maintenance program for automobiles, traffic flow improvements, carpooling, and an enhanced public tansit system.

3. Level of Control

For both particulate matter and carbon monoxide the plan uses a linear regression model to relate ambient concentrations to emissions. A trajectory model is employed to forecast ozone concentrations. These models conform to EPA guidelines in essential respects. While a validation study has shown the particulate model to be good predictor of amibient levels, both the carbon monoxide and ozone models remain to be validated. Hotspot analyses may be needed in the future SIP revisions if ambient carbon monoxide concentrations are not proportionally diminished after emissions have been reduced in accordance with the existing control strategy.

4. Legally Adopted Measures/Schedules

The SIP revision does not indicate that all necessary control measures have been adopted at the state or local level, as required by Sections 172(b)(2), 172(b)(8), and 172(b)(10). Specifically, the plan fails to show adoption in legally enforceable form of reasonably available control measures and, for all other measures, either adopted control strategies or schedules and commitments for development, adoption, submittal, and implementation. Upon EPA's reciept of evidence that all essential plan elements have been adopted by the implementing agencies, the requirements of Section 172(b) would be satisfied.

Particulate: For particulate matter the plan includes adopted regulations establishing for source categories an emission limit that can be met by reasonably available control technology. Although the State and County have provided commitments, the plan does not provide written evidence that other local governments and all other implementing entities have committed to necessary additional scheduled studies, pilot projects, and control provisions.

Carbon Monoxide: For carbon monoxide, modeling indicates that emissions from a major stationary source contribute to violations of the standard. The state must submit approvable regulations to EPA for that source.

The requirements of Section 172(b)(10) are not met, since the plan does not include written evidence that the agencies identified as responsible for transportation related measures have adopted, by legally enforceable commitments, the necessary transportation control measures and schedules of implementation, and are committed to implement and enforce the transporation elements of the plan. The plan must provide evidence that agencies with transportation planning and implementing authority have (1) adopted an emissions reduction target for the transportation sector, and (2) clearly acknowledged and accepted responsibility for the implementation of the transportation control measures presented in the plan on a scheduled consistent with the requirements of reasonable further progress.

Ozone: The plan must include adopted regulations reflecting reasonably available control technology, for stationary source categories, for which EPA has published a Control Techniques Guideline document by January 1978. Transportation measures, which account for necessary hydrocarbon emission reductions must be supported by the commitments identified in the above discussion of carbon monoxide controls.

3. Emission Reduction Estimates

Due to the unavailability of area-specific data, the plan includes only tentative emission reduction estimates for transportation and fugitive dust control measures for all pollutants. The plan provides for studies to determine the local effectiveness of these control tactics. This information must be supplied in future annual reports. The hydrocarbon emission reduction estimates for stationary source ozone strategies appear to be accurate.

6. Reasonable Further Progress

The showing of planned emission reductions for each of the three pollutants appears to be consistent with the requirements of Section 172(b)(3) and the definition of reasonable further progress in Section 171(1). The schedule represents regular incremental reductions needed for expeditious attainment, with application of reasonably available control technology (RACT). The schedule should be supported and further quantified by estimated reductions from specific control tactics. In addition, all RACT regulations identified in the plan must be submitted as SIP revisions in order to justify the claimed reductions.

7. Emissions Growth

The plan indicates no growth in emissions from major stationary sources since new or expanded sources will be subject to permit conditions requiring full offsets of emissions. In order to satisfy the requirements of Section 172(b)(5), the State and CCHD must submit permit regulations requiring these emissions offsets or conformity with an identified emissions growth increment.

8. Annual Reporting

The plan contains a commitment to submit annual reports of reasonable further progress, including an updated emissions inventory. These reports are to be supplemented by interim progress reports every six months to identify the status of the air quality related transportation programs. This commitment should be further supplemented by additional specific commitments from all particpating agencies to develop and describe in the SIP:

(1) Procedures for determination of conformity between transportation programs and projects and SIP revisions;

(2) Programs to monitor and report on actual field effectiveness of each transportation control measure.

9. Permit Program

The plan does not contain regulations for a permit program for major new or modified sources conforming to the provisions of Section 173. Because the State has exclusive statewide permitting authority over fossil fuel-fired steam generators, both the State and CCHD must submit regulations for a permit program satisfying the Part D provisions.

10. Resources

The plan does not specifically identify and commit all financial and manpower resources necessary for plan implementation, nor does the plan provide commitments to these resources on the part of all implementing agencies. The plan indicates that such documentation is forthcoming. Upon receipt of these essential commitments, the provisions of Section 172(b)(7) would be met.

11. Public and Government Involvement

The plan provides evidence of public, local government, and State involvement and consultation in the planning process, and includes a summary of public comments. In addition, the plan identifies air quality, health, welfare, economic, energy, and social effects of the plan provisions. The plan also documents the process used in designating responsible entities for preparing and implementing the revised SIP. All requirements of Section 172(b)(9) appear to be satisfied.

12. Public Hearing

The plan conforms to Section 172(b)(1) and 40 CFR 51.4, since it includes evidence that the SIP was adopted by the State after reasonable notice and public hearing.

13. Extension Requirements

Since the State has requested an extension of the attainment date beyond 1982 for carbon monoxide and photochemical oxidants (ozone), the plan must meet the requirements of Section 172(b)(11)(A). Both the State and the CCHD must submit a new source review permit program requiring an analysis of alternative sites, sizes, processes, and controls, and demonstrating that the benefits of a major emitting facility outweigh environmental costs.

The plan must also include a vehicle emission control inspection and maintenance program or specific schedule for adoption and implementation of such a program. This requirement of Section 172(b)(11)(B) appears to be satisfied by the State's submittal of additional statutory authority and regulations for such a program. The revision to the State's inspection and maintenance program is the subject of a separate Notice of Proposed Rulemaking.

The plan identifies other measures, which are not now reasonably available, that may be necessary to provide for the attainment of the NAAQS by the end of 1987.

The requirements of Section 172(b)(11)(C) may be met if additional documentation is submitted specifying (1) planning activities that are expected to result in the evaluation, adoption, and implementation of these other measures; and (2) emission reductions attributable to these other measures.

The provisions of Sections 110(a)(3)(D) and 110(c)(5)(B) are not met, since the plan does not contain adequate commitments by agencies with legal authority to establish, expand, or improve public transportation to meet basic transportation needs. These basic transportation needs must be met as expeditiously as practicable using Federal grants and State and local funds to implement public transportation programs. Explicit commitments and schedules must be provided by agencies with transportation planning and implementing authority to conduct the necessary studies to determine basic transportation needs in the Las Vegas Valley nonattainment area, and to develop and implement the public transportation measures necessary to meet those needs. Further commitments must be provided to use all available funding for the purpose of implementing the necessary measures to meet basic transportation needs.

The plan fails to provide adequate commitments to undertake a comprehensive technical analysis of transportation control options including, at a minimum, those measures listed in Section 108(f).

14. Extension Requirements for RACT

The plan indicates that attainment of the 0.08 ppm photochemical oxidants standard is not possible by 1982. Therefore, the plan must contain adopted, legally enforceable regulations which reflect the application of reasonably available control technology (RACT) for those stationary source categories for which EPA has published a Control Techniques Guideline (CTG) document by January 1978. In addition, a commitment to adopt RACT regulations for additional source categories, to be covered by future CTG documents, must be made. The revision of the NAAQS for ozone may provide the opportunity to show attainment of the standard by December 31, 1982. Upon EPA's receipt and approval of a SIP revision making such a demonstration, these Clean Air Act requirements may not be applicable.

The plan submitted by the State indicates that, of the eleven source categories for which adopted regulations are required, only seven source categories exist in the nonattainment area. These categories are service stations (Stage I, gasoline vapor recovery), gasoline bulk plants, gasoline bulk terminals, fixed roof tanks, solvent metal cleaning (degreasing), cutback asphalt, and surface coating at large appliance manufacturers.

The CCHD has adopted regulations for these categories, following public notice and hearing. The regulations provide controls comparable to those identified in the EPA guidance documents.

However, the locally adopted regulations pertaining to cutback asphalt and to surface coating at large appliance manufacturers contain provisions which could render the requirements potentially unenforceable.

The regulation for cutback asphalt contains an exemption for days when the forecast ambient temperature will not exceed 50°F. This provision would be difficult to enforce. It is proposed that specifying the months when the ambient tenperature is generally not expected to exceed 50°F as an exemption would be an appropriate remedy. Additionally, since this is a future effective regulation, it should be accompanied by schedules of compliance.

The regulation for large appliance manufacturers may be difficult to enforce because it does not clearly identify what sources and emission points are affected. The regulation could be improved by specifying the sources affected and the means of emission reduction.

The plan includes a commitment to adopt RACT regulations for additional source categories to be covered by future CTG documents.

Public Comments

Under Section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove revisions to the SIP submitted by the State. This proposal also includes draft VOC RACT regulations which have been adopted after public hearing by the local agency, but not yet adopted by the State. The State has requested EPA to review these draft regulations and invite public comment on whether these regulations meet the requirements of Part D of the Clean Air Act. EPA may proceed to final rulemaking on these VOC RACT regulations without providing further opportunity for public comment if the State adopts and submits regulations in accordance with those described here, along with any recommended changes. The Regional Administrator hereby issues this notice setting forth the above described revisions as proposed rulemaking and advises the public that

interested persons may participate by submitting written comments to the Region IX Office during the specified comment period. Comments received will be available for public inspection at the EPA Region IX Library and at the locations listed in the Addressees Section of this notice.

The Administrator's decision to approve or disapprove the proposed revisions will be based on the comments received and on a determination whether the revisions meet the requirements of Section 110 and Part D of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

(Sections 110, 129, 171 to 178 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410, 7501 to 7508, and 7601(a)).

Dated: March 28, 1979.

Paul D. Falco,

Regional Administrator.

[FRL 1210-8]

[FR Doc. 79-13027 Filed 4-26-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 65]

State and Federal Administrative Orders Permitting a Delay in Compliance with State Implementation Plan Requirements; Proposed Approval of an Administrative Order Issued by the Mobile County Board of Health to the Alabama State Docks Department of the State of Alabama

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Mobile County Board of Health to the Alabama State Docks Department of the State of Alabama (hereinafter referred to as the "State Docks"). The Order requires the State Docks to bring air emissions from its bulk handling and unloading facility in Mobile County, Alabama, into compliance with air pollution control regulations contained in the federally approved Alabama State Implementation Plan (SIP) by June 30, 1979. Because the order has been issued to a major source of air pollution and permits a delay in compliance with provisions of the SIP, the Administrative Order must be approved by EPA before it become effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before May 29, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Geddis, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street; N.E., Atlanta, Georgia 30308, Telephone Number: (404) 881-4253.

SUPPLEMENTARY INFORMATION: The State Docks operate a bulk handling and unloading facility in Mobile County, Alabama.

The Order under consideration addresses visible and fugitive emissions from the bulk handling and unloading facility. These emissions are subject to Sections 6.1 and 6.2 of the Mobile County Air Pollution Control Rules and Regulations, respectively, which are indentical to Sections 4.1 and 4.2 of the Alabama Air Pollution Control Rules and Regulations. These regulations limit the emissions of particulate matter and are part of the federally approved Alabama State Implementation Plan. The order requires final compliance with the regulations by June 30, 1979, through the implementation of the following schedule for the construction or installation of control equipment:

January 20, 1979—Delivery of baghouses, fans and rotary valves.
February 1, 1979—Start installation of dust control system on "H" Tower.
May 1, 1979—Complete modifications on conveyors No. 2 and No. 3.
June 22, 1979—Complete installation of dust control system on "H" Tower.
June 30, 1979—Demonstrate final compliance.

The order requires the source to submit, no later than ten (10) days after the deadline for completing each milestone required by the above schedule, certification to the Mobile County Department of Health whether or not such milestone has been met.

As an interim control measure, the State Docks shall utilize water sprays on the conveying system on all materials other than bauxite, utilize water spraying of a ship's hold when necessary to minimize fugitive dust emissions from materials other than bauxite, and maintain and utilize the existing control device on the east end transfer point.

Because this Order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable state air pollution control regulations, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection. EPA has tentatively determined that the above-referenced order satisifies these legal requirements.

If the submitted administrative Order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulations covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the Order would also constitute an addition to the Alabama SIP. Compliance with the proposed order will not exempt the company from the requirements contained in any subsequent revision to the SIP which are approved by EPA.

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether EPA may approve the Order. After the public comment period, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601.)

Dated: April 18, 1979.

John C. White,

Regional Administrator, Region IV.

[Docket No. DCO-79-59; FRL 1210-5]

[FR Doc. 79-13020 Filed 4-26-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 65]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Approval of an Administrative Order Issued by the Virginia State Air Pollution Control Board to Jewell Coal & Coke Co., Plant No. 1

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Virginia State Air Pollution Control Board ("SAPCB") to Jewell Coal and Coke Company. The order requires the company to bring air emissions from its Plant No. 1 coke ovens in Vansant, Virginia into compliance with certain regulations contained in the federally-approved Virginia State Implementation Plan (SIP) by June 30, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order which occur during the period of the Order's effectiveness. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before May 29, 1979.

ADDRESS: Comments should be submitted to Director, Enforcement Division, EPA, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Gross at the above address or telephone (215)597–8907.

SUPPLEMENTARY INFORMATION: Jewell Coal and Coke Company operates a coke plant at Vansant, Virginia. The order under consideration addresses emissions from 168 non-recovery coke ovens known as Plant No. 1 at the facility, which are subject to Sections 4.20 and 4.40 of the Virginia Regulations for the Control and Abatement of Air Pollution. The regulations limit the emissions of particulate matter and visible emissions, and are part of the federally approved Virginia State Implementation Plan. The order requires final compliance with the regulation by June 30, 1979 through installation of common tunnel afterburners, a coke-side enclosure, and a baffled quench tower using clean water make-up.

This notice supersedes the notice of proposed rulemaking which appeared in the **Federal Register** on October 24, 1978 (43 FR 49546). The previous notice annouced EPA's proposed disapproval of an order issued by the Virginia SAPCB to Jewell. In response to that notice, the Company made substantive comments indicating their willingness to have the State order amended to correct deficiencies to which EPA had objected.

On December 22, 1978, the SAPCB submitted a revised order to EPA for approval as a DCO. The revised order contains monitoring procedures and work practices which the SAPCB and Jewell have certified to be adequate to ensure compliance with all applicable provisions of the SIP. These provisions are to be implemented on a portion of the facility no later than February 7, 1979. EPA intends to conduct an on-site evaluation of the work practices during the public comment period provided by this notice. EPA's final action with respect to the State order will depend on the findings of the on-site evaluation as well as public comment received in response to this notice.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Virginia SIP.

Approval of this proposed Order does not constitute a finding by EPA that the source has made a good faith effort to comply with the Virginia SIP, nor does it preclude EPA action for violations which have occurred prior to such approval.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601.)

Dated: March 15, 1979.

Jack J. Schramm,

Regional Administrator, Region III.

[FRL 1210–7]

[FR Doc. 79–13235 Filed 4–26–79; 8:45 am]

BILLING CODE 6560–01–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 57]

Grants to Schools of Medicine, Osteopathy, Dentistry, Public Health, Veterinary Medicine, Optometry, Pharmacy, and Podiatry for Support of Their Educational Programs; Proposed Rulemaking

AGENCY: Public Health Service, HEW.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: These proposed regulations establish criteria for the health professions capitation grants program under section 770 of the Public Health Service Act, as amended by the Health Professions Educational Assistance Act of 1976. These grants are made annually to schools of medicine, osteopathy, dentistry, public health, veterinary medicine, optometry, podiatry and pharmacy for support of their educational programs. The Health Professions Educational Assistance Act revised the conditions for receiving grants under this program and extended eligibility to schools of public health.

DATES: Comments must be received on or before June 26, 1979.

ADDRESSES: Written comments should be addressed to the Director, Bureau of Health Manpower, Health Resources Administration, 3700 East-West Highway, Center Building, 4th Floor, Hyattsville, Maryland 20782. All comments received will be available for public inspection and copying at the Office of Program Support, Bureau of Health Manpower, at the above address (3rd Floor), weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: John R. Westcott, Grants Management Officer, Bureau of Health Manpower, Room 4–27 at the above address. (Telephone 301–436–6564).

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, Department of Health, Education, and Welfare, with the approval of the Under Secretary of Health, Education, and Welfare, proposes to add a new Subpart JJ to Part 57 of Title 42 of the Code of Federal Regulations to implement the

amendments made by the Health Professions Educational Assistance Act of 1976 (Pub. L. 94–484, October 12, 1976) to the existing authority for Health Professions Capitation Grants in Title VII of the Public Health Service Act.

Section 770 of the Public Health Service Act ("Act")(42 U.S.C. 295f) provides that the Secretary of Health, Education, and Welfare will make annual grants, based on enrollment, to schools of medicine, osteopathy, dentistry, public health, veterinary medicine, optometry, pharmacy and podiatry for the support of their educational programs ("capitation grants"). To receive a capitation grant, all schools must meet statutory requirements to maintain their level of first-year enrollment and their level of expenditures from non-Federal sources for educational purposes. Additional conditions, some of which are options and some requirements, are set by the statute for schools in each of the professional disciplines. Among these conditions are submission of plans for clinical training in ambulatory care settings (schools of osteopathy and dentistry); increases in first-year enrollment (schools of dentistry, public health, optometry and podiatry); clinical training emphasizing care to food-producing or fiber-producing animals or to both types of animals (schools of veterinary medicine); enrollment of specified percentages of students from States without accredited schools in that professional discipline (schools of veterinary medicine, optometry, and podiatry); and a requirement that all students complete a program in clinical pharmacy (schools of pharmacy). When this authorizing legislation was enacted in 1976, there was a general consensus that (a) more health professionals were needed, and (b) if more professionals were produced, more would elect to practice in underserved geographic areas and in primary care fields. Accordingly, a number of Federal programs enacted at that time provided incentives for increased student enrollment in an effort to increase overall supply.

Recent developments affect this earlier consensus. Preliminary studies of projected supply and requirements in the health professions now seriously question the assumption that the nation faces a shortage in the aggregate supply of health professionals. Indeed it appears there may be a possible oversupply in certain professions by 1990, depending on which model and which assumptions are employed in projecting requirements. Further, there is increasing recognition that greater numbers of health professionals do not necessarily alleviate the nation's distributional problems. Over the last ten years, there have been significant increases in the supply of health professionals, but the maldistribution in rural areas and inner cities continues. The statute provides that schools of dentistry, veterinary medicine, optometry, and podiatry as a condition of receiving capitation support must either increase their first-year enrollments or submit plans relating to clinical training programs in ambulatory care settings or enrollment of students from States without accredited schools in that particular discipline.

The Department prefers that schools of veterinary medicine, optometry, and podiatry select the option of enrolling students from States without an accredited school or, in the case of dental schools, the option of clinical training in ambulatory care settings rather than choosing the enrollment increase option. This policy reflects the Department's priority to concentrate Federal efforts on addressing specialty and geographic maldistribution of health professionals as opposed to simply increasing their supply. Regardless of the Department's preference, however, schools which choose the enrollment increase option and meet other statutory requirements will receive capitation support under this program.

Interested persons are invited to submit written comments, data, views, and arguments relating to these proposed regulations to the Director of the Bureau of Health Manpower at the address given above. All relevant materials received on or before June 26, 1979, will be considered before adoption of the final regulations.

It is therefore proposed to add a new Subpart JJ to Part 57 of Title 42 of the Code of Federal Regulations to read as set forth below.

Dated: January 19, 1979.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: April 12, 1979.

Hale Champion,

Acting Secretary.

Subpart JJ—Grants to Schools of Medicine, Osteopathy, Dentistry, Public Health, Veterinary Medicine, Optometry, Pharmacy, and Podiatry for Support of Their Educational Programs

Sec.

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Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216) Secs. 770–72 of the Public Health Service Act, 90 Stat. 2290 as amended by 91 Stat. 391 and 91 Stat. 1503, and 92 Stat. 3456 and 3457 (42 U.S.C. 295f).

§ 57.3501 To whom do these regulations apply?

The regulations in this subpart apply to the award of annual grants to schools of medicine, osteopathy, dentistry, public health, veterinary medicine, optometry, pharmacy, and podiatry for the support of the education programs of these schools.

§ 57.3502 Definitions.

For purposes of sections 770–72 of the Act and this subpart, the following definitions apply:

"Act" means the Public Health Service Act, as amended.

"Ambulatory care setting" means a facility in which health care is delivered to persons who are ambulatory and who are not patients in a hospital or other inpatient care facility for the purpose of receiving the particular care being provided.

"Construction" means (a) the construction of new buildings or the expansion or acquisition of existing buildings (including related costs such

as architects' fees, acquisition of land, offsite improvements, and the initial equipping of buildings); and (b) the remodeling, alteration, and repair of existing buildings.

"Council" means the National Advisory Council on Health Professions Education established by section 702 of the Act.

"Dental specialty program" means a program in any dental specialty which is accredited by a body or bodies recognized for this purpose by the Commissioner of Education and is at least one academic year in length. For purposes of this subpart a residency training program in the general practice of dentistry is considered a dental specialty.

"Fiscal year" means the Federal fiscal year beginning October 1 and ending the following September 30.

"Full-time course of study" means a course of study in which the student is enrolled for a sufficient number of credit hours in a semester or other academic term to enable the student to complete the course of study within not more than the number of semesters or other academic terms normally required to complete the course of study on a full-time basis.

"Full-time student" means a student as defined in section 770(c) of the Act.

"Medically underserved population" means a population group designated under section 332(b) of the Act, a population group served by a facility designated under that section, or a population group residing in an area designated under that section.

"Resident of a State" means one who was residing in that State at the time of his or her application to the school.

"School" means a public or other nonprofit school of medicine, osteopathy, dentistry, public health, veterinary medicine, optometry, pharmacy, or podiatry as defined in section 701(4) of the Act and which is accredited as provided in section 772(b) of the Act.

"Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

"State" means in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

§ 57.3503 Who is eligible to apply for a health professions capitation grant?

Any school which is located in a State may apply for a grant under this subpart.

§ 57.3504 How must application be made for a capitation grant?

Each school seeking a capitation grant must submit an application in the form and at the time that the Secretary requires. This application must be signed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award, including the regulations of this subpart.

§ 57.3505 What assurances are required of all applicants for capitation grants?

In accordance with the requirements of section 771(a) of the Act, each school must furnish reasonable assurances satisfactory to the Secretary that:

(a) The first-year enrollment of full-time students in the school, in the school year beginning in the fiscal year for which the grant applied for is to be made, will not be less than the first-year enrollment of full-time students in the school in the preceding school year or in the school year which began in the fiscal year ending September 30, 1976, whichever is greater.

(b) The applicant will spend an amount of funds from non-Federal sources (other than funds for construction) in carrying out its functions as a school during the fiscal year for which the grant is sought, which is at least as great as the amount of funds spent by the applicant for this purpose (excluding expenses of a nonrecurring nature) in the fiscal year preceding the fiscal year for which the grant is made.

§ 57.3506 What additional requirements apply to school of medicine?

(a) *Medical residency training program requirements.*—Under section 771(b)(2) of the Act (42 U.S.C. 295f–1(b)(2)), the Secretary must determine as of July 15, 1977, and July 15 of each subsequent year, the percentage of filled first-year positions in direct or affiliated medical residency training programs in primary care in all schools in the States. If the percentage is not 35%, 40%, and 50%, respectively, on the July 15 dates, each school of medicine in order to be eligible for a grant must achieve that percentage in the filed first-year positions in its direct or affiliated medical residency training programs on July 15 one year later. The Secretary will publish a notice in the **Federal Register** announcing the results of his or her annual determination and whether individual schools will be required to comply with the provisions of this paragraph.

(1) For the purpose of making this determination:

(i) "Medical residency training program" means a medical residency training program which is approved or provisionally approved by the Liaison Committee on Graduate Medical Education.

(ii) "Direct or affiliated medical residency training program" means a medical residency training program conducted in facilities owned by the applicant school or its parent organization or a medical residency training program which has an arrangement with the school or one of the school's constituent units, providing for any of the following:

(A) The exchange of three or more students enrolled in the school of medicine for a total of at least 12 months of education within any given school year; or any exchange of at least one medical resident for at least one year; or

(B) The exchange of faculty between the school of medicine or one of its consitituent units and the residency program; or the appointment to any faculty position at the school of medicine of any individual on the staff of the entity sponsoring the residency program who has any responsibility for the program (the term "faculty" excludes individuals who receive no financial compensation for their teaching activities or who have no responsibility for the instruction of students or residents in the medical residency training program); or

(C) The provision or receipt by the school of medicine or one of its constituent units of any funds for the residency program.

(iii) "Filled first-year position" means any filled position in:

(A) The first year of a medical residency training program sponsored by a residency program in family practice, internal medicine, pediatrics, obstetrics and gynecology, pathology or general surgery;

(B) The first year of a medical residency training program jointly sponsored by two or more medical residency training programs; or

(C) Any position in any other type of medical residency training program in which a resident is enrolled in his or her fist year of graduate medical education.

(iv) "Filled first-year position in primary care" means all filled positions in:

(A) The first year of medical residency training programs sponsored

by a residency program in family practice, internal medicine or pediatrics; and

(B) The first year of medical residency training programs jointly sponsored by any combination of residency programs in family practice, internal medicine, or pediatrics.

(b) *Student transfer provisions.*— Under section 771(b)(3) of the Act, a school of medicine must also increase its enrollment of full-time third-year students in school year 1978–79 by not less than 5 percent of (1) the number of full-time first-year students enrolled in the school in school 1977–78 or (2) the number of full-time third-year students enrolled in school year 1977–78, whichever is less. The pool of eligible students who can be counted toward meeting this increase consists of (1) U.S. citizens enrolled in a medical school not in the United States prior to October 12, 1976, (2) individuals enrolled in two-year programs at schools in the United States which prepare students to enter the third-year of medical school in the United States, (3) individuals enrolled in Ph.D.—M.D. programs in the United States, and (4) other individuals accepted into the third year as transfer students unless specifically exlcuded by the statute. Interim-Final regulations implementing this statutory requirement can be found at 43 FR 36441 (August 17, 1978).

§ 57.3507 What additional requirements apply to schools of osteopathy?

Each school of osteopahty must also submit, for the Secretary's approval, a plan or participate in the joint submission of a plan to train full-time students in ambulatory care settings either in areas geographically remote from the main site of the teaching facilities of the applicant school or schools, or in areas in which medically underserved populations reside. An ambulatory care setting is considered to be geographically remote if it is physically removed from the facility or facilities where the major part of the educational program of the school is conducted and should, to the maximum extent feasible, be located in areas in which medically underserved population reside. The training must occur in the school year beginning in the fiscal year for which the grant is made and in each subsequent school year for which a grant is made. In the case of a joint submission of a plan by two or more schools, the plan must detail the specific responsibilities of each school submitting the plan, and must be signed by an authorized official of each school. In addition, beginning with applications for fiscal year 1979, each grantee must provide evidence of adequate progress in implementing the plan approved in the fiscal year immediately preceding the year of re-application.

§ 57.3508 What additional requirements apply to schools of dentistry?

(a) Each school of dentistry must also meet the requirements of section 771(d)(2) of the Act and either the requirements of section 771(d)(3) or section 771(d)(4) of the Act at the option of the school of dentistry. Where a school elects to meet the requirements of section 771(d)(4) of the Act, the school must submit a plan or participate in the joint submission of a plan to train full-time students in ambulatory care settings either in areas geographically remote from the main site of the teaching facilities of the school or in areas in which a medically underserved population resides. An amabulatory care setting is considered to be geographically remote if it is physically removed from the facility or facilities where the major part of the educational program of the school is conducted and should to the maximum extent feasible be located in areas in which there is a need for dentists. The clinical training must occur in a health care delivery setting which enables the student, under practitioner-instructor supervision, to integrate and assume the roles, functions, and responsibilities that characterize a dental practitioner and that trains the student to provide primary dental care.

(b) The Secretary may waive requirements for a school of dentisty under section 771(d) if he or she determines, after receiving the written recommendation of the appropriate accreditation body or bodies approved for this purpose by the Commissioner of Education, that compliance with the requirements would prevent the school from maintaining accreditation.

§ 57.3509 What additional requirements apply to schools of public health?

Each school of public health must also meet the requirements of section 771(e)(1) of the Act with respect to increasing its enrollment of full-time first-year students.

§ 57.3510 What additional requirements apply to schools of veterinary medicine?

Each school of veterinary medicine must also meet the requirements of section 771(f)(2) and either section 771(f)(3) or section 771(f)(4) of the Act at the option of the school of veterinary medicine. A school of veterinary medicine will be able to meet the reqirements of section 771(f)(2) of the Act relating to emphasizing care to food-producing or fiber-producing animals if over 50 percent of the total credits or contact hours of both the clinical aspects of the basic biomedical sciences and the clinical care training programs consist of treating food-producing and/or fiber-producing animals.

§ 57.3511 What additional requirements apply to schools of optometry?

A school of optometry must also meet the requirements of either section 771(g)(2) or section 711(g)(3) of the Act at the option of the school of optometry.

§ 57.3512 What additional requirements apply to schools of podiatry?

A school of podiatry must also meet the requirements of section 771(h)(2) or section 711(h)(3) of the Act at the option of the school of podiatry.

§ 57.3513 What additional requirements apply to schools of pharmacy?

A school of pharmacy must also meet the requirements of section 771(i) of the Act.

§ 57.3514 How will the number of students at each school be determined?

(a) The number of full-time students enrolled in a school, or the number of full-time, first-year students enrolled in a school, for any year, will be the number of students enrolled or to be enrolled in the school on September 15 of the fiscal year in which the grant is made except that in the case of a school of pharmacy or school of medicine with a course of study of more than 4 years (1) full-time students mean only those students enrolled in the last four years of the school, and (2) full-time first-year students mean those students enrolled in the first of the last four years. The Secretary may, upon application, approve a date other than September 15 as the official counting date for schools whose academic calendars make the September 15 date inappropriate.

(b) The classification of a full-time student as a first-year student, will be in accordance with the policies of the particular school except that for the purpose of the assurances required by section 771 of the Act:

(1) A student may not be counted as a first-year student more than once.

(2) A first-year student enrolled in a school of public health is one who is enrolled in the first year of a course of study leading to a master's degree or in the first year of a course of study leading to a doctoral degree for which no post-baccalaureate studies are a prerequisite for admission into the program.

§ 57.3515 Under what circumstances and in what amounts may these grants be made?

(a) The Secretary will award a capitation grant to each applicant whose application is found by the Secretary, after consultation with the Council, to meet the requirements of the applicable provisions of the Act, and of this subpart.

(b) the amount of each capitation grant will be an amount computed in accordance with the formula set forth in section 770(a) of the Act. If the amount of funds appropriated under section 770(e) of the Act for each category of health professions schools for any fiscal year is less than the total of the amounts so computed for each school of medicine, osteopathy, dentistry, public health, veterinary medicine, optometry, pharmacy, and podiatry with an approved application, the grant awarded to each school will be reduced proportionately in accordance with section 770(b) of the Act.

§ 57.3516 What expenses are allowable under these capitation grants?

(a) Capitation grant funds may be obligated by the school at any time before the end of the 24-month period specified in the grant award document for any purpose related to the educational program of the school, except as otherwise provided in paragraph (b) of this section. Any funds not obligated must be refunded to the Federal Government.

(b) Capitation grant funds may not be expended for the following purposes:

(1) Construction, except that grant funds may be used for remodeling, alteration and repair of existing buildings;

(2) Student assistance; or

(3) Sectarian instruction or any religious purpose.

§ 57.3517 What nondiscrimination requirements apply to grantees?

(a) Recipients of grants under this subpart are advised that in addition to complying with the terms and conditions of these regulations, the following laws and regulations are applicable:

(1) Section 704 of the Act (42 U.S.C. 292d) and its implementing regulation, 45 CFR Part 83 (prohibiting discrimination on the basis of sex in the admission of individuals to training programs).

(2) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and its implementing regulation, 45 CFR Part 80 (prohibiting discrimination in federally assisted programs on the ground of race, color, or national origin).

(3) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et. seq.*) and its implementing regulation, 45 CFR Part 86 (prohibiting discrimination on the basis of sex in federally assisted education programs).

(4) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794) and its implementing regulation, 45 CFR Part 84 (prohibiting discrimination in federally assisted programs on the basis of handicap).

(b) Grant funds used for alteration or renovation shall be subject to the condition that the grantee comply with the requirements of Executive Order 11246, 30 FR 12319 (September 24, 1965) as amended, and with the applicable rules, regulations, and procedures.

§57.3518 How will payments be made to grantees?

The Secretary will from time to time make payments to a grantee of all or a portion of any grant award, either in advance or by way of reimbursement.

§57.3519 What recordkeeping, audit, inspection, and reporting requirements apply to grantees?

(a)Each school which receives a capitation grant must, in addition to the requirements of 45 CFR Part 74, meet the requirements of section 705 of the Act, concerning recordkeeping, audit, and inspection.

(b) Each school which receives a capitation grant must meet the requirements of section 708(c) of the Act, concerning reporting information on students who attent the school.

§ 57.3520 What provisions of 45 CFR Part 74 apply to grantees?

The provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles, apply to all grants awarded under this subpart:

§ 57.3521 What additional conditions apply to grantees?

The Secretary may, with respect to any grant award, impose additional conditions prior to or at the time of any award when in his or her judgment these conditions are necessary to assure or protect advancement of the grant purposes, the interest of the public health, or the conservation of grant funds.

[FR Doc. 79-13069 Filed 4-26-79; 8:45 am]

BILLING CODE 4110-83-M

INTERSTATE COMMERCE COMMISSION

[49 CFR Chapter X]

Grains and Grain Products; seasonal and demand-sensitive rates; separate rates for distinct rail service; domestic and export rates

AGENCY: Interstate Commerce Commission.

ACTION: Request for public comment.

SUMMARY: Public comment is requested on the appropriate action to implement Commission findings adopted in Ex Parte No. 270 (Sub.-No. 9), *Investigation of Railroad Frt. Rate Structure—Grain*, 345 I.C.C. 2975 (1979), decided February 1. In that decision the Commission found appropriate revisions in the rail rate structure on grain and grain products to provide for: (1) greater use of seasonal and demand-sensitive rates; (2) separate rates for distinct rail services; and (3) rate treatment on domestic and export traffic reflecting today's economic needs. Public comment is requested on how to implement these policy findings into the rate structure. For administrative convenience we plan to consider each issue separately and seek separate comments, appropriately identified. Cross-service is not required.

DATES: Verified comments (15 copies if possible) should be filed with the Commission on or before June 26, 1979.

ADDRESSES: The original and 15 copies should be forwarded to: Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Janice M. Rosenak or Harvey Gobetz, Telephone: (202) 275-7693.

SUPPLEMENTARY INFORMATION: In regard to each of the three issues, comment could be particularly helpful on the following matters:

I. Ex Parte No. 270 (Sub. 9A), Action Needed to Advance the Publication of Seasonal and Demand-Sensitive Rates on Grain and Grain Products.

(a) What would be the impact on grain marketing patterns of shorter notice for seasonal rates?

(b) What peaking problems are caused by specific grain product movements?

(c) What evidence is available, if any, that peak and seasonal movements are equipment related rather than commodity related?

(d) Do peaking problems vary with export and domestic movements of particular grain commodities?

(e) Would peak and seasonal pricing resolve peaking problems raised in (b) and (d)?

(f) If peaking would not be reduced by demand-sensitive and seasonal rates, can these rates still be used to give railroads incentive to allocate equipment (i.e. by reflecting the carrier's investment costs of providing adequate peak service)?

(g) What is the cost differential in peak and off-peak transportation of grain?

(h) Does the cost of distinct services vary with peak and non-peak traffic?

(i) To what extent can contract rates resolve peaking problems involving grain shipments and does the practicality of this solution vary with the size of the shipper and his location?

(j) Does transit inhibit the use of seasonal and peak-period pricing?

(k) What notice of proposed rate changes is normally needed by shippers?

(l) What minimum notice period is required of such changes?

(m) What would be the impact of the proposed changes on the equipment availability of other modes of transport?

(n) Do different railroads have different revenue needs, i.e. are general seasonal rate increases justifiable?

(o) Do any railroads have merger conditions which would be adversely affected by imposition of seasonal and demand-sensitive rates?

(p) Would car shortages make it impossible, as a practical matter, for shippers to enjoy advantageous rates?

(q) What is the impact of car shortages on projected shipping schedules for grain?

(r) What other comments do you have?

II. Ex Parte No. 270 (Sub No. 9B), Action Needed to Advance the Publication of Separate Rates for Distinct Rail Services on Grains and Grain Products.

(a) What are the costs and revenues of the inbound and outbound moves on transited shipments?

(b) What is the average time span between inbound and outbound transit movements on the same bill of lading?

(c) What would be the impact of prohibiting transit rates where the inbound and outbound movements are of different commodities, such as inbound agricultural products and outbound food products?

(d) Do transit charges adequately reflect the costs of providing the grain gathering network?

(e) Does transit inhibit the rational use of surcharges?

(f) What is the impact of transit on equipment utilization?

(g) What would be the impact on the outbound movements if transit privileges were reduced or eliminated?

(h) What would be the impact on particular locations or on geographic regions of the reduction or elimination of transit?

(i) How might the reduction or elimination of transit affect the marketing practices of individual railroads?

(j) What is the relationship between transit and maximum reasonable rate levels on transited commodities?

(k) What other elements of grain transportation besides transit are suited for distinct services, e.g., special grain doors and the like?

(l) How much notice would shippers need of any proposal to change the existing rules?

(m) Should transit time be limited?

(n) Has inflation made transit privileges, not limited in time, an undue luxury?

(o) Would elimination of transit unduly affect interior processors as compared to those located at terminal points?

(p) Would a change in transit affect carriers differently?

(q) Would existing merger conditions be affected by a change in transit?

(r) What proportion of traffic receives transit privileges?

(s) What other comments on appropriate action to foster the publication of separate rates for distinct rail services do you have?

III. Ex Parte No. 270 (Sub. 9C), Appropraite Domestic and Export Rates Relationships on Grain.

(a) Do the pricing differences in the final markets for export and domestic grains justify different regulatory treatment, including:

1. Market dominance,

2. Discrimination,

3. Service standards and obligations, and

4. Rate levels?

(b) Do the differences in intermodal transportation competition justify different treatment of import and domestic grains?

(c) What is the geographic coverage of effective intermodal competition for domestic as against export grain shipments? Comment on truck, truck-barge, rail-barge movements and provide maps, charts and tonnage and revenue figures.

(d) Do grain surpluses and competition from foreign grain exporters continue to exert same influence that lead to the domestic/export differentials?

(e) To what extent does port equalization account for domestic/export differentials? Does port equalization justify continuing these differentials?

(f) Any other commenters on the relationship between domestic and export rates.

IV. Persons submitting comments are reminded that, to the extent practical, three *separate* issues are being addressed. We hope to isolate discussion of these issues as much as possible. It is unnecessary for parties to comment on all issues and questions.

Decided: April 16, 1979.

By the Commission. Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian.

H. G. Homme, Jr.,

Secretary.

[Ex Parte 270 (Sub No. 9A, 9B, 9C)]

[FR Doc. 79-13049 Filed 4-26-79; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 44, No. 83
Friday, April 27, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Meat Pricing Task Force; Additional Meeting and Extension of Time in Which To File Written Statements

On Wednesday, March 28, 1979, five meetings of the Meat Pricing Task Force were announced (**Federal Register**, Vol. 44, No. 61). All meetings are to be open to the public, and public participation was announced for the meetings of April 23 and 24, 1979, at the Winnebago Room, Omaha Hilton Hotel, Omaha, Nebraska; April 26 and 27 at Texas A&M University Research and Extension Center, Amarillo, Texas; and May 10, 1979, at Room 218A Administration Building, USDA, Washington, D.C.

An additional meeting is hereby announced for the Meat Pricing Task Force. This meeting will begin at 9 a.m., June 11, 1979, at the Airport Marina Hotel, Dallas-Fort Worth Regional Airport, Dallas, Texas (phone: 214–453–8400).

This meeting, like all other meetings of the Task Force, is open to the public but no public participation will be invited.

An announcement was also made in the Wednesday, March 28, **Federal Register** notice that written statements from any interested person would be accepted if postmarked no later than May 5, 1979. That date is now extended. Any person interested in submitting a written statement to the Task Force should address such statement to Chas B. Jennings, Deputy Administrator, Packers and Stockyards, AMS, U.S. Department of Agriculture, Room 3039-South, Washington, D.C. 20250, and must be postmarked no later than May 21, 1979.

Dated: April 24, 1979.

Paschal O. Drake,
Acting Deputy Administrator, Packers and Stockyards.

[FR Doc. 79-13218 Filed 4-26-79; 8:45 am]

BILLING CODE 3410-02

Forest Service

Coronado National Forest Grazing Advisory Board; Meeting

The Coronado National Forest Grazing Advisory Board will meet at 10:00 a.m., May 22, 1979, at the Ramada Inn (Ocotillo Room), 404 N. Freeway, Tucson, Arizona 85705. The purpose of this meeting is to discuss allotment management planning and the use of range betterment funds.

The meeting will be open to the public. Persons who wish to attend should notify Larry Allen, Coronado Supervisor's Office, telephone 602–792–6418. Written statements will be filed with the board before or after the meeting.

The board has established the following rule for public participation: Nonmembers are asked to withhold comments until the close of business.

Howard Shupe,
Acting Forest Supervisor.

April 19, 1979.

[FR Doc. 79-13074 Filed 4-26-79; 8:45 am]

BILLING CODE 3410-11-M

National Forest System Advisory Committee; Meeting

The National Forest System Advisory Committee will meet at 9 a.m. on May 29, 30 and 31 at the Village Motor Inn, 100 Madison, Missoula, Montana.

This Committee, comprised of 12 members from a broad spectrum of geographic and interest areas, advises the Secretary of Agriculture and the Forest Service on the planning and management of the National Forests. The portion of the meeting scheduled for May 29 will be devoted to a review of land management planning activities on the Lolo National Forest. On May 30 and 31 the Committee will discuss and develop Committee positions on the Resources Planning Act, reforestation, and National Grasslands management. Dr. M. Rupert Cutler, Assistant Secretary for Conservation, Research and Education, will chair the meeting.

The meeting will be open to the public. Persons who wish to attend should notify the Committee's Executive Secretary, James C. Overbay, USDA-Forest Service, P.O. Box 2417, Room 3021–S, Washington, D.C. 20013, telephone (202) 447–6341. Written statements may be filed with the Committee before or after the meeting.

Jerome A. Miles,
Deputy Chief.

[FR Doc. 79-13041 Filed 4-26-79; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Seminole Electric Cooperative, Inc.; Draft Environmental Impact Statement and Notice of Public Hearing

Notice is hereby given that the Rural Electrification Administration as lead Federal agency 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 potential financial assistance to Seminole Electric Cooperative, Inc. ("Seminole"), 2410 East Busch Boulevard, Tampa, Florida 33612. The U.S. Environmental Protection Agency, Region IV; U.S. Army Corps of Engineers, Jacksonville District; U.S. Department of the Interior (U.S. Fish & Wildlife Service) and U.S. Department of Commerce (National Marine Fisheries Service) have acted as cooperating agencies during the NEPA process.

The anticipated financial assistance would allow Seminole to secure funds required for the construction of a proposed steam-electric generating station near Palatka, Putnam County, Florida. The project consists of two 600 MW coal-fired generating units scheduled for operation in 1983 and 1985 respectively, and ancillary facilities. Proposed electric transmission associated with the project involves (1) a 230 kV double circuit from the generating station to a point east of Palatka, and (2) a 230 kV double circuit from the generating station to Silver Springs. The project will provide a reliable source of electrical power to fill existing and projected future needs of Seminole's member distribution cooperatives.

The U.S. Environmental Protection Agency (EPA) is proposing to give approval to construct the facility under

the regulations for prevention of significant deterioration of air quality, 40 CFR 52.21. A public notice of the Preliminary Determination was published on February 27, 1979.

The U.S. Environmental Protection Agency also proposes to issue a National Pollutant Discharge Elimination System (NPDES) Permit, NPDES and application number FL0036498. The permit application describes one proposed discharge from construction and operation of the facility which will generate and transmit electricity SIC Code 4911. The discharge will enter the St. Johns River approximately 73 miles above its mouth and five miles north of Palatka, Florida. This reach has been classified by the State of Florida as follows: Class III—Recreation-Propagation and Management of Fish and Wildlife. The Florida Department of Environmental Regulation has been requested to certify the discharge(s) in accordance with the provisions of Section 401 of the Clean Water Act (33 U.S.C. Section 1251 et seq.).

The proposed NPDES permit contains limitations on the amounts of pollutants allowed to be discharged and was drafted in accordance with the provisions of the Clean Water Act (33 U.S.C. Section 1251 et seq.) and other lawful standards and regulations. The pollutant limitations and other permit conditions are tentative and open to comment from the public both in writing and at the public hearing.

A fact sheet which outlines the applicant's current discharge(s) and EPA's proposed pollutant limitations and conditions is available by writing or calling the EPA. A copy of the draft permit is also available from EPA. The application, supporting data, environmental impact statement, comments received, and other information are available for review and copying at 345 Courtland Street, 3rd floor, Atlanta, Georgia, between the hours of 8:15 a.m. and 4:30 p.m., Monday through Friday. A copying machine is available for public use at a charge of 20¢ per page.

In order to foster further public participation on the proposed financial assistance, necessary permits, determinations and approvals for the proposed project, the Rural Electrification Administration in conjunction with the U.S. Environmental Protection Agency and the Florida Department of Environmental Regulation will hold a public hearing. The hearing is scheduled for June 4, 1979, and will begin at 7 p.m. in the Holiday Inn at Palatka, Florida. The Florida Division of Administrative Hearings will chair the hearing. The hearing panel will also include representatives from REA and EPA.

Both oral and written comments will be accepted and a transcript of the proceedings will be made. For the accuracy of the record, written comments are encouraged. The Hearing Officer reserves the right to fix reasonable limits on the time allowed for oral statements.

Additional information on the proposed project may be secured from Mr. Joe S. Zoller, Assistant Administrator-Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Persons wishing to comment upon or object to the project, the Draft Environmental Impact Statement, approval of financial assistance, the NPDES permit issuance, the proposed permit limitations and conditions and the State certification are invited to respond in writing within 45 days of this notice or EPA's notice of availability of the Draft EIS, whichever is later. Comments are invited from the public and particularly 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 Federal Draft Environmental Impact Statement have been sent to various Federal, State and local agencies, as outlined in the Council on Environmental Quality Guidelines. Limited supplies of the Draft EIS are available upon request to Mr. Zoller at the address given above. Copies of the Draft EIS, which includes the Seminole Environemtal Analysis, Preliminary PSD Determination, and draft NPDES permit may be examined during regular business hours at the following locations:

Rural Electrification Administration, USDA, 14th & Independence Avenue, S.W., Room 5906, Washington, D.C. 20250.
U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308.
Florida Department of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, Florida 32301.
Florida Department of Environmental Regulation, St. Johns River Subdistrict Office, 3476 Bills Road, Jacksonville, Florida 32201.
Putnam County Courthouse, Office of Zoning Code, Palatka, Florida 32077.
Palatka Public Library, Palatka, Florida 32077.
Clay Electric Cooperative, Inc., District Office, Palatka, Florida 32077.
Seminole Electric Cooperative, Inc., 2410 East Busch Boulevard, Suite 108, Tampa, Florida 33612.

Persons, organizations and agencies wishing to comment should do so in writing within the 45-day period indicated above and address their correspondence to Mr. Zoller of REA at the address given above; the Enforcement Division, U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30308, Attention: Ms. Mona Ellison; and the Florida Department of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, Florida 32301, Attention: Mr. Hamilton S. Oven, Jr. The NPDES number (FL0036498) should be included in the first page of comments. All comments received within the 45-day period will be considered in the formulation of final determinations regarding the approval of REA funding of the project, the Final EIS, the NPDES permit, and permit conditions, the significant deterioration of air quality construction approval, and the State certification. Response to all substantive comments made at the public hearing will be published in the Final EIS. Requests for adjudicatory hearings on the NPDES Permit may be filed after the Regional Administrator makes the above-described determinations. Additional information regarding adjudicatory hearing is available in the July 24, 1974, **Federal Register**, 39, page 27081 or by contacting the Legal Support Branch at the address above or at 404/881-3506.

Final REA action pursuant to this proposed Seminole project (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 and requirements of other environmentally-related statutes, regulations, and Executive Orders have been met.

Dated at Washington, D.C., this 24th day of April, 1979.

Joseph Vellone,

Acting Administrator, Rural Electrification Administration.

[FR Doc. 79-13040 Filed 4-26-79; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Lake George Critical Area Treatment RC&D Measure, New York; Intent Not To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lake George Critical Area Treatment RC&D Measure, Warren County, New York.

The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Robert L. Hilliard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment. The planned works of improvement include stabilizing an 80 foot high, 500 foot long section of roadbank along Diamond Point Road.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Robert L. Hilliard, State Conservationist, Soil Conservation Service, U.S. Courthouse and Federal Building, 100 South Clinton Street, Room 771, Syracuse, New York 13260, telephone 315–423–5493. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until May 29, 1979.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87–703, [16 U.S.C. 590 a–f, q])

Dated: April 19, 1979.

Joseph W. Haas,

Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 79–12994 Filed 4–26–79; 8:45 am]

BILLING CODE 3410–16–M

Upper Clear Boggy Creek Watershed, Oklahoma; Intent Not To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the remaining work in the Upper Clear Boggy Creek Watershed Project, Pontotoc, Coal, and Johnston Counties, Oklahoma.

The environmental assessment of the remaining work in this federally-assisted action indicates that the project will not cause significant adverse local, regional, or national impacts on the environment. As a result of these findings, Mr. Roland R. Willis, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for the remaining work in this project.

The project concerns a plan for watershed protection and flood prevention. The remaining planned works of improvement include land treatment, 4 single purpose floodwater retarding structures, and 7 acres of wildlife mitigation area.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment is on file and may be reviewed by interested parties at the Soil Conservation Service, Farm Road and Brumley Street, Stillwater, Oklahoma 74074. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal is available to fill single copy requests.

No administrative action on implementation of the proposal will be taken until May 29, 1979.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Act, Public Law 83–566 16 U.S.C. 1001–1008)

Dated: April 17, 1979.

Joseph W. Haas,

Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 79–12997 Filed 4–26–79; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

Aerlinte Eireann Teoranta

In the matter of Aerlinte Eireann Teoranta; authority to operate on-route charters.

Aerlinte Eireann Teoranta (Aerlinte), an Irish-flag airline, holds a foreign air carrier permit, issued by Order 74–3–34, which authorizes it to engage in foreign air transportation of persons, property and mail between Ireland and the U.S. cities of New York, Boston and Chicago.[1] The permit also authorizes Aerlinte to conduct charter trips in foreign air transportation, subject to the terms, conditions, and limitations prescribed by Part 212 of the Board's Economic Regulations. Under this charter authority, Aerlinte may perform an unlimited number of on-route charters without any requirement for advance approval. The carrier may also perform off-route charters upon prior approval of the Board with as little as five days' advance application required for passenger charters (two days' for cargo charters). The applicant must attest that its government reciprocates for U.S. carriers.

Scheduled air services between the United States and Ireland are covered by a February 3, 1945 agreement, amended June 11, 1973; no charter services agreement between the two countries exists. Nevertheless, Aerlinte holds authority to operate charters to the United States, as described above, in accordance with our long-standing policy of unilaterally granting charter rights to foreign air carriers providing scheduled services. Such charter rights are, however, strictly dependent upon comity and reciprocity; 14 CFR 212.6(a).[2]

The Board firmly believes that the development of an international air transportation system responsive to the needs of the public is furthered by liberal exchanges of charter rights between countries. However, when foreign governments sharply restrict the charter operations of United States carriers, we will respond. Indeed, we are required by law to do so. Section 2 of

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[1] Specifically, Aerlinte may operate (1) between Ireland and New York, via Newfoundland and Boston; and (2) between Ireland and Chicago, via Newfoundland, Montreal and Boston. It may not serve Boston on route (2) during the months of May to October, inclusive.

[2] In the matter of On-Route Charter Authority of Foreign Air Carrier Permits, Order 70–7–58, July 13, 1970; Foreign Carrier Off-Route Charter Investigation, 27 CAB 196, 197 (1958); 30 C.A.B. 1547–48 (1960); Japan Air Lines Foreign Air Carrier Permit, Order E-24295, served October 19, 1966; In the matter of on-route charter trips of El Al Israel Airlines Limited Order 73–2–99, February 26, 1973; In the matter of Iran Air, Order 75–9–83, September 24, 1975.

the International Air Transportation Fair Competitive Practices Act of 1974 [3] expressly requires that several agencies, including the Board, keep under review "all forms of discrimination or unfair competitive practices to which United States air carriers are subject in providing foreign air transportation services and each *shall take all appropriate actions within its jurisdiction to eliminate such forms of discrimination or unfair competitive practices found to exist." (emphasis added).*

We have been advised that the Government of Ireland has given its national airline, Aerlinte, a right of first refusal over several charter programs proposed by Trans International Airlines and World Airways to Shannon this summer. As a result, the Irish Government has denied TIA's request to perform 34 charter flights between New York/Boston and Shannon on the grounds that "adequate capacity can be made available by the on-route carrier. * * *" [4] It also has failed so far to approve a series of weekly Chicago-Shannon charters proposed by World for this summer and has advised that carrier that Aerlinte may exercise a first refusal.[5] These particular actions of the Irish Government are a reflection of its general policy of offering to those airlines designated under the bilateral agreement to perform scheduled service, rights of first refusal over on-route charters proposed by other carriers. The Irish Government adheres to this policy despite the fact that TIA and World are authorized by the United States Government to perform U.S.-Ireland charter services—services that we have found to be required by the public convenience and necessity.[6]

We have been aware for some time of the Irish Government's protectionist charter policy and previously have taken measured responses. In 1975, we denied Aerlinte authority to conduct various off-route charters during a period when the Irish Government's exercise of its first refusal policy toward U.S. supplementals precluded a finding of reciprocity.[7] We have continued to consider each Aerlinte off-route charter application individually, although we grant many foreign airlines blanket rights to conduct off-route charters without prior Board approval.[8]

It now is evident that these actions have not been effective, in light of the experiences this year of TIA and World. Reciprocity has not been achieved on the less restrictive regulatory terms we would prefer. Reciprocity now appears possible only in the form of a more tightly controlled charter regime of the sort that renounces consumers' welfare and discourages tourism.

The Irish authorities' first-refusal charter policy discriminates among equally authorized U.S. air carriers and subjects a segment of them—the charter air carriers—to an unfair competitive disadvantage *vis-a-vis* carriers designated under the scheduled air service agreement. The Irish policy is based on the unilaterally determined theory, uniquely held by Ireland in the United States-Western Europe air travel market, that designated scheduled airlines should have so-called "primary rights" to take over any charter programs their potential competitors have developed, often at great expense to these competitors, whenever they propose charter flights between points where regular scheduled services are conducted. Rather than seeing the entitlement to provide scheduled service as an opportunity to compete to enlarge a market in the public interest, the policy sees the entitlement as one carrying a concomitant right to protection against charter competitors at the public expense. Even if unexercised, the policy discourages charter organizers from dealing with charter air carriers or other undesignated airlines. When exercised, it can idle expensive aircraft or result in their use for less profitable operations. It can force organizers to use aircraft with seating capacities too small or too large for their programs, usually at higher prices, often on unwanted itineraries. It can also mean that thousands who would travel only on charter flights in a relatively high-priced scheduled market will not travel to Ireland at all. This approach, in our view, represents a practice that the Congress has mandated that we take steps to eliminate.

We therefore conclude that the Irish first-refusal charter policy is not in accord with the character of comity and reciprocity on which the Board has relied in granting Aerlinte charter authority. Under section 212.4(b), the Board may at any time, with or without hearing, notify a foreign air carrier that it cannot perform on-route charter trips without prior Board approval. We find this notification to Aerlinte is now required by the public interest.[9]

We regret this action is necessary. We would much prefer that all U.S. and Irish carriers and organizers wishing to provide charter flights in the market be left free by both Governments to do so. It is unfortunate that the Government of Ireland's decision to attempt to give Aerlinte a favored position, and Aerline's use of the discriminatory practices offered to it, compel us to impose this requirement. Continuation of this Irish policy could adversely affect the plans of both Irish and American travelers, as well as harm others who would benefit from a freer exchange of visitors than the Government of Ireland now appears willing to allow. Finally, we look toward intergovernmental talks and/or policy changes by the Government of Ireland and Aerlinte on this issue. We hope Ireland will abandon the concept of "primary" or first refusal rights now unilaterally exercised in the air travel market between these two friendly nations.

Accordingly,

1. We notify Aerlinte Eireann Teoranta (Aerlinte) that effective thirty (30) days after service of this order, it shall not perform any on-route charter trip unless specific authority in the form of a Statement of Authorization to conduct such charter trip has been granted by the Board. In the event that an application for a Statement of Authorization has been properly filed at least 30 days in advance of a proposed flight, notice of the Board's failure to approve either the whole or part of such application will be submitted to the President of the United States at least 10 days prior to the date of the proposed flight. Any such failure to approve a timely-filed on-route charter trip application shall be subject to stay or disapproval by the President within 10 days after the date of the Board's notification;

2. We will serve copies of this order upon Aerlinte, the Ambassador of Ireland in Washington, D.C., Trans

[3] Pub. L. 93-623, 88 Stat. 2102.

[4] See *Application of Trans International Airlines* for emergency exemption in Docket 34875, in general, and Exhibit 1, page 2, in particular. Only Pan American, Trans World Airlines, and Aerlinte are designated under the United States-Ireland Air Transport Services Agreement to perform scheduled services. Although in a March 8, 1979, filing in Docket 34875, Aerlinte states that all designated airlines may exercise first refusal rights, both PAA and TWA have reported that they had not been approached by the Irish authorities with respect to the TIA program. We therefore conclude that "the on-route carrier" referred to by the Irish authorities is Aerlinte.

[5] See *Application of World Airways* for an emergency exemption in Docket 35010.

[6] *Transatlantic Route Proceeding*, Order 77-1-98/100.

[7] See letter dated February 28, 1975, from Director, Bureau of Operating Rights, and letter dated March 24, 1975, from Edwin Z. Holland for the Board, to Jones, Day, Reavis, and Pogue (Aerlinte's Washington, D.C. counsel).

[8] See Order 78-12-175.

[9] In Docket 28012, TIA petitioned the Board to subject Aerlinte to the prior approval procedures under 212.4(b) for much the same reasons we are doing so today. Since our action here effectively grants the authority sought by TIA, we will terminate the proceeding in Docket 28012.

International Airlines, World Airways, Trans World Airlines, and Pan American World Airways; and

3. We close Docket 28012.

This order will be published in the **Federal Register**, and will be transmitted to the President.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[Docket 35381; Order 79-4-138]

[FR Doc. 79-13173 Filed 4-26-79; 8:45 am]

BILLING CODE 6320-01-M

Application for an All-Cargo Air Service Certificate

April 23, 1979.

In accordance with Part 291 (14 CFR 291) of the Board's Economic Regulations (effective November 9, 1978), notice is hereby given that the Civil Aeronautics Board has received an application, Docket 34371, from Northern Air Cargo of Anchorage, Alaska for an all-cargo air service certificate to provide domestic cargo transportation.

Under the provisions of § 291.12(c) of Part 291, interested persons may file an answer in opposition to this application within twenty-one (21) days after publication of this notice in the **Federal Register.** An executed original and six copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-13174 Filed 4-26-79; 8:45 am]

BILLING CODE 6320-01-M

Texas/Great Lakes-Eastern Canada Service Investigation; Hearing

The hearing herein will be held at 10:00 a.m. on 19 June 1979 in Room 1003, Hearing Room B, Universal Building North, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., April 23, 1979.

Rudolf Sobernheim,

Administrative Law Judge.

[Docket 33477]

[FR Doc. 79-13175 Filed 4-26-79; 8:45 am]

BILLING CODE 6320-01-M

Yucatan Service Case; Hearing

By the prehearing conference report dated 15 December 1978 the hearing was set for 24 April 1979. Due to an inadvertence, a notice of this hearing was not published in the Federal Register. Nevertheless, all parties to the proceeding were notified and are ready to proceed on 24 April 1979. In the event, however, that there is any party or member of the public who has not had an opportunity to make their position known or to present such point as they may desire to present, a further hearing will be held on 14 June 1979 at 10:00 a.m. in Room 1003, Hearing Room A, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

However, any party desiring to appear to such hearing is required to so advise the presiding administrative law judge and counsel for the Bureau of International Aviation, Civil Aeronautics Board, no later than the close of business on 8 June 1979.

Dated at Washington, D.C., 23 April 1979.

Rudolf Sobernheim,

Administrative Law Judge.

[Docket 33220]

[FR Doc. 79-13176 Filed 4-26-79; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Maine 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 conference of the Maine Advisory Committee (SAC) of the Commission will convene at 9:00 a.m. and will end at 5:30 p.m., on June 8 and 9, 1979, at the Holiday Inn, 88 Spring Street, Portland, Maine 04111.

Persons wishing to attend this conference should contact the Committee Chairperson, or the Northeastern Regional Office, 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose is a conference on bilingualism.

This meeting will be conducted pursuant to the provisions of Rules and Regulations of the Commission.

Dated at Washington, D.C., April 23, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-13091 Filed 4-26-79; 8:45 am]

BILLING CODE 6335-01-M

Maine 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 Maine Advisory Committee (SAC) of the Commission will convene at 1:00 p.m. and will end at 9:00 p.m., on June 7, 1979, at the Holiday Inn, 88 Spring Street, Portland, Maine 04111.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeastern Regional Office, 26 Federal Plaza, Room 1639, New York, New York 1007.

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., April 23, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-13090 Filed 4-26-79; 8:45 am]

BILLING CODE 6335-01-M

Maryland 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 Maryland Advisory Committee (SAC) of the Commission will convene at 6:30 pm and will end at 10:00 pm, on May 14, 1979, at the Holiday Inn, Airport and Elkridge Landing Roads, Baltimore, Maryland.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street, NW., Room 510, Washington, D.C. 20037.

The purpose of this meeting is to review the proposal for a consultation on citizen complaint procedures in the Baltimore Police Department.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C. April 24, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-13092 Filed 4-26-79; 8:45 am]

BILLING CODE 6335-01-M

Michigan Advisory Committee; Change of Meeting Date

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 Michigan Advisory Committee (SAC) of the Commission originally scheduled for

May 25, 1979 (FR Doc. 79–12352) on page 23550 has been changed to May 24, 1979.

The meeting place and time will remain the same.

Dated at Washington, D.C., April 24, 1979.

John I. Binkley,
Advisory Committee Management Officer.

[FR Doc. 79–13093 Filed 4–26–79; 8:45 am]

BILLING CODE 6335–01–M

Michigan 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 Kentucky Advisory Committee (SAC) of the Commission will convene at 12:00 noon and will end at 3:00 pm, on June 5, 1979, at Executive West, Freedom Way at the Fairgrounds, Paisley Room, Louisville, Kentucky, 40206.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southern Regional Office, Citizens Trust Bank Building, Room 362, 75 Piedmont Avenue, N.E., Atlanta, Georgia 30303.

The purpose of this meeting is orientation for new SAC members, review of local police department statistics and continue plans for follow-up.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 23, 1979.

John I. Binkley,
Advisory Committee Management Officer.

[FR Doc. 79–13094 Filed 4–26–79; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Industry and Trade Administration

Madhu Vrajmir Desai; Order Denying Export Privileges

In the Matter of Madhu Vrajmir Desai, 34 Jalan Taman Pantai, Kuala Lumpur, Malaysia, Respondent.

By letter of February 1, 1979, the Compliance Division charged that Madhu Vrajmir Desai violated the U.S. Export Administration Regulations, 15 CFR Part 368 *et seq.* It alleged that respondent reexported and diverted controlled U.S. origin equipment, machinery and instruments used for the production of integrated circuits and semiconductors in the approximate value of $278,000, to a proscribed destination without authorization of U.S. Government. This precluded the Office of Export Administration from determining whether the ultimate consignee should be approved for receipt of the commodities, and is in violation of 15 CFR 374.1.

In 1974–1975, the now defunct Hugle International, Inc., of Sunnyvale, California, devised a scheme to subvert the law and regulations. It mislabelled exports and shipped them to the respondent, an American citizen living in Malaysia, (Desai was previously employed in the U.S. by Hugle International). Desai, in turn, then transshipped the commodities to a Polish consignee. The scheme was the subject of inquiry by the United States as well as Malaysian authorities.

Respondent was interrogated by the American Consul. His testimony supports the finding that respondent was a pass-through agent and that he knew that his actions were contrary and in violation of the Export Administration laws and regulations. Further, Desai failed to answer the charging letter. Therefore, the allegations of the charging letter are taken as confessed. In view of the respondent's admission to violations of the Export Administration regulations, the Hearing Commissioner recommended that the respondent be denied all United States export privileges for a period of five years.

In accordance with the evidence outlined by the Hearing Commissioner and his recommendations, I find that respondent knowingly violated the Export Administration Regulations as alleged in the charging letter of February 1, 1979. I find that an order denying export privileges to the respondent for a period ending May 31, 1984, is reasonably necessary to protect the public interest and achieve effective enforcement of the Export Administration Regulations.

Therefore, pursuant to the authority delegated to me, 15 CFR 388, *it is ordered:*

I. All outstanding export licenses in which respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Department of Commerce, Industry and Trade Administration.

II. The respondent is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application; (b) in the preparation or filing of any export license application or reexportation authorization, or any document to be submitted therewith; (c) in the obtaining or using of any validated or general export license or other export control documents; (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities, or technical data, in whole or in part, exported or to be exported from the United States; and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. Such denial of export privileges shall extend not only to the respondent but also to his agents, employees, representatives, and partners and to any other person, firm, corporation, or business organization with which the respondent now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or services connected therewith.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Industry and Trade Administration, shall do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondent or any related party, or whereby the respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer or use any license, shipper's Export Declaration, bill of lading, or other export control document relating to any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States, by, to, or for said respondent or related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. This order shall remain in effect until May 31, 1984, except insofar as this order may be amended or modified hereafter in accordance with the Export Control Regulations.

VI. In accordance with the provisions of section 388.15 of the Export Control Regulations, the respondent may move at any time to vacate or modify this Denial Order by filing with the Hearing Commissioner, Industry and Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, an appropriate motion for relief, supported by substantial evidence, and may also request an oral hearing thereon, which if requested shall be held before the Hearing Commissioner at the earliest convenient date.

This order shall become effective immediately.

Dated: April 20, 1979.

Lawrence J. Brady,

Acting Director, Office of Export Administration.

[Case No. 584]

[FR Doc. 79-12996 Filed 4-26-79; 8:45 am]

BILLING CODE 3510-25-M

Panametrics, Inc.; Order

In the Matter of Panametrics, Inc., 221 Crescent Street, Waltham, Massachusetts 02154, Respondent.

By letter of December 14, 1978, the Compliance Division charged that Panametrics, Inc. violated the Export Administration Regulations. It alleged that respondent exported an ultrasonic spectroscope console, valued at $28,450.50, to the People's Republic of China without the required validated license. A main frame oscilloscope, a dual trace amplifier, and a spectrum analyzer composed the console.

Panametrics, for the purposes of this proceeding, admitted the single violation. It showed that, in 1973, OEA stated that its equipment could be shipped under a general license. However, following that opinion, respondent upgraded its console and substituted more sophisticated components. Although the substitutions mandated a validated license for export purposes, Panametrics failed to recognize that fact.

Shortly after exporting the console, the unit required certain repairs. Respondent arranged for servicing of the equipment by an American company in Japan. It was then that Panametrics learned that, although the servicing could be performed, the item could not be reexported to the People's Republic of China without a validated license. Panametrics immediately attempted to rectify its original error. It has since sought to recover the equipment and to substitute less sophisticated components and to otherwise comply with the export regulations.

The Hearing Commissioner reports that Panametrics made its export with apparent lack of knowledge of the requirements. He stated that this was an isolated transaction and the effort put forth by the respondent to recover the equipment demonstrates its desire to comply with all rules and regulations. He noted that the company is not otherwise suspect and has properly instructed its personnel and taken other appropriate measures to insure continued compliance. He recommends that a consent proposal, 15 CFR 388.10, be approved.

Based on the foregoing and the recommendations of the Hearing Commissioner, I find that respondent violated the Export Administration Regulations, as alleged in the charging letter. In view of respondent's efforts to regularize the export and the measures taken to insure that its export activities will conform with law and policy, I find the agreed penalty, as outlined below, is fair and designed to achieve the purposes of the law and regulations.

Therefore, pursuant to the authority delegated to me, 15 CFR 387.1, *it is Ordered:*

A period of probation ending December 31, 1979 is imposed upon respondent. The terms of probation are that respondent shall fully comply with all requirements of the Export Administration Act of 1969, as amended, and all regulations and orders issued thereunder.

Upon a finding by the Director, Office of Export Administration, or such other official as may be exercising the duties now exercised by him, that the respondent has knowingly failed to comply with the requirements and conditions of the order or with any of the conditions of probation, said official without notice when national security or foreign policy considerations are involved, or with notice if such considerations are not involved, by supplemental order may revoke the probation of the respondent, revoke all outstanding validated export licenses to which said respondent may be a party and deny to said respondent all export privileges for the period of the order. Such supplemental order shall not preclude the Bureau of Trade Regulation from taking such further action for any violations as it shall deem warranted. On the entry of a supplemental order revoking respondent's probation without notice, it may file objections and request for an oral hearing as provided in Section 388.16 of the United States Export Administration Regulations, but pending such further proceedings the order of revocation shall remain in effect.

This order is effective immediately.

Dated: April 20, 1979.

Lawrence J. Brady,

Acting Director, Office of Export Administration.

[Case No. 581]

[FR Doc. 79-12995 Filed 4-26-79; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council, Scientific and Statistical Committee, and Advisory Panel; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The North Pacific Fishery Management Council was established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94-265), and the Council has established a Scientific and Statistical Committee (SSC) and an Advisory Panel (AP). Joint and separate meetings will be held on May 22-25, 1979.

DATES: The Council meeting will convene on Thursday, May 24, 1979, at 8:30 a.m. and will adjourn on Friday, May 25, 1979, at 5 p.m. at the Anchorage/Westward/Hilton Hotel, Kenai-Aleutian Room, 3rd & E Streets, Anchorage, Alaska. The SSC will convene on Tuesday, May 22, 1979, at 9:30 a.m. and will adjourn on Wednesday, May 23, 1979, at 5 p.m. at the Council Headquarters, Post Office Mall Building, 333 West 4th Avenue, Anchorage, Alaska. The AP meeting will convene on Wednesday, May 23, 1979, at 9 a.m. and will adjourn at 5 p.m. at the Anchorage/Westward/Hilton Hotel, Kenai-Aleutian Room. The SSC and AP will meet jointly, as necessary, on May 24-25, 1979. The meetings may be lengthened or shortened depending upon progress on the agenda. The meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 3136DT, Anchorage, Alaska 99510, Telephone: (907) 274-4563.

Proposed Agendas

Council

(1) Provisional Agenda; (2) February 22-23, 1979, and March 22-23, 1979, minutes; (3) subsequent reports: Executive Director, Alaska Department of Fish and Game (ADF&G), National Marine Fisheries Service (NMFS), U.S. Coast Guard (USCG), SSC and AP; (4) preliminary Council review of the draft

Fishery Management Plan (FMP)/ environmental impact statement (EIS) for the Herring Fishery in the Bering/ Chulhchi Sea; (5) Gulf of Alaska Groundfish Fishery—possible FMP amendment: establish a separate Optimum Yield (OY) for rattails or create a special category for unutilized and unwanted commercial species; (6) Tanner Crab FMP: possible amendment reducing total allowable level of foreign fishing (TALFF) and/or modifying the area open to foreign fishing; (7) Bering Sea/Aleutian Islands Groundfish Fishery FMP: Council approval of the section previously reserved dealing with Aleutian Islands openings and closures for foreign fishing; (8) Gulf of Alaska Groundfish Fishery FMP and regulations: discussion of Federal/State regulations and problems; (9) Gulf of Alaska Groundfish Fishery FMP: consideration of the last planned release of reserves (July 2) to TALFF; (10) domestic annual harvest (DAH)/ Processor Preference Working Group report; (11) Troll Salmon FMP discussion of west coast resource problem including the potential for emergency closures off Alaska; (12) consideration of Fishery Conservation Management Act (FCMA) changes for Oversight Hearings; (13) report on FMP Development Workshop held May 3–4, 1979, in Anchorage; (14) public comment period scheduled for May 24, 1979, at 3:30 p.m.

Scientific and Statistical Committee

(1) Review: King Crab FMP, draft herring FMP/EIS, Contract 78–4 report (The Development and Enhancement of a Computerized Information System), alternative statistical reporting requirements for the Bering Sea/ Aleutian Islands Groundfish Fishery FMP, Southeast Coho/Chinook Plan progress, possible Gulf of Alaska Groundfish Fishery FMP rattail amendment, progress report of the ADF&G Tag Recovery Contract 78–7, DAH/Processor Preference Working Group report, possible Tanner Crab FMP amendment, "reserved" section options for Bering Sea/Aleutian Islands Groundfish Fishery FMP, final report "Graphical and Printed Summaries of Troll Salmon Fishery Data" from the Alaska Trollers Association 1977 Troll Logbook Program, and discuss staff support concept.

Advisory Panel

(1) Review: draft FMP/EIS for herring fishery in the Bering/Chukchi Seas, possible rattail amendment to the Gulf of Alaska Groundfish Fishery FMP, possible amendments to the Tanner Crab FMP, "Reserved" section options in the Bering Sea/Aleutian Islands Groundfish Fishery FMP, report from DAH/Processor Preference Working Group, west coast slamon problem and possible emergency closures off Alaska, report of FMP Development Workshop: discuss Federal/State regulations and problems with Gulf of Alaska Groundfish Fishery FMP; consider the last planned release of reserves (July 2) to the Gulf of Alaska Groundfish Fishery FMP and FCMA changes for Oversight Hearings.

Dated: April 24, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-13231 Filed 4-26-79; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The South 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: preliminary review of Billfish Fishery Management Plan (FMP) decision elements; review of final Snapper-Grouper FMP, final draft of Spiny Lobster FMP, and foreign fishing permit applications, if any; status reports of Calico Scallop and Coral FMP; and other business.

DATES: The meeting will convene on Tuesday, May 22, 1979, at 1:30 p.m. and will adjourn on Thursday, May 24, 1979, at approximately 12 noon. The meeting is open to the public.

ADDRESS: The meeting will take place at Headquarters, 1 Southpark Circle, Suite 306, Charleston, South Carolina.

FOR FURTHER INFORMATION CONTRACT: South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, South Carolina 29407, Telephone: (803) 571–4366.

Dated; April 24, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-13232 Filed 4-26-79; 8:45 am]

BILLING CODE 3510-22-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 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: April 27, 1979.

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 February 9, 1979 the Committee for Purchase from the Blind and Other Severely Handicapped published notice (44 FR 8323) 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 commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following commodities are hereby added to Procurement List 1979:

Class 7340

Flatware, Plastic, Picnic
7340–00–170–8374 (Spoon)
7340–00–205–3187 (Knife)
7340–00–205–3342 (Fork)
(Requirements for GSA Regions 4 and 7 only)

C. W. Fletcher,

Executive Director.

[FR Doc. 79-13046 Filed 4-26-79; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1979; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1979 commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 30, 1979.

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: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1979, November 15, 1978 (43 FR 53151):

Class 7110

Blackboard, Portable
7110–00–132–6651 (Increase from 60% to 100% of Government requirements)

Class 7210

Pillowcase, Cotton/Polyester, White
7210–00–119–7357

Class 8115

Wood, Boxes, Nailed, Hand Grenade
8115–00–N00–0019 (Requirements for Pine Bluff Arsenal,
8115–00–N00–0020 Arkansas only)

Class 3990

Pallet
3990–00–935–7826 (Requirements for Pine Bluff Arsenal, Arkansas only)

SIC 0782

Grounds Maintenance
Fairways and Roughs, Golf Course
Fort Ord, California

SIC 7399

Labeling of Supplies
Defense Depot Mechanicsburg
Mechanicsburg, Pennsylvania

C. W. Fletcher,
Executive Director.

[FR Doc. 79–13047 Filed 4–26–79; 8:45 am]

BILLING CODE 6820–33–M

CONSUMER PRODUCT SAFETY COMMISSION

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Interagency Regulatory Liasion Group; Public Meeting

The U.S. Consumer Product Safety Commission, the U.S. Environmental Protection Agency, the Food and Drug Administration, the Food Safety and Quality Service, and the Occupational Safety and Health Administration have agreed to work together as the Interagency Regulatory Liaison Group (IRLG) to improve the effectiveness of their programs, while eliminating duplicative or inconsistent regulatory actions and unnecessary paperwork. The IRLG agreement was announced at a joint press conference on August 2, 1977 and was published in the **Federal Register** on October 11, 1977 (42 FR 54856). In January 1979 the Food Safety and Quality Service of the U.S. Department of Agriculture joined the IRLG as a fifth member.

On Tuesday, May 22, 1979 a meeting of the regional administrators and key headquarters staff of the five agencies will be held. This meeting will begin at 8:30 a.m. at the General Services Administration (GSA) auditorium, 18th and F Streets, NW., Washington, D.C. with registration beginning at 8:00 a.m. and will end at 11:30 a.m. The purpose of the meeting is to present and discuss updated information about IRLG activities, goals, and procedures of the regional offices of the five agencies. The tentative agenda for the meeting on May 22 is as follows:

8:30–8:45 a.m.—Introduction and Opening Remarks.
8:45–9:00—Review of Progress and Organizational Changes.
9:00–9:10—Inclusion and Role of FSQS.
9:10–9:20—Regulatory Development Work Group Update.
9:20–9:30—Overview of Regional Assessment.
9:30–9:45—Information Exchange, Regional Activities, Headquarters Activities—Common Codes Project—Libraries.
9:45–10:00—Internal Management & Training, Regional Activities, Headquarters Activities—General Orientation Training.
10:00–10:15—Laboratories, Regional Activities, Headquarters Activities—Inventory of Lab Equipment.
10:15–11:00—Compliance and Enforcement, Regional Activities, Headquarters Activities—Emergency Response—Referral Inspection Program—Joint and Crossover Inspection Programs.
11:00–11:20—External Relations, Regional Activities, Headquarters Activities.
11:20–11:30—Closing Remarks.

The public is invited to attend this meeting. A list of issues on which public input is desired will be distributed there. These issues and others will be discussed by the IRLG participants during the meeting.

On the following day, Wednesday, May 23, 1979, there will be a second public meeting to obtain comment on these issues. This second meeting will take place at the General Services Administration (GSA) auditorium, 18th and F Streets, NW., Washington, D.C. with registration beginning at 8:00 a.m. This meeting will end at 11:30 a.m.

For further information, contact Ms. Susan Guenette, IRLG Executive Assistant, at 202–634–4350 or address correspondence to Ms. Susan Guenette, IRLG Executive Assistant, Room 509, 1111 18th Street, NW., Washington, D.C. 20207.

Dated: April 25, 1979.

Dr. Edwin H. Clark II,
EPA IRLG Surrogate.

[FRL 1212–4]

[FR Doc. 79–13340 Filed 4–26–79; 8:45 am]

BILLING CODE 6560–01–M

CONSUMER PRODUCT SAFETY COMMISSION

National Advisory Committee for the Flammable Fabric Act; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Meeting: National Advisory Committee for the Flammable Fabrics Act.

SUMMARY: This notice announces a meeting of the National Advisory Committee on Monday, May 14, 1979 from 9:30 AM to 4:30 PM and Tuesday, May 15, 1979 from 9:30 AM to 1:00 PM.

FOR FURTHER INFORMATION CONTACT: Sadye E. Dunn, Office of the Secretary, Suite 300, 1111 18th Street, NW., Washington, DC 20207 (202) 634–7700.

SUPPLEMENTARY INFORMATION: The National Advisory Committee provides advice and recommendations on Commission proposals and plans to reduce the frequency and severity of burn injuries involving flammable fabrics. The meeting on Monday, May 14, 1979 will include discussions on hazard data collection, the comprehensive fire and burn collection data project and the need for a flammable fabrics annual report, as well as a presentation on burn care.

On Tuesday, May 15, 1979, the meeting will be devoted to a number of compliance issues: amendments to the flammable fabrics regulations, definition of children's sleepwear, and testing of multi-layered fabrics. The Committee

will also be briefed on the status of Commission activities in the flammable fabrics area. The meeting is open to the public; however, space is limited. Persons who wish to make oral or written presentations to the National Advisory Committee should notify the Office of the Secretary (see address above) by May 9, 1979. The notification should list the name of the individual who will make the presentation, the person, company, group or industry on whose behalf the presentation will be made, the subject matter, and the approximate time requested. Time permitting, these presentations and other statements from the audience to members of the Committee may be allowed by the presiding officer.

Dated: April 20, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79-13059 Filed 4-26-79; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of The Secretary

Task Force on Evaluation of Audit, Inspection, and Investigative Components of the Department of Defense; Advisory Committee Meeting

The Task Force on Evaluation of Audit, Inspection and Investigative Components of the Department of Defense will meet on May 4, 1979, from 10:00 AM to 12:00 noon at the Pentagon, Washington, D.C., Room 3D973.

The mission of the Task Force is to advise Congress and the Secretary of Defense of the effectiveness of the audit, inspection and investigative components of the Department of Defense.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services.

April 23, 1979.

[FR Doc. 79-13039 Filed 4-26-79; 8:45 am]

BILLING CODE 3810-70-M

Department of the Army

Privacy Act of 1974; Deletion and Amendments to Systems of Records

AGENCY: Department of the Army.

ACTION: Notice of deletion and amendments to Systems of Records.

SUMMARY: The Army proposes to delete 1 and amend 3 systems of records subject to the Privacy Act of 1974. Specific changes to the systems being amended are set forth below followed by the systems published in their entirety as amended.

DATE: The systems shall be amended as proposed without further notice on May 29, 1979 unless comments are received on or before May 29, 1979 which would result in a contrary determination and require republication for further comments.

ADDRESS: Any comments, including written data, views or arguments concerning the amendments should be addressed to the System Manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mr. Cyrus H. Fraker, the Adjutant General Center (DAAG-AMR-R), Department of the Army, 1000 Independence Avenue, SW, Washington, DC 20314; telephone 202/693-0973.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices, as prescribed by the Privacy Act, have been published in the **Federal Register** as follows:

FR Doc. 77-28225 (42 FR 50396) September 28, 1977
FR Doc. 78-23953 (43 FR 38070) August 25, 1978
FR Doc. 78-22562 (43 FR 40272) September 11, 1978
FR Doc. 78-26732 (43 FR 42026) September 19, 1978
FR Doc. 78-25819 (43 FR 42374) September 20, 1978
FR Doc. 78-26699 (43 FR 43059) September 22, 1978
FR Doc. 78-26996 (43 FR 43539) September 26, 1978
FR Doc. 78-29130 (43 FR 47604) October 16, 1978
FR Doc. 78-29211 (43 FR 48894) October 19, 1978
FR Doc. 78-29982 (43 FR 49557) October 24, 1978
FR Doc. 78-31795 (43 FR 52512) November 13, 1978
0R Doc. 78-34586 (43 FR 58111) December 12, 1978
FR Doc. 78-35523 (43 FR 59869) December 22, 1978
FR Doc. 79-5788 (44 FR 11105) February 27, 1979
FR Doc. 79-6621 (44 FR 12231) March 6, 1979
FR Doc. 79-8787 (44 FR 17767) March 23, 1979
FR Doc. 79-11350 (44 FR 22140) April 13, 1979

The proposed amendments are not within the purview of the provisions of 5 USC 552a(o) of the Act which requires the submission of a new or altered system report.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

April 23, 1979.

Deletion

A1012.05aTRADOC

System name: 1012.05 Student and Faculty Expertise (SAFE) (42 FR 50618) September 28, 1977.

Reason: System is no longer required; data have been purged.

Amendments

A0102.02aDARCOM

System name: 102.02 Office Personnel Register Files (44 FR 17769) March 23, 1979.

Change:

System location: Delete period after "(DARCOM)" and add: "and all subordinate elements."

A0225.11gDAPC

System name: 225.11 Recruit Quota System (REQUEST) (44 FR 17771) March 23, 1979.

Change:

Categories of records in the system: After the word "sex;" add: "race;".

A1012.04bTRADOC

System name: 1012.04 Resident Student Record System (RSR) (43 FR 43061) September 22, 1978.

Changes:

System location: Delete "(ATSW-DA)" and substitute: "(ATZLSW-DOA)".

Categories of individuals covered by the system: Delete period after "USACGSC" and add: "resident program."

Categories of records in the system: Delete entry and substitute: "File contains: Personal data which includes name, social security number (SSN), student number, branch of service, rank, component, alternate Officer Personnel Management System (OPMS), primary OPMS; administrative data including counselor's name, class division, class section, class work group, type course (i.e., regular United States, reserve component, Ally); and academic data including test scores, courses, student exam code, cooperative degree program, course number, academic term, course module, course block, and selected related data."

Authority for maintenance of the system: Delete entry and substitute: "Title 10 U.S.C., Section 3012."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Delete entry and substitute: "The file is used to schedule students for courses, process student grades and prepare school transcripts. Records are used by USACGSC instructional departments

and the Director of Education and Curriculum Affairs to prepare rosters, and by USACGSC resident academic records personnel to prepare transcripts.

The automated grading examination system (GRADEX) constitutes a subsystem of this file, in that it provides an important element of front end curriculcum analysis, and basis for curriculum changes and evaluation of entry level knowledges. It also provides the capability to administer various course/subcourse tests with MARK SENSE forms during the academic year.

Computerized interactive quizes provide the capability to administer course/subcourse tests interactively using computer terminals."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Delete the period and add: "and magnetic tape."

Retrievability: Delete entry and substitute: "Records are retrieved by SSN, name, student number, or by one or a combination of data elements contained in the system."

Safeguards: Delete entry and substitute: "At the USACGSC, the computer programs are kept in locked cabinets in building secured by guards. Computer access is controlled by passwords which are periodically changed. Access to the computer programs is further restricted by addtional passwords which are changed weekly. Data files are maintained in a secure environment restricted to authorized employees.

Retention and disposal: Delete entry and substitute: "Records are destroyed at completion of an academic year."

Record access procedures: Delete "ATSW–DA" and substitute: "ATZLSW–DOA".

A0102.02aDARCOM

SYSTEM NAME:

102.02 Office Personnel Register Files

SYSTEM LOCATION:

Visitor registration forms are maintained at the US Army Materiel Development and Readiness Command (DARCOM) and all subordinate elements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any visitor who represents a person, firm, corporation, academic institution, or other entity involved in business transactions with DARCOM.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records comprise business registration forms that give an individual's name, name and address of company represented, purpose of visit and individual's affiliation with the Department of Defense.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C., Section 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information obtained is used to determine the visitor's purpose and status to prevent a conflict of interest.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in locked file cabinets.

RETRIEVABILITY:

By name of visitor.

SAFEGUARDS:

Paper records are maintained in the Office of the General Counsel (GC), with access limited to Division and Branch Chiefs having primary interest.

RETENTION AND DISPOSAL:

The information is retained for 1 year, after which timne it is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, US Army Materiel Development and Readiness Command, 5001 Eisenhower Avenue, Alexandria, VA 22333.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager.

RECORD ACCESS PROCEDURES:

Information may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records, for contesting contents and appealing initial determinations may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information on the Visitor Registration Form is obtained from the individual concerned.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0225.11gDAPC

SYSTEM NAME:

225.11 Recruit Quota System (REQUEST)

SYSTEM LOCATION:

United States Army Military Personnel Center (MILPERCEN). The official mailing address is in the Department of Defense Directory in the Appendix.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Non-prior and prior service personnel who have indicated a desire to enlist in the US Army, USARNG or USAR.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; social security number (SSN); sex; race; citizenship; date of birth; education level achieved and school subjects; driver's license; physical profile; color perception; Army standard score from the Armed Services Vocational Aptitude Battery; Audio Perception score; Defense Language Aptitude Battery (DLAB) score; Motor Vehicle Battery Test score; type of enlistment; enlistment date, term and option; military occupational specialty; enlistee's initial processing and training assignments, type, locations, and dates; unit of assignment; system identificaton of location that created an accession record; recruiter identification; and recruiting area credit code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C., Section 301; Title 10 U.S.C., Section 3012.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Department of Army: Records are used for personnel management, manpower, training, and accession management.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on disk and magnetic tape.

RETRIEVABILITY:

By name and/or SSN.

SAFEGUARDS:

Data security; entry protection, password; auto-logged, user identification.

RETENTION AND DISPOSAL:

Records are retained for 2 years, then erased.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, US Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from US Army Military Personnel Center, Enlisted Personnel Directorate, 2461 Eisenhower Avenue, Alexandria, VA 22331.

RECORD ACCESS PROCEDURES:

Written requests for information should contain the full name, SSN, and current address. Requests should be made to Commander, US Army Military Personnel Center, Enlisted Personnel Directorate (DAPE–EP), 2461 Eisenhower Avenue, Alexandria, VA 22331.

For personal visits, the requester should provide acceptable identification, i.e., military identification card or other identification normally acceptable in the transaction of business.

CONTESTING RECORD PROCEDURES:

The Army's rules for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Data are obtained from individual's application (DD Form 1966) and from tests given to applicants. This information is maintained at the Armed Forces Examining and Entrance Stations (AFEES).

A1012.04bTRADOC

SYSTEM NAME:

1012.04 Resident Student Record System (RSR)

SYSTEM LOCATION:

Director of Automation (ATZLSW–DOA), United States Army Command and General Staff College (USACGSC), Ft Leavenworth, KS 66027.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:

Any officer, United States or Allied, enrolled in the USACGSC resident program.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains: Personal data which includes name, social security number (SSN), student number, branch of service, rank, component, alternate Officer Personnel Management System (OPMS), primary OPMS; administrative data including counselor's name, class division, class section, class work group, type course (i.e., regular United States, reserve component, Ally); and academic data including test scores, courses, student exam code, cooperative degree program, course number, academic term, course module, course block, and selected related data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C., Section 3012.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING

CATEGORIES OF USERS AND THE PURPOSES, OF SUCH USES:

The file is used to schedule students for courses, process student grades and other academic related information, record student grades and prepare school transcripts. Records are used by USACGSC instructional departments and the Director of Education and Curriculum Affairs to prepare rosters, and by USACGSC resident academic records personnel to prepare transcripts.

The automated grading examination system (GRADEX) constitutes a subsystem of this file, in that it provides an important element of front end curriculum analysis, and basis for curriculum changes and evaluation of entry level knowledges. It also provides the capability to administer various course/subcourse tests with MARK SENSE forms during the academic year.

Computerized interactive quizzes provide the capability to administer course/subcourse tests interactively using computer terminals.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer disk and magnetic tape.

RETRIEVABILITY:

Records are retrieved by SSN, name, student number, or by one or a combination of data elements contained in the system.

SAFEGUARDS:

At the USACGSC, the computer programs are kept in locked cabinets in building secured by guards. Computer access is controlled by passwords which are periodically changed. Access to the computer programs are further restricted by additional passwords which are changed weekly. Data files are maintained in a secure environment restricted to authorized employees.

RETENTION AND DISPOSAL:

Records are destroyed at completion of an academic year.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Automation, United States Army Command and General Staff College, Ft Leavenworth, KS 66027.

NOTIFICATION PROCEDURE:

Information may be obtained from: Commandant, United States Army Command and General Staff College, ATTN: Director of Automation, Bell Hall, Ft Leaveworth, KS 66027; Telephone: Area Code 913/684–3685.

RECORD ACCESS PROCEDURES:

Requests should be addressed to: Commandant, United States Army Command and General Staff College, ATTN: ATZLSW–DOA, Ft Leavenworth, KS 66027.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Personnel data and enrollment information are obtained from the students at the time they complete enrollment and from Department of the Army orders. Grades, class section number, and academic information is obtained from the USACGSC academic departments. Data for the GRADEX system are obtained from the MARK SENSE cards completed by the students and information extracted from the RSR.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 79–13252 Filed 4–26–79; 8:45 am]
BILLING CODE 3710–08–M

Department of the Navy

Naval Discharge Review System; Hearing Locations

In November 1975, the Naval Discharge Review Board began to convene and conduct prescheduled discharge review hearings for a number of days each quarter in locations outside of the Washington, D.C. area. The cities in which these hearings are scheduled are determined in part by the concentration of applicants in a geographical area.

The following NDRB itinerary for April 1979 through September 1979 has been approved, but remains subject to modification if required:

April 1979—Chicago, Illinois.
May 1979—Chicago, Illinois; Albany, New York; Minneapolis, Minnesota; St. Louis, Missouri.
June 1979—Minneapolis, Minnesota; St. Louis, Missouri; El Paso, Texas; San Diego, California; Portland, Oregon; San Francisco, California; Denver, Colorado; and San Diego, California.

July 1979—San Francisco, California; selected cities in: South Dakota, North Dakota, Montana, Idaho, Nevada, Utah, Wyoming, Nebraska; Chicago, Illinois; Minneapolis, Minnesota; Boston, Massachusetts.

August 1979—Chicago, Illinois; Minneapolis, Minnesota; Boston, Massachusetts; Dallas, Texas; Kansas City, Missouri; Albuquerque, New Mexico; Dallas, Texas; San Diego, California; San Francisco, California.

September 1979—New Orleans, Louisiana; Atlanta, Georgia; Tampa, Florida; Columbus, Ohio; and Memphis, Tennessee.

The foregoing schedule supersedes the schedule published in the **Federal Register** for Thursday, March 15, 1979.

Any former member of the Navy or Marine Corps who desires to obtain a discharge review, either in Washington, D.C., or in a city nearer his or her residence, should file an application with the Naval Discharge Review Board using DD Form 293. If a personal appearance is requested, the petitioner should enter on the application the hearing location which is preferred. Application forms (DD 293) may be obtained from, and the completed application should be mailed to, the following address:

Naval Discharge Review Board, Suite 910, 801 North Randolph Street, Arlington, Virginia 22203.

Notice is hereby given that the foregoing itinerary is subject to modification. Additionally, notice is hereby given that following receipt of a new application, the Naval Discharge Review Board must obtain the applicant's military records before a hearing may be scheduled. Accordingly, the submission of an application to the Naval Discharge Review Board is not tantamount to scheduling a hearing. Applicants and their representatives, if any, will be notified by mail of the date and place of their scheduled hearing when a personal appearance has been requested.

For further information concerning the NDRB, contact: Captain John G. Shaw, U.S. Navy, Executive Secretary, Naval Discharge Review Board, Suite 910, 801 North Randolph Street, Arlington, Virginia 22203, telephone number (202)–696–4881.

Dated: April 23, 1979.

P. B. Walker,

Captain, JAGC, U.S. Navy Deputy Assistant Judge Advocate, General (Administrative Law).

[FR Doc. 79-13075 Filed 4-26-79; 8:45 am]

BILLING CODE 3810-71-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

April 26, 1979

The USAF Sceintific Advisory Board Ad Hoc Committee on Space Defense will meet on May 14–15, 1979 at the HQ SAMSO facilities, El Segundo, California. The purpose of the meeting is to review the space defense technology options. The Committee will meet from 9:00 a.m. to 4:30 p.m. each day.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697–8845.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 79-13392 Filed 4-26-79; 10:16 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

National Petroleum Council, Task Groups of the Committee on Materials and Manpower Requirements; Meeting

Notice is hereby given that a subcommittee of the Committee on Materials and Manpower Requirements will meet in April 1979. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Materials and Manpower Requirements will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The subcommittee scheduling a meeting is the Government Subcommittee. The time, location and agenda of the meeting follows:

The third meeting of the Government Subcommittee, scheduled for Thursday, April 19, 1979, has been canceled and is rescheduled for Friday, April 27, 1979, starting at 9:00 a.m. in the Main Conference Room of the General Crude Oil Company's offices, One Allen Center Building, 500 Dallas Street, Houston, Texas.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and government Cochairman.

2. Discussion of the progress of the Business Environment Task Group and the Regulatory Impact Task Group.

3. Discussion of the timetable of the Government Subcommittee.

4. Discussion of any other matters pertient to the overall assignment of the Government Subcommittee.

The meeting is open to the public. The chairman of the subcommittee is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the 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 James R. Hemphill, Office of Resource Applications, 202/633–8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on April 20, 1979.

George S. McIsaac,

Assistant Secretary for Resource Applicotions.

April 20, 1979.

[FR Doc. 79-13113 Filed 4-25-79; 8:45 am]

BILLING CODE 6450-01

Economic Regulatory Administration

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE) [1] Hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Orders issued on December 26, 1978, to the powerplants named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

Docket No.	Owner	Generating Station	Powerplant	Location
DCU-175	Public Service Co. of Colorado	Arapahoe	1	Denver, Colo.
DCU-176	do	do	2	Do.
DCU-177	do	do	3	Do.
DCU-178	do	do	4	Do.

The Prohibition Orders, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited these powerplants from burning natural gas or petroleum products as their primary energy source.

By letter of March 7, 1979, George P. Green, Manager, Governmental Licensing and Planning, Public Service Company of Colorado, reported to DOE that Arapahoe Generating Station Units 1, 2, 3, and 4, are presently burning coal as a primary energy source, pursuant to the terms of the outstanding Prohibition Orders.

In view of Public Service Company of Colorado's voluntary accomplishments, DOE believes that further action toward making the outstanding ESECA Prohibition Orders effective would not be in the public interest, and accordingly, rescission of the orders is now appropriate.

Comment on DOE's intention to rescind the Prohibition Orders is invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street, NW., Washington, D.C. 20461 (Attn: D. Kidwell). All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission of Arapahoe Generating Station Units 1, 2, 3, and 4 Prohibition Orders (DCU-175 & 176 & 177 & 178)." All written comments must be received no later than ten (10) days after the date of publication in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 C.F.R. 303.9(f). DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: R. James Caverly, Division of Existing Facilities Conversion, Economic Regulatory Administration, Department of Energy, Room 2104, 2000 M Street NW., Washington, D.C. 20461 (telephone: (202) 632-5140). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95-70 and Pub. L. 95-620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95-70 and Pub. L. 95-91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267))

Issued in Washington, D.C. April 24, 1979.

Doris J. Dewton,

Deputy Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-13317 Filed 4-26-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE) [1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Orders issued on December 26, 1978, to the powerplants named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

The Prohibition Orders, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited these powerplants from burning natural gas or petroleum products as their primary energy source.

By letter of March 7, 1979, George P. Green, Manager, Governmental Licensing and Planning, Public Service Company of Colorado, informed DOE that Cameo Generating Station Unit 2 was using coal as the primary energy source and that Cameo Unit 1 will begin using coal as the primary energy source in March 1979, pursuant to the terms of the outstanding Prohibition Orders.

In view of Public Service Company of Colorado's voluntary accomplishments, DOE believes that further action toward making the outstanding ESECA Prohibition Orders effective would not be in the public interest, and accordingly, rescission of the orders is now appropriate.

Comment on DOE's intention to rescind the Prohibition Orders is invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street NW., Washington, D.C. 20461 (Attn: D. Kidwell). All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission of Cameo Generating Station Units 1 and 2 Prohibition Orders (DCU-169 & 170)." All written comments must be received no later than ten (10) days after the date of publication in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR 303.9(f). DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as

Docket No.	Owner	Generating station	Powerplant	Location
DCU-169	Public Service Co. of Colorado	Cameo	1	Palisade, Colo.
DCU-170	do	do	2	Do.

follows: R. James Caverly, Division of Existing Facilities Conversion, Economic Regulatory Administration, Department of Energy, Room 2104, 2000 M Street NW., Washington, D.C. 20461 (telephone: (202) 632–5140). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267).)

Issued in Washington, D.C. April 24, 1979.

Doris J. Dewton,

Deputy Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79–13318 Filed 4–26–79; 8:45 am]

BILLING CODE 6450–01–M

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE) [1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Order issued on December 26, 1978, to the powerplant named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

Docket No.	Owner	Generating station	Powerplant	Location
DCU–175	Public Service Co. of Colorado	Valmont	5	Boulder, Colo.

The Prohibition Order, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited this powerplant from burning natural gas or petroleum products as its primary energy source.

By letter of March 7, 1979, George P. Green, Manager, Governmental Licensing and Planning, Public Service Company of Colorado, reported to DOE that Valmont Generating Station Unit 5 is presently burning coal as the primary energy source pursuant to the terms of the outstanding Prohibition Order.

In view of Public Service of Colorado Company voluntary accomplishments, DOE believes that further action toward making the outstanding ESECA Prohibition Order effective would not be in the public interest and accordingly rescission of the order is now appropriate.

Comment on DOE's intention to rescind the Prohibition Orders is invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street, NW., Washington, D.C. 20461 (Attn: D. Kidwell). All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission of Valmont Generating Station Unit 5 Prohibition Order (DCU–179)." All written comments must be received no later than ten (10) days after the date of publication in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR 303.9(f). DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: R. James Caverly, Division of Existing Facilities Conversion, Economic Regulatory Administration, Department of Energy, Room 2104, 2000 M Street, NW., Washington, D.C. 20461 (telephone: (202) 632–5140). Written questions should be identified on the evelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267).)

Issued in Washington, D.C. April 24, 1979.

Doris J. Dewton,

Deputy Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79–13319 Filed 4–26–79; 8:45 am]

BILLING CODE 6450–01–M

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

Issuance of Proposed Decision and Order

April 18, 1979.

Notice is hereby given that the Economic Regulatory Administration has issued to the City of Long Beach, California a Proposed Decision and Order with regard to an application for incentive prices pursuant to 10 CFR 212.78, the Tertiary Enhanced Recovery Program. Under the Provisions of 10 CFR 205.98, such a Decision and Order must be published in the Federal Register. Interested parties have thirty calendar days from the date of publication to submit objections or comments. Upon review of any matters submitted, we may issue a final Decision and Order in the form proposed, issue a modified proposed or final Decision and Order, or take other appropriate action. All parties offering objections or comments will be notifed of the action taken and will be furnished a copy of that action. Objections or comments should cite the Docket number and be addressed to: Administrator, Economic Regulatory Administration, Department of Energy, Washington, D.C. 20461, Attention: Chief, Branch, of Crude Oil Production.

As required a copy of the Proposed Decision and Order to the City of Long Beach is supplied in this Notice. In addition, a copy of the test of the Proposed Decision and Order, together with a copy of the City's application is available in the Public Docket Room, Room B–120, 2000 M Street, N.W., Washington, D.C. between 1:00 p.m. and 5:00 p.m., Monday through Friday.

Barton R. House

Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

April 18, 1979

Proposed Decision and Order of the Department of Energy

Application for Price Incentives Tertiary Enhanced Recovery Project (Ranger Zone, Fault Block VII Project)

Docket Number ERA–TA–79–2

Name of Petitioner: The City of Long Beach, California

Background.—Between August 14, 1978 and March 6, 1979 the City of Long Beach, California (City) submitted to the Economic Regulatory Administration (ERA) several documents which comprise a complete application for incentive pricing under the Tertiary Enhanced Recovery Program of 10 CFR 212.78. The application concerns crude oil production from the Ranger Zone of Fault Block VII in the Long Beach Unit of the Wilmington Oil Field.

The Wilmington Oil Field lies in the Los Angeles Basin. It is the largest oil field in California. First drilled in 1932, the Field extends over approximately 33 square miles of highly developed industrial-commerical-residential zones of the Los Angeles metropolitan area. The Wilmington field extends from offshore west of Torrance and Redondo Beach on the Northwest to offshore in San Pedro Bay on the Southeast. The field is a broad asymmetrical anticline with a northwest-southeast axis broken by a series of transverse normal faults. The faults divide the reservoir into separate pools and have proven to be effective barriers to fluid and pressure communication. Bed dips range from a maximum of 20 degrees on the northern flank to 60 degrees on the southern flank. The entire structure, approximately 11 miles long and 3 miles wide, underlies approximately 13,000 acres. There are seven major producing zones in the field (Tar, Range, Upper Terminal, Lower Terminal, Union Pacific, Ford and 237) which lie between the depths of 2,000 and 7,000 feet subsea and range in age from late Miocene to early Pliocene. The upper four zones containing low gravity, high viscosity crude are the major oil reservoirs. The reservoir rock in all zones is sand or sandstone in differing degrees of consolidation with varied silt and clay content.

The Long Beach Unit embraces most of the East Wilmington Oil Field (the southeastern end of the Wilmington Field), but excludes the Belmont Offshore Field. Beginning in the early 1940's, land subsidence was observed in Wilmington. Because of the increasing danger of subsidence, the City of Long Beach delayed further development of Wilmington to the east and southeast of the Wilmington anticline. In mid-1953, a pilot waterflooding operation was commenced to determine the feasibility of water injection for repressurization to control subsidence. The repressuring operation's success in subsidence control and secondary oil recovery led to fieldwide operations starting in 1958. After field pressuring operations were proved successful, the ban on development of East Wilmington was lifted. In 1965, the Long Beach Unit was formed to develop the remaining fault blocks of the Wilmington field lying to the east. THUMS Long Beach Company, a joint venture of Texaco, Inc., Humble Oil and Refining Company, Union Oil Company of California, Mobil Oil Corporation, and the Shell Oil Company was selected as field contractor for the City of Long Beach for the development of the Long Beach Unit. The City is the trustee and operator of the Unit for 69 working interest owners and hold 85% participation in the unit.

Fault Block VII, within the Long Beach Unit, is a north-south slice across the East Wilmington Field between the Junipero Fault on the west and the Long Beach Unit Fault on the east and extending roughly from 7th Street south out into San Pedro Bay. The Range Zone Fault Block VII Project is located on the western side of Fault Block VII. The Pilot pattern area is offshore between the Junipero and Temple Avenue Faults. A modified staggered line drive configuation represents a typical waterflood well pattern for the Ranger Zone of the Long Beach Unit portion of the field.

The Ranger Zone is the largest and most prolific of the Long Beach Unit's reservoirs. It consists of several distinct pay intervals or subzones separated by impermeable shale sections. Each subzone is an interbedded sequence of shales and unconsolidated to semi-consolidated, poorly sorted, medium-to-fine grain sands. The structure is a monocline in the project area with a northeasterly dip of approximately 8 degrees. There are six productive subzones within the Ranger Zone underlying the project area. These have been designated from top to bottom as the Fo, F, H, X, G and G 4. These subzones lie at depths of 2600 to 3400 feet subsea and comprise a gross thickness of approximately 850 feet and a net thickness of 310 feet.

Waterflooding has been undertaken in the Ranger Zone. However, the overall recovery efficiency has been low. Various approaches including polymer, micellar solution and caustic flooding have been studied since 1966. Independent laboratory investigations by THUMS and the City's Department of Oil Properties tended to corroborate each other in finding that an entrapment and entrainment process obtained by sequencing a low concentration caustic solution with one containing additions of sodium chloride would bring about an improvement in sweep efficiency over that resulting from a caustic flood alone.

On September 30, 1976 the City and the energy Research and Development Administration (ERDA, now a part of the Department of Energy) contracted to conduct jointly a 95 acre pattern area in the Fault Block VII section of the Long Beach Unit as a pilot demonstration of the caustic flood entrapment-entrainment process. The total contract cost of $11,584,572 was to be shared 60% by the City and 40% by the ERDA.

Core testing and laboratory work began shortly after October 1, 1976. Laboratory work included core floods (involving sample preparation, waterflooding, and caustic enhanced waterflooding); selection of crude oils for core flood tests, and evaluation of core flood tests results (tests of both entrapment and entrainment); interfacial tension tests, oil dehydration, and produced water softening.

Simulation of reservoir performance was performed under contract with Scientific Software Corporation of Denver, Colorado. Facilities and equipment design and installation covered full scale pre-flush and caustic-brine injection, caustic storage, handling and pumping. Injection well redrills and workovers were undertaken. Pre-project tracer studies were re-evaluated. Static pressure, operating pressure, fluid entry and spinner surveys have been conducted. Producing well redrills, workovers and stimulation have been performed. By the end of November, 1978, ERDA contract expenditures amounted to $6,969,000. Additional incremental costs of $852,000 will be required to initiate the pilot, leaving a balance not yet expended or committed as of November 30, 1978 of $3,763,572.

After reviewing some of the laboratory tests and simulations, the City determined that, for purposes of this application, the test pattern area defined by the ERDA contract should be extended to the north and south to embrace wells which would be affected by the caustic flood operation. No eastward or westward expansion is possible because the Junipero and Temple Avenue faults block communication to the west and to the east, respectively, of those two faults. Thus, for purposes of this application for price incentives, the surface boundaries

of the Ranger Zone Fault Block VII Project are as follows:

a. On the West: the Junipero Fault

b. On the East: The Temple Avenue Fault

c. On the North: a line running generally WNW–ESE parallel with the 3500 foot contour which is about 400 feet north of the line drawn of the line drawn through producing wells B–710 and B–120.

d. On the South: a line running generally WNW–ESE parallel with the 2640 foot contour and which is not more than 400 feet south of the line drawn through producing wells B–705 and B–707A so as to exclude producing well B–639 from the project area, all as shown in Exhibit B to the City's letter of September 25, 1978.

On the Ranger Zone Fault Block VII Project virtually all of the laboratory and simulation work, mini-injection tests, and workover requisites have been essentially complete by the end of February, 1979. Softened water pre-flush began about that date to continue for about 6 months before commencing the caustic injection. Caustic injection, (NaOH at about 0.1 wt/% concentration) will start about August 1, 1979 and will (should) continue for some 5 to 5½ years, (that is, until late 1984). Following termination of caustic injection, a post chemical waterflood injection flush will be performed for 10 years, perhaps longer.

The initial reservoir response in producing incremental crude is forecast to occur in 1981 when it will average 200 BPD or 73,000 barrels for the year. Incremental production is predicted to rise to 660 BPD or nearly 241,000 barrels in 1987 and to decline thereafter, falling to 490 BPD or just short of 179,000 barrels in 1993.

Findings and Analysis

A. Section 212.78 provides that the "incremental crude oil" from a "qualified tertiary enhanced recovery project" may be sold at prices not subject to the ceiling price limitations of Subpart D of Part 212. In order for crude oil production from a particular project to be priced in accordance with the price rule of § 212.78, ERA must certify the project as a qualified tertiary enhanced recovery project. Prior to granting this certification, § 2.2.78(d) requires ERA to determine that (1) the project involves one of enhanced oil recovery techniques listed in the definition of a qualified tertiary enhanced recovery project set forth in § 212.78 (c) and (2) the project would be uneconomic at the otherwise applicable ceiling prices. With respect to a project that is initiated prior to receipt of the required certification, § 212.78(b)(2) provides an additional requirement that certification will be granted only if (1) the producer affirms that it intends to discontinue the project (or the particular high-cost phase of the project) because continuation would be uneconomic at the otherwise applicable ceiling prices and (2) there has been a material change of circumstances since the initiation of the project.

B. The City has submitted information indicating that it has undertaken, in conjunction with the ERDA Contract, a thorough investigation of alternative methods of enhanced oil recovery on its properties in the Wilmington Oil Field. As a result of an extensive sequence of laboratory, field mini-test, and field work, it has prepared to commence a caustic flood of the Ranger Zone. The Division of Fossil Fuel Extraction of the Office of Energy Technology of the Department of Energy, (currently administering the ERDA contract) has stated, in response to an inquiry by this office that the City has tested and prepared the Ranger Zone project for employment of an alkaline waterflood tertiary enhanced recovery effort. In its evaluation of the project, the State of California Division of Oil and Gas found that all project operations will be conducted in accordance with the requirements of both the Division and of the State Water Quality Control Board, and certifies that it meets the State Regulatory Agency review and evaluation criteria. Inasmuch as alkaline (or caustic) waterflood is one of the techniques listed in § 212.78(c), we have determined on the basis of the statements by the City and the Office of Energy Technology that the Ranger Zone Project meets the first requirement for certification as a qualified tertiary enhanced recovery project.

C. The City has submitted information indicating that the Ranger Zone Project will be an uneconomic venture unless a higher price than permitted under existing ceiling prices is authorized for the crude oil produced from that project. The materials submitted by the City show that, under the current price control system, the caustic flood operation would have an annual negative cash flow for each year from the present to beyond 1985. Projections extended through 1993 indicate negative cash flows annually for every year except a negligible positive cash flow of about $4,000 in the year 1992. These projections are set forth in Table 1.

Based on the information submitted by the City we have determined that the Ranger Zone Fault Block VII Project meets the second requirement for certification as a qualified tertiary enhanced recovery project since the expected rate of return under existing ceiling price regulations through 1991 is negative.

D. In evaluating the City's application, we have taken full cognizance of the City's contract with ERDA, by which ERDA committed to assist the City with the preparatory phases of the subject project with the contribution of $4,634,000 over a period of time extending through 1980. The City has excised this amount from relevant data in the application, and the excision has been confirmed by the ERA. Thus, ERA's analysis of the City's application relates only to the City's share in that project.

E. As a result of the ERDA contract, the City has made certain expenditures necessary for the caustic waterflood tertiary enhanced recovery project. Section 212.78(b)(1) defines the initiation of a project as the point at which the first expenditure necessary for the project is made. Thus, the requirements of § 212.78(b)(2) must be met prior to ERA's granting certification.

We have determined that these requirements have been met. In its submission the City affirmed that it would not undertake the next steps in the tertiary project if the incremental crude oil produced by the project was subject to ceiling price limitations other than those set forth in § 212.78(a). Moreover, these steps represent a material change in circumstances since they will not be partially financed by the federal government under the ERDA contract.

F. Inasmuch as the requirements for certification have been satisfied, we are proposing to certify the Ranger Zone Fault Block VII Project as a qualified tertiary enhanced recovery project. The price for incremental crude oil from this project would be determined in accordance with the price rule of § 212.78.

G. Section 212.78(d) requires ERA to determine, at the time that it certifies a project as a qualified tertiary enhanced recovery project, the amount of incremental and non-incremental crude oil (as defined in § 212.78(c)) that will result from that project. In general the incremental crude oil resulting from a project initiated after certification by ERA is the amount of crude oil above that which would have occurred had the qualified tertiary enhanced recovery project not been undertaken. We have determined the amounts of non-incremental production from March, 1979 through December, 1993, and have

set forth these amounts in the proposed order. These amounts were calculated from the forecasts of annual production of non-incremental crude furnished by the City. Conversion to monthly estimates were performed by an interpolation of monthly values adjusted for days in the month.

H. In its application, the City requests that 50% of the non-incremental crude oil production from the project be exempted from price regulations and be authorized to be sold at free market prices. No regulation currently exists under which this request of the City might be considered. Therefore, we have not evaluated the merits of that request. Our determination not to act on this request does not prejudice the City from applying for such relief if a regulation is issued to permit adjustment to the price of non-incremental crude oil.

I. 10 CFR 205.98 sets forth the procedures for objecting to this Proposed Decision and Order. Any objection must be received by ERA within thirty calendar days from the date of publication in the **Federal Register** of the Proposed Decision and Order.

J. All relevant submissions with respect to this application will be available for public inspection in the Public Docket Room, Room B–120, 2000 M street, N.W., Washington, D.C., between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday.

It is, therefore, ordered, that:

1. The Ranger Zone Fault Block VII Project, operated by the City of Long Beach, California for itself and other working interests, producing crude oil from the Ranger Zone of Fault Block VII in the Wilmington Oil Field in Los Angeles County, California is declared to be a qualified Tertiary Enhanced Recovery Project within the meaning of 10 CFR 212.78.

2. Crude oil produced each month from the Ranger Zone Fault Block VII Project in excess of the following schedule of "Non-Incremental Crude" is not subject to the ceiling price limitations of 10 CFR, Part 212, Subpart D:

Monthly Non-Incremental Crude Volumes

Year	Month	Barrels
1979	March	87,100
	April	83,600
	May	85,700
	June	82,200
	July	84,100
	August	83,100
	September	79,500
	October	81,200
	November	77,670
	December	79,200
1980	January	78,200
	February	69,800
	March	76,300
	April	72,900
	May	74,300
	June	71,000
	July	72,500
	August	71,900
	September	68,900
	October	70,600
	November	67,700
	December	69,300
1981	January	68,600
	February	61,400
	March	67,400
	April	64,600
	May	66,100
	June	63,300
	July	64,800
	August	64,100
	September	61,400
	October	62,800
	November	60,200
	December	61,500
1982	January	60,900
	February	54,400
	March	59,600
	April	57,100
	May	58,300
	June	55,800
	July	57,000
	August	56,400
	September	54,000
	October	55,300
	November	52,900
	December	54,100
1983	January	53,500
	February	47,800
	March	52,300
	April	50,000
	May	51,100
	June	48,900
	July	49,900
	August	49,200
	September	47,000
	October	47,900
	November	45,800
	December	46,600
1984	January	46,000
	February	41,000
	March	44,700
	April	42,700
	May	43,400
	June	41,400
	July	42,200
	August	41,800
	September	40,000
	October	40,900
	November	39,200
	December	40,000
1985	January	39,600
	February	35,400
	March	38,700
	April	37,100
	May	37,900
	June	36,200
	July	37,000
	August	36,600
	September	35,100
	October	35,900
	November	34,400
	December	35,200
1986	January	34,800
	February	31,100
	March	34,100
	April	32,700
	May	33,400
	June	32,000
	July	32,700
	August	32,400
	September	31,000
	October	31,800
	November	30,400
	December	31,100
1987	January	30,800
	February	27,600
	March	30,200
	April	28,900
	May	29,600
	June	28,300
	July	29,000
	August	28,800
	September	27,600
	October	28,300
	November	27,200
	December	27,900
1988	January	27,600
	February	24,700
	March	27,200
	April	26,100
	May	26,700
	June	25,600
	July	26,200
	August	26,000
	September	25,000
	October	25,600
	November	24,600
	December	25,200
1989	January	25,000
	February	22,400
	March	24,600
	April	23,600
	May	24,200
	June	23,200
	July	23,800
	August	23,700
	September	22,800
	October	23,400
	November	22,500
	December	23,100
1990	January	22,900
	February	20,600
	March	22,700
	April	21,800
	May	22,400
	June	21,500
	July	22,100
	August	21,900
	September	21,000
	October	21,600
	November	20,700
	December	21,200
1991	January	21,100
	February	18,900
	March	20,700
	April	19,900
	May	20,400
	June	19,600
	July	20,000
	August	19,800
	September	19,000
	October	19,400
	November	18,600
	December	19,000
1992	January	18,800
	February	16,800
	March	18,400
	April	17,600
	May	18,000
	June	17,200
	July	17,600
	August	17,400
	September	16,700
	October	17,100
	November	16,400
	December	16,800
1993	January	16,700
	February	14,900
	March	16,400
	April	15,700
	May	16,000
	June	15,400
	July	15,700
	August	15,600
	September	14,900
	October	15,300
	November	14,600
	December	15,000

3. The Base Production Control Level (BPCL) for the Ranger Zone Fault Block VII Project shall be, in accordance with 10 CFR 212.78(f)(1), for any month in which the production of incremental crude oil first occurs (as determined in this certification) and thereafter in the same proportion to the total amount of non-incremental crude oil (as such non-

incremental crude oil is determined in the preceding section) as the amount of old crude oil produced from the project area in the twelve-month period immediately preceding the month in which incremental crude oil production commences bears to total crude oil produced from that property during the same twelved-month period.

4. Incremental crude oil production will be deemed to occur in any month subsequent to the date of this Decision and Order in which total production exceeds the schedule of "Non-Incremental Crude" in this Order, *and* which is subsequent to the initiation of the pre-flush operation.

5. This certificate is based on the presumed validity of statements, assertions, and documentary materials submitted by the City. It is based on the City's implicit assurance that all actual and projected costs reported by the firm have been determined on an arm's length basis and represent fair and reasonable market price valuations for the expenditures involved, that all actual and projected production figures have been derived from reliable records or made on the basis of generally acceptable engineering practice, and that every effort has been made to insure that all cost revenue and production estimates are reasonably accurate.

6. This order will continue in effect from the date of this order so long as the City of Long Beach pursues the caustic flood program in the Ranger Zone of Fault Block VII of the Wilmington Field, provided that it may be revoked or modified at any time upon a determination that the factual basis underlying the application is materially incorrect.

Issued in Washington, D.C., April 18, 1979.

Table 1.—*Incremental Cash Flow to the City of Long Beach Ranger Zone Fault Block VII Project*

	Non-incr. prod. B/D	Incr. prod. B/D	Incr. costs, $/day	Incr. income $/ day, $5.316/ bbl.	Incr. income $/ day, $11.435/ bbl.	Cash flow at lower tier pr. $5.316/ bbl.	Cash flow at free price $11.435/ bbl.
Year:							
1976*	4,600	0	2,006	0	0	(2,006)	(2,006)
1977	3,000	0	5,339	0	0	(5,399)	(5,339)
1978	3,000	0	3,800	0	0	(3,800)	(3,800)
1979	2,730	0	3,717	0	0	(3,711)	(3,711)
1980	2,350	0	6,718	0	0	(6,817)	(6.817)
1981	2,100	200	6,787	1,063	2,287	(5,316)	(4,509)
1982	1,850	440	6,756	2,339	5,031	(4,417)	(1,725)
1983	1,620	550	6,519	2,923	6,289	(3,596)	(230)
1984	1,370	580	6,257	3,083	6,632	(3,174)	375
1985	1,200	620	6,026	3,295	7,090	(2,660)	1,064
1986	1,060	640	5,955	3,402	7,318	(2,553)	1,364
1987	940	660	5,774	3,509	7,547	(2,265)	1,774
1988	850	650	5,631	3,455	7,433	(2,176)	1,802
1989	770	630	5,676	3,349	7,204	(2,327)	1,528
1990	715	585	5,738	3,110	6,689	(2,628)	951
1991	650	550	5,647	2,924	6,289	(2,773)	642
1992	570	430	2,806	2,817	6,061	11	3,255
1993	510	490	2,711	2,605	5,603	(106)	2,892

* Fourth quarter only.

[Docket Number ERA-TA-79-2]
[FR Doc. 79-12819 Filed 4-26-79; 8:45 am]
BILLING CODE 6450—01—M

DEPARTMENT OF ENERGY

Albert B. Alkek; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order.

DATES: Issue date: March 22, 1979. Comments by May 30, 1979.

ADDRESS: Send comments to: Thomas Holleran, Chief, Crude Oil Branch, Office on Enforcement Policy and Planning, 2000 M Street, N.W., Room 5204D, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Robert G. Heiss, Acting Assistant General Counsel for Enforcement, 2000 M Street, N.W., Room 5308B, Washington, D.C. 20461. (202–254–8700).

SUPPLEMENTARY INFORMATION: Albert B. Alkek (Alkek) of Victoria, Texas executed a Consent Order dated March 22, 1979, which the Office of Enforcement of the ERA has accepted. Under 10 CFR § 205.199J(b), a Consent Order which involves a sum of $500,000 or more in the aggregate, excluding penalties and interest, becomes effective upon its execution only if the DOE expressly finds it to be in the public interest to do so.

The Consent Order by and between the Office of Enforcement, ERA, and Alkek is an integral part of the disposition of certain criminal and civil disputes in regard to Alkek as directed in the Statement of Plea Bargaining and other documents filed on February 28, 1979, with the United States District Court for the Southern District of Texas in the action styled *United States v. Albert B. Alkek* (Crim. No. H–79–39). Accordingly, in order to resolve both criminal and civil matters as directed and agreed, the DOE made this Consent Order effective immediately upon execution by both Alkek and the DOE in furtherance of the public interest, pursuant to 10 CFR § 205.199J(b).

I. The Consent Order

In settlement of possible civil liability of Alkek within the jurisdiction of the DOE and arising out of or related to the DOE regulations and statutes, the Office of Enforcement, ERA, and Alkek entered into a Consent Order, the significant terms of which are as follows:

1. The Consent Order covers Alkek's relationship to (M&A Petroleum Company)M&A) and Uni Oil, Inc. (Uni) and his dealings with M&A, Uni, and their agents, employees and directors with respect to transactions and events between Uni and M&A involving the purchase and sale of crude oil, during the period December 1, 1975 through July 1, 1977;

2. Execution of the Consent Order does not constitute an admission by Alkek that the DOE statutes or regulations have been violated and does not constitute a finding by the DOE that

Alkek has committed any such violations;

3. Alkek agrees to refund, in full settlement of any and all civil liability within the jurisdiction of the DOE in regard to actions that might be brought by the DOE arising out of the specified transactions, the sum of $3,240,000 on or before March 22, 1979;

4. The DOE shall deposit the refund into an interim account with the United States Treasury Department and shall transfer the refund into a suitable interest bearing escrow account upon establishment of the same in order that the monies in the fund may be administered in accordance with 10 CFR Part 205, Subpart V; and

5. The provisions of 10 CFR § 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Alkek agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $3,240,000 on or before March 22, 1979. The refund has been delivered to the Assistant Administrator for Enforcement, ERA, and deposited in an interim account with the United States Treasury Department. These funds will remain in a suitable account with the Treasury Department pending the determination of their proper disposition.

In order to effect proper disposition of these funds, the Assistant Administrator for Enforcement, ERA, filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals, DOE, pursuant to 10 CFR Part 205, Subpart V on April 19, 1979. In proceedings under Subpart V, the Director of the Office of Hearings and Appeals or his designee shall issue a Proposed Decision and Order which shall be published in the **Federal Register.** The Proposed Decision and Order shall generally describe the nature of the particular refund proceedings for the disposition of the refund made by Alkek and shall set forth the standards and procedures that the Office of Hearings and Appeals intends to apply in evaluating claims to this refund. Opportunity for public comment on this Proposed Decision and Order will be provided. *See* 10 CFR § 205.280 *et seq.*

III. Submission of Written Comments

The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments to Thomas Holleran, Chief, Crude Oil Branch, Office of Enforcement Policy and Planning, ERA, 2000 M Stret, N.W., Room 5204D, Washington, D.C. 20461. You may obtain a free copy of this Consent Order by writing to the same address.

You should identify your comments on the outside of your envelope and on the documents you submit with the designation, "Comments on the Albert B Alkek Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on May 30, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR § 205.9(f).

Issued in Washington, D.C. on the 23rd day of April 1979.

Barton Isenberg,

Assistant Administrotor for Enforcement, Economic Regulatory Administration.

[FR Doc. 79-13112 Filed 4-26-79; 8:45 am]

BILLING CODE 6450-01-M

Inter-City Minnesota Pipelines Ltd., Inc.

AGENCY: Department of Energy, Economic Regulatory Administration

ACTION: Notice of application for amendment to import already authorized quantities of natural gas from Canada at the newly determined border price, and invitation to submit petitions to intervene.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of the application of Inter-City Minnesota Pipelines Ltd., Inc. (Inter-City), to amend its current import authorization to increase the established U.S.A.-Canadian border export price of $2.16 per million Btu (MMBtu) ($2.013 per Gigajoule (GJ)). The Canadian National Energy Board (NEB) on March 28, 1979, issued a notice implementing an order issued by the Canadian Privy Council on March 28, 1979, that the new authorized export price will be $2.30 per MMBtu ($2.14 per GJ), effective May 1, 1979. The March 28, 1979, Order will affect only NEB License No. GL 28 which allows ICG Transmission Limited (ICG), of Canada to export gas to Inter-City.

This application is filed with ERA pursuant to Section 3 of the Natural Gas Act and the Secretary of Energy's Delegation Order No. 0204-25. Petitions to intervene are invited.

DATES: Petitions to intervene: to be filed on or before the fifth day after the date of publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. Finn K. Neilsen, Director, Import/Export Division, 2000 M Street, N.W., Room 6318, Washington, D.C. 20461, Telephone (202) 254-9730; Mr. Martin S. Kaufman, Office of General Counsel, 12th and Pennsylvania Avenue, N.W., Room 5116, Washington, D.C. 20461, Telephone (202) 633-9380.

SUPPLEMENTARY INFORMATION: Inter-City states that on March 28, 1979, the NEB amended its license to establish a border price of U.S. $2.30, effective May 1, 1979. Presently, Inter-City purchases gas at a border price of $2.16 per MMBtu ($2.013 GJ). In addition, Inter-City states that if the import authorization is not amended before May 1, 1979, its ability to render natural gas service to its customers will be impaired in a fundamental way.

OTHER INFORMATION: The ERA invites petitions for intervention in this proceeding. 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 May 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 petition 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.

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 ERA on its own motion believes that such a hearing is required. If such hearing is required, due notice will be given.

A copy of Inter-City's petition is available for public inspection and copying in Room B-120, 2000 M Street, N.W., Washington, D.C. 20461 between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. April 23, 1979.

Barton R. House,

Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[ERA Docket No. 79-12-NG, FERC Docket No. CP 70-289]

[FR Doc. 79-13109 Filed 4-26-79; 8:45 am]

BILLING CODE 6450-01-M

Michigan Wisconsin Pipe Line Co.

AGENCY: Department of Energy, Economic Regulatory Administration

ACTION: Notice of application for amendment to import natural gas from Canada at the newly determined price, and invitation to submit petitions to intervene.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of the application by Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) to amend its natural gas import authorization to pay to TransCanada Pipelines Limited (TransCanada) the increased border price of $2.30 per MMBtu ($2.14 per Gigajoule (GJ)), announced by the Privy Council of the Dominion of Canada on March 28, 1979, and effective May 1, 1979. Michigan Wisconsin presently purchases gas from TransCanada at a border price of $2.16 MMBtu. In addition, Michigan Wisconsin states that if the import authorization is not amended before May 1, 1979, it will be faced with termination or suspension of imports of gas from TransCanada. This application is filed with ERA pursuant to Section 3 of the Natural Gas Act and the Secretary of Energy's Delegation Order No. 0204-25.

Petitions to intervene are invited.

DATES: Petitions to intervene: to be filed on or before May 2, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Finn K. Neilsen, Director, Import/Export Division, 2000 M Street, N.W., Room 6318, Washington, D.C. 20461, Telephone (202) 254-9730; Mr. Martin S. Kaufman, Office of General Counsel 12th and Pennsylvania Avenue, N.W., Room 5116, Washington, D.C. 20461, Telephone (202) 633-9380.

OTHER INFORMATION: The ERA invites petitions for intervention in this proceeding. 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., May 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 petition 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.

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 ERA on its own motion believes that such a hearing is required. If such hearing is required, due notice will be given.

A copy of Michigan Wisconsin's petition is availale for public inspection and copying in Room B-120, 2000 M Street, N.W., Washington, D.C. 20461 between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. April 23, 1979.

Barton R. House,

Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[ERA Docket No. 79-13-NG]

[FR Doc. 79-13108 Filed 4-26-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

April 23, 1979.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on April 11, 1979, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Substitute 5th Revised Sheet No. 29-E and Second Substitute 3rd Revised Sheet No. 29-F.

Algonquin Gas states that the above tariff sheets were filed in substitution for Substitute 5th Revised Sheet No. 29-E and Substitute 3rd Revised Sheet No. 29-F to reflect lower revised Opinion No. 21-A rates filed by its supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), in Docket No. RP74-41 under its Rate Schedule ISS than were used in the determination of Substitute 5th Revised Sheet No. 29-E and Substitute 3rd Revised Sheet No. 29-F.

The proposed effective date of Second Substitute 5th Revised Sheet No. 29-E and Second Substitute 3rd Revised Sheet No. 29-F is March 1, 1979.

Algonquin Gas recognizes that Texas Eastern filed its rates pursuant to Opinion No. 21-A without prejudice to the right of any other party to the proceedings in Docket No. RP74-41 to seek rehearing and/or judicial review of Opinion No. 21-A. For that reason, Algonquin Gas hereby requests that the Commission accept those tariff sheets filed by Algonquin Gas to be effective March 1, 1979, which synchronize their rates with the underlying rates of Texas Eastern.

Algonquin Gas states that a copy of this filing is being served upon each affected party and interested state commission.

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, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 2, 1979. 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.

Lois D. Cashell,

Acting Secretary.

[Docket No. CP77-337]

[FR Doc. 79-13096 Filed 4-26-79; 8:45 am]

BILLING CODE 6450-01-M

Bixco, Inc.; Petition for Declaratory Order

April 16, 1979.

Take notice that on February 16, 1979, Bixco, Inc. (Bixco) filed a petition for a declaratory order in Docket No. CS72-621. Bixco requests that the Commission issue a declaratory order allowing Bixco to sell gas supplies to Arizona Public Service Commission (APS) and El Paso Natural Gas Company (El Paso), pursuant to the small producer certificate held by Bixco, at the large producer rate (where applicable) or the small producer rate (where applicable), and declaring that other sales may be made without certificate authorization to the extent removed from the Commission's nonpricing jurisdiction by Section 601 of the Natural Gas Policy Act of 1978 (NGPA).

Bixco indicates that it is a wholly-owned subsidiary of APS and that it is engaged in the exploration, gathering, development and sale of natural gas with the primary purpose of serving the resale requirements of its parent, APS,

in Arizona. Bixco further indicates that APS, which is supplied by EL Paso, has been subject to increasing curtailments in recent years. Bixco states that it has entered into a Gas Transportation Agreement with El Paso, dated September 1, 1978, for the purpose of having gas supplies which it acquires or develops transported to APS in the State of Arizona. In addition, Bixco states that it has entered into an Excess Gas Purchase Agreement with El Paso, also dated September 1, 1978, whereby Bixco has the right, but not the obligation, to sell, and El Paso has the right, but not the obligation, to purchase gas in excess of that which APS may require for its customers' high priority use (including potential injection into storage for that purpose). Bixco therefore seeks a declaration by this Commission that it can sell natural gas, pursuant to the foregoing agreements, to APS and to El Paso under the small producer certificate issued to Bixco by the Commission in Docket No. CS72–621, and also that no certificate authorization is necessary for sales of natural gas to the extent that they are removed from the Commission's nonpricing jursidiction by Section 601 of the NGPA.

Any person desiring to be heard or to make any protest with reference to said petition should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 9, 1979. All protestss filed with the Commission will be considered by it 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 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.

[Docket No. CS72–621]
[FR Doc. 79–13097 Filed 4–26–79; 8:45 am]
BILLING CODE 6450–01–M

Calaveras County Water District; Application for Major License

April 19, 1979.

Take notice that on November 30, 1978, the Calaveras County Water District (Calaveras) filed an application for license for Project No. 2409. Project No. 2409, also called the North Fork Stanislaus River development, would be located on the Stanislaus and North Fork Stanislaus Rivers, and Highland, Silver, Beaver, and Duck Creeks. It would be in Calaveras, Alpine, and Tuolumne Counties, California, near the towns of Sonora, City of Angels, and San Andreas, and would affect lands of the United States within the Stanislaus National Forest. Correspondence with the applicant should be sent to: Steve Felte, Manager, Calaveras County Water District, P.O. Box 846, San Andreas, California 95249, and Robert L. McCarty, Special Counsel, McCarty & Noone, 490 L'Enfant Plaza East, Suite 3306, Washington, D.C. 20024.

Project No. 2409 would have an installed capacity of 205,200 kW. Power from the project would be integrated into power systems in Northern California. It would consist of the following works:

1. The 37–foot high concrete gravity North Fork Diversion Dam, impounding a 350 acre–foot reservoir immediately downstream of the confluence of Silver and Duck Creeks, and an 11,300-foot long unlined tunnel.

2. A 200-foot high rockfill dam, 200 feet downstream of the existing dam for Spicer Meadow Reservoir, and the resulting New Spicer Meadow Reservoir, enlarged to 189,000 acre-feet of storage capacity. The crest elevation of the new dam would be at 6,610 feet. A 120-foot high rockfill dike would also be constructed. New Spicer Meadow Power Plant, at the toe of the main dam, would contain four 1,300 kW generating units to be connected with the Pacific Gas and Electric Company's (PG&E) transmission facilities near Cabbage Patch.

3. The 170-foot high concrete arch McKay's Point Diversion Dam, with a crest elevation of 3,395 feet, creating a 2,200 acre-foot reservor with a surface area of 40 acres at the normal maximum water surface elevation of 3,370 feet.

4. A 15-foot high concrete weir, the Beaver Creek Diversion Dam, to be located downstream of the Calaveras Big Trees State Park. This dam would create a 25 acre-foot reservoir with a surface area of five acres at the normal maximum water surface elevation of 4,195 feet. It would divert Beaver Creek flows through a 7-foot diameter, 900-foot long tunnel into McKay's Point Diversion.

5. Collierville Tunnel, 17 feet in diameter and 40,100 feet long, from a gated intake structure 135 feet high in the right abutment of the McCay's Point Diversion Dam to a 6,620-foot long penstock.

6. Collierville Powerhouse, to be located at Clark Flat on the Stanislaus River about a mile below the confluence of the North and Middle Fork Stanislaus Rivers. The Powerhouse will house two 100,000 kW generating units connected through transformers to an adjacent switchyard and thence to the existing area transmission system.

7. The 56-foot high concrete gravity Collierville Afterbay Dam, with a crest elevation of 1,076 feet and impounding a 920 acre-foot reservoir with a surface area of about 40 acres. The dam will reregulate releases from the Collierville and Stanislaus power plants.

8. Eleven miles of buried 21 kV sheathed transmission cable from the New Spicer Meadow Power Plant to PG&E's existing Cabbage Patch switchyard and 35 miles of 230 kV, double circuit, 3-phase transmission line from the Collierville Power Plant to PG&E's existing Bellota switchyard.

9. Recreation facilities in the New Spicer Meadow Reservoir and the North Fork Diversion Dam areas. At New Spicer, the Applicant proposes to develop 60 campsites on a 60-acre area with water and sanitary facilities; a boat launch facility for small boats and canoes where Road 7NO1 would be inundated, with sanitary facilities and parking for 25 cars; and re-routing of inundated trails to connect with existing trails in the area. At the North Fork Diversion Dam, Applicant would develop a jeep road for day-use access.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's rules of practice and procedure, 18 CFR § 1.8 or § 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commision's rules. Any protest or petition to itervene must be filed on or before June 25, 1979. The Commission's address is: 825 N. Capitol Street, N.E., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

Lois. D. Cashell,
Acting Secretary.

[Project No. 2409]
[FR Doc. 79–13098 Filed 4–26–79; 8:45 am]
BILLING CODE 6450–01–M

Electric Plant Board of the City of Glasgow, Ky.; Application for Preliminary Permit

April 19, 1979.

Take notice that an application was filed October 17, 1978, by the Electric Plant Board of the City of Glasgow, Kentucky under the Federal Power Act, 16 U.S.C. §§ 791a–825r, for a preliminary permit for 24 months to study the feasibility of installing hydroelectric generating units at the United States Army Corps of Engineers' existing Barren River Lake Dam. The project would be on the Barren River in Allen, Barren, and Monroe Counties, Kentucky. Correspondence with the Applicant should be sent to: H. Jefferson Herbert, Jr., Wilson, Herbert, Garmon & Sparks, Richards Building, Glasgow, Kentucky 42141.

The Barren River Lake Dam is a rolled earthfill dam 3,970 feet long and 146 feet high. Project No. 2874 would consist of an intake with a control gate, a conduit through the dam, and a powerhouse. The number, size, and preferable type of generating units would be determined in the course of the study. The Applicant estimates an installed capacity of 15,000 kW and a project cost of $40,000,000. The Applicant proposes that the project's generating station be operated in coordination with the Tennessee Valley Authority's inter-connected system. The Applicant would use all the power generated at the project.

A preliminary permit does not authorize construction. It only gives a permittee the right of priority of application for license while the permittee undertakes the necessary studies and examinations to determine the engineering and economic feasibility of the project, the market for the power, and all other necessary information for inclusion in an application for license.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1978). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before June 25, 1979. The Commission's address is: 825 N. Capitol Street NE., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Acting Secretary.

[Project No. 2874]

[FR Doc. 79–13095 Filed 4–26–79; 8:45 am]

BILLING CODE 6450–01–M

Interstate Power Co.; Filing

April 23, 1979.

Take notice that Interstate Power Company on April 19, 1979, tendered for filing a letter agreement ancillary to Interstate Power Rate Schedule FERC No. 114.

Interstate indicates that this letter agreement replaces condition (8) of a letter agreement dated March 28, 1978. Interstate also indicates that this letter agreement extends the services rendered to Springfield, Minnesota through the scheduling month ending December 19, 1985.

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 the Commission's Rules of Practice and Procedure (18 CFR 1.8,1.10). All such petitions or protests should be filed on or before May 14, 1979. 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.

Lois D. Cashell,

Acting Secretary.

[Docket No. ER79–318]

[FR Doc. 79–13099 Filed 4–26–79; 8:45 am]

BILLING CODE 6450–01–M

Lawrenceburg Gas Transmission Corp.; Tariff Filing

April 23, 1979.

Take notice that on March 28, 1979, Lawrenceburg Gas Transmission Corporation (Lawrenceburg), 230 West High Street, Lawrenceburg, Indiana 47025, filed in Docket No. TC79–55 tariff sheets as part of its FERC Gas Tariff, First Revised Volume No. 1, to provide on an interim basis a plan for the delivery of natural gas for essential agricultural and high-priority uses in accordance with Section 401 of the Natural Gas Policy Act of 1978 and Part 281 of the Regulations thereunder, all as more fully set forth in said sheets which are on file with the Commission and open to public inspection.

The tariff sheets tendered by Lawrenceburg adopt and incorporate by reference the regulations set forth in 18 CFR 281.101 through 281.111 to provide that Lawrenceburg's plan for the curtailment of deliveries, to the maximum extent practicable, does not cause curtailment of deliveries of natural gas for essential agricultural and high-priority uses.

In accordance with the finding and determination by the Commission in the order issued March 6, 1979, in Docket NO. RM79–13 (44 FR 13464, March 12, 1979), that good cause exists for waiver of the 30-day notice required by Section 4 of the Natural Gas Act and 154.22 of the regulations thereunder, the tendered tariff sheets shall be accepted for filing to be effective April 1, 1979, without further order of the Commission.

Any person desiring to be heard or make any protest with reference to said tariff sheets should on or before May 11, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). No requests for extension of this time will be entertained. 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.

[Docket No. TC79–55]

[FR Doc. 79–13100 Filed 4–26–79; 8:45 am]

BILLING CODE 6450–01–M

Natural Gas Pipeline Co. of America; Tariff Filing

April 20, 1979.

Take notice that on April 4, 1979, Natural Gas Pipeline Company of America (Respondent), 122 South Michigan Ave., Chicago, Illinois 60603, tendered for filing in Docket No. TC79–15, Substitute Original Sheet No. 150 as part of its FERC Gas Tariff, Third Revised Volume No. 1. The tendered filing is stated to be in compliance with the Commission's order of March 30, 1979, in the instant docket. That order directed Respondent to delete paragraph (d) contained in Original Sheet No. 150

as tendered on March 16, 1979, in order to conform to the Commission's Interim Curtailment Rule issued on March 6, 1979, in Docket No. RM79–13 (18 CFR, Part 281), in accordance with Section 401 of the Natural Gas Policy Act of 1978.

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 St., N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 7, 1979. 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 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. Copies of the filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79–13101 Filed 4–26–79; 8:45 am]

BILLING CODE 6450–01–M

Otter Tail Power Co.; Rate Filing

April 23, 1979.

Take notice on April 19, 1979, Otter Tail Power Company (Otter Tail) tendered for filing rate schedules covering scheduling and dispatching service provided to Cooperative Power Association (Association) and Central Power Electric Cooperative (Central). An effective date of April 1, 1979, is requested for the increase, estimated at approximately $1,250 per year, in rates to be charged the Association per Supplement No. 3 to Otter Tail's Rate Schedule FERC No. 154. An effective date of March 20, 1979, is requested for a decrease estimated at approximately $2,000 annually in rates to be charged Central per Supplement No. 3 to Otter Tail's Rate Schedule FERC No. 171.

Otter Tail requests waiver of the Commission's notice requirements to allow these two Schedules to become effective on April 1, 1979, and March 20, 1979, respectively.

Any person desiring to be heard or to protest said application 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 May 14, 1979. 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 processing. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[Docket No. ER79–316]

[FR Doc. 79–13102 Filed 4–26–79; 8:45 am]

BILLING CODE 6450–01–M

Public Service Co. of Indiana, Inc.; Tariff Change

April 23, 1979.

Take notice that Public Service Company of Indiana, Inc. on April 19, 1979 tendered for filing pursuant to the Interconnection Agreement between Public Service Company of Indiana, Inc. and Northern Indiana Public Service Company a Fifth Supplemental Agreement to become effective June 18, 1979.

Said Supplemental Agreement increases the demand charge for Short Term Power from 60¢ per kilowatt per week to 70¢ per kilowatt per week.

Copies of the filing were served upon Northern Indiana Public Service Company and the Public Service Commission of Indiana.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions should be filed on or before May 14, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are available for public inspection at the Federal Energy Regulatory Commission.

Lois D. Cashell,

Acting Secretary.

[Docket No. ER79–317]

[FR Doc. 79–13103 Filed 4–26–79; 8:45 am]

BILLING CODE 6450–01–M

Kentucky West Virginia Gas Co. et. al.; Request for Waiver

April 19, 1979.

The petitioners listed in the appendix have requested the Commission to waive the filing requirements of 18 CFR 281.104. Part 281 of the Commission's regulations implement the curtailment priority for essential agricultural uses established by Section 401 of the Natural Gas Policy Act of 1978 (NGPA).

Some petitioners do not cite a procedural basis for their requested waiver. Others cite either NGPA Section 502(c) or 18 CFR 1.7 or both. For all the petitioners listed in the appendix, the Commission shall deem their filings as requests for wavier pursuant to § 1.7(b) of the Commission's regulations.

The petitioners state eight different reasons for requesting a wavier. Petitioners in Group I assert that they do not have curtailment plan on file with the Commission. As a result, "the granting of adjustments to the otherwise applicable provisions of its curtailment plan" required by 18 CFR 281.104 is claimed to be unnecessary. Similarly, petitioners in Group II assert that they have no applicable tariff on file with the Commission.

Petitioners in Group III assert that they only engage in the transportation of natural gas and do not make sales for resale. They note that the Commission's supply curtailment policies, including Part 281, apply to natural gas sales, and as a result the filing required by 18 CFR § 281.104 is unnecessary.

Petitioners in Group V claim that all of their natural gas sales are made to customers with their own curtailament plans. They assert that Part 281 should be applied to their customers rather than to the petitioners in Group IV.

Petitioners in Group IV claim to have only one customer. Because the purpose of a curtailment plan is to allocate natural gas among customers, they argue that a filing under 18 CFR § 281.104 is unnecessary.

The C.B. Gas Gathering, Inc., Docket No. TC79–90, claims to have ceased operations in 1973. Louisiana-Nevada Transit Company does not state facts in support of its request for waiver in Docket No. TC79–59. Commercial Pipeline Co., Inc., Docket No. TC79–60, claims that it does not anticipate any curtailments during the time period covered by the interim rule.

Any person desiring to be heard or to make any protest with reference to any petition for waiver should on or before May 18, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to

intervene or a protest in the appropriate docket in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR or 1.8 or 1.10). All protests filed with the Commission will be considered by it in determing 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.

Group I.—*No Curtailment Plan on File With the FERC*

Docket No.	Petitioner	Date filed	Address
TC79-52	Kentucky-West Virginia Gas Company.	3/26/79	420 Blvd. of the Allies, Pittsburgh, PA 15219.
TC79-53	Equitable Gas Company	3/26/79	420 Blvd. of the Allies, Pittsburgh, PA 15219.
TC79-56	Michigan Consolidated Gas Company.	3/27/79	One Woodward Avenue, Detroit, MI 48226.
TC79-58	Honeoye Storage Corporation	3/27/79	c/o Energy Storage Ventures, 8 Arlington, St., Boston, MA 02116.
TC79-62	Pacific Interstate Transmission Company.	3/26/79	720 West Eighth St., Los Angeles, CA 90017.
TC79-63	Raton Natural Gas Company	3/28/79	1115 South 2nd St., Raton, NM 87740.
TC79-72	West Texas Gathering Company.	3/29/79	P.O. Box 3908, Odessa, TX 79760.
TC79-76	Washington Natural Gas Company.	4/2/79	P.O. Box 1869, 815 Mercer St., Seattle, WA 98111.
TC79-77	Union Light, Heat and Power company.	4/2/79	P.O. Box 960, 139 E. 4th St., Cincinnati, OH 45201.
TC79-80	Carnegie Natural Gas Company	4/15/79	3904 Main St., Munhall, PA 15120.
TC79-81	South Texas Natural Gas Gathering Company.	3/29/79	5 Greenway Plaza East, Houston, TX 77046.
TC79-85	Cimarron Transmission Company.	3/27/79	58 Broadlawn Village, Ardmore, OK 73401.
TC79-87	Chattanooga Gas Company	3/26/79	811 Broad St., Chattanooga, TN 37402.
TC79-89	R.M.N.G. Gathering Company	3/28/79	420 Capital Life Center, 1600 Sherman St., Denver, CO 80203.
TC79-91	McCulloch Interstate Gas Corporation.	3/30/79	10880 Wilshire Bldv., Los Angeles, CA 90024.
TC79-92	Zenith Natural Gas Company and Oklahoma Natural Gas Gathering Corporation.	4/6/79	624 South Boston Ave., Tulsa, OK 74119.
TC79-93	Northern States Power Company.	4/6/79	414 Nicollet Mall, Minneapolis, MN 55401.
TC79-123	Hampshire Gas Company	4/12/79	1100 H Street, N.W., Washington, D.C. 20080.

Group II.—*No Tariff on File With the Commission*

TC79-74	Pacific Coal Gasification Company.	3/30/79	720 West 8th St., Los Angeles, CA 90017.
TC79-86	Ohio River Pipeline Corporation	3/27/79	1630 N. Meridan St., Indianapolis, IN 46202.

Group III.—*Makes No Sales for Resale*

TC79-54	Associated Natural Gas Company.	3/22/79	P.O. Box 629, Blytheville, AR 72315.
TC79-57	Penn-Jersey Pipe Line Company.	3/22/79	One Elizabethtown Plaza, Elizabethtown, NJ 07207.
TC79-61	Blue Dolphin Pipe Line Company.	3/26/79	P.O. Box 2436, Houston, TX 77001.
TC79-64	Gulf Energy & Development Corporation.	3/28/79	P.O. Box 17349, San Antonio, TX 78217.
TC79-65	Sabine Pipe Line Company	3/29/79	1111 Rusk St., Houston, TX 77002.
TC79-67	Jupiter Corporation	3/29/79	400 East Randolph St., Chicago, IL 60601.
TC79-69	Tarpon Transmission Company.	3/29/79	4665 First International Bldg., Dallas, TX 75270.
TC79-71	Gas Transport, Inc	3/29/79	109 N. Broad St., Lancaster, OH 43130.
TC79-73	Bluefield Gas Company	3/30/79	602 Raleigh St., Bluefield, W VA 24701.
TC79-75	Standard Pacific Gas	3/30/79	77 Beale St., San Francisco, CA 94106.
TC79-78	Lone Star Gathering Company	4/2/79	301 S. Harwood St., Dallas, TX 75201.
TC79-82	Stingray Pipeline Company	3/27/79	P.O. Box 1642, Houston, TX 77001.
TC79-83	High Island Offshore System, Inc.	3/27/79	700 Milan St., Houston, TX 77001.
TC79-88	U-T Offshore System	3/28/79	P.O. Box 1396, Houston, TX 77001.

Group IV.—*No Gas Sold Directly to End Users; Customers Have Curtailment Plans*

TC79-68	Western Transmission Corporation.	3/29/79	2700 Fidelity Union Tower Bldg., Dallas, TX 75201.
TC79-70	Sea Robin Pipeline Company	3/30/79	P.O. Box 1478, Houston, TX 77001.

Group V.—*Pipeline Has Only One Customer*

TC79-66	Michigan Gas Storage Company.	3/28/79	212 W. Michigan Ave., Jackson, MI 49201.
TC79-84	Urbana Pipe Line Company	3/27/79	1800 First National Bank Bldg., Dallas, TX 75202.

Group VI.—*Others*

TC79-59	Louisiana-Nevada Transit Company.	3/27/79	P.O. Box 8789, Denver, CO 80201.
TC79-60	Commercial Pipeline Company, Inc.	3/27/79	201 Century Plaza Bldg., Wichita, KN 67202.
TC79-90	C.B. Gas Gathering	4/5/79	P.O. Box 1873, Corpus Christi, TX 78403.

[Docket No. TC79-52 *et seg.*]

[FR Doc. 79-12936 Filed 4-26-79; 8:45 am]

BILLING CODE 6450-01-M

Texas Eastern Transmission Corp.; Filing of Pipeline Refund Reports and Refund Plans

April 19, 1979.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before May 8, 1979. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix

Filing date	Company	Docket No.	Type filing
Jan. 15, 1979	Texas Eastern	AR64-2, *et al*	Plan.
Mar. 28, 1979	Texas Gas	G-18886	Report.
Mar. 30, 1979	United Gas	RP60-2	Report.
Apr. 9, 1979	Lawrenceburg	RP78-37	Report.

[Docket Nos. AR64-2, *et al.*]

[FR Doc. 79-12935 Filed 4-26-79; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Objections Filed Week of April 2 Through April 6, 1979

Notice is hereby given that during the week of April 2 through April 6, 1979 the Notice of Objection to a Proposed Remedial Order listed in the Appendix to this notice was filed with the Office of Hearings and Appeals of the Department of Energy.

On or before May 17, 1979, any person who wishes to participate in the proceeding which the Department of Energy will conduct concerning the Proposed Remedial Order described in the Appendix to this notice must file a request to participate, pursuant to 10 CFR 205.194 (44 Fed. Reg. 7926, February 7, 1979). On or before May 29, 1979, the Office of Hearings and Appeals will determine those persons who may participate on an active basis in this proceeding, and will prepare an official service list which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown. All requests regarding this proceeding shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Issued in Washington, D.C., April 23, 1979.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

Earl E. Wall, New Orleans, Louisiana—DRO-0188, crude oil.

On April 5, 1979, Earl E. Wall filed a Notice of Objection to a Proposed Remedial Order which the DOE Southwest Enforcement District issued to him on March 19, 1979. In the Proposed Remedial Order, the Enforcement District office found that during the period September 1973 through October 1976, Earl E. Wall sold crude oil produced from certain properties in Louisiana at prices which were in excess of the ceiling price levels specified in 10 CFR Part 212. According to the Proposed Remedial Order, Earl E. Wall's violations of the provisions of 10 CFR, Part 212 resulted in overcharges to his customers of $496,484.43.

[FR Doc. 79-13110 Filed 4-26-79; 8:45 am]

BILLING CODE 6450-01-M

Objection Filed; Week of April 9 Through April 13, 1979

Notice is hereby given that during the week of April 9 through April 13, 1979, the Notice of Objection to a Proposed Remedial Order listed in the Appendix to this notice was filed with the Office of Hearings and Appeals of the Department of Energy.

On or before May 17, 1979, any person who wishes to participate in the proceeding which the Department of Energy will conduct concerning the Proposed Remedial Order described in the Appendix to this notice must file a request to participate, pursuant to 10 CFR 205.194 (44 FR 7926, February 7, 1979). On or before May 29, 1979, the Office of Hearings and Appeals will determine those persons who may participate on an active basis in this proceeding, and will prepare an official service list which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown. All requests regarding this proceeding shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Issued in Washington, D.C., April 23, 1979.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

Brock Exploration Corporation, New Orleans, Louisiana; Freeport Oil Company, Midland, Texas—DRO-0190, crude oil.

On April 9, 1979, Freeport Oil Company, P.O. Box 3038, Midland, Texas 79701, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southwest Enforcement District issued to its predecessor in interest, Freeport Minerals Company (Freeport Minerals) and to Brock Exploration Corporation (Brock), on March 19, 1979. In the Proposed Remedial Order, the Enforcement District found that during the time period September 1, 1973 through December 31, 1975, Brock and Freeport Minerals committed pricing violations in the State of Louisiana in connection with the production and sale of crude oil. According to the Proposed Remedial Order, Brock and Freeport Mineral Company's violations resulted in overcharges to its customers of $456,444.91.

[FR Doc. 79-13111 Filed 4-26-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Amendment to Experimental Use Permit Issued to Elanco Products Co.

On Friday, August 25, 1978 (43 FR 38085), information appeared pertaining to the issuance of an experimental use permit, No. 1471-EUP-60 to Elanco Products Co. At the request of the company, that permit has been amended. The experimental use permit allows the use of the remaining supply of 210 pounds (the amount previously authorized) of the fungicide tricyclazole on rice to evaluate control of rice blast disease. A total of 200 acres is involved; the program is authorized only in the States of Arkansas, Louisiana, Mississippi, and Texas. The experimental use permit period is also extended, and the permit is now effective from May 26, 1978 to August 21, 1979. A temporary tolerance for residues of the active ingredient in or on rice has been established. This permit is being issued with the limitation that all treated rice straw is to be destroyed or used for research purposes only. (PM-21, Room: E-305, Telephone: 202/755-2562)

(Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136))

Dated: April 18, 1979.

Douglas D. Campt,

Acting Director, Registration Division.

[FRL 1211-3; OPP-50378A]

[FR Doc. 79-13022 Filed 4-26-79; 8:45 am]

BILLING CODE 6560-01-M

Amendment to Experimental Use Permit Issued to Lowden, Inc.

On Thursday, June 3, 1976 (41 FR 22413), information appeared pertaining to the issuance of an experimental use permit, No. 23614-EUP-1, to Lowden, Inc. At the request of the company, that permit has been amended. The experimental use permit allows the use of 10 pounds (the amount previously authorized) of the fungicide nystatin on elm trees to evaluate control of Dutch elm disease on approximately 35 trees in the States of Maryland, Massachusetts, Nebraska, New Hampshire, and Rhode Island. The experimental use permit period is also extended and the permit is now effective from May 12, 1979 to May 30, 1980. (PM-21, Room: E-305, Telephone: 202/755-2562)

(Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136))

Dated: April 18, 1979.

Douglas D. Campt,

Acting Director, Registration Division.

[FRL 1211-4; OPP-50160A]

[FR Doc. 79-13021 Filed 4-26-79; 8:45 am]

BILLING CODE 6560-01-M

Notice of Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review, Environmental Protection Agency.

PURPOSE: This Notice lists the Environmental Impact Statements which have been officially filed with the EPA and distributed to Federal Agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of April 16 to April 20, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from April 27, 1979 and will end on June 11, 1979. The 30-day wait period for final EIS's will be computed from the date of receipt by EPA and commenting parties.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathi Weaver Wilson, Office of Environmental Review A-104, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 755-0780.

SUMMARY OF NOTICE: Appendix I sets forth a list of EIS's filed with EPA during the week of April 16 to april 20, 1979, the Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number if available. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period or a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and County(ies) of the EIS, the date EPA announced availability of the EIS in the **Federal Register** and the extended date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous Notices of Availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agencies.

Appendix V sets forth a list of reports or additional supplemental information on previously filed EIS's which have been made available to EPA by Federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

Dated: April 24, 1979.

William N. Hedeman, Jr.,

Director, Office of Environmental Review.

Appendix I

EIS's Filed With EPA During the Week of April 16 to 20, 1979

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 412A, Washington, D.C. 20250, (202) 447-3965.

Soil Conservation Service

Draft

Blind Brook Watershed, flood control, Westchester County, N.Y.; Fairfield County, Conn., April 16: Proposed is a flood control project for the Blind Brook Watershed located in Westchester County, New York and Fairfield County, Connecticut, which has a drainage area of 6,980 acres. The plan provides for the installation of land treatment measures, two floodwater retarding structures, and four dikes. About 117 acres of land will be committed to the installation of structural measures and will become permanent grassland, concrete dikes, water, wetland, or will retain existing cover. (EIS order No. 90399.)

Forest Service

Final Supplement

Elk Summit Land Management Plan, revision (S–2), Idaho County, Idaho, April 20: This statement supplements an EIS issued in March 1975 concerning the Elk Summit Land Use Plan, Clearwater National Forest, located in Idaho County, Idaho. The issues of water quality, fisheries and wildlife were reviewed and reanalyzed and as a result the FS has determined that some changes were needed in the original land use plan and have proposed emphasis of several areas including timber production, wildlife habitat management, recreation, natural areas, and others. (USDA–FS–FES–ADM–R1–74–7) Comments made by: COE, AHP, DOE, DOI, EPA, State and local agencies, groups, individuals and businesses. (EIS order No. 90416.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy, Attn: DAEN–CWR–P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue, S.W., Washington, D.C. 20314, (202) 693–6795.

Draft Supplement

Big Pine Lake and Creek, regulatory exemption, Red River County, Tex., April 16: This statement supplements a final EIS (No. 51424) filed September 1975. Proposed for regulatory exemption is the placement of dredged or fill material into the waters of Big Pine Creek of Big Pine Lake located in Red River County, Texas. This action is in conjunction with the construction of Big Pine (earthen) Dam and the relocation of four sections of two county roads totaling approximately 2.9 miles. Fill material would be obtained from the flood plain of Big Pine Creek and from borrow areas in adjacent terrace deposits. (Tulsa District). (EIS order No. 90400.)

Baytown Flood Control, evacuate/relocate (DS–1), Harris County, Tex., April 20: This statement supplements a final EIS (No. 80911) filed August 1978. Proposed is the evacuation and relocation of all residents from the flood plain area of the city of Baytown, Harris County, Texas. The plan also involves removal of structures from the flood plain and deeding of the lands to the city of Baytown for management as a nature area or other passive uses. (Galveston District). (EIS order No. 90414.)

DEPARTMENT OF DEFENSE, ARMY

Contact: Col. Charles E. Sell, Chief of the Environmental Office, Headquarters DAEN–ZCE, Office of the Assistant Chief of Engineers, Department of the Army, Room 1E676, Pentagon, Washington, D.C. 20310, (202) 694–4269.

Draft

Fort Monroe base realignment, relocation, closure, York County, Va., April 19: Proposed is the relocation of Headquarters, U.S. Army Training and Doctrine Command (HQ TRADOC) from Fort Monroe, York County, Virginia to Fort Eustis, Virginia and the closure and excessing of Fort Monroe. Closure will not include facilities occupied by the Naval Surface Weapons Center and the 72d Tactical Control Flight. The purpose of this action is to reduce expenditures by consolidating Army activities. (EIS order No. 90406.)

DEPARTMENT OF ENERGY

Contact: Dr. Robert Stern, Acting Director, NEPA Affairs Division, Department of Energy, Mail Station E–201 GTN, Washington, DC 20545, (202) 376–5998.

Draft

Management of commercially generated radioactive waste, programmatic April 20: This is a generic statement concerning the management of commerically generated radioactive waste. The action involves the selection of an appropriate programmatic strategy leading to the permanent isolation of commercial radioactive wastes in a fashion that provides reasonable assurance of safe, permanent isolation of this material. The statement replaces a draft EIS (#41405) filed September 1974 by the Atomic Energy Commission. (EIS order No. 90415.)

Waste Isolation Pilot Plant, Construction, Eddy County, N. Mex., April 19: Proposed is the construction and operation of a waste isolation pilot plant for the defense transuranic nuclear wastes (TRU), experimental research and development with high level waste forms and for the potential disposal of up to a thousand spent fuel assemblies in an intermediate scale facility. The site under consideration is located in Eddy County, New Mexico. Seven alternative are considered which include: No action, alternatives to tru-waste disposal, alternatives for the intermediate-scale facility, alternative time schedules and potential alternative locations. (DOE/EIS–0026–D). (EIS order No. 90407.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. PHIL MYERS, Office of Drinking Water (WH–550), Environmental Protection Agency 401 M Street SW., Washington, D.C. 20460, (202) 426–3934.

EPA, Headquarters

Draft Supplement

State underground Injection Control Program (DS) Regulatory, April 16: this statement supplements a DEIS (No. 61338) filed September 1976. Proposed are new regluations concerning the State underground injection control program. These regulations set requirements for effective State programs to prevent underground injection of contaminated fluids which endanger sources of drinking water, revisions affect: permitting, monitoring, reporting, and control costs; area of review; existing enhanced recovery and hydrocarbon storage wells; geologic, hydrolic, and historical conditions; performance requirements of oil and gas wells; annular injection; cementing/sealing, and tubing/packing techniques; and permit issuance procedures. (EIS Order No. 90403)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Carl W. Penland, Acting Director, Environmental Affairs Division, General Services Administration, 18th and F Street NW., Washington, D.C. 20405, (202) 566–1416.

Draft

Hamilton Air Force Base, Disposition and use, Martin County, California, April 19: Proposed is the disposition of approximately 1653.5 fee acres and 258.6 acres of easements, permits and licenses, with associated facilities, on Hamilton Air Force Base, located in the City of Novato, Martin County, California. The alternatives address the following land uses: Aviation, commerical/industrial, residential, and public. Also considered is no action, and holding of the land by the Federal Government. (EIS Order No. 90408)

Lease Construction of Federal Building, Milwaukee, Milwaukee County, Wisconsin, April 16: Proposed is the lease of 327,000 occupiable square feet of space in a building which is to be constructed for GSA by a private developer in the City and County of Milwaukee, Wisconsin. Additionally, parking will be provided for 338 vehicles. The faciltity would provide replacement space for agencies presently housed in two federally owned building, and provide for the consolidation of agency activities housed in 11 widely scattered locations. (EWI–78001) (EIS Order No. 90398)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, room 7274, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, (202) 755–6306.

Final

Maryvale Terrace, Phoenix, Mortgage Insurance, Maricopa County, Arizona, April 16: Proposed is the Issuance of HUD Home Mortgage Insurance for the Maryvale Terrace Subdivision located in Phoenix, Maricopa County, Arizona. The project will encompass approximately 141 acres and consist of the development of 618 living units. Alternatives considered include: 1) no development, 2) increased density, 3) decreased density, and 4) recreational use. (HUD–R09–EIS–78–3F) Comments made by: AHP, USDA, COE, EPA, DOI, VA, State Agencies, Individuals. (EIS Order No. 90401.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, room 4256 Interior Building, Department of the Interior, Washington, D.C. 20240, (202) 343–3891.

Bureau of Land Management

Draft

Shoshone Area, Livestock Grazing Management program, several counties in Idaho, April 20: Proposed is a revised livestock grazing management program for the Bennett Hills, Timmerman Hills and Magic Planning Units, of the Shoshone grazing area district, located in the counties of Lincoln, Gooding, Elmore, Blaine, and Camas, Idaho. The plan involves rest-rotation and deferred-rotation grazing, along with minor annual spring use. Proposed initial livestock use in the area would be 38,138 animal unit months. Also included are water developments, pipelines, fencing, seeding, herbicide spraying, and burning. (DES–79–21) (EIS Order No. 90413.)

Bureau of Reclamation

Draft

Closed Basin Division, San Luis Valley Project, Alamosa and Saguache Counties, Colorado, April 19: Proposed is a multiple-purpose water resource project for the Closed Basin Division of the San Luis Valley Project, located in Alamosa and Saguache Counties, Colorado. The project will deliver water to the Rio Grande River which is removed by evaporative processes from the Closed Basin. Project features consist of: 95 to 165 production wells, laterals, electric transmission facilities, conveyance channel, and miscellaneous structures. The project will also include the establishment of the Mishak National Wildlife Refuge (NWR), delivery of water to the Alamosa NWR, stabilization of the San Luis Lake water level, and recreational facilities at San Luis Lake. (DES–79–20) (EIS Order No. 90409.)

NUCLEAR REGULATORY COMMISSION

Contact: John B. Martin, Director, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Draft

Uranium Milling, Generic Statement, Programmatic: April 20: This is a generic EIS concerning uranium milling which examines associated problems for the purpose of future regulatory changes. To be proposed as a result of this analysis. The problems examined include controlling emissions from mills during operations and the problem of mill decommissioning. The latter includes the special problem of dealing with the large volume wastes (mill tailing) produced by milling operations. (NUREG–0511) (EIS Order No. 90412.)

TENNESSEE VALLEY AUTHORITY

Contact: Dr. Harry G. Moore, Jr., Acting Director, Division of Environmental Planning, Tennessee Valley Authority, 268 401 Building, Chattanooga, Tennessee 37401, (615) 755–3161 FTS 854–3161.

Draft

Melton Hill Reservoir, sale of permanent easement, Anderson County, Tennessee, April 17: Proposed is the granting for sale of a 64 acre, permanent industrial easement on Melton Hill Reservoir in Anderson County, Tennessee. The easement would enable the contruction and operation of a rail to barge regional coal-loading facility. Operation would involve the movement of coal from local and regional coal fields by rail to the facility where it would be loaded onto barges for further movement. Truck off-loading facilities would be available for emergencies. (EIS Order No. 90404.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, (202) 426–4357.

Federal Aviation Administration

Draft

Airport and Airway Improvement/Revenue Acts, 1979, Legislative, April 20: Proposed for submission to Congress is a draft bill which contains three titles. Title I replaces the Airport and Airway Development Act of 1970 and provides authorization for airport and airway development and planning for 1981 through 1985. Title II amends the Internal Revenue Code and the Airport and Airway Revenue Act of 1970 to continue the airport and airway trust fund and the aviation user taxes; and modifies the existing tax on aviation fuel and assesses a new tax on the sale of new aircraft and avionics for use in noncommercial aviation. Title III contains miscellaneous amendments to the Federal Aviation Act of 1958 and the Airport and Airway Development Act of 1970. (EIS Order No. 9041.

Federal Highway Administration

Draft

TN–34, TN–137 to Bluff City Bypass, Improvement, Washington and Sullivan Counties, Tennessee, April 18: Proposed is improvement of a segment of TN–34 from TN–137 in Johnson City, Washington County to Bluff City Bypass, Sullivan County located within the State of Tennessee, for a distance of approximately nine miles. At the Johnson City end of the improvement, two alternate alignments on new location are being considered. Throughout the rural portion of the project widening of the existing two-lane roadway to four-lane facility is proposed. A new structure over the Watauga River will be part of the improvement. (FHWA–TN—EIS–78–02–D) (EIS Order No. 90405.)

Final

OH–7 and Belmont County Road 46, relocation, Belmont County, Ohio, April 20: Proposed is the relocation and improvement of 2.3 miles of OH–7 in Belmont County, Ohio. The project begins near the south corporation line of Shadyside and ends near the south corporation line of Belaire. This project will involve the construction of a new 4-lane pavement on new location with limited access through the urban area of Shadyside, Ohio, by-passing the central business district of the city. The relocation and improvement of Belmont County Road 46 for a relocation length of 0.83 miles is also included in the project. (FHWA–OHIO–76–05–F). Comments made by: DOI, HUD, USDA, EPA, State and local agencies. (EIS Order No. 90417.)

US 7, Manchester and Dorset, construction, Bennington County, Vermont, April 16: The proposed action consists of the construction of a section of US 7 in the towns of Manchester and Dorset, Bennington County, Vermont. The highway will be two-lane on four-lane right-of-way with fully controlled access. The project begins at just south of VT–11 and about 1.4 miles easterly of the US 7/VT–11 intersection in Manchester center extending northerly to existing US 7 north of the Manchester-Dorset town line. (FHWA–VT–EIS–78–03–F.) Comments made by: DOT, HUD, EPA, DOI, COE, State and local agencies. (EIS Order No. 90402.)

VETERANS ADMINISTRATION

Contact: Mr. Willard Sitler, Director, Environmental Affairs Office (66), Veterans Administration, 810 Vermont Avenue, Washington, D.C. 20420, (202) 389–2526.

Draft

Oklahoma City VA Medical Center, addition, Canadian and Cleveland Counties, Oklahoma, April 20: Proposed is the construction of a new clinical addition to the VA Medical Center in Oklahoma City which includes portions of Canadian, Cleveland, and Oklahoma Counties, Oklahoma. Seismic deficiencies will also be corrected in portions of the medical center. The addition will provide expanded facilities for ambulatory care, clinical and administrative services, radiology, nuclear medicine, laboratory, cardiac catheterization, nursing education, canteen service, and pharmacy. New ambulance entrances will be constructed. (EIS Order No. 90410.)

EIS's Filed During the Week of April 16 to 20, 1979

[Statement Title Index—By State and County]

State	County	Status	Statement title	Accession No.	Date filed	Orig. Agency No.
Arizona	Maricopa	Final	Maryvale Terrace, Phoenix, Mortgage Insurance	90401	04-16-79	HUD.
California	Marin	Draft	Hamilton Air Force Base, Disposition and Use	90408	04-19-79	GSA.
Colorado	Alamosa	Draft	Closed Basin Division, San Luis Valley Project	90409	04-19-79	DOI.
	Saguache	Draft	Closed Basin Division, San Luis Valley Project	90409	04-19-79	DOI.
Connecticut		Draft	Blind Brook Watershed, Flood Control	90399	04-16-79	USDA.
Idaho	Several	Draft	Shoshone Area, Livestock Grazing Mgmt. Program	90413	04-20-79	DOI.
	Idaho	Supple	Elk Summit Land Management Plan, Revision (S-2)	90416	04-20-79	USDA.
Legislative		Draft	Airport and Airway Improvement/Revenue Acts, 1979.	90411	04-20-79	DOT.
Programmatic		Draft	Uranium Milling, Generic Statement	90412	04-20-79	NRC.
		Draft	Mgmt. of Commercially Generated Radioactive Waste.	90415	04-20-79	DOE.
New Mexico	Eddy	Draft	Waste Isolation Pilot Plant, Construction	90407	04-19-79	DOE.
New York		Draft	Blind Brook Watershed, Flood Control	90399	04-16-79	USDA.
Ohio	Belmont	Final	OH-7 and Belmont County Road 46, Relocation	90417	04-20-79	DOT.
Oklahoma	Canadian	Draft	Oklahoma City VA Medical Center, Addition	90410	04-20-79	VA.
	Cleveland	Draft	Oklahoma City VA Medical Center, Addition	90410	04-20-79	VA.
	Oklahoma	Draft	Oklahoma City VA Medical Center, Addition	90410	04-20-79	VA.
Regulatory		Supple	State Underground Injection Control Program (DS)	90403	04-16-79	EPA.
Tennessee	Anderson	Draft	Melton Hill Reservoir, Sale of Permanent Easement	90404	04-17-79	TVA.
	Sullivan	Draft	TN-34, TN-137 to Bluff City Bypass, Improvement	90405	04-18-79	DOT.
	Washington	Draft	TN-34, TN-137 to Bluff City Bypass, Improvement	90405	04-18-79	DOT.
Texas	Harris	Supple	Baytown Flood Control, Evacuate/Relocate (DS-1)	90414	04-20-79	COE.
	Red River	Supple	Big Pine Lake and Creek, Regulatory Exemption	90400	04-16-79	COE.
Vermont	Bennington	Final	US 7, Manchester and Dorset, Construction	90402	04-16-79	DOT.
Virginia	York	Draft	Fort Monroe Base Realignment, Relocation, Closure.	90406	04-19-79	USA.
Wisconsin	Milwaukee	Draft	Lease Construction of Federal Building, Milwaukee	90398	04-16-79	GSA.

Appendix II.—Extension/Waiver of Review Periods on EIS's Filed With EPA

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Waiver/ extension	Date review terminates
TENNESSEE VALLEY AUTHORITY					
Dr. Harry G. Moore, Jr., Acting Director, Division of Environmental Planning, Tennessee Valley Authority, 268 401 Building, Chattanooga, Tennessee 37401 (615) 755-3161, FTS 854-3161.	Mallard-Fox Creek area development and use.	Draft 90284	03/26/79	Extension	05/14/79
NUCLEAR REGULATORY COMMISSION					
Mr. John B. Martin, Director, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.	Uranium milling, generic	Draft 90412	04/27/79 (see appendix I).	Extension	07/26/79

Appendix III.—EIS's Filed With EPA Which Have Been Officially Withdrawn by the Originating Agency

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Date of withdrawal
DEPARTMENT OF ENERGY				
Dr. Robert Stern, Acting Director, NEPA Affairs Division, Department of Energy, Mail Station E-201 GTN, Washington, D.C. 20545 (202) 376-5998.	Commercial high-level, transuranium—contaminated wastes.	Draft 41405	Filed 09/05/74	April 1975
		This DEIS was originally filed by the Atomic Energy Commission in September 1974 and has since been withdrawn by the Energy Research and Development Adminstration in April 1975. The Department of Energy has filed a new DEIS (#90415) on April 20, 1979 (see Appendix I of this report).		

Appendix IV.—Notice of Official Retraction

Federal agency contact	Title of EIS	Status/number	Date notice published in "Federal Register"	Reason for retraction
None.				

Appendix V.—Availability of Reports/Additional Information Relating to EIS's Previously Filed With EPA

Federal agency contact	Title of report	Date made available to EPA	Accession No.
None.			

Appendix VI.—Official Correction

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Correction
None.				

[FRL 1212-1]
[FR Doc. 79-13107 Filed 4-26-79; 8:45 am]
BILLING CODE 6560-01-M

Michigan and Washington State Departments of Agriculture; Specific Exemptions To Use Triforine To Control Mummyberry on Blueberries

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Issuance of a specific exemption.

SUMMARY: EPA has issued specific exemptions to the Michigan and Washington State Departments of Agriculture (hereafter referred to by State individually or as the "Applicants" collectively) to use triforine (Funginex EC) to control mummyberry on 3,000 acres of blueberries in Michigan and 700 acres in Washington. The specific exemptions end on July 30, 1979.

FOR FURTHER INFORMATION CONTACT: Emergency Response Section, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Room E-315, Washington, D.C. 20460, Telephone: 202/755-4851.

SUPPLEMENTARY INFORMATION: Mummyberry is caused by the fungus *Monilinia vaccinii corymbosi*. Primary infection by ascospores takes place early in the spring just as the leaf and flower buds begin to grow. These ascospores are released from spore cups that develop from mummified fruit. Spore cup emergence coincides with the emergence of the young susceptible tissues of the plant.

Mummies are a result of the disease from the previous crop and have overwintered on or near the surface of the soil beneath the bushes. Infected blossoms and leaves turn brown and wither as a result of these primary infections. The fungus then produces a second spore type on these infected tissues. These are blown onto remaining blossoms where secondary infection takes place on the developing pistil of the flowers. These flower infections remain undetected until the fruit begins to enlarge. The infected fruit turns off-color and usually drops to the ground before healthy berries mature. These mummified fruits persist through the winter and act as a source of the fungus for the primary infection the following spring.

Currently there are four fungicides registered for the control of the primary infection stage: Benomyl, Captan, Ferbam, and Ziram. The Applicants submitted data which indicated that these fungicides are relatively ineffective in controlling primary infections of this disease. Cultural practices have also not been successful in commercial planting. However, triforine (N,N-[1,4-piperazinediylbis (2,2,2-trichloroethylidene)]-bis-[formamide]) appeared to be efficacious in suppressing this pathogen. Triforine is registered in the United States under the trade name Funginex EC. It was estimated by Michigan that the economic loss from shoot damage and fruit loss might be as much as $575,000 in that State, and by Washington that losses could reach a value of $600,000 in that State, if an effective fungicide was not available this growing season.

The Applicants proposed to use Funginex EC at a maximum rate of 0.316 pound active ingredient (a.i.) in Michigan, and 0.3 pound a.i. in Washington per acre, in a maximum of five applications. EPA has determined that residues of triforine from this use should not exceed 0.1 part per million (ppm). This level has been deemed adequate to protect the public health. Based on the low toxicity, short half-life, and low application rate, no serious hazards to fish and wildlife are expected.

After reviewing the applications and other available information, EPA has determined that (a) a pest outbreak of *Monilinia* mummyberry is likely to occur this year on blueberries in Michigan and Washington; (b) there is no effective pesticide presently registered and available for use to control this pest in these States; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the pest is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicants have been granted specific exemptions to use the pesticide noted above until July 30, 1979, to the extent and in the manner set forth in the applications. The specific exemptions are subject to the following conditions:

1. The product Funginex EC, EPA Reg. No. 21137-4, may be applied;

2. The total acreage treated in Michigan will not exceed 3,000 acres. The total acreage treated in Washington will not exceed 700 acres;

3. Ground or aerial application may be made in Michigan, triforine will be applied at a rate of 24 ounces of formulation (0.316 pound a.i.) per acre for four treatments and a fifth application will be made at 16 ounces formulation per acre. In Washington, triforine will be applied at a rate of 0.3 pound a.i. per acre in sufficient water for coverage by ground. If applied by air, triforine will be applied at a rate of 0.3 pounds a.i. in a minimum of five gallons of water per acre;

4. A maximum of five applications may be made. The first application may be made at bud break. Thereafter, application may be made at seven-to ten-day intervals, with the last application at full bloom;

5. In Michigan a maximum of 2,625 gallons Funginex may be used. In Washington, a maximum of 656 gallons may be used;

6. If applied by aircraft, precautions will be taken to avoid or minimize spray drift to non-target areas;

7. A minimum of 40 days will elapse between the last application of triforine and harvest;

8. Applications of this pesticide will be made licensed commercial applicators or State-certified private applicators. Information pertaining to timing, rates, and procedures will be

made available to the applicators through the respective University Extension Services;

9. Harvested blueberries with a triforine residue level not exceeding 0.1 ppm may enter into interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

10. All applicable directions, restrictions, and precautions on the product label must be followed;

11. The EPA will be immediately informed of any adverse effects resulting from the use of triforine in connection with these exemptions and;

12. Michigan and Washington are each responsible for assuring that all of the provisions of its specific exemption are met and must submit a report summarizing the results of its program by October 30, 1979.

(Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136))

Dated: April 19, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[OPP-18023; FRL 1210-2]

[FR Doc. 79-13025 Filed 4-26-79; 8:45 am]

BILLING CODE 6560-01-M

Grants for Construction of Treatment Works; Class Deviation

Under authority of 40 CFR 30.1000, EPA has issued a class deviation from the provisions of 40 CFR 30.615-1(a) and 40 CFR 35.945 for construction grant projects awarded under section 201 of the Clean Water Act.

Section 203(b) of the Clean Water Act, the EPA General Grant regulations in 40 CFR 30.615-1(a) and EPA construction Grant regulations in 40 CFR 35.945 require that EPA make construction grant payments on a reimbursement basis. The Uniform Relocation Assistance and Real Property Acquisition Policy Act regulations in 40 CFR Part 4 provide that if it is necessary for the expeditious completion of a program or project, EPA may make advance payments for its share of the cost of relocation assistance. An EPA General Counsel opinion of December 5, 1978, advised that the Clean Water Act was never intended to restrict advance payment of relocation costs associated with a construction project.

On February 15, 1979, EPA approved a class deviation from 40 CFR 30.615-1(a) and 40 CFR 35.945 to allow the Regional Administrator to exercise discretion to make advance payments of relocation assistance costs to a construction grantee under 40 CFR 4.502(c).

Under our policy to publish class deviations in the **Federal Register**, EPA is publishing the deviation as part of this Notice. The provisions of the deviation will be incorporated in the next revision to 40 CFR Parts 30 and 35.

For further information contact: Mr. Alexander J. Greene, Director, Grants Administrator Division (PM-216), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 (Tel. No. 202/755-0850).

Dated: April 17, 1979.

C. W. Carter,

Acting Assistant Administrator for Planning and Management.

Date: February 15, 1979.

Subject: Class Deviation from 40 CFR 30.615-1(a) and 35.945, Advance Payment of Relocation Assistance Under the Construction Grants Program.

From: Alexander J. Greene, Director Grants Administration Division (PM-216).

To: Regional Administrators.

40 CFR 30.615-1(a) and 35.945 provide that payment for waste treatment construction grants will be on a reimbursement basis. 40 CFR 4.502(c) provides in part that if the Administrator determines it is necessary for the expeditious completion of a program or project, he may advance the EPA share of the cost of any payment of relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

Action

I am approving a limited class deviation from 40 CFR 30.615-1(a) and 35.945 for the construction grants program. This approval allows the Regional Administrators to exercise discretion to make advance payments of relocation assistance costs to a construction grantee under section 4.502(c).

Background

An Office of General Counsel opinion of December 5, 1978, advises us that section 203(b) of the Clean Water Act was never intended to restrict advance payment of relocation costs associated with a construction project. While relocation costs are not traditionally thought of as construction costs, so long as compliance with the Act is required by all Federal agencies, there is nothing in the Clean Water Act which prohibits advance payments of relocation costs.

When EPA makes advance payments for relocation costs, 40 CFR 30.615-1(b) and (d) will apply. The provision of this deviation will be incorporated in the next revision to 40 CFR Parts 30 and 35.

Dated: February 16, 1979.

Concur:

C. W. Carter for William Drayton, Jr.

Dated: February 5, 1979.

Concur:

Thomas Jorling.

cc: *Water Division Directors, Management Division Directors, Grants Administration Offices.*

[FRL 1211-2]

[FR Doc. 79-13023 Filed 4-26-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL MARITIME COMMISSION

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to Section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 100 L Street, N.W., Room 10126; or may inspect the agreement at the field Offices located at New York, N.Y., New Orleans, Louisiana, San Franscisco, California, and San Juan, Puerto, Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before May 7, 1979. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination of unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularily. If a violation of the Act or detriment to the Commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or deteriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Agreement No. 9901-11.

Filing Party: Edward Schmeltzer, Esquire, Schmeltzer, Aptaker & Sheppard, P.C., 1800 Massachusetts Avenue N.W., Washington, D.C. 20036.

Summary: Agreement No. 9902-11, by and among Hapag-Lloyd Aktiengesellschaft (Hapag-Lloyd),

Compagnie Generale Maritime (CGM), and Intercontinental Transporat (ICT) B.V. (ICT), amends the basic joint service agreement of Hapag-Lloyd and CGM, operating under the trade name of "Euro-Pacific Joint Service" in the trade, generally, between ports on the Pacific Coast of the United States and parts in the United Kingdom, Scandinavia and Continental Europe, by providing for the participation ICT as a party to the joint service. All deposits, costs, expenses, profits, and losses incurred by the derived from the joint service shall be shared as follows: Hapag-Lloyd, 50 percent; CGM, 30 percent; and ICT, 20 percent.

Further, the amendment provides that CGM and ICT shall appoint agents to represent their interests, and Hapag-Lloyd shall appoint separate agents to represent its interest, in which event the respective agents shall each be allocated one-half of the space available on each sailing of the joint service.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 79-13088 Filed 4-26-79; 8:45 am]

BILLING CODE 6730-01-M

Astro Maritime Agency, Inc.; Independent Ocean Freight Forwarder License No. 2057; Vacating Revocation

By Decision served July 24, 1978, in Docket No. 77-53, *Licensing of Independent Ocean Freight Forwarders* (Federal Register Vol. 43, No. 146, P. 32776, July 28, 1978), the Federal Maritime Commission amended its General Order 4 (46 CFR 510) to require all licensed independent ocean freight forwarders to file with the Commission a surety bond in the amount of $30,000. Previously, a bond in the amount of $10,000 was required. The Order stated that if a licensee failed to file a bond in the increased amount on or before December 1, 1978, the license shall be revoked in accordance with Rule 510.9 of General Order 4.

Following the Order of July 24, 1978, the Commission published a Notice of Revocation in the **Federal Register** on January 3, 1979, which identified various-named licensees which had failed to file the required surety bond within the period specified, and in accordance with the terms of that Order, the licenses held by those identified parties were revoked.

After December 1, 1978, Astro Maritime Agency, Inc. obtained a valid surety bond with an effective date on or before December 1, 1978, in accordance with the Commission's Order of July 24, 1978. Substantive compliance with the Commission's new bonding requirement has been achieved. The licensee has now evidenced continuous coverage and has met the new $30,000 minimum amount. Therefore, the revocation and the Notice of Revocation as it pertains to Astro Maritime Agency, Inc. (FMC 2057) is vacated based upon the newly discovered evidence that the new $30,000 bond has been in effect from December 1, 1978.

A copy of this Notice Vacating Revocation shall be published in the **Federal Register** and served upon the licensee.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 79-13089 Filed 4-26-79; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of 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):

Glacier Bay Lodge, Inc., Suite 312, Park Place Building, Seattle, Washington 98101.

Dated: April 24, 1979.

Francis C. Hurney,

Secretary.

[FR Doc. 79-13087 Filed 4-26-79; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Austin Bancshares Corp.; Acquisition of Bank

Austin Bancshares Corporation, Austin, Texas, has applied for the Board's approval under Section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of Austin National Bank Northwest, Austin, Texas, a proposed *de novo* bank. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than May 18, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, April 19, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-13011 Filed 4-26-79; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in

writing and received by the appropriate Federal Reserve Bank not later than May 21, 1979.

A. *Federal Reserve Bank of San Francisco,* 400 Sansome Street, San Francisco, California 94120:

Rainier Bancorporation, Seattle, Washington (finance, leasing, and insurance activities; Washington): to engage, through its subsidiary, Rainier Credit Company, in making or acquiring loans and other extensions of credit, including making consumer installment loans, purchashing consumer installment sales finance contracts, and making loans to small businesses; leasing personal property and equipment, or acting as agent, broker, or advisor in such leasing in accordance with the Board's Regulation Y; and acting as agent or broker with regard to life, disability, and property and casualty insurance directly related to its extensions of credit. These activities would be conducted from an office in Vancouver, Washington, and the geographic area to be served is the southwestern portion of Washington.

B. *Other Federal reserve Banks:* None.

Board of Governors of the Federal Reserve System, April 20, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-13012 Filed 4-26-79; 8:45 am]

BILLING CODE 6210-01-M

European American Bancorp; Proposed Establishment of Foreign Branch

European American Bancorp, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to establish an office in Luxembourg of its subsidiary, European American Banking Corporation, New York, New York. Applicant states that the new office would engage in international banking activities in Luxembourg, principally making interbank Eurodollar and Eurocurrency placements and deposits, Eurodollar and Eurocurrency commercial loans, and foreign exchange transactions. Certain of these activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b), and others have not.

Interested persons may express their views on the question whether, the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than May 18, 1979.

Board of Governors of the Federal Reserve System, April 19, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-13013 Filed 4-26-79; 8:45 am]

BILLING CODE 6210-01-M

First National Bank Shares, Ltd.; Formation of Bank Holding Company

First National Bank Shares, Ltd., Great Bend, Kansas, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 61.4 percent or more of the voting shares of First National Bank and Trust Company, Great Bend, Kansas. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than May 16, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, April 16, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-13014 Filed 4-26-79; 8:45 am]

BILLING CODE 6210-01-M

First National Bancshares Corp.; Formation of Bank Holding Company

First National Bancshares Corporation, Lexington, Tennessee, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of The First National Bank of Lexington, Lexington, Tennessee. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than May 18, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, April 19, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-13015 Filed 4-26-79; 8:45 am]

BILLING CODE 6210-01-M

Independent Bank Corp.; Acquisition of Bank

Independent Bank Corporation, Ionia, Michigan, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3) to acquire 100 per cent of the voting shares of the successor by consolidation to the Olivet State Bank, Olivet, Michigan. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in

writing to the Reserve Bank to be received not later than May 21, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, April 19, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-13016 Filed 4-26-79; 8:45 am]

BILLING CODE 6210-01-M

Marshall County Bankshares, Inc.; Formation of Bank Holding Company

Marshall County Bankshares, Beattie, Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 86 per cent of the voting shares (less directors' qualifying shares) of First National Bank, Beattie, Kansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than May 17, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, April 17, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-13017 Filed 4-26-79; 8:45 am]

BILLING CODE 6210-01-M

Pittsburgh National Corp.; Proposal To Engage De Novo in Insurance Activities

Pittsburgh National Corporation, Pittsburgh, Pennsylvania, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to engage in the underwriting, on a reinsurance basis, of credit life and credit accident and health insurance sold in connection with extensions of credit by Applicant's subsidiary, Pittsburgh National Bank, Jeannette, Pennsylvania. These activities would be performed from offices of Applicants' subsidiary, Pittsburgh National Life Insurance Company, Phoenix, Arizona, and the geographic areas to be served are the following six counties in Pennsylvania: Westmoreland, Allegheny, Washington, Fayette, Indiana and Butler Counties. Such activity has been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than May 14, 1979.

Board of Governors of the Federal Reserve System, April 18, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-13018 Filed 4-26-79; 8:45 am]

BILLING CODE 6210-01-M

Request for Comments on Federal Reserve Handling of Noninterest Bearing Negotiable Orders of Withdrawal (NINOWs) and Other "Check-like" Payment Instruments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comments on Federal Reserve handling of noninterest bearing negotiable orders of withdrawal (NINOWs) and other "check-like" payment instruments.

SUMMARY STATEMENT: The Board of Governors is considering two questions involving the handling of new "check-like" payments instruments in the Federal Reserve's check collection process. These questions are: (1) should Federal Reserve Banks continue to collect, as cash items, noninterest bearing negotiable orders of withdrawal ("NINOWs"), and (2) what other types of payments instruments should be handled by the Federal Reserve's collection system. These questions address the same policy issues concerning the appropriateness of the System's handling, as cash items, increasing numbers and varieties of hybrid "check-like" payment instruments whose legal characteristics vary from those of traditional checks. The Board has invited public comment on these questions by June 1, 1979.

DATE: Comments must be received on or before June 1, 1979.

ADDRESS: Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All materials submitted should refer to docket number R-0220.

FOR FURTHER INFORMATION CONTACT: Allen L. Raiken, Associate General Council ((202) 452-3625); or Lee S. Adams, Senior Attorney ((202) 452-3594), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Board of Governors is reviewing the current practice of the Federal Reserve System to collect, as cash items, noninterest-bearing negotiable orders of withdrawal ("NINOWs") payment instruments that are drawn on mutual savings banks in the State of Pennsylvania. This review has been made necessary because the Supreme Court of Pennsylvania in 1978 ruled that NINOWs in their present form are not payable on demand and hence are not checks within the Uniform Commercial Code definition *(Pennsylvania Bankers Association* v. *Secretary of Banking,* (October 5, 1978)).

Because the Board's definition of cash item in Regulation J (12 CFR 210.2(i)(2)) requires that cash items be checks or other items payable on demand, this definition, unless amended, would not permit Reserve Banks to continue to handle NINOW instruments as cash items. Before reaching a decision on

whether or not to amend Regulation J, the Board believes that it will be helpful to receive comments from interested parties on whether such an amendment, which would permit the continued handling of NINOWs by the Federal Reserve System, would be in the public interest and consistent with the Federal Reserve's responsibilities for ensuring an efficient payment system.

Reserve Banks have been handling NINOW instruments as cash items since regulations were issued in 1977 by the Pennsylvania Secretary of Banking that permitted State-chartered mutual savings banks to offer NINOWs to their depositors. That State's regulations require that NINOW instruments bear on their face a legend stating that the mutual savings bank reserves the right to require not less than 14 days' prior withdrawal notice before paying the instrument. In determining that the Secretary of Banking had authority to issue this regulation, the Supreme Court of Pennsylvania recently stated that because of this legend, a NINOW "is obviously not 'payable on demand' and hence not a check within the Uniform Commercial Code definition." Under commercial law, therefore, NINOWs would be considered time drafts rather than demand drafts.

The Board has been requested to consider whether Reserve Banks should continue handling these instruments as cash items. If it is determined that NINOW instruments should be collected through Federal Reserve facilities, Regulation J must be amended. Such an amendment could provide that a Federal Reserve Bank is authorized to accord cash item treatment to any payment instrument that is determined to have characteristics consistent with treatment as a cash item.

Such an amendment raises broad issues concerning the types of payments instruments which should be handled by the Federal Reserve's payments collection system. It is likely that, in the future, additional variations of traditional checks and drafts will be made available to the public, and thus it is expected that questions also will be raised whether the Federal Reserve System's "cash item" collection mechanism should accommodate these instruments. For example, the Federal Home Loan Bank Board has proposed, 43 FR 52254 (November 9, 1978), to allow Federal savings and loan associations to permit customers to issue nonnegotiable nontransferable orders for payment. A payment instrument is "negotiable" if it provides "holder in due course" status upon transfer, and "transferability" refers to the assignment of rights in the instrument. While an amendment to Regulation J would be necessary to permit handling of NINOW drafts, such an amendment may not be required to permit the handling of the proposed savings and loan payment order provided such instruments are payable on demand.

The permissibility and appropriateness of such items being handled through the Federal Reserve System have already been the subject of discussion between the staffs of the two agencies. While an amendment to Regulation J to permit handling of NINOW drafts would not necessarily address the Federal Home Loan Bank Board proposal, since no amendment may be required, the Board wishes guidance on the extent to which the cash item definition in Regulation J should be amended or the Board's present policies should be broadened to permit handling of new payments instruments, some of which may be nonnegotiable or nontransferable.

The Board is cognizant of the problems of setting appropriate definitional parameters if Regulation J were changed to permit cash item handling of NINOWs or if payment orders were accorded cash item treatment. Thus the Board would appreciate comment on the scope of change desirable and the most logical point to draw the distinction between cash and noncash collection items.

The Board is also aware that NINOWs have obtained general public acceptance in Pennsylvania and the Federal Reserve System has not experienced any difficulties in providing its collection facilities for these instruments. The Board solicits comment from commercial banks whether they have experienced any difficulties in collecting NINOWs deposited with them and, if so, what is the nature of these difficulties. In addition, the Board wishes to know what possible future difficulties commercial banks might experience if NINOWs gain wide acceptance. It is recognized that a significant number of customers of mutual savings banks and others could be inconvenienced if NINOW instruments were less readily acceptable in the marketplace because they could no longer be collected through the Federal Reserve. The Board is concerned about the potential impact that a failure to amend Regulation J ultimately would have on consumers using NINOW instruments in Pennsylvania and therefore solicits comment on the public benefits that would occur if such an amendment were adopted to permit continued collection of these instruments. Comment is requested on the acceptance by the public of NINOWs for the payment of goods or services, and on the number of individuals who are using NINOWs as payment instruments.

The Board notes that NOW instruments authorized by Federal law, which are also subject to a notice of withdrawal, do not require any legend. Further, the legend itself may not be fully informative since in offering these instruments a mutal savings bank whose deposits are insured by the Federal Deposit Insurance Corporation must provide for a 30-day notice of withdrawal period, which is a greater restriction than the 14-day period required for NINOWs by State law and reflected in the legend on the instrument. Comment is requested on the consumer protection value that the notice of withdrawal legend serves. In addition, the Board solicits comment on the costs, if any, that would be experienced by financial institutions both in competition and risk exposure by the Federal Reserve continuing to handle these instruments as cash items. Commenters may also wish to address the likelihood of State action to remove the legend requirements and thus make unnecessary further Board consideration of an amendment to the cash item definition in Regulation J.

To aid the Board in its consideration of this matter, interested persons are invited to submit comments, views, or arguments. Any such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than June 1, 1979. Such material will be made available for inspection and copying upon request except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information.

Board of Governors of the Federal Reserve System, April 18, 1979.

Theodore E. Allison,

Secretary of the Board.

[Docket No. R-0220]

[FR Doc. 79-13010 Filed 4-26-79; 8:45 am]

BILLING CODE 6210-01-M

Shelbank, Corp.; Formation of Bank Holding Company

Shelbank, Corp., Sheldon, Missouri, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 85.73 percent or more of the voting shares of Sheldon State Bank, Sheldon, Missouri. The

factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than May 16, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of facts that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, April 18, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-13019 Filed 4-26-79; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

Pharmaceutical Reimbursement Board; Proposed MAC's and Announcement of Public Hearing

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Correction of Error.

SUMMARY: In FR document Vol. 44, No. 70, appearing in the **Federal Register** on April 10, 1979 at page 21367, an error occurred in the proposed maximum allowable cost (MAC) limit on penicillin G 400 mu tablets. The proposed limit should read $.0237 instead of $.0235.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Rodler, Executive Secretary, Pharmaceutical Reimbursement Board, 3076 Switzer Building, 330 C Street, S.W., Washington, D.C. 20201, 202-472-3820.

Dated: April 23, 1979.

Peter J. Rodler,

Executive Secretary, Pharmaceutical Reimbursement Board.

[FR Doc. 79-12998 Filed 4-26-79; 8:45 am]

BILLING CODE 4110-35-M

Office of the Assistant Secretary for Health

Select Panel for the Promotion of Child Health; Meeting

Notice is hereby given, pursuant to Pub. L. 92-463, that the Select Panel for the Promotion of Child Health, established pursuant to Section 211 of the Health Services and Centers Amendments of 1978 (Pub. L. 95-626), will meet on Thursday, May 3, at 9:00 a.m. in Room 607G1, on the sixth floor of the Hubert H. Humphrey Building, Third Street and Independence Avenue, S.W., Washington, D.C. The Panel has responsibility for the formulation of national goals with respect to the promotion of the health status of children and expectant mothers, the development of a comprehensive national plan for the achievement of these goals and otherwise promoting the health of children in the United States, and, the transmittal of a report to the Secretary and the Congress detailing the comprehensive national plan and recommendations for administrative, legislative, and other actions necessary to implement this plan and to otherwise promote the health of children in the United States. This first meeting of the Panel will be devoted to organizational matters and to planning the Panel's activities in carrying out the mandate contained in Pub. L. 95-626. Meetings of the Panel are open for public observation.

Scheduling considerations prevented the publication of this Notice in compliance with the normal requirements of Pub. L. 92-463.

Further information on the Panel may be obtained by contacting Thomas P. Reutershan, Acting Staff Director, Select Panel for the Promotion of Child Health, Room 731G, Hubert H. Humphrey Building, 300 Independence Avenue, S.W., Washington, D.C. 20201, telephone (202) 472-5588.

Dated: April 23, 1979.

Thomas P. Reutershan,

Acting Staff Director, Select Panel for the Promotion of Child Health.

[FR Doc. 79-13310 Filed 4-26-79; 8:45 am]

BILLING CODE 4110-85-M

Center for Disease Control

Workshop on Occupational Health Engineering Control Technology; Open Meeting

The following workshop will convened by the National Institute for Occupational Safety and Health of the Center for Disease Control and will be open to the public for observation and participation, limited only by the space available:

Date: May 16-17, 1979
Time: May 16, 8:15 a.m. to 5 p.m., May 17, 9 a.m. to 11:30 a.m.
Place: Room 5407D, Federal Building, 550 Main Street, Cincinnati, Ohio 45202.
Purpose: To discuss the needs for occupational health engineering training in universities.

Additional information may be obtained from:

Mr. Al Amendola, Division of Physical Sciences and Engineering, National Institute for Occupational Safety and Health, Center for Disease Control, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone: 513-684-4221.

Dated: April 23, 1979.

Robert L. Kaiser,

Acting Director, Center for Disease Control.

[FR Doc. 79-13076 Filed 4-26-79; 8:45 am]

BILLING CODE 4110-87-M

Food and Drug Administration

Chlortetracycline Soluble Powders; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency announces the effective indications for which chlortetracycline soluble powders for animal use may be marketed and proposes to withdraw approval of new animal drug applications (NADA's) for products labeled for conditions lacking substantial evidence of effectiveness. The agency is also providing an opportunity for hearing on the indications that lack such evidence.

DATES: Written appearances requesting a hearing, comments in response to this notice, and supplements to NADA's must be submitted by May 29, 1979; supporting data by June 26, 1979.

ADDRESSES: Written appearances requesting a hearing, and written comments, to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857; supplements to NADA's to the Division of Drugs for Swine and Minor Species (HFV-130), Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donald Gable, Bureau of Veterinary Medicine (HFV-100), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

SUPPLEMENTARY INFORMATION: Published elsewhere in this issue of the **Federal Register** is a proposal to amend § 546.110c *Chlortetracycline powder (chlortetracycline hydrochloride powder)* (21 CFR 546.110c) by deleting

the indications for use that lack substantial evidence of effectiveness. This document announces the effective indications for which chlortetracycline soluble powders may be marketed and provides an opportunity for hearing on the other indications.

A. The Drug

Generic name: Chlortetracyline, as bisulfate or hydrochloride.

Dosage form: Soluble powder.

The following companies either hold or have held effective approvals for products that were evaluated by the National Academy of Sciences/National Research Council (NAS/NRC) under the Drug Efficacy Study Implementation (DESI) or have marketed similar products that are covered by this notice:

NADA 55–020, Aureomycin Soluble Powder (chlortetracycline bisulfate); NADA 65–071, Aureomycin Soluble Powder (chlortetracycline hydrochloride); NADA 65–217, Aureomycin Soluble Powder (chlortetracycline bisulfate); NADA 65–440, Aureomycin Soluble Concentrate (chlortetracyline hydrochloride). American Cyanamid Co., P.O. Box 400, Princeton, NY 08540.

NADA 65–025, Chemichloro S (chlortetracycline soluble powder). Chemifer s.p.a., Milan, Italy (firm no longer in existence).

NADA 65–178, Chlortetracycline Hydrochloride Soluble Powder, Chlortetracycline Bisulfate Soluble Powder. Diamond Shamrock Corp., Nutrition & Health Division, 1100 Superior Ave., Cleveland, OH 44114.

NADA 65–096 (DESI–049), Tetra-Plus, and Vita Treet (vitaminized antibiotic formula containing chlortetracycline). Philips Roxane, Inc., 2621 North Belt Highway, St. Joseph, MO 64502.

NADA 65–253, Prochlor-S (chlortetracycline soluble powder). Pierrel America, Inc., 576 Fifth Ave., New York, NY 10036.

NAS–038, Purina Boost-R-Aid (chlortetracycline with vitamins soluble powder). Ralston Purina Co., Checkerboard Square, St. Louis, MO 63199.

NADA 65–077, Chlortetracycline Soluble Powder. Rhinecliff Labs., 723–733 E. Manchester Ave., Los Angeles, CA 90001 (firm no longer in existence).

NADA 65–256, Vi-Mycin (chlortetracycline hydrochloride soluble powder). Vineland Laboratories, Inc., Vineland, NJ 08360.

Under section 108(b)(2) of Pub. L. 90–399 (82 Stat. 353), the Animal Drug Amendments of 1968, any approval of a new animal drug granted prior to the effective date, whether through approval of a new drug application, master file, antibiotic regulation, or food additive regulation, continues in effect until withdrawn in accordance with the provisions of section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b). Many such approvals were made long ago and may never have been used by the holder of the approval. Consequently, the current Food and Drug Administration (FDA) files may be incomplete and may not reflect the existence of some approvals. Also, many approvals have been withdrawn by other agency actions. To permit definitive revocation or amendment of the regulations, the burden of coming forward with proof of an unnamed approval in such circumstances is therefore properly placed on the holder.

The director of the Bureau of Veterinary Medicine, FDA, knows of no approvals affected by this proposal other than those named herein. Any person who intends to assert or rely on such an approval that is not listed in this notice shall submit proof of its existence within the period allowed by this notice for opportunity to request a hearing. The failure of any person holding such a approval to submit proof of its existence within that period shall constitute a waiver of any right to assert or rely on it. If proof of the existence of such an approval is presented, this notice shall also constitute an notice of opportunity for hearing with respect to that approval, under the same requirements as to the approvals named in this notice.

B. Labeled Uses

In chickens: For prevention, control, and treatment of chronic respiratory disease (air sac infection) and blue comb (nonspecific infectious enteritis); for prevention and control of synovitis; for control of mortality due to fowl cholera.

In turkeys: For prevention, control, and treatment of blue comb (nonspecific infectious enteritis, mud fever); for prevention and treatment of infectious sinusitis and hexamitiasis; for prevention and control of synovitis.

In swine: For prevention, control, and treatment of bacterial enteritis; for prevention, control, and treatment of bacterial pneumonia.

In cattle: For treatment of bacterial diarrhea and shipping fever; for control and treatment of bacterial pneumonia and bacterial enteritis.

C. Background

1. *NAS/NRC review of chlortetracycline with vitamins for water medication.* In the **Federal Register** of June 20, 1970 (35 FR 10162, DESI 2–0038NV), FDA announced the conclusions of the NAS/NRC Drug Efficacy Study Group for Purina Boost-R-Aid (various vitamins with 5 grams (g) of chlortetracycline hydrochloride per pound) marketed by Ralston Purina Co. The product is intended for use in poultry drinking water for the prevention and treatment of certain respiratory diseases in chickens and turkeys under normal conditions and during periods of stress. The NAS/NRC concluded the product was probably not effective as an antibiotic-vitamin fortification for use in the presence of diseases during periods of stress such as chilling, moving, vaccination, and debeaking. The NAS/NRC stated:

(1) The effectiveness of the recommended dosage schedule has not been adequately documented;

(2) Administration of the drug via drinking water for severely ill animals is questioned;

(3) Information is needed to document the value of vitamins in the preparation;

(4) Dose response curves are needed for many of the recommended uses;

(5) Each disease claim should be qualified as "appropriate for use in (*name of disease*) caused by pathogens sensitive to (*name of drug*)." If the disease cannot be so qualified, the claim must be dropped;

(6) Claims made regarding "for prevention of" or "to prevent" should be replaced with "as an aid in the control of" or "to aid in the control of";

(7) The label should carry a warning statement that treated animals must actually consume enough medicated water to provide a therapeutic dose under the conditions that prevail and, as a precaution, state the desired oral dose per unit of animal weight per day for each species as a guide to effective use of the preparation in drinking water; and

(8) Substantial evidence was not presented to estalish that each ingredient designated as active makes a contribution to the total effect claimed for the drug combination.

FDA agreed with the NAS/NRC evalution and recommendations.

2. *NAS/NRC review of certain feed premixes containing chlortetracyline.* In the **Federal Register** of July 21, 1970 (35 FR 11646, DESI 0113NV), FDA announced the conclusions of the NAS/NRS Drug Efficacy Study Group on certain feed premixes containing chlortetracycline. In this review were several chlortetracycline soluble powders, including:

a. Aureomycin Soluble Powder, containing 25 g chlortetracycline hydrochloride per pound; marketed by American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540.

b. Nopco CTC 4/ss, containing 4 g chlortetracycline per pond and 50 percent sodium sulfate; originally

marketed by Nopco Chemical Co., Fine Chemicals Division, 60 Park Place, Newark, NJ 07111.

c. Nopco CTC 6.66/ss, containing 6.6 g chlortetracycline and 83.33 percent sodium sulfate; originally marketed by Nopco Chemical Co.

d. Nopco CTC 10, 25, 50, and 100; containing 10, 25, 50, and 100 g of chlortetracycline per pound, respectively; originally marketed by Nopco Chemical Co.

The NAS/NRC evaluated these products as probably effective for growth promotion, feed efficiency, and the treatment of animal diseases caused by pathogens sensitive to chlortetracycline.

The NAS/NRC stated:

(1) Claims made regarding "for prevention of" or "to prevent" should be replaced with "as an aid in the control of" or "to aid in the control of";

(2) Claims for growth promotion or stimulation are disallowed and claims for faster gains and/or feed efficiency should be stated as "may result in faster gains and/or improved feed efficiency under appropriate conditions";

(3) Each disease claim should be properly qualified as "appropriate for use in *(name of disease)* caused by pathogens sensitive to *(name of drug)*"; if the disease cannot be so qualified, the claim must be dropped;

(4) Claims pertaining to egg production and hatchability should be changed to "may aid in maintaining egg production, and hatchability, under appropriate conditions, by controlling pathogenic microorganisms";

(5) The labels should warn that treated animals must actually be consuming enough medicated water or medicated feed to provide a therapeutic dosage under the conditions that prevail and, as a precaution, state the desired oral dose per unit of animal weight per day for each species as a guide to effective usage of the preparation in drinking water; and

(6) Effective blood levels are required for each recommended dosage.

FDA agreed with the NAS/NRC evaluation; however, the agency concluded the claims for faster weight gains and improved feed efficiency should be reworded as "for increased rate of weight gain and improved feed efficiency for (under appropriate conditions of use)."

NAS/NRC review of certain drug products containing chlortetracycline. In the **Federal Register** of August 22, 1970 (35 FR 13485, DESI 0048NV), FDA announced the conclusions of the NAS/NRC Drug Efficacy Study Group concerning several chlortetracycline products, including the following soluble powders:

a. Tetra-Plus, Vitamized Antibiotic Formula (each pound contains 16 g of chlortetracycline as chlortetracycline hydrochloride, 4 milligrams (mg) of vitamin B_{12} supplement, 500,000 international units (IU) of vitamin A, 400,000 IU vitamin D^3, 128,000 IU vitamin C, 100 IU vitamin E, 1.8 g of riboflavin, 5.6 g of niacin, 2.4 g *d*-calcium pantothenate, 900 mg of ferrous carbonate, and 520 mg of cobalt carbonate); marketed by Bio-Ceutic Laboratories, 2621 North Belt Highway, St. Joseph, MO 64502.

b. Vita-Treet, Vitamized Antibiotic Formula (each pound contains 16 g of chlortetracycline as chlortetracycline hydrochloride, 4 mg of vitamin B_{12} supplement, 500,000 IU vitamin A, 400,000 IU vitamin D_3, 128,000 IU vitamin C, 100 IU vitamin E, 1.8 g of riboflavin, 5.6 g of niacin, 2.4 g of *d*-calcium pantothenate, 900 mg of ferrous carbonate, and 520 mg of cobalt carbonate); marketed by Anchor Serum Co., a division of Philips Roxane, Inc., 2621 North Belt Highway, St. Joseph, MO 64502.

The NAS/NRC classified these preparations as probably not effective for the prevention and treatment of scours in calves and for the prevention and treatment of infections in cattle, chickens, swine, sheep, and turkeys.

The NAS/NRC stated:

(1) Each disease claim should be properly qualified as "appropriate for use in *(name of disease)* caused by pathogens sensitive to *(name of drug)*," and if the disease claim cannot be so qualified, the claim must be dropped;

(2) Claims made regarding "for prevention of" or "to prevent" should be replaced with "as an aid in the control of" or "to aid in the control of";

(3) Each active ingredient in a preparation containing more than one drug must be effective, or contribute to the effectiveness of the preparation, to warrant acceptance as an active ingredient. Tetra-Plus and Vita-Treet have not satisfied these conditions; and

(4) The label should warn that treated animals must actually consume enough medicated water or medicated feed to provide a therapuetic dose under the conditions that prevail, and, as a precaution, the label should state the desired oral dose per unit of animal weight per day for each species as a guide to effective use of the preparation in drinking water or feed.

Again, FDA agreed with the NAS/NRC findings.

4. Request for additional information. Each of the above announcements informed the drug sponsors of the NAS/NRC and FDA conclusions about the effectiveness of the drug and gave notice to all interested persons that such articles must be the subject of an approved NADA and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act for continued marketing; 6 months were provided to submit adequate documentation in support of the labeling used.

5. *FDA policy regarding vitamins as active ingredients.* FDA will not approve an application for any new animal drug dosage form, regardless of route of administration, if it contains nutritional ingredients (i.e., vitamins and minerals), unless each nutritional ingredient qualifies as an active ingredient and the product is labeled with appropriate directions for use. If a single claim for the treatment or control of a disease is made, the nutrient ingredients must be demonstrated as contributing in an additive manner to the overall efficacy of the label claim; if separate claims are made for the nutritional components other than those made for the drug component, e.g., for the treatment of dietary deficiency disease as a concurrent problem in an animal suffering from a particular disease for which the drug component is proposed, then the data must be adequate to show that the nutritional deficiency does occur concurrently with the disease in question in a significant portion of the target population.

D. Effectiveness Classification

In response to the NAS/NRC findings, Philips Roxane, Inc., submitted data that established the safety and effectiveness of chlortetracycline soluble powder as an aid in the control and treatment of bacterial pneumonia and bacterial enteritis in calves and swine. The Philips-Roxane application was approved and § 546.110c amended to identify the sponsor and the approved indications for use in the **Federal Register** of June 14, 1976 (42 FR 23947). The approved indications of use were footnoted to indicate that they were deemed effective by NAS/NRC and FDA, and that applications for these uses need not include the efficacy data required by § 514.111 (21 CFR 514.111), but that bioequivalency and safety data may be required.

The Philips-Roxane approval was identified as NADA 65–096V in the June 14, 1976 notice; however, because NADA 65–096V refers to Philips Roxane's vitamized antibiotic formulations with chlortetracycline (Vita Treet and Tetra Plus), the approved drug has been assigned NADA 65–480. Philips Roxane's vitamized antibiotic formulations with chlortetracycline, NADA 65–096V, is subject to this notice of opportunity for hearing. The approved indications of use in § 546.110c(c)(5)(iii) and (iv) are as follows:

a. Chlortetracycline hydrochloride soluble powder may be used in the drinking water of swine at one g per gallon to provide approximately 10 mg per pound of body weight daily. It is used as an aid in the control and treatment of bacterial enteritis (scours) caused by *Escherichia coli* and bacterial pneumonia accociated with *Pasteurella* spp., *Hemophilus* spp., and *Klebsiella* spp.

b. Chlortetracycline hydrochloride soluble powder may be used as a drench in calves at one level teaspoonful per each 98 pounds of body weight every 12 hours to provide approximately 10 mg per pound of body weight daily. It is used as an aid in the control and treatment of bacterial enteritis (scours) caused by *Escherichia coli* and bacterial pneumonia (shipping fever) associated with *Pasteurella* spp., *Hemophilus* spp., and *Klebsiella* spp. The Director has reviewed the NAS/NRC reports and also concludes that chlortetracycline hydrochloride soluble powder is effective in calves and swine when used at 10 mg per pound body weight daily as an aid in the control and treatment of bacterial enteritis (scours) caused by *Salmonella* spp.

The Director has reviewed the NAS/NRC reports and other published materials (Refs. 1 through 11) pertaining to chlortetracycline soluble powder for use in the drinking water of chickens and turkeys and concludes that it is effective for the following indications:

a. Chlortetracycline hydrochloride may be used in the drinking water of chickens at 200 to 400 mg per gallon when labeled for use as an aid in the control of infectious synovitis caused by *M. synoviae* suspeptible to chlortetracycline.

b. Chlortetracycline hydrochloride may be used in the drinking water of chickens at 400 to 800 mg per gallon when labeled for use as an aid in the control of chronic respiratory disease (CRD) or air sac infection caused by *M. gallisepticum* and *E. coli* susceptible to chlortetracycline.

c. Chlortetracycline hydrochloride may be used in the drinking water of turkeys at 400 mg per gallon when labeled as an aid in the control of infectious synovitis caused by *M. synoviae* susceptible to chlortetracycline.

d. Chlortetracycline hydrochloride may be used in the drinking water of growing turkeys at a drug level per gallon to provide approximately 25 mg per pound of body weight daily when labeled for use as an aid in the control of bluecomb (transmissible enteritis) complicated by organisms susceptible to chlortetracycline.

Additionally, chlortetracycline preparations for use in the drinking water of animals must warn that the concentration of drug required in medicated water must be adjusted to compensate for variation in the age of the animal, class for chickens and turkeys, and environmental temperature, each of which affects water consumption. The sponsor should provide directions to obtain the drug levels needed. Chlortetracycline preparations for use in the drinking water of chickens and turkeys must also be labeled with directions for use and a warning statement as follows:

1. Directions for Use—Chickens and Turkeys. Administer for 7 to 14 days. Medicate continuously at the first clinical signs of disease. The dosage ranges permitted provide for different levels based on the severity of the infection. Consult a poultry diagnostic laboratory or a poultry pathologist to determine the diagnosis and advice regarding the optimal level of the drug where ranges are permitted. The desired oral dose per unit of animal weight per day must be stated as a guide to effective use in drinking water.

2. Warning: Use as the sole source of chlortetracycline. Not to be used for more than 14 consecutive days. Do not use in laying chickens. For growing turkeys only. Caution: Prepare a fresh solution ———— (the blank to be filled in by the time period for which stability data are available).

This evaluation is concerned only with the effectiveness and safety of these drugs to the animal to which they are administered. It does not take into account the safety of food products derived from drug-treated animals. Nothing in this notice prevents further proceedings on questions of safety of these drugs or their metabolites as residues in food products derived from treated animals.

The Director also concludes that there lacks substantial evidence of effectiveness for all other labeled indications for chlortetracycline soluble powder, and that chlortetracycline soluble powder in combination with vitamins is not supported by adequate data to establish that the vitamins contribute to the overall efficacy of the label claims, or that a nutritional deficiency occurs concurrently with the disease being treated.

F. Marketing

Chlortetracycline soluble powders that are the subject of an approved NADA may continue to be marketed provided that, on or before May 29, 1979, the holder of the application submits, if he or she has not previously done so, (1) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (2) a supplement to provide updating information with respect to items 4 (components and composition) and 5 (manufacturing methods, facilities, and controls) of the NADA FD Form 356V (see § 514.1(b) (21 CFR 514.1(b))). Any products that are approved but that were not reviewed by NAS/NRC may additionally be required to submit bioequivalency and safety data.

Sponsors of products for chlortetracycline soluble powders that are not subject of an approved NADA who submit applications for the effective conditions of use identified in this notice need not include efficacy data required by § 514.111 for these uses but may be required to submit bioequivalency and safety data. The approval of an NADA must be obtained prior to marketing any such products. Marketing prior to approval of an NADA will subject such products, and those persons who caused the products to be marketed, to regulatory action. NADA's and supplemental NADA's that are filed in response to this notice and comply with the requirements set forth will be approved and notice will be published in the **Federal Register**, amending the appropriate regulations in accord with the approval and identifying the sponsor pursuant to section 512(i) of the act.

G. Notice of Opportunity for a Hearing

Section 512 of the act requires that a new animal drug have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. Section 512 of the act imposes a precise standard for demonstrating effectiveness: Effectiveness must be established by substantial evidence based upon adequate and well-controlled investigations, as provided in § 514.1(b)(8)(ii). Additionally, for the chlortetracycline soluble powder products that are in combination with vitamins, § 514.1(b)(8)(v) requires that each ingredient designated as active must make a contribution to the effect in the manner claimed or suggested in the labeling, and if, in the absence of express labeling claims of advantages for the combination, such a product purports to be better than either component alone, it must be established that the new animal drug has that purported effectiveness. The requirement of effectiveness includes the requirement that the most effective

level for each component be used. In the case of drug combinations for concurrent therapy, the requirement of effectiveness also includes the requirement that the dosage of each component is such that the combination is safe and effective for a population of significant size specifically described in the labeling as requiring such concurrent therapy. On the basis of all available data and information, the Director is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 512 of the act, § 514.1(b)(8)(ii), and, for the vitamin combination products, § 514.1(b)(8)(v), demonstrating the effectiveness of chlortetracycline soluble powders for their labeled indications of use other than the effective claims as stated in this notice.

Therefore, notice is given to the holders of the approvals of the products listed above and to all other interested persons, that the Director proposes to issue an order under section 512(e) of the act and under section 108(b) of Pub. L. 90–399 withdrawing approval of the NADA's providing for any claims other than for those classified in this notice as effective. The ground for the proposed withdrawal is that new information about the drug products, provided by the NAS/NRC reviews, evaluated together with the evidence available at the time of their approval, shows there is a lack of substantial evidence that the drug products meet the requirements of section 512 of the act and the regulations promulgated thereunder. An order withdrawing approval will not issue with respect to any application(s) supplemented, in accord with this notice, to delete the claim(s) lacking substantial evidence of effectiveness.

This notice of opportunity for hearing encompasses, in addition to the ground for the proposed withdrawal of the approvals, all issues relating to the legal status of the drug products subject to it, e.g., any contention that any such product is not a new animal drug within the meaning of section 201(w) of the act (21 U.S.C. 321(w)).

In accordance with the provisions of section 512 of the act, section 108 of Pub. L. 90–399, and the regulations promulgated thereunder (21 CFR Part 514), the holders of approvals for the drug products named above and all other persons subject to this notice are hereby given an opportunity for a hearing to show why approval of the NADA's providing for claims other than those identified in this notice as effective should not be withdrawn and an opportunity to raise, for administrative determination, all issues related to the legal status of the drug products named above. Any other interested person may also submit comments on this notice within the time and under the requirements specified in this notice.

If a holder of an approval or any other interested party elects to avail itself of an opportunity for hearing under section 512(e)(1)(C) of the act and § 514.200 (21 CFR 514.200), the party must file with the Hearing Clerk (address above) a written appearance requesting such a hearing by May 29, 1979, and provide a well-organized and full-factual analysis of the scientific and other investigational data that the party is prepared to prove by June 26, 1979, in support of its opposition to the Director's proposal.

Such analysis shall include all protocols and underlying raw data. The Director requests that the information by submitted in accordance with the provisions of § 314.200(c)(2) and (d) (21 CFR 314.200(c)(2) and (d)), which are hereby made applicable to this notice by reference. Wherever in § 314.200(d) reference is made to the requirements of § 300.50 (21 CFR 300.50), that reference shall be deemed, for the purposes of this notice, to be a reference to the requirements for combination drug products as expressed in § 514.1(b)(8) and this notice.

The failure of the holder of an approval, or any other party subject to this notice, to file timely written appearance and request for hearing as required by § 514.200 constitutes an election by such party not to avail itself of the opportunity for a hearing concerning the action proposed with respect to such drug products and a waiver of any contentions concerning the legal status of any such drug product. Any such drug product labeled other than for the effective claims identified in this notice may not thereafter lawfully be marketed, and FDA will initiate appropriate regulatory action to remove such drug product(s) from the market. Any new animal drug product marketed without an approved NADA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must sety forth specific facts showing there is a genuine and substantial issue of fact that requires a hearing. When it clearly appears from the data submitted and from the reasons and a factual analysis in the request for the hearing that no genuine and substantial issue of fact precludes the withdrawal of approval of the drug products and revocation or amendment of the underlying monographs (for example, no adequate and well-controlled clinical investigations to support the claims of effectiveness have been identified), the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions, and denying a hearing, and any applicable regulation will be immediately revoked or amended consistent with such determination without further opportunity for objection or hearing.

Written appearances requesting a hearing and comments responding to this opportunity for hearing shall be filed, on or before May 29, 1979, in five copies, identified with the Hearing Clerk docket number found in brackets in the heading of this document, with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857. Such submissions, except for data and information prohibited from public disclosure under section 301(j) of the act (21 U.S.C 331(j)) or 18 U.S.C. 1905, may be seen in the Hearing Clerk's office from 9 a.m. to 4 p.m., Monday through Friday.

Submissions of NADA's or supplemental NADA's in accord with the NAS/NRC-reviewed claims deemed effective by this notice shall be submitted to the Division of Drugs for Swine and Minor Species (HFV–130), Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

H. References

The following references have been placed on file in the office of the Hearing Clerk, FDA, and may be seen in that office from 9 a.m. to 4 p.m., Monday through Friday:

(1) "Diseases of Poultry," 6th Ed., Edited by N. O. Olson, Iowa State University Press, pp. 328–329, 1972.

(2) Snoeyenbos, G. H., H. I. Basch, and M. Sevoian, "infectious Synovitis: II. Drug Prophylaxis and Therapy," *Avian Diseases*, 2:514–530, 1975.

(3) Olson, N.O., D. C. Shelton, J. K. Bletner, and C. E. Weakley, "Infectious Synovitis Control. II. A Comparison of Levels of Antibiotics." *American Journal of Veterinary Research*, 18:200–203, 1957.

(4) Cover, M. S., W. J. Benton, L. M. Green, and F. D'Armi, "Potentiation of Tetracycline Antibiotics with Terephthalic Acid and Low Dietary Calcium," *Avian Diseases*, 3:354–361, 1959.

(5) "Diseases of Poultry," 6th Ed., Edited by N. O. Olson, Iowa state University Press, p. 750, 1972.

(6) Pomeroy, B. S. and J. M. Seiburth, "Bluecomb Diseases of Turkeys,"

Proceedings of Annual Meeting of the American Veterinary Medical Association, pp. 321–328, 1953.

(7) Peterson, E. H. and T. A. Hymas, "Antibiotic in the Treatment of an Unfamiliar Turkey Disease," *Poultry Science*, 30:466–468, 1951.

(8) Olesiuk, O. M., H. Van Roekel, and N. K. Chandiramini, "Antibiotic Medication of Chickens Experimentally Infected with Mycoplasma Gallisepticum and Escherichia Coli," *Avian Diseases*, 8:135–152, 1964.

(9) White-Stevens, R. and G. H. Ziebel, "The Effect of Chlortetracycline (Aureomycin) on the Growth Efficiency of broilers in the Presence of Chronic respiratory Disease," *Poultry Science, 33:1164–1174, 1954.*

(10) Scott, M. L., M. C. Nesheim, and R. J. Young, "Nutrition of the Chicken," 1st Ed., Scott, pp. 332–333, 1969.

(11) "The Merck Poultry Serviceman's Manual," 2d Ed., New York, pp. 189–197, 1967.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 507, 512, 59 Stat. 463 as amended, 82 Stat. 343–351 (21 U.S.C. 357 and 360b)) and the Animal Drug Amendments of 1968 (sec. 108(b), Pub. L. 90–399; 82 Stat. 353), and under authority delegated to the Commissioner (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84).

Dated: April 19, 1979.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[Docket No. 79N–0025]

[FR Doc. 79–13009 Filed 4–26–79; 8:45 am]

BILLING CODE 4110–03–M

Salsbury Laboratories; Dr. Salsbury's Sulquin Powder; Withdrawal of Approval of New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency withdraws approval of a new animal drug application (NADA) providing for use of a powdered premix containing sulfaquinoxaline and sulfur in chicken feed as a coccidiostat and to control mortality due to fowl cholera. The sponsor, Salsbury Laboratories, requested this action.

EFFECTIVE DATE: April 27, 1979.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Bureau of Veterinary Medicine (HFV–138), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

SUPPLEMENTARY INFORMATION: Salsbury Laboratories, Charles City, IA 50616, is sponsor of NADA 6–524V which provides for use in chicken feed of Dr. Salsbury's Sulquin Powder (containing 25 percent sulfaquinoxaline and 75 percent sulfur) for prevention and control of coccidiosis and for checking mortality in outbreaks of acute fowl cholera. The NADA was originally approved July 6, 1948. By letter of December 5, 1978, the firm requested that approval of the NADA be withdrawn because the product is no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 6–524V and all supplements for Dr. Salsbury's Sulquin Power is hereby withdrawn, effective April 27, 1979.

Dated: April 19, 1979.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 79–13008 Filed 4–26–79; 8:45 am]

BILLING CODE 4110–03–M

Office of Education

National Advisory Council on the Education of Disadvantaged Children; Meeting/Site Visits

Notice is hereby given, pursuant to Pub. L. 92–463, that the National Advisory Council on the Education of Disadvantaged Children will hold its next meeting in Portland, Oregon on May 18 and 19, 1979. On May 17, from 1–4 p.m., the members will conduct site visits to Title I Technical Assistance Centers in Olympia, Washington; Salem, Oregon; Sacramento, California; and Boise, Idaho (states being served by the Northwest Regional Educational Laboratory (NWREL)). On May 18, the full Council will meet at the NWREL from 9:00 a.m. to 4:30 p.m., and on May 19, the Council will meet from 9:00 a.m. to 12 noon (specific location to be announced at a later date).

The National Advisory Council on the Education of Disadvantaged Children is established under section 148 of the Elementary and Secondary Education Act (20 U.S.C. 2411) to advise the President and the Congress on the effectiveness of compensatory education to improve the educational attainment of disadvantaged children.

The purpose of the meeting is to review the 1979–80 Annual Plan, review and approve committee activities and develop specific areas and issues for Council's Special Report on Technical Assistance Centers. The Friday, May 18 meeting will be a general session for members to meet with TAC director and personnel to discuss various topics on national evaluation efforts.

The meeting will be open to the public. Because of limited space, all persons wishing to attend should call for reservations by May 11, 1979, area code 202/724–0114 and speak with Mrs. Lisa Haywood.

Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on the Education of Disadvantaged Children located at 425 Thirteenth Street, NW., Suite 1012, Washington, D.C. 20004.

Signed at Washington, D.C. on April 24, 1979.

Gloria B. Strickland,

Acting Executive Director.

[FR Doc. 79–13044 Filed 4–26–79; 8:45 am]

BILLING CODE 4110–02–M

Social Security Administration

Advisory Council on Social Security; Public Meetings

AGENCY: Advisory Council on Social Security, HEW.

ACTION: Notice is hereby given, pursuant to Pub. L. 92–463, that, the Advisory Council on Social Security, established pursuant to section 706 of the Social Security Act, as amended, will meet on Sunday, June 10, 1979, from 9:00 a.m. to 5:00 p.m. and Monday, June 11, 1979, from 9:00 a.m. to 5:00 p.m. at the Marriot Twin Bridges Hotel, U.S. 1 and I–395, Washington, D.C. 20024. The meetings will be devoted to the topics of the treatment of minorities under Social Security, universal coverage, and the relationship of Social Security to other income-maintenance programs.

These meetings are open to the public.

Individuals and groups who wish to have their interest in the Social Security program taken into account by the Council may submit written comments, views, or suggestions to Mr. Lawrence H. Thompson.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence H. Thompson, Executive Director, Advisory Council on Social Security, P.O. Box 17054, Baltimore, Maryland 21235.

Telephone inquiries should be directed to Mr. Edward F. Moore, (301) 594–3171.

(Catalog of Federal Domestic Assistance Program Numbers 13.800–13.807 Social Security Program)

Dated: April 23, 1979.

Lawrence H. Thompson,

Executive Director, Advisory Council on Social Security.

[FR Doc. 79-13053 Filed 4-26-79; 8:45 am]

BILLING CODE 4110-07-M

National Institutes of Health

Report on Bioassay of Diazinon for Possible Carcinogenicity; Availability

Diazinon (CAS 333-41-5) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of diazinon for possible carcinogenicity was conducted by administering the test chemical in feed to F344 rats and B6C3F1 mice. Applications of the chemical include use as an insecticide.

It is concluded that under the conditions of this bioassay, diazinon was not carcinogenic for F344 rats or B6C3F1 mice of either sex.

Single copies of the report, Bioassay of Diazinon for Possible Carcinogenicity (T.R. 137), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20205.,

Dated: April 19, 1979.

Donald S. Fredrickson, M.D.,

Director, National Institutes of Health.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

[FR doc. 79-12642 File 4-26-79; 8:45 am]

BILLING CODE 4110-08-M

Report on Bioassay of Fenthion for Possible Carcinogenicity; Availability

Fenthion (CAS 55-38-9) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of fenthion for possible carcinogenicity was conducted by administering the test chemical in feed to F344 rats and B6C3F1 mice. Applications of the chemical include use as a pesticide.

It is concluded that under the conditions of this bioassay, fenthion was not carcinogenic for male of female F344 rats or for female B6C3F1 mice. The results with male B6C3F1 mice were inconclusive. The male mice developed sarcomas, fibrosarcomas and rhabdomyosarcomas of the integumentary system at incidences not significantly greater than observed in non-dosed control mice. However, the incidences were significantly higher than rates in male mice of the same strain used as controls in other bioassay tests at the same laboratory and at the same time.

Single copies of the report, Bioassay of Fenthion for Possible Carcinogenicity (T.R. 103), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20205.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: April 19, 1979.

Donald S. Fredrickson, M.D.,

Director, National Institutes of Health.

[FR Doc. 79-12639 Filed 4-26-79; 8:45 am]

BILLING CODE 4110-08-M

National Institutes of Health

Review of Papers on Health Effects of Radiation Exposure; Meeting

At his press conference on February 27, 1979, Secretary Joseph A. Califano indicated that the Director, NIH, would request outside scientific experts to review the previously unpublished HEW papers on health effects of radiation exposure which may have been associated with the atmospheric testing of nuclear weapons and recommend any additional research needs identified in this review.

Notice is hereby given of the first meeting of the scientific experts to review the content of HEW papers, May 3, 1979, at the Marriott Hotel, Dulles International Airport, Virginia. The entire meeting will be open to the public from 8:30 a.m. to 5:00 p.m. Attendance by the public will be limited to space available.

Dr. Victor H. Zeve, Special Assistant to the Deputy Director, National Cancer Institute, Building 31, Room 10A34, Bethesda, Maryland 20205 (301/496-5515) will provide additional information.

Dated: April 25, 1979.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 79-13299 Filed 4-26-79; 8:45 am]

BILLING CODE 4110-08-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Colorado River Indian Irrigation Project, Arizona; Annual Operation and Maintenance Charges

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Public Notice.

SUMMARY: The purpose of this public notice is to make the following changes:

(a) Increase the basic annual per acre assessment rate for operation and maintenance from $14.00 to $16.00 per irrigable acre to properly reflect the actual costs for labor, materials, equipment and services.

(b) Increase the per acre-foot charge for water in excess of the basic allowance from $3.50 to $5.50 per acre-foot to properly reflect the actual cost for labor, materials, equipment and services.

(c) Decrease the basic water allowance for certain sandy soils from 8 acre-feet per acre to 5 acre-feet per acre to eliminate an inequity between these areas and sandy soil areas developed under the basic 5 acre-feet per acre allowance and provide a uniform basic water allocation from the Colorado River as the project expands its irrigated area.

(d) Change the date payment is due for the first half of the annual basic water charge from February 1 to January 1 and the date payment is due for the second half of the annual basic water charge from June 15 to July 1 to provide a more uniform collection schedule.

This public notice will replace §§ 221.6, 221.7, 221.8, and 221.8a of Part 221, Chapter I, Subchapter T of Title 25 of the Code of Federal Regulations, which are being deleted by a Final Rule to be published in the **Federal Register** simultaneously with this public notice

EFFECTIVE DATE: This public notice shall become effective June 30, 1979.

FOR FURTHER INFORMATION CONTACT: Vernon Hughes, Bureau of Indian Affairs, Colorado River Agency, Parker, Arizona 85344, telephone 602-669-2187.

SUPPLEMENTARY INFORMATION: The current operation and maintenance charges were established in 1974. The inflation rate on labor and materials has continued to increase each year until costs now exceed revenue from current charges.

A notice of the proposed changes in water charges and changes in procedures were sent to all water users on February 14, 1979 and also published in the local newspaper. The notice

requested written comments be submitted within thirty days. No comments were received.

The principal author of this document is Vernon M. Hughes, Bureau of Indian Affairs, Colorado River Agency, Parker, Arizona 85344, telephone 602–669–2187.

Pursuant to § 191.1(e) of Part 191, Chapter I, Subchapter R, of Title 25 of the Code of Federal Regulations, this public notice is issued under authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 230 DM 1 and redelegated by the Assistant Secretary for Indian Affairs to the Area Directors in 10 BIAM 3.

The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 385.

The public notice shall read as follows:

Colorado River Indian Irrigation Project, Arizona

Annual Operation and Maintenance Charges

1. *Basic Water Charges.* The annual basic charges against the land to which water can be delivered under the Colorado River Indian Irrigation Project in Arizona for operation and maintenance of the Project, is hereby fixed at $16.00 per irrigable acre, whether water is used or not. Payment of this charge will entitle the water user to, but not in excess of 5 acre-feet of water per annum per irrigable acre of land. The foregoing charges and allotments of water shall become effective for the second half of the calendar year 1979 and continue in effect until further notice.

2. *Excess Water Charge.* Additional water, if and when available, in excess of the basic allowance, may be delivered upon written request to the Superintendent by landowners or users at the rate of $5.50 per acre foot or fraction thereof.

3. *Payment.* One-half of the annual basic water charge shall become due and payable on January 1 of each year, which entitles the water user to not more than one-half of the annual basic water allotment prior to July 1. The second half of the annual basic water charge will be due and payable on July 1 which shall entitle the water user to not more than the remaining one-half of the annual basic water allotment. Water delivery will not be continued for any tract after July 1 of any year unless and until the remaining half of the basic water charge shall have been paid. To all charges assessed against fee land and Indian lands under lease to a non-Indian which are not paid on or before July 1 of each year, there shall be added a penalty of one percent per month or fraction thereof from January 1 until paid. Water will not be delivered to any tract of land in succeeding years until full payment of the previous years' operation and maintenance assessments, inclusive of penalties, has been made or unless arrangements have been made under Part 191 Operation and Maintenance, Paragraph 191.17 CFR 25, Indians and (a) and (b) of this section.

(a) Assignments or leases of Indian lands that become effective during the last half of the calendar year, and basic charges have not been paid in full, and irrigation water is desired during that half of the calendar year, the assignee or lessee will be required to pay prior to delivery of water, one-half the annual basic charge, for delivery of not to exceed one-half of the annual basic allotment of water, and if the lease term ends on June 30, the lessee shall be charged one-half of annual basic assessment for the calendar year, plus excess water charges for water used in excess of one-half of the annual basic allotment.

(b) No water shall be delivered for use on Indian trust lands under lease until the Superintendent of the Indian Reservation has certified that the lessee has paid the required operation and maintenance charges and complied with all the terms of the lease contract.

The excess water charge is payable at the time of written request for such water and must be paid prior to delivery of the excess water.

Note.—It is hereby certified that the economic and inflationary impacts of this Public Notice have been evaluated in accordance with Executive Order 11821.

Harold D. Roberson,
Assistant Area Director.

[FR Doc. 79–13072 Filed 4–26–79; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

New Mexico; Application

April 17, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for one 6-inch natural gas pipeline right-of-way across the following land:

New Mexico Principal Meridian, New Mexico

T. 18 S., R. 29 E.,
Sec. 17, N½NW¼ and SW¼NW¼;
Sec. 18, NE¼SW¼.

This pipeline will convey natural gas across 0.641 of a mile of public land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Raul E. Martinez,
Acting Chief, Branch of Lands and Minerals Operations.

[NM 36529]

[FR Doc. 79–12894 Filed 4–26–79; 8:45 am]

BILLING CODE 4310–84–M

Alaska; Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

Correction

In FR Doc. 78–23740 appearing on page 37768, in the issue of Thursday, August 24, 1978, in the first column before the last paragraph insert the following:

"Thence S. 52°40′ E., 160,843 feet, more or less, to a point identical with a point located at Latitude 63°59′ N., Longitude 145°55′ W., approximately;"

[F–35871]

BILLING CODE 1505–01–M

Alaska Native Claims Selection

Correction

In FR Doc. 79–9993, appearing at page 19259 in the issue for Monday, April 2, 1979, make the following corrections:

(1) One page 19259, in the middle column, in the second full paragraph, in the 11th line, "Tokotna" should be corrected to read "Takotna".

(2) On page 19259, in the third column, under the first heading for **Kateel River Meridian, Alaska (Unsurveyed),** under application AA–12633, in the 2nd line of the land description, substitute "Secs. 1 to 16" for "Secs. 1 and 16".

(3) On page 19259, in the third column, under the first heading for **Fairbanks Meridian, Alaska (Unsurveyed),** under application AA–12644, in the 2nd line of the land description, substitute "Secs. 13 to 30" for "Secs. 13 and 30".

(4) On page 19259, in the third column, under the second heading for **Fairbanks Meridian, Alaska (Unsurveyed),** in the 2nd line of the land description,

substitute "Secs. 13 to 30" for "Secs. 13 and 30".

(2) On page 19260, in the first column in the series of section listings for T. 24 S., R. 29 E., make the following substitutions:

(a) In the 1st line, replace "Secs. 1 and 4" with "Secs. 1 to 4".

(b) In the 2nd line, replace "Secs. 5 and 8" with "Secs. 5 to 8".

(c) In the 4th line, replace "Secs. 9 and 13" with "Secs. 9 to 13".

(d) In the 10th line, replace "Secs. 17 and 20" with "Secs. 17 to 20".

(e) In the 12th line, replace "Secs. 21 and 27" with "Secs. 21 to 27".

(f) In the 19th line, replace "Secs. 31 and 36" with "Secs. 31 to 36".

(6) On page 19260, in the middle column, below the explanatory line "The grant of the above-described lands shall be subject to:", under no. 2, in the 11th line, "ANSCA" should read "ANCSA".

(7) On page 19260, in the middle column, below the explanatory line "The grant of the above-described lands shall be subject to:", under no. 2, in the 12th line, "NSCSA" should read "ANCSA".

(8) On page 19260, in the last column, in the first full paragraph, the 4th line should read, "the Alaska Native Claims Settlement Act".

BILLING CODE 1505-01-M

Intent To Prepare an Environmental Statement and Request for Comments

The Department of the Interior's Bureau of Land Management (BLM) intends to prepare an environmental impact statement to consider the effects of a proposed oil and gas leasing program being developed under Section 18 of the Outer Continental Shelf Lands Act, as amended, the "OCS Lands Act," 43 U.S.C. 1331 *et seq.* Under Section 18, such a leasing program is defined as consisting of:

> A schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which he [the Secretary] determines will best meet national energy needs for the five year period following its approval.

While such schedules have been developed in the past, the Amendments require a new approval process involving significant participation of affected States, Federal agencies, and the public, as well as submission to the President and Congress. The proposed OCS planning schedules issued by the Department of the Interior prior to the OCS Lands Act Amendments were program planning documents enabling the Department of the Interior to proceed with an orderly consideration of potential OCS lease sales, and aided in: establishing the order of resource and environmental examination; planning work assignments and allocation of resources for studies; and apprising government agencies, industry and the public of the general time frame for examinations of potential sales. Those schedules were flexible documents, which specifically stated that consideration of any listed potential sale was subject to being terminated, modified, deferred, or advanced. Like the schedule being developed, the earlier schedules did not represent a decision to lease in any of the specified OCS areas, but only the Department's intent to consider leasing in such areas, and to proceed with leasing and development only upon determining that such activities were environmentally, technically, and economically acceptable.

The Bureau of Land Management is requesting comments on this proposal and alternatives to be addressed in the environmental statement, as well as on issues defined to date which require in-depth analysis in the statement.

Background

The Department of the Interior has been issuing leases for Outer Continental Shelf oil and gas development since 1954, pursuant to the Outer Continental Shelf Lands Act of 1953 (67 Stat. 462, 43 U.S.C. 1331 *et seq.*). In recognition of energy shortages and supply difficulties brought about by the OPEC oil embargo of 1973, a program to accelerate leasing of the OCS was initiated. A programmatic environmental statement on this initiative was prepared and submitted to the public and the Council on Environmental Quality in July 1975. In addition, environmental statements concerning specific sale proposals have been developed regularly since 1970. To date, 25 final environmental statements have been prepared for specific sale areas in the Gulf of Mexico, South Atlantic, Mid-Atlantic, North Atlantic, Southern California and Alaska. In addition, six statements are under preparation.

Congress has recognized the need to establish policies and procedures to better manage oil and gas resources in a manner so as to expedite exploration and development, and at the same time to meet other goals and policies, including balancing orderly energy resource development with protection of the human, marine, and coastal environments. To this end, the OCS Lands Act of 1953 was amended on September 18, 1978 (92 Stat. 632). An integral part of these Amendments is the requirement to prepare a leasing program, in the form of a five-year schedule. Once the schedule has been approved, leasing activities must be consistent with the schedule. Prior schedules were not statutorily mandated and did not legally constrain leasing activity.

On October 25 and 26, 1978, the Secretary of the Interior requested comments and information in order to develop a proposed program. Specific information regarding environmental concerns and risks, and other uses of the Outer Continental Shelf were requested, as well as information pertaining to industry interest, location of OCS regions with respect to energy markets, and laws, goals and policies of affected States. The information requested pertained to considerations, outlined in Section 18(a), with which the proposed program must be consistent.

On March 9, 1979, after reviewing and analyzing comments and information received as a result of his request, the Secretary submitted to the Governors of affected coastal States for their comments, and made available to the public, a draft proposed schedule. An analysis and discussion of considerations upon which the draft proposed schedule was based was included in the submission to the Governors, as was a summary of comments received. This material was also available to the public upon request.

Public meetings concerning the draft proposed schedule were held March 21 through April 9, 1979, in Boston, Massachusetts; Trenton, New Jersey; Atlanta, Georgia; New Orleans, Louisiana; Los Angeles, California; Burlingame, California; and Juneau, Alaska (radio broadcast town meeting). Comments obtained from the Governors and those resulting from public meetings and comments from other interested parties, are presently being considered in developing a proposed leasing program to be submitted to Congress, the Attorney General and the Governors of affected States, by June 18, 1979, pursuant to Section 18(c)(3), and to be finally submitted to the President and Congress at least sixty days prior to Secretarial approval, pursuant to Section 18(d)(2).

Proposal

The proposed action to be evaluated in the environmental statement is a schedule of 26 oil and gas lease sales to be held over a five-year period. Depending on the area, up to one million acres are proposed to be offered per

sale. For details concerning the timing and location of sale areas, see the draft schedule attached. This draft schedule is the same schedule which was previously made available for public comment on March 9, 1979.

Comments received to date through the public participation process outlined above, and comments received as a result of this Notice, will be considered in further defining or amending the proposal and defining the scope of the environmental statement.

Alternatives

The program to be considered is being developed pursuant to Section 18 of the OCS Lands Act, cited above. The purposes of the OCS Lands Act include making oil and gas resources available to meet the Nation's energy needs as rapidly as possible and balancing orderly energy resource development with protection of the human, marine, and coastal environments.

A mandate to develop OCS oil and gas resources as a part of a larger national energy plan has been given to the Department of the Interior by the Department of Energy, which has been given responsibility to develop such an energy plan. The general guidance from the Department of Energy is that increased OCS production will be necessary to reduce the gap between domestic supply and demand for petroleum, or at least restrain its rate of growth.

The proposed action is the adoption of a five-year OCS leasing schedule, as required by law. Accordingly, alternatives to the proposed schedule consist of, in addition to a "no action" or conservation alternative, alternative sale schedules. Such alternatives would involve: (1) a different number of sales in each year and in the five-year period as a whole, (2) addition or deletion of specific sale areas or sales, and (3) alternative sale sizes. Comments received to date, and as a result of this Notice, will be utilized to define these alternatives for consideration in the environmental statement.

Mandatory Considerations

In developing a five-year leasing schedule, the OCS Lands Act Amendments (Section 18(a)(2)) mandate consideration of the following:

—Existing information concerning the geographical, geological, and ecological characteristics of oil and gas-bearing regions of the outer Continental Shelf;

—An equitable sharing of developmental benefits and environmental risks among the various regions;

—The location of these regions with respect to, and the relative needs of, regional and national energy markets;

—The location of these regions with respect to other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of the resources and space of the outer Continental Shelf;

—The interest of potential oil and gas producers in the development of oil and gas resources as indicated by exploration or nomination;

—Laws, goals and policies of affected States which have been specifically identified by the Governors of such States as relevant matters for the Secretary's consideration;

—The relative environmental sensitivity and marine productivity of different areas of the outer Continental Shelf; and,

—Relevant environmental and predictive information for different areas of the outer Continental Shelf.

Significant Environmental Impact Issues

On the basis of the above considerations and comments received to date, as well as through past experience in the OCS leasing program, significant environmental issues which need to be addressed in depth in the environmental statement have been identified. In addressing these issues in the environmental statement, the relative risks of various regions will be evaluated. These environmental issues (impacts) are not tract specific in nature. While some of these issues may be involved in tract specific decisions, they are also national and programmatic in scope. Tract specific issues will be addressed and responded to on a sale-by-sale basis as individual environmental statements are prepared for each sale. The following are considered to be the significant issues and the focus of the environmental statement.

1. Effect of chronic and accidental release of oil and toxic materials on populations of marine organisms. (Impact on marine biologic populations)

2. Interference with commercial fish harvesting and effects of oil and gas development, particularly a large oil spill, on commercial fish stocks or year classes. (Impact on commercial fisheries)

3. Effects of major oil spills on recreation resources and on local tourism economies. (Impact on recreation and tourism)

4. Adequacy of knowledge and technology to respond to potential geologic hazards, adverse meteorologic and oceanographic conditions, and deepwater operating requirements. (Impact on operations of geologic hazards, meteorologic and oceanographic conditions)

5. Effect of chronic release of oil and toxic materials on unique, important, or productive biological resources. (Impact on coral, wetlands, estuaries, etc.)

6. Compatibility with potential designation of areas as marine sanctuaries. (Impact on marine sanctuary program)

7. Effect of OCS operations and related onshore facilities on air quality in adjacent onshore areas. (Impact on air quality)

8. Impact of oil and gas operations on subsistence cultures. (Impact on native culture/socioeconomic impact)

Comments concerning the significance of the issues identified above are invited, as well as comments identifying additional environmental issues that should be addressed in depth in the environmental statement.

Any comments concerning the proposed action or the environmental statement should be received by May 11, 1979, and should be addressed to the Director (700), Bureau of Land Management, 18th and C Streets, N.W., Washington, D.C. 20240. Comments previously provided in response to the request for comments on the proposed schedule (43 FR 49983, October 26, 1978) will be considered in developing the environmental statement. Respondents to that request need not resubmit their comments in order for their views to be considered. However, additional comment may be provided. Any questions on the proposal or the environmental statement may be directed to Donald Truesdell (202–343–4437).

Arnold Petty,

Acting Assistant Director, Bureau of Land Management.

Approved: April 24, 1979.

Larry E. Meierotto,

Assistant Secretary of the Interior.

BILLING CODE 4310–84–M

PROPOSED 5-YEAR OCS OIL & GAS LEASING PROGRAM

DRAFT

U. S. Department of the Interior March 1979

SALE AREA	1980												1981												1982												1983												1984												1985											
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
Gulf of Mexico		F		P		SC	R	N	S																																																															
55 Gulf of Alaska			F		P		SC	R	N	S																																																														
62 Gulf of Mexico		F				P		SC	R	N	S																																																													
46 Kodiak	H			F		P		SC	R	N	S																																																												
53 Central and Northern Cal			E		H				F		P		SC	R	N	S																																																							
Gulf of Mexico 1/						E		H			F		P		SC	R	N	S																																																				
56 South Atlantic						E		H				F		P		SC	R	N	S																																																			
60 Cook Inlet							E		H				F		P		SC	R	N	S																																																		
65 Gulf of Mexico								E		H				F		P		SC	R	N	S																																																
59 Mid-Atlantic									E		H				F		P		SC	R	N	S																																															
Gulf of Mexico	C		D		T										E		H			F		P		SC	R	N	S																																								
Santa Barbara Channel		D			T												E		H			F		P		SC	R	N	S																																			
52 North Atlantic				T															E		H			F		P		SC	R	N	S																																
Gulf of Mexico							C		D		T									E		H			F		P		SC	R	N	S																																
57 Norton Basin			T																	E		H			F		P		SC	R	N	S																																
Beaufort		D			T																E		H			F		P		SC	R	N	S																																
Gulf of Mexico												C		D		T									E		H			F		P		SC	R	N	S																												
Southern California										C		D			T									E		H			F		P		SC	R	N	S																												
Gulf of Mexico																	C		D		T									E		H			F		P		SC	R	N	S																				
Mid-Atlantic																C		D		T									E		H			F		P		SC	R	N	S																				
Gulf of Mexico 1/																	C		D		T									E		H			F		P		SC	R	N	S																				
Blake Plateau														C		D			T									E		H			F		P		SC	R	N	S																				
Gulf of Mexico																				C		D		T								E		H			F		P		SC	R	N	S																		
Cook Inlet																	C		D		T									E		H			F		P		SC	R	N	S																		
Central and Northern Cal																			C		D		T								E		H			F		P		SC	R	N	S																	
Gulf of Mexico																						C		D		T								E		H			F		P		SC	R	N	S															
North Atlantic																						C		D		T									E		H			F		P		SC	R	N	S													
Chukchi Sea 1/																C			D				T												E		H			F		P		SC	R	N	S											
Navarin Basin																	C			D				T												E		H			F		P		SC	R	N	S									
St. George Basin 1/																		C			D				T												E		H			F		P		SC	R	N	S								

C - Call for Nominations
D - Nominations Due
T - Tract Selection
E - Draft Environmental Statement
H - Public Hearing
F - Final Environmental Statement
P - Proposed Notice of Sale
SC - State comments Due
R - Energy Review
N - Notice of Sale
S - Sale

1/ These sales have been included in this schedule in order that planning may be commenced. Subsequent events (e.g., deletion of another sale from this schedule) will determine whether these sales will be held as indicated, deleted or postponed until after February 1985.

[FR Doc. 79-13004 Filed 4-26-79; 8:45 am]
BILLING CODE 4310-84-C

Utah; Termination of Proposed Withdrawal and Reservations of Lands

Notice of an application filed by the Bureau of Reclamation, U.S. Department of the Interior, U–33567, for withdrawal and reservation of public lands was published as **Federal Register** Document 76–21549 on pages 30697 and 30698 of the issue for July 26, 1976. The Bureau of Reclamation has canceled its application involving the lands described in the **Federal Register** publication referred to above. Therefore, pursuant to the regulations contained in 43 CFR 2091.2–5(b)(1) such lands will be relieved of the segregative effect of the above-mentioned application at 10:00 a.m. on June 11, 1979.

Dated: April 18, 1979.

Paul L. Howard,

State Director.

[U–33567]

[FR Doc. 79–13001 Filed 4–26–79; 8:45 am]

BILLING CODE 4310–84–M

California Desert Conservation Area Advisory Committee; Meeting

Notice is hereby given in accordance with Pub. L. 92–463 and 94–579 that the California Desert Conservation Area Advisory Committee to the Bureau of Land Management, U.S. Department of the Interior, will meet May 17–18, 1979, in Palm Springs, California. The meeting Thursday evening, May 17 will be a business meeting devoted to reports of subcommittees and the report of the State Director of the Bureau of Land Management. As previously announced, the meeting Friday, May 18, will include a report on the committee's April workshop on methods to be used in developing the California Desert Plan, the handling of alternatives in the plan and environmental statement, and the substance of a first generation balanced plan, as well as the form the advisory committee's advice shall take. The afternoon session will be devoted to obtaining public input into the planning process.

The meeting will be held at the Convention Center of the International Resort, 1800 East Palm Canyon Drive, Palm Springs, California 92262, from 7:30 p.m. to 9 p.m., Thursday, May 17, and from 8 a.m. to 5 p.m., Friday, May 18 1979. The meeting is open to the public and interested persons may attend and file statements with the advisory committee. Further information, including the meeting agenda, may be obtained from the Chairman, California Desert Conservation Area Advisory Committee, c/o Desert Plan Staff, Bureau of Land Management, 3610 Central Avenue, Suite 402, Riverside, California 92506.

John E. Birch,

Acting State Director.

[FR Doc. 79–13078 Filed 4–26–79; 8:45 am]

BILLING CODE 4310–84–M

R/W Applications for Pipeline Northwest Pipeline Corp.

April 20, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 USC 185), Northwest Pipeline Corporation, 315 East 200 South, Salt Lake City, Utah 84111, has applied for a right-of-way for 4½" o.d. natural gas pipeline for the Great Divide Gathering System approximately 3.276 miles long, across the following Public Lands:

Sixth Principal Meridian, Moffat County, Colorado

T. 9 N., R. 93 W.,
Sec. 5, Lots 2, 3, 4, SE¼NW¼, NE¼SW¼.
Sec. 9, E½SW¼.
Sec. 16, NE¼NE¼.
T. 10 N., R. 93 W.,
Sec. 28, SW¼, SW¼NW¼, W½SE¼, W½NE¼, NE¼NE¼.
Sec. 33, W½NW¼.

The above-named gathering system will enable the applicant to collect natural gas in the area through which the pipeline will pass and to convey it to the applicant's customers.

The purposes for this notice are: (1) To inform the public that the Bureau of Land Management is proceeding with the preparation of the environmental and other analytic reports, necessary for determining whether or not the application should be approved and if approved, under what terms and conditions. (2) To give all interested parties the opportunity to comment on the applications. (3) To allow any party asserting a claim to the lands involved or having bona fide objections to the proposed natural gas gathering system to file its claims or objections in the Colorado State Office. Any party so filing must include evidence that a copy thereof has been served on *Northwest Pipeline Corporation.*

Any comments, claims, or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, as promptly as possible after publication of this notice.

Andrew W. Heard, Jr.,

Leader, Craig Team, Branch of Adjudication.

[Colorado 26176–1]

[FR Doc. 79–13079 Filed 4–26–79; 8:45 am]

BILLING CODE 4310–84–M

Outer Continental Shelf Western and Central Gulf of Mexico; Proposed Oil and Gas Lease Sale No. 58

Correction

In FR Doc. 79–12094 appearing at page 23584 in the issue for Friday, April 20, 1979, Make the following corrections:

(1) On page 23584, in the third column, in paragraph "3. *Method of Bidding*", in the second line, the word "enevlope" should be "envelope".

(2) Also on page 23584, in the third column, in the last paragraph, in the next to last line, the world "formal" should read "formula".

(3) On page 23585, in the first column, in the formula, the value for "Rj" should read as follows:

Rj = the percent royalty that is due and payable on the unadjusted amount or value of all production saved removed or sold in quarter j

(4) On page 23585, Table 1 should read as follows:

TABLE 1. HYPOTHETICAL QUARTERLY ROYALTY CALCULATIONS

(1) Actual Value of Quarterly Production (Millions of Dollars)	(2) GNP Fixed Weighted Price Index	(3) Inflation Factor[1]	(4) Adjusted Value of Quarterly Production[2] (V_j, Millions of $)	(5) Percent Royalty Rate (R_j)	(6) Royalty Payment[3] (Millions of Dollars
10.000000	200.0	4/3	7.500000	16.66667	1.666667
30.000000	200.0	4/3	22.500000	21.97225	6.591675
90.000000	200.0	4/3	67.500000	32.95837	29.662533
270.000000	200.0	4/3	202.500000	43.94449	118.650123
810.000000	200.0	4/3	607.500000	54.93061	444.937941
10.000000	250.0	5/3	6.000000	16.66667	1.666667
30.000000	250.0	5/3	18.000000	19.74081	5.922243
90.000000	250.0	5/3	54.000000	30.72693	27.654237
270.000000	250.0	5/3	162.000000	41.71306	112.625262
810.000000	250.0	5/3	486.000000	52.69918	426.863358

a Column (2) divided by 150.0 (assumed value of GNP fixed weighted price index at time leases are issued).

b Column (1) divided by Inflation Factor.

c Column (1) times Column (5). All values are rounded for display purposes only.

(5) On page 25587, in the middle column, in paragraph 12. (c), after NG 14–3, "Corpus Cristi" should be spelled "Corpus Christi".

(6) On page 25587, in the third column, in the second table, the heading should read: "OCS Leasing Map, Mustang Island Area, Texas Map No. 3".

(7) On page 25587, third column, the table for "OCS Leasing Map, Brazos Area, Texas Map No. 5" should read as follows:

OCS LEASING MAP, BRAZOS AREA, TEXAS MAP NO. 5
(Approved July 16, 1954)

Tract	Block	Description	Acreage
58-10	(341	7/	
	(342	7/	5004.64

(8) On page 25587, in the third column, the table heading "OCS Leasing Map, South Addition, Texas Map No. 5 B" should read "OCS Leasing Map, Brazos Area, South Addition, Texas Map No. 5 B".

(9) On page 25587, in the third column, in the table for "OCS Leasing Map, Galveston Area, Texas Map No. 6", Blocks 103 and 104 shoud be preceded by open parentheses.

(10) On page 25587, in the third column, the table for "OCS Leasing Map, High Island Area, South Addition, Texas Map No. 7 B" should read as follows:

OCS LEASING MAP, HIGH ISLAND AREA, SOUTH ADDITION, TEXAS MAP NO. 7B
(Approved September 24, 1959)

Tract	Block	Description	Acreage
58-26	A-441	All	5760
58-27	A-549	All	5760
58-28	A-550	All	5760

(11) On page 23588, in the first column, the last two tables now headed "OCS Leasing May, Vermillion Area * * *" should be corrected to begin "OCS Leasing Map, Vermillion Area * * *".

(12) On page 23588, in the middle column, the table headed "OCS Leasing May, South Pelto Area * * *" should be corrected to read "OCS Leasing Map, South Pelto Area * * *".

(13) On pages 23588 and 23589 the following tables are corrected:

OCS LEASING MAP, MAIN PASS AREA, LOUISIANA MAP NO. 10
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
58-92	43	E1/2NE1/4SW1/4; S1/2SW1/4; SE1/4	2029.03
58-93	44	5/	2708.31
58-94	121	All	4994.55

OCS LEASING MAP, MAIN PASS AND BRETON SOUND AREAS, LOUISIANA MAP NO. 10
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Area	Block	Description	Acreage
58-95	Main Pass	(37	6/	
	Breton Sound	(56	2/	1738.82

OCS LEASING MAP, MATAGORDA ISLAND AREA, TEXAS MAP NO. 4
(Approved July 16, 1954)

Tract	Block	Description	Acreage
58-111	526	1/	1355
58-112	557	1/	5620
58-113	(558		
	(565	1/	5743
58-114	657	7/	5071.18

OCS LEASING MAP, BRAZOS AREA, TEXAS MAP NO. 5
(Approved July 16, 1954)

Tract	Block	Description	Acreage
58-115	374	1/	1177
58-116	437	All	5760
58-117	(438		
	(439	1/	5055

OCS LEASING MAP, SABINE PASS AREA, LOUISIANA MAP NO. 12
(Approved March 7, 1977)

Tract	Block	Description	Acreage
58-122	3	8/	1316.62
58-123	(5		
	(6	8/	4983.20
58-124	9	All	4254.39

OCS LEASING MAP, EAST CAMERON AREA, LOUISIANA MAP NO. 2
(Approved June 8, 1954; Revised August 1, 1973)

Tract	Block	Description	Acreage
58-127	9	9/	203.62
58-128	9	10/	884.30

BILLING CODE 1505-01-C

(14) On page 23590, in the middle column, in Stipulation No. 4, in paragraph b., in the sixth line, the word "save" should read "saved".

(15) On page 23590, in the middle column, in Stipulation 5, in the second paragraph, in the third line, the second "of" should read "or".

(16) On page 23590, in the third column, the first full paragraph should be corrected to read: Notwithstanding any limitation of the lessee's liability in Sec. 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against and to defend at its own expense the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against, and to defend at its own expense the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(17) Also on page 23590, in the third column, in the second complete paragraph, in the fourth line, the word "contrators" should read "contractors".

(18) On page 23591, in the middle column, in the fourth line from the top, the word "the" should be "and".

(19) On page 23591, in the third column, in the first paragraph, in the seventh line, the word "instance" should read "instances".

(20) On page 23591, in the third column, in paragraph "17. *Suggested Bid Form.*", in the third line, "Pacific" should read "New Orleans".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

Announcement of Solicitation for Grant Applications To Evaluate the Denver Project New Pride Replication Discretionary Program

The National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP), Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice is sponsoring an evaluation of its Denver Project New Pride Replication Program. Denver Project New Pride is a community-based treatment program for adjudicated juveniles with a history of serious offenses.

Applications will be considered from public or private agencies and organizations or individuals for the first phase (12 months) of a proposed three to four year evaluation. The deadline for receipt of applications is June 15, 1979. Potential applicants may obtain a copy of the solicitation by writing to: National Institute for Juvenile Justice and Delinquency Prevention, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, 633 Indiana Avenue, N.W., Room 304, Washington, D.C. 20531, attention: Pamela Swain; or by calling area code 202–724–5893.

John M. Rector,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 13000 Filed 4–26–79; 8:45 am]

BILLING CODE 4410–18–M

Development of a Discretionary Grant Program To Support a National Victim/Witness Strategy

The Office of Criminal Justice Programs, Law Enforcement Assistance Administration, under the legislative authority of Title 1 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3701, et seq., is in the process of developing a program announcement for a discretionary grant program to support a National Victim/Witness Strategy. This program announcement will represent an addition to Guideline Manual M 4500.1G, *Guide for Discretionary Grant Programs*. The addition of this program will in no way impact on programs already described in the Guide nor will it affect the eligibility of any applicants to existing programs.

It is anticipated that funds will be available for programs that enhance, strengthen, and further develop victim/witness assistance through initiatives aimed at improving the service delivery system to victims/witnesses of crime on a federal, state, and local level. These new initiatives will support an LEAA National Victim/Witness Strategy designed to create a solid network of support for victim/witness services.

It is expected that these funds will be utilized to:

1. Establish Statewide Coordinating Networks;
2. Assist National Organizations in addressing victim/witness problems in their local communities; and
3. Develop joint Intergovernmental Victim/Witness Programs on the federal level.

This comprehensive approach will provide a link between those concerned with or delivering services to the victim/witness and will promote coordination and cooperation between the wide diversity of both public and private groups.

The Draft Program Announcement will be published in the **Federal Register.** Interested parties are invited to submit written comments or suggestions to Jan Kirby, Program Manager, Victim/Witness Unit, Special Programs Division, Office of Criminal Justice Programs, Law Enforcement Assistance Administration, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

J. Robert Grimes,

Assistant Administrator, Office of Criminal Justice Programs.

[FR Doc. 79–12999 Filed 4–26–79; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

ACMI Knitwear, et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified below. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 12th day of April 1979.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: (Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
ACMI Knitwear (I.L.G.W.U.)	Perth Amboy, N.J	4-10-79	4-2-79	TA-W-5,216	Knit products.
Autocrat Corporation (Intern'l Molders Union)	New Athens, Ill	4-10-79	4-6-79	TA-W-5,217	Wood burning stoves.
Brady Cline Company (U.M.W.A.)	Summersville, W. Va	4-09-79	4-4-79	TA-W-5,218	Produce coal.
Buckeye Sugars, Inc. (U.S.W.A.)	Ottawa, Ohio	4-09-79	4-5-79	TA-W-5,219	Refine sugar beets and sugar beet pulp.
Critcheley Trucking Co. (U.M.W.A.)	Danese, W. Va	4-02-79	3-27-79	TA-W-5,220	Transport coal.
Detroit Steel Corp., Detroit Strip Division (U.S.W.A.)	Hamden, Conn	4-10-79	4-6-79	TA-W-5,221	Produce cold rolled strip steel (high carbon).
Gauley Coal Sales Co. (U.M.W.A.)	Summersville, W. Va	4-09-79	4-4-79	TA-W-5,222	Manufacture coal.
G & I Coal Company (U.M.W.A.)	Cool Ridge, W. Va	4-09-79	4-4-79	TA-W-5,223	Produce coal.
Island Creek Coal Co. North Division (U.M.W.A.)	Craigsville, W. Va	4-09-79	4-4-79	TA-W-5,224	Produce coal.
Jenny Mining Corp. (U.M.W.A.)	Rupert, W. Va	4-09-79	4-4-79	TA-W-5,225	Manufacture coal.
Leckie Smokeless Coal Company (U.M.W.A.)	Rupert, W. Va	4-09-79	4-4-79	TA-W-5,226	Produce coal.
Lucy-Ann Footwear Manufacturer (U.S.A.)	Paterson, N.J	4-09-79	3-30-79	TA-W-5,227	Ladies footwear.
Margaret Peerless Coal Company, (U.M.W.A.)	Summersville, W. Va	4-09-79	4-4-79	TA-W-5,228	Manufacture coal.
Middletown Leather (Company)	Hackettstown, N.J	4-10-79	4-2-79	TA-W-5,229	Finish leather for sale to retailers.
Sewell Coal Company No. 4 (U.M.W.A.)	Nettie, W. Va	4-09-79	4-4-79	TA-W-5,230	Manufacture coal.
Tenna Inc., Motor Div. (Company)	Caguas, P.R	4-05-79	3-30-79	TA-W-5,231	Motor components (direct current for multiple use, like car's air conditioners).
Will-Bob Truck Service, Inc. (U.M.W.A.)	Charmco, W. Va	4-2-79	3-27-79	TA-W-5,232	Transport coal.

[FR Doc. 79-13184 Filed 4-26-79; 8:45 am]
BILLING CODE 4510-28-M

Allied Chemical Corp., et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified below. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible

to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the data on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 23rd day of April 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Allied Chemical Corp., Semet Solday Div., Harewood Mine (workers).	Montgomery, W. Va	4/18/79	4/16/79	TA-W-5,270	Mining of coal.
Allied Chemical Corp., Semet Solday Div., Harewood Mine (Preparation Plant) (workers).	Montgomery, W. Va	4/18/79	4/16/79	TA-W-5,271	Cleaning of coal.
American Biltrite Corp., Cambridge Plant (workers).	Cambridge, Mass	4/17/79	4/9/79	TA-W-5,272	Rubber and plastic conveyor belts, matting, packing and hose.
Figure Flattery, Inc. (Intimate Apparel Worker's Union, ILGWU).	New York, N.Y	4/16/79	4/11/79	TA-W-5,273	Men's briefs.
Florsheim Shoe Co. (United Shoe Workers of America).	Chaffee, Mo	4/10/79	4/4/79	TA-W-5,274	Men's shoes.
Interstate Mining Company, Mine #1 (U.M.W.A.).	Mahawk, W. Va	4/2/79	3/27/79	TA-W-5,275	Contract mining for larger coal companies.
National Footwear (workers)	Epping, N.H	4/16/79	4/10/79	TA-W-5,276	Children's shoes.
Renauld Int'l, Ltd., Div. of Bonneau Company (Retail, Wholesale Department Stores Union).	Fitchburg, Mass	4/17/79	4/12/79	TA-W-5,277	Sunglasses.
Stanhope Sewing (workers)	Netcong, N.J	4/11/79	4/5/79	TA-W-5,278	Sew blouses.
T & R Auto Handling Corp. (Teamsters)	Mahwah, N.J	4/12/79	4/9/79	TA-W-5,279	Load cars on railcars.
United States Pipe & Foundry Company (U.S.W.A.).	Burlington, N.J	4/18/79	4/11/79	TA-W-5,280	Steel pipe and ductile iron pipe.

Amstar Corp. et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified below. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 18th day of April 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-13185 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Amstar Corporation, Spreckels Sugar Div. (Company).	Chandler, Ariz	4-16-79	4-11-79	TA-W-5,247	Granulated sugar and by-products (molasses and sugar beet pulp).
Converse Rubber Company, Lumberton Division (Company).	Lumberton, N.C.	4-16-79	4-11-79	TA-W-5,248	Athletic canvas footwear.
Energy Development Corporation (UMWA)	Wharncliffe, W. Va	4-10-79	4-5-79	TA-W-5,249	Mining of coal.
Florsheim Shoe Company (USWA)	Poplar Bluff, Mo	4-10-79	4-5-79	TA-W-5,250	Men's shoes.
Gay Coat Company, Inc. (Workers)	Union City, N.J.	4-16-79	4-13-79	TA-W-5,251	Contractor of ladies' coats, jackets, vests.
Gould Mine, Inc., Gram 1 Surface Mine	Greenbrier County, W. Va	4-16-79	4-11-79	TA-W-5,252	Mining of coal.
Gould Mine, Inc., Surface Mine 6 (U.M.W.A.)	Greenbrier County, W. Va	4-16-79	4-11-79	TA-W-5,253	Mining of coal.
Gould Mine, Inc., Gould 1 Surface Mine (U.M.W.A.).	Greenbrier County, W. Va	4-16-79	4-11-79	TA-W-5,254	Mining of coal.
Gould Mine, Inc., Viking 5 Surface Mine (U.M.W.A.).	Greenbrier County, W. Va	4-16-79	4-11-79	TA-W-5,255	Mining of coal.
H. Warshow & Son, Inc. (Company)	Milton, Pa	4-11-79	4-9-79	TA-W-5,256	Dyeing and finishing of elastic fabrics.
Hallowell Shoe Company (Workers)	Augusta, Maine	4-10-79	4-4-79	TA-W-5,257	Women's boots and shoes.
Lorraine Foundry (IMAWU)	Maquoketa, Iowa	4-10-79	4-4-79	TA-W-5,258	Grey ductile castings.
Mercer Rubber Company (IRWU)	Hamilton Square, N.J	4-12-79	4-8-79	TA-W-5,259	Conveyor belt, hand made hoses and rubber expansion joints.
Kim Michaels, Inc. (Company)	Burlington, N.J	4-12-79	4-5-79	TA-W-5,260	Ladies' sportswear—skirts (90%) some pants.
Ohio Brass Company (Teamsters Local 175)	Oak Hill, W. Va	4-16-79	4-10-79	TA-W-5,261	Electrical equipment for coal mines.
Perennial Print (Workers)	Paterson, N.J	4-16-79	4-11-79	TA-W-5,262	Textile printing and finishing.
River Falls Manufacturing (ACIWU)	Falls River, Mass	4-8-79	4-6-79	TA-W-5,263	Children's and ladies' outerwear.
Star Coal Company (UMWA)	Craigsville, W. Va	4-9-79	4-4-79	TA-W-5,264	Mining of coal.
Sunday's Workclothes Inc. (Workers)	Hauppauge, N.Y	4-11-79	4-6-79	TA-W-5,265	Ladies' and juniors' sportswear.
Wiley Manufacturing Company (IUMSWA)	Port Deposit, Mo	4-12-79	4-11-79	TA-W-5,266	Ocean going ships, tankers, cargo vessels, cranes.

[FR Doc. 79-13186 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

Arrived Sportswear, et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified below. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantital interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 18th day of April 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Arrived Sportswear (workers)	Hauppauge, N.Y	4/11/79	4/6/79	TA-W-5,267	Ladies' and junior's sportswear.
Going On Sportswear, Inc. (workers)	Hauppauge, N.Y	4/10/79	4/4/79	TA-W-5,268	Ladies' and junior's sportswear.
Headline Sportswear, Inc. (workers)	Hauppauge, N.Y	4/16/79	4/6/79	TA-W-5,269	Ladies' and junior's sportswear.

[FR Doc. 79-13187 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

Aspen Skiwear; Revised Certification 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 Certification of Eligibility to Apply for Adjustment Assistance on February 27, 1979, applicable to workers and former workers of Aspen Skiwear, Pueblo, Colorado. The Notice of Certification was published in the **Federal Register** on March 6, 1979 (44 FR 12290).

At the request of some former workers, a further investigation was instituted by the Director of the Office of Trade Adjustment Assistance. A review of the case revealed that layoffs of workers occurred before the original impact date of June 1, 1978.

The intent of the certification is to cover all workers at the Pueblo, Colorado, plant of Aspen Skiwear who were affected by the decline in production of ski jackets and men's and boys' knit sport shirts related to import competition. The certification, therefore, is revised providing a new impact date of May 1, 1978.

The revised certification applicable to TA–W–4326 is hereby issued as follows:

All workers of the Pueblo, Colorado, plant of Aspen Skiwear, Denver, Colorado, who became totally or partially separated from employment on or after May 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 24th day of April, 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[TA–W–4326]

[FR Doc. 79–13188 Filed 4–26–79; 8:45 am]

BILLING CODE 4510–28–M

Binni Bon, Inc., et al.; 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–4842, 4845, 4845A, 4850, 5027 and 5029: investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigations were initiated on February 26, 1979, and March 23, 1979, respectively, in response to worker petitions received on February 22, 1979, and March 19, 1979, which were filed by the Internnational Ladies' Garment Workers' Union on behalf of workers and former workers producing women's brassieres and briefs at Binni Bon, Inc., Adjuntas, Puerto Rico: Carol Foundations, Inc., Bayamon and Adjuntas, Puerto Rico; Ken Foundations, Inc., Carolina, Puerto Rico; Forever Yours, Inc., Brooklyn, New York and J. Stevens Foundations, Inc., Brooklyn, New York. The investigations revealed that the firms primarily produced women's brassieres.

The Notices of Investigation were published in the **Federal Register** on March 9 and March 30, 1979 (44 FR 13093–94 and 44 FR 19074–75), respectively. No public hearing was requested and none was held. The determination was based upon information obtained principally from officials of Forever Yours, 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.

Women's brassieres are included in the import, production category, Brassieres, Bralettes and Bandeaux. U.S. imports in this category increased absolutely and relative to domestic production in 1977 compared to 1976. U.S. imports increased absolutely in the January through September period of 1978 compared to the same period of 1977.

The Department surveyed the Major customers who decreased purchases of brassieres from Forever Yours, Inc., in 1978 compared to 1977. Respondents accounting for a substantial proportion of Forever Yours' decline in sales reported increased purchases of imported brassieres in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigations, I conclude that increased imports of articles like or directly competitive with women's brassieres produced at Binni Bon, Inc., Adjuntas, Puerto Rico; Carol Foundations, Inc., Bayamon and Adjuntas, Puerto Rico; Ken Foundations, Inc., Carolina, Puerto Rico; Forever Yours, Inc., Brooklyn, New York and J. Stevens Foundations, Inc., Brooklyn, New York contributed importantly to the decline in sales and to the separation of workers of those firms. In accordance with the provisions of the Act, I make the following certification:

All workers of Binni Bon, Inc., Adjuntas, Puerto Rico; Carol Foundations, Inc., Bayamon and Adjuntas, Puerto Rico; Ken Foundations, Inc., Carolina, Puerto Rico; Forever Yours, Inc., Brooklyn, New York and J. Stevens Foundations, Inc., Brooklyn, New York who became totally or partially separated from employment on or after March 12, 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 18th day of April 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[TA–W–4842, et al.]

[FR Doc. 79–13189 Filed 4–26–79; 8:45 am]

BILLING CODE 4510–28–M

Brown Shoe Co.; 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–4950: 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 15, 1979, in response to a worker petition received on March 6, 1979, which was filed on behalf of workers and former workers producing ladies' shoes and boots at the Bernie, Missouri, plant of the Brown Shoe Company.

The Notice of Investigation was published in the **Federal Register** on March 23, 1979, (44 FR 17833). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Brown Shoe 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. Without regard to whether any of the other criteria have been met, the following criteria has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

The Department's investigation revealed that sales and production of women's shoe's and boots at the Bernie, Missouri plant of Brown Shoe increased both in quantity and value from 1976

through 1978 and increased during the January-February period of 1979 compared with the same period of 1978.

Conclusion

After careful review, I determine that all workers of the Bernie, Missouri, plant of the Brown Shoe 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 23rd day of April 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[TA-W-4950]

[FR Doc. 79-13190 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

C. G. Conn Ltd.; 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-4829: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on February 22, 1979, in response to a worker petition received on February 15, 1979, which was filed on behalf of workers and former workers testing and assembling transistors, diodes, and capacitors at C. G. Conn Ltd., Organ Division, Madison, Indiana. The investigation revealed that the workers assemble, test and tume electronic organs. A petition was subsequently filed on behalf of workers at the above mentioned facility by the United Automobile, Aerospace, and Agricultural Implement Workers of America.

The Notice of Investigation was published in the **Federal Register** on March 2, 1979 (44 FR 11865). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of C. G. Conn Ltd., 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 electronic organs, not including chord organs, increased both absolutely and relative to domestic production in 1978 from 1977.

A survey was conducted of franchised dealers who sell Conn Organs. The survey revealed dealers which reduced purchases from the subject firm increased purchases of imported electronic organs.

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 electronic organs produced at C. G. Conn Ltd., Organ Division, Madison, Indiana, 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 C. G. Conn Ltd., Organ Division, Madison, Indiana, who became totally or partially separated from employment on or after February 9, 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 18th day of April 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[TA-W-4829]

[FR Doc. 79-13191 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

The Cambridge Tailoring Co.; 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-4912: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigtion was initiated on March 12, 1979 in response to a worker petition received on March 5, 1979 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers formerly producing men's suits and sportcoats at the Cambridge Tailoring Company, Baltimore, Maryland. The investigtion revealed that the firm primarily produced men's suits.

The Notice of Investigation was published in the **Federal Register** on March 23, 1979 (44 FR 17835). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Cambridge Tailoring 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. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Cambridge Tailoring Company was a manufacturer of men's custom-tailored suits. The suits were produced by Cambridge Tailoring for custom tailor shops. A Department survey of these tailor shops revealed that virtually all sold only custom-made suits and did not fit customers for imported suits during the period 1976 through 1978.

Conclusion

After careful review, I determine that all workers of the Cambridge Tailoring Company, Baltimore, Maryland 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 23d day of April 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[TA-W-4912]

[FR Doc. 79-13192 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

Columbian Rope Co.; 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-4846: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on February 26, 1979 in response to a worker petition received on February 22, 1979 which was filed by the American Clothing and Textile Workers Union on behalf of workers and former workers producing manila rope and synthetic rope at Columbian Rope Company, Jefferson, Louisiana.

The Notice of Investigation was published in the **Federal Register** on March 9, 1979 (44 FR 13093-4). No public

hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Columbian Rope 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 hard fiber rope increased from 25,465,000 pounds in 1977 to 30,035,000 pounds in 1978. The ratio of imports to domestic production increased from 244.8 percent in 1977 to 322.9 percent in 1978.

U.S. imports of synthetic fiber rope increased from 2,474,000 pounds in 1977 to 3,219,000 pounds in 1978. The ratio of imports to domestic production increased from 6.2 percent in 1977 to 6.8 percent in 1978.

Imports of rope by Columbian Rope Company increased in 1977 compared with 1976, and increased in 1978 compared with 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 rope produced at the Jefferson, Louisiana plant of Columbian Rope 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 the Jefferson, Louisiana plant of Columbian Rope Company who became totally or partially separated from employment on or after February 16, 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 19th day of April 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[TA-W-4846]

[FR Doc. 79-131934 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

Consolidation Coal Co.; 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-5071: 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 29, 1979 in response to a worker petition received on March 27, 1979 which was filed by the United Mine Workers of America Local 6633 on behalf of workers formerly producing metallurgical coal at Consolidation Coal Company, Beechfork No. 10 Mine, Amonate, Virginia. The investigation revealed that the correct company name is Consolidation Coal Company and that the mine is located in McDowell County, West Virginia.

The Notice of Investigation was published in the **Federal Register** on April 6, 1979 (44 FR 20820-1). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Consolidation Coal Company, its customers, the U.S. Department of the Interior, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Beechfork No. 10 mine produced metallurgical coal which is used to produce coke. Coke is metallurgical coal at a later stage of production, and therefore can be considered "like or directly competitive" with metallurgical coal.

The Beechfork No. 10 mine's coal was cleaned at the Jenkin Jones Preparation Plant until October, 1978. After October, 1978 the coal was cleaned at the Amonate Preparation Plant. The majority of coal cleaned at these two plants is exported. The only domestic customers who decreased their purchases of coal from these two plants did not purchase imported metallurgical coal or coke.

Conclusion

After careful review, I determine that all workers of Consolidation Coal Company, Beechfork No. 10 Mine, McDowell County, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of April 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[TA-W-5071]

[FR Doc. 79-13194 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

Converse Rubber Co.; 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-4928: 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 13, 1979 in response to a worker petition received on March 12, 1979 which was filed on behalf of workers and former workers producing rubber, canvas and leather athletic and leisure footwear at the Presque Isle, Maine plant of Converse Rubber Company.

Workers at the Presque Isle, Maine plant were certified eligible to apply for adjustment assistance by the Department in a previous determination (TA-W-1590). Certification under that determination expires on April 29, 1979.

The Notice of Investigation was published in the **Federal Register** on March 23, 1979 (44 FR 17834). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Converse Rubber 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 of the requirements have been met.

Imports of rubber/canvas footwear increased from 106.0 million pair in 1977 to 172.7 million pair in 1978. The raito of imports to domestic production increased from 119.0 percent in 1977 to 207.1 percent in 1978.

Customers of Converse Rubber Company surveyed by the Department indicated that they had decreased purchases of canvas and athletic

footwear from Converse and increased purchases of imports.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that incrases of imports of articles like or directly competitive with canvas and athletic footwear produced at the Presque Isle, Maine plant of Converse Rubber Company contributed importantly to the decline in sales or production and to the total or partial spearation of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Presque Isle, Maine plant of Converse Rubber Company who become totally or partially separated from employment on or after April 29, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 20th day of April 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[TA-W-4928]

[FR Doc. 79-13195 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

Converse Rubber Co.; 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-4929: 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 13, 1979 in response to a worker petition received on March 12, 1979 which was filed on behalf of workers and former workers engaged in employment related to the production of rubber, canvas and leather athletic footwear at the Division Headquarters of Converse Rubber Company, Wilmington, Massachusetts. The investigation revealed that the Division Headquarters includes regional sales offices in Elk Grove Village, Illinois; Dallas, Texas; Burlingame, California; New York City, New York; Charlotte, North Carolina; and Wilmington, Massachusetts and all sales personnel under their jurisdiction.

Workers at the Division Headquarters of Converse were certified eligible to apply for adjustment assistance by the Department in a previous determination (TA-Wp1672). Certification under that determination expires on April 29, 1979.

The Notice of Investigation was published in the **Federal Register** on March 23, 1979 (44 FR 17834). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Converse Rubber 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 of the requirements have been met.

Imports of rubber/canvas footwear increased from 106.0 million pair in 1977 to 172.7 million pair in 1978. The ratio of import to domestic production increased from 119.0 percent in 1977 to 207.1 percent in 1978.

Customers of Converse Rubber Company surveyed by the Department indicated that they had decreased purchases of canvas and athletic footwear from Converse and increased 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 canvas and athletic footwear produced by Converse Rubber Company contributed importantly to the decline in sales or production and to the total or partial separation of workers at the corporate and sale offices listed below. In accordance with the provisions of the Act, I make the following certification:

All workers of the Wilmington, Massachusetts corporate office and the Elk Grove Village, Illinois; Dallas, Texas; Burlingame, California; New York City, New York; Charlotte, North Carolina; and Wilmington, Massachusetts regional sales offices and all sales personnel under their jurisdiction, of Converse Rubber Company who become totally or partially separated from employment on or after April 29, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 20th day of April 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[TA-W-4929]

[FR Doc. 79-13196 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

Converse Rubber Co.; 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-4930: investigation regarding certification of eligibility to apply for worker ajustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 13, 1979 response to a worker petition received on March 12, 1979 which was filed on behalf of workers and former workers producing rubber, canvas and leather athletic and leisure footwear at the Berlin, New Hampshire plant of Converse Rubber Company, Granite State Division.

Workers at the Berlin, New Hampshire plant were certified eligible to apply for adjustment assistance by the Department in a previous determination (TA-W-1614). Certification under that determination expires on April 29, 1979.

The Notice of Investigation was published in the **Federal Register** on March 23, 1979 (44 FR 17834). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Converse Rubber 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 of the requirements have been met.

Imports of rubber/canvas footwear increased from 106.0 million pair in 1977 to 172.7 million pair in 1978. The ratio of imports to domestic production increased from 119.0 percent in 1977 to 207.1 percent in 1978.

Customers of Converse Rubber Company surveyed by the Department indicated that they had decreased purchases of canvas and athletic footwear from Converse and increased 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 canvas and athletic footwear produced at the Berlin, New Hampshire plant of Converse Rubber 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 the Berlin, New Hampshire plant of Converse Rubber Company who become totally or partially separated from employment on or after April 29, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 20th day of April 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[TA-W-4930]

[FR Doc. 79-13197 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

Diebold, Inc.; 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-4442: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 29, 1978 in response to a worker petition received on November 15, 1978 which was filed by the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers on behalf of workers and former workers producing safety deposit boxes, vault doors and bank equipment at the Canton, Ohio facility of Diebold, Incorporated. The investigation revealed that the plant primarily produces safe deposit boxes, vault doors, steel lockers, steel chests and visual auto tellers.

The Notice of Investigation was published in the **Federal Register** on December 5, 1978 (43 FR 56953). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Diebold, Incorporated, its customers, its potential customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. With respect to workers engaged in employment related to the production of steel lockers, steel chests and visual auto tellers and to the production of safe deposit boxes, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The average number of production workers engaged in employment related to the production of steel lockers, steel chests and visual auto tellers declined less than two percent in the first eleven months of 1978 compared to the like period of 1977. The average number of production workers engaged in employment related to the production of steel lockers, steel chests and visual auto tellers declined less than five percent in each of the first three quarters of 1978 compared to the corresponding quarters of 1977. Most of the declines were due to causes other than layoffs. The one week shutdown in August 1978 was due to inventory adjustments. The average number of production workers engaged in employment related to the production of steel lockers, steel chests and visual auto tellers increased in September, October and November 1978 compared to the same months in 1977.

The average number of production workers engaged in employment related to the production of safe deposit boxes increased in the first eleven months of 1978 compared to the like period in 1977. The average number of production workers increased in each of the first three quarters of 1978 compared to the corresponding quarter one year earlier. A one-week shutdown occurred in August, 1978, due to inventory adjustments. The average number of production workers engaged in employment related to the production of safe deposit boxes increased in September, October and November 1978 compared to the same months in 1977.

Sales and production of safe deposit boxes produced at the Canton, Ohio facility of Diebold, Incorporated increased in the first eleven months of 1978 compared to the like period of 1977.

With respect to workers engaged in the production of vault doors, 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 of vault doors at the Canton, Ohio facility increased in quantity and value in the fourth quarter of 1977 and in each of the first three quarters of 1978 compared to the same quarter one year earlier.

Conclusion

After careful review I determine that all workers of the Canton, Ohio facility of Diebold, Incorporated 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 23rd day of April 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[TA-W-4442]

[FR Doc 79-13198 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

Diversified Southern Industries and Mr. Jeans, Inc.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4813 & 4818: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on February 15, 1979 in response to a worker petition received on February 9, 1979 which was filed on behalf of workers and former workers producing men's, women's and children's fashion jeans at Diversified Southern Industries, High Point, North Carolina and at Mr. Jeans, Incorporated, Randleman, North Carolina. Mr. Jeans is owned by Diversified Southern Industries.

The Notice of Investigation was published in the **Federal Register** February 27, 1979 (44 FR 11140). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Diversified Southern Industries, Omnico, Omnico's 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 men's and boys' woven cotton and man-made jeans and dungarees increased in 1977 compared to 1976 and increased absolutely in 1978 compared to 1977. Imports of women's, misses', and children's slacks and shorts

increased in 1977 compared to 1976 and increased absolutely in 1978 compared to 1977.

The production of Diversified Southern Industries (DSI) and Mr. Jeans is sold through Omnico, another subsidiary of DSI's parent firm, United States Industries. A survey of customers of Omnico revealed that customers representing a significant proportion of the decline in Omnico's sales, in the first ten months of 1978 compared to the first ten months of 1977 increased purchases of imported jeans during the same time period. Workers at Omnico, Inwood, New York were certified eligible to apply for adjustment assistance by the Department on April 10, 1979 (TA–W–4853).

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's, women's and children's jeans produced at Diversified Southern Industries, High Point, North Carolina and Mr. Jeans, Incorporated, Randleman, North Carolina contributed importantly to the decline in sales or production and to the total or partial separation of workers of those firms. In accordance with the provisions of the Act, I make the following certification:

All workers of Diversified Southern Industries, High Point, North Carolina who became totally or partially separated from employment on or after July 8, 1978 and all workers of Mr. Jeans, Incorporated, Randleman, North Carolina who totally or partially separated from employment on or after February 5, 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 23rd day of April 1979.

C. Michael Aho,
Director, Office of Foreign Economic Research.

[TA–W–4813 and 4818]
[FR Doc. 79–13199 Filed 4–26–79; 8:45 am]
BILLING CODE 4510–28–M

Florsheim Shoe Co., et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified below. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 19th day of March 1979.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

Petitioner: Union/Workers or former workers of—	Location	Date Received	Date of petition	Petition No.	Articles produced
Florsheim Shoe Co., Outsole Leather Plant (workers).	Cape Girardeau, Mo	3/13/79	3/8/79	TA–W–4,975	Leather shoe sales.
Malden Knitting Mills, Malden Plant (com>pany).	Malden, Mass	3/12/79	3/7/79	TA–W–4,976	Men's and women's sweaters and shirts.
Malden Knitting Mills, Lawrence Plant (company).	Lawrence, Mass	3/12/79	3/7/79	TA–W–4,977	Men's and women's sweaters and shirts.
Malden Mills, Inc., Lawrence Plant (company)	Lawrence, Mass	3/12/79	3/7/79	TA–W–4,978	Knitted, woven and flocked pile fabrics.
Malden Mills Inc., North Berwick Plant (company).	North Berwick, Maine	3/12/79	3/7/79	TA–W–4,979	Knitting, woven and flocked pile fabrics.
Malden Mills, Inc., Hudson Plant (company)	Hudson, N.H	3/12/79	3/7/79	TA–W–4,980	Knitted, woven and flocked pile fabrics.
Malden Mills, Inc., Barre Plant (company)	Barre, Vt	3/12/79	3/7/79	TA–W–4,981	Knitted, woven and flocked pile fabrics.
Malden Mills, Inc., Bridgeton Plant (company).	Bridgeton, Maine	3/12/79	3/7/79	TA–W–4,982	Knitted, woven and flocked pile fabrics.
Meggan, Inc. (ILGWU)	Los Angeles, Calif	3/15/79	3/5/79	TA–W–4,983	Ladies' dresses.
Messerman Sports-Wear (ILGWU)	Los Angeles, Calif	3/15/79	3/5/79	TA–W–4,984	Ladies' sportswear (blouses, dresses, pants).
Anna Myers (ILGWU)	Los Angeles, Calif	3/15/79	3/5/79	TA–W–4,985	Ladies' sportswear and dresses.
Ronay (Leather Goods, Plastics, Handbags, & Novelty Workers' Union).	New York, N.Y	3/12/79	3/7/79	TA–W–4,986	Handbags.
Shenango, Inc., Buffalo, N.Y. Division (USWA).	Buffalo, N.Y	3/5/79	3/1/79	TA–W–4,987	Cast iron ingot molds.
Venus of Calif. (ILGWU)	Los Angeles, Calif	3/15/79	3/5/79	TA–W–4,988	Ladies' sportswear

[FR Doc. 79–13200 Filed 4–26–79; 8:45 am]
BILLING CODE 4510–28–M

International Shoe Co.; 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–4867: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on Februray 28, 1979 in response to a worker petition received on February 22, 1979 which was filed on behalf of workers and former workers producing ladies' footwear at the Belle, Missouri plant of International Shoe Company.

The Notice of Investigation was published in the **Federal Register**. on March 9, 1979 (44 FR 13095). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of International Shoe 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 certifiation 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 non-rubber footwear, except athletic, increased absolutely from 1975 to 1976, and then decreased in absolute terms from 1976 to 1977. Imports increased absolutely from 1977 to 1978. The import to domestic production ratio increased each year from 1975 to 1978.

A Department survey, conducted with customers who purchased shoes produced by International Shoe Company, revealed that customers increased imports of women's shoes from 1976 to 1977 and in the first nine months of 1978 compared to the same period of 1977, while decreasing purchases from International Shoe Company.

Conclusion

After careful review of te facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's shoes produced at the Belle, Missouri plant of the International Shoe 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 the Belle, Missouri plant of the International Shoe Company who became totally or partially separated from employment on or after February 14, 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 23rd day of April 1979.

C. Michael Aho,
Director, Office of Foreign Economic Research.

[TA–W–4867]
[FR Doc. 79–13202 Filed 4–26–79; 8:45 am]
BILLING CODE 4510–28–M

L. W. Foster Sportswear Co., Inc.; Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance: Correction

In FR Doc. 79–11573 appearing on page 22208 in the **Federal Register** of April 13, 1979, the date of petition in Appendix under L. W. Foster Sportswear Company, Inc., Philadelphia, Pennsylvania, TA–W–5199 is corrected to read as follows: "April 2, 1979."

Signed at Washington, D C. this 19th day of April 1979.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[TA–W–5199]
[FR Doc. 79–13203 Filed 4–26–79; 8:45 am]
BILLING CODE 4510–28–M

Marion Harwood Manufacturing Co.; Negative Determination Regarding Application for Reconsideration

On March 1, 1979, the petitioning union requested administrative reconsideration of the Department of Labor's negative determination regarding eligibility to apply for worker adjustment assistance in the case of former workers of Marion Harwood Manufacturing Company, Holston Plant, Marion, Virginia. The determination was published in the **Federal Register** on February 27, 1979, (44 FR 11145).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears, on the basis of facts not previously considered, that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The petitioning union claimed that workers at the Holston plant of the Marion Harwood Manufacturing Company are integrated into the production process of the Marion plant whose workers are covered under certification TA–W–4532. The petitioning union claims that the proximity of the Holston plant to the Marion plant and Holston's dependency upon the Marion plant for its cuttings of pajamas and robes supports the integration-of-production-process thesis and warrants certification. In support of the petitioning union, a company official claims that the Holston workers lost time from their work on pajamas because had the Marion plant been able to provide additional pajama cuttings, workers at Holston could have produced more pajamas.

The Department's review revealed that the Trade Act criterion of a decrease in production was not met by workers at the Holston plant producing men's and boys' pajamas. The test of increased imports contributing importantly to separations of workers producing robes was also not met. Production of pajamas at the Holston plant increased in 1978 compared to 1977 and in each of the last three quarters of 1978 compared to the like periods in 1977. The Department's survey of Marion Harwood's customers revealed that those responding represented most of Marion Harwood's sales of robes in 1978. The customers who showed decreased purchases from the subject firm and increased purchases of foreign robes in 1978 compared to 1977 accounted for only an insignificant percent of Holston's decline in robe production for 1978.

The fact that sewing and other operations are performed at the Holston plant on men's and boys' pajamas and robes which were cut by workers at the Marion plant, who are covered by a trade adjustment assistance certification, TA–W–4532, does not by itself provide a basis for certification.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 19th day of April 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[TA-W-4533]

[FR Doc 79-13204 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

Mr. Casuals, Inc.; Certification Regarding Eligibility To Apply For Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4817: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on Feburary 15, 1979, in response to a worker petition received on February 9, 1979, which was filed on behalf of workers and former workers producing men's women's and children's fashions jeans at the Elk Creek, Virginia plant of Mr. Casuals, Incorporated, a subsidiary of Diversified Southern Industries, High Point, North Carolina.

The Notice of Investigation was published in the **Federal Register** on February 27, 1979 (44 FR 11140). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Diversified Southern Industries, Omnico's 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 men's and boys' woven cotton and man-made jeans and dungarees increased in 1977 compared to 1976 and increased absolutely in 1978 compared to 1977. Imports of women's misses', and children's slacks and shorts increased in 1977 compared to 1976 and increased absolutely in 1978 compared to 1977.

Production at Mr. Casuals is sold through Omnico, the sales affiliate of Mr. Casuals' parent firm, Diversified Southern Industries.

A survey of customers of Omnico revealed that customers representing a significant proportion of the decline in Omnico's sales in the first ten months of 1978 compared to the first ten months of 1977 increased purchases of imported jeans during the same period. Workers at Omnico, Inwood, New York were certified eligible to apply for adjustment assistance on April 10, 1979 (TA-W-4853). Workers producing men's, women's, and children's jeans the at Troutdale, Virginia plant of Mr. Casuals were certified eligible to apply for adjustment assistance by the Department on February 15, 1979 (TA-W-4465).

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's, women's and children's jeans produced at the Elk Creek, Virginia plant of Mr. Casuals, Incorporated, 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 the Elk Creek, Virginia plant of Mr. Casuals, Incorporated, who became totally or partially separated from employment on or after February 5, 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 23rd day of April 1970.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[TA-W-4817]

[FR Doc. 79-13205 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

Opelika Manufacturing Corp., 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-4900: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 7, 1979 in response to a worker petition received on February 26, 1979 which was filed on behalf of workers and former workers weaving raw cotton into towelling material at the Opelika, Alabama mill of the Opelika Manufacturing Corporation.

The Notice of Investigation was published in the **Federal Register** on March 20, 1979 (44 FR 16972). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Opelika Manufacturing 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 increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Opelika, Alabama mill weaves flat goods (cloth) which is assembled by other Opelika Manufacturing Corporation plants into industrial towelling and housewares.

Total sales of the Opelika Manufacturing Corporation increased from 1977 to 1978. Sales of the divisions to which most of the fabric is transferred increased from FY 1977 to FY 1978.

Production of fabric at the Opelika mill increased from 1977 to 1978.

Layoffs which occurred at the Opelika, Alabama mill in June, 1978 were attributable to the replacement of flat goods looms with terry cloth looms. Workers have been recalled as the terry cloth looms have been installed and put into operation. No other layoffs occurred during the period from February 22, 1978, one year prior to the date of the petition, to the present.

Conclusion

After careful review, I determine that all workers of the Opelika, Alabama mill of the Opelika Manufacturing 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 23rd day of April 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[TA-W-4900]

[FR Doc. 79-13206 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-26-M

Pecos Trail Jeans; 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-4819: investigation regarding certification of eligibility to apply for

worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on February 15, 1979, in response to a worker petition received on February 9, 1979, which was filed on behalf of workers and former workers producing men's, women's and children's fashion jeans at Pecos Trail Jeans, Santa Fe, New Mexico, a subsidiary of Diversified Southern Industries, High Point, North Carolina.

The Notice of Investigation was published in the **Federal Register** on February 27, 1979 (44 FR 11140). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Diversified Southern Industries, Omnico, Omnico's 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 men's and boys' woven cotton and man-made jeans and dungarees increased in 1977 compared to 1976 and increased absolutely in 1978 compared to 1977. Imports of women's, misses', and children's slacks and shorts increased in 1977 compared to 1976 and increased absolutely in 1978 compared to 1977.

Production at Pecos Trails Jeans is sold through Omnico, the sales affiliate of Pecos Trails' parent firm, Diversified Southern Industries.

A survey of customers of Omnico revealed that customers representing a significant proportion of the decline in Omnico sales, in the first ten months of 1978 compared to the first ten months of 1977 increased purchases of imported jeans during the same period. Workers at Omnico, Inwood, New York were certified eligible to apply for adjustment assistance by the Department on April 10, 1979 (TA–W–4853).

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's, women's and children's jeans produced at Pecos Trail Jeans, Santa Fe, New Mexico 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 Pecos Trail Jeans, Santa Fe, New Mexico who became totally or partially separated from employment on or after February 5, 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 23rd day of April 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[TA–W–4819]

[FR Doc. 79–13207 Filed 4–26–79; 8:45 am]

BILLING CODE 4510–28–M

Putnam-Herzl Finishing Co., Inc.; Negative Determination Regarding Application for Reconsideration

By letter of March 27, 1979, the President of Putnam-Herzl Finishing Company requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers of the Putnam-Herzl Finishing Company, Inc., Putnam, Connecticut. The determination was published in the **Federal Register** on February 27, 1979, (44 FR 11149).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The President of the firm, on behalf of workers and former workers, claims that increased imports of finished garments contributed importantly to the decline in sales and production and to the separation of workers dyeing and finishing fabric at Putnam-Herzl since Putnam-Herzl workers do not have the opportunity to process the cloth for such imports. Further, the President provided letters from his customers which suggest that imports of finished fabric and finished garments have injured their business with Putnam-Herzl. The President also states that he does not understand how the failure to meet the "contributed importantly" test could affect the workers' claim for trade adjustment assistance especially when company sales and employment decreased in 1978 compared to 1977 while U.S. aggregate imports of finished fabric increased.

The Department's review revealed that the "contributed importantly" test was not met by workers at the Putnam-Herzl Finishing Company. In the Department's survey of Putnam-Herzl's customers, responses were received which accounted for over half of Putnam-Herzl's 1978 sales. Further, the survey revealed that the customers which decreased business with Putnam-Herzl did not import finished fabric. Also, the ratio of U.S. imports of finished fabric to total domestic production was less than 2 percent in 1976 and 1977.

The Department does not consider the President of the firm's claim of lost business because of increased imports of finished garments as relevant because imported finished garments cannot be considered like or directly competitive with finished fabric. Imports of finished fabric must be considered in determinig import injury to workers producing finished fabric. Further, all three statutory group criteria including the "contributed importantly" test must be met for certification. The failure to meet any one of the group criteria including the "contributed importantly" test vitiates the workers group claim for trade adjustment assistance.

The Department contacted Putnam-Herzl's customers identified in the application for reconsideration as claiming that imports of finished fabric and finished garments by their competitors have injured their business with Putnam. Of these customers who decreased their business with Putnam-Herzl in 1978, none imported finished fabric.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C. this 24th day of April 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[TA–W–4459]

[FR Doc. 79–13208 Filed 4–26–79; 8:45 am]

BILLING CODE 4510–28–M

Strickland Cotton Mills; 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-4765: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 29, 1979 in response to a worker petition received on January 24, 1979 which was filed on behalf of workers and former workers producing cotton sheeting, cotton drill, cotton and polyester blend twill, and single fille duck fabrics at Strickland Cotton Mills, Valdosta, Georgia. The investigation revealed that the plant primarily produced greige woven cotton fabric.

The Notice of Investigation was published in the **Federal Register** on February 6, 1979 (44 FR 7249-50). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Strickland Cotton Mills, its customers, the American Textile Manufacturer's 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 greige woven cotton fabric increased from 479 million square yards during the period January through September 1977 to 582 million square yards during the same period in 1978.

The Department conducted a survey of Strickland Cotton Mills' customers. The survey revealed that some customers increased purchases of imported greige woven cotton fabric during the period 1976 through 1978 and decreased purchases from Strickland Cotton Mills.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with greige woven cotton fabric produced at Strickland Cotton Mills, Valdosta, Georgia 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 Strickland Cotton Mills, Valdosta, Georgia who became totally or partially separated from employment on or after June 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 20th day of April 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[TA-W-4765]

[FR Doc. 79-13209 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

Textron, Inc.; 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-4744: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 24, 1979 in response to a worker petition received on January 22, 1979 which was filed on behalf of workers and former workers producing metal and nylon zippers, buttons, snaps, hooks, and eyes for clothing, luggage, sleeping bags and footwear at the Meadville, Pennsylvania plants of the Talon Division of Textron, Inc. The investigation revealed that the plants produce component parts for metal slide fasteners and finished metal slide fasteners.

The Notice of Investigation was published in the **Federal Register** on January 30, 1979 (44 FR 5952). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Talon Division of Textron, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department's investigation revealed allegations that imports of finished apparel and luggage adversely affected production and employment levels at the Talon Division. However, neither finished apparel nor luggage can be considered to be like or directly competitive with zippers. Imports of zippers must be considered in determining import injury to workers producing zippers.

The Department surveyed customers which reduced purchases from the Talon Division from 1977 to 1978. The survey revealed that customers which increased purchases of imported zippers from 1977 to 1978 were an insignificant percentage of the decline in sales at the subject firm during the same period.

Conclusion

After careful review, I determine that all workers of the Meadville, Pennsylvania plants of the Talon Division of Textron, Inc. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of April 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[TA-W-4744]

FR Doc. 79-13210 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

Tri-Star Mining Co., Inc.; 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-4878: investigation regarding certification of eligibility to apply for worker adjustment assistance as precribed in Section 222 of the Act.

The investigation was initiated on February 28, 1979 in response to a worker petition received on February 23, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers mining metallurgical coal at the Welch, West Virginia mine for Tri-Star Mining Company, Incorporated.

The Notice of Investigation was published in the **Federal Register** on March 9, 1979 (44 FR 13094). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Tri-Star Mining Company, Incorporated, its customer, the U.S. Department of the Interior, the U.S.

Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Tri/Star Mining Company, incorporated is a contract coal mine operator that worked at the Welch, West Virginia mine of the Southern Coal Company until May 1978. Virtually all of coal mined by Tri-Star was exported. Consequently, increased imports of coal or coke into the United States did not affect sales and production levels at this mine.

Conclusion

After careful review, I determine that all workers at the Welch, West Virginia mine for Tri-Star Mining Company, Incorporated are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of April 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[TA-W-4878]

[FR Doc 79-13211 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

Worcester Knitting Co.; 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-4911: 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 8, 1979, in response to a worker petition received on March 5, 1979, which was filed on behalf of workers and former workers producing children's and boys' polo shirts at Worcester Knitting Company, Worcester, Massachusetts.

The Notice of Investigation was published in the **Federal Register** on March 20, 1979 (44 FR 16971). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Worcester Knitting Company, 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. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department conducted a survey of customers of Worcester Knitting Company. The survey indicated that most surveyed customers did not reduce purchases from Worcester while increasing purchases from foreign sources. Decreased purchases from Worcester Knitting Company by a customer which increased purchases of imported children's and boys' polo shirts represented an insignificant proportion of Worcester's decline in sales.

Conclusion

After careful review, I determine that all workers of Worcester Knitting Company, Worcester, 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 19th day of April 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[TA-W-4911]

[FR Doc. 79-13212 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

Bureau of Labor Statistics

Meeting of the Business Research Advisory Council

The regular spring meeting of the Business Research Advisory Council will be held at 9:30 a.m., May 16, 1979, at the New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C., Room N4437 (A,B,&C). The agenda for the meeting is as follows:

1. Chairman's Opening Remarks—J. Frank Gaston.
2. Acting Commissioner's Remarks—Janet L. Norwood.
3. Committee Reports:
   (a) Occupational Safety and Health.
   (b) Productivity and Technology.
   (c) Foreign Labor and Trade.
   (d) Manpower and Employment.
   (e) Price Indexes.
   (f) Wages and Industrial Relations.
4. BRAC Operating Procedure.
5. Chairman's Closing Remarks.

This meeting is open to the public. It is suggested that persons planning to attend this meeting as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council on Area Code (202) 523-1559.

Signed at Washington, D.C. this 18th day of April 1979.

Janet L. Norwood,

Acting Commissioner of Labor Statistics.

[FR Doc. 79-13213 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-24-M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) will meet on Wednesday, May 16, and Thursday, May 17, 1979 at the Harvey Holiday Inn (Regency Room) 171st Street and South Halsted, Harvey, Illinois 60426.

The meetings are open to the public and will begin at 9:00 a.m.

The meeting agenda includes a general discussion of standards development and enforcement activities, as well as continued discussion and development of recommendations on the application of the coke oven standard to non-coke oven employees, and an update on the OSHA-MSHA interface.

Written data, views or arguments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the committee and will be included in the record of the meeting.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the

person will appear, and a brief outline of the content of the presentation.

Oral presentations will be scheduled at the discretion of the chairman, depending on the extent to which time permits. Communications may be mailed to:

Ken Hunt, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Third Street and Constitution Avenue, NW., Room N-3635, Washington, D.C. 20210, Phone: 202-523-8024.

Materials provided to members of the Committee are available for inspection and copying at the above address.

Signed at Washington, D.C. this 24th day of April 1979.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 79-13267 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-26-M

Office of the Secretary

Imperial Reading Corp., 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-4866 and 4866A: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 28, 1979 in response to a worker petition received on February 26, 1979 which was filed on behalf of workers and former workers providing administrative and support services at the corporate hedquarters of Imperial Reading Corporation, Lynchburg, Virginia. The investigation was expanded to include the company's sales office in New York, New York.

The Notice of Investigation was published in the **Federal Register** on March 9, 1979 (44 FR 13095). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Imperial Reading 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. The Department's investigation revealed that all of the requirements have been met.

The corporate headquarters and sales office provide services which are integral to the production and marketing of shirts and jeans produced by the Imperial Reading Corporation. Employees at various company manufacturing facilities engaged in employment related to the production of approximately 30 percent of the company's total 1977 production have previously been certified eligible to apply for trade adjustment assistance benefits. (See Department notices of determinations for TA-W-3449, 4260 and 4917.)

Employment at the corporate headquarters in Lynchburg, Virginia was relatively stable from January 1976 through August 1978. Employment began to decline in September 1978 and has continued to decline in each month thereafter through March 1979.

Employment at the company's sales office in New York, New York declined in 1977 compared to 1976 and declined in 1978 compared to 1977. Employment further declined in the first quarter of 1979 compared to the first quarter of 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with shirts and jeans produced at various locations of the Imperial Reading Corporation contributed importantly to the decline in sales and production and to the total or partial separation of workers at the Imperial Reading Corporation's corporate headquarters in Lynchburg, Virginia and sales office in New York, New York. In accordance with the provisions of the Act, I make the following certifications:

"All workers of the Imperial Reading Corporation's corporate headquarters in Lynchburg, Virginia, who became totally or partially separated from employment on or after September 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

"All workers of the Imperial Reading Corporation's sales office in New York, New York who became totally or partially separated from employment on or after February 23, 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 23rd day of April 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[TA-W-4866 and 4866A]

[FR Doc. 79-13201 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 16th day of April 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner Union/workers or former workers of—	Location	Date received	Date of Petition	Petition No.	Articles produced
Ace Equipment Rentals, Inc. (U.M.W.A.)	South Charleston, W. Va	4-9-79	4-4-79	TA-W-5,233	Heavy equipment rental for construction.
Beth-Elkhorn Coal Corporation (Mine #22) (Workers).	Jenkins Ky	4-10-79	4-5-79	TA-W-5,234	Manufacture coal-steam.
Campbell Mining Co. (U.M.W.A.)	Summersville, W. Va	4-9-79	4-4-79	TA-W-5,235	Produce coal.
Dyna Coal #1 (U.M.W.A.)	Anawalt, W. Va	4-2-79	3-27-79	TA-W-5,236	Produce coal.
Green Leaf Fashions, Inc. (Workers)	New York, N.Y	4-10-79	4-3-79	TA-W-5,237	Ladies coats and suits.
Fantasia Fashions (I.L.G.W.U.)	Perth Amboy, N.J	4-10-79	4-2-79	TA-W-5,238	Knitwear fabrics.
Fleshman Trucking, Inc. (U.M.W.A.)	Rainelle, W. Va	4-2-79	3-27-79	TA-W-5,239	Haul coal.
Fisher Coal Company (U.M.W.A.)	Hillsboro, W. Va	4-9-79	4-4-79	TA-W-5,240	Manufacture coal.
Fugerson Coal Company, Corporation (U.M.W.A.).	Craigsville, W. Va	4-9-79	4-4-79	TA-W-5,241	Manufacture coal.
Jeffery Coal Company (U.M.W.A.)	Lynco. W. Va	4-2-79	3-27-79	TA-W-5,242	Produce coal.
Kerstan Corporation (U.M.W.A.)	Richwood W. Va	4-9-79	4-4-79	TA-W-5,243	Manufacture coal.
Lee-Norse Company (Teamsters Union Local 175).	Beckley, W. Va	4-10-79	4-6-79	TA-W-5,244	Underground mining machines.
Sigler Mining, Inc. (U.M.W.A.)	Jodie, W. Va	4-2-79	3-28-79	TA-W-5,245	Produce coal.
Ury Coal Company (U.M.W.A.)	Pineville, W. Va	4-2-79	3-27-79	TA-W-5,246	Haul coal.

[FR Doc. 79-12681 Filed 4-26-79; 8:45 am]

BILLING CODE 4510-28-M

Pension and Welfare Benefit Programs Office

Proposed Exemption for Certain Transactions Involving Electric Hose & Rubber Co. Pension Trust

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the leasing to Electric Hose and Rubber Company (Electric Hose) from the Bank of Delaware (the Trustee), of real property held by the Trustee for the Electric Hose and Rubber Company Pension Trust (the Trust), a trust established by Electric Hose for two pension plans. The proposed exemption would also exempt the guarantee by Dayco Corporation (Dayco) of payment by Electric Hose of all rent due under the above lease. The proposed exemption, if granted, would affect participants and beneficiaries of the Trust, Electric Hose, and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department on or before May 28, 1979.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-017. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: C. E. Beaver of the Department of Labor, (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of Labor (the Department) of a proposed exemption from the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a)(1)(B) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code), by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Electric Hose pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). This application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

(1) Electric Hose has two pension plans, one covering an estimated 284 salaried employees and the other covering an estimated 772 hourly paid employees. The Trust was established on February 18, 1966, to hold the assets of both plans. One August 9, 1966, the Internal Revenue Service (the Service) issued a determination letter stating that the Trust was exempt from taxation under section 501(a) of the Code.

(2) Wyatt and Company, actuaries employed to determine the amount necessary to fund the two plans, found that for the fiscal year ended August 31, 1971, Electric Hose should contribute $926,500. Electric Hose did not have that

amount of cash available at that time, and decided to explore the possibility of contributing various parcels of real estate. Electric Hose had applied for, and received, an extension of time until February 15, 1972, to file its federal income tax return for the fiscal year ended August 31, 1971.

(3) In January 1972, Electric Hose had its warehouse with the land thereunder, located on Vandever Avenue in Wilmington, Delaware, appraised by a member of the American Institute of Real Estate Appraisers, who was familiar with the Wilmington real estate market. The appraised value of the warehouse property was $864,000. Electric Hose then entered into negotiations with the Trustee with regard to the terms of the possible contribution to the Trust of the warehouse property and two nearby unimproved parcels of real property. On February 14, 1972, Electric Hose deeded to the Trustee the warehouse building and the two nearby unimproved parcels of land. The Trustee and Electric Hose agreed that the fair market value of the warehouse building was $848,127. The two unimproved parcels of land, which had been purchased in 1970 for $113,832, were valued at that figure. Therefore, the stated value of the contribution by Electric Hose for funding the Trust for the fiscal year ended August 31, 1971, totaled $961,959.

(4) Immediately after the contribution, Electric Hose and the Trustee executed a leaseback to Electric Hose of the described real property for ten years at an annual "net-net-net" rental of $69,300. The lease required the lessee to pay all costs of maintenance, taxes, and any other expenses of operating the properties.

(5) The Philadelphia District of the Service audited Electric Hose's tax return for the fiscal year ending August 31, 1971, and concluded that the fair market value of the unimproved properties contributed to the Trust was $113,832, as agreed to by the Trustee and Electric Hose, but determined, on the basis of the rental in the leaseback, that the fair market value of the warehouse building subject to lease was $429,500. On November 26, 1973, the Service issued a letter to Trust proposing to revoke the Trust's tax-exempt status retroactive to September 1, 1970, on the grounds that the contribution and leaseback did not operate for the exclusive benefit of employees or their beneficiaries and that it resulted in a prohibited transaction within the meaning of section 503 of the Code.

(6) Electric Hose and Trustee protested the proposed revocation on January 4, 1974, and requested that, in accordance with Internal Revenue Service procedures, the issues raised be referred to the National Office of the Service for Technical Advice.

(7) On April 22, 1974, counsel for the Trust advised Electric Hose that the Trust intended to call upon Electric Hose to make up any difference ultimately determined between the rentals provided in the leaseback arrangement and the fair rental of the properties leased.

(8) On August 28, 1974, the lease was amended to raise the annual minimum net rent to $132,600 and to compel Electric Hose to make up the deficiency in rentals since February 15, 1972.

(9) On December 6, 1974, the Service forwarded to Electric Hose its final determination that the lease transaction was a prohibited transaction within the meaning of section 503(b)(6) of the Code because there was a substantial diversion of trust corpus when the Trust's assets were leased to Electric Hose at too low a rent. The determination was based on the Service's finding that the fair market value of the warehouse building conveyed to the Trust was $848,127, and that, based on that value as appraised in fee simple and as free and clear of any liens or encumbrances, the fair rental of the property contributed to the Trust would have been $133,199 net rent per annum. By letter of December 6, 1974, the Service revoked the exempt status of the Trust for the taxable year beginning September 1, 1975.

(10) On December 27, 1974, the lease was amended for the second time to increase the annual rental to $133,200 and Electric Hose completed payment of $165,275 in make-up rentals.

(11) In August 1975 Electric Hose filed an election pursuant to section 2003(c)(1)(B) of the Act to avoid the loss of the tax-exempt status of the Trust by paying an excise tax, and paid an excise tax of $16,783.67.

(12) From November 10, 1975, a Wilmington realtor has had a listing to sell the warehouse building which had been contributed to the Trust. Electric Hose represented by a letter of July 1, 1976, that it had been told by real estate brokers that the reason for the inability to sell the warehouse building for its fair value to date was that the real estate market in the Wilmington area had been generally depressed.

(13) On February 28, 1979, Dayco, a Delaware corporation with its principal place of business in Dayton, Ohio and owner of all the outstanding shares of stock of Electric Hose, wrote to the Trustee guaranteeing payment by Electric Hose of all rent due under the aforedescribed lease of real property by the Trustee to Electric Hose. Dayco is a diversified corporation with thirty domestic and six foreign manufacturing facilities producing products marketed throughout the world. As of October 31, 1978, Dayco had annual net sales of $653,017,699 and net earnings of $17,328,066. Its total assets were $386,502,057 and shareholders' equity was $11,761,246.

(14) If the exemption is granted, the Trust will avoid a distressed termination of the lease, executed on February 15, 1972, before its expiration date on February 15, 1982. This proposed exemption of the lease would permit the continuation of rentals from the real property while avoiding a forced sale at an unfavorable price with an unrelated third-party. The proposed exemption of the guarantee by Dayco of the rental payments by Electric Hose would protect the rights of the participants and beneficiaries of the Trust.

Notice to Interested Persons

Within two weeks after Electric Hose obtains a copy of the notice published in the **Federal Register**, a copy of the notice and a statement to the effect that interested persons have a right to comment within the period set forth in the notice will be provided to employees working at the plants of Electric Hose where the pension plans are in effect and Local Number 184 of the United Rubber, Cork, Linoleum and Plastic Workers of America in Wilmington, Delaware, which is an employee organization of which participants in the pension plan for hourly employees are members. The notice will be mailed to the union and posted upon bulletin boards maintained by Electric Hose at plants and offices where either affected plan is in effect. Copies of all such notifications will be forwarded to the Department at the time they are available or distributed.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act

which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The pending exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The pending exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with procedures set forth in ERISA Procedure 75–1. If the exemption is granted, restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a)(1)(B) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply until after February 15, 1982, to the aforedescribed lease of real property by the Trustee to Electric Hose provided the lease remains at least as favorable to the Trust as an arm's length transaction with an unrelated party, and to the guarantee by Dayco of payment by Electric Hose of all rent under the aforedescribed lease. The pending exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 18th day of April, 1979.

Ian D. Lanoff,

Administrator of Pension and Welfare Benefit Programs, Labor-Management Services Administrator, Department of Labor.

[Application No. D–017]

[FR Doc. 79–13057 Filed 4–26–79; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL COMMISSION ON EMPLOYMENT AND UNEMPLOYMENT STATISTICS

Public Meeting

Notice is hereby given that the National Commission on Employment and Unemployment Statistics will hold a public meeting on May 31 and June 1, 1979, in Room 550, 2000 K Street, NW., Washington, D.C. 20006.

The National Commission on Employment and Unemployment Statistics was established under Section 13 of the Emergency Jobs Program Extension Act of 1975, Pub. L. 94–444. Its purpose is to advise the President and the Congress on reliable and comprehensive measurements of employment and unemployment by examining the procedures, concepts, and methodology involved in employment and unemployment statistics, and suggesting ways and means of improving them.

The meetings will begin each day at 9:00 a.m. to review public comments on the Commission's Preliminary Draft Report. The public is invited to attend. Official records of the meetings will be available for public inspection by contacting:

Mr. Wesley H. Lacey, Administrative Officer, National Commission on Employment and Unemployment Statistics, Suite 550, 2000 K Street, N.W., Washington, D.C. 20006.

Signed at Washington, D.C., this 23rd day of April, 1979.

Sar A. Levitan,

Chairman.

[FR Doc. 79–13058 Filed 4–26–79; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

Availability of Draft Generic Environmental Impact Statement on Uranium Milling

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 a Draft Generic Environmental Impact Statement (GEIS) on Uranium Milling prepared by the Commission's Office of Nuclear Material Safety and Safeguards is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. Notice of the Commission's intent to prepare such a statement was published in the **Federal Register** on June 3, 1976 (41 FR 22430). A proposed scope and outline for the study was published on March 14, 1977 (42 FR 13874). The Draft Environmental Statement is also being made available at the State Clearinghouses. Requests for single copies of the Draft Environmental Statement (identified as NUREG–0511) should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Techincal Information and Document Control.

In preparing the GEIS, the staff has evaluated a wide range of issues. It has examined the problem of controlling emissions from mills during operations and the problem of mill decommissioning. The latter, of course, includes the special problem of dealing with the large volume wastes—mill tailings—produced by milling operations. These wastes will remain hazardous for very long periods of time owing to the long half-lives of radioactivity present. They emit a radioactive gas, Radon–222, which can be transported long distances exposing large populations, albeit to concentrations of radioactivity which are small increments above background. In addition to technical controls, supplementary institutional and financial arrangements for dealing with these problems have been addressed.

In formulating proposals for dealing with these problems to assure public health and safety and environmental

protection, the staff has developed a full range of perspectives and facts. It has analyzed the problems from short and long term points of view. Potential health risks to individuals living in the immediate vicinity of mills, to individuals living in mining and milling regions, to mill workers, and to large populations which can be exposed to radon, have been addressed. Potential impacts on land use, air quality, water quality, water use, biota and soils, and potential socioeconomic effects of milling operation are assessed. Alternatives for tailings diposal which have been examined have ranged from the past practice of doing virtually nothing to isolate tailings to utilizing potential advance treatment methods such as incorporation of tailings in a solid matrix, such as cement or asphalt.

A set of specific conclusions concerning both technical and institutional aspects of uranium mill operation, decommissioning and tailings disposal are drawn in the GEIS. These conclusions are being incorporated into regulation changes which will be proposed shortly.

Interested persons may submit comments on the Draft Environmental Statement for the Commission's consideration. Federal and State agencies are being provided with copies of the Draft Environmental Statement (local agencies may obtain these documents upon request).

Comments are due by July 26, 1979. An extended period of comment is provided because of the large scope and importance of the document. Furthermore, the staff is now working to set up public meetings on the GEIS at several locations in the western milling regions to make it easy for the public to participate in decisions being made. The meetings will be held after the NRC issues proposed new rules on uranium milling and mill tailings diposal which incorporate conclusions of the GEIS. It is expected that these rules will be issued shortly. Notice of the time and place of the public meetings will be in the **Federal Register.** The purpose of these meetings will be to allow persons to make statements and comments for the record on the GEIS and proposed rules, and to ask clarifying questions of NRC staff members and consultants involved in preparing the document. A record of comments from the public meetings, as well as written comments received, will be considered in preparing the Final GEIS and associated regulations.

Comments by Federal, State and local officials, or other persons received by the Commission will be made available for public inspection at the Commission's Public document Room in Washington, D.C. After consideration of comments obtained on the Draft Environmental Statement, a Final Environmental Statement will be prepared and published. A notice of availability of the Final Environmental Impact Statement will be published in the **Federal Register.**

Comments on the Draft Environmental Statement from interested persons should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Waste Management.

Dated at Silver Spring, Maryland, this 16th day of April, 1979.

For the Nuclear Regulatory Commission.

Ross A. Scarano,

Section leader, New Facilities Section, Uranium Recovery Licensing Branch, Division of Waste Management.

[Project M-25]

[FR Doc. 79-12734 Filed 4-26-79; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on May 10–12, 1979, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published on April 20, 1979 (44 FR 23609).

The agenda for the subject meeting will be as follows:

Thursday, May 10, 1979

8:30 a.m.–10:00 a.m.: Executive Session (Open)—The Committee will hear and discuss the report of the ACRS Chairman regarding miscellaneous matters relating to ACRS activities.

The Committee will hear and discuss the report of its Subcommittee on the Implications regarding Nuclear Power Plant Design of the Three Mile Island Nuclear Plant Unit 2 Accident on March 28, 1979.

10:00 a.m.–12:00 Noon: Meeting with NRC Staff (Open)—The Committee will meet with members of the NRC Staff to hear reports on the status of the Three Mile Island Nuclear Station Unit 2 and the NRC Staff evaluation of industry replies to I&E Bulletins 79–05, 79–05A, 79–06, 79–06A, 79–06B, and 79–08 and NRC Staff action in response to ACRS recommendations of April 7, 1979; April 17, 1979; and April 20, 1979 resulting from the March 28, 1979 accident at the Three Mile Island Nuclear Station Unit 2 (TMI–2).

1:00 p.m.–3:00 p.m.: Meeting with Babcock and Wilcox Company (Open)—The Committee will continue discussion with representatives of the Babcock and Wilcox Company regarding I&E Bulletins 79–05 and 79–05A and action taken in response to ACRS recommendations of April 7, 17, and 20, 1979 resulting from the March 28, 1979 accident at TMI–2.

Portions of this session will be closed as required to discuss Proprietary Information related to Babcock and Wilcox Nuclear Steam Supply Systems.

3:00 p.m.–5:00 p.m.: Meeting with Westinghouse Electric Corporation (Open)—The Committee will hear presentations by and hold discussions with representatives of the Westinghouse Electric Corporation regarding I&E Bulletins 79–06 and 79–06A and ACRS recommendations of April 7, 17, and 20 resulting from the March 28, 1979 accident at TMI–2.

Portions of this session will be closed as required to discuss Proprietary Information related to Westinghouse Nuclear Steam Supply Systems.

5:00 p.m.–8:00 p.m.: Executive Session (Open)—The Committee will consider proposed recommendations to NRC resulting from the discussions noted above.

Friday, May 11, 1979

8:30 a.m.–10:30 a.m.: Meeting with Combustion Engineering, Incorporated (Open)—The Committee will hear reports by and hold discussions with representatives of Combustion Engineering, Incorporated regarding I&E Bulletins 79–06 and 79–06B and ACRS recommendations of April 7, 17, and 20, 1979 resulting from the March 28, 1979 accident at TMI–2.

Portions of this session will be closed as required to discuss Proprietary Information related to Combustion Engineering, Incorporated Nuclear Steam Supply Systems.

10:30 a.m.–11:30 a.m.: Meeting With General Electric Company (Open)—The Committee will hear presentations by and hold discussions with representatives of the General Electric Company regarding I&E Bulletin 79–08 and ACRS recommendations of April 7, 17, and 20, 1979 resulting from the March 28, 1979 accident at TMI–2.

Portions of this session will be closed as required to discuss Proprietary Information related to General Electric Company Nuclear Steam Supply Systems.

11:30 a.m.–12:30 p.m.: Meeting With Union of Concerned Scientists (Open)—The Committee will hear and discuss with respresentatives of the Union of Concerned Scientists their interpretation of and conclusions regarding events which occurred at the Three Mile Island Nuclear Plant Unit 2.

1:30 a.m.–3:30 p.m.: Sequoyah Nuclear Plant (Open)—The Committee will hear presentations by and hold discussions with the applicant for an Operating License for this plant and their actions resulting from I&E Bulletins 79–06 and 79–06A and ACRS recommendations of April 7, 17 and 20, 1979 resulting from the March 28, 1979 accident at TMI–2.

Portions of this session will be closed as required to discuss Proprietary Information related to this facility.

3:30 p.m.–6:30 p.m.: Executive Session (Open)—The Committee will discuss proposed reports to the NRC regarding the Three Mile Island Nuclear Plant Unit 2 and the implications of the March 28, 1979 accident at this facility to other light-water

cooled and moderated nuclear power stations. The Committee will also discuss proposed reports to the NRC regarding the request for an Operating License for the Sequoyah Nuclear Plant and a Construction Permit for the Palo Verde Nuclear Generating Station Units 4 and 5.

Portions of this session will be closed as required to discuss Proprietary Information, arrangements for physical protection of these nuclear facilities, and matters involved in an adjudicatory proceeding.

Saturday, May 12, 1979

8:30 a.m.–4:00 p.m.: Executive Session (Open)—The Committee will continue discussion of proposed reports to NRC regarding items noted above.

Portions of this session will be closed as required to discuss Proprietary Information, arrangements for physical protection of these nuclear facilities, and matters involved in an adjudicatory proceeding.

The Committee will hear and discuss reports of its Subcommittee and consultants who may be present regarding matters related to nuclear power plant design and operation including: Evaluation of Licensee Event Reports; Combination of Dynamic Loads as a Design Basis for Nuclear Facilities; and proposed Regulatory Guides.

The future schedule for ACRS activities will also be discussed.

Procedures for the conduct of and participation in ACRS meetings were outlined in the **Federal Register** on October 4, 1978 (43 FR 45926). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a telephone call to the ACRS Executive Director (R. F. Fraley) prior to the meeting.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to protect Proprietary Information (5 U.S.C. 552b(c)(4)), to preserve the confidentiality of classified and Proprietary Information related to safeguarding of special nuclear material and the arrangements for physical protection of the TMI–2 and Sequoyah plants (5 U.S.C. 552b(c)(1)) and to permit discussion of matters involved in a adjudicatory proceeding (5 U.S.C. 552b(b)(10)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202–634–3265), between 8:15 a.m. and 5:00 p.m. EST.

Dated: April 24, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 13052 Filed 4–26–79; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Adoption of System of Records

AGENCY: Office of Personnel Management.

ACTION: NOTICE.

SUMMARY: The purpose of this document is to give notice pursuant to 5 U.S.C. 552a(o) of the adoption of a new system of records, Ethics in Government Financial Disclosure Records, OPM/GOVT–4. This system was proposed and described in the **Federal Register** (43 FR 66983) on December 29, 1978. The notice invited interested parties to submit comments. No comments have been received that required any changes to the system as proposed. The system was to become effective on the date the Office of Management and Budget waived its 60-day advance notice requirement. The waiver was granted and the system adopted as proposed on February 22, 1979.

EFFECTIVE DATE: FEBRUARY 22, 1979.

FOR FURTHER INFORMATION CONTACT: David Reich, Office of Government Ethics (202) 632–5421.

Beverly M. Jones,

Issuance System Manager, Office of Personnel Management.

[FR Doc. 79–13253 Filed 4–26–79; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Metropolitan Edison Co.; Proposed Sale of Transmission Lines and Substations to an Unaffiliated Electric Utility

April 23, 1979.

Notice is hereby given that Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania 19605, an electric utility subsidiary of General Public Utilities Corporation, a registered holding company, has filed a declaration 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 transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Met-Ed is the owner of three 69 kV electric transmission lines and two substations, located in Dauphin County, Pennsylvania, which were constructed and are currently used solely to provide electric service to Hershey Electric Company ("Hershey").

Hershey was recently acquired by Pennsylvania Power and Light Company ("PP&L"), which is an electric utility company, and an exempt holding company. Hershey has therefore notified Met-Ed that effective March 1, 1980, or such other date as may be mutually acceptable (the "termination date"), Hershey will discontinue obtaining its electric service requirements from Met-Ed and will, instead, obtain service from PP&L.

The above mentioned facilities of Met-Ed will no longer be useful to Met-Ed after the termination date. Met-Ed therefore proposes to sell such facilities to PP&L in accordance with a sales agreement already worked out between the two companies, but subject to Commission approval.

In order to enable PP&L to perform certain required engineering and construction work on the facilities prior to the termination date, Met-Ed has agreed to sell these facilities to PP&L on or about September 1, 1979, and lease back the facilities, for the consideration of $1.00, until the termination date.

It is stated by Met-Ed that the net book cost of the facilities at the expected date of sale, September 1, 1979, will be approximately $523,055. The sale price of these facilities, determined on the basis of negotiations between Met-Ed and PP&L is $737,094.

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that the Pennsylvania Public Utility Commission has jurisdiction over the proposed transaction. The Federal Energy Regulatory Commission has jurisdiction over the acquisition by PP&L of the facilities that it will purchase from Met-Ed. It is stated that no other 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 May 17, 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 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 declarant 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 filed or as it may be 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 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.

[Rel. No. 21015; 70-6288]
[FR Doc. 79-13104 Filed 4-26-79; 8:45 am]
BILLING CODE 8010-01-M

Municipal Securities Rulemaking Board; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 17, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission the proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board (the "Board") is filing herewith proposed rule A-16 (hereafter referred to as the "proposed rule change"), as set forth below:

Rule A-16. Arbitration Fees and Charges

Except as provided in section 35 of rule G-35, each party to an arbitration proceeding submitted pursuant to rule G-35 shall pay the following fees and assessments in accordance with the provisions set forth below:

1. Each party shall pay a filing fee of $25 at the time of the filing of the Submission Agreement provided for in section 5 of rule G-35. This fee shall not be refundable.

2. In addition to the filing fee, each party may be assessed by the arbitrators, pursuant to section 34 of rule G-35, an additional amount which shall not exceed the following:

If the amount (exclusive of interest and costs) involved is:

$500 or less per matter	$25
More than $500 to $1,000 per matter	$50
More than $1,000 to $2,500 per matter	$60
More than $2,500 to $5,000 per matter	$90
More than $5,000 to $10,000 per hearing	$90
More than $10,000 per hearing	$120

The initiating party and the responding party shall each deposit the amount prescribed by the schedule above. In the case of multiple hearings, the additional amounts required by the above schedule shall be submitted in accordance with the direction of the panel of arbitrators. A hearing for fee purposes shall include all the proceedings conducted in any one calendar day.

3. If the claim, dispute or controversy does not involve a money claim or the amount of damages cannot be readily ascertained at the time of the commencement of the proceeding, the initial amount to be deposited by each party shall be $50 or such amount as the Director of Arbitration or the panel of arbitrators may from time to time thereafter require, provided that such amount shall not exceed $250 per hearing.

4. Any matter submitted and thereafter settled or withdrawn prior to the date of the first hearing, shall entitle the parties to a refund of the amount deposited, except for the filing fee.

5. Any matter submitted and thereafter settled or withdrawn on the date set for the initial hearing or subsequent thereto, shall be subject to such partial refund as the panel of arbitrators may permit.

6. The fees or other charges which the arbitrators are empowered to assess under section 34 of rule G-35 shall in no event exceed the maximum amount chargeable to the parties as set forth in this rule.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

Purpose of Proposed Rule Change

The purpose of the proposed rule change is to establish a continuing source of revenue to defray the costs and expenses of operating and administering the arbitration system established by the Board under rule G-35.

Basis Under the Act for Proposed Rule Change

The Board has adopted the proposed rule change pursuant to sections 15B(b)(2)(D) and 15B(b)(2)(I) of the Securities Exchange Act of 1934, as amended (the "Act"). Section 15B(b)(2)(D) of the Act authorizes the Board to provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities. Section 15B(b)(2)(I) authorizes and directs the Board to adopt rules providing for the operation and administration of the Board.

Comments Received From Members, Participants, or Others on Proposed Rule Change

Although the Board did not solicit comments on the proposed rule change, the substance of the proposed rule change was set forth in the exposure draft of rule G-35, as well as in notices, circulated to the industry and other interested persons, relating to the filing of rule G-35 with the Commission and its approval by the Commission. No comments were received by the Board in response to the exposure draft or notices concerning the subject of fees and costs.

Burden on Competition

The Board does not believe that the proposed rule change imposes any burden on competition in the municipal securities industry. The fees and charges provided for in the proposed rule change will be equally applicable to all parties who submit claims, disputes, or controversies to arbitration under rule G-35.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before May 18, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

April 19, 1979.

[Release No. 34-15750; File No. SR-MSRB-79-3]

[FR Doc. 79-13105 Filed 4-26-79; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Small Business Conference Commission; Meeting

In accordance with Section 10(a) of the Federal Advisory Committee Act (5 USC appendix I), announcement is made of the following national commission meeting.

Small Business Conference Commission

May 25, 1979—9:30 a.m.–10:30 a.m.—The Harry S. Truman Library, Auditorium, 24 Highway and Delaware Streets, Independence, MO 64050; open meetings.

Purpose: The Small Business Conference Commission was established by Executive Order to provide advice with respect to the holding of a White House Conference on Small Business in early 1980. In pursuit of the goal of a strong small business community, the Commission shall recommend issues to be considered by the conference including those related to fostering of small business and the expansion of opportunities for entry into small business enterprises. The Commission shall make recommendations for legislative and policy changes primarily based upon the findings of the White House Conference on Small Business.

Agenda: The Commission shall address the above issues and review preliminary activities of task forces in a brief meeting.

Contact: Cynthia Howar, Commission Liaison, White House Conference on Small Business, 730 Jackson Place NW., Washington, D.C. 20006.

Please write before May 15, 1979, if you wish to attend this meeting. Attendance by the public will be limited to space available.

Summaries of the transcripts of the meeting will be made available to the public upon request at cost.

Dated: April 24, 1979.

K Drew,

Deputy Advocate for Advisory Councils, Small Business Administration.

[FR Doc. 79-13217 Filed 4-26-79; 8:45 am]

BILLING CODE 8025-01-M

Arkansas; Declaration of Disaster Loan Area

The above-numbered Declaration (See 44 FR 23397) is amended in accordance with the President's declaration of April 11, 1979, to include Polk County in the State of Arkansas and to make disaster relief loan assistance available as a result of severe storms and tornadoes beginning about April 8, 1979.

The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above named county and adjacent counties within the State of Arkansas. All other information remains the same; i.e., the termination date for filing applications for physical damage is close of business on June 11, 1979, and for economic injury until close of business on January 11, 1980.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 17, 1979.

A. Vernon Weaver,

Administrator.

[Declaration of Disaster Loan Area #1613; Amendment #1]

[FR Doc. 79-13219 Filed 4-26-79; 8:45 am]

BILLING CODE 8025-01-M

Maryland; Declaration of Disaster Loan Area

The above numbered Declaration (see 44 FR 18577), is amended by adding the civil disorders which included looting and vandalism involving a number of business premises, suffering considerable physical damage to real property, and the loss of merchandise. Therefore, this amendment to this declaration is a result of civil disorders in Prince Georges County, Maryland, which occurred on February 18–19, 1979. All other information remains the same, i.e., the termination date for filing applications for physical damage is close of business of May 21, 1979, and for economic injury until the close of business on December 20, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 13, 1979.

A. Vernon Weaver,

Administrator.

[Declaration of Disaster Loan Area #1593; Amendment #1]

[FR Doc. 79-13220 Filed 4-26-79; 8:45 am]

BILLING CODE 8025-01-M

Michigan; Declaration of Disaster Loan Area

The above numbered Declaration (see 44 FR 18577), is amended by adding Van Buren County and adjacent counties within the State of Michigan, which constitute a disaster area because of damage resulting from ice and snow storm which occurred on December 31, 1978 through January 31, 1979. All other information remains the same; i.e., the termination date for filing applications for physical damage is close of business on May 21, 1979, and for economic injury until the close of business on December 21, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 3, 1979.

A. Vernon Weaver,

Administrator.

[Declaration of Disaster Loan Area #1592; Amendment #1]

[FR Doc. 79-13221 Filed 4-26-79; 8:45 am]

BILLING CODE 8025-01-M

Montana; Declaration of Disaster Loan Area

Custer County and adjacent counties within the State of Montana constitute a disaster area as a result of damage caused by ice jams and flooding which occurred on March 15, 1979. Applications will be processed under provisions of Pub. L. 94–305. Interest rate is 7⅜ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on June 22, 1979, and for economic injury until close of business on January 23, 1980, at:

Small Business Administration, District Office, 301 South Park, Room 528, Federal Office Building, Helena, Montana 59601

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 23, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-13222 Filed 4-26-79; 8:45 am]

BILLING CODE 8025-01-M

New York; Declaration of Disaster Loan Area

The above numbered Declaration (See 44 FR 10170) and Amendment No. 1 (See 44 FR 16060) are amended by extending

the filling date for physical damage until the close of business on April 17, 1979, and for economic injury until the close of business on November 14, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 13, 1979.

A. Vernon Weaver,

Administrator.

[Declaration of Disaster Loan Area No. 1571; Amendment No. 2]

[FR Doc. 79-13223 Filed 4-26-79; 8:45 am]

BILLING CODE 8025-01-M

New York; Declaration of Disaster Loan Area

The above-numbered Declaration (See 44 FR 11019) and Amendment No. 1 (See 44 FR 16060) are amended by extending the filing date for physical damage until the close of business on April 17, 1979, and for economic injury until the close of business on November 14, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 13, 1979.

A. Vernon Weaver,

Administrator.

[Declaration of Disaster Loan Area No. 1576; Amendment No. 2]

[FR Doc. 79-13224 Filed 4-26-79; 8:45 am]

BILLING CODE 8025-01-M

Texas; Declaration of Disaster Loan Area

The above-numbered Declaration (See 44 FR 23398) is amended in accordance with the President's declaration of April 11, 1979, to include Baylor, Clay and Foard Counties in the State of Texas. The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above named counties and adjacent counties within the State of Texas. All other information remains the same; i.e., the termination date for filing applicaitons for physical damage is close of business on June 11, 1979, and for economic injury until close of business on January 11, 1980.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 17, 1979.

A. Vernon Weaver,

Administrator.

[Declaration of Disaster Loan Area No. 1614; Amendment No. 1]

[FR Doc. 79-13225 Filed 4-26-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

Gifts to Federal Empolyees From Foreign Governments Reported to Employing Agencies in Calendar Year 1978

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 1978 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statue.

Publication of this listing in the **Federal Register** is required by Section 7342(f) of Title 5, United States Code, as added by Section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95-105, August 17, 1977, 91 Stat. 865).

Dated: April 16, 1979.

Michael M. Conlin,

Acting Under Secretary for Management.

AGENCY: White House—President and Mrs. Carter, and Other First Family Members

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and Mrs. Carter	The Louvain Bible in Dutch, 1553, bound in calf over wooden boards decorated w/fillets & rolls, 2 clasps—inscribed by donors. Recd. January 18, 1978. Est. Value—Over $100. Transferred and stored at Archives.	King Baudouin I and Queen Fabiola, Belgium.	Non-acceptance would have caused embarrassment to donors.
President and Mrs. Carter	Fine Belgium lace doily, white, 22: diameter. Recd January 18, 1978. Est. Value—Over $100. Transferred and stored at Archives.	King Baudouin I and Queen Fabiola, Belgium.	Non-acceptance would have caused embarrassment to donors.
President and Mrs. Carter	Sisal tablecloth of hand crocheted raw linen hemp in overall design, 4" diameter rosettes, ecru color, 16' x 4'. Recd April 14, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Mrs. Ernesto Geisel, Wife of President of Brazil.	Non-acceptance would have caused embarrassment to donors.
President Carter	Stamp album of color issues commemorating Bicentennial of Discovery of Hawaiian Islands. Recd February 16, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Geoffrey A. Henry, Minister of Finance and Posts, Cook Island.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Gold pin of abstract dancing figure. Recd. May 16, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Rafael Angel Fournier Calderon, Minister of Foreign Affairs, Costa Rica.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Linen hooded cape, front buttoned, of black wool w/colorful hand embroidered floral motifs on front edges and back. Recd March 20, 1978. Est. Value—Over $100. Retained for official use.	Raul Jativa Nieto, Director General de Promocion de Exportacion, Quito, Ecuador.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Circular mirror in silver frame, copied from antique Egyptian design, handle shaped as bird 8" diameter, wooden easel incl. Recd November 20, 1978. Est. Value—$175. Transferred and stored at Archives.	Major General Mohamed Hosni Moubarek, Vice President, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donor.
President Carter	Statuette of Isis nursing Horus, of metal mounted on wooden block 5" high, found in Tunah-El-Gabal, Late period Circa 700 B.C. Recd February 9, 1978. Est. Value—Over $100. Retained for Official Display.	Pres. Anwar El-Sadat, Egypt	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Circular mirror in hand tolled silver frame of antique Egyptian design w/bird as handle, 8" diameter, wooden easel included. Recd September 27, 1978. Est. Value—$175. Transferred and sotred at Archives.	President Anwar El Sadat, Egypt	Non-acceptance would have caused embarrassment to donor.
President Carter	Silver hand engraved plate w/overall Egyptian motif, 8" diameter, wooden easel included. Recd September 27, 1978. Est. Value—$125. Transferred and stored at Archives.	President Anwar El Sadat, Egypt	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Circular mirror in silver frame, copied from antique Egyptian design, handle shaped as bird, 8" diameter. Recd February 9, 1978. Est. Value—$175. Transferred and stored at Archives.	Mrs. Jehan El Saday, Wife of President of Egypy.	Non-acceptance would have caused embarrassement to donor.
President Carter	Book: "Institutions du Droit de la Nature et des Gens" by Gerard de Rayneval. Recd January 14, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Jacques Chirac, Mayor of Paris, France.	Non-acceptance would have caused embarrassment to donor.
President Carter	Book: "Constitution Francaise, Decretee par l'Assemblee Nationale Constituante, aux annees, 1789, 1790," No. 3749 of limited edition, hand-blocked and tooled in Paris, navy blue leather binding, with inscribed presentation card on inside front cover, 15" x 10", produced by Hermes Recd January 19, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Valery Discard d'Estaing, President of France.	Non-acceptance would have caused embarrassment to donor.

AGENCY: White House—President and Mrs. Carter, and Other First Family Members—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mrs. Rosalynn Carter	Oval tablecloth, white organdy-like material with machine embroidered design and ruffled edge; included are 12 small hand napkins matching and white tablecloth undercover. Recd January 17, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Mrs. Valery Giscard d'Estaing, Wife of President of France.	Non-acceptance would have caused embarrassment to donor.
President Carter	Set of 12 crystal wine goblets entitled "The King's Goblet", each bearing etched monogram of Landgrave Frederic I of the German States of Hesse & Kassel, handblown by Suessmuth glassworks and contained in compartmentalized chest. Recd August 1, 1978. Est. Value—Over $100. Transferred and stored at Archives.	President an Mrs. Boerner, State of Hesse, Germany.	Non-acceptance would have caused embarrassment to donors.
Mrs. Rosalynn Carter	Coffee service, mocha color, 6-cup porcelain by Hochst Porcelain Co. Recd August 1, 1978. Est. Value—Over $100. Transferred and stored at Archives.	President and Mrs. Boerner, State of Hesse, Germany.	Non-acceptance would have caused embarrassment to donors.
President Carter	3 "Beethoven 9 Symphonies" performed by Berliner Philharmonic Orches., directed by Herbert Von Karajan (8 recordings), incl. souvenir booklet; "Beethoven's Symphony No. 5 & Schumann's Concert for violin & orchestra" performed by Orchestra of Beethoven Hall, Bonn, conducted by Volker Wangenheim (2 recordings) "Music for the Stage" Beethoven edition (3 recordings) incl souvenir booklet—recorded in Germany by Deutsche Grammophon & Stadt, Bonn—contained in maroon leather case imprinted w/coat of arms of Bonn, specially lettered to donee and signed by Dr. Hans Daniels on inside cover. Recd July 25, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Honorable Hans Daniels, Lord Mayor of Bonn, West Germany.	Non-acceptance would have caused embarrassment to donor.
President and Mrs. Carter	Porcelain table decoration entitled "Horse Rider", 10 in. diameter, surrounded by 4 other individual porcelain horses w/riders, 9" high—by Staatliche Porzellan Mfg. Nymphenburg (Official State Gift of Federal Republic of Germany). Recd July 24, 1978. Est. Value—Over $100. Transferred and stored at Archives.	President & Mrs. Walter Scheel, Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donors.
Amy Carter	Dollhouse, fully furnished and specially lighted. Recd July 24, 1978. Est. Value—Over $100. Retained in Donee's Room.	President and Mrs. Walter Scheel, Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donors.
President Carter	Gold medallion depicting German double eagle & Bundesrepublik Deutschland, 2" dia. commemorating Bonn Economic Summit, July 16–17, 1978. Recd July 27, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Helmut Schmidt, Chancellor of Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donor.
President Carter	2 lead crystal goblets, etched w/buildings of Health Spa & Town Hall of Wiesbaden, 6" high. Recd August 2, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Rudi Schmitt, Mayor of Wiesbaden (Oberburgermeister).	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Demitasse procelain set w/hand-painted floral motifs consisting of coffeepot, 6 cups & matching saucers, creamer and sugar holder, by Koenig L. Porzellan Mfg. contained in compartmentalized chest. Recd July 25, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Governing Mayor of Berlin and Mrs. Stobbe.	Non-acceptance would have caused embarrassment to donors.
President Carter	Book: "Die Goldene Bulle" (The Golden Bull), leather bound illustrated facsimile of Charter containing constitution of Holy Roman Empire of the German Nation, as well as procedures to be observed at an election of an emperor in Frankfurt, published by the Diet of Nuremberg on Jan. 10, 1356. Recd August 1, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Lord Mayor and Mrs. Wallmann, Frankfurt, Germany.	Non-acceptance would have caused embarrassment to donors.
Amy Carter	19th century antique doll, from collection of Frankfurt Historical Museum, in pedestal, 19" tall. Recd August 1, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Lord Mayor and Mrs. Wallmann, Frankfurt, Germany.	Non-acceptance would have caused embarrassment to donors.
Mrs. Rosalynn Carter	Covered vase, manufactured by Hochst Porcelain Co. and based on an 18th century design, 16" tall. Recd August 1, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Lord Mayor and Mrs. Wallmann, Frankfurt, Germany.	Non-acceptance would have caused embarrassment to donors.
President and Mrs. Carter	10 Commandments, each hand-written on grain of rice formed into cross under plastic, contained in handcrafted wood box w/magnifying glass. Recd January 17, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Morarji Desai, Prime Minister of India.	Non-acceptance would have caused embarrassment to donor.
President and Mrs. Carter	Collected works of Mahatma Gandhi, 70 volumes. Recd January 17, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Morarji Desai, Prime Minister of India.	Non-acceptance would have caused embarrassment to donor.
Amy Carter	Black velvet evening purse, encrusted w/floral motifs of gold thread & semi precious stones; matching belt. Recd June 14, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Morarji Desai, Prime Minister of India.	Non-acceptance would have caused embarrassment to donor.
President Carter	Sculpture "Rising Spirit", modernistic bronze on wooden base w/brass engraved plate, 45" tall, by Amar Nath Sehgal. Recd June 14, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Morarji Desai, Prime Minister of India.	Non-acceptance would have caused embarrassment to donor.
President Carter	Sterling silver cigarette box, hand engraved in India—lid bears oval picture of Indian lady. Recd June 14, 1978. Est. Value—$275. Transferred and stored at Archives.	Morarji Desai, Prime Minister of India.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Silver filigree container designed as peacock, housing vial for perfume, 6" high. Recd June 14, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Prime Minister of India Morarji Desai, and Padma Desai (daughter-in-law).	Non-acceptance would have caused embarrassment to donor.
President Carter	Red 3-speed bicycle, made by Hero in India. Recd August 9, 1978. Est. Value—Over $100. Retained at Residence of Donee.	George M. Fernandes, Minister of Industries of India.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Blue 3-speed bicycle, made by Hero in India. Recd August 9, 1978. Est. Value—Over $100 Retained at Residence.	George M. Fernandes, Minister of Industries of India.	Non-acceptance would have caused embarrassment to donor.
Amy Carter	Blue 3-speed bicycle, made by Hero in India. Recd August 9, 1978. Est. Value—Over $100. Retained at Residence.	George M. Fernandes, Minister of Industries of India.	Non-acceptance would have caused embarrassment to donor.
President Carter	Gold (or brass) box w/motif of crossed sabres set with 17 diamond chips, lined in velvet 11" x 9" x 3". Recd January 17, 1978. Est. Value—Over $100. Transferred and stored at Archives.	King Khalid, Saudi Arabia	Non-acceptance would have caused embarrassment to donor.
President Carter	Cart, intricately carved of wood, drawn by 4 horses w/driver, engraved plate attached on wood base 17" x 6" Recd January 17, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Chaudhri Devi Lal, Chief Minister Haryana State, India.	Non-acceptance would have caused embarrassment to donor.
President Carter	Carving, courtyard w/intricate 5 story scale model of obelisk containing electric bulb in tower, smaller ivory objects & fence surrounding, silver plates engraved w/Indian characters on gift & padded box. Recd January 17, 1978. Est. Value—Over $100. Transferred and stored at Archives.	R. K. Gupta, Mayor of New Delhi, India.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Evening purse and stole, gold thread; purse made w/pearls and semi-precious stones; stole w/colorful Indian motif, blue velvet box w/silver engraved	R. K. Gupta, Mayor of New Delhi, India.	Non-acceptance would have caused embarrassment to

AGENCY: White House—President and Mrs. Carter, and Other First Family Members—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	plaque. Recd January 10, 1978. Est. Value—Over $100. Transferred and stored at Archives.		donor.
Mrs. Rosalynn Carter	Silver bracelet containing numerous turquoise stones, hinged with latched closure. Recd February 13, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Amb. and Mrs. Palkhivala, Embassy of India.	Non-acceptance would have caused embarrassment to donors.
Mrs. Rosalynn Carter	Gold colored pin with numerous turquoise stones, shaped as peacock. Recd February 13, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Amb. and Mrs. Palkhivala, Embassy of India.	Non-acceptance would have caused embarrassment to donors.
President Carter	Dark wood chest w/intricate ivory inlaid elephant scenes, top mirrored inside, standing on 4 carved elephant feet, 35" x 23" x 20". Recd January 17, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Neelam Sanjeeva Reddy, President of India.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Sari, magenta w/gold threaded motif; head shawl, fuscia w/gold thread fringe & motif; evening bag w/gold encrusted motif and semi-precious stones; sandals, red leather w/gold trimwork. Recd January 17, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Neelam Sanjeeva Reddy and Mrs. Reddy, President of India.	Non-acceptance would have caused embarrassment to donors.
Mrs. Rosalynn Carter	Handmade jewelry box depicting intricately painted Indian portraits & motifs, octagonal w/8 feet, velvet lined, 9" dia. Recd January 17, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Neelam Sanjeeva Reddy and Mrs. Reddy, President of India.	Non-acceptance would have caused embarrassment to donors.
President Carter	Color photograph of donor in silver frame bearing gold crest, walnut backing, 18" x 13". Recd January 17, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Neelam Sanjeeva Reddy, President of India.	Non-acceptance would have caused embarrassment to donors.
Mrs. Rosalynn Carter	Silver bowl and tray, engraved inscription on bottom, 10" x 16". Recd January 17, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Omesh Saigal, President, New Delhi Minicipal Committee, India.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Flower arrangement of multicolor orchids ingold colored pedestal vase. Recd January 20, 1978. Est. Value—Over $100. Transferred to Flower Room at Residence.	Her Imperial Majesty, the Shabanou of Iran.	Non-acceptance would have caused embarrassment to donor.
President and Mrs. Carter	Gold box lined w/wood, Imperial crest on top, 7" x 4" x 2". Recd January 17, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Their Imperial Majesties, the Shahanshah and Shabanou of Iran.	Non-acceptance would have caused embarrassment to donors.
President and Mrs. Carter	6 tins of caviar. Recd December 22, 1978. Est. Value—Over $100. Retrained at Residence for Official Use.	Their Imperial Majesties, the Shahanshah and Shabanou of Iran.	Non-acceptance would have caused embarrassment to donors.
President and Mrs. Carter	32 deep red long stem roses in plastic pot within wicker basket. Recd February 14, 1978. Est. Value—Over $100. Transferred to Flower Room at Residence.	Ambassador Ardeshir Zahedi	Non-acceptance would have caused embarrassment to donors.
Mrs. Rosalyn Carter	4 dozen deep red roses in wicker basket. Recd June 23, 1978. Est. Value—Over $100. Transferred to Flower Room at Residence.	Ambassabor Ardeshir Zahedi, Embassy of Iran.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalyn Carter	1 large tin of caviar. Recd June 23, 1978. Est. Value—Over $100. Destroyed—per instructions of Secret Service.	Ambassabor Ardeshir Zahedi, Embassy of Iran.	Non-acceptance would have caused embarrassment to donor.
President and Mrs. Carter	30 anthuriums in pressed glass vase. Recd July 10, 1978. Est. Value—Over $100. Transferred to Flower Room at Residence.	Ambassabor Ardeshir Zahedi, Embassy of Iran.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalyn Carter	Vermeil cachepot w/figures of 3 lions in bas relief thereon, 3" high. Recd July 31, 1978. Est. Value— $500. Transferred and stored at Archives.	Ambassabor Ardeshir Zahedi, Embassy of Iran.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalyn Carter	Caviar. Recd September 12, 1978. Est. Value—Over $100. Retained by Donee for official use.	Ambassabor Ardeshir Zahedi, Embassy of Iran.	Non-acceptance would have caused embarrassment to donor.
President Carter	16-volume set of books: "A Survey of Persian Art" (from prehistoric times to the present), edited by Arthur Upham Pope & Phyllis Ackerman. Recd December 1, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Ambassador Ardeshir Zahedi, Embassy of Iran.	Non-acceptance would have caused embarrassment to donor.
President and Mrs. Carter	Waterford crystal vase w/scene from Hamlet etched thereon, 11" high. Recd March 17, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Ambassador John G. Molloy, Embassy of Ireland.	Non-acceptance would have caused embarrassment to donor.
President and Mrs. Carter	Portfolio of 20 color prints of original modernistic works by Israeli artists, entitled "Tem Painters on War and Peace", each limited Ed. print 26" x 20", signed by artist; portfolio edited by Dr. Haim Gamzu, Graphart Publishers, Tel Aviv, title page inscribed. Recd September 26, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Menachem Begin, Prime Minister of Israel.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	18K gold ring w/coral stone, handcrafted in Jordan. Recd December 14, 1978. Est. Value—$300. Transferred and stored at Archives.	Her Royal Highness, Princess Basmah of Jordan.	Non-acceptance would have caused embarrassment to donor.
President Carter	Lamp, floor pedestal style handcrafted from light colored native woods w/lattice work type globe, electrified; 70" tall. Recd April 5, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Dr. William R. Tolbert, Jr., President of Liberia.	Non-acceptance would have caused embarrassment to donor.
President Carter	Bust of Christ in ivory, mounted on 4-sided obelisk style, pedestal wood w/light colored inset, engraved plate on front, 43" high. Recd April 5, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Dr. William R. Tolbert, Jr., President of Liberia.	Non-acceptance would have caused embarrassment to donor.
President Carter	Handmade satin quilt depicting Liberian & American flag in center, surrounded by floral motifs, on white background, in green, yellow & red, 90" x 86", contained in polished wooden chest w/outline of Liberia inlaid in top. Recd April 5, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Dr. William R. Tolbert, Jr., President of Liberia.	Non-acceptance would have caused embarrassment to donor.
President Carter	Handwoven wall hanging of 23rd Psalm, displayed under glass in light colored wooden frame w/heart and diamond shape insets, 42" x 35". Recd April 5, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Dr. William R. Tolbert, Jr., President of Liberia.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Gold pendant encircling red gold medallion commemorating Donor's inauguration, suspended on gold chain contained in velvet lined polished wood chest inlaid w/Liberian Star on top. Recd April 14, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Dr. William R. Tolbert, Jr., President of Liberia.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Traditional Liberian gown of heavy white cotton w/hand embroidered gold colored thread design on sleeves, neck and down front. Recd April 14, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Dr. William R. Tolbert, Jr., President of Liberia.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Chimalli (Shield), representative of Mixtec Warriors, 14K gold w/22K mixture. Recd May 4, 1978. Est. Value—$800. Transferred and stored at Archives.	Margarita Lopez Portillo Y Pacheco, Sister of President of Mexico.	Non-acceptance would have caused embarrassment to donor.
President Carter	Jasper inkstand w/2 vials for ink (detachable lids), inlaid w/brass engraved w/names of 50 U.S. states, removable brass presentation disc in center, 15" x 12", mfg. in 1889 in Ekaterinburg, Russia by Mr. Mostovenko at Imperial workshop of Czar; included are 2 matching candlesticks 11" high made in	King Hassan II, Morocco	Non-acceptance would have caused embarrassment to donor.

AGENCY: White House—President and Mrs. Carter, and Other First Family Members—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Louis XVI style. Recd November 15, 1978. Est. Value—Over $100. Transferred and stored at Archives.		
Mrs. Rosalynn Carter	Minaudiere—an evening case for cosmetics, etc., of hand tooled solid gold, set w/diamonds, rubies & green onyx, attached to gold chain, approx. 5" x 1½", contained in red leather gold embossed case bearing crest of donor. Recd November 24, 1978. Est. Value—Between $5,000-$6,000. Transferred and stored at Archives.	King Hassan II, Morocco	Non-acceptance would have caused embarrassment to donor.
President Carter	Stamp album of color issues commemorating discovery of Hawaiian Islands. Recd February 16, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Terry Chapman, Special Representative of Premier of Niue, New Zealand.	Non-acceptance would have caused embarrassment to donor.
President Carter	3 leather hassocks, green & orange suede finished w/white piping stamped with donee's name in snakeskin, encircling seal of Nigeria, zipper openings, 4' diameter. Recd April 14, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Lt. Gen. Olusegun Obasanjo, Head of State, Nigeria.	Non-acceptance would have caused embarrassment to donor.
President and Mrs. Carter	Republic of Panama coin proof set—8 silver coins and 1 copper coin—2 identical sets, each in box, minted at Franklin Mint. Recd May 25, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Demetrio Lakas, President of Panama.	Non-acceptance would have caused embarrassment to donor.
Amy Carter	Miniature TV set, 2" screen, made in England by Sinclair. Recd June 23, 1978. Est. Value—Over $100. Retained in Donee's room.	Demetrio Lakas, President of Panama.	Non-acceptance would have caused embarrassment to donor.
President and Mrs. Carter	Pectoral, gold pre-Columban disc worn on chest(s) of Chiefs of Caciques Indians of Panama, made circa 1000 A.D. Recd June 23, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Demetrio Lakas, & Family, President of Panama.	Non-acceptance would have caused embarrassment to donor.
President and Mrs. Carter	Pen & ink drawing of Washington Hotel in Panama, 1913, made from a photo of the Times by Daniel chen 1978, 22" x 28". Recd June 23, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Demetrio B. Lakas, President of Panama.	Non-acceptance would have caused embarrassment to donor.
President and Mrs. Carter	Framed watercolor of boats 28" x 22". Recd June 26, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Brigadier General and Mrs. Omar Torrijos, Chief of Govt. and Commander of Natl. Guard, Panama.	Non-acceptance would have caused embarrassment to donor.
President and Mrs. Carter	Gobelin wall hanging depicting Warsaw's Royal Castle, wood, 55" x 38". Recd January 26, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Edward Gierek, 1st Secretary of Central Committee of Polish United Worker's Party.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Necklace of topaz colored chips in graduated sizes on string. Recd January 17, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Stanislawa Gierek (Mrs. Edward), Wife of 1st Secretary of Central Committee of Polish United Worker's Party.	Non-acceptance would have caused embarrassment to donor.
President Carter	Prints: "Portugaliae Monumenta Cartografica" (cartographic monuments of Portugal) by Armando Cortesao & Avelino Teixeira da Mota, Volumes I–VI w/index Volume VI; bound prints of maps w/text in Portuguese & English 25" x 19" each. Recd January 17, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Antonio Dos Santos Ramalho, President of Portugal.	Non-acceptance would have caused embarrassment to donor.
President Carter	12 volume set of books in English by donor, bound in red leather; gold tooling, contained in red pullout leather case; top interior lid impressed w/seal of Romania (1st volume inscribed). Recd April 13, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Nicolae Ceausescu, President of Romania.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Maroon leather briefcase w/brass fittings & Cartier crest Interior pockets, combination lock, 17" x 13" x 13"; Sony Video cassette on Saudi folklore enclosed, with 2 books "Wild Flowers of Central Saudi Arabia" and "The Kingdom of Saudi Arabia", 3 cassette tapes on Saudi popular music, packet of souvenir slides and packet of color postcards. Recd January 17, 1978. Est. Value—Over $100. Transferred and stored at Archives.	King Khalid, Saudi Arabia	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Butterfly pin, gold filigree, handmade in Senegal. Recd June 9, 1978. Est. Value—$175. Transferred and stored at Archives.	Leopold Sedar Senghor, President of Senegal.	Non-acceptance would have caused embarrassment to donor.
Amy Carter	Gold bracelet w/entwined animal hair made therein, hand fashioned in Senegal. Recd June 9, 1978. Est. Value—$250. Transferred and stored at Archives.	Leopold Sedar Senghor, President of Senegal.	Non-acceptance would have caused embarrassment to donor.
President Carter	Portfolio of poems "Chants d'Ombre" (Sons of Darkness) by Donor, accompanied by 20 original signed gravures by Andre Masson, No. 18 of Limited Ed. Recd June 9, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Leopold Sedar Senghor, President of Senegal.	Non-acceptance would have caused embarrassment to donor.
Mrs. Lillian Carter, Mother of President	"Diankha" wall hanging, depicts African lady on multi-colored background, handwoven of wool. Recd September 21, 1978. Est. Value—Over $100. Retained for Official Display by Presidential Staff.	Leopold Sedar Senghor, President of Senegal.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Matched set of ivory & gold necklace, bracelet, earrings and ring, made in Sudan, contained in wooden box w/ivory & mother-of-pearl inlay. Recd November 14, 1978. Est. Value—$1,150. Transferred and stored at Archives.	Mrs. Buthaina Nimeiri, Wife of President of Sudan.	Non-acceptance would have caused embarrassment to donor.
President Carter	Stamp album of color issues from French Polynesia. Recd February 16, 1978. Est. Value—Over $100. Transferred and stored at Archies.	Francois Audibert, Telecommunications and Postal Service of French Polynesia, Tahiti.	Non-acceptance would have caused embarrassment to donor.
Mrs. Rosalynn Carter	Green hooded cape, floor length, finely woven burlap w/rasied gold & silver star motifs overall. Recd December 4, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Prime Minister of Tunisia and Mrs. Nouira.	Non-acceptance would have cause embarrassment to donor.
President and Mrs. Carter	3 tins of caviar. Recd December 27, 1978. Est. Value—Over $100. Retained at Residence for Official Use.	Ambassador Anatoliy F. Dobrynin, Soviet Embassy.	Non-acceptance would have cause embarrassment to donor.
President and Mrs. Carter	Palekh panel—depicts a young girl in native Russian costume standing on a knoll surrounded by vines & tree, handmade in USSR. Recd Dec. 27, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Ambassador and Mrs. Anatoliy Dobrynin, Soviet Embassy.	Non-acceptance would have cause embarrassment to donor.
Mrs. Rosalynn Carter	Necklace, bracelet and pin set, amber colored. Recd January 26, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Boris N. Ponomarev, Chairman, Affairs Commission of Council of Nationalities of Supreme Soviet—USSR.	Non-acceptance would have cause embarrassment to donor.
President Carter	Key to City—silver w/religious shield motif in handle, 10" long, in presentation box w/engraved plate. Recd April 5, 1978. Est. Value—Over $100. Transferred and stored at Archies.	Sisco Rafael Dominguez, President, Municipal Council of the Federal District, Caracas, Venezuela.	Non-acceptance would have cause embarrassment to donor.
President and Mrs. Carter	Modernistic painting entitled "Jnio Intenso" (Intense June) by Mercedes Pardo 1977—acrylic. Predominantly black w/reds, blue, greys & greens, framed. Recd April 6, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Carlos Andres Perez, President of Venezuela.	Non-acceptance would have cause embarrassment to donor.

AGENCY: White House—President and Mrs. Carter, and Other First Family Members—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President Carter	Painting "Holy Family and St. Catherine", 18th century icon from Town of Boka Kotorska, late Italo-Greek style, tempera on wood panel, by unknown artist, in ornate gilt frame 22" x 19". Recd March 14, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Josip Broz Tito, President of Yugoslavia.	Non-acceptance would have caused embarrassment to donors.
Mrs. Rosalynn Carter	Tablecloth (9'6" x 5'7") w/tatted center and corner designs, 1 doz. lap napkins and 1 doz. cocktail napkins w/tatted corners & edgings, ecru linen. Recd March 14, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Josip Broz Tito, President of Yugoslavia.	Non-acceptance would have caused embarrassment to donors.
President Carter	2 plaques: buffalo in copper bas relief on copper background, framed, 25" x 19"; and impala in copper bas relief on copper disc 13" diameter, made in Zambia. Recd May 18, 1978. Est. Value—Over $100. Transferred and stored at Archives.	Kenneth D. Kaunda, President of Zambia.	Non-acceptance would have caused embarrassment to donors.

AGENCY: White House Staff

Major Bob Peterson, Air Force Aide to the President.	Silver footed dish with beaded edging, hand hammered in Egypt, 4½" diameter. Recd November 20, 1978. Est. Value—$130 Reported and transferred to GSA.	Maj. General Mohamed Hosni Moubarek, Vice President, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donors.
Dr. Zbigniew Brzezinski, Assistant to the President for National Security Affairs.	Silver footed dish with beaded edging, hand hammered in Egypt. Recd November 20, 1978. Est. Value—$130. Retained for official display in Donee's office.	Maj. General Mohamed Hosni Moubarek, Vice President, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donors.
Dr. Zbigniew Brzezinski, Assistant to the President for National Security Affairs.	Circular brass wall hanging with silver colored overlay, intricate bas relief figures, 2 ft. diameter; included are 2 matching urns, 9" diameter. Recd January 11, 1978. Est. Value—Over $100. Retained for official display in Donee's office.	Neelam Sanjeeva Reddy, President of India.	Non-acceptance would have caused embarrassment to donors.
Mark Weiner, Staff Assistant, Office of Presidential Appointments.	2 Bark sailing ships of silver in filigree pattern, handcrafted in Indonesia, each approx. 11" x 11" long. Recd February 28, 1978. Est. Value—$170. Reported and transferred to GSA.	Yani Haryanto, Advisor to Pres. Duharto, Indonesia.	Non-acceptance would have caused embarrassment to donors.
Amb. Robert S. Strauss, Special Representative for Trade Negotiations.	Seiko Digital wristwatch, World Time model, stainless steel, No. M158 5000; serial No. 820477. Recd September 18, 1978. Est. Value—$215. Reported and transferred to GSA.	Nobuhiko Ushiba, State Minister Without Portfolio—Japan.	Non-acceptance would have caused embarrassment to donors.
Amb. Alonzo L. McDonald Deputy Special Representative Office of Special Representative for Trade Negotiations.	Seiko digital wristwatch, World Time model, stainless steel case and band, No. M158-5000, Serial No. 784702. Recd October 11, 1978. Est. Value—$215. Reported and transferred to GSA.	Nubuhiko Ushiba State Minister Without Portfolio—Japan.	Non-acceptance would have caused embarrassment to donor.
Dr. Zbigniew Brzezinski Assistant to the President for National Security Affairs.	White traditional Liberian Chief's robe w/matching cap, of heavy broadcloth-like material with off white raised motifs, partially lined. Recd April 6, 1978. Est. Value—Over $100. Retained for official display in Donee's office.	William R. Tolbert, Jr. President of Liberia.	Non-acceptance would have caused embarrassment to donor.
Dr. Zbigniew Brzezinski Assistant to the President for National Security Affairs.	Map, shaped as Liberia, made from various polished rock samples, mounted on composite wooden background w/lettered key explanation in shadowbox frame, 28" square. Recd April 6, 1978. Est. Value—Over $100. Retained for official display in Donee's office.	William R. Tolbert, Jr. President of Liberia.	Non-acceptance would have caused embarrassment to donor.
Susan Clough Personal Assistant/Secretary to the President.	Wool rug, predominantly beige with blues, fringed, made in Morocco; 74" x 49". Recd December 4, 1978. Est. Value—Over $100. Retained for official display in Donee's office.	King Hassan II Morocco	Non-acceptance would have caused embarrassment to donor.
Hamilton Jordan Assistant to the President	Wool rug, various shades of blue, fringed, 79" x 56", handmade in Morocco. Recd December 1, 1978. Est. Value—Over $100. Retained for official display in Donee's office.	King Hassan II Morocco	Non-acceptance would have caused embarrassment to donor.
Dr. Zbigniew Brzezinski Assistant to the President for National Security Affairs.	Wool rug, multicolored designs, approx. 12' x 18', made in Morocco. Recd December 4, 1978. Est. Value—Over $100. Retained for official display in Donee's office.	King Hassan II Morocco	Non-acceptance would have caused embarrassment to donor.
Susan Clough Personal Assistant/Secretary to the President.	4 yards of fabric, approx 15" long by 36" wide, interspersed with gold thread design. Recd December 4, 1978. Est. Value—Over $100. Retained for official display.	King Hassan II Morocco	Non-acceptance would have caused embarrassment to donor.
Dr. William Quandt National Security Council.	Sheep's wool rug, predominantly red w/multicolored motifs, beige fringed, approx 8' x 14', crafted in Morocco. Recd December 15, 1978. Est. Value—Over $100. Retained for official display in Donee's office.	King Hassan II Morocco	Non-acceptance would have caused embarrassment to donor.
Phil Wise Deputy Appointments Secretary	Longines white gold watch, Roman numerals w/King Khalid's name in Arabic letters. Recd January 18, 1978. Est. Value—Over $200. Reported and transferred to GSA.	King Khalid Saudi Arabia	Non-acceptance would have caused embarrassment to donor.
Madeline MacBean Personal Assistant to Mrs. Carter.	Dark brown dress, gauze-like material w/intricate raised handwork of gold thread and sequins. Recd January 17, 1978. Est. Value—Over $100. Reported and transferred to GSA.	King Khalid Saudi Arabia	Non-acceptance would have caused embarrassment to donor.

AGENCY: Office and Staff of Vice President

Walter F. Mondale, Vice President	Solid gold medallion in honor of John Paul's coronation as Pope. Recd September 3, 1978. Est. Value—$150. Held in VP Gift Storage Room.	Pope John Paul I, Vatican	Non-acceptance would have caused embarrassment to U.S. Government.
Vice President and Mrs. Walter F. Mondale	Large oval mirror with shell border. Recd April 29, 1978. Est. Value—$300. Held in VP Gift Storage Room.	President and Mrs. Ferdinand Marcos, Philippines.	Non-acceptance would have caused embarrassment to U.S. Government and donors.
Vice President and Mrs. Walter F. Mondale	Hand carved reak statue of an old man feeding a bird. Recd May 6, 1978. Est. Value—$200. On Display in Vice President's office.	Vice President and Mrs. Adam Malek, Indonesia.	Non-acceptance would have caused embarrassment to donors.
Mrs Joan Mondale, Wife of Vice President	12 beige lace and linen placemats. Recd April 29, 1978. Est. Value—$200. Retained for Official Use at Residence.	President and Mrs. Ferdinand Marcos, Philippines.	Non-acceptance would have caused embarrassment to donors.
Walter F. Mondale, Vice President	Large blue-glazed china vase with lid. Recd May 6, 1978. Est. Value—$200. Retained for Official Use at Residence.	President and Mrs. Suharto, Indonesia.	Non-acceptance would have caused embarrassment to donors.
Mrs Joan Mondale, Wife of Vice President	Large brown pottery vase. Recd May 6, 1978. Est. Value—$200. Retained for Official Use at Residence.	Vice President and Mrs. Adam Malek, Indonesia.	Non-acceptance would have caused embarrassment to donors.
Vice President and Mrs. Walter F. Mondale	3 pottery items, lt. green (1 bowl; 2 vases)—antiques. Recd May 4, 1978. Est. Value—$300. Retained for Official Use at Residence.	Prime Minister Kringsak Chomanan, Thailand.	Non-acceptance would have caused embarrassment to donor.
Mrs. Joan Mondale, Wife of Vice President	2 brown pottery pots from the Iron Age (200-500 A.D.). Recd April 29, 1978. Est. Value—$500-$1,000 each. Retained for Official Display in Vice President's Office.	President and Mrs. Ferdinand Marcos, Philippines.	Non-acceptance would have caused embarrassment to donors.

AGENCY: Office and Staff of Vice President—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vice President and Mrs. Walter F. Mondale	Large scenic painting in shades of green (46" x 66"). Recd May 5, 1978. Est. Value—$750. Retained for Official Use in Vice President's Office.	President Suharto, Indonesia	Non-acceptance would have caused embarrassment to donor.
Maj. John Matheny, Military Aide to the Vice President.	Set of bronze flatware. Recd May 6, 1978. Est. Value—$200. Held in VP Gift Storage Room.	Prime Minister K. Chomanan, Thailand.	Non-acceptance would have caused embarrassment to donor.
David Bieging, Special Assistant to Vice President.	Set of bronze flatware. Recd May 6, 1978. Est. Value—$200. Held in VP Gift Storage Room.	Prime Minister K. Chomanan, Thailand.	Non-acceptance would have caused embarrassment to donor.
Deborah Sale, Special Assistant to Vice President.	Sterling silver compact. Recd May 4, 1978. Est. Value—$125. Held in VP Gift Storage Room.	General Chomanan, Prime Minister of Thailand.	Non-acceptance would have caused embarrassment to donor.
Bess Abell, Executive Assistant to Mrs. Mondale.	Sterling silver compact. Recd May 4, 1978. Est. Value—$125. Held in VP Gift Storage Room.	General Chomanan, Prime of Minister Thailand.	Non-acceptance would have caused embarrassment to donor.
Maxine Burns, Deputy Press Secretary	Sterling silver compact. Recd May 4, 1978. Est. Value—$125. Held in VP Gift Storage Room.	General Chomanan, Prime of Minister Thailand.	Non-acceptance would have caused embarrassment to donor.
Penny Miller, Personal Secretary to Vice President.	Sterling silver compact. Recd May 4, 1978. Est. Value—$125. Held in VP Gift Storage Room.	General Chomanan, Prime Minister of Thailand.	Non-acceptance would have caused embarrassment to donor.
James Johnson, Executive Assistant to Vice President.	Silver-tooled box (sterling silver). Recd May 4, 1978. Est. Value—$400. Held in VP Gift Storage Room.	General Chomanan, Prime Minister of Thailand.	Non-acceptance would have caused embarrassment to donor.
Rebecca McGowan, Special Assistant to Vice President for Scheduling.	Broach pin—gold bird with large pearl body and stones for eyes and tail. Recd April 29, 1978. Est. Value—$450. Held in VP Gift Storage Room.	Mrs. Imelda Marcos, Wife of President of Philippines.	Non-acceptance would have caused embarrassment to donor.

AGENCY: U.S. Senate (Gifts)

Edward M. Kennedy, U.S. Senator	One balalaika, a traditional stringed musical instrument. Recd September 7, 1978. Est. Value—$250. Deposited with Secretary of the Senate.	Members of Michurin Collective Farm, Alma Ata, Russia.	Non-acceptance would have caused embarrassment to donors.
Edward M. Kennedy, U.S. Senator	Framed oil painting of home of Leo Tolstoy. Recd September 9, 1978. Est. Value—$150. Deposited with Secretary of the Senate.	Leonid Brezhnev, General Secretary, U.S.S.R.	Non-acceptance would have caused embarrassment to donor.

AGENCY: U.S. Senate (Travel/Travel Expenses)

Name and position of employee	Brief description of travel or travel expenses taken place entirely outside of United States	Circumstances justifying acceptance	Identity of foreign donor and government
Howard Baker, Jr., United States Senator—and Mrs. Baker.	(a) Transportation by Panamanian aircraft. January 4, 1979	To facilitate travel within Panamanian interior at request of Government of Republic of Panama.	Republic of Panama, General Omar Torrijos.
John Chafee, United States Senator	See Ref. (a)		
Jake Garn, United States Senator—and Mrs. Garn.	See Ref. (a)		
Howard Baker, Jr., United States Senator	(b)Transportation by Panamanian aircraft to Farralon and return to Panama City. January 7, 1978.	Request of Government of Panama.	Republic of Panama, General Omar Torrijos.
John Chafee, United States Senator	See Ref. (b)		
Jake Garn, United States Senator	See Ref. (b)		
Howard Baker, Jr., United States Senator	(c) Round trip air transportation from Rio de Janeiro to Angro dos Reis on Brazilian aircraft. January 12, 1978.	To tour a nuclear facility at request of Government of Brazil.	Government of Brazil, President Geisel.
Jake Garn, United States Senator	See Ref. (c)		
Henry Bellmon, United States Senator—and Mrs. Bellmon.	(d) Travel by Soviet Government aircraft from Leningrad to Minsk, Nov. 12, 1978 and travel by Soviet Government aircraft from Minsk to Moscow, Nov. 14, 1978. Ground transportation provided by Soviet Government in official government sedans and buses.	Insistance of Soviet authorities	Soviet Government.
Quinton Burdick, United States Senator—and Mrs. Burdick.	See Ref. (d)		
Dennis DeConcini, United States Senator—and Mrs. DeConcini.	See Ref. (d)		
John Durkin, United States Senator—and Mrs. Durkin.	See Ref. (d)		
Thomas Eagleton, United States Senator—and Mrs. Eagleton.	See Ref. (d)		
John Glenn, United States Senator—and Mrs. Glenn.	See Ref. (d)		
Jacob Javits, United States Senator	See Ref. (d)		
Paul Laxalt, United States Senator—and Mrs. Laxalt.	See Ref. (d)		
Sam Nunn, United States Senator—and Mrs. Nunn.	See Ref. (d)		
Abraham Ribicoff, United States Senator—and Mrs. Ribicoff.	See Ref. (d)		
Richard Schweiker, United States Senator—and Mrs. Schweiker.	See Ref. (d)		
Adlai Stevenson, United States Senator—and Mrs. Stevenson.	See Ref. (d)		
Catharine Buchanan, Personal Secretary to Henry Bellmon, United States Senator.	See Ref. (d)		
Arthur House, Administrative Assistant to Abraham Ribicoff, United States Senator.	See Ref. (d)		
Douglas Jackson, Legislative Assistant to Henry Bellmon, United States Senator.	See Ref. (d)		

AGENCY: U.S. Senate (Travel/Travel Expenses)—Continued

Name and position of employee	Brief description of travel or travel expenses taken place entirely outside of United States	Circumstances justifying acceptance	Identity of foreign donor and government
J. S. Kimmitt, Secretary of the Senate	See Ref. (d)		
Albert Lakeland, Executive Assistant to Jacob Javits, United States Senator.	See Ref. (d)		
Gail Martin, Administrative Assistant to Secretary of the Senate.	See Ref. (d)		
Robert Maynes, Special Assistant to Dennis Deconcini, United States Senator.	See Ref. (d)		
Jeffrey Record, Legislative Assistant to Sam Nunn, United States Senator.	See Ref. (d)		
David Schaefer, Special Assistant to Abraham Ribicoff, United States Senator.	See Ref. (d)		
Roy Werner, Professional Staff Member Committee on Foreign Relations.	See Ref. (d)		
Mike Gravel, United States Senator	(e) Travel by private jet from Riyadh to Dhahran to Jeddah to Cairo; included in acceptance of above travel were five days of hotel accommodations in Saudi Arbia—December 1978.	To further a mutual exchange of information between US and govt. of Saudi Arabia—refusal would have caused offense to govt. of Saudi Arabia.	Arranged by H.R.H. Turki bin Faisel bin Abdul-Aziz at request of govt. of Saudi Arabia.
William L. Hoffman, Legislative Assistant to Mike Gravel, United States Senator.	See Ref. (e)		
Adlai Stevenson, United States Senator	Local transportation provided by host governments in Hungary, Rumania, Poland, USSR and Switzerland; hotel accommodations in Moscow provided by Soviet Government at latter's request.	Request of host governments; Soviet accommodations accepted upon advice of Dept. of State that refusal would have caused offense to Soviet Union.	As indicated.
Eric Lee, Staff Counsel, Committee on Commerce, Science and Transportation.	Travel grant from foreign governmental organization (The European Community) for purposes of studying European industrial policy; travel within Belgium, Luxembourg, France, Netherlands, Germany, United Kingdom, and Ireland—November 4–December 9 1978.	In the interests of the Senate and the United States.	European Community.

AGENCY: U.S. House of Representatives (Travel/Travel Expenses)

William S. Broomfield, Member of Congress	Lodging for 2 days in the Intercontinental Hotel in Riyadh, Saudi Arabia—January 9–10, 1978.	Non-acceptance would have caused embarrassment to donor.	Government of Saudi Arabia
J. Herbert Burke, Member of Congress John Joseph Cavanaugh, Member of Congress. Del Clawson, Member of Congress Christopher J. Dodd, Member of Congress Dante B. Fascell, Member of Congress Paul Findley, Member of Congress Benjamin A. Gilman, Member of Congress Helen S. Meyner, Member of Congress Donald James Pease, Member of Congress Shirley N. Pettis, Member of Congress Leo J. Ryan, Member of Congress Larry Winn, Jr., Member of Congress Clement J. Zablocki, Member of Congress George R. Berdes, Committee on International Relations, Staff Consultant. Everett E. Bierman, Committee on International Relations, Minority Staff Director. John J. Brady, Jr., Committee on International Relations, Chief of Staff. Kenneth R. Harding, Sergeant at Arms Keith Jewel, Photographer Helen C. Mattas, Committee on International Relations, Staff Consultant. Ivo J. Spalatin, Subcommittee on International Security & Scientific Affairs, Subcommittee Staff Director.	Above information identical for all employees listed at left.		
Hon. Mario Biaggi, Member of Congress	Surface transportation in Cyprus, lodgings and meals, March 24–27, 1978	Problems involving continued participation of Cyprus are again heating up so a personal inspection of the situation while in Europe on the other business was deemed beneficial.	Consul General of Cyprus in NY, Government of Cyprus
Hon. Lucien N. Nedzi, Member of Congress	Automobile transportation, one dinner & three lunches; no lodging, June 8–17, 1978.	Personal representative of the President at Poznan Trade Fair.	Government of Poland.

AGENCY: U.S. House of Representatives (Gifts)

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Fortney H. (Pete) Stark, Jr., Member of Congress.	Hungarian, hand-painted, china smoking set. Recd January 1978. Est. Value—Over $100. Deposited with Clerk of U.S. House of Representatives.	Frigyes Puja, Minister for Foreign Affairs, Hungary.	Non-acceptance would have caused embarrassment to donor.
Charles W. Whalen, Jr., Member of Congress	Crocodile briefcase. Recd July 31, 1978. Est. Value—Approx. $475. Deposited with Clerk of House for disposition to GSA.	Moussa Traore, President of Mali.	Non-acceptance would have caused embarrassment to donor
Clement J. Zablocki, Member of Congress	Moroccan carpet, 9' x 12". Recd November 15, 1978. Est. Value—Over $100. Retained for official use in Office of Committee on International Relations.	King Hassan II, Morocco	Non-acceptance would have caused embarrassment donor.

AGENCY: Department of the Air Force

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
John C. Stetson, Secretary of the Air Force and Mrs. Stetson.	Persian Rug, 7' x" x 4' x". Recd April 8, 1978. Est. Value—$1,800. Retained for official display in Office of Secretary of Air Force.	LTG Amir H. Rabii, Commander, Imperial Iranian Air Force.	Tendered as official courtesy. Non-acceptance would have caused offense or embarrassment.
John C. Stetson, Secretary of the Air Force and Mrs. Stetson.	18K Gold pendant w/Persian turquoise stones and center green agate. Recd May 15, 1978. Est. Value—$550. Held in office of Administrative Assistant to Secretary of Air Force pending disposition by GSA.	LTG Amir H. Rabii, Commander, Imperial Iranian Air Force.	Tendered as official courtesy. Non-acceptance would have caused offense or embarrassment.
John C. Stetson, Secretary of the Air Force and Mrs. Stetson.	18K gold necklace w/13 marquise shaped Persian turquoise stone bib. Recd April 8, 1978. Est. Value—$350. Held in office of Administrative Assistant to Secretary of Air Force pending disposition by GSA.	LTG Amir H. Rabii, Commander, Imperial Iranian Air Force.	Tendered as official courtesy. Non-acceptance would have caused offense or embarrassment.
John C. Stetson, Secretary of the Air Force and Mrs. Stetson.	Persian rug 7'2" x 4'7". Recd May 15, 1978. Est. Value—$4,200. Retained for official use in office of Secretary of Air Force.	LTG Amir H. Rabii, Commander, Imperial Iranian Air Force.	Tendered as official courtesy. Non-acceptance would have caused offense or embarrassment.
John C. Stetson, Secretary of the Air Force and Mrs. Stetson.	18K gold lady's ring w/center Persian turquoise and 32 2-point brilliant cut diamonds. Recd April 8, 1978. Est. Value—$225. Held in office of Administrative Assistant to Secretary of Air Force pending dispositions by GSA.	LTG Amir H. Rabii, Commander, Imperial Iranian Air Force.	Tendered as official courtesy. Non-acceptance would have caused offense or embarrassment.
John J. Martin, Assistant Secretary of Air Force (Research, Development and Logistics).	Round sterling silver tray, 15", elaborately chased with gold Royal Iranian Air Force emblem, in velvet box. Recd April 8, 1978. Est. Value—$1,800. Retained for official display in donee's office.	LTG Amir H. Rabii, Commander, Imperial Iranian Air Force.	Tendered as official courtesy. Non-acceptance would have caused offense or embarrassment.
Peter B. Hamilton, General Counsel, U.S. Air Force.	Round sterling silver tray, elaborately chased with gold Royal Iranian Air Force emblem, in velvet box. Recd April 8, 1978. Est. Value—$650. Held in office of Administrative Assistant to Secretary of Air Force pending disposition by GSA.	LTG Amir H. Rabii, Commander, Imperial Iranian Air Force.	Tendered as official courtesy. Non-acceptance would have caused offense or embarrassment.
BG John T. Chain, Military Assistant to Secretary of Air Force.	Round sterling silver tray, 15", elaborately chased w/gold Royal Iranian Air Force emblem, in velvet box. Recd April 8, 1978. Est. Value—$1,800. Retained for official display in office of Secretary of Air Force.	LTG Amir H. Rabii, Commander, Imperial Iranian Air Force.	Tendered as official courtesy. Non-acceptance would have caused offense or embarrassment.
BG William W. Hoover, Military Assistant to Secretary of Air Force.	Sterling silver tray, 15" round, elaborately chased w/gold Royal Iranian AF emblem, in velvet box. Recd April 8, 1978. Est. Value—$1,800. Retained for official display in office of Secretary of Air Force.	LTG Amir H. Rabii, Commander, Imperial Iranian Air Force.	Tendered as official courtesy. Non-acceptance would have caused offense or embarrassment.
Mrs. William W. Hoover, Wife of Military Assistant to Secretary of Air Force.	Wide 18K gold bracelet w/21 Persian turquoise stones. Recd April 8, 1978. Est. Value—$500. Held in office of Administrative Assistant to Secretary of Air Force pending disposition by GSA.	LTG Amir H. Rabii, Commander, Imperial Iranian Air Force.	Tendered as official courtesy. Non-acceptance would have caused offense or embarrassment.
LTC Roger Smith, Office of Policy Analysis Group, Office of Secretary of Air Force.	Sterling silver tray, 12½" round, elaborately chased w/gold Royal Iranian Air Force emblem, in velvet box. Recd April 8, 1978. Est. Value—$650. Retained for official display in office of Secretary of Air Force.	LTG Amir H. Rabii, Commander, Imperial Iranian Air Force.	Tendered as official courtesy. Non-acceptance would have caused offense or embarrassment.
Gen. David C. Jones, Chief of Staff, USAF (Currently Chairman, JCS).	French Manurain .357 magnum revolver, Serial No. K9272 and Model No. 73. Recd January 1978. Est. Value—$250. Retained for official display in office of Chairman, Joint Chiefs of Staff.	Gen. St. Cricq, Chief of Staff, French Air Force.	Tendered as official courtesy. Non-acceptance would have caused offense or embarrassment.
General David C. Jones, Chief of Staff, USAF (Currently Chairman, JCS).	Silver Tray, Rec'd June 1978, Est. Value—$200; Turned in for disposition to Air Force Military Personnel Center, Randolph Air Force Base.	General Azhari, Chief, Supreme Commander's Staff, Imperial Iranian Air Force.	Tendered as official courtesy. Non-acceptance would have caused offense or embarrassment.
General David C. Jones, Chief of Staff, USAF (Currently Chairman, JCS).	Turquoise ring, Recd June 1978, Est. Value—$500, Turned in for disposition to Air Force Military Personnel Center, Randolph Air Force Base.	LTG Amir H. Rabii, Commander, Imperial Iranian Air Force.	Tendered as official courtesy. Non-acceptance would have caused offense or embarrassment.
General David C. Jones, Chief of Staff, USAF (Currently Chairman, JCS).	Hand woven oriental-type rug, Recd July 1978, Est. Value—in excess of $100, Retained for offical display in Govt. quarters of Chairman, Joint Chiefs of Staff.	LTG Amir H. Rabii, Commander, Imperial Iranian Air Force.	Tendered as official courtesy. Non-acceptance would have caused offense or embarrassment.
LTG K. L. Tallman, Superintendant, U.S. Air Force Academy.	Persian rug, Recd July 1978, Est. Value—$200, Retained for official display in Govt. quarters of donee.	Crown Prince Raza Pahlavi, Iran.	Tendered as official courtesy. Non-acceptance would have caused offense or embarrassment.
Col. Joseph E. Clarkson, 48th Tactical Fighter Wing Commander.	Sterling silver trophy plate, 12½" diameter, w/bronze Imperial Iranian Air Force emblem mounted in center, Recd November 1977, Est. Value—$400, Approved for official display in office of Donee March 6, 1978.	Iranian Air Force official	Tendered as official courtesy. Non-acceptance would have caused offense or embarrassment.

AGENCY: Department of the Army

General Bernard W. Rogers, Army Chief of Staff.	Carved wooden table, Recd October 24, 1978, Est. Value—in excess of $100, Approved for Official Use in Quarters of Donee.	General Malhotra, Chief of Staff, Indian Army.	Non-acceptance would have caused embarrassment to donor
General Bernard W. Rogers, Army Chief of Staff.	Kashmiar Rug 4' x 6', Recd March 12, 1978, Est. Value—$1000 to $2000, Approved for Official Use in Quarters of Donee.	General Raina, Chief of Staff, Indian Army.	Non-acceptance would have caused embarrassment to donor
General Bernard W. Rogers, Army Chief of Staff.	Carved ivory tusk, 4 ft. long, Recd September 30, 1978, Est. Value—over $1000, Reported to GSA and presently held at Army Personnel Center pending disposition by GSA.	BG Lekwot, Commanding Officer, 3d Bde, One Infantry Division, Nigeria.	Non-acceptance would have caused embarrassment to donor
General Bernard W. Rogers, Army Chief of Staff.	African Cerimonial Dresses (2), Recd September 27, 1978, Est. Value—$100, Reported to GSA and presently held at Army Personnel Center pending disposition by GSA.	General Danjuma, Chief of Staff, Nigerian Army.	Non-acceptance would have caused embarrassment to donor
General Bernard W. Rogers, Army Chief of Staff.	Carved solid ebony lion statue with light, Recd September 27, 1978, Est. Value—$100 to $700, Reported to GSA and presently held at Army Personnel Center pending disposition by GSA.	General Danjuma, Chief of Staff, Nigerian Army.	Non-acceptance would have caused embarrassment to donor
General Bernard W. Rogers, Army Chief of Staff.	Model Pluton Missile with wooden case. Recd May 10, 1978. Est. Value—$100. Reported to GSA and presently held at Army Personnel Center pending disposition by GSA.	General John P. LaGarde, Chief of Staff, French Army.	Non-acceptance would have caused embarrassment to donor.
Major Dean L. Parker, U.S. Army Command and General Staff College, Ft. Leavenworth, Kansas.	Rolex Oyster wristwatch. Recd November 15, 1978. Est. Value—$100 to $300. Reported to GSA and presently held at Army Personnel Center pending disposition by GSA.	LTG Mohammad Abdul al-Sheikh, Commander, Land Forces, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor.

AGENCY: Department of the Army

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Cpt Gary K. Maxwell	Parker pen set, gold color with checkerboard design. Recd November 15, 1978. Est. Value—$110. Reported to GSA and presently held at Army Personnel Center pending disposition by GSA.	LTG Mohammad Abdul al-Sheikh, Commander, Land Forces, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor.
Melvin R. Bowdan, Jr., LTC, USA (Ret.), Former U.S. Defense Attache, Port-au-Prince, Haiti.	Swiss Piaget wristwatch, 18K white gold, rectangular, 4mm thick case with leather band, Serial No. 601006. Recd May 27, 1977. Est. Value—$1,695. Reported to GSA and presently held at Army Personnel Center pending disposition by GSA.	Jean-Claude Duvalier, President, Republic of Haiti.	Non-acceptance would have caused embarrassment to donor.
Gregory D. Lee, WO1, USA, USA Criminal Investigation Command, Fort Ord, California.	S. R. Dupont cigarette lighter (silver). Recd June 29, 1978. Est. Value—$160. Reported to GSA and presently held at Army Personnel Center pending disposition by GSA.	L. de Guiringaud, Minister of Foreign Affairs, France.	Non-acceptance would have caused embarrassment to donor.
Colonel Myron J. Longmore, Chief of Staff, USA Field Artillery Ctr., Fort Sill, Oklahoma.	Man's Rolex Oyster watch. Recd November 27, 1978. Est. Value—$400. Reported to GSA and presently held at Army Personnel Center pending disposition by GSA.	MG Abu Sulaiman, Commander, Alkarj Depot, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor.

AGENCY: Central Intelligence Agency

Stansfield Turner, Director, CIA	Replica of Mexican church bell; medallion with Mexico's seal on obverse and engraving of donee on reverse. Recd August 29, 1978. Est. Value—$360. Reported to GSA and presently held at CIA pending disposition by GSA.	Refusal would have caused embarrassment to donor.
Stansfield Turner, Director, CIA	Ten cans of caviar. Recd July 7, 1978. Est. Value—$1,000. Retained for Official Use	Refusal would have caused embarrassment to donor.
Stansfield Turner, Director, CIA	One leopard skin and one anaconda skin. Recd May 10, 1978. Est. Value—$285. Reported to GSA and presently held at CIA pending disposition by GSA.	Refusal would have caused embarrassment to donor.
Stansfield Turner, Director, CIA	Reproduction of belt pistol, flintlock with sculptured ormolu mounts. Recd May 17, 1978. Est. Value—$150. Retained for Official Display.	Refusal would have caused embarrassment to donor.
Stansfield Turner, Director, CIA	Gentlemen's set—notebook and passport folio of black snakeskin and a de Laneau watch. Recd March 20, 1978. Est. Value—$175. Reported to GSA and presently held at CIA pending disposition by GSA.	Refusal would have caused embarrassment to donor.
Stansfield Turner, Director, CIA	Bronze sculpture of Italian infantryman with bugle. Recd March 20, 1978. Est. Value—$1,200. Reported to GSA and presently held at CIA pending disposition by GSA.	Refusal would have caused embarrassment to donor.
Stansfield Turner, Director, CIA	Bokhara rug, 7' x 5', emerald green background. Recd April 6, 1978. Est. Value—$1,750. Retained for official display.	Refusal would have caused embarrassment to donor.
Stansfield Turner, Director, CIA	Lady's diamond, lapis lazuli and mother-of-pearl watch, by Chaumet. Recd March 20, 1978. Est. Value—$1,600. Reported to GSA and presently held at CIA pending disposition by GSA.	Refusal would have caused embarrassment to donor.
Stansfield Turner, Director, CIA	Oriental rug, 8½' x 13', salmon background. Recd December 5, 1978. Est. Value—$1,700. Retained for official display.	Refusal would have caused embarrassment to donor.
Stansfield Turner, Director, CIA	Smokey topaz pendant, cuff links and tie tack. Recd December 18, 1978. Est. Value—$125. Reported to GSA and presently held at CIA pending disposition by GSA.	Refusal would have caused embarrassment to donor.
Frank C. Carlucci, Deputy Director, CIA	Oriental rug, 6½' x 9½', salmon background. Recd November 1978. Est. Value—$350. Retained for official display.	Refusal would have caused embarrassment to donor.
Frank C. Carlucci, Deputy Director, CIA	21-piece silver samovar set. Recd November 1978. Est. Value—$1,100. Reported to GSA and presently held at CIA pending disposition by GSA.	Refusal would have caused embarrassment to donor.
Frank C. Carlucci, Deputy Director, CIA	Oriental rug, 6' x 9', dark red background. Recd November 1978. Est. Value—$350. Retained for official display.	Refusal would have caused embarrassment to donor.
Frank C. Carlucci, Deputy Director, CIA	Carved mother-of-pearl shrine of Last Supper in shadow-box. Recd November 1978. Est. Value—$100. Reported to GSA and presently held at CIA pending disposition by GSA.	Refusal would have caused embarrassment to donor.
Frank C. Carlucci, Deputy Director, CIA	Silver tray, 25" diameter. Recd October 1978. Est. Value—$350. Reported to GSA and presently held at CIA pending disposition by GSA.	Refusal would have caused embarrassment to donor.
Frank C. Carlucci, Deputy Director, CIA	Silver tray, 20½" diameter. Recd October 1978. Est. Value—$175. Reported to GSA and presently held at CIA pending disposition by GSA.	Refusal would have caused embarrassment to donor.
Agency employee	Stone mosaic picture of Mt. Fuji with clock in upper right corner. Recd August 24, 1978. Est. Value—$205. Retained for official display..	Refusal would have caused embarrassment to donor.
Agency employee	Oriental rug, 4' x 6'. Recd March 1978. Est. Value—$500. Retained for official display	Refusal would have caused embarrassment to donor.
Agency employee	Two miniature temple dog statues, 4" in height, light green jade. Recd July 1978. Est. Value—$300. Retained for official display.	Refusal would have caused embarrassment to donor.
Agency employee	Oriental rug. Recd August 12, 1978. Est. Value—$375. Retained for official display	Refusal would have caused embarrassment to donor.
Agency employee	Oriental rug. Recd August 14, 1978. Est. Value—$750. Retained for official display	Refusal would have caused embarrassment to donor.
Agency employee	$1000 cash. Recd June 17, 1978. Transmitted to Department of the Treasury	Refusal would have caused embarrassment to donor.
Agency employee	Gold medallion commemorating country's 20th independence anniversary. Recd January 1978. Reported to GSA and presently held at CIA pending disposition by GSA.	Refusal would have caused embarrassment to donor.
Agency employee	Man's Tudor watch and Lady's Omega watch. Recd June 6, 1978. Est. Value—$245. Reported to GSA and presently held at CIA pending disposition by GSA.	Refusal would have caused embarrassment to donor.
Agency employee	Coral necklace, 3-strand, with cabochon emerald and marcasite clasp. Recd July 1978. Est. Value—$150. Reported to GSA and presently held at CIA pending disposition by GSA.	Refusal would have caused embarrassment to donor.

AGENCY: Department of Commerce

Juanita M. Kreps, Secretary of Commerce	Gold ring with pearl. Recd Feb. 21, 1978. Est. Value—$200. Reported to GSA and presently held at Dept. of Commerce pending disposition.	Ghazi A. Algosaibi, Minister of Industry & Electricity, Saudi Arabia.	Gift presented to donee at time of official visit of donor—non-acceptance would have cause embarrassment to donor.
Juanita M. Kreps, Secretary of Commerce	Twelve inch hand cut crystal bowl. Recd as Christmas gift—1978. Est. Value—$250. Reported to GSA and presently held in Office of Donee.	Commercial Section, Czechoslovak Embassy, Washington, D.C..	Non-acceptance would have cause embarrassment to Government.

AGENCY: Department of Defense

Harold Brown, Secretary of Defense	Porcelain figure, "Hidalgo de la Mancha" (Don Quixote), Lladro model #1269. Recd August 1, 1978. Est. Value—$350. Retained for official display in donee's office.	Gutierrez Mellado, Minister of Defense, Spain.	Non-acceptance would have cause embarrassment to donor.
	Japanese "Satsuma" Vase, cream colored w/bird/flower. Recd November 10, 1978. Est. Value—$250-$300. Held in Defense Protocol Office, pending disposition.	Governor Kaname Kamada, Governor of Kagoshima Prefecture, Japan.	Non-acceptance would have cause embarrassment to donor.
	Moroccan Carpet, 10'x20'. Recd December 2, 1978. Est. Value—$700. Retained for official use in office of donee.	King Hassan II, Morocco	Non-acceptance would have cause embarrassment to donor.

AGENCY: Department of Defense

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	"Armee Francaise" revolver, Caliber 11 mm, manu. 1873, in presentation case. Recd November 21, 1977. Est. Value—$300. Held in Defense Protocol Office, pending disposition.	Yvon Bourges, Minister of Defense, France.	Non-acceptance would have cause embarrassment to donor.
Charles W. Duncan, Jr., Deputy Secretary of Defense.	Moroccan carpet, 15' x 10'. Recd December 2, 1978. Est. Value—$550. Retained for official use in office of donee.	King Hassan II, Morocco	Non-acceptance would have caused embarrassment to donor.
David E. McGiffert, Principal Deputy Under Secretary of Defense for Policy and Assistant Secretary of Defense.	One wooden box (8" x 4" x 2"), one necklace, one bracelet. Recd July 5, 1978. Est. Value—$200. Being considered for official display.	Deputy Prime Minister, Minister of War and Military Production, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donor.
General David C. Jones, USAF Chairman, Joint Chiefs of Staff.	Oriental rug (handwoven). Recd July 1978. Est. Value—Over $100. Forwarded to USAF Office of Information, Community Relations Division, Art and Museum Branch, for use in their art collection.	LTG and Mrs. Rabii, Commander of Imperial Iranian Air Force.	Non-acceptance would have caused embarrassment to donor.
General George S. Brown, USAF, Former Chairman, Joint Chiefs of Staff (deceased).	Replica of Korean Golden Crown (Kum Kwan-chang). Recd Spring 1978. Est. Value—over $100. Retained in Space Management Directorate for official display.	General Ock Man Ho, Korean Armed Forces.	Non-acceptance would have caused embarrassment to donor.
LTG Ernest Graves, USA	Wooden box, approx. 8" x 4" x 2" (ornate) with silver necklace and bracelet. Recd July 5, 1978. Est. Value—$200. Held in Office of Deputy Asst. Secy. of Defense (Administration).	Gen. Mohammed El-Gamasy, Deputy Prime Minister, Minister of War and Military Production, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donor.

AGENCY: Defense Mapping Agency

Lt. Gen. Abner B. Martin, USAF, Director, Defense Mapping Agency.	Oriental rug. 40" x 70". Recd November 1978. Est. Value—not established but well over $100. Approved for official use to become part of permanent display of mementoes presented to Agency by cooperating foreign mapping organizations.	Lt. Gen. Mahmood Sadeghian, Technical Deputy Minister of War and Director, Natl Geographic Organization, Tehran, Iran.	Circumstances such as to preclude refusal of gift, presented as mark of courtesy in appreciation of U.S. cooperative mapping effort.

AGENCY: Environmental Protection Agency (Gifts)

Alice Brandeis Popkin, Associate Administrator, Office of Intl. Activities.	18K gold chain and gold and pearl drop. Recd November 3, 1978. Est. Value—$150. Reported to GSA and presently held at EPA pending disposition by GSA.	Dr. Jokeshi Kubo, Vice President, Japan Sewage Works Agency	Non-acceptance would have caused embarrassment to Japanese Government.
Stephen J. Gage, Assistant Administrator for Research and Development.	18K gold flower centered with pearl on 18K gold 14" chain. Recd November 3, 1978. Est. Value—$150. Reported to GSA and presently held at EPA pending disposition by GSA.	Dr. Jokeshi Kubo, Vice President, Japan Sewage Works Agency.	Non-acceptance would have caused embarrassment to Japanese Government.

AGENCY: National Science Foundation

Robert M. Colton, Program Manager, Industrial Programs, ISPT.	Seiko Wristwatch, Model #4006 Red Nov. 16, 1977. Est. Value—$145. Held at 1800 G Street pending disposition by GSA.	Mr. Kazuo Noda, Japanese Venture Enterprise, Tokyo, Japan.	Received following meeting with visiting Japanese Delegation at Dupont Plaza Hotel—non-acceptance would have caused embarrassment to donor.
Roland Tibbets, Program Manager, Industrial Programs, ISPT.	Seiko Wristwatch, Model #4006 Red Nov. 16, 1977. Est. Value—$145. Held at 1800 G Street pending disposition by GSA.	Mr. Kazuo Noda, Japanese Venture Enterprise, Tokyo, Japan.	Received following meeting with visiting Japanese Delegation at Dupont Plaza Hotel—non-acceptance would have caused embarrassment to donor.

AGENCY: Department of the Navy (Gifts)

Adm. James L. Holloway, III, Chief of Naval Operations.	Silver and gold Saudi Arabian, samovar (tea pitcher), approx. 12" high. Recd June 15, 1978. Est. Value—$282. Placed in custody of Curator of Navy for permanent official display in donee's office.	Capt. Ibrahim M. Al-Saja Commander, Royal Saudi Arabian Naval Forces.	Non-acceptance would have caused embarrassment to donor.
R/ADM James A. Sagerholm Commander, South Atlantic Fleet.	Three gold medallions of varying size in small leather case; each bears likeness of donor on one side; reverse sides include various designs and slogans, as well as "L100", "L$200" & "L$400", respectively. Rec February 1978. Est. Value—$700. Held in office of donee pending disposition by GSA.	William R. Tolbert, Jr. President of Liberia.	Non-acceptance would have caused embarrassment to donor
R/ADM W. Haley Rogers Commander, Naval Base, San Diego, California.	Bird on a stand. Recd. October 16, 1974. Est. Value—$350. Held in Office of Chief of Naval Operations pending disposition instructions from GSA (Approved for official display in 1975 and returned in July 1978 following termination of official use).	Citizens Groups, Yokosuka, Japan.	Non-acceptance would have caused embarrassment to donor

AGENCY: Office of Science and Technology Policy

Dr Frank Press, Director	Mantel Clock. Recd September 8, 1978. Est. Value—$200. Designated U.S. Government property and offered for use of Office of Science and Technology Policy.	Tasaburo Kumagai, Director General, Science and Technology Agency, Tokyo.	Non-acceptance would have caused embarrassment to donor.
Dr Frank Press, Director	Indonesian silver filigree boat. Recd December 4, 1978. Est. Value—$250. Designated U.S. Government property and offered for use of Office of Science and Technology Policy.	Dr. Ing. B.J. Habibi, State Minister for Research & Technology, Republic of Indonesia.	Non-acceptance would have caused embarrassment to donor.
Dr Frank Press, Director	Japanese wood block print. Recd November 20, 1978. Est. Value—$100. Designated U.S. Government property and offered for use of Office of Science and Technology Policy.	Katsuhiko Azuma, Senior Counsellor, Bank of Tokyo.	Non-acceptance would have caused embarrassment to donor

AGENCY: Department of State

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James K. Bishop, Director of North African Affairs.	Moroccan rug, approx. 5' x 7', dominant color pink. Recd December 6, 1978. Est. Value—$350. Approved for Official Use in Office of Donee.	King Hassan II, Morocco	Delivered in absence of donee—return of gift would have been considered an insult.
James K. Bishop, Director of North African Affairs.	Wool rug, approx. 5' x 7', brown, black, grey and white. Recd November 18, 1978. Est. Value—$350. Approved for Official Use in Office of Donee.	Dr. Ali Turayaki, Foreign Minister of Libya.	Gift delivered impromptu at residence of donee—there was no opportunity to decline acceptance of gift, which was unsolicited.
David A. Botsko, Office of Security, San Francisco Field Office.	Man's Baume & Mercier watch, gold case, Roman numerals, Serial No. 35134/870183, inscribed on reverse from donor. Recd December 6, 1978. Est. Value—$600. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Prince Abdallah, Morocco	Non-acceptance would have caused offense or embarrassment to donor.
Mark Boyett, Special Agent, Office of Security, New York Field Office.	1 pair 18K gold cuff links, made from antique gold Saudi Arabian coins. Recd May 16, 1978. Est. Value—$200. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Dr. Ghazi Algosaibi, Minister of Industry and Electricity, Saudi Arabia.	Gift given as token of remembrance following protective security detail—non-acceptance would have caused embarrassment to donor.
Richard J. Bloomfield, U.S. Ambassador to Ecuador.	Statuette of man in red toga, approx. 10½" high, from 17th Century, ascribed to School of Caspicara in colonial Quito. Recd February 1978. Est. Value—$200. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Santiago Sevilla, Minister of Finance, Ecuador.	Non-acceptance would have been considered an insult.
Ellsworth Bunker, Ambassador-at-Large	Republic of Panama Mint Proof Set—9 coins. Recd—Date not stated. Est. Value—$250. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Government of Panama	Non-acceptance would have caused embarrassment to donor Government.
James T. Cronin, Special Agent, Office of Security.	Man's Vacheron et Constantin wristwatch, black face, colg case, black alligator strap, Serial No. 488306. Recd July 1978. Est. Value—$1,800. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Iranian Embassy	Non-acceptance would have caused embarrassment to donor Government.
Patrick J. Daly, Protocol Officer	Hand woven Moroccan "Artisan" rug, approx. 4' x 6', blue background with small design in center and floral border design. Recd December 15, 1978. Est. Value—$775. Approved for Official Use in Donee's office.	Ambassador Ali Bengelloun, Morocco.	Delivered to donee's office in his absence following visit of King Hassan II of Morocco. There was no opportunity to refuse acceptance.
Patricia M. Derian, Assistant Secretary for Human Rights and Humanitarian Affairs.	Dinner table linens consisting of 12 place mats, 12 coaster mats, 1 table runner and 11 napkins of beige Pina fiber, with embroidered design. Recd January 1978. Est. Value—$220. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	President and Mrs. Marcos, Philippines.	Rejection of gift would have been considered an insult and an embarrassment to donors.
Patricia M. Derian, Assistant Secretary for Human Rights and Humanitarian Affairs.	Mahogany chest with inlaid motif—chest approx. 32" x 17" x 18½"—containing assortment of Philippine items. Recd January 1978. Est. Value—$198. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	President and Mrs. Marcos, Philippines.	Rejection of gift would have been considered an insult and an embarrassment to donors.
Mrs. Francois M. Dickman, Wife of U.S. Ambassador to United Arab Emirates.	Sivler and gold-plates Arab coffee pot, two rose water holders, incense burner and tray, eye make-up urn, six small Arab coffee cups and a serving tray. Recd April 10, 1978. Est. Value—Well in excess of $100 Approved for Official Display at Embassy Residence or Chancery.	Shaikha Fatima, Wife of President of United Arab Emirates.	Rejection of gift would have been considered an insult and an embarrassment to donors.
Joseph Duffey, Assistant Secretary for Educational and Cultural Affairs.	Chalice—approx. 6½" high, silver lined and decorated on outside in silver and enamel. Recd June 1977. Est. Value—$225. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Madame Lyudmila Zhivkova, Chairman of Bulgarian, Committee for Culture.	Gift delivered to donee following departure of donor from U.S.
Mrs. Evan S. Dobelle, Wife of Chief of Protocol.	Ladies watch, R. Chabloz, Geneva, gold band with 9 diamonds on face and picture of King Khalid. Recd January 1978. Est. Value—$800. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	King Khalid, Saudi Arabia	Rejection of gift would have been considered an insult to donor.
Max Fratoddi, Special Agent, Office of Security.	Man's Vacheron et Constantin wristwatch, white face and case, alligator strap, Serial No. 488436. Recd July 1978. Est. Value—$1,800. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Embassy of Iran	Gift was unsolicited and delivered through channels following departure of Iranian Prince and Princesses for whom donee provided protective security.
Richard M. Gannon, Special Agent, Office of Security..	Two $100 bills (Federal Reserve Notes). Recd October 25, 1978. Deposited with U.S. Treasury.	Sheik Zaki Yamani, Minister of Petroleum and Mineral Resources, Saudi Arabia.	Gift presented upon departure of donor at airport. Envelope was sealed and contents unknown to donee at time of tender.
Richard M. Gannon, Special Agent, Office of Security.	Man's watch, brown suede strap, coral and gold face. Recd October 25, 1978. Est. Value—$250. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Sheik Zaki Yamani, Minister of Petroleum and Mineral Resources, Saudi Arabia.	Gift presented upon departure of donor at airport Gift was wrapped and contents unknown to donee at time of tender.
Grace Goodier, Special Agent, Office of Security.	Ladies Vacheron et Constantin wristwatch, gold face and case, black alligator strap, Serial No. 480156, Recd July 28, 1978, Est. Value—$1,800, Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Embassy of Iran	Gift presented at conclusion of visit of Iranian Prince and Princesses following departure of official guests.
David Haas, Special Agent, Office of Security, New York Office.	Man's gold Vacheron et Constantin watch with black alligator strap, Serial No. 484644, Recd August 1978, Est. Value—$1,800, Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Ambassador Zahedi, Embassy of Iran.	Gift presented at conclusion of visit of Iranian Prince and Princesses following departure of official guests.
Philip C. Habib, Under Secretary of State	Silver cigarette box, approx. 7" x 4" x 2", inscribed from donor, Recd September 27, 1977, Est. Value—$225, Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Datuk Hussein Onn, Prime Minister of Malaysia.	Gift return to Office of Protocol March 31, 1978 following termination of official use.
Kenneth Hill, Special Agent, Office of Security.	Man's watch—black reptile strap, green and gold face, Recd October 25, 1978, Est. Value—$250, Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Sheik Yamani, Saudi Arabia	Gifted presented upon departure of donor at airport. Contents unknown at time of tender.
Kenneth Hill, Special Agent, Office of Security.	Two $100 bills (Federal Reserve Notes), Recd October 25, 1978, Deposited with U.S. Treasury.	Sheik Zaki Yamani, Minister of Petroleum and Mineral Resources, Saudi Arabia.	Gifted presented upon departure of donor at airport. Envelope was sealed and contents unknow to donee at time of tender.
Frank E. Juni, Special Agent, Office of Security, Boston Field Office.	Man's gold Vacheron et Constantin watch, Serial No. 498509, black alligator strap, Recd August 16, 1978, Est. Value—$1,800, Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Ambassador Ardeshir Zahedi, Embassy of Iran.	Gift delivered following departure of Iranian official visitors for whom donee provided protective security.
Kim G. Kuzmuk, Special Agent, Office of Security, New York Field Office.	Ladies gold Vacheron et Constantin watch with black alligator strap, Serial No. 506585, Recd August 1978, Est. Value—$1,800, Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Ambassador Ardeshir Zahedi, Embassy of Iran.	Gift delivered following departure of Iranian official visitors for whom donee provided protective security.
Kevin P. O'Neil, Special Agent, Office of Security.	Man's Vacheron et Constantin wristwatch, white gold case, black alligator strap, Serial No. 514999, Recd July 1978, Est. Value—$1,800, Reported to	Embassy of Iran	Gift delivered following departure of Iranian official visitors for

AGENCY: Department of State—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	GSA and stored in Office of Protocol pending disposition by GSA.		whom donee provided protective security
William H. O'Rourke, Jr., Special Agent, Office of Security.	Man's Piaget gold watch #13342 B 56 245668. Recd December 7, 1978. Est. Value—$6,000. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Prince Sultanibn, Minister of Defense and Aviation, Saudi Arabia.	Non-acceptance by recipient may have proved to be an embarrassment to U.S. Govt.
William H. O'Rourke, Jr., Special Agent, Office of Security.	Ladies Piaget gold watch, No. 9557 B 2 304925. Recd October 10, 1978. Est. Value—$4,000. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Prince Sultanibn, Minister of Defense and Aviation, Saudi Arabia.	Non-acceptance by recipient may have proved to be an embarrassment to U.S. Govt.
William H. O'Rourke, Jr., Special Agent, Office of Security.	Gold pierced earrings with alternating stones, 3 each, of diamonds and garnets. Recd December 7, 1978. Est. Value—$500. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Prince Moulay Abdallah, Brother of King Hassan II, Morocco.	Unsolicited gift, delivered by second party to donee after departure of donor
Rozanne L. Ridgway, U.S. Ambassador to Finland.	Pair of cross-country skis—"Jarvinen" fiberglas, approx. 82" long, with poles, boots, clampers and bag. Recd February 17, 1978. Est. Value—$200. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Veli Kokkila, Head of Provincial Chancery for Central Finland Province.	Non-acceptance would have caused embarrassment to donor
Rozanne L. Ridgway, U.S. Ambassador to Finland.	Transparent wall hanging. Recd February 17, 1978. Est. Value—$400. Approved for Official Display at Embassy Residence.	Leo Kuikka, Chairman of City Council, Saarijavi, Finland.	Non-acceptance would have caused embarrassment to donor
Harold H. Saunders, Assistant Secretary for Near Eastern and South Asian Affairs.	Oriental wool rug, blue background with geometric pattern, approx. 4'×6'. Recd December 6, 1978. Est. Value—$250. Approved for Official Use in office of donee.	Ambassador Ali Bengelloun, Morocco.	Non-acceptance would be considered insult to donor.
Gerard C. Smith, Ambassador at Large.....	Gold Seiko Clock, approx 7¼" high, 8½" wide, 3" deep. Recd. September 15, 1978. Est. Value—$110. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Tasaburo Kumagai, Minister of State for Science and Technology, Japan.	Delivered to donee's office during his absence out of the country.
R. Grant Smith, Moroccan Country Officer.....	Moroccan wool rug, red with medallion—approx 4'×6'. Recd December 5, 1978. Est. Value—$150. Approved for Official Use in office of donee.	Ambassador Ali Bengelloun, Morocco.	Non-acceptance would be considered insult to donor.
Mrs. William H. Sullivan, Wife of U.S. Ambassador to Iran.	Necklace, pair of earrings and ring, all fashioned from turquoise and diamonds. Recd August 13, 1977. Est. Value—$1,000. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Deputy Trustee of Shrine of Imam Reza, Mashed, Iran.	Attempts to return the gift were unsuccessful.
Terance A. Todman, Assistant Secretary, Bureau of Inter-American Affairs.	Unframed oil painting (42" x 54") depicting ancient Dominican warrior. Recd October 1977. Est. Value—$150. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Dr. Jose de Jesus Alvarez Bogaert, Member of City Council of Santiago de loa Caballeros, Dominican Republic.	Non-acceptance would have been considered insult to donor.
Mrs. Cyrus Vance, Wife of Secretary of State...	Set of table linens, ecru with embroidered floral design of same color—12 napkins, 12 place mats, 12 coaster mats, and 1 table runner. Recd September 1977. Est. Value—$350. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	President and Mrs. Ferdinand Marcos, Philippines.	Non-acceptance would have been considered insult and adversely affect U.S.-Philippine relations.
Cyrus Vance, Secretary of State.....	Man's gold Baume & Mercier watch with donor's name in Arabic on face of watch. Recd January 1978. Est. Value—$1,500. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	King Khalid, Saudi Arabia.....	Non-acceptance would have been considered insult to donor.
Cyrus Vance, Secretary of State.....	Coffee table with carved elephant designs, inlaid caravan design in center—approx. 16" x 60" x 22". Recd January 3, 1978. Est. Value—$350. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	President Reddy, India	Non-acceptance would have been considered insult to donor.
Cyrus Vance, Secretary of State.....	Hand carved ivory tusk, approx. 36" long, mounted on Liberian wood base, approx. 43" x 15½" with map of Liberia in center of base. Recd April 1978. Est. Value—$300. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	William R. Tolbert, Jr., President of Liberia.	Rejection of gift would have been considered insult and an embarrassment to donor.
Cyrus Vance, Secretary of State.....	Traditional Liberian Chief's gown and hat—made of duck cloth or similar material, white with eggshell applique design. Recd April 1978. Est. Value—$300. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	William R. Tolbert, Jr., President of Liberia.	Rejection of gift would have been considered an insult and an embarrassment to donor.
Mrs. Cyrus R. Vance, Wife of Secretary of State.	Tourmaline pear-shaped pendant drop. Recd March 29, 1978. Est. Value—$130. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	President Ernesto Geisel, Brazil..	Rejection of gift would have been considered an insult and an embarrassment to donor.
Mrs. Cyrus R. Vance, Wife of Secretary of State.	Necklace, bracelet, and earrings of ivory—yellow gold setting. Recd April 3, 1978. Est. Value—$225. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	President William Tolbert, Liberia	Rejection of gift would have been considered an insult and an embarrassment to donor.
Cyrus Vance, Secretary of State.....	3 hassocks—2 round and 1 rectangular, leather, centered with appliqued cut-out seal of Nigeria in snakeskin. Recd March 31, 1978. Est. Value—$180. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	Lt. Gen. Obasanjo, Nigeria.....	Rejection of gift would have been considered an insult and an embarrassment to donor.
Cyrus Vance, Secretary of State.....	Carved ivory tusk—approx 33" long with 8 carved elephants in graduated size. Recd May 5, 1978. Est. Value—$225. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	President H. Kamuza Banda, Malawi.	Rejection might have adversely affected relations between U.S. and Malawi.
Cyrus Vance, Secretary of State.....	Gold dagger with ivory handle, encrusted with jewels. Recd November 16, 1978. Est. Value—$1,700. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	King Hassan II, Morocco.....	Rejection would have caused embarrassment to donee and to U.S. Government.
Cyrus Vance, Secretary of State.....	Cobalt, manganese and copper samples set on malachite slab, inscribed with plaque. Recd December 8, 1978. Est. Value—$160. Reported to GSA and stored in Office of Protocol pending disposition by GSA.	President Mobutu Sese Seko, Zaire.	Rejection would have caused embarrassment to donee and to U.S. Government.
Cyrus Vance, Secretary of State.....	Hand woven Moroccan "Artisan" rug, "Superieure" quality, approx 9½' x 12½', rust color center with border of floral design. Recd November 1978. Est. Value—$1,300. Approved for Official Use in Office of Deputy Chief of Protocol.	Ambassador Ali Bengelloun, Morocco.	Rejection would have caused embarrassment to donee and to U.S. Government.

AGENCY: Department of the Treasury

W. Michael Blumenthal, Secretary of the Treasury.	Incense burner, approx 9" ht., of various metals: brass, tin, etc., with inset colored stones and small gold emblem trim. Recd November 1978. Est. Value—$100+. Retained for official display by Secretary.	Finance Minister, Abalkhail, Saudi Arabia.	Non-acceptance would have caused offence.
Robert Carswell, Deputy Secretary of the Treasury.	Gold key holder, with attached gold ¾" diameter Saudi medal of King Faisal. Recd March 1978. Est. Value—$120. Retained by Protocol Officer for possible official display.	Minister of Industry and Electricity, Algosaibi, Saudi Arabia.	Non-acceptance would have caused offence.

[Pub. Notice 659]

[FR Doc. 79-12817 Filed 4-26-79; 8:45 am]

BILLING CODE 4710-20-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Wabash Valley Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR §§ 211.41 and 211.9, notice is hereby given that the Wabash Valley Railroad (WVR) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)). That petition requests that the WVR be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The WVR seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS–79–5, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Trans Point Building, 2100 Second Street, S.W., Washington, D.C. 20590.

(Section 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d).)

Issued in Washington, D.C., on April 8, 1979.

J. W. Walsh,
Chairman, Railroad Safety Board.

[FRA Waiver Petition Docket HS–79–5]
[FR Doc. 79–13082 Filed 4–26–79; 8:45 am]
BILLING CODE 4910–06–M

Federal Aviation Administration

Aviation Safety Reporting Program; Amendment to Memorandum of Agreement Between National Aeronautics and Space Administration and Department of Transportation, Federal Aviation Administration

On March 21, 1979, the Federal Aviation Administration (FAA) modified the Aviation Safety Reporting Program (44 FR 18128, March 26, 1979). The modification provides that when a violation of the Federal Aviation Regulations comes to the attention of the FAA from a source other than a report filed with the National Aeronautics and Space Administration (NASA) under the Aviation Safety Reporting Program, appropriate action will be taken. Reports filed with NASA by persons involved in incidents will not be made available to the FAA, however, and these reports cannot be used as the basis for enforcement or disciplinary action against the reporter or other persons named in the report.

The Memorandum of Agreement entered into by NASA and the FAA under which NASA operates the Aviation Safety Reporting System (ASRS) has been amended to eliminate references to the immunity program. The amendment also provides an interim period during which an advisory circular and new reporting forms will be provided and distributed to implement the modification to the ASRS. The

original immunity shall continue to apply to reports that are timely filed concerning incidents that occur before July 1, 1979. The new reporting forms and an advisory circular describing the modified program will be available by that date.

The Amended Memorandum of Agreement is published below.

Issued in Washington, DC on April 24, 1979.

Langhorne Bond,
Administrator.

Amended Memorandum of Agreement Between National Aeronautics and Space Administration and Department of Transportation, Federal Aviation Administration; Aviation Safety Reporting System

I. Background

A. The Administrator of the Federal Aviation Administration (FAA), Department of Transportation is empowered and directed to encourage and foster the safety in air commerce. Pursuant to this authority, the Administrator adopted a voluntary Aviation Safety Reporting Program (ASRP) (40 FR 17775, April 22, 1975) designed to acquire previously unobtainable information concerning potential deficiencies and discrepancies in the national aviation system.

B. The National Aeronautics and Space Administration (NASA) has a continuing responsibility to engage in aviation research and development programs and is authorized in carrying out this responsibility to enter into appropriate agreements with other government agencies.

C. The Aviation Safety Reporting System (ASRS) was agreed to be established in the original Memorandum of Agreement signed August 15, 1975. The Agreement and a description of the ASRS were published in the **Federal Register** on April 15, 1976 (41 FR 15,903 15,914). The ASRS was designed and established by NASA and became operational April 15, 1976. (Section I.C. added April 24, 1979.)

D. The Administrator of the FAA has determined that the immunity feature described in Section IV.D. of the original agreement shall be eliminated (44 FR 18128, March 26, 1979). Accordingly, it is necessary to amend the original agreement to eliminate references in Sections IV.C., IV.D., and V.D. to the immunity provisions. NASA and the FAA agree that sufficient time is required to print and distribute an advisory circular and new reporting forms to implement this modification to the ASRS program. Therefore the original immunity feature shall continue to apply to reports that are timely filed concerning incidents that occur before July 1, 1979, the date by which the new reporting forms and an advisory circular describing the modified program will be available. (Section I.D. added April 24, 1979.)

II. Purpose

The FAA has determined that the effectivness of the ASRP would be greatly enhanced if the receipt, processing, and analysis of the raw information received were to be accomplished by NASA rather than the FAA. This would further ensure the anonymity of the reporter and consequently increase the flow of information so necessary for the effective evaluation of the safety and efficiency of the aviation system. NASA has determined that undertaking this task would be consistent with its aviation research and development responsibilities and would significantly increase its ability to fulfill those responsibilities.

III. Authority

This agreement is entered into under the authority of Section 302(k) and 313 of the Federal Aviation Act of 1958, as amended, Section 601 of the Economy Act, as amended, and the National Aeronautics and Space Act of 1958, as amended.

IV. Aviation Safety Reporting System

A. *General.* NASA will design and implement an Aviation Safety Reporting System (ASRS). This system will be designed primarily to provide information to the FAA and the aviation community to assist the FAA in reaching its goal of eliminating unsafe conditions and preventing avoidable accidents. In addition, the system will be designed in a manner that will permit its operation by another party at the expiration of this agreement.

B. *Description.* The ASRS will be designed to perform four primary functions. They are (1) receipt, de-identification and initial processing; (2) analysis and interpretation; (3) dissemination of reports and other data; and (4) system evaluation and review.

1. NASA will develop procedures for receiving, de-identifying, and processing ASRS reports including those covered by the FAA's ASRP. This procedure will assure that reports are initially screened by NASA officials for—

(a) Time critical information which will be promptly referred to the FAA and other interested parties for appropriate action;

(b) Information concerning criminal offenses which will be promptly referred to the Department of Justice and the FAA; and

(c) Information concerning accidents which will be promptly referred to the National Transportation Safety Board and the FAA.

Except for reports covered by paragraphs (b) and (c), reports will be de-identified by deleting all informtion that would reveal identities of persons filing reports and persons named in those reports. De-identification will be accomplished as soon as possible after determining that no additional data is needed, normally within 24–48 hours. The person submitting the report will be mailed a receipt and the anonymous data placed in the NASA data base. The data base will be made available for public inspection except as authorized or required by Federal law to be withheld.

2. NASA will establish procedures to provide for the analysis and interpretation of safety reports.

3. NASA will prepare periodic reports, statistical summaries, and other data necessary to depict the results of the analysis and interpretation of the safety reports. This material will be transmitted to the FAA and other users of the system to facilitate their evaluation and action to eliminate unsafe conditions or practices.

4. NASA will provide for the continuing review and evaluation of the system to ensure that it is operating as efficiently and effectively as practicable.

C. (Section VI.C. deleted April 24, 1979.)

D. *Confidentiality.* Experience gained by the FAA under its near mid-air collision program and the ASRP has indicated that the willingness of persons to submit a report depends to a large degree on preserving the anonymity of persons filing reports and persons named in those reports. Accordingly, FAA will not seek and NASA will not release to the FAA any information that might reveal the identity of such persons. (Section IV.D. revised April 24, 1979.)

E. *Staffing and Management.* The ASRS functions will be performed by NASA with assistance of such others as may be necessary. All forms used in the ASRS will be NASA forms. All records will be the records of NASA.

F. *Advisory Committee.* NASA will form an ASRS Advisory Committee within the framework of the NASA Research and Technology Advisory Council. The purpose of the Committee will be to advise NASA of the design and conduct of the ASRS program and to provide an additional means of communication with the aviation community concerning the ASRS. The Committee will also be responsible for advising NASA with respect to the maintenance of the anonymity of persons submitting reports or named therein. The membership of the Committee will be appointed by NASA from all elements involved in the operational aspects of the national aviation system including FAA and DOD.

G. *Schedule.* The ASRS will become operational by April 15, 1976, on which data NASA will begin receiving safety reports. The first report summarizing ASRS operations will be published three months thereafter. A full evaluation of ASRS operations and procedures will be made in June 1977 by the ASRS Advisory Committee and necessary system and procedural changes designed and implemented. The utility and effectiveness of the ASRS will be re-evaluated by the Committee in June 1979. At that time, the Committee will make recommendations to the Administrators of NASA and the FAA concerning the future utilization and continuance of the system.

V. Responsibilities

A. NASA will provide the personnel, services, materials, and facilities necessary for the design and implementation of the ASRS until termination of this Agreement or June 1980, whichever first occurs.

B. NASA will formally establish the ASRS and provide for the publication of a description of the system and such other information concerning that system as is necessary to ensure its maximum utilization by the aviation community and other interested persons.

C. FAA will provide the following:

1. The services to NASA of a senior ATC specialist for one month for advice and

instruction on the FAA's air traffic control system. The specialist will also be made available for consultation at NASA's request for approximately 20 percent of the following year.

2. Assist NASA in obtaining necessary information about other areas of the national aviation system, including operational incidents and problems relevant to the research studies to be conducted under the ASRS.

3. Make FAA personnel available to assist NASA in the design of the ASRS.

4. Distribute the NASA ASRS forms, designed by NASA and bearing the NASA logo.

D. The FAA will not use any report submitted under the ASRS (or information derived therefrom) in any disciplinary action except information concerning criminal violations or accidents. In addition, the FAA will delete aspects of its ASRP program, such as reporting, which would duplicate NASA's efforts under this agreement. (Section V.D. revised April 24, 1979.)

E. Prior to the time that the ASRS becomes operational, the FAA and NASA will agree on criteria to be used by NASA to determine whether a report contains time critical information within the meaning of Section IV B.1. (a).

F. The FAA and NASA will jointly develop a continuing information program designed to fully acquaint the aviation community and the public with all aspects of the ASRP, ASRS, and their interrelationship. All press releases and other public announcements will be subject to prior consultation between the parties.

G. FAA and NASA will each designate an official for the purpose of ensuring continuing liaison concerning the administration of the ASRS. These officials will meet as required to exchange information and ensure that the system is meeting its objectives.

VI. Funding

A. The FAA will reimburse NASA for amounts paid by NASA to any contractor assisting NASA in the performance of its ASRS functions up to a maximum of $560,000 for FY–1976, which maximum amount may be increased or decreased by mutual agreement of the parties. Appropriate maximum levels of obligation on the part of the FAA for subsequent fiscal years shall be periodically mutually agreed to by the parties.

B. NASA will provide all necessary funding for the salary and administrative service costs associated with the design and implementation of the ASRS, costs associated with the operation of the Advisory Committee, and any other costs relating to the ASRS not otherwise specifically provided for herein.

VII. Other Provisions

A. NASA will publish quarterly reports providing routine statistical ASRS findings. These reports will each contain an appendix identifying time critical reports processed during the reporting period. NASA will also publish from time to time special reports describing the findings of special analyses conducted as a result of requests by the Advisory Committee or by others.

B. NASA will provide the FAA with quarterly reports summarizing project highlights, accomplishments, and resource utilization and annual reports summarizing ASRS findings and results of special studies.

VIII. Effective Date

This Agreement shall enter into force and effect when signed by both parties and shall remain in force and effect until June 1980 unless and until sooner terminated. Such termination may be by mutual agreement of the parties or by notice in writing forwarded by one party to the other not less than twelve months in advance of such termination.

George M. Low,

Deputy Administrator, National Aeronautics and Space Administration.

James E. Dow,

Acting Administrator, Department of Transportation Federal Aviation Administration.

Signed in Washington, D. C., on August 15, 1975.

Modifications to the original Memorandum of Agreement concurred in by both parties to the Agreement.

A.M. Lovelace,

Deputy Administrator, National Aeronautics and Space Administration.

Longhorne Bond,

Administrator, Department of Transportation, Federal Aviation Administration.

Signed in Washington, D. C., on April 24, 1979.

[FR Doc. 79-13266 Filed 4-26-79; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds

A certificate of authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 6 to 13 of Title 6 of the United States Code. An underwriting limitation of $3,528,000 has been established for the company.

Name of Company, Business Address, and State in Which Incorporated

Northbrook Property and Casualty Insurance Company, Allstate Plaza, Northbrook, Illinois 60062.

Certificates of authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Copies of the circular, when issued, may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: April 16, 1979.

D. A. Pagliai,

Commissioner, Bureau of Government Financial Operations.

[Dept. Circ. 570, 1978 Rev., Supp. No. 12]

[FR Doc. 79-13042 Filed 4-26-79; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Cooperative Studies Evaluation Committee, Meeting

The Veterans Administration gives notice pursuant to Pub. L. 92–463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 U.S.C. 4101, will be held at the Ramada Inn, 4641 Kenmore Avenue (Seminary Road East & I–95), Alexandria, VA, on June 11 and 12, 1979. The meeting will be for the purpose of reviewing proposed cooperative studies and advising the Veterans Administration on the relevance and feasibility of the studies, the adequacy of the protocols, the scientific validity and the property of technical details, including involvement of human subjects. The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program, on its findings.

The meeting will be open to the public up to the seating capacity of the room from 8 to 8:30 a.m., June 11 and 12, to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. James A. Hagans, Coordinator of the Committee, Veterans Administration Central Office, Washington, DC (202–389–3702) prior to May 25.

The meeting will be closed from 8:30 a.m. to 6:15 p.m., June 11, and 8:30 a.m. to 3:45 p.m., June 12, for consideration of specific proposals in accordance with provisions set forth in Subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and Subsection 552b(c)(6) of Title 5, United States Code. During this portion of the meeting, discussion and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: April 19, 1979.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

[FR Doc. 79-13050 Filed 4-26-79; 8:45 am]

BILLING CODE 8320-01-M

INTERSTATE COMMERCE COMMISSION

Office of Proceedings

Permanent Authority Decisions; Decision-Notice

Decided: April 12, 1979.

The following applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.** Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If applicant has introduced rates as an issue it is noted. Upon request an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We find: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient protests, filed on or before May 29, 1979 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied. By the Commission, Review Board Number 2, Members Boyle, Eaton, and Liberman.

H. G. Homme, Jr.,

Secretary.

MC 29934 (Sub-20F), Filed January 15, 1979. Applicant: LO BIONDO BROTHERS MOTOR EXPRESS, INC., P.O. Box 160, Bridgeton, NJ 08302. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by chain grocery and food business houses, from the facilities of Ralston-Purina Company, in Cumberland County, PA, to points in NJ and those in NY on and south of Interstate Hwy 84. (Hearing site: New York, NY.)

MC 30844 (Sub-621F), Filed August 7, 1978, previously noticed in the FR issue of December 28, 1978. Applicant: KROBLIN REFRIGERATED XPRESS, INC., P.O. Box 5000, Waterloo, IA 50704. Representative: John P. Rhodes (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses,* 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 Wisconsin Beef Industries, Inc., at Eau Claire, WI, to points in CT, DE, IN, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, TN, VA, VT, WV, and DC, restricted to the transportation of traffic originating at the named origins. (Hearing site: St. Paul, MN.).

Note.—This republication adds VA as a destination State.

MC 35334 (Sub-82F), Filed January 2, 1979. Applicant: COOPER-JARRETT, INC., Hanover Plaza, Morristown, NJ 07960. Representative: Irving Klein, 371 Seventh Ave., New York, NY 10001. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, 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 Jeffersonville, IN and Cincinnati, OH, over Interstate Hwy 71, serving no intermediate points, and serving Cincinnati, for the purposes of joinder only. (Hearing site: Louisville, KY, or Washington, DC.)

MC 48784 (Sub-4F), Filed January 4, 1979. Applicant: P. J. GARVEY CARTING & STORAGE, INC., 465 Cornwall Ave., Buffalo, NY 14215. Representative: James P. Burgio, 3350 Marine Midland Center, Buffalo, NY 14203. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *household goods*, between Buffalo, NY, and points within 60 miles of Buffalo, on the one hand, and, on the other, points in TX, OK, MS, LA, and AR. (Hearing site: Buffalo or Rochester, NY.)

MC 52704 (Sub-204F), filed January 15, 1979. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer H, LaFayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *coin operated devices*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of *coin operated devices* (a) between the facilities of Vendo Co., at or near (i) Corinth, MS, (ii) Memphis, TN, and (iii) Pinedale, CA, and (b) between the facilities named in (a) above, on the one hand, and, on the other, points in AL, AR, DE, FL, GA, IL, IN, KY, LA, MD, MI, MS, MO, NJ, NY, NC, OH, OK, PA, SC, TN, TX, VA, WV, WI, and DC. (Hearing site: Atlanta, GA)

MC 67234 (Sub-19F), filed January 15, 1979. Applicant: UNITED VAN LINES, INC., 1 United Drive, Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *gambling equipment, materials, and supplies*, from Las Vegas, NV, to points in CA, FL, and NJ. (Hearing site: Las Vegas, NV, or St. Louis, MO)

MC 98964 (Sub-17F), filed January 4, 1979. Applicant: P. B. I. FREIGHT SERVICE, a Corporation, 960 North 1200 West, Orem, UT 84057. Representative: Lon Rodney Kump, 33 East Fourth South, Salt Lake City, UT 84111. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Page, AZ, and Phoenix, AZ, over U.S. Hwy 89, serving all intermediate points, and the off-route point of the North Rim of the Grand Canyon, AZ, and (2) between Fredonia, AZ, and junction Alternate U.S. Hwy 89 and U.S. Hwy 89, over Alternate U.S. Hwy 89, serving all intermediate points, and the off-route point of the North Rim of the Grand Canyon, AZ, restriction to the extent the certificate to be issued here authorizes the transportation of classes A and B explosives, it shall be limited in term to a period expiring five years from the date of issuance. (Hearing site: Salt Lake City, UT, or Las Vegas, NV)

MC 104654 (Sub-163F), filed January 12, 1979. Applicant: COMMERCIAL TRANSPORT, INC., P.O. Box 469, Belleville, IL 62222. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th St., NW., Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *liquid fertilizer*, in bulk, from Chaffee, MO, to points in AR, IL, KY, and TN. (Hearing site: St. Louis, MO, or Washington, DC)

MC 106074 (Sub-82F), filed January 16, 1979. Applicant: B AND P MOTOR LINES, INC., Oakland Rd. and U.S. Hwy. 221 South, Forest City, NC 28043. Representive: Clyde W. Carver, Suite 212, 5299 Roswell Rd. NE, Atlanta, GA. 30342. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *new furniture* and *furniture parts*, from the facilities of Thomasville Furniture Industries, Inc., at (a) Appomattox and Brookneal, VA, and (b) Pleasant Garden, NC, to those points in the United States in and west of MN, IA, MO, AR, and LA, (except AK and HI). NOTE: Dual operations may be involved. (Hearing site: Charlotte, NC, or Washington, DC)

MC 112304 (Sub-168F), filed January 22, 1979. Applicant: ACE DORAN HAULING & RIGGING CO., a Corporation, 1601 Blue Rock St., Cincinnati, OH 45223. Representive: Fred Schmits, (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *ferro alloys* (except commodities in bulk), from the facilities of Marc Rich & Co. International Ltd., at or near (1) Chicago, IL, to points in AR, CO, IL, IN, IA, KS, KY, LA, MI, MO, NE, OH, OK, TN, and TX, and (2) East Liverpoool, OH, to points in IL, IN, KY, MI, NY, NC, OH, PA, SC, TN, VA, and WV. (Hearing site: Chicago, IL, or Washington, DC)

MC 114604 (Sub-66F), filed January 15, 1979. Applicant: CAUDELL TRANSPORT, INC. P.O. Drawer I, Forest Park, GA 30050. Representive: Frank D. Hall, Suite 713, 3384 Peachtree Rd., N.E., Atlanta, GA 30326. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by grocery and food business houses, (except commodities in bulk, and in tank vehicles), in vehicles equipped with mechanical refrigeration, between the facilities of Kraft, Inc., in Clayton, Cobb, De Kalb, Fulton, and Gwinnett Counties, GA, on the one hand, and, on the other, points in AL, FL, KY, LA, MS, NC, SC, TN, VA, and WV, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Atlanta, GA)

MC 115554 (Sub-16F), filed January 18, 1979. Applicant: SCOTT'S TRANSPORTATION SERVICE, INC., P.O. Box 89B, R.R. 6, Iowa City, IA 52240. Representive: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *electric motors, grinders, buffers, dental lathes, dust collectors, and pedestals*, (2) *parts, accessories, and attachments* for the commodities named in (1) above, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) and (2) above, from Columbus, MS, to Fort Smith, AR, and points in IL, IN, IA, MI, MN, OH, and WI. (Hearing site: Fort Smith or Little Rock, AR)

MC 116254 (Sub-237F), filed by January 15, 1979. Applicant: CHEM-HAULERS, INC., 118 E. Mobile Plaza, Florence, AL 35603. Representative: William H. Shawn, 1730 M Street, N.W., Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *potassium muriate, potassium sulfate*, and *potassium nitrate*, in bulk, in dump vehicles, from Baltimore, MD, to points in DE, NJ, NY, OH, PA, VA, and WV.

(Hearing site: New York, NY, or Washington, DC)

MC 116254 (Sub-238F), filed January 15, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL 35630. Representative: Hampton M. Mills, (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *cast iron pipe fittings, valves, hydrants, and castings*, and (2) *accessories and parts* for the commodities named in (1) above, from the facilities of U.S. Pipe and Foundry, at Birmingham and Bessemer, AL, to points in AR, GA, FL, KY, MO, NC, SC, and TN. (Hearing site: Birmingham or Montgomery, AL)

MC 116254 (Sub-239F), filed January 16, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Forence, AL 35630. Representative: Hampton M. Mills, (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *petroleum, petroleum products, vehicle body sealers, and sound deadener compounds* (except commodities in bulk, in tank vehicles), and *filters*, from the facilities of Quaker State Oil Refining Corporation, in Warren County, MS, to points in the United States (except AK and HI), and (2)(a) *petroleum, petroleum products, vehicle body sealer, sound deadener compounds*, (except commodities in bulk, in tank vehicles), and *filters*, and (b) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, (except commodities in bulk, in tank vehicles), from points in AL, GA, IL, IN, KY, NY, OH, OK, PA, RI, SC, VA, and WV, to the facilities of Quaker State Oil Refining Corporation, in Warren County, MS, restricted in (1) and (2) above to the transportation of traffic originating at or destined to the above-named facilities. (Hearing site: Philadelphia, PA, or Washington, DC)

MC 116254 (Sub-240F), filed January 18, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL 35630. Representative: Hampton M. Mills, (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *aluminum articles*, from the facilities of Kaiser Aluminum and Chemical Corporation, at or near Ravenswood, WV, to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KY, LA, MD, MI, MN, MS, MO, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VA, WV, WI, and DC. (Hearing site: Charleston, WV, or Washington, DC)

MC 116544 (Sub-167F), filed January 16, 1979. Applicant: ALTRUK FREIGHT SYSTEMS INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Kirk Wm. Horton, P.O. Box 10061, Palo Alto, CA 94303. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except commodities in bulk), from the facilities of The Larsen Company, at points in WI, to points in NY, PA, NJ, CT, RI, MA, MD, DE, NC, SC, GA, FL, AL, MS, LA, AR, MO, NE, KS, CO, OK, TX, NM, AZ, CA, OR, WA, and DC, restricted to the transportation of traffic originating at the above-named origin facilities. (Hearing site: Green Bay, WI, or Kansas City, MO)

MC 119934 (Sub-226F), filed January 16, 1979. Applicant: ECOFF TRUCKING, INC., 625 E. Broadway, Fortville, IN 46040. Representative: Roberrt W. Loser, II, 1009 Chamber of Commerce Bldg., Indianapolis, IN 46204. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *aluminum sulphate*, in bulk, in tank vehicles, from Indianapolis, IN, to points in OH, KY, IL, and TN. (Hearing site: Indianapolis, IN, or Washington, DC)

Note.—Dual operations may be involved.

MC 124174 (Sub-129F), filed January 22, 1979. Applicant: MOMSEN TRUCKING CO., a Corporation, 13811 "L" St., Omaha, NE 68137. Representative: Karl E. Momsen (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *electric cable*, from the facilities of Western Electric Company, Inc., at Omaha, NE, to points in IN, MI, NY, OH, and PA. (Hearing site: Omaha, NE, or Washington, DC)

Note.—Dual operations may be involved.

MC 125254 (Sub-52F), filed January 17, 1979. Applicant: MORGAN TRUCKING CO., A Corporation, P.O. Box 714, Muscatine, IA 52761. Representative: Larry D. Knox, 600 hubbell Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *such commodities* as are dealt in by grocery and food business houses, and (2) *materials, and supplies*, used in the manufacture, distribution and sale of the commodities in (1) above, (except commodities in bulk), between Clinton, and Davenport, IA, on the one hand, and, on the other, points in IN, KY, MO, MI, OH, and WI. (Hearing site: St. Louis, MO)

MC 128304 (Sub-1F), filed January 15, 1979. Applicant: I. T. L., INC., 2155 N. 10th St., Box 280, Gering, NE 69341. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by grocery houses (except commodities in bulk), from those points in the United States in and west of LA, AR, MO, IL, and WI (except AK and HI), to the facilities of Associated Grocers of Nebraska Cooperative, Inc., at or near Gering, NE, under continuing contract(s) with Associated Grocers of Nebraska Cooperative, Inc., of Gering, NE. (Hearing site: Scottsbluff, NE)

MC 129624 (Sub-20F), filed January 17, 1979. Applicant: ROUTE MESSENGERS OF PENNSYLVANIA, INC., 2425 Bainbridge St., Philadelphia, PA 19102. Representative: Alan Kahn, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *cleaning compounds, insecticides, air fresheners, deodorizers, brooms, brushes, mops, toilet preparations, cosmetics, food supplements, food seasonings, household utensils, clothing hangers, mirrors, costume jewelry, books magnetic tapes, hosiery, and fire extinguishers*, (1) from Dayton, NJ, to the facilities of Route Messengers of Pennsylvania, Inc., at (a) New York, NY and points in its commercial zone, (b) Camden, NJ, and (c) Philadelphia, PA, and (2) from the facilities named in (1) above, to points in CT, DE, and NJ, points in Alleghany, Steuben, Schuyler, Chemung, Tompkins, Tioga, Broome, and Delaware Counties, NY, points in PA in and east of Potter, Clinton, Centre, Huntingdon, and Fulton Counties, and points in MD on and east of the Susquehanna River and the Chesapeake Bay. Condition: The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. 11343 (a) (formerly Section 5(2) of the Interstate Commerce Act), or submit an affidavit indicating why such approval is unnecessary. (Hearing site: Washington, DC, or Philadelphia, PA)

Note.—Applicant intends to tack the authority in (1) above, with the authority in (2) above.

MC 134134 (Sub-36F), filed January 15, 1979. Applicant: MAINLINER MOTOR EXPRESS, INC., 4202 Dahlman Avenue,

P.O. Box 7439, Omaha, NE 68107. Representative: Lavern R. Holdeman, 521 South 14th St., Suite 500, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts*, and *articles distributed by meat-packing houses*, 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, in tank vehicles), from the facilities of Armour Food Company, at or near Omaha, NE, to points in ME, NH, OH, VT, VA, and DC, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Phoenix, AZ, or Omaha, NE)

MC 136774 (Sub-12F), filed January 15, 1979. Applicant: MC-MOR-HAN TRUCKING CO., INC., Shullsburg, WI 53586. Representative: Carl L. Steiner, 39 S. LaSalle St., Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *corn syrup* and *high fructose corn sweeteners*, in bulk, in tank vehicles, from the facilities of Hubinger Company, at Keokuk, IA, to points in the United States (except AK and HI). (Hearing site: Chicago, IL, or Des Moines, IA.)

Note.—Dual operations may be involved.

MC 138174 (Sub-3F), filed December 29, 1978. Applicant: JJ & JL COMPANY, INC., d.b.a. JET AIR FREIGHT SERVICE, 6136 NE 87th Ave., Portland, OR 97220. Representative: David C. White, 2400 SW Fourth Ave., Portland, OR 97201. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those requiring special equipment, radiopharmaceuticals, radioactive drugs, and medical isotopes), (1) between Portland, OR, on the one hand, and, on the other, points in Lane County, OR, and (2) between the Eugene-Mahlon Sweet Airfield, at or near Eugene, OR, and Salem Airport, at Salem, OR, on the one hand, and, on the other, points in Benton, Linn, Lane, Multnomah, Polk, Clackamas, Marion, and Washington Counties, OR, restricted in (1) and (2) above to the transportation of traffic having a prior or subsequent movement by air. (Hearing site: Portland, OR.)

MC 138824 (Sub-19F), filed January 15, 1979. Applicant: REDWAY CARRIERS, INC., 5910 49th Street, Kenosha, WI 53140. Representative: Paul J. Maton, 10 S. LaSalle St., Room 1620, Chicago, IL 60603. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *food products*, in containers, and (2) *materials and supplies* used in the processing, containerization, and sale of food products, (except commodities in bulk), between the facilities of RJR Foods, Inc., at Plymouth and Argos, IN, on the one hand, and, on the other, points in MI, under continuing contract(s) with RJR Foods, Inc., of Winston-Salem, NC. (Hearing site: Chicago, IL.)

MC 140134 (Sub-9F), filed November 2, 1978, and previously noticed in FR issue of February 1, 1979. Applicant: CALDARULO TRADING CO., a CORPORATION, 2840 South Ashland Avenue, Chicago, IL 60608. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *confectionery, and dessert preparations*, (except commodities in bulk), from Chicago, IL, to points in CA, AZ, NM, UT, CO, NV, WY, ID, OR, WA, MT, OH, PA, NY, WV, VA, MD, DE, NJ, CT, RI, MA, and DC, under continuing contract(s) with Leaf Confectionery, Inc., of Chicago, IL. (Hearing site: Chicago, IL.)

Note.—The republication adds RI as a destination state.

MC 141124 (Sub-32F), filed October 30, 1978, previously noticed in the FR issue of February 1, 1979. Applicant: EVANGELIST COMMERCIAL CORPORATION, P.O. Box 1709, Wilmington, DE 19899. Representative: Boyd B. Ferris, 50 West Broad Street, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *paper and paper products*, from Philadelphia, PA, and Fort Edward and Albany, NY, to points in MI, SC, NC, WI, OH, IN, IL, and KY, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of paper and paper products, reverse direction. (Hearing site: Philadelphia, PA, or Columbus, OH.)

Note.—This republication clarifies the territory in part (2).

MC 145064 (Sub-9F), filed January 18, 1979. Applicant: HUNTER TRUCKING, INC., 805 32nd Avenue, Council Bluffs, IA 51501. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes transporting *lumber*, from those points in the United States in and east of TX, AR, MO, IA, and MN, to ports of entry on the international boundary line, between the United States, and Canada at (a) Pembina, ND, and (b) Noyes, MN, under continuing contract(s) with Theo A. Burrows Lumber Company, of Winnipeg, Manitoba, Canada. (Hearing site: Minneapolis, MN.)

Note.—Dual operations may be involved.

MC 145624 (Sub-1F), filed December 4, 1978. Applicant: J. V. CARBONE, INC., 33 Marion Ave., New Providence, NJ 07974. Representative: Mr. Mezzacca, P.O. Box 265, Hwy. 27, Edison, NJ 08817. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *sand, gravel, stone, slag, and slag products*, in bulk, from Falls Township, PA to points to NY and NJ. (Hearing site: Trenton or Newark, NJ.)

MC 145904 (Sub-1F), filed January 19, 1979. Applicant: SOUTH WEST LEASING INC., P.O. Box 152, Waterloo, IA 50704. Representative: John P. Rhodes, P.O. Box 5000, Waterloo, IA 50704. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes transporting *meats, meat products and meat byproducts*, and *articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), (1) from the facilities used by Wilson Foods Corporation, at Cedar Rapids, IA, to St. Louis, MO, and those points in IL within the Chicago, IL Commercial Zone, and (2) from the facilities of Tama Packing Corp., at Tama, IA, to points in IL, KS, MN, MO, NE, SD, and WI, restricted in (1) and (2) above, to the transportation of traffic originating at the above named facilities and destined to the indicated destinations. (Hearing site: Kansas City, MO, or Des Moines, IA.)

Passenger

MC 146254F, filed January 18, 1979. Applicant: THUNDERBIRD EXPRESS, INC., 2401 North Belmont, Wichita, KA 67220. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes transporting *passengers and their baggage*, in the same vehicle

with passengers, in round trip charter operations, beginning and ending at points in KS, and extending to points in the United States (except AK and HI). (Hearing site: Wichita, KS.)

[Permanent Authority Decisions Vol. No. 34]
[FR Doc. 79-12958 Filed 4-26-79; 8:45 am]
BILLING CODE 7035-01-M

Permanent Authority Applications; Decision-Notice

Correction

In FR Doc. 79-5131 appearing at page 10469 in the issue for Tuesday, February 20, 1979, on page 10476, in the middle column, the paragraph beginning "MC 116254 (Sub-271F)" should begin "MC 116254 (Sub-217F)".

[Decisions Volume No. 10]
BILLING CODE 1505-01-M

Permanent Authority Applications; Decision-Notice

Correction

In FR Doc. 79-5130 appearing at page 10456 in the issue for Tuesday, February 20, 1979, on page 10465, in the middle column, the paragraph beginning "MC 134477 (Sub-28F)" should begin "MC 134477 (Sub-287F)".

[Decisions Volume No. 11]
BILLING CODE 1505-01-M

Boston & Maine Corp. Reorganization Compensation Petition of Group of Institutional Bondholders for Allowance of Expenses Incurred

Howard C. Westwood, Lewis H. Weinstein, and Charles C. Shannon seek compensation for allowance of Expenses incurred in connection with this proceeding, represented by the firm of Bingham, Dana & Gould, 100 Federal Street, Boston, Massachusetts 02110, hereby give notice that on March 26, 1979, they filed with the Interstate Commerce Commission at Washington, D.C., an application under Section 77(c)(12) of the Bankruptcy Act, requesting Compensation for expenditures of the group in connection with this proceeding for the period from March 1, 1970 through January 3, 1973, for which it seeks reimbursement of the Group's counsel and of its transportation consultants. These services are fully described in the affidavits of Mr. Howard C. Westwood of Covington & Burlington, of Mr. Lewis H. Weinstein of Foley, Hoag & Eliot, and of Mr. Charles C. Shannon of Wyer, Dick & Company. The expenditures set forth in each of such affidavits were paid for by the Group in the amounts stated. Those expenditures amount, in all, to $655,101.98.

Interested persons may participate as parties in the hearing to be held before the Commission required by section 77(c)(12) of the Bankruptcy Act. In order to be considered a party, a written statement should be submitted which shall include the person's position, e.g. party protestant, or party in support, of the requested authorization, the interest of the person in the reorganization proceeding, and a request for oral hearing if one is desired. Such submissions shall indicate the proceeding designation Finance Docket No. 26115 (Sub-No. 10F) and an original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than 30 days after the date notice of the filing of the application is published in the **Federal Register.** Persons submitting written statements to the Commission shall, at the same time serve copies of such statements upon the applicant and upon the Clerk, United States District Court, 1525 Federal Building, Boston, Massachusetts 02109.

H. G. Homme, Jr.,
Secretary.

[Finance Docket No. 26115 (Sub-No. 10F)]
[FR Doc. 79-13228 Filed 4-26-79; 8:45 am]
BILLING CODE 7035-01-M]

Petition of the Commuter Operating Agency of the Department of Transportation of the State of New Jersey for Exemption From Certain Jurisdiction of the Interstate Commerce Act

AGENCY: Interstate Commerce Commission.

ACTION: Petition for exemption of commuter bus operations conducted under contract with the State of New Jersey.

SUMMARY: The Commission must decide whether various interstate commuter bus operations subsidized by the State of New Jersey should continue to be subject to our regulation.

COMMENTS: Any interested person wishing to participate in this proceeding must notify the Commission in writing by May 14, 1979.

FOR FURTHER INFORMATION CONTACT: Janice M. Rosenak or Harvey Gobetz (202) 275-7693.

SUPPLEMENTARY INFORMATION: Commuter Operating Agency of the Department of Transportation of New Jersey (COA) asks that the Commission exempt from regulation regular route mass transportation services provided pursuant to contract with COA. Contracting carriers, listed with their Interstate Commerce Commission certificate numbers, are Lincoln Transit Company, Inc., MC-589159; Maplewood Equipment Company, MC-138828; New York-Keansburg-Long Branch Bus Company, MC-106207; Somerset Bus Company, MC-2880; and Transport of New Jersey, MC-3467.

Under 49 U.S.C. 1608(f) the Commission is required to exempt mass transportation services unless it finds within 180 days that the public interest would not be served, that an undue burden on interstate or foreign commerce would result, or that the mass transportation services are not subject to regulation by any state or local public agency.

Requests for documents relating to the proposal should be addressed to the following representative of the State of New Jersey: Robert H. Stoloff, Deputy Attorney General, 1035 Parkway Avenue, Trenton, New Jersey 08625.

Decided: April 20, 1979.

By the Commission. Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian.

H. G. Homme, Jr.
Secretary.

[No. 37157]
[FR Doc. 79-13229 Filed 4-26-79; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Applications

April 20, 1979.

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 1334 (Sub-24TA), filed March 15, 1979. Applicant: RITEWAY TRANSPORT, INC., 2131 W. Roosevelt St., Phoenix, AZ 85012. Representative: David Robinson, 3003 N. Central, Suite 2101, Phoenix, AZ 85012. *Boric acid, fire retardant chemicals and commodities used in the manufacture of fire retardant chemicals,* from Phoenix, AZ to points in CA, CO, GA, ID, IL, IN, KS, MI, MN, NB, OH, OK, OR, TX, UT, WI and WA, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): H. J. H. Chemicals Co., 2229 E. Magnolia, Phoenix, AZ. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 1824 (Sub-88TA), filed March 14, 1979. Applicant: PRESTON TRUCKING COMPANY, INC., 151 Easton Blvd., Preston, MD 21655. Representative: Charles S. Perry, same as above. *Common Carrier:* Regular route: *General Commodities, except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,* serving Metamora, OH as an off-route point in conjunction with applicant's presently authorized regular route authority between Elkhart, IN and Toledo, OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Parker Hannifin, Filter Div., 16810 Fulton County Road #2, Metamora, OH 43540. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 2934 (Sub-20TA), filed March 6, 1979. Applicant: AERO MAYFLOWER TRANSIT CO., INC., 9998 Michigan Road, Carmel, IN 46032. Representative: James L. Beattey, 130 E. Washington St., Suite 1000, Indianapolis, IN 46204. *Lawn and patio furniture,* from the facilities of Sun Terrace Casual Furniture Co., at or near Columbus, OH, to points in PA on and West of U.S. Hwy 220, points in NY on and West of Interstate Hwy. 81, points in IN, MI, IL, and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Sun Terrace Casual Furniture Co., P.O. Box 2377, Clearwater, FL 33517. Send protests to: Beverly Williams, Transportation Assistant, 429 Federal Building & U.S. Court House, 46 East Ohio Street, Indianapolis, IN 46204.

MC 4024 (Sub-5TA), filed March 12, 1979. Applicant: HORN TRUCKING CO., 300 Schmetter Road, Highland, Illinois 62249. Representative: Edward D. McNamara, Jr., 907 South Fourth Street, Springfield, Illinois 62703. *Iron and Steel Articles:* (1) From East Chicago, IN and Chicago, IL and its commercial zone to points in Illinois on and south of U.S. 24 and to points in MO, (2) Between Maverick Tube Corp. at or near Union, MO on the one hand and points in AK, KY, TN, OH, and WI on the other, (3) From St. Louis, MO and Staunton, IL to points in AK, KY, TN, and from Staunton, IL to points in MO. (4) From the plantsites of Inland Steel Corp. at East Chicago, IN to points in IL on and south of U.S. 24 and points in MO for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Tubular Steel, Inc., 7220 Polson Lane, Hazelwood, MO 63042; Whittaker Metal, 4504 Euclid, East Chicago, IN 46312; Maverick Tube Corp., P.O. Box 696, Union, MO 63084. Send protests to: Charles D. Little, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, Illinois 62701.

MC 8535 (Sub-77TA), filed February 28, 1979. Applicant: GEORGE TRANSFER AND RIGGING COMPANY, INCORPORATED, P.O. Box 500, Parkton, MD 21120. Representative: Charles J. McLaughlin, same as above. *Iron and Steel Articles* (except in dump vehicles), from the facilities of Kentucky Electrical Steel Co. of Coalton, Boyd Co., KY to points in IA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kentucky Electric Steel Company, P.O. Box 1179, Ashland, KY 41101. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 7914 (Sub-5TA), filed April 2, 1979. Applicant: UTICA ROME BUS CO., INC., Kirkland Avenue, Clinton, New York 13323. Representative: Mr. Harwood Jones, Kirkland Avenue, Clinton, NY 13323. *Passengers and their baggage in round trip special operations,* beginning and ending at Rome and Utica, NY and extending to all points in OH, MI, IN, KY, AR, MO, IA, MN, ND, SD, NE, KS, OK, TX, NM, CO, WY, MT, ID, WA, UT, AZ, CA, OR, NV, IL and WI, including points on the United States-Canadian boundary line. For 180 days. Supporting shipper(s): There are 9 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: Interstate Commerce Commission, U.S. Courthouse & Federal Bldg., 100 S. Clinton St.—Rm. 1259, Syracuse, NY 13260.

MC 8535 (Sub-78TA), filed March 16, 1979. Applicant: GEORGE TRANSFER AND RIGGING COMPANY, INCORPORATED, P.O. Box 500, Parkton, MD 21120. Representative: Charles J. McLaughlin, same as above. *Aluminum and Aluminum Articles,* from the facilities of Kaiser Aluminum & Chemical Corporation at or near Ravenswood, WV to points in DE, DC, IL, IN, KY, MD, MI, NJ, NY, NC, OH, PA, TN, VA, and WV, for 180 days. Supporting shipper(s): Kaiser Aluminum & Chemical Corporation, P.O. Box 98, Ravenswood, WV 26164. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 8535 (Sub-79TA), filed March 16, 1979. Applicant: GEORGE TRANSFER AND RIGGING COMPANY, INCORPORATED, P.O. Box 500, Parkton, MD 21120. Representative: Charles J. McLaughlin (same as above). *Iron and steel articles (except in dump vehicles),* originating at the facilities of the Weirton Steel Division of National Steel Corporation at Steubenville, OH and Weirton, WV to points in IN, on or south of Interstate Route 70, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Richard T. Symons, Weirton Steel Div., National Steel Corp., Weirton, WV 26062. Send protests to: W. L. Hughes, DS, Interstate Commerce Comm., 1025 Federal Bldg., Baltimore, MD 21201.

MC 8535 (Sub-80TA), filed March 16, 1979. Applicant: GEORGE TRANSFER AND RIGGING COMPANY, INCORPORATED, P.O. Box 500, Parkton, MD 21120. Representative: Charles J. McLaughlin (same as above). *Iron and steel articles (except in dump vehicles),* from the facilities of United States Steel Corporation located at or near Braddock, Clairton, Duquesne, Dravosburg, Fairless, Homestead, Johnstown, McKeesport, McKees Rocks, and Pittsburgh, PA, Cleveland, Lorain and Youngstown, OH to IL and IN; for

180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Gary M. Bleakley, United States Steel Corporation, 600 Grant St., Room 568, Pittsburgh, PA 15230. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 9914 (Sub-8TA), filed March 19, 1979. Applicant: WARREN TRUCKING COMPANY, INC., P.O. Box 5224, Martinsville, VA. Representative: Richard L. Hollow, P.O. Box 550, Knoxville, TN. *New furniture, materials, equipment and supplies used in the manufacture and distribution of new furniture and furniture parts,* from Martinsville, VA and Smyth Co., VA to points in NY and points in that part of OH west of a line beginning at the OH–KT state line at Portsmouth, OH and extending north along US Hwy 23 to junction OH Hwy 4 near Marion, OH, thence northerly along OH Hwy 4 to the OH state line at Sandusky, OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Chatmoss Furniture Corp., P.O. Box 4983, Martinsville, VA 24112; American Furniture Corp., Martinsville, VA 24112; Hooker Furniture Corp., Martinsville, VA. Send protests to: Paul D. Collins, DA, ICC, Room 10–502, Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 13134 (Sub-64TA), filed March 13, 1979. Applicant: GRANT TRUCKING, INC., P.O. Box 256, Oak Hill, OH 45656. Representative: David A. Turano, Ste. 1800, 100 East Broad St., Columbus, OH 43215. *Refractories and refractory products,* from the facilities of United Refractories, Inc. at Warren, OH to points in the Chicago, IL Commercial Zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): United Refractories, Inc., Edward Esposito, President, P.O. Box 1289, Warren, OH 44482. Send protests to: ICC, 600 Arch St., Rm. 3238, Philadelphia, PA 19106.

MC 14215 (Sub-28TA) filed February 22, 1979. Applicant: SMITH TRUCK SERVICE, INC., P.O. Box 1329, Steubenville, OH 43952. Representative: John L. Alden, 1396 W. 5th Ave., Columbus, OH 43212. *Silica sand,* in bulk, in dump vehicles, from Wedron, Ottawa, and Utica, IL, to Sharon, PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Castings Division, Midland-Ross Corporation, 700 South Dock St., Sharon, PA 16146. Send protests to: J. A. Niggemyer, DS, 416 Old P.O. Bldg., Wheeling, WV 26003.

MC 14215 (Sub-29TA) filed March 28, 1979. Applicant: SMITH TRUCK SERVICE, INC., 1118 Commercial ST., Mingo Junction, OH 43938. Representative: A. Charles Tell, 100 East Broad St., Columbus, OH 43215. *Iron and steel articles,* from the facilities of Bar Steel Co., at Detroit, MI to points in OH, PA and TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Bar Steel Company, 18695 Sherwood, Detroit, MI 48235. Send protests to: J. A. Niggemyer, DS, 416 Old P.O. Bldg., Wheeling, WV 26003.

MC 14215 (Sub-30TA) filed March 23, 1979. Applicant: SMITH TRUCK SERVICE, INC., 1118 Commercial St., Mingo Junction, OH 43938. Representative: A. Charles Tell, 100 East Broad St., Columbus, OH 43215. *Iron and steel articles,* from the facilities of Jones & Laughlin Steel Corporation at Aliquippa and Pittsburgh, PA to points in IN, and OH, for 180 days. Supporting shipper(s): Jones & Laughlin Steel Corporation, Room 121, 1600 W. Carson St., Pittsburgh, PA 15263. Send protests to: J. A. Niggemyer, DS, 416 Old P.O. Bldg., Wheeling, WV 26003.

MC 21244 (Sub-3TA), filed March 14, 1979. Applicant: WESTERN EXPRESS, INC., 1522 S. Caton Ave., Baltimore, MD 21227. Representative: Edward N. Button, 1329 Pennsylvania Ave., Hagerstown, MD 21740. *Furniture, materials and supplies (except in bulk) used in the manufacture and distribution thereof,* between Baltimore and Westminster, MD and their respective commercial zones, on the one hand, and, on the other, points in NC, SC, GA and FL. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Woodvalley Furniture Corporation, 289 E. Green St., Westminster, MD 21157; Sheraton Manufacturing Co., 1680 Clough St., Baltimore, MD 21213; Chesapeake Manufacturing Company, Inc., 4001 Washington Blvd., Baltimore, MD 21227. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 24784 (Sub-23TA), filed March 9, 1979. Applicant: BARRY, INC., 463 South Water, Olathe, KS 66061. Representative: Arthur J. Cerra, P.O. Box 19251, 2100 TenMain Center, Kansas City, MO 64141. *Iron and steel articles,* from Tulsa and Muskogee, OK to points in CO, IA, KS, MO, and NE for 180 days. Supporting shipper(s): Steel and Pipe Supply Co., Manhattan, KS. Send protests to: DS John V. Barry, Rm. 600, 911 Walnut, Kansas City, MO 64106.

MC 52704 (Sub-212TA), filed March 30, 1979. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer H, LaFayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. (1) Animal and poultry feed, fish feed, and corn products, (except in bulk), from Birmingham and Decatur, AL, and Springfield, TN to points in Oklahoma and Texas, and (2) Materials, equipment and supplies used in the manufacture or distribution of commodities named in (1) above (except commodities in bulk), from points in Oklahoma and Texas to Birmingham and Decatur, AL, and Springfield, TN. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jim Dandy Company, P.O. Box 10687, Birmingham, AL 35203. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operation, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 52704 (Sub-213TA), filed March 9, 1979. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer H, LaFayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Metal containers,* from the facilities of Kaiser Aluminum & Chemical Co., at or near Jacksonville, FL, to Greensboro, NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kaiser Aluminum & Chemical Co., 10001 Lake Forest Blvd., New Orleans, LA 70127. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operation, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 52704 (Sub-214TA), filed March 30, 1979. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer H, LaFayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Meal, flour, prepared baking mixes and birdseed,* from Shawnee, OK, to points in AL, FL, GA, KY, LA, MS, NC, SC, and TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Shawnee Milling Company, P.O. Box 1567, Shawnee, OK 74801. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operation, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 56244 (Sub-77TA), filed March 13, 1979. Applicant: KUHN TRANSPORTATION COMPANY, INC., P.O. Box 98, R.D. No. 2, Gardners, PA 17324. Representative: John M. Musselman, Rhoads, Sinon & Hendershot, P.O. Box 1146, 410 North Third Street, Harrisburg, PA 17108. Such merchandise as is dealt in by grocery and food business houses (except commodities in bulk and frozen foods),

from the facilities of Libby, McNeill & Libby, Inc., at Chicago, IL and points in its commercial zone to points in Maryland and Pennsylvania, and Washington, D.C. and points in its commercial zone as defined by the Commission, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Libby, McNeill & Libby, Inc., 200 S. Michigan Avenue, Chicago, IL 60604. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869 Federal Square Station, 228 Walnut Street, Harrisburg, PA 17108.

MC 56244 (Sub-78TA), filed March 2, 1979. Applicant: KUHN TRANSPORTATION COMPANY, INC., P.O. Box 98, R.D. No. 2, Gardners, PA 17324. Representative: John M. Musselman, P.O. Box 1146, 410 North Third Street, Harrisburg, PA 17108. (1) *Foodstuffs* (except in bulk) and (2) *Materials, supplies and equipment* used in connection with or incidental to the manufacturing, packing or distribution of foodstuffs (except in bulk), between the facilities of Anderson Clayton Foods, Division of Anderson Clayton and Company, at Jacksonville, IL, on the one hand, and, on the other, points in Delaware, Maryland, New Jersey, and Pennsylvania, and Washington, D.C. and points in its commercial zone as defined by the Commission, restricted to the transportation of shipments originating at the indicated origins and destined to the indicated destinations, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Anderson Clayton Foods, P.O. Box 368, East Morton Road, Jacksonville, IL 62650. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Federal Square Station, 228 Walnut Street, Harrisburg, PA 17108.

MC 58035 (Sub-19TA), filed February 27, 1979. Applicant: TRANS-WESTERN EXPRESS, LTD., 48 East 56th Avenue, Denver, CO 80216. Representative: Edward T. Lyons, Jr., 1600 Lincoln Center Bldg., Denver, CO 80264. *Photographic apparatus, equipment, materials, supplies and products* (1) From the facilities of Eastman Kodak Company at or near Rochester, NY to the facilities of Eastman Kodak Company at or near San Ramon, Palo Alto, Whittier and Hollywood, CA; Dallas, TX and Oak Brook, IL (2) From the facilities of Eastman Kodak Company at or near Windsor, CO to the facilities of Eastman Kodak Company at or near Palo Alto, CA; Dallas, TX; Dayton, NJ; and Oak Brook, IL (3) Between the facilities of Eastman Kodak Company at or near Windsor, CO; San Ramon and Whittier, CA (4) Between the facilities of Eastman Kodak Company at or near Windsor, CO and Rochester, NY for 180 days. Underlying ETA filed seeking 90 days authority. Supporting shipper(s): Eastman Kodak Company, 2400 Mount Read Blvd., Rochester, NY 14650. Send protests to: D/S Roger L. Buchanan, Interstate Commerce Commission, 721 19th St., 492 U.S. Customs House, Denver, CO 80202.

MC 61445 (Sub-12TA), filed March 7, 1979. Applicant: CONTRACTORS TRANSPORT CORP., 5800 Farrington Avenue, Alexandria, VA 22304. Representative: Daniel B. Johnson, 4304 East-West Highway, Washington, DC. *Iron and steel articles,* from Pittsburgh, Phila., and Bethlehem, PA, to points in VA, MD, and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Steele and Moroney, Inc., P.O. Box 9276, Alexandria, VA 22304. Send protests to: Carol Rosen, TA, ICC, 600 Arch St., Rm. 3238, Philadelphia, PA 19106.

MC 61825 (Sub-97TA), filed March 20, 1979. Applicant: ROY STONE TRANSFER CORPORATION, V. C. Drive, P.O. Box 305, Collinsville, VA 24078. Representative: John D. Stone (same address as above). *Lawn and Garden Machinery, Snow throwers and Accessories,* from Plymouth, WI to Charlotte, NC and Richmond, VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Gilson Brothers Company, P.O. Box 152, Plymouth, WI 53073. Send protests to: Paul D. Collins, DS, ICC, Room 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 72235 (Sub-11TA), filed March 23, 1979. Applicant: IVORY VANLINES, INC., 5601 Corporate Way, Suite 107, West Palm Beach, FL 33407. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. *Zinc* or *zinc alloys* between Josephtown, Beaver County, Potter, Township, PA, on the one hand and on the other, points in NJ, NY, CT, MA, and MD for 180 days. Supporting shipper(s): St. Joe Zinc Company, Two Oliver Plaza, Pittsburgh, PA 15222. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 N.W. 53rd Terrace, Miami, FL 33166.

MC 77424 (Sub-47TA), filed February 2, 1979. Applicant: WENHAM TRANSPORTATION, INC., 3200 East 79th Street, Cleveland, OH 44140. Representative: James Johnson (same address as applicant). *Building materials and equipment, material and supplies* used in the installation, erection or application thereof between Sidney, OH on the one hand, and, on the other, Fairview and Hammonton, NJ for 180 days. Supporting shipper(s): Aluminum Company of America, 1501 Alcoa Building, Pittsburgh, PA 15219. Send protests to: Mrs. Mary A. Wehner, District Supervisor, Interstate Commerce Commission, 1240 E. Ninth Street, Cleveland, OH 44199.

MC 77424 (Sub-48TA), filed March 29, 1979. Applicant: WENHAM TRANSPORTATION, INC., 3200 East 79th Street, Cleveland, OH 44104. Representative: James Johnson (same address as applicant). *Chemicals,* liquid or dry, except in bulk, from Louisiana, MO, to Painesville, OH, for 180 days. Supporting shipper(s) The Lubrizol Corporation, 29400 Lakeland Blvd., Wickliffe, OH 44092. Send protests to: Mary Wehner, D/S, ICC, 731 Federal Bldg., Cleveland, OH 44199.

MC 77424 (Sub-49TA), filed March 29, 1979. Applicant: WENHAM TRANSPORTATION, INC., 3200 East 79th Street, Cleveland, OH 44199. Representative: James Johnson (same address as applicant). *Chemicals,* liquid or dry, and *plastics or plastic materials,* except in bulk in tank vehicles from Delaware City and New Castle, DE, to points in IL, IN, MI (southern peninsula), NY, OH, and PA, for 180 days. Supporting shipper(s): Diamond Shamrock Corp., 1100 Superior Avenue, Cleveland, OH 44114. Send protests to: Mary Wehner, D/S, ICC, 731 Federal Bldg., Cleveland, OH 44199.

MC 85934 (Sub-99TA), filed March 6, 1979. Applicant: MICHIGAN TRANSPORTATION COMPANY, 3601 Wyoming Ave., P.O. Box 248, Dearborn, MI 48120. Representative: Martin J. Leavitt, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48168. *Cement,* in bulk and in bag, from the facilities of Penn Dixie Industries at or near Petosky, MI to all points in the States of IL, IN, OH, and WI, for 180 days. Supporting shipper(s): David L. Williams, Director, Traffic and Distribution, Penn Dixie Industries, Inc., Cement Division, P.O. Box 152, Nazareth, PA. 18064. Send protests to: Tim Quinn, DS, ICC, 604 Federal Building and U.S. Courthouse, 231 W. Lafayette Blvd., Detroit, MI 48226.

MC 93224 (Sub-25TA), filed March 1, 1979. Applicant: S & N FREIGHT LINE, INC., P.O. Box 12147, Norfolk, Virginia 23502. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street NW., Washington, D.C. 20005. Wrapping paper, woodpulp board

woodpulp and scrap paper and equipment, materials and supplies used in the manufacture and distribution of the above-referenced commodities, (except commodities in bulk) between the facilities of the Chesapeake Corp. of Va., at West Point, VA, on the one hand, and, on the other, points in MD, DE, NJ, NY, MA, CT, RI, DC, NC, SC and points in PA located on and east of Interstate 81 for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Chesapeake Corp. of Va., Box 311, West Point, Virginia 23181. Send protests to: Paul D. Collins, DS, ICC, Room 10–502, Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 93235 (Sub-13TA), filed February 13, 1979. Applicant: INDIANA TRUCKING, INC., 400 Blaine Street, Gary, IN 46406. Representative: Eugene Cohn, One North LaSalle, Chicago, IL 60602. Contract carrier, over irregular routes, *iron and steel articles*, from the facilities of Inland Steel Company, East Chicago, IN to points in Kenosha, Racine, Milwaukee, Washington, Ozaukee and Waukesha Counties, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Inland Steel Company, 30 West Monroe Street, Chicago, IL 60603. Send protests to: Annie Booker, TA, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Everett McKinley Dirksen Building, Chicago, IL 60604.

MC 94265 (Sub-296TA), filed March 7, 1979. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, VA 23487. Representative: Olin C. Cooper, Jr. (same address as applicant). *Foodstuffs* (except in bulk) in controlled temperature vehicles, from the plantsite and storage facilities owned and/or utilized by J. H. Filbert, Inc., located in Fulton, Clayton, DeKalb, Cobb, and Douglas Counties, GA, to points in the states of IL, IN, and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): J. H. Filbert, Inc., 3701 Southwestern Boulevard, Baltimore, MD 21229. Send protests to: Paul D. Collins, DS, ICC, Room 10–502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 94265 (Sub-297TA), filed March 9, 1979. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, Virginia 23487. Representative: Olin C. Copper (same address as applicant). *Bananas, and agricultural commodities* the transportation of which is exempt from economic regulation pursuant to Title 49 USC Section 1052.6 (formerly Section 203(b)(6) of the Interstate Commerce Act) when transported at the same time in the same vehicle with commodities subject to economic regulation (as otherwise authorized), from Portsmouth, Norfolk, Newport News, VA to points in the states of VA, NC, TN, KY, WV, MD, DE, OH, MI, IN, IL, WI, IA, MO, NE, KS, MN and the District of Columbia, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Best Banana Co., Inc., 910 Maple Road, Buffalo, N.Y. 14221. Send protests to: Paul D. Collins, DS, ICC, Room 10–502 Federal Bldg., 400 North 8th Street, Richmond, Virginia 23240.

MC 95084 (Sub-135TA), filed March 14, 1979. Applicant: HOVE TRUCK LINE, Stanhope, IA 50246. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. *Iron and steel articles* from the facilities of Nucor Corporation, Vulcraft Division, at or near Norfolk, NE to points in IL, IN, IA, KS, KY, MI, MN, MO, OH, PA, SD, WV, and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Nucor Corporation, Vulcraft Division, P.O. Box 59, Norfolk, NE 68701. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 95084 (Sub-136TA), filed March 26, 1979. Applicant: HOVE TRUCK LINE, Stanhope, IA 50246. Representative: Kenneth F. Dudley, 611 Church Street, Ottumwa, IA 52501. *Such commodities as are dealt in or used by agricultural equipment, industrial equipment, and lawn and leisure products manufacturers and dealers* (except commodities in bulk) between the facilities of International Harvester Company at Canton, East Moline, and Rock Island, IL, and Memphis, TN, on the one hand, and, on the other, points in CT, DE, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, WV, and DC. Restricted to transportation of traffic originating at the facilities or used by International Harvester Company named therein and originating at points in the states named therein and destined to the facilities of International Harvester Company named therein except that restrictions shall not apply to traffic moving in foreign commerce, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): International Harvester Company, 401 North Michigan Avenue, Chicago, IL 60611. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 95084 (Sub-137TA), filed March 29, 1979. Applicant: HOVE TRUCK LINE, Stanhope, IA 50246. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. *Plastic pipe* from the plantsite of Johns-Manville Sales Corp. at or near Wilton, IA to points in IL, IN, KY, KS, MI, MN, MO, NE, ND, OH, SD and WI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Johns-Manville Sales Corporation, 2222 Kensington Court, Oak Brook, IL 60521. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 106074 (Sub-98TA), filed February 28, 1979. Applicant: B AND P MOTOR LINES, INC., Oakland Road and U.S. Highway 221 South, Forest City, NC 28043. Representative: John J. Capo, Suite 212, 5299 Roswell Rd, NE, Atlanta, GA 30342. (1) *Plastic articles and material, and (2) materials, equipment, and supplies used in the manufacture and distribution of plastic articles* (1) from Forest City, NC to all points in CA, FL, KS, MN, MO, MS, NJ, OH, PA, and TX, and (2) from points in CA, MN, FL, NJ, OH, PA, and TX to Forest City, NC, for 180 days. Supporting shipper(s): A & E Warbern, Incorporated, Foothill Road and Vance St., Forest City, NC 28043. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Rd—Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 106074 (Sub-99TA), filed February 28, 1979. Applicant: B & P MOTOR LINES, INC., P.O. Box 741, Forest City, NC 28043. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Meats and packinghouse products* from the facilities of Wilson Foods Corporation located at Cedar Rapids, IA to points in DE, MD, VA and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wilson Foods Corporation, 4545 Lincoln Blvd., Oklahoma City, OK 73105. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Rd—Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 106074 (Sub-100TA), filed March 14, 1979. Applicant: B & P MOTOR LINES, INC., Oakland Rd. and U.S. Highway 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Foodstuffs (except in bulk)* from the facilities of Sunmark, Inc., at St. Louis, MO to all points in AL, FL, GA, NC, and SC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Summark, Inc., 10795 Watson Rd., St. Louis, MO 63127. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd—Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 106074 (Sub-101TA), filed March 29, 1979. Applicant: B and P MOTOR LINES, INC., Oakland Road and U.S. Highway 221 South, Forest City, NC 28043. Representative: John J. Capo, Suite 212, 5299 Roswell Rd, NE, Atlanta, GA 30342. (1) *Saw blades; and (2) hand tools and saw blades* (1) from Toccoa, GA to Lincolnton, NC; and (2) from Lincolnton, NC to all points in AR, AZ, CA, CO, KS, MO, NM, NV, OK, TX, and UT, for 180 days. Supporting shipper(s): Vermont America Corporation, Hardware Tool Div., P.O. Box 340, Lincolnton, NC 28092. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd—Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 106674 (Sub-370TA), filed February 22, 1979. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, U.S. Highway 24 West, Remington, IN 47977. Representative: Jerry L. Johnson (same as applicant). *Paper and paper products,* (1) from the facilities of Scott Paper Company in the commercial zone of Philadelphia, PA to points in the States of OH, IN, IL and WI, (2) from the facilities of Scott Paper Company in the commercial zone of Mobile, AL to points in the States of PA, OH, IN, IL, and WI, (3) from the facilities of Scott Paper Company in the commercial zones of Oconoto Falls, Green Bay, Marinette and Fond du Lac, WI to points in the States of IL, OH, IN and AL, for 180 days. Supporting shipper: Scott Paper Company, Scott Plaza I, Philadelphia, PA 19113. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio Street, Room 429, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

MC 106672 (Sub-371TA), filed March 6, 1979. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same as applicant). *Fabricated Metal Products,* from the plantsite of United States Gypsum Company at Franklin Park, IL, to points in MI, OH, IN and KY, for 180 days. Supporting shipper: U.S. Gypsum Company, 101 S. Wacker Drive, Chicago IL 60606. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 429 Federal Bldg., 46 East Ohio Street, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

MC 107064 (Sub-132TA), filed March 5, 1979. Applicant: STEERE TANK LINES, INC., P.O. Box 2998, Dallas, TX 75221. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75201. *Fuel oil, in bulk, in tank vehicles,* from Borger, TX to Golden, CO for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): McDougald Oil, Inc., South Highway 163, Moab, UT. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 109124 (Sub-66TA), filed March 2, 1979. Applicant: SENTLE TRUCKING CORPORATION, P.O. Box 7850, Toledo, OH 43619. Representative: James H. Burtch, 100 East Broad St., Suite 1800, Columbus, OH 43215. *Mill scale, in bulk,* from the Detroit, MI Commercial Zone, to Woodville, OH for 180 days. Common-carrier-irregular routes. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ohio Lime Company—A Subsidiary of General Refractories, P.O. Box 128, Woodville, OH 43469. Send protests to: Interstate Commerce Commission, Bureau of Operations, 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 111434 (Sub-98TA), filed March 1, 1979. Applicant: DON WARD, INC., 241 West 56th Ave., Denver, CO 80216. Representative: J. Albert Sebald, 1700 Western Federal Building, Denver, CO 80202. *Liquid concrete admixtures, in bulk,* from Seattle, WA to points in CA, OR, NV, ID, UT, WY and MT for 180 days. Underlying ETA filed seeking 90 days authority. Supporting shipper: Master Builders, Division of Martin Marietta Corp., Lee at Mayfield Roads, Cleveland Heights, OH 44118. Send protests to: D/S Roger L. Buchanan, ICC, 492 U.S. Customs House, Denver, CO 80202.

MC 112304 (Sub-182TA), filed March 2, 1979. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock St., Cincinnati, OH 45223. Representative: Fred Schmits (same as applicant). *Tractors, tractor excavation, grading or loading attachments, combinds,* from Burlington, IA, to NC, SC, TN, MS, AL, GA and FL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): J I Case Company, Robert L. Henderson, Manager, Corporate Traffic, 700 State St., Racine, WI 53404. Send protests to: Paul J. Lowry, DS, ICC, 5514–B Federal Bldg., 550 Main St., Cincinnati, OH 45202.

MC 112304 (Sub-183TA), filed March 26, 1979. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock St., Cincinnati, OH 45223. Representative: Fred Schmits (same as applicant). *(1) Storage or warehouse pallet racks, bins or shelving, and (2) equipment materials and supplies used in the manufacture of items in (1) above.* (1) between the facilities of Speedrack, Inc., at or near Quincy, IL. on the one hand, and, on the other, all points in the U.S. (except AK and HI); from the facilities of Joslyn Empire Galvanizing, at Franklin Park, IL, and from the facilities of Reliable Galvanizing at Chicago, IL, to all points in the U.S. (except AK and HI); and (2) from all points in the U.S. to the facilities of Speedrack, Inc., at Quincy, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Speedrack, Inc., Robert E. Tofall, Traffic Manager, 5300 Golf Road, Skokie, IL 60077. Send protests to: Bureau of Operations, ICC, Wm. J. Green, Jr., Federal Bldg. 600 Arch St., Room 63238, Philadelphia, PA 19106.

MC 113784 (Sub-79–TA), filed March 28, 1979. Applicant: LAIDLAW TRANSPORT LIMITED, 65 Guise Street, Hamilton, Ontario L8L 4M1. Representative: DOUGLAS R. GOWLAND (same address as above). *Iron and Steel articles,* from the facilities of U.S. Steel Corp. at or near Cleveland, lorain and Youngstown, OH and Braddock, Clairton, Dravosburg, Duquesne, Homestead, Irwin, Johnstown, McKeesport, McKees Rocks, Pittsburgh and Vandergrift, PA to the International Boundry between United States and Canada located on the Niagara and Detroit Rivers, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): United States Steel Corp., 600 Grant Street, Pittsburgh, PA 15230. Send protests to: Richard H. Cattadoris, DS, ICC, 910 Federal Bldg., 111 West Huron St., Buffalo, NY 14202.

MC 114045 (Sub-536TA), filed February 23, 1979. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, Dallas, TX 75261. Representative: J. B. Stuart (same address as applicant). *Prepared Foodstuffs (except in bulk) in vehicles equipped with mechanical refrigeration,* (1) From the facilities of the Pillsbury Company at New Albany, IN to Denison, TX and (2) from the facilities of Pillsbury Company at Denison, TX to the City of Commerce, CA for 180 days. Supporting shipper(s): The Pillsbury Company, 608 Second Avenue South, Minneapolis, MN 55402. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 114045 (Sub-537TA), filed March 23, 1979. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, Dallas, TX 75261. Representative: J. B. Stuart (same as above). *(1) Acids, chemicals and solvents (except in bulk) (2) materials, equipment, and supplies*

(except in bulk) used in the manufacture, sale or distribution of acids, chemicals and solvents, from points in CA to points in NJ and PA for 180 days. Supporting shipper(s): J. T. Baker Chemical Co., Phillipsburg, NJ 08865. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 114045 (Sub-538TA), filed March 5, 1979. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, Dallas, TX 75261. Reprentative: J. B. Stuart (same address as above). *(1) Such commodities as are dealt in by grocery, hardware, and drug stores (except foodstuff) in containers (except in bulk) (2) materials ud in manufacture of the commodities,* from the facilities of Boyle-Midway, a division of American Home Products Corp., at Chicago, IL and points in its commercial zone to Dallas, TX for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Boyle-Midway, 685 Third Avenue, New York, NY 10017. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13012, Dallas, TX 75242.

MC 114604 (Sub-70TA), filed February 23, 1979. Applicant: CAUDELL TRANSPORT, INC., P.O. Drawer I, Forest Park, GA 30050. Reprentative: Frank D. Hall, Suite 713, 3384 Peachtree Rd., N.E., Atlanta, GA 30326. *Citrus products* from the facilities of Citrus Central, Inc., at or near Bartow, Winter Haven, Lakeland, Howey-in-the-Hills, Plymouth, Haines City and Umatilla, FL, to points in AL, GA, IL, IN, KY, LA, MI, MS, NC, OH, PA, SC, TN, VA and WV. For 180 days. An underlying ETA eks 90 days authority. Supporting shipper(s): Citrus Central, Inc., P.O. Box 17774, Orlando, FL 32810. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 114604 (Sub-71TA), filed February 27, 1979. Applicant: CAUDELL TRANSPORT, INC., P.O. Drawer I, Forest Park, GA 30050. Reprentative: Frank D. Hall, Suite 713, 3384 Peachtree Rd., N.E., Atlanta, GA 30326. *Margarine, except in bulk, when moving in mechanically refrigerated equipment* from the facilities of Deep South Products, Inc., at or near Gainesville, GA to the warehou and storage facilities of Winn-Dixie Stores at Montgomery, AL, Jacksonville, Miami, Orlando and Tampa, FL, Louisville, KY, New Orleans, LA, Charlotte and Raleigh, NC, Greenville, SC and Ft. Worth, TX, for 180 days. An underlying ETA eks 90 days authority. Supporting shipper(s): Deep South Products, Inc., P.O. Box 2534, Gainesville, GA 30501. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 114965 (Sub-64TA), filed March 8, 1979. CYRUS TRUCK LINE, INC., P.O. Box 327, Iola, KS 66749. Reprentative: Charles H. Apt., P.O. Box 328, Iola, IS 66749. *Liquefied petroleum gas,* in bulk, in tank vehicles from Ringer Pipeline Terminal at or near Paola, KS to points and places in MO 180 days, common, irregular, 90-day ETA granted, R–37; Supporting shipper: Getty Refining and Marketing Co., Tulsa, OK.; Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 115654 (Sub-131TA), filed February 27, 1979. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Reprentative: Hank Seaton, 929 Pennsylvania Bldg., 425 Thirteenth St., N.W., Washington, DC 20004. *Charcoal birquettes* from the facilities utilized by Husky Industries, at or near Meridian and Pachuta, MS, to points in AL, GA, and TN, for 180 days. An underlying ETA eks 90 days authority. Supporting shipper(s): Husky Industries, Inc., 62 Perimeter Center East, Atlanta, GA 30346. Send protests to: Glenda Kuss, TA, ICC, Suite A–422 U.S. Court Hou, 801 Broadway, Nashville, TN 37203.

MC 115654 (Sub-132TA), filed March 20, 1979. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 Thirteenth St. NW., Washington, DC 20004. *Foodstuffs (except commodities in bulk), moving in mechanically refrigerated equipment* (a) from the facilities of Vlasic Foods, Inc. at or near Imlay City, Bridgeport, or Memphis, MI, to Greenville, MS, and (b) From Greenville, MS, to points in AL, AR, GA, IL, IN, KY, MO, OH, and TN, for 180 days. Restricted to traffic originating at the facilities of Vlasic Foods, Inc. Supporting shipper(s): Vlasic Foods, Inc., 33200 W. 14 Mile Road, W. Bloomfield, MI 48033. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 115654 (Sub-133TA), filed March 23, 1979. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Hank Seaton, 929 Pennsylvania Building, 424 Thirteenth St. NW., Washington, DC 20004. *Confectionery and confectionery products (except in bulk), moving in mechanically refrigerated equipment* from Nashville, TN to points in that part of AL south of U.S. Highway 80; Columbus, OH; and points in WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Standard Candy Company, 443 2nd Avenue, North, Nashville, TN. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 115654 (Sub-134TA), filed March 21, 1979. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Henry E. Seaton, 929 Pennsylvania Building, 425 Thirteenth St. NW., Washington, DC 20004. *Foodstuffs, canned and preserved,* from the facilities of Heinz, USA, at or near Fremont and Toledo, OH to points in AL, GA, MS, and TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Heinz USA, P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 115975 (Sub-34TA), filed March 7, 1979. Applicant: C.B.W. TRANSPORT SERVICE, INC., P.O. Box 48, Wood River, IL 62985. Representative: Ernest A. Brooks II, 1301 Ambassador Building, St. Louis, MO 63101. Petroleum lubricating oil in bulk in tank vehicles, from St. Louis, MO to the facilities of Pennzoil Company at or near Marion, IL (Williamson County, IL) (under bilateral contract with Pennzoil Company of Oil City, PA), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pennzoil Company, Drake Building, Oil City, PA 16301. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Building, Springfield, Illinois 62701.

MC 116045 (Sub-49TA), filed March 15, 1979. Applicant: NEUMAN TRANSIT CO., INC., P.O. Box 38, Rawlins, WY 82301. Representative: Leslie R. Kehl, Jones, Meiklejohn, Kehl & Lyons, 1600 Lincoln Center, 1660 Lincoln Street, Denver, CO 80264. *Liquid sulphur,* in bulk, from Park County, WY to Denver, CO for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Public Service Company of Colorado, 5900 E. 39th Avenue, Denver, CO 80207. Send protests to: District Supervisor Paul A. Naughton, Interstate Commerce Commission, Rm 105 Federal Building & Court House, 111 South Wolcott, Casper, WY 82601.

MC 116254 (Sub-257TA), filed March 2, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence,

AL 35630. Representative: Randy C. Luffman (same address as applicant). *Aluminum Sheet and Aluminum Industrial Foil,* from Fairmont, WV, to points in AR, GA, MS, OK, TN and TX, for 180 days. Supporting shipper(s): Alcan Aluminum Corporation, P.O. Box 6977, Cleveland, OH 44101. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operation, ICC, Room 1616 2121 Building, Birmingham, AL 35203.

MC 116254 (Sub-258TA), filed March 14, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL 35630. Representative: Randy C. Luffman (same address as applicant). *Liquid Chemicals,* in bulk, in tank vehicles, from Union Carbide Corporation located at Taft, LA, to points in the U.S., except MS, AL, LA, AK and HI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Union Carbide Corporation, 270 Park Ave 6th Floor, New York, NY 10017. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operation, ICC, Room 1616 2121 Building, Birmingham, AL 35203.

MC 116254 (Sub-259TA), filed March 14, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL 35630. Representative: Randy C. Luffman (same address as applicant). *Liquid chemicals,* in bulk, in tank vehicles, from Texas City, TX, and Chocolate Bayou, TX, to points in AL, FL, GA, IL, IN, IA, KY, LA, MS, MO, NJ, NC, OH, PA, SC, TN, and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Monsanto Company, 800 N. Lindbergh Blvd., St. Louis, MO 63166. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operation, ICC, Room 1616 2121 Building, Birmingham, AL 35203.

MC 116254 (Sub-260TA), filed March 14, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL 35630. Representative: Randy C. Luffman, P.O. Box 339, Florence, AL 35630. *Aluminum and aluminum articles,* from the facilities of Kaiser Aluminum and Chemical Corporation, at or near Ravenswood, WV; to AR, AL, CT, DE, FL, GA, IL, IN, IA, KY, LA, MD, MI, MN, MS, MO, NJ, NY, NC, OH, PA, RI, SC, TX, TN, VA, WV, WI and the District of Columbia, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kaiser Aluminum & Chemical Corporation, P.O. Box 98, Ravenswood, WV 26164. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operation, ICC, Room 1616 2121 Building, Birmingham, AL 35203.

MC 116254 (Sub-261TA), filed March 21, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL 35630. Representative: Randy C. Luffman, P.O. Box 339, Florence, AL 35630. *Chemicals,* in bulk, in tank vehicles, between the facilities of Dow Chemical U.S.A., located in Brazoria County, TX and AL, GA, TN, FL, MS, LA, AR, NC, SC, KY, VA, WV, IN, MO, KS, IL, IA, WI, MN, MI, OH, PA, NJ, and NY. For 180 days. Supporting shipper(s): Dow Chemical USA, Freeport, TX 77541. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operation, ICC, Room 1616 2121 Building, Birmingham, AL 35203.

MC 116474 (Sub-43TA), filed March 2, 1979. Applicant: LEAVITTS FREIGHT SERVICE, INC., 3855 Marcola Road, Springfield, OR 97477. Representative: Earle V. White, 2400 SW. 4th Avenue, Portland, OR 97201. *Contract* carrier, *irregular* routes, *laminated wood products, prefabricated wood timbers, trusses, and beams* from Saginaw, OR to points in CA, WA, ID, and NV, for 180 days. An underlying ETA seeks 90 days authority. ETA seeks 90 days authority. Supporting Shipper(s): Bohemia, Inc., P.O. Box 1819, Eugene, OR 97401. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 117644 (Sub-51TA), filed March 28, 1979. Applicant: D & T TRUCKING CO., INC., 498 First Street, Northwest, New Brighton, MN 55112. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. Contract carrier, over irregular routes. *Meats, meat products, meat by-products and articles distributed by meat packaginghouses as described in Sections A, C and D 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),* between the plantsite and storage facilities of Lauridsen Foods, Inc. located at or near Britt, IA, on the one hand, and, on the other, points in AL, GA, FL, NC, SC, TN, KY, VA, WV and MS, restricted to the transportation of shipments originating at the above named origins and destined to the named destinations, for 180 days. Supporting shipper(s): Armour and Company, Manager of Transportation, Greyhound Tower, Phoenix, AZ 85077. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 119654 (Sub-71TA), filed March 6, 1979. Applicant: HI-WAY DISPATCHER, INC., 1401 West 26th Street, Marion, IN 46952. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. *Such commodities as are dealt in or used by producers and distributors of paper and plastic products (except commodities in bulk and commodities which because of size or weight require special handling or special equipment),* from the facilities of Continental Plastic Industries Bondware Division at or near Shelbyville, IL to Milwaukee and Madison, WI, for 180 days. Supporting shipper: Continental Plastic Industries, 800 East Northwest Highway, Palatine, IL 60067. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 429 Federal Bldg., 46 E. Ohio Street, Indianapolis, IN 46204.

MC 120675 (Sub-6TA), filed March 2, 1979. Applicant: ACME TRUCK LINE, INC., P.O. Box 183, Harvey, LA 70059. Representative: Paul D. Angenend, 1806 Rio Grande (P.O. Box 2207), Austin, TX 78768. *Drilling mud (except in bulk, and tank vehicles),* between points in CA on the one hand, and, on the other, points in LA, for 180 days. Applicant has filed an underlying ETA for 90 days. Supporting Shipper(s): Chromalloy Co., P.O. Box 7036, Houma, LA 70361. Send protests to: Connie A. Guillory, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 120675 (Sub-7TA), filed March 13, 1979. Applicant: ACME TRUCK LINE, INC., P.O. Box 183, Harvey, LA 70059. Representative: Robert W. Minyard (same address as applicant). *Machinery, materials, supplies, and equipment incidental to or used in, the construction development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum* between points in AL, AR, FL, LA, GA, MS, and TX on the one hand, and, on the other, points in IL, IN, KY, and TN, for 180 days. Applicant has filed an underlying ETA for 90 days operating authority. Supporting Shipper(s): Santa Fe Marine, Inc., P.O. Box 2518, Houma, LA 70361, Norwell Welder Supply Co., P.O. Box 36, Harvey, LA 70059, Conmaco, Inc., 708 Engineers Road, Belle Chasse, LA 70037. Send protests to: Connie A. Guillory, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 121664 (Sub-64TA), filed March 27, 1979. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 36460 Representative: W. E. Grant, 1702 First Avenue South, Birmingham, AL 35233. *Lumber,* From New Augusta, MS to points in AL, FL, GA, NC, SC, TN, KY, PA, OH, MI, MN, WI, IA, IN, IL,

MO, AR, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Leaf River Forest Products, Inc., P.O. Box 326, New Augusta, MI 39462. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operation, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 121664 (Sub-65TA), filed March 30, 1979. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 36460 Representative: W. E. Grant, 1702 First Avenue South, Birmingham, AL 35233. *Composition board, particleboard, lumber, wood fiber insulation sheathing, hardboard siding and wallboard,* in straight or mixed shipments. From: Facilities of Temple Industries located at or near West Memphis, AR; Diboll and Pineland, TX; and Thomson, GA To: points in the United States in and east of ND, SD, NB, KS, OK, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Temple Industries, Inc., P.O. Drawer N, Diboll, TX 75941. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operation, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 121725 (Sub-1TA), filed March 9, 1979. Applicant: ARCO, INC., d.b.a. THRASHER FREIGHT, 495 Lovitt Lane, Reno, NV 89507. Representative: Reese H. Taylor, Jr., Esq., P.O. Box 646, Carson City, NV 89701. *Construction, Logging and Mining Equipment* and Parts and Accessories for such Equipment when moving in the same shipments with such equipment via low-bed equipment, between points in NV on and north of U.S. Highway 6 on the one hand, and points in the states of OR and WA, and points in and north of Monterey, Kings, Tulare and Inyo Counties, CA, on the other hand, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are 12 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: W. J. Huetig, DS, ICC, Room 203, Federal Building, 705 North Plaza St., Carson City, NV 89701.

MC 121794 (Sub-4TA), filed February 27, 1979. Applicant: JAMES WILKETT, d.b.a. WILKETT TRUCKING COMPANY, P.O. Box 209, Stigler, OK 74662. Representative: George G. Olsen, Esq., 1101 Connecticut Avenue, N.W., Suite 500, Washington, D.C. 20036. *Coal,* from points in Haskell, LeFlore, Muskogee, Latimer and Pittsburg Counties, OK, to points in Bosque, Morris, Freestone and Harris Counties, TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Westhoff Brothers, Inc., Box 1096, Great Bend, KS 67930; Randall & Blake, Oklahoma, Inc., Route 1, Box 133E, Kinta, OK 74552; Great National Corp., P.O. Box 35, McCurtain, OK 74944. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240, Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 121794 (Sub-5TA), filed February 27, 1979. Applicant: JAMES WILKETT, d.b.a. WILKETT TRUCKING COMPANY, P.O. Box 209, Stigler, OK 74662. Representative: George G. Olsen, Esq., 1101 Connecticut Avenue, N.W., Suite 500, Washington, DC. 20036. *Coal,* from points in Haskell and Pittsburg Counties, OK, to points in Dallas, Johnson, and Tarrant Counties, TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Randall & Blake, Oklahoma, Inc., Route 1, Box 133E, Kinta, OK 74552; Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240, Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 124554 (Sub-33TA), filed March 14, 1979. Applicant: LANG CARTAGE CORP., P.O. Box 1465, Waukesha, WI 53187. Representative: Richard Alexander, 710 N. Plankinton Ave., Milwaukee, WI 53203. Contract carrier; irregular routes; *Paper and paper products,* (1) from the facilities of Schilling Paper Co., at LaCrosse, WI to points in IA and MN; and (2) from the facilities of Dieter Paper Co., at Rochester, MN to points in IA and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Schilling Paper Co., P.O. Box 607, LaCrosse, WI 54601; and Dieter Paper Co., P.O. Box 607, LaCrosse, WI 54601. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 124964 (Sub-31TA), filed March 2, 1979. Applicant: JOSEPH M. BOOTH, d.b.a., J. M. BOOTH TRUCKING, P.O. Box 907, Eustis, FL 32726. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier;* irregular routes; *Canned and preserved foodstuffs,* from the facilities of Heinz USA at or near Holland, MI, Fremont, OH, Mechanicsburg and Pittsburgh, PA, to points in AL, FL, GA, LA, MS, NC, SC, restricted to traffic originating at the named origins and destined to the above destinations, for 180 days. Under continuing contract with Heinz USA, Pittsburgh, PA. An underlying ETA seeks 90 days authority. Supporting shipper(s): H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 125254 (Sub-58TA), filed March 15, 1979. Applicant: MORGAN TRUCKING CO., P.O. Boxs 714, Muscatine, IA 52761. Representative: Larry D. Knox, 600 Hubbell Blvd., Des Moines, IA 50309. *Cellulose bands and plastic articles,* (1) from the facilities of Thatcher Plastic Packaging at or near Muscatine, IA to Dover, NJ; Newark, DE; Lewiston, ME; New York, NY; Dunkirk, NY; Fort Washington, PA; and Boston, MA, and (2) from the facilities of Thatcher Plastic Packaging at or near Muscatine, IA to Cincinnati, OH and Hamburg, MI and their respective commercial zones for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Thatcher Plastic Packaging, Division of Dart Industries, R. R. #5, P.O. Box 409, Muscatine, IA 52761. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 125254 (Sub-57TA), filed March 14, 1979. Applicant: MORGAN TRUCKING CO., P.O. Box 714, Muscatine, IA 52761. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. *Liquid foundry compound, in drums,* from Muscatine, IA to Chicago, IL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Carver Foundry Products, Progress Park, Capitol Road, Muscatine, IA 52761. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 125535 (Sub-15TA), filed March 1, 1979. Applicant: NATIONAL SERVICE LINES, INC., OF NEW JERSEY, 12015 Manchester Rd., Suite 118, St. Louis, MO 63131. Representative: Donald S. Helm, (same as above). *(1) Paper and paper products and (2) commodities used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk in tank vehicles,* between S. Glens Falls, Carthage and Syracuse, NY, on the one hand, and, on the other, points in CT, DE, IL, IN, KY, MD, MA, MI, MO, NJ, NC, OH, PA, RI, SC, TN, VA, WV, WI, and DC, for 180 days. An underlying ETA seeks 90 days authority. Contract carrier under continuing contract with Crown Zellerbach Corp. Supporting shipper(s): Crown Zellerbach Corporation, 8966 Latty Ave., Berkeley, MO 63134. Send protests to: P. E. Binder, Officer in

Charge, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 126514 (Sub-51TA), filed March 2, 1979. Applicant: SCHAEFFER TRUCKING, INC., 5200 W. Bethany Home Rd., Glendale, AZ 85301. Representative: Leonard R. Kofkin, 39 LaSalle St., Chicago, IL 60603. *Photgraphic equipment, materials and supplies, and materials and supplies used in the manufacture and sale thereof,* from Andover, North Andover, New Bedford, Waltham, Cambridge, Needham, Needham Heights, Westwood and Norwood, MA to points in CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Polaroid Corporation, 140 Kendrick St, Needham Heights, MA 02194. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N 1st Ave., Phoenix, AZ 85025. Supporting shipper(s): Polaroid Corporation, 140 Kendrick St., Needham Heights, MA 02194. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N 1st Ave., Phoenix, AZ 85025.

MC 126514 (Sub-52TA), filed March 6, 1979. Applicant: SHAEFFER TRUCKING, INC., 5200 W. Bethany Home Rd., Glendale, AZ 85301. Representative: Leonard R. Kofkin, 39 S. LaSalle St., Chicago, IL 60603. *Chemicals, salt, alloys, and chemical products, and materials used in the manufacture and sale of chemicals,* between Marlboro, Newton, Salem and Westwood, MA, Dallas, TX, and Irvine and Berkeley, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Shipley Company, Inc., 2300 Washington, St., Newton, MA 02162. Send Protests To: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025. Supporting shipper(s): Shipley Company, Inc., 2300 Washington St., Newton, MA 02162. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 127705 (Sub-76TA), filed February 20, 1979. Applicant: KREVDA BROS. EXPRESS, INC., P.O. Box 68, Gas City, IN 46933. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Fibreboard cans,* from Sonoco Products Company located at Alpha, OH to Buffalo, NY, for 180 days. Supporting shipper: Sonoco Products Company, North 2nd St., Hartsville, SC 29550. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 East Ohio Street, Room 429, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

MC 127705 (Sub-77TA), filed March 1, 1979. Applicant: KREVDA BROS. EXPRESS, INC., P.O. Box 68, Gas City, IN 46933. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Glass containers,* from Terre Haute, IN to Milwaukee, WI, for 180 days. Supporting shipper: Midland Glass Co., Inc., P.O. Box 557, Cliffwood, NJ, 07721. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 249 Federal Bldg., 46 East Ohio Street, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

MC 128095 (Sub-27TA), filed March 27, 1979. Applicant: IBCO TRUCK LINE, INC., P.O. Box 1402, Tupelo, MS 38801. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. *Foam padding* from the facilities of E. I. DuPont De Nemours & Co. (Inc.) at Wurtland, KY to points in AL, FL, LA and MO, for 180 Days. An underlying ETA seeks 90 days authority. Supporting shipper(s): E. I. DuPont De Numours & Co., T&D Dept. DuPont Co., Wilmington, DE 19898. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Street, 100 North Main Building, Suite 2006, Memphis, TN 38103.

MC 128235 (Sub-22TA), filed March 28, 1979. Applicant: AL JOHNSON TRUCKING INC., 1516 Marshall Avenue, Northeast, Minneapolis, MN 55413. Representative: Earl Hacking, 1700 New Brighton Boulevard, Minneapolis, MN 55413. *Malt beverages in containers* from Chippewa Falls, WI to Raleigh, NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Carolina Distributing Co., Inc., Vice President, 2341 University Avenue, St. Paul, MN 55114. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

MC 128964 (Sub-6TA), filed March 23, 1979. Applicant: REES TRUCKING CO., INC., P.O. Box G, Houston, MO 65483. Representative: Herman W. Huber, Attorney, 101 East High Street, Jefferson City, MO 65101. *Iron and steel articles,* from the facilities of Inland Steel Company at East Chicago, Indiana to points in Missouri and Arkansas for 180 days. An underlying ETA seeks 90 days. Supporting shipper(s): Inland Steel Company, Chicago, IL 60603. Send protests to: DS John V. Barry, 600 Fed. Bldg., 911 Walnut, Kansas City, MO 64106.

MC 129124 (Sub-19TA), filed March 5, 1979. Applicant: SAMUEL J. LANSBERRY, INC., P.O. Box 58, Woodland, PA 16881. Representative: Herbert R. Nurick, Attorney at Law, McNees, Wallace & Nurick, P.O. Box 1166, 100 Pine Street, Harrisburg, PA 17108. *Sand,* in bulk, in dump vehicles, from points at or near Mapleton, PA and Berkeley Springs, WV to a point at or near Niagara Falls, NY; with the right to interline at the origin and destination points, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Consumers Glass Co., Ltd., 777 Kipling Avenue, Toronto, Ontario, Canada M8Z 5G6. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 129124 (Sub-20TA), filed March 1, 1979. Applicant: SAMUEL J. LANSBERRY, INC., P.O. Box 58, Woodland, PA 16881. Representative: Herbert R. Nurick, Esquire, McNees, Wallace & Nurick, P.O. Box 1166, Harrisburg, PA 17108. *Sand,* in bulk, in dump vehicles, from a point at or near Mapleton, PA to the facilities of Thatcher Glass Manufacturing Co., a Division of Dart Industries, at Elmira, NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Thatcher Glass Manufacturing Co., a Division of Dart Industries, P.O. Box 265, Elmira, NY 14902. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 129124 (Sub-21TA), filed March 29, 1979. Applicant: SAMUEL J. LANSBERRY, INC., P.O. Box 58, Woodland, PA 16881. Representative: Herbert R. Nurick, Esquire, McNees, Wallace & Nurick, P.O. Box 1166, 100 Pine Street, Harrisburg, PA 17108. *Clay,* in bulk, in dump vehicles, from Bloom Township, Clearfield County, PA to a point at or near Jennings, MD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Harbison-Walker Refractories, Division of Dresser Industries, Inc., Two Gateway Center, Pittsburgh, PA 15222. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 129184 (Sub-17TA), filed February 13, 1979. Applicant: KENNETH L. KELLAR, Box 449, Blaine, WA 98320. Representative: Michael D. Duppenthaler, 211 South Washington St., Seattle, WA 98104. *Contract carrier:* irregular routes: *Liquor and cigarettes,* from the United States-Canada

International Boundary line located at or near Champlain, NY to West Palm Beach, FL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Exports, Inc., P.O. Box 449, Blaine, WA 98320. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 129625 (Sub-13TA), filed March 12, 1979. Applicant: ROBERT COLE TRUCKING COMPANY, P.O. Box M, Falls Creek, PA 15840. Representative: William J. Lavelle, Esquire, Wick, Vuono & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. *Rock salt,* in bulk, in dump vehicles, for ice control purposes from Erie, PA to Niagara, Erie, Cattaraugus and Chautauqua Counties, NY, for 180 days. Supporting shipper(s): Morton Salt Company, 110 N. Wacker Drive, Chicago, IL 60606. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 129664 (Sub-7TA), filed March 21, 1979. Applicant: COMET MESSENGER & DELIVERY SERVICE, INC., 2 River Road, Chatham, NJ 07928. Representative: Norman Weiss, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. *Wallpaper,* in shipments weighing not more than 250 pounds from one shipper to one consignee in any one day. From Bellmore, NY to Philadelphia, PA and points in the commercial zone thereof and points in NJ, irregular routes for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Embassy Wallcoverings, Inc., 1305 Newbridge Road, Bellmore, NY 11710. Send protests to: Joel Morrows, DS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 133085 (Sub-12TA), filed March 13, 1979. Applicant: TRENCO, INC., P.O. Box 697, Williamsport, PA 17701. Representative: Dwight L. Koerber, Jr., 666 Eleventh St. NW, Suite 805, Washington, DC 20001. *Building materials and supplies,* in cargo containers, Between the facilities of Masonite Corporation, in Bradford County, PA, on the one hand, and, on the other, the Ports of New York, NY, and Philadelphia, PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Masonite Corporation, P.O. Box 311, Towanda, PA 18848. Send protests to: ICC, Wm. J. Green, Jr. Federal Building, 600 Arch Street, Philadelphia, PA 19106.

MC 133095 (Sub-243TA), filed March 9, 1979. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. *Paper, paper products and wood pulp* from the facilities of International Paper Company, at or near Mobile, AL; Moss Point, MS; Bastrop, LA; Springhill, LA and South Texarkana, TX to points in AZ and CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): International Paper Company, P.O. Box 160707, Mobile, AL 36616. Send protests to: Martha A. Powell, TA, ICC, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 133095 (Sub-244TA), filed March 6, 1979. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. *Paper and paper articles* (1) from the facilities of Scott Paper Company, at or near Mobile, AL to points MN, MI, WI, PA (except Philadelphia, PA); Huntington, WV; Fairmont, WV and their respective commercial zones. (2) from the facilities of Scott Paper Company, at or near Marinette, WI; Oconto Falls, WI; Green Bay, WI and Fond du Lack, WI to Atlanta, GA; Mobile, AL and their respective commercial zones, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Scott Paper Company, Scott Plaza I, Philadelphia, PA 19113. Send protests to: Robert J. Kirspel, DS, ICC, Room 9A27 Federal Bldg., 819 Taylor, St., Fort Worth, TX 76102.

MC 133095 (Sub-245TA), filed March 9, 1979. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Ralph B. Matthews, P.O. Box 872, Atlanta, GA 30301. (1) *Such merchandise as is dealt in by discount and variety stores, except foodstuffs, furniture, and commodities in bulk; and (2) foodstuffs (except in bulk) and furniture in mixed loads with those commodities named in (1) above,* from the facilities of Chicago Shippers' Association at Jersey City, NJ and Chicago, IL, to points in the U.S. (except AK and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Chicago Shippers Association, Inc., No. 2 Sixth Street, Jersey City, NJ 07302. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133095 (Sub-246TA), filed March 26, 1979. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. *Plastic containers and materials, equipment, and supplies* used in the manufacture and distribution (except commodities in bulk) between Morris and Passaic Counties, NJ, on the one hand, and on the other, points in AL, KY, LA, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Continental Plastics Industries, Member of the Continental Group, Inc., 633 Third Avenue, New York, NY 10017. Send protests to: James H. Berry, ROD, ICC, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 133775 (Sub-20 TA), filed February 21, 1979. Applicant: REEFER TRANSIT LINE, INC., 1977 West 103rd Street, Chicago, IL 60643. Representative: Elaine M. Conway, Sullivan and Associaties, Ltd., 10 South LaSalle Street, Suite 1600, Chicago, Il 60603. *Meats, meat products, meat by-products and articles distributed by meat packinghouses,* (except commodities in bulk), from Worthington, MN to AL, FL, GA, LA, MS, NC, SC and TN, for 180 days. Supporting shipper(s): Armour Food Company, 111 West Clarendon, Greyhound Tower, Phoenix, Arizona 85077. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, Il 60604.

MC 133805 (Sub-9 TA), filed March 9, 1979. Applicant: LONE STAR CARRIERS, INC., Route 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Road, Suite 115, Fort Worth, TX 76112. (1) *Containers and container lids,* from Oil City, PA, to the facilities used by Power Service Products, Inc., at or near Weatherford, TX; and (2) *such merchandise as is dealt in by automotive supply stores (except commodities in bulk, in tank vehicles),* from the facilities used by Power Service Products, Inc. at or near Weatherford, TX, to all points in the U.S. (except AK, HI and TX), restricted to Shipments originating at said facility and destined to points in the destination states, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Power Service Products, Inc., P.O. Box 459, Weatherford, TX 76086. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133805 (Sub-10TA), filed March 9, 1979. Applicant: LONE STAR CARRIERS, INC., Route 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Road, Suite

115, Fort Worth, TX 76112. *Meat, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions of Motor Carrier Certificates, 61 M.C.C. 209 & 766 (except hides and commodities in bulk),* from the facilities used by Freezer Service, Inc., at or near Amarillo, TX, to points in CA, LA, MS, AL, IL, IN, OH, PA, NY, NJ, RI, CT, and MA, restricted to shipments originating at said origin and destined to points in the named destination states, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Freezer Services, Inc., P.O. Box 30220, Amarillo, TX 79120. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX, 76102.

MC 133805 (Sub-11TA), filed March 26, 1979. Applicant: LONE STAR CARRIERS, INC., Rt. 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Rd., Suite 115, Fort Worth, TX 76112. *Meat, meat products, meat by-products and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in Descriptions of Motor Carrier Certificates, 61 M.C.C. 209 & 766 (except hides and commodities in bulk) from the facilities used by Freezer Industries, Inc., at or near Amarillo, TX to points in FL, GA, SC, NC, and VA, restricted to shipments originating at named origin and destined to points in the indicated destination states, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Freezer Services, Inc., P.O. Box 30220, Amarillo, TX 79120. Send protests to: James H. Berry, ROD, ICC, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 134134 (Sub-42TA), filed March 20, 1979. Applicant: MAINLINER MOTOR EXPRESS, INC., 4202 Dahlman Avenue, P.O. Box 7439, Omaha, NE 68107. Representative: Lavern R. Holdeman, Peterson, Bowman, Swanson & Johanns, P.O. Box 81849, Lincoln, NE 68501. *Pipe fittings and rough iron castings,* from the facilities of J. P. Ward Foundries, Inc., at or near Blossburg, PA, to points in the states of NE, CO, KS, MO, IA, IL, WI, IN, OH, MI, KY, and WV, for 180 days. Supporting shipper(s): Bernard Kazman, J. P. Ward Foundries, Inc., Blossburg, PA 16912. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 134145 (Sub-73TA), filed March 26, 1979. Applicant: NORTH STAR TRANSPORT, INC., Route 1, Hwy. 1 and 59 West, Thief River Falls, MN 56701. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Contract carrier:* irregular routes: (1) *Parts for computing machines,* and (2) *Materials and supplies used in the manufacture or operation of computing machines (except commodities in bulk),* between points in the United States (except Alaska and Hawaii), on the one hand, and the facilities of Control Data Corporation located at or near Merced, Los Angeles, LaJolla, San Francisco and San Diego, CA, Campton, KY, Arlington, TX, Rochester, MI, Omaha and Lincoln, NE, Rapid City, SD, Washington, D.C., Baltimore, MD, Manchester, CT, Norristown, PA, Minneapolis, MN, and Oklahoma City, OK, on the other hand, for the account of Control Data Corporation, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Control Data Corporation, P.O. Box 42–A, Minneapolis, MN 55440. Send protests to: DS, ICC, Bureau of Operations, Room 268 Fed. Bldg. and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 134145 (Sub-74TA), filed March 26, 1979. Applicant: NORTH STAR TRANSPORT, INC., Route 1, Hwy. 1 and 59 West, Thief River Falls, MN 56701. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Contract carrier:* irregular routes: *Computer parts and materials and supplies used in the manufacture thereof,* from Gallapolis, OH, Bloomington and Chicago, IL, Indianapolis and Ft. Wayne, IN, and Milwaukee, WI to Minneapolis, MN, for the account of Control Data Corporation, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Control Data Corporation, P.O. Box 42–A, Minneapolis, MN 55440. Send protests to: DS, ICC, Bureau of Operations, Room 268 Fed. Bldg. and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 134405 (Sub-67TA), filed March 22, 1979. Applicant: BACON TRANSPORT CO., P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615, East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Petroleum and petroleum products,* in bulk, in tank vehicles, from Ardmore and Wynnewood, OK, to points in TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Lucky Lady Oil Co., Inc., 2311 East Grauwyler, Irving, TX 75061; Kerr-McGee Refining Corp., P.O. Box 25861, Oklahoma City, OK 73125; Knox Oil of Texas, Inc., 4255 LBJ Freeway, Suite 186, Dallas, TX 75234. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240, Old Post Office and Court House Building, 215 N.W. Third, Oklahoma City, OK 73102.

MC 134405 (Sub-68TA), filed March 27, 1979. Applicant: BACON TRANSPORT CO., P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615, East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Dry fertilizer,* in bulk, from Plainview, TX, to points in OK, NM, KS, and CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Occidental Chemical Co., P.O. Box 1185, Houston, TX 77001. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240, Old Post Office and Court House Building, 215 N.W. Third, Oklahoma City, OK 73102.

MC 134405 (Sub-36TA), filed March 29, 1979. Applicant: BACON TRANSPORT CO., P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615, East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Liquid chemicals,* in bulk, in tank vehicles from Deer Park, TX, to Sand Springs, OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kimball Chemical Co., Inc., P.O. Box 880, Sand Springs, OK 74063. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240, Old Post Office and Court House Building, 215 N.W. Third, Oklahoma City, OK 73102.

MC 134574 (Sub-36TA), filed March 14, 1979. Applicant: FIGOL DISTRIBUTORS LTD., P.O. Box 6298, Station C, Edmonton, AB, Canada T5B 5K6. Representative: Ray F. Koby, 314 Montana Building, Great Falls, MT 59401. Beer and malt liquor, in containers, from points in WA to the U.S.-Canada International Boundary line, restricted to foreign commerce, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Alberta Liquor Control Board, P.O. Box 2360, Edmonton, AB, Canada T5J 2R4. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 134574 (Sub-37TA), filed March 22, 1979. Applicant: FIGOL DISTRIBUTORS LTD., P.O. Box 6298, Station C, Edmonton, AB, Canada T5B 5K6. Representative: Ray F. Koby, P.O. Box 2567, Great Falls, MT 59403. *Meat, meat products, and meat by-products and articles distributed by meat packinghouses, as described in Sections*

A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, in vehicles equipped with mechanical refrigeration, from ports of entry on the International Boundary line between the U.S. and Canada located in WA to points in AZ, CA, NV, OR and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Forrest Randolph Co., 4340 Redwood Highway, San Rafael, CA 94903; Fletcher's, I imited, 8385 Fraser Street, Vancouver, BC, Canada. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 134644 (Sub-5TA), filed March 29, 1979. Applicant: CLARA L. MARTIN, d.b.a. MARTIN TRUCKING, Route 1, Box 219B, Sullivan, WI 53178. Representative: David V. Purcell, 111 E. Wisconsin Avenue, Milwaukee, WI 53202. Contract carrier; irregular routes; *Such commodities as are dealt in by warehousers of agricultural, construction, industrial, internal combustion engine, medical, mining, self-propelled vehicular and vending equipment, parts and subassemblies* (except commodities in bulk and those requiring special equipment), from the facilities of Sajac Co., Inc. at or near Beaver Dam, WI to Chicago, IL under a continuing contract(s) with Sajac Co., Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Sajac Co., Inc., 1100 Green Valley Road, Beaver Dam, WI 53916. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 134724 (Sub-9TA), filed March 15, 1979. Applicant: BIG RIG REFRIGERATION, INC., 6465 South 86th Street, Omaha, NE 68127. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Meat and packinghouse products,* from the facilities of Wilson Foods Corporation at Omaha, NE to points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Fred Sinkankas, Wilson Foods Corp., 4545 Lincoln Blvd., Oklahoma City, OK 73105. Send protests to: Carroll Russell, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 134755 (Sub-179TA), filed March 1, 1979. Applicant: CHARTER EXPRESS, INC., P.O. Box 3772, Springfield, MO 65804. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Frozen foods and exempt commodities when moving in the same vehicle with frozen foods,* from the plantsite of Empire Freezers of Syracuse, Inc., Syracuse, NY to points in PA west of U.S. Highway 15 and points in OH for 180 days. An underlying ETA seeks 90 days. Supporting shipper(s): Empire Freezers of Syracuse, Inc., Syracuse, NY. Send protests to: DS John V. Barry, 600 Fed Building, 911 Walnut, Kansas City, MO 64106.

MC 134755 (Sub-180TA), filed March 26, 1979. Applicant: CHARTER EXPRESS, INC., 1959 East Turner Street, P.O. Box 3772, Springfield, MO 65804. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Clay products,* from Summerville, and Lewis Run, PA and Canton and Minerva, OH, to points in MO, KS, OK, and AR, for 180 days. Supporting shipper(s): S–G Metals Industries, Inc., Riverview at Second Street, Kansas City, KS 66118. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 135215 (Sub-6TA), filed March 29, 1979. Applicant: BULK TRANSPORTATION, 415 Lemon Avenue, Walnut, CA 91789. Representative: Melvin Thurman, 415 Lemon Avenue (P.O. Box 390), Walnut, CA 91789. *Common:* Irregular: *Dry fertilizers, Truckload and in bulk.* From points in California to points in Arizona and Nevada, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Western Ag Supply, Inc., 1251 N. Red Gum Street, Anaheim, CA 92806. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 135605 (Sub-2TA), filed March 27, 1979. Applicant: WILKINSON TRANSPORT, INC., P.O. Box 25, Barton, AR 72312. Representative: R. Connor Wiggins, Jr., Suite 909, 100 North Main Building, Memphis, TN 38103. *Iron and steel articles,* from Burns Harbor, IN to St. Louis, MO, restricted to shipments originating at Burns Harbor, IN and destined to St. Louis, MO facilities of Baldor Electric Company, for 180 days as a common carrier over irregular routes. An underlying ETA seeks 90 days authority. Supporting shipper(s): Baldor Electric Co., 5711 South Seventh Street, Fort Smith, AR 72901. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 136645 (Sub-3TA), filed March 7, 1979. Applicant: DIME DELIVERY LTD., 5836 Valley Way, Niagara Falls, Ontario, Canada L2E 1Y1. Representative: Robert D. Dunderman, Esq., 710 Statler Building, Buffalo, NY 14202. *Machine parts and related materials.* Restricted against the transportation of shipments weighing in the aggregate of 2,500 pounds or more from one consignee to one consignor on any one day. Between ports of entry on the International Boundary line between the US and Canada located on the Niagara River on the one hand, and, on the other, Geneva, NY. Restricted to transportation between the facilities of American Can Company located in Geneva, NY and Niagara Falls, Ontario, Canada, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Can of Candad Limited, 5695 Lewis Avenue, Niagara Falls, Ontario, Canada L2G 3R9. Send protests to: Richard H. Cattadoris, DS, 111 West Huron Street, Buffalo, NY 14202.

MC 136814 (Sub-6TA), filed March 16, 1979. Applicant: MATLOCK TRANSPORTATION, INC., 1988 West Valley Boulevard, Colton, CA 92324. Representative: Richard C. Celio, 1415 West Garvey Avenue, Suite 102, West Covina, CA 91790. Contract: irregular. *Printed material,* from the printing and warehouse facilities of McGraw-Hill at or near Goleta, CA to points in OR, WA, AZ and NV, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Multi-List McGraw-Hill, 420 S. Fairview Avenue, Goleta, CA 93017. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 134484 (Sub-24TA), filed March 22, 1979. Applicant: EDWARD BROS., INC., P.O. Box 1684, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, registered practitioner, P.O. Box 162, Boise, ID 83701. *Meats, carcass,* from the plantsite of and cold storage facilities used by Iowa Beef Processors, Inc. (IBP), in Boise, ID to points in the States of AZ, OR, and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Iowa Beef Processors, Inc., Dakota City, NE 68731. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Drive, Boise, ID 83706.

MC 136635 (Sub-16TA), filed February 23, 1979. Applicant: UNIVERSAL CARTAGE, INC., P.O. Box 2769, South Bend, IN 46680. Representative: Don W.

Smith, P.O. Box 40248, Indianapolis, IN 46240. *Iron and steel articles* (1) from the facilities of Inland Steel Company at East Chicago, IN, to points in IL, MI, OH and WI, and (2) from the facilities of Bethlehem Steel Corporation at or near Burns Harbor, IN to points in IL, WI, for 180 days. Supporting shipper(s): Inland Steel Company, 30 W. Monroe St., Chicago, IL 60603, Bethlehem Steel Corporation, P.O. Box 248, Chesterton, IN 46304. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 East Ohio Street, Room 429, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

MC 136635 (Sub-17TA), filed March 1, 1979. Applicant: UNIVERSAL CARTAGE, INC., 640 W. Ireland Road, South Bend, IN 46680. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. General commodities (with the usual exceptions), from Indianapolis, IN to points in IN, for 180 days. Supporting shippers: Central Union Warehouse, Inc., 449 S. Pennsylvania, Indianapolis, IN 46225, Merchandise Warehouse Co., Inc., 1414 S. West Street, Indianapolis, IN 46206. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 429 Federal Bldg., 46 E. Ohio Street, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

MC 136635 (Sub-18TA), filed February 20, 1979. Applicant: UNIVERSAL CARTAGE, INC., P.O. Box 2769, South Bend, IN 46680. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Paper and paper products, materials and supplies used in the manufacture of paper and paper products,* between the facilities of Weston Paper & Manufacturing Company at Terre Haute, IN on the one hand, and on the other, points in IL, MO, for 180 days. Supporting shipper: Weston Paper & Manufacturing Co., P.O. Box 539, Terre Haute, IN 47802. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 East Ohio Street, Room 429, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

By the Commission.

H. G. Homme, Jr.,
Secretary.

[Notice No. 69]
[FR Doc. 79-13178 Filed 4-26-79; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Applications

April 17, 1979.

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 day 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 25518 (Sub-21TA), filed March 29, 1979. Applicant: JOHN BUNNING TRANSFER COMPANY INC., P.O. Box 128, Rock Springs, WY 82901. Representative: Christian Bunning (same address as applicant). *Petroleum products and petroleum distillates,* between Salt Lake and Davis Counties, UT and points in WY for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Delgado Oil Company, P.O. Box 66, Pinedale, WY 82941, Red Horse Oil Co., Inc., P.O. Box 128, Rock Springs, WY 82901. Send protests to: District Supervisor Paul A. Naughton, Interstate Commerce Commission, Rm 105, Federal Bldg & Crt House, 111 South Wolcott, Casper, WY 82601.

MC 81779 (Sub-1TA), filed March 15, 1979. Applicant: PAUL JOHNSON, INC., 340 West Adams, Waterman, IL 60556. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, D.C. 20001. *Iron and steel articles,* from the facilities of Jones and Laughlin Steel Corporation located in the Chicago, IL commercial zone to points in IL, IA and St. Louis, MO commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jones and Laughlin Steel Corporation, 3001 Dickey Road, East Chicago, IN 46312. Send protests to: Annie Booker, TA, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 106398 (Sub-874TA), filed April 3, 1979. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull (same address as applicant). (1) *Building materials and construction materials,* from the facilities of Barclay Industries at: (a) Lodi, NJ, to points in AL, AR, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, VT, VA, WV, WI, WY, & DC, and (b) Deer Park, NY, to all points in the U.S., (except AK and HI), and (c) Los Angeles, CA, to all points in the U.S., (except AK and HI); and (2) *Materials and supplies used in the manufacture of commodities named in (1) above,* from all points in the United States, to the facilities of Barclay Industries named in (a), (b), and (c) above, restricted to shipments originating at or destined to the facilities of Barclay Industries, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Barclay Industries, Inc., 65 Industrial Rd., Lodi, NJ 07644. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240, Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 106398 (Sub-875TA), filed April 4, 1979. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull (same address as applicant). (1) *Plywood, paneling, gypsum board, hardboard, particle board, pressboard, moulding, roofing and trim,* from the facilities of Sequoia Supply Company, at or near Jacksonville, FL, to points in AL, AR, GA, IL, IN, KY, LA, MS, MO, NY, NC, OH, PA, SC, TN, TX, VA, WV, & WI; and (2) *materials used in the manufacture of commodities named in (1) above,* from destination states named above, to Sequoia Supply Company, at Jacksonville, FL, restricted to shipments originating at or destined to the facilities

of Sequoia Supply Company at Jacksonville, FL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Sequoia Supply Inc., P.O. Box 2990, 2355 Dennis, Jacksonville, FL 32203. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240, Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 107478 (Sub-44TA), filed March 9, 1979. Applicant: OLD DOMINION FREIGHT LINE, INC., P.O. Box 2006, High Point, NC 27261. Representative: K. Edward Wolcott, 235 Peachtree Street, NE., Atlanta, GA 30303. *General commodities,* except classes A and B explosives, household goods as defined by the Commission, commodities of unusual value, commodities in bulk, and those requiring special equipment (1) between points in that part of NC in and east of Transylvania, Haywood, Madison, Yancey, Mitchell, Avery, Watauga, Ashe, and Alleghany Counties, in and west of Onslow, Jones, Carteret, Pamlico, Beaufort, Washington, Chowan, and Gates Counties on the one hand, and, on the other, points in SC and GA; (2) between points in that part of NC in and west of Transylvania, Haywood, Madison, Yancey, Mitchell, Avery, Watauga, Ashe, and Alleghany Counties, on the one hand and, on the other, points in that part of NC in and east of Onslow, Jones, Carteret, Pamlico, Beaufort, Washington, Chowan, and Gates Counties for 180 days. Supporting shipper(s): There are 70 shippers. Send protests to: Mr. Archie W. Andrews, D/S, ICC, P.O. Box 26896, Raleigh, NC 27611.

MC 109449 (Sub-26TA), filed March 15, 1979. Applicant: KUJAK TRANSPORT, INC., Junction Avenue, Winona, MN 55987. Representative: Gary Huntbatch, (same address as applicant). *Meats, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A & C of Appendix I to the report in Descriptions in Motor Carrier Certificates 61 M.C.C. 209 & 766 (except hides and commodities in bulk)* from the facilities utilized by Geo. A. Hormel & Co. at Huron, SD and Austin, MN to all points in PA east of Highway 219, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Geo. A. Hormel & Company, Supervisor, Motor Carrier Services, P.O. Box 800, Austin, MN 55912. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 111729 (Sub-754TA), filed March 28, 1979. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, NY 11042. Representative: Elizabeth L. Henoch, Staff Vice President (same address as applicant). *Business papers, records, and audit and accounting media of all kinds,* between Nashville, TN, and Jonesboro, AR, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): E. I. DuPont de Nemours & Co., Inc., 1007 Market Street, Wilmington, DE 19898. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

MC 112989 (Sub-90TA), filed April 5, 1979. Applicant: WEST COAST TRUCK LINES INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr., 85647 Highway 99 South, Eugene, OR 97405. *Iron and steel articles* as described in Appendix V to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 from the facilities of Copperweld Steel Company at or near Warren, Ohio, to points in California, Oregon, and Washington, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Copperweld Steel Company, P.O. Box 351, Warren, OH 44482. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 117439 (Sub-63TA), filed March 28, 1979. Applicant: BULK TRANSPORT, INC., P.O. Box 1429, Baton Rouge, LA 70821. Representative: Edward A. Winter, 235 Rosewood Drive, Metairie, LA 70005. *Dry fertilizer,* from the facilities of Monsanto Company, located at or near Luling, LA to points in AL, GA, and MS for 180 days. Applicant has filed an underlying ETA for 90 days. Supporting shipper(s): Monsanto Company, 800 N. Lindbergh Blvd., St. Louis, MO 63166. Send protests to: Robert J. Kirspel, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 118838 (Sub-47TA), filed April 2, 1979. Applicant: GABOR TRUCKING, INC., Rural Route No. 4, Box 124B, Detroit Lakes, MN 56501. Representative: Robert D. Gisvold, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Rail car parts,* from Youngstown, OH to Renton, WA and Portland, OR, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Youngstown Steel Door, P.O. Box 1379, Youngstown, OH 44501. Send protests to: DS, ICC, Bureau of Operations, Room 268, Fed. Bldg. & U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 119789 (Sub-561TA), filed March 13, 1979. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas TX 75266. Representative: James K. Newbold, Jr. (Address same as above). *Foodstuffs (except in bulk),* From Frankfort, IN to AR, MO, KS, TX, CA, CO, LA, and NE for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Peter Paul Cadbury, Inc., State Road 28 West, Frankfort, IN 46041. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, TX 75242.

MC 119789 (Sub-562TA), filed March 19, 1979. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. (Same as above). (1) *Plastic siding, and fittings and accessories used in the installation of plastic siding* from Weatherford, TX to points in the U.S. (except AK, HI, and TX); (2) *Materials and supplies used in the prduction and distribution of plastic siding* from points in the U.S. (except AK, HI, and TX), to Weatherford, TX for 180 days. Supporting shipper(s): Robintech, Inc., 1202 N. Bowie Dr., Weatherford, TX 76086. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 120419 (Sub-5TA), filed April 4, 1979. Applicant: SERVICE TRANSFER, INC., 1501 West Main Street, Henryetta, OK 74437. Representative: Clifford Neal (same address as applicant). *Glass containers,* from Henryetta, OK, to Detroit and Frankenmuth, MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Midland Glass Company, Inc., P.O. Box 557, Cliffwood, NJ 07721. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240 Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 120999 (Sub-3TA), filed March 12, 1979. Applicant: CALIFORNIA AND WESTERN STATES AMMONIA TRANSPORT, INC., d.b.a. CALIFORNIA AMMONIA TRANSPORT, INC., 415 Lemon Avenue, Walnut, California 91789. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Liquid fertilizers, in bulk,* from points in CA to points in AZ and NV, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): U.S.A. Petrochem Corporation, P.O. Box 1839, Santa

Monica, CA 90406; Occidental Chemical Company, P.O. Box 198, Lathrop, CA 95330; Ind/Ag Chemicals, Inc., 3075 Citrus Circle, Walnut Creek, CA 94598. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012.

MC 121658 (Sub-16TA), filed March 14, 1979. Applicant: STEVE D. THOMPSON TRUCKING, INC., 1205 Percy Street, P.O. Drawer 149, Winnsboro, LA 71295. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. *Petroleum, petroleum products, vehicle body sealer and/or sound deadener compounds* (except commodities in bulk, in tank vehicles) and *filters*, from points in Warren County, MS, to Dallas and Fort Worth, TX; Little Rock, AR; Memphis, TN and points in LA, restricted to the transportation of traffic originating at the facilities of Quaker State Oil Refining Corporation, in Warren County, MS, for 180 days as a common carrier over irregular routes. Supporting shipper(s): Quaker State Oil Refining Corp., P.O. Box 989, Oil City, PA 16301. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 124078 (Sub-954TA), filed February 28, 1979. Applicant: SCHWERMAN TRUCKING CO., 611 S. 28 St., Milwaukee, WI 53215. Representative: Richard H. Prevette (same address as applicant). *Calcium carbonate*, from Quincy, IL to Milwaukee, Oak Creek and West Allis, WI, for 180 days. Supporting shipper(s): Thiem Corp., 500 W. Marquette Ave., Oak Creek, WI 53154. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 124078 (Sub-955TA), filed March 15, 1979. Applicant: SCHWERMAN TRUCKING CO., 611 S. 28 St., Milwaukee, WI 53215. Representative: Richard H. Prevette (Same address as applicant). *Vegetable oils*, in bulk, in tank vehicles from Maxton, NC; Darlington, SC; Dawson, Gainesville & Augusta, GA; Birmingham, Dothan & Enterprise, AL and Graceville, FL to Saint Rose, LA, for 180 days. Supporting shipper(s): Alimenta (USA), Inc., P.O. Box 88987, Atlanta, GA 30338. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 124839 (Sub-40TA), filed March 8, 1979. Applicant: BUILDERS TRANSPORT, INC., P.O. Box 7057, 4800 Augusta Road, Savannah, GA 31408. Representative: William P. Sullivan, 1320 Fenwick Lane, Silver Spring, MD 20910. *Contract carrier;* irregular routes; *Paper and paper products*, (1) from Plattsburgh, NY to DC, FL, GA, NC, SC, VA, and WV, and (2) from Crossett, AR to AL, FL, GA, and TN for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Georgia Pacific, 800 Summer Street, Stamford, CT 06901. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 125368 (Sub-51TA), filed February 28, 1979. Applicant: CONTINENTAL COAST TRUCKING COMPANY, INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: C. W. Fletcher (same address as applicant). *Meats, meat products and supplies used in the manufacture of meat products* between meat packinghouses in MI and NC, on the one hand, and, on the other, points in the U.S. except AK and HI, for 180 days. An underlying ETA has been filed seeking 90 days authority. Supporting shipper(s): Frederick and Herrud, Herco, Carolina Meat Processors, and other subsidiaries, 1487 Farnsworth, Detroit, MI 48211. Send protests to: Mr. Archie W. Andrews, District Supervisor, Interstate Commerce Commission, P.O. Box 26896, Raleigh, NC 27611.

MC 125368 (Sub-52TA), filed February 28, 1979. Applicant: CONTINENTAL COAST TRUCKING COMPANY, INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: C. W. Fletcher (same address as applicant). *Glass and glass products* from the facilities of Libbey-Owens Ford Glass, Inc., at or near Laurinburg, and Clinton, NC to points in IA and MN for 180 days. An underlying ETA seeking 90 days authority has been filed. Supporting shipper(s): Libbey-Owens-Ford Company, 811 Madison Avenue, Toledo, OH 43695. Send protests to: Mr. Archie W. Andrews, District Supervisor, Interstate Commerce Commission, P.O. Box 26896, Raleigh, NC 27611.

MC 125368 (Sub-53TA), filed February 28, 1979. Applicant: CONTINENTAL COAST TRUCKING COMPANY, INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: C. W. Fletcher, (same address as applicant). *Food products* from the facilities of Campbell Soup Company, at or near Worthington, MN; Omaha, Freemont, and Tecumseh, NE to points in AR, CA, CO, DE, DC, IL, IN, IA, KS, MD, MI, MN, MO, NJ, NY, NC, ND, OH, PA, SC, SD, TX, UT, VA, and WI for 180 days. An underlying ETA seeking 90 days authority has been filed. Supporting shipper(s): Campbell Soup Company, 1202 Douglas Street, Omaha, NE. Send protests to: Mr. Archie W. Andrews, District Supervisor, Interstate Commerce Commisson, P.O. Box 26896, Raleigh, NC 27611.

MC 125479 (Sub-15TA), filed March 7, 1979. Applicant: P-N-J KORNACKER, INC. d.b.a.-KORNACKER TRUCKING CO., 3050 West 10th Street, Waukegan, IL 60085. Representative: Albert A. Andrin, 180 North LaSalle Street, Chicago, IL 60601. *Cranberry Products and Fruit Juices* (not frozen and except in bulk), from the facilities of Ocean Spray Products at Kenosha, WI and North Chicago, IL to the Lower Peninsula of MI, Fort Wayne, IN, Peoria, IL, Louisville, Lexington, Covington and East Bernstadt, KY, Montgomery, Birmingham and Anniston, AL, Green Bay and LaCrosse, WI, Minneapolis, MN, St. Louis, MO and Columbus, OH, for 180 days. Supporting shipper(s): Ocean Spray Cranberries, Inc., 7800 South 60th Avenue, Kenosha, WI 53142. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 126118 (Sub-141TA), filed March 1, 1979. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). *Such commodities as are manufactured by, used by and dealt in by manufacturers of paper and paper products*, Between Green Bay, WI, on the one hand, and, on the other, points in AL, AR, CA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, NY, ND, OH, OK, PA, SD, TN, TX, UT, VA, WV, and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): D. E. Hitchcock, Manager of Transportation, Fort Howard Paper Company, P.O. Box 130, 1919 South Broadway, Green Bay, WI 54305. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building & Court House, 100 Centennial Mall North, Lincoln, NE 68508.

MC 126118 (Sub-142TA), filed March 1, 1979. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). *Park and playground*

apparatus and equipment, and *equipment, materials and supplies used in the sale and distribution thereof,* from Litchfield, MI to points in the United States in and west of MN, IA, MO, OK and TX and points in FL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Richard L. Tarnow, Dist. Manager, Game Time, Inc., 900 Anderson Road, Litchfield, MI, 49252. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building & Court House, 100 Centennial Mall North, Lincoln, NE 68508.

MC 126118 (Sub-143TA), filed March 8, 1979. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). (1) *Paper* from Arkansas Kraft Corp. at or near Morrilton, AR and (2) *Talc* from Cyprus Industrial Chemicals at or near Three Forks, MT to Kaukauna, WI and points in its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. NOTE: Common control may be involved. Supporting shipper(s): John R. Washatka, Thilmany Pulp & Paper Company, Kaukauna, WI 54130. Send protests to: Max Johnston, ICC, 285 Federal Building and Court House, 100 Centennial Mall North, Lincoln, NE 68508.

MC 126118 (Sub-144TA), filed March 30, 1979. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE, 68501. Representative: Duane W. Acklie (same address as applicant). (1) *Such commodities as are used by and dealt in by manufacturers of motorcycles, snowmobiles and recreational vehicles* (except size and weight commodities and bulk), From Los Angeles and Orange Counties, CA, to the facilities of Kawasaki Motors Corp., U.S.A. located at Lincoln, NE, and its commercial zone, and (2) Meat, meat products and meat by-products (except in bulk), from the plant site of American Stores Packing Company at Lincoln, NE, to Buffalo, NY; Syracuse, NY, and Johnstown, PA, and their Commercial zones, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kawasaki Motors Corporation, 2009 East Edinger Avenue, Santa Ana, CA, 92711. American Stores Packing Company, 200 South 2nd Street, Lincoln, NE, 68501. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building & Court House, 100 Centennial Mall North, Lincoln, NE, 68508.

MC 126118 (Sub-145TA), filed March 30, 1979. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE, 68501. Representative: Duane W. Acklie, (same address as applicant). Flammable stains, sealers, or lacquers in drums or pails; unfinished wooden shapes, viz: Front frames and sides for storage cabinets, drawer components, and miscellaneous shapes bedroom furniture, K.D., in cartons; and drawer and cabinet hardware in cartons or bundles in straight or mixed loads, from the plant site of Bal Harbour Manufacturing, Inc., located at Santa Ana, CA, to points located on and east of U.S. Hwy 85 in the Continental United States, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Bal Harbour Mfg., Inc., 1900 South Susan St., Santa Ana, CA, 92074. Send protests to Max H. Johnston, District Supervisor, 285 Federal Building & Court House, 100 Centennial Mall North, Lincoln, NE, 68508.

MC 127478 (Sub-16TA), filed February 13, 1979. Applicant: WILLIAM M. HAYES, d.b.a. HAYES TRUCKING CO., P.O. Box 31, Winterville, GA 30683. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. Frozen Foodstuffs, from the facilities of the Kitchens of Sara Lee at New Hampton, IA and Deerfield, IL to points in GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kitchens of Sara Lee, Deerfield, IL 60015. Send protests to: Sara K. Davis, Transportation Assistant, ICC, Room 300, 1252 West Peachtree Street, NW, Atlanta, Georgia 30309.

MC 127579 (Sub-18TA), filed March 13, 1979. Applicant: HAULMARK TRANSFER, INC., 1100 N. Macon St., Baltimore, MD 21205. Representative: Glenn M. Heagerty (same as above). *Green Fibre Mulch,* in bags, from the facilities of Hampton Roads Recycling at Hampton, VA to points in PA, MD, DC, WV, NY, NJ and DE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hampton Roads Recycling, 1 Newsome Pl., Box 1435, Hampton, VA 23661. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 133189 (Sub-21TA), filed March 15, 1979. Applicant: VANT TRANSFER, INC., 1229 Osborne Road, Minneapolis, MN 55432. Representative: John B. Van de North, Jr., Briggs and Morgan, 2200 First National Bank Building, St. Paul, MN 55101. (1) *Metal and metal articles* from the facilities of Gate City Steel Corporation located at Gary, IN, Sterling, IL, Davenport, IA, St. Paul, MN and Omaha, NE to points in IL, IN, WI, IA, NE, MN, MO, ND, and SD; and (2) *Materials, equipment and supplies (except in bulk) used in the manufacture and processing of metal and metal articles* from the destination points described in (1) above to the facilities of Gate City Steel Corporation described in (1) above; and (3) *Metal and metal articles and materials, equipment and supplies (except in bulk) used in the manufacture and processing of metal and metal articles,* between the facilities of Gate City Steel Corporation described in (1) above, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Gate City Steel Corporation, 100 Essex Court, Omaha, NE 68114. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 133189 (Sub-22TA), filed April 4, 1979. Applicant: VANT TRANSFER, INC., 1229 Osborne Road, Minneapolis, MN 55432. Representative: John B. Van de North, Jr., Briggs and Morgan, 2200 First National Bank Building, St. Paul, MN 55101. *Metal and metal articles* from points in the Chicago, IL Commercial Zone to points in MN, WI, IA and NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Central Steel & Wire Company, Manager-Transportation, 3000 West 51st Street, Chicago, IL 60632. Northern Industries, Traffic Manager, 4677 West Cal Sag Road, Crestwood, IL 60445. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

MC 134289 (Sub-5TA), filed March 27, 1979. Applicant: CALDWELL TRUCK RENTALS, INC., 625 South Blvd., Lenoir, NC 28645. Representative: Jack L. Hawn (same address as applicant). *New furniture, crated or uncrated, and new furniture parts* (see attached for scope), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are 35 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 134328 (Sub-8TA), filed March 8, 1979. Applicant: D & G TRUCKING CO., INC., P.O. Box 1004, Wynne, AR 72396. Representative: James N. Clay, III, 2700 Sterick Building, Memphis, TN 38103. *Commodities* used or dealt in by manufacturers of electrical appliances, electrical equipment, wood products and parts thereof, between Forest City, AR and Edinburg, IN, on the one hand, and on the other, points in the United States (except AK and HI), for 180 days, as a contract carrier over irregular routes.

Supporting shipper(s): Sanyo Manufacturing Corporation, 3333 Sanyo Road, Forest City, AR 72335. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 134369 (Sub-13TA), filed March 2, 1979. Applicant: CARLSON TRANSPORT, INC., P.O. Box R, Byron, IL 61010. Representative: Allan C. Zuckerman, 39 South LaSalle Street, Chicago, IL 60603. *Sand and sand with additives,* in bulk from the facilities of Acme Resin Company, a unit of CPC International, Inc., at Chicago, IL to the facilities of Central Foundry Division of General Motors Corporation at Defiance, OH, for 180 days. Supporting shipper(s): Acme Resin Company, a unit of CPC International, Inc., 1401 Circle Avenue, Forest Park, IL 60130. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 134769 (Sub-2TA), filed March 12, 1979. Applicant: BILL BURTON & SONS, INC., East Victory Way, P.O. Box 404, Newberry, MI 49868. Representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 48080. *Lumber and lumber products* from points in Alger, Chippewa, Mackinac, Schoolcraft, and Luce Counties in MI, to points in IL, IN, OH and WI. An underlying ETA seeks 90 days authority. Supporting shipper(s): Cliffs Forest Products Company, P.O. Box 520, Iron Mountain, MI 49801. Send protests to: C. R. Flemming, D/S, ICC, 225 Federal Building, Lansing, MI 48933.

MC 134769 (Sub-3TA), filed March 13, 1979. Applicant: BILL BURTON & SONS, INC., P.O. Box 404, East Victory Way, Newberry, MI 49868. Representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 48080. *Lumber and lumber products* from points in Alger, Chippewa, Mackinac, Schoolcraft and Luce Counties, MI to points in AR, TN, MS, IA, MO, MN, KS, AL, NC, TX, VA, PA, KY, GA, SC, FL, ND, SD, NE, and OK. An underlying ETA seeks 90 days authority. Supporting shipper(s): Cliffs Forest Products Company, P.O. Box 520, Iron Mountain, MI 49801. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Bldg., Lansing, MI 48933.

MC 134838 (Sub-23TA), filed March 7, 1979. Applicant: SOUTHEASTERN TRANSFER & STORAGE CO., INC., P.O. Box 39236, Bolton Station, Atlanta, GA 30318. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Iron and steel articles* from the facilities utilized by Three-D Steel Supply, Inc., at or near Greenville, SC to points in AL, FL, GA, KY, MS, NC and TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Three-D Steel Supply, Inc., 5912 New Peachtree Road, Doraville, GA 30340. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 135078 (Sub-46TA), filed March 2, 1979. Applicant: AMERICAN TRANSPORT, INC., 7850 "F" Street, Omaha, NE 68127. Representative: Arthur J. Cerra, P.O. Box 19251, 2100 TenMain Center, Kansas City, MO 64141. *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the ICC, commodities in bulk and those requiring special equipment),* from the commercial zones of Philadelphia and Allentown, PA to the commercial zones of Chicago, IL and Denver, CO and from the commercial zone of Chicago, IL for partial reloading to the commercial zone of Denver, CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Al Divito, Cooperative Shipper's Association, Inc., 4252 Rising Sun Avenue, Philadelphia, PA 19140. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 135658 (Sub-6TA), filed February 20, 1979. Applicant: ROCK RIVER CARTAGE, INC., R.R. 2, Box 430, Rock Falls, IL 61071. Representative: Michael W. O'Hara, 300 Reisch Building, Springfield, IL 62701. Contract-irregular, *iron and steel articles* from the facilities of Inland Steel Company at East Chicago, IN to points in IL on and West of U.S. Route 51 and on and North of U.S. Route 34, and points in IA on and East of U.S. Route 61, for 180 days. Supporting shipper(s): Inland Steel Company, 30 West Monroe Street, Chicago, IL 60603. Send protests to: Annie Booker, Transporation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 135779 (Sub-8TA), filed March 8, 1979. Applicant: BALDWIN TRUCKING, INC., 192 98th Avenue, Oakland, CA 94577. Representative: Michael C. Leiden, P.O. Box 8594, Emeryville, CA 94662. *Empty tin cans,* in specialized can vans, equipped with attached rollers for gravity loading and unloading of unitized loads of cans and return shipments of empty pallets, fibre and separators used in preparing cans for shipment, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Del Monte Corporation, P.O. Box 3575, San Francisco, CA 94119. Send protests to: A. J. Rodriguez, DS, ICC, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 136318 (Sub-61TA), filed March 9, 1979. Applicant: COYOTE TRUCK LINE, INC., P.O. Box 756, 302 Cedar Lodge Rd., Thomasville, NC 27360. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202. *Contract* Carrier—Irregular Routes: *New furniture and furniture parts* from Worcester and Franklin Counties, MA to points in CA, OR, WA, ID, NV, AZ, UT, MT, WY, CO, NM and El Paso, TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): New England Furniture Shippers Association, Inc., 838 West Broadway, Gardner, MA 01440. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd., Rm CC516, Mart Office Building, Charlotte NC 28205.

MC 136818 (Sub-62TA), filed March 5, 1979. Applicant: SWIFT TRANSPORTATION CO., INC., 335 W. Elwood Rd., Phoenix, AZ 85030. Representative: Donald Fernaays, 4040 E. McDowell Rd., Phoenix, AZ. *Meat and meat products,* from Great Bend, Wichita, and Topeka, KS to points in WA, OR, CA, and AZ, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Thies Packing Company, Inc., P.O. Box 49, Great Bend, KS 67530. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 136818 (Sub-63TA), filed March 12, 1979. Applicant: SWIFT TRANSPORTATION CO., INC., 335 West Elwood Rd., Phoenix, AZ 85030. Representative: Donald Fernaays, 4040 E. McDowell Rd., Phoenix, AZ. *Paper and Paper Products (except in bulk) and commodities produced or distributed by manufacturers and converters of paper and paper products (except in commodities bulk),* from points in Portage and Wood Counties, WI to points in AZ, CA, OR, and WA for 180 days. Supporting shippers: Nekoosa Papers Inc., 100 Wisconsin River Dr., Port Edwards, WI 54469 and Consolidated Papers, Inc., P.O. Box 50, Wisconsin Rapids, WI 54494. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 136818 (Sub-64TA), filed March 30, 1979. Applicant: SWIFT TRANSPORTATION CO., INC., 335 W. Elwood Rd., Phoenix, AZ 85030. Representative: Donald Fernaays, 4040

E. McDowell Rd., Phoenix, AZ. *Charcoal, charcoal briquets, fire place logs, wood chips, lighter fluid and all related products,* from Meta, MO to AZ, CA, CO, FL, GA, KS, MS, NB, NM, OK, OH, SD, TX, UT, and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Standard Milling Co., 1009 Central St., Kansas City, MO. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 136818 (Sub-65TA), filed March 30, 1979. Applicant: SWIFT TRANSPORTATION CO., INC., 335 W. Elwood Rd., Phoenix, AZ 85030. Representative: Donald Fernaays, 4040 E. McDowell Rd., Phoenix, AZ. *Building materials and materials, equipment and supplies used in the manufacture and distribution of building materials,* from Lubbock and El Paso, TX to points in AZ, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Specialty Forest Products, Inc., 4433 No. 19th Ave., Phoenix, AZ 85015. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 136899 (Sub-34TA), filed March 13, 1979. Applicant: HIGGINS TRANSPORTATION LTD., P.O. Box 192, Richland Center, WI 53581. Representative: Wayne Wilson, 150 E. Gilman St., Madison, WI 53703. *Lawn, garden, and snow removal equipment, and parts, attachments, and accessories for lawn, garden, and snow removal equipment* from Brillion, New Holstein, and Plymouth, WI to points in IL, IN, IA, KS, MI, MN, MO, NE, ND, OH and SD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ariens Co., 655 W. Ryan, Brillion, WI 54110, and Gilson Brothers Co., P.O. Box 152, Plymouth, WI 53073. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 136899 (Sub-35TA), filed March 22, 1979. Applicant: HIGGINS TRANSPORTATION LTD., P.O. Box 192, Richland Center, WI 53581. Representative: Wayne Wilson, 150 E. Gilman St., Madison, WI 53703. *Paper, paper products, cellulose products, and textile softeners* from the facilities of Procter & Gamble Paper Products Co. at Green Bay, Marinette, and Menasha, WI and Cheboygan, MI to points in IA, KS, MO, and NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Procter & Gamble Paper Products Co., P.O. Box 599, Cincinnati, OH 45201. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 136899 (Sub-36TA), filed March 23, 1979. Applicant: HIGGINS TRANSPORTATION LTD., P.O. Box 192, Richland Center, WI 53581. Representative: Wayne Wilson, 150 E. Gilman St., Madison, WI 53703. *Such merchandise as is dealt in or sold by retail department stores and catalog stores* (except commodities in bulk) from Hermansville, MI to St. Paul, MN, restricted to traffic originating at or destined to the facilities of Montgomery Ward, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Montgomery Ward, One Montgomery Plaza, Chicago, IL 60671. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 138109 (Sub-7TA), filed March 13, 1979. Applicant: RAY J. FORNEY, INC., P.O. Box 207, Ashton, IL 61006. Representative: Elizabeth A. Purcell, 805 McLachlen Bank Building, 666 Eleventh Street, NW, Washington, D.C. 20001. *Commodities dealt in by wholesale, retail and chain grocery stores and food business houses,* and *materials, ingredients and supplies used in the manufacture, distribution and sale of the commodities named,* between the facilities of Ralston Purina Co. at/near Davenport and Clinton, IA on the one hand, and, on the other, points in IN, OH, KY, MN, MO, MI, IL, NY, PA and WI for 180 days. An underlying ETA was granted for 90 days. Supporting shipper(s): Ralson Purina Co., Checkerboard Square, St. Louis, MO 63188. Send protests to: Annie Booker, TA, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 138198 (Sub-10TA), filed April 5, 1979. Applicant: SPD TRUCK LINE, INC., 401 Cottage Street, Abilene, KS 67410. Representative: William B. Barker, 641 Harrison Street, Topeka, KS 66603. *Contract carrier:* irregular routes: *Household Goods as defined by the Commission,* under continuing contract(s) with Duckwall-Alco Stores, Inc. of Abilene, KS between points in AR, CO, IL, IA, KS, MN, MO, NE, NM, OK, SD, TX and WY, for 180 days. Supporting shipper(s): Duckwall-Alco Stores, Inc., 401 Cottage, Abilene, KS 67410. Send protests to: Thomas P. O'Hara, D/S, ICC, 256 Federal Bldg., 444 S.E. Quincy, Topeka, KS 66683.

MC 138308 (Sub-64TA), filed March 8, 1979. Applicant: KLM, INC., Old Hwy. 49 S., P.O. Box 6098, Jackson, MS 39208. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. *Paint rollers and metal stampings* from Roanoke, VA to Torrance, Los Angeles and San Bernardino, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): Hansteck Corp., P.O. Box 733, Roanoke, VA 24004. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 138308 (Sub-65TA), filed March 2, 1979. Applicant: KLM, INC., Old Hwy. 49 S, P.O. Box 6098, Jackson, MS 39208. Representative: Fred W. Johnson, Jr., P.O. Box 22628, Jackson, MS 39205. *Tile, composition, facing or flooring and adhesives* from the facilities of National Floor Products Co., Inc., at or near Florence, AL to points in AZ, CA, CO, ID, LA, NV, NM, OR, TX, UT and WA, for 180 days. Supporting shipper(s): National Floor Products Company, Inc., P.O. Box 354, Florence, AL 35630. Send protests to: Alan Tarrant, D/S, ICC, Rm 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 138388 (Sub-5TA), filed March 13, 1979. Applicant: CHESTER CAINE, JR., d.b.a. CAINE TRANSFER, Box 376, Lowell, WI 53557. Representative: James Spiegel, 6425 Odana Rd, Madison, WI 53719. *Cheese and cheese products and materials, equipment, and supplies used in cheese production* (a) between points in WI and Van Wert, OH, and (b) from Van Wert, OH to Rochester, MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s) Borden Foods, 802 S. St., Plymouth, WI 53073. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 138469 (Sub-124TA), filed March 6, 1979. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representive: Jack H. Blanshan, Attorney at Law, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Automobile glass,* from the facilities of Libbey-Owens-Ford Company at Ottawa, IL and points in the Ottawa, IL Commercial Zone, to points in TX, for 180 days. An underlying ETA seeks 90 days authority.

Supporting shipper(s): Libbey-Owens-Ford Company, 811 Madison Avenue, Toledo, OH 43695. Send protests to: Connie Stanley, Transportation Assistant, Room 240 Old Post Office and Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 138469 (Sub-125TA), filed March 6, 1979. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Jack H. Blanshan, Attorney at Law, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Fresh meats and packinghouse products,* from the facilities of Wilson Foods Corporation, at Marshall, MO, to points in CA, restricted to traffic originating at the named origin and destined to the named destination, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wilson Foods Corporation, 4545 North Lincoln Boulevard, Oklahoma City, OK 73105. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240 Old Post Office and Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 138469 (Sub-126TA), filed March 8, 1979. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Jack H. Blanshan, Attorney at Law, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Fresh meats and packinghouse products,* from the facilities of Wilson Foods Corporation, at or near Cedar Rapids and Cherokee, IA, to points in CA, restricted to traffic originating at the named origins, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wilson Foods Corporation, 4545 Lincoln Boulevard, Oklahoma City, OK 73105. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240, Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 138469 (Sub-127TA), filed March 14, 1979. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Jack H. Blanshan, 205 W. Touhy Avenue, Suite 200, Park Ridge, IL 60068. *Meat, meat products, meat by-products and articles distributed by meat packing houses,* as described in Sections A and C of Appendix 1 to the report in Descriptions of Motor Carrier Certificates, 61 MCC 209 and 766, (except hides and commodities in bulk), from the facilities of Wilson Foods Corporation, at Omaha, NE, to points in CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wilson Food Corporation, 54545 North Lincoln Boulevard, Oklahoma City, OK 73105. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240, Old Post Office and Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 138469 (Sub-128TA), filed March 15, 1979. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: William J. Green, (same address as applicant). *Office and household fixtures and furnishings, and component parts thereof, and materials, equipment and supplies used in the production of office and household fixtures and furnishings,* from the facilities of Triangle Pacific Corporation, at or near Union City, IN, to points in CO, NM and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Triangle Pacific Corporation, 4255 L.B.J. Freeway, Dallas, TX 75234. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240, Old Post Office and Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 138469 (Sub-129TA), filed March 15, 1979. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Jack H. Blanshan, 205 West Touhy Avenue, Suite 200, Park Ridge, IL 60068. *Meat, meat products, meat by-products and articles distributed by meat packing houses,* as described in Sections A and C of Appendix 1 to the report in Descriptions of Motor Carrier Certificates, 61 MCC 209 and 766, (except hides and commodities in bulk), from the facilities of Wilson Foods Corporation, at Albert Lea, MN, to points in CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wilson Food Corporation, 4545 North Lincoln Boulevard, Oklahoma City, OK 73105. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240, Old Post Office and Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 138469 (Sub-130TA), filed March 16, 1979. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: William J. Green (same address as applicant). *Meat, meat products, meat by-products, and articles distributed by meat packing houses* as described in sections A & C of Appendix 1 to the report in Description in Motor Carrier Certificates, 61 MCC 209 and 766, (except hides and except commodities in bulk), from the facilities of Peppertree Beef Company, at or near Denver, CO, to points in NJ, NY and PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Peppertree Beef Company, 5300 Franklin Street, Denver, CO 80216. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240, Old Post Office and Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 138469 (Sub-131TA), filed March 20, 1979. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: William J. Green (same address as applicant). *Automobile glass,* from the facilities of Libbey-Owens-Ford at or near Toledo, OH, to points in TX, restricted to the transportation of traffic originating at the named origin and destined to the named destination point, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Libbey-Owens-Ford Company, 811 Madison Avenue, Toledo, OH 43624. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240, Old Post Office and Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 138469 (Sub-132TA), filed March 21, 1979. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Daniel O. Hands, Attorney at Law, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Confectionery* (except in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of E. J. Brach & Sons, at or near Chicago, IL, to points in GA, OK, & TX, restricted to the transportation of shipments originating at the named origins and destined to the named destinations, for 180 days. Supporting shipper(s): E. J. Brach & Sons, P.O. Box 802, Chicago, IL 60690. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240, Old Post Office and Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 139219 (Sub-4TA), filed April 6, 1979. Applicant: LANE TRUCKING, INC., 2230 North Range, Dothan, AL 36301. Representative: W. K. Martin, Post Office Box 2069, Montgomery, AL 36103. *Fertilizer in bulk, in dump vehicles, and fertilizer in bags,* between points in FL, GA, AL and MS, for 180 days. Supporting shipper(s): There are 7 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 140159 (Sub-9TA), filed March 12, 1979. Applicant: C. L. FEATHER, INC., P.O. Box 1190, Altoona, PA 16601.

Representative: Thomas M. Mulroy, Esquire, 1500 Bank Tower, 307 Fourth Avenue, Pittsburgh, PA 15222. *Stone,* from the facilities of Stone Tile, Inc., in Youngstown, OH to Duncansville, PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Coronado Stone Co., P.O. Box 382, Duncansville, PA 16635. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburg, PA 15222.

MC 140159 (Sub-10TA), filed March 20, 1979. Applicant: C. L. FEATHER, INC., P.O. Box 1190, Altoona, PA 16601. Representative: Thomas M. Mulroy, Esquire, Pillar & Mulroy, 1500 Bank Tower, 307 Fourth Avenue, Pittsburgh, PA 15222. *Coal,* in bulk, in dump vehicles, from points in Cambria County, PA to Dunkirk, NY for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Nace Utility Sales, Inc., 25 South Service Road, Jericho, NY 11753. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburg, PA 15222.

MC 140389 (Sub-48TA), filed March 14, 1979. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Highway 77, Gadsden, AL 35902. Representative: Gerald D. Colvin, Jr., 601–09 Frank Nelson Building, Birmingham, AL 35203. *Foodstuffs* (except in bulk) from points in FL to Atlanta, GA and points in IL, IN, IA, KY, MI, MN, MO, OH, TN and WI for 180 days. Supporting shipper(s): There are "6" Supporting Shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 140389 (Sub-49TA), filed March 14, 1979. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Carl E. Johnson, Jr., 603 Frank Nelson Bldg., Birmingham, AL 35203. *(1) Liquid cleaning compounds and liquid bleaching compounds (except in bulk),* from the facilities of National Marketing Association, Inc., near New Orleans, LA, to points in AL and GA; and (2) Materials, equipment and supplies used in the manufacture and distribution of commodities described in (1) from points in AL and GA to the facilities of National Marketing Association, Inc., near New Orleans, LA, for 180 days. Supporting shipper(s): National Marketing Association, Inc., 1501 St. Louis, New Orleans, LA 70112. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 140389 (Sub-50TA), filed March 23, 1979. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Clayton R. Byrd, P.O. Box 12566, Atlanta, GA 30315. *Canned foodstuffs,* (except commodities in bulk), from the facilities of Pilgrim Farms, Inc., at Plymouth, IN, and from the facilities of Naas Foods, Inc., at or near Portland and Geneva, IN, to points in AL, FL, GA, MS, NC, and SC. Supporting shipper(s): Pilgrim Farms, Inc., 1430 Western Avenue, Plymouth, IN 46563; Naas Foods, Inc., P.O. Box 1029, Portland, IN 47371. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 140768 (Sub-35TA), filed March 7, 1979. Applicant: AMERICAN TRANS-FREIGHT, INC., P.O. Box 796, Manville, NJ 08835. Representative: Eugene M. Malkin, Suite 6193, 5 World Trade Center, New York, NY 10048. Common carrier, Irregular routes, for 180 days. Heating equipment, stoves, fireplaces and incinerators, from the facilities of Martin Industries, Inc. at or near Sheffield, AL to all points in the United States, except AK and HI. An underlying ETA seeks up to 90 days of authority. Supporting shipper(s): Martin Industries, Inc., P.O. Box 128, Florence, AL 35630. Send protests to: Irwin Rosen, TS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 140829 (Sub-197TA), filed March 5, 1979. Applicant: CARGO, INC., P.O. Box 206, U.S. Highway 20, Sioux City, IA 51102. Representative: William J. Hanlon, Esq., 55 Madison Ave., Morristown, NJ 07960. *Foodstuffs in mechanical refrigerated equipment (except commodities in bulk, in tank vehicles),* from the facilities of Standard Brands, Inc., at or near Chicago, IL, to points in CO, IA, KS, MO, NE, TX, CT, MA, MD, NJ, NY, PA, and Washington, D.C., for 180 days. Supporting shipper(s): Thomas J. Brown, Standard Brands, Inc., 3401 Mount Prospect Road, Franklin Park, IL 60131. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102

MC 140829 (Sub-198TA), filed March 14, 1979. Applicant: CARGO, INC. (Formerly Cargo Contract Carrier Corp.), P.O. Box 206, U. S. Highway 20, Sioux City, IA 51102. Representative: William J. Hanlon, Esq., 55 Madison Avenue, Morristown, NJ 07960. *Plastic or rubber articles, NOI, other than expanded,* from the facilities of Tucker Manufacturing Co., at or near Arlington, TX, to points in the states of IL, MO, and NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Richard M. Glover, Tucker Manufacturing Co., 721 111th Street, Arlington, TX 76011. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 140829 (Sub-199TA), filed March 15, 1979. Applicant: CARGO, INC. (Formerly Cargo Contract Carrier Corp.), P.O. Box 206, U. S. Highway 20, Sioux City, IA 51102. Representative: William J. Hanlon, ESQ., 55 Madison Ave., Morristown, NJ 07960. *Folding cartons, carton forming machinery and plastic film,* (1) from the facilities of Malnove, Inc., at or near Omaha, NE, to points in the states of CT, IL, IN, ME, MD, MA, MO, NH, NJ, NY, OH, PA, RI, VT, and the District of Columbia: and (2) from Bridgeport, CT and Chicago, IL to the facilities of Malnove, Inc., at or near Omaha, NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Charles W. Eliasson, Malnove, Inc., 13434 "F" St., Omaha, NE 68137. Send protest to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 140829 (Sub-200TA), filed March 21, 1979. Applicant: CARGO, INC., P.O. Box 206, U.S. Highway 20, Sioux City, IA 51102. Representative: William J. Hanlon, Esq., 55 Madison Avenue, Morristown, NJ 07960. *Soap, cleaning compounds and toilet preparations (except in bulk, in tank vehicles),* from Kansas City, KS to points in IL, IN, MN, and WI, for 180 days. Supporting shipper(s): R. Stingo, Colgate-Palmolive Co., 1806 Kansas Avenue, Kansas City, KS 66105. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 140829 (Sub-201TA), filed March 22, 1979. Applicant: CARGO, INC., P.O. Box 206, U.S. Highway 20, Sioux City, IA 51102. Representative: William J. Hanlon, Esq., 55 Madison Ave., Morristown, NJ 07960. *Meat, meat products and articles distributed by meat packinghouses,* from the facilities of Wilson Foods Corporation at Omaha, NE to points in CT, DE, DC, ME, MD, MA, NH, NJ, NY, PA, RI, VT, AND VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Fred Sinkankas, Wilson Foods Corporation, 4545 Lincoln Blvd., Oklahoma City, OK 73105. Send protests

to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 140829 (Sub-202TA), filed April 6, 1979. Applicant: CARGO, INC., P.O. Box 206, US HWY 20, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Ave., Morristown, NJ 07960. *Charcoal briquets,* from Branson, MO to points in AR, CO, OK, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Husky Industries, Inc., 62 Perimeter Center, E. Atlanta, GA 30346. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 141849 (Sub-7TA), filed February 13, 1979. Applicant: REGAL TRUCKING CO., INC., 95 Lawrenceville Industrial Park Circle, N.E., Lawrenceville, GA 30245. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. Polyethylene, plastic sheeting on rolls, and bags on rolls (except in bulk), from Senoia, GA to AL, MS, TN, GA, SC, NC, KS, FL, CT and MA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Flex-On Packaging, Inc., Senoia, GA 30276. Send protests to: Sara K. Davis, Transportation Assistant, ICC, Room 300, 1252 West Peachtree St. NW., Atlanta, GA 30309.

MC 141958 (Sub-10TA), filed March 7, 1979. Applicant: FEDCO FREIGHTLINES, INC., P.O. Box 422, Effingham, IL 62401. Representative: Routman, Lawley & O'Hara, Ltd., 300 Reisch Building, Springfield, IL 62701. Such commodities as are dealt in by wholesale, retail, and chain grocery and food business houses, for the account of Proctor and Gamble Distributing Co. from Chicago, IL to points in the Lower Peninsula of Michigan, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Proctor & Gamble Distributing Co., P.O. Box 599, Cincinnati, OH 45201. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 141958 (Sub-11TA), filed March 30, 1979. Applicant: FEDCO FREIGHTLINES, INC., P.O. Box 422, Effingham, IL 62401. Representative: Robert T. Lawley, 300 Reisch Building, Springfield, IL 62701. Grocery items, for the account of Swift & Company, from Bradley, Chicago and Des Plaines, IL to St. Louis, MO, for 180 days. Supporting shipper(s): Swift & Company, 115 W. Jackson Boulevard, Chicago, IL 60604. Send protests to: Charles D. Little, ICC, Room 414, Leland Office Bldg., 527 East Capitol Avenue, Springfield, IL 62701.

MC 142059 (Sub-66TA), filed February 9, 1979. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Road, Joliet, IL 60436. Representative: Jack Riley, 1830 Mound Road, Joliet, IL 60436. *Foodstuffs* (except frozen and in bulk) (1) from DeKalb, Mendota and Rochelle, IL and Arlington, Markesan and Plover, WI to points in IN, KY, MI, MN, MO, ND, OH, PA, WV and WI; and (2) Between the facilities of Del Monte Corporation located in IL, IN, KS, NJ, TN and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Del Monte Corporation, 15th Street, Rochelle, IL 61068. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Everett McKinley Dirksen Building, Chicago, IL 60604.

MC 142059 (Sub-67TA), filed March 5, 1979. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Road, Joliet, IL 60436. Representative: Jack Riley, (address same as applicant). *Sand and sand additives* in packages, from the facilities of Acme Resin Corporation near Oregon, IL to NY and PA, for 180 days. Supporting shipper(s): Acme Resin Corporation, P.O. Box 130, Oregon, IL 61061.

MC 142059 (Sub-68TA), filed March 5, 1979. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Road, Joliet, IL 60436. Representative: Jack Riley (address same as applicant). *Aluminum ingots and zinc alloy ingots* (except in bulk) from the facilities of Aluminum Smelting and Refining Company, Inc. and Certified Alloys Company at Maple Heights, OH to points in AL, CT, GA, IA, IL, IN, KY, MI, MN, MO, NC, NJ, NY, PA, SC, TN and WI, for 180 days. Supporting shipper(s): Aluminum Smelting and Refining Company, Inc., Certified Alloys Company, 5463 Dunham Road, Maple Heights, OH 44137. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 142268 (Sub-37TA), filed March 19, 1979. Applicant: GORSKI BULK TRANSPORT, INC., R.R. #4, Harrow, ON, Canada NOR 1GO. Representative: Robert E. McFarland, McFarland & Bullard, 999 W. Big Beaver Rd., Suite 1002, Troy, MI 48084. *Tires, tubes, and materials, articles and supplies used in the manufacture thereof,* between points in IL and KY, on the one hand, and, on the other, points in the Lower Peninsula of MI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Joseph Vatalaro, Corporate Director of Transportation, The General Tire & Rubber Company, 1 General St., Akron, OH 44329. Send protests to: C. R. Flemming, DS, ICC, 225 Federal Building, Lansing, MI 48933.

MC 142508 (Sub-62TA), filed March 8, 1979. Applicant: NATIONAL TRANSPORTATION, INC., 10810 South 144th St., P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. *Plastic bags; wrap articles; stretch wrap holders; aluminum foil; parts, materials and supplies used in the manufacture and distribution of these products,* from the plantsite and warehouse facilities of Presto Products, Inc., at Appleton, Little Chute and Weyauwega, WI to points in NE, CO, and UT, for 180 days. Supporting shipper(s): Christopher Fissel, Presto Products, Inc., 670 No. Perkins St., Appleton, WI 54911. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 142508 (Sub-63TA), filed March 12, 1979. Applicant: NATIONAL TRANSPORTATION, INC., 10810 So. 144th St., P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. *Batter and breading (except in bulk),* from Evansville, IN to Gloucester, MA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Alvin P. Williams, O'Donnell-Usen Fish Corporation, Commercial Street, Gloucester, MA 01930. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 142508 (Sub-64TA), filed March 13, 1979. Applicant: NATIONAL TRANSPORTATION, INC., 10810 So. 144th St., P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. *Wheels, wheel rims and related mounting hardware, hubs and clamps,* from Plainfield, IL to points in NE, IA, and KS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Peterson Manufacturing Company, P.O. Box 8, 700 West 143rd St., Plainfield, IL 60544. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 142508 (Sub-65TA), filed March 20, 1979. Applicant: NATIONAL TRANSPORTATION, INC., 10810 So. 144th St., P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. *Fruit and berry products and condiments (except commodities in bulk),* from the facilities of Ocean Spray Cranberries, Inc., at or near Bordentown, NJ; Middleboro, MA; Markham, WA;

Northeast, PA; and Yuba City, CA to points in CO, IL, IA, KS, MO, and NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Walter Heppner, Ocean Spray Cranberries, Inc., Water St., Plymouth, MA 02360. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 142508 (Sub-66TA), filed March 20, 1979. Applicant: NATIONAL TRANSPORTATION, INC., 10810 So. 144th St., P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. *Confectionery*, (1) from the facilities of E. J. Brach & Sons in the Chicago, IL commercial zone to points in CO and Reno, NV; and (2) from the facilities of E. J. Brach & Sons at or near Reno, NV, to points in AZ, CA, CO, ID, MT, NM, OR, UT, and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Joseph C. Kelly, E. J. Brach & Sons, 4656 West Kinzie St., Chicago, IL 60644. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

Mc 142508 (Sub-67TA), filed March 20, 1979. Applicant: NATIONAL TRANSPORTATION, INC., 10810 So. 144th St., P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. *General commodities (except those of unusual value, classes A & B explosives, household goods as defined by the Commission, commoditires in bulk, and those requiring special equipment)*, from points in MA and VT to points in CO, IL, IN, IA, MI, MN, MO, NE, OH, OK, TX, and WI, restricted to the transportation of traffic originating at the facilities of New England Shipping Association Co-operative or at the facilities of its members originating at the named origins and destined to the indicated destinations, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): John Seidensticker, New England Shipping Association Co-operative, 1029 Pearl St., Brockton, MA 02403. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

Mc 139928 (Sub-2TA), filed March 8, 1979. Applicant: AMERICAN COACH LINES, INC., 2611 W. Grand Ave., Wisconsin Rapids, WI 54494. Representative: Andrew R. Clark, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Passengers and their baggage in charter service*, between Green Bay, Wausau, Eau Claire, LaCrosse, Oshkosh and Fond du Lac, WI on the one hand, and Alaska, on the other, for 180 days. Supporting shipper(s): Holiday Travel, Inc., 2842 London Square Mall, Eau Claire, WI 54701. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 18088 (Sub-60TA), filed March 14, 1979. Applicant: Floyd & Beasley Transfer Co., Inc., Post Office Drawer 8, Sycamore, AL 35149. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Avenue, N.W., Washington, DC 20036. 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 Pell City and Hamilton, Alabama: From Pell City over U.S. Highway 78 to Hamilton, Alabama, and return over the same route, serving the off-route points of Birmingham, Alabama, the facilities of Winfield Cotton Mills at or near Winfield, Alabama, and the facilities of Fayette Cotton Mills at or near Fayette, Alabama; between Pell City, Alabama, and junction Alternate U.S. Highway 72 and U.S. Highway 72 at or near Tuscumbia, Alabama: From Pell City over U.S. Highway 231 to junction Alabama Highway 67, thence over Alabama Highway 67 to junction Alternate U.S. Highway 72, and thence over Alternate U.S. Highway 72 to junction U.S. Highway 72 at or near Tuscumbia, Alabama, and return over the same route, serving points in Coosa and Clay Counties, Alabama, as off-route points; between Pell City and Centreville, Alabama: From Pell City over U.S. Highway 231 to harpersville, Alabama, and thence over Alabama Highway 25 to Centreville, Alabama, and return over the same route, serving Vincent, Alabama, as an intermediate point for purpose of joinder only, and the plant site and warehouse facilities of Aliceville Cotton Mills at or near Aliceville, Alabama, as off-route points; between Pell City and Cuba, Alabama: From Pell City over U.S. Highway 231 to Rockford, Alabama, thence over Alabama Highway 22 to Selma, Alabama, and thence over U.S. Highway 80 to Cuba, Alabama, and return over the same route, serving all intermediate points in Alabama. An underlying ETA seeks 90 days authority. Applicant intends to tack the sought authority with existing authority at points in East Central Alabama to provide service between points in Alabama, Georgia, South Carolina and Tennessee. Supporting Shippers: There are 25 shippers. Their statements may be examined at the office listed below. Send protests to: Clifford W. White, District Supervisor, 2121 Building, Suite 1616, 2121 Eighth Avenue, North, Birmingham, Alabama, 35203.

MC 127049 (Sub-17TA), filed October 23, 1978, published in the **Federal Register** December 11, 1978 and republished this issue. Applicant: KRUEPKE TRUCKING, INC., 2881 Highway 45, Jackson, WI 52037. Representative: Richard C. Alexander, 710 N. Plankinton Ave., Milwaukee, WI 53203. By order dated April 12, 1979. The Motor Carrier Board granted applicant 180 day temporary authority to operate as a *contract carrier*, by motot vehicle, over irregular routes, transporting: (1) *Fans, heaters, heat recyclers, vacuum cleaners, household compactors, door chimes, range hoods and range splash plates, roof cappings, and parts and accessores* for the foregoing commodities, (a) From Hartford, WI to Clearwater and Tampa, FL, Atlanta, GA, Wilkesboro, NC, Chattanooga and Nashville, TN, Dallas, TX. (b) Between Hartford, WI, and Old forge, PA and (2) *Parts* used in the manufacture of the commodities in (1) except in bulk, in tank trailers, (a) From Jacksonville and Jonesboro, AR, Gainesville, GA, Chicago, IL, Ft. Wayne, IN, Detroit and Owosso, MI, and Columbus and West Lafayette, OH to Hartford, WI and (b) Between Old Forge, PA and Hartford, WI. Under a continuing contract or contracts with Broan Manufacturing Co., Inc., of Hartford, WI. Supporting shipper: Broan Manufacturing Co., Inc., 926 W. State Street, Hartford, WI. Any interested party may file a petition for reconsideration within 20 days of the date of this publication. Within 20 days after the filing of such petition with the Commission, any interested person may file and serve a reply thereto. Purpose of this republication is to reflect the broader scope of authority granted by the Motor Carrier Board.

MC 145548 (Sub-2TA), filed January 8, 1979, and published in the **Federal Register** issue of February 15, 1979, and republished as corrected this issue. Applicant: COMMUNITY TRANSIT LINES, INC., 315 Howe Avenue, Passaic, NJ 07055. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. On April 9, 1979, the Motor Carrier Board granted authority to applicant to operate as a common carrier, over regular routes, transporting passengers and their baggage between the Livingston Mall at

or near the intersection of NJ Highway 510, also known as South Orange Avenue, and Walnut St., Livingston, N.J, and New York, NY, serving no intermediate points. Applicant was authorized to tack with its existing authority. The notice published on February 15, 1979, failed to show that applicant intended to tack with its existing authority. Send petitions of reconsideration to: The Secretary, Interstate Commerce Commission, Washington, DC 20423.

By the Commission.

H. G. Homme, Jr.,
Secretary.

(Notice No. 67)

[FR Doc.79-13179 Filed 4-26-79; 8:45 am]

BILLING CODE 7035-01-M

Permanent Authority Decision-Notice

Decided: April 12, 1979.

The following applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.** Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

On cases filed on or after March 1, 1979, petitions for intervention either with or without leave are appropriate.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If applicant has introduced rates as an issue it is noted. Upon request an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We Find: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient protests, filed by May 29, 1979 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 2, Members Boyle, Eaton, and Liberman.

H. G. Homme, Jr.,
Secretary.

MC 808 (Sub-58F), filed February 26, 1979. Applicant: ANCHOR MOTOR FREIGHT, INC., 3700 Park East Dr., Cleveland, OH 44122. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *motor vehicles,* in initial movements, in truckaway service, from Willow Run and Lansing, MI, to points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, WV, and DC, under continuing contract(s) with General Motors Corporation, of Detroit, MI. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 2368 (Sub-91F), filed February 27, 1979. Applicant: BRALLEY-WILLETT TANK LINES, INC., 2212 Deepwater Terminal Rd., P.O. Box 495, Richmond, VA 23204. Representative: Steven L. Weiman, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals,* in bulk, between Roanoke, VA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 13569 (Sub-44F), filed February 23, 1979. Applicant: THE LAKE SHORE MOTOR FREIGHT COMPANY, a corporation, 1200 South State Street, Girard, OH 44420. Representative: John P. Tynan, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. To operate as a *common carrier,* by motor vehicle, in

interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from the facilities of Republic Steel Corporation, at Canton, Cleveland, Massillon, Niles, Warren, and Youngstown, OH, to points in IN and MI. (Hearing site: Cleveland or Columbus, OH.)

MC 13569 (Sub-49F), filed February 22, 1979. Applicant: THE LAKE SHORE MOTOR FREIGHT COMPANY, a corporation, 1200 S. State St., Girard, OH 44420. Representative: John P. Tynan, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from the facilities of Wheeling-Pittsburgh Steel Corporation, at Allenport, PA, to points in the Lower Peninsula of MI. (Hearing site: Columbus, OH, or Pittsburgh, PA.)

MC 25869 (Sub-147F), filed February 23, 1979. Applicant: NOLTE BROS. TRUCK LINES, INC., 6217 Gilmore Avenue, Omaha, NE 68107. Representative: Irwin Schwartz, P.O. Box 7184, South Omaha Sta., Omaha, NE 68107. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *adhesives, caulking, cleaning, polishing, and cement compounds, emulsions, latex solutions, mastics, sealing primer, and solvents*, (except commodities in bulk, in tank vehicles) from the facilities of Durabond Products Co., at Chicago, IL, to points in IA, NE, CO, and WY. (Hearing site: Chicago, IL.)

MC 25869 (Sub-148F), filed February 22, 1979. Applicant: NOLTE BROS. TRUCK LINES, INC., 6217 Gilmore Ave., Omaha, NE 68107. Representative: Irwin Schwartz, P.O. Box 7184, South Omaha Sta., Omaha, NE 68107. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from the facilities of Northwestern Steel & Wire Co., at or near Sterling and Rock Falls, IL, to points in CO, IA, NE, and SD. (Hearing site: Omaha, NE.)

MC 31389 (Sub-273F), filed February 26, 1979. Applicant: McLEAN TRUCKING CO., a corporation, 1920 West First Street, Winston-Salem, NC 27104. Representative: David F. Eshelman, P.O. Box 213, Winston-Salem, NC 27102. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving points in St. Louis and St. Charles Counties, MO, as off-route points in connection with applicant's otherwise authorized regular-route operations. (Hearing site: Washington, DC, or St. Louis, MO.)

MC 52709 (Sub-357F), filed February 23, 1979. Applicant: RINGSBY TRUCK LINES, INC., 3980 Quebec Street, Denver, CO 80207. Representative: Rick Barker, (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from the facilities of Champion Spark Plug Company, at Burlington, IA, to points in CA, NV, OR, and WA. (Hearing site: Denver, CO.)

MC 56409 (Sub-14F), filed February 21, 1979. Applicant: MAJOR TRANSPORT, INC., Box 204, Highway 135 and Airport Road, Palmyra, WI 53156. Representative: David V. Purcell, 111 East Wisconsin Avenue, Milwaukee, WI 53202. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *building materials, and materials and supplies* used in the installation of building materials, (except commodities in bulk), from the facilities of Bird & Son, Inc., at Chicago, IL, to points in AR, KS, KY, IN, IA, MI, MN, MO, NE, ND, OH, OK, SD, TN, and WI. (Hearing site: Chicago, IL, or Milwaukee, WI.)

MC 56679 (Sub-114f), filed February 12, 1979. Applicant: BROWN TRANSPORT CORP., 352 University Ave., SW., Atlanta, GA 30315. Representative: Leonard S. Cassell (same address as applicant). To operate as a *common carier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chain saws, snow-throwers, and garden, lawn, turf, and golf course care equipment*, from the facilities of the Toro Company, at or near (a) Windom, MN, and (b) Tomah, WI, to points in AL, AR, FL, GA, KY, LA, MS, NC, SC, and TN, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Minneapolis, MN, or Chicago, IL.)

MC 78228 (Sub-107F), filed February 15, 1979. Applicant: J MILLER EXPRESS, INC., 962 Greentree Rd., Pittsburgh, PA 15220. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, in interestate or foreign commerce, over irregular routes, transporating *sand*, in bulk, from points in LaSalle County, IL, and Berrien County, MI, to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MS, MO, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, and WI. (Hearing site: Pittsburgh, PA, or Washington, DC).

MC 78228 (Sub-108F), filed February 23, 1979. Applicant: J MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporating *iron and steel articles*, between the facilities of Southwestern Ohio Steel, Inc., at Hamilton and Middletown OH, on the one hand, and, on the other, points in IL and IN. (Hearing site: Washington, DC, or Pittsburgh, PA.)

MC 78228 (Sub-109F), filed February 26, 1979. Applicant: J MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, tranportating *iron and steel articles*, between the facilities of Tygart Industries at or near (a) Pittsburgh, PA, and (b) Chicago, IL, on the one hand, and, on the other, points in DE, IL, IN, IA, KY, MD, MI, MN, NJ, NY, OH, PA, VA, WV, AND WI. (Hearing site: Washington, DC, or Pittsburgh, PA.)

MC 78228 (Sub-110F), filed February 28, 1979. Applicant: J MILLER EXPRESS, INC., 962 Greentree Rd., Pittsburgh, PA 15220. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *bauxite ore*, from Baltimore, MD, to Curwensville, PA. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 85718 (Sub-11F), filed February 22, 1979. Applicant: SEWARD MOTOR FREIGHT, INC., 1041 Elm St., P.O. Box 126, Seward, NE 68434. Representative: Michael J. Ogborn, P.O. Box 82082, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *sugar* in bags, from Idaho Falls, ID, and Garland, UT, to points in IA, KS, MO, and NE. (Hearing site: Salt Lake City, UT.)

MC 107839 (Sub-181F), filed February 6, 1979 Applicant: DENVER-ALBUQUERQUE MOTOR TRANSPORT, INC., 2121 East 67th Avenue, P.O. Box 16106, Denver, CO 80216. Representative: Edward L. Gordon (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except in bulk, in tank vehicles), from the facilities of Skyland Food Corporation, at or near Delta, CO, to those points in the United States in and west of MN, IA, MO, AR, and LA. (except AK and HI). (Hearing site: Denver, CO.)

MC 108119 (Sub-127F), filed February 22, 1979. Applicant: E. L. MURPHY TRUCKING COMPANY, a corporation, P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Bldg., Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *insulation products*, (2) *vermiculite*, in bags, (3) *materials, equipment, and supplies used in the manufacture, distribution, and installation of insulation*, and (4) *such commodities as are dealt in or used by manufacturers or distributors of cellulose materials and products*, (except commodities in bulk), between points in the United States (except AK and HI). (Hearing site: Minneapolis or St. Paul, MN.)

MC 112989 (Sub-86F), filed February 21, 1979. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *gypsum products*, from points in Clark County, NV, to points in CA, OR, UT, and WA. (Hearing site: Los Angeles, CA.)

MC 113908 (Sub-469F), filed February 26, 1979. Applicant: ERICKSON TRANSPORT CORP., 2105 E. Dale St., P.O. Box 10068, G.S., Springfield, MO 65804. Representative: B. B. Whitehead (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *soybean oil*, in bulk, from Fredonia, KS, to Memphis, TN, and Catoosa and Tulsa, OK; and (2)(a) *animal fats, animal oils, and vegetable oils*, in bulk, and (b) *products and blends of the commodities named in (2)(a)*, in bulk, from the facilities of Humko Products, Kraft, Inc., at Champaign, IL, to points in ID and UT. (Hearing site: Kansas City, MO, or Washington, DC.)

MC 113908 (Sub-470F), filed February 26, 1979. Applicant: ERICKSON TRANSPORT CORP., 2105 East Dale Street, Springfield, MO 65804. Representative: B. B. Whitehead (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *citrus distillers solubles*, in bulk, from Lake Alfred, FL, to Macon, GA, (2) *alcohol and alcoholic beverages*, in bulk, in tank vehicles, from Paducah, KY, to points in IA, MI, CT, IL (except Chicago), MD, CA, and KS, and (3) *alcoholic liquors and alcohol*, in bulk, from points in PA, to Bardstown, KY. (Hearing site: Kansas City, MO, or Washington, DC.)

MC 113908 (Sub-471F), filed February 27, 1979. Applicant: ERICKSON TRANSPORT CORP., 2105 E. Dale St., P.O Box 10068, G.S., Springfield, MO 65804. Representative: B. B. Whitehead. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals*, in bulk, (1) from Los Angeles, CA, to points in PA, and (2) from Eightyfour, PA, to Bayport, TX. (Hearing site: Kansas City, MO, or Washington, DC.)

MC 115669 (Sub-179), filed February 21, 1979. Applicant: DAHLSTEN TRUCK LINE, INC., 101 W. Edgar St., P.O. Box 95 Clay Center, NE 68933. Representative: Howard N. Dahlsten (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper bags and packaging materials*, from points in the United States (except AK and HI), to the facilities or American Colloid Company, in WY, MT, Butte County, SD, and Bowman County, ND. (Hearing site: Chicago, IL.)

MC 116519 (Sub-60F), filed February 23, 1979. Applicant: FREDERICK TRANSPORT LIMITED, a corporation, R.R. 6, Chatham, Ontario, Canada N7M 5J6. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., NW., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting *such commodities as are dealt in or used by dealers of agricultural equipment, industrial equipment, or lawn and leisure products*, (except commodities in bulk), between the facilities of Deere & Company, in IL, WI, and IA, on the one hand, and, on the other, ports of entry on the international boundary line between the United States and Canada in MI, NY, VT, NH, and ME. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 116519 (Sub-61F), filed February 16, 1979. Applicant: FREDERICK TRANSPORT LIMITED, a corporation, R.R. 6, Chatham, Ontario, Canada N7M 5J6. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., NW., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting (1) *building materials and cement asbestos pipe*, from the facilities of Johns-Manville Sales Corporation, at or near Waukegan, IL, to ports of entry on the international boundary line between the United States and Canada in MI and NY, (2) *plastic pipe*, from the facilities of Johns-Manville Sales Corporation, at or near Wilton, IA, to ports of entry on the international boundary line between the United States and Canada in MI and NY, (3) *insulating board and mineral wool*, from the facilities of Johns-Manville Sales Corporation, at or near Alexandria, IN, to ports of entry on the international boundary line between the United States and Canada in MI and NY, (4) *insulating board*, from the facilities of Johns-Manville Perlite Corporation, at or near Rockdale, IL, to ports of entry on the international boundary line between the United States and Canada in MI and NY, and (5)(a) *building materials and cement asbestos pipe*, (b) *materials and supplies* used in the manufacture or distribution of the commodities named in (5)(a) above and (c) *insulating materials*, from ports of entry on the international boundary line between the United States and Canada in MI and NY, to points in the United States (except AK, AZ, CA, CO, ID, MT, NV, NM, HI, OR, UT, WA, and WY). (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 117169 (Sub-5F), filed February 26, 1979. Applicant: BEASLEY TRUCKING, INC., P.O. Box 8255, Denver, CO 80201. Representative: Richard S. Mandelson, 1600 Lincoln Center Building, 1660 Lincoln Street, Denver, CO 80264. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *materials, equipment, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products; (2) *materials, equipment, and supplies* used in, or in connection with

the construction, operation, repair, servicing, maintenance, and dismantling of pipe lines, including the stringing and picking up of pipe; (3) *earth drilling machinery, equipment and supplies* (except commodities in bulk), and (4) *materials, equipment, and supplies* used in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells, between points in AZ, CO, ID, MT, NE, ND, NM, NV, OR, SD, UT, WA, and WY. (Hearing site: Denver, Co.)

MC 118468 (Sub-52F), filed February 21, 1979. Applicant: UMTHUN TRUCKING CO., a corporation, 910 S. Jackson St., Eagle Grove, IA 50533. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *adhesives, building materials, gypsum, and gypsum products*, (except commodities in bulk), and (2) *materials and supplies* used in the manufacture, distribution, or installation of the commodities named in (1) above, (except in commodities in bulk), between the facilities of United States Gypsum Company, at or near Shoals, IN, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX, under continuing contract(s) with United States Gypsum Company, of Chicago, IL. (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 118838 (Sub-41F), filed February 26, 1979. Applicant: GABOR TRUCKING, INC., R.R. 4, Box 124B, Detroit Lakes, MN 56501. Representative: Robert S. Lee, 1000 First National Bank, Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1)(a) *prefabricated agricultural processing facilities*, and (b) *parts and accessories for the commodities named in (1)(a)*, from Wahpeton, ND, and Watertown, WI, to points in ID, IL, IN, IA, KS, MN, MO, MT, NE, ND, OH, OR, SD, WA, and WI; and (2) *materials, equipment, and supplies* used in the manufacture or distribution of the commodities named in (1) above, in the reverse direction. (Hearing site: Minneapolis, MN.)

MC 118838 (Sub-42F), filed February 26, 1979. Applicant: GABOR TRUCKING, INC., R.R. 4, Box 124B, Detroit Lakes, MN 56501. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. To operate as a *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting *building materials* (except lumber, lumber products, iron and steel articles, and commodities in bulk), from ports of entry on the international boundary line between the United States and Canada in WA, ID, MT, and ND, to points in CA, CO, ID, IA, MN, MT, NE, ND, NV, OR, SD, UT, WA, WI, and WY. (Hearing site: Portland, OR, or Washington, DC.)

MC 118838 (Sub-43F), filed February 27, 1979. Applicant: GABOR TRUCKING, INC., R.R. 4, Box 124B, Detroit Lakes, MN 56501. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *grain storage bins*, knocked down, from Mansfield, OH, to points in ND, SD, MN, MT, IA, and WI, restricted to the transportation of traffic originating at the facilities of Martin Steel, at Mansfield, OH; and (2) *wrought steel pipe*, from Minneapolis, MN, to points in ND, SD, MT, and WI, restricted to the transportation of traffic originating at the facilities of Lindsay Bros. Company, at Minneapolis, MN. (Hearing site: St. Paul, MN.)

MC 119988 (Sub-189F), filed February 26, 1979. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Clayte Binion, 1108 Continental Life Bldg., Fort Worth, TX 76102. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodites as are dealt in or used automobile supply, household appliance, and general merchandise stores*, between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Western Auto Supply Co. (Hearing site: Kansas City, MO, or Dallas, TX.)

MC 123048 (Sub-426F), filed February 26, 1979. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st St., Racine, WI 53406. Representative: John L. Bruemmer, 121 W. Doty St., Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting (1) *tractors, agricultural equipment and implements, and snowblowers*, and (2) *parts and accessories for the commodites named in* (1) between ports of entry on the international boundary line between the United States and Canada at (a) Detroit and Port Huron, MI, and (b) Buffalo and Niagara Falls, NY, on the one hand, and, on the other, points in AZ, CA, CO, ID, KS, MT, NV, NM, OR, UT, WA, and WY. (Hearing site: Detroit, MI, or Washington, DC.)

MC 123048 (Sub-427F), filed February 21, 1979. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st St., Racine, WI 53406. Representative: John L. Bruemmer, 121 W. Doty St., Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *materials and supplies used in the manufacture or distribution of cast iron and cast iron products*, (except commodities in bulk), between Lynchburg, VA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Chicago, IL, or Washington, DC.)

MC 123048 (Sub-429F), filed February 23, 1979. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st St., Racine, WI 53406. Representative: John L. Bruemmer, 121 W. Doty St., Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *heat exchangers and heat equalizers*, (2) *heating, cooling, conditioning, humidifying, dehumidifying, and gas and liquid moving equipment*, and (3) *materials, equipment, and supplies* used in the manufacture or distribution of the commodities named in (1) and (2), above, (except commodities in bulk), form the facilities of The Trane Company, in Fayette County, KY, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Cincinnati, OH, or Louisville, KY.)

MC 123389 (Sub-50F), filed February 23, 1979. Applicant: CROUSE CARTAGE COMPANY, a corporation, P.O. Box 151, Carroll, IA 51401. Representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts*, and *articles distributed by meat-packing houses*, 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 used by Farmland Foods, Inc., at or near (a) Crete, Lincoln, and Omaha, NE, and (b) Carroll, Denison, Des Moines, Fort Dodge, Sioux City, and Iowa Falls, IA, to points in AZ, CA, ID, MT, NM, NV, OR, UT, WA, and WY, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Omaha, NE.)

MC 124328 (Sub-128F), filed February 16, 1979. Applicant: BRINK'S INCORPORATED, Thorndal Circle, P.O. Box 125, Darien, CT 06820. Representative: Richard H. Streeter, 1729 H St., NW., Washington, DC 20006. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *accounting and audit media, commercial papers, documents, written instruments, and business records*, between points in WV, on the one hand, and, on the other, points in OH, under continuing contract(s) with banks, financial institutions, and accounting firms. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 133119 (Sub-156F), filed February 26, 1979. Applicant: HEYL TRUCK LINES, INC., P.O. Box 206, 200 Norka Drive, Akron, IA 51001. Representative: A. J. Swanson, 521 South 14th Street, Suite 500, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, 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 Iowa Beef Processors, Inc., at or near Dakota City, NE, to points in ND and SD, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Kansas City, MO, or Omaha, NE.)

MC 133219 (Sub-27F), filed February 26, 1979. Applicant: NEBRASKA BULK TRANSPORTS, INC., P.O. Box 215, Bennet, NE 68317. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *vegetable oils*, in bulk, in tank vehicles, from Mankato, MN, to points in IA, KS, MO, NE, and OK. (Hearing site: Minneapolis, MN.)

MC 134689 (Sub-3F), filed February 26, 1979. Applicant: LA ROSA DEL MONTE EXPRESS, INC., 1133–1135 Tiffany Street, Bronx, NY 10459. Representative: Larsh B., Mewhinney, 555 Madison Avenue, New York, NY 10022. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *used household goods*, between points in Dade, Broward, and Palm Beach Counties, FL, restricted to the transportation of traffic having a prior or subsequent movement by water or rail. (Hearing site: New York, NY.)

MC 136318 (Sub-60F), filed February 22, 1979. Applicant: COYOTE TRUCK LINE, INC., P.O. Box 756, Thomasville, NC 27360. Representative: James P. Beck, 717 17th St., Suite 2600, Denver, CO 80202. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes transporting *new furniture*, from points in NC and VA, to the facilities of John Breuner Company, in AZ, CA, and NV, under continuing contract(s) with John Breuner Company, of San Ramon, CA. (Hearing site: San Francisco, CA.)

Note.—Dual operations may be involved.

MC 138328 (Sub-82F), filed February 23, 1979. Applicant: CLARENCE L. WERNER, d. b. a. WERNER ENTERPRISES, P.O. Box 37308, Omaha, NE 68137. Representative: James F. Crosby, P.O. Box 37205, Omaha, NE 68137. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes transporting *appliances*, from the facilities of Franklin Manufacturing Co., at or near St. Cloud, MN, and the facilities of Gibson Products Corporation, at or near Greenville, MI, to points in IA and NE. (Hearing site: Omaha, NE, or Chicago, IL.)

Note.—Dual operations may be involved.

MC 138328 (Sub-83F), filed February 26, 1979. Applicant: CLARENCE L. WERNER, d. b. a. WERNER ENTERPRISES, P.O. Box 37308, Omaha, NE 68137. Representative: James F. Crosby, P.O. Box 37205, Omaha, NE 68137. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes transporting *iron and steel articles*, from the facilities of United States Steel Corporation, at or near (a) Gary, IN, and (b) Joliet, South Chicago, and Waukegan, IL, to points in IA, NE, KS, and CO, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 138469 (Sub-116F), filed February 26, 1979. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Jack H. Blanshan, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, 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 Wilson Foods Corporation, at Des Moines, IA, to points in AL, GA, NC, and SC, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Washington, DC.)

MC 140379 (Sub-5F), filed February 23, 1979. Applicant: TRANSPORT SERVICE, INC., 216 Amaral Street, East Providence, RI 02914. Representative: Jeffrey A. Vogelman, Suite 400, Overlook Bldg., 6121 Lincolnia Road, Alexandia, VA 22312. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes transporting (1) *culverts, guard rails, retaining walls, sound barrier systems, highway signs, highway safety products, rolling mill shapes, and feedlot mats*, and (2) *accessories* for the commodities named in (1) above, from the facilities of Syro Steel Company, at Girard, OH, to points in CT, ME, MA, NH, RI, and VT, under continuing contract(s) with Syro Steel Company, of Girard, OH. (Hearing site: Washington, DC.)

MC 141759 (Sub-9F), filed February 26, 1979. Applicant: OHIO PACIFIC EXPRESS, INC., 2385 S. High St., Columbus, OH 43207. Representative: Thomas F. Kilroy, Suite 406, Executive Bldg., 6901 Old Keene Mill Rd., Springfield, VA 22150. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities as are dealt in by manufacturers of glass and glass products* (except commodities in bulk), from Columbus, OH, to points, in AL, AK, AZ, CA, CO, GA, ID, LA, MS, MT, NV, NM, OK, OR, TX, UT, WA, and WY, under continuing contracts with Federal Glass, Division of Federal Paperboard Company. (Hearing site: Columbus, OH.)

MC 143318 (Sub-2F), filed February 14, 1979. Applicant: JENKINS TRUCK LINE, INC., P.O. Box 246, Motley, MN 56466. Representative: Michael T. Hoekstra,

301 Midwest Federal Building, St. Paul, MN 55101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *sugar beet pulp pellets*, between points in ND, SD, NE, MN, IA, MO, WI, and IL. (Hearing site: Minneapolis, MN.)

MC 143698 (Sub-1F), filed January 29, 1979, previously noticed in the FR issue of March 27, 1979. Applicant: CAST NORTH AMERICA, LTD., 4150 Ste-Catharine Street West, Montreal, Quebec, Canada H3Z 2R8. Representative: Richard H. Streeter, 1729 H Street, NW, Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting *general commodities*, (except those of unusual value, classes A and B explosives, commodities in bulk, and those requiring special equipment), in intermodal containers, between Chicago, IL, on the one hand, and, on the other, points in IL, IN, IA, KY, MO, and WI, restricted to the transportation of traffic having a prior or subsequent movement by water. NOTE: This republication changes the type of authority to *common*, deletes "in trailers," and more specifically describes the "containers" involved. (Hearing site: Chicago, IL, or Washington, DC).

MC 144449 (Sub-3F), filed February 26, 1979. Applicant: A & A MOVING & STORAGE CO., a Corporation, d.b.a., A & A CONTRACT CARRIERS, 414 Blue Smoke Court West, Fort Worth, TX 76101. Representative: Stephen B. Jurbala, 3606 High Bluff, Dallas, TX 75234. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *retail and office store supplies, and office equipment*, and (2) *materials, equipment, and supplies used in the manufacture or distribution of the commodities named in (1)*, above (except commodities in bulk), between Newton, Danbury, and Stamford, CT, and points in NY, GA, SC, NC, and TX, under continuing contract(s) with Pitney Bowes, of Stamford, CT. (Hearing site: Fort Worth or Dallas, TX.)

MC 144578 (Sub-1F), filed February 23, 1979. Applicant: LIME INC., 3969 Wyoming Avenue, Dearborn, MI 48126. Representative: Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lime products*, in bulk from Carey, Huron, and Maple Grove (Seneca County), OH, to points in MI, IN, IL, PA, and WV. (Hearing site: Detroit, MI, or Washington, DC.)

MC 146448F, filed February 6, 1979. Applicant: C & L TRUCKING, INC., P.O. Box 409, Judsonia, AR 72081. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Boulevard, McLean, VA 22101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals, alloys, salt, and materials, equipment and supplies* used in the manufacture of chemicals (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from Newton, Westwood, Salem, and Marlboro, MA, to Irvine and Berkeley, CA, and Dallas, TX. (Hearing site: Boston, MA)

MC 146468F, filed February 8, 1979. Applicant: NANKIN AUTO PARTS TRANSPORT, INC., 510 S. Newburgh Rd., Westland, MI 48185. Representative: Armando Provenzano (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *wrecked or damaged motor vehicles*, and (2) *parts and assemblies of wrecked or damaged motor vehicles*, between points in the United States (except AK and HI). (Hearing site: Washington, DC, or Chicago, IL

MC 146478F, filed February 27, 1979. Applicant: ULTIMATE DISTRIBUTION, INC., 333 Cantor Ave., Linden , NJ 07036. Representative: George A. Olsen, P.O. Box 357 Gladstone, NJ 07934. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by grocery and department stores, and food business houses (except commodities in bulk), between the facilities of Ultimate Distribution, Inc., at Linden, NJ, on the one hand, and, on the other, points in CT, DE, MD, MA, NJ, PA, RI, VA, NY (except Nassau, Suffolk, and Westchester Counties, and New York, NY, and DC. Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under the provisions of 49 U.S.C. 11343(a), or submit an affidavit indicating why such approval is unnecessary. (Hearing site: New York, NY, or Washington, DC)

Note.—Dual operations may be involved.

[Permanent Authority Decisions Volume No. 37]
[FR Doc. 79-13180 Filed 4-26-79; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Transfer Proceedings

Dated: April 23, 1979.

Applications filed for temporary authority under Section 11349 in connection with transfer application under Section 10926 and Transfer Rules, 49 CFR Part 1132.

MC-FC 78091. By application filed March 21, 1979, SHAMROCK TOWING, INC., 2216 North 27th Avenue, Phoenix, AZ 85009, seeks temporary authority to transfer the operating rights of ASSOCIATED TOWING, INC., 5715 West Maryland, Glendale, AZ 85301, under section 210a(b). The transfer to SHAMROCK TOWING, INC., of the operating rights of ASSOCIATED TOWING, INC., is presently pending.

MC-FC 78092. By application filed March 29, 1979, BOBBY W. RAGAN, AN INDIVIDUAL, d/b/a TEKAMAH TRANSFER, 1414 J Street, Tekamah, NE 68061, seeks temporary authority to transfer the operating rights of DONALD K. CONKLIN, aka D. K. CONKLIN, AN INDIVIDUAL, d/b/a TEKAMAH TRANSFER, 1521 O Street, Tekamah, NE 68061, under section 210a(b). The transfer to BOBBY W. RAGAN, AN INDIVIDUAL, d/b/a TEKAMAH TRANSFER, of the operating rights of DONALD K. CONKLIN, aka D. K. CONKLIN, AN INDIVIDUAL, d/b/a TEKAMAH TRANSFER, is presently pending.

MC-FC 78094. By application filed April 11, 1979, DANCO INTERSTATE CARRIERS, INC., P.O. Box 297, Huntington Station, NY 11725, seeks temporary authority to transfer the operating rights of CHEYENNE TRUCK LEASING INC., 6500 Jericho Turnpike, Commack, NY 11725, under section 210a(b). The transfer to DANCO INTERSTATE CARRIERS, INC., of the operating rights of CHEYENNE TRUCK LEASING INC., is presently pending.

MC-FC 78098. By application filed April 12, 1979, DUANE McFARLAND, AN INDIVIDUAL, Oakland, MN 56076, seeks temporary authority to transfer the operating rights of GEORGE McFARLAND, SR., AN INDIVIDUAL, d/b/a GEORGE McFARLAND, SR., under section 210a(b). The transfer to DUANE McFARLAND, of the operating rights of GEORGE McFARLAND, SR., AN INDIVIDUAL, d/b/a GEORGE McFARLAND, SR., is presently pending.

By the Commission.

H. G. Homme, Jr.
Secretary

[Notice No. 72]
[FR Doc. 79-13226 Filed 4-26-79; 8:45 am]
BILLING CODE 7035-01-M

Assignment of Hearings

April 24, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains

prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC–C–10143, O.N.C. Freight Systems, Inc. versus Herbert D. Needel, D.B.A. Tucson Package Delivery, now assigned for continued hearing on April 25, 1979, at Tucson, AR, is canceled and application dismissed.

MC–C–8879, Bowman Transportation, Inc., et al. versus Central Motor Express, Inc., now assigned for hearing on May 14, 1979 (1 week), at Louisville, KY, is postponed to June 19, 1979 (4 days), at Louisville, KY, hearing room will be by subsequent notice.

MC–C–8877, Consolidated Freightways Corporation Of Deleware—Investigation Of And Revocation Of Certificates, now assigned for hearing on May 21, 1979 at Atlanta, GA will be held at Sheraton Biltmore Hotel, 817 West Peachtree Street instead of Riviera Hyatt House, 1630 Peachtree St., N.W.

MC 143743 (Sub-1), Fulton Trucking Company, Inc., now assigned for hearing on May 7, 1979 at Atlanta, GA and will be held in Room 305, 1252 West Peachtree Street, N.W.

MC 124679 (Sub-95F), C.R. England & Sons, now assigned for hearing on May 9, 1979 at Salt Lake City, UT and will be held in Room 479, U.S. Post Office and Courthouse, 350 South Main Street.

MC 143059 (Sub-24F), Mercer Transportation Company, now assigned for hearing on May 14, 1979 at Portland, OR and will be held in Room 103, Pioneer Courthouse, 555 S.W. Yamhill Street.

MC 119988 (Sub-159F), Great Western Trucking Company, Inc., now assigned for hearing on May 14, 1979 at Portland, OR and will be held in Room 103, Pioneer Courthouse, 555 S.W. Yamhill Street.

MC 128527 (Sub-122F), May Trucking Company, now assigned for hearing on May 8, 1979 at Salt Lake City, UT is canceled and transferred to Modified Procedure.

H. G. Homme, Jr.,
Secretary.

[Notice No. 77]
[FR Doc. 79-13227 Filed 4-26-79; 8:45 am]
BILLING CODE 7035-01-M

Rerouting Traffic; Amendment No. 3 to ICC Order No. 15 Under Service Order No. 1344

Service date: April 24, 1979.

To all railroads:

Upon further consideraton of I.C.C. Order No. 15 (Chicago, Milwaukee, St. Paul and Pacific Railroad Company), and good cause appearing therefor:

It is ordered, ICC Order No. 15 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., May 15, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., April 15, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the **Federal Register.**

Issued at Washington, D.C., April 11, 1979.

Interstate Commerce Commission.

Robert S. Turkington,
Agent.

[FR Doc. 79-13237 Filed 4-26-79; 8:45 am]
BILLING CODE 7035-01-M

Rerouting Traffic; Amendment No. 3 to ICC Order No. 13 Under Service Order No. 1344

Service date: April 24, 1979.

To all railroads:

Upon further consideration of I.C.C. Order No. 13 and good cause appearing therefor:

It is ordered, ICC Order No. 13 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., May 5, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., April 15, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C. April 11, 1979.

Interstate Commerce Commission.

Robert S. Turkington,
Agent.

[FR Doc. 79-13238 Filed 4-26-79; 8:45 am]
BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 83
Friday, April 27, 1979

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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1

CIVIL AERONAUTICS BOARD.

Notice of change of time and item of the April 26, 1979, board meeting, (M–214 Amdt. 1; Apr. 24, 1979.)

TIME AND DATE: 9 a.m., April 26, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 1a. Docket 33136: North Central-Southern merger case (instructions to staff, OGC—was item 42).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, 202–673–5068.

SUPPLEMENTARY INFORMATION: Item 42 will be item 1a on the April 26, 1979, meeting agenda.

[S–812–79 Filed 4–25–79; 9:15 pm]

BILLING CODE 6320–01–M

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., May 1, 1979.

PLACE: 2033 K Street NW., Washington, D.C., Fifth Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Petition of Futures Industry Association, Inc., for rulemaking amendment to Rule 1.55.

Rule 1.31(a)—Inspection of books and records.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–818–79 Filed 4–25–79; 1:36 pm]

BILLING CODE 6351–01–M

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:30 a.m., May 1, 1979.

PLACE: 2033 K Street NW., Washington D.C. Fifth Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters; registration, and administrative proceedings.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314

[S–819–79 Filed 4–25–79; 1:36 pm]

BILLING CODE 6351–01–M

4

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., Friday, May 4, 1979.

PLACE: 2033 K Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–820–79 Filed 4–25–79; 1:36 pm]

BILLING CODE 6351–01–M

5

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, May 1, 1979.

PLACE: Commission Conference Room 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open to the public:

1. Proposed revision of procedures for processing Federal sector appeals.
2. Proposed regulations establishing time limits for Federal sector appeals.
3. Proposed delegation of authority to Merit System Protection Board to decide certain cases.
4. Report on lawyers' review of "no cause" determinations.
5. Report on Commission operations by the Executive Director.

Closed to the public:

Litigation authorization: General Counsel Recommendations; Matters.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Marie D. Wilson, Executive Officer, Executive Secretariat, at 202–634–6748.

This notice issued april 24, 1979.

[S–816–79 Filed 4–25–79; 11:35 am]

BILLING CODE 6570–06–M

6

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, April 26, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

CHANGES IN THE MEETING:

The following item has been deleted:

Agenda, Item No., and Subject

Renewal—2—Application of Mission Central Co. as supplemented for renewal of license for station KONO, San Antonio, Tex., on remand from the Court of Appeals, *Bilingual Bicultural Coalition of Mass Media* v. *F.C.C.*, et al.

Additional information concerning this item may be obtained from the FCC Public Affairs Office, telephone 202–632–7260.

Issued: April 24, 1979.

[S–822–79 Filed 4–25–79; 3:43 pm]

BILLING CODE 6712–01–M

7

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, April 23, 1979, the Corporation's Board

of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), and concurred in by Mr. H. Joe Selby, acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required the addition of the following items to the agenda for consideration at the meeting, on less than seven days' notice to the public:

Petition of South Brooklyn Against Investment Discrimination and the Center for Community Change that the application of the Greater New York Savings Bank, New York, New York, for consent to establish a branch be moved from the agenda for the April 23, 1979 closed meeting to the agenda for the open meeting then in session.

Memorandum proposing the adoption of an amendment to the interagency statement of policy with respect to EDP examination, scheduling, and report distribution.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: April 23, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Acting Executive Secretary.

[S-808-79 Filed 4-25-79; 9:15 a.m.]

BILLING CODE 6714-01-M

8

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, April 23, 1979, the Corporation's Board of Directors voted, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), and concurred in by Mr. H. Joe Selby, acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), to withdraw the following item from the agenda for consideration at the meeting:

Recommendation regarding the liquidation of assets acquired by the Corporation from Franklin National Bank, New York, New York (Case No. 43,860-L).

The Board also determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: April 23, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Acting Executive Secretary.

[S-809-79 Filed 4-25-79; 9:15 am]

BILLING CODE 6714-01-M

9

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR24244, April 24, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., April 25, 1979.

CHANGE IN MEETING: The following item has been added:

Item No., Docket No., and Company

M-7. Proposed rulemaking to amend §33.14 of the Commission's regulations.

Lois Cashell,

Acting Secretary.

[S-811-79 Filed 4-25-79; 9:15 am]

BILLING CODE 6740-02-M

10

April 25, 1979.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 2 p.m., April 26, 1979.

PLACE: 825 North Capitol Street NE., Washington, D.C. 20426, Commissioners' Library.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Subpenas issued in a pending proceeding.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, telephone 202-275-4166.

[S-821-79 Filed 4-25-79; 2:27 pm]

BILLING CODE 6740-02-M

11

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 10 a.m., May 2, 1979.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Monthly Report of actions taken pursuant to authority delegated to the Managing Director.

2. A proposed revision of General Order 18 to require the filing with the Commission of certain cargo statistics.

3. Public Law 180 of the Dominican Republic—Implementation of the UNCTAD Code.

4. Notice of proposed rulemaking—Petitions for reconsideration and for stay.

5. Docket No. 77-50: North Carolina State Ports Authority, et al. v. Dart Containerline Company, Ltd.—Consideration of request for oral argument and petition to intervene and possible consideration of the record.

6. Docket No. 79-10: Rates of Far Eastern Shipping Company—Consideration of petitions to intervene.

7. Bunker surcharges filed by Matson Navigation.

Portion closed to the public:

1. Docket No. 76-11: In Re Agreement Nos. 150 DR-7 and 3103 DR-7—Discussion of the Record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, 202-523-5725.

[S-806-79 Filed 4-25-79; 9:15 am]

BILLING CODE 6730-01-M

12

FEDERAL TRADE COMMISSION.

TIME AND DATE: 2 p.m., Monday, April 30, 1979.

PLACE: Room 532, (open); Room 540 (closed) Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue N.W., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to Public: (1) Oral Argument in Francis Ford, Inc., Docket No. 9073.

Portions closed to the Public: (2) Executive Session to Discuss Oral Argument in Francis Ford, Inc., Docket 9073.

CONTACT PERSON FOR MORE INFORMATION: Ira J. Furman, Office of Public Information, 202-523-3830, Recorded message, 202-523-3806.

[S-814-79 Filed 4-25-79; 9:48 am]

BILLING CODE 6750-01-M

13

INTERSTATE COMMERCE COMMISSION.

TIME AND DATE: 2 p.m., Tuesday, May 1, 1979.

PLACE: Room 4225, Interstate Commerce Commission Building, 12th and Constitution Avenue NW., Washington, D.C. 20423.

STATUS: *Closed Special Conference.* A majority of the Commission voted to close this conference because it is likely to relate solely to the internal personnel rules and practices of the agency, within the meaning of 5 U.S.C. 552(c)(2) and 49 CFR 1012.7(d)(2). Commissioners Brown and Clapp voted not to close the meeting.

MATTER TO BE CONSIDERED: Briefing on Implementation of SES Program.

CONTACT PERSON FOR MORE INFORMATION: Douglas Baldwin, Director, Office of Communications, telephone 202–275–7252.

[S–810–79 Filed 4–25–79; 9:15 am]

BILLING CODE 7035–01–M

14

LEGAL SERVICES CORPORATION.

In the matter of the meeting of the Advisory Presidential Search Committee Meeting.

TIME AND DATE: 10 a.m., Wednesday, May 2, 1979.

PLACE: Law Offices of Cohen & Uretz, 1775 K Street NW, Washington, D.C., Fourth Floor.

STATUS: Closed Meeting (As authorized by 5 U.S.C. 552b(c)(2), the meeting will relate solely to the discussion of existing and potential candidates for appointment as President.)

MATTERS TO BE CONSIDERED: 1. Discussion of existing and potential candidates for appointment as President.

CONTACT PERSON FOR MORE INFORMATION: Dellanor Young, Office of the President, telephone 202–376–5100.

Issued: April 23, 1979.

Alice Daniel,

Acting President.

[S–813–79 Filed 4–25–79; 9:15 am]

BILLING CODE 6820–35–M

15

NATIONAL LABOR RELATIONS BOARD.

TIME AND DATE: 3 p.m., Wednesday, May 2, 1979.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, D. C. 20570.

STATUS: Closed to public observation.

MATTERS TO BE CONSIDERED: Operation of Performance Review Boards and bonus allocations for SES members—Regional Directors.

CONTACT PERSON FOR MORE INFORMATION: William A. Lubbers, Executive Secretary, Washington, D.C. 20570. telephone 202–254–9430.

Dated, Washington, D.C., April 24, 1979.

By direction of the Board:

George A. Leet,

Associate Executive Secretary, National Labor Relations Board

[S–807–79 Filed 4–25–79; 9:15 am]

BILLING CODE 7545–01–M

16

OVERSEAS PRIVATE INVESTMENT CORPORATION.

Meeting of the Board of Directors

TIME AND DATE: Meeting of the OPIC Board of Directors, Tuesday, May 1, 1979 at 9 a.m. (closed portion); 10 a.m. (open portion).

PLACE: Offices of the Corporation, Seventh Floor Board Room, 1129 20th Street NW., Washington, D.C.

STATUS: The first part of the meeting from 9 a.m. to 10 a.m. will be closed to the public. The open portion of the meeting will start at 10 a.m.

MATTERS TO BE CONSIDERED: (Closed to the public 9 a.m. to 10 a.m.)

1. Resumption of OPIC in Western Hemisphere Country.
2. Finance project in Latin American Country.
3. Insurance project in East Asia Country.
4. Insurance project in Central american Country.
5. Insurance project in south East Asia country.
6. Claims Report.
7. Information Reports.

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 10 a.m.)

1. Approval of the Minutes of the Previous Board Meeting.
2. Confirmation of scheduled Board meetings.
3. Testimonial.
4. Insurance for Investments in Projects Involving Host Government Ownership or Guaranties.
5. Construction Program; Resumption of Program to OPIC.
6. Policy Change for Insurance of Hydrocarbon Projects.
7. Oman: Eligibility for OPIC Finance Programs.
8. Reimbursable Development Programs.
9. Inter-American Development Bank Proposal for Multilateral Insurance Program for Latin America.
10. International Development Cooperation Administration.
11. Financial Statements.
12. Information Reports.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation at 202–632–1839.

Elizabeth A. Burton,

Corporate Secretary.

April 24, 1979.

[S–817–79 Filed 4–25–79; 12:28 pm]

BILLING CODE 3210–01–M

17

SECURITIES AND EXCHANGE COMMISSION.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENTS: [44 FR 23420 April 19, 1979.]

STATUS: Closed meeting ; open meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATES PREVIOUSLY ANNOUNCED: Tuesday, April 17, 1979.

CHANGES IN THE MEETING: Additional items.

The following additional item will be considered at a closed meeting scheduled for Wednesday, April 25, 1979, at 10 a.m.:

Regulatory matter bearing enforcement implications.

The following additional items will be considered at a closed meeting scheduled for Thursday, April 26, 1979, immediately following the 10 a.m. open meeting.

Other litigation matters.

Amendment of injuctive action.

The following additional items will be considered at an open meeting scheduled for Thursday, April 26, at 10:00 a.m.:

1. Consideration of what response to make to the House Committee on Rules' request for the Commission's comments concerning H.R. 65, the "Legislative Oversight Act of 1979," which is designed to improve Congressional oversight of the federal government by requiring annual reports from agencies that include descriptions and comparisons regarding the objectives, impacts, duplications, and costs of agency programs and activities. For futher information, please contact Alan Rosenblat at (202) 755–1198.

2. Consideration of whether to initiate a proceeding, including public hearings, to consider proposed Rule 19c-3 which would preclude the application of the rules of national securities exchanges prohibiting over-the-counter transactions in securities listed and registered on an exchange to certain securities which were not exchange traded on April 26, 1979, or which were exchange traded on April 26, 1979, but fail to remain continuously exchange traded thereafter. For futher information, please contact André Weiss at (202) 376–7470.

3. Consideration of whether to propose Rule 11Acl-3 under the Securities Exchange Act of 1934 which would provide, with respect to certain securities, protection for all displayed limit orders against executions at inferior prices. For further information, please contact Brandon Becker at (202) 755–8749.

Chairman Williams and Commissioners Loomis, and Evans, determined that Commission business required consideration of this matter and that no earlier notice thereof was possible.

April 24, 1979.

[S–815–79 Filed 4–25–79; 10:21 am]

BILLING CODE 8010–01–M

Federal Register

Friday
April 27, 1979

Part II

Department of Defense

Department of the Army

Army Discharge Review Board; Standard Operating Procedures

DEPARTMENT OF DEFENSE

Department of the Army

Army Discharge Review Board; Standard Operating Procedures

The ADRB Standard Operating Procedures were designed for internal use by members and support personnel of the review board, but are published with the anticipation that applicants before the board may also find guidance contained in the document helpful in preparing for discharge review.

Dated: April 20, 1979.

William E. Weber,
Colonel, IN,
President.

Section I. General
Mission.
Purpose.
Authority.
Organization and Functions.
General Concept of Operations.
II. Responsibilities
President ADRB.
Presiding Officer (PO).
Board (Panel) Member.
Hearing Examiner (HE).
Secretary/Recorder, Operations Division.
CPT Section.
Administrative Support Division.
Special Board Members/Advisors.

Annex and Tab

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Any portion of this document which is not published in this printing is incorporated by reference or available for public inspection and copying at the Armed Forces Discharge Review/Corrections Board Reading Room, 2E165, the Concourse, The Pentagon, Washington, D.C.

I. General

A. *Mission:* The mission of the ADRB is:

1. To determine by examination of official military records, documentation provided by applicant and personal testimony (if available) whether or not the discharge received was granted in a proper manner, in accordance with regulatory procedures, and was fair and equitable when viewed from the perspective of the Army at large.

2. It is the essence of discharge review to act as an "equalizing agency" to insure that the application of the discharge process remains a relatively uniform procedure with uniform standards irrespective of the location of the unit or the commander at the time of discharge (see Annex N–2, DOD Directive 1332.28).

B. *Purpose:* This SOP is established for the purpose of governing the operational aspects of the Army Discharge Review Board's mission. As requirements dictate, this SOP will be modified. All personnel for duty with the ADRB are encouraged to recommend changes as appropriate.

C. *Authority:* The ADRB exists as a field operating agency of the Office of the Secretary of the Army in accordance with Title 10, U.S. Code, Section 1553. The ADRB is governed by the provisions of Army Regulation 15–180 (Annex A–1).

D. *Organization and Functions:* The ADRB is structured functionally as depicted by Annex B–1 and is staffed in accordance with the authorizations listed at Annex B–2.

1. The Office of the President of the ADRB is the command and control element of the ADRB. It plans, directs, reports, supervises, and coordinates the activities of the Review Board. The President of the ADRB functions jointly as the Deputy Director of the Army Council of Review Boards (ACRB).

2. The Board Panel Members constitute an officer personnel resource for which five-member panels are designated to hear appeals submitted under the provisions of Title 10, U.S. Code, Section 1553. The panels may convene either in Washington, D.C. or at a designated Traveling Panel site. From this resource, individual Hearing Examiners are deployed to remote locations to video-tape the appeals of applicants who appear in person. In addition, selected Board Members are periodically designated to sit on Ad Hoc Review Boards, Army Physical Disability Appeal Boards (APDAB), and Army Disability Rating Review Boards (ADRRB).

3. The Secretary/Recorder Operations Division provides direct support to the constituted review panels in the hearing of discharge appeals. It processes, schedules, logs, records, and finalizes active discharge appeals, together with providing on-site logistic and administrative support and coordination for panels convened at either Washington, D.C. or deployed Traveling Panel or Hearing Examiner locations.

4. The Administrative Support Division operates at the beginning and end of the thruput system of the discharge review process. It receives, records, analyses, and maintains library control of new cases; it reviews and records data from applicants' service records and other documentation submitted and acts to obtain such data where records are incomplete or missing; it finalizes, records, reproduces, and dispatches completed cases. It inputs copies of completed cases to the public Reading Room located in the concourse of the Pentagon.

E. *General Concept of Operation:* In fulfilling its mission of discharge review, the ADRB orients its daily operations on maximizing case thruput of discharge appeals that have entered the review process. (See Annex C–1 for a detailed narrative of the appeal process.) To this end, a structured weekly work schedule is published to insure that Board Members proportionately share a balanced workload of cases pre-reviewed, heard, post reviewed and to establish an orderly case flow. The system is depicted at Annex C–2. The Administrative Support Division and Secretary/Recorder Operations Division gear their activities to these daily production objectives.

II. Responsibilities

Specific responsibilities and duties of principal individuals and, where applicable, their subordinate operating organizational elements are as follows:

A. *President, ADRB:* The President of the ADRB has overall responsibility for

accomplishment of the operational mission of the Board and its panels. To assist him, he has an Executive Officer and the necessary administrative personnel (secretary and clerk-typist) to support him. (See Annex B–2 for current TDA authorizations.) In the absence of existing written policy, he establishes policy and/or precedents to be followed by the Board. He provides guidance to ensure full and proper understanding of the mission requirements and current standards for interpretation of changing social mores by members of the Board and its panels (see President's Guidance, Annex F–1). He makes all operational decisions necessary to insure proper operation of the Board. He is the Presiding Officer of all Army Discharge Review Board Panels on which he sits. He, along with the Secretary/Recorder, authenticates, by signature, all Case Reports and Directives and all other directive actions concerning cases heard by the Board and its panels.

B. *Presiding Officer (PO):* The PO of a particular panel is the senior line officer, normally in the rank of colonel (06), of the five members constituting the panel. It is his responsibility to ensure that his panel fulfills the mission of the ADRB in reviewing the cases before it. As the senior member of the panel, he provides guidance when necessary, to insure a full and fair hearing for each applicant, and insures that cases are properly heard and properly considered. He rules on the procedural conduct of all aspects of the hearing, conforming to the operational concepts of boards and commissions as outlined in AR 15–6 and AR 15–180. A guide to the ADRB procedural conduct of a hearing appears at Annex G–1. Deviation from this guide should be exercised with caution to preclude prejudicial errors affecting the propriety and equity of the hearing. The PO rules upon the admissibility of evidence presented to the panel by the applicant and/or counsel, exercising the greatest latitude of acceptance of material as evidence. Wide latitude is possible because discharge review is not an adversary proceeding. The PO is also responsible to insure that all members of the panel are informed of any changes in the scheduled date and time of the hearing.

1. The PO will be appraised of all the arrangements for the trip prepared by the ASR in accordance with the check list at Annex G–2. The PO is personally responsible to insure that the appearance and conduct of the other panel members and supporting Secretary/Recorder staff are beyond reproach, both on and off duty, as expected of official representatives of the Army Discharge Review Board and Department of Defense. The PO will submit and after-action report on the trip and an ASR/SRA Evaluation Form concerning the performance of the ASR upon return to duty in Washington, D.C. A sample format of a TP after-action report is at Annex G–3. A sample format of the ASR/SRA Evaluation Form is at Annex G–4.

2. PO's are also responsible to accomplish pre-reviews of cases referred to the ADRB for discharge review. Just as any other panel member, the PO pre-reviews cases according to the cyclic work schedule directed by the President, ADRB (see Annex C–2 for cyclic work schdule). For details of pre-reviewing and forms used, see Annexes H–2 and E–3. The PO also has the unique responsibility of post-reviewing the draft Case Reports and Directives of every case heard by his/her panel. He/she performs a final review of all the above Case Reports and Directives, typed in final, to insure completeness and correctness, and signs as the Presiding Officer before the completed case is authenticated by the ADRB Secretary/Recorder and the President, ADRB, and appropriately dispatched. These post-reviews and final reviews are accomplished as part of the cyclic work schedule. The task of post-reviewing and final reviewing may be delegated to the next senior member of the panel, but only in the prolonged absence of the PO (absence in excess of 2 weeks). When a PO is absent for a shorter period, the cases will be held by the Secretary/Recorder Section and released to the PO upon his/her return to duty.

C. *Board (Panel) Member:* Each Board (Panel) member must have a thorough knowledge of all regulations and procedures which apply to administrative discharges before being able to vote in adjudicating a case before a panel. Further, Board (Panel) members are responsible to protect the interests of the government as well as those of the applicant. In cases where there is any doubt as to whether the applicant's discharge should be upgraded, the vote should be resolved in favor of the applicant. Above all, the members must be objective in all cases that come before the Board (Panel). A Panel member must examine all facts and evidence presented by the applicant without partiality or prejudice so as to insure that the applicant receives a fair and impartial hearing in determining if the applicant was properly and equitably discharged. In short, the member must consider all evidence and apply common sense and mature judgment in weighing all factors, before reaching a conclusion on how to vote each case. Specific duties of each panel member are enumerated at Annex H–1. Each panel member is scheduled to perform pre-reviews of cases referred to ADRB for discharge review, according to the cyclic work schedule directed by the President, ADRB. For details of pre-reviewing and the forms used, see Annexes H–2 and E–3.

D. *Hearing Examiner (HE):* Certain members of the ADRB, normally in the rank of Colonel (06), are scheduled to perform hearing examinations in one or more locations within a designated geographical area. (See Annex I–2 for Procedural Guide for the Conduct of a Hearing Examiner.) A hearing examination involves recording of the applicant's appeal on video tape which is played before an ADRB Panel in Washington, D.C., and adjudicated in the same manner as a live, personal appearance. The HE trip arrangements are finalized by the ASR in accordance with the check list at Annex J–10.

1. The HE team is composed of a minimum of three people, the Hearing Examiner and Alternate Secretary/Recorder, and a Secretary/Recorder Assistant who operates the video camera equipment and provides the administrative support required to type the draft Case Report and Directive for each case. The video equipment required for the hearing examinations can be deployed with the team from ADRB equipment resources or, preferably, provided locally at the hearing site. Many times, the transport of the bulky, sensitive equipment can be avoided by thorough coordination, well in advance of the trip, to take advantage of local resources of video equipment frequently available through Red Cross, technical training institutions, colleges and universities, Veterans Administration, and prisons. In instances where the video equipment can be provided locally, the HE needs only to furnish the video tapes to conduct the hearings. When the video equipment must be deployed with the HE team, the HE must insure that excess baggage is authorized in the travel orders of all three members of the team.

2. The HE is also responsible for submitting an after-action report of the trip within two weeks of return to duty in Washington, D.C. A sample format for an HE after-action report is at Annex I–3.

E. *Secretary/Recorder Division:* The Secretary/Recorder Division consists of the Chief, the Alternate Secretary/Recorder Branch, the Plans and

Programming Branch, and the Processing Branch. The Secretary/Recorder Division is responsible for the conduct of all hearings before the Army Discharge Review Board, Army Disability Rating Review Board, Army Security Review Board, and the Ad Hoc Review Board. In coordination with the Duputy Director, Army Council of Review Boards, the division will upon receipt of the briefed case from the analyst, establish date, time, and place of hearing, and will designate Board members for each hearing. Until completion of the case, to include the final directive, the Secretary/Recorder Division has operational control over the case. The Secretary/Recorder Division is also responsible for collecting and maintaining statistical data concerning all boards within the Council. Data for the ADRB will indicate how the case was heard, where the case was heard, what happended to the case (i.e., changed from Undesirable to General), etc. The Division also maintains all HE equipment used by the ADRB. The Chief, Secretary/Recorder Division has overall responsibility for the operational mission for the Secretary/Recorder Division. He will assign the duties, tasks, and responsibilities of his subordinate branches and will provide them with overall guidance and supervision.

1. Alternate Secretary/Recorder Branch. This branch is composed of the alternate secretary/recorders (ASR) and the secretary/recorder assistants (SRA). The ASRs and SRAs assist the chief of the division in conducting the operation of the Washington, D.C. ADRB panels (in accordance with the actions and procedures contained in Annex J–1, J–2, and J–3) and the other boards of the Council. The ASRs and SRAs will periodically be required to provide the administrative support necessary to insure the success of traveling panels and hearing examination. The actions and procedures required to support these trips are contained in Annexes J–4 and J–5.

2. Plans and Programming Branch. This branch receives records from the Administrative Support Division, insures that they are pre-reviewed, and then distributes them to the Alternate Secretary/Recorder Branch for boarding. It is also responsible for obtaining and purifying computer listings of all applicants (broken out by type) as well as obtaining the status and/or records from the ADRB Library. In addition the branch recommends potential HE and TP sites. Statistical data is maintained on the status of all records for which the Secretary/Recorder Division has responsibility. Finally, the branch supervises the operations of data processing equipment and systems within the ADRB.

F. *CPT Section:* This section is responsible for the draft typing, final typing and processing (to include typographical accuracy and correction of obivious incongruities) of the OSA Form 172. It is responsible for insuring the completeness of every case to include having the proper forms in the proper sequence. This section is directly under Headquarters ADRB, and consists of an OIC, deputy NCOIC, 4 sub-sections and an operations center.

1. The Operations Center receives transmissions from panels or HEs deployed in the field. A Case Processing Assistant (CPA) is sent into the field with the word processing equipment. Each day the CPA transmits that days completed cases back to the Operations Center. The cases are then corrected and printed and ready for review when the panel returns to Washington, D.C. One case takes approximately 2½ minutes to 3 minutes to transmit at the 1200 Baud Level. Each panel in the field has a scheduled time to transmit.

2. Upon receipt of all other cases from the Secretary/Recorder Division, the cases are logged in by either box number or by name and last 4 of SSN and the name of the Secretary/Recorder. The case is then draft typed and returned to the Secretary/Recorder for draft review. During the draft typing all of the hand written and dictated information is transcribed onto the OSA Form 172. Upon receipt of the case for final typing, it is again logged in. During final typing, all the corrections are made and then printed out on the 7 ply paper. The draft information is stored on a floppy disk until after the case has been finalized and shipped out. During final typing, corrections from the draft are transported to the final. Once the case has been shipped out, the floppy disk is erased and re-used. The CPT Section uses a first-in, first-out method of dealing with cases, in that the first cases received are the first cases that are distributed to be typed.

G. *Administrative Support Division:* The Administrative Officer supervises the operation of this Administrative Support Division. He is responsible for inprocessing and outprocessing all cases, for analyzing all new cases after establishing ADRB jurisdiction, for obtaining missing OMPF documents, for preparing both recurring and special statistical reports, and for receiving, controlling, and replying to correspondence from Veterans Organizations, attorneys, members of Congress, and the general public.

1. Receipt and screening. Cases are recieved by the Mail/Records Distribution Section of the Records Distribution/Supply Branch. Upon receipt, a records clerk logs in each case. The case is passed to the Records Processing Branch which verifies ADRB jurisdicition, and establishes initial control by following the procedures listed in Annex K–1. The clerk then files the case for further processing.

1. Carding. Cases are pulled from control files by clerks of the Records Processing Branch who extract and record specific detailed case data and prepare the cases for the Records and Analysis Section. (See Annex K–2 and K–3 for carding procedures.)

3. Analysis. The Records Analysis Branch, under the supervision of the Chief Analyst, has the responsibility for confirming that ADRB has jurisdiction over a case, for analyzing the entire OMPF of each applicant, and for preparing Part II and the Part III, Section A–K, OSA Form 172. (See Annex E–3 for sample forms. See Annex K–4 for instructions on the preparation of forms.) If an analyst finds there is a question of jurisdiction on a specific case, the case is referred to the Chief Analyst for determination. In the event the Chief Analyst cannot resolve the jurisdictional question, he will forward the matter to the Administrative Officer for decision. No analysis will be initiated until ADRB jurisdiction has been confirmed. It is determined that ADRB lacks jurisdiction, the case is returned to the Records Processing Branch for appropriate disposition. Upon confirming ADRB jurisdiction, case analysis begins with a thorough detailed review of the OMPF. If any documents necessary to the case review are missing, the OMPF is returned to the Records Processing Branch with a demand for the specific missing documents. The analysis is renewed when the case is returned to the Records Analysis Branch with the missing document or an indication that the document is unobtainable. Part II and Part III, Sections A–K, OSA Form 172, are then prepared. When a case analysis is complete, the case is forwarded to the Secretary/Recorder Section.

4. Outprocessing and Dispatch. Completed cases are returned by the Secretary/Recorder Operations Division to the Records Distribution/Supply Branch for appropriate reproduction and distribution of case material in accordance with Annex K–5.

5. Data Storage. Case data is entered into the computer terminal at two points

in the discharge review process by the Records Processing Branch: upon completion of carding, and upon return of the completed case to RCPAC. The case data is then taken from the Computer Control Card prepared for each case and becomes a data record for each case heard. Periodic and special computer print-outs are produced for quality control purposes and for developing discharge review statistical data.

6. Records. Records Processing Branch files and maintains computer cards, case records and associated correspondence, makes temporary loan of retain files and records, and retired retain files (Annex K–6).

7. Correspondence. The Records Processing Branch of the Administrative Support Division responds to all correspondence and inquiries received that pertain to cases undergoing discharge appeal.

8. Supply. Normal supply service is provided by the ADRB Supply Section of the Administrative Support Division.

H. *Special Board Members/Advisors:* Officer personnel consist of legal (JAGC) and medical advisors whose responsibility it is to advise the President, ADRB, POs and panel members on the legal and medical sufficiency of administrative discharge processing for any case (see Annex L–1). Although the final determination of legal or medical sufficiency remains with the panels, the recommendations of the special advisors carry the signifiance of technically qualified expertise and should be appropriately weighed by panel members in the deliberation of any case. These officers may sit as members of a panel but may be, by ADRB policy, sit as POs.

Annex A–1

Army Regulation 15–180, incorporated by reference, was published in the Federal Register on April 13, 1978, at 43 FR 15572, and modified on September 12, 1978, at 43 FR 40498.

Annexes B–1 and 2

Organizational chart and Table of Distribution and Allowances, which relate solely to internal management and personnel requirements, have not been published.

Annex C–1.—Appeal Process

The applicant will be the former officer or enlisted member, or, if incompetent or deceased, will be the spouse, next-of-kin, or legal representative. The appeal will be made on DD Form 293 (Annex E–3). In preparing the DD Form 293, the applicant will specify the corrective action desired and may state specific contentions which contest the propriety and equity of the discharge issued. The applicant may submit supporting documents to establish the validity of the appeal, and by appropriate entry, the applicant may select the most convenient mode of hearing and may indicate a choice of counsel. Review may also be initiated on the Board's own motion. All requests will be forwarded to: Commanding General, U.S. Army Reserve Components, Personnel and Administrative Center, 9700 Page Boulevard, St. Louis, Missouri 63132.

The U.S. Army Reserve Components Personnel and Administration Center (USARPAC) receives the appeal and checks it for completeness. Personnel records (OMPF) are retrieved and reviewed for completeness and juridictional propriety. If records are incomplete, documents are requested from other agencies or the applicant. The case is then forwarded to the ADRB for consumation of the review.

Upon receipt at the ADRB, the Administrative Support Division logs and checks (Annex K–1), cards (Annexes K–2 and K–3), and analyzes (Annex K–4) the case. The prepared case next passes to the Records Library Section where it is shelved until it is called for by the Secretary/Recorder Operations Division which will schedule the case for pre-review and hearing by a panel.

Where a case is to be heard by a Traveling Panel, the case is assigned for control purposes to the Alternate and Assistant Secretary/Recorders designated to support that deployment. The case(s) for a specific site are pre-reviewed by the officer who will conduct the Hearing Examination. The case is otherwise handled similarly to the Traveling Panel case.

All other cases are handled routinely by the Secretary/Recorder Section, except that Special Discharge Review Programs, either on-going or which may later be initiated, may require special procedures pursuant to the specific provisions contained in the program(s).

After the pre-review is complete, a case is scheduled for hearing by the Plans and Programs Branch, Secretary/Recorder Operations Division. A panel will hear each scheduled case in accordance with Annex G–1.

Where an applicant fails to appear at a scheduled hearing, and has failed to request a rescheduling or continuance, the case will be heard as a "records only" (A) case if it has not been previously heard. If the case is a rehearing contingent on an escalated mode of hearing, the case will be closed without action.

The results of a case heard will be sent to the applicant, after the formal Case Report and Directive is finalized.

Where a change in discharge is directed by the panel which hears the case, the Adjutant General is directed to issue the applicant a new separation document.

Annex C–2

Case flow chart, a diagram of the case flow process described in detail in Section II, has not been published.

Annex D–1.—Current Guidance on Cases Requiring Secretarial Notification

1. The following cases require Secretarial notification:

a. All cases containing a formal minority report (not merely a minority opinion) submitted by one or more members of the panel hearing the case.

b. All officer discharge review cases.

c. All cases containing unusual circumstances which appear to warrant Secretarial interest, as determined by the President, ADRB.

2. Any case in category 1c will be brought to the attention of the President, ADRB, by the Presiding Officer of the panel hearing the case or the pre-reviewing officer, before the case is heard. The President will make the final determination on the disposition of all above type cases.

Annex E–1.—Definitions

1. ABCMR. The Army Board for the Correction of Military Records is an administrative body vested with discretionary authority to grant relief to service members who have been prejudiced by erroneous facts of military record. It is the highest Army administrative appellate level with DoD.

2. ADRB. The Army Discharge Review Board is an administrative body vested with discretionary authority to review discharges and dismissals under the provision of Title 10, U.S.C. 1553 and such other public laws which may be promulgated.

3. ANALYZE. As used in discharge review, analyze refers to the act of extracting data from an applicant's service record and his submissions and recording it on Discharge Review Case Report and Directive.

4. ANTIOCH STIPULATION. An out-of-court agreement consummated in January 1977 by the U.S. Government and the Urban Law Institute which is active in seeking relief for former service members who received less than honorable discharges. The impact of this

stipulation, effected in lieu of a federal court trial, was to require more standardization of discharge review procedures, substantial increases in the nature and volume of documentation prepared to support a case heard by the ADRB; and establishment of a Reading Room for public access to the case reports for all appeals finalized.

5. CASE. The applicant's appeal and supporting documentation, together with the ex-service member's Official Military Personnel File (OMPF), as it enters the ADRB discharge review process.

"A" CASE. A case heard by a discharge review panel board on the evidence in the applicant's military record and his written submissions.

"B" CASE. A case wherein the applicant appears in person before a discharge review panel in Washington, D.C. with or without counsel, to present evidence or testimony in support of an upgrade of the type of discharge received.

"C" CASE. A case wherein a counsel alone appears before a discharge review panel to present evidence, testimony, and argument in support of an upgrade of the type of discharge received.

"D" CASE. A case wherein the applicant personally appears with or without counsel before a traveling panel outside Washington, D.C., and presents evidence or testimony in support of an upgrade of the type of discharge received.

"E" CASE. A case wherein, the applicant personally appears with counsel or representative before a hearing examiner outside Washington, D.C., and presents evidence or testimony in support of an upgrade of the type of discharge received.

6. CASE REPORT AND DIRECTIVE. That document which records all evidential and procedural material considered by a panel in its deliberations of a particular case, and on which are recorded contentions, issues, findings, rationale, case problems, and the decision of the panel.

7. CHALLENGE FOR CAUSE. The perogative of an applicant who appears before a discharge review panel to ask that any panel member hearing the case who in any way was connected with the events leading up to the separation or the actual separation itself be replaced by another Board member.

8. CONTENTION. A contention is a matter raised by an applicant and/or counsel; when it involves a matter of fact, law or discretion that is relevant to the equity and/or propriety of the discharge process it becomes an issue just the same as if raised by a DRB.

9. DE-NOVO. This term refers to a category of cases heard under the Special Discharge Review Program (SDRP) wherein an applicant who was denied relief as a result of an on-the-record hearing of his case, was granted an automatic rehearing contingent upon his/her electing to exercise this option and agreement to appear in person either with or without the free assistance of a Department of Defense provided counsel.

10. FINAL-REVIEW. That function performed by PO's whereby the final types Case Report and Directive for each case was heard by his/her panel is checked for completeness, correctness, and signed before being authenticated by the Sec/Rec and President, ADRB and appropriately dispatched.

11. FINDING. The determination by a panel hearing a case as to what degree a contention or issue raised is relevant to the discharge appeal; whether the contention or issue is supported by evidence; and to what degree the contention or issue may have impacted on the equity or propriety of applicant's discharge.

12. HEARING EXAMINER. A Board member detailed to deploy to various locations throughtout the country with a video tape team consisting of an Alternate Secretary/Recorder and an Assistant Secretary/Recorder Assistant to record live, the discharge appeal presentations of applicants who request to advance their cases by this means. The video taped proceedings are heard by a panel in Washington, D.C. at a subsequent date.

13. ISSUE. An issue is a matter of fact, law or discretion that is relevant to the equity and/or propriety of the discharge process, and is raised by a DRB in keeping with responsibility UP 10 USC Sec. 1553 when and if applicant and/or counsel is silent on the matter.

14. LIBRARY. The facility for storing cases after they have been received and analyzed. The library is a sub-element of the Secretary/Recorder Operations Division.

15. MINORITY REPORT. The minority opinion of a panel usually prepared by the senior dissenting panel member to challenge the majority opinion. Such a report may be prepared and submitted for Secretarial determination where it is perceived that a grievous and substantive flaw of fact or perception is basic to the majority opinion as recorded in its findings or rationale.

16. PL 95–126. A public law enacted on 8 October 1977 by the 95th Congress which suspends the fifteen year period for application for one year to review upon applications every less-than-honorable discharge issued between 1775 and October 1978; requires that each of the 13,046 discharges upgraded under the SDRP be re-reviewed to establish eligiblity for VA benefits under historically consistent standards of discharge review; and precludes awarding of VA benefits to any ex-service member separated UOTHC on the basis of a continuous AWOL of 180 days or more.

17. PP 4313. President Ford's 16 September 1974 Clemency Proclamation, which was directed at Vietnam Era service members who remained in a status of desertion/prolonged absence, together with his 19 January 1977 extension which directed that the discharges of all ex-service members who served in Vietnam and who received discharges under other than honorable conditions be reviewed and that these discharges be characterized as under honorable conditions, providing that certain criteria were met and that there were no compelling reasons to the contrary.

18. POST-REVIEW. Review of the draft Case Report and Directive (CRD) performed by the Presiding Officer (PO) of the panel that heard the case. The post-review is a qualitative step in the discharge review process to insure that the CRD is accurate, intelligible, and concise.

19. PRE-REVIEW. Review of a case by a board member, prior to its being heard, which includes an indepth assessment of the applicant's contentions, submitted documents, OMPF, and the preparation of review documents and a concise commentary on the case.

20. PRESIDING OFFICER. The senior designated member of a panel who is responsible for insuring that a case is properly considered and that a proper Case Report and Directive is prepared.

21. RATIONALE. A written statement prepared at the conclusion of the board's deliberation and found in Part VII, Section C of the Case Report and Directive which indicate the basis for the board's decision to provide or deny relief.

22. READING ROOM. The Armed Forces Discharge Review/Corrections Board Reading Room, located in the Concourse of the Pentagon, is a public repository of CRD's in compliance with the Antioch Stipulation. The cases are indexed to assist those who seek information concerning completed cases.

23. SDRP. The Special Discharge Review Program was the Department of Defense companion action to President Carter's proclamation of a pardon for

Vietnam War draft evaders and took effect on 5 Apr 77. This program was an extension of the President's act of compassion and forgiveness and provided for a mandated upgrade of under-other-than honorable discharges, if application was made prior to 4 October 1977, and the applicant met certain criteria and the reason for discharge was not a compelling reason to the contrary. It further provided for a De Novo re-hearing if the appeal was denied. (See 9 above).

24. SPD. Separation Program Designator. A three letter code entered in the Reason and Authority block of the DD 214 and which represented the reason for discharge as listed in AR 635–5–1. SPD's superceded SPN's (commonly referred to as "Spin").

25. TITLE 10, U.S.C. 1553. The public law which directs that an Army Discharge Review Board be established.

26. TRAVELING PANEL. A panel deployed from Washington, D.C. to varying regional locations throughout the United States to hear discharge appeal cases.

Annex E–2

Subject/Category Listing to Index to ADRB Case Report and Directives, incorporated by reference, was published in the **Federal Register** on February 18, 1977, at 42 FR 10028, and modified on October 13, 1978, at FR 47237.

BILLING CODE 3710-08-M

Annex E–3.—Forms

DD Form 293, 1 Mar 77	Application for Review of Discharge or Dismissal from Armed Forces of the U.S.	E–3–1
DD Form 149, 1 Apr 69	Request for ABCMR	E–3–2
OSA Form 172, 1 Feb 78	Part I, II and Section A, Part III	E–3–3
OSA Form 172, 1 Feb 78	Section B–I, Part III	E–3–4
OSA Form 172, 16 Oct 78	Section J & K, Part III	E–3–5
OSA Form 172, 1 Feb 78	Section A–C, Part IV	E–3–6
OSA Form 172, 1 Feb 78	Section A and B, Part V	E–3–7
OSA Form 172, 1 Feb 78	Section A, Part VI	E–3–8
OSA Form 172, 1 Feb 78	Section A–C, Part VII	E–3–9
OSA Form 172, 1 Feb 78	Section D, Part VII and Part VIII	E–3–10
OSA Form 172, 1 Feb 78	Standard Continuation Sheet	E–3–11
OSA Form 172, Apr 78	SDRP Addendum—Parts I—Part VII	E–3–12
OSA Form, May 78	Long Addendum—Parts I, II, III; Item 1 & 2, Section A, Part IV	E–3–13
OSA Form 172, May 78	Long Addendum (second page) Item 3 & 4, Section A, Part IV; Section B and C, Part IV; Section A and B, Part V.	E–3–14

NOTE.—The Case Control Card and the Daily Journal of Cases Completed, forms used solely for internal management, and the Standard Continuation Sheet, essentially a blank sheet, were not submitted for publication.

APPLICATION FOR REVIEW OF DISCHARGE OR DISMISSAL FROM THE ARMED FORCES OF THE UNITED STATES

OMB APPROVED 22-R-0014

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: 10 U.S.C. 1553, Executive Order 9397, 22 Nov 43 (SSN)
PRINCIPAL PURPOSES: To apply for upgrading of type of discharge issued.
ROUTINE USES: Placed in applicant's file. Used in applicant's case in determining the relief sought. To compare facts presented with evidence in the record.
DISCLOSURE: Voluntary. If information is not furnished, applicant may not secure benefits from the Board.

SEE INSTRUCTIONS ON REVERSE BEFORE COMPLETING THIS FORM. TYPE OR PRINT.

BRANCH OF SERVICE
☐ ARMY ☐ NAVY ☐ MARINE CORPS ☐ COAST GUARD ☐ AIR FORCE

1. LAST NAME, FIRST NAME, MIDDLE INITIAL	2. SERVICE NO./SSN	3. SEPARATION RATE OR GRADE

4. SEPARATION UNIT AND LOCATION	5. NATURE OF DISMISSAL OR TYPE OF DISCHARGE RECEIVED	6. SEPARATION DATE

7. I REQUEST THE FOLLOWING CORRECTIVE ACTION BE TAKEN *(See instructions)*
☐ UPGRADE DISCHARGE TO ☐ HONORABLE ☐ GENERAL ☐ CHANGE REENLISTMENT CODE *(Air Force Only)*
☐ CHANGE DISCHARGE REASON *(Explain)* _____ ☐ OTHER *(Explain)* _____

8. REASON FOR REVIEW OF DISCHARGE *(State in your own words the reasons you feel your discharge should be changed. use additional sheets if necessary) (See instructions)*

9. SUPPORTING DOCUMENTS *(See instructions)*

10. PERSONAL APPEARANCE ☐ I DESIRE TO APPEAR BEFORE THE BOARD *(No expense to the GOVERNMENT) (See instructions)*
☐ AT WASHINGTON, D.C. ☐ HEARING EXAMINER *(Army Only)* CLOSEST TO _____ *(City and State)*
☐ BEFORE THE TRAVELING/REGIONAL BOARD CLOSEST TO _____ *(City and State)*
☐ I DO NOT DESIRE TO APPEAR BEFORE THE BOARD AND HAVE LEFT THE ABOVE BLANK. I DESIRE TO HAVE MY DISCHARGE REVIEWED BASED ON MY MILITARY RECORDS AND WHATEVER DOCUMENTATION I HAVE SUBMITTED.

11. REPRESENTATIVE
☐ I DESIRE TO BE REPRESENTED BY, AND AUTHORIZE RELEASE OF MY RECORDS TO *(No expense to the GOVERNMENT) (See instructions)*

NAME	ADDRESS *(Include ZIP Code)*

☐ I DO NOT DESIRE TO BE REPRESENTED AND HAVE LEFT THE ABOVE BLANK.

I make the foregoing statements as a part of my application with full knowledge of the penalties involved for willfully making a false statement. *(U.S. Code, Title 18, Section 1001, formerly Section 80, provides a penalty as follows: A maximum fine of $10,000 or maximum imprisonment of 5 years, or both.)*

STREET OR RFD	CITY, STATE AND ZIP CODE

(IF YOU MAKE A CHANGE IN RESIDENCE, NOTIFY THE APPROPRIATE BOARD IMMEDIATELY.)

DATE	SIGNATURE OF APPLICANT

NOTE: IF VETERAN IS DECEASED OR INCOMPETENT, the application may be signed by a person other than the one whose name appears in block 1 above, indicate status in box below. Legal proof of death or incompetency and satisfactory evidence of the relationship between the discharged person and the petitioner must accompany application.)

☐ NEXT OF KIN ☐ LEGAL REPRESENTATIVE ☐ SURVIVING SPOUSE

UPON COMPLETION, MAIL THIS APPLICATION AS FOLLOWS:

ARMY	NAVY & MARINE CORPS	COAST GUARD	AIR FORCE
CO, USARCPAC 9700 Page Blvd St. Louis, MO 63132	Navy Discharge Review Board 801 No. Randolph St. Arlington, VA 22203	Commandant (CED) U.S. Coast Guard Headquarters Washington, DC 20591	National Personnel Records Center, GSA (Military Personnel Records) 9700 Page Blvd St. Louis, MO 63132

DD FORM 1 MAR 77 293 PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE AND WILL NOT BE ACCEPTED.

E-3-1

INSTRUCTIONS

Copy of Military Record. Should you desire to have copies of your records, you must submit a General Services Administration Standard Form 180 (GS SF 180) before you submit this form. Once this DD Form 293 is submitted, you records will be obtained by the Board. Official records and copies of records obtained by the Board will be available to applicants only at the hearing locations.

Item 1 thru 6. - *Self* Explanatory.

Item 7. Indicate the corrective action you are requesting. You must check at least one block and can check more blocks if desired. Due to certain limitations in the Board's authority, the Board cannot: (a) review discharges issued as a result of General Court-Martial *(Use DD Form 149)*; (b) review discharges issued more than fifteen years prior to the application *(DD Form 293)* submission date; (c) review a Release from Active Duty until a final discharge is issued; (d) change a reenlistment code *(except Air Force)*; (e) change the reason for a discharge from or to physical disability; or (f) determine eligibility for veteran's benefits.

Item 8. State here your reasons why you feel your discharge should be changed. Briefly summarize each of your contention *(reasons)* and/or issues of fact, law, or discretion that you want the Board to address and resolve. Additions or modifications may be made at any time up to the date of review of your case by the Board.

Item 9. Evidence not in your official records should be submitted to the Board before hearing date. Review Boards do not locate witnesses nor do they secure evidence for applicants. Legal briefs or counsel submissions should also be submitted in advance of hearing date. Documents that may be helpful are statements, affidavits, and depositions such as: character references; police clearances; educational achievement; exemplary post-service conduct; medical reports; employment record; verification of alcoholism or drug abuse; award of Department of Labor Exemplary Rehabilitation Certificate; explanation of disciplinary problem or discharge problem; brief of counsel arguing error or injustice. Witnesses may appear in person at no cost to the Government.

Item 10. If you state on your application that you will appear before the Board in person and fail to do so without previous satisfactory arrangements with the Board, such failure will be considered as a waiver of appearance and your case will be reviewed on the evidence contained in your military record.

AIR FORCE, NAVY, AND MARINE CORPS: The Discharge Review Boards meet daily in Washington, D.C., for personal appearance hearings and documentary reviews. If you request a review based on records only or a hearing in Washington, DC, your case will be scheduled there at the earliest date possible. Personal appearance hearings are also scheduled before the Traveling Boards in various cities throughout the 48 contiguous states as the population of requests on hand requires. If you ask for a hearing before the Traveling Board, it will be scheduled after your case is prepared and when the Traveling Board is next in your area. You will ordinarily not have to travel more than 300 miles for your hearing.

ARMY: Panels of the Review Board meet daily in Washington, DC and other locations and on an irregularly scheduled basis at major cities and other smaller metropolitan areas of the U.S. at least once each year. You may appear before the Board in Washington, DC, or in front of a Traveling Panel elsewhere in the U.S. or you may also appear in front of a Hearing Examiner who will video tape testimony for presentation to the Board in Washington, DC. For Hearing Examiners you must be accompanied by counsel or representative. Normally ex-Army members will not have to travel in excess of 200 miles if you are heard by a Traveling Panel or Hearing Examiner. Generally speaking, scheduled cases are heard as follows: (1) Personal Appearance, Washington, DC, within six months; (2) Personal Appearance by Traveling Panel or Hearing Examiner, within twelve months; (3) Representation by counsel or other person/organization only at Washington, DC, within three months; and (4) Without personal appearance or representation, review based on military records and documents submitted by applicant, within 30 days.

Block 11. The services do not provide counsel, representation, or evidence for applicant, nor do they defray cost of such under any circumstances. However, certain agencies recognized by the VA, some state, county, and city organizations, private organizations, and some schools of law do provide assistance in presenting your appeal. If you wish to be assisted, you are responsible for obtaining representation and may:

a. Obtain a lawyer at your own expense.

b. Contact an appropriate state, county, city, private or law school organization.

c. Obtain representation from any other agency or individual who is willing to assist you.

d. Select one of the following organizations which regularly furnish representation at no charge to you. Representatives may or may not be lawyers.

(1) American Red Cross
(2) American Legion
(3) Disabled American Veterans
(4) Jewish War Veterans of the U.S.A.
(5) Veterans of Foreign Wars

An appearance by your representative will not be scheduled in your absence unless your representative requests it. In this event, if a. or c. apply, power of attorney is mandatory.

APPLICATION FOR CORRECTION OF MILITARY OR NAVAL RECORD UNDER THE PROVISIONS OF TITLE 10, U.S. CODE, SEC. 1552

(See instructions on reverse side BEFORE completing application.)

Form Approved - Office of Mgmt & Budget No. 22-R0009

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: Title 10, U.S. Code 1552, Executive Order 9397, 22 Nov 43 (SSN)
PRINCIPAL PURPOSE: To apply for correction of a military or naval record.
ROUTINE USES: To docket a case. Reviewed by board members to determine relief sought. To determine qualification to apply to board. To compare facts present with evidence in the record.
DISCLOSURE: Voluntary. If information is not furnished, applicant may not secure benefits from the Board.

BRANCH OF SERVICE ☐ ARMY ☐ NAVY ☐ AIR FORCE ☐ MARINE CORPS ☐ COAST GUARD

1. NAME *(Last, first, middle initial) (Please print)*	2. PRESENT RATE, GRADE	3. SERVICE NUMBER	4. SOCIAL SECURITY NUMBER

5. TYPE OF DISCHARGE *(If by court-martial, state type of court.)*	6. PRESENT STATUS, IF ANY, WITH RESPECT TO THE ARMED SERVICES *(Active duty, retired, Reserve, etc.)*	7. DATE OF DISCHARGE OR RELEASE FROM ACTIVE DUTY

8. ORGANIZATION AT TIME OF ALLEGED ERROR IN RECORD	9. I DESIRE TO APPEAR BEFORE THE BOARD IN WASHINGTON, D.C. *(No expense to the Government)* ☐ YES ☐ NO

10. NAME AND ADDRESS OF COUNSEL *(If any)*

11. I REQUEST THE FOLLOWING CORRECTION OF ERROR OR INJUSTICE.

12. I BELIEVE THE RECORD TO BE IN ERROR OR UNJUST IN THE FOLLOWING PARTICULARS.

13. IN SUPPORT OF THIS APPLICATION I SUBMIT AS EVIDENCE THE FOLLOWING *(If Veterans Administration records are pertinent to your case, give Regional Office location and Claim Number.)*

14. a. THE DATE OF THE DISCOVERY OF THE ALLEGED ERROR OR INJUSTICE WAS _____. b. IF MORE THAN THREE YEARS SINCE THE ALLEGED ERROR OR INJUSTICE WAS DISCOVERED, STATE WHY THE BOARD SHOULD FIND IT IN THE INTEREST OF JUSTICE TO CONSIDER THIS APPLICATION.

15. APPLICANT MUST SIGN IN THE SPACE PROVIDED. IF THE RECORD IN QUESTION IS THAT OF A PERSON WHO IS DECEASED OR INCOMPETENT, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY APPLICATION. IF APPLICATION IS SIGNED BY SPOUSE, WIDOW OR WIDOWER, NEXT OF KIN OR LEGAL REPRESENTATIVE, INDICATE RELATIONSHIP OR STATUS IN APPROPRIATE BOX. ☐ SPOUSE ☐ WIDOW ☐ WIDOWER ☐ NEXT OF KIN ☐ LEGAL REP ☐ OTHER *(Specify)* ____ _____

16. I MAKE THE FOREGOING STATEMENTS, AS PART OF MY CLAIM, WITH FULL KNOWLEDGE OF THE PENALTIES INVOLVED FOR WILFULLY MAKING A FALSE STATEMENT OR CLAIM. *(U. S. Code, Title 18, Sec. 287, 1001, provides a penalty of not more than $10,000 fine or not more than 5 years imprisonment or both.)*

17. COMPLETE ADDRESS, INCLUDING ZIP CODE *(Applicant should forward notification of all changes of address)*

DOCUMENT NUMBER
(DO NOT WRITE IN THIS SPACE)

18. DATE	19. SIGNATURE *(Applicant must sign here.)*

DD FORM 1 FEB 78 149

EDITION OF 1 APR 69 IS OBSOLETE AND REPLACES DD FORM 149, PRIVACY ACT STATEMENT, 26 SEP 75, WHICH IS OBSOLETE.

E-3-2

INSTRUCTIONS

1. For detailed information see:

   Air Force Regulation 31-3

   Army Regulations 15-185

   Coast Guard, Code of Federal Regulations
   Title 33, Part 52

   Navy, NAVEXOS P-473, as revised

2. Submit original only of this form.

3. Complete all items. If the question is not applicable, mark—"None".

4. If space is insufficient, use "Remarks" or attach additional sheet if necessary.

5. Various veterans and service organizations furnish counsel without charge. These organizations prefer that arrangements for representation be made through local posts or chapters.

6. List all attachments or inclosures.

7. ITEMS 9 and 10. Personal appearance of you and your witnesses or representation by counsel is not required to insure full and impartial consideration of applications. Appearances and representations are permitted, at no expense to the Government when a hearing is authorized.

8. ITEM 11. State the specific correction of record desired.

9. ITEM 12. In order to justify correction of a military or naval record, it is necessary for you to show to the satisfaction of the Board, or it must otherwise satisfactorily appear, that the alleged entry or omission in the record was in error or unjust. Evidence may include affidavits or signed testimony of witnesses, executed under oath, and a brief of arguments supporting application. All evidence not already included in your record must be submitted by you. The responsibility for securing new evidence rests with you.

10. ITEM 14. 10 U.S.C. 1552b provides that no correction may be made unless request is made within three years after the discovery of the error or injustice, but that the Board may excuse failure to file within three years after discovery if it finds it to be in the interest of justice.

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW

ARMY	NAVY AND MARINE CORPS	COAST GUARD	AIR FORCE
(For Active Duty Personnel) Army Board for Correction of Military Records Department of the Army Washington, D.C. 20310 *(For Other than Active Duty Personnel)* CO, USARCPAC 9700 Page Blvd. St. Louis, MO. 63132	Board for Correction of Naval Records Department of the Navy Washington, D.C. 20370	U.S. Coast Guard ATTN: Senior Member Board for Correction of Coast Guard Records Washington, D.C. 20591	USAFMPC/DPMDOA1 Randolph AFB, Tex. 78148

REMARKS *(Applicant has exhausted all administrative channels in seeking this correction and has been counseled by a representative of his/her servicing military personnel office. (Applicable only to active duty and reserve personnel.))*

UNITED STATES ARMY
DISCHARGE REVIEW BOARD
CASE REPORT AND DIRECTIVE

Case #:	Case Report and Directive Documenation ☐ Original ☐ PL 95-126 ☐ Preliminary ☐ Final ☐ Addendum ☐ 2d Regular Review ☐ 3d Regular Review

****

PART I
APPLICATION DATA

Name:	SSN/ASN:	Address: Phone:
Counsel/Rep: Orgn: Name:		Address: Phone:
Next-of-kin: Surv Spouse: Legal Rep:		Address: Phone:

Type Disch	Date Disch	Auth	Reason for Discharge:

Type Application	Requests
☐ Regular ☐ Review (BD) ☐ Review (SP) ☐ Rehear ☐ Review (VA) ☐ SDRP	☐ Hon ☐ Gen ☐ Mod ☐ Affirm

****

PART II
PERSONAL HISTORY DATA

☐ Enl ☐ Renl ☐ Ind Date _____ Period	Date of Last Dischary Rev	Previous Serv ( )Yrs( )Mos Current Serv ( )Yrs( )Mos	Waiver ☐ Med ☐ Min ☐ Mor ☐ Men Time Lost	Highest Grd Current Prd

Date of Birth	Age at Entry First Last	Civ Education Level Entry _____ Discharge	Aptitude Data AFQT _____ Mental _____ GT Cat

****

PART III
SERVICE HISTORY DATA

SECTION A
UCMJ & DISCIPLINARY DATA

Art 15	DATE	OFFENSE	DATE	OFFENSE
SUMCM				
SPCM				
GCM				

OSA Form 172, 1 Feb 78

E-3-3

CASE #:

SECTION B
TIME LOST DATA

STATUS	TIMES	DAYS	STATUS	TIMES	DAYS	COMMENTS
AWOL			Conf Civ Auth			
DFR			Excess Leave			
Conf Mil Auth			Total			

SECTION C
CONDUCT AND EFFICIENCY

C	E	From	To	C	E	From	To	C	E	From	To

SECTION D
AWARDS AND DECORATIONS

VALOR		MERIT		FOREIGN	
Type	Location	Type	Location	Type	Location

SECTION E
TRNG, REHAB & ADMIN DATA

	Yes	No	NA		Yes	No	NA		Yes	No	NA
Compl BCT				Asgt Perm Unit				Disch fm DB/RB			
Compl AIT				Asgd in Pmos				Asgd USARB/CTF			
Enl Opt Satis				Disch fm O/S Cmd				Asgd USDB			
Enl Opt Waived				Disch fm Unit				Compl USARB/CTF			
Enl Opt Dis				Disch fm PCF/SPD				Drug/Alcohol Reh			

SECTION F
MEDICAL, LEGAL AND SEPARATION DATA

	Yes	No	NA		Yes	No	NA		Yes	No	NA
NP Ment Sta Evl				Couns for Consult				Order in File			
Entry Physical				Counsel for Repr				Agrees w/oth Dr			
Separation Phy				GCM SJA Review				Decline Sep/Rsn			
Pre-Ent Dat Md				Approve Auth Rev							

SECTION G
BACKGROUND DATA

	Yes	No	NA		Yes	No	NA		Yes	No	NA
Mil ROI				Reenl Bar				Civ Conviction			
FBI Rpt				Witness Statemnts				(basis for dis)			
Civ ROI				Clem Discharge							
ART 32 Invest				Alternate Svc				Other Pert Data			

SECTION H
ASSIGNMENT AND PERFORMANCE DATA

Last duty assignment in (CONUS) (Overseas)
Unit: _____
Duty MOS:

	Yes	No	NA
Wounded			
Demoted			
Subseq Promotion			
EERs in File			

Overseas Service

Location	From	To

SECTION I
PREVIOUS SERVICE

From	To	Type Dischg

OSA Form 172, 1 Feb 78

E-3-4

CASE #:

Analyst's and Prereview Officer's (PRO) assessment of the military record and of information from the applicant/counsel/representative; and PRO and ADRB Panel evaluation of the assessments with changes as appropriate.

DISCHARGE BASIS: ( )

SECTION J
APPLICABLE CRITERIA/PROPRIETY

Analyst/PRO Enter Appropriate Index No(s)

		ISSUES				
		ANAL	PRO		PANEL	
			Yes	No	Yes	No
(A01.00)	Elements Common All Discharges					
(A02.00)	Elements Common When SM has Right to Board					
(A03.00) to (A84.00)	Specific Elements Pertaining to Rsn for Disc					
(A85.00) to (A89.00)	Policy Changes Specifically Retroactive					

SECTION K
APPLICABLE CRITERIA/EQUITY

PRO only Enter Appropriate Index No(s)

		ISSUES		
		PRO	PANEL	
			Yes	No
(A90.00)	Procedural Changes not made Retroactive			
(A91.00)	Policy Changes not made Retroactive			
(A92.00)	Quality of Service			
(A93.00)	Capability to Serve			
(A94.00)	Other Equitable Consideration			
(A99.00)	Admin Action Indirectly Related to Discharge			

Analyst/PRO Comment(s):

OSA Form 172 (Revised Section J and K), 16 Oct 78

E-3-5

CASE #:

****

PART IV
PREHEARING REVIEW

SECTION A
HE AND/OR PREREVIEW OFFICER EVALUATION

1. Part III, Section J:

2. Part III, Section K:

3. Overall Assessment:

4. Referred to (Med) (JAG)
for:

****

SECTION B
MEDICAL PREHEARING COMMENTS

****

SECTION C
LEGAL PREHEARING COMMENTS

OSA Form 172, 1 Feb 78

E-3-6

CASE #:

****

PART V
SUMMARY OF HEARING

SECTION A
ADMINISTRATIVE DATA

Type of Hearing	Hearing Date	Appearance by Applicant	Appearance by Counsel
☐ Records ☐ Hearing Ex		☐ Yes	☐ Yes
☐ Personal ☐ Travel Pnl		☐ No	☐ No
☐ Coun/Rep ☐ Other____		☐ NA	☐ NA

****

SECTION B
SUMMARY OF OPENING REMARKS

OSA Form 172, 1 Feb 78

E-3-7

CASE #:

PART VI
CONTENTIONS AND ISSUES
(FACT, LAW, DISCRETION)

SECTION A
APPLICANT'S CONTENTIONS-BOARD FINDINGS

CONTENTIONS:

FINDINGS:

SECTION B
BOARD ISSUES-BOARD FINDINGS

ISSUES:

FINDINGS:

SECTION C
PRESIDING OFFICER'S COMMENTS

1. CASE PROBLEMS:

2. REJECTION OF PART III, SECTION J AND K, ISSUES:

OSA Form 172, 1 Feb 78

E-3-8

CASE #:

PART VII
BOARD ACTION
SECTION A
REMARKS

☐ Defer	(see tab)	☐ Minority Report	(see tab)
☐ Congressional	(see tab)	☐ Review Panel Report	(see tab)
☐ Continuance	(see tab)	☐ INFORM:	
☐ Ret w/o Action	(see tab)	☐ Appl ☐ Rep by denial ltr	
☐ Refer to BCMR	(see tab)	☐ Coun ☐ Other (see tab)	

****

SECTION B
CONCLUSIONS

1. INITIAL DISCHARGE	☐ Proper	☐ Not Proper	4. BASIS	☐	DoD Dir (AR 15-180)
	☐ Equ'tbl	☐ Not Equ'tbl		☐	DoD-SDRP 4 Apr 77
				☐	PM 19 Jan 77
2. UPGRADED DISCHARGE	☐ Affirm	☐ Not Affirm		☐	SoA DIRECTED
	☐ Prelim	☐ Prelim		☐	SECT D, PART VII, ADDENDUM RATIONALE
	☐ Final	☐ Final			
3. APPEAL	☐ Granted	☐ Denied	☐ Modified	5. NONE	☐ See Remarks, Sect A
	☐ In Full				
	☐ Partial				

****

SECTION C
RATIONALE

a. Majority:

b. Minority and if formal Minority Report is not submitted:

c. Full Relief Denied Because (if appropriate):

OSA Form 172, 1 Feb 78

E-3-9

CASE #:

SECTION D--DECISION

1. ISSUE: ☐ DD 214 and Discharge Certificate as follows:
☐ HONORABLE ☐ GENERAL ☐ AR_____ ☐ SPD_____
☐ REMARKS:

2. ISSUE: ☐ DD 215 changing DD 214 as follows:
☐ AUTH: AR_____ ☐ REASON: SPD_____
☐ REMARKS: ☐ Disch reviewed UP PL 95-126 and a determination made that change in characterization of service is warranted by DoD Directive.
☐ Disch reviewed UP PL 95-126 and a determination made that characterization of service was warranted UP ☐ PM 19 Jan 77
☐ DoD-SDRP 4 Apr 77
☐ Reviewed under standards of DoD Dir and previous Board action affirmed.

SECTION E--VOTE							SECTION F AUTHENTICATION
	APPEAL				REVIEW		
	GRANTED					NOT	SECRETARY/RECORDER ASS'T
RANK NAME	HON	UHC	DENIED	MOD'Y	AFFIRM	AFFIRM	
							ALT SECRETARY/RECORDER
							PRESIDING OFFICER
PO							

PART VIII--DIRECTIVE

To: THE ADJUTANT GENERAL DATE:_____

The Army Discharge Review Board established under the provisions of Section 30, Public Law 346, 78th Congress, approved 22 June 1944 as codified in 10 U.S.C., Section 1553, in the case of the applicant named in Part I finds, concludes, and decides as indicated in Part VII of this document.

As authorized by the Secretary of the Army, it is directed that the actions specified in Part VII be executed and that the applicant, or next-of-kin, legal guardian, or other acting in the name of the applicant and the counsel or representative for the applicant, if appropriate, be so informed.

The Board's action in consideration of the listed contentions and issues are unique to this case.

Signature of Secretary/Recorder	Signature of President of the Board
s/V. C. Gomez LTC Sec/Rec ADRB	s/William E. Weber COL President ADRB

****

EXHIBITS

A - ORDER APPOINTING BOARD
B - APPL FOR REV OF DISCH
C - AFF., DEP.,STMTS BY/FOR APPL
D - INSTRUCTIONAL LETTER APPLICANT
E - SCHEDULE LTR TO APPLICANT
F - OTHER
G - OTHER

INDEX REFERENCE NUMBERS

OSA Form 172, 10 Oct 78

E-3-10

UNITED STATES ARMY
DISCHARGE REVIEW BOARD
CASE REPORT AND DIRECTIVE

Case #

Addendum to OSA Form 172, Discharge Review Board Case Report and Directive, dated _____

****

PART I
APPLICATION DATA

Name	SSN/ASN	Address:
		Phone:
Counsel/Rep Orgn:		Address:
Name:		Phone:
Next-of-kin Surv Spouse:		Address:
Legal Rep:		Phone:

Type Disch	Date Disch	Auth	Reason for Discharge:

Type Application

[ ] Regular [ ] Review (BD) [ ] Review (SP)

[ ] Rehear [ ] Review (VA) [ ] SDRP

Requests

[ ] Hon [ ] Gen [ ] Mod [ ] Affirm

****

PART II
PERSONAL HISTORY DATA (ABBREVIATED) (See Basic 172)

Date of Last Discharge Review:

****

PART III
SERVICE HISTORY DATA (See Basic 172)

****

PART IV
PREHEARING REVIEW (See Basic 172)

****

PART V
SUMMARY OF HEARING (See Basic 172)

Date of Hearing:

****

PART VI
CONTENTIONS AND ISSUES (FACT, LAW, DISCRETION) (See Basic 172)

****

PART VII
BOARD ACTION

SECTION A
REMARKS (See Basic 172)

SECTION B
CONCLUSION (See Basic 172)

2. Upgraded Discharge [ ] Affirm [ ] Final 4. BASIS [ ] DOD DIR (AR 15 - 180)

SECTION C
RATIONALE (See Basic 172)

The Board considered the previous findings, conclusions and rationale and found no reason to deviate therefrom. The Board affirms the discharge awarded under DOD SDRP.

(4 - 78) SDRP ADDENDUM

E-3-12

UNITED STATES ARMY
DISCHARGE REVIEW BOARD
CASE REPORT AND DIRECTIVE

Case #	Case Report and Directive Documenation ☐ Original ☐ PL 95-126 ☐ Preliminary ☐ Final ☐ Addendum ☐ 2d Regular Review ☐ 3d Regular Review

****

PART I
APPLICATION DATA

Name	SSN/ASN	Address: Phone:
Counsel/Rep Orgn: Name:		Address: Phone:
Next-of-kin Surv Spouse: Legal Rep:		Address: Phone:

Type Disch	Date Disch	Auth	Reason for Discharge:

Type Application	Requests
☐ Regular ☐ Review (BD) ☐ Review (SP) ☐ Rehear ☐ Review (VA) ☐ SDRP	☐ Hon ☐ Gen ☐ Mod ☐ Affirm

****

PART II
PERSONAL HISTORY DATA

(ABBREVIATED) SEE BASIC OSA 172

Date of Last Discharge Review

****

PART III
SERVICE HISTORY DATA

SEE BASIC OSA 172

****

PART IV
PREHEARING REVIEW

SECTION A
HE AND/OR PREREVIEW OFFICER EVALUATION

1. Part III, Section J

2. Part III, Section K

OSA Form 172, LONG ADDENDUM, 5-78

E-3-13

CASE #:

PART IV
PREHEARING REVIEW
SECTION A
HE AND/OR PREREVIEW OFFICER EVALUATION

3. Overall Assessment

4. Referred to (Med) (JAG) for:

****

SECTION B
MEDICAL PREHEARING COMMENTS

****

SECTION C
LEGAL PREHEARING COMMENTS

****

PART V
SUMMARY OF HEARING
SECTION A
ADMINISTRATIVE DATA

Type of Hearing	Hearing Date	Appearance by Applicant	Appearance by Counsel
☐ Records ☐ Hearing Ex		☐ Yes	☐ Yes
☐ Personal ☐ Travel Pnl		☐ No	☐ No
☐ Coun/Rep ☐ Other		☐ NA	☐ NA

****

SECTION B
SUMMARY OF OPENING REMARKS

OSA Form 172, LONG ADDENDUM, 5-73

E-3-14

BILLING CODE 3710-08-C

Annex E–4.—References

ALIENS

Regulation	Dated
AR615–360	20 Jul 44
AR615–300	10 Aug 44
AR615–366	21 Oct 44
AR615–365	15 Dec 44
AR635–205	9 Dec 54
AR635–200	15 Jul 66
AR635–200	1 Feb 78

RESIGNATION OF EM

AR615–367	13 Sep 48
AR615–367	27 Sep 48
AR635–200	and Laird Memo 7 Jul 71, 15 Jul 66
AR635–200	1 Feb 78

RESIGNATION OF OFFICERS

AR605–275	20 Oct 25
AR605–275	30 Oct 26
AR605–275	25 Sep 28
AR605–275	9 Nov 44
AR605–275	27 Jun 49
SR605–290–1	12 Aug 49
SR605–290–1	17 Jun 52
AR635–120	8 Oct 54
AR635–120	25 Nov 55
AR635–120	8 Apr 68

ELIMINATION OF OFFICERS

AR635–105A	2 Jan 57
AR635–105B	2 Jan 58
AR735–173	31 Mar 61
AR635–120	8 Apr 68

DISCHARGE FROM THE RESERVES

SR140–177–1	29 Sep 49
SR140–177–1	24 Nov 52
AR140–158	15 Jan 55
AR140–175	24 Feb 55
AR135–133	8 Jun 56
AR140–178	14 May 57
AR135–178	20 May 66
AR135–178	15 Jul 77
AR635–200	1 Feb 78

UNFIT-FREQ. INCIDENTS, SEXUAL PERVERSION, DRUGS, SHIRKING, FAILURE TO PAY JUST DEBTS, FAILURE TO SUPPORT DEPENDENTS, HOMO ACTS

AR615–360	6 Dec 22
AR615–360	14 Sep 27
AR615–360	4 Apr 35
AR615–360	26 Nov 42
AR615–360	25 May 44
AR615–368	20 Jul 44
AR615–368	7 Mar 45
AR615–368	14 May 47
AR615–368	27 Oct 48
AR635–208	21 May 57
AR635–208	8 Apr 59
AR615–360	1 Mar 66
AR635–212	15 Jul 66
AR635–200	15 Jul 66
AR635–200	1 Feb 78

UNSUIT-INAPTITUDE, PERSONALITY DISORDERS, APATHY, ALCHOHOLISM, HOMOSEXUALITY

AR615–360	6 Dec 22
AR615–369	20 Jul 44
DA MSG 477064	24 Dec 55
DA MSG 590808	25 Feb 55
AR735–209	17 Mar 55
DA CIR 635–11	4 Nov 55
DA CIR 635–2	19 Aug 57
AR635–209	8 Apr 59
AR635–212	15 Jul 66

DISLOYALITY AND SUBVERSION

SR600–200–1	10 Nov 48
AR615–366 (Sec VI-Reserves)	5 Feb 54
SR140–175–1 (Reserves)	9 Mar 54
AR604–10	29 Jul 55
AR604–10	15 May 57
AR635–200	15 Jul 56
AR604–10	15 Nov 69
AR604–10	21 Apr 75

HOMOSEXUALITY

AR615–360	7 Mar 45
AR615–368	12 Jan 50
AR600–443	21 Jan 55
AR635–89	18 Sep 58
AR635–89	15 Jul 66
AR635–212	15 Jul 66
AR635–200	1 Feb 78
AR 635–200	

MARRIAGE AND PREGNANCY

AR615–361	4 Nov 44
SR615–360–10	12 Jan 50
AR615–361	30 Aug 50
AR635–120	25 Nov 55
AR635–173	5 Dec 58
AR635–210	17 Feb 61
AR635–120	21 May 62
AR635–200	15 July 66
AR635–100	16 Apr 71
AR635–200	16 Jul 66
AR635–200	1 Feb 78

MINORITY AND HARDSHIP DISCHARGE

AR615–360	6 Dec 22
AR615–362	18 Oct 44
AR135–173	5 Dec 58
AR635–207	12 Jan 61
AR635–120	21 May 62
AR635–200	15 Jul 66
AR635–200	1 Feb 78

DISHONORABLE AND BAD CONDUCT DISCHARGE

AR615–364	27 Oct 48
AR635–200	15 Jul 66
AR635–200	1 Feb 78

CONVENIENCE OF THE GOVERNMENT

AR615–360	6 Dec 22
AR615–265	25 Oct 44
AR635–205	9 Dec 54
AR635–205	2 Apr 56
AR635–205	11 Jan 60
AR635–200	15 Jul 66
AR635–200	1 Feb 78

MISCONDUCT, CONVICTION BY CIVIL COURT

AR615–360	6 Dec 22
AR615–366	24 May 45
AR615–366	5 Feb 54
AR635–206	16 Jan 56
AR635–206	8 Apr 59
AR635–207	12 Jan 61
AR635–200	15 Jul 66
AR635–200	1 Feb 66

FRAUD ENTRY, AWOL AND DESERTION

AR615–300	6 Dec 22
AR615–366	24 May 45
AR615–366	5 Feb 54
AR635–206	16 Jan 50
AR635–206	8 Apr 58
AR635–207	12 Jan 61
AR635–206	15 Jul 66
AR635–200	1 Feb 78

Annex F–1.—President's Guidance.

1. Introduction. The purpose of these notes is to attempt to convey a broader understanding of the purpose of discharge review and to place into perspective the many facets which influence discharge review. The following paragraphs will attempt to explain both the philosophy and certain techniques that will make the duties of Discharge Review Panels of the Board more understandable and, hopefully, will convey the essence of the manner in which officers should see their roles as panel members performing their duties under Title 10 U.S.C. 1553 and in accordance with the uniform standards and procedures contained in DOD Directive 1332.28, and AR 15–180.

a. The review of discharges encompasses two entirely different time frames, that of the present, which may involve the presence of the applicant, and that of the past, which is represented only by documentation which may or may not be adequate to the needs of the panel. It is the juxtaposition of the two timeframes which makes discharge review a difficult task. Compounding the problem is the period of time that has elapsed and what this means in terms of the changes that have occurred both in the Army, society and in the applicant. On the one hand, the records present a person who demonstrably had difficulty with the military and who may or may not have been equitably separated at the time. You are also confronted with the possibility that the reason for which the individual was separated in the past can not now be justified in light of the changes that have occurred in the means by which the Army administers its personnel. On the other hand, you are confronted with an individual whose present status may or may not typify that of the average, productive, concerned American citizen. In between you will find categories that encompass a multiplicity of variations of these two extremes.

b. The greatest difficulty the panel faces, when adjudicating cases, is to strive for uniformity that is defensible and comprehensible to impartial observers who possess no expertise nor any reliable means of evaluating the way of life of the military. Concurrently, you must also satisfy yourself that the determinations made at the time of discharge are defensible and comprehensible when considered against the broad spectrum of the Army as a whole both at the time the discharge was awarded and on the date of review. In short, you must ask yourself—would the same results have pertained elsewhere in the Army at the time this person was discharged and would they pertain today across the entire spectrum of the Army? This is the most difficult question to resolve. To do

so, each panel member must be completely impartial in evaluation of a case. Yet, at the same time, each panel member must attempt to project his/her thoughts to the installation and to the commander who made the decision at the time of discharge, and simultaneously to the person who was discharged. While contact between those two may have been absent, their relationship nevertheless existed and each panel member must understand this relationship and evaluate it if he/she is to be able to objectively evaluate the merits of the review.

c. It is important that panel members bear in mind their roles are not to justify the actions of the Army, nor are they to defend the applicant as if he/she is engaged in an adversary proceeding against the Army. Their roles are simply to uncover the truth, to interpret the truth, and then to judge! It is incumbent upon each panel member that he/she be as scrupulous as possible when looking for errors in the discharge proceedings as he/she is in looking for the correctness of the discharge proceedings. The panel member cannot assume that the applicant is sufficiently sophisticated nor learned so as to adequately comprehend what he/she perceives to be injustice in his/her case. In all probability, the applicant is no better prepared at the time of his review hearing to comprehend fully the impact of the proceedings that control his/her destiny then he/she was at the time of his/her discharge. However, there is one critical change in the applicant's attitude from that at the time of his/her discharge. It is most probable that, at the time of his/her discharge, he/she was not only amenable to the action taking place but also desired separation (and as is true in many cases, deserved separation). At the time of his/her review hearing, however, none of those aspects, particularly that in the parenthetical portion above, should be considered as binding. At the hearing, the applicant believes that he/she was wronged or that he/she is no longer deserving of being punished. He/she may perceive that there was equity in the manner in which he/she was discharged, but he/she does not believe that equity has prevailed as to the impact of his/her discharge.

d. It is necessary to take into consideration the trauma associated with the events that led up to an administrative discharge as "undesirable." This taruma is two-fold. On the one hand is the impact that the circumstances have on the individual concerned and his/her ability to reason his/her problem or to even perceive his/her problem. On the other hand, it is a problem faced by the Command (particularly, in those instances where the individual was in the hands of a Personnel Control facility or Special Processing Detachment), which had to process individuals whose records were absent and who, in all probability, were known by no one in the processing system. Even if the individual was processed by his/her own organization, assignment may have been short lived and the officers and NCO's of that organization may have had limited, if any, opportunity to become acquainted with the individual. The foregoing, coupled with institutional trauma suffered by the United States Army as a result of the turbulence created by the requirements of RVN, produced a situation in which the administrative discharge system, when at its best, was operating in an almost impersonal manner, and, when at its worst, was operating almost with assembly line procedures.

e. The foregoing is not intended to infer that regulations were not followed, nor that the rights of the individual were not considered; however, the experience of thousands of cases and the statistical pattern evidenced over the past ten years indicates that some personnel were discharged administratively from the U.S. Army by means which were either improper or inequitable, and while it is almost certain that these inadequacies could not be perceived at the time, in retrospect it is possible to perceive them as such now. In short, very careful consideration must be given by the discharge review panel to "read between the lines" of each case and attempt to determine whether or not the intent and spirit as well as the letter of regulation and the policies of administrative discharge were followed in the timeframe leading up to the discharge and the time of discharge.

f. The panel must endeavor, based on the knowledge and experience gained through years of service, to reconstruct the environment at separation. Impartiality must be the rule for each panel member. A clear, non-jaundiced, unprejudiced evaluation must be made, which favors neither the individual nor the government but which simply tries to fairly consider whether or not the actions that took place can now be justified with the benefit of hindsight. The board must strive for uniformity in its adjudicative deliberations. While circumstances can vary, there are certain parameters within which all types of cases fit and by which these various cases can be considered, so as to apply what might be called a "worldwide standard" for the consideration of discharge review appeals.

g. Presiding Officers must realize that their functions are to insure that cases are properly heard and properly considered. The Presiding Officer's guidance to the panel should not take on the guise of directed verdict nor should his seniority be applied either consciously or unconsciously to attempt to influence other members of the panel. This does not mean that the Presiding Officer may not use logic as a means of subduing emotional argument nor does it means that he/she should permit clearly irrelevant discussion to unnecessarily prolong the adjudicating process. However, it does mean that the Presiding Officer must insure that all panel members have a free and unrestricted opportunity to express their points of view when discussing the merits of a case. All panel members are equal during the adjudication of a case. The Presiding Officer must insure that no junior member of the panel is made to feel inhibited by the actions of the Presiding Officer or any other senior member of the panel. Points of view and expressions of compassionate concern must not be ridiculed nor must the individual expressing them be cut short in his discussion or argument as long as they are relevant to the merits of the case.

h. Each panel member must be given free opportunity to question the applicant, if such is indicated, although all panel members must remember that the proceedings are not adversary in nature, and that the range of cross-examination is clearly limited to those areas that appear in the military records or that have been offered by the applicant in direct examination or written statement. A basic credo is that benefit of doubt is always resolved in favor of the applicant, and the panel members must remember that it is incumbent upon them to recognize areas of doubt.

i. It has been the experience of the ADRB that applicants suffer from the misconception that the panel knows as much about their cases as they do. Consequently, the applicants fail to bring out in their statements those facts which are important to their cases and which may be favorable to their cases. Panel members with adequate background and experience are able through questioning to bring out these facts almost as counsel might do. In this regard, panel members must also appreciate that counsels are rarely, if ever, so thoroughly prepared on a case that they can insure that all facets are

covered during direct or redirect examination of the applicant. Since the panel must function without acting as a proponent for the applicant or the government in the area of revealing facts, thorough questioning in each case is essential. Prehearing review by board members should include any briefs submitted by counsel as well as any supporting documentation submitted by the applicant. Even though this documentation may not make any particular reference to time-in-service and principally cover pre- and post-service, it is of value.

2. Discharge Review Standards (see Appendix C of AR 15–180). As established by law and regulation, it is the mission of the ADRB, when considering appeals, to determine whether or not the discharge was equitably and properly given. In accomplishing this mission, the panel must bear in mind that the passage of time, adequacy of records, and the circumstances under which the discharge occurred are such that it may not be possible to have available all facets of the case. It is for this reason that the panel is composed of mature and experienced officers, so that the panel, when necessary, can read between the lines in restructuring the events which led to separation and the actual circumstances of separation. The panel must at all times remain impartial and objective, although subjective reasoning may be necessary to satisfy all considerations that may arise. The panel must function neither as the proponent for the applicant nor the government. Broad guidance concerning propriety and equity is contained in Appendix C, AR 15–180. The examples shown below are meant to elaborate on the discussion contained in the AR and to provide the panel members leads regarding areas for consideration and questioning in their quest to establish propriety and equity for any case. These examples are not policy; procedural rights or guidance—only areas of consideration.

a. Propriety: A discharge shall be deemed to be proper, unless in the course of discharge review it is determined that there was prejudicial error. The following are some specific examples of the type of situations which may be helpful in determining whether the available evidence establishes that impropriety is a possibility in a particular discharge review area.

(1) Prejudicial error may be a possibility when:

(a) Unrebutted, clearly substantiated allegations of command influence are found by the ADRB in the record; or,

(b) The ADRB determines there was an intended violation of a regulation which required transfer, or some form of observation and counseling, prior to the initiation of discharge proceedings; or,

(c) The ADRB determines that the applicant was not specifically advised prior to a waiver of the applicant's rights to a hearing of the particular conduct on which the administrative separation was based, or otherwise adequately notified of such conduct by statements of witnesses or other evidence, or given full opportunity to rebut the adverse evidence against him/her.

(2) Prejudicial error may exist when the characterization of the service was based on a record which contained:

(a) An adverse action (e.g., non-judicial punishment or reprimand) which by service regulation should have been removed from the file; or,

(b) Evidence of pre-service conduct except where that pre-service conduct was a part of the basis for discharge, e.g., fraudulent entry because of undisclosed civil convictions.

(3) Prejudicial error may exist when the ADRB determines that compliance with the appropriate regulation required an entry in the service record of the individual and such entry is not present, if the missing entry was material to the separation process or the characterization of the service of the individual, and is not otherwise known.

(4) Prejudicial error may exist when the ADRB determines that an individual separated with a discharge under other than honorable conditions in lieu of trial by court-martial could not have been sentenced by a court-martial to a punitive discharge.

(5) Prejudicial error does not exist when in-service determinations of the applicant's eligibility for discharge based on conscientious objection hardship/dependency discharge, or medical discharge were resolved unfavorably even though the applicant contends these decisions were unjust. The impact of such determinations on the applicant's quality of service may be considered in determining the equity of the characterization of his/her service, however, if the ADRB considers that the decisions were too harsh or unjust.

(6) Prejudicial error shall not be based on Constitutional issues unless the ADRB determines that the Constitutional issue addresses an intrinsic element of the discharge process itself.

b. Equity: A discharge may be deemed to be equitable unless:

(1) In the course of a discharge review, it is determined that the policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on an Army-wise basis to discharges of the type under consideration, provided that:

(a) current policies or procedures represent a substantial enhancement of the rights afforded a respondent in such proceedings; and

(b) there is a substantial doubt that the applicant would have received the same discharge if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration; or,

(2) At the time of issuance, the discharge was inconsistent with standards of discipline in the Army; or,

(3) In the course of a discharge review, it is determined that relief is warranted based upon consideration of the applicant's service record and other evidence presented to the ADRB viewed in conjunction with the factors listed in this subparagraph and the regulations under which the applicant was discharged, even though the discharge was determined to have been otherwise equitable and proper at the time of issuance. Areas of consideration include, but are not limited to:

(a) Quality of Service, as evidenced by factors such as:

1. Service history, including date of enlistment, period of enlistment, highest rank achieved, conduct of efficiency ratings (numerical or narrative).

2. Awards and decorations.

3. Letters of commendation or reprimand.

4. Combat service.

5. Wounds received in action.

6. Level of responsibility at which the applicant served.

7. Other acts of merit that may not have resulted in formal recognition through an award or commendation.

8. Length of service during the service period which is the subject of the discharge review.

9. Prior military service and type of discharge received or outstanding post-service conduct to the extent that such matters provide a basis for a more thorough understanding of the performance of the applicant during the period of service which is the subject of the discharge review.

10. Convictions by court-martial.

11. Record of non-judicial punishment.

12. Convictions by civil authorities while a member of the Army, reflected in the discharge proceedings or otherwise noted in the service records.

13. Record of periods of unauthorized absence.

14. Records relating to a discharge in lieu of court-martial.

(b) Capability to serve, as evidenced by factors such as:

1. Total capabilities. This includes an evaluation of matters such as age, educational level, and aptitude scores. Consideration may also be given to whether the individual met normal military standards of acceptability for military service and similar indicators of an individual's ability to serve satisfactorily, as well as ability to adjust to the Army.

2. Family/Personal Problems. This includes matters in extenuation or mitigation of the reason for discharge that may have affected the applicant's ability to serve satisfactorily.

3. Arbitrary or Capricious Actions. This includes actions by individuals in authority which constitute a clear abuse of such authority and which contributed to the decision to discharge or to the characterization of service.

4. Discrimination. This includes unauthorized acts as documented by records or other evidence.

c. The following are some specific examples of situations which can be used in determining whether the available evidence establishes that inequity exists in a particular discharge review:

(1) Inequity may exist when it cannot be discerned from the military record and other evidence considered by the ADRB in reviews involving applicants separated for the reasons listed in (a) to (h) below, that the conduct upon which the separation was based had an adverse impact on the quality of the individual's service or on the state of discipline within the organization of which the individual was a member.

(a) Conviction by civil authorities.

(b) Frequent involvement of a discreditable nature with civil authorities.

(c) Sexual perversion.

(d) Drug addiction, habituation or the unauthorized use or possession of drugs (including chemicals) except when that use/possession was the basis for criminal charge for which the individual requested discharge in lieu of trail.

(e) An established pattern showing failure to pay just debts.

(f) An established pattern showing dishonorable failure to contribute adequate support to dependents or failure to comply with orders, decrees, or judgments of civil courts concerning support of dependents.

(g) Unsanitary habits.

(h) Fraudulent enlistment.

(2) Inequity may be found to exist when the ADRB determines that it can be discerned from evidence of record that the command which discharged the individual in lieu of trial by court-martial with a discharge under other than honorable conditions clearly did not intend to dispose of the charges by reference to a court-martial empowered to adjudge a Bad Conduct Discharge had the individual not requested discharge.

3. Specific Areas for Consideration (not restrictive).

a. Post Service Conduct. The panel may take into consideration post-service circumstances of the applicant's life when reviewing appeals. Specific factors of unusual importance can be given consideration, but of greater value is the sum total of the manner in which the applicant has conducted himself since separation. By and of itself, post-service conduct of an outstanding nature is not enough to outweigh in-service conduct which clearly could not be tolerated by a military organization. However, if the panel can establish to its satisfaction that in-service conduct was not major in scope and represented an abnormality to the normal pattern of the individual's life, then outstanding post-service conduct can be given significant weight. It is the overall character of the applicant that is of importance, and it is in that determination of character that the panel may establish what weight it may give to post-service conduct.

b. Vietnam Syndrome. The panel may recognize that during the Vietnam era, young, easily influenced, and immature individuals may have been misled by the dissension in American society over Vietnam involvement. This susceptibility could possibly have been heightened upon their return from service in Vietnam, particularly when their ability to comprehend the purpose for their service in Vietnam was eroded by their inability to find understanding for such service among their peer group in civilian life. The panel may, subject to its own judgment, give consideration to the possibility that this element of confusion may have caused some ex-servicemen to express their uncertainly by infractions of discipline. When personnel of this type then elected to sever their relationship with the Army as opposed to accepting punishment or rehabilitation, the panel may conclude, if otherwise justified, that this might be due to ideological pressures. Care must be taken by the panel to insure that the Vietnam Syndrome is, indeed a factor in the case as opposed to cases wherein the individual was simply dissatisfied with military life and under any other circumstances would be a recalcitrant or noneffective soldier.

c. Institutional Discrimination. The panel must recognize that the application of discipline may not have been uniform throughout the entire spectrum of the Army for similar individuals committing similar types of offenses. The panel must also recognize that the "tolerance level" of commanders, at different installations, in different periods of time, and theaters of operation varied and punishment may not have been equally applied. The panel must attempt to accord uniformity in its review of cases. The panel may give consideration to the possibility that unintentional discrimination could have been a factor in the awarding of a discharge. This institutional discrimination could have resulted because of race, type of unit, mission of the unit, involvement or noninvolvement in combat operations, time and length of relationship between the commander and the members of the unit, and other variables inherent in a military structure. It is incumbent upon the panel to reconstruct the events so as to determine when, how, and if to give consideration to the aspect of institutional discrimination.

d. Application of Changing Social Mores. The panel must appreciate the relationship between society at large and the society of the Army. It is not always true that the change in mores of the nation will at some time be reflected in the code of the Army. Nonetheless, that there is an impact upon the members of the Army in the area of societal change is true. It is also true that this impact may have influenced soldiers to an extent where there was honest conflict in their minds between conformance within the Army and the conformance within their peer group and society at large. The fact that this conflict existed did not give a soldier license to viloate military standards, but it may have produced a situation in which a commander may have failed to understand and compensate for this conflict. No parameters can be drawn for the panel in this regard, but the panel must understand that precipitous action may have occurred in the commander/commanded relationship when, instead, understanding may have been a more appropriate alternative. The extent to which the panel considers this area is again a function of judgement. But of particular importance is the requirement that the panel distinguish between deliberate violation of military standards as opposed to unintentional failure to comply because of honest confusion.

e. Fraudulent Entry. The panel must be extremely cautious in this area so as

not to assume that every instance of concealment of otherwise disqualifying factors for enlistment was perpetrated by deliberate intent to defraud the government. The panel must attempt to establish what the motivation of the applicant was at the time of enlistment and must give consideration to his/her conduct subsequent to enlistment. Of equal importance is the time of enlistment and the pressures that were present on the procurement system and what could have been at times a simple human failing of procurement personnel who were motivated to meet quotas. It is incumbent upon the panel to determine whether or not the fraud was concealed for the purpose of innocence or for the purpose of evil. Conduct subsequent to entry must be a major consideration in this area.

f. Drugs.

(1) Laird Policy. The Laird Memorandum is the basis for this area. When drugs are a principal element in the discharge process, it is incumbent upon the panel to attempt to determine whether or not the involvement of drugs was the proximate cause or effect of other disciplinary problems which contributed towards discharge. The panel must also consider the impact of peer pressure in the drug use area and as well the degree of tolerance exhibited by the commander. The nature of the drugs used as well as the differentiation between experimenters, abusers, and addicts must be weighed by the panel.

(2) Post Laird. The basis for this area is the current drug amnesty and rehabilitation policy. Panel members must appreciate that post RVN entrants to the Army have benefited from understanding policy pertaining to drugs. The compassionate consideration elements inherent in pre-Laird reviews may not be proper for recent cases. Individuals who knowingly and deliberately violate policy may properly be expected to bear responsibility for such.

g. Outside Pressures. This is a difficult area to enunciate since regulatory procedures have accommodated outside pressures that made it difficult for a soldier to concentrate exclusively on military duties. Hardship discharge and compassionate reassignment provisions were available to soldiers that had need of such assistance. However, in some cases the pressure of the Vietnam era, as most wartime, was sufficiently traumatic so as to make it administratively difficult for soldiers to avail themselves of these provisions. Also, the junior leadership of the Army may not have been completely aware of the means by which they should have assisted soldiers to avail themselves of these provisions. This, coupled with the perception on the part of many soldiers that the burden of wartime conflict is unequally borne, may have led some to mistakenly assume that the choice between family and service left them no choice at all but that of the family. Again as in other areas, the panel must establish to its own satisfaction whether or not violations were deliberate, without regard to any other methods for solution, or whether they were unintentional because of frustration at being unable to effectively apply any other alternative solution.

h. Character and Behavior versus Habits and Traits. Often the line of demarcation between separation for character and behavior disorders (honorable type discharge) and separation for habits and traits (usually under other than honorable conditions) is not clearly discernible. Many times the decision to board as "unfit" versus "unsuitable" was more influenced by external circumstances than it was by the character and personality of the individual being separated. The panel in considering whether or not the proper method was used in separating the individual from the service must examine the cause/effect relationship, the individual's behavioral capabilities, and his behavioral pattern. In essence, the panel must ascertain whether or not the infractions of discipline were acts of commission or of omission. A key is to decide whether or not the individual was simply incapable of proper performance. Coupled with this, must be a determination as to the nature of the offense and the time/space circumstances under which the offense was committed.

i. Would but Couldn't; Could but Wouldn't. This area of consideration relates very closely to the preceding paragraph. Some individuals are error prone, others clearly were mistakes of the procurement process and should never have been inducted or enlisted into the Army. These individuals could properly be called victimes of the trauma associated with attempting to meet critical personnel requirments during RVN within the political, economic, and social constraints that detracted from efficient operation. It is inevitable that some would have had difficulty with the military system. Key to consideration of their cases is the determination as to whether or not they were sincerely trying to conform versus whether or not there was deliberate intent not to conform. The panel may grant relief if, in its opinion, there was intent but no ability to be a good soldier.

j. Homosexuality. Individuals whose sexual desires are so oriented are clearly unfit for a military environment. They are unfit not so much from the standpoint of not being able to adequately perform their military duties, but because their impact on military society is so traumatic. Many times such individuals are otherwise exemplary soldiers. Nonetheless, the panel in considering appeals from individuals separated by reason of homosexuality must affirm Army regulations in this area. However, the panel must insure that it was compliance with the regulations which produced the character of discharge and not the emotions generated in the command because of the nature of the offense. Of equal importance, the panel must give consideration to the manner in which the behavior of the individual concerned was brought to the attention of the command. As an example, those individuals whose homosexuality becomes known because they have sought help must clearly be separated, but the nature of their separation should not be a punishment.

k. Retroactive Application. As with the alcoholic and the Laird policy regarding drugs, the panel may, when justified, apply the foregoing areas of consideration even though regulations at the time of separation may not have permitted such consideration. However, this retroactive application is limited to those areas in which changes to Army Regulations or standards resulted from an attempt to correct past practices which were clearly prejudicial.

l. Arbitrary and Capricious Administrative or Command Action. It is sometimes very difficult when reviewing the official military records to separate the fair from the unfair. Compliance with both the spirit and intent of the regulation is a necessary prerequisite to a fair and equitable processing of administrative or command action. Too frequently, it is clear from the timing, the presence or absence of comments, and other facts that the administrative processing was simply "by rote" or accomplished in such a way as to be prejudicial to the opportunity for fair consideration. The circumstances rarely lend themselves to clear perception since it is in their nature that they are concealed simply because of the appearance of "normality". It is incumbent upon board members to insure that arbitrary and capricious action has not been the net result of simple "by rote" processing of administrative separation documents. Furthermore, it is incumbent upon board members to insure that arbitrary and

capricious action has not been the basis of determining that the discharge is to be awarded and, more importantly, determining the character of that discharge. When in the opinion of a board member it is demonstrably clear that arbitrary and capricious determination is in fact a circumstance of the administrative and command action, then relief must be given serious consideration.

m. Multiple Minor Offenses. There are circumstances and cases in which board members will find that a series of insignificant minor offenses have been used to justify initiation of board action more properly suited to the resolution of serious disciplinary problems. This is particularly true when a series of minor offenses suggest that they are precipitated by a personality conflict or in many cases just plain inability to comprehend on the part of the offender. In certain units individuals in commission of such offenses tend to be an irritant to the commander and a "case" is made to justify processing that individual administratively for separation. Since the basis upon which the process is initiated is the commission of disciplinary offenses, it can only be justified as an action of unfitness as opposed to one of unsuitability. Consequently, the action terminates normally in the individual being awarded an undesirable discharge when, in fact, the offenses for which separated would not justify such a characterization. Board members must insure that the listing of a multiplicity of offenses has not been done simply for the purpose of making a "case" but is, in fact, an honest and fair rendition of indicators that clearly establish that the perpetrator is "unfit" for service as opposed to manifestation of a character and behavior disorder which would be a basis for a determination of unsuitability. If any other conclusion can be drawn, then board members should give serious consideration to relief.

n. Stacking of Offenses to Justify BCD SPCM. As in the preceding discussion of multiple minor offenses, at times board members will find that a multiplicity of charges have been prepared based on a single incident. As an example, an individual will be charged with more than 3 but not more than 30 days AWOL, breaking restriction and with failure to repair at the same time. While it is true that all offenses were committed, it is clear that the more serious one of AWOL is the one in which consideration may justify special court-martial action. It is also clear that it is not wrong nor illegal to list the other charges for which the individual could be tried; but it is often clear from other action that the listing of these charges has been done deliberately to make the circumstances appear to be of a greater magnitude than they truly are. Board members must insure that they are not unduly and incorrectly influenced when it is apparent that "stacking" has occurred simply because there is a listing of a multiple of offenses associated with the same time period. It is incumbent upon board members to give consideration to the nature, seriousness, and circumstances under which the offenses occurred before they have a right to deduce that "stacking" may be a factor. Additionally, board members must consider whether the "stacking" was used to justify or support discharge processing or was simply added "window dressing".

o. Juxtaposition of Court-Martial Versus Board Action Processing. In some circumstances, board members will observe that there has been a processing of charge sheets and, simultaneously, requests for administrative board action on an individual soldier and that the same offense is used as a catalyst in both circumstances. By itself this is not in error. In short, it is perfectly permissible for a commander to process charge sheets involving an offense while at the same time using the commission of this offense as being indicative of the culmination of a pattern of bad performance on the part of an individual. However, if a court-martial has occurred and could have, but did not, adjudge a discharge, it is improper to use that offense as a catalyst for a Board Action. Board members must insure that there is a clear separation in the manner in which a single offense is used to justify two separate and distinct actions.

p. Pre-Laird Civilian Drug Bust. Many times cases will be presented to members in which the basis for undesirable discharge has been conviction or confinement by civilian authority for drug violation. If the civilian case for which the offender was convicted or confined is of a nature that had it been a military offense and "Laird" would have applied, then board members may apply Laird policy and grant relief. Care must be taken to thoroughly examine all cases of this type since many times, although the basis for separation is civil conviction or confinement, the nature of the offense committed may not justify an undesirable discharge.

q. Conviction or Confinement by Civil Authority. Board members must be conscious of the fact that action by civil authorities for similar offenses may not be uniform on a nationwide basis. Consideration must be given to idiosyncrasies of legal jurisdictions when they are contiguous to major military areas. If it is not clear that the conviction by itself justifies an undesirable discharge, then board members must be satisfied that the offense, if committed within the military environment, would have justified the UD. In absence of such justification, board members have a clear obligation to give consideration to upgrading.

r. Rehabilitation (other than for drugs). Cases are often seen in which the basis for discharge was failure of rehabilitation. This is frequently seen in administrative separation by the Retraining Brigade, (Correctional Training Facility) at Ft. Riley, Kansas. Whenever the commander has determined that correctional training or other rehabilitation is appropriate, he has clearly indicated that the offender deserves another chance. Having done so, clear evidence is required that the offender did, in fact, fail all proper and reasonable efforts at rehabilitation before an administrative separation with a UD is appropriate. While it is legally correct to use a few very minor infractions, together with all prior offenses, to attempt to justify a UD for failure of rehabilitation, serious questions must be asked as to the equity of such action. Board members must satisfy themselves that the separation was the justified course of action.

s. Legal, Regulatory or Procedural Error. In any case in which there can be clearly established that legal, regulatory, or procedural error exists (and such error is verified by the legal consultant), serious consideration must be given to granting relief. Essential to the evaluation process should be a view of facts that enable members to conclude the legal, regulatory, or procedural error was prejudicial to the applicant in either the separation process or characterization of discharge (see paragraph 2). A conclusion that the legal, regulatory, or procedural error may not have been prejudicial to the foregoing does not justify an absence of upgrading, nor does the mere presence of error demand upgrading unless that error is deemed prejudicial. All other factors must be evaluated in the context of the presumed error. In any event, care must be taken that a decision to upgrade or not to upgrade is suitable, specifically from a legal point of view and generally from a moral point of view.

t. Capability to Comprehend. Members must give consideration to the

"person" of the individual involved and determine whether that individual was capable of comprehending the actions leading to separation and the impact of unfavorable separation on his future life. This does not mean that the simple absence of formal education by itself is cause to consider that an individual is not capable of comprehending administrative procedures applied against him or towards him under Army regulations. Even the uneducated and the undereducated can be made to understand, if the approach taken by those who are more sophisticated is that at the individual's level of comprehension. Members cannot always reconstruct the totality of the circumstances under which the applicant was handled, but based on experience we can reconstruct the basics of the environment in which the action occurred. Whether or not absence of understanding became prejudicial from the standpoint of separation action or characterization of discharge is a factor for consideration when looking at the case.

Members must satisfy themselves that personnel responsible for procedurally processing the individual were oriented towards enabling comprehension by the individual. If it can be concluded that the opposite pertained either deliberately or as a by product of environment, then consideration can be given to granting relief.

u. The Whole Man. The function of discharge review is theoretically limited to consideration of events that transpired from the day of entry into the service to the day of separation from the service. Consequently, documentation and data from those timeframes is adequate for determination of regulatory and procedural propriety. However, such are not necessarily adequate when attempting to read the human element into the equation, since it is evident that there is and was both a before, during and after to the period of military service, which involves human concern that may or may not be documented. This can have a distinct bearing on the conduct during service and ability to cope with service. During review it is incumbent upon members to attempt to establish an understanding of the human involved before endeavoring to objectively evaluate the propriety and equity of the separation process. In some respects, this understanding of the human involved can have a major bearing on paragraph i above.

v. Personality Disorder. Individuals who suffer from a personality disorder frequently are incapable and/or unwilling to conform to the standards necessary in a military organization. These individuals are often afflicted with and manifest characterlogical and behavioral traits which make them socially offensive and/or the objects of irritation, ridicule and/or anger. Under those circumstances, it is at time difficult for a clear perception to be gained whether or not the individual concerned is acting in a manner over which he/she has no control and is more a victim of his/her situation than a perpetrator. Individuals who truly have a character and behavior disorder (used interchangeably with personality disorder) should not be unjustly penalized for their affliction although they clearly must be separated.

(1) A determination as to whether or not an individual is properly classified as a character and behavior disorder is a function of two different spheres of expertise. On one hand, the medical sphere offers expert evaluation establishing whether or not the individual concerned has a personality disorder. On the other hand, there is the commander's evaluation which involves an area of expertise that centers around certain intangibles of leadership culminating in a judgment whether or not the individual concerned is capable of complying with soldierly standards. It is the interplay between these two spheres of expertise, each of which must be mutually supporting, that makes a final determination possible.

(2) Individuals who suffer from situational maladjustment or some form of stress and fatigue, such as combat fatigue or other similar situational syndromes, may appear to support the test of personality disorder but may, in fact, not be so afflicted. Care must be taken to insure that such individuals are not improperly categorized. The determination in this regard is heavily dependent upon the specific duty environment and circumstances that existed at the time the problem or problems which led to the soldier's separation manifested themselves.

(3) Certain prerequisites of processing must be evaluated by the panel to insure proper consideration of a C & B case. Under the policy in effect now, a psychiatric evaluation is mandatory. Equally important, though not mandatory, is a clear rendition of the perception of the commander of the problems faced by the individual. Absent these, panels must give serious consideration to the granting of relief. In this regard, relief can be interpreted as granting a fully honorable discharge.

w. Justifying Decision Not to Grant Full Relief. Under the provisions of "Urban Law Institute v. Secretary of Defense, U.S.D.C., C.A. No. 76-0530" as they are interpreted by the Army General Counsel, the Discharge Review Board is responsible for enunciating in sufficient detail a decision as to why full relief is not granted when only partial relief is granted on the discharge appeal. In substance, this means that when a panel determines that there is inherent to an appeal sufficient justification to upgrade from UD to General, but does not justify upgrading to Honorable, the following must be accomplished:

(1) In the Rationale paragraph, and in the findings for both contentions and/or issues, if applicable, a full explanation justifying changing the discharge from UD to General should appear.

(2) In addition, both in Rationale, and as appropriate, PO's notes, the reason why the panel decided not to go fully honorable must appear. This can be expressed in general terms but must be specific enough to enable the applicant to clearly understand why he was not provided full relief.

(3) In responding to this requirement, panels may make use, by reference thereto, of information that is already contained in the Case Report and Directive. For example, if in part III there are specifically enunciated offenses which were punished by Article 15, Special or Summary Courts-Martial, and as well, a specific listing of AWOL time and Conduct and Efficiency ratings, then reference can be made to these in the Rationale as being the basis on which a decision was made not to grant full honorable.

4. Summation.

a. As indicated previously, the areas of consideration in the foregoing are in no way intended to be all-encompassing factors to be considered by the panel in arriving at a decision. The panel, in the final analysis, must exercise common sense in reviewing cases and must not be overly influenced by any one factor. The panel must also consider the whole person in determining what is fair and proper. The panel is neither the proponent for the individual nor the government. But a basic element must always be present in the panel's action. This element can be simply stated as follows: Has the panel determined by the sum total of its consideration of the case that it has left no factors unconsidered which may justify granting complete or partial relief to the applicant? In doing this, the panel must always remember that it is not the intent of the administrative discharge system and the nature of discharge granted to do anything other than categorize the sum total of the individual's conduct during service. An administrative

discharge is not intended as a form of punishment but is simply a technique by which the Army removes from its rolls those individuals who have demonstrated that they are not capable of serving effectively. Any administrative discharge which does more than intended by the foregoing is not proper and equitable.

b. All members must appreciate that our duty is to correct what may be improper or inequitable. This may at times place us in a position where we perceive an injustice exists, but our authority is limited to correct. These events are inevitable and while we may deplore our non-action we have no right to assume the authority of other agencies to correct that which is beyond the role of our Board. We do all a disservice if we exceed our limits. It is imperative that the credibility of the Board be inviolate—in all perceptions of what we do. Each perspective must reflect that we have done all, but only, what law has authorized!

c. Nothing in the foregoing is intended to make mandatory any specific consideration of any area by members or panels. Members may or may not weigh these areas as they determine they are appropriate. These areas of philosophical dissertation must not be abused so as to constitute a basis for challenge of the board's actions. No board member may cite these as rules for decision.

Annex G–1.—Procedural Guide To Conduct of Hearing

1. Background.

a. Members are appointed under the authority of Title 10, U.S. Code, Section 1553. They are designated by the Secretary of the Army or detailed by competent authority when requested by the President, ADRB. No member may sit on a panel hearing a case in which he/she was a participant in the separation proceedings.

b. Each member must be familiar with the contents of this SOP, specifically, the applicable portions of this Annex and the President's Guidance (See Annex F–1).

c. The panel consists of five officers, seated in order of rank, as indicated in AR 15–6. The senior line member is the PO who conducts the proceedings. It is the PO's responsibility to insure the applicant receives a full and fair hearing and in personal appearance cases, to provide the applicant the greatest latitude in telling his/her story and introducing evidence.

d. For personal appearance cases, each member of the panel will be furnished a copy of Parts I, II, III (including Section J/K) and IV of OSA Form 172 (See Annex E–3). The members of the panel will use these documents as a general brief of the case in preparation for the actual hearing. Also provided will be an ADRB SOP for reference and sufficient note paper to use for recording information essential for rendering a decision. The applicant and his counsel will retain the original official military personnel file throughout the formal hearing, for reference, as deemed necessary. Upon closing of the hearing for panel deliberation, the original file remains in the hearing room for panel reference as necessary.

e. For all other hearings, Part I through IV of the OSA 172 will be read to the panel, displayed using an overhead opaque projector otherwise made available to panel members for review.

f. The Alternate Secretary/Recorder (Alt Sec/Rec) makes any research of the applicant's records required and reads verbatim any pertinent comments, remarks, charges, medical and legal data in response to requests from the PO or other panel members. The daily journal is maintained by the Sec/Rec Assistant who records changes or modifications to the SPN's/SPD's in the "remarks" section of the journal. The Alt Sec/Rec also provides the "Summary of Hearing" for all live cases, records the panel's decision, notates changes in case category, e.g., B to C or A, insures that the PO's dictated Findings, Rationale, and PO's notes are recorded accurately and completely, collects and announces results of secret ballots; and authenticates, by signing, the completed case in Part VII, Section F along with the Sec/Rec Assistant and the PO.

g. When an applicant requests to record, on tape, a verbatim record of his personal appearance hearing before a panel, he will be allowed to do so. The taping will be done by the applicant using his own equipment. The taping will not be permitted to interfere with the panel's operation and all necessary equipment and supplies must be those of the applicant.

Some agencies utilize law students to represent applicants in personal appearance cases with a qualified attorney present to supervise the student's performance. The supervising attorney is the attorney of record for the applicant and has full rights accorded this status. He is free to interject himself as any other attorney would in representing his client. He may permit the law student to present the case in its entirety or he may, at any time during the case presentation, interrupt the law student briefly to clarify or develop a line of questioning or to take over the remaining presentation, at his discretion. Similar consideration is granted to other agencies which have someone in a training status representing an applicant under the supervision of a qualified representative even though that representative is not a lawyer.

i. Applicants have the right to challenge a panel member for cause in ADRB hearings. While the exercise of this right is remote in light of past experiences, there are procedures which are designed to insure proper and uniform handling of challenges for cause, should they occur. If it should appear to a panel member that he/she has had some prior dealing with an applicant which would make impartial participation in the hearing possible, the PO should be so advised. Simple participation in a prior hearing is not a de facto basis for challenge for cause itself. The PO will report the matter to the President, ADRB, who will direct a replacement member to sit. In the Traveling Panel situation, the replacement member will ordinarily be the accompanying Secretary/Recorder. If it appears that a panel member had some prior dealing with an applicant, but he/she feels that he can impartially participate in the hearing, he should so advise the PO. The PO will then rule whether or not the member should continue to sit on the case. A panel member is normally the best judge of his qualification to sit in a particular case. It is not the fact of prior dealing, per se, that is determining, but, with the exception of participation in the initial discharge process itself, the question of whether or not the member is impartial. If there is doubt, resolution should be made in favor of sustaining a challenge for cause. Other possible challenges for cause will be resolved in a similar manner, except that if the PO is challenged, he/she will judge the matter of impartiality. If the PO rules that he/she can be impartial, he will continue to sit unless an applicant or counsel expresses disagreement with the ruling, in which case the PO will advise the President, ADRB, who will decide. Prior to convening the Panel, any member who believes that there could be a question arising concerning his/her qualification to sit should advise the PO. In this regard, Secretary/Recorders, Pre-Reviewing Officer, and others, who review records prior to the hearing, should advise the PO or President, ADRB, of any potential grounds for challenges for cause. In the event that a challenge for cause is raised and a determination reached that the

challenged member will participate in the hearing, this facet will be incorporated into the OSA 172 in Part VI, Section C, Para 1, Case Problems. The basis for the challenge and the basis for the ruling will be described in the portion of the Case Report and Directive.

j. Under the provisions of "Urban Law Institute v. Secretary of Defense, U.S.D.C., D.C., C.A. No. 76–0550" as they are interpreted by the Army General Counsel, the Discharge Review Board is responsible for enunciating in sufficient detail a decision as to why full relief is not granted when only partial relief is granted on the discharge appeal. Into an appeal sufficient justification to upgrade from UD to General, but does not justify upgrading to Honorable, the following must be accomplished:

1. In OSA 127, Part VII, Section C, para a. "Majority," and in the findings for both contentions and/or issues, if applicable, the rationale justifying changing the discharge from UD to General should appear.

2. Additionally, in Part VII, Section C, para C, the reason why the panel decided not to go to full honorable must appear. This can be expressed in general terms but must be specific enough to enable an applicant and/or counsel to clearly understand why full relief was not granted. In responding to this requirement, panels may make use, by reference thereto of information that is already contained in the Case Report and Directive. For example, if in Part II there are specifically enunciated offenses which were punished by Article's 15, Special and Summary Court-Martial, etc., and, as well a specific listing of AWOL time and Conduct and Efficiency ratings, then reference can be made to these as being the bases on which a decision was made not to grant fully honorable.

k. The President, ADRB, may authorize official observers to be present during live hearings under the authority vested in him by the Secretary of the Army. Unofficial observers are allowed to attend a hearing only with the permission of the applicant. Applicant objections to the attendence of an official observer will be referred to the President, ADRB, for resolution.

Note.—Mock script for sample case has not been published.

Annexes G–2 and 3

Traveling Panel After Action Report and Alternate Secretary/Recorder Observation Report forms relate solely to internal personnel management and have not been published.

Annex H–1.—Duties of Panel Members

1. Presiding Officer (PO):

a. For the duration of the particular panel, the PO is reponsible for the operations of the panel in all of its aspects. He is the representative of the President of the ADRB and will rule on all matters of policy, procedure or other operational aspects of the panel's activities within the guidelines contained in paragraphs B–3 and B–4, Appendix B, AR 15–180 and this SOP.

b. Assigns specific responsibilities to individual panel members to insure that the work copy of the OSA Form 172 that records the actions taken by the panel on a specific case is prepared accurately, and that the requisite number of copies of the signed report can be produced in a timely manner.

c. Insures that all stated contentions; issues of fact, law, or discretion; documents; testimony; and records are discussed, evaluated, and conclusions drawn therefrom. The Presiding Officer (PO) will then cause the panel to vote and decide whether or not a petitioner was properly and/or equitably discharged, and the action to be taken in regard to the petitioner's request in his/her discharge appeal.

d. After the findings relating to the contentions and issues of fact, law, or discretion have been recorded, the PO enunciates the rationale for the panel's conclusions regarding the propriety and equity of the applicant's separation. Also, as applicable, the PO will record comments to record any case problems, minority opinion, and reason for not granting full relief.

2. Panel Members:

a. Perform such duties relative to preparation of the work copy of the OSA Form 172 as assigned by the PO. Insure that the respective parts of the OSA 172 are completed accurately in accordance with this SOP and that the draft is legible and grammatically correct.

b. Evaluate all testimony, documentary evidence, contentions and issues in the case along with the regulatory guidance covering separations of the type involved in the specific case under consideration.

c. Apply the criteria contained in AR 15–180 in arriving at their individual determinations and votes on the specific case under consideration.

d. Present their views in the discussion phase of each case clearly so that each panel member has the benefit of all views relative to the case before the panel votes on the case. This also assists the PO in enunciating the majority and minority views after the panel has voted.

e. Assists in the post-review function regarding the preparation and authentication of the OSA Form 172 as required.

Annex H–2.—Pre-Review Guide

Board members will be tasked to pre-review cases in accordance with the published weekly work schedule. Cases to be pre-reviewed during a particular day will depend on the status of individual members that day. Individuals assigned as panel members leaving "A" or "C" cases will be required to pre-review their proportional share of cases to be heard on that day. Individuals assigned as panel members hearing "B" or "E" cases will be required to pre-review cases scheduled for future "B", "D", or "E" hearings depending on the amount of time required in the panel room. Cases to be pre-reviewed will be provided by the Secretary/Recorder Operations Division to the individual officers concerned, to the Pits or at a specifically designated point. Additionally, each pit will have a group of "B", "D" or "E" cases for pre-review when personnel have time to work on them.

Cases to be pre-reviewed will have been analyzed before they are delivered. Each case presented for pre-review will consist of an applicant's OMPF together with a separate accompanying file. The separate file will contain a work copy of the OSA 172. The Admin Support Division will have completed Parts I through III (including Section J/K) of the 172 prior to the case being presented for pre-review. Section A, Part VI will also have been completed by the Admin Support Division. Additionally, the Applicant's Enlisted Qualification Record (DA Form 20, DA Form 2–1 and/or DA Form 24 as appropriate) will also be included in the work folder. Work folders are color coded to show the mode of hearing requested by the applicant at the time he submitted his DD Form 293. Color codes are:

Mode and Color

"A"—Red
"B"—Green
"C"—Grey
"D"—Blue
"E"—Yellow

In essence, the pre-review officer's (PRO's) task is to prepare what is, in effect, a case brief, after thoroughly reviewing the evidence of record, the applicant's appeal (including contentions) and any supporting documentation submitted by the applicant. In addition, the PRO potential

evaluates issues of propriety identified by the analyst in Section J/K of Part III as well as any potential issues of equity identified by the PRO during his/her review of the file. Additionally, the PRO prepares a summary of the contents of all documents including counsel's brief submitted in support of the DD Form 293. Such documents will be identified serially as Exhibits starting with C–1. A description of the document which summarizes its content will be prepared and entered in Part V, Section F (Summary of Exhibits). Additionally, the PRO is responsible for preparation of Part IV, Section A. "A" and "C" cases in which a medical or legal question is raised as either a contention or issue will be routed through the appropriate professional member for comment. The specific basis for referral will be stated by the PRO in paragraph 4, Section A, Part IV. As a matter of procedure, all "B", "D", and "E" cases will be routed through both professional members for a review.

The PRO will also verify that the entries made by the Administrative Support Division in Parts I through III are accurate and complete.

While no rigid sequence of pre-review is required, the following guide will insure an efficient and thorough procedure on which personal techniques may be developed as confidence and experience are acquired:

1. Acquire an overall sense of the case and concurrently confirm the analyst provided data on the applicant's personal history and in-service history appearing Part II and Sections A thru I, Part III, OSA Form 172. See Annex J–1 for samples of Parts II and III, OSA Form 172.

2. Read the applicant's appeal together with any accompanying documentation or submitted supporting evidence. Confirm the applicant's contentions, if any, as recorded in Section A, Part VI, by the analyst. See Annex J–1 for samples of a DD Form 293 and Part VI, OSA Form 172, Section A.

Note: The requirement is that the ADRB address all specific contentions of fact, law, or discretion that are germane to the propriety or equity of the applicant's separation. If the submission does not identify any specific contentions it is not to be treated as a contention. In such cases, the statement or a summary of it will be placed in Section C, Part V (Summary of Applicant's Brief or Statement) or shown as an exhibit in Section F, Part IV with a description of the document. If submitted on the DD 293 or as a brief, Section C, Part IV is the appropriate place. Otherwise Section F, Part IV will be used (See paragraph 8 below).

3. Track the discharge action carefully, using the appropriate checklist for the type separation contained in Annex H–2–1 as a guide. Note that these are general outlines only. In many cases, particularly older cases, it will be necessary to consult the appropriate regulation under which the applicant was separated. The Legal Advisor has copies of most of the pertinent separation regulations. If the case involves an unusual separation basis, the Army Library has a complete set of all Army Regulations.

4. The analyst may indicate specific questions of propriety as potential issues on Section J/K. The PRO will evaluate such issues and place his/her evaluation of it in paragraph 1, Section A, Part IV. The PRO will also indicate in the appropriate column on the J/K whether the issue is or is not an issue for consideration by the Panel which hears the case. This is an opinion of the PRO and is not binding on the Panel. If the PRO believes there is no issue, he should state the issue as a question and enter it in Part VI, Section B.

5. Any other potential issues of propriety or equity noted by the PRO should be treated in the same way (except that possible equity issues should be discussed in Paragraph 2, Section A Part IV). The PRO should enter the appropriate index number including both odd and even suffixes (Example 01.01/02) or the appropriate line in Section J/K. See Annex H–2–2 for discussion of equity.

6. Develop and write a concise and thorough OVERALL ASSESSMENT of the case in Section A, Part IV, focusing on the significant aspects of the case. Do not simply record a chronology of the applicant's service.

The PRO, at this point, is the individual who is most familiar with the contents of the OMPF. The results of his/her review in the form of facts/indications found in the record should be summarized here for the information of the panel. The PRO's role is to call to the Panel's attention all significant information in the file and documents submitted by the applicant. The PRO is not a decision maker and will not include any conclusions in the overall assessment; the panel will draw the conclusions on the interpretation of the facts.

7. If any developed issues or contentions surface a requirement for specific Medical/Legal Advisor opinion, refer the case to the appropriate member of the advisory staff by making specific entries in Section A, Part IV (REFERRED TO (MED) (JAG) FOR:). The entry should frame the specific question that the PRO believes the panel which hears the case would ask if the Medical/Legal Advisor were present in the board room. (If the PRO has a question, he/she should consider that at least one of the Panel members will have the same question so the case with the question should be routed for a professional opinion.

8. Develop and enter a concise summary of any brief that accompanies the application and enter it on a SCS, identifying the heading as Part V, Section C, SUMMARY OF COUNSEL/REP/APPL BRIEF, STATEMENTS AND/OR DIRECT EXAMINATIONS.

9. Develop and enter a concise summary of other documents that accompanies the application and enter it on a SCS, identifying the heading as Part V, Section F, SUMMARY OF EXHIBITS. Identify such exhibits serially starting with Exhibit C–1.

Note: If the brief or other documents raise a potential issue but do not phrase it as a specific contention, the matter will be identified as a potential issue (Para 5 above) and handled in that manner. Specifically identified contentions will be extracted verbatim and entered in Part VI (see para 2 and associated note above).

Annex H–2–1.—Checklist For Reviewing Discharge Propriety

The following is intended to aid PROs and panel members in review of cases to focus on key elements of the regulatory requirements for the various types of discharges commonly encountered. It is emphasized that this is a simple check sheet and obviously not a substitute for detailed understanding and application of the ARs, the SOP, and the supplemental memoranda, especially where applicants make specific contentions relating to the detailed requirements of the discharge process.

The lists are arranged in the order of the chapters of AR 635–200 (Nov. 77 edition) in effect at this time. In some cases additional amplifying notes are provided. A negative response to any criterion indicates a possible issue is present.

1. Chapters 1 & 2—ETS—Applicable Criteria—a. Individual completed normal tour in enlistment, reenlistment, or induction.

b. Individual met one or more following criteria during current period (prior to May 75).

(1) Conduct rating below GOOD.

(2) Efficiency rating below FAIR.

(3) Convicted by GCM.

(4) Convicted by more than one SPCM.

c. Personal decoration during current service.

d. Characterization based on isolated acts.

e. Characterization based on mental status or other medical evaluation.

f. Characterization based solely on service subsequent to restoration to duty (for former prisoner with a suspended discharge only).

g. Characterization determined by commanding officer of applicant's last unit of assignment/attachment (prior to transfer activity).

h. Characterization changed by commanding officer of transfer activity and appropriate entries made in file showing reason.

2. Training Discharge Program—Applicable Criteria—a. Volunteer enlistee who demonstrated nonproductivity after no more than 179 days of active duty.

b. Individual received and acknowledged notification of commander's intent to separate.

c. No rebuttal submitted.

d. Rebuttal submitted and properly considered.

e. Honorable Discharge approved by proper authority.

f. Separation accomplished within a reasonable time of approval action.

3. Concealment of Arrest (not convictions)—Applicable Criteria—a. Arrest concealed was for felony type offense.

b. After 1 Jan 74, counsel for consultation was a qualified JAG Officer.

c. Discharge approved by GCM Authority.

4. Chapter 5—EDP—Applicable Criteria—a. Applicant failed to meet standards between 6th month–36th month of service.

b. Applicant assigned to unit from which separated for more than 60 days.

c. Applicant consented to the discharge.

d. Applicant afforded opportunity to consult with counsel.

e. Type discharge recommended by the initiating commander issued by appropriate approving authority.

f. Applicant separated within a reasonable time after approval, (3 days).

Notes: (1) Did the applicant consent to being discharged? Was he advised he could consult with a JAG officer before deciding?

(2) Does he fit the criteria for EDP, i.e., 6–36 months of service and meet the personality traits of the program?

(3) Was the discharge authority an O5 commander or higher?

5. Failure to Demonstrate Promotion Potential.

(**Note:** This authority is no longer a separate authority but was incorporated into the EDP in June 1975. It is incorporated since there are a number of such cases applying for review). Old para 5–37 AR 635–200 prior to Jun 75.

Applicable Criteria—a. Promoted to E–2 after 4 months active duty.

b. Promoted to E–3 after attaining time-in-grade/time-in-service requirements.

c. Commander's recommendation appropriate.

d. Applicant acknowledged counseling and understanding impact of recommendation for discharge.

e. Immediate commander recommended: HONORABLE, GENERAL.

f. Appropriate authority approved discharge.

g. Applicant never promoted to E–3/E–4 and reduced to E–2/E–3.

6. Chapter 9, AR 635–200—Alcohol/Drug Abuse—Applicable Criteria—a. Individual protected UP exemption policy.

b. Exempted evidence not used.

c. Personal abuse is sole basis for action.

d. Individual is rehabilitative failure:

(1) Voluntary Program.

(2) Directed Program (30 days minimum).

e. Individual notified of proposed action, commander's recommendations and acknowledged.

f. Individual advised of right to counsel.

g. Discharge authority action appropriate (SPCM jurisdiction).

7. Chapter 10—For The Good of the Service—Applicable Criteria—a. Charge sheet present and correct.

b. Offense charged, punishable by a "punitive discharge." (NOTE: Section B, Table of Maximum Punishments, applies prior to 1 Apr 76).

c. Applicant requested 'good of service' discharge.

d. Advised by qualified counsel (JAG after 1 Jan 74).

e. Request processed in accord with intent of AR.

f. Approved by GCM authority.

Notes: (1) Did he request the discharge?

(2) If on or after 1 Jan 74, did a JAG officer sign the request form?

(3) Could the offense charged be punished by a punitive discharge? (Note: Section B, Table of Maximum Punishments, applies prior to 1 Apr 76.)

(4) Was the request approved by the GCM authority?

8. Chapter 11—Bad Conduct Discharge (BCD) (**Note:** A BCD as a result of a GCM sentence is not a proper matter for review by the ADRB.) Applicable Criteria—a. BCD affirmed on appellate review.

b. Final supplemental Court-Martial order which orders the BCD, and states that the requirements of Article 71c have been met.

c. Not "Laird Drug" offense.

Note: Is there a final supplemental court-martial order which orders the BCD executed and states that the requirements of Article 71C have been complied with?

9. Chapter 13—Unsuitability.—Applicable Criteria—a. Separation action initiated properly.

b. Counseling and rehabilitative requirements met and/or waived.

c. Mental status evaluation action completed (Note 4 paragraph 9h(4))

d. Psychiatric or psychological report (when required) (Note 3 paragraph 9h(3))

e. Individual: (1) Waive Board and other rights.

(2) Advised by counsel (JAG after 1 Jan 74).

(3) Represented by counsel (if Board held).

f. Board (if convened) properly conducted.

g. Convening authority disapproved Board's recommendation.

h. Proper authority (GCM or commander with JAG for unfitness/CCM or—

(1) In waiver cases, was counsel for consultation on or after 1 Jan 74, a JAG officer?

(2) Is the specific criteria met for the discharge action concerned?

(3) If discharge is for a personality disorder or homosexuality is there a psychiatric report in the file (see annex H–3 for guidance on Personality Disorder Cases.)

(4) In other cases, is there a mental status evaluation in the file which was prepared or reviewed by a military physician? (See para 1–30b, AR 635–200, 21 Nov 77 for requirements regarding Mental Status Evaluations/Psychiatric Evaluations for discharges after 1 February 1978.)

10. Paragraph 14—Misconduct—Fraudulent Entry—a. Fraudulent entry substantiated.

b. Separation action initiated.

c. Mental status evaluation action complete.

d. Individual:

(1) Waive Board and other rights.

(2) Advised by counsel (JAG after 1 Jan 74.)

(3) Represented by counsel (if Board held.)

e. Board (if convened) properly conducted.

f. Convening authority approved Board's recommendation.

g. Convening authority disapproved Board's recommendation.

h. Discharge approved by GCM authority.

Note: In cases involving alleged recruiter connivance see para 14–5c, AR 635–200, 21 Nov 77.

11. Conviction by Civil Court.—a. Civil conviction and appeal action complete.

b. Conviction meets UCMJ punishment standards.

c. Notified in writing—Board and other rights explained—Acknowledged and/or waived.

d. Qualified counsel provided (if possible).

e. Discharge in accordance with policy for non-US convictions.

f. Mental status evaluation (when under military control.)

g. Proper authority directed discharge (GCM–UD/SPCM–GD or HD). (See Note 7 paragraph 11h–7)

h. AR 635–206—Civil Conviction:—(Amplifying Notes)

(1) In waiver cases, was counsel for consultation on or after 1 Jan 74 a JAG officer?

(2) Was the offense (or offenses) for which convicted punishable by a comparable offense under the UCMJ by confinement of more than 1 year (prior to 2 Dec 76) or confinement of 1 year or more (effective 2 Dec 76), or was the offense for narcotics violation or sexual perversions regardless of the punishment imposed?

(3) Is there an indication in the file that no appeal is intended or that the time for appeal has expired?

(4) Is there a mental status evaluation in the file (only required if under military control)? (See para 1–30e, AR 635–200 for discharges after 1 Feb 78.)

(5) If confined by civil authorities, was he advised by registered mail of his basic rights? Evidence in record?

(6) In formal board actions involving a UD (UOTHC), was counsel for representation a JAG officer or otherwise a lawyer qualified under Article 27(b)(1), UCMJ?

(7) For cases involving discharge after 1 Feb 78, GCM authority is the approving authority regardless of the type discharge involved. See para 1–32, AR 635–200 (w/Chap 1) for detailed discussion of discharge authority.

12. Desertion/AWOL—Applicable Criteria—a. Desertion/AWOL continuous 1 year or more.

b. Individual properly advised of proposed action in writing.

c. Advised by qualified counsel.

d. Mental status evaluation action complete.

e. Action processed in accordance with intent of AR.

f. Approved by GCM authority.

g. Amplifying Note: (1) For individuals separated under the DOD SDRP based on return to military control from absentee status, a Mental Status evaluation was not required by the Letter of Instructions issued implementing the separation phase of the SDRP.

13. Other Misconduct—Applicable Criteria—a. Separation action initiated properly.

b. Counseling and rehabilitative requirements met or waived.

c. Psychiatric report present (when required-Note 1)

d. Mental Status evaluation action completed (Note 2)

e. Specific criteria met for discharge action concerned.

f. Individual:

(1) Waive board and other rights.

(2) Advised by counsel (JAG after 1 Jan 74)

(3) Represented by counsel if a board is held (Note 3).

(4) Board (if convened) properly conducted.

(5) Convening authority approved board recommendation or changed to better type discharge.

(6) Proper authority (Note 3) took action.

g. Amplifying Notes: (1) Homosexual cases under Chap 14 require a psychiatric evaluation.

(2) All other cases require a mental status evaluation by a medical officer or after 1 Feb 78 an individual shown in para 1–30b, AR 635–200.

(3) Counsel for representation a JAG officer or otherwise a lawyer qualified under Article 27(b)(1), UCMJ.

(4) GCM convening authority. See para 1–32 AR 635–200 (w/Ch 1) for detailed discussion of discharge authority.

14. Other Discharges not Covered Under AR 635–200. Applicable Criteria—a. Officer Resignations in Lieu of Trial Chap 5, AR 635–120.

b. Applicant tendered resignation.

c. Charges preferred and required documents included.

d. Request forwarded to DA from GCM authority.

e. Applicant advised that he could consult with and be represented by qualified counsel, either a JAG officer or civilian counsel retained by him.

f. Request approved by appropriate authority.

15. Presidential Proclamation—PP 4313—Applicable Criteria—a. Applicant in AWOL/Desertion status which began between 4 Aug 64 and 28 Mar 73 prior to return to military control.

b. Applicant afforded opportunity to elect discharge or face other action (CM or Board).

c. Counseled by JAG officer.

d. Discharge approved by proper authority.

e. Amplifying Notes:

Notes: Completion of assigned alternate service was not a factor in the discharge process but rather for issuance of a Clemency Discharge.

(2) Presence of documentation indicating issuance of Clemency Discharge does not indicate applicant was discharged under PP 4313. Individuals discharged for violations of Articles 85, 86 or 87, UCMJ between 9 Aug 64 and 28 Mar 73 were eligible for award of a Clemency Discharge based on completion of alternate service awarded by or excused from alternate service by the Presidential Clemency Board.

(3) Presidential Memo of 19 Jan 77 was not a basis for discharge. That memo was a special discharge review program directed by President Ford which covered a defined group of individuals who had applied for clemency under PP 4313.

16. DOD Special Discharge Review Program—Applicable Criteria.

a. Applicable criteria.—(1) Returned to military control between 4 Apr and 3 Oct 77 an unauthorized absence which began between 9 Aug 64 and 28 Mar 73.

(2) See AWOL/Desertion criteria under Ch 14, AR 635–200 with Note 1 for remaining applicable criteria.

b. The property standards for use in prereview and consideration of each case all contained in Appendix A-h AR 15–180.

Annex H–2–2.—Checklist for Reviewing Equity Considerations

1. Consistent with the enunciated philosophy of the ADRB, equity must incorporate all apparent factors of mitigation or extenuation that may have had a material effect on a service-member's ability to perform satisfactory service. Many of these factors must be inferred by the PRO based on evidence of record. Section K, Part III, provides a place for the PRO to indicate his/her perception that a possible issue of equity exists in the discharge under review. As with the case of equity issues, this is an evaluation of the PRO and not a decision binding on the panel which considers the case. The PRO will indicate the area of concern by listing

the associated index numbers (example A93.17/18) under the applicable heading in the Section K portion of the J/K sheet, explain the basis for the potential issue in paragraph 2, Section A, Part IV, and frame the proposed issue as a question in Section B, Part VI of the OSA 172 work copy.

2. In reviewing a case, the PRO will apply the equity standards contained in Appendix A–1, AR 15–180 in conducting the prereview. The panel will apply its collective judgment in applying the equity standards as well. Particular attention must be given to the standard concerning changes in discharge standards. This is a two part standard. Review of the regulation under which separated and the current discharge regulations.

From the viewpoint of equity, the type of discharge issued to an ex-service member by intent characterizes the overall service performed. The provisions of Chapter 1, AR 635–200, establish criteria for characterizing the service performed by a service member who completes a contractual service obligation.

3. For those service members who are discharged involuntarily prior to the expiration of their contractual obligation, the characterization of their service is, in effect, a qualitative measure of the service performed, consistent with regulatory standards. At different times, certain separation regulations mandated specific characterization of service when an individual was separated under that regulation. In more recent times, except for discharges resulting from the sentence of a court-martial which are subject to a separate review process under the UCMJ prior to being ordered into execution, the regulations generally have set a standard that normally a certain type of discharge will be awarded. These standards are not absolute because they authorize the discharge approving authority to award a better discharge if the circumstances of the case warrant. In other instances, the separation regulations state a range of discharge characterizations which may be awarded based on the circumstances of the individual case. The current standards for characterization of service also mandate characterization in certain types of separation (Trainee Discharge, Alcohol or Other Drug Abuse, and Personality Disorder) covering that reason for separation will reveal whether there has been a change in the discharge standard. The Panel must then exercise its judgment in determining whether the substantial doubt exists "to satisfy the second part." The PRO function is to provide the information regarding the change in discharge standard to the Panel—not to render an opinion on the substantial doubt.

4. Matters of equity raised by an applicant as a contention will not be considered as issues. If an applicant provides information which indicates there may be a matter of equity (or propriety) present but did not state it as a specific contention, the PRO will identify that as a potential issue in the same manner as if the potential issue were perceived through an evaluation of the evidence in the OMPF.

Annex H–3.—Consideration in Personality Disorder Cases (Formerly Character and Behavior Disorders).

The following criteria will be used in reviewing cases in which the individual was separated based on a Personality Disorder (C & B Disorder formerly).

a. All personality disorder cases require a psychiatric evaluation accomplished by a trained psychiatrist. The evaluation must have been performed in a time frame associated with the discharge action.

b. Medical officers who qualify to conduct a psychiatric evaluation are those who:

(1) Sign as a psychiatrist.

(2) Are assigned full time duties to a Mental Health Consultation Service (MHCS).

(3) Are assigned to an NP Clinic.

c. Absence of a diagnosis from the file in itself does not constitute a prejudicial error if there is a sufficient basis in the file to establish that a diagnosis was made.

d. When it is determined that the required diagnosis was not made or that it was made by an individual not qualified as a psychiatrist, the discharge is improper. The provisions of the Memorandum from the Assistant Secretary of the Army (M & R A) dated 8 February 1978 ("Nelson Memorandum") are applicable in such cases. The Panel must also determine a proper reason for discharge applicable in the case.

e. Terms which qualify under the overall heading of personality [1] disorders include the following: (1) Antisocial Personality, (2) Asthenic Personality, (3) Cyclothymic Personality, (4) Explosive Personality, (5) Hysterical Personality, (6) Immature Personality, (7) Inadequate Personality, (8) Obsessive Compulsive Personality, (9) Paranoid Personality, (10) Passive-agressive Personality, (11) Passive-dependent Personality, (12) Schizoid Personality.

f. Care must be exercised to distinguish those cases in which older terminology is used. In the past (prior to mid-1960s) the term "Reaction" was used to describe conditions which are now designated as a "Disorder". Under current terminology a "Reaction" is a situational maladjustment and not a deeply ingrained maladaptive pattern of behavior of long duration which interferes with a member's ability to perform duty or makes it impossible for an individual to perform duty. Any case in which the term "Reaction" is a part of the diagnosis should be routed to the Medical Advisor for an opinion as to whether it describes a personality disorder.

g. Care must also be exercised to ensure that the case does not involve a simple clerical error. In many cases an applicant was recommended for separation for unsuitability other than a personality disorder and the approving authority approved the separation without specifying the specific reason for separation or the SPN/SPD to be used. At the Separation Point, a SPN/SPD signifying separation based on a Personality Disorder was entered on the record copy of the DD 214. This does not constitute a separation based on a personality disorder. The basis for separation is that which was approved by the approving authority—not necessarily what was reflected on the DD Form 214. In such cases, the panel should correct the error through a modification as well as determining whether the discharge was proper and equitable based on the criteria applicable to the reason for which the commander approved separation.

Annex I–1.—HE Checklist, a form which relates solely to internal personnel and resources management, has not been published.

Annex I–2.—Procedural Guide For Conduct of HE

1. Background.

a. The HE mode of hearing cases was devised to provide the opportunity for a personal appearance type hearing to applicants outside the Washington, D.C. area for whom it would be inconvenient, too expensive or otherwise prohibitive for them to travel to the Pentagon to present their case in person before a

[1] Presently the American Psychiatric Association has in draft (1979) a 3rd Edition of the *Diagnostic & Statistical Manual of Mental Disorders* (DSM–III). Personality disorders further delineated in the drafted 3rd Edition are as follows: (1) Paranoid Personality; (2) Introverted Personality; (3) Schizotypal Personality; (4) Hystrionic Personality; (5) Narcissistic Personality; (6) Borderline Personality; (7) Anit-social Personality; (8) Avoidance Personality; (9) Dependent Personality; (10) Compulsive Personality; (11) Passive-agressive Personality (12) Other, mixed.

panel of the Army Discharge Review Board. The Hearing Examiner (HE) mode also supplements the Traveling Panel (TP) capabilities of the ADRB which are restricted in number and frequency of trips by personnel resource authorizations and availability of funds.

b. Hearing Examinations are conducted in a single location or in several locations within a geographical area, usually, where the number of cases prepared for hearing would not justify, nor be cost effective for sending a full TP. The HE mode is ideally suited to conduct hearings in a location or combination of locations where the total case load is 30 to 40. It is, therefore, the best mode to employ for hearing cases in remote or restricted areas such as prisons and Indian reservations. Because of its effectiveness and efficiency, it may also be employed to augment the more costly TP mode when deemed appropriate by the President, ADRB.

c. Since the HE is acting for the full panel as far as questioning the applicant to insure that all aspects of the record of service, in discipline and any factors in mitigation are revealed, it requires that he does become thoroughly familiar with each case to be heard. Therefore, it is desirable for the HE to perform the pre-review of each case scheduled for hearing and prepare his questions based on the knowledge and insight gained from the pre-reviews. If an applicant fails to show for the scheduled hearing the HE is responsible to complete the pre-review as an "on-the-record" case so that upon his return the case can be scheduled for hearing as an "A" case. (See Annex I–1 HE Check List for trip preparation). In preparing the case for consideration as an "A" case, the HE will be responsible for all actions normally done by a pre-review officer.

Additionally, he/she will prepare an appropriate MFR (See Incl #1), for inclusion in the OMPF showing the date, place of scheduled hearing and the fact that the applicant failed to appear. Also, an appropriate entry will be made in Part VI, Section C, Paragraph 1 (Case Problems) of the OSA Form 172, outlining the failure to appear for the scheduled hearing. This is to ensure that an "audit trail" is established to justify hearing the case in a different mode than that requested by the applicant.

2. Responsibilities.

a. HE

(1) Pre-review of cases/familiarization with cases prior to hearing date.

(2) Development of stipulation regarding hearing in consultation with applicant/counsel prior to actual filming.

(3) Conduct of the examination.

(4) Conduct of the epilogue.

(5) Preparation of "no show" cases for presentation as A or C cases.

b. Alternate Sec/Rec and Sec/Rec Assistant.

(1) All administrative and logistical preparations for the trip.

(2) Necessary coordination with scheduling section to insure letters to applicants are mailed in a timely manner and that copies of all such letters are filed in applicant's OMPF.

(3) Filming of hearing prologue and epilogue.

(4) Affording applicant and counsel an opportunity to review the entire filmed hearing prior to filming the epilogue.

(5) Preparation of a summary of testimony (Part V, OSA 172).

3. A Hearing Examination sequence is as follows:

a. Alt Sec/Rec meets and greets applicant and counsel and briefs on procedures. (Note: Sec/Rec Asst. may do this as well).

b. Sec/Rec has counsel and applicant prepare contentions in writing. Whenever possible any Sec/Rec may assist if requested to insure contentions are clear and concise as possible. Any documents to be presented in evidence should be assigned exhibit numbers at this time as well. (Contentions and documentary evidence should be made available to HE during discussion of possible stipulations).

c. Sec/Rec Assistant loads video tapes in recorder and advances the tape approximately 100 numbers for the prologue.

d. Applicant and counsel are brought to hearing room and introduced to HE. HE informally discusses case with applicant and counsel, and insures applicant and counsel understand the HE mode.

e. Alt Sec/Rec swears applicant and witnesses in, if there are any.

f. Filming is begun. He introduces applicant and counsel to panel. HE then conducts the hearing. Normal sequence is opening statement, direct and cross-examination and then break for applicant-counsel to review tape.

g. During filming, Alt Sec/Rec prepares summary of hearing. Careful attention should be given to testimony presented in support of contentions and matters covered in cross-examination.

h. Video tape is rewound. Applicant and counsel are given an opportunity to review the entire tape.

i. After playback, HE determines whether there are any points applicant/counsel wish to add testimony on. Camera is then turned on again. Applicant and counsel are asked whether the tape is satisfactory, make any additional or clarifying comments they desire, and counsel makes a closing statement, if any is desired.

j. HE closes the tape after ensuring applicant has nothing further to offer.

k. ASR and SRA prepare hearing room for next case.

l. Repeat sequence.

4. General Guidelines:

a. Matter on tape should be restricted to testimony in support of applicant's case to the extent possible. Administrative matters such as, identifying exhibits, swearing applicant, etc., should be accomplished off camera.

b. If problems develop and discussion with counsel is needed, go off camera. Nothing is gained by the panel watching counsel search for a document in the file.

c. If a second set of equipment is available, having the playback of the tape in another room while another case is being taped is desirable.

d. If the HE cannot understand the path that counsel is following, so inform counsel and go off camera to discuss where the testimony is leading, ex. testimony being elicited does not seem to have any, bearing on the contentions advanced. It is to the applicants advantage that the hearing be concluded in a step-by-step manner so that the panel who will not have an opportunity to question him, can follow the thread of the testimony and understand the objectives of counsel and applicant.

DEPARTMENT OF THE ARMY

Military Review Boards Agency

Washington, D.C. 20310

Date

MEMORANDUM FOR RECORD:

SUBJECT: Discharge Review Application of ———— SSAN/ASN ————

The above named applicant was advised by letter of a Hearing Examination to be held in ———— on ————. The applicant did not appear for his scheduled hearing nor did he or his counsel contact the Hearing Examiner to request a delay of the scheduled hearing. Based on this failure to appear, the case should now be heard based on the evidence available in the record in accordance with paragraph B–51, Appendix B, AR 15–180.

————

(Signature) HEARING EXAMINER

Annex I–3.—HE After Action Report, a form which relates solely to internal personnel and resources management has not been published.

Annex J–1.—Annex J, guidance to personnel concerning the mechanical/procedural aspects of conducting personal appearance hearings and hearing examinations, has not been published.

Annex K–1.—Information in this annex relates solely to internal administrative procedures for receipt, processing, and control of mail and records and has not been published.

Annex L–1.—Medical and Legal Determinations.

All discharge appeal cases have significant medical and legal aspects associated with both the propriety and equity of those events leading to discharge and the type discharge itself.

The medical and legal standards that must be met from the viewpoint of propriety are spelled out in applicable regulations (Annex E–4). However, occasionally medical and legal problems may arise.

During the pre-review process, where medical/legal opinion is deemed necessary, guidance may be obtained from medical or legal advisors. See Section II H.

In the course of a hearing, counsel may attempt to request a change to medical discharge. These persons need to be told at once by the Presiding Officer (PO) that change to medical discharge is a function of the Army Board for Correction of Military Records (ABCMR) and not that of the Army Discharge Review Board (ADRB). If direct questions are placed to the PO and if he does not know the answer, an answer should be deferred until legal opinion is obtained. Do not let a counsel get you backed into a corner. Recess the hearing or defer the decision until legal opinion is obtained. In those cases, communication should be made with the professional consultants in the Pentagon office of the Discharge Review Board. Contact should not be made with local professionals. Depending on the location of the hearing, contact can be made personally or by telephone.

Annex M–1.—Provisions of the Antioch Stipulation

1. Background. In 1975, the plaintiffs requested copies of certain decisional documents, indices, and voting records associated with discharge review under the Freedom of Information Act. The plaintiffs filed a complaint on 31 March 1976 for non-compliance with the cited Act. The U.S. Department of Justice filed a dismissal/summary factory compromise with the plaintiffs. The compromise was negotiated in the fall of 1976 and culminated in the 21 January 1977 adjudicated settlement, the Antioch Stipulation. Subsequent negotiations have been conducted with the plaintiffs to resolve disputes involving alleged non-compliance with the intent and substance of the stipulation.

2. Impact. The thrust of the Antioch Stipulation is to cause board actions to be so documented as to facilitate reasonable public access and use of those records. The impact of the stipulation on the ADRB is primarily that of multiplying the administrative burden associated with throughout of each case. Involved has been the necessity to develop a family of forms, documents, and detailed regulatory language such that the public record of each board action will contain the substantive factual consideration upon which the board based its decision. Further, a single public Reading Room has been established in the concourse of the Pentagon which constitutes a library of completed board actions appropriately indexed.

3. The following are the major provisions of the Antioch Stipulation:

a. Discharge Review Boards will render their decisions in writing for every application filed for discharge review.

b. On every case requiring review by the service Secretary or his delegated representative, the decision on review will be made in writing.

c. In every case, the decision of the Board and the reviewing authority, if any, will include a statement of findings, conclusions, and reasons.

d. Statements of findings, conclusions, and reasons will include:

(1) The date, character of reason, and authority for discharge being appealed.

(2) Findings on all issues of fact, law or discretion upon which the decision of the Board is based.

(3) Findings on all other issues of fact, law, or discretion (contentions) made by the applicant.

(4) Conclusion (s) as to whether or not any change, correction, or modification should be made in the type of character of discharge being appealed and the exact nature of the change, correction, or modification.

e. Applicants must state their contentions clearly and specifically and there may be a form provided applicants by the Board for this purpose.

f. Advisory opinions or appropriate portions containing factual information relied upon by the Board for its final decision will be appended to the decision if the applicant's appeal is rejected.

g. The final determination and the statement of findings, conclusions, and reasons with any appendices, and minority opinions, if any, will be sent to the applicant and counsel with the notice of decision.

h. The name and final vote of each Board panel member will be recorded for every Board decision and provided to applicants or be available upon request.

i. Statement of findings, conclusions, and reasons together with the Board members' recorded votes will be made available for public inspection and copying in an established Reading Room after notice of final decision is sent to the applicant. If not otherwise included above, a list of contentions and/or issues considered in each case will be made public with each case as well as any minority opinions, if applicable. (The DOD Reading Room has been established in the Concourse of the Pentagon).

j. In accordance with the provisions of the Privacy Act, all identifying details of the applicant and other persons will be deleted from the documents filed in the Reading Room.

k. Any priviledge or classified material deleted from the Reading Room files will require written justification to the applicant and counsel and filed with the applicable case. This written justification will include the specific reason for each item deleted from the file.

l. All documents filed in the Reading Room will be indexed and cross indexed to facilitate their use by those who represent applicants before the Board. The index will include: case number, date, character of, reason for and authority for discharge, decision of the Board and the reviewing authority, if any, and contentions and issues addressed (See Annex E–3).

m. The index will be published quarterly or more frequently and, upon request, distributed by sale or otherwise and available at the Reading Room.

Annex N–1.—Analysis of PL 95–126

1. Principal Features:

a. Amendment to Section 3103 of Title 38, United States Code, to bar the award of VA benefits to an individual separated under other than honorable conditions "on the basis of an absence without authority from active duty for a

continuous period of at least one hundred and eighty days."

b. Requirement for publication of uniform standards (which are historically consistent with criteria for determining honorable service and do not include any criteria for automatically granting or denying such change or issuance) and procedures for Discharge Review Boards (DRBs) generally applicable to all persons administratively discharged or released from active duty under other than honorable conditions.

c. Prospective disqualification for receipt of VA benefits for those originally qualifying due to upgrade by Presidential Memorandum (P.M.) of 19 January 1977 or the Special Discharge Review Program (SDRP), unless an eligibility determination is made under the published uniform standards and procedures.

d. Reconsideration before 7 October 1978 of all cases on DRB initiative of those upgraded from other than honorable to Honorable or General Discharges under the P.M. of 19 January 1977 or the SDRP.

e. From date of publication of uniform DRB standards and procedures for a period of at least one year, all former servicemembers (and heirs) with other than Honorable Discharges may apply for a discharge review/upgrade based on the new published rules.

2. Discharge Review Board (DRB) Notifications.

a. Written notification is required by the DRB commencing 8 October 1977 to each applicant whose record indicates he/she was discharged for reason that would bar him/her from receipt of benefits under section 3103(a) of Title 38 United States Code, that separate action by the Board for the Correction of Military/Naval Records (BCM/NR) and/or VA is required to establish eligibility for VA benefits.

As regards the 180 days consecutive unauthorized absence:

(1) Such absence must have been included as part of the basis for the applicant's discharge under other than honorable conditions.

(2) Such absence is computed without regard to the applicant's normal or adjusted ETS.

b. Written notification of the right to obtain an expedited relook preliminary determination is required by the DRB concerned to individuals who received an upgrade to an Honorable or General Discharge from a Discharge Under Other Than Honorable Conditions (UOTHC) (formerly Undesirable Discharge) under P.M. of 19 January 1977 or the SDRP. Notification is not required to individuals who received an upgrade to an Honorable Discharge from a General Discharge under the referenced special programs.

c. Written notification is required by the DRB concerned to individuals who upon preliminary determination by the DRB are found not to qualify for upgrade under published uniform standards and procedures (See 3.b. below).

3. Discharge Review Board Determinations.

a. Both a preliminary and final determination under uniform standards are required by 7 October 1978, except in those cases where a personal appearance is requested. Even if the DRB concerned simultaneously considered the case under its historically consistent discharge review criteria at the time of the SDRP determination and the decisional document specifically indicated that the individual was upgraded under those normal criteria, another review is required.

b. The determination process is as follows:

(1) Preliminary on-the-record review under the published uniform standards and procedures in the following order:

(a) Expedited basis upon notification by VA that an individual is receiving or has applied for benefits.

(b) DRB initiative for all other cases where upgrade was based on P.M. of 19 January 1977 or SDRP, to be completed by 7 October 1979.

(c) DRB initiative for cases upgraded after 8 October 1977 prior to publication of uniform standards and procedures.

(2) Favorable preliminary determination:

(a) Enter into service record as a final determination (see 3. b. (4)(a) below).

(b) Notify VA in appropriate cases and individual concerned if that person has inquired.

(3) Unfavorable preliminary determination. Notify individual concerned of adverse preliminary determination and of right to appear before the DRB under 10 USC 1553(c).

(4) Final determination:

(a) A favorable preliminary determination.

(b) An unfavorable preliminary determination when individual does not reply to notification within 45 days.

(c) Action by the DRB after complete review of case in accordance with the published uniform standards and procedures.

(5) Special situations:

(a) Cases where no changes were made under P.M. of 19 January 1977 or the SDRP do not require redetermination.

(b) Determinations made prior to 8 October 1977 by a DRB which included both consideration of historical discharge review criteria and P.M. of 19 January 1977 or SDRP criteria, with a determination that no relief was warranted except under special program criteria, does not satisfy the preliminary determination requirements.

(c) The de novo hearings under the SDRP do not satisfy the requirement for advising an applicant of the right to a DRB hearing after an adverse preliminary determination has been made.

(d) Government counsel is not furnished under the provisions of P.L. 95–126.

4. Records. Upon a final determination by a DRB to affirm under published uniform standards and procedures a discharge earlier upgraded under P.M. of 19 January 1977 or SDRP criteria, an applicant will be issued a DD Form 215, stating as applicable:

Discharge reviewed under P.L. 95–126 and a determination that change in characterization of service was warranted under provisions of P.M. of 19 January 1977 or SDRP, as applicable.

Discharge reviewed under P.L. 95–126 and a determination that change in characterization of service is warranted by DOD Directive

(**Note:** The DOD requirements for written request for a copy of DD Form 215 is suspended in these cases).

5. Additional Requirements: Each DRB will consider written requests for a review of a discharge under other than honorable conditions post-marked before 1 January 1980 from any former servicemember regardless of the date of his/her discharge.

Annex N–2.—DoD Directive 1332.28, incorporated by reference, was published in the Federal Register on March 31, 1978, at 48 FR, 13564.

Annex 0–1.—Memoranda: Numbered

Note.—SFRB Memorandum numbered 1, 2, 5, 6, 8, 10, 13, and 14 published in 1976 and 1977 have been rescinded.

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SFRB Memorandum Number	Subject
3	Change of Separation Program Numbers.
4	Clarification of Paragraph 1–10e, AR 635–200.
7	Power of Attorney.
9	"C" Case (Field Panels).
11	Pre and Post Review Briefing Cases.
12	Review of Cases UP Chapter 10, AR 635–200.
15	Continued Cases.
16	Mental Status Eval, C&B/H&T Type Cases.
17	Proper Advice and Representation UP AR 635–200 and AR 635–206.
18	Personality Disorder Cases.

Index to Annex 0-1—Continued

SFRB Memorandum Number	Subject
19	Addressing Contentions.
20	Analysis of New Army Regulation 600-85, Alcohol and Drug Prevention and Control Program.
21	Court Reporter Utilization, D.C. Panels.
22	Pre-review Officer and PO and HE Pre-review Hearing Evaluation.
23	Hearing Examiners (Prologue/Epilogue).
24	C&B Disorder Cases (Court of Claims Decision—Bernard Carter Case).
25	Traveling Panel/Hearing Examiner Case Scheduling Guidelines.
26	Use of Separation Program Designator JKG.
27	Notification to Respondents of Contemplated Board Action.
28	Index Reference Numbers.
29	Check Sheet for Regular Discharge Review Cases.
30	Index Reference Numbers.
31	Directed Rehearing Cases (Ailes Memorandum).
32	Challenges for Cause.
33	Justifying Decision Not to Grant Full Relief.
34	Work Schedule.
35	No-Show Cases, HE Deployments.
36	Completion of Pre-reviews.
1-78	Training of Newly Assigned ADRB Panel Members and Assistant Secretary/Recorders.
2-78	Precedent.
3-78	Implementation of ASA(M&RA) Memorandum, 8 February 1978, on "Litigation Involving Army's System for Discharging Individual's with Personality Disorders."
4-78	Recording of Combat Badges (CIB or CMB) on Case Report and Directive.
5-78	Challenge Predicated on Past Membership.
6-78	DOD Counsel/DE Novo No-Shows.
7-78	Presumption of Regularity.
8-78	Counsel Statements.
9-78	Restraining Order issued by U.S. District Court for District of Columbia.
10-78	Compliance with Court Order, D.C. Federal District Court, 23 August 1978.
11-78	Computation to Determine Numbers of Days Lost Under 10 U.S.C. 972.
1-79	Post Filming Review of HE Tape by Applicant and Counsel.
2-79	Case Consideration Under Regulations Applicable at Time of Discharge and Time of Review.
3-79	Criteria for HD at ETS prior to 19 May 75.

SFRB, Memo #3
January 21, 1976.

Memorandum For: Alternate Secretary/Recorders
Subject: Change of Separation Program Numbers

SPN's and SPD's initially identifying the case should be changed with discretion. Program designators which cite the reason for the man's exit from the service should not be changed, i.e., SPN 246 should remain SPN 246 and SPN 284 should remain SPN 284. Reasons delineating a modification in such SPN's should be additive, not a replacement.

Extreme caution and discretion must be exercised in utilization of the SPN 21L. Utilization of this SPN should be reserved for those cases for which the man was both improperly and inequitably discharged and for which no other reasonable SPN could have been applied.

Upgrades of cases which were separated for unfitness for which the reason for change was clearly an impropriety should have the SPN changed to reflect propriety, i.e., an unfit 28B changed for reasons of C & B should change the SPN to 264.

Thurman L. Shurtleff,
LTC, MSC, Secretary/Recorder.

SFRB, Memo #4
January 26, 1976.

Memorandum for: Alternate Secretary Recorders
Subject: Clarification of Paragraph 1–10e, AR 635–200 (Chapter 10 Discharges)

One of the panels has raised the question concerning the interpretation of paragraph 1–10e, AR 635–200. The panel members concerned were under the impression that this paragraph required the applicant to submit a writing to the effect that he understands that he *WILL* (emphasis added) get a UD, and that the individual was to be given no less than 72 hours to consult with counsel before he could submit his request for a Chapter 10 discharge. The panel was of the opinion that the violation of either provisions was a prejudicial error that required immediate upgrading of the discharge received.

The regulation at paragraph 1–10e states in part: "A member who submits a resignation under the provisions of paragraph 9–7 or requests discharge as prescribed in chapter 10 may be issued an undesirable discharge without board action, provided he has been afforded the opportunity (*not less than 72 hours*) to consult with a consulting counsel (paragraph 1–3c) and provided he certifies in writing that he understands that he *will* receive a discharge under other than honorable conditions and the adverse nature of such a discharge and the possible consequences." The 72 hour waiting period is designated for the protection of the individual to prevent the possibility of undue influence, coercion, or rash decision making from occurring. The individual may waive this period and submit his application in less than the 72 hours given him. He is the only one that can waive it and the choice is his.

As to the requirement for a written statement concerning the UD, the regulation does not require such a statement. The word WILL should read in the context of MAY the same as it reads five lines above in the same sentence. The intent of the regulation when read as a whole is to allow the GCM authority discretion in the area of characterization of an individual's discharge so that the individual's entire military record, among other factors, will determine the type of discharge he receives. To do otherwise would amount to automatic UD's which is certainly not what the regulation prescribes. DCSPER and TJAG have continuously reaffirmed our interpretation of the above, and this is the only interpretation that is proper!

The entire regulation is being rewritten at the present time and the above cited discrepancy will be corrected. Pending receipt of new regulation, no cases will be upgraded by a field panel on the basis of what they perceive to be a procedural error in the 72 hour waiting period or the interpretation of the of word WILL as discussed in this memorandum. If in doubt, please contract for clarification.

Thurman L. Shurtleff,
LTC, MSC, Secretary/Recorder.

SFRB, Memo #7
September 17, 1976.

Memorandum for: Alternate Secretary/Recorders (Filed Panels)
Subject: Power of Attorney

"1. I have noticed that some applicants have given their counsels/representatives general power of attorney in order to handle their cases before the ADRB.

2. Of course, this is unnecessary. A special or limited power of attorney will suffice, and applicants should be encouraged to use a limited power of attorney. A simple but adequate format follows:

I, (applicant's name) ———————, desire that (counsel's name) ——————— of (organization) ——————— represent me before the Army Discharge Review Board. I hereby authorize said representative access to my Official Military Personnel File and to take any steps he deems necessary to prepare for and present my case before said Board.

(applicant's signature)———(date)

(witness' signature)———(date)"

William E. Weber,
Colonel, IN, President.

SFRB, Memo #9
September 16, 1976.

Memorandum for: Field Panel Secretary/Recorders and Officers, ADRB
Subject: "C" Case (Field Panels)

1. In the past several weeks, the undersigned has been consistently exposed to the request that he permit "C" type cases to be conducted in the Field Panel locations. As has been repeatedly pointed out in the past, it is not the function of Field Panels to conduct other than personal appearance cases. This philosophy still pertains; however, because of the time invested in attempting to schedule "B" cases at Field Panels and the absence of success in this regard, I will permit some "C" case hearings under conditions outlined below:

a. Case must have originated as a "B" case.

b. Counsel must be counsel from other than a DD Form 293 agency or from a State Department of Veterans Affairs and there must be an acceptable power of attorney in force on file with case.

c. Counsel must request to present case because of the unanticipated absence of the applicant and with the previous agreement of the applicant.

d. Counsel should make a presentation that is other than simply parroting what is already in a written brief, e.g., presentation should not be used in lieu of preparing a written brief.

e. It is not the intent of this practice to have the reporter of the panel function as a pro forma secretary for the counsel.

f. Counsel must agree to be cross-examined in the event he presents any *first person* evidence. In this regard, Secretary/Recorders and temporary Field Panel members *must understand* that counsel is not in a position to present factual evidence when he is relating hearsay. Consequently, panel members cannot expect to amplify elements of the testimony by questioning counsel and, in fact, must not do so.

g. Similarly, panel members must not assist counsel in presenting the case by adroitly leading counsel since this violates regulatory prohibitions.

h. Counsel is not to be permitted to get on a "soap box," attempt to argue constitutional law, establish himself as an authority in interpretating regulatory procedures, and/or make specific accusations against installation or command procedures in the area of administrative preparation without factual supportive data.

2. In essence, the presentation of "C" cases at a Field Panel will be approached as a not-to-be-desired form of hearing and is to be used principally as a substitute for the appearance of the applicant for some unforeseen reason. Secretary/Recorders are prohibited from attempting to initiate "C" type cases. Impetus for "C" type cases *must come from* applicant or counsel. In this regard, please note revised OSA Form 293 (copy attached) procedures to cover this modification.

3. Secretary/Recorders are cautioned to bear in mind that *under no circumstances* will in excess of 80 panel hours per month be scheduled. Violation of this prohibition will not be tolerated. I wish to emphasize again that the scheduling of cases is the *sole responsibility* of the Secretary/Recorder of the panel concerned as are all other administrative and operational procedures dealing with the Field Panel.

William E. Weber,
Colonel, IN, President.

SFRB, Memo #11
September 24, 1976.

Memorandum for: All Pit Officers/Medical/Legal Officer
Subject: Pre and Post Review Briefing Cases

I dislike the concept of quotas or even a need to express production by the ACRB in terms of cases per month. However, as spread out as we are and with so many things going on simultaneously, it is evident that our officers will not always be aware of everything that is going on in the shop, nor will they necessarily always be up-to-date on the status of our workload requirements. Therefore, it is appropriate that each become goal-oriented and understand the particular portion of goal accomplishment which is an individual responsibility.

a. Officers responsible for pre-reviewing cases must also assume responsibility to refer to the medical and legal officer any case which requires a more detailed review of their areas of expertise. This can be accomplished by an appropriate notation on the pre-review staffing slip. The Secretary/Recorder Division is then responsible for routing the case to the appropriate individual and for returning the case to normal flow upon completion of their review.

b. When a Pit officer briefs the case, it is *not necessary* that the case then go to a pre-review officer. The briefing officer should in addition to preparing the brief also complete the pre-review staffing slip to include recommendation.

c. Cases referred by me to a review panel must take priority over other Pit action, insofar as the designated Pit officers are concerned. They do not, however, take priority over normal panel operations during the week. To the extent that it is possible, all review panel cases should be completed within 5 working days of the day the case is referred to the review panel.

d. Cases being reviewed by Hearing Examiner and designated Presiding Officer for Hearing Examiner trips should have the review completed at least 5 working days prior to the departure of the Hearing Examiner Team. All officers must bear in mind that the foregoing are stated goals and are enunciated with the future in mind and a presumption that all elements of this rather complex area are all going to come together at the same time. It is also possible that in order to meet your portion of the foregoing goals, you may have to devote some additional time to the desk. It is important that we remember that each aspect of our function is important but that the time we spend in the panel room is in the final analysis the *most important*!! Under no circumstances must we get into the habit of rushing through the hearings in order to get back to the desk to do the preliminary actions necessary to get into the panel room the next time.

William E. Weber,
Colonel, IN, President.

SFRB, Memo #12
October 4, 1976.

Memorandum for: All Officers
Subject: Review of Cases UP Chapter 10, AR 635–200

1. Paragraph 10–1a, AR 635–200, provides that:

"An individual who has committed an offense or offenses, the punishment for which, under the Uniform Code of Military Justice and the Manual for Courts-Martial * * * includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service."

2. In applicable substance, Section B, Table of Maximum Punishments, MCM, provides that if the offenses charged are not punishable by a punitive discharge, a bad conduct discharge may nevertheless be adjudged under either of the following circumstances:

a. The accused is found guilty, and there is proof of two or more previous convictions during the three years next preceding the commission of any current offenses.

b. The accused is found guilty of two or more offenses punishable by total confinement of six months or more.

3. In the review of these cases, the ADRB has accepted the proper application of the Table B rules in deciding the propriety of a Chapter 10 discharge. Please note, however, for future application, that on message change, 11 March 1976, paragraph 10–1a, it is now provided that "the provisions of the Table of Maximum Punishments, Section B * * * are not applicable to requests for discharge pursuant to this chapter."

4. I do not consider this change to require retroactive application. However, Board members may give consideration to such if they can justify a presumption of deliberate "stacking". (Refer to paragraph 14, Section III, SOP.)

William E. Weber,
Colonel, IN, President.

SFRB, Memo #15
Memorandum for: Secretary Recorder Section
Subject: Continued Cases
October 7, 1976.

1. In those instances where the field panel determines that it is appropriate to continue a case in order to permit either the government or appellant an opportunity to provide additional documentation or to check other sources of record, the following pertains:

a. Continuances must be in 30-day increments or less.

b. The specific reasons for the continuance must be enunciated by the Presiding Officer and entered into the transcript.

c. Specific agreement to the continuance by counsel and/or appellant must also be entered on the record in the transcript. (In the event the continuance is for the convenience of the government, the appellant may not disagree.)

d. A statement to the effect that at the time the panel reconvenes, appellant, counsel, and the same panel membership will be present, except that:

(1) Appellant and/or counsel may stipulate their desire not to be present.

(2) Panel membership may be reconfigurated but in the event such is done, a statement must appear in the addendum to the transcript, the reason for change in panel membership, and the fact that any new panel member has read the case.

e. An addendum to the transcript must be prepared indicating the action taken during the continuance and at the time of reconvening the panel.

2. In the event the continuance is of such a nature that the case would be shipped to Washington, D.C. for final action, it is still incumbent upon the field Secretary/Recorder to provide an addendum to the transcript when appropriate. In this regard, the transcript *must clearly establish the final closing of the case.*

William E. Weber,
Colonel, IN, President.

SFRB, Memo #16
November 11, 1976.

Memorandum for: All Members, ADRB
Subject: Mental Status Eval, C&B*/H&T Type Cases

*Obsolete as pertains to C&B cases. See SFRB Memo #3–78.

1. The following pertains to those cases in which the regulation *requires* a mental status evaluation and/or psychiatric evaluation be conducted prior to the time separation action is consummated. When it is determined that the mental status/psychiatric eval has not been performed or has been performed by nonqualified personnel or in a time frame not related to the separation processing, the following relief *must* be granted:

a. If the applicant was awarded a UD, his discharge must be upgraded to either General or Honorable. (Determination as to whether or not the discharge should be General or Honorable is a function of panel decision, based on type of service rendered and panel's judgment concerning ability of the applicant to perform adequately.)

b. If the applicant was awarded a General discharge, the discharge may remain General or upgraded to Honorable. (Again, as above, the decision as to whether or not to provide additional relief is a determination of the panel's decision and/or judgment concerning character of service.)

2. It is incumbent upon the panel to make certain that there is no other adequate medical data to support the equivalent of a mental status/psychiatric eval. In cases described above, consideration must be given concerning changing the SPD. In this regard, if a panel determines there is a total absence of any medical information to substantiate discharge, then serious consideration must be given to utilization of "convenience of the government" or "apathy, etc."

William E. Weber
Colonel, IN, President.

SFRB, Memo #17
November 22, 1976.

Memorandum for: All Officers, ADRB
Subject: Proper Advice and Representation UP AR 635-200 and AR 635-206

1. Paragraph 1-3c, AR 635-200, provides that "counsel for consultation," that is, the officer who advises an individual being processed for separation (with any type of discharge) under paragraph 5-38 and Chapters 9, 10, 13, and 14 plus under AR 635-206, concerning rights, effect of waiving rights, etc., will be a JAG officer. This provision became effective on *1 January 1974.*

2. Up to now, it has been ADRB policy to require counsel for consultation to be a JAG officer (or one otherwise certified by TJAG under Article 27b, UCMJ) on and after *1 July 1972.*

3. Effective immediately, the ADRB will adhere to the *1 January 1974* date requiring counsel for consultation to be a JAG officer. Article 27b certification of a non-JAG after 1 January 1974 is not recognized by the reference in 1, above.

4. Paragraph 1-3d, AR 635-200, concerns "counsel for representation," that is, the officer who represents the individual before a board of officers under Chapter 13, 14, or AR 635-206. If an *undesirable* discharge could result, counsel for representation must be a JAG officer or a non-JAG lawyer certified under Article 27b, UCMJ.

5. Counsel for representation for an individual being processed for *unsuitability* need only be any commissioned officer in the grade of first lieutenant or higher.

William E. Weber
Colonel, IN, President.

SFRB, Memo #18
January 21, 1977.

Memorandum for: All Officers
Subject: Personality Disorder Cases

1. In accordance with instructions from the Assistant Secretary of the Army, the following will govern panel operations pertaining to the review and disposition of appellants in this area:

a. All C&B personality disorder cases require a psychiatric evaluation accomplished by a trained psychiatrist effective 1 December 1976. This policy will be applied retroactive except as discussed in paragraph 5 below.

b. Medical officers who qualify to conduct a psychiatric evaluation are those who:

(1) Sign as a psychiatrist.

(2) Are assigned full time duties to a Mental Health Consultation Service (MHCS).

(3) Are assigned to an NP Clinic.

2. Excluded from coverage under the foregoing are those cases which are clearly established as combat exhaustion cases (i.e., cases of the moment) or situational maladjustment cases. As a means of attempting to enable board members to distinguish more easily between those categories, an individual suffering a personality disorder can be defined as one who possesses a condition which is:

Deeply ingrained, maladaptive pattern of behavior of long duration which interferes with a member's ability to perform duty or makes it impossible for an individual to perform duty.

3. Panel members must bear in mind that no individual can be separated for a C&B disorder is that individual has not been clearly established as meeting medical standards for retention.

4. When it is determined by review of the records that a psychiatric evaluation has not been performed or has been performed by nonqualified personnel or was performed in a timeframe not related to the separation processing, then the panel must grant relief if the separation or action was initiated on or after 1 December 1976.

5. This policy will be applied retroactively; however, the panel may not simply conclude that upgrading is justified in the absence of a psychiatric evaluation if other factors and other mental status evaluations are present which can establish to the satisfaction of the panel that the case being looked at is one of situational maladjustment or a disorder of the moment as opposed to a personality disorder of long standing. In every respect, the application of common sense is a paramount prerequisite. (See paragraph 22, Section III, ADRB SOP (President's Guidance)).

6. Terms which qualify under the overall heading of personality disorder include the following:

Antisocial Personality
Asthenic Personality
Cyclothymic Personality
Explosive Personality
Hysterical Personality
Immature Personality
Inadequate Personality
Obsessive Compulsive Personality
Paranoid Personality
Passive-aggressive Personality
Passive-dependent Personality
Schizoid Personality

William E. Weber,
Colonel, IN, President.

SFRB, Memo #19
January 25, 1977.

Memorandum for: All Officers
Subject: Addressing Contentions

1. Compliance with the stipulation pertaining to the Antioch litigation involves two specific factors. These are:

a. The applicant and/or counsel must list specific contentions of fact, law or discretion. Contentions may also be identified as "issues" to conform to the index which will be on file in the Reading Room.

b. The Board must make a specific determination on each contention (issue) which the Board found was valid, germane to the case, and nonfrivolous. In those instances in which the Board finds that the contention was not either valid, germane to the case or nonfrivolous, it must so state and identify why a specific consideration was not given to that contention.

2. It is, of course, almost impossible to insure that applicants and counsels will be disciplined to the extent that they will list in telegraphic language in a point-by-point type approach the contentions they feel are appropriate to the case. However, in the event they do not so do, it is the responsibility of the pre-review officer to make this conversion. Bear in mind that the pre-review officer *does not* develop contentions for the applicant and counsel; he simply rewords the contentions they have listed. In the event applicant and counsel list no contentions or deducible contentions from remarks or other contentions listed, then the Board is not obliged to make any specific determinations but need only address findings in the case in a general sense.

3. With regard to the foregoing, when findings are listed in cases in which there are specific contentions addressed, there must be a separate finding (determination) for *each* contention and if the Board feels appropriate, any other additional findings germane to the case. When there is no requirement for a listing of specific findings in a case, then there must be general findings made by the Board. The Board is not precluded from listing specific findings if they feel such are appropriate.

William E. Weber,
Colonel, IN, President.

SFRB, Memo #20
January 26, 1977.

Memorandum for: All Officers, ADRB
Subject: Analysis of New Army Regulation 600-85, *Alcohol and Drug Abuse Prevention and Control Program*

1. A new regulation, AR 600-85, has been published and its provisions were effective 1 September 1976. Its title is *Alcohol and Drug Abuse Prevention and Control Program,* abbreviated ADAPCP. It supersedes four AR's and a list of DA messages but mainly it

supersedes DA Circular 600–85 dated. 30 June 1972.

2. This regulation has 9 Chapters:

1. General
2. Prevention
3. Identification, Referral, and Exemption
4. Detoxification
5. Rehabilitation
6. ADAPCP Client Management
7. DA Civilian Employee Participation in the ADAPCP
8. Program Reports and Evaluation
9. Army National Guard and Army Reserve

3. The AR makes very few changes to the former DA Circular but it does incorporate the DA messages and elaborate and clarify areas of former confusion. There are several points which should be brought to the attention of ADRB members.

a. No retroactive applications are required. The ADAPCP was effective 1 September 1976.

b.The ADAPCP is available to all active duty personnel and dependents, retired military personnel and their dependents, United States Citizen civilian employees of the army authorized military medical services and their dependents who are authorized military medical services.

c. Client information concerning alcohol or other drug abuse records/history are subject to the provisions of the Privacy Act. Release of any information requires client consent in writing except for medical emergencies, research, or as directed by a court order.

d. Exemption Policy (See Table 3–1, page 3–8, AR 600–85)

(1) Purpose is to eliminate barriers to successful communications between abusers and ADAPCP counselors and physicians.

(2) Exemption is:

(a) Immunity from disciplinary action under the UCMJ or administrative separation with less than an honorable discharge, as a result of alcohol abuse or drug possession or use incidental to personal use.

(b) Immunity from use of evidence obtained directly or indirectly from participation in the ADAPCP.

(3) Exemption is automatic and irrevocable from the moment a member:

(a) volunteers for the ADAPCP.

(b) receives emergency medical treatment.

(c) has a confirmed positive urine test.

(d) is diagnosed as an alcohol or drug abuser by a physician at sick call or other routine medical exam.

(e) has initial interview with ADAPCP counselor based on Commander referral (involuntary participant in ADAPCP).

(4) The exemption policy does not apply to offenses of alcohol and drug possession or abuse incidental to personal use that occurred before the service member acquired exemption if the member:

(a) is being investigated for the offense.

(b) has been officially warned that he/she is suspected of the offense.

(c) has been apprehended for the offense.

(d) has been charged under the UCMJ with the offense or has been offered Art 15 punishment for the offense.

(e) receives emergency medical treatment for actual or suspected overdose and such treatment resulted from apprehension by civilian or military officials.

(5) The exemption policy also does not apply to other offenses committed incident to alcohol abuse or illegal drug use or possession even though such offenses may be motivated by alcohol or other drug abuse. Appropriate disciplinary action may be initiated against a service member committing such offenses or he/she may be administratively discharged with an OTH discharge, if appropriate. No use, however, can be made of any evidence obtained directly or indirectly from the member's participation in the ADAPCP.

4. AR 600–85 is quite a long, comprehensive regulation which addresses the topics in paragraph 2 above in some detail. For detailed information, ADRB members should refer to the regulation itself, a copy of which is available in the ADRB administrative office.

William E. Weber,
Colonel, IN, President.

SFRB, Memo #21.
February 18, 1977.

Memorandum for: All Officers
Subject: Court Reporter Utilization, D.C. Panels.

1. The purpose of this memorandum is to establish procedures for utilization of court reporters for D.C. panel operations in all hearing modes, e.g., on-the-record cases, counsel only, personal appearance, video tape.

2. As agreed to by Director, Military Review Boards Agency, the Court Reporter Section of the Military Review Boards Agency is available to the Army Discharge Review Board on a scheduled daily basis to assist in the accomplishment of D.C. cases. This availability is in substitution of the previous use made of court reporters to take and transcribe verbatim testimony on personal appearance cases. The intent behind the utilization is to provide dignified, responsible duties for court reporters in keeping with their skill and training and to insure that an adequate, accurate and timely record is made of all forms of cases conducted by the D.C. panels.

3. Use of court reporters will be essentially as follows:

a. *"A" Cases:*

(1) Court reporters will be present in board room during board review of "A" cases.

(2) Presiding Officers will narrate to court reporters who will copy verbatim narration of that information necessary to fill out a Case Report and Directive.

(3) In addition, either Alternate Secretary/Recorders and/or Presiding Officers will narrate to the court reporters those elements necessary to fill out Parts III, IV and V of OSA Form 62B (Records Only Case).

(4) Court reporters are responsible for transcribing all narration on each case and returning same in completed form to Alternate Secretary/Recorders and/or Presiding Officer of the panel concerned on the next duty day following the day on which narration is taken.

b. *"B" Cases:*

(1) Court reporters on D.C. panel "B" cases will function in a similar configuration to Secretary/Recorder Assistant in a field environment.

(2) Court reporters will remain available in the anterooms of each board room or elsewhere in the ADRB area so as to enter the board room during the closed session and take verbatim narration for Case Report and Directive and Part VII and VIII of OSA Form 62B (Personal Appearance).

(3) The court reporter functioning in this manner on "B" cases will be the one in support of "A" cases on that panel on that day (if appropriate).

(4) The court reporters are also responsible for transcribing Parts III, IV, V and VI of OSA Form 62B (Personal Appearance) as has been dictated on tape by Alternate Secretary/Recorders. (In other words, the same procedure will be followed in D.C. as is followed for Traveling Panels.)

c. *"C" Cases:*

(1) In those cases in which a counsel actually appears to argue a case, that portion of the counsel's argument will be placed on tape by the Secretary/Recorders in Part III, OSA Form 62B (Counsel Only), Parts IV and V.

(2) Court reporters will be responsible for taking verbatim narration of Part VI.

(3) Transcription of all parts is the responsibility of court reporters from tape or steno notes (as applicable).

(4) In the event counsel does not appear, court reporter will function during "C" cases similar to the manner functioning in "A" cases, except that Secretary/Recorders and/or Presiding Officer will summarize counsel submission.

(5) Court reporter is responsible for providing to Secretary/Recorder and/or Presiding Officer, on the next duty day following the day in which transcription is taken, the completed action.

d. *Hearing Examination:*

(1) Court reporters will be present during all non-video tape portions of Hearing Examinations for each case to take Case Report and Directive and Part III, V and VI of OSA Form 62B (Personal Appearance-Hearing Examiner). Court reporter is responsible for taking from tape Part IV of OSA Form 62B (Hearing Examiner) as summarized by Secretary/Recorder Alternate during video tape presentation.

(2) Court reporters are responsible for providing to the Presiding Officer and/or Alternate Secretary/Recorder, on the next duty day following the day of which tape is presented, completed action.

4. In essence, each panel of the Discharge Review Board in operation will have assigned a court reporter. That court reporter is responsible for supporting the activities of that panel during the entire day and providing to that panel on the next duty day following the completed action of all type cases heard that day. Chief of the Secretary/Recorder Section is responsible for coordination with Chief, Court Reporter Section to insure appropriate scheduling of court reporters sufficiently in advance and on an adequately staggered basis so as to provide each court reporter at least one duty

day following the day in which support is provided to complete action on the case.

William E. Weber.
Colonel, IN, President.

SFRB, Memo #22.
February 22, 1977.

Memorandum for: All Officers
Subject: Pre-review Officer and PO & HE Pre-review Hearing Evaluation.

1. Effective immediately (but for record purposes for all cases on or after 1 March 1977) pre-review officer actions will no longer include a recommendation. The reason for this change is to:

a. Avoid pre-conditioning attitude of panel members;

b. Avoid confrontation between pre-review officer and other panel members when the pre-review officer is a member of the panel; and

c. Avoid the precedent of an officer of the ADRB functioning as "pseudo" counsel.

2. Pre-review officers should conduct their pre-review in a manner which permits word-for-word copying (if not summarized by the PO) in part III of OSA Form 62B (Records Only Cases). It is the function of the pre-review officer to insure the case is actually ready for presentation to a panel and to highlight those areas which under any circumstances must be brought to the panel's attention. The pre-review officer also serves as a final check on the brief as prepared by the analyst.

3. PO & HE pre-hearing evaluation should clearly orient away from any suggestion of a recommendation. The essence of PO & HE pre-hearing evaluation is to isolate those areas of the case in which there is absence of fact or substantive information that would otherwise be required by a panel in rendering a fully supported decision. It is not the role of the PO & HE pre-hearing evaluation to isolate areas in cross-examination which may be adversary in nature. In short, the evaluation is not designed to prove either innocence or guilt but instead to enunicate only facts.

4. PO's of all panels are responsible to insure that during the formulative stages of utilizing new forms and new techniques that appropriate adjustments in wording are made to avoid future embarrassment to the Army while not denying to the applicant a fair and equitable hearing. In a philosophical sense, the procedures of the ADRB are intended to be exposed to view and must be so set up so as to survive the "light of day". In this regard, no one officer must be placed in an administrative position of having to stand on a decision made on an informal review. When five of us get together, the validity of our reasoning is enhanced by a multiple of five over that any one of us does as an individual. This is the basis on which I want ADRB evaluated—not individual effort!

William E. Weber.
Colonel, IN, President.

SFRB, Memo #23.
February 23, 1977

Memorandum for: All Officers.
Subject: Hearing Examiners (Prologue/Epilogue).

1. Effective immediately all Hearing Examiners will, upon completion of a Hearing Examination, place their impressions on tape. These impressions must, of course, be made after completion of the Hearing Examination but must be inserted as a prologue to the Hearing Examination.

2. To accomplish this and to discipline the amount of time utilized, Hearing Examiners will have Sec/Rec Assistant run the tape blank for approximately 5 minutes at which point of the tape the actual Hearing Examination will start. Upon completion, the Sec/Rec Assistant will rewind tape for playback and will then video record the HE impressions of the hearing. HE will, in effect, duplicate those things that the HE would otherwise normally present to the panel during the hearing of the case. Upon completion of the prologue, the applicant and counsel will be brought back in to review that portion of the tape dealing only with the actual taping of the testimony.

3. Following complete playback of the testimony, the HE will verify that applicant and counsel concur that the tape is satisfactory. If they so agree, the hearing will go back on camera and the HE will formally place on tape (epilogue) the stipulation from counsel and applicant that the tape is satisfactory and adequately presents their views. Camera will record applicant and counsel's acquiescence to complete the epilogue.

4. The purpose of the foregoing is to accomplish the following:

a. By use of the prologue to convert the actual conduct of the Hearing Examination cases at Washington, D.C. to a procedure which will not require the presence of the HE during the playing of the tape. If possible, this will give us a great deal more flexibility. It will, of course, depend upon the adequacy of material placed on the tape by the HE.

b. Place on tape for subsequent summarization on OSA 62b the statement by counsel and applicant that they are satisfied with the hearing.

c. This technique will enable the HE to record comments concerning the case at the point in time the case is most current in the HE's mind and will also permit a more accurate assessment of the actual conditions of the Hearing Examination then would otherwise be possible through later recall.

d. This technique should enable an increase in the total number of Hearing Examinations that can be conducted on any one trip, because of a reduction in the amount of administrative follow-up effort required on the part of the HE.

5. It is also important to remember that during the period of time in which the tape is being played back to counsel and applicant, the Sec/Rec accompanying the HE should be placing the summary of testimony on cassette recorder at that time. Also, the prologue exercise, for which the Sec/Rec is responsible for handling the camera gives the Sec/Rec the benefit of HE thoughts before doing a summarization.

6. In summary, a Hearing Examination is chronologically sequenced as follows:

a. Sec/Rec meets and greets applicant and counsel and briefs on procedures.

b. Sec/Rec brings applicant and counsel to hearing room and HE conducts informal review.

c. HE and Sec/Rec Assistant conduct tape hearing (Sec/Rec Assistant has already run 5 minutes of tape blank).

d. Sec/Rec Assistant rewinds tape upon completion of hearing and readies camera for "prologue" then departs room to "fall out" Sec/Rec and pre briefs next case or starts typing preceding case.

e. Sec/Rec joins HE and films "prologue".

f. Applicant and counsel rejoin and HE/Sec/Rec play back testimony. During playback, Sec/Rec places summary on cassette recorder.

g. At completion of testimony playback, HE verifies with applicant and counsel such is satisfactory and then Sec/Rec places on video tape the "epilogue".

h. Sec/Rec, applicant, and counsel depart room. Sec/Rec Assistant comes back in and readies for next case.

i. Repeat.

William E. Weber.
Colonel, IN, President.

SFRB Memo #24
March 10, 1977

Memorandum for: All officers
Subject: C & B Disorder Cases (Court of Claims Decision—Bernard Carter Case)

1. In the subject case, Bernard Carter was separated from the Army as a C & B on the basis of a psychiatric evaluation which concluded that there was "no psychiatric disease or defect". No further narrative description was given by the psychiatrist which either alluded to or specifically identified a C & B problem.

2. The installation concerned nontheless processed Carter as a C & B and ultimately separated with a SPN of 264 and a characterization of General. Georgetown School of Law submitted a claim to the US Court of Claims in the Carter case requesting that he be paid all his pay due from the date of separation to the date of ETS and that the Secretary be required to recharacterize his discharge as appropriate. In making the argument to the Court of Claims, Plaintiff's counsel used the argument that absent a specific identification as a C & B by an appropriate medical/psychiatric officer, the Army had no right to characterize Carter as such or separate as such. While the case was in litigation, the TJAG of the Army requested that the DRB hear the case on its own motion to determine whether or not the discharge was proper and equitable.

3. In our review of the case, we established that the discharge was not proper but the characterization was equitable and we changed the reason for discharge to Secretarial determination. Our rationale in so doing was similar to that of counsel to the Plaintiff in that the Army did not establish by regulation that Carter was a C & B even though a lay person in reviewing his military performance and conduct could conclude that he was suffering from some C & B disorders.

4. The action of the Court of Claims granting back pay and recognition of service until ETS in effect establishes a premise that no individual may be separated from the

Army by C & B unless, in accordance with regulation, there is a specific and narrative determination made by an appropriately qualified medical/psychiatric officer of the Medical Corps that the applicant is in fact suffering from a C & B disorder. There must also be specific diagnostic language establishing the C & B disorder.

5. As many of you know, a significant percentage of our C & B cases are those justified on the basis of a "circle jerk" which terminates by concluding that there is an absence of psychiatric problem but does not necessarily include language that there is a presence of a specific C & B disorder. Cases of this type necessarily fall under the same broad category as does the Carter case as described above. At the present time, we do not know whether or not the Secretary (TJAG) will choose to request that Justice appeal the Court of Claims' decision. The prognosis is that they will not.

6. In the interim, I desire that all cases that may be configured similar to that of the "Carter" case be considered on the presumption that the lesson learned as a result of the Carter case will be applied to all future considerations by the ADRB. These cases then will be identified on a separate roster by name, SSN, and case number (such roster to be maintained by the Executive Officer) so that in the event future action need be taken by the Secretary similar to that which the Court of Claims directed be taken in the Carter case we will be prepared to execute without additional work. The Secretary/Recorder Section is responsible for providing a daily log to the XO with a listing of the cases that meet this condition.

7. All PO's and pre-review officers are requested to pay special attention to this problem area so as to insure that cases of this type are surfaced as soon as possible and that none slip through the cracks.

William E. Weber,
Colonel, IN, President.

SFRB Memo #25
March 17, 1977.

Memorandum for: All Personnel
Subject: Traveling Panel/Hearing Examiner Case Scheduling Guidelines

1. Lessons learned on recent visits by both Traveling Panels and Hearing Examiners, coupled with new administrative procedures and forms, require scheduling on a uniform basis. As a result, all future trips will schedule 60 cases for Traveling Panels and 30 cases for Hearing Examiners. When possible, Traveling Panels will be scheduled for 15 day duration, departing on Sunday and returning on Saturday/Sunday. Hearing Examiners will be scheduled for 10 day duration, departing on Sunday and returning on Tuesday.

2. The Secretary/Recorders responsible for each designated trip will schedule cases to be heard on a daily basis as indicated below:

Hearing Examiner

Sunday—Departure Day.
Monday—4 cases.
Tuesday—5 cases.
Wednesday—5 cases.
Thursday—5 cases.
Friday—5 cases.
Saturday—2 cases.
Sunday—Day of Rest.
Monday—4 cases.
Tuesday—Return.

Traveling Panel

Sunday—Departure Day.
Monday—5 cases.
Tuesday—6 cases.
Wednesday—6 cases.
Thursday—6 cases.
Friday—5 cases.
Saturday—2 cases.
Sunday—Day of Rest.
Monday—5 cases.
Tuesday—6 cases.
Wednesday—6 cases.
Thursday—6 cases.
Friday—5 cases.
Saturday—2 cases.
Sunday—Return.

3. Presiding Officers and Hearing Examiners are authorized to adjust scheduled cases on site if there are mitigating circumstances and they feel it is in the best interest of the applicant or TP/HE concerned.

4. The scheduled format assumes that 60 and 30 hard cases respectively will be available for each planned trip. It is demonstrably evident that when fewer cases are available, the Secretary/Recorder responsible will adjust the schedule accordingly, using fewer days for the planned trip. However, in no case will the number of hearings per day exceed six for TP's and five for HE's.

5. Within the next few days, the tentative traveling schedule for the remainder of calendar year 1977 will be made available to each member of the Army Discharge Review Board. The schedule will indicate place and date of visit. Because each of you has certain preferences, please provide to the Executive Officer your first and second choice, to include any mitigating reasons. If you have no preference, please so indicate. In this regard, you should also accept that you may receive a nonpreferred assignment for each of your selections which can be accommodated.

6. You will also note that six Hearing Examiners may be deployed during any given month; the additional two are for my use and will be designated by myself, based on requirements levied on the ADRB.

William E. Weber,
Colonel, IN, President.

SFRB, Memo #26
May 11, 1977

Memorandum for: All officers and sections
Subject: Use of Separation Program Designator JKG

1. RCPAC has presented a problem. The SPD now used for fraudulent enlistments that have been declared void is JKG. In such a case, there is no discharge characterization because of the period of service has been declared viod.

2. In order to avoid confusion and adverse effects to applicants, the ADRB will not use JKG. Whenever a panel determines that an applicant who has been discharged for fraudulent enlistment should have his discharge upgraded, the SPD will be changed to JFF–KFF (Secretarial Authority—old 21L).

William E. Weber,
Colonel, IN, President.

SFRB, Memo #27
May 12, 1977

Memorandum for: All officers
Subject: Notification to Respondents of Contemplated Board Action

1. Recently it has been noted that counsel for applicants have referred to a TJAG opinion that purportedly stands for the proposition that a full and explicit description of the basis for proposed discharge action must be given to a military member before he can validly be discharged. The citation is DAJA–AL 1974/3846, 29 April 1974, published in The Army Lawyer in June 1974.

2. Reliance by counsel on this opinion as indicated above has sometimes been overstated. Various paragraphs of AR 635–200 (1–10a, and 13–22 a and b) do require that a potential respondent be specifically advised of the basis for discharge action and that he be given full opportunity to rebut adverse evidence. However, TJAG also recognizes that the scope of notification may be supplemented by witness statements or other evidence. In other words, substance rather than form is the main point; the question essentially is one of actual realities, that is, whether or not a potential respondent was reasonably appraised of the reason for discharge action taken.

William E. Weber,
Colonel, IN, President.

SFRB, Memo #28
May 27, 1977

Memorandum for: All officers, chief, secretary/recorder section chief, administrative section
Subject: Index Reference Number

1. Effective 1 June 1977, Presiding Officers and Secretary/Recorders are responsible for insuring that both primary and secondary Index Reference Numbers are indicated on *all* cases. These Index Reference Numbers must be reflected on the Case Report and Directive and Summary of Testimony sheets.

2. To insure that there is a unanimity of understanding as to the areas of considerations for which Index Reference Numbers must be selected, the following procedure will be adhered to:

a. For every finding by the panel, both as relating to contentions submitted by the applicant and, as well, deduced areas covered by the panel, an Index Reference Number will be selected.

b. The primary Index Reference Number assigned to the case will be determined from among the foregoing by the Presiding Officer at the completion of the case. This determination will be predicated on the Presiding Officer's assessment of the dominant factor of issues of fact, law, or discretion considered by the board.

c. Index Reference Numbers will be selected for negative findings as well as positive findings.

3. The current Discharge Review Board Index is now probably not complete enough to satisfy this expanded requirement,

therefore, and in addition, Presiding Officers and Secretary/Recorders are also responsible for providing the Executive Officer recommended new index reference identifiers for inclusion in the Discharge Review Board Index. These identifiers will presumably be developed by panels in their consideration of cases. In this regard, it is evident that specific identifiers now become extremely important since we must insure that findings remain appropriate only to the case which generated their development so as to avoid the aspect of precedent setting actions by the panels which can be used to attempt to bind future panels on future cases.

4. The foregoing should not be interpreted to suggest that there cannot be similarity in findings between cases. However, it is the combination of findings which make one case distinct from another.

William E. Weber,
Colonel, IN, President.

SFRB, Memo #29
June 14, 1977.

Memorandum for: All officers
Subject: Check Sheet for Regular Discharge Review Cases

The following is intended as an aid to POs and panel members in the review of regular cases in order to focus upon the key elements of regulatory requirements for the various types of discharges most commonly encountered. It is emphasized that this is a simple check sheet and obviously not a substitute for detailed understanding and application of the ARs, the SOP, and the supplemental memoranda, especially where applicants make specific contentions relating to the detailed requirements of the discharge process.

a. *BCD Special Court-Martial:* Is there a final supplemental court-martial order which orders the BCD executed and states that the requirements of Article 71C have been complied with?

b. *Chapter 5 (para 5–37)—EDP:* (1) Did the applicant consent to being discharged? Was he advised he could consult with a JAG officer before deciding?

(2) Does he fit the criteria for EDP, i.e., 6–36 months of service and meet the personality traits of the program?

(3) Was the discharge authority an O5 commander or higher?

c. *Chapter 5 (para 5–38)—Concealment of Arrest:* (1) Was the arrest concealed for a felony type offense?

(2) Was counsel for consultation on or after 1 Jan 74 a JAG officer?

(3) Was the discharge directed by the GCM authority?

d. *Chapter 10:* (1) Did he request the discharge?

(2) If on or after 1 Jan 74, did a JAG officer sign the request form?

(3) Could the offense charged be punished by a punitive discharge? (Note: Section B, Table of Maximum Punishments, applies prior to 1 April 1976.)

(4) Was the request approved by the GCM authority?

e. *Chapter 13:* (1) In waiver cases, was counsel for consultation on or after 1 Jan 74 a JAG officer?

(2) Is the specific criteria met for the discharge action concerned?

(3) If discharge is for a personality disorder, homosexuality or homosexual acts, is there a psychiatric report in the file?

(4) In other cases, is there a mental status evaluation in the file which was prepared or reviewed by a military physician?

(5) In formal board actions involving a UD (UOTHC), was counsel for representation a JAG officer or otherwise a lawyer qualified under Article 27(b)(1), UCMJ?

(6) Was the discharge directed by proper authority, i.e., GCM level commander for UD, SPCM level commander for GD or HD?

f. *Chapter 14:* (1) In waiver cases, was counsel for consultation on or after 1 Jan 74 a JAG officer?

(2) Is the specific criteria met for the discharge action concerned?

(3) Is there a mental status evaluation in the file (only required if under military control)?

(4) In formal board actions involving a UD (UOTHC) was counsel for representation a JAG officer or otherwise a lawyer qualified under Article 27(b)(1), UCMJ?

(5) Was the discharge directed by proper authority, i.e., GCM level commander for UD, SPCM level commander for GD or HD?

g. *AR 635–206—Civil Conviction:* (1) In waiver cases, was counsel for consultation on or after 1 Jan 74 a JAG officer?

(2) Was the offense (or offenses) for which convicted punishable by a comparable offense under the UCMJ by confinement of more than 1 year (prior to 2 Dec 76) or confinement of 1 year or more (effective 2 Dec 76), or was the offense for narcotics violation or sexual perversions regardless of the punishment possible?

(3) Is there an indication in the file that no appeal is intended or that the time for appeal has expired?

(4) Is there a mental status evaluation in the file (only required if under military control)?

(5) If confined by civil authorities, was he advised by registered mail of his basic rights?

(6) In formal board actions involving a UD (UOTHC), was counsel for representation a JAG officer or otherwise a lawyer qualified under Article 27(b)(1), UCMJ?

(7) Was the discharge directed by proper authority, i.e., GCM level commander for UD, SPCM level commander for GD or HD?

William E. Weber,
Colonel, IN, President.

SFRB, Memo #30
June 27, 1977.

Memorandum for: All officers, chief, secretary recorder section chief, administrative section
Subject: Index Reference Numbers

1. This memorandum rescinds paragraphs 1 and 2, PART II SFRB MEMO #D. It also amplifies guidance in SFRB Memo #28.

2. Primary Index Reference Number.

a. The primary index number will be designated by the Presiding Officer at the time of the hearing. No index references will be assigned to cases prior to this time.

b. Favorable decisions. In these cases, the primary index will be the principal reason that the board took favorable action.

(1) Regular Cases. Number selected from ADRB Index.

(2) DoDDRP(S) Cases. Number selected from 67.00 series in ADRB Index.

c. No change decisions. In these cases, the number will be selected based on the reason for discharge and will be the most specific number in the index (example: Applicant discharged for unfitness, frequent involvement, SPN/SPD 28B/JKA. Index Reference Number would be 34.08). This practice will be followed for both regular cases and DoDDRP(S) cases.

3. Secondary Index Reference Numbers. These numbers will also be assigned based on the contentions, findings, and reasons enunciated in the case.

a. DoDDRP(S) Cases. The secondary index numbers will be assigned from the 67.00 series. When the applicant has enunciated additional contentions (other than those covered by DoDDRP(S)) a finding and index number appropriate to the contention will be selected as well.

b. Regular Cases. The secondary index numbers will be selected from the ADRB Index. Index numbers should be as specific as possible. At a minimum, there must be an index number for each finding. Since we always consider the applicant's record of service overall, an appropriate number from the 56.00 series should also be assigned to the case.

William E. Weber,
Colonel, IN, President.

SFRB Memo #31
July 12, 1977.

Memorandum For: All Officers.
Subject: Directed Rehearing Cases (Ailes Memorandum).

1. Attached is a copy of the memorandum issued by Stephen Ailes, under Secretary of the Army, effective 20 November 1961, which prescribed directed rehearing for applicants subsequent to 1 December 1961 whose cases were considered on or before 30 November 1961.

2. Within the memorandum is contained a reference to "except as barred by 10 USC 1553c . . ." The reference appears to be confusing under the current codification since 1553c refers to provision of counsel and presentation of witness statements. However, the reference has applicability to an earlier codification, and the earlier codification specifically establishes that applicants under the authority of the Ailes Memorandum are bound by the 15 year statute of limitations.

3. Accordingly, any application dated subsequent to 1 December 1976 is no longer eligible for the directed rehearing provision of the Ailes Memorandum, and cases received by the Army Discharge Review Board will be returned to RCPAC without further action, citing as the authority for return that the case was submitted subsequent to the expiration of the 15 year statute of limitations.

4. Cases on hand or subsequently received for which the *date of application* is on or before 1 December 1976 will continue to be

heard under the auspices of the Ailes Memorandum.

William E. Weber.
Colonel, IN, President.

November 20, 1961.

Memorandum Thru: Director, Army Council of Review Boards.
For: President, Army Discharge Review Board.
Subject: Army Discharge Review Procedures.

Purpose of this memorandum is to provide additional policy guidance to the President, Army Discharge Review Board, in processing cases where individuals request reconsideration of the type and nature of discharge. To provide this Board with an opportunity to exercise a more objective and flexible approach in determining the most judicious and equitable resolution of an individual case, authority is granted to consider, in addition to the old criteria upon which an individual was separated, any criteria in current regulations which pertains to the same reason or basis for separation. This additional consideration will in no way affect the traditional approach of deciding each case on its individual merits, and in light of a best evidence presented to and obtainable by the Board.

Unless barred by the provision of 10 USC 1553c, an application for review of discharge received on or after 1 December 1961 from an applicant whose case has been reviewed by the Army Discharge Review Board on or before 30 November 1961, will be treated as an individual application and not as an application for rehearing. This action is taken in view of Department of Defense commitments to Congress that a discharge issued under regulations in existence prior to implementation of DOD Directive 1332.14, 14 January 1959, subject: Administrative Discharges, may be reviewed under the standards outlined in this Directive.

An application for review of discharge received from an applicant whose case has been heard on or after 1 December 1961 will be considered and processed as an application for rehearing.

Stephen Ailes.
Under Secretary of the Army.

SFRB Memo #32
August 4, 1977.

Memorandum For: All Officers and Secretary/Recorders.
Subject: Challenges for Cause.

1. The applicant in an ADRB hearing has a right to challenge a panel member for cause. While the exercise of this right is remote in the light of past experiences, a few ground rules should be laid down to guide PO's in the proper and uniform handling of challenges for cause.

a. If it should appear to a panel member that he has had some prior dealing with an applicant, and he feels that he *cannot* impartially participate in the hearing, he should so advise the PO. The PO will report the matter to the President, ADRB, for a replacement member. In a Traveling Panel situation, the replacement member will ordinarily be the accompanying Secretary/Recorder.

b. If it should appear to a panel member that he has had some prior dealing with an applicant, and he feels that he *can* impartially participate in the hearing, he should so advise the PO. The PO will then rule whether or not the member should continue to sit on the case.

c. A panel member is normally the best judge of his qualification to sit in a particular case. It is not the fact of prior dealing, per se, (e.g., in a de novo hearing, having sat on a SDRP panel) that is determining but, with the exception of participation in the initial discharge process itself, the question of whether or not the member is impartial. If there is doubt, it should be resolved in favor sustaining a challenge for cause.

d. Other possible challenges for cause will be resolved in a similar manner.

e. If the PO is challenged, he will judge the matter of his qualificaion to sit. Where he feels he may not be impartial, he will advise the President, ADRB, who will decide. Where the PO rules that he is impartial, he will continue to sit unless an applicant or his counsel expresses disagreement with the ruling, in which instance the PO will advise the President, ADRB, who will make the decision.

2. Prior to convening of a panel, any member who believes that there could be a question arising concerning his qualification to sit should advise his PO (or President, ADRB). In this regard, Secretary/Recorders, Pre-Review officers, and others who review records prior to hearings should advise the PO (or President, ADRB) of any ground for challenge for cause that may be detected.

William E. Weber.
Colonel, IN, President.

SFRB Memo #33
September 6, 1977.

Memorandum For: Presiding Officers, Professional Staff, Board Members, Secretary/Recorder, Alternate Secretary/Recorders, and Secretary/Recorder Assistants.
Subject: Justifying Decision Not to Grant Full Relief.

1. Under the provisions of "Urban Law Institute v. Secretary of Defense, U.S.D.C., D.C., C.A. No. 76-0530" as they are interpreted by the Army General Counsel, the Discharge Review Board is responsible for enunciating in sufficient detail a decision as to why full relief is not granted when only partial relief is granted on the discharge appeal. In substance, this means that when a panel determines that there is inherent to an appeal sufficient justification to upgrade from UD to General, but does not justify upgrading to Honorable, the following must be accomplished:

a. In the Reason and Justification paragraph, and in the findings for both contentions and/or issues, if applicable, the rationale justifying changing the discharge from UD to General should appear.

b. In addition, both in Reason and Justification and, as appropriate, PO's notes, the reason why the panel decided not to go to full honorable must appear. This can be expressed in general terms but must be specific enough to avoid being challenged as simply conclusary.

2. In responding to this requirement, panels may make use, by reference thereto, of information that is already contained in the Case Report and Directive. For example, if in Part III there are specifically enunciated offenses which were punished by Article 15, Special or Summary Courts-Martial, etc., and, as well, a specific listing of AWOL time and Conduct and Efficiency ratings, then reference can be made to these in the Reasons and Justification as being the basis on which a decision was made not to grant full honorable. Samples of the kind of language (given the presence of these data elsewhere in the Case Report and Directive) that will be sufficient to meet the requirement follow:

a. "The total circumstances warrant upgrade to General Discharge. This is mandated by the presence of a prior Honorable Discharge. However, an upgrade to Honorable is not warranted because of the frequent disciplinary problems (2 Articles 15 for failure to repair, a summary court-martial conviction for failure to obey an order, an Article 15 for disrespect to an NCO, and 2 Articles 15 for AWOL (10 and 20 days)), in addition to the events resulting in discharge. Further, applicant's age (25), aptitude (AFQT-70), education (two years of college) and prior excellent service during first enlistment indicate an ability to perform in a manner better than that demonstrated by his record."

b. The applicant enlisted in October 1973 for three years; he was discharged in April 1975 in lieu of court-martial for an AWOL from 23 December 1974–10 March 1975; was 23 at time of enlistment; served for 17 months; was AWOL for 57 days in addition to the period that resulted in discharge; conduct and efficiency ratings were as follows: 4 months—excellent; 6 months—good; 8 months—unsatisfactory; highest rank achieved was E3; no awards and decorations; AFQT score—35; completed 10th grade of school; received two Articles 15, one for a 10-day AWOL in August 1974 and the other for a 20-day AWOL in October 1974. Applicant's discharge should be upgraded to General because it was too harsh in light of applicant's overall record of service. An Honorable Discharge is not warranted because of the periods of AWOL and the unsatisfactory conduct and efficiency ratings during the last 8 months, as highlighted in Part III, Sections A thru D, of the Case Report and Directive.

3. Presiding Officers must exercise care and ensure that the choice of language in cases not warranting full relief is adequate to avoid challenge as being too general.

William E. Weber.
Colonel, IN, President.

SFRB, Memo #34.
September 21, 1977

Memorandum for: All Personnel.
Subject: Work Schedule (Panel Room and Pit Operation).

1. Examination of work effort since 8 August and recommendations from Pit Bosses suggest a modification in the scheduling of workload in order to provide a more orderly

flow of cases. The changes outlined below are not permanent in nature but are, as has been the case in the past two months, experimentation to find the most effective means of operation.

2. Effective Monay, 26 September, a cyclic schedule of a full-day of panel room operation, followed by a half-day of pre-review on a rotational basis, will be put into operation. Attached at inclosure 1 is a sample of how such scheduling will be programed. The published schedule each week will accommodate special requirements, holidays, etc., but, in general, will conform to inclosure 1.

3. The goal behind this change is intended to increase overall case production and, at the same time, provide board members uninterrupted periods of work effort so as to enhance each element of work effort. In order for this system to work effectively and properly, *it is essential* that (within reason) each period of work effort consummate in total completion of caseload scheduling for that period of time and that each officer complete the portion of work effort allocated. The discipline, concerning work completion, is the personal responsibility of each officer. Essentially, a duty day is not complete until the work effort allocated for that day is complete.

4. In addition to the foregoing, a change in post-review procedures will also be implemented effective with all cases heard on or after 26 September 1977. Draft post-review will be accomplished only by the Presiding Officer whose panel heard the case. The Presiding Officer concerned will be given a standdown day in order to accomplish this draft post-review. Presiding Officers will also be the only officers to accomplish final post-review of cases for which they are responsible, but they will not be given a standdown day for this purpose. It will be included as a part of their normal workload during a half-day review period.

5. Subject to announced changes, workload goal, towards which maximum effort must be made, is assigned as follows:

a. Panel rooms conducting on-the-record (A) or written presentation by counsel only (C) cases—25 per full-day. (Note: it is the responsibility of the Presiding Officer concerned to ensure (within reason) that the 25 cases are completed, even if it involves more than 8-hours of work effort. On those days where panel effort is split, e.g., Afternoon/Morning, it is the responsibility of the Presiding Officer to insure (within reason) completion of sufficient number of cases in the afternoon session so that the morning session terminates at 1200 hours.)

b. HE Hearing Room—6 complete cases per full day.

c. Personal Appearances or Appearances by Counsel (B, TP) Only—10 cases per full-day. (This presumes 40% show rate and remaining 6 cases done as on-the-record cases. Obviously, if rate of show increases, adjustments will be made. In addition, each personal appearance panel room will have 10 on-the-record cases added to the log. These cases must be completed on the scheduled day of the log unless personal appearances extend beyond 1500 hours. In such cases, the residue will be continued on the log for the succeeding day.)

d. Pre-Review by Officers—6 cases for each half-day period for those officers who are scheduled to sit as a panel member for the other half-day period in the same day. Pit officers not assigned to a panel on any given day are responsible for completing 10 cases per day. (*Note:* This excludes Presiding Officers on the day allocated for draft post review and HEs on the 3-days prior to deployment.

6. There can be no question that the secret behind accomplishment of the foregoing mission is a complete and well-prepared pre-review action. Further, to do an improper pre-review can only result in an unnecessary effort being expended in the panel room that otherwise would not be necessary. The documents that have been developed to assist the pre-review officer in accomplishing a well-prepared pre-review have inherent to them some repetitive effort. While I recognize that this results in some additional work, it is also true that it ensures against error of omission and helps to prevent errors of commission in recording substantive data on which a panel bases its decision on a case. In the final analysis, it is a simple proposition: either one officer is involved in the tedium of recording information or five officers must do so when in the panel room. I think the choice is obvious and, more importantly, we must all consider that the combination of the time spent on the case (e.g., that of the pre-review officer as well as that of the panel) is what constitutes a measure of how effectively we provide a fair and impartial review. To scrimp on pre-review can only lead to an increase in judgmental error within the panel room. It is incumbent upon pre-review officers to present information to the panel—not decisions.

7. I recognize the foregoing is a significant workload but experience of the past 60-days establishes that it can be accomplished and it must be accomplished if we are to remain abreast of the incoming workload. During the latter portion of October, it is my hope that there will be some relief in the way of additional assets but, in the interim, the above stated workload must be accomplished with existing resources.

William E. Weber,
Colonel, IN, President.

SFRB, Memo #35.
November 3, 1977.

Memorandum for: Board Members, Secretary/Recorders and Executive Officer.
Subject: No-Show Cases, HE Deployments.

1. For a variety of reasons, not the least of which is the possible impact of PL 95–126, no-show rate on HE deployments has increased. Under present procedures HEs are bringing the cases back for reinsertion into the system, requiring going back into The Pit for pre-review prior to scheduling on-the-record.

2. The foregoing normally results in wasting the unique knowledge of the case as a result of the Hearing Examiner's pre-deployment review. This review, although not encompassing use of the pre-review forms, is nonetheless the equivalent, if not a more detailed "look see," than the normal pre-review.

3. Effective immediately, the following procedures will be employed for all no-show HE cases:

a. Alternate Secretary/Recorder will hold the no-show cases and give them to the HE as soon as the team returns to D.C.

b. HE will complete normal pre-review within one duty day following the first duty day of return to Washington, D.C. (In the event there are more than 10 cases to pre-review, the requirement per duty day is 10 per day.)

c. HE can, if desired, do pre-review while deployed.

d. Upon completion of pre-review, the cases will be given directly to the Alternate Secretary/Recorder responsible for supporting the deployment of that particular HE.

e. The Alternate Secretary/Recorder concerned is then responsible for insuring the immediate scheduling and hearing of these cases in the appropriate board room.

f. Cases will be identified as "HE No-Show (appropriate location)".

4. Presiding Officers of panels hearing such cases and having been identified by the Alternate Secretary/Recorder as "HE No-Show" will add to the PO's notes a statement essentially as follows:

"This case was heard on-the-record as a direct result of the failure of the applicant concerned to be present on time and as scheduled for a Hearing Examination at ———. In accordance with policy, failure to make necessary arrangements in such circumstances causes the individual concerned to forfeit the right for a personal appearance form of hearing and authorizes the board to complete the case as an on-the-record case."

William E. Weber,
Colonel, IN, President.

SFRB, Memo #36.
November 9, 1977.

Memorandum for: All Officers.
Subject: Completion of Pre-reviews.

1. Effective immediately, the following clarification of preparation instructions are prescribed for completion of Section L—DoD Special Discharge Review Program, Discharge Data, Part III of the Worksheet for the Case Report and Directive:

a. When submission by the applicant reflects a claim of any criteria of the SDRP, the claimed criteria will be checked affirmatively on the L–15 and worded as one or more contentions under the heading, "Applicant's Contentions," on page 4 of the worksheet. In such cases, a notation, "See Contention(s) No. ———," will be made in the Comments Section of the L–15. Proposed findings to the contentions will be drafted, when possible, in the same manner as for other contentions.

b. When review of the record reveals the possible presence of the primary criteria of the SDRP, as listed in the printed instructions of page 5 of the worksheet, those criteria will be checked affirmatively on the L–15 and raised as one or more issues (if not listed as an applicant contention) under the heading,

"Board Issues," on page 5 of the worksheet. In such cases a notation, "See Issue(s) No. ———," will be made in the Comments Section of the L–15. Proposed findings to the issues will be drafted, when possible, in the same manner as for other issues.

c. When review of the records reveals the existence of any factors listed under the secondary criteria of the SDRP, these factors will be checked affirmatively on the L–15. If in the opinion of the prereviewing officer, these factors checked are mitigating, they will be raised as issues (if not listed as applicant contention) under the heading "Board Issues" on page 5 of the worksheet and treated in the same manner as for issues pertaining to the primary criteria. If the factors are not considered mitigating, a notation, "Factor(s) not considered as mitigating," will be made in the Comments Section of the L–15. In this case, such factors will not be raised as issues on the worksheet by the pre-reviewing officer.

d. More than one primary criteria may be combined to form a single issue or contention, if appropriate. Primary and secondary criteria should not be combined to form a single contention or issue.

e. Where review of records reveals the possible presence of a compelling reason, it will be checked appropriately on the L–15 and raised as an issue. Proposed finding to the issue will be made in the normal manner and a notation in the Comments Section of the L–15 will be made as follows: "See Issue No. ———".

f. To ensure clarity and ease of understanding, where more than one comment is placed in Comments Section in accordance with some combination of a, b, c, d, and e above being applicable to the case, the appropriate factor/factors applicable to each comment will be annotated with a reference number. That reference number will be used with the appropriate remark in the Comments Section.

2. A summary of the charges under Chapter 10 will be included in the Comments Section of L–1 for all cases when the specific charges can be determined. If specific charges cannot be determined, an explanation should be made in the Comments Section. This information should also appear under "Reason for Discharge" on the sheet used to display by Vugraph the service highlights pertaining to the application.

3. It is the responsibility of the pre-review officer to review the entries by the analysts for conformity with instructions for completion issued by the Executive Officer, ADRB, dated 13 Oct 77, and to complete appropriate parts of the worksheet, Parts II and III, Section Ls and Section M for each case. Presiding Officers will assure that documents are complete for each case which receives a hearing resulting in a decision.

Robert Laychak, for William E. Weber,
Colonel, IN, President.

SFRB, Memo #1–78.
January 5, 1978.

Memorandum for: All officers, ADRB.
Subject: Training of Newly Assigned ADRB Panel Members and Assistant Secretary/Recorders.

1. This memorandum establishes content and responsibility for conduct of training of newly assigned officers of the Discharge Review Board.

2. *Conduct of Training:*

a. Training will be conducted in four modes: Conference training, observer training, on-the-job training, and individual critique and coaching.

b. The conference training, observer training, and on-the-job training will be scheduled formally. The individual critique and coaching will be conducted concurrently with the other phases of training.

c. Training will cover approximately four weeks from date of arrival of the newly assigned members of the ADRB.

3. *Responsibilities for Training:*

a. *Individual.* Familiarization with ADRB SOP, AR 635–200, AR 635–106, AR 635–120 and the contents of the "reference package" provided to each newly assigned member of the ADRB will be the responsibility of the individual officer.

b. *Training Coordinator.* An officer will be designated by the President, ADRB, to act as coordinator of training when several newly assigned members are to arrive at the same time. He will be responsible for scheduling training of the newly assigned officers and conduct of the initial orientation of the ADRB. When there is no training coordinator designated, the Pit Boss concerned will be responsible for the scheduling and initial orientation.

c. *Pit Boss.* Conduct of critique and individual coaching of newly assigned members. A member of the particular pit may be designated by the Pit Boss to accomplish this phase. (Note: Where the newly assigned officer is an Assistant Secretary/Recorder, the Secretary/Recorder will be responsible for those actions noted as Pit Boss Responsibilities.

4. *Training Cycle:*

a. *1st Week:*

(1) Administrative Inprocessing.
(2) ADRB Overall Orientation.
(3) ADRB Philosophy.
(4) Admin Support Orientation.
(5) Secretary/Recorder Orientation.
(6) Professional Orientation.
(7) Executive Officer Orientation.

b. *2d Week–4th Week:* Board observer training. OJT training.

5. *Training Content:*

a. *ADRB Overall Orientation.* History of ADRB, overall organization and functions of the ADRB, relationship of ADRB to ACRB and Military Review Boards Agency, role of ABCMR with regard to discharge review, and relationship of RCPAC to the ADRB. Overview of the impact of PP 4313, the extension of PP 4313, the SDRP, and PL 95–126 on ADRB. Discussion of the Ailes Memo, the Laird Memo, and the Brotzman Memo on the ADRB. Methods of hearings, flow of cases through the ADRB, role of the Presiding Officer, role of the Hearing Examiner and role of the professional staff. (Two-hour conference by training coordinator or Pit Boss.)

b. *ADRB Philosophy.* Discussion of the philosophical approach to cases and policy guidance. (Two-hour conference by President of ADRB.)

c. *Admin Support Orientation.* Functions of Admin Support Division and the role of the various elements in the division. Particular emphasis on the role of the analyst. Portion of orientation will be spent observing analysts in their processing of a case. (One 8-hour duty day—Chief, Admin Support responsibility.)

d. *Secretary/Recorder Orientation.* Functions of the Secretary/Recorder Division with specific emphasis on the role of the Secretary/Recorder in processing a case in all its phases (pre-review, hearing, post-review). Portion of orientation will be spent observing Secretary/Recorder functioning in various boardrooms. (One 8-hour duty day—Chief, Secretary/Recorder responsibility.)

e. *Professional Orientation.* Role of Legal and Medical Advisors, including overview of the functioning of other boards which comprise the ACRB. (Two-hour conference—Medical and Legal Advisor responsibility.)

f. *Boardroom Observer Training.* Observes in boardrooms for all modes and types of hearings. Goal is to gain an understanding of the application of ADRB philosophy, policy, and regulatory guidance to cases. During breaks, the PO of the board concerned will answer specific questions or emphasize the reason for board actions on specific cases which were decided during the board session. POs may comment after conclusion of individual cases as well when it is appropriate. (Training Coordinator/Pit Boss responsible for scheduling, PO for conduct.)

g. *OJT Training.* Hands-on pre-review of actual cases. Cases completed, reviewed and critiqued. Explanation of use of ADRB forms, application of policy and regulatory guidance, and explanation of interpretation of SPN/SPD codes, and the SOP for accomplishment of analyst actions will be accomplished before initial pre-reviews are undertaken. Problems or questions arising in individual cases will be covered as they arise. (Pit Boss responsibility or of designated pit member.)

h. *Executive Officer Orientation.* Overview of management procedures, efficiency reports, TDY procedures, leaves, passes, and other related matters. Responsibilities toward enlisted personnel and civilian employees of ADRB. Sign out and Panel Assignment Boards and ADRB Duty Officer responsibilities. (One-hour—Executive Officer responsibility.)

William E. Weber,
Colonel, IN, President.

SFRB, Memo #2–78.
February 10, 1978.

Memorandum for: All officers.
Subject: Precedent.

1. The Antioch Stipulation requires the Discharge Review Boards to address specific contents of applicants. When an applicant contends that the ADRB must grant a recharacterization of his discharge because the facts of his case are similar to those in an earlier case in which a DRB granted such relief, the Stipulation requires a finding. What should the findings contain?

Basic to discharge review concepts is that the Discharge Review Board is an

administrative body, not a judicial body, and thus not bound to stringent rules of the judicial process. The judicial process includes a system known as "stare decisis" which means generally that courts are bound to follow certain prior decisions or precedents. The idea is that when a principle of law has been established by judicial decision, this forms a precedent and those affected will know that future cases will be decided according to a more or less set body of rules thus established. The administrative process is more flexible. While administrative bodies cannot be arbitrary and capricious in making their decisions, and should seek some degree of uniformity, there is more room for judgment and discretion in the decision making process.

3. In light of the above, a panel's finding on a particular contention is unique to that particular contention or that particular case. The diversity of the personalities and the circumstances involved are such that no two cases are exactly alike. This does not mean that contentions of precedent can be ignored, nor does it suffice to answer such a contention with a conclusory statement that prior DRB decisions have no bearing in consideration of the case at hand. It does mean that such contentions must be considered. It does mean that applicants may make proper use of prior decisions to help them in persuading the panel to decide similar cases in a similar way. It does mean that there should be a discussion in the finding of distinguishing facts, differing equities, changes of policy and the like which make the case at hand different from the case cited. Given the broad equitable powers at the Discharge Review Board, and the widely varying circumstances of the cases considered, distinguishing factors among cases are normally the rule rather than the exception. This will be particularly true when the cases from other services are cited.

4. When such contentions are made, the panel members must be especially conscious of the nonadversary nature of the hearings. It is not the proper role of a panel to seek out other decisions decided in different ways. It would be proper, however, for the PO to require the applicant to present a complete copy of the decision document in order that the panel be able to make an intelligent evaluation of any case cited where needed.

5. Therefore, Presiding Officers will, when an applicant or counsel introduces previous cases and/or findings as contentions:

a. Request the applicant and/or counsel present a copy of the cited case, if possible.

b. If "a" above is not possible, the PO shall require that applicant and/or counsel specifically state the aspects of the cited case they believe are similar to their case.

c. Inform that the panel will give appropriate consideration to "b" cited statements.

d. Inform that the panel cannot continue to hear a case if the panel's comprehension of testimony and exhibits is dependent upon cited case if applicant/counsel cannot then produce the case or specifically state area to be considered.

e. If necessary, grant deferment or continuance to permit applicant/counsel to obtain cited case. A continuance in such a case must be brief, and never beyond the term of a Traveling Panel or Hearing Examiner in field situations.

f. Under no circumstances, accept as a contention a simple cite of a case number and continue to hear the case without the panel having prior access to the substance of the case.

g. Agree to accept written brief and affidavits and/or depositions to support a prior case cited as a contention.

William E. Weber,
Colonel, IN, President.

SFRB, Memo #3–78.
March 14, 1978.

Memorandum for: All ADRB Officers.
Subject: Implementation of ASA(M&RA) Memorandum, 8 February 1978, on "Litigation Involving Army's System for Discharging Individuals with Personality Disorders."

1. *Purpose:* To meet the requirement of ASA Nelson Memo (attached) it is necessary to dispatch letters to those former service members who were discharged for C&B disorders, and who did not receive full relief when reviewed under the provisions of the Brotzman Memo, dated 14 January 1977, informing them that they may qualify for an upgrade on the basis of regulation changes. Accordingly, it is necessary to obtain the names and addresses of those individuals who were identified previously by the ADRB for personality disorder relook consideration, to dispatch letters to those individuals, to review the discharges of those individuals who apply for relook consideration, and to complete the entire process as expeditiously as possible.

2. *Responsibilities:*

a. Administrative Support Division: Organize and supervise the mailing of notification material based on a computerized address list provided by the Operations Branch, Secretary/Recorder Division; packets will be dispatched at the rate of 100 letters per work day. Mailing to applicants will begin on 27 March! Each applicant will receive a notification letter and DD Form 293. Only the letter will be addressed. It is estimated that approximately 400–500 former Army members will require notification upon receipt of applicant's form (DD Form 293). The Administrative Support Division will establish a color-coded system to identify applicant's records. All record and board review action must be completed within a period of six months from date of receipt at ADRB.

b. Secretary/Recorder Operations Division: Insure that identified cases are processed in accordance with the ADRB SOP. In processing appeals, insure that the Board is advised during proceedings of those cases which come under the provision of the ASA Nelson Memorandum. Monitor the processing of applicants with personality disorders to assure that cases are completed in an expeditious manner.

c. PO's and pre-review officers are requested to give special attention to the accurate and timely processing of these particular cases. All cases will be referred to the Medical Consultant prior to being boarded for authentication of psychiatric signature and findings.

d. Board Members. Presiding Officers are required to insure that members of the Board are familiar with the provisions of the Nelson Memorandum in the processing of individuals who have been discharged with personality disorders. Applicants for relief who were not diagnosed by a medical doctor trained in psychiatry shall be entitled to have their discharges upgraded to honorable. It is the responsibility of the Board to determine that medical documentation is proper and adequate to substantiate discharge for individuals with personality disorders. If the Board determines that the discharge is not properly or adequately supported as a personality disorder, the SPN Designator must be changed to Secretarial Discretion JFF.

e. Special Board Members/Advisors: Assist Board Members, as required, to validate medical finding of personality disorders. Insure that all cases meet correct legal criteria. Upon completion of final Board action, all cases will be returned to the Professional Section for post-review.

William E. Weber,
Colonel, IN, President.

February 8, 1979.

Memorandum for: President, Army Discharge Review Board.
Subject: Litigation Involving the Army's System for Discharging Individuals with Personality Disorders.

In connection with the civil lawsuit entitled *Lipsman* v. *Brown* certain changes were made to Army Regulations 635–200. By memorandum dated January 1977, former Assistant Secretary Brotzman transmitted these changes to you and requested that you apply them retroactively. He also requested that you dispatch letters to certain unsuccessful ADRB applicants for relief informing them of the regulation changes and advising that they may qualify for discharge upgrades upon application. By memorandum of this date the Director of the Army Staff has been directed to make an additional change to paragraph 13–15 of AR 635–200, dated 27 November 1977.

To permit completion of settlement of the lawsuit, it is requested that you undertake the following additional actions. First, send copies of the attached letter to each person to whom you sent a letter pursuant to Mr. Brotzman's instructions (except to those persons whose letters were returned undeliverable). Any recommendations for changes to the letter will be made only with the concurrence of the General Counsel. Second, upon application for relief by persons discharged for unsuitability due to personality disorders, you shall undertake reconsideration of their discharges. Third, in reviewing the applications for relief from persons discharged for unsuitability due to personality disorders, apply the regulation changes retroactively, except the change to paragraph 13–15 of AR 635–200. Applicants for relief who were not diagnosed by a medical doctor trained in psychiatry shall be entitled to have their discharges upgraded to honorable. (This provision is essential

because there is no way to determine today the extent to which more serious mental disorders might have affected the applicant's behavior while in service.) All applications for relief should be reviewed with compassion and considering the complete record. In reviewing applications for relief, the presence of a personality disorder diagnosis should be considered as a mitigating factor that justifies relief except in cases where there are clear and demonstrable reasons why a fully honorable discharge should not be given. It is requested that letters be dispatched and the review of requests for relief from persons with personality disorders be completed as soon as reasonably possible.

Robert L. Nelson,
Assistant Secretary of the Army (Manpower and Reserve Affairs).

SFRB, Memo #4–78.
Memorandum for: All personnel.
Subject: Recording of Combat Badges (Combat Infantry Badge or Combat Medical Badge) on Case Report and Directive (CRD).

1. Inadvertently, in the instructions on the methodology to be used to record awards and decoration in Part III of the CRD, no provision was made for combat badges. Consequently, a significant diversity exists in the means in which this slippage is being accommodated.

2. Effective immediately, all personnel will institute procedures to record award of any combat badge as the last entry in the right column of Section E, Part III, OSA Form 172 (1 Feb 78). It will not be necessary for any existing draft CRDs to be redone. Appropriate correction should be made at any point at which the entry is perceived as proper. Case Production Branch must insure the final documents are correct.

3. Entry will be as follows:

	Yes	No	N/A
CIB (or CMB)	X		

William E. Weber,
Colonel, IN, President.

SFRB, Memo #5–78.
May 1, 1978.
Memorandum for: PIT members and secretary/recorder division.
Subject: Challenge Predicated on Past Membership.

1. As the final appearances for de novos and nonaffirmed DOD–SDRP cases begin to occur, it is apparent that board members may have been members of the panel which gave a preliminary nonaffirm or an initial DOD denial. The same is true for what is expected to be an exceedingly large number of cases that will reappeal predicated on "waiver of the statute of limitations" contained in PL 95–126.

2. There is a high probability that in personal appearance cases, some counsel and applicants may suggest prior knowledge would have a bearing on the ability of individual board member concerned to impartially adjudicate the case. There can be no question that normally this could be a valid challenge to panel membership, particularly if the individual member concerned had on the previous hearing, voted to deny favorable action on the appeal. In any event, there clearly could be construed to be an "appearance of evil" unless some clear and definitive procedures are followed which would make it difficult, if not impossible, for any sitting panel member to be informed of his or her previous panel membership on the case.

3. We all understand that the absolutely unique and unusual case may be recalled by any board member at any time, but the general run of cases, given the thousands that you will have reviewed, cannot be expected to fall within the categories of cases that you will remember. Thus, challenges generally are without foundation insofar as your being influenced because a prior membership is concerned.

4. To insure that challenges cannot be sustained, providing the board member concerned otherwise indicates non-recall of the case, procedures will be implemented immediately to insure that no prior sitting member may be informed of his or her membership on the case to be considered. Secretary/Recorders will take the necessary action to remover the voting page from the Case Report and Directive when the file is made available to any member of the panel or to the panel at large. Secretary/Recorder Teams will also insure that they avoid indicating any prior membership. The intent of this is to insure that panel members and Secretary/Recorder Team members understand the need to protect the impartiality of the panel.

5. The foregoing does not permit the Secretary/Recorder Team to deny access to this information to applicant and/or counsel/representative. These individuals may and must be aware of previous action in the case. In the event they choose to exercise a challenge of a panel member, predicated on acquisition of this knowledge, the Presiding Officer, once the panel member has been identified, will, on the record, inquire as to whether or not he or she has recall of the case. If the panel member attests to an absence of specific recall, then the challenge will not be sustained. Under no circumstances will counsel or applicant be permitted, when exercising challenge, to indicate while challenging what the challenged panel member's vote was on the preceding hearing.

6. All officers are reminded it is essential in the event administrative errors occur and the vote sheet remains with the Case Report and Directive, that they studiously avoid perusal of such or identification to other panel members.

William E. Weber,
Colonel, IN, President.

SFRB, Memo #6–78.
May 4, 1978.
Memorandum for: 06 board members & secretary/recorders.
Subject: DoD Counsel/De Novo No-Shows.

1. It is not uncommon in a personal appearance case that an applicant who has been duly notified of the time and place of the hearing fails to appear at the appointed time, and has not made a prior, timely request for a continuance or withdrawal of the application. If counsel is present, and based on the applicants power of attorney authorization, wishes to proceed as a "C" case the hearing should proceed accordingly; if counsel is also not present or has no authorization to proceed in the absence of the applicant the panel will conduct its review based upon the evidence of record.

2. The TJAG coordinator for the DoD counsel in de novo cases has taken the position that, as a matter of ethics in the legal profession, the DoD counsel should seek a continuance in all no-show cases even though he has no valid explanation for the absence of the applicant. Where there is no showing that the failure to appear was due to circumstances beyond the control of the applicant the request for a continuance should be only pro forma and can be quickly disposed of. However, I have decided as a matter of policy to accord this defference to the concern for compliance with legal ethics. Of course, the same treatment should be accorded to any other attorney who feels he must record his effort to seek a continuance in a no-show situation.

3. Accordingly, the following procedures will be utilized by all Presiding Officers to accommodate this problem area. Naturally the following describes only intent—it is not necessary to parrot the words.

Presiding Officer: "The Panel will come to order. The Army Discharge Review Board is ready to proceed with the case of (Appl's name) (go through procedures of swearing the Board)."

Presiding Officer: "(name of counsel). I note that the applicant you represent is not present as scheduled and that the panel has received no contact from the applicant with regards to (his/her) absence. Do you have any specific knowledge as to whether or not circumstances beyond the control of the applicant caused this absence and were of such a nature so as to preclude (his/her) notifying the panel in advance?"

Counsel: "(Assume counsel has no excuse and requests a continuance)."

Presiding Officers: "Your request for a continuance is noted. However, in accordance with the policies established by DoD Directive 1332.28 and Ar 15–180 and the correspondence the Army Discharge Review Board has had with you and the applicant; (Name) a request for a continuance is not favorably considered. However, if you are in possession of an appropriate power of attorney and you are willing to proceed I will permit this case to continue as a counsel/representative only, presentation. In the event you are not willing to proceed as a counsel/representative only presentation this hearing will be closed and the Army Discharge Review Board will consider this case as an on the record case providing the applicant's status is such as to authorize such a hearing. (In the case of PL 95–126 preliminary non-affirmed no further hearing would be indicated. The same is true for De Novo cases for which no documentation has been submitted)."

In all circumstances the Presiding Officers will exercise discretion and avoid arbitrary

and capricious acts. In off the record dialogue the Presiding Officer may also notify counsel/representative that, in the event subsequent information substantiates an emergency condition beyond the control of the applicant occurring in a manner which made it impossible for the applicant to notify the board in advance, the board will entertain reopening the case.

William E. Weber,
Colonel, IN, President.

SFRB, Memo #7–78.
June 13, 1978.

Memorandum for: All board members; chief, secretary/recorder section and alternate secretary/recorders; chief, administrative support division.
Subject: Presumption of Regularity.

1. Attached for your information is an Office of the General Counsel, Department of Defense, opinion concerning subject area pertaining to Discharge for the Good of the Service (Chapter 10)! The basic reference referred to in the attached is not germane to this memorandum since it deals with a practice of another service, but the opinion rendered and the philosophy expressed is germane and will be given cognizance in Army cases.

2. To the extent that the attached is in conflict with other guidance, elements of the SOP, or memoranda previously issued, the attached will prevail. It is important to note, however, that this opinion is not intended to imply rigidity in the evaluation of records which may be absent certain documents that otherwise were required by the discharge process involved. It is incumbent upon board members or panel to resolve the issue of regularity (if possible) on the basis of other documentation or evidence presented. The panel must accept or reject, by a majority, whether the absence of the document concerned indicates that the document was never prepared or, conversely, that through some bureaucratic or clerical error, it failed to be appropriately filed in the OMPF.

3. It is incumbent upon all board members to adhere to the requirement of "substantial credible evidence" when making the determination to overcome the presumption of regularity. In this regard, "substantial credible evidence" is a broad area which does not have specifically defined parameters and must, instead, be established in each board member's mind, predicated upon those elements of evidence or information that he or she considers essential for arriving at a decision. Simple visceral feeling, which cannot be logically supported, is insufficient in this regard.

William E. Weber,
Colonel, IN, President.

May 18, 1978.

Memorandum for Special Assistant for Legal and Selected Policy Matters, OASD (MRA&L).
Subject: Implementing Regulations for Discharge Review.

In paragraph 5(f) of my memorandum of May 9, 1978, subject as above, I addressed the applicability of a presumption of regularity in cases involving a discharge for the good of the service. In that memorandum, I noted that if the accused was required to admit the facts containd in the charge sheet, or if the discharge authority was required to find that the facts stated therein were true, then the Discharge Review Board could presume the truth of such facts. Subsequently, I received an inquiry from the services as to whether preferral of charges could provide an alternative basis for the presumption.

Charges may be preferred by any person subject to the Uniform Code of Military Justice. 10 U.S.C. 830 (1976) (Art. 30). The charges must be signed and sworn to before a commissioned officer authorized to administer oaths, and shall state: (1) that the signer has personal knowledge of, or has investigated the matters set forth therein; and (2) that the charges are true in fact to the best of the signer's knowledge and belief. *Id.* If the discharge in lieu of court-martial requires a valid preferral, the Discharge Review Board may presume that the signer either had personal knowledge of, or had investigated the matters set forth therein, and that the charges were true in fact to the best of the signer's knowledge and belief. The weight to be given the presumption in determining whether the facts stated in the charge sheet are true is a matter to be determined by the Discharge Review Board. To the extent that the discharge proceeding reflects: (1) an official determination that the facts stated in the charge sheet are true; (2) that the accused admitted the facts stated in the charge sheet; or (3) that the accused admitted guilt of the offense(s), then the presumption is strengthened.

In accordance with the DoD Directive, the presumption may be rebutted by "substantial credible evidence." 32 C.F.R. 70.5(b)(12)(vi).

Robert L. Gilliat,
Assistant General Counsel (Manpower, Health & Public Affairs).

SFRB, Memo #8–78.
June 20, 1978.

Memorandum for: Chief, secretary/recorder division; chief, administrative support division; senior American Red Cross; Veterans of Foreign Wars; American Legion; Disabled American Veterans; Jewish War Veterans counsels.
Subject: Counsel Statements.

1. DD 293 designated agency counsel statements submitted in behalf of an applicant become a part of the case report provided the Armed Forces Discharge Review Board Reading Room. They must *not* contain data contrary to the dictates of the Privacy Act of 1974.

2. Effective immediately all counsel submissions will not contain the applicant's name, address, and social security number. In addition, the counsel preparing the brief should authenticate the documents only by initials.

3. Counsel are reminded that public access is relatively unlimited to the Reading Room. Cases are available for review as are past counsel briefs.

4. Attached is a copy of the new form to be used by counsel when submitting applicant/counsel contentions. Chief, Secretary/Recorder Division is designated overall responsibility for execution of this memo.

William E. Weber,
Colonel, IN, President.

President,
Army Discharge Review Board,
Rm 1 E487, The Pentagon,
Washington, DC 20310.
Date:———————.

———————————————————

(case control number)

The duly authorized counsel as designated by the below listed agency registered with the VA under the provisions of 10 USC 1553 and selected by the applicant, whose Case Control Number is indicated above, hereby requests that this case be submitted to the Army Discharge Review Board for a hearing.

1. It is requested that the Board consider the following specific contentions and/or issues of fact, law, or discretion. (Please indicate in telegraphic language those points on which you feel the Board should make a specific determination.)

a.———————————————.
b.———————————————.
c.———————————————.
Other

2. List and/or discuss those factors in the case in which you feel support and the contentions above or present other arguments in favor of granting the appeal. (USE REVERSE SIDE, IF NECESSARY.)

———————————————————

Initials of counsel

———————————————————

Service organization

Note.—Under the Privacy Act of 1974, records of personnel actions made available for public surveillance shall be void of identifying data, (i.e. name, SSN, etc.).

SFRB, Memo # 9–78.
August 14, 1978.

Memorandum for: All Officers.
Subject: Restraining order issued by United States District Court for District of Columbia.

The Army Discharge Review Board will immediately comply with Civil Action No. 76–0530 Restraining order issued on 11 August 1978 (Incl 1). Implementing instructions are attached as inclosures 2 and 3.

All board members and administrative personnel assigned to the ADRB will become familiar with the attached instruction.

William E. Weber,
Colonel, IN, President.

United States District Court for the District of Columbia

Urban Law Institute of Antioch College, Inc., et al., Plaintiffs, v. Secretary of Defense, et al., Defendants. Civil Action No. 76–0530.

Order

Plaintiffs having applied for a temporary restraining order and preliminary injunction seeking to have the defendants ordered to comply with Paragraphs 5A (1), 5A (5) (a) and 5A (5) (d) of the stipulation of dismissal entered by this Court in this case on January 31, 1977, and this Court having heard

argument from counsel for both parties and read the motions and memoranda submitted by plaintiffs, it is, this 11th day of august, 1978.

Ordered that plaintiffs' motion for a preliminary injuction will be heard before this Court at 9:30 a.m. on Thursday, August 17, 1978, and at that hearing the Court will, pursuant to Rule 65 (a) (2) of the Federal Rules of Civil Procedure, consolidate the hearing on the preliminary injunction with a hearing on the ultimate merits of this case; and, it is

Further ordered that any applicants and their counsel, if any, who appear before any Discharge Review Boards until this case is finally decided, shall be given a copy of the written notice attached hereto; and it is,

Further ordered that defendants shall not issue any decisional documents with regard to applications for re-characterization of an applicant's less than Honorable Discharge, including decisions made pursuant to Pub. L. 95–126, 91 Stat. 1106 (1977), unless the decision grants the applicant complete or partial relief and contains a statement of findings, conclusions and reasons that complies with Paragraph 5A (1) of the stipulation approved by this Court on January 31, 1977, and it is,

Further ordered that defendants shall forthwith, make each quarterly Discharge Review Board index available for public inspection and copying at all locations outside of the Washington, D.C. metropolitan area at which Discharge Review Board panels are scheduled to hear cases within seven (7) days of the date of this Order, and it is,

Further ordered that this Order and all of its provisions shall expire at 12:01 a.m., Eastern Daylight time on Friday, August 18, 1978.

Honorable Aubrey E. Robinson, Jr.,
United States District Judge.

Instructions to Presiding Officers and Alternate Secretary/Recorders on Use of "Important Notice to Applicants"

The attached "IMPORTANT NOTICE TO APPLICANTS" is to be discussed with applicant and counsel by the Alternate Secretary/Recorder *prior to* the applicant and counsel being presented to the Panel. Three copies of the document are to be executed—one in to be retained by the applicant; one to be retained by counsel; and one to become the government's exhibit to the Case Report and Directive.

In the event applicant and counsel elect to request a postponement of the hearing, the Presiding Officer of the Panel will cause to be executed the Case Report and Directive and a statement made in the Presiding Officer's notes which essentially iterates that the applicant when offered the opportunity, as indicated on the "IMPORTANT NOTICE TO APPLICANTS" elected to request postponement. The appropriate remark will be made in the Remarks Section of the Case Report and Directive and the case flagged by the Alternate Secretary/Recorder for rescheduling. In the event applicant or counsel indicate they be informed as to when rescheduling will occur, they are to be informed that the case will be rescheduled for the next Traveling Panel and/or Hearing Examiner (as the case may be) in the locality they have agreed to appear at.

In the event the applicant and counsel elect to proceed with the hearing, the Secretary/Recorder will present the executed government's copy or the "IMPORTANT NOTICE TO APPLICANTS" to the Presiding Officer of the Panel. The Presiding Officer of the Panel, after formally, convening the panel, will question applicant and counsel as to their understanding of the "IMPORTANT NOTICE TO APPLICANTS" and whether or not they affirm the election they have made. The Alternate Secretary/Recorder will cause this information to be recorded on tape for recording on the Case Report and Directive, a summation of this dialogue between the Presiding Officer, applicant, and counsel.

In the above cases in the preparation of the Case Report and Directive, the Presiding Officer will include in the Presiding Officer's Notes a remark concerning this particular circumstance. In addition, in the Rationale, and in the event the Panel has not granted full relief, the Presiding Officer will specifically enunciate that, dependig upon the outcome of the law suit referred to in the "IMPORTANT NOTICE TO APPLICANTS" the applicant's right to request a rehearnig and be granted one has been preserved.

Hearing Examiners will in essence conduct the above routine in the same manner except that Hearing Examiners will place their comments (if appropriate) as an integral portion of the Case Report and Directive.

Important Notice to Applicants

Because of a law suit, *Urban Law Institute vs. Secretary of Defense*, pending in the Federal District Court in Washington, D.C., which seeks to change certain procedures of the Discharge Review Board, you have a right to postpone your hearing.

The people bringing this law suit believe that the present system of providing you with information about past Discharge Review Board cases can be improved. The people bringing the law suit also believe that the improvements they seek may help you to be better prepared for your hearing.

A hearing has been set in that law suit for Thursday, August 17, 1978. You now have the following choices:

1. You may proceed with your hearing. If you proceed with your hearing but do not receive the relief you seek, then you may have the right to a new hearing in your case if you request one. Whether you would be given a new hearing will depend upon the outcome of the law suit.

2. You may request that your scheduled hearing be postponed and receive a hearing at a later date.

If you wish to speak to the individuals who are bringing this law suit, you may contact them at (202) 466–2244 or (202) 296–7592 or their local representatives. You may ask the Recorder of the Board how to contact their local representative.

Please circle and initial your choice.

I do ——————.

I do not ——————.

choose to proceed with my hearing today.

——————Alt Sec/Rec

Representative of the Army Discharge Review Board

Date ——————.

Place ——————

——————

Signature of Applicant

——————

Signature of Counsel/Representative

SFRB, Memo #10–78.

August 28, 1978.

Memorandum for: All board members; alternate secretary/recorders.

Subject: Compliance with Court Order, D.C. Federal District Court, 23 August 1978.

1. The following will be instituted immediately by all Presiding Officers, Alternate Secretary/Recorders, and pre-review officers in recording "findings" on contentions which are unsubstantiated by either documentation or testimony, yet which, on the basis of our knowledge of history of administrative discharges, have inherent to them potential for an element of truth.

2. As you are aware, in the past your guidance from me has been to respond to such contentions essentially as follows:

"The Panel can neither refute nor accept this contention in view of the absence of documentation in the Offical Military Personnel File, or as provided by applicant and/or counsel which leads to substantiation or rejection; and, in view of the unsubstantiated testimony which, if accepted at face value, would require a finding in opposition to a presumption of irregularity prevailing in government operations."

The purpose of this type of finding in this type of contention was to permit each individual board member to weigh the value of the contention in light of other information as they determined appropriate. This type of finding also permitted accommodating the differences that might normally exist amongst the five members of the panel as to whether or not there was sufficient doubt to recommend in favor of the applicant, vis-a-vis insufficient doubt so as to resolve in favor of the government. As you are all aware, it was our opinion that this approach met the requirements of the Stipulation of January 1977 and, as well, was most fair to the applicant.

3. This approach was challenged by the plaintiffs in the recent court action and, though a determination was not made by the Judge as to the validity of the challenge received, there is, of course, the inference that contentions (as indicated by the Stipulation) must be resolved by specific findings. Consequently, and effective immediately, the following will pertain in this area:

a. In any circumstances in which the contention submitted by an applicant and/or counsel is of the nature that a specific positive or negative finding cannot be established to the satisfaction of the panel and be supportive by documentation or substantiated testimony, then the panel must find in consonance with the presumption of

regularity as it pertains to government operations.

b. The foregoing can only be overcome when the majority of the panel can conclude on the basis of substantial credible evidence that there is basis to substantiate the contention.

c. A sample form of finding to these uncertain contentions (not to be copied verbatim, but to be adjusted as appropriate by Presiding Officers) might be as follows:

"The contention, as stated, can neither be rejected or supported by documentation or substantiated testimony. Based on the presumption of regularity in government operations and on the fact that acceptance of contentions on unsubstantiated testimony would be the equivalent of a finding against presumption of regularity, the panel concludes that the contention cannot be supported."

d. Presiding Officers and Secretary/Recorders are cautioned to ensure that all actions dealing with compliance with the Stipulation and, in particular, those dealing with the preparation of the Case Report and Directive, have both the appearance and the actuality of good faith and compliance with the letter, spirit and intent of the Stipulation. It is incumbent upon all panel members and all members of the Secretary/Recorder Team to call attention to the Presiding Officer any circumstance, any incidence, any use of language, or any panel or Secretary/Recorder Team conduct which could be construed as bad faith compliance or which would produce a Case Report & Directive that could not be supported.

4. None of the foregoing is to be interpreted as changing the basic philosophy under which the Army Discharge Review Board operates, nor as authorizing placing applicant or counsel in a position of having to conduct their aspect of the hearing as if the hearing were of any adversary nature. All members of the ADRB are enjoined to remember that the requirement of 10 U.S.C. Section 1553 places the burden of determining the "propriety" and "equity" on the Board and that even should the applicant remain silent and the entire case is predicated on a presumption of regularity, these must clearly exist sufficient cause to establish that the presumption of regularity is valid in the case being considered. In this regard and to reiterate past guidance, *no distinction* is to be made by any member of this board or its supporting elements between the type of applicant or type of case hearing requested. All applicants whether they have requested "A," "B," "C," "D," or "E" type of hearing are to be given the same information and opportunity concerning right of access to the Index, their files, their right to submit sworn or unsworn statements, letters, arguments, etc. in support of their appeal. Any panel aware during the conduct of the hearing of a case in which these rights have not been afforded will not conclude the case but will instead cause the applicant concerned to be notified and the case to be rescheduled after an appropriate passage of time.

5. It is my considered opinion that everything this board has done since January 1977 has had inherent the attempt and intent to give full, good faith compliance with the Stipulation. It is necessary that this attitude continue. This is not to infer that the possibility of mistakes have not been present, but it is essential that any mistakes we make be errors of "omission" and not "commission".

6. Your continued cooperation is appreciated.

William E. Weber,
Colonel, IN, President.

SFRB, Memo #11–78.
September 27, 1978.

Memorandum for: All board members and chief, analyst section.
Subject: Computation To Determine Number of Days Lost Under 10 USC 972.

1. In some cases noted recently, analysts and/or pre-review officers have counted the number of days spent in a Special Processing Detachment (SPD) or a Personnel Control Facility (PCF) as days lost (10 USC 972) in Section B, Part III, OSA Form 172. This practice is in error.

a. Persons assigned to an SPD or PCF are not in confined status in the meaning of AR 190–3. Days spent in SPD or PCF are duty days, not days of bad time.

b. Pretrial or other confinement may only be served in a facility described as a stockade, correctional facility or confinement facility (terms differ, depending on the timeframe involved), after the responsible commander has executed a DA Form 497 (Confinement Order). Personnel in SPD or PCF are not assigned to these facilities on a confinement order.

c. The same principle applies to correctional custody, served as the result of punishment under Article 15, UCMJ. Only a Court Martial may sentence an individual to confinement. Thus, days served in a correctional custody status as a result of Article 15 are also duty days, and not days lost under 10 USC 972.

2. A similar problem has been noted with computations of days lost for personnel assigned to the U.S. Army Retraining Brigade (formerly, the U.S. Army Correctional Training Facility (USACTF)). The following principles should be applied in such cases:

a. For persons assigned to USARB after 1 Feb 78, look for an order in the file in which the unexecuted portion of the sentence to confinement is suspended, or a FR Form 222 in which the sentence to confinement is deferred. On the effective date of suspension or deferral, the soldier ceases being a prisoner and becomes a trainee, and all subsequent days should be counted as duty days. Absent the order or FR 222, follow the next rule.

b. For all other personnel assigned to USARB or USACTF, days of lost time should equal either the number of days from the approval of the sentence to the minimum release date or the successful completion of the retraining program, whichever is earlier.

(1) Minimum release date can be computed by taking the sentence to confinement and deducting 2½ days per month (allowable good time). Thus a sentence to confinement for six months is actually a sentence to six months less fifteen days, provided the prisoner commits no acts of indiscipline while in confinement.

(2) In the event an individual's minimum release date occurs before graduation from USARB/USACTF, that person's status will be considered as changed from "confined" to "trainee" on that date, and all subsequent days counted as duty days.

(3) If an individual graduates from USARB/USACTF before the minimum release date, the date of graduation will be considered to mark a similar change in status.

3. In general, a good rule to follow in the matter of computing the number of days lost under 10 USC 972 is to lean in the direction of the applicant whenever there is doubt. Instances of doubt, however, should be reduced if the methodology described above is followed closely. Your cooperation in this regard is appreciated.

William E. Weber,
Colonel, IN, President.

SFRB, SOP Memo #1–79.
March 22, 1979.

Memorandum for: Board members; chief, secretary/recorder division.
Subject: Post Filming Review of Hearing Examiner Tape by Applicant and Counsel.

1. Effective immediately, Hearing Examiners are authorized to inquire of applicant and counsel as to their desire to postreview the tape. The Hearing Examiner will cover with applicant and counsel whether or not they wish to postreview the tape. This dialogue must be sufficiently complete to insure that the applicant and counsel completely understand the option available to him.

2. In the event applicant and counsel do not wish to postreview the case, the HE will go back on tape and specifically ask both applicant and counsel as to whether or not they wish to postreview tape and whether or not they understand their rights to postreview.

3. Great care must be taken to ensure that applicant and counsel are neither encouraged nor discouraged in this matter. The choice must be theirs and theirs alone. Time is not a critical factor in this regard insofar as cases remaining to be taped during any given taping day.

William E. Weber,
Colonel, IN, President.

SFRB, SOP Memo #2–79.
March 27, 1979.

Memorandum for: Board members; chief, secretary/recorder division (LTC Gomez); chief, administrative support division (LTC Dortch); chief, word processing section (2LT Tomczak).
Subject: Case Consideration Under Regulations Applicable at Time of Discharge and Time of Review.

1. The following confirms previous guidelines and constitutes instructions for mandatory application during Board deliberations of cases and in the pre- and post-hearing phase of case preparation as applicable. Addresses are responsible to insure distribution of this information, as appropriate, to their applicable division or section.

2. In accordance with PL 95–126, DOD Directive 1332.28 and AR 15–180, applicants for review of discharges are informed that the material to be used for review by the Board will consist of:

a. Appropriate regulations in effect at the time of discharge.

b. Current regulations for which policy is made expressly retroactive.

c. Current regulations for which policy, if applicable at the time of discharge, would substantially enhance rights of applicant and which may have had a significant impact on the type of discharge received by the applicant.

d. Other documents present in the Official Military Personnel File (OMPF) or other records of the government, as appropriate.

e. Documents provided by applicant and/or counsel prior to or during hearing.

3. In compliance with the foregoing, the Board is responsible that applicants and/or counsel are informed of the specific regulations to be used in considering the case. This responsibility includes making available to applicants and/or counsel, upon request, copies or summaries of all documents except for those included in the OMPFs or documents provided by applicant and/or counsel prior to or during the hearing. In some circumstances prior to hearings other government agencies may provide this information.

4. To ensure that full adherence is given to this requirement, panels must specifically cover, by discussion, the applicable regulations at the time of discharge and, as well, present regulations prior to arriving at a decision on the appeal. Panels of the board will have available to them copies (microfiche) of regulatory procedures in effect at various times from the period 1940 to date.

5. It is a specific responsibility of the Secretary/Recorder of the panel concerned to insure that the appropriate regulatory provisions are made known to the Presiding Officer and members of the panel prior to or during the closed session of the panel deliberation and, if appropriate, upon request to applicant, counsel and/or agency.

6. It is a specific responsibility of the Presiding Officer of the panel concerned to insure that appropriate narrative recognition, in a generalized sense, is included in the rationale that consideration was given to the applicable regulatory procedures in effect at the time of the discharge and time of review when relief is not a result of such consideration. If relief results, specific language is necessary to insure applicability only to the cases considered and not precedent making in scope.

7. Hearing Examiners during the conduct of the filming of the Hearing Examination will insure that specific (on film) identification is made of the fact that applicant, counsel and/or agencies have been informed of the regulatory procedures applicable at the time of discharge and the availability of the review of these regulatory procedures by microfiche reader prior to the filming of the Hearing Examination.

8. Secretary/Recorders of the Traveling Panels and Personal Appearance Panels in the Pentagon will insure that applicant and counsel are made aware of the availability, through microfiche readers, of the regulatory procedures that were in effect at the time of discharge. Preliminary to the opening of the formal hearing, Presiding Officers will verify through dialogue with applicant, counsel and/or third party that such availability has been offered and that sufficient time has been provided to take advantage of the information, if appropriate.

9. These procedures can be expected to increase the time length for review of a case. Analysts and pre-review officers should insure that their assessment of the case has taken into consideration the applicable regulatory procedures in effect at the time of the discharge so as to highlight and call to the attention of the panel any significant areas requiring special review by the panel hearing the case. Microfiche and readers will be made available in each Pit to assist pre-review officers in researching regulations.

10. The foregoing are mandatory for compliance by the Board.

William E. Weber,
Colonel, IN, President.

SFRB Memo #3–79
April 4, 1979.

Memorandum For: All Board Members and Chief, Analyst Section
Subject: Criteria for HD at ETS prior to 19 May 75

1. This memorandum confirms previous verbal guidance and instruction concerning the attached memorandum from Army General Counsel which indicates that paragraph 1–9 (d) (2) of AR 635–200, as it read prior to 19 May 75, precluded the exercise of discretion and mandated an Honorable Discharge for any servicemember discharged by reason of ETS who during the period of service characterized had:

a. conduct rating of at least "Good,"

b. efficiency ratings of at least "Fair,"

c. no conviction by a general court-martial and

d. not more than one conviction by special court-martial.

2. Although the above guidance was provided in relation to a specific case, it should be considered and applied when reviewing the general discharge *at ETS* of any enlisted member between 6 Dec 55 and 19 May 75, the period during which the referenced language appears in the enlisted personnel separation regulations. A review of past and present separation regulations indicates that the referenced provisions appeared only in AR 635–200 effective between 6 December 1955 and 19 May 1975.

3. Your attention is directed to footnote 2 of the Memorandum which indicated that characterization of other than ETS discharges is governed by specific guidance contained in the chapter of AR 635–200 which authorized applicant's separation prior to ETS, as well as the more general guidance of chapter one. In short, satisfying the four conditions of paragraph 1–9 (d) (2) did not require award of an honorable discharge for members discharged prior to ETS.

William E. Weber,
Colonel, IN, President

May 8, 1978

Memorandum Thru The Assistant Secretary of The Army (Manpower and Reserve Affairs)
For: President, Army Discharge Review Board
Subject: Floyd E. Maness

A lawsuit filed in the United States District Court for the District of Columbia seeks, pursuant to the Privacy Act, 5 U.S.C. § 552*a* (d)(2), to obtain recharacterization of a former servicemember's service as "Honorable" rather than "Under Honorable Conditions." Mr. Maness, the plaintiff, asserts that paragraph 1–9 (d) (2) of Army Regulation 635–200, as it read prior to May 19, 1975, precluded the exercise of discretion and mandated an Honorable Discharge, as opposed to a General Discharge, for any servicemember who satisfied the four conditions set forth in that paragraph.[1] Because he meets these four conditions, Maness contends that he is entitled to an Honorable Discharge.

We have considered the April 6, 1978 memorandum from DCSPER and that of April 12, 1978 from the Assistant Secretary of the Army (M&RA) concerning the proper interpretation of paragraph 1–9 (d) (2) and have concluded the latter sets forth the more realistic position. Service members who were separated at ETS and who met the criteria set forth in the paragraph should have been awarded Honorable Discharges.[2]

Therefore, as authorized by 10 U.S.C. § 1553, the Department of the Army, through the Army Discharge Review Board, should review, on its own motion, the characterization of Maness' service. A copy of his OMPF has been provided directly to the Board. Because Maness apparently meets the criteria of paragraph 1–9 (d) (2), review based upon the record alone appears appropriate. Given the current litigation, we request that this be done expeditiously and

[1] Prior to May 19, 1975 paragraph 1–9 (d) (2) read:

"A member's service will be characterized as honorable by the commanding officer authorized to take such action or higher authority when a member is eligible for or subject to separation and it has been determined that he merits an honorable discharge under the following standards:

(a) Has conduct ratings of at least 'Good.'

(b) Has efficiency ratings of at least 'Fair.'

(c) Has not been convicted by a general court-martial.

(d) Has not been convicted more than once by a special court-martial."

[2] We also agree with the position taken in both memoranda that the characterization of the service of soldiers discharged prior to ETS was governed by the specific guidance contained in the applicable chapter of AR 635–200, as well as the more general guidance of Chapter one. Accordingly, satisfying the four conditions of paragraph 1–9 (d) (2) did not guarantee an Honorable Discharge for soldiers discharged prior to ETS.

that we be advised of the result not later than May 15, 1978.

Jill Wine-Volner,
General Counsel

Annex 0–2.—Memoranda: Un-numbered

Index to Annex 0–2

Eleven memoranda in this annex are not numbered or lettered but appear in chronological order.

Subjects:

Selection of Counsel by Applicants to the Army Discharge Review Board, dated 16 June 1976.
Board Room Conduct, dated 1 September 1976.
Use of New Forms, dated 18 February 1977.
Department of Defense Discharge Review, Special, dated 29 March 1977.
Contentions and Issues, dated 1 August 1977.
Judge Advocate Officer Support to ADRB Panels.
Basic Upgrade Comparison Philosophy, dated 12 August 1977.
Justifying Relief Not to Grant Full Relief.
Bar to VA Benefits Under Law, dated 22 November 1977.
HE Procedures, dated 23 February 1978.
Prereview, dated 17 April 1978.

June 16, 1976.

Memorandum for: Alternate secretary/recorders.
Subject: Selection of Counsel by Applicants to the Army Discharge Review Board.

1. Recently, the DAV and AMVETS have withdrawn their support by counsel from the San Francisco Panel. Thus that panel is limited to the American Red Cross as far as DD Form 293 agencies are concerned and, in addition, MOPH and Department of Veterans Affairs, State of California.

2. Based on the arrangements negotiated by the Alternate Secretary/Recorder in San Francisco and his recommendation to me, it has been suggested that means be established whereby a private veterans rights organization can be made known to applicants. This suggestion has much merit. Accordingly, a query was addressed to the Office of the General Counsel, DA, to determine whether or not such action would be appropriate on the part of the Army Discharge Review Board. For your information, attached as Inclosure 1 are copies of the correspondence pertaining to this area.

3. Based on the response, the following will now be policy: Alternate Secretary-Recorders may (by appropriate modification) of attached sample counsel selection letter (Inclosure 2) inform applicants of agencies on DD Form 293 or other than those listed on the DD Form 293 who have agreed to provide counseling or counsel assistance. However, this is limited to those agencies who agree to provide such assistance free of charge to the applicant. In this regard, it is *not* incumbent upon the Alternate Secretary/Recorder to engage in investigatory practices to establish that the service in fact is being provided free of charge. However, it *is* incumbent upon the Alternate Secretary/Recorder to establish in writing with the agency concerned that the Army may state to the potential applicant that the service will be provided free of charge. Under *no* circumstances will Alternate Secretary/Recorders or members of their staff function as intermediaries to establish contact between applicants and agencies providing counsel service if such agencies exact a charge from the applicant for such service. Similarly, members of the ADRB will not act as intermediaries between private counsel and the applicant when such private counsel exacts a charge for services or will not agree in writing to provide the Army the right to make a statement that such services are provided free of charge.

4. Please bear in mind that it is important to operate in this area with grave caution. Be judicious! Avoid any appearance of conflict of interest and under no circumstances, get involved in any action in which a fee is collected from the applicant by any agency or individual who is functioning as counsel. If you have reason to believe that you can benefit from an arrangement with an organization in your area similar to that offered by Swords to Plowshares in San Francisco, you may execute after checking with me.

William E. Weber,
Colonel, IN, President.

SFRB
September 1, 1976.

Memorandum to: All alternate secretary/recorder and all officers, ADRB.
Subject: Board Room Conduct.

This memorandum is not intended nor to be interpreted as a criticism of current practices since my observations do not reveal any infractions of past guidance. However, in view of the many new officers joining the Board and the rather aggressive traveling schedule both for Traveling Panels and Hearing Examiners, I thought it desirable to reiterate certain requirements. These requirements address primarily the impression that is gained by the public, the applicant, counsels, and other observers as to the professionalism of the Army Discharge Review Board. It is not only in the interest of the Army and the Board that we present only a totally professional appearance, but is clearly in keeping with our own standards in this regard.

Many times, we are exposed to elements of the public who are not favorably disposed to the Army, and will look for every possible means to criticize. Since our impression must be to win good will for the Army, we, of course, must avoid any situation which impacts unfavorably on the image of the officer corps of the Army. Consequently, officers must always present a proper professional appearance. Needless to say, they must always conduct themselves in this manner, whether in uniform or in civilian attire when they can be recognized as members of the ADRB. In the board room itself, it is necessary that officers remain alert, interested, and friendly but formal.

During the preliminary functions leading to the formal convening of the Board, it is both proper and necessary that the Presiding Officer place the applicant at ease. He should point out to the applicant that the mission of the Board is to assist in bringing out facts which may justify granting of relief, but that, at the same time, establish that the burden of presenting the facts remains that of the applicant. The introduction of officers to the applicant should be limited to that done by the Secretary/Recorder upon entry of the applicant to the room, i.e., when the applicant and counsel are presented to the PO, and subsequently when the Board is introduced to the applicant preparatory to the Board being sworn. It is not necessary for the Board's qualifications to be established either to the applicant or to the counsel, nor is it desirable to exchange pleasantries.

Smoking will not be permitted during the formal portion of the hearing. Applicant and counsel will be informed (should it become necessary) that rudeness, boorishness, profanity, and insulting demeanor will not be tolerated. Similarly, Board members must understand that they must not by their mannerisms or questioning technique infer that the applicant is not being truthful or that they are opposed to applicant's appeal.

The Presiding Officer must be patient with applicant and counsel during the hearing even though they may at times ramble. On the other hand, it is incumbent upon the Presiding Officer to inform counsel and/or applicant when clearly irrelevant information is being presented. If we err in this regard, however, it is more appropriate to err on the side of resigning ourselves to listening with interest.

Under no circumstances must any applicant or counsel ever leave the board room with the impression that they have been unable to adequately present what they felt was vital to the successful presentation of the appeal.

Board members are reminded that the Presiding Officer is the final arbiter and he is due the courtesy (and will be given such courtesy) of being asked for permission to address applicant and counsel, if such has not been previously granted by him.

Always bear uppermost in mind that we wish the applicant, counsel and observers to leave with the impression that they have been given a full, fair and compassionate opportunity to win their case. We must establish and maintain a setting which is appropriate to the level of the action in which we are involved, e.g., exercising statutory authority of the Secretary of the Army.

William E. Weber,
Colonel, IN, President.

SFRB
February 18, 1977.

Memorandum for: All Officers.
Subject: Use of New Forms.

1. There still seems to be some uncertainty as to the intent behind the use of the new forms. This memorandum is designed to attempt to clarify only in a philosophical sense as opposed to a detailed and specific sense. Please bear that in mind when complying with the memorandum

2. With respect to the Case Report and Directive, it is essential that the Presiding Officer and/or Alternate Secretary/Recorder insure that the contentions advanced in the case or, if not advanced, deduced, be telegraphically listed in Part I. These contentions then must be addressed in findings—a separate finding for each contention.

3. Findings must be listed in numerical sequence in brief, telegraphic language that for all practical purposes has the philosophy of a yes/no type response. In addition, findings should be added by the Presiding Officer when such are clearly substantive to the decision of the Board, are discernible in the body of the case, and are necessary to enable third parties when later reviewing the records to be able to make sense out of what has been done. To ease understanding of terminology: For all practical purposes, "findings" are synonomous with "determinations".

4. Panels are cautioned to bear in mind that the determination that a discharge was not proper must be capable of being supported either by an indication of violation of law or regulation or in unusual cases, a violation of moral responsibility. Most individuals for whom continued service is clearly not proper and whose separation process has met the tests of regulatory procedures *and* who have been separated under the appropriate regulation can be considered as having been separated *properly* even though a panel may determine to upgrade the discharge received. It is in the characterization of the discharge, or, in other words, the "equity" of the action that most of the operations of the Army Discharge Review Board occur. Consequently, in the portions of the forms completed by Presiding Officers (Reasons on the Case Report and Directive and Presiding Officer's comments) or in certain cases, the comments by the pre-review officer or PO/HE pre-hearing review, we can expect to find the logic that enables a third person to read and understand the common sense application of what we have done.

5. Reasons, as they appear on a Case Report and Directive, should be specific, to the point, and in keeping with the boiler plate that has been provided. Those portions of the OSA Form 62B referred to above should contain the explanation of the intangibles, the visceral, the emotional and other judgmental areas used by the panel in rendering a decision. Included herein would be such things as initial impression of the case as they might be gained by a pre-review officer or PO/HE pre-hearing review and, as well, the culmination of the impressions gained by the panel as they heard the case. If appropriate, the veracity of the applicant and the arguments of counsel should be included in this area when they are germane to a total understanding of the case. It is not necessary that these portions of the forms reflect any particular brilliance. *It is necessary* that these portions of the form represent telegraphic brevity in words that provide substantive understanding of the concept under which the panel did its thing.

6. Of prime importance is that all officers bear in mind that we are in a test environment which implies that the bulk of the effort should be put forth in attempting to make it work, as opposed to trying to find out that it cannot work. I assume the latter will become undeniably clear to us as time goes on. We have already established that the most critical problem is the actual production of the finished product as opposed to the creative requirements necessary to produce raw material. In that, let me call to your attention that it is the Secretary/Recorder Assistants and court reporters who must convert this creativity into the finished product. If you wish them to keep abreast of you, be brief!!

William E. Weber,
Colonel, IN, President.

SFRB
March 29, 1977.

Memorandum for: All presiding officers, ADRB.
Subject: Department of Defense Discharge Review, Special.

1. Effective immediately, the ADRB will begin applying the criteria of the subject program to all cases being heard.

2. Specifically, under this program, former service members who received UD's or GD's during the period 4 Aug 64–28 Mar 73 are eligible for review. Individuals who received UD's during the RVN era will have their discharges upgraded if they meet any one of the following criteria:

a. Wounded in combat in RVN.

b. Received a military decoration, other than a service medal.

c. Successfully completed an assignment in SE Asia or in the Western Pacific in support of operations in SE Asia.

d. Completed alternate service or was excused from completion of alternate service under the clemency program instituted 16 Sep 74.

e. Received an HD from a previous tour of military service.

3. Individuals may also qualify for upgrading whenever the Board believes such upgrading is appropriate based on all the circumstances of a particular case, and on the quality of civilian record made since discharge. Factors to be considered in this regard include:

a. Age, general aptitude, and length of service at time of discharge.

b. Education level at time of discharge.

c. Whether entered the military service from a deprived background.

d. Possible personal distress which may have contributed to the acts which led to discharge.

e. Whether entered military service upon waiver of normally applicable entrance standards.

f. Whether the actions which led to discharge were alleged at the time to have been motivated by conscience.

g. Whether was discharged for abuse of drugs or alcohol and, if so, any contributing or extenuating circumstances.

h. Record of good citizenship since discharge. Boards will be encouraged to give weight to this factor when a good record is shown.

4. As previously noted, persons who received General Discharges (Under Honorable Conditions) also may qualify for upgrading to an HD by the ADRB, which shall examine their discharges in the spirit of this program.

5. Any cases not upgraded will be assembled separately and returned to the Sec/Rec Section for separate processing IAW the denial provisions of this special review program.

6. This program is being implemented in the spirit of forgiveness and compassion in which the President has sought to bind up the divisions of the Vietnam Era. Any upgrading obtained under the program will be an act of forgiveness, and prospective in its effect.

William E. Weber,
Colonel, IN, President.

SFRB
August 1, 1977.

Memorandum for: Board members; Chief, Secretary/Recorder Division; Chief, Administrative Support Division Professionals.
Subject: "Contentions and Issues".

This memorandum confirms previous verbal guidance and instructional periods received by addressees concerning utilization of the new OSA 172 Form and the relationship between contentions and issues advanced by the applicant and/or counsel and the Board.

Contentions are allegations or issues of fact, law or discretion raised by the applicant and/or counsel before or during a hearing, in writing or verbally, which advance those areas the applicant believes are appropriate for consideration in the case and which, if they meet the Urban Law Stipulation, must be answered by the Board.

In the past, Presiding Officers and pre-review officers have been authorized to assist applicant and/or counsel in the rewording of contentions so as to insure their specificity and propriety to the case. The thrust of rewording has been to improve the posture of the applicant and/or the case and not to insure convenience for the Board.

In view of recent correspondence on the Urban Law Stipulation, the foregoing practice will cease immediately and the contentions submitted by the applicant will not in any way be reworded or modified by any board member, pre-review officer or Presiding Officer. The applicant's contentions will be listed verbatim to include misspelling, grammatical errors and obscenities (except that grossly offensive language will be placed in a sealed envelope and referred to in the appropriate portion of the OSA 172). In the event an applicant or counsel asks for assistance in wording or rewording contentions, they will be referred back to the Secretary/Recorder of that particular panel who will provide such assistance within the constraints of the SOP.

Secretary/Recorders are authorized to discuss written contentions with applicant and counsel to point out areas in which the contention can be made more specific or more beneficial to the applicant's case. Secretary/Recorders are also authorized and required to insure that both applicant and

counsel in personal appearance or Hea Examiner cases understand that contentions must be phrased orally when presented to the Board at the onset of the presentation of the case. This is to insure that applicant and counsel know exactly that which the Board will consider.

Issues are those essential elements that are raised by the Board as a part of its official responsibility under 10 U.S.C., Section 1553, and AR 15–180 to insure the propriety and equity of a discharge. It is incumbent upon the Board and members of the Board to surface as issues those areas of a case relating to propriety and equity, irrespective of whether or not these areas are beneficial to the government or to the applicant. This is a responsibility which is paramount and to which all members of the Board and Secretary/Recorders must devote maximum effort to insure complete, fair and impartial presentation of the essential elements of information in all cases.

William E. Weber,
Colonel, IN, President.

SFRB
August 4, 1977.

Memorandum for Record.
Subject: Judge Advocate Officer Support to ADRB Panels.

1. Judge Advocate offiers will soon be provided to the ADRB for a minimum TDY period of two months. The purpose of the additional JAG support is to assist PO's in the proper formulation of the Case Report and Directives in order to insure that the language used is in full compliance with the Antioch Stipulation.

2. The JAG officers will be designated Assistant Legal Advisors to the ADRB. As such, they will be prohibited from taking part in presenting cases or cross-examining witnesses. They will be present at open sessions, but only to observe and listen. During closed sessions, they will assist the PO as stated in paragraph 1, above. They will not participate in the panel's basic finding of fact, law, and discretion and conclusion in deciding cases. They will not be sworn.

3. The presence of a JAG officer in the Board room will be explained by the PO in "B" and "C" cases by the following scenario addition immediately prior to calling the panel to order for the formal convening of the panel:

"PRESIDING OFFICER: In the Board room with us is Captain ———, a member of The Judge Advocate General's Corps. Captain ——— will not participate in the hearing. The basic purpose of his presence is to listen to the proceedings in order to assist me in closed session concerning proper language to be used in formulating the written report of the panel's determination in this case. This assistance is provided for in order to insure compliance with requirements of law that adequate and appropriate findings, conclusions, and reasons be made in each case decided by the Army Discharge Review Board."

William E. Weber,
Colonel, IN, President.

SFRB
August 12, 1977.

Informal memorandum for: All officers, secretary/recorders, and secretary/recorder assistants, ADRB.
Subject: Basic Upgrade Comparison Philosophy.

1. The purpose of this memorandum is to provide broad understanding of certain upgrade comparison philosophy that will assist you in resolving the problems you now have between the Regular and "Carter" review. While I recognize that there may be as many different opinions in this area as people who read this memorandum, I do believe it is necessary that we all abide by the concept contained herein or we will have difficulties keeping things in order.

2. Perhaps the first thing to do is to disabuse ourselves of the notion that there is such a thing as a separate review for a "Carter" case. This is not correct. A "Carter" consideration is only the last step of normal review and it becomes mandatory for voting purposes only if relief has not been granted as a result of normal review and *only* in the context of the mandated portions covered by the six primary criteria. However, if this last step is taken, the result of the step becomes the result of the Board, e.g., if the normal review resulted in no change of a UD and the "Carter" primary criteria mandates an upgrade, then the vote of the Board would be "general." It is the *only vote* of the Board.

3. In the event a "Carter" applicant receives a normal upgrade, it is still necessary to fill in the appropriate portions of "Carter" criteria applicable so as to insure the computer program properly records historical data. However, this is simply a by-rate exercise and one that is *not* an essential insofar as justifying the upgrading of a case.

4. Basic philosophy on upgrading is as follows:

a. Any time any case upgraded from UD to Honorable or General to Honorable, it is a case for which upgrading can be justified on the basis of normal review. In short, "Carter" by itself (mandated criteria) cannot justify Honorable.

b. Any case which is upgraded from UD to General because of issues of discretion on "Carter" secondary considerations is a case that receives upgrading because of normal review. In short, no "Carter" case can be recorded as upgraded to General only UP special program on just secondary considerations since these considerations must also have been enunciated as issues for normal review.

c. Any case which is UD–NC in normal review and is granted relief because of the primary criteria of "Carter" must include in the conclusions block a change to the SPD to KCR. These type cases must be checked as follows: properly separated initially; equitably separated initially; relief granted under provisions of Special program; change to General AR ———; change SPD to "KCR." NOTE: A case of this type cannot be checked: "Relief granted under current policy."

d. Any case in which relief is granted by normal review will have either "not properly separated" or "not equitably separated" or both checked and, as well, "relief granted under current policy." It is also mandatory if that case is a "Carter" applicant that the block "full or partial relief granted under Special program also be checked, but *do not change the SPD to KCR.* In unusual cases (such as Laird), the blocks "properly separated initially" and "equitably separated initially" could be checked and, as well, "relief granted under current policy" and "under provisions of Special program."

5. This memo is intended to be used only as a "working paper" it is not a formal memo, and must not be distributed outside the ADRB.

William E. Weber,
Colonel, IN, President.

SFRB
September 23, 1977.

Memorandum for: All colonels.
Subject: Justifying Decision Not to Grant Full Relief.

Please insure that you pay attention to SFRB Memo #33, 6 September 1977.

William E. Weber,
Colonel, IN, President.

SFRB
November 22, 1977.

Memorandum for: All ADRB personnel.
Subject: Bar to VA Benefits Under Law.

1. Under provisions of PL 95–126, any individual whose catalyst for separation was 180 days or more AWOL is not eligible for veterans benefits even if the discharge is upgraded by Discharge Review Board action. Additionally, we are responsible for notifying all such individuals of this fact and that they may apply to BCMR, Veterans Administration, for relief of this bar.

2. All personnel are requested to call to the attention of the Executive Officer any cases currently on hand in ADRB, for whom the record indicates separation may have been as a result of 180 days or more consecutive AWOL. The purpose of notification is to enable us to provide these individuals with an appropriate letter.

William E. Weber,
Colonel, IN, President.

SFRB
February 23, 1978.

Memorandum for: 06 board members.
Subject: HE Procedures.

1. The purpose of this memorandum is: to reaffirm guidance on the procedures to be followed on Hearing Examinations; and, to call again to your attention the need to conform to these procedures to avoid creating precedent conditions which can be used against us in court actions by applicants or counsel who may be dissatisfied with the ultimate results of the Hearing Examination.

2. As you all understand, it is *mandatory* that once the Hearing Examiner taping is completed by the Hearing Examiner that the *entire* tape be replayed to the applicant and counsel so as to set the stage for the epilogue. It is a violation of procedure and a dangerous practice to produce an epilogue which contains statements alluding to satisfaction with the Hearing Examination and the material presented if the applicant and counsel concerned have not seen the entire tape.

3. You cannot depend upon their memory to ensure that they are satisfied with the presentation. Additionally, we cannot expect that all applicants and counsels are motivated to deal with us on a basis of mutual trust. We must assume, since it is true, that they will tend to be naturally suspicious of that which we do and it is incumbent upon us to insure that we protect our integrity and impartiality, even if it involves additional work!

4. I am not unaware of the tedious aspects of replaying the tape, nor do I fail to understand that at times it represents wasted effort and time. It is, however, a necessity so as to ensure that we do not jeopardize the principle of being able to use Hearing Examinations as a means of conducting hearings. It will take only one failure on our part to cause a loss of credibility as to the integrity of the Hearing Examiner methodology.

5. All officers deployed as Hearing Examiners or HE Secretary/Recorders must insure complete compliance with HE procedures in this regard. Secretary/Recorders are instructed to remind the Hearing Examiner that as Secretary/Recorders they are under orders to insure the administrative propriety and completeness of Hearing Examinations in accordance with Standard Operating Procedures.

William E. Weber.
Colonel, IN, President.

April 17, 1978.

Memorandum for: Pit bosses, secretary/recorder division, admin support division.
Subject: Prereview.

There have been many complaints concerning the cycling of cases for prereview and, more importantly, what some officers believe to be a waste of time. I have had a long discussion with the Pit Bosses concerning the foregoing and I assume that the word has been passed in this regard.

To insure, however, that all personnel at least understand the rudiments of the problem, I would like to enunciate certain facts which are part of the problem of driving the train:

a. I have assumed that budgeting one hour for prereview was fair to the average officer and would give the average officer the time necessary to produce an adequate, well-thought out, neatly written prereview (no matter what type the case) that would be beneficial in the long run to the panel reviewing such. In reviewing the time available during the stand down day, I had calculated that the draft post review would require approximately two hours and thus 7 cases per officer for prereview would accommodate the scheduled duty hour day.

b. The foregoing 7 cases per officer represented a calculated risk concerning production since one case/per hour/per available officer/per stand down day *was not* adequate to support the hearing day throughput of 320 cases per day. Reason: There are an average of only 38 pit officers available for duty each stand down day; ergo, $7 \times 38 = 266$. I allowed this continuing short fall since we had some cases in the "bank."

c. This does not accommodate yet the additional burden of prereviewing regular cases *which must not be ignored throughout this Carter relook cycle. We still must do regular cases.*

Notwithstanding the foregoing, there seems to be "free time" and thus a great deal of discontent about the stand down day duty hours. I can only assume from this that the pits are more efficient in producing cases than I had anticipated, and thus I can schedule prereview to equal need. Therefore, effective immediately, two basic changes will be instituted:

a. To insure that the analysts are able to maintain the burden of their workload (which includes assisting in as a part of the administrative overhead at times), I will allow some cases to be sent to the pit for prereview *that have not been analyzed.* In such circumstances, the prereview officer is responsible for completing the Part II and III analysis!

b. I will increase the number of cases per available officer per day (that are placed in the pit) to allow sufficient to meet required workload throughput for both Carter redo and regular cases. In this regard and as you all know, the cases are placed "en mass" in the pits. Pit Bosses are responsible to insure that in the event the numbers placed in the pit each stand down day are not adequate to insure meaningful utilization of duty hour time, the Sec/Rec shop is requested to provide additional cases. (*There is no shortage of cases to be prereviewed.*)

Candor requires me to include an additional thought to this memorandum. Contrary to what may be believed, there still are a significant number of cases presented to panels for which the prereview is something less than completely adequate. In the past, I have assumed that this was simply the penalty paid for high turnover of personnel and the need to require new board members to become functional more quickly than otherwise would be desirable. However, some older members prereviews also reflect at times certain inadequacies and these, unfortunately, help to account for some of the errors that are being made in the panel room. The Pit Bosses tell me that the quota system may be responsible for this problem. This is what cause me to come off the quota system as far as prereview is concerned and go to the cases by mass in the pit. I hope this will solve the problem of inadequate prereview. *If not,* Presiding Officers are going to be instructed to provide copies of inadequate prereviews so that the Pit Bosses and myself may assist the board members concerned in this regard.

I am not unaware of the unhappiness with the duty hours; however, until such time as the totality of ACRB can be programmed for different duty hours, those announced must continue. There is clearly enough work to justify even longer hours. I recognize that at times other elements of the board are not always capable of meeting their goals redelivery of cases, etc., but since this new system has only been in effect for one week, I think we can all assume things will improve. As I have said before and as I say again now—As soon as assets, capability and production meet requirements, I will examine again the duty hours situation.

William E. Weber.
Colonel, IN, President

Annex 0–3.—Memoranda: Special.

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SFRB Special Program Memo and Subject

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SFRB, Special Program Memo A
April 18, 1977

Memorandum for: All Officers.
Subject: Discharge Review Program (Special).

1. For your information, attached copy of memorandum establishes that "retrospective" application of subject program is the only application permitted. In essence, this means that the discharge date originally established will be the date of any upgraded discharge under this program. Furthermore, no identification which will establish that the individual concerned was upgraded under the auspices of this program will appear on any documents that the individual concerned may have to display in the public arena.

2. This action signals to us that the totality of the intent of this program is to grant to the individual benefitting therefrom all of the benefits and social acceptance that would otherwise have accrued to them had they originally been discharged with a good discharge.

3. I request all board members to understand that it is not within our prerogative to disagree with the intent of the program or to allow ourselves to be influenced unfavorably because of any disagreement we may have with what the program accomplishes. It is necessary that we devote all our energies to giving full support.

William E. Weber.
Colonel, IN President

April 15, 1977

Memorandum For Secretary of the Navy, and Secretary of the Air Force.
Subject: Discharge Review Program (Special).

Reference: Memorandum for Secretary of the Navy and Secretary of the Air Force, dated 7 April 1977, from Acting ASA(M&RA), subject as above.

In the above reference, you were asked to delay final processing of any discharge

upgrades under the special program until a decision could be reached as to whether those upgrades would be prospective or retrospective.

Since one of the main purposes of the special program is to relieve the effects of less than honorable discharges on those holding them, there must be nothing on the copy of the new discharge (DD Form 214) issued to the serviceman or woman indicating that it is in fact an upgrade. In line with this principle, the effective date of all upgraded discharges will be the date of the original discharge.

To assure protecting such veteran's benefits as may be due the serviceman or woman whose undesirable discharges are upgraded, the Veterans Administration has asked that certain notations appear on their copy of the DD Form 214. Those notations, plus some additional information, will be needed on record copies of the DD Form 214 retained by the Service. Department of the Army will publish instructions early next week concerning preparation of DD 214's for the Special Discharge Review Program.

Paul D. Phillips,
Acting Assistant Secretary of the Army (Manpower and Reserve Affairs)

SFRB, Special Program, Memo B
April 20, 1977.

Memorandum for: Board Members, Executive Officer, Chief, Secretary/Recorder Section, Chief, RP&S Section.
Subject: Credit Under Special Criteria (Para 3) and Good Time (Para 9) Pre-Review Check List.

1. The purpose of this memorandum is to clarify for all concerned the awarding of credit in Paragraph 3, Tab A, of the Pre-Review Check List and Part III of the Case Data Sheet as it pertains to an Honorable Discharge and 24-months good service and in paragraph 9, Pre-Review Check List as it pertains to assessing good time.

2. *Part I—Honorable Discharge and 24-Months Service Credit:*

A. Credit for previous Honorable Discharge may be granted when the individual concerned has received that Honorable Discharge after having served at least one-third of the period of service for which originally obligated. This one-third factor is, of course, subject to judgment and the vagaries that are inherent in each case and should be used only as a general rule.

B. To determine whether or not credit should be awarded for 24-months service, in computing the 24-months you *must not* pick up any period of service which is covered by the credit granted for prior Honorable Discharge but *you may* credit such service when the prior Honorable Discharge credit is not given, i.e.:

(1) Individual enlists for 3-years, serves 14-months, takes a short discharge to re-up, receives an Honorable Discharge; 6-months later, individual absents himself in deserter status and subsequently receives a UD. In paragraph 3, Part A (Part III, Case Data Sheet), you *may* credit this individual with an HD but you *may not* credit him for 24-months service.

(2) Individual enlisted for 3-years, served 6-months, takes a short discharge, serves 19-months, then deserts, and subsequently receives a UD. You *may not* credit him with an Honorable Discharge but you *may* count the 6-months plus the 19-months and give credit for 24-months good service.

(3) Individual drafted for 2-years, serves 8-months, takes a short discharge to reenlist, serves 26-months and deserts and subsequently credited with a UD. You *may* credit with a prior Honorable Discharge and you *may* credit with at least 24-months good service.

3. *Part II—Credit for Good Time.*

A. In the Tab D section of the Pre-Review Checklist, information placed therein should be limited only to that period of service for which the appeal is applicable (i.e., the last period of service), except where in Part I above the circumstances make it permissible to include a prior period of service in computing a total of 24-months service. In these circumstances, computing good time in Tab B can include both the present and prior period of service.

B. In many cases, records will fail to reveal a believable pattern of recording the C&E of an individual. Typical in these cases will be a last entry coincidental with an awarding of an Undesirable Discharge which shows C&E as Unsat/Unsat, even though a review of the records clearly suggests a high possibility that the C&E is not correct and that a portion of that period would justify some other form of rating. If there are no other data in the record to clarify what portion of that period could be read as other than Unsat/Unsat, the one-third rule can again be applied as follows:

(1) If the individual concerned has a period of rated service that is Fair/Fair or better, that covers at least one-third of all total service less AWOL time, then an equivalent rating can be assumed for all improperly rated time except that period covered by actual offenses.

4. All board members should understand that the foregoing are intended to be applied as rules for the analyst personnel and guidelines for the pre-review officers and panels. It is not my intent to rigidly preclude crediting when the specific circumstances in a case clearly identify that credit is not only logical but that it would be unfair not to so grant.

William E. Weber,
Colonel, IN, President.

SFRB, Special Program, Memo C
April 20, 1977.

Memorandum for: Board Members, Executive Officer, Chief, Secretary/Recorder Section, Chief, RP&S Section.
Subject: Applicant Insertion of Information Under Mitigating Factors.

1. The purpose of this memorandum is to insure that all personnel have a clear understanding of the procedures to be followed when applicants insert mitigating factor information during the 30-day period following application. Under the provisions of this Special Program, all applicants (whether calling by phone, applying by DD Form 293, or in-house applicants notified of their eligibility) are granted the opportunity to present additional documentation to substantiate claims under mitigating factors. The intent of this proviso is to give each individual a last minute chance to call to the attention of the panel those things that he or she feels may be germane to their case and beneficial to the possibility of partial or full relief.

2. When such information is received, either directly by mail to ADRB or inserted in the record by RCPAC prior to shipping records to ADRB, it is incumbent upon analysts to insure that the document or documents are tabbed and highlighted in the record and on the Pre-Review Sheet. Pre-review officers are *personally responsible* to review, read and judge the submission and credit accordingly. In those cases where the pre-review officer feels specific highlighting is required, he or she should call the panel's attention to such by appropriate remarks on the bottom of the pre-review sheet.

William E. Weber,
Colonel, IN, President.

SFRB, Memo #D
April 21, 1977.

Memorandum for: Board Members, Executive Officer, Chief, Secretary/Recorder Section, Chief, Records Processing and Screening Section, Chief, Mail and Distribution Section, Chief, Administrative Office, Chief, Analyst Section, Chief, Special Actions Section.
Subject: "Start Up"

Part I. All Personnel:

1. For a variety of reasons, not the least of which is the favorable attitude and rate of progress of training, I have decided to execute the actual conduct of hearings one week earlier than initially programmed. This will result in some personnel being required to absorb certain functional responsibilities in an OJT configuration as opposed to a pure training configuration. We will accommodate to this by insuring that experienced personnel are available and accessible at every step to provide answers to questions as they arise.

2. To accommodate this earlier "start up", I will schedule on a basis of only 100 cases per panel per day due to the fact that we only have two board rooms available for new process cases at the moment. Some board members will not be directly involved in new case review each day. These members will receive regular case reviewing assignments on an as required basis until full cycle flow of six panel new process cases commences.

3. During the OJT period, we must all understand that not only are new techniques being learned, but that we may be faced with the need to modify or adjust procedures already established to insure a more effective operation in the long run. Thus, at time there will be some confusion since the dispersion of our facility is such that everybody cannot get the word at the same time. I ask that you bear with this problem; and as the old people know, "it will be better by 1 January".

Part II. Board Members:

1. As a part of the pre-review function, all board members are responsible for placing the index reference number on the Case Data Sheet and on the Case Report and Directive. The index reference number used will be one of four principle numbers for most cases. In cases of unusual circumstances, the pre-review officer is responsible for determining

an appropriate index reference number. The four index reference numbers to be used normally (as appropriate) are as follows:

a. For Chapter 10 cases: 23.00.

b. For Unsuitability cases: 66.00.

c. For Unfitness cases: 65.00.

d. For Drug cases: 25.00.

2. In the event any case reaches the board room and an index reference number has not been placed thereon, it is the responsibility of the Presiding Officer to designate an appropriate index reference number. Completion of this requirement is critically important since the Special Actions Section people have not been trained nor instructed in this area and are not capable of selecting the appropriate index reference number.

3. During the "start up" timeframe, there will be cases on which panels vote no change or provide only partial relief. Many of these cases will still be within the 30-day suspense timeframe and they cannot be consummated until the individual has an opportunity to provide additional information in support of the appeal. In those circumstances, the cases will be returned to the original pre-review officer who will asses the information received and determine whether or not such would have influenced the original vote. In cases where the pre-reviewing officer determines possible influence or where there is a question of doubt, the case will be returned to a panel for revoting. Where the pre-reviewing officer determines there is no impact, the case will be returned by the Secretary/Recorder Section to the Special Actions Section for final consummation.

4. In the foregoing, under *no* circumstances must *any case* be mailed back to RCPAC for final action until completion of the 30-day suspense date. All cases mailed back will carry a mailing date on or after the 30 day suspense date.

William E. Weber,
Colonel, IN, President.

SFRB, Special Program Memo E
April 25, 1977.

Memorandum for: All Personnel.
Subject: Establishing Findings for Contentions Other Than "Carter Philosophy".

1. Cases on hand at the inception of the Special Discharge Review Program include cases wherein the applicant and/or counsel may have enunciated specific contentions and/or issues of fact, law, or discretion. Under the Antioch Stipulation, it is incumbent upon the Board to provide specific findings for each of these contentions and/or issues of fact, law or discretion that are non-frivolous in nature.

2. The foregoing remains a requirement even during the Special Discharge Program except for the following modifications:

a. In cases where full relief is granted, it is not necessary to address other contentions or to provide any findings other than those provided for routinely on the DD Form 2067 (Case Report and Directive).

b. In those instances where only partial relief is granted, i.e., UD to General, it will be necessary to address other contentions if they are very specific in nature. If, as is normal, they are general in nature and non-specific, then a statement to this effect in the findings will suffice: "The contentions raised by the applicant in the original DD Form 293 were addressed by the Board in considering this case. These contentions resulted in findings that were favorable. The denial of full relief is predicated on the overall evaluation of the character of service and not a specific incident."

c. In cases where all relief is denied, it is a responsibility of the pre-review officer to address other contentions specifically in the remarks section of the Pre-Review Checklist. Telegraphic language should be used. A specific notation should be made on the Work Sheet-Findings, Conclusions and Reasons to call to the attention of the typist concerned the requirement to include the findings enunciated on the Pre-Review Check List in the appropriate block of the DD Form 2067.

3. Pre-review officers should avoid, to the degree defensible, any additional workload inherent in the foregoing. Generally speaking, most contentions will probably be inclusive in the overall contention inherent in the "Carter philosophy". When it is clear that other contentions are so included, then no specific reasons need to be given to these contentions.

William E. Weber,
Colonel, IN, President.

SFRB, Special Program, Memo F
May 3, 1977.

Memorandum for: All Pre-Review Officers.
Subject: Preparation of Pre-Review Checklist.

1. To affirm previous guidance, clarify to insure uniform understanding, and most importantly to simplify the work effort of the analysts, the following instructions pertain:

a. Analysts will *always* tab every portion of the OMPF which relates to any of the items contained on the Pre-Review Checklist. Except in the area of "compelling reasons to the contrary," the analysts will circle the tabbed item on the Pre-Review Checklist.

b. The analyst will always show both good and bad time on Part D but may at times be incapable of defining C&E time if the records do not clearly reveal such. In such cases, it is incumbent upon the pre-review officer to so do.

2. Thus in accordance with above instructions, pre-review officers may expect to find that such items as age, aptitude, length of service, and education will *always* be circled on the Pre-Review Checklist. This does *not mean* that these items are necessarily germane to the awarding of credit for a mitigating factor. The determination of "yes" or "no" is the sole responsibility of the pre-review officer no matter *what* may be checked or tabbed by the analysts. Please bear in mind that the analysts are attempting to provide you with the best briefed case possible but they are, of course, limited by the adequacy of the records, the time in which they have to complete a case, and (as we all) by their diverse motivation from day to day.

3. Please understand that when there are errors in the Pre-Review Checklist, it is the responsibility of the pre-review officer to catch and correct, since this is one of the purposed for pre-review. The other, of course, is to arrive at recommendations for use by the panel.

Robert Laychak,
for William E. Weber, Colonel, IN, President.

SFRB Special program, Memo G.
May 4, 1977.

Memorandum for: All officers and sections.
Subject: Re-Pre-Review Action.

1. As indicated in the addendum to the SOP, there are times when additional information is received on a case after it has been through pre-review and in front of a panel. This has occurred since it was necessary to have cases to do during the 30-day suspense timeframe and, as well, was also caused because the JLO failed to send suspense letters out for a 10-day period following receipt of calls.

2. Irrespective of the reasons, we now have a number of cases that will be re-circulated for another look to determine whether or not the material received is of sufficient importance to possibly effect the recommendations the pre-review officer made and/or the decision made by the panel. These cases will be handled by being returned (whenever possible) to the original pre-review officer who will conduct a more detailed analysis and make recommendations accordingly.

3. Enclosed is the "Re-Pre-Review List" which is to be used in conjunction with the pre-review check list originally prepared. The "Re-Pre-Review List" is self explanatory.

4. Cases in which the pre-review officer feels that the additional information has no real bearing on the decision of a panel will be returned to the system for administrative consummation. Those cases in which the pre-review officer feels the additional information might have a bearing on the decision of the panel will be rescheduled for an appearance in front of a special panel by the Secretary/Recorder section.

5. Initially, the sequence of events concerning these cases will be as follows:

a. Each Tuesday morning the Secretary-Recorder Section will deliver pre-review cases that are to be heard by a Special Panel on Wednesday to those pre-review officers effected who are present for duty that day. For those officers who may be on VOCO, leave, sick, or TDY, their cases will be given to another pre-review officer to do. These cases will all be in addition to the normal allocation of cases (I do not expect these special Re-Pre-Review cases to amount to more than two or three to each officer).

b. Tuesday evening the cases will be picked up by the Secretary/Recorder Section (in other words, Re-Pre-Review must be completed on the same day as delivery).

c. The cases will be scheduled to be heard at approximately 1400 hours or on call in the "A" Board room on Wednesdays. A Special Panel will be designated for this purpose and will be published in the weekly schedules. I anticipate that we will rarely, if ever, have more than 100 cases weekly for Re-Pre-Review and of these, probably less than 50% will survive to go in front of the Special Panel.

d. It will *not* be necessary for pre-review officers to re-check these cases with the JAG or MC unless they feel the additional

information is of such a nature that a re-check is mandatory. In the event a re-check is made, it *is* necessary to hand carry the case both ways!

e. In the Board room there will be no opaque projector utilized. Each board member will be provided a copy of the original Pre-Review Check List and the Re-Pre-Review List. The Board room will be administratively supported by one Secretary/Recorder and two Secretary/Recorder assistants.

6. Under no circumstances must these Re-Pre-Review cases be allowed to mix in with regular Carter cases or other regular cases. Pre-review officers should keep them separate on their desks and when completed, should keep them in a separate pile on their desks. The attached Re-Pre-Review List will be printed in red paper.

William E. Weber,
Colonel, IN, President.

SFRB, Special program, Memo H.
May 16, 1977.

Memorandum for: Board members, executive officer, chief, secretary/recorder section.
Subject: Case Workload for Panels.

1. In order to provide meaningful expenditure of effort for available board room time, effective immediately some panels conducting "Carter case" hearings will from time to time also conduct hearings of regular cases. This will not include, however, personal appearances either by applicant or counsel but will be limited to on-the-record (A) cases and counsel only (C) cases that have a brief or written submission.

2. Procedures to be followed for these cases will be the same as the practice in the regular case board rooms and the cases heard will be recorded on a separate log which will be prepared in advance by the Secretary/Recorder Section.

3. All regular cases are to be heard upon completion of the daily "Carter Case" workload by the panel. Presiding Officers are requested to recess the panel at the completion of the "Carter Cases" for approximately one-half hour to allow the Secretary/Recorder and the Secretary/Recorder assistants to clear the panel room of "Carter Cases" and prepare for regular case hearings.

4. When available, a court reporter will be assigned to the D-ring panel rooms in order to accomplish the summary of testimony requirements. If a court reporter is not available, the Presiding Officer will place the information required on tape, on the tape recorder provided, for subsequent transcription by members of the Secretary/Recorder Section. In any event, the responsibility for adequate accomplishment of the administrative requirements for such cases is jointly shared by the PO and Secretary/Recorder assigned to the panel on that day.

5. To begin with, between 5 and 10 regular cases will be allocated to each "Carter Case" panel room. Future caseload will be established on an "as required" basis.

William E. Weber,
Colonel, IN, President.

SFRB, Special program, Memo I.
May 26, 1977.

Memorandum for: All officers, secretary/recorder section, special actions section, records processing section.
Subject: Pre-Review and Re-Pre-Review.

1. Special instructions are being issued which will change slightly the manner in which the records processing clerks will tab the files. When tabbing elements under special consideration or mitigating factors, the analysts will include a number as well as the letter. The number will correspond to the sequential appearance of that item as it is circled on the pre-review sheet (example—under special consideration, ARCOM with V would be tabbed A–1 if it is the first one circled, A–2 if the second, etc). In addition, analysts will place a tab number 11 on the top page of the document dealing with the last discharge. When this discharge is also qualified under a "compelling reasons to the contrary", a tab C will also appear on it.

2. Pre-review officers are requested to provide more amplification in the reasons portion of the pre-review sheet, particularly for cases for which a no change is recommended. Panels when reviewing such cases (particularly C type cases) are being required to spend an inordinate period of time to justify pre-review recommendation. Pre-review officers are also reminded it is required that the pre-review sheet *must be signed.*

3. Re-pre-review officers are requested to no longer complete items 2 or 6 of the re-pre-review sheet. Experience is shown that re-pre-review officers are misinterpreting the purpose of those two items and, in fact, are attempting to justify the original recommendation. This is not the purpose of re-pre-review. Re-pre-review starts with the basic premise that the decision of the panel was correct and then examines the new evidence in light of the decision to determine whether or not the case should be referred to a panel. Whenever the decision is made to refer the case to a panel, the reason stemming from the additional information added must be adequately explained.

William E. Weber,
Colonel, IN, President.

SFRB
Special program, Memo J.
May 31, 1977.

Memorandum for: All officers, all sections, all chiefs.
Subject: Use of Paragraph 9, Tab D (Pre-Review Check List).

1. The purpose of the subject area on the pre-review check list is to provide pre-review officers and, as well, panels with a discriminator to assist in two adaptations:

a. Enable choice between honorable and general.

b. To substantiate no change on non-mandatory upgraded cases.

2. The use of the portion pertaining to conduct and efficiency ratings below good and fair respectively is intended to correlate with that which assists in determining character of discharge at ETS. However, the relationship is only symbolic in its intent, not mandatory for use.

3. Under no circumstances should pre-review officers or panels assume that meeting the minimum qualifications in this area is sufficient to justify any type of vote. The formula applied at ETS *is not* applicable insofar as mandatory action is concerned for characterization of discharge *short* of ETS. Pre-review officers and panel members are requested to avoid any automatic aspect of use of paragraph 9 (Tab D), and instead insure use only to assist in judgemental determinations based on the other data available.

William E. Weber,
Colonel, IN, President.

SFRB
June 1, 1977.

Special program, Memo K.
Memorandum for: All officers and section chiefs.
Subject: Additions to Present Index.

Action has been taken to include the following additions to the DRB index required by the Antioch stipulation. They will be used by the ADRB effective 1 June 1977.

67.11 tour in Southeast Asia or Western Pacific
67.12 wounded in combat
67.13 decorated for valor/merit
67.14 previous honorable discharge
67.15 satisfactorily served 24 good months prior to discharge
67.16 completed alternate service or was excused in accordance with Presidential Proclamation 4313
67.21 age, aptitude, length of service at time of discharge
67.22 education level
67.23 deprived background
67.24 personal distress
67.25 waiver to enlist
67.26 conscience
67.27 drugs or alcohol
67.28 good citizenship
67.29 other factors
67.31 discharged for act(s) of violence
67.32 discharged for act(s) of dishonor
67.33 discharged for desertion in or from combat theater
67.34 discharged for offense(s) subject to civilian criminal prosecution

Robert Laychak,
LTC, FA, Executive Officer.

SFRB, Special program, Memo L.
June 7, 1977.

Memorandum for: All officers.
Subject: Additional Clarification of "AWOL in and From the Combat Theater" and "Criminal Acts/Civil Standards".

1. Recently the Secretary of the Army, in response to the Chairman of the Senate Veterans Affairs Committee, provided amplified explanation of the subject area. The genesis of this amplification is unknown to me. Presumably it emanates from the office of Defense and/or General Counsel

2. For our purposes, it is not particularly important as to the point at which the

definition begins. What is important is that we now apply this philosophy in our case evaluation. Specifically, the modifications are as follows:

a. "AWOL/desertion in and from * * *"—The applicability of this area stems from the definition provided the Congress for the term "successfully completed an assignment in Vietnam." This definition stated that the term "encompasses those who were ordered to Vietnam and were given credit for a completed assignment without having been recommended for discharge for improper conduct while in Vietnam." On the basis of the foregoing, it becomes apparent that an individual whose discharge stems directly from his Vietnam service is one who perhaps cannot be given credit for a tour in Southeast Asia if the reason for discharge is solely for improper conduct while in theater. Thus, an individual with frequent AWOL's who is charged with and is separated in lieu of trial for these charges of AWOL may meet the test of AWOL/desertion in the combat zone. Panels must be exceedingly careful in evaluating these areas.

b. "Criminal Acts/Civil Standards"—In his response to the Chairman at the Senate Arms Service Committee, the Secretary in answering the question as to whether or not "the offense committed would have been punishable under civilian criminal law" answered that "boards will consider the evidence of calculated criminal intent, intent of a grievious bodily harm to an individual, intent of substantial permanent loss of/to an individual of his possessions, offenses against minors and the like." This definition would seem to elevate somewhat higher than have we, the conditions which would justify the "compelling reason to the contrary" for criminal acts under civil standards. As in the previous explanation, panels must exercise due care and justify to their own satisfaction the offense(s) considered truely meet(s) the philosophical test of the foregoing.

William E. Weber,
Colonel, IN, President.

Annex P–1.—DOD Discharge Review Program (Special)

The Special Discharge Review Program (SDRP) was implemented on 5 April 1977 to effect the review, by application, of all undesirable (UOTHC) or general discharges awarded during the period 4 Aug 64 and 28 Mar 73 under criteria more favorable than those of regular review. Although applications had to be received prior to 4 Oct 77, and the initial reviews accomplished within 180 days of receipt, the standards for SDRP review are relevant today because of the compliant procedures resulting from the Antioch Stipulation and a small number of de novo appeals under SDRP that have yet to be finalized.

SDRP Guidance for Pre-Review Officers and Board Members

1. The characterization of discharges considered under this program will be changed to honorable or general (Under Honorable Conditions) as appropriate where:

a. Determination is made that discharge and/or characterization was improper or inequitable under normal existing criteria considered by the Army Discharge Review Board; or

b. The applicant meets one of the following primary criteria and there are no compelling reasons to the contrary:

(1) Received a U.S. decoration other than a service medal.

(2) Was wounded in action.

(3) Satisfactorily completed an assignment in Southeast Asia or in the Western Pacific in support of operations in Southeast Asia.

(4) Completed alternate service or was excused therefrom in accordance with Presidential Proclamation 4313 of 16 September 1974.

(5) Received an honorable discharge from a previous tour of military service.

(6) Had a record of satisfactory active military service for 24 months prior to discharge; or

c. The applicant merits special consideration as a result of the following factors:

(1) Age, general aptitude, and length of service at time of discharge.

(2) Education level at the time of discharge.

(3) Individual entered the service from a deprived background.

(4) Actions which led to the discharge were alleged at the time of discharge to have been motivated by conscience.

(5) Individual entered the service upon a waiver of normally applicable entrance standards.

(6) Possible personal problems may have contributed to the acts which led to discharge.

(7) Record of good citizenship since discharge. Boards are encouraged to give weight to this factor when a good record is documented.

(8) Was discharged for drug or alcohol abuse and, if so, any contributing or extenuating circumstances.

2. Compelling reasons which will be used as a basis for denial of upgrade unless special consideration is given after evaluation of the factors listed in para 1c, above, are:

a. Desertion/AWOL in or from the Combat Zone. Commission of this act requires that an individual have deserted within the combat zone or departed the combat zone on leave, TDY, or other authorized absence and failed to return to his unit in the combat zone. An individual who failed to report to an overseas replacement station or port of embarkation for further assignment to the combat zone.

b. Discharge Based on an Act of Violence or Violent Conduct. It is necessary for the pre-reviewer to distinguish these acts from barracks brawls or bar room fights. Intended here, is the fact that an act of violence or violent conduct was the actual or proximate cause of the discharge.

c. Discharge Based on Cowardice or Misbehavior before the Enemy. This act must have taken place in the combat zone during actual engagement with the enemy.

d. Discharge Based on an Act or Conduct Subject to Civilian Criminal Prosecution. Acts included in this category will generally relate to felonies in the civilian environment. Inherent in this category is the intent to eliminate those offenses which are peculiar only to the military and consider only offenses which relate to civilian society (e.g., murder, rape, larceny, assault, etc.). Common sense and experience must prevail in determining if or how an offense relates to civilian criminal law. Prereviewers may refer to the Table of Maximum Punishments, UCMJ, or ask the advice of the ADRB JAG officer.

3. In considering the type and character of separation to be given under this program, the provisions of Section III, Chapter 1, AR 635–200 are applicable as modified by the following additional guidance:

a. An honorable discharge should be considered for award when:

(1) Provisions of para 1b, above, are satisfactorily met; and

(2) Provisions of para 1–9d(1), AR 635–200 are met. In this regard, weight must be given to the nature of pending changes in the case of a separation under Chapter 10, AR 635–200 and to the offense for which applicant was convicted by civil court in cases of separation UP AR 635–206 by reason of civil court conviction. The most severe weight, other than disqualification, which may be given to such offenses is to equate them to a single conviction by Special Court-Martial, except where a multiplicity of charges and/or specifications clearly warrant a more prejorative categorization.

b. A general discharge (Under Honorable Conditions) should be considered for award to applicants under this program who received an undesirable discharge (enlisted personnel), or were separated under other than honorable conditions (officer personnel), when there are no compelling reasons for disqualification (para 2, above), and the provisions of para 3a, above, are not fully met.

c. Eligible personnel may also be awarded a general discharge (Under

Honorable Conditions) or an honorable discharge when none of the special considerations enumerated in para 1b, above, have been met, but mitigating factors listed in para 1c, above, warrant special consideration.

4. Applicants who received a general discharge (Under Honorable Conditions) may be awarded an honorable discharge when the provisions of para 3a, above, are met or evaluation of the factors enumerated in para 1c, above, indicates special consideration is appropriate and is in consonance with the President's desire that discharges be re-examined in a spirit of compassion and forgiveness.

[FR Doc. 79-12723 Filed 4-26-79; 8:45 am]

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federal register

Friday
April 27, 1979

Part III

Department of Defense

Department of the Army

Discharge Review; Memoranda on Recharacterization of Discharges for Drug Use or Possession

DEPARTMENT OF DEFENSE

Department of the Army

Discharge Review; Memoranda on Recharacterization of Discharges for Drug Use or Possession

Memoranda provide service wide guidance to discharge review boards for review of punitive discharges and administrative discharges under other than honorable conditions issued solely for personal use or possession of drugs prior to July 7, 1971. Former service members may find the guidance contained in the memoranda helpful in preparing for discharge review. The Army Discharge Review Board has been requested under the provisions of paragraph D.3, DOD Directive 1332.28, to effect publication for the Department of Defense.

Dated: April 20, 1979.

William E. Weber,
Colonel, IN, President, Army Discharge Review Board.

Memorandum for: The Secretaries of the Military Departments The Chairman, Joint Chiefs of Staff

Subject: Review of Discharges Under Other Than Honorable Conditions Issued to Drug Users

August 13, 1971.

Consistent with Department of Defense Directive 1300.11, October 23, 1970, and my memorandum of July 7, 1971, concerning rehabilitation and treatment of drug users, administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use will be reviewed for recharacterization.

Accordingly, each Secretary of a Military Department, acting through his Discharge Review Board, will consider applications for such review from former service members. Each Secretary is authorized to issue a discharge under honorable conditions upon establishment of facts consistent with this policy. Former service members will be notified of the results of the review. The Veterans' Administration will also be notified of the names of former service members whose discharges are recharacterized.

The statute of limitations for review of discharges within the scope of this policy will be in accordance with 10 United States Code 1553.

This policy shall apply to those service members whose cases are finalized or in process on or before July 7, 1971.

Melvin R. Laird

Memorandum for: The Director, Army Council of Review Boards

Subject: Review of Discharges Under Other Than Honorable Conditions Issued to Drug Users

September 17, 1971.

The following guidance is provided for the implementation of policy contained in the Secretary of Defense memorandum, above subject, 13 August 1971:

The policy is limited to former members separated, or in the process of being separated, administratively on or before 7 July 1971 solely for drug use or drug possession for personal use, with an Undesirable Discharge (DD Form 258A) or Other Than Honorable Discharge (DD Form 794A).

Drug use pertains to the personal use of those controlled substances as defined by 21 U.S.C. Section 812 and applicable regulations without regard to the number of occasions of such use or the circumstances surrounding such use unless the user sold, transferred, distributed, or intended to sell, transfer, or distribute drugs.

Drug possession for personal use implies the possession of a quantity of one or more of the drugs mentioned above without the intent to sell, introduce, transfer, or distribute such drugs to another person or persons. No specific amount of drugs will be used in making a determination that the possession of drugs was for personal use. The determination is dependent upon the circumstances of each case taken in their totality. Such factors include the number of drugs, the amount of drugs, the frequency with which drugs could be obtained, the likely intake of a user given the particular drug and its potency and the degree of his prior use, the individual's previous history of drug use or association with drugs, the possession, if any, of drug packaging or related equipment, and any other relevant factors which may establish or disprove his intent to possess drugs for his own use.

The term "solely" should not be construed to bar the favorable recharacterization of a discharge where only minor offenses, especially those related to or caused by drug abuse, may have been a contributing factor in the granting of an Undesirable Discharge or Other Than Honorable Discharge.

Thaddeus R. Beal,
Under Secretary of the Army.

Memorandum for: The Deputy Secretary of Defense

Subject: Review of Discharges Under Other Than Honorable Conditions Issued to Drug Users

September 24, 1971.

The policy announced in Mr. Laird's August 13, 1971 memorandum on the above subject requires the military departments to review the applications, subject to certain limitations, of those who received administrative discharges under other than honorable conditions issued solely on the basis of the personal use of drugs or possession of drugs for the purpose of such use. Pursuant to the authority of 10 U.S.C. 1552, absent your instructions to the contrary, the Army Board for the Corrections of Military Records will apply this policy to those individuals separated or in the process of being separated on or before July 7, 1971 with punitive discharges for the offense of wrongful use of drugs or wrongful possession of drugs, but in the latter case only where it can be established that possession was for the individual's own use.

The application of this policy will ensure some degree of equal treatment to Army personnel who have received discharges under other than honorable circumstances because of drug use or the possession for such use. The nature of the military justice system entrusts a significant amount of discretion to the commander and the court-martial convening authority. In some cases, the individual who has used or possessed drugs may not have been charged with an offense under the Uniform Code of Military Justice but, instead, may have been processed for administrative separation. In other cases, the individual may have been charged but then granted the opportunity to request a discharge in lieu of court-martial, generally receiving an undesirable discharge. Not only has there been a variation among commanders and convening authorities in the disposition of drug offenders, but also it appears that the overall attitude of commanders and convening authorities has changed over the past several years, with relatively less reliance on the use of courts-martial for the offenses of drug use or possession. Because of these variations in the disposition of drug offender cases, it is unfair to limit the opportunity for a recharacterized discharge solely to instances where the individual received an administrative discharge rather than a punitive discharge.

For Army personnel now confined at the U.S. Disciplinary Barracks following conviction for drug use or possession for such use, I intend to take similar action through the Clemency and Parole Board.

Kenneth E. Belieu,
Under Secretary of the Army.

Memorandum for: Secretaries of the Military Departments, Chairman, Joint Chiefs of Staff

Subject: Review of Punitive Discharges Issued to Drug Users

April 28, 1972.

Reference is made to Secretary Packard's memorandum of July 7, 1971, concerning rehabilitation and treatment of drug users, and my memorandum of August 13, 971, subject: "Review of Discharges Under Other Than Honorable Conditions Issued to Drug Users."

My August 13, 1971 memorandum established the current Departmental policy that administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use will be reviewed for recharacterization to under honorable conditions.

It is my desire that this policy be expanded to include punitive discharges and dismissals resulting from approved sentences of courts-martial issued solely for conviction of personal use of drugs or possession of drugs for the purpose of such use.

Review and recharacterization are to be effected, upon the application of former service members, utilizing the procedures and authority set forth in Title 10, United States Code, Sections 874(b), 1552 and 1553.

This policy is applicable only to discharges which have been executed on or before July 7, 1971, or issued as a result of a case in process on or before July 7, 1971.

Former service members requesting a review will be notified of the results of the review. The Veterans' Administration will also be notified of the names of former service members whose discharges are recharacterized.

Melvin R. Laird

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federal register

Friday
April 27, 1979

Part IV

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction

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 Government Contract 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.

New General Wage Determination Decisions

Mississippi	MS79–1077
Tennessee	TN79–1078

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California:	
CA78–5006; CA78–5007	Jan. 27, 1978.
CA78–5106; CA78–5107	July 7, 1978.
CA78–5122	Aug. 11, 1978.
CA78–5123	Aug. 18, 1978.
Connecticut:	
CT75–2067	Apr. 25, 1975.
CT79–2010; CT79–2011	Apr. 6, 1979.
Florida:	
FL79–1068	Apr. 13, 1979.
Ohio:	
OH78–2157	Nov. 24, 1978.
Pennsylvania:	
PA78–3054	Aug. 11, 1978.
Rhode Island:	
RI78–3050; RI78–3051; RI78–3052	July 21, 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.

Pennsylvania:	
PA77–3122(PA79–3008)	Sept. 9, 1977.

Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C. this 20th day of April 1979.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

NEW DECISION

STATE: Mississippi *COUNTIES: See below
DECISION NO.: MS79-1077 DATE: Date of Publication
DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and garden type apartments up to and including 4 stories.

*Counties: Clarke, Jasper, Kemper, Lauderdale, Neshoba and Newton

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanic	6.25				
Bricklayers	7.50				
Carpenters	6.04				
Cement masons	6.00				
Dry wall finisher	4.92				
Dry wall hangers	5.53				
Electricians	9.45	.32	.28	.12	
Glaziers	4.90				
Ironworkers, reinforcing	4.96				
Laborers:					
Laborers	3.00				
Mason tenders	3.13				
Mortar mixers	3.50				
Painters, brush	5.00				
Plumbers and pipefitters	7.25				
Roofers	5.75				
Sheet metal workers	5.00				
Soft floor layers	6.00				
Tile setters	6.50				
Truck drivers	3.00				
Welders - Rate for craft					
POWER EQUIPMENT OPERATORS:					
Backhoe	3.60				
Bulldozer	3.88				

NEW DECISION

STATE: TENNESSEE
COUNTIES: LOUDON, McMINN, MEIGS, MONROE, POLK, & RHEA.
DECISION NUMBER: TN79-1078 DATE: DATE OF PUBLICATION
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS (includes single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
AIR CONDITIONING & HEATING MECHANICS	$ 5.38				
BRICKLAYERS	7.75				
CARPENTERS	5.53				
CEMENT MASONS	6.00				
DRYWALL FINISHERS	5.84				
DRYWALL HANGERS	6.17				
ELECTRICIANS	5.70				
INSULATION INSTALLERS	4.13				
LABORERS:					
UNSKILLED	3.50				
MASON TENDERS	4.00				
MORTAR MIXERS	4.00				
PAINTERS	5.27				
PLUMBERS & PIPEFITTERS	6.22				
ROOFERS	5.00				
TILE SETTERS	5.00				
TRUCK DRIVERS	3.90				
WELDERS - RATE FOR CRAFT.					
POWER EQUIPMENT OPERATORS:					
BACKHOE	5.70				
BOB-CAT	5.70				
BULLDOZER	5.70				
CURB MACHINE	3.75				
FRONT END LOADER	5.70				
HI-LIFT	3.75				
MOTOR GRADER	5.70				
ROLLER	3.75				

MODIFICATIONS P. 1

DECISION NO. CA78-5006 - Mod. #3 (43 FR 3859 - January 27, 1978) San Diego County, California	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Painters:					
Brush; Pant Burners	$12.37	$1.23	$1.38	.75	.07
Paperhanger; Spray (swing Stage)	12.87	1.23	1.38	.75	.07
Brush (swing stage); Spray (swing stage)	12.62	1.23	1.38	.75	.07
Steeplejack	14.02	1.23	1.38	.75	.07
Iron, steel and bridge (ground) work and spray ground work	13.12	1.23	1.38	.75	.07
Iron, steel and bridge (swing stage and spray swing stage)	13.38	1.23	1.38	.75	.07

DECISION NO. CA78-5007 - Mod. #3 (43 FR 3863 - January 27, 1978) San Diego County, California					
Change:					
Brush; Paint Burners	12.37	1.23	1.38	.75	.07
Paperhanger; Spray (swing Stage)	12.87	1.23	1.38	.75	.07
Brush (swing stage); Spray (swing Stage)	12.62	1.23	1.38	.75	.07
Steeplejack	14.02	1.23	1.38	.75	.07
Iron, steel and bridge (ground work and spray ground work)	13.12	1.23	1.38	.75	.07
Iron, steel and bridge (swing stage and spray swing stage)	13.37	1.23	1.38	.75	.07

MODIFICATIONS P. 2

DECISION NO. CA78-5106 - Mod. #2 (43 FR 38273 - August 25, 1978) Alameda, Amador, Calaveras, Contra Costa, Del Norte, El Dorado, Humboldt, Marin, Mariposa, Merced, Monterey, Napa, Nevada, Placer, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Sutter, Tehama, Tuolumne; Yolo and Yuba Counties, California	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Painters:					
Alpine, Amador, Calaveras and San Joaquin Counties					
Brush	$10.56	$1.00	$2.34	$1.11	
Spray; Sheetrock Tapers; Swing Stage; Scaffold; Sandblaster; Structrual Steel	10.96	1.00	2.34	1.11	
Del Norte and Humboldt Cos.					
Brush	10.03	.85	1.05	.80	
Monterey, San Benito, San Mateo, Santa Clara and Santa Cruz Counties (excluding portions of the Lake Tahoe Area)					
Brush	13.29	1.20	1.75	.40	.06
Spray	13.79	1.20	1.75	.40	.06
Tapers	13.86	1.20	1.75	.40	.06
Sutter, Tehama and Yuba Cos.					
Brush; Pot Tender; Rollers	9.35	.80	.70		
Spray; Sandblasters; Structural Steel; Swing Stage; Tapers	9.60	.80	.70		
Marin, San Francisco and Sonoma Counties					
Brush	$13.06	$1.20	$1.75	.80	.06
Spray	13.56	1.20	1.75	.80	.06
Tapers	13.88	1.20	1.75	.80	.06
Alameda, Contra Costa, El Dorado, Napa, Nevada, Placer, Sacramento, Solano, and Yolo Counties (excluding portions of Counties in the Lake Tahoe Area)					
Brush	13.29	1.20	1.75	.80	.06
Spray	13.79	1.20	1.75	.80	.06
Tapers	14.09	1.20	1.75	.80	.06
Omit:					
Del Norte andHumboldt Cos.					
Spray; Sandblasters; Structural Steel; Swing Stage; Tapers; Paperhangers	7.80	.60	.20	.80	

DECISION NO. CA78-5107 - Mod. #5 (43 FR 29444 - July 7, 1978) Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Con Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba Counties, California	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Painters:					
Alpine, Amador, Calaveras and San Joaquin Counties					
Brush	$10.56	$1.00	$2.34	$1.11	
Spray; Sheetrock Taper; Swing Stage; Scaffold; Sandblaster Structural Steel	10.96	1.00	2.34	1.11	
Fresno, Kings, Madera and Tulare Counties					
Brush; Tapers	12.51	.61	.20		
Spray; Structural Steel	13.01	.61	.20		
Monterey, San Benito, San Mateo, Santa Clara and Santa Cruz Counties (excluding portions of Cos. in the Lake Area)					
Brush	13.29	1.20	1.75	.40	.06
Spray	13.79	1.20	1.75	.40	.06
Tapers	13.86	1.20	1.75	.40	.06
Lake, Marin, Mendocino, San Francisco and Sonoma Cos.					
Brush	13.06	1.20	1.75	.80	.06
Spray	13.56	1.20	1.75	.80	.06
Tapers	13.88	1.20	1.75	.80	.06

DECISION NO. CA78-5107 (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Butte, Coluas, Glenn, Lassen, (excluding the extreme SE Corner), Modoc, Plumas, Shasta, Siskiyou, Sutter, Tehama, Trinity, and Yuba Counties					
Brush; Pot Tenders; Rollers	$9.35	.85	.70		
Spray; Sandblaster; Structural Steel; Swing Stage; Tapers	9.60	.85	.70		
Alameda, Contra Costa, El Dorado, Napa, Nevada, Placer, and Yolo Counties (excluding portions of Counties in the Lake Tahoe Area)					
Brush	13.29	1.20	1.75	.80	.06
Spray	13.79	1.20	1.75	.80	.06
Tapers	14.09	1.20	1.75	.80	.06
Del Norte and Humboldt Cos.					
Brush	10.03	.85	1.05	.80	
Parking Lot Striping Work and/or Highway Markers:					
Fresno, Kings and Tulare Counties:					
Traffic delineating device applicator	10.12	.85	.45	b	
Wheel stop installer; Traffic surface sandblaster; Striper	9.73	.85	.45	b	
Helper (wheel stop installer, traffic surface sandblaster, striper)	7.43	.85	.45	b	
Slurry Seal Operation:					
Mixer Operator	9.73	.85	.45	b	
Squeegee Man	8.54	.85	.45	b	
Applicator Operator	8.54	.85	.45	b	
Shuttleman	8.54	.85	.45	b	
Top Man	7.00	.85	.45	b	

DECISION NO. CA78-5107 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Remaining Counties					
Traffic delineating device applicator; Wheel stop installer; Traffic surface sandblaster	$10.12	.85	.45	b	
Helper (traffic delineating device applicator; Wheel stop installer; Traffic surface sandblaster)	8.82	.85	.45	b	
Striper	11.22	.85	.45	b	
Helper (striper)	8.82	.85	.45	b	
Slurry Seal Operation:					
Mixer Operator	10.12	.85	.45	b	
Squeegee Man	8.54	.85	.45	b	
Applicator Operator	8.54	.85	.45	b	
Shuttleman	8.54	.85	.45	b	
Top Man	7.00	.85	.45	b	
Remaining Counties					
Footnote:					
b. Employer contributes $.30 per hour to Holiday Fund plus $.20 per hour to Vacation Fund for the first year of employment; 1 year but less than 5 years $.40 per hour to Vacation Fund; 5 years but less than 10 years $.66 per hour to Vacation Fund; over 10 yrs. $.80 per hout to Vacation Fund.					
Omit:					
Del Norte and Humboldt Cos. Spray; Sandblasters; Structural Steel; Swing Stage; Tapers; Paperhangers	7.80	.60	.20	.80	

DECISION NO. CA78-5122 - Mod. #5
(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:					
PAINTERS:					
Imperial, Orange, Riverside, Los Angeles (Pomona Area), San Bernardino (excluding Western portion):					
Brush; Paint Burners; Spray Paperhangers; Spray (swing stage	$12.37	1.23	1.38	.75	.07
Brush (swing stage)	12.87	1.23	1.38	.75	.07
Steeplejack	12.62	1.23	1.38	.75	.07
Iron, Steel and Spray (ground work)	14.02	1.23	1.38	.75	.07
Iron, Steel and Spray (swing stage)	13.12	1.23	1.38	.75	.07
Kern (Lancaster, Mojave, Palmdale, China Lake Naval Ordnance Test Station and Edwards AFB), Los Angeles (except Pomona Area), San Bernardino (west of a line North of Trono including China Lake Area, Johannesburg, Boron, South including the Wrightwood Area):	13.37	1.23	1.38	.75	.07
Brush	12.41	.71	.80	.60	.02
Paint burner	12.53	.71	.80	.60	.02
Tapers	13.35	.71	.80	.60	.02
Brush swing stage (13 stories or less); Paperhangers; Sandblasters; Spray Painter	12.66	.71	.80	.60	.02
Spray, Sandblaster swing stage (13 stories or less), Paste Machine; Special coating spray	12.91	.71	.80	.60	.02
Kern County (Remainder of Co.):					
Brush	9.68	.70	.90		.03
Brush or roller, swing stage Paperhangers, Taping joint Sheet Rock	10.28	.70	.90		.03
Spray, sandblasters	10.18	.70	.90		.03
San Luis Obispo, Santa Barbara and Ventura Counties:					
Brush; Pot Tender	$12.35	1.07	1.30		.03
Paperhangers; Paste Machine Operators; Iron and Steel	12.60	1.07	1.30		.03
Spray; Taper; Sandblaster	12.85	1.07	1.30		.03
Sign Painter	13.00	1.07	1.30		.03

DECISION NO. CA78-5123 - Mod.#6
(43 FR 36839 - August 18, 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:					
PAINTERS:					
Inyo, Kern (Lancaster, Mojave, Palmdale, China Lake Naval Ordnance Test Station and Edwards AFB), Los Angeles (except Pomona Area), Mono, San Bernardino (west of a line north of Trono including China Lake Area, Johannesburg, Boron, South including the Wrightwood Area)					
Brush	$12.41	.71	.80	.60	.02
Structural Steel and bridge; Paint burner	12.53	.71	.80	.60	.02
Tapers	13.35	.71	.80	.60	.02
Brush Swing Stage (13 stories or less); Paperhangers; sandblasters; Spray Painter	12.66	.71	.80	.60	.02
Brush Swing Stage (over 13 stories)	12.78	.71	.80	.60	.02
Structural steel and bridge, swing (13 stories or less)	12.81	.71	.80	.60	.02
Structural steel and bridge, swing (excess of 13 stories)	12.93	.71	.80	.60	.02
Spray Painter; Sandblaster, swing stage (excess of 13 stories)	13.03	.71	.80	.60	.02
Spray Painter; sandblaster, swing stage (13 stories or less); Paste machine; special coating spray	12.91	.71	.80	.60	.02
Steeplejack	13.65	.71	.80	.60	.02
Kern County (Remainder of County):					
Brush	9.68	.70	.90		.03
Brush or roller, swing stage; Paperhangers; Taping joint sheet rock	10.28	.70	.90		.03
Spray; sandblasters	10.18	.70	.90		.03
Steeplejack	11.18	.70	.90		.03
San Luis Obispo, Santa Barbara and Ventura Counties:					
Brush; Pot Tender	$12.35	1.07	1.30		.03
Paperhangers; Paste Machine operators; Iron and Steel	12.60	1.07	1.30		.03
Spray; Taper; Sandblasters	12.85	1.07	1.30		.03
Sign Painter	13.00	1.07	1.30		.03
Steeplejack	13.35	1.07	1.30		.03

DECISION NO. CT75-2067 - MOD #3
(40 FR 18304 - April 25, 1975),
Hartford County, Connecticut

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
RESIDENTIAL CONSTRUCTION:					
ELECTRICIANS:					
Berlin, Bristol, New Britain Newington, Plainville, Southington	$11.50	1.00	3%+.52		½%

DECISION NO. CT79-2010 - MOD #1
(44 FR 20913 - April 6, 1979)
Fairfield, Litchfield and Windham Counties, Connecticut

CHANGE:					
CARPENTERS; MILLWIGHTS; PILE-DRIVERMEN & SOFT FLOOR LAYERS (Building Construction)					
Fairfield Co.: Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull, Weston, & Westport	$10.70	.90	.65	c	e
Litchfield Co.: Harwinton, Plymouth, Thomaston, & Watertown	10.75	.90	.65		.05
CARPENTERS: (Heavy & Highway Construction):					
Windham Co.:	10.50	.90	.65	f	.03
ELECTRICIANS:					
Litchfield Co.: Plymouth Building Construction	11.50	1.00	3%+.52		½%
FOOTNOTES:					
e. $50.00 per year					
OMIT:					
CARPENTERS: (Building Construction):					
Fairfield Co.: Greenwich	10.10	.90	.65		.05
CARPENTERS: (Heavy & Highway Construction):					
Fairfield Co.: Greenwich	10.55	.85	.65	f	.05

DECISION NO. CT79-2011 - MOD #1
(44 FR 20921 - April 6, 1979)
Hartford, Middlesex, New Haven, New London and Tolland Counties, Connecticut

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS; MILLWRIGHTS; PILEDRIVERMEN.					
Floor Layers (Building Construction)					
Hartford Co.: New Britain, Newington, Berlin, Southington, Plainville, Burlington, Canton, Bristol, New Haven Co.: Meriden, Wallingford, New Haven, East Haven, Branford, Guilford, Madison, North Branford, North Haven, Hamden, West Haven, Orange (east of Orange Center Road and North of Route 1; also north of Route 1 and east of the Oyster River), Cheshire Waterbury, Wolcott, Middlebury, Southbury, Naugatuck, Prospect, Bethany Beacon Falls, Woodbridge; Middlesex Co.	$10.75	.90	.65		.05
New Haven Co.: Milford, Oxford, Derby, Seymour, Ansonia, Orange (that part south of Route 1 and West of the Oyster River	10.70	.90	.65	c	e
New London Co.: Tolland Co.: Mansfield, Union, Willington, Coventry, Hebron, Columbia, Andover	10.70	.90	.65		.03
CARPENTERS (Heavy & Highway Construction):					
New Haven Co.: Ansonia, Derby, Milford, Orange (W. of Orange Center Road & S. of Rt #1 & W. of the Oyster River), Oxford & Seymour	10.50	.90	.65	f	e

DECISION NO. CT79-2011 - MOD #1 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ELECTRICIANS:					
Hartford Co.: Berlin, Bristol, New Britain, Newington, Plainville & Southington	$11.50	1.00	3%+.52		½%
New Haven Co.: Remainder of Co.; New London Co.: E. Lyme, New London, Fishers Island Sound Old Lyme, Groton, Waterford & Ledyard (Submarine Based Only)	11.50	1.00	3%+.52		½%
Change Footnote e to read e. $50.00 per worker per year					
DECISION #FL79-1068 - Mod. #1 (44 FR 22309 - April 13, 1979) Cape Canaveral, Kennedy Space Flight Center, Patrick Air Force Base, and Melabar Radar Site, Florida					
CHANGES:					
BRICKLAYERS:					
Bricklayers	8.70	.50	.40		.03
Blocklayers	8.70	.50	.40		.03
Manhole bricklayers	8.70	.50	.40		.03
Plasterers	8.70	.50	.40		.03
Terrazzo workers	8.70	.50	.40		.03
Tile setters	8.70	.50	.40		.03
Cement masons	8.70	.50	.40		.03
Masonry cutting or grinding machine operator	8.95	.50	.40		.03
DECISION NO. OH78-2157 - MOD #3 (43 FR 55205 - November 24, 1978) Statewide, Ohio					
Omit:					
Linemen:					
Franklin County	$13.11	.50	3%		½%
Add:					
Line Construction:					
Franklin County					
Linemen; Cable splicers	10.88	.50	3%		½%
Operators:					
0 to ½ year	7.30	.50	3%		½%
½ to 1 year	8.52	.50	3%		½%
1 year or more	9.81	.50	3%		½%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #PA78-3054 - Mod. # 3 (43 FR 35868 - August 11, 1978) Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania					
Change:					
Landscaping:					
Landscape Laborer	$8.00	.95	.65	b	
Farm Tractor Driver	8.50	.95	.65	b	
Hydroseeder Nozleman	8.50	.95	.65	b	
Mulcher Nozzleman	8.50	.95	.65	b	
DECISION NO. RI78-3050 - MOD #4 (43 FR 31551 - July 21, 1978) Bristol, Kent, & Providence Counties, Rhode Island					
OMIT:					
Power Equipment Operators for Highway & Bridge Incidental To Highway Construction					
ADD:					
Power Equipment Operators for Water and Sewer line Projects, Highway and Bridge incidental to Highway Construction Projects					
CLASS 1	$10.845	.95	1.15		.10
CLASS 2	9.375	.95	1.15		.10
CLASS 3	8.125	.95	1.15		.10
CLASS 4	9.325	.95	1.15		.10
CLASS 5	9.575	.95	1.15		.10
CLASS 6	9.445	.95	1.15		.10
CLASS 7	9.425	.95	1.15		.10
CLASS 8	9.075	.95	1.15		.10
CLASS 9	8.945	.95	1.15		.10
CLASS 10	8.425	.95	1.15		.10
CLASS 11	8.225	.95	1.15		.10
CLASS 12	8.895	.95	1.15		.10
CLASS 13	8.225	.95	1.15		.10
CLASS 14	9.275	.95	1.15		.10

DECISION NO. RI78-3050 Cont'd

CLASS 1 - Digging machines, cranes, pile drivers, lighters, locomotives, derricks, hoists, pavers, front end loaders (3 to 4 yds. +), economobiles, Ross carriers

CLASS 2 - Firemen

CLASS 3 - Oilers

CLASS 4 - Bulldozers, spreaders, rollers, tractors

CLASS 5 - Front end loaders, less than 3 yds.

CLASS 6 - Scrapers, graders, dozer pusher operators

CLASS 7 - Pippin type backhoe operators

CLASS 8 - Maintenance engineers

CLASS 9 - Gas & Electric driven heaters, pumps, concrete mixers, stone crushers, air compressors, light plants, welding machines, concrete pumps

CLASS 10 - Mechanics

CLASS 11 - Bulldozers in pits

CLASS 12 - Shovel operators, front end loaders 3 cu. yds. & over, dragline & crane operators in material yds.

CLASS 13 - Test boring machine operators

CLASS 14 - Well point installation crews

DECISION NO. RI78-3051 - MOD #5
(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.
OMIT:					
Power Equipment Operators for Highway & Bridge Incidental To Highway Construction					
ADD:					
Power Equipment Operators for Water and Sewer line Projects, Highway and Bridge incidental to Highway Construction Projects					
CLASS 1	$10.845	.95	1.15		.10
CLASS 2	9.375	.95	1.15		.10
CLASS 3	8.125	.95	1.15		.10
CLASS 4	9.325	.95	1.15		.10
CLASS 5	9.575	.95	1.15		.10
CLASS 6	9.445	.95	1.15		.10
CLASS 7	9.425	.95	1.15		.10
CLASS 8	9.075	.95	1.15		.10
CLASS 9	8.945	.95	1.15		.10
CLASS 10	8.425	.95	1.15		.10
CLASS 11	8.225	.95	1.15		.10
CLASS 12	8.895	.95	1.15		.10
CLASS 13	8.225	.95	1.15		.10
CLASS 14	9.275	.95	1.15		.10

DECISION NO. RI78-3051 Cont'd

CLASS 1 - Digging machines, cranes, pile drivers, lighters, locomotives, derricks, hoists, pavers, front end loaders (3 to 4 yds. +), economobiles, Ross carriers

CLASS 2 - Firemen

CLASS 3 - Oilers

CLASS 4 - Bulldozers, spreaders, rollers, tractors

CLASS 5 - Front end loaders, less than 3 yds.

CLASS 6 - Scrapers, graders, dozer pusher operators

CLASS 7 - Pippin type backhoe operators

CLASS 8 - Maintenance engineers

CLASS 9 - Gas & Electric driven heaters, pumps, concrete mixers, stone crushers, air compressors, light plants, welding machines, concrete pumps

CLASS 10 - Mechanics

CLASS 11 - Bulldozers in pits

CLASS 12 - Shovel operators, front end loaders 3 cu. yds. & over, dragline & crane operators in material yds.

CLASS 13 - Test boring machine operators

CLASS 14 - Well point installation crews

DECISION NO. RI78-3052 - MOD # 4
(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.
OMIT:					
Power Equipment Operators for Highway & Bridge Incidental To Highway Construction					
ADD:					
Power Equipment Operators for Water and Sewer line Projects, Highway and Bridge incidental to Highway Construction Projects					
CLASS 1	$10.845	.95	1.15		.10
CLASS 2	9.375	.95	1.15		.10
CLASS 3	8.125	.95	1.15		.10
CLASS 4	9.325	.95	1.15		.10
CLASS 5	9.575	.95	1.15		.10
CLASS 6	9.445	.95	1.15		.10
CLASS 7	9.425	.95	1.15		.10
CLASS 8	9.075	.95	1.15		.10
CLASS 9	8.945	.95	1.15		.10
CLASS 10	8.425	.95	1.15		.10
CLASS 11	8.225	.95	1.15		.10
CLASS 12	8.895	.95	1.15		.10
CLASS 13	8.225	.95	1.15		.10
CLASS 14	9.275	.95	1.15		.10

DECISION NO. RI78-3052 - Cont'd

CLASS 1 - Digging machines, cranes, pile drivers, lighters, locomotives, derricks, hoists, pavers, front end loaders (3 to 4 yds. +), economobiles, Ross carriers

CLASS 2 - Firemen

CLASS 3 - Oilers

CLASS 4 - Bulldozers, spreaders, rollers, tractors

CLASS 5 - Front end loaders, less than 3 yds.

CLASS 6 - Scrapers, graders, dozer pusher operators

CLASS 7 - Pippin type backhoe operators

CLASS 8 - Maintenance engineers

CLASS 9 - Gas & Electric driven heaters, pumps, concrete mixers, stone crushers, air compressors, light plants, welding machines, concrete pumps

CLASS 10 - Mechanics

CLASS 11 - Bulldozers in pits

CLASS 12 - Shovel operators, front end loaders 3 cu. yds. & over, dragline & crane operators in material yds.

CLASS 13 - Test boring machine operators

CLASS 14 - Well point installation crews

SUPERSEDEAS DECISION

STATE: Pennsylvania
DECISION NO.: PA79-3008

COUNTIES: Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County

DATE: Date of Publication

Supersedes Decision No. PA77-3122 dated September 9, 1977 in 42 FR 45614.

DESCRIPTION OF WORK: Building Erection and Foundation Excavation Project, (does not include 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	10.76	.67	.90		.01
Boilermakers	13.775	1.075	1.00		.02
Bricklayers & Block Layers	10.07	.60	.57		.01
Carpenters	10.30	.50	.55		.05
Cement Masons	10.465	.65	.50		
Electricians	10.86	.65	3%+.49		½ of 1%
Elevator Constructors	10.895	.745	.56	b+c	.015
Elevator Constructors' Helpers	7.63	.745	.56	b+c	.015
Elevator Constructors' Helpers (Prob.)	5.45				
Glaziers	9.79	.40	.50		.01
Ironworkers, Structural	11.48	1.14	1.35		.03
Ironworkers, Ornamental	11.48	1.14	1.35		.03
Ironworkers, Reinforcing	11.48	1.14	1.35		.03
Laborers:					
Air, fuel and electric tool operators and all other pneumatic and mechanical tools including blow-pipe and vacuum cleaners, pipelayers, power-buggy, precast slab placers and signal men	8.05	.35	.40		
Unskilled laborer	7.90	.35	.40		
Plaster and cement mason tenders, machine mixers, plaster pump and scaffold builders (excluding masonry scaffolding) for cassion workers, blasters, wagon air track and diamond point drill operators, burning torches, green cutting machine and steam jenny	8.37	.35	.40		
Mason tenders, machine mixers, motorized stockers, scaffold builders (masonry), mortar pump, conveyors, mechanical cleaners and sandblasting for masonry and masonry equipment	8.47	.35	.40		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers: (Cont'd)					
Nursery workers, window washers floor scrubbers and watchmen	7.55	.35	.40		
Lathers	10.11	.40	.25		.01
Lead Burners	10.75	.40	.25	a	.01
Marble Setters	10.28	.60	.57		
Millwrights	11.45	.50	.55		.05
Line Construction:					
Linemen	11.39	.45	3%		3/8%
Groundmen	6.83	.45	3%		3/8%
Cable Splicers	11.39	.45	3%		3/8%
Winch Truck Operator	7.97	.45	3%		3/8%
Painters:					
Brush	9.15	.32	.30		.02
Structural Steel	9.60	.32	.30		.02
Spray	9.90	.32	.30		.02
Tanks, Bridges, Stacks	10.40	.32	.30		.02
Piledrivermen	11.12	2.33	1.35	f	.12
Plasterers	9.60	.65	.50		.01
Plumbers	11.30	.70	.80		.12
Roofers:					
Composition	10.41	.80	.55		
Sheet Metal Workers	10.47	1.40	1.18		.13
Soft Floor Layers	9.20	.50	.55		.05
Sprinkler Fitters	12.31	.75	1.05		.08
Steam Fitters	11.30	.70	.80		.12
Stone Masons	10.07	.60	.57		
Terrazzo Workers & Tile Setters	9.03	.60	.57		
Truck Drivers:					
Truck Drivers, Building Pick-ups, dump, service trucks, flat trucks, to and including Z highway license plates	8.39	d	e		
Transit mix, winch trucks, tractors all types euclids, ross lumber and over Z plates	8.64	d	e		
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. Eight paid holidays, A through F and Washington's Birthday, Good Friday and Christmas Eve provided the employee has worked 45 full days prior to the holiday, and is available for work the days preceding and following the holiday.

b. 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.

c. Paid Holidays: A through F, plus the Friday after Thanksgiving Day.

d. $71.37 per month for employees who have worked sixty hours or more during the month.

e. $41.95 per month for employees who have workerd sixty hours or more during the month.

f. Paid Holidays: Washington's Birthday; Good Friday; Memorial Day; Labor Day; Presidential Election Day; Veteran's Day and Thanksgiving Day

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr
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%

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 3-½ c.y. and over, tandem scrapers, pippin type backhoes, boat Captains, batch plant operators (concrete) drills, self-contained rotary drills, fork lifts, 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 3-½ 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 points, compressors, pumps, heaters, farm tractors, form line graders, fine grade machines, road finishing machines, concrete breaking machines, rollers, seaman pulverizing mixer, power broom, seeding spreader, tireman (for power equipment), machines similar to above

GROUP 5: Fireman, grease truck

GROUP 6: Oilers and deck hands (personnel boats), core drill helper

GROUP 7: All machines with booms (including jib, masts, leads, etc.): 100 ft. and over

GROUP 7-A: 150 ft. and over

GROUP 7-B: 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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Part V

Securities and Exchange Commission

Securities Trading Practices of Registered Investment Companies

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 271

Securities Trading Practices of Registered Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: General Statement of Policy.

SUMMARY: The Securities and Exchange Commission announces a general statement of policy with regard to the economic effects and legal implications under the Investment Company Act of 1940 of reverse repurchase agreements, firm commitment agreements, and standby commitment agreements entered into by registered investment companies. Further, the Commission announces the views of the Division of Investment Management regarding repurchase agreements entered into by registered investment companies with broker/dealers.

EFFECTIVE DATE: April 18, 1979.

FOR FURTHER INFORMATION CONTACT: Joseph D. Carney, Esq. (202) 755–1753, Richard G. Partrich, Esq. (202) 376–8048, Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today announced a general statement of policy under the Investment Company Act of 1940 [15 U.S.C. 80a *et seq.*] ("Act") regarding the effect on the capital structure of registered investment companies of certain securities trading practices known as the reverse repurchase agreement, the firm commitment agreement, and the standby commitment agreement. Such practices may involve the issuance by the investment company of a senior security subject to the prohibitions and asset coverage requirements of Section 18 of the Act [15 U.S.C. 80a–18]. The board of directors of each registered investment company should review present securities trading practices to determine if the investment company is involved in any of the practices under discussion, or in similar trading practices with comparable effects on the capital structure of the investment company. Directors of investment companies, in the exercise of their general fiduciary obligations under the Act, should consider whether the investment company has appropriately segregated assets in a manner which would satisfy the legislative purposes of Section 18 of the Act. If an investment company is involved in such securities trading practices, the directors should review the adequacy of the investment company's disclosure of its participation therein, and the risks of loss to the investment company and its shareholders which may result from such securities trading practices. Directors should review also the adequacy of their valuation of, and accounting for, such transactions. Directors should further determine whether such trading practices, because of their inherent risk, are consistent with the policies of the investment company as recited in its registration statement, or cause its name to be deceptive or misleading.

In addition, the Commission is publishing the views of its Division of Investment Management ("Division"), which has reconsidered its prior position that, pursuant to Section 12(d)(3) of the Act [15 U.S.C. 80a–12(d)(3)], an investment company may be prohibited from entering into a repurchase agreement with a broker/dealer. Under certain circumstances, the Division has determined not to recommend to the Commission that action be taken under Section 12(d)(3) of the Act against investment companies which engage in repurchase agreements with broker/dealers.

Although the general statement of policy discusses securities trading practices of open-end investment companies and uses specific types of U.S. government guaranteed securities as examples, it is intended to address the use by all registered investment companies of similar trading practices involving all types of securities.

Background

Section 18(f)(1) of the Act [15 U.S.C. 80a–18(f)(1)] provides, in part, that it shall be unlawful for any registered open-end investment company ("investment company") to issue any class of senior security or to sell any senior security of which it is the issuer, except that the investment company shall be permitted to borrow from any bank, provided that immediately after any such borrowing there shall be an asset coverage of at least 300 per centum for all borrowings of the investment company as computed under Section 18(h) of the Act [15 U.S.C. 80a–18(h)]. Section 18(g) of the Act [15 U.S.C. 80a–18(g)] defines "senior security" to means, in part, "any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness." Section 2(a)(36) of the Act [15 U.S.C. 80a–2(a)(36)] defines "security" to mean, in part, "any note, stock, treasury stock, debenture, evidence of indebtedness, . . . or, in general, any interest or instrument commonly known as a 'security.' "

In this statement of policy, the Commission is expressing its views only with regard to those securities trading practices under discussion in view of the unique legislative purposes and policies underlying Section 18 of the Act, and not generally with respect to the definition of security or to particular types of securities within that definition. However, if an investment company were to issue a security which affected its capital structure in a manner analogous to the agreements discussed herein, and barring other material differences, the Commission believes it would view that transaction from a similar analytical posture. Nonetheless, this general statement of policy with respect to Section 18 of the Act should not be read as stating any opinion as to whether the securities trading practices under discussion would constitute the issuance of securities for purposes of the Securities Act of 1933 [15 U.S.C. 77a, *et seq.*], the Securities Exchange Act of 1934 [15 U.S.C. 78a, *et seq.*], or the other federal securities laws.

Areas of Concern

The Commission has become aware of certain securities trading practices engaged in by investment companies which raise serious questions as to whether such practices involve the issuance of senior securities by the investment companies and, thus, are either prohibited by, or subject to the asset coverage requirement of, Section 18(f)(1).[1]

The securities trading practices which concern the Commission are generally known as the reverse repurchase agreement, the firm commitment agreement, and the standby commitment agreement. Often, the underlying securities involved in these agreements are guaranteed as to payment of principal and interest by the U.S. government, its agencies, or federally sponsored quasi-public corporations, e.g., modified pass through securities guaranteed by the Government National

[1] This release suggests an analysis of and some limitations upon certain securities trading practices of open-end investment companies. These practices may have similar effects on closed-end investment companies, which also are subject to restrictions on their capital structures under Section 18. For example, Section 18(a) of the Act [15 U.S.C. 80a–18(a)] makes it unlawful for a closed-end investment company to issue senior securities unless asset coverage and other requirements are met. Therefore, as the circumstances require, the analysis and recommendations contained in this release are addressed also to directors of closed-end investment companies.

Mortgage Association ("Ginnie Maes"). In the following discussion of these transactions, reference to "Ginnie Maes" is made only to serve as an example of the underlying security, and such reference should not be construed as delimiting this statement. Rather, this release is intended to illustrate the Commission's concern with the possible economic effects and legal implications of the securities trading practices herein discussed, regardless of whether the underlying securities are U.S. government obligations, government agency obligations, or other types of securities. Furthermore, because such types of securities trading practices are subject to innumerable variations, this release is intended to address generally the possible economic effects and legal implications of all comparable trading practices which may affect the capital structure of investment companies in a manner analogous to the securities trading practices specifically discussed herein.

The Commission recommends that each investment company board of directors review its present securities trading practices to determine if the investment company is involved in the practices under discussion, or in other trading practices with comparable effects on the capital structure of the investment company.

Reverse Repurchase Agreements

In a typical investment company reverse repurchase agreement,[2] an investment company is the record owner of a Ginnie Mae. The investment company transfers possession of the Ginnie Mae to another party (often a broker/dealer or a bank) in return for a percentage of the value of the Ginnie Mae, usually 90–97% [3] of its market value ("proceeds"), but retains record ownership and the right to receive interest and principal payments on the Ginnie Mae. At an agreed upon future date, the investment company repurchases the Ginnie Mae so transferred by remitting the proceeds plus interest. In a "continuing contract" agreement, there is no agreed upon repurchase date; during its existence, the agreement is treated as if it were reestablished each day. When the agreement takes such form, interest payments are calculated daily and often are based on the prevailing overnight repurchase rate. The flexible maturities of the agreements, as short as one business day or as long as desired by the parties, make them attractive investment and borrowing tools for both parties to the transaction.

The Commission believes that, in economic reality, the reverse repurchase transaction is a loan to an investment company by the other party, collateralized by the security, because all of the incidents of ownership of the security are retained by the investment company. Furthermore, even if the form of the transaction were altered to reflect more closely an actual sale and repurchase of a Ginnie Mae instead of a transfer of a security in conjunction with a loan, the proceeds of the initial sale would still be considered to be a borrowing by the investment company under Section 2(a)(23) of the Act [15 U.S.C. 80a–2(a)(23)], which defines "lend" to include "a purchase coupled with an agreement by the vendor to repurchase" and defines "borrow" to include "a sale coupled with a similar agreement."

Investment companies may choose to engage in reverse repurchase agreements for two reasons. First, reverse repurchase agreements could be used to finance the purchase of interest bearing securities, allowing the investment company to derive income from the interest rate differential between the cost of borrowing and the return on the security purchase with the proceeds. For example, an investment company would purchase a Ginnie Mae. On settlement date, it would enter into a reverse repurchase agreement with the seller of the Ginnie Mae, and use the proceeds obtained from the reverse repurchase agreement to reduce the amount owed on the purchase. The investment company could thereby complete the purchase of the security by investing cash amounting to only 3–10% (typically) of the value of the security. The investment company's objective would be, then, to realize net income on the differential between the yield it would receive from the Ginnie Mae and the interest it would pay for the use of the proceeds.

Second, an investment company could enter into a reverse repurchase agreement with a Ginnie Mae it already owns. By so doing, it would obtain additional cash to invest in other securities. In such a case, the investment company's objective would be, then, to obtain funds to pursue additional investment opportunities whose yield would exceed the carrying cost of the proceeds of the reverse repurchase agreement.

In each of the above circumstances, the reverse repurchase agreement entered into by the investment company constitutes a borrowing by the investment company and, concurrently, may involve the issuance by it of an evidence of indebtedness. Section 2(a)(36) of the Act defines "security" to include any "evidence of indebtedness". Thus, an investment company which enters into a reverse repurchase agreement may be involved in the issuance of a security which, in turn, may be a senior security as defined in Section 18(g) of the Act. This view is further supported by Section 18(f)(1) which, by implication, treats all borrowings as senior securities. Section 18(f)(1) of the Act prohibits such borrowings unless entered into with banks and only if there is 300% asset coverage on all borrowings of the investment company.

The legislative history of the Act indicates that Congress intended Section 18, *inter alia*, to limit increases in the speculative character of junior securities issued by investment companies.[4] Leveraging [5] of an investment company's portfolio through the issuance of senior securities and through borrowing magnifies the potential for gain or loss on monies invested and, therefore, results in an increase in the speculative character of the investment company's outstanding securities. Leveraging without any significant limitation was identified by the staff of the Investment Trust Study of 1939 and by the investment company industry as one of the major abuses of investment companies prior to the passage of the Act by Congress.[6] Absent

[2] As the terms are used herein, in a reverse repurchase agreement, the investment company borrows money; in a repurchase agreement, the investment company lends money. In the marketplace, various terms are used to describe reverse repurchase and repurchase agreements, including "reverse repo," "repo" and "buy back."

[3] This percentage is subject to negotiation and can exceed 100%. Because, however, the proceeds typically are less than the current market value of the security, the latter overcollateralizes the loan, giving the lender added protection in the event of default.

[4] See memorandum entitled "Provisions of the Proposed Bill Relating to Capital Structure (Sections 18, 19(b) and 21(c))," introduced by L.M.C. Smith (Associate Counsel, Investment Trust Study, Securities and Exchange Commission), *Hearings on S. 3580 before a Subcommittee of the Senate Committee on Banking and Currency*, 76th Congress, 3rd Sess. at 1025 (1940) (herinafter cited as "Senate Hearings").

[5] Leverage exists when an investor achieves the right to a return on a capital base that exceeds the investment which he has personally contributed to the entity or instrument achieving a return. See Senate Hearings at 240. Through a reverse repurchase agreement, an investment company can achieve a return on a very large capital base relative to its cash contribution. Therefore, the reverse repurchase agreement is a highly leveraged transaction.

[6] "The conclusion to be drawn from the operation of the principle of leverage and from these statistics is that the common stock of leverage investment companies is so fraught with danger to the investor and so hazardous a commodity that it is definitely inappropriate as an offering of a public investment

Footnotes continued on next page

regulation under Section 18 of the Act, an investment company potentially could pyramid leveragings by entering into reverse repurchase agreements using securities purchased with the proceeds of earlier reverse repurchase agreements.[7] Pyramiding through the reverse repurchase technique can substantially magnify the risk of investing in, or holding shares of, the investment company; while net assets remain the same, total risk to investors increases commensurate with the increase in gross assets.

It appears that, if investment company participation in reverse repurchase agreements is not subject to limitation, one of the important policies underlying Section 18 would be rendered substantially nugatory. Directors of investment companies should consider the Congressional purpose behind Section 18 and, additionally, the Congressional concerns articulated in Sections 1(b)(3), 1(b)(7), and 1(b)(8) of the Act [15 U.S.C. 80a–1(b)(3), 1(b)(7), 1(b)(8)] in considering whether the securities trading practices of the investment company involved, including reverse repurchase agreements, constitute the issuance of senior securities by the investment company.[8] Directors should consider also whether the investment company engages in similar securities trading practices, not specifically the subject of this release, which have comparable leveraging effects on the capital structure of the investment company.

Exclusion for Temporary Borrowing

Section 18(g) of the Act provides an exclusion from the definition of "senior security" for certain privately arranged loans for temporary purposes.[9] The section states that loans repaid within sixty days shall be presumed to have been made for temporary purposes if not extended or renewed. Although neither "extension" nor "renewal" is defined in the Act, the Commission believes that an extension or renewal would include any substantially similar temporary loan entered into within sixty days of the previous temporary loan, whether or not both loans were made with the same lender. Thus, both loans might fall outside that exclusion from the definition of senior security.

Reverse repurchase agreements could be designed to appear to fall within the exclusion from the definition of senior security for temporary loans created for less than sixty days. Such agreements could then be "rolled-over," perhaps indefinitely, with such short-term borrowings being entered into, closed out, and later re-entered. If substantially similar "temporary loans" were being "rolled over" in any manner for a total period of sixty days or more, the later loans would be treated as renewals of the earlier loan and, thus, all would fall outside the exclusion for "temporary loans."

Firm Commitment Agreements

The firm commitment agreement [10] is a buy order for delayed delivery [11] in which an investment company agrees to purchase a Ginnie Mae from a seller (usually a broker/dealer) at a future date, stated price, and fixed yield.[12] The agreement binds the seller as to delivery and binds the investment company as to acceptance. Agreements frequently permit substitution of a different Ginnie Mae with a stated yield different from the contract rate, so long as there is an appropriate adjustment to the purchase price that results in a yield to expected maturity equal to the yield originally committed. In general, no fee is required to be paid at the time of entering into Ginnie Mae firm commitment agreements.

The value of fixed yield Ginnie Maes to be delivered in the future will fluctuate as interest rates vary. Because of the effect that interest rate changes have on such securities in the marketplace, even before delivery of a Ginnie Mae, the firm commitment contract may represent an unrealized gain or loss on the security to be delivered. On or before settlement date, the investment company generally has the option of closing out the purchase obligation, rather than purchasing the security, by assigning the contract. For example, in a falling interest rate market the investment company could sell the firm commitment agreement for immediate profit. Conversely, in a rising interest rate market the investment company could assign the firm commitment, prior to the settlement date, and accept an immediate loss, measured by the amount the investment company would be required to pay to the purchaser to accept the assignment or to the seller to forgo its rights under the contract. If a firm commitment is held until settlement, the investment company, in purchasing the Ginnie Mae, will pay the commitment price regardless of the current market value of the Ginnie Mae.

Whether or not a firm commitment is held until settlement, it creates the potential for profit or loss without any investment because interest rate changes in the marketplace affect the value of the security to be delivered. In economic reality, this can be characterized as unlimited leverage.[13]

Footnotes continued from last page
institution, especially upon consideration of the sales emphasis of investment companies upon the savings and investment character of the securities of such companies." Senate Hearings at 1029.

[7] Leverage through reverse repurchase agreements creates the risk of magnified capital losses which occur when losses affect an asset base, enlarged by borrowing, that exceeds the equity base of the investment company. Pyramiding of reverse repurchase agreements requires the investment company to seek investments which can produce income sufficient to cover fixed interest charges on the proceeds. This situation may result in unusual pressure on investment company management to find investments with sufficient yield without regard to their quality or suitability for the investment company. This same pressure existed where multiple layers of preferred stock were issued by investment companies prior to the passage of the Act. See Senate Hearings at 1038.

[8] Sections 1(b)(3), 1(b)(7), and 1(b)(8) of the Act declare, in part, that the national public interest and the interest of investors are adversely affected: when investment companies fail to protect the preferences and privileges of the holders of their outstanding securities; when investment companies, by excessive borrowing and the issuance of excessive amounts of senior securities, increase unduly the speculative character of their junior securities; and when investment companies operate without adequate assets or reserves.

[9] Section 18(g) provides, in part, that senior security "when used in this section 18 [shall not] include any such promissory note or other evidence of indebtedness in any case where such a loan is for temporary purposes only and in amount not exceeding 5 per centum of the value of the total assets of the issuer at the time when the loan is made. A loan shall be presumed to be for temporary purposes if it is repaid within sixty days and is not extended or renewed; otherwise it shall be presumed not to be for temporary purposes. Any such presumption may be rebutted by evidence."

[10] The firm commitment is known by other names such as a "forward contract," a "when-issued security," a "mandatory," or, if delivery is called for within 30 days, an "immediate."

[11] The Commission recognizes that, for example, in the ordinary purchase of equity securities there is often a delay of a few days between the purchase of the security, and clearance and settlement. This general statement of policy respecting Section 18 of the Act is not intended to address arrangements involving the purchase of equity securities where the delay in delivery involves, for example, only the brief period usually required by the selling party and its agent solely to locate appropriate stock certificates and prepare them for submission for clearance and settlement in the customary way.

[12] Commitments to purchase securities whose yields are determined on the date of delivery with reference to prevailing market interest rates are not intended to be included in this general statement of policy. Such commitments neither create nor shift the risk associated with interest rate changes in the marketplace, and in economic reality have no discernible potential for leverage.

[13] Because most traditional leveraging techniques require some cash investment, an investor's ability to leverage is limited by available cash. Firm commitments require no cash investment, which removes the most significant restriction on the increasing use of leverage. The degree of leverage is often measured by the ratio between the additional cash upon which the investor receives a right to a return and the investor's own cash investment. If the investor puts up nothing, leverage cannot be measured in ratio terms, and therefore can be said to be unlimited or infinite.

Exposure of an investment company's assets to risk of loss is borne proportionately by all the securities issued by the investment company, so that the speculative character of such securities in the hands of investors increases as the investment company enters into increasing numbers of firm commitment agreements.

An investment company's participation in a firm commitment agreement may involve the issuance of a security by the investment company. Section 2(a)(36) of the Act defines the term "security" to mean any evidence of indebtedness. Because a firm commitment is an obligation to pay in the future for consideration presently received, it may involve the issuance of an evidence of indebtedness by the investment company. Thus, if a firm commitment agreement is a security, because it evidences an indebtedness of the investment company, it also may be a senior security as defined in Section 18(g) of the Act, and an investment company entering into such agreements may be in violation of Section 18(f)(1).

Standby Commitment Agreements

The standby commitment agreement is a delayed delivery agreement in which the investment company contractually binds itself to accept delivery of a Ginnie Mae with a stated price and fixed yield upon the exercise of an option held by the other party to the agreement at a stated future date. The investment company receives an individually negotiated, non-refundable commitment fee in consideration for its agreement to "standby" to purchase the Ginnie Mae. The Commission believes that the standby commitment agreement involves, in economic reality, the issuance and sale by the investment company of a "put."

If an investment company is successful in predicting interest rate movements, the standby commitment agreement may be used by an investment company to earn commitment fee revenues without investment or cost. For example, if an investment company entered a standby commitment and interest rates in the marketplace declined, the broker/dealer (who paid the fee) would retain the security stated in the agreement, or sell it to a third party at the current market price. The contract would be allowed to lapse and the investment company would have earned its fee without investment or cost.

The standby commitment agreement creates a risk of loss to the investment company and its shareholers well in excess of the commitment fees the investment company would receive as consideration for entering into the agreement. The market value of a Ginnie Mae, which often has a face value in excess of $1,000,000, will be materially affected when even slight changes occur in the current market interest rate. For example, if interest rates in the marketplace increase after the agreement is made, it is likely that the contract price on the delivery date will exceed the then current market value of the Ginnie Mae. The broker/dealer can be expected to exercise its option and, in effect, pass the decline in the value of the Ginnie Mae to the investment company. That decline in value may significantly exceed the fee received by the investment company for entering into the agreement.

An investment company's participation in a standby commitment agreement may involve the issuance of a security by the investment company. Section 2(a)(36) of the Act defines the term "security" to mean any "evidence of indebtedness" and "any interest or instrument commonly known as a 'security.'" Because a standby commitment agreement is a contingent obligation to pay in the future for consideration presently received, it may involve an issuance of an evidence of indebtedness by the investment company. Furthermore, as noted, the standby commitment is or at least closely resembles a "put" which is generally regarded as a security and is included within the definition of security in Section 2(a)(36). Thus, a standby commitment agreement may be considered a security under either or both of these theories and, further, a contingent evidence of indebtedness of the investment company. Therefore, an investment company involved in standby commitment agreements, if they are senior securities as defined by Section 18(g) of the Act, may be in violation of Section 18(f)(1) of the Act.

The Agreements as Securities

The Commission believes that reverse repurchase agreements, firm commitment agreements, and standby commitment agreements fall within the functional meaning [14] of the term "evidence of indebtedness" for purposes of Section 18 of the Act. Generally, included within it would be all contractual obligations to pay in the future for consideration presently received; the term would not be limited to notes or other acknowledgments of debt. The Commission's views are based not so much on the conclusion that reverse repurchase agreements and firm commitment agreements, considered in isolation, are inherently securities for all purposes, but more upon the proposition that trading practices involving the use by investment companies of such agreements for speculative purposes or to accomplish leveraging fall within the legislative purposes of Section 18.

The Commission has reviewed the legislative history and the Congressional intent underlying the Act. In light of the concerns discussed therein, the Commission believes that its construction of "evidence of indebtedness" in Section 2(a)(36) of the Act, for purposes of Section 18 of the Act, is reasonable because the fundamental economic nature of reverse repurchase, firm commitment, and standby commitment agreements is such that each poses a risk of loss to an investment company analogous to the danger caused by leverage, which is discussed throughout the legislative history of the Act. The Commission believes that the agreements being considered cannot be viewed merely as contracts for the acquisition of the underlying securities; rather, the agreements are securities separate from the underlying Ginnie Maes. The decision to enter into such agreements involves considerations and determinations which are separate and distinct from those involved in the purchase of Ginnie Maes. A Ginnie Mae, because of its government guarantee, is viewed as a low risk investment. Each of the reverse repurchase agreement, firm commitment agreement, and standby commitment agreement may be a substantially higher risk investment because of the additional risk of loss created by the substantial leveraging in each agreement, and in light of the volatility of interest rates in the marketplace. The gains and losses from the transactions can be extremely large relative to invested capital; for this reason, each agreement has speculative aspects. Therefore, it would appear that the independent investment decisions involved in entering into such agreements, which focus on their distinct risk/return characteristics, indicate that, economically as well as legally, the agreements should be treated as securities separate from the underlying Ginnie Maes for purposes of Section 18 of the Act.

Segregated Account

In circumstances involving similar economic effects, such as short sales of securities by investment companies, the

[14] "The starting point in every case involving the construction of a statute is the language itself." *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1976).

Division of Investment Management has determined that the issue of compliance with Section 18 will not be raised with the Commission by the Division if the investment company "covers" the senior security by establishing and maintaining certain "segregated accounts."[15] The Commission agrees that segregated accounts, if properly created and maintained, would limit the investment company's risk of loss. The board of directors of an investment company which is engaged in reverse repurchase agreements, firm commitment agreements or standby commitment agreements should review the investment company's portfolio and custodial accounts to determine if any segregated accounts with the company's custodian have been, or should be, created.

A segregated account freezes certain assets of the investment company and renders such assets unavailable for sale or other disposition. If an investment company continues to engage in the described securities trading practices and properly segregates assets, the segregated account will function as a practical limit on the amount of leverage which the investment company may undertake and on the potential increase in the speculative character of its outstanding common stock. Additionally, such accounts will assure the availability of adequate funds to meet the obligations arising from such activities.

The Commission believes that only liquid assets, such as cash, U.S. government securities or other appropriate high grade debt obligations, should be placed in such segregated accounts. Segregated assets may be replaced by other appropriate non-segregated assets of equal value. The value of U.S. government securities or other assets in an account should be marked to the market daily, and additional assets should be placed in the segregated account whenever the total value of the account falls below that amount described in the following guidelines. With respect to the segregation of assets, the Commission recommends:

(1) With regard to each reverse repurchase agreement which lacks a specified repurchase price, the investment company should maintain in a segregated account (not with a broker), beginning on the date the investment company enters into the reverse repurchase agreement, liquid assets equal in value to the proceeds received on any sale subject to repurchase plus accrued interest. If the reverse repurchase agreement has a specified repurchase price, the investment company should maintain in the segregated account an amount equal to the repurchase price, which price will already include interest charges.

(2) With regard to each firm commitment agreement the investment company should maintain in a segregated account (not with a broker), beginning on the date the investment company enters into the firm commitment agreement, liquid assets equal in value to the purchase price due on the settlement date under the firm commitment agreement.

(3) With regard to each standby commitment agreement, the investment company should maintain in a segregated account (not with a broker), beginning on the date the investment company enters into the standby commitment agreement, liquid assets equal in value to the purchase price under the standby commitment agreement.

Directors should note that, as asset segregation reaches certain levels, an investment company may impair its ability to meet current obligations, to honor requests for redemption, and to manage properly the investment portfolio in a manner consistent with its stated investment objectives. For example, in an extreme case an investment company which has segregated all its liquid assets might be forced to sell non-segregated portfolio securities to meet its obligations upon shareholder requests for redemption. Such forced sales could cause an investment company to sell securities which it wanted to retain or to realize gains or losses which it did not originally intend. Therefore, directors should consider such potential loss of flexibility when determining the extent to which the investment company should engage in such transactions.

Investment Company Policies

Sections 8(b) (1), (2) and (3) of the Act [15 U.S.C. 80a–8(b)(1), 8(b)(2), 8(b)(3)] provide, in part, that every investment company shall file with the Commission recitals of its policies with respect to certain specified activities including the borrowing of money and the issuance of senior securities, certain investment policies that are changeable only if authorized by shareholder vote, and certain policies which the registrant deems fundamental. Sections 13(a) (2) and (3) [15 U.S.C. 80a–13(a)(2), 13(a)(3)] provide, in part, that no investment company, unless authorized by the vote of a majority of its outstanding voting securities, shall borrow money or issue senior securities except in accordance with the recitals of policy contained in its registration statement or deviate from any fundamental policy or any investment policy which is changeable only if authorized by a shareholder vote.

To ensure compliance with Section 13 of the Act, directors of an investment company should determine whether the securities trading practices of the investment company are consistent with the policies recited pursuant to Section 8(b) of the Act. Directors should consider whether the investment company has designated the preservation of capital or the growth of capital through "conservative" investment strategies as a fundamental policy or a policy changeable only by shareholder vote. If so, it may be inappropriate for the investment company to engage to a material extent in the securities trading practices which have been discussed above.

Valuation and Accounting

The securities trading practices discussed above may also create valuation problems. Changes in the value of a firm commitment agreement, for example, will affect the price at which the shares of an investment company may be sold, redeemed or repurchased. Section 22(c) of the Act [15 U.S.C. 80a–22(c)] and Rule 22c–1 [17 CFR 270.22c–1] thereunder require, in part, that such sales, redemptions and repurchases be effected at current net asset value. Section 2(a)(41) of the Act [15 U.S.C. 80a–2(a)(41)] and Rule 2a–4 [17 CFR 270.2a–4] thereunder require that, in determining net asset value, securities for which market quotations are readily available must be valued at current market value while other securities and assets must be valued at fair value as determined in good faith by the board of directors. Accordingly, directors should review their current valuation procedures, accounting systems, and systems of internal accounting control to determine whether any inadequacies exist with regard to the valuation and accounting treatment of such securities trading practices.

With respect to the proper accounting treatment of such securities trading practices, different treatment may be accorded firm[16] and standby

[15] See Guidelines for the Preparation of Form N–8B–1, Investment Company Act Release No. 7221, pp. 6–8 (June 9, 1972).

[16] In deciding upon the treament a firm commitment should receive in the investment company's accounting records, the board of directors should consider the position of the American Institute of Certified Public Accountants concerning how municipal bond funds should account for certain municipal bonds purchased on a "when issued" basis. In part, this paragraph states:

Footnotes continued on next page

commitments. Because standby commitments and listed put options have similar financial attributes and because it is possible to value the securities underlying the standby commitment by reference to market prices and interest rates for existing Ginnie Mae securities, the board of directors should consider accounting procedures used for listed put options in determining how a standby commitment should be treated in the investment company's accounting records.[17]

Disclosure

As stated above, use of the reverse repurchase agreement, the firm commitment agreement, and the standby commitment agreement creates the potential for substantial losses to an investment company. The directors of an investment company using such securities trading practices should review documents filed with the Commission and provided to investors and shareholders pursuant to the federal securities laws[18] to ensure complete disclosure of all pertinent information regarding the nature and consequences of the investment company's participation in such transactions. Specifically, disclosure materials should focus on, and comments by the Division during the review process will be directed to, the potential risk of loss presented to an investment company and its investors by those transactions; the identification of the securities trading practices as separate and distinct from the underlying securities; the differing investment goals inherent in participating in the securities trading practices as compared to those of investing in the underlying securities; and any other material information relating to such practices and the investment company's participation therein. Based on historical experience, the Commission believes that disclosure including the risk of loss to an investor in an investment company engaging in the practices described is necessary to ensure that the investment company will not be offering for sale or selling securities by means of a false, misleading or deceptive statement of a material fact in a prospectus.[19] Failure to disclose material information to shareholders in such documents would result in violations of the Securities Act of 1933 and the Securities Exchange Act of 1934. In connection with the foregoing, directors of investment companies which engage in the securities trading practices under discussion should also consider whether the investment company's name accurately reflects its portfolio investment policies and securities trading practices.[20]

Division Position Respecting Repurchase Agreements With Broker/Dealers

In recent "no-action" correspondence,[21] the Division of Investment Management stated that it could not assure that it would not recommend action under Section 12(d)(3) of the Act[22] against an investment company if it entered into certain repurchase agreements with a broker/dealer. The Division has reconsidered the position taken therein and, because of the relevancy of that position to the general discussion by the Commission of the applicability of Section 18 of the Act to certain securities trading practices, has requested that the Commission publish the Division's current position, which follows.

A repurchase agreement differs from the reverse repurchase agreement in that the investment company lends rather than borrows money. In a typical investment company repurchase transaction, an investment company purchases securities from a broker/dealer (the purchase price being the "proceeds"), and agrees to resell such securities to the same broker/dealer at a later date. Upon resale, the investment company receives the proceeds plus an amount which represents interest on the proceeds. The transaction is, in effect, a method for the investment company to invest idle cash for negotiated periods at prevailing market rates. In economic reality and under the definition of the term "lend" in Section 2(a)(23) of the

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Footnotes continued from last page

"The asset and liability relating to a 'when issued' security should be recorded when the priced transaction confirmation is issued, and the investment should be valued thereafter." American Institute of Certified Public Accountants, Statement of Position 79-1: Accounting for Municipal Bond Funds (Proposal to the Financial Accounting Standards Board to Amend AICPA Industry Audit Guide, *Audits of Investment Companies*, January 15, 1979.) Paragraph 20. In a firm commitment, the analogous "priced transaction confirmation" appears to be issued when the commitment is written. The difference between the balance of the asset and liability accounts would be reflected in the company's net asset value. It should be noted that payment for the security, while extinguishing the liability, would not be likely to affect the total value of the company's net assets.

[17] Using this analogy, when a standby commitment is written its only recognition in the accounting records would be an entry to record the premium received as a deferred credit (a liability). The full value of the committed securities would not receive recognition at this time because their acquisition is contingent on interest rate movements during the commitment period. However, in order to compute net asset value properly, any decline in the value of the committed securities should be recognized because it is a measure of an actual liability. Such declines in value should be reflected as increases in the deferred liability account used to record the premium received. Whenever it becomes reasonable to expect that the company will purchase and take into its portfolio the committed securities, it appears appropriate to recongize the value of the committed security as an asset and the full purchase price as a liability with appropriate entries to the deferred liability account in which the premium and unrealized depreciation was recorded. It may also be appropriate to adjust the deferred liability account to the extent of the premium received in response to increases in the market value of the committed securities. Such value increases would be recorded as a decrease in the deferred liability account. Recording increases in the value of committed securities in excess of the premium received appears to be inappropriate because as such value increases the investment company would probably not be asked to perform under the commitment. When the commitment period expires, or at an earlier time if it is reasonably expected that the company will not be expected to perform under the commitment, the amounts relating to the commitment should be removed from the investment company's accounting records and a realized gain or loss recognized, as appropriate. Because all of the accounting consequences will be recognized in terms of gain or loss, commitment premiums should not be recorded as an element of investment income. Financial statements should fully disclose the investment company's potential liability under its commitments.

[18] Such documents would include, but are not limited to, registration statements filed pursuant to Section 8(b) of the Act, reports, filed with the Commission, reports mailed to shareholders pursuant to Section 30 of the Act [15 U.S.C. 80a-29], sales literature distributed to existing and prospective investors under Section 24(b) of the Act [15 U.S.C. 80a-24(b)] and proxy statements filed pursuant to Section 20 of the Act [15 U.S.C. 80a-20].

[19] "The lack of investment quality characterizes the common stock of open-end leverage investment companies as well as that of closed-end leverage investment companies. The contributor to the open-end fund can easily be impressed by the representation that the senior capital is working for him, he can less easily be expected to realize that . . . upon any substantial market oscillation his investment will be virtually impaired or entirely swept away." Senate Hearings at 1044.

[20] Section 35(d) of the Act [15 U.S.C. 80a-34(d)] provides that it is unlawful for an investment company to adopt as part of its name or title any words which the Commission finds, and by order declares, to be deceptive or misleading. Although the types of securities trading practices in question usually involve an underlying security which bears a government guarantee, the agreements and their expected returns do not bear such guarantees. Thus, an investment company which is significantly involved in such securities trading practices, and which uses a name that appears to suggest or allude inappropriately to the existence of a U.S. government guarantee, may be using a deceptive or misleading name within the meaning of Section 35(d) of the Act. In cases where the Division believes a violation may have occurred, the Commission has instructed it to seek appropriate Commission orders and to recommend to the Commission that appropriate action be taken as authorized by Section 35(d) of the Act.

[21] Letter dated March 24, 1978, from the Division of Investment Management to Sidley & Austin re American Medical Association Tax-Exempt Income Fund Inc., [1978 Transfer Binder] FED. SEC. L. REP. (CCH) ¶81,612.

[22] Section 12(d)(3) of the Act, in part, prohibits an investment company from purchasing or otherwise acquiring "any security issued by or any other interest in the business of any person who is a broker, a dealer, [or] is engaged in the business of underwriting."

Act, the repurchase transaction is a loan by the investment company to the selling party secured by the securities transferred to the investment company. Use of repurchase agreements permits investment companies to invest idle cash at negotiated yields for periods as brief as overnight and may improve the overall performance of investment companies. Investors in the market for repurchase agreements appear to be primarily institutional. To deprive investment companies of access to such opportunities may impair the ability of certain investment companies to seek and to offer investment performance as favorable as that available through other institutional investors not subject to such a limitation. Moreover, the legislative history of Section 12(d)(3) suggests that its purpose principally was to prevent investment companies, except pursuant to certain conditions, from exposing their assets to the entrepreneurial risks of an investment banking business, as would be the case where an investment company took a partnership interest in a broker/dealer. Here, however, the investment company as lender would look to the intrinsic value of the collateral (i.e. the Ginnie Mae or other U.S. government security) rather than the creditworthiness or other risks associated solely with the business operations of the broker/dealer.[23] Accordingly, the Division henceforth will not recommend to the Commission that enforcement action be brought under Section 12(d)(3) against investment companies with respect to such transactions if the repurchase agreement is structured in a manner reasonably designed to collateralize fully the investment company loan, i.e., the value of the transferred security is, and during the entire term of the agreement remains, at least equal to the amount of the loan including the accrued interest earned thereon.

The Division remains concerned, however, about the possibility of abuse in such situations, particularly if investment companies enter into repurchase agreements to promote certain reciprocal practices, such as loans to broker/dealers [24] on terms less favorable than those available with other broker/dealers or banks to encourage share distribution efforts or to obtain research services for the investment adviser. Those kinds of reciprocal practices could result in violations of the investment company's and the investment adviser's fiduciary obligations under the Act to investment company shareholders. Therefore, the Commission has instructed the Division to monitor and review carefully investment company activities in this area.

In connection with the Division's present "no-action" position, directors should review their methods of accounting for repurchase agreements. An investment company should not record as an asset the securities which collateralize a loan pursuant to a repurchase agreement. It is also important to disclose the amount of the loan, and the effective interest rate to be received. Furthermore, directors should review the policies articulated in their investment company's registration statement pursuant to Section 8(b) of the Act, regarding, in particular, the making of loans to other persons, to ensure compliance with Sections 8 and 21 of the Act [15 U.S.C. 80a-21].[25]

Conclusion

The Commission believes that, as part of their general fiduciary duties to shareholders, directors should review the securities trading practices of their investment company to determine whether any of the practices which are the subject of this release (or any different practices with analogous effects on the capital structure of the investment company) exist, or are contemplated. If so, directors should make the determinations, inquiries, and disclosures recommended in this release. If necessary and appropriate, directors should consider the creation and maintenance of segregated accounts to ensure compliance with the policies and provisions of Section 18 of the Act.

The Commission has instructed the Division, through its oversight of the Commission's investment company inspection program, to monitor carefully the compliance of investment companies engaging in the aforementioned and similar securities trading practices with the disclosure and regulatory provisions of the Act, and with the appropriate disclosure requirements of the Securities Act of 1933 and Securities Exchange Act of 1934 applicable to investment companies.

Accordingly, Part 271 of Title 17 of the Code of Federal Regulations is amended by adding this General Statement of Policy regarding Securities Trading Practices Of Registered Investment Companies.

The Commission would, of course, welcome the views of directors and other interested persons on any of the matters discussed herein. All views or comments should be submitted in writing to the Securities and Exchange Commission, Washington, D.C. 20549 and refer to File S7-776. All communications will be available for public inspection.

By the Commission.

George A. Fitzsimmons,
Secretary.

April 18, 1979.

[Release No. IC-10666, S7-776]
[FR Doc. 79-13007 Filed 04-26-79; 8:45 am]
BILLING CODE 8010-01-M

[23] See Senate Hearings at 243.

[24] Repurchase agreements with broker-dealers affiliated with the investment company would, of course, raise serious questions under Sections 17(a) and 17(d) of the Act [15 U.S.C. 80a-17(a), 17(d)].

[25] Section 21 of the Act provides, in part, that "It shall be unlawful for any registered management company to lend money or property to any person, directly or indirectly, if the investment policies of such registered company . . . do not permit such a loan . . ."

Friday
April 27, 1979

Federal Register

Part VI

Department of Health, Education, and Welfare

Public Health Service

Grants to Nursing Schools for the Support of Their Educational Programs

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

42 CFR Part 57

Grants for Construction of Teaching Facilities, Educational Improvements, Scholarships and Student Loans; Grants to Schools of Nursing for the Support of Their Educational Programs

AGENCY: Public Health Service, HEW.

ACTION: Final regulations.

SUMMARY: These regulations establish criteria for the nursing capitation grants program under section 810 of the Public Health Service Act, as amended by the Nurse Training Act of 1975, and the Health Services Extension Act of 1977. These grants are made annually to eligible schools of nursing based on enrollment. The Nurse Training Act of 1975 and the Health Services Extension Act of 1977 revised, among other things, the conditions for receiving grants under this program and altered the formula for computing grant amounts.

EFFECTIVE DATE: These regulations are effective on April 27, 1979.

FOR FURTHER INFORMATION CONTACT: Miss Edith Rathbun, Special Assistant to the Director, Division of Nursing, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 3-50, 3700 East-West Highway, Hyattsville, Maryland 20782, phone: 301-436-6684.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 3, 1978 (43 FR 4790), the Assistant Secretary for Health, Department of Health, Education, and Welfare, proposed to delete Subpart K of 42 CFR Part 57, relating to nursing capitation grants under former section 806 of the Public Health Service Act, and to substitute a new Subpart K to implement section 810 of the Act, as amended by the Nurse Training Act of 1975 and by the Health Services Extension Act of 1977.

Interested persons were afforded the opportunity to participate in the rulemaking process through submission of comments on or before March 6, 1978. Only five comments were received and they concerned the assurances required for receipt of a grant and the formula for computing the grant awards. One commenter objected to the requirement for maintaining enrollment, one to the alternative of increasing enrollment. Three commenters noted that the formula for allocating grant funds did not treat the different types of nursing education programs alike and wanted a more equitable distribution of grant funds. One commenter requested that the regulations provide additional activities which may be included in an applicant's plan required as part of the assurance under § 57.1004(c)(3).

The regulations have not been changed in accordance with these comments because the required assurances as well as the formula for computing the grants are prescribed by statute. The Department points out that the differences in the formula take into account the differences in length and cost of the three types of programs, and that the requirements provide the schools with the option of carrying out two of four specified programs as an alternative to increasing enrollment. Several minor changes of an editorial or technical nature have been made in the proposed regulations.

When this authorizing legislation was enacted in 1975, there was a general consensus that (a) more health professionals were needed, and (b) if more professionals were produced, more would select primary care as their field of endeavor and more would work in underserved geographic areas. Accordingly, a number of Federal programs enacted at that time provided incentives for increased student enrollment in an effort to increase overall supply.

Two recent developments affect this earlier consensus. First, there is serious question, on the basis of certain preliminary studies of projected supply and requirements in the health professions, including nursing, with the assumption that the nation faces shortages in aggregate supply. Indeed, there is a basis for believing that there will be a possible oversupply by 1990, depending on which model and which assumptions are employed in projecting requirements. In fact, Congress acknowledged this view for the first time in its statement of findings in Pub. L. 94-484 (enacted October 12, 1976), in connection with aggregate physician supply and the statutory preference to alien physicians wishing to emigrate to the United States.

Second, there is increasing recognition of the fact that even with larger numbers of health personnel, the nation's distributional problems are not necessarily alleviated.

Over the last ten years, there have been significant increases in the supply of health professionals, but the maldistribution of professionals in rural areas and inner cities continues, as does the proportion of health personnel providing primary care as compared with secondary and tertiary services.

The Department recognizes that the legislation authorizing capitation support for schools of nursing provides two options by which a school could qualify for such support: either by a specified enrollment increase of its first year class or by agreeing to undertake at least two of four innovative programs of nursing instruction, as specified in Section 810 of the Act. In view of the above observations, the Public Health Service would prefer to see schools undertake the latter option rather than the enrollment increase option.

Accordingly, Subpart K of 42 CFR Part 57 is deleted and a new Subpart K is substituted to read as set forth below.

Dated: July 5, 1978.

Julius B. Richmond,
Assistant Secretary for Health.

Approved: April 12, 1979.

Hale Champion,
Acting Secretary.

Subpart K—Grants to Schools of Nursing for the Support of Their Educational Programs

Sec.

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Authority: Sec. 215, 58 Stat. 690, as amended (42 U.S.C. 216); sec. 810, 89 Stat. 356 (42 U.S.C. 296e).

Subpart K—Grants to Schools of Nursing for the Support of Their Educational Programs

§ 57.1001 Applicability.

The regulations of this subpart apply to the award of annual grants under section 810 of the Public Health Service Act (42 U.S.C. 296e) to schools of nursing for the support of their education programs.

§ 57.1002 Definitions.

As used in this subpart:

"Act" means the Public Health Service Act, as amended.

"Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and

Welfare to whom the authority involved has been delegated.

"State" means a State, the Commonwealth of Puerto Rico, the District of Columbia, the Canal Zone, Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands.

"Council" means the National Advisory Council on Nurse Training established by section 851(a) of the Act.

"School" or "school of nursing" means a collegiate, associate degree, or diploma school of nursing which is accredited as provided in section 853(6) of the Act.

"Collegiate school of nursing" means a department, division, or other administrative unit in a college or university which provides primarily or exclusively a program of education in professional nursing and allied subjects leading to the degree of bachelor of arts, bachelor of science, bachelor of nursing, or to an equivalent degree, or to a graduate degree in nursing, and including advanced training related to this type of educational program provided by the school, but only if the program or unit, college, or university is accredited.

"Associate degree school of nursing" means a department, division, or other administrative unit in a junior college, community college, college, or university which provides primarily or exclusively a two-year program of education in professional nursing and allied subjects leading to an associate degree in nursing or to an equivalent degree, but only if the program, or unit, college, or university is accredited.

"Diploma school of nursing" means a school affiliated with a hospital or university, or an independent school, which provides primarily or exclusively a program of education in professional nursing and allied subjects leading to a diploma or to equivalent indicia that the program has been satisfactorily completed, but only if the program, affiliated school, hospital, university, or independent school is accredited.

"New school" means a school which, at the time of filing an application for a grant under this subpart, has not graduated a class because of an insufficient period of operation.

"Full-time student" means a student pursuing a full-time course of study, as determined by the school, in an accredited program in a school of nursing leading to a diploma or degree specified in this section.

"Construction" means (1) the construction of new buildings and the acquisition or expansion of existing buildings (including related costs, such as architects' fees, acquisition of land, off-site improvements, and the initial equipping of such buildings); and (2) the remodeling, alteration, and repair of existing buildings.

"Program for the training of nurse practitioners" means an educational program for registered nurses (irrespective of the type of school of nursing in which the nurses received their training) which meets guidelines prescribed by the Secretary under section 822(a)(2)(B) of the Act and which has as its objective the education of nurses (including pediatric and geriatric nurses) who will, upon completion of their studies in this program, be qualified to effectively provide primary health care, including primary health care in homes and in ambulatory care facilities, long-term care facilities, and other health care institutions.

"Nonprofit" as applied to any school means one which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"Fiscal year" means the Federal fiscal year as defined in 31 U.S.C. 1020(a).

§ 57.1003 Eligibility.

(a) To be eligible for a grant under this subpart the applicant shall:

(1) Be a public or nonprofit school of nursing; and

(2) Be located in a State.

(b) A new school of nursing may apply for a grant under this subpart in the fiscal year preceding the fiscal year in which it will admit its first class. For purposes of this section, the first class in a new collegiate school of nursing is (1) the second-year class in a three-year school, or (2) the third-year class in a four-year school.

§ 57.1004 Application.

(a) Each eligible school desiring a grant under this subpart shall submit an application in the form and at the time which the Secretary may prescribe.[1]

(b) The application shall be signed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award, including the regulations of this subpart.

(c) In addition to other information and assurances which the Secretary may require, an approvable application shall contain:

(1) A reasonable assurance satisfactory to the Secretary that the first-year enrollment of full-time students in the school year beginning in the fiscal year in which the grant applied for is to be made will not be less than the first-year enrollment in the school in the preceding school year. This assurance shall be in addition to any assurance given under section 802(b)(2)(D) of the Act with respect to a construction grant application, where applicable.

(2) A reasonable assurance that the school will expend in carrying out its function as a school of nursing, during the school year for which the grant is sought, an amount of funds (other than funds for construction) from non-Federal sources which is at least as great as the average amount of funds expended by the school for this purpose (excluding expenditures of a nonrecurring nature) in the three school years immediately preceding the school year for which the grant is sought. The determination of the average amount of non-Federal funds expended by a new school during this three-year period shall be the average for the three preceding school years in which expenditures were actually made in carrying out the functions of the school.

(3) Either (i) A reasonable assurance satisfactory to the Secretary that for the school year beginning in the fiscal year in which the grant is to be made, and for each school year thereafter beginning in a fiscal year in which a grant is made, the first-year enrollment of full-time students in the school will exceed the number of these students enrolled in the school year beginning during the fiscal year ending June 30, 1975, by

(A) 10 per centum of this number if it was not more than 100; or

(B) 5 per centum of this number, or 10 students, whichever is greater, if it was more than 100; or

(ii) A reasonable assurance satisfactory to the Secretary that the school will carry out, in accordance with a plan contained in or accompanying its application and approved by the Secretary, at least two of the following programs in the school year beginning in the fiscal year in which the grant applied for is to be made and in each school year thereafter beginning in a fiscal year in which the grant is made:

(A) In the case of a collegiate school of nursing, a program for the training of nurse practitioners as defined in § 57.1002.

(B) A program under which students enrolled in a school of nursing will

[1] Applications and instructions may be obtained from the Division of Nursing, Bureau of Health Manpower, Health Resources Administration, Department of Health, Education, and Welfare, Center Building, Room 3-50, 3700 East-West Highway, Hyattsville, Md. 20782.

receive a significant portion of their clinical training in community health centers, long-term care facilities, and ambulatory care facilities geographically remote from the main site of the teaching facilities of the school.

(C) a program for the continuing education of nurses which meets needs identified by appropriate State, regional, or local health or educational entities (including health systems agencies).

(D) A program to identify, recruit, enroll, retain, and graduate individuals from disadvantaged backgrounds (as determined by the school in accordance with criteria prescribed in this paragraph) under which program at least 10 per centum of each year's entering class or 10 students, whichever is greater, is comprised of these individuals. For purposes of this paragraph, the school may only consider an individual to be from a disadvantaged background if the individual:

(*1*) Comes from an environment that has inhibited the individual from obtaining the knowledge, skills, and abilities required to enroll in and graduate from a school of nursing; or

(*2*) Comes from a family with an annual income below a level based on low-income thresholds by family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and multiplied by a factor to be determined by the Secretary for adaptation to this program. The Secretary periodically will publish in the **Federal Register** the income levels as adjusted.

(4) In the case of an application from a new school of nursing which applies for a grant under this subpart in the fiscal year preceding the fiscal year in which it will admit its first class:

(i) Evidence satisfactory to the Secretary that where required by State law or regulation the school has received the approval of the State Board of Nursing for the State in which the school is located to enroll students in the school in the fiscal year after the fiscal year in which the grant is sought.

(ii) An estimate of the number of full-time students to be enrolled in the school in the fiscal year after the fiscal year in which the grant is made and information and assurances supporting this estimate.

§ 57.1005 Determination of number of students.

(a) For purposes of this subpart, the number of full-time students enrolled in a school, the number of full-time first-year students enrolled in a school, or the number of full-time students enrolled in a particular year-class in a school, as the case may be, for any year shall be the number of these students enrolled or to be enrolled, as the case may be, in the school on October 15 of the fiscal year for which the grant is made; however, schools which admit first-year classes in courses of study leading to a diploma or degree specified in § 57.1002 at times other than early fall may request the Secretary's approval of another official counting date for purposes of determining first-year enrollment.

(b) The classification of a full-time student as a first-year student or as a student in a particular year-class in a school shall be in accordance with the policies of the particular school, except that any student who is required to repeat one or more first-year courses after having been enrolled as a full-time student during a previous school year shall not be considered a first-year student for purposes of the enrollement requirement of section 810(c)(1)(A) of the Act and § 57.1004(c)(1) or for purposes of section 810(c)(2)(A) of the Act and § 57.1004(c)(3)(i), where applicable.

(c) For purposes of making a grant under section 810(e) of the Act to a new school of nursing which applies for a grant in the fiscal year preceding the fiscal year in which it will admit its first class, the number of full-time students enrolled in the school or in a particular year-class in the school shall be the number which the Secretary, on the basis of the information and assurances provided by the school under § 57.1004(c)(4)(ii), determines to be the number of full-time students which the school will enroll in the fiscal year after the fiscal year in which the grant is to be made. With respect to a new associate degree school of nursing, the number of full-time students enrolled in the first year of the school shall be the number of full-time students enrolled in the first year of the program of education leading to an associate degree in nursing or to an equivalent degree.

§ 57.1006 Grant award.

(a) The Secretary, after consultation with the Council, shall award a capitation grant to each applicant whose application is found to meet the applicable requirements of section 810 of the Act and the regulations of this subpart.

(b) The amount of each capitation grant shall be an amount computed in accordance with the formula set forth in section 810(a) of the Act. If the amount of funds appropriated for any fiscal year is less than the total of the amounts so computed for each school of nursing with an approved application, the grant awarded to each school shall be reduced proportionately in accordance with section 810(b) of the Act.

§ 57.1007 Grant payments.

The Secretary shall from time to time make payments to a grantee of all or a portion of any grant award, either in advance or by way of reimbursement.

§ 57.1008 Expenditure of grant funds.

(a) Capitation grant funds may be obligated by the school at any time before the end of a 24-month period specified in the grant award document for any purpose related to the educational program of the school, except as provided in paragraph (b) of this section. Any funds not so obligated shall be refunded to the Federal Government.

(b) Capitation funds may not be expended for the following purposes:

(1) Construction, except that grant funds may be used for alterations and renovations;

(2) Student assistance; and

(3) Sectarian instruction or any religious purpose.

§ 57.1009 Nondiscrimination.

Recipients of grants under this subpart are advised that in addition to complying with the terms and conditions of these regulations, the following laws and regulations are applicable:

(a) Section 855 of the Act (42 U.S.C. 298b–2) and its implementing regulation, 45 CFR Part 83 (prohibiting discrimination on the basis of sex in the admission of individuals to training programs).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and its imlementing regulation, 45 CFR Part 80 (prohibiting discrimination in Federally assisted programs on the ground of race, color, or national origin).

(c) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) and its implementing regulation, 45 CFR Part 86 (prohibiting discrimination on the basis of sex in Federally assisted education programs).

(d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794) and its implementing regulation, 45 CFR Part 84 (prohibiting discrimination in Federally assisted programs on the basis of handicap).

§ 57.1010 Grantee accountability.

(a) Accounting for grant funds shall be in accordance with institutional accounting practices, based on generally accepted accounting principles,

consistently applied regardless of the source of funds. The grantee shall account for the sum total of all amounts paid by presenting or otherwise making available evidence satisfactory to the Secretary of expenditures meeting the requirements of this subpart.

(b) The total sum of: (1) Any amount not accounted for under paragraph (a) of this section, and (2) any other amounts due under Subparts F, M, and O of 45 CFR Part 74 shall be payable to the Federal Government as final settlement with respect to each grant under this subpart. This total sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assigns by setoff or other lawful action.

§ 57.1011 Records and reports.

Each grant awarded under this subpart shall be subject to the condition that the grantee shall maintain financial records, identifiable by grant number, and file with the Secretary financial reports relating to the use of grant funds which the Secretary may find necessary to carry out the purposes of section 810 of the Act and the regulations of this subpart.

§ 57.1012 Inspection and audit.

Any application for a grant under this subpart shall constitute the consent of the applicant to inspections of the facilities, equipment, and other resources of the applicant at reasonable times by the Secretary and the Comptroller General of the United States or any of their duly authorized representatives. In addition, the acceptance of any grant award under this subpart shall constitute the consent of the grantee to inspections and fiscal audits by these persons of the supported activity and of progress and fiscal records relating to the use of grant funds.

§ 57.1013 Applicability of 45 CFR Part 74.

The relevant provisions of the following subparts of 45 CFR Part 74, establishing uniform administrative requirements and cost principles, shall apply to all grants awarded under this subpart:

Subpart

A—General.
B—Cash depositories.
C—Bonding and insurance.
D—Retention and custodial requirements for records.
F—Grant-related income.
K—Grant payment requirements.
M—Grant closeout, suspension, and termination.
O—Property.
Q—Cost principles.

§ 57.1014 Additional conditions.

The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award when in his or her judgment these conditions are necessary to assure or protect advancement of the grant purposes, the interests of the public health, or the conservation of grant funds.

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Part VII

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

Public Housing Homeownership Opportunities Projects; Proposed Rules

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 868]

Public Housing Homeownership Opportunities Projects

AGENCY: Office of Assistant Secretary for Housing, Department of Housing and Urban Development (HUD).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department is proposing to expand the public housing Modernization Program to include homeownership projects assisted under the Low-Income Housing Homeownership Opportunities Program (Turnkey III) and the Mutual Help Homeownership Opportunities Program.

COMMENTS DUE: June 26, 1979.

ADDRESS: Send comments to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of HUD, 451 Seventh Street, S.W., Washington, D.C. 20410. Each person submitting a comment should include his/her name and address and refer to the docket number indicated in the heading and give reasons for any recommendation. Copies of all written comments received will be available for examination by interested persons in the Office of the Rules Docket Clerk at the address listed above.

FOR FURTHER INFORMATION CONTACT: Wayne Hunter, Office of Assisted Housing Management, Department of HUD, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755–6460. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The current Rule Part 868 is retitled Subpart A—Modernization of Public Housing Rental Projects, and the text is revised to eliminate reference to the use of modernization funds for the correction of design or construction deficiencies which will be funded from development funds and to clarify that HUD-determined wage rates apply to major repairs and replacements due to normal wear and tear by items of substantially the same kind since these are operational-type expenditures and not developmental in character. A new Subpart B—Modernization of Public Housing Homeownership Opportunities Projects is added which provides for the modernization of homeownership projects under modified provisions adapted to the special character of these programs. The substantive modifications applicable to the modernization of homeownership projects are:

(a) A homebuyer family whose income, equities and assets are at or above the amount at which it is required by applicable HUD regulations to purchase the home is ineligible for the modernization.

(b) A homebuyer family which is in violation of the terms of its Homebuyer Agreement is ineligible for the modernization program until it has achieved substantially full compliance.

(c) Eligible work items include alterations or improvements to the homebuyer family's home to meet applicable HUD standards for family housing need or suitability, including the achievement of a barrier-free dwelling for the handicapped family, or energy conservation including the conversion of, or the addition of alternate, utility systems to achieve energy conservation or economy or to utilize indigenous energy sources. These work items will make the dwelling unit more suitable for its intended use and will ordinarily enhance the value of the property. Modernization funds may not be used to correct design or construction deficiencies. Work items related to replacement of structural elements or equipment, or to maintenance of the property, are not eligible since these are the responsibility of the homebuyer family under the terms of its Homebuyer Agreement and, if necessary, may be funded from its equity accounts.

(d) The homebuyer family is afforded an opportunity (1) to express its views and preferences with respect to the modernization of its home; (2) to know the estimate of the cost attributable to its home; (3) to know that the actual cost attributable to its home will be added to the purchase price and will result in an extension of the amortization period; (4) to know that it will be included in the regular inspection process and at the final inspection to participate in the determination of the quality of workmanship and materials; and (5) to decide whether to participate in the modernization program.

(e) If the homebuyer family decides to participate with respect to any of the proposed work items, it must agree, in writing that: (1) the Homebuyer Agreement will be revised to add the actual cost of modernization of its home to the purchase price to reflect the added capital cost; and (2) the amortization period, during which the homebuyer family is subject to the terms to the Homebuyer Agreement and at the end of which the homebuyer family would receive title to its home, will be proportionately extended but not to exceed any lease term on the land in the case of Mutual Help housing.

(f) Any homebuyer family may decline to participate without risk to its homebuyer status because of that declination.

(g) The current rule on the Modernization Program—PHA-Owned Projects would be retitled and renumbered as Supbart A—Modernization of Public Housing Rental Projects, with minor editorial changes. Subpart B—Modernization of Public Housing Homeownership Opportunities Projects, would be added as a new Subpart.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with Handbook 1390.1. A copy of the Environmental Finding of Inapplicability is available for inspection at the above address.

Accordingly, the Department proposes to amend Part 868 of Chapter VIII of Title 24 of the Code of Federal Regulations by:

Subpart A—Modernization of Public Housing Rental Projects

1. Revising § 868.4 and § 868.8, retitling and renumbering the existing part 868 as Subpart A of Part 868 and making certain editorial changes to reflect that retitling and renumbering, as follows:

§§ 868.1 through 868.13 [Renumbered as §§ 868.101 through 868.113]

(a) Renumber § 868.1 through § 868.13 to § 868.101 through § 868.113, respectively;

(b) Substitute the following for the language in § 868.108, Labor Provisions:

§ 868.108 Labor provisions.

(a) *HUD-determined wage rates.* Under section 12 of the Act, the PHA and its contractors shall pay not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, to all architects, technical engineers, draftsmen, and technicians employed by the PHA itself or by an architect/engineer or other contractor engaged by the PHA for a modernization program, and to all laborers and mechanics employed by the PHA itself or by a contractor engaged by the PHA in carrying out (1) Major Repairs as defined in § 868.102 of this subpart or (2) replacements, due to normal wear and tear, by items of substantially the same kind.

(b) *Davis-Bacon Act.* Under section 12 of the Act, the PHA and its contractors shall pay not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor, under the Davis-Bacon Act (40 U.S.C. 276a et seq.), to all laborers and mechanics employed by the PHA itself or by a contractor engaged by the PHA for modernization work or contracts over $2,000, except Major Repairs as defined in § 868.102 of this subpart or replacements due to normal wear and tear by items of substantially the same kind."

(c) Change the word "Part" to "Subpart", wherever it appears in this Subpart A;

(d) Insert the word "rental" after the phrase "PHA-Owned, low-income" and before the phrase "public housing projects," wherever they appear in this Subpart A; and

§ 868.104 [Amended]

(e) Amend § 868.104(i) to insert a semicolon after "deficiencies" and to strike the remainder of the subparagraph.

(2) Adding a new Subpart B to the existing Part 868, as follows:

Subpart B—Modernization of Public Housing Homeownership Opportunities Projects

Sec.

868.201 Purpose and scope.
868.202 Definitions.
868.203 Eligibility requirements for an allocation of modernization funds.
868.204 Effect on purchase price and amortization period.
868.205 Homebuyer participation.
868.206 Procedures for obtaining approval of a modernization program.
868.207 Contracting requirements.
868.208 Labor provisions.
868.209 Requests for modernization funds.
868.210 Monitoring and evaluation.
868.211 Revisions of the modernization program budget.
868.212 Revisions of the modernization work program.
868.213 Completion of modernization programs.
868.214 Effect on purchase price and purchase price schedule.

Authority: United States Housing Act of 1937, (42 U.S.C. 1437 et seq.) sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Subpart B—Modernization of Public Housing Homeownership Opportunities Projects

§ 868.201 Purpose and scope.

The purpose of this Subpart is to prescribe policies and procedures for modernization by Public Housing Agencies (PHAs) of PHA-owned, low-income, homeownership opportunities projects (Mutual Help and Turnkey III). This subpart does not apply to the PHA-Owned, Low-Income, Rental Public Housing Program, the Section 23 and Section 10(c) Leased Housing Programs, the Section 23 and Section 8 Housing Assistance Payments Programs, or the modernization of low-income public housing projects undertaken with funds derived from the Community Development Block Grant Program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5316).

§ 868.202 Definitions.

As used in this subpart:

"Act"—see § 868.102.

"Annual Contributions Contract" (ACC)—see § 868.102.

"Force Account Labor"—see § 868.102.

"Homebuyer Agreement" means a Mutual Help and Occupancy Agreement or a Turnkey III Homebuyer's Ownership Opportunity Agreement.

"Work Item"—see § 868.102.

§ 868.203 Eligibility requirements for an allocation of modernization funds.

To be eligible for an allocation of modernization funds, the PHA shall:

(a) Present evidence of the actual need for the proposed Work Items;

(b) Propose the most economical way of accomplishing needed Work Items;

(c) Provide accurate cost estimates;

(d) Limit proposed modernization expenditures to eligible Work Items which include alterations or improvements to the homebuyer family's home to meet applicable HUD standards for family housing need or suitability, including the achievement of a barrier-free dwelling for the handicapped family, or energy conservation including the conversion of, or the addition of alternate, utility systems to achieve energy conservation or economy or to utilize indigenous energy sources. Modernization funds may not be used to correct design or construction deficiencies. Work items related to replacement of structural elements or equipment, or to maintenance of the property, are not eligible since these are the responsibility of the homebuyer family under the terms of its Homebuyer Agreement and, if necessary, may be funded from its equity accounts.

(e) Present evidence, satisfactory to HUD, of management capability to complete the proposed modernization program with a two-year period beginning after amendment of the ACC;

(f) Present evidence, satisfactory to HUD, that the homebuyer family of each dwelling unit to be modernized is in substantial compliance with the terms of its Homebuyer Agreement;

(g) Present evidence, satisfactory to HUD, that the current income of the homebuyer family of each dwelling unit to be modernized, together with its equity balances, are less than the amount at which the family is required, under HUD regulation, to purchase the home;

(h) Carry out modernization in accordance with civil rights and equal opportunity requirements:

(1) In the case of Indian Housing Authorities (IHAs), with 24 CFR 805.105 (Applicability of civil rights statutes) and 24 CFR 805.106 (Preferences, opportunities and nondiscrimination in employment and contracting).

(2) In the case of all other PHAs, with 24 CFR 841.104 (Civil rights and equal opportunity).

(i) Propose no modernization program to correct construction and design deficiencies;

(j) Present evidence of compliance with HUD regulations and requirements under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.); and

(k) Obtain HUD clearance under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.), and Executive Order 11593 on Protection and Enhancement of the Cultural Environment (36 FR 8921), where applicable.

§ 868.204 Effect on purchase price and amortization period.

(a) The cost of Work Items in a modernization program shall constitute an addition to the purchase price of the home and shall result in a proportionate extension of the amortization period.

(b) When the modernization program has been completed, a revision to the Homebuyer Agreement shall be executed by each homebuyer, reflecting the increase in the purchase price equal to the portion of the total cost of the modernization program attributable to that home and providing for extension of the amortization period, for an additional time proportionate to the increase in the purchase price.

§ 868.205 Homebuyer participation.

(a) The PHA shall discuss the modernization program with the homebuyer families of the project to be modernized and shall advise them of the effect of such modernization on the terms of their Homebuyer Agreements. The homebuyer families shall be

afforded a reasonable opportunity to present their views on the proposed program and the PHA shall give full consideration to their recommendations consistent with the PHA's own determination of efficiency, economy and need.

(b) The PHA shall afford each homebuyer family an opportunity (1) to express its views and preferences with respect to the modernization of its home; (2) to know that the actual cost will be added to the purchase price and will result in an extension of the amortization period; (3) to know that it will be included in the regular inspection process and at final inspection to participate in the determination of the quality of workmanship and materials; and (4) to decide whether to participate in the program.

(c) The PHA shall provide each homebuyer family with a copy of the PHA's evaluation of the recommendations, the tentative decisions reached with respect to a modernization program to be submitted to HUD and the estimated cost of the Work Items to be included in the proposed modernization program for its home.

(d) If the homebuyer family decides to participate in the modernization program with respect to any of the proposed Work Items, it must agree in writing that its Homebuyer Agreement will be revised to provide (1) that the actual cost of modernizing its home will be added to the purchase price to reflect the added capital cost; and (2) that the amortization period will be proportionately extended: *Provided,* That, for Mutual Help housing, the extension shall not exceed the lease term on the land.

(e) Any homebuyer family may decline to participate without risk to its homebuyer status because of that declination.

(f) Records of homebuyer family participation and agreements required by this section shall be retained in the PHA's files for inspection by HUD.

(g) In the case of Work Items of an emergency nature, affecting the life, health or safety of certain homebuyer families, the provisions of this section may be modified by the PHA, to the extent necessary, to permit expeditious discussions and agreement with the affected homebuyers.

§ 868.206 Procedures for obtaining approval of a modernization program.

(a) *Informal consultation.* The PHA shall consult with the appropriate HUD office to discuss its modernization needs, to obtain information and advice on HUD policies and procedures, and to explore the availability of modernization funds.

(b) *Preliminary application.* The PHA shall submit to the appropriate HUD Office a preliminary application in letter form which shall contain:

(1) A brief description and justification of each Work Item proposed for each project and the preliminary estimated amount of modernization funds needed to finance each Work Item: and

(2) An estimate of additional modernization funds, if any, needed to complete previously approved modernization programs.

(c) *HUD-PHA joint review.* The PHA shall participate in an on-site review with the appropriate HUD office to develop a mutual agreement on the scope of the proposed modernization program and the details of the final application.

(1) The joint review shall include:

(i) On-site inspection of the proposed Work Items for each project, the time for completion, the method of accomplishment (by contract or Force Account Labor), cost estimates, and the method of PHA inspection of the work;

(ii) An evaluation of the cost-effectiveness of the proposed Work Items for each home in relation to the estimated remaining useful life of the property and the cost of equivalent new construction;

(iii) PHA need for the technical services of a professional architect/engineer in planning, designing, and implementing all or part of the proposed modernization program;

(iv) PHA plan for organizing and staffing the modernization program;

(v) PHA performance in administering previously approved modernization programs, if applicable;

(vi) PHA compliance with civil rights statutes, executive orders, and regulations, as applicable, under § 868.203(h);

(vii) Determination of the applicability of § 868.203(i);

(viii) PHA compliance with homebuyer participation and eligibility requirements under § 868.204 and § 868.205;

(ix) Determination of the applicability of HUD regulations and other published requirements under the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the Archeological and Historic Preservation Act of 1974, and Executive Order 11593.

(x) Compliance by homebuyer families with the terms of their Homebuyer Agreements; and

(xi) Project characteristics, including the general physical condition of the project's systems and structures.

(2) HUD reserves the option to exclude coverage of those items required under paragraph (c)(1) of this section that have been covered by audit or other HUD review process conducted within the preceding six months.

(d) *Final application.* Upon notification from HUD, the PHA shall submit to the appropriate HUD office the final application which shall contain:

(1) A program budget, in a form prescribed by HUD, describing each Work Item, amount of modernization funds requested, method of accomplishment, estimated dates for starting and completing work, and a summary of Work Items by project;

(2) A work program, in a form prescribed by HUD, stating the estimated amount of modernization Funds to be expended and the estimated work to be completed for each Work Item by quarter for eight quarters (a two-year period);

(3) An organization and staffing plan stating the proposed organization, staffing, and inspection of the program;

(4) A management plan, describing any management Work Items and estimated progress by quarter for eight quarters (a two-year period) where management deficiencies have been identified by HUD;

(5) A PHA report on compliance by the local governing body with the terms of the Cooperation Agreement and any additional services or facilities that the PHA plans to request from the local governing body;

(6) Environmental data, in a form prescribed by HUD, under procedures to be developed by HUD, if required; and

(7) A resolution by the PHA Board of Commissioners:

(i) Approving the program budget, the work program, the organization and staffing plan, and the management plan; and

(ii) Certifying that:

(A) The PHA will comply with all policies, procedures, and requirements prescribed by HUD for the modernization program;

(B) The proposed Work Items are eligible for modernization funding;

(C) The amount of modernization funds requested represent the PHA's best estimate of the costs of the modernization program described in the final application;

(D) The PHA will comply with civil rights statutes, executives orders, and

regulations as applicable, under § 868.203(h); and

(E) The PHA has complied with HUD regulations and requirements under the Flood Disaster Protection Act of 1973 or that such regulation and requirements are not applicable.

(e) *ACC amendment.* After HUD approval of the PHA's final application, the PHA shall enter into an ACC amendment or an ACC to obtain modernization funds.

§ 868.207 Contracting requirements.

(a) *Compliance with Tribal, State and local law.* the PHA shall comply with Tribal, State and local laws applicable to bidding and contract award.

(b) *PHA agreement with architect/engineer.* The PHA shall submit the proposed agreement, if any, with an architect/engineer for technical services to the appropriate HUD office for review and approval before executing the agreement.

(c) *Bidding documents.* The PHA shall submit complete plans, drawings, specifications, and other related documents for each proposed modernization contract to the appropriate HUD office for review and approval before inviting bids. If the Director of the HUD office determines that the PHA has the necessary technical and administrative experience and capability, he may notify the PHA, in writing, that bidding documents need not be submitted to HUD for review where the proposed modernization contract is less than $50,000 or is less than such lower limitation as the HUD office may specify.

(d) *Contract award.* The PHA shall submit all documents relating to the proposed award of modernization construction and equipment contracts to the appropriate HUD office for review and approval before making an award where:

(1) The amount of the contract exceeds the amount included in the latest approved modernization program budget;

(ii) The bider attempts to withdraw a bid, alleging a mistage: or

(iii) The PHA:

(A) Receives a single bid;

(B) Proposes to disqualify the low bider;

(C) Proposes to reject all bids received; or

(D) Revises the contract documents for readvertising, as applicable under paragrah (c) of this section.

(2) In all other instances, unless required by HUD in its approval of the bidding documents, the PHA shall make the award without HUD review and approval after the PHA Board of Commissioners or the designated PHA official has certified that:

(i) The bidding was conducted in compliance with Tribal, State and local laws, and Federal regulations;

(ii) The award does not exceed the amount included in the latest approved modernization program budget;

(iii) The low bid has been accepted; and

(iv) The award has been informally cleared with the appropriate HUD office to determine that the contractor is not on the Consolidated List of Debarred, Suspended, and Ineligible Contractors and Grantees.

(e) *Contract changes and time extensions.* Except in an emergency endangering life or property, the PHA shall submit to the appropriate HUD office for review and approval all proposed contract changes that exceed the latest approved budget approved budget amount or change the approved scope of the work by adding new Work Items, deleting approved Work Items, or lowering the work of material quality and all proposed time extensions for causes beyond the contractor's control before issuing changes to the contractor.

(f) *Contract settlement.* Regardless of the amount of the contract, the PHA shall submit all documents for final payment of the contractor to the appropriate HUD office for review and approval before making the payment.

§ 868.208 Labor provisions.

(a) *HUD-determined wage rates.* Under section 12 of the Act, the PHA and its contractors shall pay not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, to all architects, technical engineers, draftsmen, and technicians employed by the PHA itself or by an architect/engineer or other contractor engaged by the PHA for a modernization program, and to all maintenance laborers and mechanics employed by the PHA itself or by a contractor engaged by the PHA in carrying out (1) Major Repairs as defined in § 868.102 of this part or (2) replacements due to normal wear and tear by items of substantially the same kind.

(b) *Davis-Bacon Act.* Under section 12 of the Act, the PHA and its contractors shall pay not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor, under the Davis-Bacon Act (40 U.S.C 276a et seq.), to all laborers and mechanics employed by the PHA itself or by a contractor engaged by the PHA for modernization work or contracts over $2000, except Major Repairs as defined in § 868.102 of this part or replacements due to normal wear and tear by items of substantially the same kind.

§ 868.209 Requests for modernization funds.

To request modernization funds against the approved modernization program, the PHA shall:

(a) Consult informally with the appropriate HUD office as to the amount of modernization funds needed for the time period in question, the immediacy of need, and the method of financing;

(b) Submit a request to the appropriate HUD office for only the amount of modernization funds needed for the time period in question and support the request with a written justification, in a form prescribed by HUD; and

(c) Submit the latest required progress reports under § 868.210(b) and § 868.210(c), unless the first required report is not yet due.

§ 868.210 Monitoring and evaluation.

(a) *On-site physical inspections.* The PHA shall provide, by contract or otherwise, adequate and competent supervisory and inspection personnel during modernization whether the work is performed by contract or Force Account Labor and with or without the services of an architect/engineer, to assure-work quality and progress. The homebuyer shall be included, at his option, in the regular inspection process and the final inspection shall be a joint inspection by the PHA inspector and each homebuyer. After the inspection, the PHA inspector shall give the homebuyer a signed written statement of the condition of the completed modernization Work Items. The homebuyer shall indicate concurrence by signing the statement. If the homebuyer does not concur, the objections shall be noted on the statement and the differences resolved by the PHA.

(b) *Progress reporting.* For each quarter until completion of the modernization program, the PHA shall submit, in a form prescribed by HUD, to the appropriate HUD office:

(1) A modernization quarterly progress report showing the PHA's actual performance in comparison with its planned performance contained in the modernization work program by Work Item for each project, including the planned and actual expenditures during the preceding quarter and

cumulatively, and the work planned but not accomplished.

(2) An explanation, including the reasons for the deficiency and the corrective actions which the PHA has planned or taken, where the modernization quarterly progress report indicates:

(i) An overrun or underrun of 10% or more in actual cumulative expenditures in comparison with planned cumulative expenditures; or

(ii) Any work planned but not accomplished during any previous quarter.

(3) A narrative report, describing the PHA's actual performance in comparison with its planned performance contained in the modernization management plan, including the current status of each management Work Item and an explanation if no progress has been made.

(c) *Construction reporting.* The PHA shall submit construction progress reports, on forms prescribed by HUD, to the appropriate HUD office.

§ 868.211 Revisions of the modernization program budget.

The PHA shall not incur any modernization cost in excess of the total approved modernization budget. The PHA shall submit a revision of the modernization budget, in a form prescribed by HUD, to the appropriate HUD office for review and approval if the PHA plans (within the total approved modernization budget) to:

(a) Delete or substantially revise approved Work Items;

(b) Add new Work Items; or

(c) Incur modernization costs in excess of the approved budget amount for:

(1) A Work Item; or

(2) Any project.

§ 868.212 Revisions of the modernization work program.

The PHA shall submit a revision of the modernization work program, in a form prescribed by HUD, to the appropriate HUD office for review and approval where there is:

(a) A revision of the modernization program budget; or

(b) A determination by the appropriate HUD office that the PHA is unable to complete the modernization program within the two-year period because of:

(1) Circumstances beyond the control of the PHA; or

(2) Improper PHA administration of the modernization program.

§ 868.213 Completion of modernization programs.

Upon completion of modernization programs, the PHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to the appropriate HUD office for review, audit vertification, and approval. If the audited modernization cost certificate indicates that excess funds have been provided, the PHA shall dispose of the excess funds as directed by HUD. If the audited modernization cost certificate discloses unauthorized expenditures, the PHA shall take such corrective action as HUD may direct. The PHA shall enter into an ACC amendment to reflect actual modernization costs or corrective action taken, where determined necessary by HUD.

§ 868.214 Effect on purchase price and purchase price schedule.

(a) *For Mutual Help projects converted in accordance with 24 CFR 805.428 or placed under ACC from March 9, 1976 and for Trunkey III projects.* (1) An amount equal to the portion of total modernization cost attributable to the home shall be added to the homebuyer's total purchase price as initially determined (under 24 CFR 804.113(a) or 804.115(b) for Turnkey III projects or under 24 CFR 805.422 (b) or (c) for Mutual Help projects) plus the amount of subsequent modernization costs, if any.

(2) The latest purchase price schedule shall be extended for an additional period proportional to the modernization cost increase in the total purchase price.

(3) As promptly as possible after determining the amount of modernization cost attributable to the home, the PHA shall furnish to the homebuyer a statement of total purchase price of the home, as determined under paragraph (a)(1) of this section, and a new purchase price schedule in place of the original purchase price schedule. The purchase price schedule shall:

(i) show monthly amortization of the total purchase price over a period commencing on the same day as the original purchase price schedule and terminating at the end of the extended period, as determined under paragraph (a)(2) of this section;

(ii) be computed on the basis of the same interest rate as used for the original purchase price schedule; and

(iii) state the monthly debt service amount on which the schedule is based.

(b) *For Mutual Help projects placed under ACC before March 9, 1976 and not converted in accordance with 24 CFR 805.428,* an amount equal to the portion of the total modernization cost attributable to the home shall be added to the balance of the debt attributable to the home on the books of account of the IHA, thus increasing the purchase price and extending the amortization period.

Issued at Washington, D.C., March 21, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[Docket No. R-79-637]

[FR Doc. 79-13063 Filed 4-26-79; 8:45 am]

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Friday
April 27, 1979

Part VIII

Department of Health, Education, and Welfare

Office of Education

Basic Skills and Educational Proficiency Programs; Proposed Rule

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 162]

Basic Skills and Educational Proficiency Programs

AGENCY: Office of Education, HEW.

ACTIONS: Notice of Proposed Rulemaking (NPRM).

SUMMARY: These regulations govern several programs relating to basic skills and educational proficiency.

The overall purpose of these programs—established through the Education Amendments of 1978—is to help public and private agencies coordinate resources and improve their basic skills efforts for children, youth, and adults.

DATES: Comments must be received on or before June 26, 1979.

Public meetings will be held on these proposed regulations on the following dates at the following places:

City, Date, and Time

Region I—Boston, May 9, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.
Region II—New York, May 10, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.
Region III—Philadephia, May 7, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.
Region IV—Atlanta, May 9, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.
Region V—Chicago, May 8, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.
Region VI—Dallas, May 7, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.
Region VII—Kansas City, May 10, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.
Region VIII—Denver, May 9, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.
Region IX—San Francisco, May 8, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.
Region X—Seattle, May 7, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.

ADDRESSES: Comments should be addressed to Mr. Thomas M. Keyes, U.S. Office of Education, 400 Maryland Avenue, S.W., (Donohoe Building, Room 1150), Washington, D.C. 20202.

Public Meetings will be held in—

Region I—Boston

Administration Building, Boston School Department, Boston Committee Hearing Room, 26 Court Street, Boston, Massachusetts 02203.

Region II—New York

Bank Street College of Education, Auditorium, 610 West 112 Street, New York, New Yor 10025.

Region III—Philadephia

Drexel University, Mandell Theater, 3210 Chestnut Street, Philadelphia, Pennsylvania 19104.

Region IV—Atlanta

Sale Hall, Morehouse College, Atlanta, Georgia 30314.

Region V—Chicago

William Rainey Harper College, Algonguin & Roselle Road, Building A—Board Room, Palatine, Illinois 60067.

Region VI—Dallas

El Centro College, Performance Hall, Main & Lamar Streets, Dallas, Texas 75202 (Use Market Street Entrance).

Region VII—Kansas City

Board of Education, Auditorium, 1211 McGee, Kansas City, Missouri 64106.

Region VIII—Denver

George Washington High School, 6555 South Monaco, Denver, Colorado, 80224.

Region IX—San Francisco

San Francisco Community College, Community College Center, 800 Mission Street & Corner of 4th Street, San Francisco, California 94102.

Region X—Seattle

Pacific Special Education Center, SEA–MAT Center, 1330 North 90th Street, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT.
Mr. Thomas M. Keyes, U.S. Office of Education, Telephone (202) 245–2710.

FOR INFORMATION ON PUBLIC MEETINGS IN THE REGIONAL OFFICE CITIES, CONTACT THE APPROPRIATE REGIONAL COMMISSIONER FOR EDUCATION PROGRAMS:

Region I, Boston, Dr. Thomas J. Burns, 617–223–7205
Region II, New York, Dr. William D. Green, 212–264–4370
Region III, Philadelphia, Dr. Albert C. Crambert, 215–596–1001
Region IV, Atlanta, Dr. William L. Lewis, 404–221–2063
Region V, Chicago, Dr. Juliette Noone Lester, 312–353–5215
Region VI, Dallas, Mr. Edward J. Baca, 214–767–3626
Region VII, Kansas City, Dr. Harold Blackburn, 816–374–2276
Region VIII, Denver, Dr. John Runkel, 303–837–3544
Region IX, San Francisco, Dr. Caroline Gillen, 415–556–4920
Region X, Seattle, Mr. Allen Apodaca, 206–442–0460

SUPPLEMENTARY INFORMATION:

The following section provides information about such matters as: (1) regulations governing general administrative matters; (2) questions likely to be asked by interested parties: and (3) procedures for public participation.

(a) Education Division General Administrative Regulations

These proposed regulations for Basis Skills and Educational Proficiency do not contain certain types of requirements that will be covered in the Education Division General Administrative Regulations (EDGAR). The EDGAR will replace the General Provisions for Office of Education Programs Regulations and soon will be published as a Notice of Proposed Rulemaking.

Anyone wanting to comment on the requirements in EDGAR should do so in response to the EDGAR NPRM, rather than to this NPRM.

The following items applicable to the Basic Skills and Educational Proficiency programs will now be among those covered in part in EDGAR, as well as in these program regulations:

(1) How an applicant applies for a grant.

(2) How a grant is made to an applicant.

(3) How to apply to the State for a subgrant.

(4) How a subgrant is made to an applicant.

(5) Certain conditions that must be met by an applicant.

(6) Administrative responsibilities of a grantee.

(7) Compliance procedures used by the Commissioner.

(b) Questions and Answers

What kinds of projects are covered by these regulations?

The regulations are divided into three components: (1) National Basic Skills Improvement, (2) State Basic Skills Improvement, and (3) Educational Proficiency.

(1) There are three programs in the National Basic Skills Improvement component. The *Basic Skills Improvement in the Schools Program* assists projects that demonstrate improved basis skills instruction in the schools. The *Parent Participation Program* assists projects that enlist parents and volunteers in teaching basic skills to children. The *Out-of-School Basic Skills Improvement Program* assists projects to help children, youth, and adults improve their basic skills outside the normal school program.

(2) The State Basic Skills component consists of two programs. Under the *Formula Grant Program*, the States subgrant most of the funds they receive to support activities that promote the State basic skills plan. The *State Leadership Program* helps the State

carry out its own leadership activities in basic skills.

(3) The Educational Proficiency component consists of two programs. The *Proficiency Standards Program* assists projects to help students reach levels of educational proficiency set by the applicant. The *Achievement Testing Program* helps improve the capacity of SEAs and LEAs to measure basic skills achievement.

Why is "basic skills" defined as "mathematics, reading, and oral and written communication"?

Congress defines basic skills this way in the law.

Why are "reading," "mathematics," "oral communication," and "written communication" not defined in these regulations?

The Commissioner believes that a broad definition will encourage applicants to propose creative teaching techniques within the four basic skills areas.

Is all necessary information available in these regulations?

No. These regulations do not repeat the Act. Often they paraphase or cross reference the Act, which is republished here as an appendix to these regulations. An applicant should also read the applicable sections of EDGAR, as well as instructions on the application form and the application notice published in the **Federal Register**. The application notice contains such information as where to obtain an application form, programs for which funds are available, where to send the application, and the amount of money for which an applicant may apply.

Why are some programs under the Act, not included in these regulations?

Some programs are not included here because the Commissioner proposes to implement certain sections of the law by individual contract rather than by grants. Sections 204 (technical assistance), 207 (technology and instruction), 209 (evaluation and dissemination), 231 (inexpensive book distribution), and 232 (special mathematics instruction) will be carried out by contract because the U.S. Office of Education (OE) wishes to obtain very specific products and results. For the grant programs covered by these regulations, OE announces a general goal, and applicants determine the specific expected results under that goal.

What happens if an applicant, at the time of writing the application, has already accomplished an item required in the regulations?

An applicant need not repeat the required activity, but should indicate how and when the required acitvity took place. If the applicant has, for example, recently conducted a basic skills needs assessment in its project schools, it should simply report its findings in the application.

Why is such a great emphasis placed on projects that coordinate with other basic skills activities at the Federal, State, and local levels?

Congress refers frequently in the Act to the need for coordination. Experience shows there are better results if projects engage in mutual sharing and mutual planning. For these reasons—

(1) Coordination of resources will be emphasized in individualized State agreements developed under the State Basis Skills programs;

(2) Points will be awarded to National Basic Skills applicants for their coordination plans; and

(3) State educational agencies will be asked to comment on the consistency of LEA-related applications to the State basic skills plan.

Are preschool projects allowable?

The law does not authorize preschool projects under the Basic Skills Improvement in the Schools Program. However, local school districts may apply to the State to conduct a preschool project as a subgrantee under the State Formula Grant Program.

Does an applicant for a Basic Skills Improvement in the Schools project have to propose instructional activities in all four basic skills subject areas: reading, mathematics, oral communication, and written communication?

No. An applicant must conduct a needs assessment for all four subject areas within the project school(s) to be served. If the data show that emphasis should be placed on one, two, or three (but not all four) of the basic skills subject areas, and if there is an existing instructional program in the remaining areas, the applicant may propose Federal assistance for just the subjects in which there is a special need.

In the Out-of-School Basic Skills Improvement program must the project be conducted outside of a school building?

No. A recipient may implement the project inside a school building or any other appropriate building. A recipient may work with children, youth, or adults who are or who are not currently enrolled in a school instructional program. However, the instruction given to the participants must be outside the normal school instructional program.

If an applicant applies for multi-year funding for programs in the National Basic Skills component will Federal funding remain at the same level year after year?

No. The Commissioner intends to fund projects at a certain level the first year and then at declining levels for each of the following years. The Commissioner believes that a grantee must assume an increasing fiscal responsibility as its project matures. Expected support levels will be announced annually in the closing date notice published in the **Federal Register**.

What is an "individualized" approach to agreements under the State basic skills improvement programs?

Experience shows that States vary considerably in their basic skills activities. Thus, the Commissioner does not propose to require that all States do all of the same activities in the same sequence. Rather, each State shall propose those activities that are needed in that State and in a time sequence set by the State.

Why are funds under the State Leadership Program distributed on the basis of population rather than by competitive grants?

The Commissioner wants to build the leadership capacity of all States in basic skills.

Do the terms "measures of achievement," "assessment," and "tests" in the law and in these regulations refer to a certain type of test such as a norm-referenced test?

No. The Commissioner places great emphasis on grantees using their descretion in measuring achievement in basic skills. The Commissioner encourages grantees to use varied, valid, and reliable measures of achievement.

(c) Invitation To Comment

A public meeting on this Notice of Proposed Rulemaking will be held in each of the ten Federal regions. If you are interested in making oral comments at a public meeting, please call the appropriate Regional Commissioner of Education. He/she will schedule a time for your comments to be given.

Persons who do not notify the Regional Commissioner of their intention to make oral comments will be given an opportunity to speak after those who registered. Those persons making presentations will be called upon according to their prearranged schedule, or if not prearranged, in the order of registration.

Also, interested persons are invited to submit written comments, suggestions, and recommendations to be considered prior to the issuance of the final regulations. Comments suggestions, and recommendations may be sent to the address given at the beginning of this

document. All comments received on or before the 60th day after publication of this document will be considered.

All written comments submitted in response to this notice will be available for public inspection, both during and after the comment period, in Room 3523, Regional Office Building Three, 7th and D Streets, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

The General Education Provisions Act requires that a citation of statutory authority for each section of the proposed regulations be placed in parentheses on the line following the text of each section. References to "Sec" in these citations of authority relate to sections of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978.

Authority: These proposed regulations are issued under the authority of Title II and Part B of Title IX, of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561.

Dated: April 16, 1979.

Ernest L. Boyer

U.S. Commissioner of Education.

Approved: April 20, 1979.

Hale Champion,

Acting Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance Number Not Yet Assigned)

Part 162 of Title 45 Code of Federal Regulations is revised to read as follows:

PART 162—BASIC SKILLS IMPROVEMENT

General Information

Sec.

162.1 Programs under this part.
162.2 Eligible applicants.
162.3 Regulations that apply to the Basic Skills Improvement Program.
162.4 Definitions.
162.5 Submission of applications.

National Basic Skills Improvement

Type of Projects Assisted

162.110 Basic Skills Improvement in the Schools Program: requirements.
162.111 Parent Participation Program: Allowable activities.
162.112 Out-of-School Basic Skills Improvement Program: allowable activities.
162.113 Out-of-School Basic Skills Improvement Program: Requirements for instructional projects.
162.114 Duration of awards.

Selection of Recipients

162.120 State review of applications affecting an LEA.
162.121 Selection criteria.

Conditions of Awards

162.130 Coordination requirement.
162.131 Participation of non-public school children.
162.132 Other requirements for LEAs and SEAs.

State Basic Skills Improvement

How a State Applies for a Grant

162.210 Formula Grant Program: Individualized agreement.
162.211 State Leadership Program: Individualized agreement.

How a Grant is Made to a State

162.220 Formula Grant Program: Apportionment of funds.
162.221 State Leadership Program: Apportionment of funds.

Subgrants Under the Formula Grant Program

162.230 Eligibility for a subgrant.
162.231 Subgrants to local educational agencies: Allowable activities.
162.232 Subgrants to other eligible agencies: Allowable activities.
162.233 Conditions regarding participation of non-public school children.

Educational Proficiency

Types of Projects Assisted

162.310 Proficiency Standards Program: Requirements.
162.311 Achievement Testing Program: Allowable activities.

Selection of Recipients

162.320 State review of applications affecting LEAs.
162.321 Selection criteria.

Authority: Title II and Part B of Title IX, of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561.

General Information

§ 162.1 Programs under this part.

Part 162 contains regulations for a number of programs to improve achievement in the basic skills of reading, mathematics, and oral and written communication. The regulations are divided into three components:

(a) The National Basic Skills Improvement component consists of three programs. They are—

(1) The Basic Skills Improvement in the Schools Program (section 205), which assists projects that demonstrate improved basic skills instruction in the schools;

(2) The Parent Partcipation Program (section 206), which assists activities that enlist parents and volunteers in teaching basic skills to children; and

(3) The Out-of-School Basic Skills Improvement Program (section 208), which assists projects to help children, youth, and adults improve their basic skills outside the normal school program.

(b) The State Basic Skills Improvement component consists of two programs. They are—

(1) The Formula Grant Program (sections 221 through 223), which provides support to help a State plan and implement basic skills improvement programs, primarily through subgrants by the States to eligible subgrantees; and

(2) The State Leadership Program (sections 221, 224), which provides support for a State to—

(i) Carry out leadership and training in the area of basic skills; and

(ii) Develop and implement Statewide programs for improving the basic skills achievement of children, youth, and adults.

(c) The Educational Proficiency component consists of two programs. They are—

(1) The Proficiency Standards Program (section 921), which assists projects to help students reach levels of educational proficiency set by the applicant; and

(2) The Achievement Testing Program (section 922), which provides assistance to improve the capacity of State educational agencies (SEAs) and local educational agencies (LEAs) to measure the basic skills achievement of children.

(d) The Commissioner enters into contracts to carry out the programs authorized by sections 204 (technical assistance), 207 (technology and instruction), 209 (evaluation and dissemination), 231 (inexpensive book distribution), and 232 (special mathematics instruction).

(20 U.S.C. 2885, 2886, 2888, 2901–2904, 3331, 3332)

§ 162.2 Eligible applicants.

(a) The following kinds of agencies are eligible to apply for any of the three programs in the National Basic Skills Improvement component:

(1) An SEA.

(2) An LEA.

(3) A public or private agency, organization, or institution, including an institution of higher education. A for-profit agency, organization or institution is not eligible to compete for a grant but may receive contracts under any procurement that may be issued for these programs.

(b) Any State is eligible to apply for either or both programs in the State Basic Skills Improvement component.

(c) The following kinds of agencies are eligible to apply for the Proficiency Standards Program:

(1) An SEA.

(2) An LEA, if the appropriate SEA has not submitted an application. The

LEA is responsible for contacting the SEA to determine if there will be a State application.

(d) The following kinds of agencies are eligible to apply for the Achievement Testing Program:

(1) An SEA.

(2) An LEA.

(3) A public or private agency, organization, or institution, including an institution of higher education. A private agency, organization, or institution is not eligible to receive a grant, but may receive a contract under any procurement that may be issued for these programs.

(20 U.S.C. 2884, 2902–4, 3331, 3332)

§ 162.3 Regulations that apply to the Basic Skills Improvement Program.

(a) *Regulations.* The following regulations apply to the Basic Skills Improvement Program.

(1) The Education Division General Administrative Regulations (EDGAR) in Part 100c (Definitions) and—

(i) For the programs in the National Basic Skills Improvement component and the Educational Proficiency component, Part 100a (Direct Grant Programs).

(ii) For the programs in the State Basic Skills Improvement component, Part 100b (State-Administered Programs).

(2) The regulations in this part.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in Part 100c:

Applicant
Application
Award
Budget
Commissioner
Contract
Grant
Institutions of higher education
Local educational agency
Nonprofit
Non-public
Project
Public
Recipient
Secondary school
State
State educational agency
Subgrant
Subgrantee

(20 U.S.C. 1221e–3(a)(1))

§ 162.4 Definitions.

As used in this part—

"Basic Skills" means reading, mathematics, and oral and written communication; and

"Section" or "Sec.", unless otherwise indicated, means a section of Title II or Part B of Title IX of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 2881–2922, 3331–3332)

§ 162.5 Submission of applications.

(a) For the programs in the National Basic Skills Improvement component and the Educational Proficiency component—

(1) The Commissioner establishes—in a notice published in the **Federal Register**—an annual closing date for receiving applications.

(2) An applicant may seek assistance for each program separately or for more than one program in a consolidated application if the applicant—

(i) Divides the project into identifiable components in the application; and

(ii) Seeks assistance from only one program for each component of the project.

(3) The Commissioner reviews separately each programmatic component of a consolidated application in competition with other applicants seeking assistance under that program.

(b) For the programs in the State Basic Skills Improvement component—

(1) An applicant enters into individualized agreements with the Commissioner under the requirements described in—

(i) Section 162.210 of these regulations for the Formula Grant Program; and

(ii) Section 162.211 of these regulations for the State Leadership Program.

(2) The Commissioner and the State may decide to enter into a consolidated agreement under the Formula Grant Program and the State Leadership Program if the State wishes to participate in both programs.

(20 U.S.C. 2885, 2886, 2888, 2902, 2904)

National Basic Skills Improvement

Types of Projects Assisted

§ 162.110 Basic skills improvement in the schools program: Requirements.

(a) An applicant shall include in its project the six program elements described in the "Instruction in Basic Skills" section of the Act (sec. 205).

(b) An applicant shall propose to conduct its project at the elementary level, the secondary level or both.

(c)(1) Each project must address one or more of the four basic skills areas—reading, mathematics, oral communication, or written communication.

(2) If the proposed instructional activities do not address all four basic skills areas, the applicant shall demonstrate that—

(i) The instructional needs of the target population in all four basic skills areas have been assessed; and

(ii) Those not addressed by the project are being met.

(20 U.S.C. 2885)

§ 162.111 Parent participation program: Allowable activities.

Examples of activities that enlist parents and volunteers in teaching children basic skills are—

(1) Developing and disseminating materials for parents to use with their children in the home; or

(2) Conducting voluntary training activities for parents in areas directly related to the school curriculum.

(20 U.S.C. 2886)

§ 162.112 Out-of-school basic skills improvement program: Allowable activities.

A recipient under this program—described in sec. 208 as "Involvement of Educational Agencies and Private Organizations"—may conduct activities such as the following:

(a) Free distribution of books to children or lending or selling books to persons for the purpose of improving basic skills.

(b) Instructional programs and voluntary tutorial programs outside of the school for those in need of basic skills improvement. These activities may be known as academies.

(c) Efforts by community organizations to encourage individuals to improve their basic skills.

(20 U.S.C. 2888)

§ 162.113 Out-of-school basic skills improvement program: Requirements for instructional projects.

Each project must include:

(a) Procedures for—

(1) Identifying and recruiting participants in most need of basic skills improvement; and

(2) Focusing on the individual's ability to function effectively in society;

(b) Provision to conduct instruction at convenient times and locations; and

(c) Procedures for effective coordination with other organizations, such as employment and training agencies, private businesses, vocational and technical institutions, and local schools.

(20 U.S.C. 2889)

§ 162.114 Duration of awards.

(a) Under the conditions described in EDGAR, applicants may apply for multi-year awards of up to 48 months.

(b) Under terms announced annually in a notice of closing date published in the **Federal Register**, the Commissioner—

(1) States the amount, if any, available for multi-year awards; and

(2) Decreases the amount of funding in each year of a multi-year award.

(20 U.S.C. 2885, 2889, 2921)

Selection of Recipients

§ 162.120 SEA review of applications affecting an LEA.

(a) An applicant shall seek written comments from the SEA in each State in which the proposed activities are to take place if—

(1) The applicant is an LEA; or

(2) The applicant proposes to conduct any activity that—

(i) Takes place in an instructional program operated by an LEA; or

(ii) Involves preservice or in-service training of LEA teachers.

(b) In seeking the SEA's comments, the applicant shall specifically ask the SEA to state whether it considers the proposed activities to be consistent with the State's basic skills plan.

(c) The SEA may comments on the consistency of the proposed activities with the State's basic skills plan only if it has informed potential applicants in a timely manner of the criteria by which it intends to judge consistency.

(d) The applicant shall submit a copy of its application to the SEA 15 days before the closing date for submitting applications to the Commissioner. To ensure consideration of its comments, the SEA shall forward its comments to the Commissioner within 30 days.

(e) The Commissioner considers an application for funding if—

(1) The SEA has indicated that the application is consistent with the State's basic skills plan;

(2) The SEA was given the required opportunity to comment, but did not do so; or

(3) The Commissioner determines that the proposed activities make a special contribution to the purposes of the Act.

(20 U.S.C. 2881, 2882(b), 2890)

§ 162.121 Selection criteria.

(a) In considering an application for funding, the Commissioner uses general selection criteria found in EDGAR. The value assigned to each criterion indicates the relative importance the Commissioner places on that criterion.

(1) Plan of operation. (15 points)

(2) Quality of staff. (10 points)

(3) Budget and cost effectiveness. (5 points)

(4) Evaluation plan. (7 points)

(5) Adequacy of resources. (3 points)

(b) Specific criteria are also used to evaluate applications. The specific criteria comprise 60 possible points.

(1) The extent to which the project objectives are clear and are based on the needs of the target population, and on research and experience regarding basic skills instruction. (15 points)

(2) The extent to which the project provides for effective coordination of Federal, State, and local resources and activities. (15 points)

(3) The extent to which affected schools, organizations, and individuals have been and will be involved in planning and implementing the proposed activities. (10 points)

(4) The extent to which the project's results can be incorporated into regular instructional programs in the school; basic skills improvement activities in non-school settings; or statewide basic skills plan. (10 points)

(5) The quality of a plan to validate the results of the project and to disseminate those results to the general public and interested agencies and institutions. (10 points)

(c) The Commissioner may take into account the geographic distribution of awards among the States in deciding which projects to support.

(20 U.S.C. 2885, 2886, 2888)

Conditions of Awards

§ 162.130 Coordination requirement.

A recipient shall coordinate its activities with other local, State, and federally-supported activities relating to basic skills improvement in the project area.

(20 U.S.C. 2881–2890)

§ 162.131 Participation of nonpublic school children.

An SEA or LEA applicant under each of the three programs shall provide assurance in its application that—

(a) In designing the project, the applicant has consulted with non-public school officials on the needs of children in non-public elementary and secondary schools; and

(b) To the maximum extent possible, and taking into account in the area to be served the number of non-public school children who have the educational needs the project is intended to address, the applicant will provide an opportunity for those non-public school children to participate in the project on a basis comparable to that provided for public school children.

(20 U.S.C. 2882)

§ 162.132 Other requirements for LEA's and SEA's.

An SEA or LEA applicant shall include an assurance in its application that it will have effective procedures to—

(a) Evaluate the effectiveness of the project and report its findings to the Commissioner; and

(b) Incorporate successful practices into the regular instructional program.

(20 U.S.C. 2882)

State Basic Skills Improvement

How a Grant is Made a State

§ 162.210 Formula grant program: Individualized agreement.

An SEA wishing to participate in the program shall develop with the Commissioner an individualized agreement that—

(a) Describes a coordinated program to improve basic skills in the State, including recent activities in the State, the proposed goals and activities, evaluation plans, and expected outcomes; and

(b) Meets the requirements for use and distribution of funds, consultation, and evaluation that are listed in the Act's section on "Agreements with State educational agencies" (222(a)).

(20 U.S.C. 2901–2903)

§ 162.211 State leadership program: Individualized agreement.

A State wishing to participate in the program shall enter into an individualized agreement with the Commissioner to carry out activities based on needs identified by the State. These activities are described in the "State Leadership Program" section of the Act (sec. 224).

(20 U.S.C. 2904)

How a Grant Is Made to a State

§ 162.220 Formula grant program: Apportionment of funds.

(a) Each year the Commissioner apportions available funds among the States that have entered into an agreement under § 162.210 according to the formula described in section 223 of the Act ("Distribution of Funds"). If any States are not funded, the Commissioner apportions the excess funds among those States that have entered into an agreement with the Commissioner according to their school age population (5 through 17 years).

(b) The State may retain no more than 5 percent of the grant to administer its agreement with the Commissioner.

(c) The State shall subgrant to LEAs to least 70 percent of the State allotment.

(20 U.S.C. 2903)

§ 162.221 State leadership program: Apportionment of funds.

The Commissioner apportions available funds among the States on the same basis described in § 162.220(a).

(20 U.S.C. 2904)

Subgrants Under the Formula Grant Program

§ 162.230 Eligibility for a subgrant.

The following kinds of agencies are eligible to apply to the State for a subgrant—

(a) An LEA.

(b) An institution of higher education.

(c) Any other public or nonprofit private agency or organization.

(20 U.S.C. 2902(b))

§ 162.231 Subgrants to local educational agencies: Allowable activities.

An LEA shall conduct—

(a) An in-school project that meets the conditions described in sec. 222(d); or

(b) A parent involvement project that includes the types of activities described in sec. 222(e).

(20 U.S.C. 2902 (d) and (e))

§ 162.232 Subgrants to other eligible agencies: Allowable activities.

An applicant other than an LEA shall conduct a parent involvement project that includes the types of activities described in sec. 222(e).

(20 U.S.C. 2902(e))

§ 162.233 Conditions regarding participation of nonpublic school children.

(a) A State shall insure that its subgrantees provide for the equitable participation of children attending nonpublic schools.

(b) The expenditures for services and arrangements for those non-public students must be equal to those provided to children in public schools based on the number of children to be served and the special educational needs of those children.

(20 U.S.C. 2902(c))

Educational Proficiency

Types of Projects Assisted

§ 162.310 Proficiency standards program: Requirements

An applicant under the Proficiency Standards Program shall in its application—

(a) Describe the proficiency standards being established in basic skills and in other proposed subjects;

(b) Describe instructional projects designed to assist students in reaching the proficiency standards; and

(c) Assure that additional instructional assistance is provided to students who fail the proficiency standards test.

(20 U.S.C. 3331)

§ 162.311 Achievement testing program: Allowable activities.

A recipient may conduct activities such as the following:

(a) Provide information to SEAs and LEAs about different measures of achievement and uses of those measures.

(b) Provide training for educational leaders and instructional personnel in SEAs and LEAs on different measures of achievement and uses of those measures.

(c) Conduct research on measuring achievement and diagnosing instructional needs.

(20 U.S.C. 3332)

Selection of Recipients

§ 162.320 State review of applications affecting an LEA.

The State coordination procedures in § 162.120 apply to the two programs in this component.

(20 U.S.C. 3331–3332)

§ 162.321 Selection criteria.

(a) In considering an application for funding under the Proficiency Standards Program or the Achievement Testing Program, the Commissioner uses general selection critieria found in EDGAR. The value assigned to each criterion indicates the relative importance the Commissioner places on that criterion.

(1) Plan of operation. (20 points)

(2) Quality of staff. (7 points)

(3) Budget and cost effectiveness. (10 points)

(4) Evaluation plan. (15 points)

(5) Adequacy of resources. (3 points)

(b) Specific cirteria are also used to evaluate applications. The specific criteria comprise 45 possible points.

(1) For the Proficiency Standards Program, the specific criteria are:

(i) The project objectives, including the extent to which the objectives are based on needs of the target population, and on research and experience regarding the setting of proficiency standards. (20 points)

(ii) The extent to which the applicant proposes effective procedures for involving teachers, parents, and experts in developing and adopting the standards. (10 points)

(iii) The extent to which the applicant proposes effective procedures to convert proficiency test results into usable information for improving curriculum and instruction. (15 points)

(2) For the Achievement Testing Program, the specific criteria are:

(i) The project objectives, including the extent to which the objectives are based on the needs of the applicant agency and on research and experience regarding achievement testing. (20 points)

(ii) The extent to which the applicant proposes effective procedures for involving teachers, parents, and experts in developing and implementing the project. (15 points)

(iii) The extent to which the applicant proposes effective procedures to convert achievement test results into usable information for improving curriculum and instruction. (15 points)

(c) The Commissioner may take into account the geographic distribution of awards among the States in deciding which projects to support.

(20 U.S.C. 3331, 3332)

[Editorial note.—The following appendix will not appear in the Code of Federal Regulations]

APPENDIX

PUBLIC LAW 95–561—NOV. 1, 1978

TITLE II—ESTABLISHMENT OF A NEW TITLE II OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

Basic Skills

Sec. 201. Title II of the Elementary and Secondary Education Act of 1965 (hereinafter in titles II through IX of this Act referred to as "the Act") is amended to read as follows:

"TITLE II—BASIC SKILLS IMPROVEMENT

"Part A—National Program

"Purpose

"Sec. 201. The purpose of this part is—

"(1) to assists Federal, State, and local educational agencies to coordinate the utilization of all available resources for elementary and secondary education to improve instruction so that all children are able to master the basic skills of reading, mathematics, and effective communication, both written and oral;

"(2) to encourage States to develop comprehensive and systematic plans for improving achievement in the basic skills;

"(3) to provide financial assistance to State and local educational agencies for the development of programs in the basic skills;

"(4) to develop means by which parents working with the schools can contribute to improving the educational achievement of their children;

"(5) to encourage the involvement of the private sector in the delivery to children, youths, and adults of educational services and materials that will improve achievement in the basic skills; and

"(6) to expand the use of television and other technology in the delivery of

instructional programs aimed at improving achievement in the basic skills.

"Applications

"Sec. 202. (a) The Secretary may make a grant or award a contract under this part only upon the submission of an application by an eligible entity at the time and in the form prescribed by the Secretary. Each such application by a State or local educational agency shall provide assurances that—

"(1) in designing the proposal for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with private school-officials; and, to the maximum extent feasible, and consistent with the number of such children in the area to be served who have the educational needs the proposal is intended to address, those children will be provided an opportunity to participate in the proposed activity on a basis comparable to that provided for public school children;

"(2) procedures have been developed to evaluate the effectiveness of the proposed activity in achieving the purposes of this title; and

"(3) procedures have been developed for incorporating successful practices developed with assistance under this title into the regular instructional program.

"(b) No grant or contract may be awarded to a local educational agency under this part unless the appropriate State educational agency has been provided an opportunity for at least thirty days to comment on the application.

"Acceptance of Gifts

"Sec. 203. Notwithstanding the provisions of section 408(a)(3) of the General Education Provisions Act, the Secretary may accept, on behalf of the United States, conditional or unconditional gifts or donations of services, money, or property, made for any activities authorized to be carried out under this title.

"Grants and Contracts

"Sec. 204. (a) In order to achieve the purposes of this part, the Secretary is authorized, during the period of October 1, 1979, through September 30, 1983, to make grants to, and enter into contracts with, State and local educational agencies, and other public and private agencies, organizations, and institutions to carry out planning, research, development, demonstrations (including training of leadership personnel, evaluation, and dissemination, as described in sections 205 through 209), except that no grant may be made under this part to other than a public or nonprofit private agency, organization, or institution.

"(b) The Secretary may provide to such agencies, organizations, and institutions, either directly or through grants or contracts, technical assistance related to the purposes of this part.

"Instruction in Basic Skills

"Sec. 205. The Secretary shall provide assistance, in accordance with section 204, for activities designed to demonstrate improved delivery of instructional services in the areas of reading, mathematics, and oral and written communication, including—

"(1) assessment of schoolwide needs to identify the instructional needs of children in basic skills;

"(2) establishing learning goals and objectives for each school;

"(3) the development of comprehensive programs to address the needs through the use of resources available under this part and other resources from local, State, and Federal programs;

"(4) the demonstration of techniques for coordinating the efforts of local agencies, organizations, and institutions, to improve achievement in basic skills;

"(5) preservice training programs for teaching personnel including teacher aides and other ancillary educational personnel, and in-service training and development programs, designed to enable such personnel to improve their ability to teach basic skills; and

"(6) active involvement of teachers, teacher aides, administrators, and other educational personnel to improve their ability to utilize available resources to carry out the purposes of this part.

"Parental Participation in Basic Skills Instruction

"Sec. 206. The Secretary, in accordance with section 204, shall support activities designed to enlist the assistance of parents and volunteers working with schools to improve the skills of children in reading, mathematics, and oral and written communication. The activities which may be supported under this section include—

"(1) the development and dissemination of materials that, with appropriate training, parents may use in the home to improve their children's performance in those skills; and

"(2) voluntary training activities for parents to encourage them to assist their children in developing basic skills.

"Use of Technology in Basic Skills Instruction

"Sec. 207. The Secretary, in accordance with section 204, shall support development and demonstration activities related to the improved use of television and other technology to contribute to the instruction of children in reading, mathematics, and written and oral communication. The activities authorized under this section shall be designed to expand the variety and improve the quality of instructional efforts involving the use of technology. The activities which may be supported under this section include—

"(1) the development and acquisition of educational programing, including audio and video materials distributed through broadcast, cable, tape, film, cassettes, or other means that provide instruction in basic skills in an effective manner;

"(2) the development and acquisition of instructional materials that supplement educational programing described in clause (1) of this section in order to improve its effectiveness in the school, the home, and other learning environments;

"(3) the development and acquisition of materials to assist teachers in relating such programing, or similar public or commerical programs of educational value, to instruction in the classroom;

"(4) the training of teachers, administrators, and other instructional personnel in the use of educational technology;

"(5) assistance to teachers, administrators, and other instructional personnel for experimentation with new technological approaches to instruciton; and

"(6) distribution of information about, and promotion of the use of, such programing and technology in the classroom and other learning environments.

"Involvement of Educational Agencies and Private Organizations

"Sec. 208. (a) The Secretary shall provide assistance and information to State and local educational agencies, institutions of higher education, and private agencies, organizations, and institutions (such as labor unions, volunteer organizations, and business associations) to support the efforts of such agencies, organizations, and institutions to stimulate children, youths, and adults to improve their achievement in basic skills. The activities which may be supported under this section include—

"(1) programs to motivate children to improve their reading skills through the distribution to children of books;

"(2) instructional programs and voluntary tutorial programs to provide individual assistance outside of the school to children, youths, and adults with instruction needs;

"(3) community efforts to encourage individuals to improve their performance in basic skills; and

"(4) the establishment of programs for lending or selling books to children, youths, and adults.

"(b) Activities supported under subsection (a)(2) may be known as reading academies.

"Collection and Dissemination of Information Relating to Basic Skills Programs

"Sec. 209. The Secretary is authorized to use funds appropriated under this part to collect and analyze information concerning the results of activities carried out under this title and under part C of title IV, including information on the activities which have been successful in improving the achievement of students in the basic skills. Such funds may also be used to disseminate that information to State and local educational agencies and other interested public and private agencies, organizations, and institutions.

"Coordination

"Sec. 210. The Secretary shall establish effective and efficient procedures for coordination between the programs assisted under this part and other parts of this title, with programs assisted under title I and title IV of this Act, title V of the Economic Opportunity Act of 1964, title V of the Higher Education Act of 1965, and other such Federal programs that support efforts to improve the basic skills of children, youth and adults.

"Part B—State Basic Skills Improvement Program

"Statement of Purpose

"Sec. 221. It is the purpose of this part to provide financial assistance to States to enable them—

"(1) to develop comprehensive and systematic statewide plans for improving achievement in the basic skills, to coordinate available resources for elementary and secondary education, and to provide financial assistance to improve the instruction so that all children are able to master the basic skills of reading, mathematics, and effective communication, both written and oral;

"(2) to provide assistance to local agencies in the development and implementation of comprehensive programs to improve basic skills proficiency and instruction in the elementary and secondary schools;

"(3) to develop means by which parents working with the schools can contribute to improving the educational achievement of their children;

"(4) to provide State leadership in the planning, execution, and evaluation of basic skills instructional programs in elementary and secondary schools; and

"(5) to arrange for and assist in the training of educational staff, including special reading and mathematics personnel and specialists needed in programs assisted under this part.

"Agreements With State Educational Agencies

"Sec. 222. (a) Any State which desires to receive grants under this part shall, through its State educational agency, enter into an agreement with the Secretary, in such detail as the Secretary deems necessary, which—

"(1) designates the State educational agency as the agency for administration of the agreement;

"(2) provides for a process of active and continuing consultation with the State educational agency, by persons broadly representative of the educational resources of the State and of the general public, including persons representative of—

"(A) public and private nonprofit elementary and secondary schoolchildren,

"(B) institutions of higher education,

"(C) parents of elementary and secondary schoolchildren,

"(D) areas of professional competence relating to basic skills instruction in reading and mathematics,

"(E) classroom teachers in the State, and

"(F) local administrators including principals and superintendents,

to advise the State educational agency on the planning, development, implementation, and evaluation of a comprehensive State program for improving basic skill;

"(3) describes the basic skills instructional programs in elementary and secondary schools for which assistance is sought under this part and procedures for giving priority to basic skills programs which are already receiving Federal financial asssistance and show reasonable promise of achieving success;

"(4) sets forth criteria for achieving an equitable distribution of that part of the assistance under this part which is made available to local educational agencies pursuant to the second sentence of subsection (b) of this section, which criteria shall—

"(A) take into account the size of the population to be served, beginning with preschool, the relative needs of pupils in different population groups within the State for the program authorized by this part, and the financial ability of the local educational agency serving such pupils, and

"(B) assure that such distribution shall include grants to local educational agencies having high concentrations of children with low reading or mathematics proficiency;

"(5) provides for the coordination and evaluation of programs assisted under this part;

"(6) provides for technical assistance and support services for local educational agencies participating in the program;

"(7) makes provision for the dissemination to the educational community and the general public of information about the objectives of the program and results achieved in the course of its implementation;

"(8) provides for making a report, at least once every three years, and such other reports, in such form and containing such information, as the Secretary may reasonably require to evaluate the effectiveness of the program and to carry out his other functions under this part;

"(9) provides that not more than 5 per centum of the amount allotted to the State under this part for any fiscal year may be retained by the State educational agency for purposes of administering the agreement;

"(10) provides that programs assisted under this part shall be of sufficient size, scope, and quality so as to give reasonable promise of substantial progress toward achieving the purposes of this part; and

"(11) provides that Federal funds expended under the program will supplement the level of State and local funds that would be available for such programs in the absence of Federal assistance, and in no event will supplant such State and local funds.

"(b) Grants for projects to carry out the purposes of this part may be made to local educational agencies (subject to the provision of subsection (c) relating to the participation of private elementary and secondary school pupils), institutions of higher education, and other public and nonprofit agencies and institutions. Not less than 70 per centum of the amount allotted to a State under this part for any fiscal year shall be made available by the State for grants to local educational agencies within that State.

"(c) The provisions of section 130(a)(1) of this Act relating to the participation of children enrolled in private elementary and secondary schools shall apply to programs assisted under this part.

"(d) Each application by a local educational agency within a State for assistance under this part shall be developed in conjunction with teachers and building administrators in such district. The application shall set forth in a systematic strategy for improving basic skills instruction in the local district which provides for the planning and implementation of comprehensive basic skills instructional programs at the school building level. The school level programs shall address the needs of all students and shall utilize, in a coordinated fashion, resources available from all Federal, State, and local sources. Teachers, administrators, and parents shall be involved in the development of the comprehensive school level programs. Such programs shall include—

"(1) diagnostic assessment to identify the needs of all of the children in the school;

"(2) the establishment of learning goals and objectives for the school;

"(3) to the extent practicable, preservice training and inservice training and development programs for teaching and administrative personnel, including teacher-aides and other ancillary educational personnel, designed to enable such personnel to improve their ability to teach students the basic skills;

"(4) activities designed to enlist the support of parents to aid in the instruction of their children at home and school;

"(5) procedures for the evaluation of the effectiveness of the program, including a program of periodic testing of basic skills achievement and the publication of test results on basic skills performance by grade level and by school, without identification of performance of individual children;

"(6) assessment, evaluation, and collection of information on individual children by teachers during each year of a pre-elementary program, to be made available for teachers in the subsequent year, in order that continuity for the individual child not be lost. Such information shall also be available to parents or guardians of the individual children.

"(e) In addition to the grants authorized in subsection (d), the State educational agency may also make grants to support activities designed to enlist the assistance of parents working with schools to improve the skills of their children in reading, mathematics, and oral and written communication. Activities that may be supported under this section include—

"(1) the development and dissemination of materials that parents may use in the home to improve their children's performance in those skills;

"(2) the encouragement of closer contacts between parents and teachers to improve the coordination between learning experiences in the home and those in school;

"(3) planning for, developing and improving centers accessible to parents to provide materials and professional guidance, including volunteers, for parents who desire to assist in the instruction of their children; and

"(4) the demonstration of training programs for parents who desire to develop new skills to complement the instruction their children receive in school.

"(f) The Secretary shall enter into an agreement which complies with the provisions of subsection (a) with any State

which desires to enter into such an agreement.

"Distribution of Funds

"Sec. 223. The Secretary shall distribute grants under the provisions of this part so as to assure that each State having an agreement under section 222 will receive not less than the amount which bears the same ratio to the total amount available for this part for a fiscal year as the number of school age children (aged five through seventeen inclusive) in that State bears to the number of such children in all States, except that any State having an agreement shall not receive less than $50,000 in any such fiscal year.

"State Leadership Program

"Sec. 224. The Secretary is authorized to enter into agreement with State educational agencies for the carrying out by such agencies of leadership and training activities designed to prepare personnel throughout the State to implement programs which have been demonstrated in that State or other States to be effective in overcoming deficiencies in the basic skills, and to develop and implement statewide plans for improving the skills of children, youth, and adults in reading, mathematics, and oral and written communication. The activities authorized by this section shall be limited to—

"(1) the development of a comprehensive statewide program providing for the coordination of all Federal and State programs that provide instruction in basic skills;

"(2) planning activities that involve local administrators, teachers, and parents in the development of strategies to improve instruction in basic skills;

"(3) statewide assessments of need relating to basic skills, including the needs of both students and instructional personnel;

"(4) in-service training programs for local administrators, instructional personnel, and other staff members involved in instruction in basic skills; and

"(5) the provision of technical assistance and the dissemination of information relating to basic skills instruction to local educational agencies and other organizations and institutions involved in programs of instruction in basic skills.

"Part C—Special Programs for Improving Basic Skills

"Inexpensive Book Distribution Program for Reading Motivation

"Sec. 231. (a) The Commissioner is authorized (1) to enter into a contract with a private nonprofit group or public agency (hereinafter in this section referred to as the 'contractor'), which has as its primary purpose the motivation of children to learn to read, to support and promote the establishment of reading motivational programs which include the distribution of inexpensive books to students and (2) to pay the Federal share of the cost of such programs.

"(b) The contract shall provide that—

"(1) the contractor will enter into subcontracts with local private nonprofit groups or organizations or with public agencies (hereinafter referred to as 'subcontractors') under which the subcontractors will agree to establish, operate, and provide the non-Federal share of the cost of reading motivational programs which include the distribution of books by gift or loan, to pre-elementary, elementary or secondary schoolchildren;

"(2) funds made available by the Commissioner to a contractor pursuant to any contract entered into under this section will be used to pay the Federal share of the cost of establishing and operating reading motivational programs as provided in paragraph (1); and

"(3) the contractor will meet such other conditions and standards as the Commissioner determines to be necessary to assure the effectiveness of the programs authorized by this section and will provide technical assistance in furtherance of the purposes of this section.

"(c) The Commissioner shall make no payment of the Federal share of the cost of acquiring and distributing books pursuant to a contract authorized by this section unless he determines that the contractor or the subcontractor, as the case may be, has made arrangements with book publishers or distributors to obtain books at discounts at least as favorable as discounts that are customarily given by such publisher or distributor for book purchases made under similar circumstances in the absence of Federal assistance.

"(d) For purposes of this section—

"(1) the term 'nonprofit', when used in connection with any organization, means an organization no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

"(2) the term 'Federal share' means, with respect to the cost of books purchased by a local private nonprofit group, organization, or public agency for a program in a locality for distributing such books to schoolchildren in that locality, 75 per centum of the cost of that agency or group or organization for such books for such program; except when such nonprofit group, organization or public agency has within the two years preceding its application for assistance, received Federal funds under a program to benefit migrant and seasonal farmworkers in which the Federal share was 100 per centum. In that case the term 'Federal share', under this section, shall mean 100 per centum of the cost of that agency or group or organization for such books that are distributed to the children of migrant and seasonal farmworkers; and

"(3) the term 'pre-elementary school' means a day or residential school which provides pre-elementary education, as determined under State law, except that such term does not include education for children who have not attained three years of age.

"(e) There are authorized to be appropriated to carry out the provisions of this section $9,000,000 for fiscal year 1979, $10,000,000 for fiscal year 1980, $11,000,000 for fiscal year 1981, and $12,000,000 for each of the two succeeding fiscal years. Under such conditions as the Commissioner determines to be appropriate, not to exceed 10 per centum of the amounts appropriated for each fiscal year shall be available for a contract from the Commissioner to the contractor designated under subsection (a) of this section for technical assistance under subsection (b)(3) of this section to carry out the provisions of such section.

"Special Mathematics Program

"Sec. 232. (a) The Commissioner is authorized to make grants to, and enter into contracts with, one or more private nonprofit agencies, institutions, or organizations, for the conduct, in cooperation with one or more local educational agencies, of special programs for the teaching of standard mathematics to children eligible for services under titles I and VI of this Act through instruction in advanced mathematics by qualified instructors with bachelor's degrees in mathematics, or the mathematical sciences from colleges or other institutions of higher education, or equivalent experience.

"(b) There are authorized to be appropriated such sums as may be necessary for fiscal year 1980 and for each of the three succeeding fiscal years, to carry out the provisions of this section.

"Part D—General Provisions

"Authorization of Appropriations

"Sec. 241. There are authorized to be appropriated such sums for the fiscal year 1980 and for each succeeding fiscal year ending prior to October 1, 1983, as may be necessary to carry out the provisions of parts A and B of this title.

"Apportionment of Appropriations

"Sec. 242. (a) From the first $20,000,000 appropriated pursuant to section 241 of any fiscal year the Secretary shall carry out the provision of part A of this title.

"(b) From the amounts in excess of $20,000,000 in any fiscal year the Secretary shall carry out the provisions of part B of this title.".

"TITLE IX—ADDITIONAL PROGRAMS

"Part B—Educational Proficiency Standards

"Grants To Implement Educational Proficiency Standards

"Sec. 921. (a) The Commissioner is authorized to make grants to any State educational agency (or to any local educational agency located in a State in which the State educational agency has not submitted an application for a grant under this section) to carry out any plan approved by the Commissioner in accordance with this section to assist students in achieving levels of educational proficiency compatible with basic standards established by such educational agency.

"(b)(1) Each applicant which desires to receive a grant under this section may submit an application to the Commissioner. Any such application shall be submitted in such form, and in accordance with such procedures, as the Commssioner shall require and shall contain an educational proficiency plan, as described in paragraph (2) of this subsection.

"(2) The educational proficiency plan referred to in paragraph (1) of this subsection—

"(A) shall contain a description of the educational proficiency standards established by the applicant for reading, writing, mathematics, and any other subject for which the State may require such standards;

"(B) shall contain a description of the programs designed to assist students in achieving levels of educational proficiency compatible with the standards described in subparagraph (A) of this paragraph;

"(C) may provide for the administration of examinations to students, at specified intervals or grade levels, to measure their reading, writing, or mathematical proficiency, or their proficiency in other subjects which the applicant considers appropriate for testing; and

"(D) shall contain the assurances of the applicant that any student who fails any examination provided for under subparagraph (C) of this paragraph shall be offered supplementary instruction in the subject matter covered by such examination.

"(c) The Commissioner shall award a grant to any applicant, in such amounts as the Commissioner considers appropriate, only if (1) the Commissioner approves the educational proficiency plan submitted by the applicant pursuant to subsection (b) of this section, and (2) the application submitted pursuant to such subsection satisfies all other requirements established by the Commissioner. Grants awarded under this section may be used by applicants either to continue to implement their ongoing educational proficiency plans, or to implement new plans, including the provision of supplementary instruction to be provided to students who fail the examinations.

"(d) There are authorized to be appropriated to carry out this section such sums as may be necessary for the fiscal year ending September 30, 1979, and for each of the four succeeding fiscal years.

"(e) For purposes of this section, the term 'applicant' means any State or local educational agency which submits an application under this section.

"(f) Nothing in this section shall authorize the Commissioner to impose tests on State educational agencies or local educational agencies, and no such agency shall be compelled in any way to apply for funds under this section.

"Achievement Testing Assistance

"Sec. 922. (a) The Commissioner is authorized, either directly or through grants or contracts awarded to State and local educational agencies and other public agencies, organizations, and institutions, and through contracts with private agencies, organizations, and institutions, to assist State and local educational agencies to develop their capacity to conduct programs of testing the achievement in the basic skills of children in elementary and secondary schools. The activities which may be supported under this section include—

"(1) disseminating information to State and local educational agencies on the availability and uses of achievement tests;

"(2) training of and assistance to administrators, teachers, and other instructional personnel in the use of tests and test results; and

"(3) research and evaluation designed to determine improved means of assessing more accurately the achievement of children in basic skills and of diagnosing instructional needs.

"(b) Nothing in this section shall authorize the Commissioner to require specific tests or test questions. Any State or local educational agency may refuse to use any test or test question developed under this section.

"(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section for fiscal year 1980, and for each of the three succeeding fiscal years.

[FR Doc. 79-13064 Filed 4-26-79; 8:45 am]

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Friday
April 27, 1979

Part IX

Department of Energy

Production Incentives for Marginal Properties; Correction

DEPARTMENT OF ENERGY

10 CFR Part 212

Mandatory Petroleum Price Regulations; Production Incentives for Marginal Properties; Correction

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Correction.

SUMMARY: On April 5, 1979, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) adopted amendments to the Mandatory Petroleum Price Regulations designed to provide additional incentives for increased production of domestic crude oil. (44 FR 22010, April 12, 1979.) The April 5, 1979 Notice contained certain inadvertent errors and omissions, which do not affect the substance of those amendments, but which have been corrected in the appended Notice.

FOR FURTHER INFORMATION CONTACT:

William Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, NW., Room B110, Washington, D.C. 20461, (202) 634–2170.

William Carson (Office of Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street, NW., Room 2304, Washington, D.C. 20461, (202) 254–7200.

Eugene Glass (Office of Fuels Regulations), Department of Energy, 2000 M Street, NW., Room 6128E, Washington, D.C. 20461, (202) 254–7183.

Lynette Charboneau (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue, NW., Room 1147, Washington, D.C. 20461, (202) 633–8965.

Issued in Washington, D.C., April 22, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final Rule, Further Notice of Proposed Rulemaking.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is adopting amendments to the Mandatory Petroleum Price Regulations designed to provide additional incentives for increased production of domestic crude oil.

One of these amendments will apply to crude oil produced and sold from "marginal properties" and, as of the effective date of the amendment, most of the crude oil produced and sold from these properties will be eligible for upper tier ceiling prices with the remainder of such crude oil to be released to upper tier prices effective January 1, 1980.

Under another of these amendments, producers will be given an opportunity, for each domestic property on a one-time basis to elect to (1) eliminate any existing current cumulative deficiencies, and (2) update the base production control levels (BPCL's), as of the effective date of this amendment. Thereafter, the amendments provide for adjustments to these BPCL's so as to provide each month for a more realistic opportunity to release a portion of the properties' lower tier crude oil production to the upper tier. These amendments will apply to all properties except those qualifying as "marginal," for which special procedures are provided.

Finally, the ERA is continuing this rulemaking proceeding to consider whether to adopt any of the other proposals currently under consideration in this proceeding, including (but not limited to), elimination of the current 21 cent per barrel entitlement penalty on uncontrolled crude oil.

DATES: Effective date of amendments adopted, June 1, 1979; Further comments by June 15, 1979, 4:30 p.m.

ADDRESSES: All comments to: Public Hearing Management, Docket No. ERA–R–78–18, Department of Energy, Room 2313, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

William Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, NW., Room B110, Washington, D.C. 20461, (202) 634–2170.

William Carson (Office of Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street, NW., Room 2304, Washington, D.C. 20461, (202) 254–7200.

Eugene Glass (Office of Fuels Regulations), Department of Energy, 2000 M Street, NW., Room 6128E, Washington, D.C. 20461, (202) 254–7183.

Lynette Charboneau (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue, NW., Room 1147, Washington, D.C. 20461, (202) 633–8965.

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A. *Third Stage of EPCA Implementing Regulations*

B. *The Energy Conservation and Production Act*

II. *General Principles Underlying Consideration of the Proposals*

III. *Alternative Amendments Proposed*

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IV. *Discussion of Comments*

V. *Amendments Adopted*

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I. Background

A. Third Stage of EPCA Implementing Regulations

On May 4, 1976, the Federal Energy Administration (FEA) issued a Notice of Proposed Rulemaking and Public Hearing (41 FR 18873, May 7, 1976) to consider whether additional incentives, beyond the lower tier and upper tier ceiling price levels (including adjustments for inflation and to provide a production incentive) that had been adopted pursuant to the pricing policy of the Energy Policy and Conservation Act (EPCA, Pub. L. 94–163), would be needed to maintain or increase production volumes in any classifications of domestic crude oil. At that time any amendment to provide such incentives by increasing the composite price would have been required to be submitted to Congress pursuant to the review procedures established by Section 551 of the EPCA for composite price adjustments in excess of the adjustments for inflation and as a production incentive, which were then permitted without such review.

The FEA at that time proposed additional incentives with respect to each of the three categories specified in the Emergency Petroleum Allocation Act, as amended (EPAA, Pub. L. 93–159), *i.e.*, the discovery and development of high cost and high risk properties, the application of enhanced recovery

techniques, and sustaining production from marginal wells.

Final action on any of the proposals in that proceeding was ultimately deferred because of the increased composite price flexibility afforded by the Energy Conservation and Production Act (ECPA, Pub. L. 94–385), which was enacted on August 14, 1976, during the pendency of the proceeding. The ECPA eliminated the 3 percent limitation on production incentive adjustments, and identified express priorities for treatment under that increased pricing flexibility.

B. The Energy Conservation and Production Act

The ECPA amended the EPAA in several significant respects regarding crude oil prices. Specifically, the ECPA removed the 3 percent limitation on adjustments to the composite price to provide a production incentive, so that only the overall limitation of 10 percent on the combined effect of adjustments to reflect inflation and as a production incentive was retained. The EPCA had limited the annual rate of adjustment to the rate of inflation (as measured by the first revision of the GNP deflator) plus not more than 3 percent as a production incentive, with the total rate of adjustment not to exceed 10 percent per year. In contrast, the ECPA permitted increased pricing flexibility of up to a full 10 percent per year, with the result that composite price increases as a production incentive could exceed 3 percent if the rate of inflation were below 7 percent.

This increased pricing flexibility provided a means to encourage domestic production, and the ECPA included as express priorities in this regard the application of *bona fide* tertiary recovery techniques and adjustments to certain gravity price differentials that were associated at that time with heavy crude oil. (Action has since been taken to accomplish adjustments to gravity price differentials and to provide additional price incentives for *bona fide* tertiary enhanced recovery techniques.)

The ECPA provided that, effective September 1, 1976, crude oil produced and sold from stripper well properties is exempt from first sale price controls. The statutory exemption for crude oil produced and sold from stripper well properties (first in the EPAA and later in the ECPA) was intended by Congress to provide an incentive to maintain domestic crude oil production from marginal producing well properties. Under the current ECPA exemption for stripper well properties, Congress set the qualifying limits for the exemption at production of crude oil at levels of 10 barrels or less per well per day during any preceding consecutive 12-month period beginning after December 31, 1972. Although such crude oil is statutorily exempt from first sale price controls, actual volumes of stripper well crude oil have been reported to the DOE, given an imputed price (as determined under Section 121 of the ECPA), and included in the calculations to determine compliance with the actual weighted average first sale price restrictions contained in the EPAA. Effective June 1, 1979, the domestic crude oil first sale price restrictions contained in Section 8 of the EPAA terminate under current law.

II. General Principles Underlying Consideration of the Proposals

We have determined that the examination, begun by the FEA, of additional production incentives for domestic crude oil, should be continued, particularly with respect to domestic crude oil volumes the production of which may be marginally economic at currently controlled price levels. Accordingly, on November 2, 1978, we proposed several amendments (and variations thereof) to the price regulations to provide such production incentives for domestic crude oil. Public hearings on these proposals were held in Austin, Texas on January 9, 1979, and in Los Angeles, California on January 11, 1979. After consideration of all the comments received in connection with this proceeding, and on the basis of data now available to us, we have decided to adopt certain amendments to the price regulations. We will continue our examination of whether additional price incentives should be proposed with respect to first sales of domestic crude oil.

An important element of DOE policy is the promotion of domestic crude oil production, and thus of national energy self-sufficiency, in a manner compatible with the specific policies of the EPAA and overall national policies generally. In this connection, we have considered whether crude oil price levels calculated in accordance with DOE regulations, particularly lower tier crude oil price levels, may be resulting in the premature abandonment of domestic crude oil producing properties that would be self-sustaining in the absence of controls or at higher price levels. Also, we are aware that the present crude oil price control system may be operating to discourage producers from undertaking actions that would increase crude oil production. Allowing production to decline to levels which would qualify for stripper well property treatment might result in more favorable regulatory treatment than if production efforts were maintained or increased.

In order to prevent the crude oil price regulations from operating in a fashion that frustrates the goal of maximizing domestic crude oil production and to address the potential problems discussed above, we have adopted the amendments described below. These amendments will permit an increase in the price of some volumes of crude oil produced and sold from certain properties, to upper tier ceiling price levels.

Our consideration of the proposals set forth in the November 2 Notice has been guided by several factors. We have endeavored to determine whether and to what extent their adoption would be likely to result in increased levels of production above those that would otherwise occur in the absence of their adoption. In addition, we have determined that these amendments result in prices and classifications that are both administratively feasible and consistent with our goal of moving domestic crude oil production toward replacement cost, tempered by concerns for inflationary impacts on the national economy.

III. Alternative Amendments Proposed

A. Alternative Proposal No. 1: Market Prices for Certain Production From "Marginal" Properties

This proposal was designed to maintain marginal domestic crude oil production with price incentives that more closely correspond to costs of production at different well depths. It was our intention to determine whether production costs associated with domestic crude oil significantly increase in proportion to the depth of that production. Accordingly, this alternative proposed to establish a new classification of domestic crude oil produced from "marginal" properties, called "market tier" crude oil, which would immediately be eligible to be sold without regard to the current ceiling prices applicable to first sales of lower tier and upper tier crude oil.

Under this proposal, a "marginal property" would be assigned a "Marginal Base Production Control Level," and any volumes of current production and sale in excess of the Marginal BPCL could be sold at market clearing prices. (All other volumes of current production and sale equal to or less than the Marginal BPCL would be classified as either lower tier or upper

tier crude oil, as more fully explained in the November 2 Notice.) Additionally, an imputed decline rate would operate continuously to decrease the property's Marginal BPCL so as to provide an additional incentive to maintain or increase production levels.

We have decided that effective June 1, 1979, the BPCL for a marginal property will be equal to 20 percent of the average monthly production and sale of old crude oil from the property concerned during calendar year 1978. Effective January 1, 1980, the BPCL for any marginal property will be reduced to zero. Other than the complete elimination of the BPCL effective January 1, 1980, there will be no BPCL adjustments for marginal properties.

B. Alternative Proposal No. 2: Updating of BPCL for All Properties

Under this alternative we proposed to provide producers with an option, in addition to the existing BPCL options to establish a BPCL for a particular property based on the average monthly volumes of old crude oil produced and sold from the property in 1977. For each property the producer would be permitted to eliminate any current cumulative deficiency existing in the month prior to the month in which this proposal was adopted as a final rule. If the producer selected the 1977 calendar year to establish the property's BPCL, the BPCL could be adjusted in accordance with the formula of 10 CFR 212.76, based upon the property's actual decline in production experienced between 1974 and 1977.

This proposal would permit producers of lower tier crude oil to establish and thereafter adjust a BPCL that is more current than is permitted under the present provisions of the crude oil pricing regulations. We have considered a similar proposal which would have permitted an adjusted BPCL and decline rate for the property in the manner provided under Alternative Proposal No. 1 for the Marginal BPCL, rather than under § 212.76. We have decided not to adopt this variation.

We have decided instead to (1) eliminate all existing cumulative deficiencies on a one-time basis, and (2) provide producers with the option either to continue the property's existing BPCL and existing adjustments (if any), or adopt as the BPCL the property's average monthly production and sale of old crude oil during the six-month period ending March 31, 1979, and to reduce the updated BPCL each month by a factor of 1½ percent during calendar year 1979. Effective January 1, 1980 (the mid-point of the updated BPCL period), the updated BPCL will be reduced by a factor of 3 percent each month. Where the producer elects to use as a property's BPCL the average monthly production and sale of old crude oil from the property during the six-month period ending March 31, 1979, the first BPCL adjustment will be made effective June 1, 1979, and will effect a BPCL reduction of 9 percent to reflect 1½ percent reductions for each of the months of January through May 1979. These BPCL adjustments do not apply to marginal properties.

C. Alternative Proposal No. 3: Release of Some Crude Oil Production From All Wells to Market Prices

Under this proposal, a certain volume of the daily crude oil production from each well on a property would be eligible for sale at market prices. We specifically solicited comments on the question of how many barrels of crude oil per day per well should be released under this proposal in order to provide an adequate incentive for maintaining domestic production.

We also considered releasing a certain volume of current crude oil production to market prices for those properties that have secondary or tertiary recovery projects to encourage the use of enhanced recovery methods. In that regard, commenters discussed whether it would be necessary and administratively feasible for us to require evidence that the property for which the incentive is sought is subject to a *bona fide* secondary or tertiary recovery project.

D. Alternative Proposal No. 4: Increase in Lower Tier Ceiling Price

This proposal would have increased ceiling prices of lower tier crude oil by an amount to be determined in light of data received in response to the November 2 Notice.

We have decided to continue this proceeding for the purpose of soliciting comments addressed to whether we should escalate lower tier and upper tier ceiling prices at faster than the rate of inflation as measured by the GNP deflator, or otherwise adjust lower tier and upper tier ceiling prices. Although we have not closed the rulemaking on this alternative, we have determined not to take any action on this proposal at this time.

E. Additional Proposal To Eliminate 21 Cent Per Barrel Entitlement Penalty for Uncontrolled Crude Oil

Under the entitlements program, there is currently a 21 cent per barrel fixed advantage for refiners' receipts of lower tier and upper tier domestic crude oils as compared with receipts of imported crude oil. In the November 2 Notice, we proposed that this 21 cent fixed advantage be eliminated based on our tentative conclusion that there are sufficient incentives to refine domestic crude oil, and that the 21 cent penalty may be imposing an inappropriate burden on those refiners that are dependent on imported crude oil. Commenters were divided over this proposal. Generally, refiners favored this proposal and producers opposed it. We are deferring consideration of this proposal and will continue to receive comments in this proceeding as to whether we should adopt this proposal.

IV. Discussion of Comments

We received oral or written comments from more than sixty parties including major integrated refiners, large and small independent refiners, retailers, trade associations, air carriers, and governmental representatives.

Most of the comments strongly agreed that additional incentives are appropriate at this time in order to optimize the production of domestic crude oil, especially with respect to crude oil that is produced from the nation's older, declining properties, but urged that the elimination of all first sale price controls over domestic crude oil would be a better way to optimize domestic production. The following summary addresses the significant aspects of the written and oral comments with respect to each of the major proposals.

A. Alternative Proposal No. 1

Our proposal to create specific price incentives for crude oil produced and sold from marginal properties received general acceptance from commenters and was generally favored over other proposals. It was thought to be a positive step to correct what has been regarded as inadequate incentives to encourage the maintenance or development of marginal properties under our current regulations. Commenters generally agreed that production costs for domestic crude oil significantly increase in proportion to the depth of that production, and that in defining a marginal property we should use qualifying thresholds which relate average daily production levels to average completion depths. (Our proposal was based in part on the presumption that operating cost differentials as a result of high water cut were built into the "economic limit" data on depth brackets.)

The comments addressed to this proposal, however, suggested that we should consider simplifying the concept by adopting more workable regulations that would facilitate both industry compliance and DOE enforcement and provide greater incentives than those offered in the proposal. The most frequent suggestion was to eliminate the "marginal" BPCL entirely (or to establish it at zero) for all marginal properties. In effect, marginal properties would be analogous to stripper well properties and once a property qualified as marginal, all crude oil produced and sold from the property would qualify in first sales for market prices. The major advantage of such a rule would, of course, be simplicity. No "market tier" would be created, and no declining marginal BPCL computations would be required.

B. Alternative Proposal No. 2

Most commenters perceived our proposal to eliminate existing cumulative deficiencies and to update BPCL's generally as a possible vehicle for the ultimate decontrol of first sales of all domestic crude oil. Comments generally suggested that the elimination of current cumulative deficiencies and updating of BPCL's would provide little incentive for increased production if implemented on a one-time-only basis. However, when implemented in conjunction with a declining BPCL, an updated BPCL based on crude oil produced and sold from properties in 1978 rather than in 1977 was viewed as a positive step. Further, comments suggested that monthly downward adjustments of the BPCL would provide the greatest opportunity at the present time for an overall increase in domestic crude oil production levels.

C. Alternative Proposal No. 3

The majority of comments stressed that a one-time release to market prices of a certain amount of current production would do little to provide incentives for increasing domestic crude oil production levels. Our proposal was to release to market prices the same volume of current production—10 barrels per well per day—for each property. The major objection that we received was that such a mechanism would not focus the incentive on marginal properties. Moreover, 10 barrels per well per day was believed to be too little to do much in the way of increasing domestic production.

D. Alternative Proposal No. 4

While the comments generally favored increasing ceiling prices of lower tier crude oil by some fixed increment, they did not indicate that our adoption of this proposal would result in a significant increase in overall domestic production. In fact, comments suggested that an increase of two to four dollars per barrel would be necessary to substantially increase production. The real effect of this proposal, it was suggested, would be to narrow the differential between ceiling prices for lower tier and upper tier crude oil, thus easing the way for all domestic crude oil to be released to market prices.

The comments further noted that the GNP deflator was not an appropriate index by which to measure adjustments to lower tier ceiling prices. Although estimates varied, the cost of materials and operations was generally estimated to be increasing at a yearly rate of almost twice the GNP deflator.

Finally, the comments emphasized that in order to be effective as an incentive for increased domestic crude oil production any increase in lower tier ceiling prices for crude oil should be implemented generally for all properties. They argued that the time and expense of case-by-case determination by the DOE Office of Hearings and Appeals would discourage producers from applying for price relief.

E. Additional Proposal to Eliminate 21 Cent Per Barrel Entitlement Penalty for Uncontrolled Crude Oil

We received over 30 comments on our proposal to eliminate the 21 cent per barrel entitlement penalty for imported crude oil. Generally, refiners favored the proposal while producers opposed it.

Comments in favor of eliminating the penalty expessed the view that the penalty was unnecessary to create an incentive for refiners to purchase and refine domestic crude oil. Many refiners argued, however, that domestic crude oil does not need the 21 cent advantage because of its lower price and more dependable supply. Small and independent refiners which lacked adequate domestic supplies argued that they are especially disadvantaged by the 21 cent penalty. Producers and some refiners with significant domestic production were opposed to eliminating the 21 cent penalty, believing that its elimination would raise the entitlement cost for lower tier and upper tier crude oil and, hence, blunt the impact of any incentives that we might adopt for marginal properties.

F. Request for Additional Comments

In addition to comments on the specific proposals, we requested comments on any additional mechanisms that might be used to optimize domestic crude oil production in general and production from marginal properties in particular. Of the 40 comments that offered alternatives to our specific proposals, almost all urged total decontrol of domestic crude oil as the best incentive to increase production.

Many of the comments expressly suggested that we decontrol all domestic crude oil by October 1, 1981. Under the scenario most frequently outlined in these comments, both lower tier and upper tier ceiling prices would be increased by June 1, 1979, to the maximum levels currently permitted under the first sale composite price restrictions of Section 8 of the EPAA. On June 1, 1979, all upper tier crude oil would be permitted to receive market prices and, through a system of phased decontrol by which monthly volumes would be released to market prices, all lower tier crude oil would be exempt from control by October 1, 1981.

V. Amendments Adopted

A. Upper Tier Ceiling Prices for Crude Oil Produced and Sold From "Marginal" Properties

Comments submitted in response to our request in the November 2 Notice confirm our earlier tentative conclusion that production costs for domestic crude oil increase significantly in proportion to the depth of that production. For example, our data indicate that direct operating costs at a depth of 8,000 feet average approximately 41 percent above those experienced by domestic producers at a depth of 4,000 feet. Moreover, we believe that based on the comments we received, we can provide an incentive to domestic producers that is more adequately tailored to the various production situations by permitting properties to qualify as "marginal" based upon varying production levels at different depths, and to allow a large percentage of the crude oil produced and sold from such properties to be sold at upper tier ceiling prices on June 1 of this year and the remainder at the start of next year. In this way we believe that we can improve our regulations to provide better incentives for maintaining and increasing overall domestic production from this category of properties, such incentives being more nearly commensurate with the differing levels of operating costs likely to be experienced with respect to individual properties.

To illustrate: the stripper well property exemption provides market

prices in first sales of crude oil from any property where production of crude oil, excluding condensate recovered in non-associated production, has averaged 10 barrels or less per well per day during any preceding 12-month period beginning after December 31, 1972. This congressionally mandated exemption is designed, through the incentive of exempt prices based on the statutory presumption of threshold economic marginality at 10 barrels of crude oil per well per day for a consective 12-month period, to promote the continued operation of economically marginal properties, the production from which might otherwise by lost.

We are aware, however, that some incentive is also appropriate for other properties that do not fall within the definition of a stripper well property, but which are nevertheless economically marginal, or are approaching that limit because of higher operating costs. The marginal property amendment which we are adopting in this proceeding is addressed to those properties. Moreover, we are aware that with respect to properties that are approaching the 10 barrel per well per day limit some producers have foregone, and would continue to forego, efforts to maintain or to increase production from those properties because such efforts are more economically withheld and subsequently undertaken once the property has qualified as a stripper well property. We believe that this amendment will also avoid this unintended consequence of the stripper well property exemption and should result in a significant increase in domestic crude oil production.

Accordingly, we are adopting the following amendments to the crude oil price regulations, applicable to marginal properties effective June 1, 1979.

1. Qualifications as a "Marginal Property"

Inasmuch as our concept of a marginal property is analogous to a stripper well property, and because the calculations to be used in determining a property's qualification as a marginal property are similar to those used in determining a property's qualification under the stripper well property exemption, *Rulings 1974–28, 1974–29, 1974–30, 1975–12, 1975–15, 1977–6,* and relevant portions of *Rulings 1977–1* and *1977–2* will apply with respect to marginal properties as well as to stripper well properties.

a. *Qualifying Period.*—In the November 2 Notice, we proposed a qualifying period beginning on July 1, 1977, and ending on June 30, 1978. Comments addressed to this qualifying period were favorable. A later qualifying period was viewed as being more acceptable, however, and we have decided to adopt a later period (calendar year 1978) which is more consistent with the period selected for updating BPCL's generally. Once a property has qualified as marginal, it will retain that status for the duration of price controls—even if production levels subsequently increase above the qualifying limits—in order to provide the additional incentive to increase production levels. We proposed to use a historical qualifying period—rather than the statutory "rolling" qualifying period as is used for the stripper well property exemption—so as to eliminate any incentive to curtail production in order to qualify a particular property as marginal. Comments addressed to this issue confirmed our belief that in most cases one year appears to be the optimum period to establish marginal status while providing the incentive of higher prices. A one-year period is generally long enough to compensate for short-term production anomalies and establish representative production levels, and it is not an inordinately long period of time for a property to be operated near its economic limit.

b. *Determination of "Average Completion Depth."*—In order to determine whether a particular property qualifies as a marginal property, the producer must first calculate the property's "average completion depth" of all wells that produced crude oil on the property during the qualifying period. This calculation involves dividing the sum of the completion depths for all such wells by the number of those wells. Injection wells and other wells that did not produce crude oil during the qualifying period may not be counted for purposes of these calculations.

"Completion depth" is defined as the depth from which crude oil was produced, as reported to the applicable state regulatory authority. For properties located in states where no such reports are required to be made, or where no such regulatory body exists, the producer may use the depth to the base of perforations from which the well produced crude oil. For open hole completions, the producer may use the lesser of the plugged-back depth or the base of the producing reservoir. In either case, the producer must be able to document such depths with affidavits executed by a registered petroleum engineer.

Where a well produced crude oil during the qualifying period from two or more completion depths at the same time, the well may be counted as two or more wells—and the various completion depths averaged—only where the well would qualify as a multiple completion well for purposes of the stripper well property exemption, as interpreted in *Ruling 1975–12, i.e.,* where

(a) The well consists of two (or more) separate tubing strings run inside the casing, each of which carries crude oil from a separate and distinct producing formation, *and*

(b) the production capabilities of each formation are unaffected by any change in the production level of any other formation producing through the same well.

In all other cases, for example, where a single well produces crude oil from two or more different completion depths but does not otherwise meet the criteria in *Ruling 1975–12,* the producer must count the well as one well and may use the deepest completion depth. Where a well produced crude oil during the qualifying period from two or more separate and distinct producing reservoirs, and the producer had properly elected to treat the separate reservoirs as separate properties during the qualifying period, one or more of the separate and distinct reservoirs might qualify as marginal properties depending upon average daily production during the qualifying period. In cases such as this, *i.e.,* where there was discontinuity of property treatment during the qualifying period, the producer may determine marginal property treatment on a reservoir-by-reservoir basis, provided that he is able to provide evidence of actual production volumes from each reservoir during the entire qualifying period. Otherwise, marginal property status must be determined on the basis of the property as it existed at the beginning of the qualifying period.

c. *Determination of "Average Daily Production."*—A property's average daily production during the qualifying period must be determined in the same way as is done for stripper well properties, and the provisions of the relevant stripper well property rulings will be applicable with respect to such computations. Accordingly, in calculating a property's average daily production, for example, a producer may not count injection wells, or other wells that did not produce crude oil during the qualifying period. Moreover, adjustments to average daily production must be made to account for any well which was not operated at the maximum feasible rate of production in accordance with recognized conservation practices, or was significantly curtailed by reason of

mechanical failure or other disruption in production.

d. *Qualifying Thresholds.*—Once the property's average completion depth and average daily production have been determined, the producer will compare those figures with the qualifying limits set forth below.

Average Completion Depth in Feet	Average daily production
2,000 or more but less than 4,000	20 barrels or less.
4,000 or more but less than 6,000	25 barrels or less.
6,000 or more but less than 8,000	30 barrels or less.
8,000 or more	35 barrels or less.

For example, assume that a property consisted of four producing wells completed at depths of 3,300 feet, 4,700 feet, 4,500 feet, and 6,600 feet, and that during the qualifying period all four wells were operated at the maximum feasible rate of production in accordance with recognized conservation practices, with no production disruptions or other curtailments. Assume also that during this period 29,500 barrels of crude oil, excluding condensate recovered in non-associated production, were produced from the property. The property's average completion depth would be computed as follows:

$$ACD = \frac{3,300 + 4,700 + 4,500 + 6,600}{4}$$

$$= 4,775 \text{ feet}$$

The property's average daily production would be computed as follows:

$$ADP = \frac{29,500 \text{ barrels}}{(365 \text{ days})\ (4 \text{ wells})}$$

$$= 20.21 \text{ barrels per well per day}$$

Accordingly, the property as described in the example would qualify as a marginal property because, with an average completion depth of 4,775 feet (more than 4,000 but less than 6,000 feet), it produced less than 25 barrels of crude oil per well per day during the qualifying period. Therefore, as of June 1, 1979, the effective date of this rule, the producer may certify the property as a marginal property.

e. *Recordkeeping.*—Once a property qualifies as a marginal property, a producer will be required, with respect to the property during the qualifying period, to maintain at its principal place of business, and make available to the DOE upon request, (1) records specifying the number of wells on a property, (2) adequate records, or a certification by a registered petroleum engineer, providing the completion depth of each well, (3) records providing the volumes of crude oil produced at each depth, and (4) records of production, including records of each time production was significantly curtailed by reason of mechanical failure or other disruption in production. Where records of actual measured production volumes are unavailable, we will permit estimates verified by a registered petroleum engineer to be maintained.

B. *Updating of BPCL and Elimination of Existing Current Cumulative Deficiencies for All Properties.*

Effective February 1, 1976, in connection with the amendments adopted to implement the crude oil pricing policy of the Energy Policy and Conservation Act (41 FR 4931, February 3, 1976), the FEA revised the definition of base production control level (BPCL) to provide producers with the option to continue to use the then-existing BPCL or the average monthly production and sale of old crude oil during calendar year 1975 for the property. At that time the FEA found that:

> The production incentives afforded by the prior regulations [adopted initially by the Cost of Living Council in August 1973], which permitted new and released crude oil to be sold without respect to the ceiling price rule, were of decreasing impact or effectiveness because, due to natural rates of decline, production levels [were by February 1976] generally well below 1972 levels for most properties, and [were continuing] to decline. (41 FR at 4932.)

Because many properties with declining production levels were therefore unaffected by the incentives previously afforded under the price regulations, the FEA found it necessary to offer the option of using a more recent BPCL as a production incentive. In order to maximize the effectiveness of this new production incentive, the FEA eliminated all existing current deficiencies that had accumulated for properties under existing regulations.

In April 1976 the FEA amended the price regulations in order to provide an additional production incentive, with respect to those properties for which production levels were nevertheless still below the BPCL and for which production levels continued to decline so as to make the incentive of upper tier ceiling prices unrealistic. That amendment provided for BPCL adjustments based upon the annual rate of decline for the particular property concerned during the period January 1, 1972, through December 31, 1975.

Accordingly, under current regulations producers began to adjust BPCL's downward for certain properties. This adjustment has been made every six months (in January and July of each year) subject to the following qualifications. For properties from which no new crude oil was produced and sold from February 1, 1976, through June 30, 1976, the BPCL adjustments began July 1, 1976, and were permitted to be made each six months thereafter. For properties from which new crude oil was produced and sold during that five-month period, the BPCL adjustments began with the first month immediately following any six-month semi-annual period ending after June 30, 1976, during which the total production and sale of crude oil from the property was less than the sum of the property's BPCL's for that six-month period.

Once a property has qualified for the adjustment provisions contained in 10 CFR 212.76, the property's BPCL is adjusted generally as follows: During the first six-month period of adjustments, the BPCL is reduced by 75 percent of the property's annual rate of decline during the January 1972 through December 1975 period; during subsequent six-month periods, the BPCL is reduced by 50 percent of that annual rate of decline.

We have determined that the effectiveness of the production incentives offered in February and April of 1976 have significantly decreased to the point that the current price regulations no longer afford many domestic producers a realistic promise of upper tier prices with respect to most lower tier production. More than three years have elapsed since BPCL's were updated for all properties and existing current cumulative deficiencies were eliminated. By the effective date of this amendment three years will have passed since the FEA's adoption of the BPCL-adjusting regulations. Many lower tier properties are now operating at levels that are considerably below BPCL and, because of decline rates in excess of 1972 through 1975 levels, are afforded no incentive under the BPCL adjustments. Other producers have managed to increase production levels but are faced with large cumulative deficiencies that must be overcome before any crude oil may be sold at upper tier prices.

Accordingly, we have decided to eliminate all existing current cumulative deficiencies, to provide an optional updated BPCL for all properties, and to revise 10 CFR 212.76 to provide a simpler mechanism for adjusting the updated BPCL's if selected. The purpose of this amendment is to provide incentives to maintain or increase crude oil production by allowing producers to receive upper tier prices for production in excess of the property's more recent decline rate, without requiring the producer to "pay back" from such increased production the amount by which prior production had been less than the property's prior BPCL. The one-time elimination of the current cumulative deficiency should ensure that there are no disincentives to increased production solely by reason of the fact that such increased production would otherwise be required to be sold at lower tier prices.

Under the amendments, which will become effective June 1, 1979, the BPCL for any property will be equal to the average monthly production and sale of old crude oil from the property concerned during the six-month period ending March 31, 1979. For most properties from which only lower tier crude oil is currently being produced and sold, this action should provide a greater production incentive.

Significantly affected properties will fall generally into two categories: (1) those for which production levels have fallen below BPCL, either with or without cumulative deficiencies, resulting in all current production begin classified as lower tier crude oil under existing regulations; and (2) those for which production levels are above BPCL but for which cumulative deficiencies exist. Properties in the former category will benefit from a more current lower BPCL and elimination of cumulative deficiencies; those in the second category will benefit from elimination of existing cumulative deficiencies, but would not necessarily benefit from a more recent BPCL because the new BPCL might be greater than the existing BPCL. In order to assure maximum incentives, producers will be given a one-time election to use either the existing BPCL for the property or the updated BPCL.

We have decided upon the six-month period ending March 31, 1979, rather than the calendar year that was proposed, in order to provide a more current reference point for BPCL calculations. This should more accurately take into account the production declines experienced by most domestic properties during a very recent period, and still provide a sufficiently long period of time over which to measure the BPCL so as to average out any production anomalies experienced during that period.

A producer of a unitized property will also be given the option of selecting a unit BPCL based on production and sale from the unitized property during the six-month period ending March 31, 1979. However, the producer's selection of an updated unit BPCL does not constitute "the establishment of a unit BPCL" for any other purpose under the DOE regulations. For example, an updated unit BPCL may allow certain lower tier crude oil to be released to upper tier ceiling prices, but will not affect previously determined volumes of imputed stripper well crude oil, or imputed new crude oil.

Elections must be made not later than August 1, 1979, by the producer for each property by written certification pursuant to the provisions of § 212.131. Regardless of which BPCL is elected, any existing cumulative deficiency will be eliminated effective June 1, 1979.

The provisions of the cumulative deficiency rule will be modified and retained, however, so that once new crude oil is produced and sold from a property after June 1, 1979, and production and sale volumes subsequently fall below BPCL in any month, a deficiency will begin to accrue and must thereafter be overcome before any additional volumes of new crude oil may be sold. This will serve to ensure the fulfillment of the dual policy objectives that have always been contained in the rule: (1) To provide an additional incentive to continued increased production, and (2) to act as a safeguard against possible abuses of the upper tier crude oil price incentive by periodically withholding volumes of current production for sale in later months as new crude oil. *See D.C. Latimer,* Interpretation 1976–16, 42 FR 7937 (February 8, 1977).

Several commenters pointed out, however, that the current cumulative deficiency rule may actually serve to discourage production increases by acting as an impediment to upper tier prices where the provisions of the rule are triggered by anomalous events over which the producer has no control. Such a case might arise, for example, where a sudden surge in production from a single well results in the property exceeding the BPCL by a small amount before such time as production levels are increased from the property as a whole, or where the purchaser makes an extra purchase of crude oil from the property during one month. In such cases, the producer would begin to accumulate a deficiency during a time in which efforts might otherwise be made to increase production levels generally; and when increased production levels were ultimately achieved, the cumulative deficiency would have to be "paid back" before upper tier prices could be realized.

We believe that this aspect of the rule may actually discourage the achievement of the general policies sought to be served under our regulations, and even the dual policy objectives of the rule itself. Accordingly, we are amending the rule in a way that we believe will avoid these unintended results and give the producer an opportunity to avoid the operation of the rule in most cases of production anomalies. The amended rule will provide that a deficiency is not triggered unless the sum of the volumes of crude oil produced and sold in any consecutive two-month period exceeds the sum of the BPCL's for those two months, provided however that crude oil produced and sold in excess of the BPCL in either of those two months is not sold as new crude oil. For example, assume that the BPCL for a property is 500 barrels in July and August, and that in July 525 barrels of crude oil are produced and sold from the property. If the producer certifies 25 barrels as new crude oil, the provisions of the cumulative deficiency rule would be triggered, and for any subsequent month in which production and sale was less than the BPCL, a deficiency would accrue. However, the producer could

avoid the operation of the rule by certifying the entire 525 barrels produced and sold in July as old crude oil provided the total production and sale of crude oil during the months of July and August did not exceed 1,000 barrels.

A generally-applicable BPCL reduction factor will provide a more realistic incentive for producers to maintain increased production levels from domestic properties. With respect to properties for which the producer elects to continue using the existing BPCL, that BPCL may be adjusted only in accordance with the current provisions of § 212.76. With respect to properties for which the producer elects to use as the BPCL the average monthly production and sale of crude oil during the six-month period ending March 31, 1979, the property's BPCL may be reduced by a factor of 1½ percent per month during calendar year 1979, with the first adjustment (effective June 1, 1979) calculated as if the adjustments had begun effective January 1, 1979. Accordingly, for such properties, the BPCL will be reduced effective June 1, 1979, by 9 percent, reflecting a 1½ percent reduction for each of the months from January 1979 through June 1979. Effective January 1, 1980, the factor by which a property's BPCL may be reduced is increased from 1½ percent to 3 percent per month.

We have concluded that reducing the BPCL by a lower amount in 1979 and a greater amount thereafter is advisable in order to reduce the initial inflationary impact of this proposal and also to reflect the time lag between the effective date of the amendment and the resulting additional production.

However, with respect to properties for which the producer would not exercise the option effective June 1, 1979, because of more favorable treatment under the existing provisions of § 212.76, we have concluded that the producer should not be foreclosed from using the 3 percent reduction factor effective January 1, 1980. Accordingly, for such properties, the producer may elect to use the 3 percent BPCL adjustment factor effective January 1, 1980, regardless of whether the updated BPCL and 1½ percent adjustment factor was elected effective June 1, 1979.

C. Increase in Lower Tier Ceiling Price

On March 1, 1979, we issued Crude Oil Price Schedule No. 14 permitting increases in lower tier and upper tier ceiling prices to reflect a rate of inflation of 8.1 percent as measured by the GNP deflator published in February 1979. Pursuant to schedule No. 14, lower tier prices for the months of March, April, and May 1979 are projected to average $5.78, $5.82, and $5.86 per barrel nationally, respectively.

Crude Oil Price Schedule No. 14 represents the final in a series of price increases permitted by the FEA and the DOE to implement part of the crude oil pricing policy as proposed in the National Energy Plan (NEP) issued by the President on April 20, 1977. That policy, which was subsequently reiterated by the FEA and the DOE on several other occasions, was to permit lower tier and upper tier prices to increase at no more than the rate of inflation through May 1979, at which time the President's mandatory authority under the EPAA to control first sale prices of domestic crude oil prices becomes discretionary.

We have not decided at this time to depart from the policy to permit lower tier and upper tier prices to increase at the rate of inflation, as measured by the GNP deflator.

VI. Other Matters

In adopting this rule, we have considered, in accordance with DOE Order 2030, the economic impact of our action and have prepared a regulatory analysis. Copies of the regulatory analysis, as well as the EIS, may be obtained from the ERA, Office of Public Information, 2000 M Street, NW., Room B-110, Washington, D.C. 20461, (202) 634-2170.

In accordance with Section 404 of the DOE Act, the Federal Energy Regulatory Commission received a copy of the proposed rulemaking and has notified the ERA that it has not determined that the proposed regulations would significantly affect any function within its jurisdiction under Sections 406 (a)(1), (b), and (c)(1) of the DOE Act.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185; Department of Energy Organization Act, Pub. L. 95-91; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 212 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective June 1, 1979.

Issued in Washington, D.C., April 5, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

1. Section 212.72 is amended to add the definitions of "Average completion depth," "Average daily production," and "Completion depth," and to revise the definitions of "Base production control level," "Current cumulative deficiency," and "New crude oil," to read as follows:

§ 212.72 Definitions.

"Average completion depth" means for each particular marginal property the sum of all completion depths for all wells that produced crude oil from the property concerned during calendar year 1978, divided by the number of such wells during that 12-month period.

"Average daily production" means for each particular marginal property the qualified maximum total production of crude oil (excluding condensate recovered in non-associated production) produced from a property, divided by 365 times the number of wells that produced crude oil (excluding condensate recovered in non-associated production) from that property during calendar year 1978. To qualify as maximum total production, each well on the property must have been maintained at the maximum feasible rate of production throughout that 12-month period and in accordance with recognized conservation practices, and not significantly curtailed by reason of mechanical failure or other disruption in production.

"Base production control level" means: (a) with respect to months ending prior to February 1, 1976:

(1) If crude oil was produced and sold from the property concerned in every month of 1972, the total number of barrels of domestic crude oil produced and sold from that property in the same month of 1972;

(2) If crude oil was not produced and sold from the property concerned in every month of 1972, the total number of barrels of crude oil produced and sold from that property in 1972, divided by 12;

(b) With respect to months commencing after January 31, 1976, except as provided in § 212.76(a), either:

(1) The total number of barrels of old crude oil produced and sold from the property concerned during calendar year 1975, divided by 365, multiplied by the number of days during the month in 1975 which corresponds to the month concerned; or

(2) If the producer elects to certify crude oil sales for 1972 in accordance with § 212.131(a)(2), the total number of barrels of crude oil produced and sold from the property concerned during calendar year 1972, divided by 366, multiplied by the number of days during the month in 1972 which corresponds to the month concerned;

(c) With respect to months commencing after May 31, 1979, except as provided in § 212.76, for properties other than marginal properties, either:

(1) The total number of barrels of old crude oil produced and sold from the property concerned during the six-month period ending March 31, 1979, divided by 182, multiplied by the number of days during the month in 1978 which corresponds to the month concerned; or

(2) If the producer elects to certify crude oil sales for 1975 in accordance with § 212.131(a)(2), the total number of barrels of old crude oil produced and sold from the property concerned during calendar year 1975, divided by 365, multiplied by the number of days during the month in 1975 which corresponds to the month concerned; or

(3) If the producer elects to certify crude oil sales for 1972 in accordance with § 212.131(a)(2), the total number of barrels of crude oil produced and sold from the property concerned during calendar year 1972, divided by 366, multiplied by the number of days during the month in 1972 which corresponds to the month concerned;

(d) With respect to marginal properties, the base production control level equals (1) with respect to months commencing after May 31, 1979, 20 percent of the total number of barrels of old crude oil produced and sold from the property concerned during calendar year 1978, divided by 365, multiplied by the number of days during the month in 1978 which corresponds to the month concerned; (2) for the months commencing after December 31, 1979, zero.

"Completion depth" means the depth from which crude oil was produced, as reported to the applicable state regulatory authority. Where such reports are not required to be made, completion depth means the depth in feet measured from ground level, or from the top of the surface casing, along the bore hole to the base of perforations from which a well produces crude oil; with respect to a well which has been completed "open hole," completion depth means the lesser of (a) the depth to the base of the reservoir, or (b) the "plugged-back" depth. Provided that where no official state regulatory depth report has been made, completion depth must be documented with an affidavit executed by a registered petroleum engineer.

"Current cumulative deficiency" means: (a) For months prior to February 1, 1976, the total number of barrels by which production and sale of crude oil was less than the base production control level, for all months in which production and sale of crude oil was less than the base production control level subsequent to the first month in which new crude oil was produced and sold, minus the total number of barrels of domestic crude oil produced and sold in each prior month which was in excess of the base production control level for that month, but which was not classified as new crude oil because of this requirement to reduce the amount of new crude oil in each month by the amount of the current cumulative deficiency;

(b) For months commencing after January 31, 1976, the total number of barrels by which production and sale of crude oil has been less than the base production control level subsequent to the first month (after February 1, 1976) in which new crude oil was produced and sold, minus the total number of barrels of domestic crude oil produced and sold in each month after February 1, 1976, which was in excess of the base production control level for that month, but which was not classified as new crude oil because of this requirement to reduce the amount of new crude oil in each month by the amount of the current cumulative deficiency;

(c) For months commencing after May 31, 1979, at the option of the producer either (1) the total number of barrels by which production and sale of crude oil has been less than the base production control level subsequent to the first month (after June 1, 1979) in which new crude oil was produced and sold, minus the total number of barrels of domestic crude oil produced and sold in each prior month after June 1, 1979, which was in excess of the base production control level for that month, but which was not classified as new crude oil because of this requirement to reduce the amount of new crude oil in each month by the amount of the current cumulative deficiency; or

(2) The total number of barrels by which production and sale of crude oil has been less than the base production control level subsequent to any two-month period in which the total production and sale of crude oil from the property concerned exceeds the sum of the property's base production control levels for that two-month period, minus the total number of barrels of domestic crude oil produced and sold in each prior month after June 1, 1979, which was in excess of the base production control level for that month, but which was not classified as new crude oil because of this requirement to reduce the amount of new crude oil in each month by the amount of the current cumulative deficiency. A producer may not elect this option (2) for any property from which new crude oil was produced and sold as new crude oil in any month which begins after May 31, 1979.

* * * * *

"Marginal property" means a property whose average daily production of crude oil (excluding condensate recovered in non-associated production) per well during calendar year 1978 did not exceed the number of barrels shown in the following table for the corresponding average completion depth:

Table

Average completion depth in feet	Barrels per day
2,000 or more but less than 4,000	20 or less.
4,000 or more but less than 6,000	25 or less.
6,000 or more but less than 8,000	30 or less.
8,000 or more	35 or less.

* * * * *

"New crude oil" means, with respect to a specific property: (a) For months prior to February 1, 1976, the total number of barrels of domestic crude oil produced and sold in a specific month, less (1) the base production control level for that month, and less (2) the current cumulative deficiency;

(b) For months commencing after January 31, 1976, the total number of barrels of domestic crude oil produced and sold in a specific month, less (1) the property's base production control level for that month and less (2) the current cumulative deficiency since February 1, 1976;

(c) For months commencing after May 31, 1979, the total number of barrels of domestic crude oil produced and sold in a specific month, less (1) the base production control level for that month, and less (2) the current cumulative deficiency since June 1, 1979; and

(d) Shall not in any period include any number of barrels not certified as new crude oil pursuant to the provisions of § 212.131(a)(1) within the consecutive two-month period immediately succeeding the month in which the crude oil is produced and sold, except where such recertification is explicitly required or permitted by DOE order, interpretation or ruling.

* * * * *

2. Section 212.75 is amended in paragraph (b) and (g), and to add a new paragraph (h), to read as follows:

§ 212.75 Crude oil produced and sold from unitized properties.

* * * * *

(b) *Definitions.* For purposes of this section—"Current unit cumulative deficiency" means (a) For months prior to June 1, 1979, the total number of barrels by which production and sale of

crude oil from the unitized property was less than the unit base production control level subsequent to the first month (following the establishment of a unit base production control level for that unitized property) in which any crude oil produced and sold from that unit was eligible to be classified as actual new crude oil (without regard to whether the amount of actual new crude oil was exceeded by the amount of imputed new crude oil), minus the total number of barrels of domestic crude oil produced and sold in each prior month from that unitized property (following the establishment of a unit base production control level for that unitized property) which was in excess of the unit base production control level for that month, but which was not eligible to be classified as actual new crude oil because of this requirement to reduce the amount of actual new crude oil in each month by the amount of the current unit cumulative deficiency;

(b) For months commencing after May 31, 1979, at the option of the producer either (1) the total number of barrels by which production and sale of crude oil from the unitized property has been less than the unit base production control level subsequent to the first month (after June 1, 1979) in which new crude oil was produced and sold, minus the total number of barrels of domestic crude oil produced and sold from the unitized property in each prior month after June 1, 1979, which was in excess of the unit base production control level for that month, but which was not classified as new crude oil because of this requirement to reduce the amount of new crude oil in each month by the amount of the current unit cumulative deficiency; or

(2) The total number of barrels by which production and sale of crude oil from the unitized property has been less than the unit base production control level subsequent to any two-month period in which the total production and sale of crude oil from the unitized property concerned exceeds the sum of the property's unit base production control levels for that two-month period, minus the total number of barrels of domestic crude oil produced and sold in each prior month after June 1, 1979, which was in excess of the unit base production control level for that month, but which was not classified as new crude oil because of this requirement to reduce the amount of new crude oil in each month by the amount of the current unit cumulative deficiency. A producer may not elect this option (2) for any unitized property from which new crude oil was produced and sold as new crude oil in any month which begins after May 31, 1979.

* * * * *

(g) Notwithstanding the provisions of the definition of "Unit base production control level" in paragraph (b) of this section, with respect to any unitized property for which a unit base production control level was established prior to June 1, 1979, a producer may, effective June 1, 1979, select as the unit base production control level, the total number of barrels of old crude oil produced and sold during the six-month period ending March 31, 1979, from all properties that constitute the unitized property, divided by 182, times the number of days during the month in 1978 which corresponds to the month concerned. The selection of a unit base production control level pursuant to this paragraph (g) does not constitute the "establishment of a unit base production control level" for any purpose under this Part.

(h) The provisions of this section shall apply to each first sale of crude oil from a unitized property.

3. Section 212.76(a) is revised to read as follows:

§ 212.76 Adjustments to base production control levels.

(a) *Eligibility.*—(1) With respect to each property for which a base production control level is not determined pursuant to the provisions of paragraph (c)(1) of the definition of "base production control level" in § 212.72, and from which no new crude oil is produced in any month in the five-month period ending June 30, 1976, after June 30, 1976, a producer may adjust the base production control level for the property concerned for each month during that six-month period in accordance with paragraph (b) of this section.

(2) With respect to each property for which a base production control level is not determined pursuant to the provisions of paragraph (c)(1) of the definition of "base production control level" in § 212.72, and from which new crude oil is produced in any month in the five-month period ending June 30, 1976, a producer may adjust the base production control levels applicable thereto in accordance with paragraph (b) of this section, commencing with the six-month semiannual period immediately following a six-month semiannual period ending subsequent to June 30, 1976, in which the total amount of crude oil produced and sold from the property concerned was less than the sum of the base production control levels for that period.

(3)(i) Effective June 1, 1979, with respect to any property for which the base production control level is determined pursuant to the provisions of paragraph (c)(1) of the definition of "base production control level" in § 212.72, and with respect to any unitized property for which the unit base production control level is selected pursuant to the provisions of paragraph (g) in § 212.75, a producer may adjust the base production control level for the property concerned in each month only in accordance with the following formula—

$$ABPCL = [1 - (N)(.015)] (BPCL)$$

Where:

ABPCL = The adjusted base production control level or the adjusted unit base production control level for the month concerned.

BPCL = The base production control level or the unit base production control level for the month concerned.

N = The number of months, including the month concerned, since December 31, 1978.

(ii) Effective January 1, 1980, with respect to any property a producer may adjust the base production control level or unit base production control level in accordance with the following formula—

$$ABPCL = [(.82) - (N)(.03)] (BPCL)$$

Where:

ABPCL = The adjusted base production control level or the adjusted unit base production control level for the month concerned.

BPCL = The base production control level or the unit base production control level for the month concerned.

N = The number of months, including the month concerned, since December 31, 1979.

3. Section 212.128 is amended to add a new paragraph (c) to read as follows:

§ 212.128 Recordkeeping.

* * * * *

(c) *Marginal properties.* Each producer of crude oil from a marginal property shall, with respect to the qualifying period, maintain at its principal place of business, (1) records specifying the number of wells on the property, (2) adequate records or a certification by a registered petroleum engineer, providing the completion depths of each well, and (3) records providing the volumes of crude oil produced at each depth. Where actual volumes are unavailable, estimates verified by a registered petroleum engineer will be required to be maintained. Access to such records, with adequate opportunity for duplication by DOE, will immediately be

provided to the DOE upon request of DOE audit personnel.

4. Section 212.131 is amended by revising paragraphs (a)(2)(iii) and (a)(3)(iii) to read as follows:

§ 212.131 Certification of domestic crude oil sales.

* * * * *

(a)(2) *Non-stripper well properties.*

* * * * *

(iii) The certification required under this paragraph (a)(2) of this section shall be made within the consecutive two-month period immediately following the month of September 1976, or, with respect to any property from which crude oil has not been produced and sold prior to September 30, 1976, the certification required under this paragraph (a)(2) of this section shall be made within the two-month period immediately following the first month in which crude oil is produced and sold. With respect to any property for which a base production control level is determined pursuant to the provisions of paragraph (3)(1) of the definition of "base production control level," the certification required under this paragraph (a)(2) of this section shall be made within the two-month period immediately following the month of June 1979.

* * * * *

(a)(3) *Unitized properties.*

* * * * *

(iii) The certification required under this paragraph (a)(3) of this section shall be made within the consecutive two-month period immediately following the month of September 1976, or, with respect to any unitized property for which a unit base production control level has not been established prior to September 30, 1976, the certification required under this paragraph (a)(3) of this section shall be made within the consecutive two-month period immediately following the first month in which such unit base production control level is established. With respect to any unitized property for which a unit base production control level is established pursuant to the provisions of § 212.75(g), the certification required under this paragraph (a)(3) of this section shall be made within the two-month period immediately following the month of June 1979.

[Docket No. ERA-R-78-18]

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Friday
April 27, 1979

Part X

Department of Agriculture

Animal and Plant Health Inspection Service

Horse Protection; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

Prohibition Concerning Exhibitors of Horses, Tranportation, Inspection and Detention of Certain Horses, Responsibilities, Liabilities, and Requirements of Management, Horse Industry Organizations and Associations, and Certain Other Persons, and Amendment to Clarify Final Rulemaking Regarding Designated Qualified Persons

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document establishes new and revised regulations under the Horse Protection Act to prevent the showing, exhibiting, selling or auctioning of sore horses and certain transportation of sore horses in connection therewith at horse shows, horse exhibitions, horse sales and horse auctions as required or authorized by the Horse Protection Act amendments of 1976, enacted on July 13, 1976 and certain other purposes.

DATE: Effective date: May 17, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. Dale F. Schwindaman, Senior Staff Veterinarian, Animal Care Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, Phone: (301) 436–8271.

SUPPLEMENTARY INFORMATION: On April 28, 1978, this Department published a notice of proposed rulemaking containing changes and additions to Part 11 of Subchapter A, Chapter I, Title 9 of the Code of Federal Regulations (43 FR 18514–18531). The proposed rulemaking included, among other things, provisions that: (1) Certain prohibitions be established concerning the sale of horses at horse sales or auctions in addition to current prohibitions concerning the showing and exhibiting of horses; (2) procedures be established for the detention and inspection of horses; (3) procedures and requirements be established for Designated Qualified Persons (DQP's) to inspect horses for compliance with the Act; (4) procedures be established for the certification of horse industry DQP programs; and (5) requirements be established regarding space and facilities for inspection of horses to be provided by management of horse shows or exhibitions, or horse sales or auctions. Proposals for new and revised definitions and other pertinent revisions relative to recordkeeping and other requirements also appeared in the notice of proposed rulemaking.

A total of 47 comments was received within the comment period in response to the proposed ruelmaking. Although this is a relatively small number, many of the comments were from horse industry organizations and associations which represent a great number of individual members and constituent organizations such as the American Horse Council, the United Professional Horseman's Association, Inc., the American Quarter Horse Association, the American Paint Horse Association, the American Horse Shows Association, Inc., the Appaloosa Horse Club, Inc., the American Saddle Horse Breeders Association, the Tri-State Horsemen's Association, Inc., the Tennessee Walking Horse National Celebration, the Tennessee Walking Horse Breeders and Exhibitors Association, the Walking Horse Owners of America Association, and the Walking Horse Trainers Association, Inc.

Comments were also received from private citizens, Department employees, and from humane agencies, such as the Humane Society of the United States, the Society for Animal Protective Legislation, and the American Horse Protection Association, Inc.

Many of the comments raised questions or made suggestions which, because of their validity, warranted some changes of the proposed rulemaking. Certain editorial changes were also made for purposes of clarification. Because of the lengthy amount of time required to incorporate suggested changes and comments regarding the proposed regulations, the Department decided to publish Sections 11.1 and 11.7 "Definitions" and "Certification and Licensing of Designated Qualified Persons" (DQP's), as final rulemaking at an earlier date. These regulations were published in the **Federal Register** on January 5, 1979. The remaining parts of the proposed regulations are being published as final rulemaking in this document. The decision to publish Sections 11.1 and 11.7 as final rulemaking at an earlier date was made so that the horse industry organizations and associations concerned would have sufficient time to study the requirements and to establish their DQP programs.

This document amends the regulations promulgated pursuant to the Act of 1970 in the following respects: (1) § 11.2 of the regulations (9 CFR 11.2) is amended with respect to the equipment, devices, paraphernalia, and substances, which are allowed to be present on horses; the section also sets out certain prohibitions and restrictions, and describes required information relating to horses at horse shows, horse exhibitions, or horse sales or auctions; (2) a new § 11.3 of the regulations (9 CFR 11.3) identifies the criteria to be applied in enforcing the "Scar Rule" with respect to horses shown, exhibited, sold or auctioned at any horse show, horse exhibition, or horse sale or auction; (3) § 11.4 of the regulations (9 CFR 11.4) is amended to identify the requirements for the inspection and detention of horses; (4) § 11.5 of the regulations (9 CFR 11.5) is amended to require show management, sponsoring organizations, and exhibitors to allow Veterinary Services representatives, and Designated Qualified Persons access to the horse show, horse exhibition, or horse sale, or auction premises and records; (5) a new § 11.6 of the regulations (9 CFR 11.6) requires the management of horse shows, horse exhibitions, or horse sales or auctions to provide Veterinary Services with adequate space and facilities for the inspection of horses; (6) § 11.20 of the regulations (9 CFR 11.20) is amended to clarify the responsibilities and liabilities of management of any horse show, horse exhibition, or horse sale or auction; (7) the recordkeeping requirements in § 11.21 of the regulations (9 CFR 11.21) are amended in light of the expanded coverage of the 1976 amendments to the Act; (8) § 11.22 of the regulations (9 CFR 11.22) is amended to require the management of any horse show, horse exhibition, or horse sale or auction, and horse industry organizations and associations to provide the Department with access to certain records and information; (9) § 11.24 of the regulations (9 CFR 11.24) is amended to require the management of horse shows, horse exhibitions, horse sales or auctions to report all horses excused or disqualified from being shown, sold, auctioned or exhibited and the reasons for such actions; (10) § 11.40 of the regulations (9 CFR 11.40) is amended to require the shipper, transporter or receiver of any horse transported to any horse show, exhibition, sale or auction to allow inspection of the horse at any such horse show, horse exhibition, or horse sale or auction, and to furnish certain information concerning such horse when there is reason to believe that the horse may be shown, exhibited, sold, or auctioned; and (11) § 11.41 of the regulations (9 CFR 11.41), which

presently deals with enforcement, is amended to require horse industry organizations and associations to report certain information to the Department.

Prior amendments containing the "Definitions" section of the regulations (9 CFR 11.1) and a new section entitled "Certification and Licensing of Designated Qualified Persons" (DQP's) (9 CFR 11.7) were published in the **Federal Register** on January 5, 1979 (44 FR 1558–1566). This amendment contains the remainder of the regulations which were proposed in the **Federal Register** dated April 28, 1978 (43 FR 18514–18531), as final rulemaking. It also contains minor changes to the Designated Qualified Persons provisions (§ 11.7) for purposes of clarification.

The Act provides that the management of any horse show, horse exhibition, or horse sale or auction shall disqualify or prohibit the showing, sale, auction, or exhibition of any horse which is sore if the management has been notified by a DQP or by the Secretary (Department representatives) that such horse is sore. Section 11.7(d)(1)(ix), (d)(3)(ii)(B), (d)(4), and (d)(7)(iv) of the final regulations published on January 5, 1979, regarding designated qualified persons contains language which reflects that horses found to be sore by DQP's would be or could be, disqualified or excused at horse shows, exhibitions, sales or auctions, by such DQP's. Although this could be the case if management decides to delegate to the DQP the authority to disqualify or excuse horses, this is still primarily the function of management according to the Act. Therefore, in order to prevent misunderstanding and for the purpose of clarification, these sections are amended herein.

The opening paragraph of § 11.7(d)(1) which speaks of the disqualification or excusing of horses is also amended for clarification and to avoid any confusion by the addition of, "from being shown, sold, auctioned, or exhibited," after the words "or horse auction," at the end of the paragraph.

Section 11.7(d)(1)(ix) is amended by deleting the words "was or," in the fourth line, after the words "such horse" and before the words "should be excused." This paragraph would then read: "The name or names of the show manager or other management representative notified by the DQP that such horse should be excused or disqualified and whether or not such manager or management representative excused or disqualified such horse."

Section 11.7(d)(3)(ii)(B) is amended by deleting the words "by the DQP." at the end of the sentence. This paragraph would then read: "The name and address of the owner, trainer, exhibitor, or other person having custody of or responsibility for the care of each such horse disqualified or excused."

Section 11.7(d)(4) is amended by deleting the words "by one of said organization or association DQP's at any horse show, horse exhibition, horse sale, or horse auction" after the words "any reason" in the ninth line of the sentence. This paragraph would then read: "Each horse industry organization or association having a Department certified DQP program shall provide, by certified mail if personal service is not possible, to the trainer and owner of each horse allegedly found in violation of the Act or its regulations or otherwise disqualified or excused for any reason, the following information:".

Section 11.7(d)(7)(iv) is amended to read, "The DQP shall immediately inform management of each case regarding any horse which, in his opinion, is in violation of the Act or regulations."

Discussion of Comments

Prohibitions Concerning Exhibitors

All 47 of the comments received regarding the proposed regulations referred to one or more paragraphs of § 11.2, "Prohibitions concerning exhibitors." Five of the comments indicated that the Department should either allow fewer devices or should ban all devices except protective boots. It is recognized that such prohibition would make enforcement of the Act much easier, but the Department feels that such drastic action is unwarranted at this time. However, if the horse industry makes no effort to establish a workable self-regulatory program for the elimination of sore horses, or if such a program is established but does not succeed in eliminating the sore horse problem within a reasonable length of time, the Department will give serious consideration to the prohibition of all action devices and pads.

The majority of the comments referring to proposed § 11.2 were concerned with paragraph (b), "Specific prohibitions." For that reason, the items listed under § 11.2(b) will be addressed separately by number. Items (1) and (2) concern the weights of various devices, such as beads, rollers, and chains, which are used as action devices. Three comments received indicated that all weights should be standardized and should apply to all types of devices. It is recognized that such standardization would result in more uniformity and ease of enforcement. However, this would not allow for the great diversity in the types and construction of action devices. One device may inflict little or no pain or trauma to a horse, while another device of equal weight may have the opposite effect. The Department must, therefore, reject the concept of standardized weights for all the devices listed in § 11.2(b) (1) and (2). Weight limitations will continue to be based upon the horse's reaction to devices of different weights. Another comment indicated that large horses should be allowed to carry action devices in excess of 14 ounces, since a large horse can carry more weight than a small horse. The Department agrees that a large horse can probably carry a heavier weight load than a small horse; however, this proposition overlooks the fact that larger animals are not more immune to pain than smaller ones. Each is sensitive to punishment directed to the coronary area of the foot, and a large horse may well be more sensitive to pain than a small horse, or vice versa.

Item 3 received no comments and will remain as proposed. Four comments indicated that the prohibition of chains with drop links in item 4 would prohibit the use of kicking and pawing chains when the horse was in its stable or trailer. This has been changed to indicate that chains with drop links are prohibited on any horse that is being ridden, worked on a lead, or otherwise worked out or moved about. Such clarification will not prohibit the use of pawing and kicking chains while the house is stabled or tied in a trailer.

Several comments indicated that the restriction prohibiting more than one action device on each limb of a horse in item 5 would hamper horses such as hunters and jumpers which normally wear combinations of bell boots and fixed protective devices. The Department will retain the limitation of one action device on each limb of a horse, since by virtue of the definition of "action device," *fixed* protective devices which are worn with action devices would not ordinarily be prohibited.

Items 6 and 7 received no comments and will remain as proposed.

Three comments were concerned with items 8 and 9 which would limit the weight used on yearling horses' feet and the height of pads to elevate or change the angle of the hoof. One comment suggested that all types of devices should be prohibited on yearling horses, including weights, and pads, as well as devices that change the angle of the hoof. The Department has no reason to take such action at this time; however, if the practice of soring continues, the

Department will seriously consider the removal of devices and pads from horses. Another comment indicated that the weight of shoes should be determined by measuring the size of the shoes rather than by weighing. This proposal would allow for quicker and easier determinations for compliance; however, it would not allow for the great variation in construction materials. Metals, such an aluminum, iron, stainless steel, and various alloys all have different weights. The Department will therefore retain item 9 as proposed. The third comment stated that the use of pads, weights, and other devices, as discussed in items 8 and 9, did not result in intentional soring and should be left up to industry rules.

The Department would point out that the definition of the term "sore" does not differentiate between intentional and unintentional soring. Nor does the diagnosis or detection of a sore horse depend on whether or not the soring is intentional. A sore horse, whether made sore intentionally or unintentionally, is still a sore horse. The severity of the penalty under the Act, however, may well depend upon whether the soring was intentional or unintentional. The Department would further point out that, to date, the horse industry has done little to limit the amount of buildup or the amount of weight that is attached to the feet of a horse. The Department will therefore retain the prohibitions set forth in items 8 and 9 as proposed.

Item 10 concerns the heel-toe ratio on the built-up feet of horses. The present regulations require the length of the toe to exceed the height of the heel by at least 1 inch when measured from the ground to the hair line. The proposed regulations reduced the heel-toe ratio to ½ inch. A total of six comments were received concerning the heel-toe ratio. Four of the comments stated that the heel-toe ratio should be kept at the 1 inch differential, and a fifth comment stated that the height of buildup by pads should be limited. The sixth comment suggested that the term "unless for therapeutic reasons" should be added to all prohibitions proposed in items 10 through 15. The Department can see no beneficial effect from adding the term "unless for therapeutic reasons" to any of the indicated prohibitions in items 10 through 15, since the Act makes provision for the therapeutic treatment of horses in the definition section. Also, the Department does not intend to place a limitation upon the height of the buildup on a horse's feet at this time. However, such action may be considered in the future.

The Department has recently initiated a study of soring methods and techniques at a major university. The effects of building up a horse's feet with pads, and of changing the angulations of the foot, fetlock, and pastern areas, will be included in the study. The Department has therefore decided to wait for the results of the study before making any change in the heel-toe ratio. Therefore, the Department will retain the present 1-inch heel-toe differential unless and until studies indicate that a change should be made.

Item 11 would prohibit the artificial extension of the toe length unless such extension assumes the normal angle of the hoof wall and pastern and is therapeutically necessary to repair a broken hoof. A total of five comments were received concerning this prohibition. Three of these comments indicated that the proposal was too restrictive and should allow for extension of the toe without a broken hoof. Another comment suggested changing "and is therapeutically necessary" to "or is therapeutically necessary," and the fifth comment suggested deleting the whole phrase regarding the repair of a broken hoof.

The Department purposely worded this prohibition so as to prevent the artificial extension of a horse's toe unless it was necessary to repair a broken hoof. Other purposes for such toe extensions are limited to cosmetic reasons or training and soring aids. The Department therefore finds no reason to allow such toe extension except as required for the therapeutic repair of a broken hoof.

Item 12 would prohibit the use of rocker-bars on the bottom surface of horse shoes if such bars are located more than 1½ inches back from the point of the toe. Two comments were received regarding this proposal, and both suggested that allowances should be made for the use of Memphis bars, cross-firing bars, and similar devices, the purpose of which is to correct or otherwise change a horse's gait. The proposal, as stated, was not intended to interfere with shoeing practices to correct such conditions as cross-firing (striking the front feet with the hind feet). The intent of the prohibition of placing rocker-bars more than 1½ inches back from the toe is to prevent the unsteadiness of stance and the tendon irritation that occurs when weight and balance focus upon a small fulcrum point. The intention was to prohibit the single rocker-bar or double rocker-bars that are placed close together so as to act as a single bearing surface. This part has been reworded so as to clarify this intent.

Item 13 would require that metal hoof bands used to anchor or strengthen pads and shoes be placed at least ½ inch below the coronet band. One comment was received regarding this proposal indicating that such metal bands should be at least 1 inch below the coronet band. The Department sees no justification, at this time, for such a requirement and will therefore retain the 1/2 inch distance as proposed.

Item 14 would prohibit the use of metal hoof bands that can be easily and quickly loosened or tightened by hand. Thirteen comments were received regarding this proposal. Eight of these comments stated that the hoof bands must be able to be loosened or they will injure the horse. Three other comments questioned as to how such bands would be changed or loosened to allow for normal growth. Another comment asked how to set the proper tension, and the last comment stated that the tension on such hoof bands must not be so tight as to cause pain or distress to the horse. The Department would point out that the proposal does not require "permanently fixed" bands, nor does it prohibit the adjustment, changing, or replacement of such bands. It does prohibit metal hoof bands that can be *easily and quickly loosened or tightened by hand.* Such a prohibition would include such things as wing nuts. Bands which can be adjusted, but cannot be readily and easily tightened or loosened by hand in a few seconds, would not be prohibited. The tension placed on such bands should be sufficient to firmly hold the pads or shoes in place but should not cause undue pressure on the foot which could result in pain to the horse. The Department feels that such fastening devices can be utilized without excessive problems or difficulty, and will, therefore, retain this part as proposed.

Item 15 would prohibit any action device, or any other device that strikes the coronet band of the foot of a horse. Two comments were received which indicated that jumping horses and other horses wear bell boots as protective devices and that such wording would prohibit the use of bell boots, as they "strike" the coronet band. The Department recognizes the validity of this comment and has added the phrase, " * * * except for soft rubber or soft leather bell boots that are used as protective devices."

Item 16 pertains to shoeing and hoof trimming practices that could be expected to cause pain or distress to a horse. No comments were received

concerning this proposal. It will therefore be retained as proposed.

Item 17 would prohibit the attachment of lead or other weights to the outside of the hoof wall, pad, or on the outside surface of the horse shoe. Three comments were received concerning this proposal. Two of the comments indicated that the phrase, "exposed surface other than the bottom of the pad or on the outside surface of the horse shoe" should be inserted after the term "* * * hoof wall, * * *." The Department can see no beneficial effect or improvement from the addition of such a phrase to the proposal. The word "the" has been added between the terms hoof wall and pad for the purpose of clarification. Attaching excess weight to the feet of a horse will cause inflammation, pain, and soreness in the shoulder, upper legs, and tendons. It is the intention of the Department to restrict such practices. The third comment stated that there should be maximum weight limits set for yearling horses, 2-year-old horses, 3-year-old horses, and 4-year-old or older horses. With the exception of yearling horses, the proposed regulations did not place any restrictions as to weight limitations by age group of horses. However, the Department will keep the comment under consideration with the possibility of incorporating such requirements into the regulations at a later date if circumstances indicate such a need.

Paragraph (c) of § 11.2 would prohibit the use of all substances on the extremities above the hoof of any horse, except glycerine, petrolatum, mineral oil, or mixtures thereof, with certain limitations. A total of eight comments were received concerning this paragraph. Three of the comments insisted that all substances used on horses be prohibited. The Department feels that such action would be overly restrictive at this time. However, these comments will be given serious consideration in the future if sore horses continue to be a problem.

Other comments indicated that the proposed restriction places an unnecessary burden on most horse shows and exhibitions by prohibiting the use of fly sprays, grooming aids, etc., on the vast majority of horses. It was further pointed out that since soring is only prevalent in one or two breeds of horses, placing such restrictions upon all horses was unwise and unfair. The Department agrees that this comment and objection has some validity. It has been the Department's experience over the past 7 or 8 years that the types of horses usually subjected to soring practices have been Tennessee Walking Horses and, to a lesser extent, racking horses. The Department has therefore changed paragraph (c), "Substances", to read: "All substances are prohibited on the extremities above the hoof, of any Tennessee Walking Horse or racking horse, while being shown, * * *" and is thus limiting the prohibition concerning the use of substances to Tennessee Walking Horses and racking horses.

Others commented that this proposal is too restrictive and should allow the use of more substances. The prohibition of substances such as sprays, dyes, and greases has received considerable attention. It is recognized that dyes could aid in changing the identity of a horse and could act as a camouflage to signs or soring. Colored substances, sprays, greases, and clear substances can act as vehicles to soring chemicals and serve as an adhesive to foreign material which could be abrasive in nature. These substances could then cause soring by direct or indirect means. For these reasons the Department will continue to prohibit all substances on the legs of Tennessee Walking Horses and racking horses, except as allowed under § 11.2(c).

Another comment referred to prohibiting substances "adminstered" to a horse. Although this is a good suggestion, the Department is of the opinion that at this time the general prohibitions found in proposed § 11.2 adequately cover any practice which could cause a horse to be sore which is not specifically prohibited by regulation. In the event that it becomes necessary to specifically refer to the administration of substances to a horse in the regulations to properly enforce the law, the Department will do so in future rulemaking.

Section 11.2(d) pertains to competition restrictions placed upon 2-year-old horses so as to alleviate the excessive stress and fatigue to which such young horses are subjected. The proposed regulation would limit the amount of time that a 2-year-old horse could be worked, at any one time, to a total of 10 minutes. After a rest period of not less than 5 minutes, the horse would be allowed a second performance or workout period not to exceed 10 minutes in length. Only two such 10-minute workouts would be allowed per class or performance. A total of 18 comments were received regarding this proposal. One comment indicated that the 10-minute restriction should be retained; however, five other comments indicated that such a restriction was unrealistic, unenforceable, and unworkable in large classes. The Department is advised that horse show or horse sale management, or the judge, usually have complete authority to limit or extend the period of performances or workouts. Additionally, they have the responsibility of complying with the Horse Protection Act and regulations. Thus, such a restriction would be enforceable. The Department also suggests that if 2-year-old classes contain so many horses that they cannot be judged within a single 10-minute period, or possibly within two 10-minute periods with a 5-minute rest period between the 10-minute workouts, then the class size should be reduced by splitting the class. The Department finds that the objections submitted are not persuasive and believes that the proposed restrictions can be workable and enforceable.

Another comment requested the Department to clarify whether the 10-minute time limit meant the time after the initial performance and lineup or the entire time. A second person asked, "Do two workouts mean a complete workout?" The 10-minute time limitation refers to the total time that a horse is worked. If the horses can be judged both ways in the ring within a single 10-minute period, they could then be lined up and a second 10-minute workout could be given after a 5-minute rest period, if necessary. However, if the horses were only judged going one way in the ring during the 10-minute workout, it would then be necessary to allow a 5-minute rest period before judging the horses going in the reverse direction in the ring. In this case, no further workout would be allowed as the maximum of two 10-minute workouts per performance, or class, would have been reached. Nine of the comments received stated that such time limitations were not necessary for most breeds of horses, in most shows, and should apply only to Tennessee Walking Horses, and not to other breeds of horses. The Department recognizes the validity of such comments, since most other breeds of horses (such as Quarter Horses, Arabians, Morgans, Hackneys, Saddlebreds, Thoroughbreds, etc.) are not subjected to gaits or performances that are as physically punishing and fatiguing as are the "big lick" or the rack. The Department will, therefore, limit § 11.2(d), "Competition restrictions—2-year-old horses", to Tennessee Walking Horses and racking horses.

No comments were received pertaining to part (e), "Information requirements—horse related", of § 11.2 and it will be retained as proposed.

Scar Rule

Several comments were received concerning the proposed scar rule. One comment indicated that such scars were not found on the pasterns of normal horses and, therefore, should not be allowed at all. While the Department recognizes the truth in this statement, such action would essentially eliminate most of the Tennessee Walking Horses from the show or sale ring and therefore cannot be considered as practical.

One comment indicated that the scar rule should not be applied to sales or to brood stock. The Department would point out that the Act itself covers horses which are shown, exhibited, sold or auctioned, and therefore, regulations which pertain to one type of activity must pertain to all types. Additionally, there is no method to guarantee that any horse that is sold will be used only for breeding and not be shown or exhibited. Also, the scar rule would not interfere with the selling of older breeding stock, but would pertain only to younger horses of particular age groups. The age of horses covered by the scar rule would therefore increase each year.

Another comment asked, "At what age does the scar rule apply?" As set forth in the proposed regulations, all horses up to and including 5-year-old horses in the 1977 horse show season would be subject to the scar rule. The Department has recently reviewed horse industry's enforcement of its own scar rules and has found it to be lax or nonexistent. Many 2-year-old, 3-year-old, and 4-year-old horses are being found to have scars on their pasterns when inspected by Department veterinarians. Horses of these age groups were foaled after the Horse Protection Act of 1970 was enacted, and some were foaled after the Horse Protection Act Amendments of 1976 were enacted, and should, therefore, carry no scars on their pasterns. Due to lack of enforcement of its scar rules by the horse industry, the Department has determined to add a scar rule to the regulations and will initiate a policy of strict enforcement of the rule.

In order not to cause a severe hardship upon the horse industry by the elimination of large numbers of 4- and 5-year-old horses from competition, due to the scar rule, the Department has decided to make the scar rule applicable to all 3-year-old horses in the 1979 horse show season, rather than 7 years old as proposed. Therefore, 3-year-old horses in 1979; 4-year-old horses in 1980; 5-year-old horses in 1981, etc., will be subject to the scar rule. Three-year-old horses would be eleigible to compete in 3-year-old classes 4-year-old horses would be eligible to compete in 4-year-old classes, etc. The horse industry is cautioned, however, that the Department intends to vigorously enforce the rule.

Still another comment indicated that the concept of "once sore—always sore," which is associated with the scar rule, should be eliminated. The Department would point out to the horse industry that the scar rule applies only to horses that were foaled and trained well after the passage of the Horse Protection Act of 1970, and after the passage of the 1976 Horse Protection Act amendments. Such horses should therefore bear no scars whatsoever if the law were being complied with. Additionally, it is conceivable that such a scarred horse could be restored to a satisfactory condition with proper care, rest, and time. The Department therefore finds no justification to change the proposed scar rule or its intent.

Inspection and Detention of Horses

Proposed § 11.4 concerns the "Inspection and detention of horses." A total of 13 comments referred to the proposals set forth in this section. Four of the comments were concerned with the general idea of detention of horses and expressed concern that such authority could be abused or could cause problems such as detention of a horse on the last day of the show, which could cause management to violate possible contracts or agreements concerned with vacating the premises by a specified time, or with hauling or shipping arrangements. An additional concern was that horses might be detained deliberately in order to keep them from showing. The Department agrees that the possibility of abuse does exist; however, the possibility of abuse exists within any regulatory agency or law enforcement body. While such possibility must be acknowledged, the Department feels that the likelihood of actual abuse is very remote and is certainly not supported by the past actions of Department inspectors in carrying out their duties and responsibilities. There will be times when horses may be detained on the last day of a show. However, any problems which this could cause will have to be worked out prior to the show between the parties involved.

It is true that a horse may be held in detention and thus miss a class in which it had been entered during the detention period. Such instances should be remote, however, and certainly would not be caused deliberately. Department inspectors will detain horses in a detention area provided by management without fee for various reasons, such as to confirm or discount a diagnosis of soreness or to check out some abnormality that was observed when examining the horse. Such decisions will be made carefully by the Veterinary Services Show Veterinarian and will be based upon the evidence available at the time. The Department will not state that detained horses may not miss a class now and then, but it does not believe that the detention of horses will be deliberately abused to prevent any particular horse from showing. The same reasoning applies to contract carriers or agreements by management to vacate the show grounds by a specified time. While the Department must admit that there will be instances when horses are detained on the last day of an event, every effort will be made by Department inspection personnel to expedite any inspection when such problems arise. Department personnel are just as anxious to leave the show grounds and return to their homes and family as are the exhibitors, and it is very unlikely that they would purposely delay such departure any longer than necessary.

Another comment requested clarification of the purpose for detention of horses and expressed the fear that either double violations would result concerning a single horse, or that charges would not be withdrawn if the horse proved not to be sore upon examination during the detention period. As stated before, horses may be detained for various reasons and for varying periods of time. It may be necessary for Department inspectors to detain a horse for further examination of some abnormal condition noted during examination, or for additional evidence to either justify or refute a possible soring violation. If further examination during the detention period confirms the diagnosis of soreness, then one alleged violation will be documented for each particular instance the horse was transported, entered, shown, sold, etc., in a sored condition. The detention in itself will not trigger a separate violation, since the purpose of the detention would be to confirm or disprove a prior diagnosis. If the horse is detained again, after performing in another class, a second violation could be documented. Should further examination of the horse during the detention period indicate that the diagnosis of soreness cannot be sustained or justified, than an alleged violation would not be prepared. The custodian of the horse would be so advised by Department personnel.

One comment indicated that a Veterinary Services representative should be in the proximity of the dention area at all times when any horse is being held in detention. Such a requirement was the intent of the Department and has been set forth in guidelines for Department personnel; however, proposed § 11.4(d) has also been changed so as to clarify this intent.

Several other comments were concerned with the care of horses while under detention and stated that hand walking of the horses should be allowed under supervision. The Department would point out that proposed § 11.4(e) clearly allows feeding, watering, and other normal custodial and maintenance care of detained horses. Such normal care and maintenance would include hand walking. However, in order to clarify the intent of this section, the term "such as walking, grooming, etc.," has been added.

The remainder of the comments regarding proposed § 11.4 addressed paragraph (h) regarding the right of the owner, trainer, exhibitor, or custodian of the horse to request reexamination and testing of their horse. One comment indicated that the Department should not allow requests for reexamination. Another comment indicated that the entire section should be eliminated. The remainder of the comments stated that examination should work both ways and that reexamination should be granted upon request and should not be contingent upon the availability of Veterinary Services personnel or a determination that sufficient cause exists for reexamination.

The Department is of the opinion that not to allow requests for reexamination of horses would be unfair to the horse industry in view of the serious consequences which could result from being charged with a violation. However, to allow such requests for reexamination without limitation, or a means of selection, would lead to chaos and total collapse of the system. It is highly probable that unscrupulous owners, trainers, or custodians of horses would request, or demand, the detention of every horse that was examined by Department inspectors or that was found to be in possible violation. The numbers of such requests would be impossible to handle and would overburden Department inspection personnel to the point that inspections and enforcement of the Act could no longer be properly carried out. Such action would vitiate the entire purpose of the Act. Additionally, once Department veterinarians have made the determination that a horse is sore and in violation of the Act or regulations, there is no need to further examine such horse unless the Veterinary Services Show Veterinarian and the examining veterinarians feel that additional information is required or that additional information could change their opinion concerning the status of the horse. The Department will therefore retain the provision that the Veterinary Services Show Veterinarian must determine that sufficient cause for reexamination and testing exists before granting any such request for reexamination.

Access to Premises and Records

One comment was received in regard to proposed § 11.5, "Access to premises and records." This comment stated that paragraph (b)(1) should be expanded to include trainers and grooms, and to allow for the seizure of equipment and devices in the groom's bucket or equipment tray. Paragraph (b)(1) as proposed, states in part, "Each horse owner, exhibitor, or other persons having custody of or responsibility for any horse * * *." Thus, the trainer and groom are already included under the wording, "* * * other persons having custody or responsibility for any horse * * *." The Department would also point out that section 6(e)(2) of the Act, contains authority for the seizure of any equipment, device, paraphernalia, or other substance which was used in violation of any provision of the Act or any regulation issued under the Act or which contributed to the soring of any horse at or prior to any horse show, horse exhibition, or horse sale or auction. There is therefore, no need to repeat such authority within the regulations. The Department finds no justification to change § 11.5, and it is therefore published as proposed.

Inspection Space and Facility Requirements

Six of the comments received stated their concern with the regulations proposed in § 11.6, "Inspection space and facility requirements." Several of the comments indicated that the regulations, as proposed, were too broad in scope and should not require every horse show or 4–H demonstration to routinely set aside inspection space since it would create economic burdens and hardships. Other comments stated that such requirement for all horse shows was unreasonable and costly when based on the limited number of horse shows inspected by the Department in the past. It was also suggested that such requirements be limited to certain types of horse shows. The Department is of the opinion that these concerns of burden and hardship to the horse industry, due to the wide scope of the proposed regulations and the limited number of shows inspected, are valid. The Department will therefore modify the proposed requirement that inspection space shall be routinely provided, whether or not management is notified of the Department's intention to inspect. This requirement is changed herein to apply only to horse shows, exhibitions, sales, or auctions containing Tennessee Walking Horses or racking horses. However, shows, exhibitions, sales, or auctions containing other types of horses will still be required to provide inspection space and facilities if requested by Veterinary Services.

It was further stated that such space and facilities could not be provided by small shows without a severe financial burden. The Department would point out that space which would be adequate for inspection (or detention) is usually available at most horse shows, large or small, and could therefore be made available to Department inspectors without undue cost. Requirements for inspection space and waiting space for horses, in a convenient location, would require prior planning by management so that appropriate space were available should USDA inspectors attend the show; it would not, however, require significant additional cost. The Department will therefore retain the requirement that sufficient space in a convenient location be supplied for the inspection of horses and for horses waiting for inspection. Such space shall be provided by management, without fee, and shall include a place where horses can be detained.

Protection from the elements and a means of crowd control will not be required to be supplied by every horse show, horse exhibition, or horse sale or auction, but should be planned for by management and made available upon the request of the Veterinary Services Show Veterinarian. A 110-volt power source is not an absloute requirement, since many small shows are held in areas that have no electrical source readily available. However, if electrical service is present, it must be made available to USDA inspectors upon request of the Veterinary Services Show Veterinarian.

One comment stated that inspection and detention facilities should not be routinely required of any horse show, but that the Department should give management a 12-hour notice of intent to inspect the show, with penalties for leaking word of such inspection. Management could then supply the

required facilities. The Department has inspected horse shows for the past 7 years, and in most instances, it was necessary to advise management that a USDA inspection team would be present so that proper facilities would be available. Without exception, word of USDA inspection has rapidly spread, and certain horses, owners, and trainers have either left the grounds or have not attended the show. Surprise attendance at horse shows and sales will be the basis of future inspections, and therefore, the Department must reject any suggestion of prior notification of management.

Additionally, one comment stated that minimum requirements should be specifically stated. The Department finds that to specify by regulation, specific requirements, which would apply to all types of horse shows, exhibitions, sales or auctions, in all parts of the country, and under all types of conditions, would be unworkable and unrealistic. The space and facility requirements are therefore written so as to allow some flexibility according to circumstances.

Responsibilities and Liabilities of Management

Twelve of the comments received were concerned with the proposed regulations under § 11.20, "Responsibilities and Liabilities of Management." Without exception, all of these comments indicated that to require the DQP to observe all horses in the warmup area and show ring, to inspect all horses prior to showing, exhibition or sale, and to inspect all first-place horses in all animated gait classes, in addition to carrying out the required recordkeeping duties, was physically impossible and unreasonable. Additionally, it was indicated that such a requirement would not only delay and interfere with the operation of large shows, but was an unnecessary and costly requirement for most shows and most breeds and would place an impossible burden on both management and the DQP. Several of these comments indicated that such requirements should be limited to those shows, exhibitions, sales and auctions involving those horses which are most commonly sored.

The Department finds these comments to be valid and reasonable, and will therefore limit the duties and responsibilities of DQP's, as set forth in § 11.20 concerning the physical examination of horses, to those horse shows, horse exhibitions, horse sales and horse auctions that contain Tennessee Walking Horses or racking horses. Events featuring Tennessee Walking Horses and racking horses must follow all the requirements of the regulations; other shows or sales at which a DQP is present need not strictly adhere to the requirements other than reporting sore horses.

Other comments indicated that the delegation of authority to a DQP, by management, to disqualify or excuse horses, should be required and should be absolute rather than optional. According to the Act, it is management's responsibility to disqualify or to prohibit the sale or auction of any horse which is sore if the management has been notified of the fact by a DQP or by the Secretary, or if it otherwise has knowledge that such horse is sore. Although management can delegate its functions to whomever it pleases, the Department does not feel that it is appropriate to require such delegation by regulation.

One comment stated that it is illegal to prevent or remove a horse from showing. The Department would point out that, in the past, horse show management has exercised its authority to prevent or remove any horse from showing if it so desired. Management now has the legal responsibility, under the Horse Protection Act, to prevent or remove horses that are in violation of the Act or regulations from being shown, exhibited, sold or auctioned. Such action is required under the Act with severe penalties for failure to do so.

Records Required and Disposition Thereof

Two of the comments received indicated that the proposed recordkeeping requirements, as set forth in § 11.21, were impossible to comply with, would be an economic burden (especially for small shows), and that the required information was not usually available to show management. It was further stated that there was no basis for expanding the recordkeeping requirements and suggested that they be restricted to those shows which contain horses that are subjected to soring practices.

The Department would point out that the information which would be required to be maintained under § 11.21 is information that is normally required by horse industry associations or organizations and is therefore available to management without excessive cost or effort. Additionally, this information is necessary for the effective enforcement of the Horse Protection Act. The Department agrees, however, that to require such recordkeeping procedures of all horse shows would be an unnecessary burden upon the horse industry. Therefore, the Department will not change the information that is required to be kept, but will limit such recordkeeping requirements to those horse shows, exhibitions, sales or auctions which feature Tennessee Walking Horses or racking horses.

Inspection of Records

No comments were received concerning proposed § 11.22, "Inspection of records." However, certain editorial changes were made to clarify the intent that all horse shows, whether or not they contain Tennessee Walking Horses or racking horses, must allow the inspection of any and all records pertaining to horses by a Veterinary Services representative and must provide facilities for the proper examination of such records.

Reporting by Management

Two comments were received concerning proposed § 11.24, "Reporting by management." One comment stated that such a requirement violated privacy rights of management and individuals. The Horse Protection Act of 1970 and the Amendments of 1976 give the Secretary the authority to issue such rules and regulations as he deems necessary to carry out the provisions of the Act. Section 4(d) of the Act (15 U.S.C. 1823(d)) requires the management of a horse show, horse exhibition, or horse sale or auction to establish and maintain such records, make such reports, and provide such information as the Secretary may reasonably require to implement and determine compliance with the Act. The Department therefore finds this comment to be invalid. The second comment stated that such a reporting requirement would place an unnecessary burden upon horse shows, exhibitions, sales and auctions that did not contain horses which were ordinarily subjected to soring practices and should be limited to those shows that feature horses which might be expected to be sore. The comment further stated that the 72-hour time limit for reporting appeared to be unreasonable, as show management had many duties and responsibilities to fulfill within a short period of time. A time limit of 5 days was suggested instead of 72 hours for management to report excused or disqualified horses.

The Department agrees that the proposed 72-hour reporting requirement may be too short. Therefore, the time period for reporting excused or disqualified horses is changed herein to 5 days. Also, the reporting requirement is modified herein to require the reporting of information described in

§ 11.21(a)(1) through § 11.21(a)(6) only by management of events featuring Tennessee Walking Horses and racking horses. Management of events not featuring walking horses or racking horses shall still be required to report any incident wherein a horse is excused or disqualified because of soring.

Prohibitions and Requirements Concerning Persons Involved in Transportation of Certain Horses

No comments were received concerning proposed § 11.40. The words "affecting commerce" have been deleted from the heading of this section as they have been determined to be unnecessary. Section 3 of the Act states that all horses subject to the Act are either in interstate or foreign commerce or substantially affect such commerce; therefore, there is no need to include the phrase "affecting commerce" in the regulations.

Reporting Required of Horse Industry Organizations or Associations

Four of the comments received addressed the proposed reporting requirements of horse industry organizations or associations as set forth in § 11.41. All of these comments indicated that the requirement to supply rulebooks and information relating to disciplinary procedures to all exhibitors, trainers, and owners of horses at such shows, exhibitions, sales, or auctions was not only impossible but was an unnecessary economic burden and expense to such organizations or associations.

These comments further indicated that the requirement to disclose all disciplinary proceedings taken by an organization or association was not necessary and that such disclosures should be limited to violations of the Horse Protection Act or regulations.

The Department agrees with these comments and has therefore changed proposed § 11.41 to indicate that the reporting of information regarding disciplinary procedures will be limited to violations of the Horse Protection Act or regulations and that such information and rulebooks should be readily available to all exhibitors, trainers, owners, and other persons.

Accordingly, Part 11 of Subchapter A, Chapter I, Title 9 of the Code of Federal Regulations, is amended in the following respects:

1. Section 11.2 (9 CFR 11.2) is revised to read as follows:

§ 11.2 Prohibitions concerning exhibitors.

(a) *General prohibitions.* Notwithstanding the provisions of paragraph (b) of this section, no chain, boot, roller, collar, action device, nor any other device, method, practice, or substance shall be used with respect to any horse at any horse show, horse exhibition, or horse sale or auction if such use causes or can reasonably be expected to cause such horse to be sore.

(b) *Specific prohibitions.* The use of any of the following devices, equipment, or practices on any horse at any horse show, horse exhibition, or horse sale or auction is prohibited:

(1) All beads, bangles, rollers, and similar devices, with the exception of rollers made of lignum vitae (hardwood), aluminum, or stainless steel, with individual rollers being of uniform size, weight and configuration, provided each such device may not weigh more than 14 ounces, including the weight of the fastener.

(2) Chains weighing in excess of 8 ounces each including the weight of the fastener on 2-year-old horses and chains weighing in excess of 10 ounces each including the weight of the fastener on horses 3 years old or older.

(3) Chains with links that are not of uniform size, weight and configuration; and, chains that have twisted links or double links.

(4) Chains that have drop links on any horse that is being ridden, worked on a lead, or otherwise worked out or moved about.

(5) More than one action device on any one limb of a horse.

(6) Chains or lignum vitae, stainless steel, or aluminum rollers which are not smooth and free of protrusions, projections, rust, corrosion, or rough or sharp edges.

(7) Boots, collars, or any other device, with protrusions or swellings, or rigid, rough, or sharp edges, seams or any other abrasive or abusive surface that may contact a horse's leg.

(8) Pads or any other devices on yearling horses (horses up to 2 years old) that elevate or change the angle of such horses' hooves in excess of 1 inch at the heel.

(9) Any weight on yearling horses, except a keg or other similar, conventional type horseshoe, and any horseshoe on yearling horses that weighs in excess of 16 ounces.

(10) Toe length that does not exceed the height of the heel by 1 inch or more. The length of the toe shall be measured from the coronet band, at the center of the front pastern along the front of the hoof wall, to the ground. The heel shall be measured from the coronet band, at the most lateral portion of the rear pastern, at a 90 degree angle to the ground, not including normal caulks at the rear of a horseshoe that do not exceed ¾ inch in length. That portion of caulk at the rear of a horseshoe in excess of ¾ of an inch shall be added to the height of the heel in determining the heel-toe ratio.

(11) Artificial extension of the toe length, whether accomplished with horseshoes, pads, acrylics or any other material or combinations thereof, unless such extension assumes the normal angle of the hoof wall and pastern and is therapeutically necessary to repair a broken hoof.

(12) Single or double rocker-bars on the bottom surface of horseshoes which extend more than 1½ inches back from the point of the toe, or which would cause, or could reasonably be expected to cause, an unsteadiness of stance in the horse with resulting muscle and tendon strain due to the horse's weight and balance being focused upon a small fulcrum point.[4]

(13) Metal hoof bands, such as used to anchor or strengthen pads and shoes, placed less than ½ inch below the coronet band.

(14) Metal hoof bands that can be easily and quickly loosened or tightened by hand, by means such as, but not limited to, a wing-nut or similar fastener.

(15) Any action device or any other device that strikes the coronet band of the foot of a horse except for soft rubber or soft leather bell boots that are used as protective devices.

(16) Shoeing a horse, or trimming a horse's hoof in a manner that will cause such horse to suffer, or can reasonably be expected to cause such horse to suffer pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving.

(17) Lead or other weights attached to the outside of the hoof wall, the pad, or on the outside surface of the horseshoe.

(c) *Substances.* All substances are prohibited on the extremities above the hoof of any Tennessee Walking Horse or racking horse while being shown, exhibited, or offered for sale at any horse show, horse exhibition, or horse sale or auction, except lubricants such as glycerine, petrolatum, and mineral oil, or mixtures thereof: *Provided,* That:

(1) The horse show, horse exhibition, or horse sale or auction management agrees to furnish all such lubricants and to maintain control over them when

[4] This prohibition is not intended to disallow corrective devices, such as Memphis bars which consist of a metal bar(s) crossing from the ground surface of one side of the horseshoe to the ground surface of the other side of the horseshoe, and the purpose of which is to correct a lameness or pathological condition of the foot: *Provided,* That such metal bar(s) do not act as a single fulcrum point so as to affect the balance of the horse.

used at the horse show, horse exhibition, or horse sale or auction.

(2) Any such lubricants shall be applied only after the horse has been inspected by management or by a DQP and shall only be applied under the supervision of the horse show, horse exhibition, or horse sale, or auction mangaement.

(3) Horse show, horse exhibition, or horse sale or auction management makes such lubricants available to Department personnel for inspection and sampling as they deem necessary.

(d) *Competition restrictions—2 Year-Old Horses.* Horse show or horse exhibition workouts or performances of 2-year-old Tennessee Walking Horses and racking horses and working exhibitions of 2-year-old Tennessee Walking Horses and racking horses (horses eligible to be shown or exhibited in 2-year-old classes) at horse sales or horse auctions that exceed a total of 10 minutes continuous workout or performance without a minimum 5-minute rest period between the first such 10-minute period and the second such 10-minute period, and, more than two such 10-minute periods per performance, class, or workout are prohibited.

(e) *Information requirements—horse related.* Failing to provide information or providing any false or misleading information required by the Act or regulations or requested by Department representatives, by any person that owns, trains, shows, exhibits, or sells or has custody of, or direction or control over any horse shown, exhibited, sold, or auctioned or entered for the purpose of being shown, exhibited, sold, or auctioned at any horse show, horse exhibition, or horse sale or auction is prohibited. Such information shall include, but is not limited to: Information concerning the registered name, markings, sex, age, and legal ownership of the horse; the name and address of the horse's training and/or stabling facilities; the name and address of the owner, trainer, rider, any other exhibitor, or other legal entity bearing responsibility for the horse; the class in which the horse is entered or shown; the exhibitor identification number; and, any other information reasonably related to the identification, ownership, control, direction, or supervision of any such horse.

2. Section 11.3 (9 CFR 11.3) is added to read as follows:

§ 11.3 Scar rule.

Starting with the 1979 show season,[5] the scar rule shall apply to all 3-year-old horses [6] during the 1979 season; 4-year-old horses during the 1980 season; 5-year-old horses during the 1981 season, etc. Any horse which is older than a 3-year-old during the 1979 show season shall be unaffected by this rule. Horses subject to this rule which do not meet the following scar rule criteria shall be considered to be "sore" and are subject to all prohibitions of § 5 of the Act. The scar rule criteria are as follows:

(a) The anterior and anterior-lateral surfaces of the fore pasterns (extensor surface) must be free of bilateral granulomas,[7] other bilateral pathological evidence of inflammation, and, other bilateral evidence of abuse indicative of soring including, but not limited to, excessive loss of hair.

(b) The posterior surfaces of the pasterns (flexor surface), including the sulcus or "pocket" may show bilateral areas of uniformly thickened epithelial tissue if such areas are free of proliferating granuloma tissue, irritation, moisture, edema, or other evidence of inflammation.

3. Section 11.4 (9 CFR 11.4) is revised to read as follows:

§ 11.4 Inspection and detention of horses.

For the purpose of effective enforcement of the Act:

(a) Each horse owner, exhibitor, trainer, or other person having custody of, or responsibility for, any horse at any horse show, horse exhibition, or horse sale or auction, shall allow any Veterinary Services representative to reasonably inspect such horse at all reasonable times and places the Veterinary Services representative may designate. Such inspections may be required of any horse which is stabled, loaded on a trailer, being prepared for show, exhibition, or sale or auction, being exercised or otherwise on the grounds of, or present at, any horse show, horse exhibition, or horse sale or auction, whether or not such horse has or has not been shown, exhibited, or sold or auctioned, or has or has not been entered for the purpose of being shown or exhibited or offered for sale or auction at any such horse show, horse exhibition, or horse sale or auction.

[5] Since horse shows throughout the country occur during most months of the year, the show season shall entail the complete calendar year.

[6] Horses which are eligible to compete in 3-year-old classes. Four-year-old horses would be eligible to compete in 4-year-old classes, etc.

[7] Granuloma is defined as any one of a rather large group of fairly distinctive focal lesions that are formed as a result of inflammatory reactions caused by biological, chemical, or physical agents.

Veterinary Services representatives will not generally or routinely delay or interrupt actual individual classes or performances at horse shows, horse exhibitions, or horse sales or auctions for the purpose of examining horses, but they may do so in extraordinary situations, such as but not limited to, lack of proper facilities for inspection, refusal of management to cooperate with Department inspection efforts, reason to believe that failure to immediately perform inspection may result in the loss, removal, or masking of any evidence of a violation of the Act or the regulations, or a request by management that such inspections be performed by a Veterinary Services representative.

(b) When any Veterinary Services representative notifies the owner, exhibitor, trainer, or other person having custody of or responsibility for a horse at any horse show, horse exhibition, or horse sale or auction that Veterinary Services desires to inspect such horse, it shall not be moved from the horse show, horse exhibition, or horse sale or auction until such inspection has been completed and the horse has been released by a Veterinary Services representative.

(c) For the purpose of examination, testing, or taking of evidence, Veterinary Services representatives may detain for a period not to exceed 24 hours any horse, at any horse show, horse exhibition, or horse sale or auction, which is sore or which a Veterinary Services veterinarian has probable cause to believe is sore. Such detained horse may be marked for identification and any such identifying markings shall not be removed by any person other than a Veterinary Services representative.

(d) Detained horses shall be kept under the supervision of a Veterinary Services representative or secured under an official USDA seal or seals in a horse stall, horse trailer, or other facility to which access shall be limited. It shall be the policy of Veterinary Services to have at least one representative present in the immediate detention area when a horse is being held in detention. The official USDA seal or seals may not be broken or removed by any person other than a Veterinary Services representative, unless:

(1) The life or well-being of the detained horse is immediately endangered by fire, flood, windstorm, or other dire circumstances that are beyond human control.

(2) The detained horse is in need of such immediate veterinary attention that its life may be in peril before a

Veterinary Services representative can be located.

(3) The horse has been detained for a maximum 24-hour detention period, and a Veterinary Services representative is not available to release the horse.

(e) The owner, exhibitor, trainer, or other person having custody of or responsibility for any horse detained by Veterinary Services for further examination, testing, or the taking of evidence shall be allowed to feed, water, and provide other normal custodial and maintenance care, such as walking, grooming, etc., for such detained horse: *Provided,* That:

(1) Such feeding, watering, and other normal custodial and maintenance care of the detained horse is rendered under the direct supervision of a Veterinary Services representative.

(2) Any non-emergency veterinary care of the detained horse requiring the use, application, or injection of any drugs or other medication for therapeutic or other purposes is rendered by a Doctor of Veterinary Medicine in the presence of a Veterinary Services representative and, the indentity and dosage of the drug or other medication used, applied, or injected and its purpose is furnished in writing to the Veterinary Services representative prior to such use, application, or injection by the Doctor of Veterinary Medicine attending the horse. The use, application, or injection of such drug or other medication must be approved by the Veterinary Services Show Veterinarian or his appointed representative.

(f) It shall be the policy of Veterinary Services to inform the owner, trainer, exhibitor, or other person having immediate custody of or responsibility for any horse allegedly found to be in violation of the Act or the regulations of such alleged violation or violations before the horse is released by a Veterinary Services representative.

(g) The owner, trainer, exhibitor, or other person having immediate custody of or responsibility for any horse or horses that a Veterinary Services representative determines shall be detained for examination, testing, or taking of evidence pursuant to paragraph (e) of this section shall be informed after such determination is made and shall allow said horse to be immediately put under the supervisory custody of Veterinary Services or secured under official USDA seal as provided in paragraph (d) of this section until the completion of such examination, testing, or gathering of evidence, or until the 24-hour detention period expires.

(h) The owner, trainer, exhibitor, or other person having custody of or responsibility for any horse allegedly found to be in violation of the Act or regulations, and who has been notified of such alleged violation by a Veterinary Services representative as stated in paragraph (f) of this section, may request reexamination and testing of said horse within a 24-hour period: *Provided,* That:

(1) Such request is made to the Veterinary Services Show Veterinarian immediately after the horse has been examined by Veterinary Services representatives and before such horse has been removed from the Veterinary Services inspection facilities; and

(2) The Veterinary Services Show Veterinarian determines that sufficient cause for reexamination and testing exists; and

(3) The horse is maintained under Veterinary Services supervisory custody as prescribed in paragraph (d) of this section until such reexamination and testing has been completed.

(i) The owner, exhibitor, trainer, or other person having custody of, or responsibility for any horse being inspected shall render such assistance as the Veterinary Services representative may request for purposes of such inspection.

4. Section 11.5 (9 CFR 11.5) is revised to read as follows:

§ 11.5 Access to premises and records.

Requirements regarding access to premises for inspection of horses and records are as follows:

(a) *Management.* (1) The management of any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, provide Veterinary Services representatives with unlimited access to the grandstands, sale ring, barns, stables, grounds, offices, and all other areas of any horse show, horse exhibition, or horse sale or auction, including any adjacent areas under their direction, control, or supervision for the purpose of inspecting any horses, or any records required to be kept by regulation or otherwise maintained.

(2) The management of any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, provide Veterinary Services representatives with an adequate, safe, and accessible area for the visual inspection and observation of horses while such horses are competitively or otherwise performing at any horse show or horse exhibition, or while such horses are being sold or auctioned or offered for sale or auction at any horse sale or horse auction.

(b) *Exhibitors.* (1) Each horse owner, exhibitor, or other person having custody of or responsibility for any horse at any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, admit any Veterinary Services representative or Designated Qualified Person appointed by management, to all areas of barns, compounds, horse vans, horse trailers, stables, stalls, paddocks, or other show, exhibition, or sale or auction grounds or related areas at any horse show, horse exhibition, or horse sale or auction, for the purpose of inspecting any such horse at any and all reasonable times.

(2) Each owner, trainer, exhibitor, or other person having custody of or responsibility for, any horse at any horse show, horse exhibition, or horse sale or auction shall promptly present his horse for inspection upon notification, orally or in writing, by any Veterinary Services representative or Designated Qualified Person appointed by management, that said horse has been selected for examination for the purpose of determining whether such horse is in compliance with the Act and regulations.

5. Section 11.6 (9 CFR 11.6) is added to read as follows:

§ 11.6 Inspection space and facility requirements.

The management of every horse show, horse exhibition, or horse sale or auction, containing Tennessee Walking Horses or racking horses, shall provide, without fee, sufficient space and facilities for Veterinary Services representatives to carry out their duties under the Act and regulations at every horse show, horse exhibition, or horse sale or auction, containing Tennessee Walking Horses or racking horses, whether or not management has received prior notification or otherwise knows that such show may be inspected by Veterinary Services. The management of every horse show, horse exhibition, horse sale or auction which does not contain Tennessee Walking Horses or racking horses shall provide, without fee, such sufficient space and facilities when requested to do so by Veterinary Services representatives. With respect to such space and facilities, it shall be the responsibility of management to provide at least the following:

(a) Sufficient space in a convenient location to the horse show, horse exhibition, or horse sale or auction arena, acceptable to the Veterinary

Services Show Veterinarian, in which horses may be physically, thermographically, or otherwise inspected.

(b) Protection from the elements of nature, such as rain, snow, sleet, hail, windstorm, etc., if required by the Veterinary Services Show Veterinarian.

(c) A means to control crowds or onlookers in order that Veterinary Services personnel may carry out their duties without interference and with a reasonable measure of safety, if requested by the Veterinary Services Show Veterinarian.

(d) An accessible, reliable, and convenient 110-volt electrical power source, if electrical service is available at the show, exhibition, or sale or auction site and is requested by the Veterinary Services Show Veterinarian.

(e) An appropriate area adjacent to the inspection area for designated horses to wait for inspection, and an area to be used for detention of horses.

§ 11.7 [Amended]

6. Sections 11.7(d)(1), 11.7(d)(1)(ix), 11.7(d)(3)(ii)(B), 11.7(d)(4), and 11.7(d)(7)(iv) are amended to read as follows:

(d) * * *(1) Any licensed DQP appointed by the management of any horse show, horse exhibition, horse sale or auction to inspect horses for the purpose of detecting and determining or diagnosing horses which are sore and to otherwise inspect horses for the purpose of enforcing the Act and regulations, shall keep and maintain the following information and records concerning any horse which said DQP recommends be disqualified or excused for any reason at such horse show, horse exhibition, horse sale or auction, from being shown, exhibited, sold or auctioned, in a uniform format required by the horse industry organization or association that has licensed said DQP:

* * * * *

(ix) The name or names of the show manager or other management representative notified by the DQP that such horse should be excused or disqualified and whether or not such manager or management representative excused or disqualified such horse.

* * * * *

(3) * * *

(ii) * * *

(B) The name and address of the owner, trainer, exhibitor, or other person having custody of or responsibility for the care of each such horse disqualified or excused.

* * * * *

(4) Each horse industry organization or association having a Department certified DQP program shall provide, by certified mail if personal service is not possible, to the trainer and owner of each horse allegedly found in violation of the Act or its regulations or otherwise disqualified or excused for any reason, the following information:

* * * * *

(7) * * *

(iv) The DQP shall immediately inform management of each case regarding any horse which, in his opinion, is in violation of the Act or regulations.

* * * * *

7. Section 11.20 (9 CFR 11.20) is revised to read as follows:

§ 11.20 Responsibilities and liabilities of management.

(a) The management of any horse show, horse exhibition, or horse sale or auction which does not appoint and retain a DQP shall be responsible for identifying all horses that are sore or otherwise in violation of the Act or regulations, and shall disqualify or disallow any horses which are sore or otherwise in violation of the Act or regulations from participating or competing in any horse show, horse exhibition, horse sale, or horse auction. Horses entered for sale or auction at a horse sale or horse auction must be identified as sore or otherwise in violation of the Act or regulations prior to the sale or auction and prohibited from entering the sale or auction ring. Sore horses or horses otherwise in violation of the Act or regulations that have been entered in a horse show or horse exhibition for the purpose of show or exhibition must be identified and excused prior to the show or exhibition. Any horses found to be sore or otherwise in violation of the Act or regulations during actual participation in the show or exhibition, must be removed from further participation prior to the tyeing of the class or the completion of the exhibition. All horses tyed first in each Tennessee Walking Horse or racking horse class or event at any horse show or horse exhibition shall be inspected after being shown or exhibited to determine if such horses are sore or otherwise in violation of the Act or regulations.

(b)(1) The management of any horse show, horse exhibition, horse sale or auction which designates and appoints a Designated Qualified Person (or persons) to inspect horses shall accord said DQP access to all records and areas of the grounds of such show, exhibition, sale, or auction and the same right to inspect horses and records as is accorded to any Veterinary Services representative. Further, management shall not take any action which would interfere with or influence said DQP in carrying out his duties or making decisions concerning whether or not any horse is sore or otherwise in violation of the Act or regulations. In the event management is dissatisfied with the performance of a particular DQP, including disagreement with decisions concerning violations, management shall not dismiss or otherwise interfere with said DQP during the DQP's appointed tour of duty.[1] However, management should immediately notify, in writing, the Department [2] and the organization or association that licensed the DQP, as to why the performance of said DQP was inadequate or otherwise unsatisfactory. Management which designates and appoints a DQP shall immediately disqualify or disallow from being shown, exhibited, sold, or auctioned any horse identified by the DQP to be sore or otherwise in violation of the Act or regulations or any horse otherwise known by management to be sore or in violation of the Act or regulations. Should management fail to disqualify or disallow from being shown, exhibited, sold or auctioned any such horse, said management shall assume full responsibility for and liabilities arising from the showing, exhibition, sale, or auction of said horses.

(2) The DQP shall physically inspect: (i) All Tennessee Walking Horses and racking horses entered for sale or auction, (ii) all Tennessee Walking Horses and racking horses entered in any animated gait class (whether under saddle, horse to cart, or otherwise), (iii) all Tennessee Walking Horses and racking horses entered for exhibition before they are admitted to be shown, exhibited, sold, or auctioned, and (iv) all Tennessee Walking Horses and racking horses tyed first in their class or event at any horse show, horse exhibition, horse sale, or horse auction. Such inspection shall be for the purpose of determining whether any such horses are in violation of the Act or regulations. Such physical examination may be conducted in any manner deemed necessary by the DQP in order to determine whether any such horses are sore. The DQP shall observe horses in the warmup ring and during actual performances whenever possible, and shall inspect any Tennessee Walking Horse or racking horse at any time he deems necessary to determine whether any such horse shown, exhibited, sold,

[1] The duration of the show, exhibition, or sale or auction.

[2] Same as previous footnote 2.

or auctioned is in violation of the Act or regulations. If present at other shows, he shall examine any horse which he determines should be examined for compliance with the Act and regulations.

(3) The DQP shall immediately report, to the management of any horse show, horse exhibition, or horse sale or auction, any horse which, in his opinion, is sore or otherwise in violation of the Act or regulations. Such report shall be made, whenever possible, before the show class or exhibitioin involving said horse has begun or before said horse is offered for sale or auction.

8. Section 11.21 (9 CFR 11.21) is revised to read as follows:

§ 11.21 Records required and disposition thereof.

(a) The management of any horse show, horse exhibition, or horse sale or auction, that contains Tennessee Walking Horses or racking horses, shall maintain for a period of at least 90 days following the closing date of said show, exhibition, or sale or auction, all pertinent records containing:

(1) The dates and place of the horse show, horse exhibition, horse sale, or horse auction.

(2) The name and address (including street address or post office box number and ZIP code) of the sponsoring organization.

(3) The name and address of the horse show, exhibition, horse sale or horse auction management.

(4) The name and address (including street address or post office box number and ZIP code) of the DQP, if any, employed to conduct inspections under § 11.20; and, the name of the horse industry organization or association certifying the DQP.

(5) The name and address (including street address or post office box number, and ZIP code) of each show judge.

(6) A copy of each class or sale sheet containing the names of horses, the names and addresses (including street address, post office box and ZIP code) of horse owners, the exhibitor number and class number, or sale number assigned to each horse, the show class or sale lot number, and the name and address (including street address, post office box, and ZIP code) of the person paying the entry fee and entering the horse in a horse show, horse exhibition, or horse sale or auction.

(7) A copy of the official horse show, horse exhibition, horse sale, or horse auction program, if any such program has been prepared.

(8) The identification of each horse, including the name of the horse, the name and address (including street address, post office box, and ZIP code) of the owner, the trainer, the rider or other exhibitor, and the location (including street address, post office box, and ZIP code) of the home barn or other facility where the horse is stabled.

(b) The management of any horse show, horse exhibition, or horse sale or auction containing Tennessee Walking Horses or racking horses shall designate a person to maintain the records required in this section.

(c) The management of any horse show, horse exhibition, or horse sale or auction containing Tennessee Walking Horses or racking horses shall furnish to any Veterinary Services representative, upon request, the name and address (including street address, or post office box, and ZIP code) of the person designated by the sponsoring organization or manager to maintain the records required by this section.

(d) The Deputy Administrator may, in specific cases, require that a horse show, horse exhibition, or horse sale or auction records be maintained by management for a period in excess of 90 days.

9. Section 11.22 (9 CFR 11.22) is revised to read as follows:

§ 11.22 Inspection of records.

(a) The management of any horse show, horse exhibition, or horse sale or auction shall permit any Veterinary Services representative, upon request, to examine and make copies of any and all records pertaining to any horse, either required in any part of the regulations, or otherwise maintained, during ordinary business hours or such other times as may be mutually agreed upon. A room, table, or other facilities necessary for proper examination of such records shall be made available to the Veterinary Services representative.

(b) Horse industry organizations or associations who train, maintain, and license DQP's under a certified DQP program shall permit any Veterinary Services representative, upon request, to examine and copy any and all records relating to the DQP program which are required by any part of the regulations. Such requests shall be made during ordinary business hours or such other times as mutually agreed upon. A room, table or other facilities necessary for proper examination shall be made available upon the request of the Veterinary Services representative.

10. Section 11.24 (9 CFR 11.24) is revised to read as follows:

§ 11.24 Reporting by management.

(a) Within 5 days following the conclusion of any horse show, horse exhibition, or horse sale or auction, containing Tennessee Walking Horses or racking horses, the managements of such show, exhibition, sale or auction shall submit to the Area Veterinarian in Charge[1] for the State in which the show, exhibition, sale or auction was held, the information required by § 11.21(a)(1) through § 11.21(a)(6) for each horse excused or disqualified by management or its representatives from being shown, exhibited, sold or auctioned, and the reasons for such action. If no horses are excused or disqualified, the management shall submit a report so stating.

(b) Within 5 days following the conclusion of any horse show, horse exhibition, or horse sale or auction which does not contain Tennessee Walking Horses or racking horses, the management of such show, exhibition, sale or auction shall inform the Area Veterinarian in Charge for the State in which the show, exhibition, sale or auction was held, of any case where a horse was excused or disqualified by management or its representatives from being shown, exhibited, sold or auctioned because it was found to be sore.

11. Section 11.40 (9 CFR 11.40) is amended in paragraph (a) to read as follows:

§ 11.40 Prohibitions and requirements concerning persons involved in transportation of certain horses.

(a) Each person who ships, transports, or otherwise moves, or delivers or receives for movement, any horse with reason to believe such horse may be shown, exhibited, sold or auctioned at any horse show, horse exhibition, or horse sale or auction, shall allow and assist in the inspection of such horse at any such show, exhibition, sale, or auction to determine compliance with the Act as provided in § 11.4 of the regulations and shall furnish to any Veterinary Services representatives upon his request the following information:

(1) Name and address (including street address, post office box, and ZIP code) of the horse owner and of the shipper, if different from the owner or trainer.

(2) Name and address (including street address, post office box, and ZIP code) of the horse trainer.

(3) Name and address (including street address, post office box, and ZIP code) of the carrier transporting the

[1] Same as previous footnote 1.

horse, and of the driver of the means of conveyance used.

(4) Origin of the shipment and date thereof, and,

(5) Destination of shipment.

12. Section 11.41 (9 CFR 11.41) is revised to read as follows:

§ 11.41 Reporting required of horse industry organizations or associations.

Each horse industry organization or association which sponsors, or which sanctions any horse show, horse exhibition, or horse sale or auction, shall furnish the Department[2] by March 1 of each year with all such organization or association rulebooks, and disciplinary procedures for the previous year pertaining to violations of the Horse Protection Act or regulations, applicable to such horse show, horse exhibition, or horse sale or auction. Rulebooks and information relating to disciplinary procedures for violations of the Horse Protection Act or regulations should be readily available to all exhibitors, trainers, and owners of horses at such show, exhibition, sale, or auction. Each horse industry organization or association shall furnish the Department[2] with a quarterly report of all disciplinary actions taken against the management or any horse show, horse exhibition, horse sale, or horse auction, any exhibitor, or any licensed DQP, for violation of the Horse Protection Act or regulations, and the results thereof.

(Secs. 4, 6, and 9; 84 Stat. 1404; 90 Stat. 916 and 918; (15 U.S.C. 1823, 1825, and 1828); 29 FR 16210, 36 FR 20707.)

It is to the benefit of the public and the regulated industries that these amendments to the regulations be made effective at the earliest practicable date. This year's horse show season has already begun and horse industry representatives have requested that these regulations go into effect as soon as possible. In view of the foregoing, it is hereby found and determined that good cause exists for making these regulations effective 20 days from the date of publication in the **Federal Register** and that it would be contrary to the public interest to delay the effective date of these amendments for a longer period of time. (Section 553(d), Administrative Procedures Act, U.S.C. 551–559.)

Done at Washington, D.C., this 20th day of April, 1979.

Note.—This rule has been reviewed under the USDA criteria established to implement E.O. 12044, "Improving Government Regulations," and has been designated "significant." An approved Final Impact Analysis Statement has been prepared and is available from the Animal Care Staff, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, Md 20782, Area Code (301) 436–8271.

M. T. Goff,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79-13230 Filed 4-26-79; 8:45 am]

BILLING CODE 3410-34-M

[2] Same as previous footnote 2.

federal register

Friday
April 27, 1979

Part XI

Department of Health, Education, and Welfare

Health Care Financing Administration

Medicare Program; Validation of Accreditation Surveys of Hospitals

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

[42 CFR Part 405]

Medicare Program; Validation of Accreditation Surveys of Hospitals

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposal would modify current Medicare regulations dealing with validation surveys of hospitals accredited by the Joint Commission on Accreditation of Hospitals (JCAH) or the American Osteopathic Association (AOA). The proposal would provide for consultation with JCAH and AOA before the Secretary could (under section 1861(e)(9) of the Social Security Act) promulgate standards that are higher or more precise than those used by JCAH or AOA. It would specify that the JCAH institutional planning standard for hospitals is equivalent to the Federal institutional planning requirement.

The intent of the amendments is to expand and clarify the regulatory provisions concerning the effect of JCAH and AOA hospital accreditation.

This proposal would also amend current regulations to reflect certification procedures under which State agencies survey end-stage renal disease treatment facilities, rural health clinics, physical therapists in independent practice, and chiropractors and recommend to the Secretary whether they meet the respective conditions for coverage of their services.

DATES: Consideration will be given to written comments or suggestions received by June 26, 1979.

ADDRESSES: Address comments to: Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, P.O. Box 2382, Washington, D.C. 20013.

In commenting, please refer to file code HSQ–15–P. Agencies and organizations are requested to send comments in duplicate. Comments will be available for public inspection beginning approximately 2 weeks from today, in Room 5231 of Department's offices at 330 C Street, S.W., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–0950).

FOR FURTHER INFORMATION CONTACT: Janet M. Harryman, Health Standards and Quality Bureau, Health Care Financing Administration, Room 301 East High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235. Telephone (301) 594–9712.

SUPPLEMENTARY INFORMATION:

Background

Hospitals wishing to participate in the Medicare program must meet certain health and safety requirements specified in section 1861(c) of the Social Security Act, as well as any additional requirements the Secretary may require under section 1861(c)(9). Section 1865 of the Act provides that a hospital which is accredited by JCAH is deemed to meet, by virtue of that accreditation, most of the requirements of section 1861(e). This eliminates the need for the hospital to be routinely reviewed by the State survey agency to determine whether it is in compliance with the requirements of section 1861(e). The exceptions not covered by JCAH accreditation include the requirements for institutional planning and for a hospital utilization review plan and any requirement promulgated by the Secretary under section 1861(e)(9) of the Act that is higher than the requirements prescribed for accreditation by JCAH. Section 1865 also requires as a precondition for being deemed to meet the Medicare requirements that the hospital must, at the Secretary's request, authorize JCAH to release to the Secretary, on a confidential basis, a copy of the most current JCAH accreditation survey of that hospital.

If the Secretary finds that accreditation of a hospital by AOA or any other national accreditation body provided reasonable assurance that some or all of the health and safety requirements of section 1861(e) are met, he is also authorized under section 1866 to treat that accreditation as meeting the requirements of section 1861(e). The Secretary has previously provided that hospitals accredited by AOA would be deemed to meet all of the requirements of section 1861(e) except for institutional planning, utilization review and any requirements the Secretary might impose under section 1861(e)(9) which are higher than AOA requirements (see 42 CFR 1901(b)).

Section 1864(c) of the Social Security Act authorizes the Secretary to enter into agreements with State survey agencies to determine by means of a validation survey whether hospitals participating in the Medicare program by virtue of JCAH accreditation are in fact meeting the conditions of participation for hospitals that they are deemed to meet. The regulation would implement that authority.

A Notice of Proposed Rulemaking (NPRM) concerning validation of accreditation surveys was published in the **Federal Register** on September 4, 1975 (40 FR 40850). Comments received from 31 sources, including State governments and industry and consumer representatives were considered in developing the new proposal. Because of the time elapsed since initial publication and because of several substantive changes which have been made since the previous publication, we are again providing opportunity for comment.

Minor technical changes to §§ 405.1901–405.1902 and 405.1904–405.1995 are also proposed. These update the certification procedures regulations to include reference to end-stage renal disease treatment facilities, rural health clinics, physical therapists in independent practice, and chiropractors.

The regulations provides that State survey agencies survey such suppliers of services and certify to the Secretary whether they meet the applicable requirements for coverage of their services.

Major Provisions

1. *Validation Survey.*—Section 1864(c) of the Social Security Act, added by Section 224 of the Social Security Amendments of 1972 (Pub L. 92–603), authorizes the Secretary to enter into agreements with certain State survey agencies to perform surveys to determine whether accreditation by JCAH provides reasonable assurance that the Medicare conditions of participation are met. These surveys are called validation surveys. The provisions of the Act authorizing the Secretary to treat hospitals accredited by AOA as being deemed to met the Medicare conditions of participation also permit the use of validation surveys to provide assurance that those hospitals continue to meet the Medicare conditions of participation.

The proposed regulations would provide that the surveys may be conducted on a selective-sample basis or in response to substantial allegations or evidence of a significant deficiency or deficiencies that may adversely affect the health and safety of patients. In conducting validation surveys, the State survey agencies would apply the Medicare health and safety requirements, rather than those used by JCAH and AOA. There is substantial dissimilarity in the wording of many Medicare and JCAH or AOA requirements. Therefore, unless the validation surveys are conducted under the Medicae survey procedures, it would be extremely difficult to determine if the hospitals had significant deficiencies

with respect to the Medicare conditions of participation (see §§ 405.1011–405.1040).

The proposed regulations would provide that a hospital that fails to authorize the release of its most current accreditation survey (on a confidential basis for JCAH accredited hospitals), or refuses to allow a validation survey, or, after the validation survey, is found to be out of compliance with one or more of the conditions of participation, would no longer be deemed to meet those conditions and would be subject to the same Medicare survey and certification requirements as nonaccredited hospitals.

Once the State survey agency determines that the hospital meets all conditions of participation, the hospital may once again be deemed to meet the conditions of participation by virtue of its accreditation by JCAH or AOA. The previous NPRM placed the hospital under the full review of the State survey agency for a minimum of 2 years. Upon considering the comments received, it was decided to provide incentives for correcting Medicare deficiencies as quickly as possible. As soon as a hospital meets all the Medicare conditions of participation, it will be restored to the position of being deemed to meet conditions of participation by virtue of its accreditation.

The findings of a validation survey that an accredited hospital was out of compliance with one or more of the Medicare conditions of participation would be treated as if the finding followed a State agency survey. It would not be necessary to perform an additional State agency survey before requiring a plan of correction or initiating other appropriate action under Subpart S. The finding of the validation survey would not be considered an "initial determination" subject to the formal appeal rights provided in §§ 405.1510–405.1595 because the hospital remains in the Medicare program and may continue to receive reimbursement. However, it would be subject to the informal review process described in the Bureau of Health Insurance Identical Memo 76–100 (Validation Surveys of JCAH), which is available at any Social Security district office. The hospital must request the review within 15 days. It may then submit additional written evidence. If the Secretary determines that there are no significant deficiencies, the hospital is again deemed to meet the conditions of participation. If the review determines that significant deficiencies do exist, the hospital is subject to the same Medicare survey and certification requirements as nonaccredited hospitals until the hospital meets all conditions of participation.

2. *Promulgation of Higher Standards.*—As stated above, section 1861(e) authorize the Secretary to promulgate standards to protect the health and safety of individuals who are furnished services in hospitals participating in the Medicare program. If such standards are higher than those prescribed by either JCAH or AOA, section 1865 provides that hospitals accredited by JCAH or AOA are not deemed to meet those standards. The proposed regulation would provide that prior to the promulgation of such higher standards, the Secretary would consult with JCAH and AOA. This consulation is intended to provide JCAH and AOA with the opportunity to adopt equivalent or higher standards as part of their accreditation process so that hospitals accredited by those bodies may be deemed to meet the proposed Medicare standards. As evidenced in its report accompanying the 1972 Amendments, the Congress expected that if the Secretary is proposing more effective standards, JCAH and AOA would, in all probability, adopt the standards and that therefore, it would not be necessary to conduct State agency surveys for isolated requirements (See page 291 of the Report of the Committee on Finance of the United States Senate accompanying P.L. 92–603, S. Rep. No. 92–1230, 92d Cong., 2d Sess. 1972).

3. *Institutional Planning Standard.*—JCAH and AOA accredited hospitals are not currently deemed to meet the Medicare institutional planning requirement. The Act provides, however, that if the Secretary finds that JCAH or AOA does have an equivalent or higher standard, hospitals accredited by those bodies may be deemed to meet the Medicare standard. JCAH's standard contains identical requirements to medicare's annual operating budget and long-term capital expenditure plan. It also requires "conformance with the requirements of authorized planning, regulatory and inspecting agencies" and review and prompt action by JCAH accredited hospitals on reports of such agencies. On this basis, the Secretary has determined that JCAH's institutional planning standard is equivalent to Medicare's standard. Therefore, hospitals accredited by JCAH will also be deemed to meet the Medicare institutional planning standards and will not be subject to State agency review for compliance of this standard. AOA accredited hospitals are still subject to State agency review for compliance of this standard because the AOA does not have an institutional planning requirement equivalent to Medicare's standard.

4. *Technical and Editorial Changes.*—In this NPRM, section 405.1902(b) would be redesignated section 405.1902(c) for editorial reasons. Clarifying technical changes are also being proposed for sections 405.1904 and 405.1905.

42 CFR Part 405 is amended as set forth below:

1. Section 405.1505 is amended by adding a new paragraph (m) to read as follows:

§ 405.1505 Administrative actions which are not initial determinations.

Adminstrative actions which shall not be considered initial determinations under any provisions of the regulations in this Subpart O include, but are not limited to, the following:

* * * * *

(m) The finding that an institution that is deemed to meet the statutory definition of a hospital under section 1861(e) of the Act by virtue of accreditation by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association is subject to full review by the State survey agency. (An informal appeals process in accordance with the Bureau of Health Insurance Identical Memo 76–100 (Validation Surveys of JCAH) is available in this situation. The memo is readily available at any Social Security district office.) (See § 405.1901 for rules on survey of accredited hospitals.)

2. Section 405.1901 is revised to read as follows:

§ 405.1901 The certification process.

(a) *Definitions.* As used in this subpart:

"Accredited hospital" means a hospital accredited by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association.

"Act" means the Social Security Act.

"AOA" stands for the Americn Osteopathic Association.

"Full review" means a review of all conditions of participation for hospital in the medicare program.

"JCAH" stands for the Joint Commission on Accreditation of Hospitals.

"State survey agency" means the State health agency or other appropriate State or local agency used by the Secretary to perform survey and review functions for Medicare.

(b) *Basic conditions for certification.* In order to be approved for participation in the Medicare program, a prospective provider or supplier of services must:

(1) Meet the applicable statutory definition of section 1861 or 1881 of the Act; and

(2) Be in compliance with the applicable conditions prescribed in Subparts J, K, L, M, N, Q, or U of this part, or the conditions for certification of rural health clinics (Subpart A of Part 481 of this chapter).

(c) *Promulgation and approval of, and conformance with, higher health and safety requirements.* (1) The Secretary, after consultation with the JCAH or AOA, may promulgate health and safety standards higher or more precise than those of either of these accrediting bodies.

(2) The Secretary may, at a State's request, approve health and safety requirements for that State that are higher than those specified in section 1861(e) of the Social Security Act.

(3) If a State or political subdivision imposes higher requirements as a condition for the purchase of health services under a State plan for Old Age Assistance (title I of the Act), Aid to Aged, Blind or Disabled (title XVI of the Act), or Medicaid (title XIX of the Act), the Secretary will impose the same requirements as a condition for reimbursement under Medicare.

(d) *Effect of JCAH or AOA accreditation.* (1) Institutions accredited as hospitals by the JCAH are deemed to meet all of the Medicare conditions of participation for hospitals, except:

(i) The requirements for utilization review as specified in section 1861(e)(6) of the Act;

(ii) The additional special staffing and medical records requirements that are considered necessary for the provision of intensive care in psychiatric and tuberculosis hospitals (sections 1861(f) and (g) of the Act); and

(iii) Any standard under section 1861(e) of the Act which, after consultation with JCAH or AOA, is identified and promulgated by the Secretary as higher or more precise than the requirements for accreditation (section 1965(a)(4) of the Act).

(2) Institutions accredited as hospitals by the AOA are assumed to meet all of the Medicare conditions of participation for hospitals except those specified in paragraph (d)(1) of this section and the institutional planning requirements specified in section 1861(e)(8) of the Act.

(e) *Validation survey.* (1) *Basis for survey.*

The secretary may require a survey of an accredited hospital to validate the JCAH or AOA accreditation processes. Those surveys will be conducted on a selective-sample basis, or in response to substantial allegations or evidence of a condition adverse to the health and safety of patients.

(2) *Effect of selection for survey.*

A hospital selected for a validation survey must:

(i) Authorize its accrediting body to release (on a confidential basis for JCAH hospitals) to the Secretary or the State agency designated by him, a copy of the hospital's current accreditation survey. (For the rules on confidentiality, see 20 CFR 422.426(b)(2) and (c).); and

(ii) Authorize the carrying out of the validation survey.

(3) *Refusal to cooperate with survey.* If a hospital selected for a validation survey fails to authorize its accrediting body to release a copy of its current accreditation survey, or fails to authorize the performance of the validation survey, it will no longer be deemed to meet the Medicare conditions of participation; will be subject to State survey agency review in accordance with § 405.1902; and may be subject to termination under § 405.614.

(f) *Consequences of finding of noncompliance.* (1) If a validation survey results in a finding that the hospital is out of compliance with one or more of the Medicare conditions of participation, the hospital will be subject to:

(i) The requirements applied to unaccredited hospitals that are found out of compliance following a State agency survey (see § 405.1907); and

(ii) State agency survey review (see § 405.1902).

(2) A hospital found out of compliance may obtain an informal administrative review (See § 405.1505(m)).

(g) *Reinstating effect of accreditation.* An accredited hospital will once again be deemed to meet the Medicare conditions participation in accordance with paragraph (d) of this section if:

(1) It withdraws any prior refusal to authorize its accrediting body to release a copy of the hospital's current accreditation survey;

(2) It withdraws any prior refusal to allow a validation survey; and

(3) The Secretary finds that the hospital meets all the Medicare conditions of participation.

(h) *Civil rights requirements.* Attention is invited the requirements of:

(1) Title VI of the Civil Rights Act of 1974, as implemented by 45 CFR Part 80, which provides that no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity receiving Federal financial assistance (section 601); and

(2) Section 504 of the Rehabilitation Act of 1973, as implemented by 45 CFR Part 84, which provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance.

3. Section 405.1902 is revised to read as follows:

§ 405.1902 State survey agency review.

(a) *Statutory provisions.* (1) Section 1864(a) of the Act requires the Secretary to enter into agreements with any State that is able and willing to do so, under which appropriate State or local survey agencies will determine:

(i) Whether providers or prospective providers meet the Medicare conditions of participation;

(ii) Whether supplies meet the conditions of coverage; and

(iii) Whether rural health clinics meet the conditions of certification.

(2) Section 1864(c) of the Act authorizes the Secretary to enter into agreements with appropriate State or local survey agencies for the purpose of conducting validation surveys (see § 405.1901(e)).

(b) *Effect of State agency determination.* (1) The determinations by the State survey agency represent recommendations to the Secretary.

(2) On the basis of these recommendations, the Secretary will determine:

(i) Whether a provider or supplier is eligible to participate in the Medicare program; or

(ii) Whether an accredited hospital shall be deemed to meet the Medicare conditions of participation or be subject to full review by the State survey agency.

(3) Notice of the Secretary's determination will be sent to the provider or supplier.

(c) In the case of a skilled nursing facility completing the second of two successive agreements under title XIX provisions in effect prior to July 1, 1973, and having the same deficiency(ies) which occasioned the two agreements, the State survey agency will review the performance of such facility (which may be limited to a review of the documentation of record) in providing safe and adequate patient care and in progressing toward correction of such deficiency(ies). On the basis of its evaluation, the State survey agency will recommend to the Secretary that:

(1) No provider agreement may be executed with such facility; or

(2) A new provider agreement may be executed for a period related to the time required to correct such deficiency(ies) but not to exceed 6 months; or

(3) A new provider agreement may be executed for a period of 12 months but subject to a provision for automatic cancellation 60 days following the scheduled date for correction unless the State survey agency finds and notifies the Secretary that all required corrections have been satisfactorily completed.

4. Section 405.1904 is amended by revising paragraph (a) to read as follows:

§ 405.1904 Periodic review of compliance and approval.

(a) Determinations by the State agency to the effect that a provider or supplier is in compliance with all the conditions of participation or the conditions for coverage will be for a period of 12 months, except for physcial therapists in independent practice and chiropractors. Determinations for physcial therapists in independent practice and chiropractors will be conducted as often as the Secretary deems necessary and may be for more or less than a 12-month period.

(See paragraph (b) of this section for periods of certification applicable to skilled nursing facilities.) State agencies may visit or resurvey providers or suppliers more frequently where necessary to evaluate correction of deficiencies, ascertain continued compliance, or accommodate to periodic or cycilical survey programs. In addition, the State agency shall review information received through medical review conducted in skilled nursing facilities (see § 405.1121(d)). The State agency shall also review statements obtained from each facility setting forth (from payment records) the average numbers and types of personnel (in fulltime equivalents) on each tour of duty during at least 1 week of each quarter, such week to be selected by the survey agency and to occur irregularly in each quarter of the year. The State agency shall evaluate such reports as may pertain to the health and safety requirements and, as necessary, take appropriate action to achieve compliance or certify to the Secretary that compliance has not been achieved. A State finding and recommendation to the Secretary that a provider or supplier is no longer in compliance will supersede the State's previous certification.

* * * * *

5. Section 405.1905 is amended by revising paragraph (b) to read as follows:

§ 405.1905 Certification of noncompliance.

* * * * *

(b) If the Secretary determines that an institution or agency is not in compliance with the conditions of participation or conditions for coverage, the institution or agency has the right to request that the determination be reviewed. (See §§ 405.614(a)(2) and 405.2404(6) and Subpart 0 of the this Part.)

(Sec. 1102, 1861, 1864, 1865, 1971, and 1881 of the Social Security Act (42 U.S.C. 1302, 1396(e), 1895aa, 1395bb, 1395hh and 1395rr).) (Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare-Hospital Insurance.)

Dated: March 5, 1979.

Leonard D. Schaeffer,

Administrator, Health Care Financing Administration.

Approved: April 11, 1979.

Joseph A. Califano, Jr.,

Secretary.

[FR Doc. 79-13233 Filed 4-26-79; 8:45 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
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DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

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

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

***NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)**

REMINDERS

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

Rules Going Into Effect Today

ENVIRONMENTAL PROTECTION AGENCY

18491 3–28–79 / Air quality implementation plans; California

18490 3–28–79 / Air quality implementation plans; Louisiana

18490 3–28–79 / Air quality implementation plans; Oklahoma

NATIONAL ARCHIVES AND RECORDS SERVICE

Office of the Federal Register—

18630 3–28–79 / Incorporation by reference, publication procedures

Rules Going Into Effect Saturday, April 28, 1979

DEPARTMENT OF TRANSPORTATION

Coast Guard—

20424 4–5–79 / New London, Conn.; establishment of security zone

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing Apr. 24, 1979

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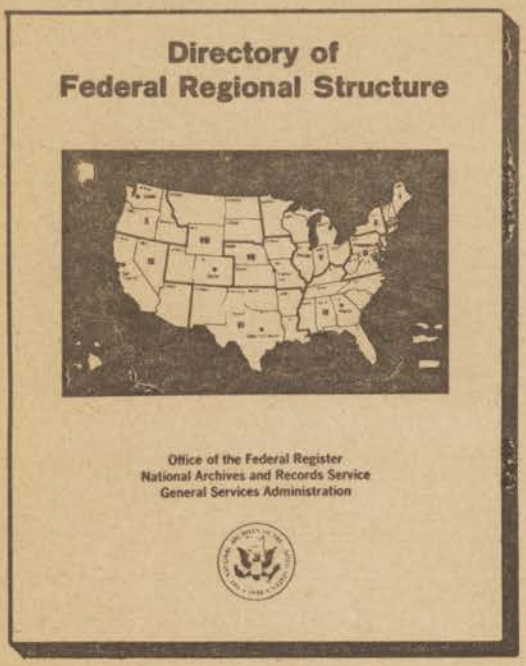
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